

IN THE SUPREME COURT OF THE STATE OF NEVADA

ANDREW ROBERT ALLEN LASTINE,

No. 73239

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Elizabeth A. Brown
Clerk of Supreme Court

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 FOUR

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1 4185
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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 III

20 March 8, 2017

21 8:45 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 8, 2017, 8:45 a.m.

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3 --oOo--

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

6 MR. BOLENBAKER: Your Honor, I e-mailed your clerk
7 and Ms. Brady. After reviewing the elements instruction and
8 preparing for the closing, I noticed what I believed to be
9 perhaps a confusing element in that the law requires one to
10 stop, if they knew or should have known they were simply in
11 an accident.

12 With the elements that we had originally yesterday
13 were knew or should have known he was involved in an accident
14 resulting in injury. And I thought that perhaps would be
15 confusing in the sense that one could argue, well, perhaps he
16 didn't know the person was injured or shouldn't have known
17 that the person was injured and therefore wouldn't have had
18 the duty to remain.

19 Obviously, concerned me. Was a moment of panic.
20 I e-mailed and did a new set of elements instructions that
21 would separate those two concepts. So now the elements would
22 read, the fourth element would read knew or should have known
23 he was involved in an accident. And then the five, that the
24 accident resulted in personal injury to another person. I

1 think that more accurately reflects the law here in Nevada.

2 What I also did -- that was instruction number 19.

3 Instruction number 20, I tailored it to fit this case.

4 Originally, we had on line one, the driver of any vehicle
5 involved in an accident, I think resulting in personal injury
6 to another person shall immediately stop, and then gave the
7 laundry list of requirements pursuant to law.

8 I cut out that portion of it, because this is
9 simply stating what the law is when you are involved in an
10 accident. And at the end, we had a little paragraph at the
11 end that, essentially, failure to do so means the defendant
12 would be guilty of and it gave the name of the charge,
13 leaving the scene of an accident causing personal injury,
14 which actually wouldn't be the case under this particular
15 scenario, because this was just stating what the law is on
16 any accident. So I didn't think that was an appropriate
17 paragraph to have, so I cut that part out as well.

18 Those are the two corrections I made to
19 instructions 19 and 20 based on Nevada law. And I have
20 the -- based on I think it's the Clancy case, where it was
21 established that there is an element of knowing or should
22 have known that someone was in an accident.

23 And I think it was a good discussion on what is
24 and what should be required of someone in Nevada when they

1 are in that situation. And on the one hand, you don't want
2 people to truly not know or should have no idea they were
3 involved in an accident having a duty to them that they
4 really didn't know. But on the flip side, you don't want
5 people to come in and surreptitiously claim, well, I didn't
6 know I was in an accident. And I think that is a confusing
7 burden. So this is the middle ground and I think this is an
8 appropriate statement of the law.

9 THE COURT: Let me hear from the defense.

10 MS. BRADY: I'm a little bit confused as to what I
11 need to -- your Honor, as to what he exactly -- I saw that he
12 changed on the elements, he said he changed some other
13 things. I wasn't able to follow.

14 THE COURT: Mr. Bolenbaker, hang on a second.
15 Let's go off the record so counsel can confer and look at the
16 various instructions. We're off the record.

17 (Discussion off the record.)

18 THE COURT: We're back on the record.

19 MS. BRADY: Thank you, your Honor. I did receive
20 Mr. Bolenbaker's e-mail last night and I also did some
21 further research. And the State of Nevada's law is that he's
22 correct in terms of requiring only that the person knew or
23 should have known there was an accident.

24 The California law -- let me backup. So the

1 Nevada Supreme Court held that essentially by saying that it
2 requires the person to know that someone was injured would
3 promote people leaving to then say, I didn't know anyone was
4 injured. That was one of the main points of the Nevada
5 Supreme Court.

6 I will note that the Ninth Circuit did hold, and I
7 didn't bring that case with me, I can provide it, the Ninth
8 Circuit, in looking at the California case and considering
9 the California case did not find that same thing to be true.
10 And so they upheld the constitutionality of the California
11 case, which also requires that they knew or should have known
12 they were in an accident and had reason to believe or knew
13 that there was an injury.

14 So I want to preserve the issue for appeal or for
15 the record that there should be -- in this case, I would be
16 objecting to changing it inasmuch as when you have a
17 situation such as here where there is more of a fender-bender
18 and perhaps not a reason to suspect that someone was injured,
19 that there should -- that for these kinds of instances, the
20 State should have to also prove that he either knew or should
21 have known that there was an injury.

22 Because otherwise, it's a misdemeanor. If you're
23 just causing damage to an automobile or property, in an
24 automobile that is attended by someone else, then that's a

1 misdemeanor and that's covered by the Washoe County Code.
2 Just making the record as to that.

3 In terms of -- so that's on the instruction, which
4 would be --

5 THE COURT: 19.

6 MS. BRADY: -- instruction number 19. That's my
7 objection to that.

8 My objection to instruction number 20 is that I
9 would -- the State has changed the first paragraph in both of
10 the proffered ones. So I would object to this new one that
11 he offers, which lowers the burden of proof that he has to
12 prove and it changes it in a way that I think at this point
13 it's unpredictable to know how these changes would impact the
14 jury and their deliberation.

15 I would promote using the exact language in
16 484E.030, which is what instruction number 20 is based upon,
17 and that states, the driver of any vehicle involved in a
18 crash resulting in injury or death of a person or damage to
19 any vehicle or other property, which is driven or attended by
20 a person shall. So that would be my objection to the
21 revisions. I would want to just use the statute as it is
22 stated in the law.

23 THE COURT: All right. Thank you. I'll adopt the
24 changes requested by the State, but I think Ms. Brady makes a

1 good point in terms of elevating the degree of offense. But
2 I think this is an accurate reflection of the law here in
3 Nevada. And so, Ms. Clerk, let's --

4 MR. BOLENBAKER: Judge, may I make a record on
5 that particular issue?

6 THE COURT: Yes. Certainly.

7 MR. BOLENBAKER: In my opinion, the intent of the
8 statute is that we encourage, by law, people to remain at any
9 accident. And the analysis is not whether the individual
10 charged or the individual suspect, the one potentially
11 fleeing knew or should have known the person was injured.
12 The elevation of a misdemeanor to a felony is only the injury
13 and that has no bearing on anything that the defendant would
14 know.

15 The only reason that the enhancement has nothing
16 to do with any criminal intent on this matter. If the
17 accident results in no injury, it's a misdemeanor. If the
18 accident results in injury, it's a felony. That has no
19 bearing on what is going through the defendant's mind,
20 whether he would know if he was an accident that would have
21 injured somebody.

22 So I understand Ms. Brady's position, but I think
23 the analysis is perhaps misplaced that the enhancement is
24 merely just simply because someone is actually injured.

1 THE COURT: Whether the defendant knows it or not?

2 MR. BOLENBAKER: Whether the defendant knows it or
3 not.

4 MS. BRADY: If may I?

5 THE COURT: Yes.

6 MS. BRADY: That's exactly my exact point is that
7 because whether or not there was an injury elevates it,
8 enhances it to the felony versus misdemeanor. That's exactly
9 why we should keep to exactly how the law is, because it
10 conflates and could confuse the jury as to if they think he
11 had a duty and they're thinking along the lines of having to
12 stop for any accident being a felonious action. I mean, that
13 lowers their burden of proof where if they thought -- that
14 lowers their burden of proof.

15 THE COURT: All right.

16 MS. BRADY: So it's confusing to the jury. I
17 think that in terms of I strongly believe that we should
18 stick to the language as the legislature intended it to be,
19 rather than changing it in a way that has a risk of making an
20 unreliable determination by the jury.

21 THE COURT: Mr. Bolenbaker.

22 MR. BOLENBAKER: This is the last one I'll make is
23 that the reason I took it out is not to change the burden.
24 If you actually look at all the statutes, 010, 020, 030; 020

1 is the duty that you're supposed to do if it's simply just an
2 accident. Then 020 says you're supposed to remain and
3 perform all the functions that are in 030. Rather than list
4 all of the requirements of 020 and then all of the
5 requirements of 030, this is just melding these two simply
6 into one set of rules that you're supposed to comply with.

7 And that's why I thought it was more appropriate
8 to tailor it in that manner. It's nothing to do with trying
9 to lessen the burden or anything of that nature. It really
10 is just combining what would be superfluous language in the
11 instruction.

12 THE COURT: Let's keep these instructions in terms
13 of the record on appeal, Ms. Clerk. So this will be I'll
14 just say Court's withdrawal number one will be number 19 and
15 Court's withdrawal number two will be instruction 20. I'll
16 renumber the new instructions 19 and 20.

17 The Court is going to need a few minutes to
18 download these instructions. But have you had a chance --
19 before we do so, Ms. Brady, have you had a chance to talk
20 with Mr. Lastine?

21 MS. BRADY: Yes, your Honor.

22 THE COURT: Mr. Lastine, good morning, sir.

23 THE DEFENDANT: Good morning, your Honor.

24 THE COURT: Have you taken any pill, drug or

1 medicine in the last 24 hours?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Are you under the care of a physician
4 or psychiatrist?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Have you had an opportunity -- well,
7 strike that. Sir, you have the right under the Fifth
8 Amendment not to testify. You could remain silent, seated at
9 counsel table and rest on the presumption of innocence. You
10 are not required to testify. You are not required to produce
11 any evidence. However, you can waive that constitutional
12 right and testify.

