

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW ROBERT ALLEN LASTINE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal from a Judgment of Conviction in Case Number CR16-0718
The Second Judicial District Court of the State of Nevada
Honorable Patrick Flanagan, District Judge

JOINT APPENDIX VOLUME THREE

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1 4185
2 STEPHANIE KOETTING
3 CCR #207
4 75 COURT STREET
5 RENO, NEVADA
6

7 IN THE SECOND JUDICIAL DISTRICT COURT
8 IN AND FOR THE COUNTY OF WASHOE
9 THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

10 --oOo--

11 STATE OF NEVADA,)	
)	
12 Plaintiffs,)	
)	
13 vs.)	Case No. CR16-0718
)	
14 ANDREW ROBERT ALLEN)	Department 7
LASTINE,)	
)	
15 Defendant.)	
16		

17
18 TRANSCRIPT OF PROCEEDINGS

19 TRIAL VOLUME II

20 March 7, 2017

21 9:00 a.m.

22 Reno, Nevada
23

24 Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

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1 RENO, NEVADA, March 7, 2017, 9:00 a.m.

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4 THE COURT: We are convened outside the presence
5 of the jury in CR16-0718. Mr. Bolenbaker, you rise.

6 MR. BOLENBAKER: Thank you, your Honor. I wanted
7 to put on the record, I noticed in the defense opening
8 argument yesterday, they argued something to the effect of,
9 well, these deputies barged in to the residence without a
10 warrant, went into the room without a warrant, and things of
11 that nature.

12 I bring it up, because I don't think that's
13 appropriate. I think it's trying to confuse the jury as to
14 what they can and cannot consider. I dealt with this issue
15 in a DUI trial last August where there was a fight over
16 whether the blood would be admitted. The blood was allowed
17 to be admitted. And during most of the jury trial, there was
18 an insinuation that the blood was taken illegally.

19 And that went back into the jury room, after the
20 jury deliberated and came back guilty. I did speak to some
21 of the jurors and they said that they weren't sure if they
22 could consider the blood because of the arguments of defense
23 counsel.

24 So I wanted to put the Court on notice, I do

1 believe if that's a continuing line of argument, that there
2 should be some type of remedy to say that you are allowed to
3 consider or that the entry has been deemed lawful or
4 something to protect us and give us a fair shot.

5 Because it stands now, it seems like they're
6 trying to say this was an illegal entry. That's the
7 insinuation that they make when they say you barge in without
8 a warrant or that type of insinuation. I think some remedy
9 needs to be made to make sure we're all on a level playing
10 field.

11 THE COURT: Ms. Brady. Ms. Maher.

12 MS. BRADY: There wasn't any insinuation. We
13 weren't trying to make any kind of insinuation. It was just
14 a fact. You deemed it to be a legal warrantless entry. He
15 can on cross examination, he's able on his opening, he's able
16 to say and got out, elicited that Mr. Robert Lastine said
17 they could come in. I don't see any prejudice to the State.

18 THE COURT: Let me do this, let me have
19 Ms. Koetting provide a transcript of the opening, I'll look
20 at it, and if I feel some advisory instruction is
21 appropriate, I'll ask both sides for their contribution. But
22 I understand the concern.

23 MR. BOLENBAKER: Thank you, your Honor.

24 THE COURT: Anything further?

1 MS. BRADY: No.

2 THE COURT: Let's bring in the jury.

3 MS. BRADY: I'm sorry. The only thing I want to
4 put on the record is that the State did get close, I know
5 that you didn't withhold the keys in the pocket, but in his
6 opening, he mentioned that the keys -- that those keys were
7 to the truck and you did suppress the issue of them, you
8 know, turning on, getting into the truck.

9 THE COURT: I listened to that and I thought that
10 they were close, but they didn't cross the line to our
11 ruling. Our ruling was that the actions of Trooper Howald in
12 going in and turning the key and entering the cab was
13 suppressed and whatever happened after that, but I don't
14 think they crossed the line. But I appreciate that. Go
15 ahead.

16 MS. BRADY: My concern is that if he's going to
17 try to elicit from the officer something to the effect of,
18 without saying she got into the truck, but to the effect, you
19 know that those keys opened, you know, ignited that truck,
20 were to that truck, that is using and taking advantage of the
21 knowledge they gained from the fruit of the poison tree. So
22 I would be concerned about any question of that sort.

23 MR. BOLENBAKER: I wouldn't ask that question.
24 What I would ask, though, is were the keys located in the

1 pocket, were they vehicle keys? I think that's an
2 appropriate observation that she can make just based upon
3 observing the keys in the pocket.

4 THE COURT: That's fine. Thank you very much.
5 Now let's bring in the jury.

6 Mr. Bolenbaker, how will we proceed?

7 MR. BOLENBAKER: I have all six of my witnesses
8 left in the case coming this morning, because I wanted to be
9 prepared to move. I figure essentially one may get bumped.
10 I don't anticipate them being any longer than the one we had
11 yesterday. So that took about, what, 20 minutes.

12 THE COURT: All right. I just have an appointment
13 at 11:45. So I expect to close up a little bit before lunch
14 there and probably come back at 1:15, start at 1:30.

15 (The following proceedings were had in the
16 presence of the jury.)

17 THE COURT: Good morning, ladies and gentlemen.
18 Will counsel stipulate to the presence of the jury?

19 MR. BOLENBAKER: Yes, your Honor.

20 MS. BRADY: Yes, your Honor.

21 THE COURT: Thank you very much. Mr. Bolenbaker,
22 your next witness.

23 MR. BOLENBAKER: Thank you. The State will call
24 Jason Beck. May I approach your clerk?

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THE COURT: You may.

(One witness sworn at this time.)

THE COURT: Thank you very much. Mr. Bolenbaker,
your witness.

MR. BOLENBAKER: Thank you, your Honor.

JASON BECK

called as a witness and being duly sworn did testify as
follows:

DIRECT EXAMINATION

BY MR. BOLENBAKER:

Q. Good morning, sir.

A. Good morning.

Q. Can you state your name and spell your last for
the record?

A. Jason Beck, B-e-c-k.

Q. And, Mr. Beck, what I'd like to do is focus your
attention on January 7th of 2016. Do you recall that day?

A. Yes.

Q. And let's start with just the day itself. Can you
tell us a little bit about what you were doing that day?

A. I was at work.

Q. And where do you work?

A. I work for Bennet Medical Services.

Q. What do you do there?

1 A. I'm the purchasing manager.

2 Q. And what time do you normally get off work?

3 A. 5:00.

4 Q. Is that approximately when you got off work on
5 January 7th?

6 A. Yes.

7 Q. When you got off work, what were your plans?

8 A. I go pick up my daughter in Sun Valley.

9 Q. And where are you picking her up from?

10 A. From Mozart Lane from the daycare.

11 Q. And how are you traveling that evening?

12 A. The way I normally do, north 395 to Sun Valley
13 Boulevard and north on that.

14 Q. Okay. And it's January, so what were the lighting
15 conditions when you were driving?

16 A. It was dark. So streetlights and lights from the
17 cars.

18 Q. Now, what I want to focus your attention, then, to
19 when you were at Sun Valley Boulevard and about First Avenue.
20 Did something unusual happen?

21 A. Yes. I was cut off by a pickup truck.

22 Q. And what do you mean by cut off?

23 A. It was bumper to bumper. We were at the light and
24 there wasn't very much room between me and the car in front

1 of me, just normal distance, and a pickup truck swerved in
2 front of me with no turn signal.

3 Q. And what lane were you traveling in?

4 A. I was in the left lane.

5 Q. Left lane. And so the truck that you're referring
6 to swerved from the right lane into the left lane?

7 A. Correct.

8 Q. And it went in front of you, you said?

9 A. Yes.

10 Q. So you were able to see the rear of that truck?

11 A. Correct.

12 Q. Can you describe what that truck looked like?

13 A. It was an older Ford Ranger type small pickup
14 truck, tan in color.

15 Q. Anything about the license plate catch your eye?

16 A. It was a classic vehicle license plate.

17 Q. Why would an old Ford small pickup with a classic
18 license plate catch your eye?

19 A. It's funny that an old Ford pickup truck,
20 1980-ish, is considered a classic vehicle.

21 Q. Now, did you observe how many people were in that
22 truck?

23 A. I saw one.

24 Q. So describe what happens then. We'll talk about

1 the accident in a second, but describe what happens then from
2 the time you're cut off until the time you get to Sun Valley
3 and Fifth.

4 A. He's still in front of me in the left lane. We
5 get past the light at First Street. Traffic starts to thin
6 out. And the driver is driving erratically or aggressively.
7 He swerves into the middle turn lane like he's going to pass
8 the other cars in front of him, back into the travel lane,
9 back over into the turn lane, back and forth.

10 Somewhere before the accident happens, the car
11 gets over into the right lane and stays there and drives
12 normal.

13 Q. Okay. And when you say drives normal, you mean
14 within the lane?

15 A. Within the lane, yes.

16 Q. And then what did you observe?

17 A. Then coming up, the light changes red. I'm in the
18 left lane. There is a white SUV vehicle ahead of me in the
19 right lane. That vehicle starts to slow down, I start to
20 slow down, and the pickup truck doesn't slow down, no brake
21 lights after I see the tail pass me, and hits the white SUV.

22 Q. Now, describe how the truck hits the white SUV.

23 A. Like I said, there was no attempt to stop. There
24 was no brake lights. I didn't observe that the truck was

1 slowing down at all, hits it, and then they both kind of veer
2 off to the side of the road.

3 Q. So the front of the truck hit the back of the
4 white SUV?

5 A. Correct.

6 Q. Like a rear-end?

7 A. Yes.

8 Q. Describe exactly then after the impact. Let me
9 backup. When you say -- I said rear-end, is that fair, is
10 that a fair and accurate description of it?

11 A. Yes, rear-end.

12 Q. And describe, then, the immediate aftermath of the
13 impact and where the cars go.

14 A. So there's a bus stop right there before the
15 intersection. They -- both vehicles kind of coast, drift off
16 to the shoulder. The SUV comes to a stop. The pickup truck,
17 the driver seems to pop up, get his wits about him, goes over
18 the embankment, through the parking lot, and out the east
19 side of that business.

20 Q. What do you mean by pop up and get his wits about
21 him?

22 A. I could see the silhouette in the back. His head
23 popped up. He wasn't -- the person in there, I don't think
24 was injured. He popped up, because there was two seconds,

1 maybe, that they drifted off to the shoulder.

2 Q. And then so he popped up and then went down that
3 embankment?

4 A. Yeah, then went down the embankment and out the
5 parking lot.

6 Q. Describe that embankment.

7 A. It's probably two or three feet, a dirt
8 embankment. The parking lot is lower than the street level.

9 MR. BOLENBAKER: May I approach, your Honor?

10 THE COURT: You may.

11 BY MR. BOLENBAKER:

12 Q. Let me show you what has been admitted as Exhibits
13 1 through 6. Can you just take a minute to look through
14 those?

15 A. Okay.

16 Q. Do those photos fairly and accurately depict the
17 aftermath of this accident scene as you saw it?

18 A. Yes.

19 Q. And Sun Valley and Fifth, is that in Washoe
20 County?

21 A. Yes.

22 Q. So the accident took place in Washoe County?

23 A. Yes.

24 MR. BOLENBAKER: Permission to publish these

1 again, your Honor?

2 THE COURT: Granted.

3 BY MR. BOLENBAKER:

4 Q. So everyone knows, I think we figured out the
5 lighting snafu. I'm hoping it will come up better than it
6 did yesterday. Can you tell us what you see in this
7 photograph?

8 A. I see the car that was rear-ended just before the
9 intersection.

10 Q. You can actually touch the screen and it will come
11 up for everybody to see. Use your fingernail. That's the
12 best way to get it.

13 A. That was the vehicle that was rear-ended just
14 before the intersection there.

15 Q. And is that Fifth, then, we're looking at? We're
16 on Sun Valley looking at Fifth?

17 A. Correct.

18 Q. And where do you see the embankment that we've
19 been talking about?

20 A. The embankment runs right here, and I believe the
21 bench for the bus stop is behind the deputy's vehicle.

22 Q. And that's Exhibit Number 1. I'll show you number
23 five. Is that the bus stop there to the left?

24 A. Correct.

1 Q. You're referring to?

2 A. Yes.

3 Q. Can you circle the bus stop bench so everyone can
4 see? Did that truck ever stop at the scene?

5 A. No.

6 Q. Did you stop?

7 A. I stopped.

8 Q. You stopped?

9 A. Yes.

10 Q. Why did you stop?

11 A. Because it was a pretty hard rear-end and I
12 thought they would both stop and I would get out and help in
13 some way.

14 Q. And what do you mean help in some way?

15 A. It struck me as very strange, the driver,
16 obviously, watching that truck coming down Sun Valley
17 Boulevard driving erratically and rear-ended somebody with no
18 apparent stopping or trying to avoid the accident.

19 And then like I said, after -- two seconds after
20 the rear-end happened, it sped off. So then I really needed
21 to stay.

22 Q. Were you worried that somebody was hurt?

23 A. Yes.

24 MS. BRADY: Objection, leading.

1 THE COURT: Overruled.

2 BY MR. BOLENBAKER:

3 Q. You said that the truck sped away. What do you
4 mean by that?

5 A. As I said, they both kind of veered to the
6 shoulder on the right side of the road. And then the best
7 way I could describe it is just put the foot on the gas and
8 went over the embankment. You can see the truck, you know,
9 as it went over, it bounced quite hard and out the side of
10 the parking lot.

11 Q. So you stop and what do you do?

12 A. I pull up behind the white SUV and block traffic a
13 little bit and start talking the lady who was driving.

14 Q. And how did she appear to you?

15 A. She was very dazed and hurt.

16 MS. BRADY: Objection, speculation.

17 THE COURT: Mr. Bolenbaker.

18 BY MR. BOLENBAKER:

19 Q. What you made you think she was hurt?

20 A. She was complaining of neck pain.

21 MS. BRADY: Objection, hearsay.

22 THE COURT: It's a medical exception. Overruled.

23 BY MR. BOLENBAKER:

24 Q. Go ahead.

1 A. She was --

2 MS. BRADY: Your Honor, if I may make a record?

3 THE COURT: Yes, certainly.

4 MS. BRADY: He's not a doctor treating. He wasn't
5 treating her. The medical exception would only come in terms
6 of if there was a doctor treating her and if there was some
7 business records with some kind of information from the
8 doctors themselves about any kind of injury.

9 THE COURT: Mr. Bolenbaker.

10 MR. BOLENBAKER: To me, it's a medical diagnosis.
11 It's also a present sense impression. He's explaining what
12 she's going through at that moment. There's more exceptions
13 if I can get into them, but --

14 THE COURT: The objection is overruled. Go ahead.
15 BY MR. BOLENBAKER:

16 Q. Go ahead and explain why you felt she was hurt?

17 A. I asked her if she was okay and she said no.

18 MS. BRADY: Objection, hearsay.

19 THE COURT: Overruled.

20 MS. BRADY: Just for the record, a continuing
21 objection of hearsay.

22 THE COURT: That's fine.

23 MS. BRADY: It's improper for him to discuss what
24 someone else is saying.

1 THE COURT: Understood. The objection is
2 overruled. Go ahead, counsel.

3 BY MR. BOLENBAKER:

4 Q. Go ahead. Lost your train of thought?

5 A. A little bit. So I come up to the vehicle, I
6 asked her if she's okay. She says, no, her neck hurts. I
7 ask her her name. It took her a couple of seconds to come up
8 with her own name. I looked in the vehicle for any other
9 passengers. She was the only one in there.

10 By this time, there were other people who had
11 stopped and came up. Somebody was calling 911. And so I was
12 at that point more just comforting her, saying it will be
13 okay, there's police and ambulance on the way.

14 Q. Why did you comfort her?

15 A. She was crying. She appeared to be in pain.

16 Q. When you say appeared to be in pain, what do you
17 mean?

18 A. She was crying. She was aching. She just kept
19 trying to reach for her neck.

20 Q. And then what happens next?

21 A. I believe the sheriff's deputy was the first one
22 to show up and the fire truck and ambulance weren't too far
23 behind. They started doing their thing and then I started
24 filling out -- the sheriff's deputy asked me to fill out a

1 report.

2 Q. And while you were there, did you notice a license
3 plate in the area of the accident?

4 MS. BRADY: Objection, leading.

5 THE COURT: He's just asking him what he saw. Go
6 ahead.

7 BY MR. BOLENBAKER:

8 Q. Did you notice a license plate in the area?

9 MS. BRADY: Objection, leading.

10 THE COURT: Sustained. Excuse me. Overruled. Go
11 ahead.

12 BY MR. BOLENBAKER:

13 Q. You can go ahead and answer the question. Did you
14 notice a license plate in the area?

15 A. No. I didn't see it.

16 Q. Did anybody point it out to you?

17 A. The sheriff's deputy pointed it out to me.

18 Q. When you saw that license plate, what was your
19 reaction?

20 A. I recognized it as the one on the back of the
21 vehicle.

22 Q. At least matching the one that you saw?

23 A. Matching, yes.

24 MR. BOLENBAKER: May I approach, your Honor?

1 THE COURT: You may.

2 BY MR. BOLENBAKER:

3 Q. I'm going to show you Exhibit 7 and 8. Can you
4 take a look at that?

5 A. Okay.

6 Q. Is that the license plate you saw at the accident
7 scene of Fifth Avenue and Sun Valley Boulevard?

8 A. Yes, it is.

9 MR. BOLENBAKER: Permission to publish these, your
10 Honor?

11 THE COURT: Granted.

12 BY MR. BOLENBAKER:

13 Q. I'll start with number eight. Is that
14 approximately where the license plate was when the deputy
15 pointed it out to you?

16 A. Yes, it was.

17 Q. I notice it says Classic Rod on there. Is that
18 what you were referring to?

19 A. Yes.

20 Q. I'll show you number seven, a little closer up
21 view of the actual plate. It appears that the license plate
22 number is A335?

23 A. Yes.

24 MR. BOLENBAKER: May I approach again, your Honor?

1 THE COURT: You may.

2 BY MR. BOLENBAKER:

3 Q. Let me show you what has been admitted as
4 Exhibit 10. Can you take a look at that photograph?

5 A. Okay.

6 Q. Do you recognize that vehicle?

7 A. Yes.

8 Q. How do you recognize it?

9 A. From the license plate, the tailgate, the tan with
10 the stripe and the toolbox in the bed.

11 Q. Is that the truck that you saw on January 7th,
12 2016?

13 A. Yes.

14 MR. BOLENBAKER: Permission to publish this, your
15 Honor?

16 THE COURT: Granted.

17 BY MR. BOLENBAKER:

18 Q. Does it appear that the license plate number is
19 A335 on this vehicle?

20 A. Yes, it does.

21 MR. BOLENBAKER: I have no further questions, your
22 Honor. Thank you.

23 THE COURT: Thank you, Mr. Bolenbaker. Ms. Brady.

24 MS. BRADY: Thank you, your Honor.

CROSS EXAMINATION

BY MS. BRADY:

Q. Good morning.

A. Good morning.

Q. You met with the State for about three or four times in preparation for this trial?

A. Correct. I met with him a couple of times.

Q. And did he show you pictures when you met with him in his office?

A. Yes.

Q. And on the night in question, you mentioned that it was dark?

A. Uh-huh.

Q. And that you saw whoever was driving the vehicle really from behind?

A. Correct.

Q. And that was through your window, your front window?

A. Uh-huh.

Q. And so you didn't get a look at the front of the person?

A. Correct.

Q. You refer to him as a male, but you didn't really --

1 A. Just habit. Yes. I could not tell whether it was
2 male or female.

3 Q. When you filled out your police report, you filled
4 that out after the police showed you the license plate on the
5 ground?

