EXHIBIT 3

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

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HELMUT KLEMENTI,
Plaintiff,

vs.
JEFFREY D. SPENCER,
Defendant.
AND RELATED COUNTERCLAIM.

Case No. 14-CV-0260

Dept. No. I

VIDEO DEPOSITION OF

JEFFREY SPENCER

July 28, 2016

Reno, Nevada

JOB NO. 314146

REPORTED BY: DEBORAH MIDDLETON GRECO, CCR #113, RDR, CRR

APPEARANCES

FOR PLAINTIFF/COUNTERDEFENDANT KLEMENTI:	Douglas R. Brown, Esq. Lemons, Grundy & Eisenberg 6005 Plumas St., #300 Reno, NV 89509 786-6868 Drb@lge.net
FOR JEFFREY SPENCER DEFENDANT:	David M. Zaniel, Esq. Ranalli & Zaniel, LLC 50 West Liberty St., #1050 Reno, NV 89501 786-4441 Dzaniel@ranallilawyers.com
FOR COUNTERCLAIMANT JEFFREY SPENCER:	William J. Routsis, II, Esq. 1070 Monroe Street Reno, NV 89509 337-2609
FOR COUNTERDEFENDANT KINION:	Michael A. Pintar, Esq. Glogovac & Pintar 427 West Plumb Lane Reno, NV 89509 333-0400 Mpintar@gplawreno.net
FOR FOR THE SHAWS:	Tanika M. Capers, Esq. 6750 Via Austi Parkway, #310 Las Vegas, NV 89119 (702) 371-5657 Tcapers@amfam.com
ALSO PRESENT:	Elfriede Klementi Mary Ellen Kinion Stuart Campbell, Videographer

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(Original Exhibits Retained in Binders at Sunshine Litigation Services)

BE IT REMEMBERED that on Thursday, July 28, 2016, at the hour of 10:01 a.m. of said day, at the offices of SUNSHINE LITIGATION SERVICES, 151 Country Estates Circle, Reno, Nevada, before me, DEBORAH MIDDLETON GRECO, a Certified Court Reporter, personally appeared JEFFREY SPENCER, who was by me first duly sworn and was examined as a witness in said cause.

-oOo-

THE VIDEOGRAPHER: This is the beginning of videotape tape one in the deposition of Jeffrey Spencer taken in the matter of Klementi versus Spencer held at Sunshine Litigation Services on July 28, 2016.

The time is approximately 10:01 a.m.

The court reporter is Deb Greco. I'm Stewart Campbell, the videographer and an employee of Sunshine Litigation Services.

This deposition is being videotaped at all times unless specified to go off the video record.

Would all present please identify themselves, beginning with the witness?

THE WITNESS: Jeff Spencer.

MR. ROUTSIS: William Routsis, attorney representing Jeff Spencer in the cross-claim.

MR. ZANIEL: And David Zaniel representing Jeff Spencer as a defendant.

MS. CAPERS: Tanika Capers representing the Shaws.

MR. PINTAR: Mike Pintar on behalf of Mary Ellen Kinion and Egon and Elfie Klementi.

MR. BROWN: Doug Brown on behalf of Helmut Klementi.

THE VIDEOGRAPHER: Would the court reporter please swear in the witness.

JEFFREY SPENCER

called as a witness, having been duly sworn, testified as follows:

EXAMINATION

BY MR. BROWN:

Q Mr. Spencer, good morning.

My name is Doug Brown, as you heard before we got started, and I represent Helmut Klementi.

The depo today was noticed for 9 o'clock, and it's now 10 o'clock.

Is there a reason why you were late?

A I was sick this morning.

Q And you didn't notify anybody prior to --

A No.

Q -- heading down here?

Okay.

A We attempted to call, and no one was answering the phones.

Q Okay. Could you -- your full name is Jeffrey Spencer?

A Yes.

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Q Do you have a middle name?
A Del.
Q I'm sorry?
A Del.
Q Del?
Okay. Have you ever had your deposition taken before, Mr. Spencer?
A Not that I remember, no.
Q I'm sorry?
A No. Not that I remember.
Q I'm sure you have met with your attorneys and talked to them about this process, but I'm going to go over some ground rules before we get started.
This is a process, and I know you sat through some of these depos, so it's a process that we have to go through.
In order to make sure that the court reporter is able to have a clear record or make a clear record, it's important that you let me finish my question before you respond.
And it's something that we might do in everyday conversation, but again, we want to preserve the record. Otherwise, it makes it difficult to read.
If I remind you of that, I'm not picking on you. I just want to make sure we have a clear record.
Do you understand?
A Yes, sir.

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Q Okay. And you might even -- more on that. Sometimes I even violate that rule.
You might anticipate a question or an answer to a question that I'm asking before I finished it.
Let me finish my question, even if you think you know the answer before you respond, okay?
A Yes, sir.
Q Also, in everyday conversation, we sometimes use hand gestures, uh-huhs, huh-uhs, head nods.
We can't do that in this proceeding because the court reporter can't take down those gestures.
Do you understand?
A Yes.
Q Any reason why you can't give accurate testimony here today?
A No.
Q Okay. What did you -- what documents did you review in preparing for today's deposition?
A Trial transcripts.
Q The criminal trial transcript?
A Yeah. Police report.
Q I'm sorry?
A And a police report.
Q Okay. Anything else?
A No.

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Q Did you review the surveillance footage?
A No.
Q When was the last time you looked at that?
A I can't remember.
Q Been a while?
A Yes.
Q All right. Where do you presently live?
A 321 Charles --
Q How long --
A Stateline.
Q I did it that time.
How long have you lived at that address?
A 12 years approximately.
Q And your wife Marilyn lives at that address with you?
A Yes, sir.
Q Has she lived at that address with you the entire 12 years?
A Yes, sir.
Q Has anybody else lived at that address?
A We had Marilyn's aunt living there for a while. I can't remember when that was.
Q Was that before or after April of 2012?
A Before.
Q Okay. How long have you been married to Marilyn?
A Thank heavens she is out of the room.

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Q We won't tell.
A I think we got married in '98.
Q Okay. Where did you live prior to the Charles Way address?
A Homewood. Homewood, California. It's across the lake.
Q Okay. In Tahoe?
A Yeah.
Q In the Tahoe area?
How long did you live there?
A We moved there right after we got married. About two weeks after we got married.
Q Okay. So sometime in '98?
A Yes.
Q Or sometime around that time?
A Yeah.
Q Okay. Another thing, too, is I don't want you to guess today.
But if you have an estimate or an approximation, I'm entitled to your best estimate or approximation.
A Yes, sir.
Q Okay. With respect to the Charles Way address, who are your immediate neighbors?
A Could you define "immediate"?
Q Well, who lives next door to you on -- I'm presuming

you have neighbors on both sides of your house?
A No.
Q You don't?
A No. There's a vacant lot next to my house.
Q Okay. Well, that explains that.
Explain the layout of your neighborhood to me.
A Meadow and Juniper run parallel. Charles intersects both of them. Charles is approximately 250 feet long.
Q Okay.
A So it only has four lots on it.
Q So you -- on one side of your house, you have an empty lot?
A Yes, sir.
Q What's on the other side of your house?
A Street. Juniper.
Q So you don't have any other properties, any of your neighbors have properties touching your property?
A Behind me is a vacant foreclosed house. Diagonally from me, which would be two lots over on Meadow, is a rental house.
Q Okay. Where does Helmut Klementi live in relation to your house?
A Couple streets away.
Q Okay. What about Egon and Elfie?
A Diagonally across the street. Across the street, and

they live across from the vacant lot.
Q I have seen on the video, the surveillance video, that I believe is from your security cameras, looks like there is a deck on the second story of your house?
A Yeah. I have a deck on the second story.
Q And if you are standing on that deck and looking straight across, is there a house that you can see straight across?
A Yes.
Q And whose house is that?
A Well, no, you can't.
Are you referring to the front deck or rear deck?
Q I don't know. I saw stairs. It's the surveillance video where you are coming back up the stairs. Your wife is on the phone.
A Okay. There's a house directly across the street, yes.
Q Okay. Whose house is that?
A Diane -- I don't know her last name.
Q Where does Mary Ellen Kinion live in relation to your house?
A Around the corner, down Meadow. 400 feet down Meadow, couple houses down.
Q What about Dr. Shaw and her husband?
A They live across Juniper.

Q How far from your house approximately?
A Across the street, basically. Charles goes into their driveway pretty much.
Q When you moved into the neighborhood approximately 12 years ago, were the Klementis, did the Klementis live in the neighborhood at the time?
A I believe so.
Q What about Miss Kinion?
A I couldn't say.
Q Okay. What about the Shaws?
A You know, I really couldn't say.
Q Okay. We'll get back into the neighbors and the neighborhood in a minute.
But what do you -- are you presently employed?
A Yes, sir.
Q And who are you employed by?
A I'm not going to say.
Q Why not?
A Because the Klementis have tried to have me fired from every job I have had up there. And she says that in one of the documents. So I don't want them contacting my employer.
MR. BROWN: Counsel, I need to know this information. It's going to be public record.
If he is claiming that he has been harmed in his reputation, it's certainly relevant.

And it's information that I believe needs to be answered here today.
MR. ROUTSIS: Well, I think that maybe we're going to have to take it under seal with the judge.
I understand you have got -- you can ask him all the questions you like about pay, et cetera, but as to where he works, I think he has got a legitimate concern.
So can you do that? I mean, salary, et cetera. Just leave out the name of the business so they can't contact him or his employer.
MR. BROWN: I can't verify his employment for purposes of damages, and I'm not trying to be unreasonable, Bill.
MR. ROUTSIS: No. I appreciate that.
MR. BROWN: I just want the information.
MR. ROUTSIS: Perhaps we can give you the name and keep it quiet in terms of disclosure at this time.
MR. BROWN: Want to take a quick break?
MR. ROUTSIS: Yeah.
MR. BROWN: Okay.
THE VIDEOGRAPHER: We're going off the video record. The time is approximately 10:11 a.m.
(A recess was taken)
THE VIDEOGRAPHER: We're going back on the video record. The time is approximately 10:16 a.m.
MR. ROUTSIS: I would like to make a quick record.

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This is William Routsis representing the cross-claimant, Jeff Spencer.

And due to the fact that -- in the history of this case, my client has lost his job due to what we believe is some of the alleged conduct of the defendants in our cross-claim.

So my client, to protect that from happening again, we decided not to reveal the name of his business to the defendants, but I have provided the name and numbers to counsel.

And I'm going to ask that they keep that information privileged from the defendants at this time, unless the judge makes a ruling otherwise.

MR. BROWN: And I thank you for that. And you did, in fact, provide me with a handwritten indication of who Mr. Spencer's employer is.

For our purposes, I want to make for the record that I believe that we are entitled to that information on the record from Mr. Spencer.

I will go into issues surrounding his employment for the time being and for today's purposes to keep the proceeding going, but I still believe that we're entitled to that information.

I don't believe that Mr. Spencer can pick and choose what to respond to, unless there is an objection under privilege in this case, and it would be his or your burden to move for a protective order regarding that issue.

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With that said, let's go back onto the deposition.

BY MR. BROWN:

Q So, Mr. Spencer, you are currently employed?

A Yes.

Q How long have you been employed with your current employer?

A Approximately three and a half years with one, and the other one, off and on, maybe 2010 or around there. So maybe six years with the other one.

Q Okay. So -- and that's what I was going to get at.

You indicated you have two employers?

A Yes.

Q One that you have been with -- that you were hired after, sometime after 2012?

A Yes.

Q Do you know approximately when that hire date was?

A No. I could look it up, but I don't have that information with me.

Q And the other employer, you were employed with, you said, approximately six years?

A Yeah.

Q So 2010?

A (Nods affirmatively).

Q You, in this case, have disclosed, I believe, some pay records with respect to the employer that you have been employed with about six years, correct?

A Correct. So whatever they say is what it is.

Q And that employer, not your more recent employer, but that employer is F&B?

A Yes.

Q Explain to me what your job description is at F&B.

A Basically, truck driver.

Q Is F&B in any way affiliated with the snowplow work that you did in your neighborhood?

A Yes.

Q Okay. So when you say you're a truck driver, to me, that could fill a lot of different bills.

Tell me -- when you say truck driver, tell me what it is specifically -- what you drive, what you do.

Are you a long-haul truck driver?

A No. F&B is local only.

Q What kind of trucks do you drive?

A Dump trucks and end dumps.

Q I'm sorry. Dump trucks?

A Dump trucks, end dumps, which is the long semi-style dump truck and the snowplows.

Q Do you still do snowplow work for --

A Yes.

Q Or with F&B?

A Yes.

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Q And does that include work in your neighborhood?

A Yes.

Q Still to this day?

A Yes.

Q Who is your direct supervisor at F&B?

A I would guess Flipper Manchester.

Q Flipper Manchester?

Was Mr. Manchester your direct supervisor in 2012 also?

A Yes.

Q How many hours a week do you work for F&B?

A It varies on what they have.

Q Is there an average?

A Anywhere -- no, definitely not.

Q Are there seasons where you work more --

A Yes.

Q -- or less?

A Summer and the winters.

Q Mr. Spencer, I'm not picking on you, but what you are doing is you are anticipating my questions and answering before I get it out.

Again, just to make a clean record, pause a little bit before --

A Okay.

Q -- you respond.

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A Okay.
Q So I believe you said that seasonally the work can pick up or drop off with F&B?
A Yes.
Q What's the busy time of the year?
A Summer.
Q The summer?
A (Nods affirmatively).
Q In 2012, can you give me -- can you tell me how much you made with F&B on an annual basis?
A No.
Q What about 2013?
A No. I think the best evidence is the records that were turned in.
Q Okay. What about last year?
A I don't.
Q You have no idea?
A No.
Q Is that a larger portion of your income than your new --
A No.
Q -- employer?
A No.
Q You got to let me finish.
The answer was no?

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A No.
Q Okay. So as a result of this lawsuit, you never lost your employment with F&B, as a result of the allegations in this lawsuit?
A Close, but never lost.
Q Okay. And it didn't affect your hours that you worked?
A It did.
Q It did?
So you are saying that prior to 2012 you worked more hours with F&B?
A No.
Q I don't understand your answer.
How did it affect your hours?
A It affected my hours by telling them I had to take off for this. It was hours I could have worked.
Q How many hours have you taken off because of this?
A Well, I couldn't say right now.
Q Do you have a log or --
A Yes.
Q -- have you kept track of it?
A Yes.
Q Where is that log?
A That would be at my house.
Q Have you produced it in this case?