13 That's your decision, but you shouldn't waive any
14 constitutional right until you've had a chance to talk with
15 your lawyer. If you do exercise -- if you do testify, the
16 District Attorney has the opportunity to cross examine you on
17 any matter that I deem relevant, what your criminal history
18 is, but if there are certain criminal history that the
19 District Attorney wishes to examine you on, this Court may
20 not be able to prevent him from doing that. There are risks
21 on both sides. Have you had a chance to talk to Ms. Brady
22 about this decision.

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Based upon those discussions, what is

1 your decision?

2 THE DEFENDANT: I will not be testifying.

3 THE COURT: Has anybody pressured you into that
4 decision?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Okay. Do you have any questions of me
7 about that -- the exercise of that right?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: All right. Thank you very much,
10 Mr. Lastine. You can be seated. We'll stand in recess while
11 the clerk does her magic. And when we come back, we'll start
12 with opening statements -- we'll start with the jury
13 instructions and then opening statements. Court's in recess.

14 (A short break was taken.)

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. Ladies and
22 gentlemen, this is the time set for closing arguments. I
23 will instruct you on the law. You will have these
24 instructions with you in the jury room for your

1 deliberations. But in an effort to protect our precious
2 natural resources, I decided not to kill a couple of trees
3 and make 13 copies of this packet for everybody.

4 Nevertheless, you'll have them up on the screen
5 here and you can follow along, you can listen to me, and as I
6 stated, you'll have these in the jury room.

7 The State has rested its case. And, Ms. Brady,
8 you want to put this on the record.

9 MS. BRADY: Yes. The defense rests, your Honor.

10 THE COURT: Thank you very much, Ms. Brady.

11 So we completed the testimony part and we'll move
12 into the jury instructions, the law that will apply. And
13 then, finally, you'll hear the -- after I give the jury
14 instructions, you'll hear the closing arguments of the
15 attorneys who will endeavor to remind you of the facts of the
16 case and touch on the law that applies.

17 And after which, I'll instruct you that you can
18 begin your deliberations. I'll give you some housekeeping
19 hints. And then the case is in your hands. So, please, sit
20 back, relax, and listen to the law as the Court will instruct
21 you.

22 (Jury instructions read at this time.)

23 THE COURT: Now, ladies and gentlemen, you will
24 hear the closing arguments of counsel. Did we skip over an

1 instruction?

2 MR. BOLENBAKER: I think we skipped over 13 or
3 13A. I'm not sure which one. Perhaps you could read both of
4 them.

5 THE COURT: Yes. I don't see 13A in that. Just a
6 minute, ladies and gentlemen. Here's 13A. Thank you very
7 much. 13 reads, neither the prosecution nor defense is
8 required to call as witnesses all persons who may appear to
9 have some knowledge of the matters in question in this trial.

10 It is a constitutional right of a defendant in a
11 criminal trial that he may not be compelled to testify, thus
12 the decision as to whether he should testify is left to the
13 defendant on the advice and counsel of his attorney. You
14 must not draw any inference of guilt from the fact that he
15 does not testify, nor should you discuss this fact in any
16 way, nor should this fact enter into your deliberations in
17 any way. Let me repeat that. You must not draw any
18 inferences of guilt from the fact that he does not testify,
19 nor should this fact be discussed by you, or enter into your
20 deliberations in any way.

21 With that, thank you, counsel, for bringing it to
22 the Court's attention. You'll hear the closing arguments of
23 counsel after which I'll give you some housekeeping
24 instructions and the case is yours.

1 Because the State has the burden of proof, it goes
2 first and it has an opportunity to reply to the defense
3 closing. Mr. Bolenbaker on behalf of the State.

4 MR. BOLENBAKER: Thank you, your Honor. Good
5 morning, ladies and gentlemen. In every criminal case,
6 there's two things the State has to prove to you, one, was a
7 crime committed? And, two, who committed that crime?

8 Now, most cases we usually are pretty certain on
9 one of those aspects. In this particular instance, we know a
10 crime was committed. We know there was an accident. We know
11 a truck left. We know that Ms. Green suffered injuries. We
12 know leaving the scene of an accident causing personal
13 injuries happened. All right. In this particular instance,
14 we're just trying to find out the who.

15 What I'm going to do is go through the elements of
16 leaving the scene of an accident so that we're all on the
17 same page. This is what you have here and this is the
18 instruction that you have.

19 The defendant, driving an vehicle on a highway or
20 premises to which the public has access in which he knew or
21 should have known that he was involved in an accident. And
22 that accident resulting in bodily injury to a person and
23 failed to immediately stop at the scene and remain at the
24 scene pursuant to law. And that's the laundry list of things

1 you want to do. Got to give your name, registration,
2 insurance, everything that we would normally know in a
3 situation when you get involved in an accident and you're
4 also supposed to render aid.

5 Right. So let's go through this. This is a Ford
6 pickup. This is a vehicle. There's no dispute, really, that
7 this is the vehicle. That element has been easily satisfied.
8 It was also the vehicle that Jason Beck came in and said
9 that's the vehicle I saw, very clear. He got a good look at
10 it, he was cutoff at Sun Valley and First, and followed it to
11 Fifth and watched it speed down the embankment. This is the
12 vehicle.

13 This is also a highway or premises to which the
14 public has access to. This is Sun Valley Boulevard here in
15 Washoe County. There's no dispute this is a road the public
16 has access to. It's actually a highway by the definition of
17 the law. Highway is kind of a weird one of those definitions
18 where you think highway is 395 or 580, it actually
19 encompasses so much more. But this is an easy element and it
20 has been satisfied. It's a highway or premises to which the
21 public has access to.

22 So did the defendant know or should have known he
23 was in an accident? Well, of course. Right. We heard the
24 testimony. This was a, bam, fender-bender according to the

1 defense. I would classify it as a rear-end collision as
2 every other witness testified. You can see that there's
3 damage to the car. You can see there's damage to the Ford
4 pickup. And you can see that the license plate was left at
5 the scene.

6 What did that individual do? Right. What did the
7 defendant do? According to Jason Beck, head kind of perked
8 up and accelerated down that embankment in an effort to flee.
9 Driving is a privilege. Remember I told you that? Not a
10 right.

11 And the defendant did not respect the rules of the
12 road. Did not take the personal accountability. We heard
13 someone talk about that in jury selection. Was not
14 personally accountable and speeds down an embankment and
15 flees. I submit to you that he knew.

16 But the law says knew or should have known. He
17 should have known that he was in an accident, because he hit,
18 it's a crunch, and he leaves. That element is easily
19 satisfied.

20 And that accident hurt somebody. She's right
21 there. She's hurt. She got hurt. The defense in their
22 opening argument claims it was a fender-bender, downplayed
23 it.

24 Jason Beck stayed. What did Jason Beck say? I

1 asked her her name. It took her a couple of seconds to even
2 tell me what her own name was. She told me she was hurt.
3 She told you she was hurt. She's on a back board. She went
4 to the hospital, REMSA comes. She's on pain medication. She
5 has to go to physical therapy for six months. She's hurt.
6 She's injured.

7 Jason Beck stayed. Why did he stay? Because he
8 saw that accident and thought somebody might be hurt. I
9 asked him, why did you stay with her? I was comforting her.
10 Why? She was crying. She was hurt. Driving is a privilege,
11 not a right.

12 And we know he didn't stay. Ms. Green told you he
13 didn't stay. Jason Beck told you he didn't stay. The only
14 thing that stayed was a license plate. We know that truck
15 didn't stay, because that's where the truck was, about a half
16 mile away at home.

17 All of those elements have been met and satisfied
18 beyond a reasonable doubt. So the question the defendant
19 wants to pose to you is they're saying it wasn't him, but
20 let's look at the evidence. Let's talk about what the
21 evidence was.

22 We have an eyewitness account. Remember in the
23 opening statement, they tried to tell you, well, we don't
24 know how many people were in the truck. Wrong. Both

1 witnesses told you one person. Wrong on their account. One
2 person was in that truck. Gertrude Green told you that and
3 Jason Beck told you that.

4 Proximity of time, Lieutenant Bowers, he was
5 excited when he was testifying, this is one of the rare times
6 where everything just kind of came together. That within
7 minutes you go from accident, to response, to license plate,
8 telling Deputy Gamboa, to arrival at the house where the
9 truck is right there, within minutes. Within minutes the
10 truck is found.

11 And it's found half a mile away, a half a mile.
12 And he's speeding down an embankment and heading east. Goes
13 down that embankment, heads east, goes north, and heads home.
14 He gets in that accident and he wants to pretend like it
15 never happened. That's actually what this case is about.
16 It's about an individual who just wanted to pretend it didn't
17 happen and thought it would go away.

18 You know what? No license plate, who knows? Who
19 knows where we're at. But we got a gift, right. Lieutenant
20 Bowers told you, we got a gift. Literally falling from the
21 sky on to the ground, a gift, a Classic Rod A335 license
22 plate. That Jason Beck thought was so odd, you saw the
23 photos of the truck, and he told you that he noticed it as he
24 was driving, he noticed it from First to Fifth, and it's

1 right there, the gift.

2 And we're all lucky. We're all lucky that license
3 plate fell. Because the defendant doesn't want to take
4 personal responsibility. But now we as a community can hold
5 him responsible for his actions, because of the gift.

6 The damage, okay. Lieutenant Bowers, appreciate
7 his testimony, he told you, I can tell you how this accident
8 happened. It's apparent from the damage that the defendant's
9 vehicle probably swerved to the left, right, at the last
10 second, which is why his passenger side hit the driver's side
11 of Ms. Green's vehicle, causing her, then, to go to the
12 right. And there's paint transfer. He told you exactly what
13 paint transfer is.