6 A. I was in the middle of filling it out when they
7 said that they found the license plate.

8 Q. Okay. And after the accident occurred, the Kia
9 pulled off to the side of the road?

10 A. Correct.

11 MS. BRADY: No further questions. Thank you.

12 THE COURT: Thank you, Ms. Brady. Mr. Bolenbaker.

13 MR. BOLENBAKER: Nothing further, your Honor.

14 Thank you.

15 THE COURT: Mr. Beck, thank you very much. Watch
16 your step going down. Mr. Bolenbaker, your next witness.

17 MR. BOLENBAKER: Thank you, your Honor. The State
18 will call Lieutenant Bowers.

19 (One witness sworn at this time.)

20 THE COURT: Mr. Bolenbaker, your witness.

21 MR. BOLENBAKER: Thank you.

22 EDDIE BOWERS

23 called as a witness and being duly sworn did testify as
24 follows:

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DIRECT EXAMINATION

BY MR. BOLENBAKER:

Q. Lieutenant, right?

A. Yes.

Q. Can you state your name and spell your last for the record, please?

A. It's Eddie Bowers, B-o-w-e-r-s.

Q. And, lieutenant, where do you currently work?

A. I'm the personnel commander for parole and probation.

Q. And what do you do there?

A. I oversee all the hiring for the Division, background investigation, I review those personnel related matters, grievances, things of that nature.

Q. And before you worked for the Division of Parole and Probation, where did you work?

A. The Nevada Highway Patrol.

Q. And how long did you work there for?

A. About 16 -- a little more than 16 years.

Q. And were you working for the Nevada Highway Patrol back in January of 2016?

A. Yes.

Q. And can you briefly to the jury just describe the training that you undergo to become a patrolman?

1 A. Yes. It's the curriculum offered by the Nevada
2 Peace Officers Standards and Training. You go to an academy.
3 As soon as you graduate the POST curriculum, you're allowed
4 to be a Category 1 police officer. And then after that,
5 Highway Patrol candidates go into the Highway Patrol
6 specifics program where you're taught much more intimate
7 information on how to be a traffic officer, a state traffic
8 officer.

9 Q. You said you were there for 16 years. Can you
10 give us a breakdown of your duties during that 16-year
11 period?

12 A. Initially, that of a traffic trooper for ten years
13 patrolling the highways, providing help to stranded
14 motorists, investigating crashes, taking enforcement action
15 on traffic violations, anywhere from speeding to DUI arrests.

16 And then about 2010, I promoted to sergeant with
17 the Highway Patrol. And those duties consisted of just
18 basically supervising people like myself at the time, traffic
19 troopers, having the same job duties, other than the
20 additional component of being a supervisor.

21 Q. Were you in the capacity of a sergeant back on
22 January 7th of 2016?

23 A. Yes.

24 Q. So, lieutenant, what I want to do is actually

1 focus your attention to the early evening hours of
2 January 7th, 2016. Were you called out to an area of Sun
3 Valley Boulevard and Fifth Avenue in Washoe County?

4 A. Yes.

5 Q. And what was the nature of the call?

6 A. It was a crash, two vehicle crash up on Sun Valley
7 Boulevard.

8 Q. So describe to the jury what it's like getting a
9 call of a crash and the process you do and what you do to get
10 there and things like that.

11 A. Yeah. All of our patrol cars have police radios
12 and that's the mode of communication whereby a dispatch call
13 goes out. In this particular incident, I being a supervisor,
14 you're not typically assigned to the call, so you wouldn't be
15 the one dispatch would reach out to first to send. They
16 would grab like a traffic trooper that would appear available
17 and they would have them respond to the call.

18 That in fact happened on January 7th. Another
19 officer was assigned or responding to a call. It was
20 reported that the other vehicle, the at fault vehicle,
21 perhaps fled the scene. So that kind of triggered me to
22 respond to provide any kind of assistance.

23 Q. Why does that trigger you to respond, that
24 information?

1 A. Well, I know I'm going to have one officer out
2 there, I envisioned. I didn't hear anybody else responding
3 to the call from the Highway Patrol. Now, in incidences like
4 this, especially in Sun Valley, there will be other officers
5 up there from perhaps Washoe County Sheriff's Department.
6 They're always in the area. I knew they would probably be
7 there to provide some sort of assistance. But as a
8 supervisor, you know, like a hit and run, something of that
9 nature, something that I want to respond to and make sure
10 things are followed appropriately.

11 Q. How does that work? Do you just say, hey, I'm
12 going to head there myself? How does that work?

13 A. Yeah. I'll advise dispatch. I might get on the
14 radio and I'll make a transmission that I'm going to be in
15 route to the call.

16 Q. When you get there, what do you observe?

17 A. In this particular case, there was a large SUV
18 that had damage to the rear of the vehicle indicating that is
19 where the collision had occurred. There was debris in the
20 road. Most notably, I guess from an investigative
21 standpoint, was the fact that there was a license plate in
22 the travel lane that did not belong to the victim vehicle, if
23 you will, that remained on the scene.

24 Q. And so what does that indicate to you when you see

1 something like that?

2 A. Well, I've seen it a number of times where you are
3 gifted a pretty large piece of evidence like that when a
4 license plate from the suspect vehicle falls off and it's
5 still on the scene. It's a pretty good clue to know you can
6 run the license plate and quickly ascertain where that
7 vehicle might reside and the hope, then, is that you'll find
8 that vehicle later on.

9 Q. And so I'd like to delve into that a little
10 further. You say a gift, what do you mean by that?

11 A. Well, in so many cases, I've arrived,
12 unfortunately, on the scene of crashes where there's just one
13 car on the side of the road and somebody is telling me that
14 they were hit. And I'll go, okay, where is the other car?
15 Well, they left. And they'll tell me things like it was a
16 white car. And they just don't give me enough to help them,
17 you know, be made whole, at least try to find that car that
18 did that to their vehicle.

19 And, you know, in this particular case, I didn't
20 have anybody on scene that was saying, you know, it's this
21 kind of car, it went this way. Nobody was telling me that.
22 It was just, wow, there's the license plate right there. So
23 then you can run the license plate and learn what type of
24 vehicle that plate came off of. At least it's a clue. It's

1 a lead to try to find the car that lost that plate.

2 Q. And so that was done in this particular incident?

3 A. Yes.

4 Q. Were you able to get an address associated with
5 that license plate?

6 A. That did happen, yes.

7 Q. So who else from the Nevada Highway Patrol was
8 there on the scene?

9 A. That was one of my troopers, Trooper Alyssa
10 Howald.

11 MR. BOLENBAKER: May I approach the witness, your
12 Honor?

13 THE COURT: You may.

14 BY MR. BOLENBAKER:

15 Q. I'm going to show you what has been admitted as
16 Exhibits 1 through 8. They're in kind of a series, 1 through
17 6 here, and then 7 and 8. Can you take a minute and look
18 through those?

19 A. Okay.

20 MR. BOLENBAKER: Permission to publish these, your
21 Honor?

22 THE COURT: Granted.

23 MR. BOLENBAKER: Thank you, your Honor.

24 BY MR. BOLENBAKER:

1 Q. I'm going to focus mostly on the ones of the
2 vehicle. I'm going to show you number three. Can you tell
3 us what you observed in that photograph?

4 A. Yes. It's what I referred to earlier as the SUV
5 or the victim vehicle with moderate damage to the rear of the
6 vehicle.

7 Q. And you can actually circle on there and it will
8 come up on the screen so everybody can see. Can you circle
9 what you're referring to?

10 A. Sure. I'll circle the damaged area.

11 Q. I'll show you number four. It's another angle.
12 Can you show us again what you're looking at here in this
13 photograph in terms of damage?

14 A. Yes.

15 Q. So, lieutenant, is that damage that we're looking
16 at, is that consistent with a car being struck from behind?

17 A. Yes.

18 Q. Now, I want to show you, this is number two, can
19 you show us the vehicle in that picture?

20 A. Yes. It's right -- you can see up here off the
21 shoulder.

22 Q. On this photograph -- let me show you these first.
23 I'll show you 7 and 8. Is that the license plate you're
24 referring to? That's number seven.

1 A. Yes.

2 Q. And then number eight, another picture of the
3 license plate?

4 A. Yes.

5 Q. Now, it comes up faint, but on the top left of
6 that picture, can you see a line?

7 A. Yes.

8 Q. I want to show you number two. I'm going to
9 circle it. Is that where the license plate was located?

10 A. Yes, it appears so.

11 Q. That will be to the right of the photograph?

12 A. Yes.

13 Q. So kind of take us through, then, what you do when
14 you get there.

15 A. Well, Trooper Howald had made it to the scene
16 before myself. Once I arrived to the scene, met with Trooper
17 Howald. She had already begun to process the accident scene.
18 When we do that, we're gathering names, insurance
19 information, things like that, obtaining witness statements,
20 if there are any.

21 But as I arrived, things continued to evolve. It
22 was discovered that the Washoe County Sheriff's Department
23 were at a residence associated with that license plate and
24 were possibly contacting a suspect driver. When this

1 information was discovered by myself and Trooper Howald, I
2 remember standing in the road looking at Officer Howald
3 saying, go, go to the house. I'll take over the crash part
4 and I'll allow her to go and investigate further to see if we
5 located the driver.

6 So at that point in time, I took over the
7 investigation of the crash and Trooper Howald departed to go
8 respond to the address associated with the plate.

9 Q. And timing wise, are we talking how long before --
10 after you get there to when you learned that Washoe County is
11 actually already at the residence?

12 A. Pretty quick. I didn't -- I recall getting out of
13 my patrol vehicle, walking up, making contact with Howald,
14 and it was proximity to my arrival, sometime after that, soon
15 after that is when Trooper Howald departed to respond to the
16 address.

17 Q. And you say you'll finish up the crash part, what
18 do you mean by that?

19 A. I then take over the role of memorializing all the
20 information that is obtained on to a crash form. And then I
21 would supply vehicle information, vehicle years, colors,
22 makes, models, drivers' names, license numbers, things of
23 nature, and then turn that in for a review.

24 Q. And after you're done there, did you respond,

1 then, to the address associated with the license plate?

2 A. I did.

3 Q. Was that at 290 Bent Pine Circle?

4 A. Bent Pine, yes, that is familiar.

5 Q. Give us a description of what you observed when
6 you arrived there at the address?

7 A. By the time I got there, really, a lot of things
8 had transpired already. I just -- there was a driver I
9 believe already in custody. I merely -- I'm completing the
10 accident investigation part, so I really wanted to see the
11 car that I had been looking for. And, you know, like I said,
12 with that license plate being kind of gifted to me in the way
13 of evidence and being something provided to help me make the
14 victim whole, there is, you know, a little pickup truck with
15 the same license plate I'd just seen out in the middle of the
16 travel lane with the rear of it attached to the rear of the
17 vehicle.

18 Everybody gets two license plates when they apply
19 for registration in the State of Nevada, and I had the first
20 license plate from being out in the travel lane, and the
21 second one is now found affixed to the back of this vehicle.

22 MR. BOLENBAKER: May I approach again, your Honor?

23 THE COURT: You may.

24 BY MR. BOLENBAKER:

1 Q. I'm going to show you what has been admitted as
2 Exhibits 10 through 19. Go ahead and take a look at those.

3 A. Okay.

4 MR. BOLENBAKER: And if I could approach again,
5 your Honor?

6 THE COURT: Yes.

7 BY MR. BOLENBAKER:

8 Q. I wanted to show you nine as well.

9 A. Okay.

10 Q. Now, number nine, does that appear to be an
11 accurate representation of the area of Sun Valley and Fifth,
12 as well as 290 Bent Pine Circle?

13 A. Yes.

14 MR. BOLENBAKER: Your Honor, at this time I move
15 to admit proposed Exhibit 9.

16 MS. BRADY: No objection, your Honor.

17 THE COURT: Nine is admitted, Ms. Clerk.

18 THE CLERK: Thank you.

19 MR. BOLENBAKER: Permission to publish, your
20 Honor?

21 THE COURT: Granted.

22 BY MR. BOLENBAKER:

23 Q. So can you on this circle where the accident
24 occurred?

1 A. Yes. It would be in this area here.

2 Q. Can you describe this area right here?

3 A. Yes. It's just a large parking area.

4 Q. Okay. And then can you show us where 290 Bent
5 Pine Circle is?

6 A. Yes. It's noted up here in this cul-de-sac.

7 Q. How long did it take you to get there?

8 A. Not long at all. It's a quick drive down Fifth
9 and, you know, left on Leon. I can't say precisely if that's
10 the path I traversed in order to get there, but it is not
11 far.

12 Q. Right. I'm looking at this right on the bottom.
13 It says it's 200 feet. So do you know approximately the
14 distance between these two points? Hate to put you on the
15 spot there.

16 A. I would say perhaps 2,000 feet, roughly.

17 MR. BOLENBAKER: Permission to publish these, your
18 Honor; 10 through 19?

19 THE COURT: Granted.

20 BY MR. BOLENBAKER:

21 Q. I'll start with ten. What can you tell us about
22 this photograph?

23 A. This is the suspect vehicle, if you will, or the
24 at fault vehicle from my collision vehicle. But what's most

1 notable, of course, is the license plate affixed to the rear
2 of the vehicle, which is the same as the plate found on
3 scene.

4 Q. And did you observe then and go around and look at
5 this truck?

6 A. Yes.

7 Q. I'll show you 11. Is that the same truck?

8 A. Yes.

9 Q. And then 12?

10 A. Yes, same truck.

11 Q. What do you see here in this photograph?

12 A. I'm sorry?

13 Q. What do you see here?

14 A. Again, the accident vehicle that's many different
15 colors. It's got damage in most locations of the vehicle.
16 It's an older vehicle.

17 Q. When you say many different colors, the door looks
18 green and the side paneling looks white or the wood paneling?

19 A. Yes.

20 Q. I'll show you 16. What do you see here in this
21 photograph?

22 A. We've got damage to the right front of the
23 vehicle.

24 Q. What color does the hood appear to be?

1 A. It's red.

2 Q. I'll show you another photo from another angle.
3 That's number 13. Is that just from another side of the
4 truck?

5 A. Yes, left side front.

6 Q. And then 14, what do you see here?

7 A. The right front, right side of the vehicle.

8 Q. Can you circle the damage you were referring to?

9 A. Again, right here in the right front.

10 Q. And then number 17, what do you see here?

11 A. Again, more damage to the front of the vehicle,
12 and then we start to get some -- for my standpoint, what I'm
13 looking for are evidence, things like that, to establish this
14 is in fact the vehicle that hit the victim vehicle on scene.
15 And most notably, of course, is the absence of the front
16 license plate, which is out on scene of the crash.

17 And then we start to see things like white paint
18 transfer. The other vehicle, the SUV, was white. And then
19 you start see things like white paint transfer to marry with
20 the victim vehicle that was on scene.

21 Q. And so what is paint transfer?

22 A. Well, when you have varied colors of vehicles,
23 we've got a red hood here and then a white SUV out on scene,
24 there's an exchange there. When that contact is made, the

1 collision forces are very violent and there's scrubbing,
2 disengaging, you know, metal on metal, and sometimes paint is
3 deposited on each vehicle.

4 Q. Is that common?

5 A. Yes.

6 Q. So I'll show you number 18. Can you point out
7 what you're referring to with the paint transfer?

8 A. Yes, you can see it most notably here. And then
9 the crack in the grill right in this section.

10 Q. So essentially in the middle of this photograph?

11 A. Yes.

12 Q. What kind of things, when you have a situation
13 where obviously one vehicle is no longer at the scene of a
14 two-car crash and no one says --

15 MS. BRADY: Objection, the DA is testifying.

16 THE COURT: He's setting up. Overruled.

17 BY MR. BOLENBAKER:

18 Q. And no one says it's this guy here or this lady
19 here who was the driver of that vehicle, how do you piece it
20 altogether?

21 A. Basically some of the things we talked about. I
22 had the plate out on the scene of the crash, which takes me
23 to a location. Hopefully, the car is there. Sometimes you
24 get lucky, sometimes you don't. In 16 years, I've done a lot

1 of these where sometimes it takes two weeks I'll be at the
2 house and finally the car is there. I've found cars up in
3 California before. You start following where the evidence
4 leads you.

5 And then when you get a car, in this particular
6 case, I get the car that's got the other plate still on it,
7 it doesn't get much better than that from an investigative
8 standpoint. That helps me out a lot. I've got the car now.
9 Now I can get insurance information, if it exists. All of it
10 is in an effort to make that victim whole again.

11 And then you start solidifying the case, looking
12 for things like the paint transfer. You know, is the damage
13 consistent on that vehicle, that pickup truck, is it
14 consistent with the damage that is on the rear of the white
15 SUV victim vehicle on scene of the crash? And in this
16 particular case, it made perfect sense. You got white paint
17 transfer.

18 You'll notice or recall the picture of the SUV,
19 the damage wasn't like perfectly into the back of it. It was
20 kind of down and to the left off of center and then to the
21 left a little bit, indicating that the driver of that pickup
22 perhaps at the last second made a steering input to the left.
23 And you'll notice that the damage on that pickup is mostly
24 kind of center and to the right, which means he just kind of

1 turned to the left at the last second when he hit the back of
2 that vehicle.

3 So that's even better than, you know, if it were
4 straight on, because it just makes the most sense to see that
5 kind of damage, the plate, all of that together when weighed
6 in the totality of circumstances, it at least let's me know
7 I've got the right car that damaged the other one.

8 MR. BOLENBAKER: No further questions, your Honor.
9 Thank you.

10 THE COURT: Thank you. Ms. Brady.

11 MS. BRADY: Thank you, your Honor.

12 CROSS EXAMINATION

13 BY MS. BRADY:

14 Q. Good morning.

15 A. Good morning.

16 Q. So you didn't have -- nobody gave you identifying
17 information about the driver?

18 A. No.

19 Q. And when you entered the property, to talk about
20 the property a little bit, you entered through the gate, do
21 you recall?

22 A. I don't recall. I think I was just kind of out
23 front with the car. I don't recall going into the house or
24 up on the --

1 Q. I mean the gate in the property?

2 A. I don't recall a gate.

3 Q. Okay. And do you recall that there was -- that

4 the car was off to the side on the driveway?

5 A. It was to the right, if you will, perhaps the

6 right of the home as you faced it.

7 Q. And it was dark?

8 A. Yes.

9 Q. Did you need a flashlight? You needed a

10 flashlight to be able to see what was there?

11 A. I'm certain I had a flashlight, yes.

12 Q. There weren't any ambient -- there wasn't much

13 ambient light in the yard?

14 A. I don't believe so. It was quite dark.

15 Q. When you were heading to the truck, you had to go

16 off to the right?

17 A. That's where the truck was.

18 Q. It wasn't right in front of the house? You had to

19 go off to the right?

20 A. Yes.

21 Q. You said that you met Officer Howald on the scene?

22 A. Yes.

23 Q. And then when the call came in that they were at

24 the Bent address, you told her to go?

1 A. Yes.

2 Q. And then you came later?

3 A. Yes.

4 Q. You were not involved in identifying the driver on
5 location at the address, correct?

6 A. No.

7 Q. So you don't know how that was conducted, how they
8 actually identified or located a driver?

9 A. No. I do.

10 Q. You weren't a part of that?

11 A. I know of it. I was there. I saw the things that
12 they looked at, but I didn't --

13 Q. No. In terms of the driver, you weren't there in
14 terms of being on property and searching for a driver?

15 A. That's correct. I was not.

16 Q. You didn't collect any fingerprints on the truck
17 in question?

18 A. No.

19 Q. To your knowledge, did any of the other
20 officers -- did you observe any other officers collecting
21 fingerprints?

22 A. No.

23 Q. Sun Valley Boulevard, talk a little bit about that
24 intersection and Fifth Street. That's a major intersection?

1 A. It's a big intersection.

2 MS. BRADY: Thank you. No further questions.

3 THE COURT: Thank you, Ms. Brady. Mr. Bolenbaker.

4 MR. BOLENBAKER: Just briefly.

5 REDIRECT EXAMINATION

6 BY MR. BOLENBAKER:

7 Q. Can you give us a little more information on the
8 fingerprints or lack of fingerprinting of a vehicle in this
9 kind of situation?

