

IN THE SUPREME COURT OF THE STATE OF NEVADA

EDWARD SAMUEL PUNDYK,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal from a Judgment of Conviction in Case Number CR16-1290
The Second Judicial District Court of the State of Nevada
The Honorable Connie J. Steinheimer, District Judge

JOINT APPENDIX VOLUME TWO

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1 4185.

2 JUDITH ANN SCHONLAU

3 CCR #18

4 75 COURT STREET

5 RENO, NEVADA

COPY

7 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

8 IN AND FOR THE COUNTY OF WASHOE

9 BEFORE THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

10 -o0o-

11 THE STATE OF NEVADA,)

12 Plaintiff,)

13 vs.)

14 EDWARD SAMUEL PUNDYK,)

15 Defendant.)

) CASE NO. CR16-1290
) DEPARTMENT NO. 4
)
)
)
)

16
17 TRANSCRIPT OF PROCEEDINGS

18 TRIAL

19 MONDAY, JULY 16, 2018, 9:30 A.M.

20 Reno, Nevada

21
22 Reported By: JUDITH ANN SCHONLAU, CCR #18
23 NEVADA-CALIFORNIA CERTIFIED; REGISTERED PROFESSIONAL REPORTER
24 Computer-aided Transcription

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A P P E A R A N C E S

FOR THE PLAINTIFF: OFFICE OF THE DISTRICT ATTORNEY

 BY: AMOS STEGE, ESQ.

 DEPUTY DISTRICT ATTORNEY

 1 S. SIERRA STREET

 RENO, NEVADA

FOR THE DEFENDANT: OFFICE OF THE PUBLIC DEFENDER

 BY: LINDA NORDVIG, ESQ.

 JENNIFER RAINS, ESQ.

 DEPUTY PUBLIC DEFENDERS

 350 S. CENTER STREET

 RENO, NEVADA

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I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
JACOB BOHART	34	45	45	
EDUARDO FRANCO	47	57	58	

<u>EXHIBITS:</u>	<u>MARKED FOR IDENTIFICATION</u>	<u>ADMITTED INTO EVIDENCE</u>
1		21
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1 RENO, NEVADA; MONDAY, JULY 16, 2018; 9:30 A.M.

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3
4 THE COURT: Thank you. Please be seated. Let the
5 record reflect that we are convened in CR16-1290, State versus
6 Pundyk for preliminary matters outside the presence of the
7 jury. Counsel for Mr. Pundyk and Mr. Pundyk are present.
8 State is present.

9 The first preliminary manner, I would like to go
10 over the logistics. Okay. Can everybody see all right? Did
11 we get that fixed?

12 MS. RAINS: Yes, Your Honor. Thank you

13 THE COURT: Next, I would like to go over your
14 proposed voir dire questions. I have had an opportunity to
15 view both your Trial Statements and your requested voir dire.
16 The Court does not get into which charges would have the
17 preponderance and which charges would have the beyond
18 reasonable doubt burden of proof in voir dire. I do give the
19 jury the burden of proof Instruction to see if they will
20 accept it. I don't think there is any question they will
21 accept the preponderance of the evidence Instruction. What we
22 ask is if they will follow the Instruction of beyond a
23 reasonable doubt, and, if they will, then we move on. So I do
24 not go into detail about what they're going to be instructed

1 on in the case later. So I think that was Mr. Stege's concern.

2 MR. STEGE: Right. My concern is, well -- well --
3 so under your Court's ruling, would the defense be able to go
4 into talking about beyond a reasonable doubt, I can sit here
5 and do nothing on that line of questions?

6 THE COURT: I do not see that as being a way to
7 select a jury. She has requested, and I always allow defense
8 to ask one question on presumption of innocence and one
9 question on burden of proof because that is significant to the
10 defense case. So I let them ask one question about that. So
11 when I reviewed the proposed voir dire from the defense,
12 question number three -- Well, first let me say I don't like
13 or want either of you asking questions of the jury I have
14 already asked unless there is a nuance or a specific question
15 to a specific juror. Certainly, if they responded to my
16 questions or they responded to the questionnaire in a certain
17 manner, individual voir dire as to those answers is fine. What
18 I am talking about is general voir dire of the panel. I don't
19 want you to repeat what I have already done. And so when we
20 talk about prior jury service, I do ask about that, but the
21 defense asked about have you ever been excused from jury
22 service before or the reasons for it, and I'm not going to
23 allow the reasons for that. Jurors don't know why they are
24 preempted. They wouldn't have any idea. That was your

1 question number three. Also question number five you request
2 asking have they ever had prior grand or petit jury trial
3 experience as a juror. I ask that question. If I forget to
4 ask it, you could ask it, but I always ask if they were able
5 to reach a verdict. I don't ask for a unanimous verdict,
6 because if they are on a civil case, they wouldn't have
7 reached a unanimous verdict. So that part would not be the
8 unanimous part.

9 I don't ask question number six, so I will allow you
10 to ask that if you want. I don't have any difficulty with your
11 other questions if I forget to ask them, but most of the
12 others through ten I do ask. I will allow you to ask ten and
13 eleven in part. Eleven is acceptable when you ask if they have
14 strong beliefs regarding ownership and specific types of guns,
15 but it isn't appropriate to talk about how do they feel about
16 these topics. That gets into areas that we will end up
17 indoctrinating the jury one or the other, both sides, pretty
18 soon both of you are asking questions. It doesn't really lead
19 to a good jury selection.

20 Number fourteen, is it fair to expect a person to
21 disprove allegations against them. That is not really the
22 standard. I think the jury gets so confused when asked that
23 question. They are asked presumption of innocence, and you
24 can ask burden of proof questions, but not that one.

1 Eighteen is argumentative given the nature of the
2 defense in this case, so it would not be permissible.

3 And can you think of any reason why the defense
4 would not call all the witnesses or choose not to ask
5 prosecution witnesses questions. Can they think of a reason
6 does not lead to an indication of their bias, so question
7 twenty-seven would not be permissible. That means, if
8 Mr. Stege were to object, I would sustain the objection. I am
9 not telling you what you can and cannot ask. I am giving a
10 heads up of what would be sustained if there is an objection.

11 With regard to the prosecution, I think I already
12 indicated I will not be instructing on the preponderance of
13 the evidence standard. I don't think there is any confusion
14 about that, and we'll deal with that in the Instructions at
15 the end of the case.

16 MR. STEGE: So I should stay away from that topic.
17 There are two burdens.

18 THE COURT: Right. At that point, we are starting
19 to instruct on the whole theory of this case and pretty soon
20 we are going to be telling them about the law of insanity in
21 the State of Nevada. We haven't even decided on those
22 Instructions yet. You all have an opportunity still to argue
23 your positions before me. I don't think we are in a place to
24 do that. Okay.

1 The clerk has told me that we have quite a few
2 failures to appear this morning. So the clerk is going to hand
3 you the list of jurors that did not show or will not be here.
4 There is ten. And I want to let you know that Lynsey Kennedy
5 called in this morning just a few minutes ago and said she
6 forgot her reporting time. And then Juliana Vasquez-Chavez
7 called in at 9:15 this morning and requested a postponement.
8 She's at a funeral and forgot she had jury service.
9 Lisa Paradis left a message requesting a postponement. No
10 reason. Miguel Rincon-Ramos called in and said he was not a
11 U.S. citizen. When we call the roll of those that you received
12 a list of, I anticipate all but these ten people will answer
13 here or present. If that is the case, do you waive these
14 people being present for the trial? Are you comfortable going
15 with the panel without those people?

16 MR. STEGE: I am, yes.

17 MS. NORDVIG: Yes. Thank you, Your Honor.

18 THE COURT: Okay. Thank you. Okay. We can have the
19 jury come up at this time if there is nothing else. I will be
20 telling the jury we are going to be at this for two weeks,
21 right?

22 MR. STEGE: Yes.

23 THE COURT: Did you have anything else?

24 MR. STEGE: I refreshed on the Court's order

1 regarding criminal history. It was announced earlier. I don't
2 know it made it into a written Order.

3 THE COURT: What I require is that you do a
4 memorandum to the Court telling me the results of any NCIC
5 check, and then I provide that memorandum to the defense for
6 voir dire, and then they give it back to me and we make the
7 original part of the record, so I know who has things. It
8 helps me know about facts and errors, things like that. Do
9 you have that memorandum?

10 MR. STEGE: Yes, I do.

11 THE COURT: One copy?

12 MR. STEGE: I have two copies.

13 THE COURT: If you can give me two copies that would
14 be nice. Thank you. The clerk will hand a copy to counsel for
15 the defendant so you can have it during voir dire.

16 MS. NORDVIG: Thank you.

17 THE COURT: Anything further?

18 MS. NORDVIG: Not from the defense, Your Honor.

19 MR. STEGE: No, thank you.

20 THE COURT: We'll take a short recess while the jury
21 panel comes up. Court's in recess.

22 (Short recess taken.)