14 So you've got the gift, you've got the damage, and
15 the footprints. I would submit to you, there's footprints
16 all over there. And Deputy Gamboa told you that the path
17 that these footprints are leading go straight from the door
18 to the side entrance of the home. And you can look, the
19 footprints are right there. You can see, it appears they're
20 going back and forth.

21 We don't know exactly the path he was taking and
22 what he was doing. Perhaps he was going back to the car,
23 going to the truck, maybe checking the damage to his own
24 truck. But the point being, this is the path and it goes

1 from the door to the side entrance.

2 And the shoes are wet, right. In opening, they're
3 telling you he's sleeping, and the keys in his pocket, the
4 vehicle keys. And it took a while for Robert Lastine to
5 finally talk about it, but he finally came around and said,
6 once the ignition got changed, there were only one set of
7 keys.

8 Now, you have all of that information, right. And
9 they're going to come up, and I know they're going to say,
10 nobody in court pointed to him and said he was behind the
11 wheel of the truck. I get it. Remember in jury selection, I
12 asked how many murder victims can come in and identify the
13 defendant. Well, none, they're dead.

14 I asked Lieutenant Bowers, how do you solve these
15 kind of crimes? The whole idea of someone leaving the scene
16 of an accident is so he will not be identified. If he had
17 stayed, everyone would be able to identify him. But had he
18 stayed, it would not be a crime. He needs to be held
19 responsible for his actions on January 7th, 2016.

20 Now, what did he tell you? Well, he refused to
21 respond to deputies. Deputies were there to not only
22 investigate leaving of the scene of an accident crime causing
23 injuries, but to check on his own well-being. Because there
24 were two individuals involved in an accident that night, Ms.

1 Green and the defendant, and they have a duty to check him,
2 too, and make sure he's okay.

3 So despite him wanting to forget it happened,
4 despite him not wanting to take personal responsibility for
5 his actions, law enforcement has a duty to make sure he's
6 okay. But he won't show his hands. He won't even show his
7 hands, because he wants to pretend it's not happening. He's
8 stubborn and does not want it to be real. He finally says
9 no.

10 And at that point, the officers are left with no
11 choice. They are there to check on his well-being, but they
12 also have to check for their own well-being. And you heard
13 Deputy Obos, this isn't something where they're just pulling
14 off the sheets and yanking and throwing him to the floor.
15 They're careful, because the last thing that they want to do
16 is be involved in something unknown.

17 And then they just ask him what his name is and he
18 won't give his name, because he's pretending this is not
19 happening. But he finally talks and realization starts to
20 hit. He's getting booked, no more hiding, no more
21 pretending, it's real.

22 What does he say? I was a fucking idiot and
23 that's all that matters. One, you're a fucking idiot, two,
24 you're a fucking idiot, three, idiot, this guy. All the

1 elements have been satisfied.

2 Ladies and gentlemen, driving is a privilege, not
3 a right. The defendant tried to take advantage of that on
4 January 7th, 2016, and we got a gift and that gift allows you
5 to hold him responsible for what he did and the evidence has
6 proven beyond a reasonable doubt that he's guilty of leaving
7 the scene of an accident causing personal injury. Thank you.

8 THE COURT: Thank you, Mr. Bolenbaker. Ms. Brady
9 for the defense.

10 MR. BOLENBAKER: Thank you, your Honor.

11 MS. BRADY: Leave to get set up?

12 THE COURT: Ladies and gentlemen, stand up,
13 stretch your legs.

14 THE COURT: Please be seated.

15 MS. BRADY: Thank you, your Honor. So as the
16 judge said, the State has the opportunity to go first, then I
17 will -- then now I'm going, and then the State will have an
18 opportunity to go again. I will not be able to respond. I
19 won't have an opportunity to respond to the things that he
20 says, so I ask that as you're listening to his response to
21 me, that you use your common sense and think about responses
22 that I might have as he's going through his response to me.
23 Your judgment, your good judgment in place of something that
24 I might want to say, but am unable to say when he gets up.

1 Mr. Andrew Robert Allen Lastine is my client, and,
2 no, he's not an idiot. He's a human being. He's a citizen
3 of our community. He's a defendant. He's pleading not
4 guilty. He's accused of this crime. He's a person.

5 I'm going to go through in a little bit of detail,
6 not trying to take up too much of your time, but I'm going to
7 go through the evidence and detail it.

8 As we stated in our opening statement, Ms. Maher,
9 and by the way she had to be in Carson City today.

10 THE COURT: She's made it.

11 MS. BRADY: Yeah, she's here. She was testifying
12 on a completely unrelated matter and made back. Nice to see
13 you.

14 As we spoke about in opening statement, there's a
15 puzzle, think of a puzzle, and there's a puzzle piece and
16 there's a picture. And they're trying to put Andrew Lastine,
17 shove him into their puzzle piece. But it doesn't fit and
18 I'm going to detail the reasons why he is not guilty of this
19 crime.

20 Jury instruction 13A, Fifth Amendment, can't
21 consider the fact that he didn't testify or why, speculate as
22 to why he didn't testify, or infer any guilt because of that.
23 That's the law. That's our constitution. I'll be asking you
24 to uphold that constitution.

1 Obviously, he didn't testify, so his voice, how we
2 hear from him? How do we hear his side of the story? First,
3 we know he pled not guilty, but he is not guilty of this.
4 That's what you know through all of this reason why you're
5 here today and why you've been here this week is he has said
6 he is not guilty.

7 Aside from that, his voice that speaks through me,
8 it speaks through the questions we've asked, it's speaks
9 through the evidence and the evidence points to not guilty.
10 You're allowed to look at when considering the evidence, what
11 is said, and Ms. Maher asked you initially to think about
12 also what is not said.

13 There's a lot that was made of circumstantial
14 versus direct evidence. And so we have direct evidence would
15 be, for example, an eyewitness saying that they saw Andrew
16 Lastine driving the truck. That would be direct evidence.

17 Circumstantial evidence as the State was
18 mentioning, would be other evidence that would tend to show
19 like he said, I think he used the example of it's raining.
20 And so in one instance, you know, you see it rain. You're an
21 eyewitness to the rain. That's direct evidence.
22 Circumstantial would be, you didn't see it rain, you went to
23 bed, you woke up in the morning and the ground was wet.
24 That's circumstantial.

1 Someone, one of you and I don't know, I can't
2 remember who it was, said it could have been that somebody
3 came and sprayed the lawn with water or sprayed water.
4 That's something that can happen. So circumstantial, you
5 give it equal weight, but the direct evidence isn't there and
6 the circumstantial evidence here is weak.

7 So you do look, just because there are some
8 circumstances, that doesn't in and of itself make it a strong
9 evidence that it was Mr. Lastine.

10 We have as evidence, a lot was made about -- a lot
11 to do was made about the license plate and that the license
12 plate was a gift. I'm going to put a footnote in that, but
13 we'll talk about it later, because you can have a gift and
14 then you can squander that gift and not arrive to the right
15 result.

16 So when you think of the evidence, you think of
17 the pictures, think of physical evidence, think of the
18 testimony, what was said, what is obvious, what isn't
19 obvious, and really what you take away from your beliefs,
20 your experience, your common sense, what you know to be true,
21 and then you make a decision.

22 It is up to you. I'm showing you jury instruction
23 number seven. The evidence, weighing the evidence is up to
24 you. You are the deciders of the facts in this case. So the

1 State, Mr. Bolenbaker, got up, talked about what was obvious
2 and we know this, we know he was driving the car. He had a
3 nice story about what his theory of the case. And, remember,
4 it's a theory. What I say isn't the evidence, aren't the
5 facts. What he says, they're not the facts. That's his
6 theory. It's a theory. His theory of the case. But it's up
7 to you to really look at your notes, to remember the
8 evidence, and make your own decision.

9 And we feel strongly that this evidence doesn't
10 point, they do not prove up beyond a reasonable doubt that
11 Mr. Lastine is the one who committed this crime.

12 We have the information. I'm going to read
13 information. So this is the crime, this is the specific
14 crime that they are charging him with, that the said
15 defendant on or about the 7th day of January and before
16 filing of this information, within Washoe County, did
17 willfully and unlawfully, being the driver of a Ford pickup
18 in Sun Valley Boulevard and Fifth Avenue, a public highway in
19 the County of Washoe, State of Nevada, failed to immediately
20 stop such vehicle and return forthwith and remain at the
21 scene of an accident at above location in which he was
22 involved and which personal injuries were sustained by
23 another.

24 Did willfully and unlawfully. Keeping in mind

1 that -- what that is, what the information is, it's an
2 accusation based on a theory blaming Mr. Lastine for
3 something he didn't do.

4 Instruction 17, and I'm going through this, these
5 are ones that I'm going through the specific ones detailed.
6 They have to prove every element of the crime beyond a
7 reasonable doubt. Every element. This isn't just a matter
8 of, huh, did he do it, maybe he did, more likely than not.
9 No. They have a burden, think of the word burden, burden,
10 burden of proof. This isn't just something you lightly toss
11 around or have a light theory or an accusation, they actually
12 have a burden that they have to prove and carry.

13 And there's many obstacles to them proving up this
14 burden, to carry up this burden. Each element of the offense
15 is important. It's every element of the offense together,
16 they make the full crime. You can't find him guilty on one
17 element or two elements, and say, well, you know, maybe
18 elements two and three, but I don't know about -- if you
19 don't know about any of them, then he's not guilty. If
20 there's reasonable doubt about any of the elements, any one
21 of the elements, then you must return a verdict of not
22 guilty.