10 A. Yes. In 16-plus years in the Highway Patrol, I've
11 never processed a car for fingerprints in any of the hit and
12 run crashes I've done.

13 Q. Why is that?

14 A. Typically, I've found people, had discussions, and
15 whereby people have just taken ownership of what they've done
16 and I'm able to quickly close out a case. I've not been on
17 scene of a serious enough crash to where -- I'll give you an
18 example. There was a fatality to Pyramid and Disk where two
19 people were killed. The driver left.

20 MS. BRADY: Objection, relevance. And it's also
21 prejudicial. This wasn't a crash where anyone was killed.

22 THE COURT: Mr. Bolenbaker.

23 MR. BOLENBAKER: I think he actually said it was a
24 crash unlike the crash he was about to talk about. I think

1 it would settle that. I think he was explaining the
2 fingerprint she brought up.

3 THE COURT: I'll overrule the objection.

4 THE WITNESS: In that particular case, the driver
5 fled, but that car was processed for evidence, because there
6 were flesh and things in the windshield. So that driver was
7 no longer there and they had to process that car with respect
8 to that, because of glaring evidence that was right there.

9 In crashes with claimed injuries, they would be
10 hard-pressed to bring out a crime scene investigation team to
11 collect fingerprints on a crash of this nature. It wouldn't
12 rise to the level for them to respond to the scene to do
13 that, nor would it be necessary.

14 I mean, given the level of information that we had
15 to put that car on scene as the car, that pickup that hit the
16 other vehicle was sufficient.

17 MR. BOLENBAKER: No further questions, your Honor.

18 THE COURT: Ms. Brady.

19 MS. BRADY: No, thank you, your Honor.

20 THE COURT: Thank you very much. Lieutenant, you
21 may step down. Watch your step, sir.

22 You want to take a break here?

23 MR. BOLENBAKER: I think it would be good time,
24 your Honor.

1 THE COURT: Ladies and gentlemen, let's take our
2 morning break here. I've spoken to the attorneys. We're on
3 track. It's likely we will finish up your testimony today.
4 So, please, over the break, don't talk about this case
5 amongst yourselves or with anybody else. Don't allow anybody
6 else to talk to you about the case. Don't conduct any
7 independent experiments or investigations. Remember the
8 admonition, the rest of the admonition. The jury may retire.

9 (The following proceedings were had outside the
10 presence of the jury.)

11 THE COURT: Mr. Bolenbaker, what's next?

12 MR. BOLENBAKER: We have Robert Lastine, Trooper
13 Howald, and the Deputies Obos and Gamboa. I have four
14 witnesses left. So probably won't get them all done. Well,
15 maybe. I'm always hopeful.

16 THE COURT: All right. All right. I think that's
17 all we need to address right now. Ms. Brady, anything else
18 you want to bring up?

19 MS. BRADY: The only other thing is, just in terms
20 of logistics with Mr. Lastine, Robert Lastine, and drawing
21 the picture. I have some paper that he can draw a picture of
22 his house there. I want to put it on the Elmo as opposed to
23 having him stand up at an easel, because he's older and
24 that's not comfortable for him.

1 THE COURT: Can he draw a picture over the break
2 of his property and both parties agree that that's -- that
3 would be what he would draw if he was asked to get off the
4 stand and then we can just put that on the Elmo?

5 MS. BRADY: I think that would be perfect if the
6 DA would agree with that.

7 MR. BOLENBAKER: Definitely I'm fine with that.
8 We can just do in on a regular 8 by 11 and we can just put up
9 it up there.

10 MS. BRADY: I brought an 11 by 17 paper, too.

11 THE COURT: Well, whatever, but let's use this
12 break for him to draw the schematic of his property. Maybe
13 two. Maybe you'll have a schematic of the property and maybe
14 a schematic of the house.

15 MS. BRADY: Okay. Thank you, your Honor.

16 THE COURT: I just want to follow up on the
17 objections to Mr. Beck's testimony as to the statements made
18 by Ms. Green at the scene regarding her medical conditions.

19 Just briefly, the Court overruled the objections
20 based on NRS 51.105, which reads that a statement of the
21 declarant's then existing state of mind, emotion, sensation
22 or physical condition, such as intent, plan, motive, design,
23 mental feelings, pain and bodily health is not inadmissible
24 under the hearsay rule. That was the basis I overruled the

1 objections. All right. Let's be in recess for about
2 20 minutes.

3 (A short break was taken.)

4 (The following proceedings were had in the
5 presence of the jury.)

6 THE COURT: Will counsel stipulate to the presence
7 of the jury?

8 MR. BOLENBAKER: Yes, your Honor.

9 MS. BRADY: Yes, your Honor.

10 THE COURT: Thank you very much. Mr. Bolenbaker,
11 next witness.

12 MR. BOLENBAKER: Thank you, your Honor. The State
13 will call Robert Lastine.

14 (One witness sworn at this time.)

15 THE COURT: Mr. Bolenbaker, your witness.

16 MR. BOLENBAKER: Thank you.

17 ROBERT LASTINE

18 called as a witness and being duly sworn did testify as
19 follows:

20 DIRECT EXAMINATION

21 BY MR. BOLENBAKER:

22 Q. Mr. Lastine, can you state your name and spell
23 your last for the record?

24 A. Robert Lastine, L-a-s-t-i-n-e.

1 Q. And, Mr. Lastine, where do you live?
2 A. 290 Bent Pine Circle, Sun Valley.
3 Q. Is that in Washoe County?
4 A. Washoe County.
5 Q. How long have you lived there for?
6 A. Since 1986.
7 Q. Do you know an individual named Andrew Lastine?
8 A. Yes, I do. It he's my nephew.
9 Q. Do you see Andrew Lastine in the courtroom today?
10 A. Yes, I do.
11 Q. Can you point him out and name an article of
12 clothing he's wearing today?
13 A. Brown jacket, sitting over there.
14 MR. BOLENBAKER: Your Honor, may the record
15 reflect the identification of the defendant?
16 THE COURT: The record will so reflect.
17 BY MR. BOLENBAKER:
18 Q. Now, you said you've been living in that address
19 since 1986?
20 A. At that address.
21 Q. At some point, did the defendant, Andrew, did he
22 move in with you?
23 A. Yes, he did. He lived in -- about two years ago,
24 I guess.

1 Q. Okay. And why did he move in?

2 A. He needed a place --

3 MS. BRADY: Objection, relevance.

4 THE COURT: Relevance?

5 MR. BOLENBAKER: Just foundational questions to
6 get him comfortable. I can move on.

7 THE COURT: Sustained.

8 BY MR. BOLENBAKER:

9 Q. You say he moved in about two years ago?

10 A. Yes.

11 Q. And what was the arrangement between you and him
12 in regards to him living there?

13 A. He was supposed to pay me so much rent each month.

14 Q. Was this a formal agreement or an informal
15 agreement?

16 A. An oral agreement. I didn't put anything on
17 paper.

18 Q. So just something that you spoke about with him,
19 he would contribute to or pay you rent?

20 A. Pay me rent.

21 Q. And where in the house was he living at?

22 A. In the extension behind the house that I built.

23 Q. And when did you build that extension to the
24 house?

1 A. I'm not sure of the exact date. It was maybe
2 around 2006. I would have to look at the permits to get the
3 actual date.

4 Q. And, Mr. Lastine, I want to ask you a question.
5 I'm not trying to embarrass you. Do you recall testifying in
6 a pretrial hearing about some memory issues that you have?

7 A. Yes. I was taking some Dalfampridine.

8 Q. And when were you taking that medication?

9 A. I was taking it since the end of January up until
10 a week ago, I had cut it down, and I stopped taking it
11 completely, because of the side effects.

12 Q. When you say the end of January, you mean the end
13 of January of this year?

14 A. January of this year, I had taken it previous, the
15 year before.

16 Q. And you say side effects, does that mean -- can
17 you tell us about how it affects the memory?

18 A. It would cause me to have a little confusion,
19 diarrhea, muscle cramps.

20 Q. Okay. Do you recall if you were taking it back in
21 January of 2016?

22 A. I could have been, but I'm not sure.

23 Q. Okay. And the house you live at on Bent Pine, do
24 you own that home?

1 A. Yes, I do.

2 Q. And who else lives there with you?

3 A. My wife.

4 Q. So it's you and your wife and Andrew living there?

5 A. Yes.

6 MR. BOLENBAKER: May I approach the clerk?

7 THE COURT: You may.

8 MR. BOLENBAKER: May I approach the witness, your
9 Honor?

10 THE COURT: You may.

11 BY MR. BOLENBAKER:

12 Q. Mr. Lastine, I'm going to show you what has been
13 admitted as Exhibit 10. Are you familiar with that truck?

14 A. Yes.

15 Q. And whose truck is that?

16 A. Andrew's.

17 Q. What I'd like to do, Mr. Lastine, is talk about
18 January 7th of 2016. Do you recall what you were doing,
19 let's talk about the daytime, do you remember?

20 A. I can't be 100 percent sure, but most likely I had
21 left for a doctor's appointment with a friend, maybe, on that
22 particular day. I would have to go back and look at it.

23 MS. BRADY: Objection, speculation, he's not
24 certain if it was that day.

1 THE COURT: You can bring it up on cross
2 examination. Overruled.

3 MR. BOLENBAKER: Okay.

4 BY MR. BOLENBAKER:

5 Q. Do you recall seeing Andrew's truck on that day
6 during the daytime?

7 A. I left early that morning. I think I remember
8 seeing the truck there. When I came back later in the day,
9 it was gone.

10 Q. In the morning, did you notice any front end
11 damage to it?

12 A. No. I wouldn't have any reason to look at the
13 truck or to see if there was damage to it.

14 Q. Okay. But you say when you came back him, the
15 truck was no longer there, to your recollection?

16 A. It was no longer there.

17 Q. Do you recall about what time you got home?

18 A. No. No. I can't recall. It was in the
19 afternoon, I'm sure.

20 Q. Was it still light out or was it dark?

21 A. It was probably still light out.

22 Q. What did you do when you got home?

23 A. I usually let the dogs out, sit and watch TV the
24 rest of the night until I go to bed.

1 Q. Was your wife home with you that evening?

2 A. Yes, she was.

3 Q. To your knowledge, when you got home, was Andrew,
4 your nephew, there?

5 A. Not to my knowledge.

6 Q. And then I want to focus now into the evening
7 hours. Did something unusual happen? Did you get a knock at
8 the door?

9 A. Yes. I heard a loud knock. I opened up the door.
10 There was nobody in front of the door. I went outside and
11 from the -- from the inside of the house, I seen an officer
12 standing next to my son's car pointing a flashlight at me and
13 asked me to come out.

14 Q. And did you have a conversation, then, with that
15 deputy?

16 A. Yes.

17 Q. What did he tell you?

18 A. He told me --

19 MS. BRADY: Objection, hearsay.

20 THE COURT: Overruled. It's not for the truth of
21 the matter asserted therein. It's simply to explain what he
22 did after he spoke to the officer.

23 MR. BOLENBAKER: Thank you, your Honor.

24 BY MR. BOLENBAKER:

1 Q. What did the deputy tell you, do you recall?

2 A. He told me the truck had been in an accident. I
3 looked over at the truck. I didn't see anything wrong with
4 it. He said it was smoking. I didn't see any smoke coming
5 from the truck at all. I asked -- the fire truck had arrived
6 with another sheriff's car. I asked them why the fire truck
7 was there. And, again, it was in reference to the truck
8 smoking, which I didn't see anything happening to the truck
9 at the time.

10 Q. Did he ask you who the owner of the truck was?

11 A. He asked me who the owner of the truck was and I
12 replied my nephew.

13 Q. And then what happened?

14 A. I didn't have my shoes on. I went back into the
15 house and put the dogs away so the officers could -- the
16 officers could come into the house.

17 Q. And did you allow them to come into the house?

18 A. Yes, I did.

19 Q. Did you tell them that you were the owner of the
20 home?

21 A. Yes, I did.

22 Q. Did they ask you if Andrew was in the house? Do
23 you recall that?

24 A. They probably did. I don't recall.

1 Q. Do you recall telling them --

2 MS. BRADY: Objection, leading.

3 THE COURT: Overruled.

4 BY MR. BOLENBAKER:

5 Q. Do you recall telling them to go get him in
6 reference to Andrew?

7 A. I told them that he was probably there, go back to
8 the back of the house and go get him. Exact words, I'm not
9 sure.

10 Q. Okay. I wanted to clear a couple of things up.
11 You didn't drive Andrew's truck on January 7th, 2016?

12 A. No. I have my other insured vehicles on my
13 property.

14 Q. And you said when you got home, your wife was with
15 you. To your knowledge, did she ever drive the vehicle?

16 A. No. She can't drive a clutch.

17 MR. BOLENBAKER: I want to learn more about the
18 truck in question. Permission to publish this, number ten?

19 THE COURT: Granted.

20 BY MR. BOLENBAKER:

21 Q. Can you give us a little background on that truck?

22 A. I bought it from a relative in pretty much the
23 same condition that you see it in now. It was a well-used
24 truck. It's original paint. It has some dents and dings in

1 it on the bumpers, but nothing major.

2 Q. And so you actually were the one who originally
3 purchased the truck?

4 A. Yes. I purchased it for my son.

5 Q. Do you recall about when you purchased the truck?

6 A. When my son was 16.

7 Q. Do you know about how long ago that was?

8 A. He was born in '77. So 16 years from '77.

9 Q. Testing my math there, so the early '90s, does
10 that sound about right?

11 A. Yes.

12 Q. Did he drive that truck?

13 A. He drove that truck and broke that truck, and he
14 drove another truck and broke that one. And I fixed them
15 both again.

16 Q. You eventually, then, gave the truck to Andrew?

17 A. Yes.

18 Q. Why did you give it to Andrew?

19 A. Because my son passed away and I had too many
20 vehicles and I thought he could benefit from the use of the
21 truck with better gas mileage.

22 Q. So when you gave it to him, then, did he register
23 the truck his name?

24 MS. BRADY: Objection, leading.

1 THE COURT: Overruled.

2 THE WITNESS: As far as I know, the truck is
3 registered in his name.

4 BY MR. BOLENBAKER:

5 Q. Now, the next day, so I guess January 8th, did you
6 get a look at the some of the damage to the front end of the
7 truck?

8 A. Yes, I did.

9 Q. I'll show you 17. Is that some of the damage you
10 noticed on the truck?

11 A. Yes. Yes.

12 Q. And then also number 14, I'm referring to this
13 area right here. Is that some of the damage you noticed on
14 the truck --

15 A. Yes.

16 Q. -- on the hood to the passenger side? How did it
17 make you feel when you saw that?

18 A. I was upset, because the truck was damaged.

19 Q. And why were you upset?

20 A. Because it belonged to my son at one time.

21 Q. Who were you upset with?

22 A. Initially, I was upset with my nephew.

23 MR. BOLENBAKER: No further questions, your Honor.

24 THE COURT: Thank you. Cross examination.

1 MS. BRADY: Thank you, your Honor.

2 CROSS EXAMINATION

3 BY MS. BRADY:

4 Q. Good morning, sir.

5 A. Good morning.

6 Q. You are retired?

7 A. Yes.

8 Q. What was your career?

9 A. I was a maintenance manager for the post office.

10 Q. And you have some sort of electrical experience?

11 A. Yeah. I have three degrees.

12 Q. What are those?

13 A. One in electronics, one in system analyst
14 computers, and general studies.

15 Q. Okay. And Andrew is your nephew. He's your
16 brother's son?

17 A. Yes.

18 Q. What is your brother's name?

19 A. Mark.

20 Q. What is your brother's full name?

21 A. Mark Allen -- actually, it's Burton Allen Lastine,
22 but he added Mark to it when he was younger, because he
23 didn't like Burton.

24 Q. What is Andrew's first name?

1 A. Andrew Robert -- the middle names gets -- there's
2 another one in there.

3 Q. Was the Robert in honor of you?

4 A. Yes.

5 Q. And you have another nephew, Andrew's brother?

6 A. I have a couple of different nephews, yes.

7 Q. What are their names?

8 A. Matthew and Brandon.

9 Q. What was your son's name?

10 A. Robert Wesley.

11 Q. I'm going to talk about your property now. Your
12 property is fairly large, about a third of an acre?

13 A. A little over a third of an acre.

14 MS. BRADY: Okay. If I may approach?

15 THE COURT: Certainly.

16 MS. BRADY: If I may show the witness what has
17 been marked as proposed Exhibit Number 37.

18 BY MS. BRADY:

19 Q. I'd like you to take a look at this. Does this
20 look familiar to you?

21 A. Yes.

22 Q. And what is this?

23 A. It's a drawing I made of my property.

24 Q. Okay.

1 MS. BRADY: Permission to have this admitted?
2 MR. BOLENBAKER: No objection, your Honor.
3 MS. BRADY: Permission to publish?
4 THE COURT: Certainly. It's admitted, Ms. Clerk.
5 MS. BRADY: Thank you.
6 BY MS. BRADY:
7 Q. So that's just sideways what the whole thing looks
8 like, correct?
9 A. Yes.
10 Q. Could you just describe your property and the
11 various automobiles and buildings located on your property?
12 A. I collect cars. I have collected a lot of
13 Barracudas at one time. I bought a couple of different
14 trucks for my son. My wife's got a Durango. I have a 2006
15 Mega Cab. I have two other Durangos. I have a boat in the
16 backyard. I had two trailers, two RVs.
17 Q. Sir, can you point to the boat on the -- if you
18 touch the screen, you can make a mark with your nail, if you
19 touch. Is that the boat?
20 A. That's the boat.
21 Q. And what about the RV? Could you point, touch
22 that?
23 A. This other one is the trailer.
24 Q. When you say trailer, what do you mean by a

1 trailer?

2 A. A 32-foot like Fleetwood, but I forget the name of
3 the brand.

4 Q. Okay. And where is the truck in question, the
5 Ford?

6 A. Right there in front of the truck bed that I use
7 as a planter, flower bed.

8 Q. And where is your -- could you circle your house?
9 That's fine. Actually, if you could circle the add on? How
10 big was the add on?

11 A. 20-by-20.

12 Q. There's a refrigerator in there?

13 A. There's a refrigerator in there.

14 Q. And a bed?

15 A. And a bed.

16 Q. Do you know if there was a microwave?

17 A. No. There's no microwave.

18 Q. That's the room that Andrew was renting from you?

19 A. Yes. That's the room that he was renting from me.

20 Q. He's not currently living there?

21 A. No. He's no longer currently living there.

22 Q. And then you have a garage as well. Could you
23 please point to the garage? In that schematic, it looks like
24 the garage is bigger than the house?

1 A. Yes, it is.

2 Q. And then all the blue squares are various
3 automobiles that you were discussing just now?

4 A. That I'm in the process of restoring.

5 Q. And you drew something in red. What is the red
6 indicate?

7 A. That's all the fencing around the property and
8 into the back of the yard.

9 Q. And on this night in question, it was pretty dark?

10 A. Yes, it was.

11 Q. You don't have a separate light in your backyard?

12 A. They weren't turned on.

13 Q. Actually, if you can indicate to me on this where
14 your backyard is.

15 A. This is the backyard.

16 Q. Okay. Does Andrew usually -- how does he usually
17 enter the home, his portion of the home?

18 A. Half the time through the back.

19 Q. Okay. And then the other half through?

20 A. The front.

21 Q. The front would be your front door?

22 A. Would be my front door.

23 Q. And the back would be where?

24 A. Right here on this corner.

1 Q. Okay. And you don't monitor Andrew's comings and
2 goings?

3 A. There's no reason to.

4 Q. So you wouldn't -- you really don't note any point
5 in time if he's home?

6 A. No.

7 Q. And on this day in question, you didn't know if he
8 was home?

9 A. No.

10 Q. And you didn't know -- you said that at one point
11 you think maybe the truck was gone in the morning?

12 A. Yes. No, in the afternoon.

13 Q. In the afternoon. But you're not positive that
14 was the same day?

15 A. No. It was probably gone that afternoon.

16 Q. That afternoon. But you didn't check to see
17 whether or not he was home?

18 A. No.

19 Q. And you also didn't monitor which friends he had
20 coming over?

21 A. No. It's too hard to keep track.

22 Q. Because he had a lot of friends that would come
23 over?

24 A. Yes, he did.

1 Q. And he also had a girlfriend that was living
2 there?

3 A. Yes.

4 Q. At the time of this incident, she was living with
5 him?

6 A. Up until a month before. She moved out just
7 before Christmas.

8 Q. Okay. So he's lived there with other people and
9 he has friends that come and go?

10 A. Yes.

11 Q. And that actually annoyed you a little bit about
12 him, didn't it, the friends coming and going? If not, you
13 were fine with it?

