

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 GABRIEL IBARRA,

) No. 69617

4 Appellant,

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) Clerk of Supreme Court

5 v.

6
7 THE STATE OF NEVADA,

8 Respondent.

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1 JUROR NUMBER NO. 137: I think the same thing, I don't like to
2 -- I don't -- I don't know how it will be, but I think after all
3 the facts I'll be fine.

4 MS. SUDANO: So if you're selected as a juror in this case,
5 you'd have to go back and deliberate with 11 other people and their
6 strangers. You've never met them other than sitting here this
7 morning; is that going to be an issue for you?

8 JUROR NUMBER NO. 137: No.

9 MS. SUDANO: So no issues going back there and deliberating?

10 JUROR NUMBER NO. 137: No.

11 MS. SUDANO: Would you be the type of person that could
12 participate in the process and -- and share your opinion with
13 everybody else?

14 JUROR NUMBER NO. 137: I believe so. But just like now I
15 think it might take me a little bit longer than others.

16 MS. SUDANO: But you think you can get there?

17 JUROR NUMBER NO. 137: Yes.

18 MS. SUDANO: Okay. So, I just asked the question of whether
19 or not you all would be comfortable with somebody with your state
20 of mind [indecipherable] the State of Nevada. So let's flip it
21 around. So would you all be comfortable -- I'm going to start with
22 you, Ms. Carter -- would you be comfortable if you were the
23 Defendant -- if you were in the Defendant's position with somebody
24 like yourself with your state of mind serving on a jury?

25 JUROR NUMBER NO. 137: I believe so.

1 MS. SUDANO: And why is that?

2 JUROR NUMBER NO. 137: Just for the same reason that it's hard
3 for me to make a decision, so I think having that kind of always
4 pecking at something, but not really sure. Maybe it would help
5 someone else give more information.

6 MS. SUDANO: Now is there anybody else who feels differently
7 that if they were sitting in the Defendant's position, they would
8 not want somebody with their state of mind on the jury? I'm seeing
9 no hands on that question.

10 Now, I just asked Ms. Carter the question of whether or
11 not you all would be comfortable and able to deliberate with a
12 group of strangers to all come to a verdict; is there anybody who
13 feels that they couldn't participate in that process or couldn't
14 work together with the other members of the jury to come to a
15 verdict? I'm seeing no hands on that question.

16 Have any of you ever been a witness or participated in a
17 trial in any way other than the folks who have been jurors
18 previously? Mr. Baumer, number 125?

19 JUROR NUMBER NO. 125: One, two, five, yes. Expert witness in
20 a contract dispute.

21 MS. SUDANO: Just one time?

22 JUROR NUMBER NO. 125: Just one time.

23 MS. SUDANO: Okay. And that sounds like it would have been a
24 civil case, correct?

25 JUROR NUMBER NO. 125: Correct.

1 MS. SUDANO: So you understand also that the burden in a civil
2 case are different than they are in a criminal case?

3 JUROR NUMBER NO. 125: Correct.

4 MS. SUDANO: Now, anything about that experience that would
5 affect your ability to be fair and impartial here?

6 JUROR NUMBER NO. 125: Not -- not that I can think of, no.

7 MS. SUDANO: And you could set aside your --

8 JUROR NUMBER NO. 125: That experience.

9 MS. SUDANO: -- roll and your expertise and your understanding
10 and just focus on the facts represented here?

11 JUROR NUMBER NO. 125: Absolutely.

12 MS. SUDANO: And I can assure you there's no contract dispute
13 here, so it's going to be very different.

14 JUROR NUMBER NO. 125: That's refreshing.

15 MS. SUDANO: It'll be shorter and more interesting that your
16 trial; how's that?

17 Okay. Now, who all here watches CSI or NCIS, Law and
18 Order; any of those shows? Got a bunch of hands. I'm going to
19 have you pass it over if you would, sir, to Ms. Klem, and that's
20 badge number 124.

21 JUROR NUMBER NO. 124: Right.

22 MS. SUDANO: And what do you watch?

23 JUROR NUMBER NO. 124: All of them to some extent, but Law and
24 Order mostly; that's one I watch the most.

25 MS. SUDANO: Now, do you watch some of the non-fiction shows

1 as well, the Dateline and the 48 hours?

2 JUROR NUMBER NO. 124: Uh-huh. At times, yes.

3 MS. SUDANO: But mainly Law and Order?

4 JUROR NUMBER NO. 124: Uh-huh.

5 MS. SUDANO: So you understand that shows like Law and Order
6 and CSI, those are all fictional shows?

7 JUROR NUMBER NO. 124: Yup, I do.

8 MS. SUDANO: Do you understand that some of the things that
9 happen in those cases are very different than how things actually
10 happen in the real world?

11 JUROR NUMBER NO. 124: Yes.

12 MS. SUDANO: And do you watch some of the CSI type shows as
13 well?

14 JUROR NUMBER NO. 124: Occasionally.

15 MS. SUDANO: And so in those shows they've got all sorts of
16 cool ways of --

17 JUROR NUMBER NO. 124: Right.

18 MS. SUDANO: -- finding the --

19 JUROR NUMBER NO. 124: Right.

20 MS. SUDANO: -- the bad guy or --

21 JUROR NUMBER NO. 124: Right.

22 MS. SUDANO: -- tracking somebody down?

23 JUROR NUMBER NO. 124: Right.

24 MS. SUDANO: And they rely a lot on forensic evidence. Do you
25 understand that again that sort of forensic evidence sometimes

1 isn't available in the real world?

2 JUROR NUMBER NO. 124: Yes, I do.

3 MS. SUDANO: And even if that technology does exist in the
4 real world, sometimes it's not used by agency such as Metro?

5 JUROR NUMBER NO. 124: Yes.

6 MS. SUDANO: So is there anything about those shows, Law and
7 Order, CSI, that's going to affect your ability to be a fair and
8 impartial juror in this case?

9 JUROR NUMBER NO. 124: No.

10 MS. SUDANO: Now are you going to require the State to have
11 forensic evidence or to go through all the -- the CSI type things
12 to prove our case to you beyond a reasonable doubt?

13 JUROR NUMBER NO. 124: No. Because I know sometimes that's
14 not available, or even appropriate.

15 MS. SUDANO: Okay. And so would you be able to follow the law
16 if the law told you that witness testimony by itself is sufficient?

17 JUROR NUMBER NO. 124: Yes.

18 MS. SUDANO: So you wouldn't require any of that other?

19 JUROR NUMBER NO. 124: No. No.cf

20 MS. SUDANO: Now, any of the other folks that watch CSI pass
21 it down. Mr. O'Neill, did you say you watch some CSI shows?

22 JUROR NUMBER NO. 120: I've watched it before, yes.

23 MS. SUDANO: Now, do you have any issues with that any
24 different --

25 JUROR NUMBER NO. 120: No. Not at all.

1 MS. SUDANO: And I see you understand as well that --

2 JUROR NUMBER NO. 120: Correct.

3 MS. SUDANO: -- that some of that technology just isn't
4 available?

5 JUROR NUMBER NO. 120: Right.

6 MS. SUDANO: Or even if it is --

7 JUROR NUMBER NO. 120: Right.

8 MS. SUDANO: -- available it doesn't exist in every --

9 JUROR NUMBER NO. 120: It's TV.

10 MS. SUDANO: -- in every particular case, right? So any of
11 the other CSI folks, does anybody else have any issue with -- with
12 separating the CSI type shows and the Law and Order type shows from
13 what you might see here in the courtroom today?

14 Is there anybody who would have an issue following the
15 law if the law tells you that witness testimony alone can be enough
16 to prove guilt beyond a reasonable doubt? I don't see any hands on
17 that one. So I'm going to ask it a different way just to make
18 sure. So is there anybody here who would require some sort of
19 forensic evidence or something beyond just the testimony of
20 witnesses in order to be able to find the Defendant guilty beyond a
21 reasonable doubt? Okay. I'm not seeing any hands on that.

22 I just had specific questions now on some of you.

23 Mr. Merkley.

24 JUROR NUMBER NO. 132: Yes.

25 MS. SUDANO: Number 132. Now, you said you started as a juror

1 in a criminal case in the past; is that correct?

2 JUROR NUMBER NO. 132: Correct.

3 MS. SUDANO: Now, the Judge already let you know there's not
4 going to be any blood or gore in this particular case.

5 JUROR NUMBER NO. 132: That's good for me.

6 MS. SUDANO: Yes. So, anything about your prior jury
7 experience or maybe not being able to finish your prior jury
8 experience that's going to affect your ability to be here today?

9 JUROR NUMBER NO. 132: I don't believe so.

10 MS. SUDANO: Are you excited to get all the way through
11 potentially and see --

12 JUROR NUMBER NO. 132: Hopefully.

13 MS. SUDANO: -- what happens at the end?

14 JUROR NUMBER NO. 132: Yes.

15 MS. SUDANO: Now I had one other question for you. You and
16 your wife are both retired, right?

17 JUROR NUMBER NO. 132: Yes.

18 MS. SUDANO: What did you do before you retired?

19 JUROR NUMBER NO. 132: I worked for the Boeing Company in
20 Huntington Beach, California.

21 MS. SUDANO: What did you do for Boeing?

22 JUROR NUMBER NO. 132: I worked in a job function called
23 configuration management which is an engineering management
24 discipline involving engineering changes to products. And I
25 specifically worked on a program to provide combat, survivor evader

1 radios to our servicemen.

2 MS. SUDANO: Now what did your wife do before she retired?

3 JUROR NUMBER NO. 132: She worked part time for the County of
4 San Bernardino. In Oakland she was the museum director for the
5 Oakland Schoolhouse Museum.

6 MS. SUDANO: Thank you, sir. I think those were my only
7 questions for you.

8 Ms. Peterson. You've also been on a jury.

9 JUROR NUMBER NO. 138: Yes.

10 MS. SUDANO: And that's badge number 138.

11 JUROR NUMBER NO. 138: Yes [indecipherable].

12 MS. SUDANO: And, ma'am, were you on a civil jury or criminal
13 jury?

14 JUROR NUMBER NO. 138: Civil.

15 MS. SUDANO: Okay. And same thing, you understand that the
16 burden in a criminal case is different than a burden in that civil
17 case?

18 JUROR NUMBER NO. 138: Yes.

19 MS. SUDANO: Now overall do you think your experience in -- on
20 that jury was a positive one or a negative one?

21 JUROR NUMBER NO. 138: It was positive.

22 MS. SUDANO: So, anything about that experience that would
23 prevent you from being fair and impartial here today?

24 JUROR NUMBER NO. 138: No.

25 MS. SUDANO: Who else did we have? Ms. Bruce, we already

1 talked about your jury service.

2 Mr. Hall, you were also a juror.

3 JUROR NUMBER NO. 147: Yes.

4 MS. SUDANO: That's badge number 147.

5 JUROR NUMBER NO. 147: Yes. I served on two civil trials in
6 Arizona.

7 MS. SUDANO: Were you the foreperson on either of those
8 juries?

9 JUROR NUMBER NO. 147: Yes, I was.

10 MS. SUDANO: One or both?

11 JUROR NUMBER NO. 147: One.

12 MS. SUDANO: One. Okay. And you understand as well -- oh,
13 this was -- you said it was a while ago, right?

14 JUROR NUMBER NO. 147: Thirty years. More than thirty
15 probably.

16 MS. SUDANO: So, you understand that the burden is different
17 in a civil case than a criminal case?

18 JUROR NUMBER NO. 147: Yes, I do.

19 MS. SUDANO: And the Judge will give you the law as it applies
20 to these particular facts in the case here before you?

21 JUROR NUMBER NO. 147: Right.

22 MS. SUDANO: And you could set aside what you learned in that
23 -- or those Arizona cases from 30 years ago?

24 JUROR NUMBER NO. 147: That'll be easy, yeah.

25 MS. SUDANO: Yeah. To the extent, do you remember any of it?

1 JUROR NUMBER NO. 147: Yes, I do.

2 MS. SUDANO: And any -- was your prior jury service positive
3 or negative as far as experiences?

4 JUROR NUMBER NO. 147: I would describe it as neutral really.

5 MS. SUDANO: So anything about those experiences that would
6 affect your ability to be fair and impartial here today?

7 JUROR NUMBER NO. 147: No.

8 MS. SUDANO: Anything about those experiences that makes you
9 either really want to serve or really not want to serve on a jury
10 in the future?

11 JUROR NUMBER NO. 147: No.

12 MS. SUDANO: No. Okay. Let's start with Ms. Quimby. Is it
13 Ms. Quimby-Nicols? I'm sorry. Badge number 148

14 JUROR NUMBER NO. 146: One, four, six.

15 MS. SUDANO: Oh. I can't read my handwriting. Okay. Now,
16 ma'am, you said years and years ago you were cited for underage
17 drinking.

18 JUROR NUMBER NO. 146: Yes.

19 MS. SUDANO: Was that here in Las Vegas?

20 JUROR NUMBER NO. 146: No. It was in Moapa Valley.

21 MS. SUDANO: Okay. And did the Sheriff's office or
22 Metropolitan Police Department respond to that?

23 JUROR NUMBER NO. 146: Yes.

24 MS. SUDANO: Do you think that you were treated fairly at that
25 time?

1 JUROR NUMBER NO. 146: Yes.

2 MS. SUDANO: Now, anything about that experience that would
3 affect your ability to be fair and impartial here?

4 JUROR NUMBER NO. 146: No.

5 MS. SUDANO: It was a long time ago, right?

6 JUROR NUMBER NO. 146: Long time ago.

7 MS. SUDANO: Okay. And then Mr. Kitts, badge number 145 all
8 the way up front. You also said that you were accused of a DUI and
9 a minor in possession?

10 JUROR NUMBER NO. 145: Yes. That was in Washington.

11 MS. SUDANO: Okay. So same thing that would have been when
12 you were a teenager, right?

13 JUROR NUMBER NO. 145: Correct.

14 MS. SUDANO: Right. Do you think that you were treated fairly
15 by the agency that stopped you?

16 JUROR NUMBER NO. 145: Sure.

17 MS. SUDANO: Do you think that you were treated fairly by the
18 criminal justice system as a whole?

19 JUROR NUMBER NO. 145: Yes.

20 MS. SUDANO: Now, you understand that the agency that you
21 dealt with up in Washington is different than the Metro officers
22 that you might hear from down here?

23 JUROR NUMBER NO. 145: Right.

24 MS. SUDANO: And whatever happened up there, can you set that
25 aside and -- and just be fair and impartial with the officers that

1 may testify here?

2 JUROR NUMBER NO. 145: Sure. I'll try.

3 MS. SUDANO: Anything about that experience that would affect
4 your ability to be fair and impartial?

5 JUROR NUMBER NO. 145: No.

6 MS. SUDANO: Ms. Bruce, I have one more question for you;
7 that's badge number 128.

8 JUROR NUMBER NO. 128: Yes.

9 MS. SUDANO: Now you work or worked for Adam Laxalt, right?

10 JUROR NUMBER NO. 128: Yes.

11 MS. SUDANO: Who's the Attorney General?

12 JUROR NUMBER NO. 128: Correct.

13 MS. SUDANO: So the Attorney General is one prosecuting
14 agency. The District Attorney's Office is a separate prosecuting
15 agency, right?

16 JUROR NUMBER NO. 128: Right.

17 MS. SUDANO: So, your work for the Attorney General, was that
18 -- is that more political in the campaign side of things or are you
19 actually involved in the day to day handling of cases?

20 JUROR NUMBER NO. 128: Just the political side of things on
21 the campaign.

22 MS. SUDANO: So, day to day no involvement with what the
23 Attorney General's Office is doing?

24 JUROR NUMBER NO. 128: Just in respect of learning about it
25 and being able to promote it through his social media on the

1 campaign side.

2 MS. SUDANO: Now, anything about that experience that's going
3 to affect your ability to be fair and impartial here?

4 JUROR NUMBER NO. 128: I don't think so.

5 MS. SUDANO: So, for instance, say that the State can't prove
6 this case to you beyond a reasonable doubt; does the -- and you
7 have to come back with a verdict of not guilty --

8 JUROR NUMBER NO. 128: Uh-huh.

9 MS. SUDANO: -- you'll be able to do that, right?

10 JUROR NUMBER NO. 128: Yes.

11 MS. SUDANO: Now, anything about having to come back with a
12 not guilty verdict it would be particularly difficult for you
13 because you do work for a prosecuting agency?

14 JUROR NUMBER NO. 128: No.

15 MS. SUDANO: Okay. So you'd have no issue going back and
16 saying, hey, I found him not guilty?

17 JUROR NUMBER NO. 128: Correct.

18 MS. SUDANO: Okay. And then similarly, you're not going to
19 hold the State to a higher burden or anything just because you're
20 familiar with the Attorney General and maybe some of their
21 policies?

22 JUROR NUMBER NO. 128: No.

23 MS. SUDANO: All right. Can you pass that over to Ms. Marino,
24 badge number 129? Ms. Marino, you taught for a number of years.

25 JUROR NUMBER NO. 129: Yes, 25.

1 MS. SUDANO: And you said that you worked a little bit at
2 Child Haven, right?

3 JUROR NUMBER NO. 129: Right.

4 MS. SUDANO: How long were you at Child Haven?

5 JUROR NUMBER NO. 129: Three years.

6 MS. SUDANO: Were you -- what were you teaching at Child
7 Haven?

8 JUROR NUMBER NO. 129: I was teaching grades 3 through 5 or 2
9 through 4, whatever was needed. As kids came in, we regrouped
10 frequently, but elementary.

11 MS. SUDANO: And so those kids were being taught by yourself
12 and other individuals --

13 JUROR NUMBER NO. 129: Right.

14 MS. SUDANO: -- instead of going back to the schools that they
15 had come from?

16 JUROR NUMBER NO. 129: Right. They were housed on the campus
17 and we were their teachers while they were there.

18 MS. SUDANO: And then you said -- I think that the quote was
19 something along the lines of it was more like social work than it
20 was teaching?

21 JUROR NUMBER NO. 129: It was.

22 MS. SUDANO: And so a lot of those kids were coming through
23 the juvenile justice system either through their parents or through
24 themselves --

25 JUROR NUMBER NO. 129: Right.

1 MS. SUDANO: -- is that fair?

2 JUROR NUMBER NO. 129: Right. Parents mostly through abuse or
3 neglect or homelessness or drug addiction, whatever the problems
4 with the families.

5 MS. SUDANO: And so would you said that you kind have a
6 familiarity with the juvenile justice system through that?

7 JUROR NUMBER NO. 129: I guess a sure tail experience. We
8 were never privy to any specific information. I was --

9 MS. SUDANO: That was the Court cases or whatever was
10 happening in the system was kind of apart from what you were doing?

11 JUROR NUMBER NO. 129: Right. We weren't allowed to ask and
12 nobody told us.

13 MS. SUDANO: So anything about that experience and what you
14 may have learned about the justice system through that that would
15 affect your ability to be fair and impartial here?

16 JUROR NUMBER NO. 129: I don't think so.

17 MS. SUDANO: I think that's it. So, open this one up to you
18 again, Ms. Marino, just 'cause you were my lucky person with the
19 mic. Judge Bixler already asked you all I believe if you would be
20 able to follow the law. Now do you understand that even if you
21 don't disagree with the law we're not really here to change the law
22 today, so you just have to follow the law as it's given to you/

23 JUROR NUMBER NO. 129: Yes.

24 MS. SUDANO: Do you have any issues with that?

25 JUROR NUMBER NO. 129: No.

1 MS. SUDANO: Anybody else in the panel that would have any
2 issues just following the laws that's given and separating that
3 from the ability to change the laws as it's written? Seeing no
4 hands on that.

5 Ms. Marino, again, do you promise if you're selected as a
6 juror to do the absolute best that you can with this case?

7 JUROR NUMBER NO. 129: Yes.

8 MS. SUDANO: You can give it the weight and seriousness that
9 it's entitled to?

10 JUROR NUMBER NO. 129: Yes.

11 MS. SUDANO: Now is there anybody else who can't make that
12 same promise, you can't promise that they'll do the best that they
13 can with this case? Seeing no hands.

14 And, Your Honor, with that I would pass for cause.

15 THE COURT: Very good. Counsel.

16 MS. SPELLS: Good morning, ladies and gentlemen. And actually
17 good afternoon. My name is Jasmin Spells and I -- if you don't
18 mind I'm going to go by first names 'cause that's what we've been
19 going by most of the morning.

20 Now, how many of you guys do not have a cellphone?
21 Seeing one hand. I expected to see none.

22 Mr. David, badge number 147.

23 JUROR NUMBER NO. 147: Yes, I am.

24 MS. SPELLS: And you don't have a cellphone?

25 JUROR NUMBER NO. 147: I do not.

1 MS. SPELLS: Do you only use a house phone?

2 JUROR NUMBER NO. 147: I do.

3 MS. SPELLS: And what do you do in case of emergency?

4 JUROR NUMBER NO. 147: Well, my wife has a cellphone.

5 MS. SPELLS: Okay. And everyone else, do the rest of you guys
6 have cellphones? Out of the individuals who do have cellphones,
7 how many of you guys purchased your cellphone as part of a
8 contract? Majority of you guys.

9 I want to switch gears just a little bit. How many of
10 you guys sitting here this morning -- guys and women I should say --
11 -- think it would be better for -- no, let me take that back -- how
12 many of you guys believe that as defense attorneys we should put on
13 witnesses? Seeing no hands.

14 How many of you all believe that a person who is charged
15 in a crime be called that individual a Defendant, Mr. Ibarra, that
16 he should testify at his own trial? Ms. Mary?

17 JUROR NUMBER NO. 138: Mary Peterson. Mary Peterson.

18 MS. SPELLS: And badge number 138. And you believe that a
19 Defendant named in a crime should testify at their own trial?

20 JUROR NUMBER NO. 138: Yes.

21 MS. SPELLS: And can you tell me why?

22 JUROR NUMBER NO. 138: Well, it just seems fair. I'd want to
23 hear all -- both sides, one on one personally.

24 MS. SPELLS: And can you think of a reason why an individual
25 would decide not to testify at his or her own trial?

1 JUROR NUMBER NO. 138: Either possibly their attorneys
2 suggested not too for whatever legal reasons. That's probably the
3 only -- the only reason --

4 MS. SPELLS: Okay.

5 JUROR NUMBER NO. 138: -- that I could come up with on short
6 notice.

7 MS. SPELLS: Would you hold it against Mr. Ibarra or the
8 defense if he chose not to testify?

9 JUROR NUMBER NO. 138: No.

10 MS. SPELLS: And you could still be fair and impartial if he
11 chose not to testify?

12 JUROR NUMBER NO. 138: Yes.

13 MS. SPELLS: You could weigh the evidence on both sides?

14 JUROR NUMBER NO. 138: Yes.

15 MS. SPELLS: If the --

16 JUROR NUMBER NO. 138: I would think it would help him though,
17 but that just me speaking.

18 MS. SPELLS: Now if the Judge told you that there's no
19 requirement for a Defendant to testify, would you take that into
20 consideration in your own thoughts?

21 JUROR NUMBER NO. 138: Yes.

22 MS. SPELLS: Now, can anyone else think of a reason why an
23 individual charged with a crime of choosing not to testify in their
24 own trial? Let's come to Mr. Nicholas. Are you badge number 145?
25 What is the reason that you think a person charged would choose not

1 to testify?

2 JUROR NUMBER NO. 145: Well, it's not -- it's not required to.
3 If you don't want to self-incriminate that advice [indecipherable]
4 that he mentioned.

5 MS. SPELLS: Now, can you imagine that a person may be
6 nervous?

7 JUROR NUMBER NO. 145: Uh-huh.

8 MS. SPELLS: Do you think that would possibly be a reason that
9 someone may not want to testify?

10 JUROR NUMBER NO. 145: Most definitely if they put themselves
11 out there and they seem nervous or scared outside of reasons of
12 being in this, then that could be portrayed to the jury.

13 MS. SPELLS: And what about a language barrier?

14 JUROR NUMBER NO. 145: That too.

15 MS. SPELLS: So, if Mr. Ibarra chose not to take the stand,
16 would you hold that against the defense?

17 JUROR NUMBER NO. 145: No.

18 MS. SPELLS: Could you be fair and impartial?

19 JUROR NUMBER NO. 145: Yes.

20 MS. SPELLS: Now along those same lines, tell me, Mr.
21 Nicholas, what you think is worse; is it worse to let a guilty man
22 go free or to convict an innocent person?

23 JUROR NUMBER NO. 145: I think the worst is convict an
24 innocent person.

25 MS. SPELLS: Is there anyone in the panel who believes that it

1 would be worse to let the guilty man go free or to convict an
2 innocent person? Okay. I'm seeing no hands, so that would be a
3 no.

4 Now Judge Bixler has gone over it just a little bit and
5 I'm sure he's going to go over it in more detail later. But he
6 will let you know that the State is the only party that has the
7 burden in this case and the defense doesn't have any burden. They
8 don't have to put on any witnesses or do anything. And earlier he
9 made the comment that the defense could sit and play solitaire.
10 Does anyone have a problem with that? Not seeing any hands.

11 Now I'm going to talk a little bit just about how you
12 deal with disagreements and conflicts, so I wanted to speak with
13 Ms. Christina. And are you badge number 126?

14 JUROR NUMBER NO. 126: Yes, I am.

15 MS. SPELLS: And you indicated that you were a preschool
16 teacher?

17 JUROR NUMBER NO. 126: Yes.

18 MS. SPELLS: Now, is it safe to say that in your job
19 environment some of the preschoolers have some conflict?

20 JUROR NUMBER NO. 126 Oh yes. All the time.

21 MS. SPELLS: What are some of the skills and things that you
22 do to resolve those conflicts?

23 JUROR NUMBER NO. 126: Well, I sit with them one on one to
24 talk with them. And normally I'll bring the other one after I've
25 talked with the whose caused the conflict. And, you know,

1 apologize and talk with them. They'll sit by themselves for a
2 little awhile, think about what they did and just little things
3 like that.

4 MS. SPELLS: So in doing that are you trying to determine what
5 actually happened?

6 JUROR NUMBER NO. 126: Yes.

7 MS. SPELLS: You're kind of like an investigator at the time?

8 JUROR NUMBER NO. 126: Uh-huh.

9 MS. SPELLS: Very similar to what we are asking all of you who
10 are going to be jurors to do here.

11 JUROR NUMBER NO. 126: Uh-huh.

12 MS. SPELLS: And what are some of the things you use to
13 determine who is telling the truth?

14 JUROR NUMBER NO. 126: That's a good question. I don't know.
15 I normally bring maybe one of the other aides over, another set of
16 eyes, or one of the older kids who may have saw it. Get another
17 eyewitness.

18 MS. SPELLS: Okay. And can you pass the mic -- if you don't
19 mind I want to ask the same question of Ms. Jean. Are you badge
20 number 129, Ms. Jean? You've been teaching for 26 years?

21 JUROR NUMBER NO. 129: Yes.

22 MS. SPELLS: And I want to direct the same question to you;
23 during that time period, what are some of the things you do to deal
24 with conflicts between children?

25 JUROR NUMBER NO. 129: Same thing, talk to them individually.

1 See if there's anybody who witnessed exactly what happened.
2 Schools have very strict procedures. I know we go through it. It
3 begins with that. Make a written statement from each child. Then
4 gather any witnesses and if -- if need be turn it over to a higher
5 power.

6 MS. SPELLS: Thank you. Now to the panel, can anyone think of
7 some things that you would use while listening to witnesses to kind
8 of determine whether an individual is telling the truth? Ms. Mary,
9 badge number 138.

10 JUROR NUMBER NO. 138: Yes.

11 MS. SPELLS: Go ahead please.

12 JUROR NUMBER NO. 138: Body language.

13 MS. SPELLS: That is a great one.

14 JUROR NUMBER NO. 138: I really pay attention to that.

15 MS. SPELLS: Okay. So you're going to be looking at the body
16 language --

17 JUROR NUMBER NO. 138: It's not the only, you know, but it's -
18 - it's something I pay attention too with a lot of people.