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A No, I haven't.
Q Why not?
A I haven't had time to do it yet.
Q You know, this case has been pending for --
MR. ROUTSIS: Objection. Argumentative. There is no need for your dialogue. Okay? You asked a question. He gave an answer.
MR. BROWN: Counsel, you can object.
MR. ROUTSIS: Argumentative. It's in the record.
MR. BROWN: Okay. We don't make speaking objections. We -- you know, this is a civil matter that speaking --
MR. ROUTSIS: Argumentative is not a speaking objection.
BY MR. BROWN:
Q Okay. I'm going to ask you to go ahead and answer that question.
A Could you rephrase the question? I already forgot.
Q You said you didn't have time. This litigation has been pending for well over a year.
Why haven't you had time to produce that?
A Because I work.
Q Okay. When did you create that log?
A I don't know. When did you tell me to create it?
Probably -- I don't remember. It would be whenever the first time we met with Mr. Routsis. So we don't know when

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that is. I don't remember.
Q That would have been sometime in 2012, around the criminal trial?
A Yeah.
Q Okay. What is your rate of pay at F&B?
A It's not much. 20 bucks an hour or something like that.
Q Has it gone up since 2012?
A No.
Q It's stayed the same?
A Yeah.
Q Do you get any benefits besides just an hourly rate of pay with F&B?
A Yes.
Q What benefits?
A I don't know. Define benefits.
Are you meaning like medical?
Q Anything that you would receive other than your rate of pay as a result of working with F&B.
A I receive -- how would I say this?
Anything in the lineup at work I can get done for free. So landscaping, excavating, anything like that, I can do myself and have done.
Q It sounds like F&B is more than a trucking company?
A They are an excavation company, basically.

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Q Okay. And where are they based out of?
A Kingsbury Grade, Stateline.
Q Okay. With respect to your newer employer, what's your current rate of pay?
A It's 2,450 a week.
Q 2,450?
A Yeah.
Q A month?
A A week.
Q A week?
And what do you do, what is your job description with your newer employer?
A Transportation manager, mechanic, training engineer.
Q How many hours a week do you work?
A That's pretty -- varies also. That could be anywhere from, let's see, from 40 to a hundred, probably.
Q Per week?
A Yes.
Q The allegations in this lawsuit didn't affect your ability to get that job, correct?
A No.
Q Has anybody declined to hire you because of the allegations in this lawsuit?
A No.
Q Who is your immediate supervisor at your new

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employment?
A Ryan Negri, N-E-G-R-I.
Q Is that a Nevada or a California corporation?
A California.
Q Have you been suspended or reprimanded in either the F&B or the newer employment --
A No.
Q -- for any reason?
A No.
Q It's my understanding you have security cameras installed in your home?
A Yes.
Q Okay. When did you get those installed in your home?
A My best recollection would be the first part of 2012. Maybe March, April, something like that.
Q Was that around the time that the dispute over parking a truck on the street started?
A No. It was before that.
Q Before that?
Had there been any problems with your neighbors, from your point of view, prior to that incident, the truck being parked in the street, and I think it was April of 2012?
A Yes.
Q Okay. What sorts of incidents had occurred prior to that?

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A We had a restraining order against the neighbor.
Q Which neighbor?
A Bruce Taylor.
Q Who is not a party to this lawsuit?
A No.
Q Okay. Does Mr. Taylor still live in your neighborhood?
A Yes.
Q Did that restraining order ever expire?
A Yes.
Q And what was the restraining order over?
A He was harassing us, yelling at my wife. He's just a very short-tempered person.
Q Do you have any communications with Mr. Taylor to this day?
A No.
Q When was the last time you had any interaction or communication with him?
A I couldn't tell you, but it would be 2011 or farther -- or further back than that.
Q That's what I was getting at. It's been a long time?
A Yeah. Before the restraining -- at least six months before the restraining order.
Q Was that the first incident in your neighborhood involving your neighbors, with Mr. Taylor?

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A Yes.
Q Okay. Had there been any -- prior to April 2012, had you had any negative, what you view as negative interactions with any of the Klementis?
A No.
Q What about Miss Kinion?
A No.
Q What about the Shaws?
A No.
Q So that -- those disputes with the defendants, I guess the parties to this lawsuit, really started in about April 2012?
A Could you say it again?
Q The issues that you have with the parties named in this lawsuit, the Klementis, Miss Kinion and the Shaws, started approximately in April of 2012?
MR. ROUTSIS: I'm going to object as to vague and ambiguous. I think you need to be more specific.
BY MR. BROWN:
Q You can go ahead and answer the question.
MR. ROUTSIS: If you understand it.
THE WITNESS: I think, more accurately, it would be May.
BY MR. BROWN:
Q May?
A Yeah.

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Q Okay. And here is my understanding, that's why I'm asking this question.

I understood that there was an issue involving you parking a truck on the street that occurred sometime in April of 2012.

A Okay. Then make it April.

Q Okay. That's where that came from.

A Okay.

Q And so really the issues that have precipitated and are involved in this lawsuit started around that time?

A Yes.

Q Who installed your security cameras?

A I did.

Q Where did you get the system?

A I don't even remember where we got the first system that was up at that time.

Q Do you have another system now?

A Yes.

Q So let's talk about the first system.

You installed it yourself?

A Yes.

Q Tell me how it's set up.

A The first one was just a 13-inch monitor, TV, with a VCR, you know, like the old style, and it recorded onto the VCR tapes.

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Q And how long, if you just -- if you turned your security system on, how long would it record for before you had to put a new tape in?

A It depended on the length of the tape. So about eight hours is the max you could do.

Q And were you changing that in eight-hour increments, to your knowledge?

A Yeah. Yes.

Q Did you keep the tapes, or did you -- what did you do with them after -- once you had an eight-hour session that you would record?

A Well, it got a little carried away because if you kept the tapes, then you'd have a ton of tapes, and that's kind of old school.

So I would record over a lot of stuff, glance through it.

Q Moving ahead to December of 2012, and we're going to get into a lot more specifics, did you have the same system in place?

A No.

Q Okay. You had a new system?

A Yes.

Q When did you install the new system?

A I don't recollect.

Q Do you have an approximation? Was it in the summer --

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was it in the spring of 2012, the summer, the fall, or later?

A Late summer maybe.

Q Okay. And did you install that system yourself --

A Yes.

Q -- as well?

Tell me about the second system that you installed. How did it operate? The old one operated off a VCR.

A This is digital, so it has hard drives. And if you save something on it, you record it onto the thumb drive.

And then it's -- so being digital, it also overwrites -- when the hard drive fills up, it just starts overwriting.

Q So how would you store -- you know, say, given a 24-hour day -- I presume this is recording 24 hours?

A Yes.

Q How would you store your video over a 24-hour period?

A I just -- it stores it onto the hard drive.

Q Okay. And you have a separate hard drive for that?

A No. The hard drive is built into the -- it looks like a VCR. You know, the hard drive is built into it.

Q Do you know how much space is in that hard drive?

A Two terabytes.

Q What's the brand of that hard drive?

A I can't remember.

INFORMATION REQUESTED:_____

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_____

_____

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_____

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BY MR. BROWN:

Q If I ask the court reporter to leave a blank in your deposition transcript, would you be able to provide that information?

A Yes.

Q Okay. And I would ask the court reporter to do that.

So did you have a particular system, you know, for -- obviously, a hard drive is eventually going to fill up.

How did you maintain your security footage, or do you maintain your security footage, for any given period of time?

A Thumb drives.

Q So you just --

A You would record off the hard drive onto a thumb drive.

Q Did you do that every day?

A No.

Q How often did you do that?

A I couldn't honestly answer that.

Q Approximately how much time could you record before your hard drive would fill up?

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A It would depend on where you have the camera set at, how many frames per second they are recording and so forth.

Up to three months.

Q Had you changed -- from the time you installed it, until December 2012, had you had to change out or, you know, clear up any space in your hard drive?

A No. It records over.

Q What about the incidents that took place on, I believe, December 18, 2012, how much of the day -- of that 24 hours before that incident and 24 hours after it, did you save all of that footage?

A No.

Q Why not?

A I saved -- I took the hard drive out, but it got corrupted trying to save the footage on it. I put it into a different DVR, and it corrupted it.

So we're trying to get the rest of the footage off of that.

Q So you no longer have that hard drive?

A No, I still possess it.

Q Okay. How much footage from that day did you actually save?

A From which day?

Q I believe it was the 18th of December.

A I'm trying to think. I couldn't honestly tell you.

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Q How many cameras do you currently have installed in your security system?

A I'm not going to answer that. It's a security system. If I tell you how many cameras I have, then it won't be so secure.

MR. BROWN: Counsel, are you advising your client not to answer that question?

MR. ROUTSIS: It's his right, I would say. That's his position, and I don't think he has got to give up his security for this hearing.

MR. BROWN: You are under oath. You have made allegations in this case. There is video footage. We're entitled to that information as part of this case.

And if you are advising your client not to answer that question, we will proceed accordingly. It's certainly relevant to this case.

MR. ROUTSIS: How is it relevant?

MR. BROWN: Because we're entitled to know if there's other footage, we're entitled to know different angles.

There has been a lot of -- it's my understanding that your client is contending he could make out Mr. Klementi. He is contending that somebody was in his driveway.

If he had security cameras and security footage, we are certainly entitled to look at that information and consider that.

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THE WITNESS: Okay. Would you ask the question again?

BY MR. BROWN:

Q And maybe I can ask it in a better way. I don't know if this changes your answer, but I'm looking at 2012, December of 2012, not necessarily today.

A Okay. Sure.

Q Okay. How many cameras did you have in 2012? December of 2012. Sorry.

A I think eight.

Q Eight?

A If you want to leave that blank, I can go back and fill that in.

Q I'll take eight, but we'll leave a blank if that changes -- well, you know what? We don't even need to.

One thing I didn't explain to you at the beginning of this deposition is at some point the court reporter is going to generate a transcript. You are going to have an opportunity to review that and make changes that you feel are necessary.

If you make any substantive changes, something that somebody could comment on at trial -- if you are telling me eight cameras today, and you go back and realize I had 6 or 7, that's not, to me, a big deal or something I'm going to comment on.

But you will have that right to change that.

So I believe you said you thought you had maybe eight

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at the time. And if you subsequently learn that you had less or more, I would just ask that you make that change in the deposition transcript.

A Okay. The system could only handle eight cameras. So it would be eight or less.

Q Okay. Fair enough.

How many of the cameras were pointed towards the street?

MR. ROUTSIS: Objection. What street?

BY MR. BROWN:

Q Charles.

A Three probably.

Q Three?

A Yeah.

Q And where -- again, we're going back to 2012.

Where would the other cameras point?

A The other cameras?

Q Yes. You said you had -- going by your recollection that there might have been eight, you believe there was three pointed towards Charles.

A Uh-huh (affirmative).

Q Where would the other cameras have been positioned?

A All the way around the house. Juniper, one shows Juniper, a couple show the backyard.

Q And there was a --

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A Side yard.
Q I'm sorry. I didn't mean to cut you off.
There was a camera also positioned towards your driveway, correct?
A Yes.
Can I make a correction?
Q You can.
A On the night in 2012, there was, I think, seven cameras, because there was one over the garage, but it wasn't connected yet.
Q Okay.
A And I think that's in the -- well, no.
Q Those cameras, they are on a -- you talked to me about the hard drive that they are hooked up to.
Is there also a monitor that you can see what's going on outside?
A Yes.
Q And where is that located in your house, or where was that located in your house?
A On a desk, a little side desk, second story.
Q In your -- near a family room or a --
A Yeah, it's like near a family room.
Q Okay. Easy access is what I was getting at.
You could go access that room --
A Yeah.

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Q -- relatively quickly?
A Yes.
Q Okay.
A If it's on.
Q Correct.
A Yeah.
Q And --
A The system can be recording and the monitor be off.
Q Understood.
A Okay.
Q Is there -- when you save video off your hard drive onto a flash drive, like you explained earlier, is there any sort of program that you need to run that video?
A The program that comes with the equipment.
Q Do you know what the name of that program is?
A No.
Q Do you install that on another computer?
A No.
Q So how are you able to -- and I may be asking a very basic question. I'm not a computer guy, so bear with me.
A Sure.
Q How are you able to take the video off the hard drive from your security system, plug it into another computer, and watch it?
A You go back into your system, and you put in to

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record. You know, it has drop-down menus, so on and so forth, like a regular laptop.
It has a USB port that you put the thumb drive in, and then you put in the time and the dates that you want to transfer to the thumb drive.
Q And then you are able to take that thumb drive, without any other sort of companion program, into like, say, my computer, and I could clip that in there and click on the thumb drive and open the video?
A All of the systems download their software onto your thumb drive when you download whatever you want to watch.
So when you take off -- any of the systems, if you take the thumb drive, it will have the software on it.
Q Understood. Actually, now that makes sense, in the production that I got from you guys, because there was a lot of stuff --
A Yeah. That makes no sense?
Q Yeah.
What did you do with the footage of that 24 hours before and after the December 18th incident involving Mr. Klementi?
A It's on the hard drive.
Q It's still there?
A We're hoping.
Q Have you done anything to try and retrieve that

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information?
A Yes.
Q What have you done?
A We took it to someone, but they couldn't -- they said there's stuff on there, but they couldn't get it off.
Now we have someone else looking at it to see if they can.
Q Okay. My recollection is, and I do have part of that video, and maybe that will -- everything that have produced here, anyways.
You had about an hour of time, I think you had from 8 o'clock, if I remember correctly, until the time of the incident, which was approximately a quarter til 9, correct?
A Uh-huh (affirmative).
Q How much time after the incident did you record also, do you recall?
A I couldn't say, but I know I have until at least 9 o'clock. And I know we have before 7 because we used that in court also.
Q Okay. Other than -- you described a process for me, and we'll go back to this.
You said that if you want video from a certain time frame -- and I'll use today as an example.
Say, if you wanted video from 9 to 10 this morning, you could go in and type in 9 to 10 on today's date, and that

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would download that portion of the video.
A Yes.
Q Is there any other way to get it, to your knowledge?
A No. You have to also put in what camera.
Q I'm sorry?
A You have to put in what camera.
Q Okay.
A So if you have multiple cameras, you have to designate each camera you want to download.
Q If you answered this already, I apologize. I don't recall asking this.
But what was the purpose of installing the video camera system, the first one?
A The restraining order.
Q From Mr. Taylor?
A Yes.
Q Okay. What precipitated that restraining order with Mr. Taylor?
A I wasn't home at the time. He came over and started screaming and yelling at my wife, who was sitting on the porch with her girlfriend. They just got back from doing some white water rafting.
And he just went nuts, basically. Sat there and screamed and yelled for 20 minutes.
Q Did he ever -- did you ever find out why he was

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screaming or yelling?
A We know why he thinks he was yelling and screaming.
Q That's what I'm getting at.
What was your --
A He claimed that that morning we were supposed to come over and help him load wood into his backyard, which I know we never agreed to that because my wife had a white water rafting trip planned. So --
Q And so --
A That seemed a little irrational to be screaming and yelling over something like that.
Q Was there anything else that caused you to want to get a restraining order, or was that the sole incident?
A No. He started driving by, you know, 15 times a day, and that's why we had the cameras.
And that footage we took to the 30-day hearing and restraining order to get it extended to a year.
Q And -- well, that was my next question.
So you got the initial TRO for 30 days, and then there was a hearing to extend it?
A Yes.
Q And that was granted?
A Yes.
Q And so the restraining order lasted approximately 12 months?