23 THE COURT: Thank you. Please be seated. Good
24 morning, ladies and gentlemen of the jury panel. Welcome. If

1 you do not already realize it, you are in the Second Judicial
2 District Court. This is Department 4. My name is Connie
3 Steinheimer and I am the Judge that presides in this
4 department. In a few minutes, we are going to begin the formal
5 selection of a jury known as voir dire. During this process,
6 many of you will be required to speak to us about things in
7 front of all of us, so at this time, I am going to ask that my
8 staff that serves here in Department 4 introduce themselves to
9 you. Deputy.

10 THE BAILIFF: I am deputy Garret Bird. I work for
11 the Washoe County Sheriff's Office. I am the bailiff assigned
12 to Department 4.

13 LAW CLERK: Rachel Given. I am the law clerk in
14 Department 4.

15 THE CLERK: Good morning. My name is Marci Stone. I
16 am Judge Steinheimer's court clerk.

17 COURT REPORT: Good morning. I am Judy Schonlau, the
18 Court Reporter.

19 THE COURT: Also with us are the parties and their
20 attorneys. So at this time I would ask that they introduce
21 themselves to you beginning with the State.

22 MR. STEGE: Good morning. My name is Amos Stege. I
23 am the prosecutor on this criminal case employed by the Washoe
24 County District Attorney's Office.

1 THE COURT: Thank you. Counsel.

2 MS. NORDVIG: Good morning. My name is Linda
3 Nordvig. Next to me is Jennifer Rains. We represent Mr. Ed
4 Pundyk.

5 THE COURT: Thank you. Each of you have been called
6 to jury service in this Court. This call upon your time is not
7 frequently made, but it is an obligation of your citizenship
8 in this country. No one should avoid serving on a jury
9 because it is essential to our system of government. Service
10 on a jury is a civic and patriotic obligation which all
11 citizens should perform. It affords you an opportunity to be
12 part of the judicial process by which the legal affairs of
13 persons in this country are decided, both civil and criminal.
14 It is a protected form of our government, and it is special
15 and it is unique in the world. You are being asked to perform
16 one of the highest duties of your citizenship. That is to sit
17 in judgment on the facts which will determine the guilt or
18 innocence of a person charged with a crime. The demand upon
19 your time for this case on jury duty will not be unreasonable
20 or unduly prolonged. It is a call for service for a period of
21 two weeks. The Court realizes that your service on a jury is
22 not always convenient and that there are instance where
23 service is a hardship. I will make every effort to make sure
24 that you service here on the jury is well used, your time is

1 protected and you are notified of what is going to happen at
2 all stages of the process.

3 At the conclusion of your service, I hope you will
4 be proud you served on a jury and did your duty as a citizen,
5 and I hope you understand our system of government that much
6 better. We are now going to start that formal selection of
7 the jury. We will start today this morning and hopefully
8 we'll have a jury in a few hours.

9 This is the time previously set for trial in
10 CR16-1290, the State of Nevada, Plaintiff versus Edward Samuel
11 Pundyk, defendant.

12 Let the record show the presence of the defendant in
13 Court in person and represented by his attorneys, Ms. Linda
14 Nordvig and Jennifer Rains, and that the State is represented
15 by Mr. Amos Stege, Deputy District Attorney.

16 Are you ready to proceed?

17 MR. STEGE: Yes, Your Honor.

18 MS. NORDVIG: Yes, Your Honor.

19 MS. RAINS: Yes, Your Honor.

20 THE COURT: Thank you. The clerk will now call the
21 roll of those summoned to serve as prospective jurors. Ladies
22 and gentlemen, as your name is called, answer here or present
23 out loud.

24 (Whereupon the roll of the jury was called by the Clerk.)

1 THE COURT: Counsel will you stipulate to proceeding
2 with the panel as now constituted?

3 MR. STEGE: Yes.

4 MS. NORDVIG: Yes, Your Honor.

5 THE COURT: Thank you. The clerk will swear all
6 prospective jurors to answer the questions propounded to them
7 fully and completely.

8 Ladies and gentlemen of the jury, please stand and
9 be sworn. Is there any one wishing not to swear? Okay.

10 THE CLERK: Please raise your right hands.
11 (Whereupon the prospective jurors were sworn by the clerk.)

12 THE COURT: Please put down your hands but remain
13 standing and answer the following questions out loud as though
14 you were being asked individually. Are you each over the age
15 of eighteen?

16 (Panel answers affirmatively.)

17 THE COURT: Were you summoned by your proper name?

18 (Some of the panel answered affirmatively and some
19 of the panel answered negatively.

20 Have you ever been convicted of a crime and not
21 restored to your civil rights?

22 (Panel answers negatively.)

23 THE COURT: Are there any criminal charges pending
24 against you of which you are aware?

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(Panel answers negatively.)

THE COURT: Are you a resident of the State of Nevada and the County of Washoe?

(Panel answers affirmatively.)

THE COURT: Did anyone say they were not summoned by their proper name? Okay, ma'am, what is your name?

MS. MARTIN: Legal name is Morgan Michelle Martin, M-A-R-T-I-N.

THE COURT: Martin. What name were you summoned by?

MS. MARTIN: Zack. I was married almost three years ago.

THE COURT: Have you changed your identification?

MS. MARTIN: Yes.

THE COURT: Anyone object to proceeding with Ms. Martin?

MR. STEGE: No.

MS. NORDVIG: No thank you, Your Honor.

THE COURT: Thank you, ma'am. Anyone else?

MS. DICKENS: I was summoned by my middle name Patty. My legal first name is Joan.

THE COURT: Joan what?

MS. DICKENS: Joan Patricia Dickens.

THE COURT: I made that correction. Anyone object to her proceeding?

1 MR. STEGE: No.

2 MS. NORDVIG: No thank you, Your Honor.

3 THE COURT: Anyone else? Thank you. You may be
4 seated. The defense is advised challenges for individual
5 jurors must be made prior to that juror being sworn.

6 At this time, we are ready to proceed with the
7 selection of the initial group of jurors. The clerk will
8 randomly draw the names of 32 prospective jurors from the jury
9 panel. As your name is called, please step forward and find a
10 seat in the jury box. You can see it is greatly expanded so
11 we have five rows of chairs. The first name called is going to
12 find a seat in the back row in the chair furthest away from
13 where you are currently seated. We fill up that row then the
14 next row and in order. Deputy Bird will assist you in finding
15 the proper seat.

16 (Whereupon the jury was selected.)

17 THE COURT: Thank you. Please be seated.

18 Counsel, will you stipulate to the jury as it is now
19 seated?

20 MR. STEGE: Yes.

21 MS. NORDVIG: Yes, Your Honor. Thank you.

22 THE COURT: Thank you.

23 Ladies and gentlemen of the jury panel whose names
24 were not called, I want to thank you for your service. You

1 are not going to be necessary today. You did get excused from
2 further service. Now I am sure you will not be reassigned.
3 You should have filled your requirement with jury service with
4 your service here today. If you need a letter, the Jury
5 Commissioner will provide that to you so you may take that
6 back to your employers. Thank you again for staying with us.
7 We really appreciate all of your attentiveness and willingness
8 to serve. We would have enjoyed having all of you here for
9 this trial. Maybe the next one when you come back and visit
10 me in Department 4 again. Thank you. Report to the Jury
11 Commissioner.

12 Ladies and gentlemen of the jury, I would now like
13 to explain briefly the role each person in the courtroom will
14 play during these proceedings. You will, at the conclusion of
15 the evidence, determine the facts in the case and apply to
16 those facts the law which will be stated to you by the Court,
17 and on that basis, reach a verdict consistent with the facts
18 and the law.

19 It is the duty of the attorneys to present their
20 respective cases in the most favorable light consistent with
21 the truth and the law. But statements and arguments of
22 counsel made during the course of the trial are not to be
23 treated as evidence except as to matters of fact which are
24 stipulated to between them. Keep an open mind, refrain from

1 forming or expressing any opinion concerning the case until
2 all the evidence is in, the attorneys have made their closing
3 arguments, you have received the Court's Instructions as to
4 the law and you have retired to the jury room to find your
5 verdict.