19 MS. SPELLS: And is there a certain body language that you
20 think signifies that someone is more honest?

21 JUROR NUMBER NO. 138: The eyes.

22 MS. SPELLS: Okay.

23 JUROR NUMBER NO. 138: If they're looking down or they're --
24 they're avoiding you or whoever is speaking to them. Not feeling
25 strong and their stature.

1 MS. SPELLS: Okay.

2 JUROR NUMBER NO. 138: So --

3 MS. SPELLS: And, Ms. Mary, you're also retired educator,
4 right?

5 JUROR NUMBER NO. 138: Yes.

6 MS. SPELLS: And what age group did you teach?

7 JUROR NUMBER NO. 138: Well, it was a special ed class and I
8 was teacher assistant. Each year was different, but it was one
9 through sixth. I mean, off and on. A few here, a few there.
10 Depending in the year.

11 MS. SPELLS: Would you agree with me that culturally sometimes
12 looking down could be a sign of respect?

13 JUROR NUMBER NO. 138: Yes. I learned that there.

14 MS. SPELLS: Okay.

15 JUROR NUMBER NO. 138: Yes.

16 MS. SPELLS: And so someone who is looking down possibly may
17 still be telling the truth and is just showing more respect than
18 trying to be dishonest; would you care to say?

19 JUROR NUMBER NO. 138: Yes, it is. Because we did have
20 Hispanic children and I was not accustomed to the different
21 cultures and it was brought to my attention. And I found that very
22 interesting and then it opened my eyes, so to speak.

23 MS. SPELLS: So, during the course of this when you are
24 evaluating body language, you can take into account that maybe some
25 culture's body language mean something different and is not always

1 a sign of dishonesty?

2 JUROR NUMBER NO. 138: That's true. Good reminder. Uh-huh.

3 MS. SPELLS: And anything about that experience that is going
4 to lead you to not be fair and impartial to everything else?

5 JUROR NUMBER NO. 138: No.

6 MS. SPELLS: Thank you. Now I wanted to direct a question to
7 Mr. Richard; are you badge 127? You indicated that you do
8 surveillance?

9 JUROR NUMBER NO. 127: Yes.

10 MS. SPELLS: Is that in a casino or retail shop?

11 JUROR NUMBER NO. 127: Casino.

12 MS. SPELLS: And during the course of your job duties, do you
13 deal a lot with police officers?

14 JUROR NUMBER NO. 127: Yes.

15 MS. SPELLS: Do you ever have to write any statements?

16 JUROR NUMBER NO. 127: Yes.

17 MS. SPELLS: And in those statements are you ever using like
18 any legal words as far as making a determination to what crime
19 easily was committed.

20 JUROR NUMBER NO. 127: No. We just put our point of view of
21 what we saw witnessed.

22 MS. SPELLS: Okay. And have you ever had a bad experience on
23 your job dealing with the officers?

24 JUROR NUMBER NO. 127: No.

25 MS. SPELLS: Fair to say they've all be positive experiences?

1 JUROR NUMBER NO. 127: Yes.

2 MS. SPELLS: Anything about having such a close relationship
3 with officers going to prevent you from being neutral here?

4 JUROR NUMBER NO. 127: No.

5 MS. SPELLS: Fair and unbiased?

6 JUROR NUMBER NO. 127: No.

7 MS. SPELLS: And if you could pass the microphone up just a
8 little bit, I wanted to speak with Mr. Timothy who is -- are you
9 badge 131?

10 JUROR NUMBER NO. 131: Yes.

11 MS. SPELLS: Good morning. Are you -- are a cage cashier; is
12 that correct?

13 JUROR NUMBER NO. 131: Yes.

14 MS. SPELLS: And same thing, do you often have a lot of
15 dealings with officers during the course of your employment?

16 JUROR NUMBER NO. 131: No. Not really.

17 MS. SPELLS: No. Not really. Okay. Thank you. If you could
18 pass the mic, we're going to go up one more time to Ms. Mary again.
19 Badge 138, right?

20 JUROR NUMBER NO. 138: Yes, it is.

21 MS. SPELLS: I believe you indicated that your daughter is a
22 nanny and a legal secretary?

23 JUROR NUMBER NO. 138: Yes.

24 MS. SPELLS: Does she do civil or criminal?

25 JUROR NUMBER NO. 138: She is just new to this. Actually her

1 boss who is the mom of the little girl she watches and has been for
2 five years, she asked my daughter if she wanted to be trained in
3 her office.

4 MS. SPELLS: Sure.

5 JUROR NUMBER NO. 138: So that's all I know.

6 MS. SPELLS: Do you know if the office does civil or criminal
7 law or both?

8 JUROR NUMBER NO. 138: I think it's both.

9 MS. SPELLS: Oh okay.

10 JUROR NUMBER NO. 138: And no specific cases are ever
11 discussed with me, but just in general I think that's the case.

12 MS. SPELLS: Now at the conclusion of this trial, if you are
13 chosen to be a juror, you will have to deliberate with other
14 jurors. Each of you will do that. Is anyone going to have
15 difficulty making known their opinion if they are in the minority?
16 Seeing no hands.

17 And does everyone feel comfortable with expressing their
18 thoughts and ideas about any of the evidence that you have heard
19 during the course of the trial? Okay. And I'm seeing no hands for
20 that.

21 Brief indulgence, Your Honor.

22 Just one last question. Have you ever been in a
23 situation where you felt as if someone made a huge mountain or made
24 something extremely bigger than what it was? Very like minor
25 situation either at work or at school and it just got blown way out

1 of proportion. No one ever had that experience. Yes. In the
2 back. Ms. Sherilyn.

3 JUROR NUMBER NO. 117: Uh-huh.

4 MS. SPELLS: Badge number 117.

5 JUROR NUMBER NO. 117: Yes. I have three children and so even
6 though they're adults now it still happens to this day where I'm
7 the arbitrator between them. I just listen to both sides and I try
8 to get them to see how the other person's looking at it and go on.
9 But unfortunately even they're 26, 23 and 18, it still happens.

10 MS. SPELLS: And so you indicated that you have to listen to
11 both sides and kind of look at the whole picture before you make a
12 decision?

13 JUROR NUMBER NO. 117: Correct. Because it often has to do
14 with their boyfriends, husbands, girlfriends, wives.

15 MS. SPELLS: Okay. And, Ms. Sherilyn, I can sometimes have a
16 very low voice and I want to make sure, have you been able to hear
17 me during the course of all of this?

18 JUROR NUMBER NO. 117: I hear you with these.

19 MS. SPELLS: Okay.

20 JUROR NUMBER NO. 117: I -- I am -- the Court has provided me
21 with something, so I can hear you very clearly.

22 MS. SPELLS: Just wanted to make sure.

23 JUROR NUMBER NO. 117: Uh-huh.

24 MS. SPELLS: Has anyone else had a similar experience as Ms.
25 Sherilyn? Seeing no hands.

1 And Ms. Deborah in seat 13; are you badge 133?

2 JUROR NUMBER NO. 133: Yes.

3 MS. SPELLS: I just wanted to ask you, what does your husband
4 do?

5 JUROR NUMBER NO. 133: He's president of REIT, a real estate
6 investment trust.

7 MS. SPELLS: Okay. Your Honor, I'll pass for cause.

8 THE COURT: Very good. Okay. Now we are going to go to the
9 next phase of the jury selection process and this is where both
10 sides get to pick out of this 23 people group the 13 folks that are
11 going to actually to sit on the jury. So they're going to start
12 it. They're going to pass their little list back and forth.

13 I'm going to start the process after -- I'm going to
14 pretend like this whole group is the jury 'cause I got some
15 additional information that I need to give to you by way of
16 instructions of what you can and what you can't do. And I'm just
17 going to go ahead and start, so we don't waste any time. As soon
18 as they get done, I'll -- oh yeah, when I -- when I read the names
19 of the 13 jurors, if you don't hear your name that means you're not
20 among the 13 folks and you'll be excused.

21 It's at that point that we sometimes get a lot of
22 sobbing, crying when they're not -- when they're not selected. So
23 I just want you to kind of hold that part down to a minimum.

24 So you're going to -- here's the information for the
25 jurors. Okay. First of all, from here on, you're going to get

1 another badge. The badge you've got on now is going to be
2 exchanged for another badge that JR's going to give you that's
3 going to identify you as an actual juror sitting on a jury in a
4 case that's pending.

5 The purpose of that is is it's real important you have
6 that badge on when you're anywhere close to the building because it
7 hopefully is -- it identifies you and keeps people from talking to
8 you. Because this bit about talking to people is real important.
9 Steer clear of -- now you guys -- are you guys working?

10 MS. SPELLS: Yes, Your Honor.

11 THE COURT: Oh okay. All right. It just looked that we're
12 doing anything.

13 This part about having your badge on is important because
14 we want to separate you away from everybody else especially the
15 folks here, the attorneys, the witnesses. So, to further
16 facilitate that, you will no longer be coming in and out of this
17 front door. From here on, the juries go out the back door and the
18 deliberation room is right down the hall.

19 JR's going to show you exactly where you go and you won't
20 be -- you won't park where you parked today. There's a special
21 place for jurors to park, okay. And he'll go through all that with
22 you.

23 Not only not talking about the case, it's real important
24 you don't do any kind of an investigation on your own because if --
25 you can get on the internet these days and look all kinds of stuff

1 up. That is an absolute no, no. You have to as a juror, you have
2 to make your determination as to whether or not the State has
3 proven their case beyond a reasonable doubt based strictly and
4 solely upon the evidence that's presented to you from this witness
5 chair right there. That testimony plus any exhibits is going to be
6 the only thing you can base your verdict upon, okay.

7 Here's how the case is going to proceed. And I'll tell
8 you I'm going to give you an overview of how it works. Counsel
9 will make opening statements. First the State's opening statement,
10 then the Defendant's opening statement. And in conjunction with
11 opening statements, closing arguments and questions to the
12 witnesses, I need to remind you that the evidence in this case
13 comes from the folks that are sitting there in the witness chair.

14 Everything that the counsel says whether it's in opening
15 statements, closing arguments or by way of questions to the jury
16 have no evidentiary value whatsoever. Questions to a juror only
17 have -- only have meaning as it relates to the answer to that
18 question. So don't -- don't let opening statements or closing
19 arguments or questions by counsel interfere with your thinking
20 process; that's evidence, that's not. All right.

21 There's -- there's two kinds of evidence, direct evidence
22 and circumstantial evidence. And it is completely and entirely up
23 to the purview of the jury to give evidence whatever way you deem
24 it is worth, okay. Direct evidence, so you understand what I'm
25 talking about, the classic example that's always used, direct

1 evidence is you walk outside and you see it raining, okay. You
2 know that it's raining 'cause you saw it. An eyewitness observed
3 it. You walk outside and you see a wet street. You see a wet
4 sidewalk. You see water running down the gutter. You can you
5 presume that it has rained. That is called circumstantial
6 evidence. You didn't see it, but you saw other things that gave
7 you that indication

8 Circumstantial and direct evidence is entirely how much
9 weight you want to give it is a completely and entirely up to the
10 jury.

11 I told you this before. Before the jury -- after we have
12 opening statements, the State's going to put on their evidence.
13 They're going to call their witnesses. They do direct examination.
14 Then they'll be cross examination by the defense counsel. Then
15 they'll both have a chance to do redirect or recross and then the
16 witness is excused. Okay.

17 State will go through all their witnesses. Then the
18 defense will decide what they want to do. As they said, they don't
19 have any burden to prove. They don't have to put on evidence.
20 They may or they may not call witnesses. The Defendant may or may
21 not testify.

22 If the Defendant chooses not to testify which he has
23 every single right to choose and elected to do that, it is --
24 there's a specific instruction. We're going to give you preview.
25 You are instructed that you cannot even discuss in the course of

1 deliberations the fact that the Defendant may have elected and
2 chosen not to be on a witness stand. You can't even put -- can't
3 even bring it up, so don't do that. If that's what the Defendant's
4 election is, that's his election and that is absolute
5 constitutional right.

6 You are encouraged, and you'll have a notebook here,
7 you're encouraged to take notes during the course of the evidence
8 that's being presented, but not to the point that you exclude the
9 witness. Pay attention to the witness when the witness is
10 testifying. There's plenty of lulls in the testimony and the --
11 and the trial where you'll be able to make notations of things that
12 you thought you were important. But don't do that so that you miss
13 somebody's testimony or something the same because it is real
14 important to pay attention to the witnesses while they're
15 testifying.

16 You're the ones that going to decide what you believe
17 actually happened. The only way you're going to be able to do that
18 is to pay real close attention to the witnesses. All right.
19 There's no way to correct a mistake in that regard. So you got to
20 get it right first time around.

21 You must not be influenced by any kind of sympathy or
22 prejudice for or against either the State or the Defendant. They
23 are both entitled to the same, fair and impartial consideration.
24 That pretty much -- if you can't hear a witness for heaven's sake,
25 tell JR and we'll stop. We'll stop the proceeding and have them

1 repeat what they said. Don't let something like that go -- go on
2 without making a correction.

3 Counsel's job are to ask the witnesses questions. Okay.
4 My job is to answer questions of law. We all have a function.
5 Your job is to listen real careful to the evidence and then
6 ultimately answer the questions if the State proved their case
7 beyond a reasonable doubt.

8 And your job is not to ask questions. However, even
9 though it's not encouraged, there is a process where you can ask a
10 question and I'll tell you how it works. If there's -- first of
11 all, the question has to be a question for the witness. And it has
12 to be the witness that is on the witness stand. The witness has
13 left the witness stand. We're not going to call them back 'cause
14 you thought of a question that you wanted to ask him.

15 During the course of the -- of the testimony of a
16 witness, if you have a question, what you'll do is you'll take a
17 notebook, you're going to get a clean sheet of paper, you'll put
18 your juror number and the question, give it to JR, he's going to
19 bring it up here, give it to me and I'll have counsel come up,
20 we'll all read it, I'll listen to any objections they have to the
21 question. If -- if it's a proper question to be asked, either I'll
22 ask it or I'll have one of the counsel ask the questions. So you
23 can write it down, but you're not the one that's going to be
24 asking, you know.

25 If I don't ask the question, I'll tell you at the end of

1 the trial why I -- what the objection was, what the legal reason
2 why the question couldn't be asked. That's the process that you go
3 through if you have a question that you want to ask the witnesses,
4 okay.

5 THE MARSHAL: Final selection, Your Honor.

6 THE COURT: Oh, I ran out of stuff to yap about just about the
7 same time they -- as soon as we -- as soon as we do this then
8 everybody else that's not on the list of the 13 jurors are going to
9 get excused and we're going to take a lunch -- we're going to do
10 what we do really well, take a recess. And we're going to take a
11 break 'til like 2 o'clock, okay. And then we'll come back.
12 Witnesses are all scheduled to start right at 2 o'clock and we'll
13 be off and running.

14 And yeah another thing, you go out here and JR will make
15 sure that you know when -- when you come back. When we come back
16 at like 2 o'clock, the 13 folks will meet -- you have them meet you
17 over here at the -- JR, do they meet you over here at the double
18 doors and you bring them back down the hallway over here?

19 THE MARSHAL: When they deliberate.

20 THE COURT: No. I mean, even after lunch and when they come
21 back in the morning, do you meet them over here and walk them back
22 into the deliberation room?

23 THE MARSHAL: Yes, I do.

24 THE COURT: Okay. Yeah, he'll go through that whole process
25 with you, but the main point is you're not going to be out in the

1 front door. I mean, that's where the witnesses are going to be and
2 we want to keep you away from there. So you'll come down the
3 hallway over here at the double doors, he'll take you into the jury
4 deliberation room and they have water, coffee, stuff like that.
5 For heaven sakes, it doesn't bother us if you bring something in as
6 long as it makes you comfortable and keeps you alert and awake.
7 You want water, coffee, let us know. All right.

8 Did I ever finish telling you the order after the State's
9 witnesses, the defense, if they have any witnesses, after they've
10 concluded all that, then I'm going to read you the instructions on
11 the laws that applies to this case? Then you'll hear closing
12 arguments from both the State and the defense. Because the State
13 has the burden of proof, you will hear closing arguments from the
14 State first, then you'll hear the defense closing arguments, and
15 you'll hear the State's. They get to make the last thing you will
16 hear will be the State making their final closing argument.

17 And after all that's been accomplished, I send you off.
18 We identify who the alternate juror is and then we take the other
19 12 people and send them to the deliberation room.

20 Okay. Now, since I'm not used to doing it like this,
21 which one do I read?

22 THE CLERK: Oh, I read it.

23 THE COURT: I just wanted to make sure.

24 THE CLERK: You want me to read it?

25 THE COURT: Okay. You read it. Yeah. Here you go.

1 THE CLERK: I have to number it first.

2 THE COURT: Okay. You got to make sure you have 13 there.

3 After we -- after we do this and I excused everybody,
4 you're barely going to hear me say another word 'cause it seems
5 like I'm the one that's been doing all this talking. I'm really
6 going to be pretty much silent as soon as we get this trial kicked
7 off.

8 When we named the 13 folks, we're going to kind of
9 reconfigure you so that you're in the same order, just absent the
10 people that were excused, so we can tell exactly -- you want to
11 read them?

12 THE CLERK: Do you want to look at it?

13 THE COURT: Oh no.

14 THE CLERK: Okay.

15 THE COURT: No. Just read them off.

16 THE CLERK: Okay. Juror number one is Sherilyn Nelson.

17 THE COURT: So when you hear your name, you want to step --
18 step back up. Sorry about that.

19 THE CLERK: Juror number two is Andrea Quimby-Nichols. Juror
20 number three is Christopher O'Neill. Juror number four is George
21 Baumer. Juror number five is Timothy Zacovic. Juror number six is
22 Philip Merkley. Juror number seven is Deborah Negrel. Juror
23 number eight is Rasool Barati. Juror number nine is Courtney Anne
24 Carter. Juror number ten is Darlene Drummond. Juror number eleven
25 is Jennifer Marinacci. Juror number twelve is Brian Ribar. And

1 Juror number thirteen is Emilio Guerra.

2 THE COURT: Okay. Folks, the rest of you are going to be
3 excused and sent back down to the Jury Commissioner's office on the
4 third floor. If you didn't get picked, if you didn't get even
5 overly questioned, I still have to tell you that we couldn't do
6 this without every single one of you. I appreciate the -- the
7 effort that you've made and the fact that you answered the call.
8 So, you guys don't have to listen to me talk anymore. Go on
9 downstairs to the Jury Commissioner's office on the third floor and
10 just tell them that our selection process is over with and you guys
11 weren't in the 13 that were picked. Thank you all, everyone for
12 your efforts.

13 And you guys are going to get sworn in again. There's a
14 different oath when you're actually on the sitting jury, okay. So
15 first thing we're going to do right now is have everybody stand up,
16 raise your right hand, Carol's going to swear you in.

17 [Clerk swears jury panel]

18 THE COURT: Very good. All right. Like I said, first thing
19 we're going to do is take a recess. Let's -- is that enough time
20 if we come back at 2 o'clock or should I say 2:15?

21 MS. SPELLS: That should be fine, Your Honor.

22 THE COURT: Two o'clock?

23 MS. SPELLS: Yeah. Yes.

24 THE COURT: Okay. All right. So we're taking a break here
25 for lunch, whatever from now 'til 2 o'clock. JR will take you

1 outside and tell you exactly how it works. You're going to go out
2 from -- are you going to take them out?

3 THE MARSHAL: I'll take them out. Yes, sir.

4 THE COURT: Okay. This -- this time you're going to go out
5 there, but this is the last time you're going to use the front
6 door. He'll tell you where to meet him and he'll bring you back in
7 at 2 o'clock. All right.

8 Now I have to admonish you. I did this earlier. Yeah,
9 you can leave your notebooks right there.

10 I admonish the members of the jury not to converse or
11 discuss amongst themselves or with anyone else on any subject
12 connected or related to this trial. Don't watch, listen or read
13 any reports or commentaries regarding this trial through any median
14 of information which means radio, television, newspapers, internet,
15 any of those sources of information. And don't form or express any
16 opinions on any subject connected or related to this trial until
17 such time as this case has been finally submitted to you. Okay.

18 Go have lunch. Relax. See you at 2 o'clock.

19 [Outside the presence of the jury]

20 THE COURT: Okay. We're outside the presence of the jury.
21 Anything we need to discuss?

22 MR. WOOD: Just really quick. I don't know if Your Honor did
23 it before, but the whole -- if you see us in the hallways we're not
24 ignoring you, we're just --

25 THE COURT: I'll go through it again. I mean, I didn't

1 explain it like -- but I'll go through it again. I'll make sure
2 they understand it you're not being rude by not talking to them.
3 Anything else?

4 MS. SPELLS: No, Your Honor.

5 MS. SUDANO: Not from the State, Your Honor.

6 THE COURT: Okay. I mean, how many witnesses are we going to
7 get through today?

8 MS. SUDANO: I have two lined up for this -- for this
9 afternoon. I can bring a third witness if we think we're going to
10 get to them. I just hate to bring him down here and not call him
11 today.

12 THE COURT: Well, whatever -- whatever you want to do. I just
13 want to make sure we roll this puppy along in a timely fashion.
14 Let's not waste their time.

15 MS. SPELLS: Will we be stopping at 5 today, Your Honor?

16 THE COURT: Yeah. We'll stop around between 5 and 5:15.

17 Okay. All right. See you guys at 2 o'clock.

18 [Lunch recess taken from 12:48 p.m. to 2:03 p.m.]

19 [Outside the presence of the jury]

20 THE COURT: Okay. And outside the presence of the jury. The
21 juries all here in the deliberating room. Anything we need to
22 address?

23 MR. WOOD: Yeah. Briefly, Your Honor. I think there's just a
24 housekeeping matter. In the officer reports, when they arrested my
25 client it said that they checked him and he had active warrants.

1 The DA never filed any bad acts or, you know, motions. So we just
2 want to make sure that the detectives or the officers don't --

3 THE COURT: Mention that.

4 MR. WOOD: -- indicate that sort of thing.

5 MS. SUDANO: And, Your Honor, I have pre-trialed with the
6 officers. They know not to mention the fact that he had or may
7 have had an outstanding warrant. And I do know he was never booked
8 on that, so I don't know what happened with it, but they are aware.
9 I don't anticipate any of them will mention the warrant.

10 THE COURT: Okay. All right. Good.

11 MR. WOOD: Additionally, Your Honor, I just want to let the
12 Court know that my client is going to be making an admission as to
13 a petty larceny, so we have talked to him about that. He does
14 agree with that, so we are going to be presenting that to the jury.

15 THE COURT: How?

16 MR. WOOD: Possibly in opening, but definitely in closing and
17 through jury instructions.

18 THE COURT: Okay. You mean, he's not going to get on the
19 witness stand?

20 MR. WOOD: No.

21 THE COURT: Okay. Okay. All right. Okay. And I'll -- I'll
22 reemphasize for the jurors that if they see you guys downstairs in
23 the hallway, blah, blah, blah, that they're -- you're not being
24 rude; it's just when they say no contact mean no conversations.
25 Good afternoon, that's -- that's it.

1 MR. WOOD: Understood.

2 THE COURT: All right. We're ready.

3 [In the presence of the jury]

4 THE COURT: Everybody please have a seat. Will the parties
5 stipulate to the presence of the jury?

6 MR. WOOD: We will.

7 MS. SUDANO: Yes, Your Honor.

8 THE COURT: Very good. All right. Couple of little
9 housekeeping matters. I know I said this, but I want to emphasize
10 this again. When you guys are on a break, you're in lunch break,
11 you're getting in the morning, you're leaving, it's entirely
12 possible that you're going to run into some of these people. I
13 just want to make sure you understand how important it is that you
14 don't converse with anybody that has anything to do with this case,
15 okay.

16 If you can get somebody to even say good morning, you're
17 going to be lucky. They're not being rude. They're following the
18 same instructions I'm telling you guys, okay. So if you run into
19 somebody and they act like they're ignoring you, they're not being
20 rude. They're just following the rules, okay.

21 And I've already kind of foreshadowed how this whole
22 things works. What you're going to hear right now is opening
23 statements which is a preview of what each side believes the
24 evidence is going to be. As soon as they get done with that, we're
25 going to actually start the evidence and we should have several

1 witnesses done before we break tonight, okay.

2 Counsel, are you ready?

3 MS. SUDANO: Yes, Your Honor.

4 THE COURT: Go ahead.

5 MS. SUDANO: May I move about, Your Honor?

6 THE COURT: Sure.

7 MS. SUDANO: Thank you.

8 [OPENING STATEMENT BY THE STATE]

9 BY MS. SUDANO:

10 Ladies and gentlemen, this isn't a particularly complicated
11 case, but it's still an important one. You're going to hear that
12 on July 31st of 2015 approximately 2:50 in the morning, Evangelia
13 Mantikas was sitting at a bus stop near Boulder Highway and
14 Flamingo. And as she was sitting there, she was approached by the
15 Defendant in this case, Gabriel Ibarra. He saw her texting and
16 using her phone. He asked if he could use it to make a phone call.

17 Now you're also going to hear and the evidence is going
18 to show, ladies and gentlemen, that the Defendant didn't actually
19 want to make a phone call. You see, Evangelia typed in the number
20 for him as the Defendant asking her questions about what type of
21 phone it was that she had. And then as soon as the Defendant had
22 the phone, within a matter of seconds, he stood up and he started
23 to walk away.

24 Now Evangelia attempted to follow the Defendant, but he
25 took a couple of steps, looked behind him and saw that Evangelia

1 was following him, and he began to run. So Evangelia chased him,
2 but she wasn't able to catch up with him, wasn't able to get her
3 phone back from this man who had just been borrowing it for the
4 purposes of making a phone call.

5 So instead what Evangelia did was she tracked down a
6 passerby. She called the police and she call her friend, Bri. Bri
7 started using an iPhone app to track my iPhone app. She was able
8 to give the police updated information about where the phone was
9 moving. And based on that information, the police -- you're going
10 to hear from several officers in this case -- were able to track
11 the phone, Evangelia's iPhone.

12 They eventually track it to the area of a McDonald's on
13 Nellis Boulevard, you're going to hear from Officer Kunz and
14 Officer Giese, the Las Vegas Metropolitan Police Department, that
15 they go that McDonald's as they're getting this updated information
16 from Bri and Evangelia that that's maybe where the phone is. They
17 find a car. And as the car starts to move, the iPhone starts to
18 move.

19 And so they try to conduct a stop on this car, but before
20 they were able to do so, somebody gets out and goes into the Oasis
21 Meadows Apartment complex. So Officer Kunz is eventually able to
22 conduct a stop on that car finds out that nobody in the car matches
23 the suspect that Evangelia gave to police. Nobody matches that
24 information. There's also no iPhone in the car or an iPhone that
25 belongs to Evangelia in the car.

1 So they go back to that Oasis Meadows Apartment complex.
2 You're going to hear again from Officer Kunz and Officer Giese that
3 they saw the Defendant in that complex. And they called out to the
4 Defendant and asked to speak to him, but he momentarily went around
5 the corner and then came back.

6 You're going to hear from Officer Giese that after they
7 stopped the Defendant and talked him, he walked over to that area
8 where the Defendant was momentarily out of view, just four or five
9 feet away from that area in the bushes they found Evangelia's
10 cellphone.

11 Now, once they found that cellphone, they returned it to
12 Evangelia and they had Evangelia come down to the scene and
13 identify the Defendant. She pointed out the Defendant and yes
14 again that's the man who took my iPhone from me, took it out of my
15 hand, pretended to make a phone call and then ran away with it.