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A Yes.
Q And you were represented in that proceeding, as well?
A Yes.
Q Okay. And was that Todd Torvinen?
A Yes.
Q Before working for F&B, who did you work for?
A At the moment, I can't remember.
Q And you have worked for F&B, I believe you said, since approximately 2010?
A Yes.
Q And you don't remember who you worked for prior to that?
A I've worked for various race teams since '96. So I would have to go back and look at my resume to tell you.
Q When you say race teams, what do you mean by that?
A Teams that race cars.
Q So you didn't do any truck driving prior to 2010?
A No, I have done that all my life.
Q Okay. Did you have any truck driving jobs that you recall --
A That would be the race team stuff.
How that works is, since I have a commercial license, and I'm a mechanic, they like me because I can drive the truck and work on the cars and fill more roles in.
Q Okay. Are you currently working for any race teams

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now?
A Yes.
Q And is that the --
A Yes.
Q Okay. And -- let me get my question out.
That's the employer that -- the newer employer?
A Yes.
MR. ROUTSIS: Thank you.
BY MR. BROWN:
Q What does your wife do for a living?
A She owns a mortgage brokerage, mortgage company.
Q How long has she owned that company?
A I can't say. I don't know when we opened it.
Q Let me put it this way:
Has it been -- has she owned it since before 2012, when --
A Yes.
Q Okay. And where is it located?
A She has an office in South Lake Tahoe and an office in Reno.
Q What's the name of her company?
A Alpine Mortgage.
Q I'm sorry. I didn't get that.
A Alpine Mortgage.
Q If I ask you to repeat yourself today, I apologize. I

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have hearing aids, and I didn't wear them today, and my hearing is terrible. So sometimes I just hear mumbling, and I might ask you to repeat yourself on occasion.

Nobody other than you maintains the video camera system?

A Correct.

Q What about your wife?

A She does not maintain it.

Q Does she know how to operate it?

A Yes.

Q Okay. Does she know how to view what's going on through the monitor in the side room?

A Yes.

Q I want to jump ahead to April of 2012. We started talking about that a little bit earlier.

It's my understanding that it's April of 2012 when there was an issue that arose concerning you parking a truck on the street.

A Yes.

Q An 18-wheeler, I believe.

Tell me what you know about that incident. How did it first arise?

A I don't know.

Q You, at some point, became aware that somebody was not happy about you parking a truck on the street, correct?

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A Yes.

Q Okay. How did you become aware of that?

A Volunteer sheriffs came out.

Q What did they tell you?

A They said they had a complaint that it was parked illegally.

Q Was it?

A No. And they said, no, it wasn't. It was fine.

Q Did you ultimately move the truck?

A Yes.

Q Okay. Where did you move it to when you were parking it?

A I backed it up on my lot next to my garage.

Q Was that truck with your employment with F&B?

A No.

Q It was one of the race teams?

A Yes.

Q And you don't work for that race team anymore?

A No.

Q Okay. Why not?

A It doesn't exist.

Q Okay.

A They closed it.

Q So it's not something related to this lawsuit. It just doesn't exist?

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A Yeah. He closed it, and that's why the truck sat there so long.

Q Okay. Beyond the sheriff, were there any other -- any other interactions with law enforcement or public agencies regarding that vehicle being parked on the street?

A Could you say that again?

Q Beyond the -- I think you said that a sheriff came by --

A Yes.

Q -- and told you about the complaint.

Beyond that, did you have any other interaction with any other law enforcement or any other government-type agencies concerning that vehicle being parked on the street?

A Yes.

Q Tell me about them.

A The county sent us a letter.

Q And what did the county say?

A I believe you cannot park anything longer than 24 feet on your property.

Q On your physical property?

A Yes.

Q So this is after you had moved it onto your property?

A Yes.

Q Okay. How did you deal with that letter, or did you?

A I spoke to them and told them I can't move it because

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I don't have the money to take it back to Texas. It was based out of Texas. He never sent me the money to pay for the fuel to drive it back.

Q And what were you told by the county?

A They gave me a deadline to move it. I don't remember what it was.

Q Did you eventually move it?

A Yes.

Q And did you take it back to Texas?

A Yes.

Q Did you get paid?

A Eventually.

Q Who reported you, if you know?

A It's in the records, but I can't -- I don't know.

Q Do you know if Helmut was involved in reporting you?

A No, I do not.

Q I don't have specific times on this. I'm going to ask you, and I'm going to probably be a little more vague. We have the truck parking incident that happened sometime in 2012.

It sounds like the issue was resolved without you getting any citations?

A Yes.

Q How long did that issue go on for, from the time it was first parked in the street until the time you took it back to Texas? And you can give me an estimation.

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A My best recollection, I got there April maybe 26th, and I think I moved it out June 16th, June 18th, somewhere around there.

Q Not quite two months?

A Yeah.

Q After you met with the sheriff who came out, and when you got the letter from the county, were there any other -- did you have any other -- did you have any confrontations with any of your neighbors over the truck?

A No.

Q Now I understand that you also sometime in this time frame built a fence on your property?

A Yes.

Q Do you know approximately when that was?

A Memorial Day. Over Memorial Day weekend.

Q So shortly after this?

A Yes.

Q Well, actually, you still had the truck there at the time.

A Yes.

Q Okay. Why did you build the fence, what was the purpose?

A Our surveillance cameras showed Egon Klementi walking around in our backyard.

Q In your physical backyard?

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A Yes. Two weeks earlier.

Q Did you -- do you still have that video footage?

A Yes. I think that was -- it was supposed to be submitted to you.

Q It may have been. I'm not saying it hasn't, because I haven't gone through every clip on there.

A Yeah.

Q So you believe there is video footage that you may have produced in this case that shows Egon in your backyard?

A Yes.

Q When I say backyard, we're talking within the physical boundaries of your property line?

A Yes. Backyard.

Q What was he doing when he was in your backyard?

A I couldn't tell you.

Q Was he with a dog?

A Yes, I think so.

Q Did you ever discuss with him that you didn't want him on your property?

A I can't remember.

Q So once you saw him what you believed to be in your backyard, you decided it was time to build a fence?

A Yes.

Q Why is that? What was -- was he creating any harm in your backyard?

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A It's a safety issue. My backyard has got a 22-foot drop. When we built the fence, everybody on the crew fell one time or another.

It's, you know, a foot deep in pine needles, give or take, depending on the time of the year. So it's real easy to fall.

And there is rocks, boulders, everything else.

Q When you say 22-foot drop, what do you mean? I'm picturing your property line and a cliff face that --

A Basically, yes. The house sits this way. Here's Charles. On the Juniper side, it drops way down to our lot.

Q Has anybody ever been hurt as a result of that?

A Not that I'm aware.

Q Okay.

A Just fallen, but not been hurt.

Q So you build a fence.

It's my -- from what I read in this case, that fence was approximately six feet tall?

A Yes.

Q Why did you decide on a six-foot fence?

A For privacy. That's the highest that the county allows.

Q And I'm picturing in my head, I haven't seen it, but I'm picturing in my head the redwood slats.

Is that the type of fence you're talking about?

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A Yeah. Cedar, I think we used cedar.

Q Cedar or redwood?

A Yeah.

Q Did it become an issue in the neighborhood about that fence?

A Yes.

Q Tell me about that.

A I'm not really sure how it started. The neighbors complained about it, the county contacted me about it.

Q When you say the neighbors complained -- you said a few things. I'm going to break them down a little bit.

A Okay.

Q Neighbors complained.

Who complained?

A I believe the Klementis and the Shaws complained. I'm not sure who else.

Q When you say the Klementis, there's a few of them in this case.

Do you know which ones we're talking about?

A Probably the ones that live across the street.

Q Egon and --

A Yeah.

Q -- Elfie?

A Yeah.

Q Did anybody come and complain to you personally?

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A No.
Q So the first you heard about it was the neighbors?
A Yeah.
Q Okay. Did you ever -- when -- I'm going to back up a little bit, and I'm sorry. I may jump around a little bit.
A That's okay.
Q When you saw Egon on your property, or when you saw him on the video footage on your property, did you ever have a discussion with him that you didn't want him on your property?
A No.
Q How --
A I figured that --
Q I'm sorry. Go ahead.
A I figured putting the fence up would end it. It wouldn't be a problem.
Q How was your relationship with Egon and Elfie prior to building the fence?
A Neighbors.
Q No issues at that point?
A Not that I was aware of.
Q Okay. What about Helmut?
A Same thing.
Q What about Mary Ellen Kinion?
A Same thing.
Q Had you done anything socially with any of these

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people?
A No.
Q What about your wife?
A You will have to ask her.
Q Okay.
A I don't think so.
Q You had indicated, too, that some of the -- I believe you had indicated that some of the workers who were building the fence, pretty much every one of them had fallen off that ledge.
A (Nods affirmatively).
Q Any physical injuries?
A No.
Q Nobody claimed any injuries against you for --
A No.
Q Are you aware of any injuries ever since you have owned that property as a result of that 22-foot drop?
A Yes.
Q Tell me about that.
A It was in the wintertime, and there was a car wreck and a car flipped down the hill, and came about five feet from my house.
Q When was this?
A Which apparently has happened at least 4 or 5 times there.
Q Prior to you living there?

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A Yeah.
Q Okay.
A Well, total. Once while we have been there. I think three times before.
Q Okay. So you -- when you -- you build the fence.
How long after you build the fence do you get -- is it that you get contacted by the county?
A I can't recall.
Q A short period of time, or was there a long period of time?
A I honestly don't even remember.
Q Okay. What did the letter say?
A I couldn't tell you.
Q You just got a letter in relation to your fence?
I mean, did it say, Mr. Spencer, you did a great job on the fence. It looks great. We like it?
I mean, is that the kind of letter you got?
A I just don't know -- what was I going to say?
I don't remember.
Q Do you have a copy of that letter still?
A Yes.
Q Okay.
A We'll turn that in for you.
Q Okay. Please do. Please give it to your counsel.
Do you know if it indicated or concluded that you were

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in any sort of violation of any codes?
A Yes.
Q Okay. And it did conclude that?
A Yes.
Q Does your community that you live in have CC&Rs, to your knowledge?
A I believe it does.
Q Okay. Before you build any sort of fence or any additions onto your property, do you have to go through any sort of process?
A No.
Define that. What do you mean?
Q Well --
A With the CC&Rs, no.
Q Okay.
A But if you are doing something, then you have to contact the county and the TRPA.
Q Right.
But those are what I would view as probably separate from -- what I'm asking is, generally, as I understand, you live in a homeowners association, correct?
A No.
Q No?
A No.
Q Wasn't there a homeowners -- oh, that was the KGID

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meetings. Sorry. Never mind.

So there is no homeowners association, to your knowledge?

A No.

Q So really the only entity that was raising a concern was Douglas County over your fence?

A Yes.

Q Beyond the letter, did Douglas County do anything else regarding the fence?

A Yes. We had quite a few conversations that came out. We applied for a variance. They kept changing the rules about the fence.

Q When you built the fence, was it in compliance with Douglas County code?

A Exactly to what they said on their internet site.

Q And then you found out that it wasn't to code?

A It was to code when I built it for what they had on the internet site.

Q I see.

So what they had on the internet was incorrect, as opposed to what code was currently in effect that governed the building of that fence; is that what you are telling me?

A I don't know what's currently in effect.

Q Well, I'm sorry. I probably asked a terrible question.

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In 2012, when you built that fence, you indicated to me that you looked on the Douglas County website.

A Yes.

Q And you believed the fence was up to code at that time.

A Yes.

Q What I understood is, although the internet may have had what was up to code, that may have not been the actual code that was in effect at that time.

Was that your answer?

A No. That was what was in effect at that time. And they mailed us out things.

Maybe I can make this simpler. The county came back saying that Juniper was my main street, not Charles, where my address and my front door and my driveway is.

So, thus, they said the setback needed to be 30 feet because Juniper was my front street, and the setback is 26 feet on there, because 20 feet was the rule.

Now the other thing is, what's on the internet site said the fence and the setback refers to your property line, not from easements.

So they are wanting a setback from an easement, not from my actual property line, even though what was on the internet said property line.

Q Understood. And that does clear it up, at least in my

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mind.

I also thought there was an issue over the height of the fence. Am I mistaken?

A Eventually, yeah, they complained about that, and they said there was a line of sight issue.

Q Explain that to me.

A Normally for line of sight you take the intersection of the two streets, you measure back 45 feet in each direction, and then that makes a triangle that it can't be in.

Okay. They did not use that rule to make me take the fence down.

They used an old rule that said it takes in the speed, the slope of the streets, all that, and they came up with this line of sight that goes through the middle of my house.

So my opinion was, if I could build this house, and you didn't care, why do you care about the fence now?

Q Did you ever get cited by --

A No.

Q -- Douglas County?

A No.

Q Okay. Mr. Spencer, again, I'm not picking on you. You are doing it again, and I think it's just out of habit. You are anticipating my questions and answering before I get my answer -- or my question out.

So, again, try your best to hold off until I finish my

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question.

A Okay. Sorry. I'm just trying to speed things up.

Q I know. And I apologize.

A I was late, so to help you out.

Q That's fine. And I'll probably pick on you some more throughout the deposition on that.

So there was no citation, but did you agree, or did Douglas County come out and say, you need to take this down?

A Yeah. Yeah, basically, you need to take it down.

Q Were you threatened with fines or any sort of action by --

A Yes.