6 During the trial, do not discuss the case among
7 yourselves or with any other person. Do not allow anyone to
8 speak of it in your presence. You are not to read, listen to
9 or observe any newspaper, radio or television accounts of the
10 trial that is in progress. It is your duty not to discuss the
11 case among yourselves or with anyone else including members of
12 your family, friends, co-workers or people involved in the
13 trial any matter having to do with the case. This includes
14 discussing the case or anything to do with it or the parties
15 or attorneys verbally, in person, by phone, in writing or on
16 the Internet, through the Internet feature such as Internet
17 chat rooms, blogs, bulletin boards, Facebook, Twitter,
18 e-mails, instant messengering, text messaging, websites or any
19 other electronic method of communicating with others. The
20 reason for this is you must decide the case based on the
21 evidence that is presented here in the courtroom. If you were
22 to describe something that you heard in the courtroom to
23 someone at home about what happened today in the courtroom,
24 they are probably going to give an opinion about that. They

1 are going to respond to your description, and their response
2 to your description could color or influence you as to how you
3 look at the evidence. If that were to occur, someone who never
4 heard the evidence, never saw the witness, could influence the
5 verdict, and that would be improper. So it is very, very
6 important that you don't discuss the case with anyone. We used
7 to just say discuss, and everyone understood what that meant.
8 It was talking to somebody. But now we spend a lot of time
9 communicating with other people electronically, so that is why
10 we included all the extra admonition so that you're sure to
11 understand that you just can't communicate about it.

12 You also cannot make any independent investigation.
13 It is very easy for something do come up in the courtroom and
14 you may wonder what did they really mean by that or what is
15 that about? Well we're out to dinner, we'll Google it, right?
16 We'll figure out who the seven dwarfs are. We can't remember
17 the last one. But you can't do that in this case. You cannot
18 make any independent investigation into the case. So you are
19 not allowed to do anything like that. You must decide the
20 case based on the evidence that comes into the case in the
21 courtroom. Not only must you conduct yourself as jurors above
22 reproach, but you must also avoid even the appearance of any
23 improper conduct.

24 Do not speak to the defendant, the attorneys or any

1 of the witnesses during the trial even about matters which are
2 completely disconnected with the case. In the event that any
3 person should attempt to discuss the case with you or in any
4 manner attempt to influence you with respect to it, you are to
5 advise the bailiff who in turn will advise the Court
6 immediately.

7 Any rulings made by the Court during the course of
8 this trial will be based upon the controlling law of the State
9 of Nevada. Accordingly, you must not infer any leaning on my
10 part based upon such rulings or infer any feelings on my part
11 for or against either side in this case.

12 If any objection to the admission of evidence is
13 sustained, you must not speculate as to what the answer might
14 have been or draw any inference from the question, itself.

15 During the course of the trial, matters may arise
16 which must be determined by me as matters of law outside the
17 presence of the jury. Again, you are not to speculate or be
18 concerned in any way about the reasons for such occurrence. I
19 assure you I will limit them in frequency and duration as much
20 as the law permits.

21 Observe carefully each witness as they testify and
22 consider carefully the evidence as it is presented for it is
23 you who must decide the credibility of the witnesses and
24 wherein the truth lies.

1 You may take individual notes during the course of
2 the trial, and for that purpose you will be provided with
3 notepads by the bailiff. In the event a conflict between the
4 notes of an individual juror during deliberation you are not
5 allowed to rely upon the notes. You must proceed with the
6 collective memories of the jury and disregard the notes. The
7 notes must remain in the courthouse at all times, either in
8 the jury room or here with you in the courtroom.

9 The clerk will now swear the jury. Please stand and
10 face her.

11 (Whereupon the selected jury members were sworn by the clerk.)

12 THE COURT: You may be seated. Ladies and gentlemen
13 of the jury, you're admonished that no juror may declare to
14 their fellow jurors any fact related to the case that you know
15 of your own knowledge, and if any juror discovers, during the
16 course of the trial or even after the jury has retired and is
17 deliberating, that you know any particular person or know any
18 particular fact that is in controversy in this case, you must
19 disclose it outside the presence of your fellow jurors to the
20 bailiff.

21 We encourage you to use the jury room. You may use
22 it at all of our recesses during the trial. The bailiff will
23 open the jury room for you following the noon and evening
24 recess. If you should need anything for your personal comfort

1 during the course of the trial, please advise deputy Bird and
2 he will let me know and we'll make every effort to
3 accommodate. There are restrooms in the jury room, a coffee
4 maker, tea, hot chocolate, a few snacks we provided today.
5 You will not be allowed to go to the vending machines on our
6 recesses, because I want you to stay here together in the jury
7 room. If you go out at lunch, I ask that you leave the
8 courthouse immediately. Just go down to the first floor and
9 get away from the courthouse. It is important that you not
10 accidentally run into witnesses or parties. I don't want it
11 to look that appearance of impropriety. The bailiff will give
12 badges that say juror on them so people will know you are a
13 juror and they won't accidentally talk in front of you. If
14 anyone does, don't worry about reporting that, report it. It
15 could turn out you heard a conversation about a different
16 case. On this floor there are two cases going on this week
17 that are both criminal and both have a lot of witnesses, so
18 you could be hearing another conversation. But be sure to
19 report it to the bailiff who will tell me about it and we can
20 make sure there is no issue. If you are waiting for the
21 elevator or you get on the elevator and one of the parties
22 doesn't recognize you, or, a witness you know is on the stand
23 and it is after lunch and they get on the elevator with you,
24 get off and wait for the next elevator. Don't put yourself in

1 the position of being with them in a secluded spot like that.

2 At this time, the clerk will read to the jury the
3 Indictment filed by the Grand Jury in this case and state to
4 the jury the plea entered by the defendant.

5 THE CLERK: In the Second Judicial District Court of
6 the State of Nevada in and for the County of Washoe, The State
7 of Nevada, Plaintiff versus Edward Samuel Pundyk, defendant,
8 Case No. CR16-1290. Indictment. The defendant, Edward Samuel
9 Pundyk is accused by the Grand Jury of Washoe County, State of
10 Nevada of the following: Count I, murder with the use of a
11 deadly weapon, a violation of NRS 200.010, NRS 200.030 and
12 193.165, a Category A felony in the manner following, to wit:
13 That the said defendant, on or about the 7th day of October
14 2015 at Reno, within the County of Washoe, State of Nevada did
15 willfully, unlawfully and with malice aforethought,
16 deliberation and premeditation kill and murder Delphina
17 Medeiros, a human being by means of shooting into the body of
18 Delphina Medeiros with the use of a deadly weapon, to wit: A
19 rifle or other firearm thereby inflicting mortal injuries upon
20 the said Delphina Medeiros from which she died on October 7,
21 2015.

22 Count II, discharging a firearm at or into an
23 occupied structure, a violation of NRS 202.285 a Category B
24 felony in the manner following, to wit: That the said

1 defendant, on or about the 7th day of October 2015 at Reno,
2 within the County of Washoe, State of Nevada, did willfully,
3 unlawfully and maliciously discharge a firearm, to wit: A
4 shotgun, at or into an occupied structure, to wit: A house or
5 other building located at 11903 Rocky Mountain Street, Washoe
6 County, Nevada.

7 Christopher J. Hicks, District Attorney by Amos
8 Stege, Deputy District Attorney, to which the defendant
9 previously entered pleas of not guilty by reason of insanity.

10 THE COURT: At this stage in the proceedings, the
11 attorneys may make their opening statements. The law provides
12 the District Attorney may make the first opening statement.
13 Defense counsel may then make an opening statement or reserve
14 it until later.

15 Mr. Stege, are you ready to proceed?

16 MR. STEGE: Yes. Thank you.

17 In one minute's time, the defendant knew his mom had
18 come into his house, knew that she had a sandwich, challenged
19 her, argued with her and then shot and murdered her using an
20 SKS or AK-47 style rifle. Shot five times, five bullets out of
21 the defendant's gun through a fence knowing it was his mom.

22 Now you will hear evidence. The evidence will show
23 a bullet strikes an object. In this case, that is what
24 happened. The force of the shots sent wood penetrating into

1 her chest. Fragments nearly blew off her arm, her other
2 wrist. Fragments went through her heart, lungs and throughout
3 her back. She was dead. In that one minute's time the
4 defendant, at least that one minute, where time is everything,
5 formed the intent to kill and murder his mother.

6 How do we know this? The evidence will show for
7 example, one, the defendant had video surveillance throughout
8 his house and captured in part one of the rules of criminal
9 prosecution which is it is rare the killing happens dead
10 center in the video, but between the videos, we see this and
11 that is how we know it was at least one minute. A one-minute
12 argument with his mother.

13 But what happened before that, the evidence will
14 show that, well, the defendant had a rifle out in his yard, in
15 fact, many rifles out in his yard for a long time before that.
16 Not just suddenly going to get a gun and have an argument but,
17 you know, in his backyard with the rifle. We know this from
18 the video surveillance. Going back to before that, the
19 question does he know, the evidence will show does he know it
20 is his mom. Well, not just the argument. We'll hear for
21 example through witnesses, right? We have the neighbors here.
22 For example the argument, "Get down on the ground. Get out of
23 here. Leave the sandwich." Multiple neighbors hear this
24 argument.