23 We looked at the information, the burden of proof.
24 The State has the burden to show a combination of act and

1 intent. That's their burden. That's one of their burdens
2 that they have to show and they haven't shown it. And
3 there's a jury instruction that says you are not to take your
4 sympathies, passion, or prejudice into account in determining
5 guilt or innocence. That is jury instruction number 14.

6 And I point this out, because the State spent a
7 lot of time, he pointed out that Ms. Green is here and was
8 appealing to your sympathies. This decision is not to be
9 based on that. This decision is to be based on the evidence.
10 And they have to prove it up beyond a reasonable doubt. They
11 don't get to short-cut.

12 Let's look at the elements. Someone, the State
13 wants to tell you it was the defendant, that it was Mr.
14 Lastine that wants to avoid, that he's stubborn, he even used
15 the word stubborn. There's no testimony whatsoever about
16 Andrew Lastine's character, whether he's stubborn, whether
17 he's trying to avoid things. There's no testimony about
18 that.

19 But they have to prove, the first element they
20 have to get beyond, the first hurdle, is that it was him and
21 nobody saw Andrew Lastine driving that night. Nobody.
22 There's no eyewitness that it was him. None. So to assume
23 that it's him is just that, an assumption. They're jumping
24 over a lot of burdens of proof to get to him.

1 Now, there's evidence that there was the license
2 plate on the ground at a busy intersection. Maybe it
3 happened as the -- because of the accident, maybe it didn't.
4 There was a lot of testimony that the house on Bent Pine
5 Circle was near that intersection, just a few minutes away.
6 The car could have been driven by there a hundred times in
7 any given day in any given week, but it's a gift says
8 Sergeant Bowers.

9 A gift, which is squandered. Let's say it's a
10 gift. We don't know for sure. Let's look at the pictures.
11 So we have some of the accident debris there, and then off to
12 the side, we have the license plate. And the testimony was
13 that whoever was driving, drove somewhere that way down the
14 embankment. Maybe it's the same license plate, maybe it's
15 not.

16 We have a major intersection. We have over here.
17 Maybe it is, maybe it isn't. They have to prove that. You
18 have to be convinced beyond a reasonable doubt. The State
19 said everybody was really lucky it was there. But if that
20 truck wasn't involved in the accident, and it just happened
21 to be there because it fell off at a different time, there's
22 one person who isn't lucky and that's the owner of the
23 vehicle. So, please, be sure beyond a reasonable doubt as to
24 that element. That piece of circumstance. It's a

1 circumstance. That's what that is.

2 The State talks about -- the State's witnesses
3 talk about clear footprints. A couple of things about the
4 footprints, A, there's lot of them and they're confusing.
5 There's also more footprints -- there are multiple
6 footprints, like from different shoes. So there are multiple
7 kinds of footprints in the snow.

8 Follow the footprints. Here's another one. Clear
9 set of footprints going in one direction? No. Not at all.
10 So that circumstance, that was one of the circumstantial
11 cases. That was part of the circumstantial case, that there
12 was a license plate, and that there were footprints clearly
13 leading in a certain direction to the home where Mr. Lastine
14 was living.

15 We have damage to the truck. The truck you can't
16 see it very well in this picture, trying to make it -- but
17 it's up next to a shed area and you have to look at that to
18 see. Because the reason why I bring that up is that it's an
19 old vehicle that was being worked on and we don't know what
20 damage, if you look at some of the pictures, you can see
21 there's already damage, there's damage in the back of the
22 vehicle, and Robert Lastine testified there's different nicks
23 and dings, and we don't know how much of the nicks and dings
24 in the front would be because of an accident, because of this

1 accident in particular, or which ones were preexisting.

2 And I bring that up, because the police officers
3 never towed the vehicle. They never tested it to see where,
4 you know, like measured. They never measured it to see how
5 high it was and to see if it was consistent. They never
6 tested it. They never tested the paint to see if the paint
7 was consistent with what was on the Kia. They didn't test
8 the Kia to see what paint was on there. They talked about
9 transference, but it seems like there would be some red
10 transference on the Kia, too, if it was this vehicle.

11 And about the vehicle, obviously, it was a beat up
12 vehicle. The thing is that nobody really describes, not only
13 do they not describe Andrew Lastine, they don't even know if
14 it's a male or female. Ms. Green says she thinks she could
15 tell from the back that it was a male as they were driving
16 away. I'm not sure how. You take that for what that is.
17 Some of that may just be suggestibility, because, guess what,
18 big defendant placard on the table. Big defendant placard on
19 the table.

20 So it's not too difficult to tell. Those kinds of
21 things are suggestible. When you're testifying, you're
22 seeing somebody sitting there, in your mind you want to --
23 you guys weigh that for what it is.

24 But no one described the truck and of all the

1 things about this truck, they said it was a small truck. I
2 don't know that this is a small truck. It's not like one of
3 these big tired with the roll bars. I don't know that this
4 is characterized as a small truck.

5 They didn't mention that it was multi-colored.
6 They just talked about it being a rust colored or light
7 colored. I don't know that red is a light colored truck.
8 And I don't know that it looks rust colored.

9 So they saw and Ms. Green identified and she could
10 only see it as it was -- she didn't see the accident as it
11 happened, right. She saw it as it was driving away and it
12 was a rust color. And when you look at the back of that
13 truck, to me that's not rust colored, but you look at it, see
14 if it's consistent. So that bothers me in terms of even
15 proving up whether this is the right vehicle.

16 Some of what they're calling transference, to be
17 honest with you, that looks like it could be dripping paint,
18 something like some paint dripped on it at some point. We
19 don't know. They didn't test it, so we'll never know.

20 Talking about the footprints again. Here is the
21 edge of the truck. Guess what, do you see something in this?
22 Footprints are leading to the truck, not away from it. And
23 then you have some footprints here, but that looks like it
24 belongs to a different shoe than this one.

1 So the footprints are going in the wrong
2 direction. It's not leading -- if you take Deputy Gamboa's
3 testimony that there were clear footprints leading to the
4 side of the house where he stays and where he enters
5 50 percent of the time, they should be going away from the
6 truck, not to the truck. So there's -- so, again, that
7 circumstantial evidence of the footprints in the snow, it's
8 not there. Follow the footprints. It's not there.

9 Here we have a picture that is the outside. In
10 fact, let me show you Mr. Lastine's drawing to give you an
11 idea of where this area is. That's Exhibit Number 22.
12 Mr. Robert Lastine drew this picture and we see that the
13 garage is here, right. This is the garage. This is the
14 fence. And then you go back here and here's the add on where
15 Andrew Lastine was staying.

16 So when you listen to, following the footprints,
17 the footprints should go -- then here's the car -- the truck,
18 I mean. If you believe their theory, the footprints should
19 go this direction. And there's no one picture that shows a
20 path of any kind. They take little snippets of footprints in
21 the snow and we really don't know where it is. But I drew
22 this path. We don't -- they really didn't draw, ever show us
23 what path it would take.

24 But in any rate, it should be going this

1 direction. And here's the garage. Here's the garage. The
2 side of the garage is here. The side of the garage is here.
3 So guess what, this is the outside of the fence. And
4 according to Deputy Gamboa, the footprints should be going
5 that way. Guess what, look at this, footprints are going
6 that way. So their circumstantial case pointing to Andrew
7 Lastine falls apart and it falls apart very quickly.

8 Here's the inside. There are no discernible
9 footprints going one direction or the other here. In fact,
10 we don't know what's a footprint and what's melting snow.
11 It's not there. The footprints, footprints aren't there.
12 Follow the footprints.

13 They took lot of other pictures of footprints in
14 the snow. Which direction, way what is this going? It's not
15 clear. And it's leading to different vehicles. This is a
16 different truck. Other footprints leaving in different
17 directions, different automobiles. That's just confusion.
18 There's no clear set of footprints.

19 So their circumstantial case surrounding the
20 someone, whoever was driving the car, is not strong. It's
21 weak. And it talks about the license plate being a gift, a
22 gift that was squandered. Why was it squandered? Because
23 when they got there, they were looking for the owner of the
24 vehicle.

1 Now, they didn't show us any DMV paper work, not
2 something that you can consider. They didn't show us any
3 evidentiary information other than saying he was the one that
4 owned the vehicle. There was testimony that he owned the
5 vehicle. And I'm not going to -- I'm not going to say there
6 wasn't testimony. We did not see anything, documents or
7 anything, or have DMV testify to that.

8 But even if he's the owner of the vehicle, simply
9 being the owner of the vehicle doesn't make him criminally
10 responsible for someone else that might be driving it. It
11 does not make him criminally responsible. They have to prove
12 specifically that it was Andrew.

13 And what do we know about the keys? The State
14 said that we know there were only one set of keys. That's
15 not true. Robert Lastine said he changed out the ignition
16 and when he changed it out, the new ignition came with two
17 sets of keys and he made another one. And what he said was
18 he didn't know where the other keys were.

19 What he also said in reference to the keys were
20 that he would get upset, because not only would Andrew
21 Lastine often leave the keys in the vehicle, but so would
22 Andrew's dad, Robert Lastine's brother, so would Andrew's
23 brother, which would be Robert Lastine's other nephew. So we
24 have at least two other people who have driven that car that

1 had access to keys that could have been driving.