14 A. No, not really. They didn't do anything to bother
15 me at the time.

16 Q. One thing that did bother you was that he used to
17 leave the keys in the truck sometimes?

18 A. Yes. All his brothers did.

19 Q. And at one point, there were three to four sets of
20 keys at one point?

21 A. Yes.

22 Q. That you lost track of?

23 A. I lost track of and I ended up changing the
24 ignition switch once because the keys couldn't be found.

1 Q. And so at this point, you don't keep track of
2 where the keys are, how many there are, whether others were
3 made?

4 A. No.

5 Q. Okay. Andrew also had a Yukon?

6 A. Yes.

7 Q. And you mentioned on direct examination that the
8 officer told you the truck was smoking, but you didn't see
9 the smoke?

10 A. No. I didn't see any smoke.

11 Q. And that bothered you?

12 A. It bothered me, because the fire department was
13 there and I couldn't go look at the truck. He told me not to
14 go near the truck.

15 Q. And the officers, to your knowledge, didn't tow
16 the truck?

17 A. No, they didn't.

18 Q. And to your knowledge, they didn't run any tests
19 on it?

20 A. I wouldn't have been aware of any tests done to
21 the truck after I went back into the house.

22 Q. But to your knowledge, there was -- they didn't
23 take it somewhere and do any kind of testing or
24 fingerprinting to your knowledge?

1 A. No.

2 MS. BRADY: No further questions.

3 THE COURT: Thank you, Ms. Brady. Any questions,
4 Mr. Bolenbaker?

5 MR. BOLENBAKER: Just briefly.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MR. BOLENBAKER:

9 Q. You said Andrew is not living there anymore?

10 A. No, he's not.

11 Q. Why not?

12 A. I have a policy if the sheriff's department comes
13 to my property, that any person that causes them to show up
14 in my area, I decided it's not worth the frustration of
15 drawing the attention to me.

16 Q. I'm going to show you number 37 again. Just so
17 we're clear, this is the truck in question?

18 A. Yes.

19 Q. And where is the front entrance to the home?

20 A. Right there off the porch.

21 Q. And where is the entrance, the outside entrance
22 into the add on?

23 A. Right there.

24 Q. So on your property, one would have to bypass the

1 front entrance and go around through here all the way to get
2 to the side entrance, is that fair?

3 A. Yes.

4 Q. And most evenings, where are you residing within
5 the house?

6 A. In the living room.

7 Q. Where is the living room on there?

8 A. The living room is in this area.

9 Q. Right next to the front entrance?

10 A. Next to the front door.

11 Q. You said you changed the ignition switch on the
12 truck. What does that mean?

13 A. When my son was driving it, he lost the original
14 set of keys, so I ended up changing the ignition switch.

15 Q. So what does that do in order for the keys in
16 question, the missing keys?

17 A. The question I had at that time had made up spare
18 sets of ignition keys that I don't think it had a door key
19 for it. He, my son, had keys for it. When Andrew got the
20 truck, I could only find one set of keys for it.

21 Q. So after you change the ignition switch on the
22 truck, to your knowledge, there was only one set of keys?

23 A. There was actually three -- three sets made up off
24 of the one key. Well, there were two keys that came with the

1 ignition switch originally and I had two made up besides that
2 for spares in case -- my son had a problem with losing keys.

3 Q. And I want to try and focus this time line a
4 little bit. So you testified that your son had a habit of
5 losing keys?

6 A. Yes.

7 Q. And when, and I'm not trying to pry, when did your
8 son pass?

9 A. He passed away in 2013. If he hadn't passed, I
10 would have still been in Iowa.

11 Q. So you were in Iowa at the time he passed?

12 A. I was in Iowa working for the post office at the
13 time.

14 Q. And then after he passed, did you come back then
15 to the property at 290 Bent Pine Circle?

16 A. I came back to the property to take care of my
17 wife. I had to resign my job.

18 Q. And when did --

19 MS. BRADY: Objection, relevance. It seems like
20 it's going far afield.

21 THE COURT: All right. Overruled at this point.

22 MR. BOLENBAKER: Thank you.

23 BY MR. BOLENBAKER:

24 Q. When did you give the truck, then, to Andrew?

1 A. About a year ago -- not a year ago. Just probably
2 before Christmas -- actually, during the summer, probably in
3 June of 2014.

4 Q. Of 2014?

5 A. Or 2015.

6 Q. 2015?

7 A. Yeah.

8 Q. So the summer before this happened?

9 A. The summer before this happened.

10 Q. Do you recall meeting in my office a couple of
11 weeks ago and talking about the case?

12 A. Yes.

13 Q. Do you recall telling me and my investigator that
14 to your knowledge, there was only one set of keys to the
15 truck?

16 A. Yes.

17 Q. And Andrew had those keys?

18 A. Yes.

19 MR. BOLENBAKER: No further questions, your Honor.
20 Thank you.

21 THE COURT: Ms. Brady.

22 MS. BRADY: Thank you.

23 CROSS EXAMINATION

24 BY MS. BRADY:

1 Q. There was only one set of keys that you knew where
2 they were?

3 A. There was only one set that I knew where they
4 were.

5 Q. But when you changed out the ignition, so we're
6 clear, it came with two and then you got another one made?

7 A. Yes.

8 Q. In terms of that evening, just to clarify, too,
9 you were sitting in the front room with your wife watching
10 TV?

11 A. Yes.

12 Q. And you never saw Andrew come or go?

13 A. No.

14 Q. You never saw anybody come or go?

15 A. No.

16 Q. You never heard anybody come or go?

17 A. No. We usually have the TV up loud, because I
18 have a -- I have a hearing aid, but I don't wear them,
19 because the batteries always discharging, it gets
20 uncomfortable.

21 Q. Okay. And at what point -- you said when you got
22 there, or when you opened the door, someone was already
23 looking at the truck?

24 A. No. I didn't see anybody looking at the truck.

1 All I seen when I walked up to the door was the flashlight in
2 my eyes and an officer standing in front of my son's truck --
3 I mean my son's car.

4 MR. BRADY: All right. No further questions.
5 Thank you, sir.

6 THE COURT: Thank you, Ms. Brady. Does that raise
7 any questions, Mr. Bolenbaker?

8 MR. BOLENBAKER: No, your Honor. Thank you.

9 THE COURT: Mr. Lastine, you may step down. Watch
10 your step down.

11 THE WITNESS: Thank you.

12 THE COURT: Mr. Bolenbaker, do you wish to start
13 on another witness.

14 MR. BOLENBAKER: We can start, I don't anticipate
15 finishing, but I do have one more witness present.

16 THE COURT: Let's bring in that witness.

17 MR. BOLENBAKER: Trooper Alyssa Howald.

18 (One witness sworn at this time.)

19 MR.. BOLENBAKER: May I approach your clerk, your
20 Honor?

21 THE COURT: You certainly may.

22 ALYSSA HOWALD

23 called as a witness and being duly sworn did testify as
24 follows:

DIRECT EXAMINATION

BY MR. BOLENBAKER:

Q. Good morning, sergeant.

A. Good morning.

Q. Can you state your name and spell your last for the record?

A. Sure. First name is Alyssa, last name is Howald, H-o-w-a-l-d.

Q. And where do you work?

A. I work for the Nevada Highway Patrol.

Q. And how long have you worked there for?

A. I've been with the Department of Public Safety since 2007 and with the Highway Patrol since 2012.

Q. What were you doing at the Department of Public Safety?

A. When I was first hired, I worked for the Division of Parole and Probation.

Q. And what did you do there?

A. There I supervised offenders, convicted felons. When I left, I was in the sex offender unit. And then I transferred over to the Highway Patrol Division.

Q. That was 2012, you said?

A. Yes.

Q. Can you briefly describe to the jury the training

1 you undergo to become a trooper, then?

2 A. We have our POST academy training where we learn
3 accident investigation, DUI investigation, traffic
4 enforcement. Then we're on the FTO program, the field
5 training program, where we apply those techniques in real
6 life on the street with a training officer.

7 And then we're released, we're on our own, and we
8 do day-to-day accident investigation, DUI investigation,
9 public contacts.

10 Q. And at some point, were you promoted to sergeant?

11 A. I was.

12 Q. When was that?

13 A. I was promoted last year August 31st.

14 Q. And so what's the difference between a trooper and
15 a sergeant?

16 A. So as a sergeant, supervisor duties, such as
17 overseeing paper work, time sheets, managerial things. And
18 then you have the leadership aspect of things, coaching,
19 training, mentoring, making sure the troopers are doing what
20 they're supposed to be doing, overseeing daily activities.

21 Q. Sergeant, what I want to do is focus your
22 attention to January 7th of 2016 at approximately 5:59 p.m..
23 Did you get a call out to Sun Valley Boulevard and Fifth
24 Avenue in Washoe County?

1 A. I did.

2 Q. What was the nature of that call?

3 A. The initial call was a hit and run collision that
4 occurred on Sun Valley and Fifth Avenue where the suspect
5 vehicle fled the scene.

6 Q. So describe to the jury what you do when the call
7 comes in?

8 A. So for a hit and run, knowing that the other
9 vehicle is not on scene, I'm starting to think when I get
10 there I'm going to look for evidence of what kind of vehicle
11 it was or the roadway marking. I'm going to try to talk to
12 the victim, figure out what kind of a crash it was. I'm
13 starting to think of what kind of preliminary investigation
14 I'm going to do when I get there.

15 Q. Do you recall about how long it took you to get
16 there?

17 A. Off the top of my head, I'm thinking maybe ten
18 minutes.

19 Q. And describe the scene when you arrived there.

20 A. When I arrived on scene, the first thing I see is
21 a white Kia SUV in the number two northbound lane of Sun
22 Valley and it's angled sort of into the bike lane. I see a
23 debris field behind the SUV. I see a paramedic unit on
24 scene. That's what I initially see when I get there.

1 Q. Okay. And this area, just so -- is there some
2 sort of concurrence of jurisdiction with Washoe County? How
3 does that work?

4 A. Yes. In that area, Washoe County works that area
5 as well. So I work for the State of Nevada. Essentially, I
6 can have jurisdiction anywhere in the State of Nevada. In
7 Washoe County, deputies have jurisdiction in Washoe County.
8 I don't know the exact reason why they can be there, but they
9 can be there.

10 Q. So when you arrived, were there any
11 representatives from Washoe County Sheriff's Office that you
12 saw?

13 A. Yes.

14 Q. Okay. Is that Deputy Zerkle, do you recall?

15 A. I don't recall his name, but there was a deputy
16 there.

17 Q. Okay. You said a REMSA unit was there. Can you
18 give a little more description on what you saw with that?

19 A. So the white Kia SUV that was in the number two
20 lane, the ambulance was sort of parallel to that or a little
21 bit in front of that. I walked up to the ambulance, opened
22 the door, and there was a female strapped to a back board.
23 She was the driver of the Kia. I just wanted to get some
24 preliminary injury information on her. And I was told she --

1 MS. BRADY: Objection, hearsay within hearsay.

2 THE COURT: Overruled. Go ahead.

3 THE WITNESS: I was told by the paramedics in the
4 ambulance that she had some neck and back pain.

5 BY MR. BOLENBAKER:

6 Q. And then what do you do?

7 A. I don't want to take up too much time of the
8 ambulance, because obviously they need to get to the
9 hospital. So I shut the door, came back to the scene, and I
10 started looking at exactly what happened.

11 Q. And what did observe?

12 A. So as I explained earlier, there was the white Kia
13 SUV, it had moderate damage to the rear of the vehicle.
14 Behind it was a debris field. Located in that debris field
15 was a license plate.

16 Q. And what did you do with that license plate?

17 A. I ran the license plate number through our
18 dispatch.

19 Q. Did you get an address associated with it?

20 A. I did.

21 Q. What was the address?

22 A. The address was 290 Bent Pine Circle in Sun
23 Valley.

24 Q. At the time you were a trooper, is that right?

1 A. Correct.

2 Q. Was your sergeant then Sergeant Bowers?

3 A. Yes.

4 Q. So once you get an address associated with the
5 license plate, what do you do?

6 A. So right around the time that I got the return
7 back in, meaning I got the name and the address of the
8 registered owner of the license plate left on scene, we were
9 notified through dispatch that Washoe County deputies were
10 already at that listed address, that same address, and they
11 had located the vehicle.

12 Q. So what did you do?

13 A. At the time, Sergeant Bowers continued the
14 accident investigation. I left the scene of the accident and
15 proceeded to that address 290 Bent Pine Circle.

16 Q. And how far away is that address from Fifth and
17 Sun Valley?

18 A. It was very close to the accident scene, maybe a
19 minute drive.

20 Q. When you got to the address, what did you observe?

21 A. When I arrived on scene, the Washoe County
22 deputies were already on scene. It was a cul-de-sac location
23 and I walked into the driveway of the listed address. I
24 observed an older model Ford pickup in the driveway. I

1 observed the license plate, the rear license plate to that
2 Ford pickup was the same license plate that I observed on the
3 scene of the crash.

4 Q. Then what did you do?

5 A. I met with the deputy of the Washoe County
6 Sheriff's Office who informed me that he had matched up
7 footprints.

8 MS. BRADY: Objection, hearsay.

9 MR. BOLENBAKER: I don't think it's being offered
10 for the truth, your Honor.

11 THE COURT: Overruled.

12 BY MR. BOLENBAKER:

13 Q. Go ahead.

14 A. On that particular night, it had been snowing, so
15 the ground had snow on it. The deputy that I met with had
16 gotten there before me, he had matched up, told me he had
17 matched up footprints from the on driver's side of the door
18 leading to a door at that residence. And that they had the
19 suspect in custody already.

20 Q. And then what did you do?

21 A. I went to the front door of the residence. It was
22 already open. Inside was the subject that they had placed in
23 handcuffs sitting on the crouch.

24 Q. I'll stop you there. Do you see that individual

1 in the courtroom today?

2 A. I do.

3 Q. Can you point to him and name an article of
4 clothing he's wearing today?

5 A. Sitting at the defendant table in maybe a dark
6 green jacket, black shirt.

7 MR. BOLENBAKER: Your Honor, may the record
8 reflect the identification of the defendant?

9 THE COURT: The record will so reflect.

10 BY MR. BOLENBAKER:

11 Q. And so where was he -- give us the scene of when
12 you enter, then, again?

13 A. Inside the residence, when I looked to my left,
14 there was a black couch. When I looked to my right, it
15 looked like a little living room with the TV and some chairs.

16 Q. And where was the defendant?

17 A. The defendant was sitting on the couch.

18 Q. Pursuant to statute, did you ask him what his name
19 was?

20 A. I did.

21 Q. And what was his response?

22 A. He did not provide any information regarding his
23 identity.

24 Q. Did he refuse to answer the question?

1 A. Yes.

2 Q. Did you notice any mail in the residence of
3 significance?

4 A. I did. Near the couch was a pile of papers. One
5 of which had a piece of mail addressed to the name of the
6 registered owner of the older Ford pickup that was at the
7 residence.

8 MR. BOLENBAKER: May I approach, your Honor?

9 THE COURT: You may.

10 BY MR. BOLENBAKER:

11 Q. Let me show you what has been marked as proposed
12 Exhibit 32. Is that the piece of mail that you were
13 referring to?

14 A. Yes.

15 Q. Does that photograph accurately depict the piece
16 of mail you were referring to?

17 A. Yes.

18 MR. BOLENBAKER: Your Honor, at this time I'd move
19 to admit proposed Exhibit 32.

20 THE COURT: Ms. Brady.

21 MS. BRADY: No objection.

22 THE COURT: 32 is admitted, Ms. Clerk.

23 MR. BOLENBAKER: Permission to publish, your
24 Honor?

1 THE COURT: Granted.

2 BY MR. BOLENBAKER:

3 Q. Obviously, you see the address here is addressed
4 to Andrew Lastine, 290 Bent Pine Circle?

5 A. Yes.

6 Q. So as a result of your investigation and Washoe
7 County's investigation, did you make the decision to arrest
8 the defendant?

9 A. Yes.

10 Q. And did you perform what's commonly referred to as
11 a search incident to arrest?

12 A. I did.

13 Q. What is a search incident to arrest?

14 A. So once a person is placed under arrest, search
15 their person for any evidentiary items, any items that could
16 be used to hurt either jail staff or myself, search for
17 weapons, just search for items for inventory purposes.

18 Q. And did you perform that on the defendant?

19 A. I did.

20 Q. And what did you locate in his pockets?

21 A. In his right rear, he was wearing jeans at the
22 time, I located a set of keys.

23 Q. And did they appear to you to have a vehicle key
24 on it?

1 MS. BRADY: Objection, leading.

2 THE COURT: Overruled.

3 THE WITNESS: Yes.

4 MR. BOLENBAKER: May I approach again, your Honor?

5 THE COURT: You may.

6 BY MR. BOLENBAKER:

7 Q. I'm going to show you what has been marked as
8 proposed Exhibit 31? Could you take a look at that
9 photograph?

10 A. Yes.

11 Q. Does that photograph fairly and accurately depict
12 the keys in the defendant's pocket on January 7th, 2016?

13 A. Yes.

14 MR. BOLENBAKER: At this time, your Honor, I'd
15 move to admit proposed Exhibit 31.

16 THE COURT: Ms. Brady.

17 MS. BRADY: I would object in terms of relevance
18 as to what vehicle they pertain to.

19 THE COURT: The objection is overruled.
20 Ms. Clerk, Exhibit 31 is admitted.

21 MR. BOLENBAKER: Permission to publish this, your
22 Honor?

23 THE COURT: Granted.

24 BY MR. BOLENBAKER:

1 Q. Are those the keys you found inside the pocket?

2 A. Yes.

3 Q. Now, was the defendant transported, then, to the
4 Washoe County Jail?

5 A. Yes.

6 Q. And during the process of him going to jail, did
7 you have an opportunity to be in his presence for a period of
8 time?

9 A. I did.

10 Q. Did you question him about what had happened? I'm
11 talking about some of the statements he made, just to focus
12 in here. Were you questioning him at this time period?

13 A. No.

14 Q. Did he make some spontaneous statements, then, to
15 you?

16 MS. BRADY: Objection leading.

17 THE COURT: Overruled.

18 THE WITNESS: He did.

19 BY MR. BOLENBAKER:

20 Q. What were those statements?

21 A. To the exact quote, I would like to look at the
22 report so I can report it exactly.

23 MR. BOLENBAKER: May I approach again?

24 THE COURT: You may.

1 BY MR. BOLENBAKER:

2 Q. Sergeant, I'm going to show you your report. Just
3 take a look at the relevant paragraph right here and then let
4 me know when you're done.

5 A. Okay.

6 Q. Now, in your report, did you put quotations around
7 the statements that the defendant had said on January 7th,
8 2016?