1 But going back before that, the evidence will show
2 he did know it was his mom, because there are text messages
3 starting earlier that day. This happens on October 7th of
4 20015. Text message at 10:55. Text message at 12:06 p.m.
5 Another text message related at 1:43 p.m. A phone call which
6 lasts one minute and thirty-five seconds, about forty minutes
7 before the killing. The killing happens at roughly 3:57 p.m.
8 Before 4:00 o'clock, neighbors hear the argument and hear
9 gunshots. The evidence will show he knew it was his mom. He
10 knew she was coming over. There was a sandwich. We know she
11 was at Subway at 3:35. We know there were sandwiches. Before
12 she died, she put some sandwiches down, two Subway sandwiches.
13 But we go back before that.

14 So it is not just this minute. And every second
15 counts in murder. The evidence will show that besides these
16 sixteen seconds and the forty minutes and the text messages
17 throughout the day, the defendant was killing cats. Earlier
18 that day, in fact the day before one of the cameras shows the
19 Defendant's room in his house where he keeps a large gun safe,
20 and throughout the day before and this day going to his guns.
21 The evidence will show the AR-15 is used to kill a cat. We
22 presume it is dead. You will see later it is shot and it runs
23 off. That is with the AR-15.

24 Now after that, as evidence of premeditation and

1 deliberation, knowing his mom is coming over, we see him in
2 the safe room switching guns to the SKS or AK-47 style rifle,
3 loading it, kissing an object, and, importantly, the evidence
4 will show getting on hearing protection. A guy, the evidence
5 will show, who is ready to do some killing.

6 Two, there are two counts in this case. The second
7 count occurs about half an hour, roughly half an hour after
8 this. I will say before we get there, this is a killing in
9 rage. The evidence will show it is not a killing in fear. It
10 is a killing in anger, not a killing in confusion. It is a
11 killing in rage. A guy, the evidence will show, ready to do
12 some killing and doing the killing.

13 The second count. So neighbors hear this, call the
14 police. That is right about 4:00 o'clock. Just before 4:00
15 o'clock all the neighbors call. What happens? A bunch of
16 police officers show up. They begin, the evidence will show,
17 to see what is going on. Because it is shots fired, they are
18 being careful in their approach. The surveillance is at 4:32
19 p.m. by the date stamp on the surveillance. The defendant has
20 switched now to a 12-gauge shotgun. Police had come lights and
21 sirens in the area across the street to the same fence.

22 Now this fence, the evidence will show, I would say
23 is best described as follows: There is a fence right here.
24 The defendant's house is over here. It is a six foot wooden

1 picket fence. No gate here. The entrance to the house is
2 over here. He kills his mom by jumping on a hot tub. Boom,
3 boom, boom.

4 Switches to the shotgun for Count II. The cops are
5 there. The evidence will show he knew the cops were there.
6 Across the street is a neighbor by the name of Dan Brown.
7 Shotgun, boom, boom, boom. Three shots from the shotgun, hits
8 the front of the house. It is bird shot. Breaks the windows.
9 At the same time, there is a tree in the front of the yard of
10 Mr. Brown where there are three police officers, to use their
11 testimony, stacked up or taking cover behind the tree. When
12 the three shots come out, in reaction, the police, SWAT go to
13 a SWAT plan. We need to put an end to this. They go to a
14 hostage negotiation or negotiation standpoint which they do.
15 At the same time, they call in to the defendant on his
16 cellphone. They also develop a plan to go in and get the
17 defendant. It is the second one that works. They go in and
18 take him into custody.

19 The evidence will show he's then taken to the Reno
20 Police Department where he is given an interview. Now as to
21 Count II -- point two, the evidence will show that in addition
22 to this Count I being really goal oriented, directed, rational
23 know it is his mom, taking action to kill his mom, as to the
24 interview, the defendant is up and down. He makes bizarre

1 statements for periods of time. He also makes rational and
2 coherent statements. And part of what he says which is
3 confirmed, the evidence will show, by the video, is: "My mom
4 came over. She had a sandwich. We argued about the sandwich.
5 I didn't want her to come into my house, and I killed her. I
6 shot her." The other part to this, too, which is the State has
7 the burden of proof of proving murder. This is a unique case
8 because the defense also has a burden on the insanity. You
9 will learn the defense carries that burden. They carry the
10 burden of showing. And so the question becomes and evidence
11 will show that in the time killing the mom and the time
12 shooting his neighbor's house a rational mind. Rational mind.

13 During the interview, the evidence will show he's in
14 control. He knows just like everyone else when to tell the
15 truth and when to try to not tell the truth. When to make
16 accurate statements and when to try to get -- to convince the
17 detectives, in this case detective Blas who conducted a
18 lengthy interview of the defendant. The evidence will show he
19 was not on drugs.

20 Point three in this second portion of the burden,
21 who has to prove what, right? The State has to prove murder.
22 The State is happy to do that. The defense has to prove
23 insanity. There are things they have to prove. I will
24 address them more at the close of the case, but the evidence

1 will show they cannot prove the three things necessary to show
2 that the defendant was insane, legally insane.

3 You may recall during my earlier comments you will
4 get the law. Your job for now is to soak up the facts without
5 judgment, without relation to what you might think. You are
6 to soak up these facts. The facts or the evidence will show
7 that the defendant is guilty of murder. Thank you.

8 THE COURT: Counsel, do you wish to reserve your
9 opening statement or make it now?

10 MS. RAINS: We'll make it now.

11 THE COURT: Thank you. Ms. Rains, you may proceed

12 MS. RAINS: Good afternoon. This is a horrible
13 tragedy. You just heard a lot from the State about the
14 evidence, and it is hard to hear, and it is going to be hard
15 to look at as you sit here. But what is important is to put
16 that evidence into the context, the context of what was in Ed
17 Pundyk's mind that day. It is important, because the tragic
18 evidence will show that Mr. Pundyk shot and killed his mother
19 and five of his animals. That evidence is not really in
20 dispute. What is in dispute, a central question of this case
21 is why. Why would he do that.

22 The State has charged Mr. Pundyk with killing his
23 mother, Delphina Medeiros with malice aforethought,
24 deliberation and premeditation. This means the State has to

1 prove what was in Mr. Pundyk's mind at the time. Of course,
2 it is impossible to see inside somebody's mind, so we have to
3 rely on clues that we can take out of evidence as to what was
4 going through his mind.

5 So let's talk about the clues that you will find in
6 the evidence. You will hear that shortly before October 7,
7 2015, there were red flags or warning signs. People who knew
8 him will testify that Mr. Pundyk was acting unusual and doing
9 things that hinted that his beliefs were out of sink with
10 reality. Doctor Melissa Piasecki will help you learn more
11 about that and will explain how these kinds of thoughts or
12 delusions can impact somebody's thinking, these irrational and
13 false beliefs. But the evidence will show that Mr. Pundyk was
14 suffering from false beliefs at the time. Now these delusions
15 don't make any sense to those of us operating in the real
16 world and they're not going to. But for all their
17 irrationality, Dr. Piasecki will help you, try to explain and
18 understand that for Mr. Pundyk on that day that was his
19 frightening reality. It was that snapshot in time that we are
20 looking at.

21 For some context, you will hear by all accounts
22 Mr. Pundyk and Ms. Medeiros had a very close relationship.
23 They talked nearly every day. He went to her house two to
24 three times a week to help her fix her car, do repairs around

1 her apartment, help her take care of her cats. Outside of his
2 relationship with his mom, you will hear ordinarily Mr. Pundyk
3 mostly kept to himself and his cats. Neighbors will tell you
4 they thought they were fine in their limited interaction with
5 him. He was odd but nice. You will hear one of the things
6 that struck his neighbors as odd is the number of surveillance
7 videos. He had cameras on his property. You will also hear he
8 loves cats, but you will also hear that he had a rather
9 unusual or odd number of cats. Nearly fifty that he had been
10 rescuing and taking care of in his house and in his garden. He
11 named each and every one of them.

12 Also you will hear Mr. Pundyk's odd behavior started
13 to intensify leading up to the afternoon of October 7th. You
14 will hear neighbors, friends and family members started
15 observing increasingly bizarre behavior. Someone would report
16 he was seen marching down the middle of Stead Boulevard
17 waiving his hands in the air screaming. Another neighbor will
18 say they saw him kick over garbage cans or waiving his arms
19 like he was talking to somebody, but nobody was there. Another
20 neighbor went and found him at a park and observed him to be
21 talking to trees. Someone will tell you they observed him to
22 be freaking out, just acting weird. Another neighbor called
23 Mr. Pundyk's mom to say Mr. Pundyk was acting strange.

24 Ms. Medeiros started to worry. She started to tell

1 people, as you will hear, who were close to her she was very
2 concerned about him. On October 6th she went to see him,
3 brought him a sandwich, Subway. After the visit, she went home
4 and told a close friend he was acting really strange.