16 Ladies and gentlemen, as I already told you, this isn't a
17 particularly complicated case. But at the end of this trial, the
18 State's going to stand back before you and ask that you find the
19 Defendant, Gabriel Ibarra, guilty of larceny from a person. Thank
20 you.

21 THE COURT: Thank you, counsel. Who is going to -- you are,
22 okay.

23 MS. SPELLS: I am, Your Honor. Permission to move about?

24 THE COURT: Absolutely.

25 MS. SPELLS: Thank you.

1 [OPENING STATEMENTS BY THE DEFENDANT]

2 BY MS. SPELLS:

3 There are books of which the backs and cover are by far the
4 best parts. That's a quote from Charles Dickens out of his famous
5 book Oliver Twist.

6 Now you're probably thinking what does Oliver Twist have
7 to do with this case? Well, a few things. Very similar to the
8 quote that I just recited before you. The beginning and the end of
9 this case is probably going to be the most interesting. Now why is
10 that? That's because the State and the defense agree on most of
11 the facts.

12 This case is very simple. On July 31st, 2015, Ms.
13 Evangelia Mantikas was sitting at a bus stop. Sitting next to her
14 at the bus stop was my client, Mr. Ibarra. Ms. Mantikas was
15 texting on her cellphone and Mr. Ibarra asked to use the phone.
16 Ms. Mantikas finished texting. She dialed a phone number and she
17 voluntarily handed Mr. Ibarra that cellphone. He began to speak on
18 the phone, got up, started to walk away. Ms. Mantikas also got up.
19 And she followed Mr. Ibarra. And then Mr. Ibarra began to run.

20 This whole incident was not a few seconds, but actually
21 took a number of minutes; a minimum of two to three minutes. When
22 Mr. Ibarra ran, he took the phone with him.

23 Now, unlike the story of Oliver Twist, we're not going to
24 have any interesting stories of any villains like Fagin. You're
25 not going to hear about any complicated schemes of criminal

1 deception. We won't get to explore the tricks of the trade of pick
2 pocketing like the movie Focus that starred Will Smith. And
3 unfortunately for those of you who indicated that you like CSI and
4 all of those other types of shows, it's not going to be any fun
5 science of forensic data.

6 What the evidence will show and what Ms. Evangelia
7 Mantikas will tell you was that she wasn't threatened, she wasn't
8 scared. She voluntarily handed the phone over to Mr. Gabriel
9 Ibarra. The evidence will show that there was never anything taken
10 from Ms. Mantikas' person.

11 So the obvious question becomes why are you here? If the
12 State and the defense agree on that much, what is your purpose?
13 Why are you here? The defense contends that you are here because
14 the State overcharged this case. We are very confident that end of
15 hearing all of the evidence, you will find that Mr. Ibarra is not
16 guilty of the crime charged, larceny from the person.

17 We ask instead that after considering all of the evidence
18 before you, you find Mr. Ibarra guilty of the actions that he
19 committed on petty larceny. Thank you.

20 THE COURT: Thank you, counsel. State, will you call your
21 first witness?

22 MS. SUDANO: Your Honor, can we actually approach on something
23 please?

24 THE COURT: Sure.

25 [Bench Conference commenced at 2:20 p.m.]

1 MS. SUDANO: Your Honor, I'm a little concerned
2 [indecipherable] we haven't settled a jury instructions. We
3 haven't addressed whether or not there's a lesser included of
4 larceny from the person that's going to be a petty larceny in this
5 particular case. There's some concerns with the -- the argument
6 that the State's overcharging. So I just wanted to address all of
7 those things right now before we get too far into this trial 'cause
8 like I said we haven't settled instructions and how this juries
9 been told that they're going to get a lesser included on larceny or
10 petty larceny.

11 THE COURT: I think we're going to be entitled to pursue an
12 instruction that says [indecipherable] committed the offense of
13 petty larceny. I don't know that it can be under a lesser
14 included. I think he's just entitled to -- that's their theory of
15 the case that the crime that was committed was a petty larceny.
16 Not going to [indecipherable] to a lesser included [indecipherable]
17 --

18 MR. WOOD: They actually contain all of the same elements. So
19 it actually is listed and [indecipherable] in the stock, quote on
20 quote, stock instructions as a lesser included. And those are
21 written by predominantly a DA team along with other individuals.

22 THE COURT: [indecipherable] I think you're going to be
23 [indecipherable] to have a petty larceny charge instruction. We're
24 not going to go through all the rigmarole on making a lesser
25 included. We're just going to -- unless you can show me some law

1 because otherwise I think the way it's going to work is you're just
2 going to [indecipherable] your instruction on [indecipherable].
3 We'll discuss it further.

4 MS. SUDANO: Okay.

5 THE COURT: Okay.

6 MS. SUDANO: I just wanted to raise that. Thank you, Your
7 Honor.

8 [Bench Conference concluded at 2:22 p.m.]

9 THE COURT: Call your first witness.

10 MS. SUDANO: State calls Evangelia Mantikas please.

11 THE MARSHAL: Remain standing, raise your right and face the
12 Clerk.

13 **EVANGELIA MANTIKAS**

14 having been called as a witness and being first duly sworn,
15 testified as follows:

16 THE CLERK: Please be seated and then state and spell your
17 name for the record.

18 THE COURT: Just scoot right up there close to that
19 microphone. There you go. All right. State your full name. And
20 for the record, spell both the first and last name, okay.

21 THE WITNESS: Evangelia Mantikas, E-V-A-N-G-E-L-I-A, M-A-N-T-
22 I-K-A-S.

23 MS. SUDANO: Thank you, Your Honor.

24 DIRECT EXAMINATION

25 BY MS. SUDANO:

1 Q: Ma'am, may I call you Evangelia?
2 A: Yes.
3 Q: Now, Evangelia, I want to draw your attention to July 31st
4 of 2015 approximately 2 in the morning; do you recall where you
5 were?
6 A: Yes.
7 Q: Where were you?
8 A: At the bus stop located on Boulder Highway and Flamingo.
9 Q: Is that here in Clark County, Nevada?
10 A: Yes.
11 Q: What were you doing at that bus stop?
12 A: Just waiting for the bus to get home.
13 Q: Where were you coming from?
14 A: Down Flamingo.
15 Q: Now, what were you doing while you were waiting for the
16 bus?
17 A: Texting.
18 Q: What kind of phone were you texting on?
19 A: iPhone 5S.
20 Q: Now, were there any other people at the bus stop near
21 you?
22 A: Yes.
23 Q: How many people were there?
24 A: I'd say around three to four.
25 Q: Were they close to you or far away?

1 A: Only one was closest to me. The rest were on the other
2 side.

3 Q: When you say the other side, about how far away were
4 those other people?

5 A: Maybe four or five seats away. There's dividers in the
6 bus stop.

7 Q: You said there was one person that was close to you?

8 A: Yeah.

9 Q: Where was that person?

10 A: Just a few seats away from me.

11 Q: How long had you been waiting for the bus?

12 A: When I got there, maybe 20 minutes.

13 Q: Now at some point as you were waiting for the bus, did
14 somebody else come up?

15 A: Yes.

16 Q: Do you see that person here in the courtroom today?

17 A: Yes.

18 Q: Could you please point to that person and identify an
19 article of clothing that he or she is wearing today?

20 A: A blue shirt, button up. I think.

21 MS. SUDANO: And may the record reflect identification of the
22 Defendant?

23 THE COURT: Yes. Yes, the record so shall.

24 BY MS. SUDANO:

25 Q: How is that you first came into contact with the

1 Defendant at that bus stop?

2 A: He came around the corner and kind of sat there a little
3 bit looking around and then he asked if he could borrow my phone.

4 Q: Where was your phone when the Defendant first came around
5 the corner?

6 A: Kind of like I was holding it like this, just sitting on
7 my lap.

8 Q: And so you were holding it out in front of you?

9 A: Yeah.

10 Q: Were you texting?

11 A: Yeah.

12 Q: Where was the Defendant when he asked if he could borrow
13 your phone?

14 A: Sitting next to me.

15 Q: Was he -- where was he next to you?

16 A: To my right like right -- just -- yeah.

17 Q: Was he in the seat immediately next to you or were there
18 some seats between the two of you?

19 A: Immediately next to me.

20 Q: And that was to your right side?

21 A: Yes.

22 Q: Did you agree that the Defendant could use your phone?

23 A: Yes.

24 Q: How did that conversation go?

25 A: He asked if he could borrow it and I said yes. And I

1 told him that I would type the number in for him. And I asked what
2 the number was and I typed it first and then I really didn't hear
3 the last four.

4 Q: When you say you didn't hear the last four, does that
5 mean you didn't hear the entire phone number?

6 A: Yes.

7 Q: So what if anything happened after you didn't hear the
8 phone number fully?

9 A: We started talking and I just went back to texting. And
10 then he reminded me oh, can I use your phone and I said yes. And I
11 asked for the number again and I heard it and I typed it in fully.

12 Q: Now, you said that the two of you were talking and you
13 were texting. What were you and the Defendant talking about?

14 A: He asked me simple questions like oh, what kind of phone
15 is that, where do you live, that's -- just basic questions, but it
16 wasn't that long.

17 Q: When you -- did you tell him what kind of phone it was?

18 A: Yes.

19 Q: You told him it was the iPhone 5S?

20 A: Yes.

21 Q: Did you give him any additional information about where
22 you lived or any of those other questions he asked?

23 A: Like exactly where I lived?

24 Q: What did you tell him when he asked you that?

25 A: I wasn't from here.

1 Q: Where did you tell him you were from?
2 A: California.
3 Q: Why did you do that?
4 A: I don't like telling people where I live if I don't know
5 them.
6 Q: Now, from the time you first saw the Defendant until you
7 typed in the entire phone number that he gave to you, about how
8 long was that?
9 A: Like how long were we talking before?
10 Q: Yes.
11 A: Three to five minutes. No more than that.
12 Q: Now, when you fully typed in the phone number the
13 Defendant gave to you, what happened at that point?
14 A: I handed the phone over to him and since he was to my
15 right, he grabbed it with his left hand and then switched it to his
16 right, so it was further away from me.
17 Q: So it was on the side initially that was closest to you
18 and then he switched it into his left hand so it was across his
19 body from you; is that fair?
20 A: Well, his right hand. Like he grabbed it with his left,
21 switched it to his right.
22 Q: So it was across his body from you?
23 A: Yeah.
24 Q: Okay. And approximately how long did he have the phone
25 in his right hand, so the side that was closest to you?

1 A: If anything, a second. He immediately changed it to his
2 other hand.

3 Q: What if anything happened after he changed the phone to
4 the other hand?

5 A: He stood up and started walking away.

6 Q: And how long after he switched the hand that the phone
7 was in did that occur that he got up and walked away?

8 A: It was right away as he was switching it getting up. As
9 soon as it touched his ear, he just stood up and started walking.

10 Q: Were those two things happening pretty much at the same
11 time?

12 A: Pretty much.

13 Q: What if anything did you do when you saw the Defendant
14 start to get up with your phone?

15 A: I got up with him.

16 Q: Who -- were you walking next to him in front of him,
17 behind him?

18 A: Behind him.

19 Q: What if anything did the Defendant do at that point?

20 A: When he saw me coming with him, he started running.

21 Q: Now, about how many steps did the Defendant take before
22 he started running?

23 A: Three to four maybe.

24 Q: How many steps did you take before the Defendant started
25 running?

1 A: Two to three.
2 Q: What happened after the Defendant started running?
3 A: I ran after him.
4 Q: Where did he run?
5 A: Into kind of the middle of the suites apartments.
6 Q: Are those located in that same area of Boulder Highway
7 and Flamingo?
8 A: Yes.
9 Q: Is that here in Clark County, Nevada?
10 A: Yes.
11 Q: Were you able to follow the Defendant into the suites?
12 A: For a short time, yeah.
13 Q: What happened after you followed him into the suites?
14 A: When we ran to the middle, he turned and I turned with
15 him and I was still able to see him. But once he turned again, I
16 was no longer able to catch up to him or see him at all.
17 Q: And did he lose you in the apartment complex?
18 A: Yes.
19 Q: Now, while the Defendant was sitting with you, was he
20 able to complete that phone call?
21 A: Like speak to --
22 Q: Yeah. Did he talk to anybody on the other end?
23 A: No.
24 MS. SPELLS: Objection, Your Honor. Speculation.
25 THE COURT: I think you can -- she can ask if he was able to

1 hear him talking. Did you hear him talking?

2 THE WITNESS: He mumbled something, but it wasn't to anyone on
3 the phone.

4 THE COURT: Okay.

5 BY MS. SUDANO:

6 Q: What makes you say that wasn't to anybody on the phone?

7 A: I know it wasn't the right -- like I know it didn't ring
8 yet. I know how long it takes for my phone to get to a call. And
9 he just mumbled something like he was speaking to me kind of. Like
10 he was trying to say a reason to get up and walk away.

11 MS. SPELLS: Your Honor, I'm going to object again for
12 speculation --

13 THE COURT: That's --

14 MS. SPELLS: -- and ask if that --

15 THE COURT: -- that's probably --

16 MS. SPELLS: -- line of questioning be stricken.

17 THE COURT: -- that's probably the case. Just move on.

18 BY MS. SUDANO:

19 Q: Now, I just want to clarify with you, Evangelia; you
20 never heard the Defendant speaking to anybody on the phone?

21 A: No.

22 Q: And the entire time from the time you dial your phone and
23 you hand it to the Defendant until he starts walking away, how long
24 was that?

25 A: I don't know. Can you please --

1 Q: So from the time -- you initially you dial the phone
2 number and hand the phone to the Defendant. And then he gets up
3 and starts to walk away. How long between those two things?

4 A: I want to say no more than five minutes. It wasn't that
5 long.

6 Q: And so I want to clarify, it was five minutes from the
7 time that you handed him his phone until he got up and walked away
8 or the entire interaction that you had with the Defendant was five
9 minutes?

10 A: By the time I dialed it and handed it to him and he got
11 up. The whole interaction was maybe less than 10 minutes, no more.

12 Q: And so how long was the Defendant sitting next to you
13 holding your phone before he got up and walked away?

14 A: A few seconds.

15 Q: And so when you're saying that there was something that
16 took five minutes, can you explain for the ladies and gentlemen of
17 the jury what it was that took five minutes? I'm sorry. You said
18 that the interaction from when he had the phone until he got up and
19 walked away was five minutes. Can you explain that a little bit
20 more?

21 A: From when he asked me to dial the number and I didn't
22 hear it, so I kind of ignored it. Then when he asked again, and I
23 typed it in and handed it to him. That whole process kind of took
24 five minutes.

25 Q: Okay. So that was the five minutes. And then from the

1 time you actually, physically hand him the phone 'til he gets --
2 A: That was just a few seconds.
3 Q: Okay. So when he gets up and walks away that was just a
4 few seconds?
5 A: Yes.
6 Q: Did the Defendant say anything else to you other than the
7 mumbling when he got up and started to walk away?
8 A: No.
9 Q: Did he say anything to you after he started to run?
10 A: No.
11 Q: What did you do after you lost the Defendant inside the
12 apartment complex?
13 A: I came across a couple that was standing outside their
14 apartment room and I asked them for help.
15 Q: Specifically, what did you ask them to do?
16 A: I asked if they've seen someone running and they said
17 yes. And I asked if they could help me find him and we all kind of
18 split up, but I was with the lady that was there.
19 Q: Now what did you do with the lady?
20 A: I realized that I left my stuff at the bus stop, so I
21 asked if she could come with me to pick up my stuff.
22 Q: Did you two actually go back to the bus stop?
23 A: Yes.
24 Q: What if anything did you do once you got back to the bus
25 stop?

1 A: I got my stuff and I was kind of just freaked out. So I
2 was just talking about the whole situation and then asked if I
3 could borrow her phone to make a phone call.

4 Q: Now who did you call?

5 A: First I called I called my girlfriend, Brianna.

6 Q: Is that Brianna Roche?

7 A: Yes.

8 Q: Now did you call anybody after you called Brianna?

9 A: Yes.

10 Q: Who did you call after that?

11 A: The police.

12 Q: Now when you called the police did you relate what had
13 happened to you?

14 A: Yes.

15 Q: Were you able to provide a description of the man who
16 took your phone?

17 A: Not a good valid one, but yes.

18 Q: What did you tell them -- what did you tell them about
19 the individual who took your phone?

20 A: They asked what color or race he was and I gave an
21 invalid one thinking it was what I told them.

22 Q: What did you tell them?

23 A: I said he was African American.

24 Q: Now did you tell them anything else about his, maybe his
25 age, his height, his race or his weight; anything like that?

1 A: I told them he was maybe five, five or five, six. Not
2 really knowing. And I said maybe in his 30's.

3 Q: Okay. Did you provide them with any information about
4 his clothing?

5 A: Yes.

6 Q: What did you tell them about his clothing?

7 A: I believe I told them he was wearing blue shorts or a
8 wife beater.

9 Q: Now were you able to give them any description about his
10 hair?

11 A: Yes.

12 Q: What did you tell them about his hair?

13 A: He was bald.

14 Q: Now what if anything happened after you called the
15 police?

16 A: Me and the couple I found that were outside walked over
17 to Walgreens that was located in the same parking lot as the
18 apartments.

19 Q: What if anything happened at the Walgreens?

20 A: First we were asking for pens and stuff to right down
21 like where he was 'cause we did -- we were able to track down the
22 phone. Bri was using the track my iPhone app and she was able to
23 give me an address and we wrote it down. And then asked to borrow
24 someone else's phone.

25 Q: Now you said that Bri was using the track my iPhone app;

1 can you just generally explain for the ladies and gentlemen of the
2 jury what that app is?

3 A: The app if you have an iPhone if you know your iCloud log
4 in, the password and username, you're able to track down everywhere
5 the phone is going.

6 Q: So is that just using basically the GPS on the iPhone?

7 A: Basically, but it's just only an iPhone thing. Meaning
8 if you took a Galaxy and got the app, it wouldn't work as well.
9 The iPhone will tell you where ever it is, what building it is,
10 where they're at, how fast they're going if they're on foot or in a
11 vehicle.

12 Q: And that's just you plugging in your information specific
13 to your phone number and your phone and it gives you that
14 information?

15 A: Yes. But your iCloud and all that has to be on in order
16 to do that.

17 Q: Okay. Now, at some point did you come into contact with
18 the police that night?

19 A: Yes.

20 Q: How did that happen?

21 A: I called them twice and they were not responding saying a
22 lot of things were going on. And I had seen a cop at a stop light
23 located on Flamingo and Boulder Highway and I kind of ran to him.
24 His window was down and I asked for help if he can come in the
25 driveway and help me.

1 Q: Did that officer pull over and help you?

2 A: Yes.

3 Q: Now, what happens once that officer's pulled over and
4 helping you?

5 A: I told him everything that went on about him taking my
6 phone and then another policeman pulls up. And I was just talking
7 to both of them and they told me --

8 MS. SPELLS: Objection. Hearsay.

9 THE COURT: Sustained.

10 BY MS. SUDANO:

11 Q: I don't want to talk specifically about anything that the
12 officers told you. I just want to talk about what you did and what
13 you were involved with. So, at some point after the officer show
14 up and -- and help you in the Walgreen's parking lot, do you go to
15 a different location?

16 A: Eventually yes.

17 Q: Where did you go?

18 A: It was after they had told me they found him. We went to
19 --

20 MS. SPELLS: Objection, Your Honor.

21 BY MS. SUDANO:

22 Q: So I don't want you to talk about anything that the
23 officer said. I just want you to talk about where you went.

24 A: The Oasis apartments.

25 Q: Who did you go to the Oasis apartments with?

1 A: One of the officers.
2 Q: And how did you get over to that apartment complex?
3 A: They drove me over there in their car.
4 Q: One of the police officers drove you?
5 A: Yes.
6 Q: Now, do you recall where that apartment complex was?
7 A: Nellis and Vegas Valley.
8 Q: Now what happened after you drove into the complex with
9 that officer?
10 A: He was speaking to me, but we drove in a little behind
11 the other policeman that was with us.
12 Q: And when you say he, are you referring to the officer
13 that drove you over there?
14 A: Yes.
15 Q: Okay. And you followed another officer into the complex?
16 A: Yes.
17 Q: What happened once you got into the complex?
18 A: We were backed up and he was telling me everything that
19 was --
20 MS. SPELLS: Objection, Your Honor.
21 THE COURT: Okay. Objecting to as you repeating what somebody
22 else said that you out of court. So you took that part
23 [indecipherable] he said -- just say you had a conversation.
24 THE WITNESS: Okay. Thank you. Sorry.
25 BY MS. SUDANO:

1 Q: So you get into the complex with the officer, and then
2 what happens next?

3 A: He pulls up behind the other officer away from them and
4 after we had a conversation and I had to fill out a report. I'm
5 not -- I don't really remember what it's called. And then I had to
6 identify if it was him or not.

7 Q: And when you say you had to identify if it was him or
8 not, who are you talking about?

9 A: The guy that took my phone.

10 Q: And so would it be fair to say that the officer drove you
11 into the complex and showed you somebody that may or may not have
12 been the person who took your phone?

13 A: Yes.

14 Q: Were you able to look at that person?

15 A: Yes.

16 Q: Were you able to determine whether or not that was the
17 person that took your phone?

18 A: Yes.

19 Q: And was it that person?

20 A: Yes.

21 Q: And is it the same Defendant that you see here in the
22 courtroom today?

23 A: Yes. Yes.

24 Q: Is that a yes?

25 A: Sorry.

1 Q: Now, what if anything did you do after you identified the
2 Defendant for the officers?

3 A: Sorry. I don't understand.

4 Q: Let's switch. We'll ask you a different question. So
5 the second time you saw the Defendant that, was he wearing the same
6 clothing that he had been wearing previously?

7 A: Yes.

8 Q: And what was that clothing again?

9 A: From what I remember I believe I got it wrong when I
10 identified him the first time, but he was still wearing a wife
11 beater.

12 Q: Do you recall anything about his pants?

13 A: I don't remember.

14 Q: Now, at some point did you get your phone back?

15 A: Yes.

16 Q: And where were you when you got your phone back?

17 A: I was in the car with my brother at that point and they
18 called me over saying I can go get my phone that was located on one
19 of the policeman's car.

20 Q: Was that still in the apartment complex or had you gone
21 to a different location?

22 A: Same apartment complex.

23 Q: Now when you got your phone back, approximately what time
24 was that?

25 A: Six in the morning.

1 Q: Was there anything unusual about your phone when you got
2 it back?

3 MS. SPELLS: Objection, Your Honor. May we approach?

4 THE COURT: Sure.

5 [Bench Conference commenced at 2:43 p.m.]

6 MS. SPELLS: Well, my concern is that I don't know where the
7 State was going, but if there was going to be any conversation
8 about the phone being dirty and any type of [indecipherable] or
9 anything like that because that wasn't tested. So I didn't that
10 they were going to be bringing up --

11 THE COURT: Do you have any idea what she's going to say
12 [indecipherable] --

13 MS. SUDANO: She's going to say -- she's going to say the
14 number was [indecipherable] no longer her number in the phone.

15 THE COURT: Is that what she's going to say?

16 MS. SUDANO: Uh-huh.

17 THE COURT: And what's wrong with that?

18 MS. SPELLS: That's fine. I thought they were going into the
19 [indecipherable] --

20 MS. SUDANO: No.

21 THE COURT: Okay. Thank you. All right. Counsel, careful.

22 MS. SUDANO: Okay.

23 THE COURT: Don't [indecipherable] --

24 MS. SUDANO: I'll be careful.

25 [Bench Conference concluded at 2:43 p.m.]

1 BY MS. SUDANO:

2 Q: Now, Evangelia, you said that you got your phone back
3 that morning, correct?

4 A: Yes.

5 Q: Now, did you try to make phone calls or text on your
6 phone that morning?

7 A: Yes.

8 Q: After you got it back from the police?

9 A: Yes.

10 Q: Were you able to do that?

11 A: Yes and no.

12 Q: What do you mean by yes and no?

13 A: Well, I have iMessage connected on my phone and it was
14 not turning on. And I wasn't able to text Brianna, the only person
15 I was texting. And I -- but I did -- I was able to make a phone
16 call to my brother that was with me.

17 Q: Where was your brother when you made the phone call to
18 him that morning?

19 A: On the driver's seat in the car when we were driving
20 home?

21 Q: Were you sitting right next to each other?

22 A: Yes.

23 Q: Now, did you notice anything unusual when you made that
24 phone call to your brother?

25 A: It wasn't my phone number.

1 Q: When you say it wasn't your phone number, what do you
2 mean by that?

3 A: When I called him and the caller ID showed up, it was a
4 different number and I actually called twice to make sure it was
5 not my number, it was a different number.

6 Q: Is there anything significant about that number that
7 showed upon your phone?

8 A: Can you rephrase that please?

9 Q: Had you seen that number before?

10 A: No. Oh yes. Sorry. That's the number I typed in for
11 him.

12 Q: And when you say that's the number you typed in for him,
13 who are you referring to?

14 A: The guy that took my phone.

15 Q: So, I just want to make sure that we got this all clear.
16 So when you get your phone back at 6 a.m. on the morning of the 31st
17 of July, you called your brother; is that right?

18 A: Yes.

19 Q: And the number that showed up on the caller ID you saw
20 was no longer your phone number?

21 A: Yes.

22 Q: And it was a different number, right?

23 A: Yes.

24 Q: And that was the same number that you had called for the
25 Defendant; is that correct?

1 A: Yes.

2 Q: Okay. Now -- Your Honor, may I approach the Clerk?

3 THE COURT: Sure.

4 MS. SUDANO: May I approach the witness, Your Honor?

5 THE COURT: Yes.

6 BY MS. SUDANO:

7 Q: Evangelia, I'm approaching you with proposed Exhibits 9

8 and 10. Can you go ahead and review those for me? Do you

9 recognize what's depicted in State's proposed Exhibits 9 and 10?

10 A: Yes.

11 Q: And just generally what's in State's proposed Exhibit 9?

12 A: Yes.

13 Q: What is that?

14 A: The back of my iPhone.

15 Q: And now State's proposed Exhibit 10; what's depicted

16 there?

17 A: The iPhone case I had bought.

18 Q: Now, are those a fair and accurate description -- fair

19 and accurate -- accurate representation of how your phone looked on

20 July 31st of 2015?

21 A: Before it got taken or after I had gotten it back?

22 Q: After you got it back.

23 A: It looked like that, but there's a few damages.

24 Q: Okay. But generally fair and accurate?

25 A: Yeah. Yes.

1 MS. SUDANO: Your Honor, at this time the State would move for
2 the admission of proposed Exhibits 9 and 10.

3 THE COURT: Any objections?

4 MS. SPELLS: No, Your Honor.

5 THE COURT: Nine and ten are admitted.

6 MS. SUDANO: Your Honor, may I have permission to publish
7 proposed 9 and 10?

8 THE COURT: Yes.

9 MS. SUDANO: Or 9 and 10 at this point.

10 [State's Exhibits 9 and 10 admitted]

11 BY MS. SUDANO:

12 Q: Evangelia, I'm showing you there State's Exhibit 9 and is
13 that the back of your iPhone on July 31st of 2015?

14 A: Yes.

15 Q: And now I'm showing you Exhibit 10 here; is that the
16 cover that was on your iPhone on July 31st of 2015?

17 A: Yes.

18 Q: Now were you able to give that description of the iPhone
19 or your cover to police during this case?

20 A: Yes.

21 Q: Now I want to jump back to -- you said that you made a
22 911 call in this case; is that correct?

23 A: Yes.

24 MS. SUDANO: And, Your Honor, at this time I would move for
25 the admission of State's proposed Exhibit number 1. We talked

1 about this previously. I don't believe there's going to be an
2 objection.