Q -- the county?

What were you threatened with?

A The DA said he was going to arrest me if I didn't take the fence down.

Q That caused you to take it down?

A (Nods affirmatively).

Q Okay.

A They now say I can't have a fence at all on that side of the property. Not even a two-foot fence, nothing.

Q Do you have a fence up there now?

A No.

Q You took that down?

A On the side that they wanted to, on the Juniper side.

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I still have a fence on the west side of the property and the south side of the property.

Q And it's your belief that somebody in the neighborhood turned you in?

A Yeah. It's documented.

Q It's documented.

Do you know who those individuals are? The individual or individuals.

A I believe you asked that.

Q I may have.

A The Shaws and Klementis.

Q That's correct.

A And I think Mary Ellen also bitched about it.

Q Did you ever see their written complaints?

A Yes, I believe we do. I believe we got that through subpoena to the county.

Q Did you ever talk to any of those individuals about their concerns over your fence?

A No.

Q Why not?

A This is -- this is after the December incident, and we weren't talking at all.

Q Okay. Were you talking prior to the December incident with any of the parties in this lawsuit?

A No.

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Q Any reason? Was there animosity between you and them at that point?

A No. Or maybe there was. I don't -- I can't speak for them.

Q Okay. Have you ever had any problems with crime in that neighborhood?

A Yes.

Q Prior to 2012?

A Yes.

Q Tell me about problems you had with crime in your neighborhood.

A We had people try to break into our cars before. Our neighbor had stuff stolen from his car.

There was actually, like, 181 incidents within that year, 2012. I'm -- this is a rough guess, but we subpoenaed that information also for the criminal trial. So that's available through their --

Q I don't want a guess, but if you can give me an estimate, you know, that's fine.

But you believe there was roughly 181 incidents in your neighborhood?

A That number sticks out. I think that's what it was. I'm not sure what area that encompasses.

Q Okay.

A The Kingsbury Grade area or --

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Q Okay. Prior to April 2012, had you ever called the police in your neighborhood related to an incident that occurred in your neighborhood?

A Just regarding the restraining order.

Q Just -- okay. The restraining order against Mr. Taylor?

A And possibility the rental property that's kitty-corner from us.

Q For what --

A Noise.

Q Noise?

A Yeah. They get out there, and it's at, usually at 3 a.m., and have a party, you know.

Q Understood.

But you have never -- you had indicated, I believe, and correct me if I'm wrong, that you had previous break-ins to your car.

A Uh-huh (affirmative).

Q And you have never -- go ahead.

A Attempts. They didn't get in it.

Q Okay. Did you ever report that?

A We talked to an officer about it, and he, basically, said -- had a bad attitude, that, you know, nothing you can do about it.

He asked if we could identify the person who was doing

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it, and we're like, we don't know who he is. Do you want the video? And he didn't want the video.

So -- and I don't remember what officer it was.

Q You said something that I want to go back on. You said we offered the video.

My question was -- and maybe it wasn't specific enough. I was trying to break it down prior to April 2012.

I thought earlier you had indicated that the video was installed in April or May of 2012; is that true?

A No. Yeah, yeah.

So it had to have been after that. So -- okay. I see what you are saying.

Q So prior to installing the video camera -- we will use that as the timeline.

A Okay.

Q Prior to installing the video camera, you don't recall reporting any --

A No.

Q -- burglary, vandalism, or anything of that sort in your neighborhood?

A No.

Q I understand that -- I'm jumping ahead to December of 2012 -- in reading the police statement and your wife's statement, that there was a belief on that day or that evening that someone was trying to break into your truck or your

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vehicles on that day, correct?
A Yes. It was in the newspaper.
Q It was in the newspaper?
A Yeah. It was in the newspaper that people were going around breaking into cars and keep them locked and so forth.
Q Understood.
But it didn't reference your specific house?
A Oh, no. No.
Q Okay. So there was -- generally, you were aware that people were going around trying to break into cars --
A Yes.
Q -- at that time?
And prior to you getting home from work, it's my understanding that your wife had indicated that she saw somebody in the driveway?
A Yes.
Q Do you know approximately what time that was?
And I'll ask her these questions later.
A Approximately 7.
Q Okay. Did you have video footage of that?
A Yes.
Q And where is that video footage?
A It's been turned in.
Q And that's from the 7 o'clockish time frame that you referenced?

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A Yes.
Q I won't hold you to a specific time.
A Yes.
Q And can you make out in that video who that individual is?
A Yes.
Q Who?
A Egon Klementi.
Q At 7ish?
A Yes.
Q And he is actually in your driveway?
A Yes.
Q And how are you able to tell that?
A From camera angles.
Q What caused you -- was there some landmark or something that specifically caused you to go, he just crossed into my property line?
A Yes.
Q What?
A There is some wood along the west boundary of my fence.
Q And when did you become aware that it was Egon? Was this before you went out, was this -- let me go over a basic timeline. You correct me if my timeline is incorrect.
A Okay.

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Q So sometime around 7 o'clock, you are still at work, your wife sees somebody in the driveway.
A (Nods affirmatively).
MR. PINTAR: Please respond verbally.
BY MR. BROWN:
Q I'm sorry. Yes, verbally. I didn't catch that.
Would you give me a yes or a no?
A Yes.
Q Again, we're in the deposition, and she can't write down head nods.
So roughly around 7 o'clock your wife sees somebody in the driveway?
A Yes.
Q Does she call you at work?
A Yes.
Q And what does she tell you when she reports this, to the best of your recollection?
A Yeah. She just said that she was coming home from work, and when she was on Meadow, she saw Egon Klementi in our driveway taking pictures.
Q Okay.
A And as she turned the corner up on Charles, he walked right past the side of her truck.
Q So she -- not only was it on video, but she also saw him?

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A Yes.
Q And she was able to identify him?
A Yes.
Q Okay. In December, 7 is going to be dark, correct? 7 o'clock at night, it's going to be dark out?
A Yes.
Q And so she called you and told you this. You come home approximately 8 o'clockish.
Does that sound right?
A Yes.
Q I think -- actually, I think it said 7:45, but I'm not quibbling with time.
Between 7:45 and 8 o'clock?
A Yes.
Q And do you go and review the video at that point?
A No.
Q You already knew that it was Egon because your wife had reported it?
A Yes.
Q And so I believe this -- the incident with my client happened about a quarter to 9 time frame.
Does that sound right to you?
A Yes.
Q What did you do in the intervening 45 minutes or -- let's just put it this way:

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What did you do from the time you came home until the time of that incident?

A I came home. I talked to her for a little bit. Then I went upstairs, in the back, to the third story, and started shoveling off the balcony.

Q Okay. There came a point in time when you became concerned that somebody was in your driveway?

A Yes.

Q Walk me through what happened next.

A I was throwing the snow off the west side of the balcony, porch, whatever. I heard someone crunching in the snow, footsteps. I looked out, I saw a figure, something. It was dark, I couldn't tell what it was.

I yelled at him. He didn't respond.

I went in, and had a real small flashlight, like the Harbor Freight one you get for free, you know. It has like four LEDs in it. I tried to shine that on him, but it wasn't working.

I yelled again. They didn't respond.

Then I ran downstairs and told my wife to call 911, and went out to the front porch and yelled, and they didn't respond.

Q Okay. Do you have any floodlights in the front of your house?

A I didn't then.

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Q You do now?

A I do now.

Q Okay. So you didn't have really any type of lighting system?

A No.

Q What about a light once you get into your driveway, anything of that sort?

A We have some lights on the overhang that were there, but they are not floodlights. They are can lights that are recessed up in.

Q Are they always on, or do you have to physically turn them on?

A You have to physically turn them on, or there is a motion sensor on there, and that -- I don't know if that was there then.

Q Okay.

A I don't remember.

Q Do you recall those lights going on?

A No.

Q Did you -- before you went down and had the issue with my client, did you go in and check out the video --

A No.

Q -- footage on the monitor?

Any reason why not?

A Because I thought it was a kid breaking into my truck, and it wouldn't do me any good to look at the video.

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Q Okay. Having known that Egon was in the area previously, did that cross your mind that Egon or Helmut may have been back in the area?

A It did. Why would they come back if they had already been there.

Q Okay. So you immediately checked both of them off the list?

A Yeah.

Q Now, again, I'm going to jump around a little bit, and I'm sorry for doing this.

At this point in time, had there been allegations of you, as a snowplow driver in the neighborhood, berming in their driveway?

A Yes.

Q Okay. How long had that been going on, those issues with respect to you being involved in plowing the neighborhood?

MR. ROUTSIS: I'm going to object to the form of the question. It assumes facts not in evidence.

BY MR. BROWN:

Q I'll go back and clean it up.

One of the issues, as I understand it, that has caused this dispute in the neighborhood was the allegation that you had been plowing in individual's driveways, correct? You understand that as an allegation?

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A Yes.

Q Okay. And I also believe there was an allegation by Mrs. Shaw, and maybe Mary Ellen Kinion, I'm not exact on who made this, that you assaulted Egon with the snowplow by driving by and spraying him with snow, directing your blade to him and spraying him with snow; is that correct?

A Yes, there was an allegation of that.

Q And did that all happen before this incident?

A Yes.

Q Had it been brought up with your employer?

A Yes.

Q Who complained to your employer, to your knowledge?

A He told me that Mary Ellen called him and one of the Klementis called.

Q Do you know which one?

A No.

Q Up to this point, had you had any issues with my client, Helmut, up to --

A No.

Q -- that issue on the 18th?

A No.

Q Was there also a Kingsbury Grade Improvement District meeting earlier that day?

A That night, yes.

Q Okay. Were you there?

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A No.
Q What do you understand -- let me ask a better question.
Do you know if you were an issue of discussion at that meeting?
MR. ROUTSIS: Objection. Vague and ambiguous.
At what time? When? It's not relevant unless you give us a time. Was he aware he was discussed that night, a week later?
MR. BROWN: I've only asked about one meeting, Counsel. I asked him --
MR. ROUTSIS: Excuse me. You asked him was he aware of that meeting.
When? It's not relevant unless you give a time period.
MR. BROWN: It may not be relevant to you, but it's my deposition. So let me just do my job.
MR. ROUTSIS: Vague and ambiguous.
If you don't understand it, don't answer it. I mean, you may have been aware a week later.
BY MR. BROWN:
Q So you were aware of that meeting on the 18th?
MR. ROUTSIS: If you don't understand it, don't answer it.
THE WITNESS: I don't think I was.

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BY MR. BROWN:
Q I thought you just said you were aware of it.
A I'm aware of it now. But if you are talking about was I aware of it that day when I was plowing snow, no.
Q Okay.
A I'm aware of it now because the transcripts are in evidence.
Q When did you become aware of that meeting?
A Within a couple days probably.
Q Have you since become aware that you were an issue of discussion at that meeting?
A Yes.
Q What was the issue concerning you at the meeting, to your knowledge?
A I would say the best evidence would be to look at the notes.
Q I'm asking you your recollection. I can go look at those notes any time. You can tell me what you know about it.
MR. ROUTSIS: I'm going to object. Again, vague and ambiguous. Restate the question.
MR. BROWN: Can you read the question back, Court Reporter?
Record read by the reporter as follows:
"QUESTION: What was the issue concerning you at the meeting, to your knowledge?"

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MR. ROUTSIS: Speculation, as well. Please reask the question.
BY MR. BROWN:
Q Go ahead and answer that question.
MR. ROUTSIS: If you don't understand the question -- he is asking you to speculate. If you don't understand --
MR. BROWN: Counsel, he didn't say that he --
MR. ROUTSIS: Excuse me. I'm talking to my client.
MR. BROWN: You're testifying now.
MR. ROUTSIS: Excuse me. I'm not testifying.
MR. BROWN: You are telling --
MR. ROUTSIS: Excuse me. I'm talking to my client.
MR. BROWN: Counsel --
MR. ROUTSIS: If you don't understand the question, you tell him you don't understand the question. Okay? If he is asking you to speculate, let me him know that.
BY MR. BROWN:
Q I'm not asking you to speculate anything. In fact, I told you not to speculate at the beginning of this deposition.
So I would ask you, to your knowledge, what was the issue concerning you that was raised at that meeting?
A I would speculate if I said. I don't know.
Q You wouldn't speculate. You --
A I would have to read the notes.
MR. ROUTSIS: Objection. Argumentative.

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BY MR. BROWN:
Q You had indicated --
MR. ROUTSIS: He's saying -- he has answered the question. He doesn't want to speculate.
MR. BROWN: Counsel, you're impeding the process.
MR. ROUTSIS: I'm advising him not to answer the question at this point.
Don't answer the question if you have to speculate as to what you don't have personal knowledge of.
BY MR. BROWN:
Q Let's go back on the -- let's go back and just talk about this for a minute.
So you indicated that you did -- you were aware of the meeting, you were aware that you were discussed at the meeting.
But now you are telling me you don't understand my question concerning what issues were raised at that meeting?
A I understand your question, but I don't know what issues were raised. I wasn't at the meeting.
Q Okay. So just to be clear.
You can't testify at all whether my client, Helmut Klementi, raised any issues about you at that meeting?
A Correct. We would have to look at the notes from the meeting, and then we could see who talked at the meeting.
Q And you haven't looked at those notes?
A I might have read them back in 2013.

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Q Didn't you --
A I probably did before the criminal trial.
Q Okay. Did you read the lawsuit -- or the complaint that's been filed in this lawsuit?
A Yes.
Q Okay. And you are aware that you have alleged that false statements were made at that meeting?
A Yes.
Q But you don't know what those false statements were?
A I would have to look at the notes.
Q Okay. You are the one bringing that claim.
And you -- as you sit here, you don't know what those statements were?
A I'm not going to say something that I don't know is accurate.
Q Do you have an understanding of what was said based on what you have read and looked at?
A Not at this time. I'm a little nervous, and I don't have it.
Q You are a little nervous?
A Of course.
MR. ROUTSIS: Objection. Argumentative. Asked and answered.
You've asked the question. He gave you an answer.
MR. BROWN: No, Counsel.