5 MR. STEGE: Objection. I am unaware of any hearsay
6 exception to that.

7 THE COURT: It is the phraseology you are using in
8 here. No hearsay.

9 MS. RAINS: Got it. So you will hear that she became
10 more concerned about him. Now as a result, she went to see
11 him. And that concern continued to grow, and the next day
12 taking us into the day you have already heard some about,
13 October 7th, that afternoon she brought him another sandwich,
14 wanted to have a conversation. Unfortunately, she had no way
15 of knowing what we know now standing here, all of the things
16 that had already been happening that day. So she didn't --
17 had no way of knowing. The surveillance videos show, as the
18 State has already sort of described, that he was acting in a
19 really irrational and bizarre manner. He was walking around,
20 had guns, marching in his yard. And neighbors already heard
21 some gunshots and yelling. But she didn't know, as the
22 evidence will show, that Mr. Pundyk had already started
23 killing his own cats. When Ms. Medeiros approached her son's
24 house to check on him and bring him food, she had no way of

1 knowing the clues we now have about what was starting to go on
2 with him. And what the clues show is that Mr. Pundyk was
3 already in a battle where he had to defend himself against the
4 forces of evil. He continued to defend himself against the
5 forces when his mother arrived at his home and he shot her.
6 But, ladies and gentlemen, we will present evidence rather
7 than shooting at his mother or at his neighbor's house, he was
8 defending himself against evil forces that were threatening
9 him. The fact that you and I know what we do now about who
10 died, what really happened doesn't change the moment in time
11 when he was operating under those delusional facts. This is a
12 horrible tragedy.

13 On October 7th, Edward Pundyk's life changed
14 forever. He lost his mother, one of the most important people
15 in his life, and five of his beloved pets. But the evidence
16 will show that Mr. Pundyk did not, with malice, deliberation
17 and premeditation, kill his mom, Ms. Medeiros. The evidence
18 will show Mr. Pundyk believed he was under attack from evil
19 forces. Even though it might be hard to understand why he
20 would think that, that is the question. Even though it
21 doesn't make any sense now, on that time at that day
22 Mr. Pundyk believed he was going to protect himself against
23 forces that were attacking him.

24 At the close of evidence, we will ask you to return

1 a verdict of not guilty by reason of insanity to both counts.

2 THE COURT: The State will now call its first
3 witness.

4 MR. STEGE: Jacob Bohart.

5 THE COURT: You may proceed

6

7 JACOB BOHART

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

10

11 DIRECT EXAMINATION

12 BY MR. STEGE:

13 Q Sir, please state and spell your name?

14 A Jacob Bohart. J-A-C-O-B. B-O-H-A-R-T.

15 Q Where do you currently reside?

16 A 9845 Meadowstar Drive.

17 Q How long have you lived there?

18 A It is going to be about seven years now, I believe.

19 Q Directing your attention to October 7th of 2015,
20 were you living in that house?

21 A I was.

22 Q Are you familiar with the neighborhood behind your
23 house?

24 A Familiar, yes. I haven't really been in there, no.

1 Q Did something -- Did you hear something happen
2 behind your house that brings you to court today?

3 A Yeah. As far as I know, there was a murder behind my
4 house, diagonal direction to the left.

5 MR. STEGE: Can I approach the witness, please?

6 THE COURT: You may.

7 BY MR. STEGE:

8 Q Will you please turn to Exhibit 1. It should be the
9 one tab there. It will be three pages, I believe. Please
10 review all three of those, please. Do you recognize the area
11 depicted in Exhibit 1 pages 1, 2 and 3?

12 A I do.

13 Q Do they fairly and accurately depict the
14 neighborhood where you live?

15 A They do.

16 Q Do you see your house on those exhibits?

17 A Not on the first one but on the second and the third
18 I do.

19 MR. STEGE: I move to introduce State's 1 or Exhibit
20 1?

21 THE COURT: Any objection?

22 MS. RAINS: No, Your Honor.

23 THE COURT: Exhibit 1 is admitted.

24 (Exhibit 1 admitted in evidence.)

1 BY MR. STEGE:

2 Q Let's go to page 2. I will try to put it up here on
3 the monitor in front of you. Do you see -- Would you point out
4 where your house is on this?

5 A It is at the very top of the screen on the right
6 side.

7 Q Okay. In fact, sort of off screen, like up here?

8 A Exactly.

9 Q What were you doing shortly before 4:00 p.m. at your
10 house?

11 A I was getting ready to go to work.

12 Q Where do you work or where did you work at this
13 time?

14 A I believe I was at the Nugget casino at that time.

15 Q What capacity?

16 A I was a pit supervisor for table games.

17 Q What time did your shift start?

18 A 6:00 p.m.

19 Q And did you have a routine you do before you go
20 every day?

21 A I would iron my clothes before work and get ready.
22 Straighten my tie, all that stuff. I would let my dog out,
23 because we would kennel her while I left. I let her go use
24 the bathroom before I left.

1 Q That is in the backyard?

2 A That is in the backyard.

3 Q What door do you let her out?

4 A The back sliding glass door.

5 Q Did you do that on this day?

6 A I did.

7 Q What happened when you did that?

8 A Well, I didn't really go outside, but I

9 let her out and I heard some what I thought was gunfire. I

10 wasn't completely sure, but my dog had ran back inside, and I

11 went to go see, make sure, you know, well not make sure, just

12 to see what was going on. And when I did that, I heard some

13 arguments, and I heard a male voice specifically saying,

14 "Leave or I will shoot you," repeatedly. And following that I

15 heard another set of gunshots that sounded a lot more clear

16 that they were gunshots.

17 At the time, I want to state it was about six shots

18 at that time, and then after that it was nothing. I came back

19 inside, because I was fearful for bullets coming into my home

20 and, you know, hitting me or somebody in the house. But I

21 called 9-1-1 after that as well.

22 Q Let's unpack that a little bit. How many different

23 sets of shots did you hear?

24 A There was two clearly different sets of shots.

1 Q Was the first shot, the first set, is that when your
2 dog ran in?

3 A Yeah.

4 Q Was there anything unusual about your dog running
5 back inside?

6 A Well, I have a German Shepard, and she's very
7 protective of us, and she's only afraid of thunder and
8 gunshots. It definitely wasn't thunder, and I am pretty sure
9 it was gunshots.

10 Q That is what you thought at the time, it sounded
11 like gunshots?

12 A Yeah. Yeah.

13 Q In this first set, how many were there?

14 A First set I recall there being two.

15 Q That is when your dog runs inside. What do you do
16 when your dog runs in?

17 A I went to the backdoor. I kind of peaked outside to
18 see if I could see anything. I didn't see anything, but I did
19 hear a male voice yelling what I said before, "Leave or I will
20 shoot you."

21 Q Can you indicate here on this diagram from which
22 direction the shots were coming from as you are at your
23 backdoor?

24 A Out my backdoor would be to the left diagonally.

1 Q Maybe, let's goes to page three if that would help
2 you.

3 A Yeah. My house is on the far right street there.
4 It is the second to the last home.

5 Q I am going to ask you to mark it?

6 A I can touch the screen?

7 Q You can touch the screen. Let me erase that. Why
8 don't you point out your house there?

9 A This is my house here.

10 Q Okay.

11 A It was directly this way.

12 Q Okay.

13 A My backdoor is right where the line starts where the
14 arrow is, basically.

15 Q Did you know the person? Did you recognize the
16 voice?

17 A No.

18 Q Had you ever become friends or know anyone on the
19 street behind you?

20 A No.

21 Q Is there-- How separated are these two
22 neighborhoods?

23 A I believe they are pretty separate, because there is
24 no access from my neighborhood into that neighborhood.

1 Q You couldn't just go like around here to get over
2 there?

3 A I don't think so, no.

4 Q You then start hearing a male yelling?

5 A Correct.

6 Q How long did that go on for?

7 A Thirty seconds maybe.

8 Q I will ask it this way: How many times did you hear
9 the man yelling?

10 A At least twice for sure. Multiple times.

11 Q Where were you when that was happening?

12 A I was at the sliding glass door. I never went
13 outside. I just had it open still and I kind of peeked my
14 head out.

15 Q Is that when this second set of shots is heard?

16 A Yes.

17 Q In that second set, how did they sound in relation
18 to the first set?

19 A The first set was spaced out. There was time
20 between. Then the second set was very rapid one after
21 another.

22 Q How many was the second round?

23 A Approximately six.

24 Q In terms of volume, was one louder than the other or

1 did they sound similar?

2 A They sounded similar.

3 Q What did you do when you heard this second round?

4 A I didn't wait for it to finish. I came back inside
5 and got behind a few walls and dialed 9-1-1.

6 Q Were the voice and the shots coming from that same
7 direction you indicated?

8 A Correct.

9 Q You called 9-1-1. Did you tell the operator what was
10 going on?

11 A I tried to be as clear as possible with them as
12 well.

13 Q Did you at some point write down what time you heard
14 the first one and what time you heard the second shots?

15 A I did write it down right away. Immediately.

16 Q As you sit here today, do you recall when those
17 times -- what those times were?

18 A I don't recall exactly the times. It has been four
19 years. But I do believe it was in my statement I had given to
20 the officers.