3 MR. WOOD: That's correct, Your Honor.

4 THE COURT: You guys, no objection? State's 1 is admitted.

5 MS. SUDANO: And may I have permission to publish that for the
6 jury?

7 THE COURT: Yes.

8 [State's Exhibit 1 admitted]

9 BY MS. SUDANO:

10 Q: Evangelia, now I'm going to play the -- State's Exhibit 1
11 here.

12 [Playing State's Exhibit 1]

13 Q: I just want to follow up on a couple of things with you
14 from that call. Now you're talking it sounds like to somebody else
15 who's there; who were you talking to?

16 A: The couple that I had found in the apartments.

17 Q: Now, you also were talking about how you gave the phone
18 to the Defendant to make a phone call; is that right?

19 A: Yes.

20 Q: Now, did the Defendant have your permission to have the
21 phone permanently?

22 A: No.

23 Q: Did he have permission to have your phone to do anything
24 other than make a phone call?

25 A: No.

1 Q: Now had you known that he was going to take off with your
2 phone, would you have given it to him?

3 A: No.

4 MS. SUDANO: Your Honor, at this time no further questions.

5 THE COURT: Cross.

6 MS. SPELLS: Yes, Your Honor. Thank you.

7 CROSS EXAMINATION

8 BY MS. SUDANO:

9 Q: Good afternoon, Ms. Mantikas.

10 A: Good afternoon.

11 Q: So early in the morning on July 31st you're sitting at the
12 bus stop?

13 A: Yes.

14 Q: You're texting on your phone?

15 A: Yes.

16 Q: Your phone is out?

17 A: Yes.

18 Q: It's in your hands?

19 A: Yes.

20 Q: And it's not in your purse at this time?

21 A: No.

22 Q: Not clipped to a phone clip?

23 A: No.

24 Q: It's not clipped on your belt?

25 A: No.

1 Q: It's not in an arm wristband?
2 A: No.
3 Q: It's not affixed to your body, right?
4 A: No.
5 Q: And Gabriel asked to use your phone?
6 A: Yes.
7 Q: And you respond yes?
8 A: Yes.
9 Q: So you finished texting?
10 A: Finished, but kind of just stopped.
11 Q: Okay. You stopped texting?
12 A: Yes.
13 Q: And you put in a number for him?
14 A: Yes.
15 Q: Do you recall that number by heart?
16 A: No.
17 Q: Did you write the number down somewhere?
18 A: Like physically write it down, no.
19 Q: Yes. No. After you dialed the phone number, you hand
20 the phone to Gabriel?
21 A: Yes.
22 Q: And he takes the phone in his left hand?
23 A: Yes.
24 Q: He switches it to his right hand?
25 A: Yes.

1 Q: The phone is not on speaker phone at that point?
2 A: No.
3 Q: He's holding the phone up his ears?
4 A: Yes.
5 Q: And he says something?
6 A: Yes.
7 Q: You couldn't make out what he said?
8 A: Not exactly, no.
9 Q: At this point, Gabriel starts -- he stands up?
10 A: Yes.
11 Q: And he initially begins to walk away?
12 A: Yes.
13 Q: You follow him at this point?
14 A: Yes.
15 Q: And then he begins to run?
16 A: Yes.
17 Q: Now this incident takes not more than ten minutes?
18 A: Between just us at the bus stop or the entire chase?
19 Q: The entire event from when Mr. Ibarra starts speaking to
20 you to when you begin running.
21 A: Yes.
22 Q: As the phone was in Gabriel's hand, you weren't touching
23 the phone?
24 A: No.
25 Q: You weren't touching his hands?

1 A: No.

2 Q: When Gabriel asked to use the phone, he didn't shout at
3 you?

4 A: No.

5 Q: He didn't threaten you?

6 A: No.

7 Q: Didn't demand the phone?

8 A: No.

9 Q: He didn't push or shove you anyway?

10 A: No.

11 Q: And he never used the weapon?

12 A: No.

13 Q: He also didn't snatch the phone from you?

14 A: No.

15 Q: So you handed it over to him voluntarily?

16 A: Yes.

17 Q: You weren't afraid? When he asked to borrow the phone,
18 you weren't afraid?

19 A: I was getting a little nervous when anyone asks for it,
20 but not like afraid.

21 Q: Okay. That's fair. Because obviously he's a stranger,
22 right?

23 A: Yes.

24 Q: Now, you indicated that you had an iPhone?

25 A: Yes.

1 Q: This is an iPhone 5S?
2 A: Yes.
3 Q: And are you familiar with iPhones?
4 A: Yeah.
5 Q: Somewhat?
6 A: Yeah.
7 Q: You're aware that there's currently a iPhone 6?
8 A: Yes.
9 Q: iPhone 6 Plus?
10 A: Yes.
11 Q: There's an iPhone 6S?
12 A: Yes.
13 Q: So, are you aware that the iPhone 5S came out in
14 September, approximately 2013?
15 A: I wasn't aware of the exact date, but --
16 Q: Came out a few years ago?
17 A: Yeah.
18 Q: And when did you purchase this phone? What year do you
19 recall?
20 A: 2015 this year.
21 Q: You'd have the phone for at least a few months prior to
22 this incident?
23 A: Yes.
24 Q: So the phone wasn't brand new?
25 A: I thought it was. They had told me that they gave me a

1 used phone and still charged me for the amount that I got it for.
2 Q: But it was in good shape?
3 A: Yeah.
4 Q: And it was in good working condition?
5 A: Yes.
6 Q: Did it have a few scratches?
7 A: No.
8 Q: When you purchased the phone, you purchased it as part of
9 a contract?
10 A: Yes.
11 Q: I want to talk to you just a little bit about while you
12 were at this bus stop. You had a purse that evening?
13 A: A backpack.
14 Q: A backpack?
15 A: Yeah.
16 Q: And your backpack was at the bus stop?
17 A: Yes.
18 Q: Where was it at the bus stop?
19 A: On the ground next to me.
20 Q: On the ground.
21 A: Yeah.
22 Q: And so when you begin to get up and walk and follow
23 Gabriel, your backpack was left there?
24 A: Yes.
25 Q: And when you begin to run after Gabriel, your backpack

1 was still there?

2 A: Yes.

3 Q: You knew that your backpack was still there?

4 A: Yes.

5 Q: And you were concerned about your backpack being still

6 there?

7 A: Yes.

8 Q: You're also concerned about your phone?

9 A: Yes.

10 Q: You weren't counting the amount of steps you took before

11 you started running?

12 A: No.

13 Q: You weren't looking at your watch to gage how much time

14 it was?

15 A: No. I didn't have a watch.

16 Q: And this couple that you asked for help, were they also

17 at the bus stop with you?

18 A: No.

19 Q: They were only inside the suites?

20 A: Yes.

21 Q: To your knowledge, had they ever had an opportunity to

22 see Gabriel?

23 A: Yes.

24 Q: The State talked to you a lot about the description that

25 you gave the officers about the person who took your phone. And

1 you said a couple of times that you gave a bad description.

2 A: Yes.

3 Q: You got it wrong. You said you got the clothing wrong,
4 right?

5 A: I remember the wife beater, but I didn't really remember
6 the shorts. I don't really look at people's clothing especially
7 with something that happened like that. Everything just completely
8 blew out of mind.

9 Q: Sure. And you also indicated that you thought you got
10 his ethnicity wrong.

11 A: Yes.

12 Q: And you were talking with Gabriel, right?

13 A: Yes.

14 Q: For a few minutes?

15 A: Yes.

16 Q: I want to talk to you just briefly about this iPhone and
17 the iPhone app tracker. Prior to July 31st, 2015 you had not used
18 the iPhone app tracker?

19 A: Me, no.

20 Q: No. You weren't aware that you could track where your
21 phone was going?

22 A: I was aware you can. I just didn't know how to do it.

23 Q: You didn't know how to do it, okay. And when you called
24 the police you said I hope that the police can track it, right?

25 A: Yes. Just in case the track my iPhone that my girlfriend

1 was doing did not work.

2 Q: So you weren't the person conducting the track my iPhone?

3 A: No.

4 Q: And you weren't right next to your girlfriend as this was
5 being conducted?

6 A: No.

7 Q: And you indicated that your iCloud has to be on?

8 A: Yes.

9 Q: How are you aware of that? Did someone let you know that
10 you have to have your iCloud on at the time?

11 A: When I -- I guess when connect to it --

12 Q: Uh-huh.

13 A: -- it asked if -- or -- it says something along the lines
14 to where if it is on and it lets you know if it is on, so Brianna
15 was able to tell me if it was on or not otherwise it wouldn't track
16 the phone.

17 Q: This is information that you're getting from the track my
18 iPhone site, right?

19 A: Yes.

20 Q: Okay. Do you have any type of training in electronics?

21 A: No.

22 Q: Any type of training in like cellphones specifically?

23 A: No.

24 Q: So the information when you were speaking about how the
25 iPhone -- track my iPhone works and all that; this is information

1 that you got from speaking with you girlfriend, is that fair to
2 say?

3 A: Yes. I had already known about the app, but never too
4 much about it 'cause I honestly didn't think I'd need to use it.

5 Q: So you had a general knowledge of the act?

6 A: Yes.

7 Q: But you didn't know the specifics of the application?

8 A: Yes.

9 Q: You didn't know exactly how it worked. There was some
10 mentioned earlier about Samsung phones and things like that.
11 You're not like -- you don't do any research or testing to figure
12 out how Androids work best versus iPhones, right?

13 A: I had an Android before I got the iPhone.

14 Q: And it just didn't have the track my iPhone app?

15 A: Yes. The lady I was with tried getting it. It just was
16 not working at all. She's the one that suggested to --

17 Q: Use the track my iPhone app?

18 A: Yes. She asked me if my girlfriend had had that phone --
19 the same phone.

20 Q: So what you're saying to clarify is basically someone
21 else needed to have an iPhone to assist you in tracking your
22 iPhone?

23 A: Yes.

24 Q: And that the models like Android to iPhone wouldn't work
25 together?

1 A: Yes.

2 Q: Not the capabilities of what an Android phone is or the
3 capabilities of what an Android phone can do?

4 A: Yes.

5 Q: Once you received your phone back, were you able to go
6 back into the call log?

7 A: Yes.

8 Q: From the call log, were you able to see the different
9 calls that had been made that morning? Just yes or no.

10 A: Yes.

11 Q: You received your phone back on the same day in question?

12 A: Yes.

13 MS. SPELLS: Your Honor, I'll pass the witness.

14 THE COURT: Any redirect?

15 MS. SUDANO: Briefly, Your Honor, yes.

16 REDIRECT EXAMINATION

17 BY MS. SUDANO:

18 Q: Evangelia, you were asked some questions about how it was
19 that the Defendant ended up with your phone. You were asked
20 whether you were frightened or whether he threatened you, anything
21 like that. I just want to clarify, why is that you gave the
22 Defendant your phone?

23 A: He asked to borrow it.

24 Q: Why did he ask to borrow it?

25 MS. SPELLS: Objection. Speculation.

1 MS. SUDANO: It's his statement.

2 THE COURT: Don't guess. If you know.

3 THE WITNESS: He didn't tell me why he needed it. He just
4 said he wanted to make a phone call. Not to who he was calling or
5 --

6 BY MS. SUDANO:

7 Q: So he told you it was to make a phone call?

8 A: Yes.

9 Q: Now I just want to clarify something else too. Were you
10 using your phone when the Defendant asked to borrow it?

11 A: Yes.

12 Q: Were you texting with it?

13 A: Yes.

14 Q: So it was in your hand?

15 A: Yes.

16 Q: It wasn't in your backpack?

17 A: No.

18 Q: It wasn't just sitting next to you on the bus stop?

19 A: No.

20 Q: And you actually physically handed it from your hand to
21 the Defendant's hand?

22 A: Yes.

23 Q: And then after that is when he got up and walked away?

24 A: Yes.

25 Q: And that was I think you said maybe five seconds or just

1 a few seconds?

2 A: Yes.

3 Q: Now you were asked when you bought your iPhone 5S. Do
4 you remember specifically when you bought it in 2015?

5 A: No.

6 Q: You said you'd had just a few months?

7 A: Just about, yes.

8 Q: How much did you pay for your iPhone?

9 A: The exact, I'm not sure. About four to five.

10 Q: Four to five what?

11 A: Hundred. I'm still paying it off.

12 Q: Now, you're also asked a couple of questions about your
13 backpack and you said you left your backpack at the bus stop.

14 A: Yes.

15 Q: Why did you leave your backpack at the bus stop?

16 A: I wasn't even thinking about it when I got up and ran
17 after my phone.

18 Q: Now, you're also asked about the description that you
19 gave the Defendant and you said at a couple of points that you had
20 not -- you'd given kind of a bad description.

21 A: Yes.

22 Q: And I think you also said that you remembered some things
23 a little bit better after you had the opportunity to see him again;
24 is that fair?

25 A: Yes.

1 Q: Now, I just want to clarify. You heard the 911 call,
2 right?
3 A: Yes.
4 Q: Was the 911 call made before you saw the Defendant a
5 second time or after you saw him the second time?
6 A: Before I saw him the second time.
7 Q: Were you able to give a description of his race?
8 A: Not a valid one.
9 Q: But at the time you thought he was African American; is
10 that right?
11 A: Yes.
12 Q: And fair to say that this all happened at night time?
13 A: Yes.
14 Q: Fair to say it was a little bit dark?
15 A: Yes.
16 Q: Now were you able to give the description again about
17 what clothing he was wearing?
18 A: Yes.
19 Q: Were you able to give a description about his height?
20 A: Yes.
21 Q: And a description about his weight?
22 A: Not numbers. Just like body.
23 Q: His build?
24 A: Yeah.
25 Q: You gave a description about his build?

1 A: Yes.

2 Q: You gave a description about his hair?

3 A: Yes.

4 Q: You gave a description about his age?

5 A: Yes.

6 Q: Now, at some point after you saw the Defendant a second
7 time, did you write a second statement for the police?

8 A: Yes.

9 Q: Now even in that second statement that you gave after you
10 saw the Defendant a second time; did you give a description of his
11 race?

12 A: Yes.

13 Q: What was the description you gave that second time after
14 you saw him?

15 A: African American.

16 Q: So both times you saw him that night you thought he was
17 African American?

18 A: Yes.

19 Q: And just to clarify, the Defendant is the person that you
20 saw with the police and the person that took your phone on July 31st
21 of 2015?

22 A: Yes.

23 MS. SUDANO: Your Honor, no further questions.

24 THE COURT: Okay. Anything else?

25 MS. SPELLS: No, Your Honor. Thank you.

1 THE COURT: Thank you very much. Thank you for your
2 testimony. I appreciate it. You can go ahead and step down and
3 you'll be excused. You're good.

4 THE WITNESS: Thank you.

5 THE COURT: You guys want to take a couple minute break?
6 You're all right. You want to keep going? Okay. Call another
7 witness.

8 MS. SUDANO: The State calls Brianna Roche.

9 THE MARSHAL: Remain standing and raise your right facing the
10 Clerk.

11 **BRIANNA ROCHE**

12 having been called as a witness and being first duly sworn,
13 testified as follows:

14 THE CLERK: Please be seated and then state and spell your
15 name for the record.

16 THE WITNESS: B-R-I-A --

17 THE COURT: And grab -- next to that microphone.

18 THE WITNESS: B-R-I-A-N-N-A, R-O-C-H-E.

19 THE COURT: Go ahead.

20 MS. SUDANO: Thank you.

21 DIRECT EXAMINATION

22 BY MS. SUDANO:

23 Q: [indecipherable] Brianna. I want to draw your attention
24 to July 31st of 2015 approximately two or three in the morning. Do
25 you recall that date and time?

1 A: I do.
2 Q: Where were you at that time?
3 A: Home.
4 Q: Had anybody else been at your house earlier on the night
5 of July 30th into the morning of July 31st?
6 A: No.
7 Q: Now, were you talking to anybody on the night of July
8 31st, 2015?
9 A: Yes.
10 Q: Who were you talking to?
11 A: Evangelia.
12 Q: Evangelia who just left the courtroom?
13 A: Yes.
14 Q: How were you talking to her?
15 A: Text.
16 Q: Had Evangelia been at your house prior to or earlier on
17 in the evening of July 30th --
18 A: No.
19 Q: -- 2015? At some point did you and Evangelia stop
20 texting that night?
21 A: Yes.
22 Q: Can you describe what happened there?
23 A: I texted her and I just didn't get a reply, so I texted
24 her a few more times.
25 Q: And she never responded to you?

1 A: No.

2 Q: At some point later on in the night do you get a phone
3 call?

4 A: Yeah.

5 Q: Who called you?

6 A: Evangelia.

7 Q: Do you recall about what time Evangelia called you?

8 A: Around three.

9 Q: Is that 3 a.m.?

10 A: Around that, yes.

11 Q: Now, you're quiet, so I'm going to ask you to speak up so
12 everyone --

13 A: Sorry.

14 Q: -- could hear you, okay? Now, I don't want to go
15 specifically into what you said to each other on the phone call,
16 but based on that call, did you do anything next?

17 A: Yes.

18 Q: What did you do?

19 A: Tracked her iPhone.

20 Q: How did you track her iPhone?

21 A: Find my iPhone app.

22 Q: And can you just generally explain a little bit what the
23 find my iPhone app is?

24 A: You put in their Apple ID and their password and you can
25 see where their phone is.

1 Q: And did you have Evangelia's Apple ID and her password?
2 A: Yes.
3 Q: So were you -- you were tracking the actual phone that
4 goes back to her phone number and her Apple account?
5 A: Yes.
6 Q: Now, were you doing anything with the information about
7 where her phone was?
8 A: I was on the iPhone with the police.
9 Q: Now, what were you doing with the police on the phone?
10 A: Telling them every location.
11 Q: Do you remember those locations?
12 A: Most of them.
13 Q: Okay. Where's the first location that you remember that
14 phone being?
15 A: The Eastside Cannery.
16 Q: Okay. How long was the phone at the Eastside Cannery?
17 A: About ten minutes.
18 Q: Okay. Where did the phone go next after it was at the
19 Cannery?
20 A: A neighborhood near it.
21 Q: How long was it in that neighborhood?
22 A: Roughly 20 minutes.
23 Q: Where did the phone go next after it left that
24 neighborhood?
25 A: McDonald's.

1 Q: Do you remember where that McDonald's was?
2 A: I don't.
3 Q: And how long was the phone at the McDonald's?
4 A: Fifteen minutes.
5 Q: Where did the phone go after the McDonald's?
6 A: An apartment complex.
7 Q: Do you remember where the apartment complex was?
8 A: I don't.
9 Q: Do you remember what the apartment complex was called?
10 A: Oasis I think.
11 Q: So it goes to the -- the phone goes to the Oasis complex.
12 Now, where did the phone go after it went to the Oasis complex?
13 A: The internet cut off so I got -- I didn't get any. I
14 wasn't able to track it.
15 Q: So once the phone ends up in that apartment complex, kind
16 of lost signal and you couldn't figure out where the phone was
17 going anymore?
18 A: Yes.
19 Q: Okay. Where -- well, as the phone is moving to all of
20 these different locations, what are you doing?
21 A: I'm refreshing it and just telling the copy every
22 location.
23 Q: Okay. Now, were you ever actually with Evangelia on this
24 night?
25 A: I was before.

1 Q: So when you say before, when were you with her?
2 A: Around one I want to say.
3 Q: And so was that 1 a.m. or 1 p.m.?
4 A: One a.m.
5 Q: Now, where were the two of you together?
6 A: I don't remember.
7 Q: And so what happens at 1 o'clock in the morning?
8 A: She takes me home.
9 Q: Okay. So at 1 o'clock in the morning she went back to
10 your house with you?
11 A: Around the neighborhood, yeah.
12 Q: How did you guys get there?
13 MS. SPELLS: Objection. Relevance.
14 THE COURT: No. Overruled. Go ahead.
15 BY MS. SUDANO:
16 Q: How did the two of you get to your house?
17 A: Bus I believe.
18 Q: So she takes you back to your house on the bus. If you
19 know, where did she go after that?
20 A: The bus stop that's near my house.
21 Q: What bus stop is that?
22 A: The one on I want to say on Flamingo.
23 Q: Flamingo and what?
24 A: I don't remember.
25 Q: So you two get back to your house taking the bus and then

1 as far as you know Evangelia gets on the bus stop at Flamingo. Do
2 you know where she was going?

3 A: The bus stop near the suites.

4 Q: So is that the one at Flamingo and Boulder Highway?

5 A: Yes.

6 Q: And were you two in communication as she's traveling back
7 and forth on the -- on the bus down Flamingo?

8 A: Yeah.

9 Q: Do you know where she was when she stopped responding to
10 you?

11 A: The bus stop.

12 Q: So she texted you or told you before that she was at that
13 bus stop?

14 A: Yes.

15 Q: And then that's when you stopped getting calls from her?

16 A: Yes.

17 Q: Or I'm sorry, text from her. Now, at any point after
18 that did you actually leave your house?

19 A: No.

20 Q: So all of your involvement in this is just over the phone
21 with the police?

22 A: Yes.

23 Q: How is it that you got into contact with the police that
24 night?

25 A: I got a call from them.

1 Q: One of the officers called you?
2 A: Yes.
3 Q: And is that when you started relaying the information --
4 A: Yes.
5 Q: -- to the officer? And were you using -- well what kind
6 of phone do you have?
7 A: iPhone.
8 Q: And so were you using your iPhone to track Evangelia's
9 iPhone?
10 A: My sister's iPhone at first.
11 MS. SUDANO: Your Honor, no further questions.
12 THE COURT: Okay. Cross?
13 MS. SPELLS: Court's brief indulgence.
14 [Defense counsel conferring]
15 MS. SPELLS: Your Honor, we'll pass the witness.
16 THE COURT: Okay. Thank you for your testimony. I appreciate
17 it. You can go ahead and step down. You'll be excused.
18 THE WITNESS: Thank you.
19 THE COURT: Thank you again.
20 You got somebody else?
21 MS. SUDANO: Your Honor, can we approach briefly?
22 THE COURT: Sure.
23 [Bench conference commenced at 3:20 p.m.]
24 THE COURT: I think no matter we got to take a break here.
25 MS. SUDANO: Perfect. I was just going to ask for that. My

1 other officer is supposed to be here at 4, so I can see if he's on
2 his way --

3 THE COURT: Yeah. We'll take --

4 MS. SUDANO: -- to get here a little bit quicker.

5 THE COURT: That's fine. We'll take a break -- break. They
6 need a break.

7 MS. SUDANO: Yeah.

8 THE COURT: All right. How long do you anticipate?

9 MS. SUDANO: He won't be too long. I had texted another
10 officer to see --

11 THE COURT: Are we going -- are we going -- are we going to be
12 able to be done by 5, right?

13 MS. SUDANO: We will. Absolutely.

14 THE COURT: Okay. Perfect.

15 MS. SUDANO: We'll be done by 5.

16 THE COURT: Okay.

17 MS. SPELLS: We have to give the lady her break between four
18 and five. She needs to take her shot between four and five.

19 THE COURT: All right.

20 MS. SPELLS: So --

21 MS. SUDANO: I only have one. I called all my other officers
22 and they're all graveyard officers, so [indecipherable] got my
23 messages now.

24 THE COURT: So just tell me [indecipherable] we'll be in a
25 break for a few minutes and then we will [indecipherable] ready to

1 go [indecipherable] -- okay.

2 [Bench conference concluded at 3:21 p.m.]

3 THE COURT: All right. We're going to take a short break. I
4 don't know exactly how long it's going to be. Your shot at 4
5 o'clock?

6 UNIDENTIFIED JUROR: Yeah.

7 THE COURT: Okay. We'll try to work it so that we can have a
8 break right around 4 o'clock. This might be a ten minute break.
9 It might be a 30 minute break. I'm not quite sure how it's going
10 to work. Just go relax. Have a bathroom break. Take it easy.

11 I'll admonish the member of the jury -- I have to say
12 this to you every time whether it's a two minute break or an
13 overnight break. And I want to -- let me slow down and I'll say it
14 slow to make sure you know what I'm saying.

15 I admonish the members of the jury not to converse or
16 discuss amongst themselves or with anyone else on any subject
17 connected or related to this trial. Nor watch, listen or read any
18 read any reports or commentaries regarding this trial through any
19 medium of information; that means radio, television, newspapers,
20 internet, telephone, iMessages, anything you can possibly dream up.
21 Don't watch, listen or read anything about this trial. Don't form
22 or express any opinions on any subject connected or related to this
23 trial until such time that this case had been finally submitted.

24 All right. You guys go relax. We'll see you in a little
25 while, probably -- probably about 10 or 15 minutes.

1 [Outside the presence of the jury]

2 THE COURT: All right. We're outside the presence of the
3 jury. Anything we need to cover? You're all good?

4 MS. SPELLS: We're all good, Your Honor.

5 THE COURT: Okay.

6 MS. SUDANO: Thank you, Your Honor.

7 [Recess taken from 3:23 p.m. to 4:02 p.m.]

8 [Outside the presence of the jury]

9 THE COURT: We're outside the presence of the jury. Anything
10 we need to address? We're going to -- how many witnesses do you
11 think we can get on?

12 MS. SUDANO: I only have one that was available this afternoon
13 to come down.

14 THE COURT: Okay.

15 MS. SUDANO: So he will be short. They'll be out of here well
16 before five any way today.

17 THE COURT: Perfect. Perfect.

18 MS. SPELLS: Shall we just check with the one --

19 THE COURT: She's taken her shot.

20 MS. SPELLS: Yeah. Okay.

21 THE COURT: She's all taken care of.

22 [Inside the presence of the jury]

23 THE COURT: Everybody have a seat. Will the parties stipulate
24 to the presence of the jury.

25 MR. WOOD: We will.

1 MS. SPELLS: Yes, Your Honor.

2 THE COURT: Very good. All right. The next witness for the
3 State is?

4 MS. SUDANO: State calls Carlos Morales please.

5 THE MARSHAL: Remain standing, raise your right hand, face the
6 Clerk.

7 **CARLOS MORALES**

8 having been called as a witness and being first duly sworn,
9 testified as follows:

10 THE CLERK: Please be seated and then state and spell your
11 name for the record.

12 THE WITNESS: First is Carlos. Last name Morales, M-O-R-A-L-
13 E-S.

14 **DIRECT EXAMINATION**

15 **BY MS. SUDANO:**

16 Q: Sir, how are you employed?

17 A: I work for Metro.

18 Q: In what capacity?

19 A: In patrol.

20 Q: How long have you been a patrol officer?

21 A: Ten years.

22 Q: Now I want to draw your attention to July 31st of 2015.
23 Were you working that day?

24 A: Yes.

25 Q: What was your shift on July 31st of 2015?

1 A: From 10 p.m. to 8 a.m.

2 Q: I want to draw your attention specifically to about 3

3 a.m. on the morning of July 31st of 2015. Around that time, did you

4 get a call regarding a cellphone?

5 A: Yes.

6 Q: What was the nature of that call?

7 A: There was a victim who had her phone taken away.

8 Q: Now do you know where that occurred?

9 A: It happened at Nellis and Flamingo.

10 Q: Now did you eventually respond to that call?

11 A: No.

12 Q: So did some other officer respond to that call?

13 A: Yes.

14 Q: So you were not the primary officer on that call?

15 A: No.

16 Q: At some point though, do you assist with that call?

17 A: Yes.

18 Q: How did that come about?

19 A: I was in a different call with my partner and we heard

20 that the phone was pinging around Nellis and Vegas Valley which --

21 which was where we were.

22 Q: When you say pinging what do you mean by pinging?

23 A: There's a cellphone app you can download on your phone.

24 You register it. So just in case you lose it, you can use somebody

25 else's phone to find your -- to find your phone.

1 Q: And is that the track my iPhone or the find my iPhone
2 app?

3 A: Yes.

4 Q: You explained it a little bit, but do you know a little
5 bit more about it? Can you explain it just generally for the
6 ladies and gentlemen of the jury?