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MR. ROUTSIS: You asked him. He said -- you asked the question, are you nervous? He said, yes. You said, you're nervous? He's already answered it.
MR. BROWN: Counsel, you don't have to raise your voice. I can hear you speaking fine.
MR. ROUTSIS: I thought you couldn't hear well.
MR. BROWN: I can't hear well, but you don't have to yell and raise your voice.
MR. ROUTSIS: Okay.
MR. BROWN: I'm just trying to get his understanding of complaints that he's alleged in this lawsuit.
MR. ROUTSIS: Asked and answered. You asked the same question twice.
He said he couldn't hear. You said you can't hear. Asked and answered.
MR. BROWN: He first said that he was aware.
MR. ROUTSIS: You can read it back. You asked him -- you couldn't -- he said he couldn't hear. You reasked the question. That's asked and answered.
BY MR. BROWN:
Q Do you believe my client, Helmut Klementi, said anything about you at the meeting?
A Like I said, I don't remember who spoke at the meeting, right now here today.
Q Did that issue ever come up at your criminal trial?

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A I think it did.
Q Okay. And you have reviewed your transcript before coming here today?
A Just part of it.
Q I thought you said you reviewed the entire transcript.
A Not the whole thing.
Q What portion of your transcript did you review?
A Maybe the first third of it.
Q Okay. Other than the meeting minutes of the KGID meeting that was held on the 18th of December, do you have any other evidence, that you are aware of, of statements that were said about you at that meeting?
A I'm not sure I understand what evidence would be.
Q Evidence could be documents, testimony, video. Really anything that would support the claims that you have alleged in this lawsuit.
A Yeah. People that were there.
Q Identify who was there that you had -- you've received additional information from.
A I would have to look at the notes.
Q So you don't know?
A Not sitting here, I don't.
Q Okay. Did you talk to anybody other than -- or who was at the meeting?
A Talk to anybody?

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Q Uh-huh (affirmative).
A Regarding what?
Q Regarding statements that were said about you at the meeting.
A Yes.
Q Who did you talk to?
A I couldn't remember. It was three years ago. I'm sure I have talked to people about it.
I talked to my employer about it. He has talked to me about everything. He was there.
Q What did your employer tell you about the meeting?
A I don't remember.
Q But even though you don't remember what your employer told you, what you read about the meeting minutes, you still believe that you were defamed at that meeting?
A Yes.
Q Okay. But as you sit here today, you have no basis for telling me why or how you were defamed at that meeting?
A The basis is in the notes.
Q So what you are saying is the sole evidence for that is in the notes?
A No.
MR. ROUTSIS: Objection. Misstates the evidence.
MR. BROWN: I'm just trying to get what he knows, Counsel, about the claims that he has alleged.

MR. ROUTSIS: Okay.
THE WITNESS: I said --
MR. ROUTSIS: But that was his answer. You misstated the evidence. That was the objection.
Go on.
BY MR. BROWN:
Q So we have got the notes, that you don't remember anything about as you sit here today, correct?
A Correct.
Q We have got your employer, who was there.
And who from your employer was there, do you recall that person?
A It would be Flipper was there.
Q Do you still speak to Flipper?
A Pardon?
Q Do you still speak to Flipper?
Oh, that's right. He's your direct supervisor, I think you testified.
A Yes.
Q Okay. Anybody else that you recall that was there that you have talked to?
A Not that I recall. But there was others that I talked to that were there. I just don't recall their names.
Q Have you identified them as witnesses in this case?
A I don't know if they are identified or not.

Q Okay. If they are not identified, and you can't remember who they were, how am I going to find out who you talked to?
A Probably by buying the transcripts to the criminal trial.
Q So they would have been witnesses at the criminal trial?
A That's a good start.
Q Okay. Who were the witnesses on your behalf at the criminal trial?
A I don't remember.
Q So you have no recollection, as you sit here today, of any statements that anybody has given you concerning what happened at that meeting?
A Like I said, it's all in my personal notes, notes for our criminal trial, and from the minutes of the KGID meeting.
Q What -- you said personal notes.
What are you talking -- are you talking about the time log that we talked about earlier?
A Yeah. I have a time log, we have notes on the whole thing.
Q Have you given those notes to your attorney?
A We discussed them.
Q That wasn't my question, Mr. Spencer.
My question was, have you given those notes to your

attorney?
A Yes.
Q And what are those notes of?
A Of the case.
Q What case? This case, the criminal case --
A The criminal case.
Q -- the TRO?
A The criminal case.
Q Okay. Is it a log? Tell me what -- tell me about these notes.
A I believe it's client-attorney privilege, and I shouldn't have to tell you anything about it.
Q Well, we'll let your attorney make that objection.
What was the purpose for taking these notes?
A The purpose is to show the constant harassment.
Q And when were they taken? They were just taken at the trial?
A No.
Q When were they taken?
A They were taken as it happens, as I find it. As I review the video, and see what they are doing, you know.
Q So you took notes on December 18th?
A I did not on December 18th.
Q Okay. Did you take notes --
A I took notes of December 18th after reviewing the

video in the following days.
Q Had you retained counsel by December 19th?
A We had counsel retained from earlier than -- farther than that.
Q That was Mr. Torvinen for the TRO, correct?
A Yes.
Q You hadn't yet retained counsel for the criminal proceeding, correct?
A No. We had talked to Todd about this.
Q I'd ask you to produce those notes to your attorney for production in this case.
MR. ROUTSIS: Well, first of all, if he provided me with -- I don't know what he is referring to. That would be work product for the criminal matter.
I'm unaware of what he is specifically talking about. So --
THE WITNESS: Okay.
MR. ROUTSIS: -- we'll have to address this at another time.
MR. BROWN: I guess it would be my position if he took notes the day after, and you weren't retained --
MR. ROUTSIS: Yeah.
MR. BROWN: -- they couldn't be privileged, unless you called up Todd Torvinen and Todd Torvinen said to take notes of that.

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THE WITNESS: He has been retained since we had the issue with Mr. Taylor.
BY MR. BROWN:
Q Yeah. Which is a separate incident.
A But it's -- I don't think you are following me. We took -- we -- he is retained currently. Okay? Maybe you don't understand that.
We started taking notes because of the Taylor incident. Okay? Those notes just kept going with these incidents.
Q Okay. Did you review those notes in preparation for today's deposition?
A No.
Q When was the last time you looked at those notes?
A I could not honestly tell you. I don't go back and look at them.
Q Did you take them on a -- do you have daily log notes that you take?
A Yes.
Q When was the last time you had a problem with Mr. Taylor?
A I haven't had a problem with him since the TPO, although he still drives by a lot.
Q Okay. So back to the meeting.
You are not aware of any statements, as you sit here

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today, you personally, and have knowledge of, that were said about you at that meeting?
A No, I'm aware of statements that were made. I just can't recall them word-for-word right now.
Q Okay. What are the substance of the statements? In other words, if you can't recall them word-for-word, what is your understanding of what they were?
MR. ROUTSIS: I'm going to object. You have a log, you have the findings, transcripts, of that hearing, don't you? Why are you asking him when you have the best evidence?
You've asked him seven different times. He told you he doesn't have a clear recollection. Why do you keep asking him questions?
MR. BROWN: Because I'm entitled to his understanding of what this lawsuit is about.
MR. ROUTSIS: He's given you an answer. It's been asked and answered. He told you he has no clear recollection.
Let's move on.
MR. BROWN: He just told me he had an understanding, but he didn't recall the specifics. That's why I want to know what his understanding is. That's it.
We can spend all day on this issue, or we can just get it over with.
MR. ROUTSIS: You can ask it again, you can keep asking it, and you are going to get the same answer.

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MR. BROWN: Well, he keeps changing his answer, so I want to find out what his answer is.
BY MR. BROWN:
Q What is your understanding of the nature of the statements that were made at the meeting?
A Derogative against me.
Q Okay. In what respect? Are we talking derogative as in you are ugly, derogative as in you just plowed my street and berned in my driveway?
Can you give me any more specifics than derogatory?
A No.
Q Okay. When did you find out that statements had been made about you at the meeting?
A I don't recall. Within a couple days.
Q Okay. So a time frame of less than a week, probably within a couple days after the 18th?
A For people that were there, within a couple days, but the notes weren't available for probably two months.
Q And you got those notes when they became available?
A Yes.
Q Okay. And you said people that were there.
But the only person you have been able to identify that you recall is Flipper?
A Yes.
Q Understanding that you didn't know that statements

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were made at the time that the meeting occurred, and you didn't find out until afterwards, did that impact your -- did those statements that were made at the meeting, that you don't really recall what they were, impact your employment in any way?
A Yes.
Q Tell me how it impacted your employment.
A It impacted the relationship with Flipper and I about this, what we were going to do about it. It reflected on my hours, not being used unless it was really necessary.
Q Correct me if I am wrong, because this was a while back, earlier today. I thought you had testified today that you were still plowing snow in that neighborhood.
A Yes.
Q Has the amount of work that you have done in that neighborhood plowing snow decreased since 2012?
A Yes.
Q How much?
A I couldn't tell you. But that's also an issue with less snow.
Q Last -- the year before last?
A Yeah. We haven't had any good winters.
Q Okay. How did it impact your relationship with Flipper?
A Basically, he doesn't need the harassment, the crap of being involved in this, and the only reason he keeps me is

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because there's a shortage of snowplow drivers. He can't find anyone that doesn't break the equipment.

Q Was there -- other than this discussion that you had with Flipper, was there any other formal reprimand?

A No.

Q We probably plowed this ground already. No pun unintended.

Are you able to give me today an estimate of time that you worked with F&B prior to December 18th versus after? Has there been a -- I guess what I'm getting at, has there been a change in the amount of time that you are able to work for that company?

A Yes, but I could not give you an estimate.

Q Is it a significant cut in time?

And I know that's a broad term, significant, but I'm trying to get an idea of what --

A Cut in time in the winter, but not in the summer.

Q What causes you to believe it's related to this incident, or do you believe that?

A Yes, because he doesn't want to put up with having KGID calling him and everyone else calling him.

Q Is it also due to what you just indicated, that there's been less snow, so there's been less need for snowplow drivers?

A Yes.

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Q So let's go back to the evening -- and, again, I'm sorry for jumping around. You'll find I'll probably do that throughout the day.

We have got -- the 18th, as I seem to recall, you were plowing -- or not plowing -- you were shoveling snow on your deck --

A Right.

Q -- right before the incident happened. You get home, you are shoveling snow off the deck.

I believe you testified that you heard snow crunching out in front of your house?

A Yes.

Q Okay. What -- tell me -- walk me through very specifically what happened next.

A From where?

Q From the time you hear the crunching of the snow until the time that you and Mr. Klementi were in the street.

A I thought I did say that.

Q If you did, I apologize. I probably got distracted with something else.

Walk me through that again.

A Okay. I was shoveling snow off on the west side of the balcony. I hear the crunching in my driveway. I look down, I see a figure. I see something. It's dark, but I can tell there is some movement down there.

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I yell, nothing happens.

I go into my -- the porch is off our master bedroom. I go in the master bedroom, get a little flashlight I had. It doesn't -- I tried to shine it on him. It didn't work.

I yell again, and I run in the house, tell my wife to call 911, and run out on the front porch and yell again, with no response.

Q Okay. And then what happens?

A Then I run down the stairs, run out around my truck, and that's when I collided with Mr. Klementi.

Q I believe in your statement you said you saw an individual with a hood.

A No. That's in my statement, but I didn't say that. The cop said that to me. I can't remember the name -- the officer's name.

They said, what, did he have a hood on? And I just -- yeah, whatever, I agreed. Because I thought they had already, obviously, had been there in the street, so they must have seen it.

Q Okay. So you don't believe you have ever said that Mr. Klementi had a hood on?

A I agreed to it, I didn't say it, because they said that.

Q Why did you agree to something that wasn't true?

A I figured it was an officer, he must have known what

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was going on, he must have known the truth.

My mistake. I have learned much from this.

Q Okay. Did you ever have video evidence -- I'm jumping around again. Sorry.

Did you ever have video evidence that Mr. Klementi was actually in your driveway?

A Yes.

Q Okay. How come you haven't -- and this is -- this is the time -- this is right after -- when you are shoveling snow on your balcony, you hear the crunching of the snow.

I'm talking about this incident, not the earlier incident that you claimed that happened around 7 o'clock, or you think --

A Oh.

Q So you do have video of Helmut Klementi in your driveway?

A Yes.

Q Immediately before this? Immediately before this occurs, before you run down the stairs?

A Yes.

Q Okay. Have you produced that video?

A Yes.

Q And how are you able to tell that my client is in your driveway?

A You can see him -- as I recall, you can see him walk

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up the curb. You can tell by the pinpoint of the three different camera angles I have of it, or two different angles, I guess.

And like I said earlier, the wood. Where my fence stops, there's a bunch of wood that I set, that I was splitting and cutting and whatever.

Q Prior to this incident, had you ever told Helmut Klementi not to step foot on your property?

A No.

Q Okay. Any no trespassing signs?

A We have some up, but I can't say when we put them up. I don't remember.

Q And would you be able to see them from the driveway?

A Yes.

Q Okay. And you don't know if those were up in December of 2012?

A No.

Q Okay. So you run down the stairs, past your truck. Did you stop to look and see if your truck had been --

A No.

Q Why not?

A Because I figured it was a teenager, and I wouldn't catch him if I stopped to look at my truck.

Q Was this individual running from you?

A I didn't -- couldn't tell. I didn't see him.

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Q How far away from your driveway to where the impact occurred was that? And you can give me an approximation if you don't know exactly.

A I don't -- I don't know.

Q It's a standard street? I mean, there's nothing unique about the street? It's not ten lanes?

A No.

Q It's a two-lane street?

A It's 22-feet wide.

Q Okay. So, at most, if it's 22-feet wide from your driveway to where this happened, which the video looks like it happened somewhere in the middle of the street, we're not talking any greater than 20 feet away --

A I couldn't --

Q -- from your driveway?

A I couldn't tell you.

Q Okay. But you do agree the street is 22 feet?

A Yeah. I have measured it.

Q And you agree that this happened in front of your house?

A No.

Q Where did it happen?

A Where I finally collided with him was next to my property.

Q Okay. So next to your property line?

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A Yeah, on the other side by the lot.

Q Okay. We're not talking a great distance from where your vehicle was -- where your driveway is to where the impact occurred, correct?

A Correct.

Q Okay. And you couldn't see him?

A No.

Q You didn't try to identify him?

A I yelled from the back porch and the front porch.

Q And --

A If someone doesn't -- I'm sorry.

Q Go ahead.

A If someone doesn't identify themselves when they are on your property, and you're yelling at them, the conclusion is they are up to no good.

Q Okay. How old were you at the time, 2012, December?

A 50.

Q Okay.

A I don't know.

Q And so you couldn't tell if they were running?

A No.

Q It didn't strike you as odd that you thought this was a teenager, you are able to catch up with a teenager, and you're 50 years old?