2 So that someone, that circumstantial case is very
3 weak, because we have other people, we've got the some
4 missing keys, and testimony that keys were often left in the
5 vehicle, and testimony that he didn't know where the keys
6 were, and other people that may have been able to drive it.

7 So that someone, I say someone, not the defendant,
8 because they haven't proven up that it's Andrew Lastine
9 beyond a reasonable doubt. Their circumstantial case is very
10 weak, very weak. So the circumstantial case falls apart. We
11 don't have any eyewitness.

12 Drove a vehicle. The State has to prove not only
13 was it Andrew Lastine, but that he was the one driving the
14 vehicle beyond a reasonable doubt. Both of those elements
15 beyond a reasonable doubt. And why is there reasonable
16 doubt? They didn't -- they were only specifically looking
17 for the owner of the car.

18 They didn't -- they did a little bit of a -- they
19 did a search of the property, enough to find the truck with a
20 matching plate, but past that, they didn't search anything
21 else. What about the garage? What about the trailer that
22 someone could be living in? What about the RV that was on
23 the property?

24 I'm not going to argue someone was hiding in a

1 boat, but there was at least one RV. Look at this RV here,
2 sitting here. Footprints leading to there, too.

3 Did they inquire? They didn't even inquire. The
4 police didn't even ask important questions about who has
5 access to the vehicle? Anyone else living on the property?
6 They don't even ask those questions. There was no testimony
7 about that. So there their circumstantial case is weak.

8 They cannot prove up and have not proved up beyond
9 a reasonable doubt that Andrew Lastine was the someone that
10 was driving the vehicle. Public road, yes, it's a public
11 road. It's a very busy road. A road that Robert Lastine
12 testified that earlier on in the day, he saw that the car was
13 gone. It was driving around. It would be -- you would be
14 hard pressed in Sun Valley if you've got somewhere to go
15 living where that -- at the Bent Pine Circle to not go
16 through that intersection. So, yes, I have to concede it's a
17 public road.

18 Let's talk about this. In which the person knew
19 or should have known there was an accident. I was kind of
20 ready to concede this point. You know, at the beginning of
21 the trial, I was like, okay, how can someone get into an
22 accident and not know? But when I actually heard the added
23 testimony that, and the State mentioned it, that when the
24 person drove, they kind of popped up and kept going, well,

1 whoever was driving that vehicle, that's not beyond a
2 reasonable doubt that that person was all with it.

3 Whoever was driving, I don't know if they were all
4 with it. It sounded like they kind of popped up and maybe
5 they were half asleep. I don't know. I don't know, but they
6 don't know. They have to prove beyond a reasonable doubt
7 that whoever was driving, that they actually knew that there
8 was an accident, that they were cognizant of that. That is
9 an element of the crime that has to be proven up beyond a
10 reasonable doubt, beyond a reasonable doubt.

11 That the accident caused bodily injury, beyond a
12 reasonable doubt. We heard testimony, very sympathetic
13 testimony about being hurt and having to do therapy, going to
14 a chiropractor. Where is the doctor's reports? Where is the
15 doctor? Where is the proof? The State could have done that.

16 I know the State is not required to call
17 everybody, but that would have been a crucial witness to call
18 would be the doctor just to prove up that there were
19 injuries.

20 Anyone can go and see a chiropractor. You don't
21 need a specific injury to see a chiropractor. Who referred
22 Ms. Green to the chiropractor? We don't know any of that,
23 because no doctor testified. They have to prove up beyond a
24 reasonable doubt. That was a crucial element that there was

1 an injury.

2 When I say that, I'm not being callous to someone
3 to someone who was obviously hit behind. I'm not some
4 callous, awful person defense attorney trying to be tricky.
5 That's not what this is about. This is about Andrew Lastine
6 being an American citizen and he having an constitutional
7 right to make the State prove up every element of the crime
8 beyond a reasonable doubt. That's what that is about.

9 It's not about, oh, this is a putting down the
10 victim. That's not what this about. This is about me
11 speaking for him, defending his rights. This is what this is
12 about.

13 The license plate, the truck, I talked about that,
14 the intersection, busy intersection. Okay. Sleeping in bed.
15 Mr. Lastine was sleeping in bed. The State's theory is he
16 was hiding. That's their theory. They're allowed to have
17 their theory. Evidence shows he was sleeping. They knocked.
18 We'll get to inconsistencies.

19 Deputy Obos and Deputy Gamboa had very different
20 renditions of how the detainment happened. Setting the
21 inconsistencies aside for right now. He was not
22 nonresponsive. They don't know anything about him. They
23 don't know how he sleeps, if he's a heavy sleeper. They
24 don't know any of that.

1 We know he was in bed, we know he was under the
2 covers and he didn't respond. And they make a big to do
3 about, Deputy Gamboa said that Andrew Lastine said no when
4 they said show us your hands. Deputy Obos didn't say that.
5 He didn't say that he said no. He said he touched him
6 gently, and then he pulled away. That's very vague. We
7 don't know what that is.

8 If I'm sleeping and someone touches me and I'm not
9 expecting them, you don't know how you're going to respond.
10 If you're in the middle of a dream and someone says
11 something. If someone is sleeping, pulling away or a no
12 response could be perfectly, perfectly appropriate and within
13 the realm of somebody sleeping.

14 He didn't have his shoes on. He had his jeans on
15 in the bed. Some people do sleep in their jeans. Keeping in
16 mind that this one room where the bed is, there's a
17 refrigerator, not a microwave, this was his living quarters.
18 Who has ever come home after work, sat on the couch, and
19 fallen asleep on the couch?

20 The bed in Andrew Lastine's home served as the
21 couch and the bed. So it's completely within -- it's
22 completely appropriate that he could have gotten home from
23 work that day, went, sat in the bed, watched some TV, there's
24 no evidence of a TV, they said it was dark, and gone to

1 sleep.

2 Mr. Lastine, Andrew Lastine was asleep, which
3 would tend to point to someone else on the property that the
4 police didn't even inquire about. They squandered. Let's
5 say that if you -- if you find that the truck was the truck
6 that was in the accident, and then they find a license plate,
7 they squandered it with an incomplete investigation. They
8 got so excited about, oh, we found who the owner is, they
9 didn't even look any further. If it was a gift, it was
10 squandered.

11 THE COURT: Excuse me, ladies and gentlemen,
12 please stand up. Can I see counsel at the bench?

13 (Discussion at the bench.)

14 THE COURT: Thank you, please be seated. Ladies
15 and gentlemen, I have another matter with the Grand Jury, and
16 so I'm going to take a brief break here, deal with them, and
17 this will count as our morning break. Then call you back in
18 and we'll finish up the evidence here.

19 So, please, during the break, just remember the
20 admonition and the jury may retire.

21 (The following proceedings were had outside the
22 presence of the jury.)

23 THE COURT: Please be seated. We're going to be
24 in recess. I'll ask the gallery to clear. I'll ask the

1 deputies to clear the courtroom and this will take about
2 20 minutes. I'm going to remain on the bench.

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, ladies and
11 gentlemen. Ms. Brady.

12 MS. BRADY: Thank you. Jump right back into it.
13 So multiple car keys. There was also evidence that helps to
14 frame the State's circumstantial case, which are the keys in
15 the pocket, that there were keys in his pocket. But they
16 didn't provide evidence of where these go to.

17 And we know that Mr. Robert Lastine testified that
18 Andrew Lastine also owned a Yukon, which you can see here.
19 Apparently, there is a Barracuda, and this is another
20 Barracuda, but this one here is also a Yukon in the yard.
21 So, again, their circumstantial case is weak.

22 I'll get to the investigation and complete and
23 biased in a minute testimony and footprints in the snow.
24 I've talked about that.

1 Let's talk about witnesses. Talked a little bit
2 about Jason Beck already, what he saw, what he didn't see.
3 And the big notable thing that he didn't see was who was
4 driving the car. And Jason Beck also said he couldn't tell
5 from his vantage point whether or not it was a male or
6 female.

7 And he arguably had a longer look at whoever was
8 driving, because he was watching it from before and he noted
9 that it was weaving in and out. But that also goes to the
10 idea that I was pointing out earlier about whether or not
11 whoever was driving that vehicle knew they were in an
12 accident, because it sounds like from Jason Beck's
13 description, it was pretty erratic driving and unusual
14 circumstances. So we don't know beyond a reasonable doubt
15 that whoever was driving knew.

16 A little bit, again, I talked about the different
17 witness testimony as we've gone along. But the other thing I
18 wanted to say about Robert Lastine's testimony and one of the
19 things that you have to decide between is the credibility of
20 the witnesses, as well as consistencies and inconsistencies
21 within a witness' own testimony and also consistencies or
22 inconsistencies across witness testimony.

23 Now, Robert Lastine testified about the trucks,
24 the fire trucks and so forth that arrived. He was asked

1 specifically, what did they do? Did you see them? He said,
2 no, he didn't -- if you can, look back to your notes, he went
3 back into his house and he didn't see them again. And I
4 bring that up, because that contradicts as an inconsistency
5 to Deputy Obos, Martin Obos, and his testimony that REMSA was
6 attending to Andrew Lastine.

7 So let me talk about Deputy Obos and his testimony
8 now that I'm on that subject. Deputy Obos testified that
9 they went back there and he was concerned about the
10 well-being of the owner of the vehicle. Now, he wouldn't
11 admit that they had any particular suspect in mind, although
12 Deputy Gamboa was clear he was looking for the owner of the
13 vehicle. But Deputy Obos, his testimony was that he was
14 concerned, he wanted to make sure that the health of the
15 person in the bed, who ended up being Andrew Lastine was
16 okay, wanted to check on him, make sure he wasn't harmed.