7 A: It's like -- it's every Smartphone has an app you can
8 download. You register it. Just in case you lose your phone. You
9 can use somebody else's phone to download the -- the find my iPhone
10 and then you bring up your account and it tells you where your
11 phone's at.

12 Q: And when it's pinged, is it pinged cell towers, GPS; do
13 you know?

14 A: Not exactly.

15 Q: One of those two things.

16 A: I think it was GPS.

17 MR. WOOD: Objection. Speculation.

18 THE COURT: All right. I agree, but it doesn't make
19 difference [indecipherable] --

20 BY MS. SUDANO:

21 Q: Now you said that at some point this phone was pinged
22 near Vegas Valley and Nellis; is that correct?

23 A: Yes.

24 Q: Is that here in Clark County, Nevada?

25 A: Yes.

1 Q: Now did you and your partner respond to somewhere in the
2 area of Vegas Valley and Nellis?

3 A: Yes.

4 Q: Specifically, where did you respond?

5 A: We went to the -- I think it was Stonegate apartments,
6 3055 Nellis.

7 Q: You said you think; are you sure that that's the
8 apartment complex in this particular case?

9 A: No. Either that or it's the Oasis.

10 Q: Now, would there have been a log taken of where you and
11 partner respond in this particular call?

12 A: Yes.

13 Q: Would looking at that log refresh your recollection as to
14 the specific apartment complex?

15 A: Yes.

16 MS. SUDANO: Your Honor, may I approach the witness?

17 THE COURT: Yes.

18 BY MS. SUDANO:

19 Q: Officer Morales, I'm showing you some dispatch log; could
20 you look at that generally and confirm that that's the -- the
21 dispatch log for this particular event number?

22 A: Yes.

23 Q: And go ahead and look through there and see if that
24 refreshes your recollection as to the particular apartment complex
25 and go ahead and set it down when you're done.

1 A: The name of the apartment was Oasis -- Oasis Meadows.
2 Q: So your memory was reflect -- refreshed by looking
3 through the dispatch log?
4 A: Yes.
5 Q: Now where is the Oasis Meadows complex located?
6 A: It'll be on the corner of Nellis and Desert Inn.
7 Q: Do you know the specific address for that apartment
8 complex?
9 A: Thirty, fifty-five South Nellis.
10 Q: Are you sure that that's the correct address for this
11 particular apartment complex?
12 A: No.
13 Q: Would looking at the dispatch log refresh your
14 recollection?
15 A: Yes.
16 MS. SUDANO: May I approach, Your Honor?
17 THE COURT: Yes.
18 BY MS. SUDANO:
19 Q: Okay. For the record, Officer, again I'm showing you the
20 dispatch log for this particular event number.
21 A: I can't find the address.
22 Q: Let me draw your attention to this last page here.
23 A: Oh, 3150 South Nellis.
24 Q: And did looking through the dispatch log refresh your
25 recollection as to the address?

1 A: Yes.

2 Q: Okay. And was this -- I'm sorry, 3150 Nellis -- South
3 Nellis?

4 A: Yes.

5 THE COURT: You sure you -- you sure you don't want to stay
6 there?

7 MS. SUDANO: Yes.

8 THE COURT: Okay.

9 BY MS. SUDANO:

10 Q: Is that here in Clark County, Nevada?

11 A: Yes.

12 Q: Now, fair to say that the call was already in progress
13 before you and your partner responded to the Oasis Meadows
14 Apartment complex?

15 A: Yes.

16 Q: Do you know if there were any other addresses where
17 officers had responded prior to going to the apartment complex?

18 A: I think there was making something about McDonald's on
19 Nellis and Vegas Valley?

20 Q: When you got to that Oasis Meadows Apartment complex,
21 what if anything did you do?

22 A: We -- before we went in there we heard Officer Kunz was
23 with somebody who fit the description, so we went and backed them.

24 Q: When you say that Officer Kunz was with someone who
25 matched the description, what description are you talking about?

1 A: I think it was a black male with a black tank top and
2 black -- black shorts.

3 Q: And so was that the description of the person who had
4 taken the cellphone?

5 A: Yes.

6 Q: Now, you said that we went somewhere. When you say we,
7 who are you referring to?

8 A: Myself and Officer McFarland.

9 Q: Was that your partner on July 31st of 2015?

10 A: Yes. We were riding together.

11 Q: Now were you able to make contact with Officer Kunz and
12 the individual that they had or he had stopped in the apartment
13 complex?

14 A: Yes.

15 Q: Do you see that individual here in the courtroom today?

16 A: Yes.

17 Q: Could you please point to that individual and describe an
18 article of clothing that he or she is wearing today?

19 A: He's sitting over here to my left with the blue button up
20 shirt.

21 MS. SUDANO: May the record reflect identification of the
22 Defendant?

23 THE COURT: Yes. The record will so show.

24 BY MS. SUDANO:

25 Q: Now where was it exactly that you first came into contact

1 with the Defendant?

2 A: I think it was in the far end of the property in the back
3 in the -- by building 12 I think it was.

4 Q: Do you recall approximately what time it was that you
5 first made contact with the Defendant near Building 12?

6 A: No.

7 Q: Would looking at the dispatch log refresh your
8 recollection as to --

9 A: Yes.

10 Q: -- at the time you -- you made it to the complex?

11 A: Yes.

12 MS. SUDANO: Thank you, Your Honor.

13 I'm showing you the dispatch log and also showing you,
14 Officer, the list of call signs for that time.

15 THE WITNESS: Three, forty.

16 BY MS. SUDANO:

17 Q: You arrived at the apartment complex at 3:40?

18 A: We assigned ourselves at 3:40 and then -- yeah, around
19 roughly the same time.

20 Q: And is that A.M.?

21 A: Yes.

22 Q: Now when you arrived at that apartment complex at 3:40 in
23 the morning, were there a lot of people outside?

24 A: No.

25 Q: In fact, were there any other attendants or any people

1 other than the Metro officers outside?

2 A: Correct.

3 Q: Correct, there were no other people?

4 A: Nobody else. Just us.

5 Q: Okay. Now, once you arrived in the area where Officer

6 Kunz and the Defendant were, what if anything did you do?

7 A: I walked to him and asked him for his information.

8 Q: When you say him, do you mean the Defendant?

9 A: Yes.

10 Q: Did he provide you with his information?

11 A: Yes.

12 Q: Now at some point does anybody else arrive at the

13 apartment complex that night?

14 A: Yes.

15 Q: Who arrived at the apartment complex?

16 A: It was Officer Navarro with victim.

17 Q: What was the purpose of Officer Navarro and the victim

18 arriving?

19 A: To see if the person we had stopped was the person who

20 took the victim's phone.

21 Q: Where were you when Officer Navarro and the victim

22 arrived?

23 A: In -- inside my patrol car.

24 Q: What if anything did you do at that point?

25 A: Just -- I was just checking his information, run him

1 through the computer and then when Navarro showed up, I got outside
2 and stand next to -- to the suspect.

3 Q: And what was the purpose of standing next to the suspect?

4 A: Just to make sure he doesn't run.

5 Q: Now, were you also standing next to him so that the
6 victim and Officer Navarro could drive up and see if it was
7 potentially the same individual?

8 A: Yes. I had him -- yeah, I had to move him a little bit
9 over 'cause he was in front of the patrol cars. We had to move him
10 a little bit over in front of the spot lights.

11 Q: And why did you have to move the Defendant over in front
12 of the spot lights?

13 A: 'Cause it was dark. There was no lighting.

14 Q: So was that just so that the victim could actually see
15 him --

16 A: Yeah.

17 Q: -- and --

18 A: Get a good view of the suspect we had in front of the
19 car.

20 Q: Do you know if the victim was able to make an
21 identification?

22 A: Yes.

23 Q: And --

24 A: It was -- per the victim, it was positive.

25 Q: So the victim confirmed that the Defendant was the

1 individual who had taken her cellphone?

2 A: Yes.

3 MS. SUDANO: Your Honor, may I approach the Clerk?

4 THE COURT: Sure.

5 MS. SUDANO: May I approach the witness?

6 THE COURT: Sure.

7 BY MS. SUDANO:

8 Q: Officer Morales, I am approaching with State's proposed
9 Exhibits 11, 12 and 13. If you could just look through those and
10 let me know if you recognize what's depicted there generally.

11 A: Here's Nellis and here's Vegas Valley and the apartment
12 should be the entrance -- should be right here. We were way in the
13 back corner.

14 Q: Okay. So you're looking now at State's proposed Exhibit
15 11 and you've identified as the intersection of Vegas Valley and
16 Nellis just generally?

17 A: Uh-huh.

18 Q: Is that a fair and accurate depiction of the area of
19 Vegas Valley and Nellis on July 31st of 2015?

20 A: Yes.

21 Q: Okay. Now let's go on to State's proposed Exhibit 12.
22 Do you recognize what's depicted there?

23 A: Yes.

24 Q: And was it that just generally?

25 A: Here's -- here's Nellis and [indecipherable] Valley --

1 Vegas Valley would be right here and then this is the entrance to
2 the Oasis. And I think we were some where back -- back here.

3 Q: Okay. And again, is this a fair and accurate depiction
4 of that apartment complex at 3150 Nellis on July 31st, 2015?

5 A: Yes.

6 Q: Okay. And then moving onto State's proposed Exhibit 13;
7 do you recognize just generally what's depicted in State's proposed
8 Exhibit 13?

9 A: Yes. It's the Oasis apartment complex.

10 Q: And is that a fair and accurate depiction of the
11 apartment complex on July 31st of 2015?

12 A: Yes.

13 MS. SUDANO: Your Honor, at this time, the State would move
14 for admission of proposed Exhibits 11, 12 and 13.

15 THE COURT: Any objections?

16 MR. WOOD: No objection, Your Honor.

17 THE COURT: Eleven, twelve and thirteen are all admitted.

18 [State's Exhibits 11, 12 and 13 admitted]

19 BY MS. SUDANO:

20 Q: Your Honor, permission to publish?

21 A: Yes.

22 Q: Officer Morales, I'm showing you up on the screen here
23 State's Exhibit 11. So can you mark on the screen -- if you
24 actually touch the screen it'll draw on it.

25 A: Okay.

1 THE COURT: Touch the screen. You can go like that and then -

2 -

3 BY MS. SUDANO:

4 Q: If you hit the bottom right corner or the bottom left
5 corner, I'm not sure which in this department, it'll clear out.

6 A: It did.

7 THE COURT: I'll clear it for you.

8 BY MS. SUDANO:

9 Q: So just generally what are we looking at here?

10 A: Here's -- here's Nellis. And here's apartment complex
11 right there.

12 Q: And that's at 3155 South Nellis you were talking about?

13 A: Yes.

14 Q: And it's the Oasis -- the Oasis Meadows Apartment
15 complex?

16 A: Yes.

17 Q: And there are a couple other areas marked on this map.

18 Can --

19 THE COURT: You want me to clear it?

20 MS. SUDANO: You don't have to clear it yet, Your Honor. No,
21 thank you.

22 So, can you see up at the top right there's an address on

23 --

24 THE WITNESS: Right here.

25 BY MS. SUDANO:

1 Q: Yeah. What is that address?
2 A: That's the McDonald's address.
3 Q: Okay. And that's the 2886 South Nellis?
4 A: Yes.
5 Q: And is that the -- where was that located?
6 A: At the corner of Vegas Valley and Nellis.
7 Q: Okay. I didn't realize this is actually a little bit cut
8 off, but you've got something that says Boulder Highway on the
9 bottom left.
10 A: And Flamingo.
11 Q: And so that's in the area of Boulder Highway and
12 Flamingo?
13 A: Yes. Right here.
14 Q: So you just highlighted Flamingo for us?
15 A: Yes, and Nellis.
16 Q: Now is there anything significant about that intersection
17 down there at Boulder Highway and Flamingo as it relates to this
18 particular case?
19 A: I think this is where the -- I think the victim -- the
20 victim was at a bus stop which is on the corner right here.
21 Q: So right there on that corner near Boulder Highway and
22 Flamingo and Nellis?
23 A: Yes.
24 MS. SUDANO: Could you clear that one out please, Your Honor?
25 Thank you.

1 Now, I'm showing you Exhibit 12. What's depicted here in
2 Exhibit 12?

3 THE WITNESS: Here's -- here's Nellis and this is Oasis.

4 BY MS. SUDANO:

5 Q: And so that's the apartment complex that we were talking
6 about earlier?

7 A: Yes.

8 Q: Now, I'm going to show you Exhibit 13. Thank you, Your
9 Honor. What's depicted there in Exhibit 13?

10 A: The Oasis complex again.

11 Q: Now when I was up at the witness stand with you you
12 started to indicated that the entrance to the complex and where you
13 responded.

14 A: Nellis runs --

15 THE COURT: I don't know what's going on.

16 THE WITNESS: Okay. Here we go. That's Nellis.

17 BY MS. SUDANO:

18 Q: So running north, south on this photo?

19 A: Uh-huh. This is the entrance and we went to go back --
20 Kunz in the back over right there.

21 Q: So, the top right corner I guess is the northeast top
22 corner of this complex; is that fair?

23 A: Yes.

24 Q: And do you recall specifically where in that corner or
25 just generally that corner?

1 A: I'm not sure if it was this -- that walkway or this
2 walkway. It was one of those two walkways.

3 Q: Okay. So one of the two upper most right buildings is --
4 is generally where you responded to?

5 A: Yeah.

6 Q: Now, just to clarify, when you were going back there,
7 were there a lot of people back in that corner?

8 A: No. It was -- it was pretty dark. There was no lights
9 in between the -- the buildings.

10 Q: So there were no lights at all back there?

11 A: No.

12 MS. SUDANO: Your Honor, at this time I have no further
13 questions.

14 THE COURT: Okay. Cross examination.

15 CROSS EXAMINATION

16 BY MR. WOOD:

17 Q: Officer, you said you've been with Metro for a while,
18 correct?

19 A: Yes.

20 Q: You've -- I think you said ten years, correct?

21 A: Yes.

22 Q: And I'm guessing in that time you probably handled a lot
23 of cases like this before, correct?

24 A: Yes.

25 Q: Have you worked in any other units in Metro while you've

1 been there for the past ten years?

2 A: No. I've been on graveyards for ten years in patrol.

3 Q: Always with patrol. Now, you're familiar with various
4 theft crimes, correct?

5 A: Yes.

6 Q: You're actually familiar with pickpocket crimes, correct?

7 A: Yes.

8 Q: Purse snatches?

9 MS. SUDANO: Your Honor, I'm going to object and ask to
10 approach.

11 THE COURT: Sure.

12 [Bench conference commenced at 4:25 p.m.]

13 THE COURT: [indecipherable]

14 MR. WOOD: I think it goes towards his experience. I think he
15 can speak to it as an officer.

16 THE COURT: [indecipherable] crime of petty larceny as opposed
17 to larceny from the person.

18 MR. WOOD: No. I'm just going to ask what [indecipherable] in
19 terms of pickpocketing.

20 MS. SUDANO: My concern obviously is that [indecipherable] get
21 to the [indecipherable] from this jury through this officer. I
22 don't think he could speak to [indecipherable] specific case or
23 charging decisions that were made.

24 MR. WOOD: I'm not going to ask him about any charging
25 decisions [indecipherable] --

1 MS. SUDANO: I think I'm going to also ask that we not go into
2 okay, what's your understanding of what a pickpocket is and what's
3 your understanding of what a person [indecipherable] laying out the
4 elements to a crime.

5 THE COURT: Well, it's [indecipherable] if we're getting to
6 explain these elements [indecipherable] elements of petty larceny
7 [indecipherable] explain the elements of the larceny from a person.

8 MS. SUDANO: And I don't disagree with that. I just don't
9 think that it's proper to ask the officers what their
10 interpretation of anything is.

11 THE COURT: Well, I'm going [indecipherable] you need to clear
12 that he's not the one [indecipherable] petty larceny or larceny
13 from a person. Those kind of decisions [indecipherable] somebody
14 [indecipherable] a crime [indecipherable] to determine
15 [indecipherable] -- all right. Go ahead.

16 [Bench conference concluded at 4:26 p.m.]

17 BY MR. WOOD:

18 Q: Well, I'm going to go back a little bit, Officer. You --
19 you weren't responsible for any charging decisions in this case,
20 correct?

21 A: No.

22 Q: And you had a very limited sort of piece of this case?
23 You -- you were the one who ultimately saw the suspect, correct?
24 And took him into custody, correct?

25 A: No.

1 Q: That was?
2 A: Officer Kunz saw him first.
3 Q: Okay. And you were there for the show up then, correct?
4 A: Yes.
5 Q: Now, going back to your experience. You've dealt with a
6 pickpocket crime before, correct?
7 A: Yes.
8 Q: And essentially those crimes can be done in a lot of
9 different ways, correct?
10 A: Yes.
11 Q: You could have someone fake a bump and -- and reach in
12 and take something, correct?
13 A: Yes.
14 Q: You could have multiple people working in a group to kind
15 of facilitate that, correct?
16 A: Yes.
17 Q: Same sort of thing with purse snatching, correct?
18 A: Yes.
19 Q: It can be done in a number of different ways, right?
20 A: Yes.
21 Q: And do you know or don't you know -- it's probably fair
22 to say that it's something that's pretty prevalent especially on
23 the strip?
24 A: Yes.
25 Q: And, in fact, isn't -- isn't there a unit that

1 specifically deals with crimes that are on the strip?

2 A: Yes.

3 Q: And that's like a tourist crime's unit, correct?

4 A: Yes.

5 Q: And they handle a lot of this kind of stuff, right?

6 A: Yes.

7 Q: Now, are you aware whether Metro sometimes will have an
8 officer pretend to be a citizen?

9 A: Pretend to be a citizen?

10 Q: For -- for instance, are you aware of whether or not
11 Metro has had officers impersonate a citizen with money hanging out
12 of their pockets?

13 A: No. I haven't heard anything like that.

14 Q: So you're not aware if Metro ever had a cop pretend to be
15 drunk and have money hanging out?

16 MS. SUDANO: Your Honor, at this point I'm going to object to
17 relevance.

18 THE COURT: This is getting --

19 THE WITNESS: Drunk.

20 THE COURT: -- quite a bit off. I mean, this has nothing to
21 do with the bait crime. Move on.

22 BY MR. WOOD:

23 Q: Now, you come upon -- police come upon Mr. Ibarra,
24 correct? Correct?

25 A: I'm sorry.

1 Q: Police come upon Mr. Ibarra?
2 A: Ms. --
3 Q: At the -- at the back of the complex, the suspect?
4 A: Oh. When Kunz found him?
5 Q: Correct.
6 A: Yes. We went and backed him. Yes.
7 Q: And initially you said he standing outside by the patrol
8 vehicle, correct?
9 A: Yes.
10 Q: And then you get word that a victim is going to be
11 showing up, correct?
12 A: Yes.
13 Q: And based on that you get out of your car, correct?
14 A: Yes.
15 Q: And it's kind of dark out, so you move the suspect into
16 the spot lights, correct?
17 A: Yes, 'cause the victim's driving exactly right behind us
18 and he can't see through the cars or through the windows 'cause
19 their tinted. So I had to move him over and then move the spot
20 lights into him.
21 Q: And your testimony was that there was no one else around
22 besides Metro at that point, correct, in that area?
23 A: Correct.
24 Q: And you were standing next to the suspect, correct?
25 A: Yes.

1 Q: You were in your --

2 A: Uniform.

3 Q: -- uniform? So there was no mistaking -- there's only
4 one person out there who's not wearing a uniform, correct?

5 A: Correct.

6 MR. WOOD: Court's indulgence.

7 [Defense counsel conferring]

8 MR. WOOD: We'll pass.

9 THE COURT: Any redirect?

10 MS. SUDANO: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. SUDANO:

13 Q: Mr. Morales, you were asked some questions about some of
14 the crimes that you've investigated in your ten years with Metro;
15 do you remember those questions?

16 A: Yes.

17 Q: Now, you were asked, you know, whether or not you've seen
18 cases where somebody snatches a purse or, you know, takes property
19 from somebody in a violent way, things along those lines; do you
20 remember that? Remember being asked about purse snatchings for
21 instance?

22 A: Yes.

23 Q: Have you also seen cases where somebody would use maybe a
24 trick or arouse to take property from another person?

25 A: Yes.

1 Q: Now, you're also asked questions about the tourist crime
2 unit, right; do you remember those?

3 A: Yes.

4 Q: And crimes about or questions about maybe some of the
5 bait programs at Metro employs?

6 A: Yes.

7 Q: I just want to clarify. This wasn't a tourist crime,
8 right?

9 A: No.

10 Q: And it wasn't a bait crime, right?

11 A: No.

12 Q: So it wasn't a crime that was -- strike that -- to your
13 knowledge this crime happened to an actual citizen who lives in Las
14 Vegas valley?

15 A: Yes.

16 MS. SUDANO: Your Honor, no further questions.

17 THE COURT: The recross?

18 MR. WOOD: Briefly, Your Honor.

19 REDIRECT EXAMINATION

20 BY MR. WOOD:

21 Q: Do you recall this day just asking a line of questions
22 about this wasn't a bait crime?

23 A: Yes.

24 Q: What is a bait crime?

25 A: It's when a specialized unit goes out and they have some

1 -- an officer set up as a victim, would go somewhere and sit down
2 where it's a high violent crime. Just sit down and wait 'til
3 somebody come up and commit a crime.

4 MR. WOOD: No further questions.

5 THE COURT: Is that it?

6 MS. SUDANO: Yes, Your Honor. Thank you.

7 THE COURT: Thank you very much for your testimony.

8 Appreciate it. You can go ahead and step down. You're excused.
9 Thank you once again, Officer.

10 All right. We are out of witnesses for today. You're
11 going to get an early out. And I think and if I understand
12 correctly, you're going to show him the parking -- you've already
13 done that and you're going to take care of all that?

14 THE MARSHAL: Yes, Your Honor.

15 THE COURT: Okay.

16 THE MARSHAL: I will.

17 THE COURT: So we're going to have an overnight recess. For
18 heaven's sakes, don't do anything silly. Pay attention to what I'm
19 telling you about not watching, listening or reading anything that
20 has to do with this case. Don't get on the internet and look stuff
21 up. Just go home and watch football. Just relax.

22 If you see something that looks like it could be related
23 to this case and that is a possibility although not overly likely,
24 just as soon as you recognize it and it could have something to do
25 with this case, just stop reading, okay. You'll have plenty of

1 time to do that if you choose to later.

2 So, we're going to shoot for 10 o'clock. I've gone
3 through the calendar and I think we can -- I think we can start
4 right around 10 o'clock, okay. And is there a possibility that we
5 might be done with your case?


6 MS. SUDANO: I think that it's a certainty that we'll finish
7 the State's case tomorrow. Yes, Your Honor.

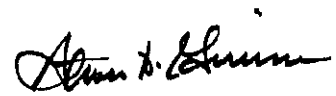
8 THE COURT: Okay. All right. We might, you know, go through
9 this fairly quickly. Impressive. All right. So, you guys are
10 going to get your parking directions and you're going to meet over
11 here in the morning at 10 o'clock. Make sure when you're walking
12 through the building keep badge on. Avoid contact with anybody who
13 has anything to do with this case. And as I said, don't get upset
14 if you see somebody out in the hallway and they just don't say
15 anything because that's how we tell everybody do it. All right.

16 So, during this overnight recess I admonish the members
17 of the jury not to converse or discuss amongst themselves or with
18 anyone else on any subject connected or related to this trial.
19 Don't watch [indecipherable] or read any reports or commentary
20 during this trial through any medium of information meaning radio,
21 television, newspapers, internet. And don't form or express any
22 opinions on any subject connect or related to this trial until such
23 time as this case has been finally submitted. And it might be
24 sooner than we thought. All right. All right. Go relax. We'll
25 see you guys in the morning.

1 ATTEST: I hereby certify that I have truly and correctly transcribed the
2 audio/video proceedings in the above-entitled case to the best of my
ability.

3 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
4 Procedure, I acknowledge that this is a rough draft transcript,
expeditiously prepared, not proofread, corrected or certified to be an
accurate transcript.

5 
6 Michelle Ramsey
7 Court Recorder/Transcriber


CLERK OF THE COURT

1 RTRAN

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

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vs.

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GABRIEL IBARRA,

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Defendant.

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BEFORE THE HONORABLE JAMES BIXLER, DISTRICT COURT JUDGE

16

TUESDAY, OCTOBER 20, 2015

17

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

18

JURY TRIAL - DAY 2

19

APPEARANCES:

20

For the State:

21

MICHELLE SUDANO, ESQ.
Deputy District Attorney

22

For the Defendant:

23

JASMIN D. SPELLS, ESQ.
JEREMY WOOD, ESQ.
Deputy Public Defenders

24

25

RECORDED BY: MICHELLE RAMSEY, COURT RECORDER

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ROUGH DRAFT TRANSCRIPT
State of Nevada v. Gabriel Ibarra
C-15-308774-1

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1 LAS VEGAS, NEVADA; TUESDAY, OCTOBER 20, 2015

2 [Proceeding commenced at 10:45 a.m.]

3 [Outside the presence of the jury]

4
5 THE MARSHAL: Court will come to order. Department 17 back
6 in session.

7 THE COURT: Okay. We are -- are we on the record?

8 THE COURT RECORDER: Yes, we are.

9 THE COURT: Okay. We are outside the presence of the jury.
10 Any matters we need to address?

11 MS. SUDANO: None from the State, Your Honor.

12 MS. SPELLS: None from the Defense, Your Honor.

13 THE COURT: Okay. Let's bring them in. You indicated
14 you're going to have -- of the three anticipated witnesses, you
15 were going to have two?

16 MS. SUDANO: That's correct, Your Honor.

17 THE COURT: Okay. And you can be resting?

18 MS. SUDANO: Correct, Your Honor.

19 THE COURT: Okay. Did you guys resolve most of the issues
20 about the instructions?

21 MS. SUDANO: We resolved some of them. We're still going to
22 have some issues that Your Honor may need to address and settle.

23 THE COURT: I pulled up -- I'm pulling up the petit larceny
24 and larceny from the person to kind of compare them and see what
25 it looks like. It certainly -- 3

1 MR. WOOD: You can't commit a larceny from the person
2 without committing a petit larceny or a larceny in general.

3 THE COURT: Yeah, depending on the value, you committed a
4 larceny from the person, and you would have also committed a petit
5 larceny if it's under \$3500 or whatever it is. So every larceny
6 from the person under \$3500 would include the same elements of
7 committing a petit larceny. Not so a larceny -- I mean, a petit
8 larceny. A petit larceny is committed with taking property --

9 MR. WOOD: Without -- yeah.

10 THE COURT: -- from the person. So if you take property
11 that doesn't amount to taking it from the person and a value under
12 \$650, it's petit larceny. So the -- the element that's not in a
13 petit larceny that's in the larceny from the person is that the
14 taking has to be from a person and not in constructive possession,
15 in actual possession.

16 [Jury enters the courtroom]

17 THE MARSHAL: All present and accounted.

18 THE COURT: Everyone, please have a seat. We'll be -- do
19 the parties stipulate to the presence of the jury?

20 MR. WOOD: We do.

21 MS. SUDANO: Yes, Your Honor.

22 THE COURT: Very good. Good morning. Good morning.

23 THE JURY: [en masse] Good morning.

24 THE COURT: So we're ready for the next witness. And just
25 to give you a little heads-up preview, the State is going to call

1 a couple witnesses, and they're probably going to rest, and then
2 we'll see what's going to happen on the other side. So -- I think
3 she needs her --

4 Believe it or not, we're already closing in on the
5 end. Okay. And who is the next witness?

6 MS. SUDANO: The State calls Nathaniel Navarro.

7 THE MARSHAL: Remain standing and raise your right hand to
8 be sworn.

9 **NATHANIEL NAVARRO**

10 being first duly sworn as a witness, testified as
11 follows:

12 THE CLERK: Please be seated and then state and spell your
13 name for the record.

14 THE WITNESS: My name is Officer Navarro. That's -- first
15 name, it's Nathaniel, N-A-T-H-A-N-I-E-L. Last name Navarro, N-A-
16 V-A-R-R-O.