A That's why I was running after them.

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Q But you are getting closer to this figure and they are not getting further, correct?

A I couldn't see. I couldn't tell if they were getting closer to me or not.

Q As you are running up to them and getting closer to them, you couldn't tell --

A I didn't see him. No.

Q So it was just completely -- you couldn't see this individual in the street?

A No.

Q There's no street lights in your neighborhood?

A No.

Q Okay. No other lighting?

A No. My porch light was on when we came out. I think it was on about the time -- I think I turned it on when I came out. I don't remember.

But I remember, from looking at the video, that when I was on my porch, my porch light was on. So I'm right underneath the lights, looking into the dark. My eyes didn't focus, I couldn't see anything.

Q Okay. I'm just a little confused.

You're running after an individual that you can't see; is that what you are telling me?

A Yes.

Q So how do you know which way they were running?

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A Because they are on that side of the driveway. So they, obviously, would have to go that direction.
Q They couldn't go through the empty lot?
A They could have, if they can go through four foot of snow or whatever was there, you know.
I don't know if it was four foot. It might have been two foot.
Q And it was snowing, or there was snow on the ground?
A Yes, it had been snowing.
Q So it was white in -- on the ground?
A Not on the street, because we had plowed the street.
Q But there was white background, white in the yards? There was, essentially, snow on the ground?
A Yeah, I guess.
Q And, again, you still couldn't see the individual, even with the snow on the ground?
A No.
Q Do you have bad eyesight?
A Yeah.
Q What's your eyesight?
A I don't know.
Q Do you wear glasses?
A Yes.
Q Who is your doctor?
A I don't know.

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Q When was the last time you went to an eye doctor?
A Five months ago.
Q Where is your doctor located?
A I went down, and I had them checked at the Walmart there.
Q The Walmart in Carson?
A Yeah.
And I also went to another one in Carson or Reno. I just go to the Walmart one to have glasses done.
Q Okay. Do you get eye checks?
A Yes.
Q I notice you are not wearing any glasses today.
Do you wear contacts?
A No.
Q Okay. How come you are not wearing glasses?
A Because I need them for distance, not for close up.
Q Okay.
A My eyes have a problem focusing from close to distance.
Q Do you have any restriction on your driver's license?
A I have to wear glasses.
Q And that's -- you have a CDL?
A Yes.
Q Okay. How often do you have to get tested, or -- it's my understanding you have to go through a medical check to keep

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up your CDL?
A Yes.
Q How often is that process?
A Every two years.
Q When was the last time you had one?
A I think it would have been February 2015.
Q So sometime in the near future you are going to have to have another --
A Next January.
Q Okay. Do you have any night blindness?
A I can't see very well at night, but it's not diagnosed as night blindness.
Q Okay. So it's your testimony you could not see, that you were chasing after an individual that you couldn't see?
A Yeah. I was running down the street to see if I could find whoever was in my driveway.
Q Did there come a point in time when you came up on Mr. Klementi, not realizing it's him, we'll talk about that in a minute, but did there come a point in time when you were chasing this individual before the impact that you saw him?
A Yes.
Q When was that, how far away was that?
A About maybe five feet from him.
Q Okay. Why did you continue -- once you saw this figure, why did you continue on chasing after him at that point?

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A I couldn't stop. I was five feet from him when I saw him.
Q Okay.
A I was in socks, and the street was icy.
Q You couldn't try to avoid the collision?
A No.
Q Were you wearing your glasses that evening?
A Not at that time.
Q Not during the chase?
A No.
Q All right. So it's your testimony you were running after an individual that you couldn't see, on a night where there was snow on the ground, but you testified it wasn't on the street, and that you could not see him until you were approximately five feet away, and at that point, it was too late to stop, and you just had to collide with him.
Is that a fair statement?
A Basically.
The amount of snow on the street, it was plowed, so I can't really tell you. I think the best evidence for that is the pictures they submitted.
Q Were you wearing shoes?
A No.
Q Why were you shoveling snow in your socks if you weren't wearing shoes?

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A I was wearing slip-ons on the back porch. We don't wear our shoes in the house. So I leave a pair at the back door, I leave a pair at the front door.

Q Were you wearing slip-ons when you --

A No.

Q So you kick off your slip-ons, give chase in your socks at that point?

A No. When I came in off the back deck, that's when I took them off.

Q Okay.

A Okay? I didn't want to track snow into the house. Then I ran downstairs, told my wife to call 911, and just ran out the door.

Q And didn't put your slip-ons back on?

A It didn't -- funny, it didn't even enter my mind.

Q So explain the collision between you and Mister -- my client, Mr. Klementi, as you recall it.

A Basically, I saw him when he was about five feet in front of me. I put my arms up, and we ran into each other. He was walking towards me at the time.

Q He was talking towards you?

A Yes.

Q Okay. So you just -- you two just happened to collide in the middle of the street is what you are saying?

A Yes.

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Q It was an accident; is that your testimony?

A Not an accident. I meant to stop whoever was breaking into my truck.

Q Okay. And so --

A I went out looking for whoever it was. I just ran into him because he was right there. At the last minute I seen him.

Q Okay. So when was it that you first became aware that it was -- I know Egon and Helmut are twins.

So when was it you first became aware that it was a Klementi that you had impacted?

A I knew it was a Klementi almost immediately --

Q Okay.

A -- because they started talking in their native tongue or whatever, and I can tell by the accents.

Q Once you collided with him -- I have seen the video. He hits the deck. You don't. What do you do?

A I recognize it's him, or one of them, as I said. I can tell. I hear him talking. And I start screaming and yelling at him, why didn't he say who you were. You know, why didn't he identify himself.

I hear one of them yelling to call 911. I say, we have already called them. Then I walked back to my house.

Q Okay. One thing -- a couple things that I didn't hear you say is, I'm sorry, or are you okay. It sounds like you just started yelling at him.

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A Yeah.

Q Why didn't you check to see if he was okay?

A He was obviously okay because he was trying to kick me. So he wasn't -- and he is yelling. So he is not out of -- he has not lost conscious.

Q Okay.

A And his brother was there, I knew it was one of the other ones, was right at the fence. So I'm sure they were going to take better care of him.

Q Do you know how old he is?

A No.

Q Over 70?

A Yeah.

Q Okay. That didn't concern you, that you just knocked a 70-year-old man down in a hard street?

A It did. That's why I was so upset. If he would have just said, it's Mr. Klementi, I'm taking pictures, then I wouldn't have came out.

Or whatever he was doing. I don't know.

Q Why were you upset at him for you knocking him down? That's what I'm confused about.

A Because he never identified who he was.

Q So it's his fault?

MR. ROUTSIS: Objection. Argumentative. He didn't say it's his fault.

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He stated the facts. Move on.

BY MR. BROWN:

Q But you weren't concerned for his safety? In other words, you didn't ask, are you okay, can I help you up?

A No.

Q All right.

A I was concerned for his safety, but I didn't ask him if he was okay.

Q And you didn't try and help him up?

A No.

Q In fact, after you yelled at him, you turned around and left, correct, went back to your house?

A Yes.

Q Why didn't you just stay there to make sure that he was okay and make sure --

A Because his brother was there. And he was trying to kick me, so he, obviously, didn't want me there.

Q Okay. So you just felt like I'm just going to let his 70-some-odd-year-old brother help him, and I'm going to leave?

A Yeah.

Q And up to this point, you are not aware or -- correct me if I am wrong.

You are not aware of any false statements that Mr. Helmut Klementi had made towards you?

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This is up until December 18th, the evening -- up until the time of the impact.
A I would have to -- I guess.
Q Okay. What happened next? You went back in the house?
A I went back up to the house. My wife was talking to the 911 operator. She said for us to stay in the house, you know, sheriffs had been dispatched.
Q Were you arrested that evening?
A Yes.
Q Okay. Now I read the police statement. I'm sure you have read it, too.
Can you confirm that?
A Yes.
Q When was the last time you read it?
I have a copy here if -- you can look at it.
A I don't know.
Q Within the last week?
You know what? I didn't realize we have been going two hours. Why don't we take a 10-minute break?
Are you fine with that?
A Yes.
Q Before we do that, the answer to the last question that I just posed to you, approximately when was the last time you reviewed that statement?

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A I have read it in the last couple days probably.
Q Okay. That's what I needed to know.
MR. BROWN: All right. Let's take a short break.
And just so counsel knows, I have to attend a conference call at 12:30. I'm hoping it doesn't take more than a half hour. In fact, I'll make it -- I'll cut it short at one if they want to go longer than that. So --
MR. ROUTSIS: I guess nobody wants to take a lunch break today?
MR. BROWN: You know what? Why don't we --
MR. ZANIEL: I would rather press on.
MR. ROUTSIS: I would, too.
MR. BROWN: Let's take a lunch break from the 12:30 to one time frame. I'll just try and grab something to eat on my conference call.
MR. ROUTSIS: I don't need one, so --
MR. BROWN: Let's take a five-minute break, and then we'll come back, we'll go for about another 25 minutes, and proceed on.
THE VIDEOGRAPHER: We're going off the video record. The time is approximately 12:02 p.m.
(A recess was taken)
THE VIDEOGRAPHER: We are going back on the video record. The time is approximately 12:14 p.m.
MR. ROUTSIS: What is it in England, though?

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BY MR. BROWN:
Q So, Mr. Spencer, I think we left off, you had gone back into the house, and whoever was on the phone with 911, I believe with your wife, told you to stay in the house, correct?
A Yes.
Q Okay. Prior to that, you had indicated that you couldn't see.
That when you went outside there was snow on the ground, but it was not in the street because of the snowplow.
A There is always going to be snow on the street basically in the winter after a storm. But it's not deep snow. It's been scraped, whatever.
Q So there is a white contrast to it, though? There is still white on the ground?
A Well, it depends on how well it's scraped. It could have a black contrast, and I don't remember what it looked like.
Q I would like to show you some pictures that were produced as exhibits in this case, and I believe we're going to keep a running exhibit list for ease.
This is Exhibit 2. Let me have you take a look at that exhibit. Tell me if that accurately represents how the street looked on the night in question.
A Can't tell you. I don't know when the picture was taken.
Q You don't know if that's my client in the middle of

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the street on the night of December 18th?
A It's one of them, but I can't tell you what night it was.
Q Okay. You think he just went out and laid in the street --
A Could have.
Q -- to take a picture?
Okay. So you are not sure if that's how the street looked that evening?
A No.
Q All right.
A Show me the rest of them.
See, just between that picture and this picture, it looks different. It's got here, smoother. Here you have got a lot more on the street.
Q Yeah. I don't think it looks different because we have got the middle -- this is a closer version. You can't see the sides.
You are pointing to the sides that you can't see. This is the front of him. This is the rear.
So I don't --
A It looks different from here.
Q Maybe it looks different to you, but --
A Well, that's kind of my job, you know.
Q Well, you know, maybe that will be for a jury to

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determine.
Do you know if that's the way the street looked that evening?
A No.
Q And that's Exhibit 4?
A That doesn't look plowed yet.
Q Okay. So you don't --
A You can see where it was plowed here, but you don't see continued.
Q So you don't --
A Can I look at it?
Q Can I finish?
You don't think that looks like the street that evening?
A I don't remember.
Q Okay. You have no reason, though, to say it's not the night in question, other than you don't remember, and you are not sure who took the picture, correct?
A Correct. I don't know who took the picture or when it was taken.
Q Okay. That was Exhibit 4 that we just looked at.
You were -- how soon after this incident occurred were you ultimately cuffed and arrested?
A I --
Q An hour?

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A I couldn't tell you.
Q Okay.
A Probably less.
Q Probably less.
Okay. Did you give a statement to the police officers that evening?
A He wouldn't take my statement. He wouldn't take my wife's statement, either.
Q Did you ever give a written statement?
A I did in the holding cell.
Q So you did when you got to the holding cell?
A Yes.
Q How long did you spend in jail?
A I don't know.
Q Was it a full day, 24 hours?
A No. No. I bailed myself out.
Q That's what I'm getting at.
Within a few hours?
A Yeah, few hours.
Q Were you out before the morning?
A Yes.
Q Okay.
A About midnight, I think.
Q What were you charged with, if you recall?
You got to remember, I wasn't part of that case so --

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A I don't really know what it was. Misdemeanor battery of some --
Q Okay. You ultimately did give a statement, though, and that's, I think you said, you were in the holding cell?
A Yeah.
Q Would you turn, and let's make sure it's on Exhibit 1.
Would you turn to Exhibit 1? I'll give it to you here in a minute. I just want to make sure it's here.
The last three pages of that exhibit appear to be -- actually, I'm sorry. The last two pages of that exhibit appear to be your written statement.
Would you take a minute and review that, and confirm to me that that is the statement or a copy of a statement that you gave?
A That's hard for even me to read.
Q Why is that?
A My writing.
Q I'm just going to go over a few things in this.
Earlier you said that you just agreed with the officer that the individual who was on your property had a hood on?
A Yes.
Q Why did you put it in your statement if that wasn't true?
A Because I thought it was true. That's what he said so -- why would an officer come in my house and lie about what

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he said?
Q He didn't see the incident, though.
A But he had already been out and checked Helmut.
Q And you had been out there because you stood over him, yelled at him, you didn't see a hood on him.
So why would you say something that you didn't believe to be true?
A I didn't know it was untrue.
The officer said, did he have a hood on, and I said, okay. Whatever. I agreed with him. I think I said that.
Q You agreed with that, even after you were in the holding cell, and you had been arrested at this point for, I believe you said, a misdemeanor assault?
A Agreed with what?
Q You still agreed with the officer's statement that this individual had a hood on --
A Yeah.
Q -- at 10:15 when you wrote this in the holding cell?
A Yes.
Q Don't you think the fact that you couldn't see him, as you testified here, was an important fact that you should have reported in your statement?
A Probably, but I have never been arrested or written a statement like that, so -- I was still pretty upset right there.
Q Let's talk about that.