9 A. I did.

10 Q. And why did you put them in quotation marks?

11 A. I put them in quotation marks, because those were
12 the exact words that he said.

13 Q. Okay. And then did you memorialize that, then, in
14 your report?

15 A. I did.

16 MR. BOLENBAKER: I'd ask that she read in the
17 quotations as a recorded recollection into the record.

18 THE COURT: Would it refresh your recollection to
19 read those quotes?

20 THE WITNESS: Yes.

21 THE COURT: You may.

22 THE WITNESS: Quote, I was a fucking idiot and
23 that's all that matters, end quote. Quote, one, you're a
24 fucking idiot, two, you're a fucking idiot, three, idiot,

1 this guy.

2 BY MR. BOLENBAKER:

3 Q. And was there anybody else around you during this
4 time period? Let me ask it a better way. Does it appear to
5 you from the statements that he was referring to himself?

6 A. Yes.

7 MS. BRADY: Objection, speculation.

8 THE COURT: It's her present impression, so the
9 objection is overruled.

10 MR. BOLENBAKER: I have no further questions, your
11 Honor. Thank you.

12 THE COURT: Ms. Brady, cross examination.

13 MS. BRADY: Thank you.

14 CROSS EXAMINATION

15 BY MS. BRADY:

16 Q. Good morning.

17 A. Good morning.

18 Q. You were the one that took the photographs that
19 night?

20 A. I took some photographs, but not all of them.

21 Q. Which other deputy was taking photographs?

22 A. Deputy Gamboa.

23 Q. You had nothing to do with the search and
24 identification of the suspect on the property at Bent Pine

1 Circle, correct?

2 A. I never searched inside the residence?

3 Q. Correct.

4 A. Right.

5 Q. Or the property at all in search of the suspect?

6 You weren't the one to do that?

7 A. No.

8 Q. And as far as you knew when you arrived on the
9 scene, it was packaged up nicely, he was on the couch, they
10 had a suspect, you didn't inquire any further?

11 A. He was on the couch. I inquired my own about the
12 pickup truck in the front yard, but nothing to do with
13 getting him inside the residence.

14 Q. And you didn't inquire as to who else would be on
15 the property?

16 A. I did not.

17 Q. And you didn't search the property for anyone
18 else?

19 A. No.

20 Q. You didn't fingerprint the truck doors?

21 A. I did not.

22 Q. And you didn't inquire as to whether or not anyone
23 else drove that truck? Let me phrase that another way. You
24 didn't inquire as to whether anyone else had access to that

1 truck?

2 A. I did not.

3 Q. I'm going to show you some pictures. Let the
4 record reflect I'm showing the witness what is marked as
5 Exhibit 20. Is this one of the pictures you took?

6 A. I did not take that photo.

7 Q. Does this look familiar to you? Is this to your
8 knowledge what was taken on the day in question?

9 A. Yes.

10 Q. And did you observe this area? Can you see where
11 it is?

12 A. I can see the photo, yes.

13 Q. And what is this up here? Do you know what that
14 is?

15 A. I don't.

16 Q. Okay. All right. Do you recognize this? Did you
17 take this picture?

18 A. I did not.

19 Q. Do you recognize this?

20 A. No.

21 Q. So you don't recognize this as the gate to the
22 back area?

23 A. I am not sure where that is on the property.

24 Q. Do you recognize this?

1 A. Yes. That's the Ford pickup truck.

2 Q. And you recognize the snow?

3 A. Yes.

4 THE COURT: Ms. Brady, can we get an exhibit
5 number?

6 MS. BRADY: Yes, sir. This is marked as
7 Exhibit 11.

8 THE COURT: Thank you.

9 BY MS. BRADY:

10 Q. There's lots of footprints there, correct?

11 A. There is footprints there, yes.

12 Q. In other words, it wasn't untouched fresh snow?

13 A. Correct.

14 MS. BRADY: No further questions.

15 THE COURT: Thank you, Ms. Brady. Does that raise
16 any questions, Mr. Bolenbaker?

17 MR. BOLENBAKER: No, your Honor. Thank you.

18 THE COURT: Sergeant, you may step down. Watch
19 your step. Ladies and gentlemen, we're going to take our
20 lunch break here. As I said, we're on track. We'll probably
21 be close to finishing with the testimony. So you may get an
22 early release this afternoon. The attorneys and I have to
23 work on the jury instructions. Trust me, not all of these
24 are going to be given to you, but we'll weed them out.

1 So over the lunch break, which will go to 1:30,
2 over the lunch break, please, don't talk about this case
3 amongst yourselves or with anybody else. Don't allow anybody
4 else to talk to you about the case. Don't form any
5 conclusions until the case has been submitted to you. Don't
6 perform any independent investigation or experiments. Don't
7 listen to any radio, television news reports, engage in
8 social media. Keep an open mind. We're in the clubhouse
9 turn, so to speak. So I'll see you after lunch. The jury
10 may retire.

11 (The following proceedings were had outside the
12 presence of the jury.)

13 THE COURT: What's next, Mr. Bolenbaker?

14 MR. BOLENBAKER: Your Honor, I have two more
15 witnesses. They're both the deputies from the Washoe County
16 Sheriff's Office who responded to the residence.

17 Ms. Brady and I spoke over the break about timing.
18 We thought that we certainly would finish those two witnesses
19 in the afternoon. We could perhaps canvass the defendant at
20 that time. They only noticed one witness, which is Robert
21 Lastine, who already testified. We could canvass the
22 defendant, settle jury instructions. It would allow Mr.
23 Lastine the opportunity tonight to consider whether he wanted
24 to testify and then I would tomorrow morning we start with

1 his testimony or we move right into closing arguments. That
2 was kind of our plan is.

3 THE COURT: Ms. Brady.

4 MS. BRADY: Thank you, your Honor. Yes, I do need
5 sometime to speak with Mr. Lastine now that the evidence has,
6 you know, been presented, to talk to him more about whether
7 or not he wants to testify. And also I have to discuss with
8 him some of the jury instructions. There's some things I
9 would need his permission to argue for. So I do need some
10 time to speak with him before we settle the jury
11 instructions.

12 THE COURT: That's certainly appropriate. Can you
13 speak to him over the lunch hour, at least, so we can get a
14 head start. If he agrees to some of these jury instructions,
15 we can at least use this afternoon to settle those.

16 MS. BRADY: Yes, your Honor.

17 THE COURT: What I suggest we do is let me canvass
18 Mr. Lastine after we've settled the jury instructions, but I
19 won't accept his decision until tomorrow morning. That will
20 give him overnight to reflect and engage in any further
21 discussions with you and Ms. Maher as to what his options
22 are.

23 And then tomorrow morning, we'll reengage perhaps
24 about quarter of 9:00 and I'll inquire of Mr. Lastine what

1 his decision is and we'll start at 9:00. How does that
2 sound?

3 MS. BRADY: Thank you, your Honor.

4 MR. BOLENBAKER: Yes. Thank you, your Honor.

5 THE COURT: We have the packet for you, I think.

6 MS. BRADY: We just received them. Thank you.

7 THE COURT: Take a look at them over the lunch
8 hour. Anything else before we retire, Mr. Bolenbaker?

9 MR. BOLENBAKER: No, your Honor. Thank you.

10 THE COURT: Ms. Brady.

11 MS. BRADY: No, thank you.

12 THE COURT: Ms. Maher.

13 MS. MAHER: No, your Honor.

14 (A lunch break was taken.)

15 (The following proceedings were had in the
16 presence of the jury.)

17 THE COURT: Good afternoon, ladies and gentlemen.
18 Will counsel stipulate to the presence of the jury?

19 MR. BOLENBAKER: Yes, your Honor.

20 MS. BRADY: Yes, your Honor.

21 THE COURT: Mr. Bolenbaker.

22 MR. BOLENBAKER: The State would call Deputy
23 Martin Obos.

24 (One witness sworn at this time.)

1 THE COURT: Mr. Bolenbaker, your witness.

2 MR. BOLENBAKER: Thank you, your Honor.

3 BY MR. BOLENBAKER:

4 Q. Deputy, can you state your name and spell your
5 last?

6 A. It is Marty Obos. Last name, O-b-o-s.

7 Q. Deputy, where do you work?

8 A. I work for the Washoe County Sheriff's Office.

9 Q. And how long have you worked there for?

10 A. 17 years.

11 Q. Can you for the jury just briefly describe the
12 training you undergo to be a deputy in the Washoe County
13 Sheriff's Office?

14 A. Sure. Once you get selected to go to the police
15 academy, it's an 18-week program. Once you graduate the
16 academy, you go through a training program in the jail. I
17 spent about seven years in there. Then I went to patrol. I
18 did ten years on patrol. And I currently work in the civil
19 division.

20 Q. What do you do in the civil division now?

21 A. On a daily basis, we serve evictions and temporary
22 and extended protection orders.

23 Q. And just so we're on the same page, that
24 particular duty has nothing to do with this particular case?

1 A. No. No. It does not.

2 Q. What I want to do is focus your attention to
3 January 7th of 2016. Did you go to an address at 290 Bent
4 Pine Circle in Washoe County?

5 A. I did.

6 Q. Can you describe the circumstances of how you got
7 initially involved in the case?

8 A. I was assigned to work the south district, which
9 is I80 south of that towards Washoe Valley. There had been a
10 call that came out that was up in the Sun Valley area and it
11 seemed like they needed additional resources. So I
12 self-dispatched myself to the call and responded from
13 somewhere down Damonte Ranch area.

14 Q. Can you describe the difference between someone, a
15 deputy being dispatched to a call versus someone
16 self-dispatching themselves to a call?

17 A. Yeah. A lot of times we'll get calls into our
18 dispatch center and they'll dispatch whatever units are
19 available and in the area of the approximate incident and
20 they'll be dispatched by the dispatch center.

21 Sometimes they don't know where everybody is at or
22 who is available. So me having that knowledge, I dispatched
23 myself to the call knowing everybody else was tied up on
24 another assignment.

1 Q. So let's talk about, then, your arrival. What
2 were your initial observations upon arrival?

3 A. When I arrived down the short street, Bent Pine is
4 very short street, ends up in a cul-de-sac, I noticed there
5 were already a couple of uniformed officers there along with
6 a sergeant. I exited my patrol vehicle and approached the
7 sergeant who gave me very brief information on what had
8 occurred.

9 Q. Did you notice a truck in question on the
10 property?

11 A. At first, I did not, but I did later on in the
12 call.

13 Q. Okay. So after, then, you get the information
14 from your sergeant, what do you do?

15 A. I get the information from the sergeant. I meet
16 up with one of my partners, Deputy Gamboa, who explains to me
17 that he wanted to make contact with the subject inside the
18 residence, who possibly could have been involved in the
19 incident.

20 Q. And so what do you do?

21 A. I walk with him towards the front door, what I
22 believe the front door was. Some of the houses in that area,
23 they have multiple entrances. This was the closest one to
24 the driveway area. So at the door, we made contact at first,

1 entered into a little enclosed mud room, which beyond that
2 was the door into the trailer area.

3 Q. And did somebody or one of you knock on the door?

4 A. I don't remember who knocked on the door.

5 Q. And did an individual later identified to you as
6 Robert Lastine --

7 MS. BRADY: Objection, leading.

8 THE COURT: Overruled.

9 BY MR. BOLENBAKER:

10 Q. Did an individual later identified to you as
11 Robert Lastine answer the door?

12 A. Yes.

13 Q. Can you describe the interaction with Robert
14 Lastine?

15 A. My interaction was very brief. Deputy Gamboa
16 explained why he was there. He invited us into the residence
17 and stated that he didn't know --

18 MS. BRADY: Objection, hearsay.

19 THE COURT: Mr. Bolenbaker.

20 MR. BOLENBAKER: I think I know what he's going to
21 say. I don't know if it's necessarily being offered for the
22 truth of the matter. I think it's stated as to whether he
23 believed Mr. Lastine was home or not.

24 MS. BRADY: He doesn't need to quote anybody. He

1 can say based on what was said, I did X, Y, Z.

2 THE COURT: Rephrase the question.

3 BY MR. BOLENBAKER:

4 Q. Based on what you were told, then, did you enter
5 into the home?

6 A. I did.

7 Q. What did you do when you entered into the home?

8 A. I received information from the homeowner, Robert
9 Lastine, that there was a bedroom in the back which the
10 subject we may have been looking for stays at temporarily or
11 periodically. When we went back, there Deputy Gamboa and I
12 went back there to see if he was in the room.

13 Q. What is the purpose, then, of trying to meet with
14 this individual in the back room?

15 A. Based on the information I received outside with
16 the sergeant, I knew there had been some sort of an accident.
17 I didn't witness the accident. I wasn't at the accident
18 scene. My concern was, is this person injured? Do they need
19 immediate medical attention? And to find out to continue the
20 investigation from what the officers or deputies are doing at
21 the accident scene.

22 Q. And when you arrived, then, at the bedroom door,
23 can you kind of give us a rundown on what happened?

24 A. Yeah. We walked through the main front room to a

1 small hallway and just off to the right of the hallway was
2 the bedroom door and I believe the door was closed. I don't
3 know if it was latched shut, but the door was closed. We
4 attempted to make contact several times. There was no answer
5 and then we had opened the door.

6 Q. And describe what you mean in your efforts to make
7 contact? What do you mean by that?

8 A. We knocked on the door frame. We knocked on the
9 door. We called out names to see if anybody would answer the
10 door that was inside the room.

11 Q. And did you get any response?

12 A. Did not get any response.

13 Q. And, verbally, what are you actually saying?

14 A. Police department, come out with your hands up.
15 If you're inside the room, step out towards us.

16 Q. And do you recall approximately how many times you
17 did that?

18 A. I don't recall.

19 Q. But more than once?

20 A. More than once.

21 Q. Several?

22 A. Two to three.

23 Q. At that time, did you believe that someone was
24 inside the room?

1 A. At that point, it was unknown, because the door
2 was closed up, I couldn't see inside.

3 Q. So was there a decision, then, to open the door
4 further?

5 A. Yes.

6 Q. And when the door was opened further, what did you
7 observe?

8 A. Still standing outside in the hallway, not
9 entering the room, as the door opened directly in front of
10 the open doorway, there was a bed. And on the bed, there
11 appeared to be somebody laying on top of the bed covered in
12 blankets.

13 Q. And how covered? Completely covered?

14 A. The way the bed was set up, it wasn't sideways
15 facing the door, it was from the foot of the bed back into
16 the room towards the head of the bed. So the person was
17 laying from the feet to the head away from us.

18 Q. Could you see the head when you first observed it?

19 A. I did not. I just saw what I saw thought was the
20 shape of a body laying on top of the bed.

21 Q. Then what happened?

22 A. Again, we called out several more times to try to
23 make verbal contact with the subject that was in the room,
24 again, approximately two or three more times and we still got

1 no response.

2 Q. Now, as a deputy, when you have an individual in
3 this particular situation, are you concerned for anybody's
4 safety?

5 MS. BRADY: Objection, leading.

6 THE COURT: Overruled.

7 THE WITNESS: Yeah. There are several concerns.
8 Again, we're standing in an unknown hallway facing an unknown
9 room, not knowing the subject inside has been injured based
10 on the information we got earlier that there was an accident,
11 and if this person was involved or not.

12 BY MR. BOLENBAKER:

13 Q. So what happened then?

14 A. Deputy Gamboa and I made the decision to go in and
15 check the welfare of the subject on the bed.

16 Q. And describe that.

17 A. The bed was only, my best estimation, probably
18 five feet from the opening of the doorway. We walked in,
19 took probably two or three steps towards the bed and touched
20 the person who I thought was underneath the blanket and tried
21 to make contact.

22 Q. And what happened then when you touched the
23 person?

24 A. At that point, the person underneath the blankets

1 moved. Again, tried to verbally make contact. Are you okay?
2 Why are you not responding? Come to us. And we did not --
3 the instructions did not -- the instructions we gave were not
4 followed. Show me your hands, show me your hands, we said
5 several times, because they were still underneath the
6 blankets.

7 Q. So what happened then when he doesn't show his
8 hands?

9 A. Eventually, we moved a little closer to
10 go hands-on to make sure this person doesn't come up or
11 present any type of a weapon. On the hands we know are
12 unknown, they're hidden underneath the blankets. So we kind
13 of close in just a little bit just in case there's something
14 presented.

15 As we go with the light touching on the subject,
16 he becomes a little bit resistant. Still, there's no verbal
17 communication between the two of us, but he becomes a little
18 resistant.

19 Q. How? How does he become resistant? What do you
20 mean by that?

21 A. When I go up, I don't remember if it was the left
22 or right arm, I grab his arm just to know that there's
23 nothing that's going to come at me, he kind of pulls away.

24 Q. So then what happens?

1 A. Because he was already laying down, it was easy to
2 go ahead and position the person on their stomach and I
3 placed the subject in handcuffs.

4 Q. And that person you placed in handcuffs, do you
5 see that individual in the courtroom today?

6 A. I do.

7 Q. Can you point to that person and name an article
8 of clothing he's wearing today?

9 A. He's wearing a black shirt and a dark colored
10 sport coat.

11 MR. BOLENBAKER: Your Honor, may the record
12 reflect the identification of the defendant?

13 THE COURT: The record will so reflect.

14 BY MR. BOLENBAKER:

15 Q. So he's placed into handcuffs. What happens after
16 that?

17 A. At that point, we're still in the room that we
18 have not cleared. We decided to make a -- we decided to take
19 the subject out of the room and go into a room that we
20 already know that kind of has been checked by us and that's
21 the front room where we entered the front door. It was
22 well-lit. The bedroom we were in was very, very dark.

23 Q. What do you mean by clearing the room, just so the
24 jury understands?

1 A. We clear a room, you can go in and you can
2 visually clear a room. That there's no big obstacles in your
3 way that you have to look around. You can visually clear a
4 room by standing in one specific spot. There's no unknown
5 areas that haven't been seen.

6 Q. To go further, clearing the room of any threats?

7 A. I'm sorry. Clearing the room of any threats, yes,
8 something that may cause harm to myself, my partner, or
9 anybody else in the house.

10 Q. So the defendant, then, was taken into, I guess
11 the living room area in the front, towards the front of the
12 house?

13 A. Yeah, I would consider it the front room.

14 Q. And what happened then?

15 A. At that point, I sat the subject down on the
16 couch. He was still in handcuffs. There was still no verbal
17 communication between the two of us. Again, I asked, are you
18 okay? Are there any injuries? Again, there was very to no
19 communication between the two of us.

20 Q. Just to clarify, you say there's no verbal
21 communication. You're saying you're asking these questions
22 to him and he's not responding?

23 A. That's correct.

24 Q. And what were the questions you were asking?

1 A. Very general factfinding questions. If we know
2 somebody may have been involved in an accident, our first
3 concern is the safety of that subject. So we ask, are you
4 hurt? We do kind of an overall scan to see if we see any
5 physical injuries, bumps to the head, bleeding, anything like
6 that.

7 Q. Do you recall any medical personnel coming to the
8 area?

9 A. I do.

10 Q. Can you describe that?

11 A. Yeah. Approximately 15 minutes after we had
12 entered that front room, there was, I believe, two REMSA
13 medics that walked in the front room.

14 Q. And were they there to look at the defendant,
15 then?

16 A. That's correct.

17 Q. Did you observe the defendant's interaction with
18 the REMSA personnel?

19 A. I don't recall if there was. If there was, it was
20 very minimal.

21 Q. Then what happened after that?

22 A. Based on the information that they gathered from
23 him, they had cleared him medically. I guess they had to --

24 MS. BRADY: Objection, hearsay and speculation.

1 He doesn't know. There's no testimony as to whether or not
2 he was cleared or what they did.

3 THE COURT: All right. He was there. It appears
4 that this is personal knowledge, so the objection is
5 overruled.

6 BY MR. BOLENBAKER:

7 Q. Please go ahead and answer.

8 A. Okay. So they didn't choose to transport him.
9 They had him sign a form, which they have the right to refuse
10 further treatment at the hospital or in the ambulance.