17 THE COURT: Go ahead.

18 MS. SUDANO: Thank Your Honor.

19 **DIRECT EXAMINATION**

20 **BY MS. SUDANO:**

21 Q Sir, how are you employed?

22 A I'm employed by Las Vegas Metropolitan Police
23 Department.

24 Q In what capacity?

25 A Patrol officer.

5

1 Q How long have you been a patrol officer?
2 A Approximately almost two years now.
3 Q I'm going to draw your attention to July 31st of 2015.
4 Were you working that day?
5 A Yes, ma'am.
6 Q What was your shift?
7 A Graveyard shift.
8 Q So what time to what time?
9 A From 2200 to 0800.
10 Q Is that 10:00 p.m. to 8:00 a.m.?
11 A That's correct.
12 Q Now, at some point during that shift, did you get a
13 call regarding a stolen cell phone?
14 A That is correct.
15 Q Do you recall what time that call came in?
16 A Approximately about 3:30, 3:36.
17 Q 3:36 a.m.?
18 A That's correct.
19 Q Did you respond to that call?
20 A Yes, I did.
21 Q What time did you respond to the call?
22 A About 3:36.
23 Q So can you explain how the call came in and you
24 responded about the same time?
25 A Actually, I was flagged down by the victim. I was

1 crossing Flamingo, going westbound, crossing Boulder Highway. I
2 was flagged down by the victim themselves about 3:36.

3 Q So had the victim initiated a call to 911 or 311 to
4 dispatch prior to you arriving at 3:36?

5 A That is correct.

6 Q Was that approximately 2:50 a.m.?

7 A That is correct.

8 Q So you just get flagged down at 3:36 a.m.?

9 A Yes.

10 Q What do you do after you get flagged down by the
11 victim?

12 A Basically, I pulled over, speak to the victim, asked
13 her what was going on. Found out that she was related to a call
14 that was generated. She told me what happened.

15 Q Now, what was the victim's name in this particular
16 case?

17 A I believe her name is Evangelina [sic throughout]
18 Mantikas.

19 Q Did she report just generally that the phone was --
20 her phone was taken from her?

21 A Well, she stated that she was sitting at the bus stop
22 --

23 MR. WOOD: Objection; hearsay.

24 THE COURT: Well --

25 MS. SUDANO: And I just want to get just generally the nature

1 that he knew her phone was taken.

2 THE COURT: And that's fine. Just kind of -- without
3 repeating what was said to you --

4 THE WITNESS: Uh-huh.

5 THE COURT: It was related to you that a phone was taken; is
6 that --

7 THE WITNESS: That is correct, the phone was taken.

8 THE COURT: All right.

9 BY MS. SUDANO:

10 Q So based on information you had that the phone was
11 taken, what, if anything, did you do?

12 A Basically, I just got the information as far as what
13 kind of phone was taken, description of the suspect that the phone
14 was taken by and where she last saw the suspect at.

15 Q Do you recall what the description of the phone was?

16 A I believe it was an iPhone 5 S. It had a cover on it,
17 which had like an Anime character.

18 Q And, now, what was the description of the suspect that
19 you received?

20 A She stated it was a black male adult, about 5'5',
21 wearing a tank top and dark color shorts.

22 Q Did anybody else respond to the call with you?

23 A Yes.

24 Q Who responded?

25 A Officer Hibbetts. 8

1 Q What, if anything, was Officer Hibbetts doing while
2 you were getting information about the phone and the suspect?

3 A Officer Hibbetts was actually on the phone speaking to
4 Evangelina's, I believe, friend. She was using the Find My iPhone
5 app, and, basically, she was relating information to him as far as
6 where the phone could be located.

7 Q What was Officer Hibbetts doing with that information
8 once he received it?

9 A He was broadcasting it over the radio to other
10 responding officers.

11 Q Now, how long were you and Officer Hibbetts there with
12 the victim trying to track her phone?

13 A I believe maybe approximately about an hour. Maybe a
14 little bit less than hour.

15 Q Now, at some point do you go to a different location?

16 A Yes, I do.

17 Q How did that come about?

18 A Well, we get dispatched -- or we go to another
19 location. We get notification that our other partners found a
20 person matching the description in a location, so --

21 Q What was that location?

22 A It was 3150 South Nellis. It's the Oasis Meadows
23 Apartments.

24 Q Now, based on that information, what do you do?

25 A What do I do? Basically, they told me where they're

1 at. I take the victim and we conduct a show-up.

2 Q Can you walk the ladies and gentlemen of the jury just
3 generally through the process for a show-up.

4 A Basically, with the show-up, we identify where the
5 location's going to be at. We show up with the victim.
6 Especially when it's graveyard, we turn our lights on. So what it
7 does is it actually protects the victim from the possible suspect
8 seeing her or him. So we have our spotlights, overhead lights and
9 our headlights on, so it pretty much -- it blacks them out.

10 The possible suspect is put at a distance so the
11 victim can generally see a good visual and make a good
12 identification of -- if that's the possible -- if that's the
13 suspect or not.

14 Q Did you follow all those procedures here in this
15 particular case?

16 A That is correct. I also read the victim, stating just
17 because we have a person in custody doesn't mean that this is the
18 person that we believe that might be part of the crime that was
19 committed. So I just told her, just take into consideration that
20 might be the person; it might not be the person.

21 Q You actually have a written form or written
22 instructions that you have to read to somebody before you do a
23 show-up?

24 A That is correct.

25 Q And it states generally₁₀ what you just said, that keep

1 in mind, this may not be the person; it's important you don't
2 identify them just because they're here?

3 A That is correct.

4 Q Now, did you read the victim in this particular case
5 those instructions?

6 A That is correct.

7 Q Did you do that before you conducted the show-up with
8 her?

9 A Before I conducted the show-up.

10 Q Now, approximately how far away from -- well, was the
11 victim in your car with you the entire time during the show-up?

12 A Yes.

13 Q Was the suspect in a car or was he out on the street?

14 A He was out on the street -- well, parking lot, so --

15 Q How far from the suspect was the victim in your car at
16 the time you did the show-up?

17 A I'd say maybe approximately like 10 yards. About 5 --
18 5, 10, maybe less than 10, so --

19 Q 5 to 10 yards?

20 A Yeah.

21 Q Now, what was the lighting situation just generally in
22 that parking lot?

23 A As far as just the streetlights, but when we have our
24 overhead lights on and all our lights on on our vehicle, it pretty
25 much illuminates whatever we're facing.

1 Q Was the victim in this particular case able to make an
2 identification of the suspect who took her phone?

3 A That is correct.

4 Q And she indicated that the person that was detained
5 was the same individual who had taken her phone?

6 A That is correct.

7 Q Now, do you see that individual here in the courtroom
8 today?

9 A To be honest, I don't recall as far as --

10 Q Did you ever have any face to face interaction with
11 that individual?

12 A No, I did not.

13 Q It was just you driving up in your car?

14 A That's correct.

15 Q Now, approximately what time was it when you took the
16 victim over to the Oasis Meadows apartment complex to conduct the
17 show-up?

18 A It was approximately about four -- like 4:30, 4 -- I'd
19 say like 4:35, 4:36.

20 Q I apologize, what was the time again, Officer?

21 A Like 4:35-ish.

22 Q 4:30 or 5:00 a.m.?

23 A Yeah.

24 Q And you responded to the call initially at 3:36 a.m.?

25 A That is correct. 12

1 Q The initial call came out at -- I'm sorry, at 2:50
2 a.m.?

3 A 2:50, yeah.

4 MS. SUDANO: Court's indulgence.

5 BY MS. SUDANO:

6 Q Now, after you conducted this show-up with the victim,
7 did you have any further involvement in this particular case?

8 A No. As far as just helping her recover the phone
9 itself, as far as just --

10 Q Are you just --

11 A Just standing by waiting till like I.D. took pictures,
12 and that's it. I just stood by.

13 MS. SUDANO: No further questions, Your Honor.

14 THE COURT: Cross.

15 **CROSS-EXAMINATION**

16 **BY MR. WOOD:**

17 Q So you were driving around, and you were hailed down
18 by Ms. Mantikas, correct?

19 A Yes, sir.

20 Q And she indicated that she had a problem, and she
21 needed your assistance?

22 A That is correct, sir.

23 Q And part of that was that her phone had been stolen,
24 correct?

25 A Yes, sir.

13

1 Q And the value of that phone was less than \$650,
2 correct?

3 MS. SUDANO: Objection as to speculation, Your Honor.

4 THE COURT: Well --

5 BY MR. WOOD:

6 Q Would it refresh your recollection to review the
7 report?

8 A Sure.

9 [Counsel confer]

10 MR. WOOD: May I approach, Your Honor?

11 THE COURT: Sure.

12 BY MR. WOOD:

13 Q Officer, I'm going to show you a page from the report
14 on this case. I just want to have you read this first paragraph
15 right there. Let me know when you're done.

16 A (Witness reading document). Okay. I'm done.

17 Q Did that refresh your recollection?

18 A Yes, sir.

19 Q That phone was under 650, correct?

20 A That is correct, sir.

21 Q After you received some indication that a suspect had
22 been caught, correct, and you -- you drove Ms. Mantikas over
23 there?

24 A That's correct, sir.

25 Q And he was standing by₄ himself, correct?

1 A That's correct, sir, but other officers were just
2 around just to make sure he doesn't walk away or anything like
3 that, so --

4 Q Were the other officers next to him or --

5 A Just next to him.

6 Q Just next to him? And those officers were in uniform?

7 A That is correct, sir.

8 Q Now, there's no one else out at this time, correct?
9 It's just officers and the suspect?

10 A That's correct, sir.

11 Q And Ms. Mantikas was viewing from within the police
12 vehicle, correct?

13 A That is correct, sir.

14 Q And you said it was approximately 10 yards?

15 A Correct, sir.

16 MR. WOOD: Court's indulgence. No further questions.

17 THE COURT: Redirect?

18 MS. SUDANO: Very briefly, Your Honor.

19 **REDIRECT EXAMINATION**

20 **BY MS. SUDANO:**

21 Q Officer Navarro, you were asked about the value of the
22 phone that was taken in this particular case; is that correct?

23 A Did you actually write the report in this particular
24 case.

25 Q No, I did not. 15

1 Q Did you actually value the phone?

2 A No, I did not.

3 Q So the report says it was \$600, but you don't have any
4 independent basis for knowing that information?

5 A That is correct, I don't know.

6 MS. SUDANO: No further questions, Your Honor.

7 THE COURT: Anything else?

8 **RECROSS-EXAMINATION**

9 **MR. WOOD:**

10 Q Officer, reports are done on everything case, correct?

11 A That is correct, sir.

12 Q And the purpose of those are because oftentimes when
13 you actually have to come in and testify, it's months or years
14 later, correct?

15 A That is correct, sir.

16 Q So you rely on the information in reports to refresh
17 your recollection, correct?

18 A Correct.

19 Q So if something is included in a report, it's
20 generally been bedded by someone at Metro, correct?

21 MS. SUDANO: Your Honor, I'm going to object to this line of
22 questioning. He didn't write this report; he can't testify to --

23 THE COURT: I think he can testify to the manner that
24 reports are generated and -- he does that every day. But don't
25 speculate or guess. If you don't know the answer, just say "I

1 don't know."

2 By MR. WOOD:

3 Q To your knowledge, there was a report that was done on
4 this case, correct?

5 A That is correct.

6 Q And you just reviewed that report, correct?

7 A That is correct.

8 Q That report was not written by you, though, correct?

9 A It was not written by me.

10 Q But it was written by someone who was involved in this
11 case, correct?

12 A That is correct.

13 Q And you had no reason to disbelieve anything that's in
14 that report, correct?

15 A Correct.

16 MR. WOOD: No further questions.

17 THE COURT: Anything else?

18 MS. SUDANO: No, Your Honor.

19 THE COURT: Thank you very much for your testimony.
20 Appreciate it.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: You can go ahead and step down. You'll be
23 excused.

24 THE WITNESS: Yes, sir.

25 MS. SUDANO: The State's next witness is Paul Kunz.

1 THE MARSHAL: Remain standing and raise your right hand.

2 PAUL KUNZ

3 being first duly sworn as a witness, testified as
4 follows:

5 THE CLERK: Please be seated and state and spell your name
6 for the record.

7 THE WITNESS: My name is Paul Kunz. That's P-A-U-L, K-U-N-
8 Z.

9 MS. SUDANO: Thank Your Honor.

10 DIRECT EXAMINATION

11 BY MS. SUDANO:

12 Q Sir, how are you employed?

13 A As a police officer with the Las Vegas Metropolitan
14 Police Department.

15 Q How long have you been a police officer?

16 A Eight years.

17 Q And drawing your attention to July 31st of 2015. Were
18 you working that day?

19 A I was.

20 Q What was your shift?

21 A I worked the graveyard shift, 10:00 p.m. to 8:00 a.m.

22 Q At some point during your shift, did a call come out
23 regarding a stolen cell phone?

24 A Yes.

25 Q Were you the initial officer who responded to that

1 call?

2 A I was not.

3 Q At some point did you get involved in that call?

4 A I did.

5 Q Approximately what time was that?

6 A I believe it was around 1:40 in the morning possibly.

7 Q Now, would the dispatch log to this particular case
8 refresh your recollection as to the time you specifically got
9 involved?

10 A Yes.

11 MS. SUDANO: Your Honor, may I approach the witness?

12 THE COURT: Yes.

13 BY MS. SUDANO:

14 Q Sir, I'm showing you the dispatch log from this event.

15 A (Witness reading document). It was a bit later,
16 actually, at 3:39 in the morning.

17 Q And that was the time that you first became involved
18 in the case?

19 A Yes.

20 Q And does looking at the dispatch log refresh your
21 recollection as to that time?

22 A That's correct.

23 Q Now, what was the nature of your first involvement?
24 How did you become involved?

25 A A cell phone was taken, and Officer Hibbetts, who was

1 the -- one of the first officers that arrived was receiving GPS
2 updates from the victim's phone as to where it was currently at,
3 and it stated -- I was in the area of Vegas Valley and Nellis, and
4 he said it was near a McDonald's over there, so I was going over
5 to see if I could locate it.

6 Q Was there anything specific about that McDonald's?
7 Any reason in particular why you thought it was at that
8 McDonald's?

9 A He stated that's where the GPS coordinates were coming
10 back to.

11 Q And where is that McDonald's located?

12 A It's the northeast corner of Vegas Valley and Nellis.

13 Q What, if anything, did you do when you responded to
14 the area of that McDonald's?

15 A I responded to that area with numerous other officers.
16 We circled the area to see if anyone stood out. There was
17 numerous cars in the drive-thru, a couple of gas pumps and some
18 people inside. So we stood by in the area just to see if the
19 phone updated at all.

20 Q Were there other businesses in that shopping center at
21 Vegas Valley and Nellis?

22 A The only other business in that complex is a Popeye's
23 Chicken. That was currently closed.

24 Q So the McDonald's was the only business in that area
25 that was open?

20

1 A The McDonald's is connected to a gas station.

2 Q The gas station, obviously, is open, too?

3 A Yeah.

4 Q What, if anything, happens while you're all standing

5 by at that McDonald's?

6 A We're standing by. Numerous vehicles leave. A couple

7 of them have numerous occupants, and we're watching them. One of

8 them drove out. It was a silver Impala that was occupied by four

9 to five people. So I was just curious where it was going. I saw

10 it drive over to the Oasis Meadow Apartments at 3150 South Nellis,

11 but then Officer Hibbetts stated that the GPS still hadn't moved,

12 so I drove away from the vehicle, went back towards the gas

13 station. Then he updated that it had moved and it was going

14 towards 3150 South Nellis, so I went back to find that vehicle.

15 Q So I just want to break that down a little bit. So

16 the silver Impala catches your eye as a vehicle with several

17 occupants?

18 A Yes.

19 Q And it was leaving a McDonald's drive-thru?

20 A Correct.

21 Q And it started heading toward the Oasis Meadows

22 apartment complex?

23 A That's correct.

24 Q What's the address for Oasis Meadows?

25 A 3150 South Nellis. 21

1 Q And that's here in Clark County, Nevada?

2 A Correct.

3 Q So you start to follow the vehicle over towards that

4 Oasis Meadows complex?

5 A Right.

6 Q But then you get an update that the phone's still

7 potentially over by the McDonald's?

8 A Yes.

9 Q So what do you do at that point?

10 A I turned around, went back towards the McDonald's. As

11 I got halfway back there, that's when Officer Hibbetts stated that

12 the GPS had updated that it was moving, and it was right in front

13 of the 3150 South Nellis, and that was the only vehicle over

14 there, still the Impala, so I went to see if I could locate it.

15 Q Were you able to locate that vehicle?

16 A I was.

17 Q Did you notice anything about the occupants as you

18 located that vehicle the second time?

19 A When I located it a second time, there was one less

20 occupant. The front passenger was missing out of the vehicle.

21 Q Do you know where the front passenger went?

22 A I conducted a vehicle stop on it, and I asked the

23 driver and the other occupants where the other party had gone, and

24 they said they dropped him off at the apartments.

25 Q And that was the Oasis₂ Meadows Apartments?

1 A Right.

2 Q Were you able to get any updated information regarding
3 the missing cell phone while you were conducting that vehicle
4 stop?

5 A I asked Officer Hibbetts because they had an ability
6 to make the phone make a noise. I had them do that. There was no
7 noise in the car. So I asked them if they had heard any noises
8 coming from the car --

9 MR. WOOD: Objection; hearsay.

10 THE COURT: You can say what he asked him.

11 THE WITNESS: Correct, sir.

12 THE COURT: You can say what you asked.

13 THE WITNESS: I asked them if they'd heard any other noises
14 coming from the car or cell phone. They said the person they
15 dropped off --

16 THE COURT: That's the problem. Don't say what they told
17 you.

18 THE WITNESS: Okay.

19 BY MS. SUDANO:

20 Q Okay. So I just want to back up. You had asked
21 Officer Hibbetts to make -- or to request that the phone make a
22 noise?

23 A Correct.

24 Q Were you able to hear the phone make a noise while you
25 were with the occupants of that silver Impala?

1 A No.

2 Q And then you asked the occupants of that Impala if
3 they had -- or if they'd heard any additional noises while the
4 other occupant was in the vehicle?

5 A Right.

6 Q Now, based on that conversation, what, if anything,
7 did you do next?

8 A I went to go located a person on foot inside the
9 apartment complex since they'd informed me they dropped that
10 person off there.

11 MR. WOOD: Objection; hearsay.

12 THE COURT: No. That's good.

13 MS. SUDANO: Okay.

14 BY MS. SUDANO:

15 Q So approximately how long had passed from the time
16 that you first see the silver Impala at the McDonald's to the time
17 that you drive halfway to the complex, then come back towards the
18 McDonald's and go back to the complex a second time?

19 A About seven minutes.

20 Q So that whole interaction is about seven minutes?

21 A Yes.

22 Q And then after you conduct that car stop, you go back
23 into the Oasis Meadows complex?

24 A Correct.

25 Q What, if anything, do₂ you do once you get to the

1 apartment complex?

2 A Numerous other officers that responded there, the ones
3 that were at the McDonald's, relocated over there because that's
4 where the GPS updated. I know another officer had stopped two
5 individuals, but didn't believe they were related, so we were
6 still locating. Officer Hibbetts was still getting GPS updates
7 from the phone that it was moving northeast through the complex,
8 so we were still trying to locate.

9 Q Okay. Now, approximately what time was it that you
10 arrived at the Oasis Meadows complex?

11 A The traffic stop I conducted was right across the
12 street, so probably two minutes after I initially made the traffic
13 stop. So around 3:50, I believe.

14 Q Okay. So 3:50 a.m., you end up in the apartment
15 complex?

16 A Approximately, yes.

17 Q Were there any other people around in the complex?

18 A There was the two persons that I believe Officer
19 Woodard stopped. He had been in contact with them while other
20 officers went to assist him just in case. And I continued
21 locating.

22 Q Now, other than those two people and the officers were
23 there, any other people out and about in the complex at 3:50 in
24 the morning?

25 A Not that I saw, no. 25

1 Q Okay. Approximately how long were you walking through
2 the apartment complex and getting updates from Officer Hibbetts
3 that the phone is still in the complex?

4 A 20 to 30 minutes, I believe.

5 Q What happens after 20 or 30 minutes walking through
6 the complex?

7 A The signal continued to go northeast. I continued to
8 walk that direction till I came almost to the wall that borders
9 3070 South Nellis, the neighboring apartment complex. I saw a
10 male with the matching clothing description walking away from me
11 at a rather fast pace. He approaches a male standing by his
12 doorway, and then he continues to walk away, and he walks east
13 around the building.

14 Q So let me break that down a little bit. You saw a
15 male who matched the description of the suspect who had taken a
16 phone?

17 A It was a call-in description, yes.

18 Q And he interacted with another individual?

19 A There was a person standing just right outside their
20 door talking on a cell phone.

21 Q Do you recall what apartment that conversation
22 occurred at?

23 A I do not know.

24 Q Now, could you tell if those two individuals had a
25 conversation?

26

1 A It looked like the male walking briefly stopped to
2 talk to the person on the cell phone, but they didn't seem to know
3 them and wanting nothing to do with him, so he continued walking.

4 Q Were you close enough to hear what was said?

5 A I was not.

6 Q Now, what, if anything, did you do after seeing that
7 male whose clothing matched the description of the suspect
8 continued walking?

9 A I made my way up there, asked the person on the cell
10 phone, hey, do you know that guy? They said they did not. So I
11 continued to try and locate him. I came up to the end of the
12 building where he turned. I didn't see him initially, so I
13 continued walking eastbound and located him on the north -- or the
14 east side of the building where I'd initially seen him.

15 Q Now, do you see that suspect here in the courtroom
16 today?

17 A I do.

18 Q Would you please point to that individual and identify
19 an article of clothing he's wearing today.

20 A Right there, gray shirt and tie.

21 MS. SUDANO: Would the record reflect identification of the
22 Defendant?

23 THE COURT: Yes, the record will so show.

24 BY MS. SUDANO:

25 Q Incidentally, how far₂₇ away from the Defendant were you

1 when you first saw him in the complex?

2 A Initially, I was probably about 50 yards away.

3 Q What, if anything, did you do when you saw the
4 Defendant from about 50 yards away?

5 A I continued to close distance on him because it's a
6 large complex, and people often run through there. So I wanted to
7 make sure I was a bit closer before I identified myself.

8 Q Were you eventually able to close that distance?

9 A I was.

10 Q Did you have constant sight of the Defendant while you
11 were closing that distance?

12 A I lost him when he turned around the building both
13 times.

14 Q Approximately how long was he out of your -- your
15 sight?

16 A A total of a minute.

17 Q Were you eventually able to contact him?

18 A I was.

19 Q How did that come about?

20 A He was continued to -- after he made that east turn,
21 he turned south, and then he was on the north side -- or, sorry,
22 the east side of the building where I initially saw him. I caught
23 up to him there. Said, Metro Police, I need to talk to you for a
24 minute. He stopped, and I asked him he stayed in the complex. He
25 informed me he didn't. I told him₂₈ hey, we're looking for someone

1 who had their cell phone [sic] taken and you match the description
2 of that person, so I need to talk to you about this.

3 Q Now, at some point did another officer respond and
4 take over?

5 A As I located him, I advised where I was. Officer
6 Giese showed up and Officer Morales and McFarland arrived.

7 Q Now, did Officer Morales take control of the
8 Defendant, for lack of a better term?

9 A Yes. He -- I was asking for his name. He wasn't very
10 forthcoming giving it initially, so Officer Morales said, come
11 with me over to the car, and that's where they continued to
12 discuss everything.

13 Q Okay. Now, did you stay in that general area where
14 you had first come into contact with the Defendant?

15 A Yes.

16 Q Did you find anything of significance in that area?

17 A I did not, no.

18 Q Did you eventually see anything of significance in
19 that area?

20 A Officer Giese advised he found a phone matching the
21 victim's.

22 MR. WOOD: Objection; hearsay.

23 THE COURT: Sustained.

24 BY MS. SUDANO:

25 Q Now, without telling me what Officer Giese, did you

1 yourself see something of evidentiary value in that area?

2 A Yes. Inside of a bush, there was a cell phone
3 matching the descript -- the victim's.

4 Q Where was that cell phone located with relation to
5 where you had first come into contact with the Defendant?

6 A It was the building directly east to us, right where
7 we were standing on the north side of it in a bush.

8 Q Now, when you first came into contact with the
9 Defendant, approximately how far away from that bush was he?

10 A 20, 25 feet, I believe.

11 Q At some point prior to that, had he been closer to the
12 bush?

13 A That was the walking direction he'd come from after I
14 initially located him, when he turned. It was the path he took
15 from where I initially saw him to where I came in contact with
16 him.

17 Q So it was the path he took where you eventually lost
18 sight of him; is that fair?

19 A Yes.

20 MS. SUDANO: Your Honor, may I approach the Clerk?

21 THE COURT: Sure.

22 MS. SUDANO: May I approach the witness, Your Honor?

23 THE COURT: Yes.

24 BY MS. SUDANO:

25 Q Officer, I'm approaching you with what has been marked

1 as State's Proposed Exhibits 2 through 8. Can you go ahead and
2 take a look through those pictures, please.

3 A Yes. (Witness reading documents).

4 Q Do you recognize all those photos?

5 A I do.

6 Q Just generally what's depicted in that series of
7 photos?

8 A It's Building 13 at the Oasis Meadows apartment
9 complex, which is the building that was just east of us where I
10 located the Defendant, the area where I came in contact with him,
11 and the bush where the cell phone was located, as well as the
12 picture of the cell phone in the bush.

13 Q Now, are all those photos a fair and accurate
14 representation of the building and the area around the apartment -
15 - or around Building 13 and the bush where the cell phone was
16 located on July 31st of 2015?

17 A Yes.

18 MS. SUDANO: Your Honor, at this time the State would move
19 for the admission of Proposed 2 through 8.

20 THE COURT: Any objections?

21 MR. WOOD: No.

22 THE COURT: State's Proposed Exhibits 2 through 8 are all
23 admitted.

24 [State's Exhibits 2 through 8 admitted into evidence]

25 MS. SUDANO: May I have permission to publish, Your Honor?

1 THE COURT: Yes.

2 BY MS. SUDANO:

3 Q Officer, I'm showing you Exhibit 2 here. What is
4 depicted there in State's Exhibit 2.

5 A That is the building -- apartment building at 3150
6 South Nellis, Number 13, which is where I came in contact with
7 him.

8 Q Now, I'm showing you next Exhibit 3. What's depicted
9 there in Exhibit 3?

10 A That's the pathway where I located him.

11 Q Can you describe for the ladies and gentlemen of the
12 jury where you first came into contact with the Defendant on this
13 photo? And if you actually touch up on that screen, it'll mark on
14 it, so you can kind of draw the path.

15 THE COURT: With your finger, you can --

16 THE WITNESS: It was actually in this vicinity right here.

17 BY MS. SUDANO:

18 Q Was that where you first saw the Defendant?

19 A No, that's where I came in contact with him.

20 Q Okay. So where was the Defendant when you initially
21 saw him?

22 Can you see on this photo?

23 A No, you cannot.

24 Q I'm showing you State's Exhibit 13. Do you recognize
25 just generally what's depicted in₃ that?

1 A Yes.

2 Q Is that the Oasis Meadows apartment complex?

3 A It is.

4 Q Just generally, where did you come into contact with
5 the Defendant, what area of this complex? It's upside down. This
6 is upside down. There we go. State's Exhibit 13.