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You said you had never been arrested.
Weren't you arrested in 1985 for sort of a similar incident where you actually caused great bodily injury to somebody?
MR. ZANIEL: Objection to the form of the question.
MR. ROUTSIS: Yes, I join.
BY MR. BROWN:
Q Go ahead and answer.
A Do I have to?
MR. ROUTSIS: Well, ask him to rephrase the question.
BY MR. BROWN:
Q Were you arrested in 1985 for a felony in California?
A Yes.
Q And was it -- I couldn't call it a road rage incident, but was it an incident involving you driving and another driver of a vehicle?
A Yes.
MR. ZANIEL: Same objection.
I will just have a running objection on this.
But, yes, go ahead and answer.
BY MR. BROWN:
Q You just indicated to me that you had never been arrested before. I want --
A Like this, and wrote a statement.
Q So you didn't give any statement in the case you were

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arrested for in 1985?
A (Witness shook head negatively).
Q Ever?
A Huh-uh (negative).
Q Did you give any testimony?
A I mean, I -- I can't remember. I don't think I did.
Q Were you convicted of a felony?
A It ended up being a misdemeanor.
Q You got four years probation?
A I had probation, but I don't know what term. I don't remember the term.
Q Didn't it cause paralysis of the -- the altercation with the other individual that you were arrested for, wasn't he paralyzed?
A No.
Q No?
A No.
Q He didn't crack his skull?
A No.
Q Okay. But you were charged with a felony hit-and-run as one of the charges?
A Yeah. I don't remember.
Q You don't know if you were convicted of that felony?
A No, I was not convicted of that.
Q Were you convicted of the charge of assault with a

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deadly weapon?
A Yes. They plea-bargained down.
Q Tell me what happened that resulted in that conviction.
What was the incident that gave rise to that conviction?
A Should I discuss this?
MR. ROUTSIS: Well, I'm going to join on the continuing objection.
But go ahead.
MR. BROWN: You can have a continuing objection.
MR. ROUTSIS: Go ahead.
THE WITNESS: What was the question again?
BY MR. BROWN:
Q What was the -- tell me about the incident that gave rise to the conviction. The altercation between you and the other driver.
A Some guy was chasing me. Tried to outrun him. He started chasing me because he thought I had my high beams on when I came up behind him.
So I went around him. He started chasing me for some reason for that.
Q Okay. And what happened?
A I ran -- it was a new neighborhood that I was in.
I pull in. Got -- it was a street going into a

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four-lane highway.
Q Uh-huh (affirmative).
A I pull up to turn left on that. And while I was waiting in traffic, there was two cars in front of me.
He runs up behind me, or he drives up behind me, so I pull into a gas station to try to get away.
As I turn around the fuel pumps and come this way, he jumps out of his car with a crowbar and throws it at my windshield.
Q That's it?
A That's it.
Q There was no physical altercation?
A Never got out of my truck.
Q Was he ever charged?
A No.
Q Why was -- why were you charged?
A Because I left the scene of an accident.
Q Okay. And you didn't have to give any written statement as a result of that?
A I can't remember. That was 20 years ago.
Q That's fine. "Can't remember" is fine.
But when you told me earlier you have never given another statement, and you had never been arrested before, that's why I went down this line of questioning.
A Well, I thought --

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MR. ROUTSIS: Okay. Stop. Stop. That's argumentative.

He was explaining that he never gave a written statement. It was ambiguous. He wasn't intentionally deceiving you.

MR. BROWN: Okay. Can we go on?

MR. ROUTSIS: Please.

BY MR. BROWN:

Q Let's go for a couple more minutes. Then I have got to --

A Sure.

Q -- cut this short.

Okay. So I asked you, and I think we got on the side detour regarding the 1985 incident.

But I asked you why you didn't put in your statement that you couldn't see him as you were running up on him.

My recollection is that you testified that you had never written a statement before and never been arrested.

A I thought it was concerning the last 20 years, not a whole life.

Q Okay. Well --

A That's usually what --

Q That wasn't responsive to my question.

So what I'm trying to get at, maybe I asked a bad question.

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What I am trying to get at is, why didn't you -- you are writing this statement in jail after you have been arrested, charged with some sort of assault on my client.

You didn't feel that it was important to put in this statement that you couldn't see him?

And the answer is yes or no.

A No.

Q Okay. Another thing I need a bit of clarity on is, as I understood your testimony earlier, you are going to correct me if I am wrong, or I misinterpreted it.

But as I understood it, you said you were running towards him, and you didn't see him until about five feet prior to the impact.

A (Nods affirmatively).

Q And at that point, whether you testified or what I interpreted this, and this is why I want your correction.

I understood that it was too late to stop, and you impacted him?

A Yeah. I just put my hands up.

Q Okay. So you weren't intending to impact him?

A I wasn't intending to impact him, no. I intended to stop him and hold him for the cops that we already called.

Q Would you take a look at page 1 of 2 of your written statement? I'm sorry. It's right here again. Back to it.

And this is Exhibit 1 of a previous deposition.

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Okay. So towards the end -- let me find it. Okay.

If you go to the very bottom of the statement, and you go three lines up, you see where it says refuse to respond, period?

A Yeah.

Q Okay. The next statement or the next sentence, as I read it, I ran after them and gave them a push to stop them.

Is that a true statement?

A No.

Q So your statement here is not true at the time that you wrote it?

A That was under duress right there, right now. I had no idea exactly what all happened.

Q Okay. So just to be clear, your testimony here today is the statement that you gave at 10:15 on 12/18/12, is not true, in the sense that, with respect to that statement that says, the person refused to respond -- I'm sorry.

I ran after them and gave them a push to stop them.

That's an untrue statement?

A The whole thing is untrue because it also says that I thought he had a hoodie on him.

Q Okay. And that was based on --

A I was just trying to remember anything I could.

Q Okay. That was based on the officer telling you that he had a hoodie --

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A Yeah.

Q -- so you put that in your statement?

But your testimony here today is true?

A Yes.

Q Okay. And this was incorrect, the time that you gave this testimony?

A Yeah.

Q Or the time that you signed this statement and wrote it out?

A (Nods affirmatively).

Q Did anybody tell you to write the statement this way?

A I don't think so.

Q So an officer in there telling you, no, you can't write it that way. I want you to put this in here, put this in here.

Was there somebody coaching you on how to write this statement?

A No.

Q Okay. So what else about this statement -- because now we found a couple inaccuracies about a statement that you provided to law enforcement.

What else is inaccurate about this statement?

MS. CAPERS: Doug, I don't know, but it's 12:30. I don't know if you want to break now.

MR. BROWN: Oh, thank you. I'm sorry. I got carried

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away.
Could you answer generally that question real quickly? Are there other inaccuracies about this statement?
THE WITNESS: I don't see any.
MR. BROWN: Okay. That's what I needed. We need to go off the record, and I need to make a conference call.
And if we could get back on around 1 o'clock. If I finish sooner, I will let everybody know, but -- all right.
MR. ZANIEL: We're all staying here, I believe, so whenever.
THE VIDEOGRAPHER: We're going off the video record. The time is approximately 12:32 p.m.
(A lunch recess was taken)
THE VIDEOGRAPHER: We are going back on the video record. The time is approximately 12:58 p.m.
BY MR. BROWN:
Q All right. So, Mr. Spencer, when we left off, I think we talked about your written statement in the police report, and you had indicated to me, other than the two issues that I pointed out regarding the hood and pushing him to stop him, there's no other statements that are inaccurate, or no other facts or statements that are inaccurate in that statement, correct?
A Not really inaccurate, but false. Just bad wording.
Q What else would you say was bad wording?

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A Well, we collided. We didn't really push. I didn't push him. We just collided into each other.
Q Why would you say that you pushed him at the time, and now you are saying you collided with him?
A Because pretty much at the time that I wrote that I was stressed out in jail.
Q But that was closer in time to the incident than today, correct?
A Correct.
Q Things were fresher in your mind at that point in time?
A I couldn't say.
Q They just happened within two hours of the written statement.
I am presuming that your memory would be better about the events that had happened two hours ago than four years ago.
Is that an incorrect assumption on my part?
A Say that again.
Q You gave the statement, you wrote the statement down approximately 10 o'clock, or whatever the time, 10:15.
My recollection is that this incident happened around a quarter to nine. Correct?
So it's actually about an hour and a half prior to your writing that statement.
Do you agree?

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A Correct.
Q Okay. And what I'm trying to get at is at the time that you wrote this, was your memory concerning that event better at that time than it is today, four years later?
A How could I tell --
Q Okay.
A -- four years ago what I was thinking?
Q Okay. Well, that's my question is, how could you tell?
How do you know -- you sit here, you have given me reasons why that statement was inaccurate on the date that you wrote it.
How are you able to remember that?
A From the video.
Q From what?
A From the video.
Q The video?
A What I remember happening is five feet in front of him, I see him. So I raise my hands up, and we collided.
Q Okay. And you didn't see him until just before the collision, as you testified earlier?
A Correct.
Q So when you sit down in the jail, and you said I pushed him to stop him, or something, the statement that you have already read?

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A Start all over. I couldn't hear you.
Q I'm sorry.
So I believe you testified, just to be clear, and I'm going to move on from this, this point, that you wrote, the statement I had you read concerning pushing him to stop him, you wrote that in jail, when you were sitting in jail.
Why didn't you say, we collided, I didn't intend to push him?
A Because I intended to hold him, and I didn't think of it. I don't have the vocabulary that you do.
I mean, you know, I was under duress and just trying to write down what happened.
I was more concerned with the fact that he was trying to break into my truck, which I thought he was at the time.
Q Okay. Did you ever verify if there was any footprints from my client on your property?
A Yes, there was.
Q Okay. Do you know if the officer took pictures of --
A No, he didn't.
Q -- his footprints?
A No, he didn't.
Q So the officer that wrote that in his statement was incorrect?
A I don't know. What are you referring to that he wrote in the statement?

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Q I'll show you. Bear with me.
Okay. You would turn to, you will see a Bates number -- you have to back up a little bit. But you see the Bates numbers on the bottom, Klementi 163.
That one is not numbered. Keep going back. It's a typewritten -- okay. They are not Bates-numbered, but this is going to be page 5 of ten, the deputy report.
MR. ROUTSIS: Did you want him to read something?
BY MR. BROWN:
Q I wanted to point it out to him in a minute. I just need to fix my microphone.
Okay. So if you go towards the bottom of the page, you will see a paragraph that looks like it's the fourth paragraph up. It says, I asked Helmut if he was in Jeff's driveway.
MR. ROUTSIS: Right there.
THE WITNESS: Yeah, I see it.
BY MR. BROWN:
Q Do you see that?
A Yes.
Q Go to the next sentence. Read it to yourself. I'm going to read it out loud, but it says, I double-checked and photographed Helmut's boots and confirmed that they were not similar to any of the boot prints in Jeff's driveway.
A He photographed Helmut's boots at the hospital. Not

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on-site. He didn't take any photographs at the scene.
Q Okay. Is that an important distinction in your mind?
A It is. He never took the photographs of the footprints in the snow, yes.
Q Okay. Never came back and took photographs or tried to match them?
A No. They even let a car drive through the whole scene.
Q Did you take photographs of the footprints in the snow?
A No.
Q Did your wife?
A No.
Q Okay. So really at the end of the day, it's going to be your word against this officer's that you saw my client's footprints in the driveway, and he is going to say, I didn't, based on this report.
Is that a fair statement?
MR. ROUTSIS: I'm getting to object to the form of the question. It's not relevant.
BY MR. BROWN:
Q Well, it is, because there is an inconsistency.
But go ahead. You can answer.
MR. ROUTSIS: Answer it if you understand it.
THE WITNESS: No, I don't.

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MR. ROUTSIS: Because I don't.
THE WITNESS: I don't understand it.
MR. BROWN: Counsel, because you don't, doesn't necessarily mean your client doesn't. I'm asking --
MR. ROUTSIS: He gave you his opinion that he didn't, either. So please move on.
MR. BROWN: I'd ask you to refrain from coaching the witness.
MR. ROUTSIS: I'm not coaching the witness. I'm giving him advice on an ambiguous question that I objected to.
MR. BROWN: Okay. And that's your view, and thank you for that. I appreciate it.
MR. ROUTSIS: You are very welcome.
BY MR. BROWN:
Q All right. So what evidence do you have besides your testimony that my client's footprints were in your snow?
A Video.
Q Video?
A Yeah.
Q Okay. Did you --
A I can't have video of him being on my property without him leaving footsteps.
We saw the footsteps. My wife saw the footsteps. The officer saw the footsteps.
The officer saw the footsteps in front of my truck and

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didn't take photographs of those.
Q Okay. Did you have a discussion with the officer or your wife where you pointed out some footprints, and the officer indicated that it was another officer's footprints?
MR. ROUTSIS: Objection. Vague and ambiguous.
BY MR. BROWN:
Q Do you recall that?
MR. ROUTSIS: Do you understand the question?
THE WITNESS: No.
MR. ROUTSIS: Ask him to repeat it.
THE WITNESS: Repeat the question. I don't think I understand.
BY MR. BROWN:
Q Okay. Fair enough.
Do you recall reporting, either you or your wife, reporting to the responding officers, after the incident happened, before you were arrested, that there were footprints in your driveway?
A Yes.
Q And do you recall pointing to those footprints, indicating that they were my client's footprints?
A Yes.
Q Okay. And do you recall a conversation with -- well, let me ask you another question before that.
How many officers responded?

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A Two.
Q Okay. So there is two officers?
A Yes.
Q Do you remember an officer, after you pointed those out, indicating that those footprints that you had pointed out belonged to the other officer who had responded with him?
A No, I don't recall.
Q Okay. And you would disagree with that statement? That those footprints were the other officer's?
MR. ROUTSIS: I'm going to object. Vague and ambiguous.
What footprints?
THE WITNESS: There was a lot of footprints there, so I don't know which --
BY MR. BROWN:
Q Well, that's what I'm trying to get at.
How can you tell which footprints were my client's?
A That, I think, is the point. They didn't take pictures of the footprints so we could tell.
Q Okay. So as you sit here, there's nothing that you can point to, concrete, that shows my client's footprints in your driveway?
A That shows a picture of his footprints?
Q Right.
A No.