11 Q. How is his demeanor at this point?

12 A. It really hadn't changed. It was still the same,
13 very quiet, very distant.

14 MR. BOLENBAKER: I have no further questions, your
15 Honor. Thank you.

16 THE COURT: Thank you. Ms. Brady, cross
17 examination.

18 CROSS EXAMINATION

19 BY MS. BRADY:

20 Q. Good afternoon.

21 A. Good afternoon.

22 Q. Did you take any photographs on the scene?

23 A. I did not.

24 Q. Did you observe any of the photographs being

1 taken?

2 A. Did I observe somebody taking photographs on the
3 scene?

4 Q. Uh-huh.

5 A. I did notice somebody taking, but I don't know who
6 it was.

7 Q. But it wasn't you?

8 A. It was not me.

9 Q. When you came in onto the property, who knocked on
10 the door?

11 A. I can't recall. I don't remember that I knocked
12 on a door.

13 Q. Where were you standing when Mr. Lastine opened
14 the door?

15 A. Again, it's kind of hard to explain the way the
16 porch was. We walked towards the house and you make a
17 90-degree to our right and that was the entrance to the
18 enclosed porch area or mud room. Once you walk in the mud
19 room, you make another 90 degree and face the house to the
20 left. So it was kind of like a zig-zag.

21 So we had to go through two doors in order to
22 enter. And I was standing on the right-hand side of the
23 front door, I believe, when we knocked, initially knocked.

24 Q. Were you standing. And where was Deputy Gamboa

1 standing?

2 A. Deputy Gamboa was standing to my right.

3 Q. Okay. When you arrived on the property, Deputy
4 Gamboa was already there?

5 A. That's correct.

6 Q. And you observed him looking at the truck when you
7 arrived?

8 A. I don't recall anybody looking at the truck. I
9 don't remember the truck there initially.

10 Q. It was pretty dark?

11 A. It was very dark.

12 Q. You couldn't really see much of the yard?

13 A. Yeah. There was a lot of vegetation and trees in
14 that particular area.

15 Q. And the yard itself had a bunch of automobiles?

16 A. Yes. Car parts, yeah. Maybe large appliances. I
17 don't remember everything specifically, but it just appeared
18 that there was a lot of debris in the yard.

19 Q. Do you remember a garage?

20 A. I don't remember a garage.

21 Q. Do you remember any RVs parked in the yard?

22 A. I don't remember.

23 Q. Or how about a trailer?

24 A. I don't remember.

1 Q. One of the reasons you don't recall is you didn't
2 search the property?

3 A. I did not search the property.

4 Q. And when you arrived, Gamboa had already had in
5 his mind, -- had already identified who he thought who the
6 suspect was?

7 A. I don't think we discussed that.

8 Q. So when you knocked on the door in the direct
9 examination, you said that he -- there was a suspect that
10 might possibly be inside?

11 A. That's correct.

12 Q. When you arrived, he already determined that there
13 was a suspect that might possibly be inside?

14 A. I believe what we were doing is we were trying to
15 find an individual that may have been linked to the truck.

16 Q. Sure.

17 A. Which --

18 Q. There was a specific individual he had in mind?

19 A. I don't know if he had a specific individual. I
20 don't know if we ever had any physical identifiers at that
21 point in the investigation. Again, I got on scene, I got
22 very brief information, and I was acting as a cover to the
23 officer -- or Deputy Gamboa.

24 Q. So in your mind, there was no, for you, there was

1 no specific individual in mind?

2 A. There was no physical descriptors.

3 Q. I'm not talking about physical descriptors.

4 A. Right.

5 Q. I'm just talking about names.

6 A. No.

7 Q. There was no specific person in mind?

8 A. No, not to my knowledge.

9 Q. You thought maybe somebody would be in the house

10 that was attached -- that was related to the truck?

11 A. To the vehicle, yes.

12 Q. But you didn't have a specific person in mind?

13 A. No, I did not.

14 Q. And you didn't look anywhere on the property

15 besides in that house, correct?

16 A. Initially when we approached the house, directly

17 into the house, that's correct.

18 Q. And you don't -- you identify Andrew Lastine as

19 the person you put cuffs on, is that correct?

20 A. That's correct.

21 Q. And you had not met him before?

22 A. I had not met him.

23 Q. You don't know him. You don't know how he sleeps,

24 if he's a hard sleeper or a soft sleeper?

1 A. No.

2 Q. You don't know any of that?

3 A. I do not.

4 Q. You said he was quiet pretty much the whole time?

5 A. Yes, he was quiet.

6 Q. Did you actually see the paper work for REMSA

7 paper work? Did you ever observe that?

8 A. I don't recall any of the paper work, no.

9 Q. You don't know for sure that there was paper work

10 that was there?

11 A. No, I do not know for sure that there was paper

12 work.

13 Q. So you don't really know what REMSA did or didn't

14 do?

15 A. No.

16 Q. Or if anything?

17 A. Specifically, no, I don't.

18 Q. You know they didn't take him to the hospital?

19 A. They did not take him to the hospital. They did

20 not transport him, correct.

21 MS. BRADY: No further questions. Thank you.

22 THE COURT: Thank you, Ms. Brady. Mr. Bolenbaker.

23 MR. BOLENBAKER: Nothing further, your Honor.

24 Thank you.

1 THE COURT: All right. Deputy, thank you very
2 much. Watch your step going down. Ladies and gentlemen,
3 just a couple of things. You may have noticed that there's a
4 number of sheriff's deputies that are coming in and out. It
5 has nothing to do with this trial or anybody here. There's a
6 new class of deputies that are cycling through and they're
7 just observing the court proceedings here.

8 They'll do the same thing up at the jail. They'll
9 do the same thing in other county buildings. And I just
10 don't want you to infer anything. It's just a bunch of --
11 not just a bunch -- there's a several new deputies. So thank
12 you very much. Mr. Bolenbaker.

13 MR. BOLENBAKER: Thank you. State would next call
14 Deputy Francisco Gamboa.

15 (One witness sworn at this time.)

16 MR. BOLENBAKER: May I approach your clerk, your
17 Honor?

18 THE COURT: You may.

19 FRANCISCO GAMBOA

20 called as a witness and being duly sworn did testify as
21 follows:

22 DIRECT EXAMINATION

23 BY MR. BOLENBAKER:

24 Q. Good afternoon.

1 A. Good afternoon.

2 Q. Could you state your name and spell your last for
3 the record?

4 A. It's Deputy Francisco Gamboa and the last name is
5 G-a-m-b-o-a.

6 Q. And where do you work?

7 A. I work for the Washoe County Sheriff's Office.

8 Q. And how long have you worked there for?

9 A. This is my 17th year.

10 Q. And can you describe to the jury the training you
11 undergo to become a Washoe County Sheriff's Deputy?

12 A. Initially, there's a patrol or a Category 1 police
13 academy, approximately almost four months long. And then
14 once you pass that, you go to the sheriff's office and you go
15 through an FTO program, which is a couple of months. Once
16 you pass that, you're a deputy and you have to have so many
17 hours of training every year to continue to keep your POST
18 standard.

19 Q. And what role did you start out, then, as a deputy
20 or where were you?

21 A. Initially at the detention.

22 Q. And how long did you do that for?

23 A. Six years.

24 Q. Is that normal? Do most of the deputies, when

1 they go through the training program, they start in the jail?

2 Is that how it works?

3 A. Yes, sir.

4 Q. And then after six years in the jail, what did you
5 do?

6 A. I took a patrol assignment in Incline.

7 Q. How long was that for?

8 A. Approximately three years.

9 Q. Then what happened after that?

10 A. I transferred to Reno patrol and I worked there
11 for I think it was almost a year.

12 Q. And where are you currently assigned?

13 A. I'm currently assigned to the Northern Nevada
14 Interdiction Task Force.

15 Q. What are your duties there, then?

16 A. I'm a K-9 handler with them and I've been with
17 that task force about seven years now.

18 Q. Just so everybody is on the same page, the K-9,
19 all of that stuff, that's not relevant to this particular
20 investigation, was it?

21 A. No. It's just my role with that assignment.

22 Q. Okay. What I want to do is focus your attention
23 to January 7th, 2016 at approximately 6:00 in the evening.
24 Were you dispatched to an area in Sun Valley, it's Sun Valley

1 Boulevard and Fifth Avenue?

2 A. Yes, sir.

3 Q. Can you describe the nature of that call?

4 A. I was driving through Sun Valley when the call
5 came out for an accident and that one of the vehicles left
6 the scene. And because I was in the area, I responded to
7 help look for the vehicle that left the area.

8 Q. Were you on duty, off duty?

9 A. I was on duty. I was on my way home. I wasn't on
10 patrol. We don't respond to calls for what I do for my
11 assignment. I was just driving home and happened to be in
12 the area.

13 Q. Were you in uniform, though?

14 A. Yes, sir.

15 Q. And did you drive into the area of Fifth Avenue
16 and Sun Valley Boulevard?

17 A. Yes, sir.

18 Q. Did you ever stop at that area, at the accident
19 scene?

20 A. I slowed down through the parking lot, but I
21 didn't come to a complete stop. I just drove through and was
22 told the last area that the vehicle left, so I took off and
23 started heading down Fifth Avenue.

24 Q. Let me look at that, Sun Valley Boulevard. May I

1 approach, your Honor?

2 THE COURT: You may.

3 BY MR. BOLENBAKER:

4 Q. Let me show you Exhibit 9. Just a second to kind
5 of orient yourself to the map there and let me know when
6 you're done.

7 A. Yes, sir.

8 Q. You feel comfortable?

9 MR. BOLENBAKER: Permission to publish this, your
10 Honor?

11 THE COURT: Granted.

12 MR. BOLENBAKER: Thank you.

13 BY MR. BOLENBAKER:

14 Q. You mentioned you slowed down through a parking
15 lot. You can actually draw on that screen and it will come
16 up for everybody to see. Just circle the area that you were
17 referring to.

18 A. This area right here.

19 Q. You said you took off in the direction that you
20 believed that the truck had been heading?

21 A. Yeah, last seen heading east on Fifth.

22 Q. Can you just show kind of the direction of travel,
23 kind of a line on it so we can see what you're talking about?
24 Did you head down that area, then?

1 A. Yes, sir.

2 Q. Now, while you're heading down Fifth Avenue, did
3 you get any updates on a potential residence associated with
4 the vehicle?

5 A. A deputy on scene had put on the radio that there
6 was a license plate left on scene from the vehicle that left.

7 Q. And was that an address, then, at 290 Bent Pine
8 Circle?

9 A. Yes, sir.

10 Q. What did you do when you got that information?

11 A. I headed towards Bent Pine Circle.

12 Q. Give us an idea on time line and the length of
13 duration between you getting the call, to being in the
14 parking lot, to going to Bent Pine Circle?

15 A. It was only within a few minutes after me leaving
16 the accident area that I got the information from the license
17 plate.

18 Q. Did you immediately go to Bent Pine Circle?

19 A. Yes, sir.

20 Q. Approximately how long did it take you to get from
21 where you were traveling on Fifth Avenue to Bent Pine Circle?

22 A. If I recall, I was just past Leon. So I had to
23 turn around and go back to Leon. It was maybe two,
24 three minutes.

1 Q. Let's start with your initial observations, then,
2 upon arrival at Bent Pine Circle, 290.

3 A. It's a cul-de-sac, so when I pulled in, the
4 address is directly ahead and off to the right a little bit.

5 Q. Let's zoom in on that. So go ahead. So what did
6 you initially observe, then, upon arrival?

7 A. I pulled into where the street meets the driveway
8 right around there and I stopped.

9 Q. Point where. Can you point on there where you're
10 talking about?

11 A. Somewhere around like right here.

12 Q. Okay.

13 A. And the first thing I observed was a light colored
14 small truck. Do you want me to mark it?

15 Q. So we're clear, so everybody knows, this photo is
16 just a generalized scene map. It's not of January 7th, 2016,
17 at 6:00 in the evening just so everybody is on the same page.
18 Can you describe, then, kind of where on here you saw the
19 truck?

20 A. The truck was off to the right, right around this
21 area.

22 Q. Okay.

23 MR. BOLENBAKER: May I approach again, your Honor?

24 THE COURT: You may.

1 BY MR. BOLENBAKER:

2 Q. I'm going to show you what has been marked and
3 admitted as Exhibits 10 through 19. Take a look at those.

4 MR. BOLENBAKER: Permission to publish these
5 again, your Honor?

6 THE COURT: Granted.

7 MR. BOLENBAKER: Thank you, your Honor.

8 BY MR. BOLENBAKER:

9 Q. Deputy, I'll start with number ten. Can you take
10 us through what your initial observations of this truck were?

11 A. How it was?

12 Q. Yeah, just what you observed upon seeing it.

13 A. Well, the first thing I noticed was there was a
14 lot of steam coming from the front engine area, as like a
15 radiator had been punched.

16 Q. When you see that, what do you do then?

17 A. I called it out on the radio saying I see a lot of
18 smoke or steam coming up on the radio, and then I put out the
19 plate and the matching plate that was left on the scene to
20 the rear plate on the truck.

21 Q. Okay. Then what did you do?

22 A. I walked up to the side of it.

23 Q. I'll show you, then, 11. That's the side of the
24 truck?

1 A. When I first approached, I was on the other side
2 of it.

3 Q. Okay. Let's get you this, then. This is 14.
4 This side, then, the passenger side?

5 A. Yes, sir.

6 Q. Did you notice damage, then, in addition to the
7 smoke or steam you saw?

8 A. There was heavy damage to the front that was
9 consistent with a car accident.

10 Q. First of all, I'll show you 16. Is that also the
11 front end damage you were referring to?

12 A. Yes, sir.

13 Q. Then 15. What are we looking at here in number
14 15?

15 A. I was trying -- radiator fluid.

16 Q. Describe that. Describe where you're seeing the
17 radiator fluid?

18 A. The tire, which is sitting right here, it's hard
19 to see on the picture, but the radiator has that like a neon
20 green fluid.

21 Q. Can you circle what you're looking at on the
22 photograph?

23 A. Right here.

24 Q. So you saw smoke or steam coming up from the -- is

1 it from the hood of the car it was coming out or where?

2 A. The front, the front where the damage was.

3 Q. And then you saw this one. Did you actually see
4 fluid dripping on to the tire or had that already stopped?

5 A. I didn't really see so much dripping.

6 Q. But it appeared to be wet and it appeared to be
7 radiator fluid?

8 A. Yes, sir.

9 Q. Now, it's January. Was there snow on the ground?

10 A. Yes, sir.

11 Q. Did you notice anything in particular with the
12 snow regarding the truck?

13 A. When I walked from the passenger side around, I
14 could see footprints from the door in that led to the side of
15 the house.

16 MR. BOLENBAKER: May I approach again, your Honor?

17 THE COURT: You may.

18 BY MR. BOLENBAKER:

19 Q. I'm going to show you what has been marked as
20 Exhibits 20 through 28. Can you take a moment to look at
21 those?

22 A. Okay.

23 MR. BOLENBAKER: Permission to publish these, your
24 Honor?

1 THE COURT: Granted.

2 BY MR. BOLENBAKER:

3 Q. So let's start with number 20. Can you describe
4 what you see in this photograph?

5 A. This is footprints at the driver's side door.

6 Q. Can you circle the footprint you're referring to?

7 A. There's a bunch of them, but the most distinct
8 ones are right there.

9 Q. Basically in the middle of the photograph?

10 A. Yes, sir.

11 Q. And to the top of photograph, is that the driver's
12 door of the truck?

13 A. Yes, sir.

14 Q. I'll show you 21. Can you describe what you see
15 in this photograph?

16 A. There's -- on the path that the prints led to,
17 there was a lot of cars over there, and this is in between,
18 and the footprints are heading towards that way.

19 Q. Is that the path towards the side entrance of the
20 home?

21 A. Yes, sir.

22 Q. Can you circle what you're referring to as the
23 prints? Then in 23, what do you see here?

24 A. More footprints. I can't tell which direction.

1 There's a lot of traffic right there.

2 Q. To be fair, there were a lot of footprints in the
3 area, is that fair?

4 A. Yes, sir.

5 Q. Were you able to see to your eyes a distinct path
6 from the driver's door into the side entrance?

7 A. The front door was off to the right more. So you
8 can see two different directions. There was a distinct path
9 to that side.

10 Q. To the side. I'll show you 22. What do you see
11 here?

12 A. That's the side gate and more footprints.

13 Q. Then I'll show you 24. Is this another photograph
14 of that side gate that you were just referring to?

15 A. Yes, sir.

16 Q. Where does that side gate lead into?

17 A. The back yard and the side door that goes into the
18 house.

19 Q. I'll show you 25. Is this here on the right, is
20 that the same gate?

21 A. Yeah. And then that's the backyard to that side.

22 Q. Now, did you ever go into this backyard area
23 through the side entrance?

24 A. I don't recall going into that backyard area. I

1 did walk up to the fence you pointed out.

2 Q. Can you circle the entrance that you're referring
3 to?

4 A. The entrance right here.

5 Q. The side and the gate and the door you're
6 referring into the home?

7 A. Yeah. This is the side door right here.

8 Q. So in the middle of the photograph?

9 A. Yeah.

10 Q. So after seeing the damage to the truck and the
11 footprints, what did you do?

12 A. I went up and knocked on the front door.

13 Q. And can you describe that?

14 A. The front door?

15 Q. Well, just how was the process of going to the
16 front door and things of that nature.

17 A. I just walked up and by myself still. I had
18 already called out on the radio, so I knew somebody was on
19 his way, and I just went up and knocked on the door.

20 Q. Did an individual identified later to you as
21 Robert Lastine answer the door?

22 A. Yes, sir.

23 Q. Can you describe your initial interaction with
24 Mr. Robert Lastine?

1 A. I identified myself as the sheriff's office and I
2 told him that there was a vehicle accident and one of the
3 vehicles left the scene and it came back to this residence
4 and it was parked out front at his house and I pointed to the
5 truck.

6 Q. What was his reaction to that information?

7 A. I learned, he told me that the truck was his
8 nephew's.

9 Q. Did you ask, then, to enter into the home at that
10 point or was that later?

11 A. It was later. I told him what happened. He told
12 me, that's my nephew's truck. He's in the back bedroom.

13 MS. MAHER: Objection, hearsay.

14 THE COURT: Mr. Bolenbaker.

15 MR. BOLENBAKER: I don't think it's being offered
16 for the truth. I think it's being offered for what he's
17 being told and why he eventually makes entry into the home.

18 THE COURT: Why don't you rephrase the question.

19 BY MR. BOLENBAKER:

20 Q. Based on what you were told, did you have reason
21 to believe that the suspect was inside the home, another
22 suspect besides potentially Mr. Robert Lastine, I guess?

23 A. Yes, sir.

24 Q. When you met with Mr. Robert Lastine, do you

1 remember how he was, what he was wearing and things of that
2 nature?

3 A. I can't recall. I don't recall exactly what he
4 was wearing.

5 Q. At some point, did Deputy Martin Obos show up to
6 the scene?

7 A. Yes.

8 Q. Then did you ask, with Deputy Obos did you ask for
9 permission --

10 MS. BRADY: Objection, leading.

11 THE COURT: Overruled.

12 BY MR. BOLENBAKER:

13 Q. Did you ask for his permission to enter into the
14 home?

15 A. I asked before Obos got there.

16 Q. Can you describe that, then?

17 A. I asked for permission to go into the owner of the
18 truck -- to find the owner of the truck.

19 Q. What did Robert Lastine say to you?

20 A. He said, go get him.

21 MS. MAHER: Objection, hearsay.

22 THE COURT: It's a present sense impression, not
23 offered for the truth of the matter asserted therein.
24 Objection is overruled.

1 BY MR. BOLENBAKER:

2 Q. I'm sorry. What did he say?

3 A. He said, go get him, he's in the back room.

4 Q. Did you then wait for Deputy Obos to arrive before
5 you made entry?

6 A. Yes.

7 Q. Why did you do that?

8 A. It's an officer safety issue. We don't just walk
9 into people's residence, especially if I'm looking for
10 somebody, alone.