7 A Okay. I initially -- I'm not sure of the exact
8 building because they all look the same at this location. But if
9 this were to be Building 13, I located him here, and then I came -
10 - or I visually saw him there, and I came in contact with him here
11 in this area.

12 Q So can you mark on there for us the -- how did he go
13 around Building 13 for you to contact him? What direction was he
14 traveling?

15 A I was initially here in the parking lot. He -- I saw
16 him. He was standing about right here. He walked up around the
17 building and then down.

18 Q Okay. Now, where in that series of events is the bush
19 where the cell phone was located at?

20 A The bush is in this corner here.

21 Q So the top right corner that I'm marking with my pen
22 right here?

23 A Yes, there.

24 Q So it was at that corner?

25 A Yes.

33

1 Q Is that right?

2 A Yes.

3 Q I'm showing you here Exhibit 4. Is this also the back
4 corner of that building?

5 A Yes.

6 Q So this photo, Exhibit 4, would correspond with this
7 area right up in here --

8 A That's correct.

9 Q --- on State's Exhibit 13? That corner, the top right
10 corner?

11 I'm showing you next Exhibit 5. What's depicted in Exhibit 5?

12 A The door marker for Apartment 1124.

13 Q What's the significance of Apartment 1124?

14 A That's the corner apartment where the bush is located.
15 Just outside of.

16 Q Going back then to Exhibit 4, where's that doorway
17 that we saw in Exhibit 5 on Exhibit 4?

18 A That doorway is just over here.

19 Q Now, the bush that the cell phone was located and you
20 eventually saw the cell phone in, is that depicted on this photo
21 here?

22 A It is.

23 Q Which bush are we talking about?

24 A It is this bush here.

25 Q So that bush is actually around the back corner of

1 this building; is that correct?

2 A Correct.

3 Q So this would've been -- well, did the Defendant
4 travel this direction when you were starting to follow him?

5 A I had seen him on the south side of the -- or the west
6 side of the building. He then traveled north, and that's when he
7 made the east turn, is where I lost visual of him. I didn't find
8 him again until he had turned south, and he was in between the two
9 buildings again.

10 Q So that east turn that we're talking about, would that
11 have taken him up, on this photo, around the corner of that
12 building?

13 A It brings him up -- this is where he turned south.

14 Q Okay. I see. So he would have actually come down
15 this way and then made a turn?

16 A He's actually coming from the direction the photo's
17 taken from.

18 Q Okay. So he came not from behind this building, but
19 he came from the building on the other side?

20 A Yeah, he came this way, and that's where I came in
21 contact with him, was over there.

22 Q Perfect. And when you initially saw him again, where
23 was he in relation to that bush?

24 A Where I came in contact with him.

25 Q Which we have depicted³⁵ here on State's Exhibit 3. So

1 you first came in contact with him in what area?

2 A Right. Here.

3 Q So the pathway and the bush we were looking at, where
4 are they in relation to this photo?

5 A The door for 1124 is here, and the bush is up here and
6 around the corner.

7 Q Now I'm going to show you State's Exhibit 7.

8 MS. SUDANO: Thank you, Your Honor.

9 BY MS. SUDANO:

10 Q What's depicted there in State's Exhibit 7?

11 A The bush with the cell phone.

12 Q And then State's Exhibit 8, is that just a close-up
13 shot of that bush and the phone?

14 A Yes. It's more detailed of the phone case.

15 MS. SUDANO: Court's indulgence. Let me clarify one thing
16 with the officer, if I can.

17 BY MS. SUDANO:

18 Q On this State's Exhibit 4 -- so you've already
19 indicated that the Defendant was coming from the direction of this
20 area -- or from the direction when the photo was taken, and then
21 he makes this turn to go back past 1124; is that correct?

22 A That's the pathway I found him at, yes.

23 Q So from this pathway here back to this bush,
24 approximately what's the distance there?

25 A Say approximately 8 feet.

1 Q And when you first saw the Defendant come around that
2 corner, where was he located?

3 A I didn't actually see him come around the corner. I
4 saw him when he was on the west side of the building and then
5 again when he was on the east side of the building. I never saw
6 him on that actual pathway back there.

7 Q So he had already kind of completed the turn before
8 you came back into contact with him?

9 A That's correct.

10 MS. SUDANO: Your Honor, no further questions.

11 THE COURT: Cross?

12 MR. WOOD: No questions, Your Honor.

13 THE COURT: Thank you very much. Appreciate your testimony.
14 You can go ahead and step down, and you're excused. Thank you
15 again. All right. Check your exhibits. Make sure everything
16 you've got is admitted.

17 MS. SUDANO: May I approach the Clerk, Your Honor?

18 THE COURT: Yes.

19 [State Counsel and Clerk confer]

20 MS. SUDANO: Your Honor, I have verified with the Clerk
21 that all of the State's exhibits have been admitted, so with that
22 the State would rest.

23 THE COURT: Do you need a couple minutes?

24 MR. WOOD: We'll rest, Your Honor. I have advised him of
25 his rights to testify.

37

1 THE COURT: You guys take a break for a minute. Here's
2 what we've got to look forward to. We're going to -- I'm going to
3 read you the instructions of the law as it applies to this case.
4 Then we're going to have closing arguments. And just to remind
5 you of how this works, being that the State has the burden of
6 proof, you'll hear from the State twice. They'll make the initial
7 closing argument, followed by the Defense's closing argument, and
8 the last thing you'll hear is the State's final closing argument.
9 And then we will designate one of you as the alternate, and the
10 other 12 will take the instructions, all the exhibits and you'll
11 retire to the jury deliberation to consider your verdict. Okay?

12 So we'll need a few minutes to sort through and get
13 the instructions all ironed out, and then we're going to wrap this
14 up. Okay? So we'll take a short recess. During this probably
15 15-minute recess -- is it going to take us longer than that to --

16 MS. SUDANO: Can we approach on this, Your Honor?

17 THE COURT: Sure, sure.

18 [Bench conference- not transcribed]

19 THE COURT: We're just going to do like this. We're going
20 to take a lunch break. You guys will eat lunch, go relax, be back
21 here at 1:00 o'clock. We'll have all of the instructions ironed
22 out, and then we'll hear the instructions and the closing
23 arguments, and we'll have plenty of time this afternoon to
24 deliberate. Right?

25 So if it appears that J₈ have moved things along in an

1 effort to make sure we don't waste any time, I want you to
2 understand something. We're got a (indiscernible). We're in no
3 hurry. You guys take your time. Okay? So you'll do a thorough
4 examination of the evidence and deliberate thoroughly and don't
5 feel as though there's any kind of pressure or concern. Okay?
6 All right.

7 We're going to take an hour and half lunch break. It's
8 11:00 [sic] o'clock. You've got to be back here by 1:00 o'clock,
9 and we will put this thing to rest. Okay?

10 During this next hour and a half lunch break, I will
11 admonish the jury not converse or discuss this trial with
12 yourselves or anyone else on any subject connected with anything
13 in this trial. Don't watch, listen or read any reports or
14 commentary regarding this trial through any medium of information
15 -- it means radio, television, newspapers or internet -- and don't
16 form or express any opinions on any subject connected or related
17 to this trial until such time this case has been finally submitted
18 to you, which will be real soon. Okay? All right. Go on lunch
19 break. Relax.

20 THE MARSHAL: You can leave everything and follow me.

21 THE COURT: Yeah. You can leave -- you can leave everything
22 right there.

23 [Jury exits the courtroom for lunch break at 11:30 a.m.]

24 [Out of the presence of the jury]

25 THE COURT: We outside the presence of the jury. All right.

1 Now, are we ready to start going through these instructions right
2 now?

3 MS. SPELLS: Yes.

4 MS. SUDANO: Yes, Your Honor.

5 THE COURT: Well, let's go ahead and see where we are.

6 MS. SPELLS: We need to get it on the record.

7 THE COURT: Oh, not initially, but let's -- let's just
8 informally go through the instructions to see where we are before
9 we go on the record. Okay?

10 MS. SPELLS: Okay.

11 THE COURT: As far as the instructions --

12 MS. SPELLS: Oh. Are they in the jury room?

13 THE COURT: I don't know.

14 MS. SPELLS: They go to the jury room if you --

15 [Counsel confer]

16 THE COURT: Listen, when we get these instructions settled -

17 -

18 [Settling of Jury Instructions begin - not transcribed]

19 THE COURT: We have -- does the State have a set of
20 Instructions 1 through 22?

21 MS. SUDANO: Yes, Your Honor.

22 THE COURT: Does the State have any objections to any of
23 the 1 through 22 instructions?

24 MS. SUDANO: I do, Your Honor. Give me a moment to find
25 where it ended up in here. My obstruct -- or my objection is

1 going to start -- I've got actually two. The first one is going
2 to be Instruction Number 10, the language in the third paragraph:
3 "The crime of larceny from the person is restricted to
4 pickpockets, purse snatchers, jewel abstractors" and the like.
5 The State did provide the Court and Defense with a copy of an --
6 of a case from 1906 out of California -- that was *State v. Stoffer*
7 -- that had that language "restricted to pickpockets, purse
8 snatchers, jewel abstractors and like categories of criminal
9 offenses." However that case then went on to describe crimes that
10 are related to deceit -- or I believe it was stealth or fraud was
11 the language that they used.

12 It appears that the *Taro* case that's been relied on by
13 both parties took that language, but didn't take the part that
14 said it was fraud until I feel like this instruction is not a
15 complete and accurate depiction and eliminates the -- the elements
16 of the fraud instruction. I know that that has been overruled,
17 but I did just want to make that objection.

18 THE COURT: Okay.

19 MS. SUDANO: And then the other one was the two -- the two
20 reasonable interpretations instruction.

21 THE COURT: I think you're actually referring to 17, but we
22 didn't use the two reasonable interpretations. We used 17, I
23 think.

24 MS. SUDANO: There it is. So that is the modified two
25 reasonable conclusions. That was₄ modified based on the

1 unpublished order and *Supernovich* from September of this past
2 year. I recognize that --

3 THE COURT: What number?

4 MS. SUDANO: I'm on Instruction 17.

5 THE COURT: Okay. Go ahead.

6 MS. SUDANO: Thank Your Honor. I do recognize that the
7 Nevada Supreme Court had said that this is a correct instruction
8 of the law. It's not misleading or confusing. However, I do
9 think that it's misleading and potentially confusing in this
10 particular case because we don't have an issue with circumstantial
11 evidence. The real issue is whether or not the taking of the
12 phone in this case constitutes a larceny from the person. So I
13 think that in this particular case, all this is going to do is
14 potentially confuse the jury.

15 THE COURT: Confused me.

16 MS. SUDANO: Thank you, Your Honor.

17 THE COURT: Does the State have any instructions that were
18 offered and not given?

19 MS. SUDANO: Not that I need to put on the record, No,
20 Your Honor.

21 THE COURT: Okay. Does the Defense have a set of
22 instructions numbered 1 through 22?

23 MS. SPELLS: Yes, Your Honor.

24 THE COURT: And does the Defense have any objections to
25 Instructions 1 through 22?

42

1 MR. WOOD: Just briefly, Your Honor. First, Instruction
2 Number 15: "A larceny victim's consent to a taking is valid only
3 if that consent is freely and unconditionally given. Consent
4 obtained by force, arrest or fraud is ineffective." My objection
5 -- and we made these arguments outside off the record, but just to
6 reiterate, the State had cited to the *Barrett* case from Nevada
7 dealing with burglary and felonious intent. Felonious intent is
8 one of the elements of burglary. I objected based on that.

9 Also, the other case the State cited was *People v.*
10 *Wynn*, a California case that is no longer good law in California
11 for at least one point of law. As such, I didn't -- I believe
12 it's confusing to the jury, and I don't know that it's necessary
13 in this case, and so I'm objecting to that one.

14 And just for purposes of making sure that there's a
15 full record, can I respond to the State's objections?

16 THE COURT: Sure.

17 MR. WOOD: As the State's Instruction Number 10 -- or the
18 Instruction Number 10 that's being given, the State argued that it
19 was not completed. They offered the *Stoffer* case from California
20 from 1906. I believe the statement that is presented to the
21 Court, in the way that it is here now, is the correct statement.
22 The inclusion that the State tried to include of things being
23 attached and giving various examples, that was never mentioned
24 until -- which is a Nevada case. It's not mentioned in any of the
25 statutes. So I believe the version that is being given to the

1 jury is the correct version.

2 And as to, I believe, 17, this was my alternative that I had
3 offered in response to one that -- the earlier one that just had
4 the -- not the full language of this instruction right now, but I
5 understand the Court's position regarding *Supernovich*. So we'll
6 just leave it at that. I'll submit it.

7 THE COURT: All right. Does the Defense have any
8 instructions of law that were not given?

9 MR. WOOD: I don't believe so, Your Honor.

10 THE COURT: The ones that weren't agreed to are stipulated
11 to.

12 MR. WOOD: That's correct.

13 THE COURT: All right. Bring in the jury.

14 THE MARSHAL: Do you want me to put out --

15 THE COURT: Plan just to put them on their chairs.

16 [Pause]

17 [Jury enters the courtroom at 2:00 p.m.]

18 THE COURT: Everyone have a seat, please. Will the parties
19 stipulate to the presence of the jury?

20 MR. WOOD: We will.

21 MS. SUDANO: Yes, Your Honor.

22 THE COURT: All right. Everybody's got a copy of the
23 instructions. I've got the original right here. It'll be signed
24 and you'll take it with you, but you're also going to take your
25 own copies back to the deliberation room. And you can follow

1 along as I read through the instructions, but as important, when
2 we have our closing arguments, many of the points that will be
3 raised during the process of closing arguments will address
4 specific instructions.

5 I encourage you to make notes on your set of
6 instructions when a particular instruction is being pointed and
7 discussed in closing arguments. You will be able to take your set
8 of instructions back to deliberate. If you have notes on them, I
9 want you to have them available for it. Okay? All right.

10 So what happens now is I read for the record the
11 instructions that you all have in front of you, and then we will
12 have our closing arguments by counsel. Then you'll go deliberate.
13 All right.

14 [Jury instructions read to the jury - not transcribed]

15 THE COURT: Ready?

16 MS. SUDANO: Yes, Your Honor.

17 **STATE'S CLOSING ARGUMENT**

18 **BY MS. SUDANO:**

19 Ladies and gentlemen, there's no one way to steal
20 things. Throughout the course of this trial you heard about purse
21 snatchings. You were instructed about jewel abstractors and
22 pickpockets. One of the officers was asked about a robbery. But
23 I told you at the very beginning of this case that this is a
24 simple case. What you have here is a larceny from the person.

25 Now, in every single criminal case the State has to

1 prove two things to you beyond a reasonable doubt. First the
2 State has to prove that the crime charged was committed, and,
3 second, we have to prove that the Defendant was the person who
4 committed the crime.

5 Now, in this particular case, there's really no doubt
6 that Gabriel Ibarra is the person who committed the crime here.
7 So how do we know that? The victim identified the Defendant as
8 the person who took her phone. The phone was located less than 8
9 feet away from the area where the Defendant is ultimately stopped
10 by police. Now, that's after he steps out of view of the officer.
11 If you remember Officer Kunz from this morning, he said that he
12 initially saw the Defendant. The Defendant went around the corner
13 of the building, and then as he's coming back, that's when he
14 finally makes contact with the officers. They go back around the
15 corner of that building again, and in the bush right there, less
16 than 8 feet away, is where the Defendant stashed the phone.

17 Now, you also have that the officers are following the
18 location of this phone, right? They've got this Track My iPhone
19 app that they're using, and they getting updated information
20 relayed to them, and they are able to use that information, and it
21 takes them straight to the Defendant. Now, even after the
22 Defendant has been stopped by officers, the victim comes back
23 again and she identifies the Defendant again and says, yep, that's
24 the person.

25 So right here we've got this phone where it ended up

1 in that bush less than 8 feet away from where the Defendant is
2 ultimately found by the police. So, again, there's really no
3 dispute that the Defendant is the person that we're talking about
4 in this particular case. Instead, what we need to focus on is
5 whether or not the crime that was charged was committed, and it
6 was, ladies and gentlemen.

7 The crime that we have here is a larceny from the
8 person. In every case, every criminal charge, there's a certain
9 element that the State has to prove to you beyond a reasonable
10 doubt. So a larceny from the person, the State has to prove that
11 under circumstances not amounting to a robbery, a person who takes
12 money, property or a thing of value from the person of another
13 without her consent and with the intent to steal or appropriate
14 that property to his own use.

15 So let's break those down. The first one is under
16 circumstances not amounting to robbery. Now, you already heard
17 that what happened in this case isn't a robbery, but you first
18 have to understand what a robbery is to know that. So robbery is
19 the unlawful taking of personal property from the person of
20 another or in his presence, against his will, so that part's
21 pretty much the same, but the part that's different here is "by
22 means of force or violence or fear of injury." And that can be
23 immediate or future to his person or property.

24 So we know what happened here isn't a robbery, so we
25 can't have that force, violence or fear of injury. So, instead,

1 the property has to be taken in another way. So you heard an
2 example. You heard the victim was questioned -- well, the
3 Defendant didn't threaten you. He didn't pull out a weapon. You
4 weren't scared at all when you gave up the property, right? But
5 if any of those things had happened, this would be a robbery
6 instead of a larceny from the person. So what we need to look at
7 is circumstances where there's no force or no violence.

8 So how do you get somebody's property away from them
9 without using force or violence? You have to use some other
10 means. Maybe it's stealth. Maybe you don't know that they're
11 taking the property. Maybe it's deception where you don't think
12 that they're actually going to take the property. Or maybe it's
13 some sort of different thought. It can be any of those ways, but
14 it can't be by force.

15 So the next element is "that a person takes money,
16 property or thing of value." So what's our thing of value in this
17 particular case? It's that iPhone 5 S. The other important thing
18 to remember in a larceny from the person, there's no requirement
19 that the phone has a specific value. The victim testified that it
20 did have a value. She said she purchased it just a couple months
21 before this for, she said, four or \$500. She couldn't remember.
22 So it does have a value. We know that. There's no minimum value
23 that needs to be shown for this to be a larceny from the person.

24 So the next requirement is that the taking has to be
25 from the person of another. So it₄₈ actually has to be on their

1 person. So it's on or attached to the victim's person, carried or
2 held by the victim, so in the victim's hand, in anticipation if
3 the property is taken from immediate possessed -- excuse me,
4 present --

5 MR. WOOD: Objection, Your Honor. Can we approach?

6 THE COURT: Sure.

7 [Bench conference -- not transcribed]

8 MS. SUDANO: So as I was saying, ladies and gentlemen, in
9 order to constitute a larceny from the person, the property
10 actually has to be taken from the person of another. So that's
11 property that's on or attached to the victim or carried or held by
12 the victim, and that includes in the victim's hand. It's
13 insufficient if the property is taken from the presence of the
14 victim or their construction possession.

15 So what larceny from the person is really meant to
16 punish and what is really meant (indiscernible) 2:22:49 8* is this
17 idea that properties taken from the person of another. It's not
18 meant to punish property that's abandoned. So if somebody has
19 just left a phone on a bus stop and walked away from it, that
20 certainly wouldn't be a larceny from the person.

21 Now, without her consent is the next element. So the
22 victim can't consent to the taking because then it doesn't
23 constitute a wrongful act. But you have an instruction, ladies
24 and gentlemen, that tells you that a larceny victim's consent,
25 you're thinking, is valid only if it's given freely and

1 unconditionally. So content -- or, excuse me, consent obtained by
2 force, duress or fraud is ineffective.

3 So what do we know about the consent here? Evangelia
4 Mantikas got up on the stand and she told you all that she
5 consented to the Defendant making one call. She didn't consent to
6 him taking off and running away with the phone. She didn't
7 consent to him having that phone permanently. So she didn't
8 consent to what actually happened in this case. The only reason
9 she gave over her phone was under this false impression and this
10 ruse that the Defendant created that he was going to make a phone
11 call. So when that turned out to not be what he intended to do,
12 her consent wasn't freely given. So the taking in this case
13 occurred without Evangelia Mantikas giving consent.

14 Now, we also have to be able to show that the
15 Defendant in this case intended to steal or appropriate that phone
16 for his own use. So how do we know he intended to appropriate it
17 for his own use? He runs off with that phone, right? The victim
18 is following after him, and he loses her inside of an apartment
19 complex. She's not able to find him anymore. He does that after
20 he sees her following him as he's walking away with the property.

21 So once he sees that she's trying to pursue him,
22 presumably in an attempt to get her property back, he takes off
23 running. When she gets that phone back just a couple of hours
24 later, the number is changed. What does she tell you about that
25 number? That number is the same number that she dialed before.

1 Now, we also know that there's an intent to steal in
2 this case. So the Defendant had the intent to steal that phone
3 before he ever got it into his hands, she has a five-minute talk
4 before the Defendant gets the phone. So for about five minutes,
5 as Evangelia Mantikas has testified, the Defendant is sitting next
6 to her. He asks at one point to borrow the phone. She doesn't
7 hear the entire number, so she doesn't give him the phone at that
8 point. She goes back to texting, hoping maybe he'll forget about
9 asking her about the phone.

10 During this time he's following up with her. He's
11 asking, hey, what kind of phone is that? Oh, is that an iPhone 4?
12 No, it's an iPhone 5 S. And he asks her once again to borrow that
13 phone after that five-minute conversation, and he asks the victim
14 to dial his number. Right? So if he's asking her to dial a
15 number and then that phone number is later switched over and takes
16 control over Evangelia's phone, it's a reasonable inference that
17 that number is his number.

18 So why would he want to call his own number? He'd
19 want to call his own number because that's how he's trying to get
20 the phone out of her possession. He's not trying to call somebody
21 for a ride. He's not trying to call his friends to meet up. He's
22 not trying to call anybody. He's just trying to get that phone
23 out of her possession.

24 Now, what else do we know? So he sits there with her
25 for five minutes trying to get that phone, and then what does she

1 say? She says as soon he gets it, within just mere seconds, he
2 switches it from hand that's closest to her to the other side of
3 his body so it's further away from her. As he's doing that, he's
4 getting up from the bench at the bus stop and he's walking away.
5 So within mere seconds of him getting that phone into his
6 possession, after trying for five minutes to get it, he takes off
7 with it. So we can show -- we have shown beyond a reasonable
8 doubt, ladies and gentlemen, that before the Defendant ever had
9 that phone, he intended to still it.

10 Now, you also have an instruction on the Amendment,
11 the main focus of a larceny from the person. It's an instruction
12 that tells you that it's limited to crimes such as purse
13 snatching, pickpocketing, jewel abstracting and the like.

14 Now, as I mentioned earlier, there can't be any force
15 in these takings, so you have to use something other than the
16 force. You have to use fraud, you have to use stealth, you have
17 to use deception because that's the only way that you're going to
18 get property off of somebody's person without the use of force.
19 So the main concern in the larceny from the person statute is that
20 the person of another has been violated, and their privacy
21 directly invaded.

22 Now, the important part about this statute -- or about
23 this inception that you've got here is that it's limited to crimes
24 such as these three things and the like. So this isn't an
25 exclusive list, ladies and gentlemen. That's just the class of

1 crimes that we're looking at here.

2 So ask yourselves whether or not what happened in this
3 particular case is any less invasive of the victim's privacy than
4 having her purse taken or her wallet stolen from her pocket. I
5 would submit to you, ladies and gentlemen, that it's not. The
6 Defendant sat by her for five minutes right in that seat right
7 next to her, asking her questions about her life and trying to get
8 that phone from her.

9 Now, in summary, the Defendant devises this ruse prior
10 to gaining control over that phone. So the entire time he's
11 sitting there with her, he's trying to gain access to this phone.
12 The phone is on the victim's person. It's in her hand. She's
13 holding and carrying it at the time of this ruse. Right?

14 She says that when the Defendant first approaches her,
15 she's sitting at the bus stop. She's texting, using her phone.
16 The ruse is the only way that the Defendant gets the phone off of
17 the victim's person. But for that ruse and that trick to get the
18 phone by telling her that he's trying to make this phone conver --
19 or maybe this phone call, he's not going to get the property off
20 of her person.

21 So, ladies and gentlemen, the Defendant in this case
22 is guilty of larceny from the person. When you all go back to
23 deliberate, the State is going to ask that you so find. Thank
24 you.

25 THE COURT: Defense closing₃

1 **DEFENSE CLOSING ARGUMENT**

2 **BY MR. WOOD:**

3 Thank you for bearing with us, ladies and gentlemen.
4 We've tried to make this as painless and tried not to waste
5 anybody's time. The State asked you, well, how do you know who
6 committed the crime? I'll tell you how. It's because we told you
7 that's who did it.

8 We told you from the very opening of this case that
9 a crime had been committed and that Gabriel had committed that
10 crime. But we also told you that that crime is not larceny from
11 the person. If you all remember the game of Clue, you often had
12 three cards. You had the who, you had the where and you had the
13 with what. We told you all of those. The only thing we don't
14 know what the crime was. You can't have a murder if no one has
15 been killed Well

16 Now, I didn't bring a PowerPoint for you guys to
17 watch, but I did a friend. Your Honor, can I?

18 THE COURT: Sure.

19 MR. WOOD: I'll be right back.

20 [Mr. Wood exits the courtroom]

21 [Pause]

22 [Mr. Wood reenters the courtroom]

23 **DEFENSE CLOSING [CONTINUED]**

24 **BY MR. WOOD:**

25 This is my friend, you₃ know, I'm going to show you

1 guys something, and I want you to pay attention, and you're going
2 to understand why it's important later on. I've got somebody
3 here, and I reach in and pull out a pen or a tie -- well, some
4 money and (indiscernible). I want you to think about what I just
5 did because it's going to make sense in a few minutes.

6 Now, for this to make sense, I want to go over some of
7 these instructions that you're going to be given -- you've already
8 been given. You're going to take them back with you. First
9 you've got your Instruction Number 9. This is the one that says:
10 Every person under circumstances not amounting to robbery with
11 intent to steal take from the person of another." That's the
12 important one. That's what's required for our larceny from the
13 person. It's got to be from that person.

14 And if you'll look at Number 10, there's a little more
15 guidance there. It tells you: "The offense is not committed if
16 the property is taken from their immediate presence, well-
17 constructed control or possession." It further says: "Taking
18 from the person of another is an essential element. The crime
19 requires more than a taking in someone's presence. The statements
20 prove beyond a reasonable doubt that the Defendant committed a
21 larceny from the person of another is strictly to pickpockets,
22 purse snatchers, jewel abstractors and the like." And this is the
23 part that I really want you to focus on when you go to the back.
24 "The gravity of the offense, the larceny from the person, is that
25 the person of another has been violated and her privacy directly

1 invaded."

2 Now, I showed you how I was taking things from this
3 individual. There's a difference. I ask someone to borrow their
4 phone, and they had that phone to me. We're not making contact;
5 we're passing something between the two of us. But if I reach in
6 around their shoulders and I lift out a pen, I'm invading the
7 privacy of another. If I go to the back and lift a wallet for
8 money, I'm getting into an area where people don't want to be
9 touched, where people don't want to be tampered with. You may not
10 know that you've been pickpocketed. There's a difference because
11 when that actually happens and realize that someone has been in
12 your personal space and has touched your body without your
13 permission, that person's body has been violated. Their privacy
14 has been invaded. You reach in the front and lift out that
15 phone. No different. Think about where these things are taken
16 from. Think about how that would appear.

17 Now, I know we have a lot of people involved with
18 casinos in this town. There's a lot of people that deal with
19 casinos, so I like to use a little bit of casino references. The
20 State is like the house. They have all the cards. They set
21 things up; they play the game. But the important thing is, is the
22 State has to follow the rules. They're their rules, and they have
23 to follow them just like everybody else.

24 If the State is going to play a hand one way, they
25 have to follow house rules. The State can't chose to hit on an 18

1 just because they know someone else has a 21. That's not house
2 rules. You have to follow the rules. The State is held to that
3 exact same burden, and in that case, you've got the law which
4 tells you exactly what the house rules are here.