17 What's interesting about -- what's inconsistent
18 about that testimony is that even though made a much to do
19 about wanting Andrew to be okay, he said that REMSA came in
20 the house. Now, that contradicts what Robert said. But
21 aside from that, he didn't stay and he didn't see at the end
22 of the day if Andrew was okay.

23 He didn't look at any paper work. He testified
24 that he signed off on some things, but he didn't -- he

1 admitted he didn't look at any paper work. He didn't know.
2 So it's kind of inconsistent that at the one hand, he's so
3 concerned about Andrew Lastine's health, but at the other
4 hand, he doesn't follow through with any of the REMSA things.

5 We know that REMSA did not take Andrew Lastine
6 from Deputy Howald's testimony that he was taken, actually
7 put in handcuffs while he was still in bed, detained, and
8 then taken -- put on the couch and taken to the jail. He
9 wasn't -- Deputy Howald never said that REMSA looked at him,
10 that he wasn't taken to the hospital. He was taken to the
11 jail.

12 You know the other thing I want to say about both,
13 about the deputies, about Deputy Howald, Deputy Gamboa and
14 Deputy Obos. So this is a situation where NHP arrives on the
15 scene of the accident. And Howald is the main person
16 investigating this. Her sergeant, she's now a sergeant, but
17 her supervising officer came to the scene. They were doing
18 it together. And when the call came in, hey, we matched the
19 plates to an address, her boss told you, go do your
20 investigation and she goes, and Andrew Lastine is already on
21 the couch in custody.

22 I say that because if you remember Deputy Gamboa's
23 testimony is that he was not even on duty. He was off duty,
24 but he was in the area. So he volunteered, kind of thought

1 he'd help out. He volunteered, came to the scene. Deputy
2 Obos testified that he was way on the south side of town, and
3 so he brought it upon himself, he checked himself -- I can't
4 remember the language, but basically checked himself into the
5 case, volunteered to come.

6 So they volunteer, they come. They basically mess
7 up Deputy Howald's investigation. She gets there, they've
8 already got somebody in custody. Who knows what she would
9 have done. Maybe she would have asked a few more questions.
10 Maybe they could have gotten, is there anyone else on the
11 property? Anyone else have access?

12 But they went in and they -- their testimony about
13 how they went in is different, too, because Deputy Gamboa
14 says he first knocked on the door by himself, but Obos said
15 that when Gamboa knocked on the door, he was standing by
16 Gamboa. So Gamboa and Obos' testimony are both very
17 inconsistent.

18 And you're allowed to give that less credibility.
19 If you think anyone has falsely sworn, you're allowed to
20 disregard any or all of their testimony. So at the very
21 least, you can look at those inconsistencies and weigh that
22 as jurors to their credibility.

23 The other thing about Deputy Gamboa, and I know
24 that Howald testified and Mr. Bolenbaker made a big deal

1 about, I'm an idiot, statements Andrew Lastine made. But one
2 of the things is that there was no testimony that they told
3 Andrew Lastine why he was being detained and arrested. There
4 was no testimony that they talked with him about the case or
5 what was going on. They told Robert Lastine what was going
6 on, but there was no testimony that they told Andrew Lastine.

7 And this is important because when on cross
8 examination Deputy Gamboa when asked, you know, whether or
9 not he fudged on whether -- Deputy Gamboa -- strike that.
10 Deputy Gamboa wouldn't say that when he put Andrew Lastine in
11 handcuffs that he was under arrest. He wouldn't say that he
12 was under arrest. He just called it detained. But he did
13 say, yes, he was detained, he was not free to go and he was
14 in handcuffs.

15 So Ms. Maher asked the question, at that point, he
16 was guilty of resisting arrest or noncompliance. So I say
17 that, because when Andrew Lastine makes any kind of comments,
18 he's not referring to a particular crime. We don't know
19 really what he's talking about. We don't know if he's
20 thinking, well, gosh, if I had just showed them my hands,
21 none of this would have happened. We don't even know if he
22 was awake on that. We don't know anything about those
23 comments. And you have to -- so all of those comments are in
24 a void. It's not like anyone told him, there's any testimony

1 that they told him why he was being arrested.

2 And I say that to give less credence to those
3 statements. We really don't know what those statements mean.
4 And to convict a person beyond a reasonable doubt off vague
5 statements isn't fair.

6 You're allowed to look at bias, not just allowed,
7 but to consider bias, a person's experience. Excuse me.
8 These filters are filters we all have. They're filters that
9 you have, filters that I have, filters that every witness,
10 everyone in this room has. We all have filters of bias. You
11 can be a good person and still have some biases. And we all
12 come to the table with experiences, the police officers, too,
13 all the witnesses, are common sense intentions, motives,
14 state of mind.

15 And I bring that up, because you're to bring all
16 of that knowledge that you have as factfinders, but also keep
17 in mind that all the witnesses have that as well. And we
18 know that Sergeant Bowers, he really -- and he said it on
19 more than one occasion, he wants to make the victims whole.
20 That's what we want our police officers to do. When we call
21 911 and someone has committed a crime against us, we want the
22 police officers to help make us whole. That's what their job
23 is.

24 And so when I mention, I'm not saying it's a bad

1 thing that he wants to make someone whole, but that is a big
2 motivator for him. He wants to make them whole. He wants to
3 find who did this. He wants to find the culprit for what's
4 been done to Ms. Green and he's motivated by that. And I
5 would say he has some tunnel vision.

6 The same with Howald, the same with Gamboa, the
7 same with Obos. There was tunnel vision there that made the
8 investigation and their circumstantial case weak.

9 Remember your oath. Respect the law, respect your
10 fellow jurors, respect the constitution. Be true to your
11 beliefs. In the instructions, it states that if you -- you
12 have to go with what you really believe the evidence says,
13 your conviction.

14 It mentions that you don't hesitate to change your
15 mind if you're otherwise convinced by your fellow jurors, but
16 don't violate your conscience. You have to have an abiding
17 conviction that Andrew Lastine is guilty beyond a reasonable
18 doubt of every element of this crime.

19 I ask you, please, hold the State to their burden
20 of proof, which is beyond a reasonable doubt, and find Mr.
21 Lastine not guilty. Thank you.

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

24 MR. BOLENBAKER: Thank you, your Honor. Ladies

1 and gentlemen, it's true the State does have the burden and
2 it's a burden that we gladly accept. That's a part of the
3 job. I applaud Ms. Brady, she's very passionate, she's a
4 zealous advocate for her client.

5 Obviously, they're using this puzzle analogy.
6 They keep using the puzzle analogy. I keep thinking in the
7 defense is at the table, they're putting this puzzle
8 together, they've got all these pieces they're putting in
9 there, and they finished and to them they see these missing
10 pieces. But it's almost like they're not looking at the
11 ground to see that some of the puzzle pieces have dropped.

12 They make no explanation that this idea that the
13 individual was sleeping, the defendant was sleeping. Why
14 would his shoe be wet? We'll get to that in a second.

15 So when I asked Lieutenant Bowers, I said, how do
16 you prove these kinds of cases? The whole concept, and it's
17 an interesting crime, most of the time I'm prosecuting for
18 something that someone did. All right. And we have that
19 here. There was an accident. He's involved in an accident.

20 But it's almost unusual, because what I'm really
21 prosecuting is a failure to do something. It's not doing a
22 duty imposed upon you by law. Because, right, driving is a
23 privilege, not a right, and there's rules we have to follow.
24 And in this particular instance, we have to follow the law,

1 which is to stay at an accident scene.

2 In the crime itself, there's this implication that
3 whoever you're looking for is no longer there. We don't
4 generally have the ability to say, that's the person. So we
5 have to use other means to find out who did it.

6 And Lieutenant Bowers is the one that told you in
7 this case everything came together with the license plate,
8 the truck, the damage, the paint transfer, the footprints,
9 the shoes, the keys and the statements.

10 Now, they're doing their job. If they had knocked
11 on the door and Robert Lastine had answered and said, 'yeah, I
12 heard this truck pull in, I thought I saw someone running
13 into the trailer. Where do you think they would have gone to
14 look? The trailer.

15 If he said they had gone into the garage, where do
16 you think they would have gone and looked? The garage. The
17 boat. Where do you think you would have gone to look? The
18 boat. They just go where the evidence leads them. That's
19 their job.

20 And the evidence from the footprints led to the
21 side entry. So where do they go to the look? They want to
22 look in that bedroom. They're just going where the evidence
23 leads them. That's their job. And that's your job, because
24 you go where the evidence leads you, and the evidence leads

1 you to guilty.

2 I find it to be an odd argument to make to really
3 come to you and argue that perhaps it really wasn't the truck
4 involved. Right. Why make that argument when it's so
5 apparent that it's the truck? We have an eyewitness, Jason
6 Beck, who looked at the photo of the truck, and say, yes,
7 that's the truck that I followed. I know this, because I saw
8 the truck. I know this, because I saw the license plate, a
9 license plate that I found unusual, because it was a classic
10 license plate on a truck that is probably not considered a
11 classic vehicle.

12 I just don't understand this argument to really
13 sit here and say, perhaps the license plate fell at some
14 other time is pure guess, it's pure speculation, which we'll
15 talk about in just a second. It's just such an odd argument.

16 And she said no one described the truck. We know
17 that's not true. Jason Beck described the truck and pointed
18 out the truck. And what we say, obviously, it's not
19 evidence, it's not testimony. There's an instruction, I'll
20 throw it up there for you. It's the evidence you heard, not
21 what we say.