11 Q. When Deputy Obos arrived, did you make entry into
12 the home?

13 A. Yes, sir.

14 Q. And describe the entry into the home and what you
15 did once you entered?

16 A. We walked -- Robert let us in, we walked into a
17 small living room area, and it went around to a kitchen, and
18 then through the kitchen there's a doorway into a hallway.

19 Q. And did you go that way?

20 A. Yes, sir.

21 Q. Why did you go that way?

22 A. Robert pointed in the direction and said the
23 bedroom is back there.

24 Q. So that's why you went in that direction?

1 A. Yes, sir.

2 Q. And when you got to the bedroom, what did you
3 observe?

4 A. There was a hallway with a side door that goes
5 outside to the left and there was a doorway in the hallway.

6 Q. So one door goes outside and one door goes into
7 the bedroom?

8 A. Yes, sir.

9 Q. Describe the door. Was it open, closed,
10 partially?

11 A. It was almost all the way closed, maybe an inch,
12 approximately, cracked. It was closed all the way to the
13 thing.

14 Q. And what did you do, then, when you arrived at the
15 bedroom door?

16 A. I had pushed it open and announced, police,
17 sheriff's office.

18 Q. When you looked into the room, what did you
19 observe?

20 A. It was lights out. It was dark. But directly in
21 front of the door, there was a bed, and on the bed, there was
22 a person under a blanket. The only thing I could see was the
23 top of a head, like a portion of it.

24 Q. And are you making your presence known?

1 A. Several commands, police, sheriff's office, show
2 your hands, police, sheriff's office, show your hands.

3 Q. Was there any response?

4 A. At first, there was nothing.

5 Q. So at first nothing, but then was there eventually
6 a response?

7 A. After several commands, I heard a distinct no.

8 Q. When you heard that distinct no, what question was
9 that in reference to?

10 A. I believe it was to showing your hands.

11 Q. And so as a deputy when you are faced in a
12 situation like this and you have someone who says no to your
13 request to show your hands, what does that indicate to you?

14 A. He's not going to cooperate with our commands.

15 Q. And so what did you do in response to that?

16 A. Immediately, both of us entered the room and
17 placed him in handcuffs.

18 Q. Now, while you were in the bedroom, did you notice
19 anything of significance?

20 A. The bed was directly in front of the door and next
21 to the bed was a pair of black tennis shoes.

22 Q. What was it about the tennis shoes that stuck out
23 to you?

24 A. Well, the tread was very distinct and I recognized

1 it from being outside. And I also noticed that the shoes had
2 fresh water, snow and mud all over them and led out the door.

3 Q. Let me show you what has been admitted as 29 and
4 30. May I approach?

5 THE COURT: You may.

6 BY MR. BOLENBAKER:

7 Q. Just take a look at these. Do you recognize those
8 photographs?

9 A. Yes, sir.

10 MR. BOLENBAKER: Permission to publish these, your
11 Honor?

12 THE COURT: Granted.

13 BY MR. BOLENBAKER:

14 Q. I'll start with 29. Are those the shoes you were
15 referring to?

16 A. Yes, sir.

17 Q. Now, this photograph was taken, is this after the
18 shoes had been taken out of the bedroom?

19 A. Yes, sir. That's not next to the bed.

20 Q. Just so we're clear, we're talking about these
21 shoes, not these slippers?

22 A. Yes, sir.

23 Q. And then 30, can you tell us what you see in that
24 photograph?

1 A. Those are the distinct treads I recognized, wet
2 and muddy still.

3 Q. This white substance here, was that snow?

4 A. That's my boot.

5 Q. That's your boot. Right here, then, is this what
6 you're talking about in terms of the wetness?

7 A. Yes, sir.

8 Q. You got me on that one. What I want to do is
9 compare those to the photos of the footprints. I'm going to
10 show you 30 again. And you said there was a distinct
11 footprint, what do you mean by that?

12 A. The tennis shoe tracks had those distinct four big
13 circles on the back heel. I thought that was very distinct,
14 not normal, regular shoe tread. It leaves an impression of
15 the circles, plus with the regular tread on the front half of
16 the shoe.

17 Q. I wanted to show you, then, number 20. Can you
18 point out on this photograph where you're talking about these
19 four -- I'm going to zoom in first. Can you circle where the
20 four little circles you're referring to?

21 A. It's the distinct four circles right here at the
22 first half of the shoe right here.

23 Q. And so everyone, just a frame of reference, number
24 20, this is the photograph you described that the top of this

1 being the driver door?

2 A. Yes, sir.

3 MR. BOLENBAKER: I have no further questions.

4 Thank you, your Honor.

5 THE COURT: Thank you, Mr. Bolenbaker. Ms. Maher,
6 cross examination.

7 CROSS EXAMINATION

8 BY MS. MAHER:

9 Q. Good afternoon, deputy.

10 A. Good afternoon.

11 Q. So on the night in question, you never stopped at
12 the accident scene?

13 A. I never got out of the car. I drove by, slowed
14 down, and then took off.

15 Q. Right. So you never heard any of the witnesses
16 describe the vehicle damage?

17 A. No, ma'am.

18 Q. And you never got out and looked at the vehicle
19 damage?

20 A. No, ma'am.

21 Q. But you were told about a license plate?

22 A. On the radio, yes, ma'am.

23 Q. And based on that license plate alone, you went to
24 the Lastine residence?

1 A. Yes, ma'am.

2 Q. You mentioned the first thing you observed was the
3 truck, is that correct?

4 A. Yes, ma'am.

5 Q. But you had to get on to the property first?

6 A. Yes, ma'am.

7 Q. So you entered the property?

8 A. Yes, ma'am.

9 Q. And you went and you looked at the truck in
10 question?

11 A. Yes, ma'am.

12 Q. You walked around to the side of it?

13 A. Yes, ma'am.

14 Q. And at this point, you hadn't spoken with the
15 owner of the property?

16 A. No, ma'am.

17 Q. So you looked at the truck and you saw it was
18 steaming?

19 A. Yes, ma'am.

20 Q. But you didn't take any photos of that steam?

21 A. Not at that time.

22 Q. And you didn't take any video of the steam?

23 A. No. I didn't have video on me.

24 Q. You don't have a body camera?

1 A. No, ma'am.

2 Q. So you saw the truck had some damage to it?

3 A. Yes, ma'am.

4 Q. Again, you hadn't gone and looked at the damage on
5 the SUV?

6 A. No, ma'am.

7 Q. You saw some footprints?

8 A. Yes, ma'am.

9 Q. And you took the photos?

10 A. I took some of them.

11 Q. You took some of the photos?

12 MS. MAHER: Permission to approach?

13 THE COURT: Granted.

14 BY MS. MAHER:

15 Q. You mentioned that the photos were important to
16 you, because they were leading from the truck to the
17 building, is that correct?

18 A. The footprints?

19 Q. Yes.

20 A. The photo of the footprints?

21 Q. The footprints were important to you, correct?

22 A. Yes.

23 Q. Because they were leading away from the truck,
24 correct?

1 A. There was a path that went away from it, yes.
2 Q. To the --
3 A. House.
4 Q. -- house. You took this photo?
5 A. Yes, ma'am.
6 Q. That's one of the footprints you thought was
7 important? The one you indicated earlier on direct, you
8 thought that was an important footprint?
9 A. It matches, yes, ma'am.
10 Q. So more about footprints, you mentioned that there
11 was mud leading out the doorway, is that correct?
12 A. Out the door?
13 Q. You mentioned in your police report that there
14 were muddy footprints inside?
15 A. It was near the bed and to the door, yes.
16 Q. But you didn't take any photos of those?
17 A. I don't recall.
18 Q. So you've seen the truck, you've seen the
19 footprints, and you think that the suspect might be inside,
20 correct?
21 A. Yes, ma'am.
22 Q. So you asked specifically to speak with the owner
23 of the truck?
24 A. After making contact, yes.

1 Q. And then just to clarify, Officer Obos came after
2 you spoke, you first spoke to Robert?

3 A. Yes, ma'am.

4 Q. Now, you and Obos go to the back of the house?

5 A. Yes, ma'am.

6 Q. And you push open the bedroom door?

7 A. Yes, ma'am.

8 Q. And at that point, you are arresting him for
9 noncompliance?

10 A. Detaining him.

11 Q. He was in handcuffs?

12 A. Yes, ma'am.

13 Q. He wasn't free to go?

14 A. Yes, ma'am.

15 Q. And it was for noncompliance?

16 A. Yes, ma'am.

17 Q. Now, while you were on the Lastine residence,
18 there were other vehicles there, correct?

19 A. Yes, ma'am.

20 Q. But you didn't search any of those vehicles?

21 A. No, ma'am.

22 Q. You didn't look inside the boat?

23 A. No, ma'am.

24 Q. You didn't look inside an RV?

1 A. No, ma'am.

2 Q. You didn't look inside a garage?

3 A. No, ma'am.

4 Q. You didn't run any fingerprints on the truck?

5 A. No, ma'am.

6 Q. You didn't ask how many people had keys to the
7 truck?

8 A. To who?

9 Q. Anyone.

10 A. I didn't ask, no.

11 MS. MAHER: Indulgence, your Honor.

12 THE COURT: Take your time, counsel.

13 MS. MAHER: No further questions, your Honor.

14 THE COURT: Thank you, counsel. Mr. Bolenbaker,
15 any questions?

16 MR. BOLENBAKER: Nothing further, your Honor.
17 Thank you.

18 THE COURT: All right. Deputy Gamboa, you may
19 step down. Mr. Bolenbaker.

20 MR. BOLENBAKER: May we approach?

21 THE COURT: Ladies and gentlemen, stand up,
22 stretch your legs.

23 (Discussion at the bench.)

24 THE COURT: Thank you. Ladies and gentlemen, you

1 can be seated. Counsel have pointed out a couple of legal
2 matters that need to be addressed before we can proceed
3 further. It might take 15 or 20 minutes. So, please,
4 remember the admonition. No independent experiments or
5 investigations. And just remember the rest of it. We'll be
6 in recess. Jury may retire for about 20 minutes or so.

7 (The following proceedings were had outside the
8 presence of the jury.)

9 THE COURT: Let's start with Ms. Brady and make a
10 further record.

11 MS. BRADY: Yes, thank you, your Honor. I wanted
12 to make a further record regarding my motion to suppress,
13 renewing the motion to suppress that Deputy Obos today
14 testified very contradictory to Deputy Gamboa where the door
15 was shut.

16 Additionally, Deputy Gamboa contradicted himself a
17 bit today in that when I asked him what direction the shoes
18 were pointing, when I crossed him on that, he said he
19 couldn't tell -- he couldn't tell when I asked him about it.
20 But today he did indicate which was the heel and which was
21 the front. And when you look on those pictures, the heel --
22 the footprint is very distinctly going towards the truck, not
23 away from it.

24 And so in terms of his reliance on probable cause,

1 seeing footprints going to the door, and reliance on also the
2 door was open and that he could see some shoes in the doorway
3 through the -- when he opened the door, even though it was
4 dark, today he testified -- they testified today that it was
5 very dark in the room. So just based on the testimony added
6 by Gamboa and Obos, it's clear that there wasn't the probable
7 cause to enter the room.

8 THE COURT: Mr. Bolenbaker.

9 MR. BOLENBAKER: Your Honor, I didn't find the
10 same sort of contradiction between Deputy Obos and Deputy
11 Gamboa. I believe his testimony was actually that he
12 couldn't recall if it was closed all the way or if it was
13 latched or not. That is what Deputy Obos testified to.

14 In terms of the probable cause, I think even if
15 you took the entire footprint notion out of it, I think
16 there's still probable cause. So I would start with that and
17 I don't see how that rises to the level of reassessing the
18 motion to suppress.

19 THE COURT: Thank you very much. If we do remove
20 the testimony regarding the footprints, there's still ample
21 probable cause that would lead the deputy to approach the
22 front door, knock, ask permission to enter from the owner
23 Robert Lastine, which led to the back bedroom. Whether or
24 not the door was closed completely, I think one of the

1 deputies testified it was closed up to the doorjamb. Whether
2 it was open an inch or so, I don't think is of such a
3 material deviation that would cause this Court to revisit or
4 reverse its decision on the motion to suppress. But the
5 record has been made.

6 MS. BRADY: Thank you, your Honor.

7 THE COURT: Now, with respect to the jury
8 instruction, Mr. Bolenbaker.

9 MR. BOLENBAKER: I was going to bring this up when
10 we were settling instructions today. I was a little
11 concerned with the instruction getting into determining
12 whether a physical injury occurred, the jury is allowed to
13 consider bias, such as whether the person claiming the injury
14 would benefit from such a claim. She cites Davis versus
15 Alaska.

16 And I'll say one of the reasons why I was hoping
17 to get to the instructions a little sooner than perhaps last
18 night at 8:30, I was trying to go through this as quickly as
19 I could, I couldn't exactly see where that particular notion
20 is cited in the case, first of all.

21 Second of all, the question was asked on cross
22 examination whether Ms. Green was represented by an attorney
23 and she said yes. Now, the full truth of the surrounding
24 circumstances, which I did not go into on redirect, because I

1 didn't want to tread where I wasn't sure I could, is that she
2 has an attorney, that Mr. Lastine, the defendant's insurance
3 company has already settled out and paid her.

4 And if they're going to try and somehow claim that
5 her hiring an attorney somehow has biased her testimony, then
6 that full knowledge and explanation would be appropriate,
7 then, and to recall Ms. Green and ask specifically. I don't
8 know the full details. That's not my position to do. But
9 it's my understanding that she has been paid by the insurance
10 company for Mr. Lastine. So that would come in, in my
11 opinion if they want this instruction.

12 THE COURT: Ms. Brady.

13 MS. BRADY: What I cited there was based on the
14 defense's ability to be able to point out the bias in
15 general. It didn't specifically talk as to money or anything
16 like that, but just to bias.

17 THE COURT: What bias is there?

18 MS. BRADY: It would be the bias that he says that
19 she has an interest in seeing that he's convicted.

20 THE COURT: What's her interest?

21 MS. BRADY: Well, knowing what I know now in terms
22 of her being already paid out, but just in terms of getting
23 the money from Mr. Lastine's insurance company or from Mr.
24 Lastine, being able to subsequently sue him for any ongoing

1 damage.

2 THE COURT: If she's already received that payout,
3 how is there any bias now that that's been resolved?

4 MS. BRADY: Well, I don't know.

5 MR. BOLENBAKER: I don't know if it's been fully
6 resolved. I believe the insurance company paid out and paid
7 medical expenses. I'm unsure of what will happen if they go
8 after him personally. And like I said, I always like to be
9 aware of it, but I don't like to get involved in it. So it's
10 my understanding that perhaps there may be further
11 litigation. I don't know, to answer that question.

12 But I do know that the insurance company did pay
13 Ms. Green and I don't know how much or anything like that.

14 THE COURT: Ms. Brady, what do you want to do with
15 this testimony?

16 MS. BRADY: With what?

17 THE COURT: With the testimony relative to the
18 civil suit? I mean, we have to make sure --

19 MS. BRADY: I wasn't going to -- I'm sorry. What
20 did you say?

21 THE COURT: I just want to make sure that the jury
22 doesn't veer off course and talk about negligence or
23 contributory negligence or an apportionment of guilt, any of
24 the civil concepts. However, I think you're entitled to

1 raise the issue of bias, but it's generally covered in that
2 instruction that talks about the factors that jurors consider
3 in determining the credibility of the witnesses.

4 MS. BRADY: I was not going to go into any kind of
5 contributory negligence or anything like that. I wasn't
6 going to go into that.

7 THE COURT: I understand.

8 MS. BRADY: I wasn't going to argue anything about
9 she was doing something wrong. I wasn't going to go that
10 route. Just suffice it to say that my impression, your
11 Honor, of her testimony was there's some inference there that
12 was this injury really all that she says it is or that the
13 State is trying to say it is.

14 And one of the things by saying there is an
15 injury, because one of the elements of the crime that I was
16 intending to talk about would be whether there was an injury,
17 you know, such that Mr. Lastine would be liable
18 feloniously -- not liable, but guilty for leaving the scene
19 of an accident when there's been an injury. So it was going
20 to attack that portion of it, you know, the extent of her
21 injury if there was one.

22 THE COURT: I'm looking for that jury instruction.

23 MS. BRADY: I was looking for it, too.

24 MR. BOLENBAKER: The one I just read?

1 THE COURT: No, the one that --

2 MR. BOLENBAKER: The one that has the list of what
3 you can consider?

4 THE COURT: Correct.

5 MR. BOLENBAKER: There's one proposed by the
6 defense, considering the testimony of a witness taking into
7 account opportunity to see and hear, the memory, manner,
8 interest in the outcome of the case, any bias or prejudice,
9 or other evidence is contradicted, reasonableness and the
10 facts. I think that's what you're referring to, that's
11 essentially covered in that instruction.

12 It kind of goes exactly to what my point is. It
13 sounds like what potentially they're going to argue is that
14 Mr. Green is overinflating or overstating what her injuries
15 are as part of an effort to increase whatever financial
16 interest she has pursuing him civilly. That's what I just
17 heard her say right there.

18 THE COURT: Correct.

19 MR. BOLENBAKER: I think it's a little unfair,
20 then, to allow her to ask that question and me in an
21 abundance of caution not delve into it, because I didn't want
22 to, you know, I never want to risk something that would be
23 inappropriate, so I didn't go into it with her. But not to
24 get the full idea of exactly what's going on and to explore

1 exactly whether she would be biased or not based on that. So
2 if that's what they're planning on arguing, I do think it's
3 appropriate.

4 THE COURT: I'll give you that opportunity to call
5 her if you wish.

6 MR. BOLENBAKER: All right.

7 THE COURT: Can we do it this afternoon? Probably
8 not.

9 MS. BRADY: I'm sorry, what did you say, your
10 Honor?

11 MR. BOLENBAKER: If I can check with my
12 investigator to see if he can reach out.

13 THE COURT: Go ahead.

14 MR. BOLENBAKER: I think he left, because he
15 thought we were settling jury instructions.

16 THE COURT: Why don't we do this, why don't we
17 pick it up at 9:00 tomorrow morning with Ms. Green. I'll
18 canvass the defendant as well tonight. I won't accept any
19 waiver or make any decision until he's had a chance to talk
20 with counsel overnight. And then we'll reengage with him at
21 about quarter to 9:00, bring Ms. Green in at 9:00, take a
22 break. I'll ask the defense what their decision is and we'll
23 look at probably instructing the jury around 10:00 with
24 closing arguments shortly thereafter. How does that sound?

1 MS. BRADY: Just for the record, I will be
2 objecting to recalling her. I mean, he had the opportunity
3 to discuss that and made a strategic decision not to, just
4 for the record.

5 THE COURT: I understand. I think, as Mr.
6 Bolenbaker pointed out, it wasn't until we delivered the --
7 the Court delivered the jury instructions to Mr. Bolenbaker
8 after Ms. Green testified that he realized the significance
9 of that testimony. And I believe it would be unfair if I
10 would preclude that testimony.

11 So we'll start again, I'll bring the jury in,
12 release them for the day. Let's just take a rough cut
13 through the jury instructions tonight and do the best we can
14 to settle them, leaving open a couple of instructions. And
15 we'll reengage tomorrow at 8:45. Let's bring the jury in.

16 (The following proceedings were had in the
17 presence of the jury.)

18 THE COURT: Will counsel stipulate to the presence
19 of the jury?

20 MR. BOLENBAKER: Yes, your Honor.

21 MS. BRADY: Yes, your Honor.

22 THE COURT: Ladies and gentlemen, I've had an
23 opportunity to talk to the lawyers. We may have one or two
24 more witnesses to hear from. They're not available until

1 first thing in the morning. So I'm going to release you this
2 afternoon. I'll be working with the attorneys on the jury
3 instructions this evening.

4 We'll reconvene at 9:00 tomorrow. We'll hear the
5 remaining testimony. I'll give you have the instructions.
6 We're still on track. I'll give you the instructions on the
7 law, you'll hear closing arguments, and the case will be
8 yours. Probably get you there just before noon. Then I'll
9 lift the admonition and allow you to talk about the case with
10 a view towards reaching a verdict.