21 Q Would it refresh your recollection to review your
22 prior statement as to what the times were?

23 A I am sorry?

24 Q If I were to show you your statement, do you think

1 that would refresh your recollection as to what times they
2 were?

3 A Oh, yes.

4 MR. STEGE: May I approach the witness?

5 THE COURT: You may.

6 BY MR. STEGE:

7 Q The way this works, I will show you this piece of
8 paper. Just read it to yourself and then I will ask you a
9 question.

10 MS. RAINS: Your Honor, if I could just see what he's
11 showing him?

12 THE COURT: Yes.

13 MR. STEGE:

14 Q If you will peruse page 3 there. Did that refresh
15 your recollection?

16 A Absolutely.

17 Q What time was the first one?

18 A 3:51 is when I heard the shots.

19 Q What about the second one?

20 A I called the police at 3:56.

21 Q You called the police as they were happening or
22 right after they happened?

23 A Right after.

24 Q Do you recall the statement you heard the man

1 yelling?

2 A "Leave or I will shoot you."

3 Q Were there other statements?

4 A That was it.

5 Q Did you also previously state he said "Get down on
6 the ground?"

7 A Yes. I believe I remember hearing that. Sorry. May
8 I see that exhibit prior to testifying?

9 Q Did you have an opportunity to review a call made by
10 you to the 9-1-1 operator?

11 A I did.

12 Q After listening to it, did you recognize it to be
13 your voice?

14 A I did.

15 Q In fact, do you believe that to be a true and
16 accurate depiction of the call that you made to 9-1-1?

17 A Yes.

18 Q After doing that, did you initial a CD of the call?

19 A I did.

20 Ms. Stone, would you mark this as Exhibit 22-e?

21 THE CLERK: E. Sure. Exhibit 22-e marked.

22 (Exhibit 22-e marked for identification.)

23 MR. STEGE: May I approach the witness?

24 THE COURT: You may.

1 BY MR. STEGE:

2 Q Do you recognize proposed Exhibit 22-e.

3 A Yes.

4 Q How did you recognize it?

5 A It has my initials on it.

6 Q Is that the CD we were just referring to it?

7 A It is.

8 MR. STEGE: Move to introduce 22-e.

9 THE COURT: Any objection?

10 MS. RAINS: No, Your Honor.

11 THE COURT: 22-e is admitted.

12 (Exhibit 22-e admitted in evidence.)

13 BY MR. STEGE:

14 Q What did you hear after the second group of shots?

15 A I didn't hear anything after that.

16 Q What did you do after that?

17 A Well, I was inside the house. Like I said, I called
18 9-1-1. Once I was finished talking to them, I just figured,
19 you know, people would be coming to do their jobs, and I
20 continued to get ready. And I was basically out the door
21 within about ten minutes after that.

22 Q When you left ten minutes later, did you see any
23 police officers in the area?

24 A I did.

1 Q Where did you see them?

2 A They were at the end of my street, so it would be
3 right here (indicating.)

4 MR. STEGE: Thank you. I will pass the witness.

5 THE COURT: Okay. Ms. Rains.

6

7 CROSS-EXAMINATION

8 BY MS. RAINS:

9 Q Good afternoon. So just to be clear, you heard one
10 male voice yelling; is that correct?

11 A One male voice.

12 Q But you didn't see anything, you just heard?

13 A Correct.

14 Q Had you ever met the defendant before?

15 A Never.

16 Q Had you even spoken to him?

17 A Never.

18 MS. RAINS: I have no further questions, Your Honor.

19 THE COURT: Anything further?

20 MR. STEGE: Yes.

21

22 REDIRECT EXAMINATION

23 BY MR. STEGE:

24 Q Could you have seen what was going on in-- Well,

1 did you know where the defendant lived?

2 A I did.

3 Q Could you have seen from your house what was going
4 on right here?

5 A Probably not.

6 Q Why not?

7 A There is a lot of trees in that area. You can see
8 in the picture here this set of trees right here actually
9 blocks my view into his yard.

10 Q So if something had been happening let's say
11 anywhere basically in that red circle that I have drawn, would
12 you have been able to see it?

13 A No.

14 MR. STEGE: Thank you. Nothing further.

15 THE COURT: Anything else?

16 MS. RAINS: No, Your Honor.

17 THE COURT: May this witness be excused?

18 MR. STEGE: Yes. Thank you.

19 THE COURT: Any objection from the defense?

20 MS. NORDVIG: No, Your Honor.

21 THE COURT: You may step down. You are excused.

22 (Witness excused.)

23 THE COURT: Call your next witness.

24 MR. STEGE: Eddie Franco.

1 THE COURT: You may proceed.

2

3

EDUARDO FRANCO

4

called as a witness, having been first duly sworn,

5

took the witness stand and testified as follows:

6

7

DIRECT EXAMINATION

8

BY MR. STEGE:

9

Q Thank you. State and spell your name, please?

10

A Certainly. Eduardo Franco. E-D-W-A-R-D-O.

11

F-R-A-N-C-O.

12

Q Where do you currently reside?

13

A 9815 Meadow Star Drive, Reno.

14

Q What part of the valley or Washoe County is that in?

15

A Reno, north valleys.

16

Q How long have lived there?

17

A Since 2010.

18

Q 2015 were you living there?

19

A Yes, I was.

20

Q Who -- Do you see your house? We are looking at

21

Exhibit 1 page 2. Do you see where you live on this exhibit?

22

A Yes, I do.

23

Q Could you point that out please for all of us?

24

A On the screen here?

1 Q The screen, yes.

2 A Right here.

3 Q Shortly before 4:00 o'clock on October 7th of 2015
4 were at your house?

5 A Yes, I was.

6 Q As you sit here today, do you recall what you were
7 doing?

8 A I had just gotten home. I was laying upstairs in my
9 bedroom with my son.

10 Q Did something happen that brings you to court today?

11 A Yeah. There was some arguing, loud voices going on.
12 Then I heard some kind of gunshots going on. Kind of got me up
13 from my bed, grabbed my son, pulled him to the side and then I
14 kind of heard some more gunshots going on.

15 Q Let's unpack that a little. Where did you hear the
16 arguing coming from?

17 A From my bedroom and bathroom window.

18 Q From which portion? Was it in front of your house?

19 A The back side to my house and stuff.

20 Q Do you see the area where you heard this arguing
21 coming from on this exhibit in front of you?

22 A Yeah.

23 Q Will you please indicate where it was coming from?

24 A Directly that way.

1 Q Okay. Is this a single --

2 A Two-story home.

3 Q Were you up or downstairs?

4 A Upstairs.

5 Q What was it that you heard?

6 A Arguing, something about a sandwich. Yelling to "Get
7 on the ground. I told you to make me a sandwich. Put it on
8 the ground. Get on the ground." Between that, then I heard
9 gunshots.

10 Q Did you recognize the voice?

11 A Yeah.

12 Q Whose voice was it?

13 A Ed's.

14 Q You just looked at someone and gestured at them. Do
15 you see the person whose voice you heard that day in the
16 courtroom right now?

17 A Yes, I do.

18 Q Would you point to them and describe what he's
19 wearing today?

20 A White shirt with a tie, gray tie.

21 MR. STEGE: Ask the record reflect the
22 identification of Edward Pundyk.

23 THE COURT: Any objection?

24 MS. RAINS: No, Your Honor.

1 THE COURT: Record will so reflect.

2 BY MR. STEGE:

3 Q When did you hear gunshots?

4 A Shortly after about 3:30. I had just got home,
5 picked up my son from school.

6 Q And in relation to this arguing about a sandwich to
7 get on the ground?

8 A That was right after the first set, in between the
9 first and second set.

10 Q Let's unpack that a little more. There were two
11 sets?

12 A Yes.

13 Q How far apart were they, the two sets?

14 A Probably about maybe ten minutes apart.

15 Q And did you hear anything before that first set, any
16 sort of arguing or voices?

17 A Just the voice. Just the arguing from the first set.
18 Just the voices and arguing, but I could only hear one voice.

19 Q I will ask that a little differently. Before the
20 first set, did you hear any arguing?

21 A Yes.

22 Q Before the second set, did you hear arguing?

23 A After the second set, just one voice. Just the
24 voice arguing.

1 Q Okay. In the first set of the arguing -- Is it fair
2 to say there were two sets of arguing?

3 A Just a continuation. It was never kind of ended.

4 Q Okay. Did you hear any other voices?

5 A Never.

6 Q So you are indicating arguing, but you heard one
7 side of an argument?

8 A Yeah, pretty much.

9 Q In the first set of shots, how many were there?

10 A Roughly about maybe three or four.

11 Q Did you recognize them to be gunshots immediately?

12 A Yeah, I did, yeah.

13 Q You have heard gunshots before?

14 A Yes, I have.

15 Q The second set, how many were they?

16 A About the same, three or four shots.

17 Q Did they sound much the same? Were they equally
18 loud? Was one louder than the other?

19 A The second set was the louder, because I was already
20 up to the bathroom window with the window open. I was trying
21 to get a little more information what was going on. I'd
22 already heard the first. When I heard the second set, I was
23 already at the bathroom window. That is when I heard the
24 voice more clearly.