22 So when she tells you that no one described the
23 truck, and when I tell you, well, Jason Beck looked at the
24 photo and said that's the truck. When you go back into the

1 jury room, what do you remember? When you go back there, you
2 say, well, we remember Jason Beck saying that's the truck.
3 That's what your job is.

4 Your job is so important to the criminal justice
5 system, but it's also very narrow. And when I say that, I
6 mean your job is to take facts of the case and apply it to
7 the law that's given to you. That's it. The facts of the
8 case, apply it to the law as given you. And the facts are
9 the facts, the truth is the truth, and the law is the law.

10 Now, what are the facts? The facts are that an
11 accident occurred in Sun Valley. The facts are that a
12 license plate was left. The fact is that the defendant lives
13 less than a half a mile from that area. The facts are that
14 within minutes law enforcement arrived there. The facts are
15 that footprints are leading frankly both ways. They're going
16 to and from, probably because he's freaking out. Probably
17 because he's going back to check the damage on the truck.

18 But the larger point of that is that it's his
19 shoes, right. His shoes next to his bed that are wet.
20 That's the larger focus. She focuses on footprints in the
21 snow and she puts it as the caption to her Power Point, but
22 the larger point is the shoes and the idea that the shoes are
23 his, next to his bed, and they're wet.

24 She talked about the damage to the vehicle and

1 suggested perhaps the damage was not done at the time. What
2 do we know? What were the facts? The facts were steam was
3 coming up, because the radiator had been punched and there
4 was wet radiator fluid on the tire. Clearly suggesting that
5 there was an accident that was within minutes and recent.

6 And the damage was consistent with that,
7 consistent with what the accident was at the scene. The
8 facts are the facts, the truth is the truth and the law is
9 the law.

10 Anybody here really think the defendant was
11 sleeping at 6:30 in the evening? Really? With wet shoes
12 next to his bed? It's 6:30. It's unreasonable and that's
13 what we're here to talk about. Has the State proven its case
14 beyond a reasonable doubt? That's the standard you always
15 hear.

16 And I want to throw up some of the instructions to
17 highlight some of the things I want to talk about. This is
18 instruction number eight. This is exactly what you're to
19 consider, that's the evidence in the case, the sworn
20 testimony, and the exhibits. So everything that was in
21 evidence. Right.

22 We had an argument in opening that law enforcement
23 barged their way in. That was an argument in opening by the
24 defense. And what was the actual testimony? They knocked on

1 the door, they told Robert Lastine exactly what had happened,
2 they asked for permission to go inside to look for the owner
3 of the vehicle, his nephew, and he said go get him. Right.
4 That's a perfect example of the difference between someone
5 arguing to you something and actually hearing the facts as
6 they come from there, from the stand.

7 Reasonable doubt. A lot of people don't
8 understand there's actually a definition of it and this is
9 the legal definition. And I want to point some of these
10 things out. All right. A reasonable doubt is based on
11 reason. Makes sense, doesn't it? That's why they call it
12 reasonable doubt.

13 Not mere possible doubt. Doubt to be reasonable
14 must be actual, not mere possibility or speculation. That is
15 the standard you are to apply to the facts of this case.
16 Doubt must be actual, not possibility, not speculation. So
17 we'll talk about how that plays into some of the other
18 instructions.

19 Here's the law on evidence, direct and
20 circumstantial evidence. And, of course, we talked about in
21 jury selection. And I remember who I talked to, right, I
22 asked, and there was a guy brave enough to give it a shot on
23 what direct and circumstantial evidence was. He did a great
24 job. We talked about the example of the difference between

1 waking up in the middle of the night, letting your dog out,
2 look out side, seeing it's raining, direct evidence that it
3 rained.

4 In the other scenario, going to bed, everything is
5 dry, not waking up in the middle of the night, and you see
6 the ground is wet, and you turn to your wife, and say, it
7 must have rained last night. And we had a guy, right, great
8 example, well, maybe it could have been a bucket splashed
9 with water. I asked, how many times have you gone to bed,
10 woke up in the morning, saw that the ground was wet and said,
11 a bucket must have been splashed on the ground. He said
12 never.

13 But let's take it a step further. Let's think
14 about that for a second. Let's say you wake up and not the
15 entire ground is wet, just a little portion. And next to
16 that portion being wet, you saw a bucket with a little bit of
17 water in it. And next to that bucket, you saw a hose with
18 little drips of water. And the rest of the ground was dry.
19 What would you think then? What does the evidence lead you
20 to believe? Someone filled that water bucket, dumped it.
21 Because you go where the evidence leads you. Right. That's
22 your job.

23 So when we're in a circumstantial case, we have to
24 rely on you. We have to rely on this, the common sense that

1 you bring with you when you come in here. You're not robots.
2 You don't forget everything you've done in your life when you
3 came in here. You're 12, 13 members of this community that
4 have come together. You didn't know each other. But you all
5 have your different life experiences and with that comes
6 common sense. And with that comes an ability to figure out
7 two plus two equals four. Right.

8 Because what this instruction says is that you
9 draw reasonable inferences, right. What's reasonable?
10 What's reasonable is that the defendant got into an accident,
11 didn't want to take responsibility for it and tried to hide
12 from it based on all the evidence when you use your common
13 sense. Right.

14 But you have to combine these two, because to draw
15 reasonable inferences, but it's not based on -- not based on
16 possibility or speculation. So when you're back there,
17 sometimes there's a tendency to try to figure out a different
18 scenario. Maybe there was a bucket splashed. You catch
19 yourself saying, isn't it possible that, or couldn't it be
20 true that? Just read this and ask yourself, what are you
21 doing here? Because the law tells you, go where the evidence
22 leads you and what are the facts?

23 And ladies and gentlemen, the facts are on January
24 7th, 2016, the defendant was in his truck. It's a Ford

1 pickup. He was driving erratically on Sun Valley Boulevard.
2 He cuts off Jason Beck. Jason Beck is not that happy about
3 it. He follows him and he sees a license plate that's
4 unusual. It's a classic license plate. Follow him in the
5 left lane.

6 Then between First and Fifth, he turns into the
7 right lane. Everything is slowing down, because the light's
8 red. Gertrude green is the third person in line. And she's
9 just trying to get home. And he turns into the right lane,
10 doesn't see her, boom, an accident happens and she's hurt.

11 Think about this, why would the defense, if they
12 were so confident of their case try to argue other things
13 like that she wasn't really that injured, or he really didn't
14 know he was in an accident. Why take that strategy? Because
15 she's not convinced.

16 And she is hurt. She's hurt, because she told you
17 that she's hurt. She suffered bodily injury, her neck hurt.
18 It's physical injury. Jason Beck told you she was hurt. He
19 saw the tears coming down her face. He stayed because we
20 stay. We stay. We stay, right. We stay, because driving is
21 a privilege, not a right.

22 He took off and he went down that embankment,
23 right. One does not make the decision to go down an
24 embankment willy-nilly. And he goes home, parks the truck

1 out in front of his house. He wants to pretend like it did
2 not happen. Goes inside. I would say it's reasonable he
3 probably heard law enforcement come and hid in his bed and
4 tried to avoid it. And probably sat there just wishing,
5 wishing, wishing it would go away, but it didn't.

6 And when Gamboa and Obos get there, he's stuck
7 between a rock and a hard place and he doesn't want to take
8 responsibility. Where did we hear that before? A couple
9 minutes go at the accident scene, not wanting to take
10 responsibility. He doesn't answer the questions. He won't
11 even show his hands. He won't even give his name.

12 And the keys are in his pocket and the shoes are
13 wet and he makes those statements. That's all the pieces
14 they're not really talking about, that's the puzzle piece
15 that says guilty on it.

16 Ladies and gentlemen, January 7th, 2016, the
17 defendant committed the crime of leaving the scene of an
18 accident causing personal injury. The State has proven this
19 case to you beyond a reasonable doubt. And we thank you for
20 your time.

21 THE COURT: Thank you, Mr. Bolenbaker. Ms. Clerk,
22 please swear in the bailiffs to take charge of this jury.

23 (Bailiffs sworn at this time.)

24 THE COURT: Thank you very much. Ladies and

1 gentlemen, the admonition this Court has given you throughout
2 the proceedings is now lifted. You can talk about this case
3 amongst yourselves with a view of reaching a verdict if you
4 can do so without violence to your individual judgment.

5 Just a couple of housekeeping matters. We've had
6 lunch brought in. Settle in, select one of your number to
7 act as foreperson to preside over your deliberations. Take
8 as much time as you feel is necessary.

9 And if you need any questions answered, simply
10 have your foreperson write the question down on a piece of
11 paper, date it and put a little time stamp on it and provide
12 it to the deputies who will bring it to the Court. I'll seek
13 the guidance of counsel and I'll get something back to you in
14 writing as soon as possible.

15 With the exception of Mr. Schroder, if you could
16 just remain here, the jury may retire to the commence its
17 deliberations.

18 (The following proceedings were had outside the
19 presence of the jury.)

20 THE COURT: Mr. Schroder, unfortunately, the
21 admonition still applies to you. We don't know if somebody
22 is going to get sick in there or for some reason is not able
23 to continue deliberations. This happens a lot more often
24 than you expect and oftentimes we're asked to bring the

1 alternate in.

2 If that occurs, I'll bring the jury back in, I'll
3 recharge them to start at the beginning, so you won't have
4 missed anything, and go back in and you'll contribute to that
5 discussion.