11 But until I do, please, remember the admonition.
12 Don't talk about this case amongst yourselves or with anybody
13 else. Don't allow anybody else to talk to you about the
14 case. Don't form any conclusions until the case has been
15 submitted to you. Don't conduct any independent experiments
16 and investigations, engage in social media. Remember the
17 rest of the admonition. Ms. Brady.

18 MS. BRADY: Can we approach?

19 THE COURT: Can you wait?

20 All right. Thank you very much. Ladies and
21 gentlemen, you can be seated.

22 (Discussion at the bench.)

23 THE COURT: It's a like church, stand up, sit
24 down, stand up, sit down. Just remember the admonition.

1 I'll see you 9:00 tomorrow morning. Have a good evening,
2 ladies and gentlemen. The jury may retire.

3 (The following proceedings were had outside the
4 presence of the jury.)

5 THE COURT: Counsel, you want to take ten minutes
6 to get everything cleared away and we can start with the jury
7 instructions?

8 MS. BRADY: Thank you, your Honor.

9 (A short break was taken.)

10 THE COURT: We are outside the presence of the
11 jury in CR16-0718 to address jury instructions. Counsel have
12 been provided a copy of jury instructions, which is a
13 compilation of instructions submitted by both the District
14 Attorney and Public Defender's Office.

15 Let's just go through them, make sure we're all in
16 the same order, and we'll do this informally, so it will be
17 off the record. And then when we're ready to proceed, we'll
18 go back on the record, and then I'll number them with the
19 exemption of a couple of the other ones we'll reserve until
20 tomorrow depending on the decision of the defense. And what
21 I can do is I can sub letter them. So the defendant has a
22 constitutional right not to testify could be 32A, so we can
23 go 32B, and just interplead the instructions that we'll take
24 out today.

1 (Discussion off the record.)

2 THE COURT: We're back on the record in CR16-0718
3 for purposes of settling jury instructions. Counsel have
4 previously been provided a packet of the instructions. The
5 Court and counsel have conferred. Subject to objection, the
6 Court will give the following instructions.

7 Ladies and gentlemen of the jury, it is my duty as
8 judge to instruct you in the law is number one.

9 Next, the defendant in this matter, Andrew Robert
10 Allen Lastine, is being tried upon an information is number
11 two.

12 Next, an information is a formal method of
13 accusing a defendant of a crime is number three.

14 Next, if these instructions any rule, direction or
15 idea is stated is number four.

16 Next, if during this trial I have said or done
17 anything is number five.

18 Next, evidence may be direct or circumstantial is
19 number six.

20 Next, to the jury alone belongs the duty of
21 weighing the evidence is number seven.

22 Next, the evidence from which you are to decide
23 the facts are is number eight.

24 Next, nothing that counsel say during the trial is

1 evidence in a case is number nine.

2 Next, it is the duty of attorneys on each side of
3 the case to object is number ten.

4 MS. BRADY: Your Honor, may I make a record on
5 number seven? I didn't when we were off the record, but
6 actually Ms. Maher pointed this out, and do you want to make
7 that record? No.

8 Just that if on line seven, if the jury believes
9 that any witness has willfully sworn falsely, as opposed to
10 just sworn falsely instead of willfully. I would just object
11 to the word willfully in there.

12 THE COURT: Well, I'm glad you brought this to our
13 attention, because I generally modify this instruction to say
14 they may disregard the whole or part of the evidence of any
15 such witnesses. But let me hear from Mr. Bolenbaker with
16 respect to willfully.

17 MR. BOLENBAKER: I have no position.

18 THE COURT: All right.

19 MR. BOLENBAKER: I agree that it should be whole
20 or part of the evidence. I appreciate that.

21 THE COURT: Ms. Clerk.

22 THE CLERK: Could you read it to me, your Honor?

23 THE COURT: Number seven should be if the jury
24 believes that any witness has, strike willfully, sworn

1 falsely, they may disregard the whole, comma, or any part,
2 comma, of the evidence against such witness.

3 Back in sequence, it is the duty of attorneys on
4 each side of the case to object is number ten.

5 Next, in deciding the facts of the case, you may
6 have to decide which testimony to believe is number 11.

7 Next, in determining the weight to be given to
8 eyewitness identification.

9 MS. BRADY: I think we were going to make a record
10 of that. I took that out.

11 MR. BOLENBAKER: I have it out.

12 MS. BRADY: I think I withdrew that, but --

13 THE COURT: We're off the record, Stephanie.

14 (Discussion off the record.)

15 THE COURT: Back on the record. The jury
16 instruction starting, in determining the weight to be given
17 to eyewitness identification testimony has been withdrawn.

18 MS. BRADY: Should I make the record as to why it
19 was withdrawn?

20 THE COURT: If you want to.

21 MS. BRADY: Because at the time that I proffered
22 that instruction, I didn't know whether or not any witness
23 would identify Mr. Lastine as being the actual driver of the
24 car.

1 THE COURT: That's fine. Next, inconsistencies or
2 discrepancies in the testimony of a witness is number 12.

3 MS. BRADY: Your Honor, on line five, in weighing
4 the affect or effect? Line five of number 12.

5 THE COURT: I think it's effect.

6 MR. BOLENBAKER: I'm going to rely on the grammar
7 experts on that one.

8 THE COURT: Stephanie, we're off the record.

9 (Discussion off the record.)

10 THE COURT: Back on the record. Inconsistencies
11 or discrepancies in the testimony of the witness is number
12 12.

13 Next, neither the prosecution nor the defense is
14 to require as witnesses -- is required to call as witnesses
15 is number 13.

16 Next, it is the constitutional right of a
17 defendant in a criminal trial. I'm going to leave that
18 blank.

19 Next, although you are to consider only the
20 evidence in the case in reaching a verdict is number 14.

21 If he decides to not testify, we'll just number
22 the preceding 13A.

23 MS. BRADY: You're going to canvass him tomorrow
24 morning?

1 THE COURT: Yes. We'll do that about quarter of.

2 MS. BRADY: Quarter of 9:00? I may have told him
3 to be here at 9:00 previously. I'll call him.

4 THE COURT: We'll do it as soon as he shows up.

5 MS. BRADY: Okay. He has to test beforehand.

6 THE COURT: Okay. Next, in every crime there must
7 be a union or joint operation is number 15.

8 Next, every person charged with the commission of
9 a crime shall be presumed innocent is number 16.

10 MS. BRADY: If I make a record, your Honor?

11 THE COURT: Yes.

12 MS. BRADY: I had proffered the very similar
13 instruction, except for exchanging the word until with
14 unless, because the word until is a sort of eventuality, it
15 implies that it's coming, just wait for it, as opposed
16 unless, that it's not there unless. There's not an
17 eventuality implicit in the word unless.

18 THE COURT: Mr. Bolenbaker.

19 MR. BOLENBAKER: Our position was that it -- this
20 instruction mirrors the statute. I'd also say that in common
21 vernacular when you -- if you went around town and told
22 people the concept of criminal law, they'll say innocent
23 until proven guilty. That's the common vernacular used. I
24 think it's appropriate to mirror the statute.

1 THE COURT: The Court will give the instruction
2 containing the word until over the objection of the defense.
3 That will be defense rejected number one.

4 Next, the burden rests upon the prosecution to
5 establish every element of the offense is number 17.

6 Next, a reasonable doubt is based on reason is
7 number 18.

8 Next, the burden is on the State to prove beyond a
9 reasonable doubt that the defendant is the person. The
10 defense objects or the defense wants to make a record.

11 MS. BRADY: Yes, your Honor. I believe this is an
12 accurate statement of the law that the burden is on the State
13 to prove beyond a reasonable doubt that it is the defendant.
14 And that if they don't prove beyond a reasonable doubt that
15 it is actually Andrew Lastine driving the car, then the jury
16 must find him not guilty, because that is an essential
17 element to the offense.

18 THE COURT: Mr. Bolenbaker.

19 MR. BOLENBAKER: Your Honor, the State's position
20 is that the element of the defendant is covered in the
21 elements instruction. It's actually number one, that the
22 defendant is the one who drove the vehicle. So it's covered
23 by that instruction. And I don't have -- I already tossed it
24 aside, so I don't remember which one it was.

1 But I think there's also the other instruction
2 that states that the State has the burden to prove every
3 element beyond a reasonable doubt. So I think it's covered
4 by the other instructions.

5 THE COURT: I think the Court finds that these
6 concepts are embodied in other instructions and would be
7 cumulative. So the Court will reject this instruction as
8 number two.

9 Next, a defense is not required to prove
10 innocence. The defense wants to make a record.

11 MS. BRADY: Your Honor, I believe the record on
12 this one -- which one are you on?

13 THE COURT: The defense is not required to prove
14 innocence. The burden is on the prosecution to prove.

15 MS. BRADY: Thank you, your Honor. The reason why
16 I offered that is because during voir dire, there was a bit
17 of discussion about whether or not there was a burden on my
18 client to prove that he didn't commit this crime, so burden
19 shifting. So that's why I'm asking for this to be in there
20 is to further, you know, instruct the jury that my client
21 doesn't have an obligation to prove his innocence.

22 THE COURT: Mr. Bolenbaker.

23 MR. BOLENBAKER: I think that concern is covered
24 with the other instructions where it clearly states that the

1 State has the burden. I think Ms. Brady also explored that
2 in jury selection and made it very clear that it's the State
3 who has the burden. So if anybody was confused, they were
4 adequately instructed by Ms. Brady during jury instructions
5 and also would be during the jury instructions and they're
6 presumed to follow the jury instructions.

7 THE COURT: All right. The Court finds that these
8 concepts are covered in other jury instructions and it
9 appears as if this is more argument than an instruction on
10 law. Certainly, there isn't anything here that the defense
11 can't argue, but I don't believe it is a proper instruction
12 of law. So we'll reject this as number three, number four,
13 Ms. Clerk?

14 THE CLERK: That will be number three, your Honor.
15 Defendant's offered and rejected number three.

16 THE COURT: All right. I have to leave the bench
17 for about ten minutes or so and I'll be right back. So we'll
18 finish up.

19 (A short break was taken.)

20 THE COURT: We are back on the record CR16-0718.
21 Next in order is defense proposed elements of leaving the
22 scene of an accident involving personal injury. Ms. Brady, I
23 thought we --

24 MS. BRADY: I'm sorry, which one are we on? The

1 elements of leaving the scene?

2 THE COURT: Correct. I thought we melded both.

3 MR. BOLENBAKER: I thought we worked this one out.

4 MS. BRADY: I think, your Honor, I wanted to make
5 a record about the word willfully failed to immediately stop.
6 The reason why, just looking back at it, I don't have the
7 information in front of me, I believe you have the word
8 willful in the information.

9 MR. BOLENBAKER: It does say willfully, unlawfully
10 being the driver of a Ford pickup, failed to immediately stop
11 such vehicle.

12 MS. BRADY: So that's why I was -- this was my
13 instruction and that's why I was proffering the word willful
14 in there.

15 THE COURT: Mr. Bolenbaker.

16 MR. BOLENBAKER: It's not in the statute. The
17 elements really are if you're in an accident and you knew or
18 should have known you were in an accident, you have a duty to
19 stop. So I think the intent element is covered under knew or
20 should have known. And it's not -- you don't have to prove
21 that he willfully left, just have to prove that he left.
22 Because once you're in the accident and you knew or should
23 have known you were in the accident, you have a duty by law
24 to stay.

1 THE COURT: All right. I'll reject this
2 instruction as to the element of willful. Number four,
3 Ms. Clerk.

4 THE CLERK: Yes, your Honor, defense offered and
5 reject number four.

6 THE COURT: Next instruction is the elements of
7 leaving the scene of an accident involving personal injury to
8 require proof beyond a reasonable doubt. Ms. Brady, you
9 wanted to object to the final line, which is outlined in the
10 following jury instruction?

11 MS. BRADY: Yes, your Honor. I believe that is
12 confusing to -- it's going to be confusing to the jury. So
13 we have this one clean page as to what the elements are, and
14 then it says -- and then it references this next page, which
15 is about 24 lines, 23 and some lines of describing what they
16 do on the scene.

17 So I'm concerned by referencing that page as being
18 part of the elements of the crime, that they will be looking
19 and focusing on this instruction as to what the elements are
20 and basing their decision on this instruction as opposed to
21 the elements of the leaving the scene instruction.

22 THE COURT: Mr. Bolenbaker.

23 MR. BOLENBAKER: I think it's the best way to, I'm
24 referring to the outline in the following jury instruction

1 outline, is the best way to meld and encapsulate what the
2 actual statute is, because the statute refers to another
3 statute.

4 And so I think it's really to fully inform the
5 jury what the law is, you have to have it in there. And this
6 is the best way to mirror exactly what the statute does,
7 which is in the last element, this failing to immediately
8 stop and having to remain at the scene, pursuant to, and what
9 is the next instruction? So it's the best way to do it.
10 That's why we proposed it that way.

11 THE COURT: All right. I'll give this instruction
12 over the objection of counsel. I don't believe it is
13 confusing and does elaborate on the requirements of the law.
14 So that will be number 19.

15 Next, the driver of any vehicle involved in an
16 accident resulting in injury is the companion instruction,
17 and that will be 20.

18 MS. BRADY: Yes, your Honor. Just for the record,
19 I object to giving this instruction. I think it's something
20 he can argue, but I think also just to be consistent with my
21 prior argument, I think it's confusing to the jury.

22 THE COURT: All right. Thank you. I'll give this
23 over objection.

24 Ms. Brady, you wanted to make a record as to the

1 following instruction, when there is a dispute between
2 degrees.

3 MS. BRADY: Yes, your Honor. This was going to be
4 sort of a draft related to a lesser included argument that I
5 was prepared to make. But in discussing whether to offer a
6 lesser included with my client, he has not authorized me to
7 do that. So I'll be withdrawing this proposed instruction.

8 THE COURT: All right. Ms. Clerk, I'm going to
9 mark it as defense withdrawn and we'll make it part of the
10 record.

11 MS. BRADY: Thank you.

12 THE CLERK: It will be defense withdrawn number
13 one, your Honor.

14 THE COURT: Thank you. Next, bodily injury must
15 be physical in nature and not merely psychological or
16 intangible is 21.

17 Next, in determining whether -- did we ever get a
18 copy of the revised version on that?

19 Stephanie, we're off the record.

20 (Discussion off the record.)

21 THE COURT: Next, Ms. Brady, in light of your
22 decision, will you withdraw this one?

23 MS. BRADY: Which one?

24 THE COURT: In determining whether physical injury

1 occurred, the jury is allowed to consider bias, such as
2 whether the person claiming injury will benefit from such a
3 claim.

4 MS. BRADY: Yes. I'm withdrawing that, your
5 Honor, based on the discussion that we had or the preliminary
6 ruling you had that if I'm going to connect her testimony and
7 whether or not she was injured to the civil suit, that she
8 could then come in and testify and I made a strategic
9 decision to withdraw it.

10 THE COURT: All right. Thank you. I'll mark it
11 as defense withdrawn two.

12 Next, the flight of a person immediately after the
13 commission of a crime is not sufficient is 22.

14 MS. BRADY: Your Honor, if I can make a record and
15 I didn't mention this. But in terms of the flight, I would
16 object to offering this, because the crime itself is leaving
17 and what would he be guilty of if he stayed?

18 Usually, this instruction refers to, like you hit
19 somebody and then you -- like physically hit somebody and
20 then you hide from the police or run or something, but the
21 charge is battery and the flight is indicative of whether or
22 not you battered someone.

23 THE COURT: Consciousness of guilt.

24 MS. BRADY: But I don't know if it applies here

1 when the whole issue is whether or not that was him fleeing.

2 THE COURT: Mr. Bolenbaker.

3 MS. BRADY: What's the may show consciousness of
4 guilt? I mean, the charge is the leaving.

5 THE COURT: Mr. Bolenbaker.

6 MR. BOLENBAKER: It is true that basically the
7 entirety of the crime involves, obviously, leaving and it's
8 embodied in this instruction. I think we had testimony,
9 especially from Jason Beck, that the driver of the vehicle
10 almost came to after and I think we know why, but we're not
11 getting into why, but came to and almost popped up and then
12 hit the gas down the embankment. That was his testimony.

13 So I think it fits in to almost an additional idea
14 of consciousness of guilt of leaving the scene. I feel it's
15 appropriate.

16 THE COURT: I tend to degree with the defense in
17 this case. I think this is embodied in the elements of the
18 offense of leaving the scene. Flight instructions are not
19 favored in the law. And so I'll reject this instruction.

20 This will be prosecution rejected number one,
21 Ms. Clerk.

22 THE CLERK: Thank you.

23 THE COURT: Next, the penalty for the offense
24 charged is not to be considered is 22.

1 Next, it is your duty as jurors to consult with
2 one another and to deliberate is 23.

3 Next, upon retiring to the jury room, you will
4 select one of your number is 24.

5 The verdict, we the jury in the above-entitled
6 matter find the defendant guilty of leaving the scene of an
7 accident involving personal injury.

8 Next, we the jury in the above-entitled matter
9 find the defendant not guilty of leaving the scene of an
10 accident.

11 MS. BRADY: So I just think it might be confusing,
12 but I think you put personal injury, because that's how the
13 information is. Is the information bodily or personal?

14 THE COURT: The information is personal.

15 MR. BOLENBAKER: The information is personal and
16 the caption of the crime is personal, so that's why we're
17 trying to mirror the statute and the caption as much as
18 possible.

19 MS. BRADY: Let me say for the record that that's
20 confusing and that the legislature should change that. So I
21 would -- I would object to -- I think the legislative intent
22 is physical injury or bodily injury, but by them throwing in
23 the personal injury, I think that makes it unconstitutionally
24 confusing.

1 THE COURT: That's why John Petty has a job for
2 life. All right. I'll overrule the objection and give the
3 instruction, because it does mirror the title of NRS
4 484E.010.

5 Mr. Bolenbaker, other than those instructions
6 previously provided and ruled on by the Court, does the State
7 have any further instructions?

8 MR. BOLENBAKER: No, your Honor. Thank you.

9 THE COURT: Ms. Brady, same question?

10 MS. BRADY: No, your Honor.

11 THE COURT: See you at quarter to 9:00 for canvass
12 of the defendant.

13 MS. BRADY: Thank you.

14 THE COURT: Have a good evening, counsel.

15 MR. BOLENBAKER: Thank you, your Honor.

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1 STATE OF NEVADA)
) ss.
2 County of Washoe)

3 I, STEPHANIE KOETTING, a Certified Court Reporter of the
4 Second Judicial District Court of the State of Nevada, in and
5 for the County of Washoe, do hereby certify;

6 That I was present in Department No. 7 of the
7 above-entitled Court on March 7, 2017, at the hour of 9:00
8 a.m., and took verbatim stenotype notes of the proceedings
9 had upon the trial in the matter of THE STATE OF NEVADA,
10 Plaintiff, vs. ANDREW ROBERT ALLEN LASTINE, Defendant, Case
11 No. CR16-0718, and thereafter, by means of computer-aided
12 transcription, transcribed them into typewriting as herein
13 appears;

14 That the foregoing transcript, consisting of pages 1
15 through 214, both inclusive, contains a full, true and
16 complete transcript of my said stenotype notes, and is a
17 full, true and correct record of the proceedings had at said
18 time and place.

19
20 DATED: At Reno, Nevada, this 29th day of June 2017.

21
22 S/s Stephanie Koetting
23 STEPHANIE KOETTING, CCR #207
24

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 7th day of December 2017. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Terrence P. McCarthy, Chief Appellate Deputy
Washoe County District Attorney's Office

I further certify that on this date a copy of this document was mailed to:

Mr. Andrew Robert Allen Lastine (#1178211)
Stewart Conservation Camp
P.O. Box 5005
Carson City, Nevada 89702

John Reese Petty
Washoe County Public Defender's Office