1 Q We are you kind of jumping around here. It is
2 probably my fault here?

3 A Sorry.

4 Q You are laying in bed. You hear the shots and/or
5 arguing first?

6 A The arguing first.

7 Q Okay. Then the shots?

8 A Yes.

9 Q After the shots, what do you do in your house?

10 A I get up. First I grab my son. I kind of put him off
11 to the stairs and stuff, and then I get up and I walk to the
12 bathroom window.

13 Q Which direction was the bathroom window looking?

14 A Directly toward the back of the yard looking at Ed's
15 backyard. So we are both against each other pretty much.

16 Q Do you see Ed? Do you ever see Ed?

17 A No.

18 Q While you're there is when you hear more arguing?

19 A The clear voice. The clear voice, yeah.

20 Q It is in the second one you hear the sandwich?

21 A Yes. I am sorry.

22 Q Does that stick out to you it was an argument about
23 a sandwich?

24 A Pretty much yeah. It is kind of weird. Something

1 strange.

2 Q But you also hear, "Get on the ground?"

3 A Yes. "Get on the ground. Put the sandwich down.
4 Get on the ground."

5 Q Would you describe the area sort of between your --
6 draw a line here where-- we might have a better one here. I
7 have stick with two here. So this is your house?

8 A Yes.

9 Q There is a fence just to the left of where I drew
10 that line?

11 A Uh-huh.

12 Q What is that?

13 A Just a little like a wash ravine in here. There is
14 a little ravine in here kind of like for drainage. An
15 easement kind of.

16 Q Where my red line is, that is near your fence?

17 A That is pretty much all my fence right there, yeah.

18 Q And this here, is that Ed's fence?

19 A Yes, it is.

20 Q So in between, is that someone's yard where you put
21 your green line?

22 A No. It is just an easement, like I said, a
23 drainage.

24 Q At any time, did you see Ed when you are looking out

1 that window?

2 A No.

3 Q You couldn't see anything to the back of his yard?

4 A There were tarps and a bunch of other stuff covering
5 the view.

6 Q Could you indicate on this exhibit what part of the
7 house the window is you are looking out?

8 A (Indicating.)

9 Q After the second set of shots, did you hear anymore
10 voices?

11 A No, because at that time I was with 9-1-1. I was
12 already away from the window trying to get to a safe spot. I
13 had my other oldest downstairs. I couldn't locate him. I was
14 trying to find out where he ran to. So --

15 Q What did you do after that?

16 A I grabbed, found my second son that was downstairs,
17 saw him by the kitchen window. I grabbed him, kind of took
18 him into the living room by the stairs. We just kind of
19 waited, because there was supposed to be an officer coming to
20 meet us.

21 Q Did an officer come to meet you?

22 A Yes, they did.

23 Q Where did he meet you or she meet you?

24 A They knocked on my door.

1 Q He or she?

2 A Male officer.

3 Q How soon after the call or say after you got off the
4 call was the cop there?

5 A Maybe less than ten minutes maybe.

6 Q And what happened when the officer got there?

7 A There was an aircraft issue. They couldn't locate
8 the house, so they came to my house first to try to see if I
9 could pinpoint where it was going on at. So me and the
10 officers were on the side of my living room trying to point
11 him out to where his fence was at and stuff.

12 Q Were you able to do that?

13 A Yes, I was.

14 Q And which side of the house, top side or bottom side
15 as we are looking at it?

16 A We were located right here. That is where my living
17 room was at.

18 Q Did you end up staying in that area as the officers
19 I guess worked?

20 A Just till we found out the address, because they
21 couldn't locate it. I ended up getting on my phone trying to
22 locate on Zillow the actual address number.

23 Q Are you the one that found the actual address?

24 A Yes, I was.

1 Q Did you ever see Ed that day while you were waiting
2 there with the police?

3 A Yes. It was a brief moment where I kind of looked
4 up while the officers was talking to see if I found the
5 address. He kind of popped up behind the fence. And at that
6 moment, it was like a quick reaction where the officer kind of
7 pushed me back, said, "Get out of the way. I need you to
8 stand back."

9 Q Who popped up?

10 A Ed.

11 Q Where did he pop up from?

12 A Right in this area right here. Right by the corner
13 of his fence.

14 Q Can you explain what you mean by popped up?

15 A He came up behind the fence like he was about to
16 come over the fence line.

17 Q So you saw his face?

18 A Yes.

19 Q Could he see your face from where he was?

20 A I am not sure if he could have or not.

21 Q How did he react when he was trying to go over the
22 fence?

23 A He was more shocked there was actually police
24 officers there.

1 Q What makes you say that?

2 A Because he kind of backed off. The officer kind
3 of --

4 MS. RAINS: Objection. Calls for speculation.

5 THE COURT: Sustained.

6 BY MR. STEGE:

7 Q So Ed backed off. What did the officer do?

8 A He actually went, like he went to his car, ran off
9 to his car and grabbed his assault rifle. So he ran back over
10 there and started yelling gestures at Ed.

11 Q Did you see Ed when the officer yelled at Ed? Did
12 you see Ed again?

13 A No, because I was already pushed off to the side.
14 Told me to get away because it wasn't safe anymore.

15 Q Prior to the rifle, did the officer have a weapon
16 out?

17 A Just his regular handgun.

18 MR. STEGE: I will pass the witness. Thank you, sir.

19 THE COURT: Cross-examination.

20

21 CROSS-EXAMINATION

22 BY MS. RAINS:

23 Q Good afternoon?

24 A Hi.

1 Q Just to clarify, you said you heard one male voice
2 yelling?

3 A Yes.

4 Q Is that correct? You indicated arguing, but it was
5 really just one voice?

6 A Yeah.

7 Q You couldn't see Mr. Pundyk's yard clearly; is that
8 correct?

9 A I could see it. I mean there are tarps that were
10 set over the backyard. So I could see all the way to his
11 house. I just couldn't see below the tarp. I could see the
12 cages, the window, the fence line. I just couldn't see below
13 the fence line.

14 Q How tall do you think that fence is?

15 A Standard fence. Maybe about seven foot fence, maybe
16 eight.

17 Q Is it like a standard residential fence?

18 A Yeah. It is a wooden fence with a chain link fence
19 in front of it.

20 Q I believe you identified Mr. Pundyk. Had you met
21 him before?

22 A Two weeks prior we had a conversation.

23 Q How many times had you met him?

24 A I have never met him personally after that, but I

1 would see him talking to my nextdoor neighbor.

2 Q You met him personally one time?

3 A Yes.

4 Q You said there were cages. Do you know what was in
5 the cages?

6 A Yeah. There was a bunch of, at the time he was
7 housing a bunch of cats out there in the backyard in between
8 our property line and in his own property line. He was
9 housing a bunch of cats.

10 MS. RAINS: Thank you. I have no further questions.

11 THE COURT: Anything further Mr. Stege?

12 MR. STEGE: Yes.

13

14 REDIRECT EXAMINATION

15 BY MR. STEGE:

16 Q Which neighbor was it that you saw the defendant
17 talking to?

18 A Eric.

19 Q Eric?

20 A He's located right here in this house.

21 Q During the conversation with the defendant, was he
22 able to carry on a conversation with you?

23 A Somewhat and stuff. He was talking a lot about
24 cats, stuff like that. He was telling me problems he was

1 having with the nextdoor neighbor with the dogs barking, stuff
2 like that.

3 Q Were you interested in this issue of his cats?

4 A Not too much and stuff, no.

5 Q Were you interested in becoming friendly with
6 Mr. Pundyk?

7 A No, not too much, no.

8 Q Were you able -- Was he able to track your
9 conversation or your side of the conversation?

10 A I don't think so, no.

11 Q What makes you say that?

12 A He was just cutting me off talking about his cats
13 and stuff, talking about how he worked at the Humane Society.

14 Q Now is that him not knowing what is going on or him
15 just being bad at conversation and kept interrupting you?

16 A Probably bad at conversation. I don't know.

17 Q The 9-1-1 call made, did you previously listen to
18 it?

19 A Yes.

20 MR. STEGE: Approach the witness?

21 THE COURT: You may.

22 BY MR. STEGE:

23 Q Do you recognize Exhibit proposed 22-c?

24 A Yes. My initials are on --

1 MS. RAINS: Objection. Outside the scope of the
2 original direct.

3 THE COURT: What is that?

4 MR. STEGE: The 9-1-1- call.

5 THE COURT: Do you want to move to reopen?

6 MR. STEGE: Yes.

7 THE COURT: And go into it at this time? Then I
8 will allow to you do that. You may inquire.

9 BY MR. STEGE:

10 Q Thank you. You listened to this phone call on this
11 CD?

12 A Yes, I have.

13 Q Did you recognize it?

14 A Yes.

15 Q Did you recognize your voice?

16 A Oh, yeah.

17 Q Was this -- Is this a true and accurate copy of the
18 call made to 9-1-1?

19 A Yes. It is exactly.

20 MR. STEGE: Move to introduce 22-c.

21 THE COURT: Counsel?

22 MS. RAINS: No objection.

23 THE COURT: 22-c is admitted.

24 (Exhibit 22-c admitted in evidence.)