6 Before you leave, you can go and pick up your
7 personal items in the jury room. But leave your personal
8 contact with Ms. Oates. If we get a verdict, we'll let you
9 know. If we need you, we'll let you know. I'll know I speak
10 on behalf of everybody when I thank you for your service.
11 I've been watching you, you've been a great juror here, and
12 we couldn't have done this without you and it's not over yet.
13 But thank you for your service.

14 A JUROR: I'm free to go?

15 THE COURT: Yes, you are. Why don't you come up
16 and leave your cell phone number with Ms. Oates.

17 Counsel, you know the drill. You can be seated.
18 Leave your cell phone number with the clerk. I'd like you to
19 be here within ten, no more than 15 minutes upon a call from
20 the jury. And that's all we need to talk about.
21 Mr. Bolenbaker, what do you want to do?

22 MR. BOLENBAKER: What do I want to do?

23 THE COURT: About the keys.

24 MR. BOLENBAKER: The improper argument?

1 THE COURT: Yes.

2 MR. BOLENBAKER: I don't know, judge.

3 THE COURT: Why don't you give it thought. All
4 right. We're in recess until the call of the jury.

5 (Jury deliberating.)

6 (The following proceedings were had in the
7 presence of the jury.)

8 THE COURT: All right. Good afternoon, ladies and
9 gentlemen. Ms. Clerk, please take roll of the jury.

10 (Roll of the jury called.)

11 THE CLERK: Are all present, your Honor.

12 THE COURT: Mr. Giardina, I think you have been
13 selected foreperson?

14 A JUROR: Yes, sir.

15 THE COURT: Has the jury reached a verdict?

16 A JUROR: Yes, they have.

17 THE COURT: Please provide the verdict form to the
18 bailiff.

19 Mr. Lastine, please rise. The clerk will read the
20 verdict of the jury.

21 (Verdict read.)

22 THE COURT: All right. Thank you very much.
23 Please be seated. Ladies and gentlemen, is that your
24 verdict, so say you one, so say you all?

1 THE JURY: Yes.

2 THE COURT: Do either side wish to pole the jury?

3 MS. BRADY: Yes, please.

4 THE CLERK: I'm going to identify you by number

5 now. When I do, I'm going to ask you if this is your verdict

6 as read. Juror number one, is this your verdict as read?

7 A JUROR: Yes.

8 THE CLERK: Juror number two, is this your verdict

9 as read?

10 A JUROR: Yes.

11 THE CLERK: Juror number three, is this your

12 verdict as read?

13 A JUROR: Yes.

14 MS. OATES: Juror number four, is this your

15 verdict as read?

16 A JUROR: Yes.

17 THE CLERK: Juror number five, is this your

18 verdict as read?

19 A JUROR: Yes.

20 THE CLERK: Juror number six, is this your verdict

21 as read?

22 A JUROR: Yes.

23 THE CLERK: Juror number seven, is this your

24 verdict as read?

1 A JUROR: Yes, it is.

2 THE CLERK: Juror number eight, is this your
3 verdict as read?

4 A JUROR: Yes.

5 THE CLERK: Juror number nine, is this your
6 verdict as read.

7 A JUROR: Yes.

8 THE CLERK: Juror number ten, is this your verdict
9 as read?

10 A JUROR: Yes.

11 THE CLERK: Juror number 11, is this your verdict
12 as read?

13 A JUROR: Yes.

14 THE CLERK: Juror number 12, is this your verdict
15 as read?

16 A JUROR: Yes.

17 THE COURT: Ladies and gentlemen, thank you very
18 much. I know I speak on behalf of everybody when I thank you
19 for your service here.

20 You might be interested that in 523 BC, a Roman
21 General by the name of Cincinnatus was farming his family's
22 farm when the city officials came up to him and asked him to
23 raise an army. The Roman Army was trapped in the Albin
24 hills, which was about 20 miles southwest of Rome by the

1 Albin and Aequi tribes. He realized if he put down his plow,
2 he would miss the planting season and likely his family would
3 starve. Nevertheless, he took up the mantle of dictatorship,
4 raised an army in six weeks, and not only rescued the Roman
5 Army, but made the tribes allies of Rome. Ladies and
6 gentlemen, then he came back, took off his mantle of public
7 service and picked up his plow.

8 Ladies and gentlemen, you've done the same thing.
9 We have called you from your private life. You've put down
10 your plow and agreed to take up the mantle of public service
11 and for that we're grateful. Now your service is over and
12 you can go back to your private lives.

13 Throughout the trial, I have told you you're not
14 allowed to talk about this case amongst yourselves or with
15 anybody else. That admonition no longer applies. So I hope
16 that this has been a good experience for you. And when
17 somebody asks you how was it, you're free to answer it.

18 However, up until Monday, each of you were
19 strangers to each other. But for this service, you never
20 would have known each other. You gathered together in that
21 jury room, you probably shared some things that you never
22 would have otherwise shared. Even during the deliberations
23 you probably shared things. So that if somebody comes up to
24 you and says to you, how was your experience, what did you

1 think, et cetera, you're certainly free to answer that. But
2 if somebody says to you, what did the other jurors say, what
3 did the other jurors feel, what did the other jurors think,
4 well, I would hope that you keep those conversations as
5 confidential and as close to your heart as the manner in
6 which they were shared with you.

7 Mr. Giardina, I see in the -- can I have the
8 bailiff up here? The verdict form, that the date may have
9 been transposed. Could you take a look at that for a moment?
10 Would you provide it to Mr. Giardina? Would you be so kind
11 as to make those changes?

12 A JUROR: Absolutely, your Honor.

13 THE COURT: That's quite all right.

14 A JUROR: I initialed both, too, your Honor.

15 THE COURT: Thank you very much. Ladies and
16 gentlemen, we'll notify the jury commissioner and remove your
17 name for the next two years and that big fat check will be
18 put in the mail for you tomorrow. Thank you very much. The
19 jury is discharged.

20 (The following proceedings were had outside the
21 presence of the jury.)

22 THE COURT: The clerk will record the verdict in
23 the minutes of the Court. Let's talk about custody. Mr.
24 Bolenbaker.

1 MR. BOLENBAKER: Your Honor, we would ask that he
2 be remanded into custody today for a variety of reasons. One
3 being as this is a non probationable offense. Now that the
4 jury has reached their verdict, he will be going to prison.

5 Two, we already have clear evidence that the
6 defendant has a drinking problem. And as you know, the other
7 facts of this case involve drinking and driving. I can't
8 imagine what would drive somebody to drink more than the
9 reality of going to prison. And so failure to remand him, I
10 think puts the community at risk. And I can't in good
11 conscience as an officer of the Court sit here and allow an
12 individual not to be remanded, knowing what I know. And so
13 we would ask that he be remanded into custody pending
14 sentencing. So that is our position.

15 THE COURT: All right. Before I hear from
16 Ms. Brady, Ms. Clerk, can we get a sentencing date?

17 THE CLERK: Yes, your Honor. Sentencing scheduled
18 for May 3rd at 9:00 a.m..

19 THE COURT: Let me hear from Ms. Brady.

20 MS. BRADY: Your Honor, we're asking that he
21 remain out of custody. He has paid \$5,000 towards \$25,000
22 bail, and because of the alcohol earlier this week, he is
23 also on supervised bail. So he's to report into Court
24 Services.

1 To my knowledge, he has tested clean yesterday and
2 today, and so he has been in compliance with Court Services.
3 Mr. Lastine's bail bondsman is here as well, and if you need
4 to hear from him, according to Mr. Lastine, he has been
5 keeping his bail bondsman apprised, making payments, and is
6 in compliance with him.

7 And so now he's in compliance with Court Services,
8 he's in compliance with his bails bondsman. He has money out
9 there that he has paid that he would like to be exonerated
10 ultimately. So he's not a flight risk. He's from the area
11 and he is -- his conduct, also to consider his conduct during
12 the trial, he's been conducting himself nicely during the
13 trial. I ask that you allow him to remain out of custody
14 until sentencing.

15 THE COURT: All right. I'll deny the motion to
16 remand at this time. It does appear as if the defendant is
17 compliant. He's tested clean. This is a nonprobatable case
18 and does increase the risk of flight. I don't have anything
19 in front of me as to his prior criminal history, other than
20 when he was arrested here, the blood alcohol content was
21 astronomical. So I'll keep him on pretrial supervision and
22 continue his present status until sentencing.

23 Mr. Lastine, you'll be provided a packet of paper
24 work from the parole and probation department. Fill it out

1 as completely as possible. It's mostly biographical
2 information. The more information the Court has about you,
3 the better job the Court is going to be able to do.

4 Stay in touch with Ms. Brady. Sometimes these
5 court dates change. If they do change, the attorney is the
6 one notified, but you're the one responsible for making any
7 and all court appearances. You are advised that a failure to
8 appear is a separate offense, which could subject you to
9 civil and criminal penalties. Now, do you have any questions
10 about these conditions?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Ms. Clerk, do we have document from
13 parole and probation?

14 THE CLERK: We do, your Honor. I just need to
15 copy this.

16 THE COURT: Ms. Brady, before you leave, make sure
17 that you get a copy of the parole and probation paper work
18 from the clerk.

19 THE CLERK: I need to make a copy.

20 THE COURT: All right. Anything further, Mr.
21 Bolenbaker?

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

23 THE COURT: Thank you. Ms. Brady, anything
24 further?

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MS. BRADY: No, your Honor.

THE COURT: Court's in recess.

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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 8, 2017, at the hour of 8:45
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 286, 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 30th 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