5 Now, I'm going to show you guys Instruction Number 11.
6 "Larceny is the stealing, taking and carrying away." Someone
7 hands me their phone, and I turn and walk away, and I run. I'm
8 stealing that phone and taking that phone. I am carrying it away
9 from the person, from -- carrying away other personal goods or
10 property of another. I am depriving them of their phone.

11 Now, you heard testimony from Mantikas. She paid 400
12 to \$500 for that phone. We know the value of the phone. It was
13 less than 650. And you're told right here: "If the property
14 taken is valued less than 650, nor taken from the person of the
15 victim," that's a petit larceny. The State doesn't get to change
16 the rules just because they want something higher. They have to
17 follow the exact same rules as everybody else.

18 Now, when we were questioning everybody, the Judge
19 asked you, can you follow the law even if you don't agree with it?
20 It's very important in this case. You may not feel good about
21 this. I'm not saying that Gabriel didn't do this. I'm saying he
22 didn't do a larceny from the person. He did not invade the
23 privacy. He did not violate or set up another. What he did was
24 he took a phone, it was handed to him. He did not make any
25 contact with that victim, and he took off and ran. It's a crime

1 we're -- and we've been asking you from the beginning, hold him
2 responsible for that crime. I'm not saying that he didn't do
3 something, but he didn't do a larceny from the person.

4 Now, I also want to show you guys -- and this will be
5 the last I deal with the instructions because I know they're
6 really boring. This one's important as well, though. This is
7 Instruction 13. It says: "You shall find the Defendant guilty of
8 larceny from the person if you believe the State has proven that
9 beyond a reasonable doubt. When a person is accused of committing
10 a particular crime and at the same time and by the same conduct
11 may have committed another offense of lesser/greater degree, the
12 latter is with respect to the former or lesser included offense."

13 If you're not satisfied that the Defendant is guilty
14 of the offense charged: "Larceny from the person, he may have,
15 however, become guilty of any lesser included offense if the
16 evidence is sufficient to establish guilt." It says here: "You
17 are instructed that petit larceny is a lesser included offense of
18 larceny from the person."

19 It's a game of Clue, folks. I've opened the
20 packet. You know what the cards are. You know who did it. You
21 know what happened. You know how it was done, and you also know
22 what crime was committed because we know nothing was done with
23 this. Nothing was done with Ms. Mantika's privacy, her -- she
24 wasn't -- her body wasn't violated. Her privacy wasn't invaded.
25 That didn't occur in this case. Hold him responsible for the

1 crime that did take place. Make the State follow the rules.
2 There's a big difference, folks.

3 MR. WOOD: Can I borrow your phone?

4 MS. SPELLS: Sure. Let me put the number in for you.

5 **DEFENSE CLOSING ARGUMENT (CONTINUED)**

6 **BY MR. WOOD:**

7 That was the testimony that took place. You were all
8 witness to it. Nothing happened to Ms. Mantika except her phone
9 was taken. She passed it to him. She felt foolish for doing it.
10 He committed a crime. It's larceny, petit larceny. Fine him
11 guilty of the crime that he's been charged with. Thank you.

12 THE COURT: Counsel.

13 [Pause]

14 **STATE'S REBUTTAL CLOSING ARGUMENT**

15 **BY MS. SUDANO:**

16 Now, ladies and gentlemen, let's start out with the
17 instruction here. This is Instruction Number 1, the very first
18 instruction in your packet.

19 Now, this says: "That regardless of what your opinion is as to
20 what the law ought to be, you assigned and you took an oath, and
21 you're bound by that oath to follow the law, the instructions that
22 were given to you."

23 Now, this isn't a case or a plan to pass money or the
24 house is changing the rules. No. This is a case where there's an
25 actual victim of the actual crime₅ of larceny from the person.

1 We're not stretching the rules or trying to make this fit where it
2 doesn't.

3 Now we move to Instruction Number 10. This tells you
4 that: "The property, when it's taken, has to be at some -- in
5 some way actually upon or attach to the person or carried or held
6 in their actual physical possession." Now, the demonstration of
7 counsel, keep that in mind. That's not actually evidence. You
8 have an instruction that says that the arguments of counsel aren't
9 your evidence. Your evidence is what you heard from the witnesses
10 in this particular case. So that was a nice demonstration, but
11 that's not your evidence.

12 The same with taking the phone and walking out of the
13 room. Also not your evidence. You know that that's not how it
14 went down because that's now how the witnesses told you it went
15 down.

16 Now, counsel pointed it this way and said, well, when
17 you're actually taking property from somebody else, you're
18 reaching into the pockets and you're taking money from them.
19 You're taking a phone or you're sneaking something out without
20 them knowing about it. Well, ask yourself again, ladies and
21 gentlemen, if what happened in this case is any less volatile of
22 Ms. Mantikas' privacy than what happened there.

23 I would submit to you, ladies and gentlemen, that it's
24 not. This instruction, Instruction Number 10, tells you that the
25 property has to be carried or held⁸⁰ in the actual possession, among

1 the other things that it says up there. So there's no requirement
2 that the property has to be under clothing or concealed in some
3 way. There's no requirement that the individual actually has to
4 make physical skin-to-skin contact with the victim in order for a
5 larceny from the person to occur.

6 I would submit again, ladies and gentlemen, that in a
7 case of a good pickpocket or somebody that's done it many times
8 before, they're not going to have any more contact with the victim
9 than the Defendant in this case did, with Evangelia Mantikas. No,
10 she's holding the phone, and he devises this ruse to get the phone
11 away from her. That is sufficient, ladies and gentlemen. The
12 phone is on her person. It's in her possession. She's holding it
13 and using it.

14 Again, I would hold you to this instruction and
15 ask you, where in there it says that there actually has to be
16 clothing removed or anything like that. No, it just says that the
17 person -- that the property has to be attached or in some way in
18 the possession of the victim, which it was in this particular
19 case.

20 Now, you also have the instruction that tells you --
21 if I can find it. It's further down on this one. This is still
22 within Instruction Number 10. It says: "The offense of larceny
23 from the person requires an actual taking from the person of
24 another, if the person of another has been violated and their
25 privacy has been directly invaded₈₁" Now, in this case apart

1 from a pickpocketing or a purse snatching, the victim in this
2 particular case is immediately away of what's going on.

3 Now, sometimes, when you've got somebody that's a
4 victim of a pickpocket -- again, if it's a good pickpocket, they
5 might not even know right away. The victim here knows. She knows
6 immediately that her person has been violated; that the Defendant
7 who's sitting there right next to her for five minutes, leaning
8 over her shoulder, asking about the phone, that as soon as he gets
9 it, he takes off with it. So she immediately knows. Her privacy
10 and her person were violated in this case, ladies and gentlemen.

11 Now, again, I would submit to you that this
12 demonstration you saw where the two Defense counsels handed a
13 phone over, that's not how it actually happened in this case.
14 You're to be guided by the testimony of the witnesses as you
15 remember it about what actually happened in this case.

16 Now, when you go back into that jury deliberation
17 room, I'm not going to put this instruction up there, but it's the
18 instruction on common sense. It says: "You're to be guided by
19 your common sense as everyday men and women. You can't check your
20 common sense at the door when you go back into that deliberation
21 room to reach your verdict in this case. I assure you that if you
22 rely on that common sense, you'll come back and find the
23 Defendant, Gabriel Ibarra, guilty of larceny from the person.
24 Thank you.

25 THE COURT: Thank you, counsel. Who all gets sworn to take

1 the --

2 You are about to commence the process of deliberation. Before you
3 do, we need to swear in the marshal to take charge of the jury
4 during the course of your deliberations. So raise your right
5 hand.

6 [Court and Clerk confer]

7 [The Marshal is given the oath by the Clerk]

8 THE COURT: Emilio, stay right there. You're the
9 alternate, and we'll have some special instructions for you. The
10 rest of you, go with J.R. Bring your notebooks, bring your set of
11 instructions.

12 [Jury exits courtroom to deliberate at 2:49 p.m.]

13 [Out of the presence of the jury]

14 THE COURT: Okay. Emilio, here's -- here's how this
15 works. You guys relax a minute. You're the designated alternate
16 juror in this matter. You're not going to have to stick around
17 the courthouse, but you need to stick around where you can be down
18 here on short notice. If something happens to somebody during the
19 course of deliberations, we'll give you a call. We need you to
20 exchange contact information, that if something was to happen to
21 you, you need to call and let us know if you -- for some reason
22 you're incapacitated.

23 The same admonishment that I've been giving the jury,
24 every time we take a break, still applies. So until you're either
25 been called to come down and sit ⁶³for somebody that should become

1 disabled in some fashion and unable to finish service, jury
2 service, or, alternatively, you'll get a call saying that the jury
3 reached a verdict, and you're free at that point to discuss the
4 case however you choose to. So that's what you'll be looking for.

5 And we'll call you and tell you that the jury's coming
6 in, and if you want to come down -- I mean, you don't have to
7 stick around, but if you're somewhere close and you want to come
8 down, we certainly will let you sit in with the jury when they
9 come back. That's kind of choice; it's up to you. Okay?

10 So, Michelle, has been sworn in, and she's going to
11 exchange information with you, and she'll be who will be
12 contacting you, either you got to come down and serve or you're
13 discharged. Okay?

14 ALTERNATE NUMBER 1: Okay.

15 THE COURT: Thank you. Might be the last time I get to see
16 you, so I want to tell you how much I appreciate the -- I know it
17 wasn't long, but I can tell you what, you were a good group. You
18 guys paid close attention. You did everything we asked you to do,
19 and I appreciate -- we always appreciate your jury service. Thank
20 you very much.

21 Okay, guys. Don't go far. We know how to get a hold
22 of everybody. You got everything?

23 THE CLERK: Yes.

24 THE COURT: All right.

25 MS. SUDANO: Thank you. 64

1 [Pause in proceedings]
2 THE COURT: All right. We're on the record?
3 THE COURT RECORDER: Yes.
4 THE COURT: Okay. We are outside the presence of the jury.
5 Does anybody have anything to address before I bring them in?
6 MS. SUDANO: Not from the State, Your Honor.
7 MS. SPELLS: None, Your Honor.
8 THE COURT: Okay.
9 [Pause]
10 [Jury enters the courtroom after deliberation at
11 4:19 p.m.]
12 THE MARSHAL: All present, Your Honor.
13 THE COURT: Everybody, please have a seat. Will the parties
14 stipulate to the presence of the jury?
15 MS. SUDANO: Yes.
16 MS. SPELLS: Yes, Your Honor.
17 THE COURT: Very good. So has the jury selected a
18 foreperson?
19 THE FOREPERSON: Yes.
20 THE COURT: And who would that be?
21 THE FOREPERSON: Baumer.
22 THE COURT: Baumer. So, Mr. Baumer, has the jury reached a
23 verdict in this matter?
24 THE FOREPERSON: We have, Your Honor.
25 THE COURT: Would you hand ⁶³the J.R. the verdict form,

1 please.

2 [Pause]

3 THE COURT: I'm going to have the clerk read into the record
4 the verdict. Would the Defendant please stand.

5 THE CLERK: District Court, Clark County, Nevada, State of
6 Nevada, Plaintiff versus Gabriel Ibarra, Defendant. Case Number
7 C308774, Department 17.

8 Verdict: We, the jury, in the above-entitled case,
9 find the Defendant, Gabriel Ibarra, as follows:

10 Count 1, larceny from the person, guilty of larceny
11 from the person. Signed on this 20th day of October by the jury
12 foreperson.

13 Ladies and gentlemen of the jury, is this verdict, so
14 say you one, so say you all?

15 THE JURY (en masse) : Yes.

16 THE COURT: Please have a seat. Would you like the jury
17 polled?

18 MR. WOOD: Yes, please, Your Honor.

19 THE COURT: Okay.

20 THE CLERK: Juror Number 1, is this your verdict as read?

21 JUROR NUMBER 1: Yes.

22 THE CLERK: Juror Number 2, is this your verdict as read?

23 JUROR NUMBER 2: Yes.

24 THE CLERK: Juror Number 3, is this your verdict as read?

25 JUROR NUMBER 3: Yes. 66

1 THE CLERK: Juror Number 4, is this your verdict as read?
2 JUROR NUMBER 4: Yes.
3 THE CLERK: Juror Number 5, is this your verdict as read?
4 JUROR NUMBER 5: Yes.
5 THE CLERK: Juror Number 6, is this your verdict as read?
6 JUROR NUMBER 6: Yes.
7 THE CLERK: Juror Number 7, is this your verdict as read?
8 JUROR NUMBER 7: Yes.
9 THE CLERK: Juror Number 8, is this your verdict as read?
10 JUROR NUMBER 8: Yes.
11 THE CLERK: Juror Number 9, is this your verdict as read?
12 JUROR NUMBER 9: Yes.
13 THE CLERK: Juror Number 10, is this your verdict as read?
14 JUROR NUMBER 10: Yes.
15 THE CLERK: Juror Number 11, is this your verdict as read?
16 JUROR NUMBER 11: Yes.
17 THE CLERK: And Juror Number 12, is this your verdict as
18 read?
19 JUROR NUMBER 12: Yes.
20 THE COURT: Ladies and gentlemen, I'm about to discharge you
21 from your duties as a jury in this case. Before I do, I want to
22 reiterate what I told you yesterday when we first started this
23 process. What you guys have just gone through is what separates
24 from the rest of the world because we can call upon folks like you
25 who are willing to sacrifice their₆ time to come down and perform,

1 no matter how short a case is, no matter how simplistic it might
2 seem, it's always a tough call. It is a never an easy call. And
3 what you guys have done is incredibly remarkable for everybody,
4 but for you guys, you've been a great jury. You've been -- even
5 though it's only been a couple days, but you've been here on time.
6 You all paid close attention to what was going on. You followed
7 the instructions, it certainly appears to be. You're all entitled
8 to an accommodation as far as I'm concerned. You've all gone
9 above and beyond the call. I cannot tell you on behalf of myself
10 and the rest of the folks here in the Eighth Judicial District how
11 much we appreciate your jury service.

12 So from this point on, the admonishment about not
13 talking about the case no longer applies. You are free to talk to
14 anybody about anything you want to talk to them that has to do
15 with the case. At the same time, you don't have to. You don't
16 have to talk to anybody.

17 And I always throw in, if somebody pesters you about
18 talking about this case and you don't want to talk about it, you
19 call the office and I'll handle them. All right?

20 So now they'll be waiting for you guys downstairs at
21 the 3rd Floor Jury Service -- Jury Commissioner's office, so go on
22 down and get -- I think you'll get that big check they pay you,
23 what you've been waiting for.

24 All right? Thank you, guys, very much appreciate it.

25 THE MARSHAL: All rise for the jury.

1 [Jury exits the courtroom after verdict at 4:25 p.m.]

2 [Out of the presence of the jury]

3 THE COURT: Now we're outside the presence of the jury.

4 Have a seat for a second here. All right. First thing, the
5 Defendant's going to be remanded in custody on this case. If he's
6 not, I think he already is. Isn't he?

7 MR. WOOD: Yes.

8 THE COURT: Okay. What is his custody status overall? Does
9 he have other matters pending?

10 MR. WOOD: No.

11 THE COURT: Okay. So we need a sentencing date.

12 THE CLERK: On December 10th, 8:30.

13 THE COURT: December 10th at 8:30.

14 MS. SUDANO: And, Your Honor, was he remanded without bail?

15 THE COURT: He's remanded without bail.

16 MS. SUDANO: Thank you.

17 THE COURT: When we put it on a bail hearing, we're setting
18 it again. I don't know if Judge Villani has already had one or
19 not. If you want to entertain at least a motion, but at the
20 present time, it's just set with no bail.
21 Okay?

22 MR. WOOD: Judge, just for record purposes, you had a chance
23 to hear the testimony. I think I'd be making an oral motion at
24 this point for a judgment notwithstanding the verdict.

25 THE COURT: Just relying on an oral motion, it is denied.

1 I think the evidence was sufficient support the verdict. Although
2 I'll have to say, you guys made it a real interesting case out of
3 what was probably an open-and- shut case. All right. Like I
4 said, the evidence was pretty strong. I don't think there's a
5 chance in the world that somebody's going to find this evidence
6 insufficient. I think it was a -- they didn't seem to have too
7 much trouble wrestling with it.

8 So I do want to say that you guys did an excellent job
9 for a case that, you know -- I mean, how unusual it probably went
10 to trial, but you guys did a great job, and you certainly had a
11 legitimate issue that you -- you rode that horse quite a ways.
12 You did a great job. Following those instructions was a little
13 rough, but that's all right. You guys have a good evening.

14 MR. WOOD: You, too, Your Honor.

15 MS. SPELLS: Thank Your Honor.

16 MS. SUDANO: Thank you for your patience with us and --

17 [Proceeding concluded at 4:19 p.m.]

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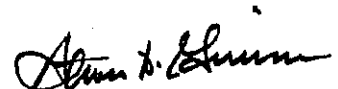
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ATTEST: I do hereby certify that I have truly and correctly
transcribed the
audio-visual recording of the proceeding in the above entitled case
to the
best of my ability.

Renee Vincent

Renee Vincent, Court Recorder/Transcriber


CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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vs.

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GABRIEL IBARRA,

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Defendant.

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BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

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TUESDAY, NOVEMBER 10, 2015

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ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

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DEFENDANT'S MOTION FOR OWN RECOGNIZANCE RELEASE, OR THE

18

ALTERNATIVE, FOR SETTING OF REASONABLE BAIL

19

20

APPEARANCES:

21

For the State:

CHARLES W. THOMAN, ESQ.,
Deputy District Attorney

22

23

For the Defendant:

JEREMY B. WOOD, ESQ.,
Deputy Public Defender

24

25

RECORDED BY: MICHELLE RAMSEY, COURT RECORDER

ROUGH DRAFT TRANSCRIPT
State of Nevada v. Gabriel Ibarra
C-15-308774-1

1 LAS VEGAS, NEVADA; TUESDAY, NOVEMBER 10, 2015

2 [Proceeding commenced at 8:48 a.m.]

3
4 THE COURT: Motion for O.R. or bail reduction. Defendant is
5 present in custody.

6 MR. WOOD: Good morning, Your Honor. Jeremy Wood on his
7 behalf. Just really briefly I'd like to add a few things that
8 weren't in the motion.

9 Obviously Your Honor was away at I think judicial college
10 or when the trial actually took place, but the testimony is that
11 essentially -- and we had done this on a writ of habeas corpus as
12 well, so the Court was familiar with the issue. She handed over
13 her phone and then the Defendant turned and ran.

14 THE COURT: I remember it. Yes.

15 MR. WOOD: My -- my indication is that he doesn't have a great
16 criminal history. He's got one prior felony. Given the non-
17 violent nature of this, yes, he was adjudicated guilty by the -- by
18 the jury trial. But I think he's still a good candidate for
19 possibly probation. Given that, I did file the motion for him to
20 try and get out and prove to the Court, you know, at the time of
21 sentencing that he can be monitored on probation.

22 So, non-violent, limited criminal history. He does have
23 ties to the community, Your Honor, as I listed in the motion. So
24 I'll submit it on that.

25 THE COURT: Doesn't he have a prior battery deadly weapon

1 case, three FTA's --

2 MR. WOOD: That's correct.

3 THE COURT: -- and in a prior case he was revoked from
4 probation for absconding.

5 MR. THOMAN: Yes, Your Honor. And I believe that's all
6 detailed in the State's response submitted.

7 MR. WOOD: That's correct.

8 THE COURT: All right. Mr. Wood, I don't think that showing a
9 good track record doesn't mean you won't get probation, sir. It's
10 just right now your record doesn't show that you're really going to
11 follow through. I'll hear from you at the time of sentencing,
12 okay.

13 I'm going to deny the motion for the reasons just set
14 forth. Thank you.

15 [Proceeding concluded at 8:50 a.m.]

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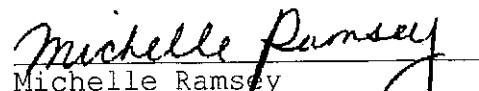
19 ATTEST: I hereby certify that I have truly and correctly
20 transcribed the audio/video proceedings in the above-entitled case
to the best of my ability.

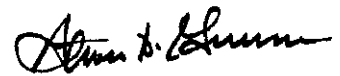
21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
22 Procedure, I acknowledge that this is a rough draft transcript,
expeditiously prepared, not proofread, corrected or certified to be
an accurate transcript.

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Michelle Ramsey
Court Recorder/Transcriber



CLERK OF THE COURT

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DISTRICT COURT

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CLARK COUNTY, NEVADA

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THE STATE OF NEVADA,

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Plaintiff,

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CASE NO. C-15-308774-1

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vs.

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DEPT. XVII

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GABRIEL IBARRA,

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Defendant.

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BEFORE THE HONORABLE MICHAEL P. VILLANI, DISTRICT COURT JUDGE

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THURSDAY, DECEMBER 10, 2015

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ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS RE:

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SENTENCING

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19

APPEARANCES:

20

For the State:

MICHELLE SUDANO, ESQ.,
Deputy District Attorney

21

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For the Defendant:

JEREMY B. WOOD, ESQ.,
Deputy Public Defender

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RECORDED BY: MICHELLE RAMSEY, COURT RECORDER

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ROUGH DRAFT TRANSCRIPT
State of Nevada v. Gabriel Ibarra
C-15-308774-1

1 LAS VEGAS, NEVADA; THURSDAY, DECEMBER 10, 2015

2 [Proceeding commenced at 10:12 a.m.]

3
4 THE COURT: Ibarra, it's time set for sentencing. Public
5 Defender case. Mr. Ibarra is present in custody. Any reason we
6 can't go forward today?

7 MR. WOOD: No, Your Honor.

8 THE COURT: Defendant is hereby adjudged guilty of larceny
9 from the person. Argument by the State?

10 MS. SUDANO: Thank you, Your Honor. The State's going to be
11 asking for a 14 to 48 month sentence on this particular case. I
12 know Your Honor was not here when we actually tried the case, but I
13 know that you did hear our petition for writ of habeas corpus. I
14 believe you're familiar with the facts.

15 Essentially, the Defendant in this case went up to an
16 individual while she was seated at a bus stop and he employed this
17 ruse to get the phone away from her and then took off running with
18 the phone. When she ultimately got her phone back later on that
19 evening, the Defendant had somehow changed the number and it was
20 potentially his number that was associated with the phone through a
21 Sims car or some other means. And that was the same number that he
22 had had her dial, so even before he got the phone in his possession
23 he wasn't intending to make a phone call. He was just trying to
24 get it away from her person.

25 And your -- Your Honor, the reason the State's asking for

1 that 14 to 48 month sentence is because the Defendant in this case
2 has one prior felony conviction. It was a battery with a deadly
3 weapon conviction, but it started out as a robbery with a deadly
4 weapon. From the beginning of this case that's given the State
5 concern.

6 What happened in that underlying case was he ran up to an
7 individual in an alley way or something, took property from the
8 individual. I believe it was a camcorder, a hand held camcorder.
9 When that individual then attempted to retrieve that property, the
10 Defendant swung some sort of knife or machete at that individual.
11 And that's how we ended up with a battery with a deadly weapon.

12 The reason that was so concerning to the State is it
13 essentially started out just like this particular case here. He
14 approaches some citizen, doesn't know out on the street and then
15 gets property away from them. And so that was the big concern for
16 the State.

17 Additionally on that case, he did receive probation. He
18 was on probation approximately one month before his first
19 violation. He got reinstated at that time. And then he was
20 ultimately revoked about six months later.

21 So he's already indicated that he's somebody who can't be
22 supervised on probation. He absconded in that case. Was using
23 narcotics and having issues with being supervised. And so the
24 State does think that prison is -- is appropriate in this
25 particular case in light of his criminal history and his failure at

1 probation previously. He has a hundred thirty three days credit,
2 Your Honor.

3 THE COURT: And what are you suggesting for his underlying?
4 I'm sorry. I think you mentioned it before.

5 MS. SUDANO: Fourteen to forty-eight, Your Honor.

6 THE COURT: Thank you.

7 Mr. Ibarra, do you have anything to say before I sentence
8 you?

9 THE DEFENDANT: Yes, sir. I just want to apologize for my
10 actions. I hear what Ms. Sudano is saying there about my first
11 conviction. It happened like about almost ten years ago. It's
12 been a long time. I don't a lot of program and I done a lot of
13 change in that period of time. I actually completed my parole. I
14 had an honorable discharge. I've been supervised and I even
15 completed programs as well as -- as numerous different types of
16 counseling programs.

17 I do understand that -- that I did -- it's been almost
18 ten years like I said. But I just I want to ask for opportunity
19 to, you know, re-entry with probation or even an inpatient drug
20 program or something to allow me to get back on a right -- on a
21 right road to get my -- my stuff and my life back together.

22 THE COURT: Thank you, sir. Counsel.

23 MR. WOOD: Your Honor, as Ms. Sudano has indicated, you're
24 aware of the issues. We did file the petition. Essentially he
25 asked to borrow a phone and then took off running. There were no

1 threats. There was nothing ever made. And -- and I think there's
2 still merit to that issue.

3 Given that though, I would point out to the Court that
4 he's got one prior felony and that's it. That happened eight years
5 ago, so that's -- he's made changes. He slipped, you know -- and
6 obviously we -- we contest the nature of the charge here and our
7 appeal's unit will deal with that, but ultimately he was convicted.

8 So given the nature -- given his history of one prior
9 felony and given the fact that that was eight years ago and this
10 case involves no violence, it didn't involve any threats. The girl
11 did receive her property back. I would ask that the Court give him
12 an opportunity. I would ask for the Court to hang something maybe
13 perhaps heavier over his head to demonstrate to him the necessities
14 of following the straight and narrow, so perhaps an underlying of a
15 19 to 48 or a 24 to 60 and an admonishment that this is his chance.

16 But I do think given the facts of this case and given his
17 prior history, I do think a shot at probation would be warranted.
18 I'll submit it.

19 THE COURT: All right. Thank you.

20 Well, sir, your last offense you said almost ten years
21 ago. Well, you got off paper three years ago.

22 THE DEFENDANT: Yes, sir. I understand that. I had an
23 honorable discharge. I did all of my time pretty much, so I paid
24 for that, you know. And I do understand, you know, that I did
25 something and I do understand your position. But at the same time,

1 sir, I just want to, you know, change my life. You know, I don't -
2 - I don't want to just, you know, be a scrub my whole life. You
3 know, I do want to get on the right path and I want to, you know,
4 make changes. I just need opportunities, sir. I'm pretty sure I
5 can -- I can succeed.

6 THE COURT: Court's going to sentence you -- and by -- by the
7 way, Carol, like I said he's adjudged guilty. It was based upon a
8 jury verdict.

9 THE CLERK: Okay.

10 THE COURT: Make sure the record is clear in that regard.

11 I'm going to sentence you to confinement, sir, to Nevada
12 Department of Corrections for a maximum term of 36 months, minimum
13 term of 14 months. You're ordered to pay a \$25 administrative
14 assessment fee, \$3 DNA collection fee, the one-fifty DNA fee is
15 waived; it was taken in another case, \$250 to the indigent defense
16 fund. And 133 dollars [sic] credit for time served. Good luck,
17 sir.

18 [Proceeding concluded at 10:19 a.m.]

19 * * * * *

20 ATTEST: I hereby certify that I have truly and correctly transcribed the
21 audio/video proceedings in the above-entitled case to the best of my
22 ability.

23 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate
24 Procedure, I acknowledge that this is a rough draft transcript,
25 expeditiously prepared, not proofread, corrected or certified to be an
accurate transcript.

Michelle Ramsey
Michelle Ramsey
Court Recorder/Transcriber

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No. 69617

vi.

Respondent.

ADAM LAXALT
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100 North Carson Street
Carson City, Nevada 89701-4717
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Employee, Clark County Public Defender's Office