1 MR. STEGE: Very good. Nothing further.

2 THE COURT: You may recross.

3 MS. RAINS: No recross, Your Honor.

4 THE COURT: Okay. Thank you. May this witness be
5 excused?

6 MR. STEGE: Yes. Thank you.

7 THE COURT: You may step down, you are excused.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 THE COURT: Okay. Is that about what you have for
11 today?

12 MR. STEGE: Yes. The next witness would take us
13 quite past 5:00.

14 THE COURT: Okay. Then, ladies and gentlemen of the
15 jury, I think you have had a long day as it is, so we'll go
16 ahead and finish today's work with you. We are going to let
17 you go home and come back tomorrow morning. When you come
18 back to the courthouse, come directly to Department 4. Go into
19 the jury room and await us in the jury room. Feel free to
20 bring things back for your personal comfort. You will get a
21 lunch hour, but if you don't want to try to catch food here in
22 the vicinity downtown, you can bring food with you. It may
23 be hard to leave and come back, depends on how far you are
24 going. There is a refrigerator, I don't know if you have seen

1 that in the jury room, and a microwave if that helps you make
2 your plans for the day. Feel free to use those. I think
3 deputy Bird is going to give you some more information. I
4 don't know how much time he's had to give you information. He
5 will probably give you a little bit more information before
6 you leave the court today, answer questions about parking and
7 what have you.

8 Tomorrow morning I would like you to be in the jury
9 room ready to go at 9:00 a.m. so we will allow you to leave.
10 I am going to give the admonition again so that you remember
11 it over this recess.

12 It is your duty not to discuss the case among
13 yourselves or with any other persons including members of your
14 family, friends, co-workers or people involved in the trial.
15 That includes any matter having to do with this case. It also
16 included discussing it with the parties, the attorneys,
17 verbally in person, by phone, in writing or on the Internet,
18 through any Internet features such as Internet chat rooms,
19 Internet blogs, Internet bulletin boards such as Facebook or
20 Twitter, e-mail, instant messaging, text messaging, websites
21 or any other electronic method of communicating with others.

22 It is further your duty not to form or express any
23 opinion about the ultimate outcome of the case until it is
24 finally submitted to you for decision.

1 You are not to read, look at, listen to or view any
2 news media account or any other account or commentary
3 including any online information about the trial or anyone or
4 thing associated with it. You will be required to decide all
5 questions of fact in this case from the evidence received in
6 the trial and not from any other source.

7 Do not make any independent investigation into or
8 about the case or the subject matter of the case. This means
9 you must not do any research such as consulting dictionaries,
10 searching the Internet or using reference materials or visit
11 the scene or conduct experiments.

12 Should any person attempt to influence you with
13 regard to the case or discuss it with you, you are to notify
14 the bailiff immediately who in turn will advise me.

15 Go ahead and step into the jury room at this time.
16 He likes the first row to go out first.

17 (Whereupon the jury left the courtroom.)

18 THE COURT: Please be seated. I would like to, just
19 for a few minutes I would like to know the proposed witness
20 list for tomorrow.

21 MR. STEGE: Mr. Holby will be one. Mr. Gross
22 subject to his flight getting here on time. Ken Kennedy. Dan
23 Brown, Jesse Johnson, Richard Lawson. Chris Waddle who is an
24 officer. Officer Mayfield, Orange.

1 THE COURT: Let me stop you there. You have Waddle
2 who is your officer?

3 MR. STEGE: And Mayfield.

4 THE COURT: Then Orange did you say?

5 MR. STEGE: Orange I said, yes. Do you think you
6 will get past that number of witnesses?

7 MR. STEGE: Yes, I do. Pitsnogle. Officer Meseberg.
8 I don't think any of them will be all that long. After that
9 probably Richard Norgrove will by a nice ending if we get that
10 far.

11 MS. NORDVIG:: Norgrove?

12 MR. STEGE: EMT. Combat EMT.

13 THE COURT: So you think you will be able to get
14 through all of those witnesses tomorrow?

15 MR. STEGE: I am optimistic, Your Honor. I will tell
16 you my plan coming into this was Pitsnogle to be the last one.

17 THE COURT: But we are going quickly.

18 MR. STEGE: We are on a nice pace.

19 THE COURT: So you have an issue in your Trial
20 Statement about a witness that is not available until next
21 Monday?

22 MR. STEGE: Yes.

23 THE COURT: What is your plan? Do you think you
24 will run out of witnesses before then?

1 MR. STEGE: That is a rebuttal witness, so thinking
2 according to my own personal subjective plan, I would be close
3 to resting my case by Friday, if not sooner, so middle of
4 Friday rest my case. Monday will be the defense case. And I
5 would get into my rebuttal Tuesday or end of the day Monday.

6 THE COURT: Okay. So your best case scenario, the
7 defense should be ready to go Friday afternoon and Monday?

8 MR. STEGE: To be fair to them, Monday.

9 THE COURT: Which would mean an early out on Friday?

10 MR. STEGE: Perhaps.

11 MS. NORDVIG: Does the Court want us to have a
12 witness or two available? I know you want to keep this on
13 track and try to get it done as fast as possible.

14 THE COURT: My biggest concern is that, if we don't
15 have a verdict before Thursday and we lose Thursday morning,
16 if it turns out the verdict is guilty, we are going to have to
17 go into a penalty phase, and I don't want that to run past, if
18 it happens, I am just --

19 MS. NORDVIG: I understand.

20 THE COURT: So I would prefer to have the verdict on
21 the guilt phase resolved by Wednesday if at all possible so we
22 are sure we have enough time to do a guilt phase if it is
23 necessary. It may not be necessary, of course, but I just, I
24 promised we would get this done in two weeks. Of course, I

1 still have a criminal calendar Thursday of the second week.
2 So we can always move that if we have to.

3 MS. NORDVIG: Your Honor, we will be happy to be
4 prepared for Friday afternoon to go until 5:00 with witnesses
5 that are local that can come in pretty quickly.

6 THE COURT: You think you could finish your case
7 Monday?

8 MS. NORDVIG: We'll see how his case goes.

9 THE COURT: I am concerned about your expert.

10 MS. NORDVIG: That would be one of my main concerns
11 as well.

12 THE COURT: All right. That sounds great. I
13 appreciate it. We can reevaluate as the week goes.

14 MS. NORDVIG: Just so the court knows, I have
15 witnesses we have told they may be called Friday afternoon so
16 they know already.

17 THE COURT: Okay. Good. Anything else before
18 tomorrow morning? Will you need any of your special evidence
19 tomorrow, Mr. Stege? I guess she thinks you do.

20 MR. STEGE: Just to be safe.

21 THE COURT: If there is nothing else for this
22 afternoon, is there Mr. Stege?

23 MR. STEGE: Court's indulgence.

24 No thank you, Your Honor.

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MS. NORDVIG: Thank you.

THE COURT: We are okay with 9:00 o'clock?

MS. NORDVIG: Oh, yes, of course.

THE COURT: Court's in recess.

(Whereupon, the proceedings were concluded.)

--o0o--

1 STATE OF NEVADA,)
2) ss.
3 COUNTY OF WASHOE.)

4 I, Judith Ann Schonlau, Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in and
6 for the County of Washoe, DO HEREBY CERTIFY:

7 That as such reporter I was present in Department
8 No. 4 of the above-entitled court on Monday, July 16, 2018 at
9 the hour of 9:30 a.m. of said day and that I then and there
10 took verbatim stenotype notes of the proceedings had in the
11 matter of THE STATE OF NEVADA vs. EDWARD SAMUEL PUNDYK, Case
12 Number CR16-1290.

13 That the foregoing transcript, consisting of pages
14 numbered 1-69 inclusive, is a full, true and correct
15 transcription of my said stenotypy notes, so taken as
16 aforesaid, and is a full, true and correct statement of the
17 proceedings had and testimony given upon the trial of the
18 above-entitled action to the best of my knowledge, skill and
19 ability.

20 DATED: At Reno, Nevada this 9th day of August, 2018.
21
22

23 /s/ Judith Ann Schonlau
24 JUDITH ANN SCHONLAU CSR #18

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 5th day of July 2019. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble, Chief Appellate Deputy,
Washoe County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Edward Samuel Pundyk (#1207257)
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Ely, Nevada 89301

John Reese Petty
Washoe County Public Defender's Office