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Q Okay. That's what I wanted to get at.
A Okay.
Q Did you look at the treads on my client's shoes?
A No.
Q Do you know what size of shoe he wears?
A No.
Q You testified earlier that the officer told you -- and I don't want to misstate your testimony, so you correct me if I'm wrong.
But I thought you said the officer told you that individual that you confronted out in the street had a hood on.
A He called it a hoodie.
Q A hoodie.
Okay. Do you recall an officer telling you that neither my client or Egon Klementi were wearing a hood?
A No, I don't.
Q If an officer -- if that is in this report, would you disagree with that?
A No.
Q An officer told you that?
A No, I would not.
Q Then take a look at the first full paragraph.
A On the same page?
Q Yes, sir.
And read that to yourself real quick, and I'm going to

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focus in on that last sentence of that paragraph.
A Okay.
Q So you see the last sentence that says, I told Jeffrey the subject that he confronted in the street was Helmut, not Egon, and neither were wearing a hood.
Did you read that?
A Yes.
Q Do you agree or disagree with that statement?
A I disagree with that. He never said that to me. He never even told me who it was. The jailer was the one that told me who it was.
Q Okay. So the officer was not being accurate in this statement is your testimony?
A Yes.
Q Do you have any indication why he would be inaccurate in a police report?
MR. ROUTSIS: Objection. That's speculation. That is really an unfair question.
MR. BROWN: If it's speculation, then he can tell me "I don't know. I would be guessing."
If it's not speculation, and he has some other fact that is responsive to that question, then he can respond with that fact.
MR. ROUTSIS: You don't need to raise your voice.
You asked him a question. And the question was, does

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he have reason to believe why the officer would write a report that way, or something to that effect. That's speculation.
MR. BROWN: Let's read the question back, Counsel, just so we can be clear that my question was appropriate and proper.
MR. ROUTSIS: Okay.
Record read by the reporter as follows:
"QUESTION: Do you have any indication why he would be inaccurate in a police report?"
MR. ROUTSIS: I think that's speculation. You can't ask him to answer why a police officer would be inaccurate.
MR. BROWN: Unless he had some fact, and I don't know whether he has some fact --
MR. ROUTSIS: Then foundation. Ask a correct question.
Ask him, does he have any indication as to facts that would support -- but to ask him why an officer wrote a report that would be inaccurate is speculation.
MR. BROWN: I said an indication. I'm asking for facts.
BY MR. BROWN:
Q Do you have any facts or evidence as to why this officer was inaccurate in his report?
A No.
Q Okay. You indicated earlier that you reviewed this

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report about -- within the last two days?
A Not this part of it.
Q Okay. Why don't you take your time and read through this report? I would like you to read through it. Just the typewritten part. Starting on page 3 of ten and going through page 8 of ten.
That's where you found one factual inaccuracy by your testimony. I want to see if there are others.
MR. ROUTSIS: Well, I'm going to object if you are asking him to read a report, and then to identify every factual error in the report.
MR. BROWN: Let's go over sentence by sentence, then.
MR. ROUTSIS: If you want to ask questions --
MR. BROWN: If you are not going to let him read the report and tell me there is other facts in here that are inaccurate, I'm going to go over this word by word.
BY MR. BROWN:
Q So let's go over the first sentence.
A How am I going to know what's factual when he wrote it, and I don't know what he was thinking.
Q You just told me that there was an inaccuracy, and so I am entitled --
A What he quoted me of saying. So I don't know what else he has got in there that could --
Q He didn't quote you. He quoted himself.

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I told Jeffrey the subject he had confronted in the street was Helmut, not Egon, and neither were wearing a hood.
And so if you are telling me that you are not going to read through this and point out any other things that are inaccurate --
A No, these --
MR. ROUTSIS: Counsel, that's not what I'm saying.
What I'm saying to ask him to read an 8-page report, and then to tell you what's inaccurate, it's highly unreliable. It's not a way to do it. It's not the way you do impeachment.
MR. BROWN: May not be how you do it. But it's how I'm going to do it. Look, there's two ways to do it.
He is either going to read through it, and tell me what's inaccurate, or I'm going to go over this sentence by sentence.
And I don't care. It doesn't matter to me.
MR. ROUTSIS: I think both ways are incorrect. I think if you want to point out something, and question him about it, that you think is inaccurate.
MR. BROWN: I don't know.
MR. ROUTSIS: You don't need to go line by line.
MR. BROWN: I wasn't there, Counsel. He was.
I have already found three inaccuracies. One, in the officer's, and two in his statement.
So I'm worried there is other inaccuracies by your

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client's testimony.
MR. ROUTSIS: I'm not trying to be difficult.
But if you ask a man to read an 8-page report, and then he forgets to tell you, oh, well, you know, I asked you what was wrong, and you didn't bring that up, because he forgot.
That's just an unclear way of going over a record. That sets him up for improper impeachment down the read.
MR. BROWN: Let's make it clear.
THE WITNESS: Okay.
BY MR. BROWN:
Q I have got a copy right here, Counsel, that he can go through, and he can mark with an X each factual inaccuracy by his testimony.
And then that way, we can go back over it, and go over them one by one.
So why don't you do that? Why don't you read through my report?
A Why don't we just start here?
As I turned down to Charles Avenue from Juniper Drive, I could see an elderly male subject laying on the ice.
There is no frigging way from Juniper, where this happened, he is going to tell if it's an elderly man, elderly woman, anything.
He is going to see a figure laying there, if he sees that.

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Q Where is that at? Where did you find that?
A First -- let's see. Second --
Q Second paragraph?
A Second paragraph, second sentence.
Q First sentence or second sentence? I can see --
A But now I can't say.
Q Okay. You just believe that. You weren't there. You don't know what he saw. But you believe that's not accurate?
A Yeah.
Q Or possible?
A Yeah. See, that's what I saying.
Q Understood.
A He turned the corner. There is no way he could see that.
Q Okay.
A Or by the time he got there, all the lights were on. Everything else.
Q All right. So continue if you would.
A Let's see.
So if you want another inaccuracy, the same paragraph, last sentence.
Q "I position" starts off --
A Yes.
Q Okay.
A My vehicle in the center of Charles Avenue, near the

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two males, blocking the travel lane.
Well, he didn't position it very well because a car went through there. So he didn't really position it blocking the travel lane if traffic went through.
Q Okay.
A When he says Deputy Almeida arrived.
But I believe they arrived at the same time. I think we can look at the video and see about that.
Q Okay. Possible inaccuracy there.
A I don't think Egon ever retrieved the blanket. Third paragraph from the bottom.
Q I instructed Egon to retrieve the blanket from his residence?
A Yeah.
Q How do you know that's not true?
A From the video.
Q Okay.
A So that statement is not accurate, either. The last paragraph.
Q Okay. Where at?
A He said he walked away, when he was walking towards me.
He started walking away, he turned around, he was walking towards me.
Said, he says, I struck him on his back, knocked him

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to the ground.
I never struck him on his back.
Q Where did you strike him?
A I never struck him.
Q You never made physical contact with him?
A No. We collided face to face.
Q Okay. So your issue is with the word "struck" versus "collide"?
A Yeah. And he is saying on his back.
Q What's the difference between struck and collide?
A Struck is -- well, I would think is more of a punch.
Q Can there be other ways that you can strike someone?
A I don't know.
Q Okay. So that's your definition is a strike is a punch?
A Yeah.
Q Collide is -- how is that different?
A Running into each other.
Q Okay.
A But the issue is, he says on his back. It was face to face.
Q Okay.
A And I did not run back to my residence. I walked back.
Q Okay. I see.

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Run back to your residence. Okay.
A The first -- the next paragraph I can't say because I don't know what he was looking at. What the officer was doing.
Q Yeah, that's fine. I'm not asking you to comment on that.
If you just are aware of something that you believe is false or inaccurate on this, that's what I would ask you to point out.
A Okay. Third paragraph, a second person walked to the scene. That's inaccurate.
Second person was Mary Ellen. Janet Wells was probably the fourth or the fifth person that he talked to.
Q Okay. I'm sorry.
A second person walked to the scene and said she did not see the specific incident.
Okay. So what is inaccurate about that?
A The second person was Mary Ellen there. Janet Wells was probably the fifth person on-site.
Her daughter and husband were down there first.
Q Okay.
A So that would put her at probably the fifth person.
Q Okay.
A I see. Fourth, let's see. One, two, three, four, fifth paragraph from the bottom.
Q Jeffrey was telling?

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A Wait a minute. Now I have lost it. Hang on a second.
Q Jeffrey went on to say, I ran down the street?
A I would have tackled him. I never said that.
Q Okay. Hold on. I have got to find that.
A Yeah. That's right -- right after the Jeffrey went on to say.
Q I ran down the street and pushed him down.
Okay. So you never said that?
A No.
Q All right.
A You know, I'm running on, running on ice. You don't need to tackle someone.
Q So this report is incorrect with respect to those quotations, I ran down the street and pushed him down.
I would have tackled him, but we would have both gotten hurt.
A Yeah.
Q You never said that?
A No, I did not.
Q Okay.
A He didn't compare any footprints in front of us like he is saying there.
Q Where?
A This is the last paragraph. As you turn the page, he said he compared Deputy Almeida's footprints -- boots to the

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footprints.
Q **Okay.**
A He's interjecting that he did that in front of us while we were out there. And he never did that while we were there.
Q **Okay.**
A And again he says -- because I said he was wearing a hoodie. We have already been over that.
Q **Any time a hoodie is referenced, you don't have to point that out. I understand that.**
A Okay.
Q **By your testimony, that's inaccurate.**
A I don't know how much of that statement is accurate, how accurate it is, but I said something relative to that.
Q **Where are you talking?**
A 1, 2, 3, fourth paragraph down.
Q **Okay. Was he okay, he wasn't bleeding or anything?**
A Yeah. Not sure that's my exact words, but I did say something to him like that.
Q **Okay.**
A He never asked me if I was willing to write a statement. That was the jailer.
Q **Okay.**
A Helmut's statement that we were involved with hostile confrontations with his brother.

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We were never involved in a hostile confrontation.
Q **You never had any words with Egon prior to this?**
A Not hostile. I talked to him for 20 minutes while he was taking pictures of kids on my property, but they weren't hostile.
Q **What did you tell him when he was taking pictures on your property?**
A I asked him why he was doing it.
Q **Okay.**
A That's in the video. It's --
Q **That's fine. You said hostile, and I'm wondering if that -- you know, talked about struck a little bit earlier.**
You said it's a strike with a fist.
A Hostile, you want me to define what I think --
Q **No. I'm just asking is it possible that you interpret that word differently than somebody else?**
A That's possible.
Q **Okay. All right. So go ahead.**
A When he says he wasn't in my driveway. Not only does the photo prove it, but so does the video evidence that he was in my driveway.
So that's inaccurate.
Q **So there's photos, too?**
A Video proof.
Q **So the videotape?**

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A Yeah.
Q **Okay.**
A His photos, the photo of, one of the photos that they turned in is in my driveway. Taking the picture straight across at the telephone pole.
Q **Okay. How do you know it's in your driveway?**
A One, I have a video that shows the flash when he took it, and, two, the picture. It has to be there.
Q **Okay.**
A You can -- if you came to the site and saw the picture, where he was standing, the distance and everything, you know it has to be.
Q **Okay. I'm fine.**
Just asking you to point out what you find inaccurate.
A Okay. Yeah, I don't agree with the statement where he said he responded to the jail after he went to the hospital and came back.
As I recollect, he never talked to me again. The jailer told me what I was being booked for. They had to wait until he was at the hospital --
Q **Okay.**
A -- to check for injuries.
I never said I grabbed it on my way out, but it did not work. And that's it.
MR. ROUTSIS: Hold on a second.

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I'm going to have a continuing objection if this is ever presented at trial, and here's the reason.
Jeff Spencer is nervous, and you are asking him under pressure at a deposition to read through a detailed report, and I'm certain many, many things are going over his head.
Many things he is forgetting. It's an improper way to ask for impeachment evidence.
So if you want to ask him specific questions, I think that's the only way you are going to get an accurate answer.
Because I know Jeff, when he reads things, he doesn't retain things well. He is nervous.
So at the end of this, he may say ten things are incorrect, and then he could look back upon it in a relaxed atmosphere and see there is 25 things.
This isn't a proper way of doing it. It doesn't get to the truth.
MR. BROWN: Are you finished?
MR. ROUTSIS: I am finished.
MR. BROWN: Okay. I'm not saying I'm using this for impeachment.
A deposition, Counsel, as you know, is a fact-finding vehicle for me.
Whether the issue is -- whether it's relevant or not, that is something that we'll discuss at another time.
But I'm entitled to have his opinion in looking

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through this, and if there's another way, if I need to just ask this question by question, sentence by sentence, I'll be happy to do that.

But he is never not going to be nervous when he's talking to me because he is going to be under oath, whether it's here or in trial.

And so I am entitled, because I can't just call him up and talk to him, to get his understanding and his belief of what's inaccurate about this report.

If he needs to -- he can take all the time he wants. I'm not rushing him.

MR. ROUTSIS: No. I understand that.

But I'm just saying, if at trial, if you ever try to say, to Mr. Spencer, I asked you to look at all these pages during the deposition, and point out inaccuracies, and you didn't point out seven other things that you are bringing up today, I'm going to have a real problem with that.

And that's why --

MR. BROWN: I'm going to have a real problem with that because you are changing his testimony, and it is under oath.

MR. ROUTSIS: Then I'm going to advise him not to answer questions, because we're not -- don't answer any more questions regarding that type of impeachment.

MR. BROWN: Are you kidding me?

MR. ROUTSIS: If you want to impeach him under the

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evidence code, you go to a specific area in the report, identify it, and ask him if it's accurate.

You don't tell somebody --

MR. BROWN: Let's see if we can get the judge on the phone. Let's see if we can get Judge Gregory on the phone.

MR. ROUTSIS: Get him on the phone.

MR. BROWN: Do we have a phone number? A Bar directory? And I think you should keep this on.

MR. PINTAR: 782-9961.

MR. ROUTSIS: Why Judge Gregory? He is not our judge.

MR. BROWN: Who is our judge? Judge Young?

MR. ROUTSIS: Judge Kosach.

MR. BROWN: Oh, Kosach. Sorry.

Let's see if we can get him on the phone.

THE VIDEOGRAPHER: We're going off the video record. The time is approximately 1:31 p.m.

(A recess was taken)

MR. BROWN: Judge?

JUDGE KOSACH: Yes.

MR. BROWN: All right. We are in the deposition of Jeff Spencer, who is the defendant counterclaimant in this case.

I am taking his deposition, and I'm going over a narrative police report that was written by an officer in this case who arrested Mr. Spencer.

I have found -- Mr. Spencer has pointed out in his own

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written statement, Mr. Spencer's written statement, things that he believes were inaccurate.

He has also pointed out other statements by the officer that he believes are inaccurate.

So I have asked him to read through the statements, and point out any other inaccuracies that he may be aware of in there.

Mr. Routsis has objected and told him that he is not going to permit him to answer any more questions regarding this statement because he feels it's improper impeachment, and that he has never seen it in his 30-year legal career.

MR. ROUTSIS: 29.

MR. BROWN: 29-year legal career.

So in order to streamline this, we decided to call you to see if we could get some sort of guidance on that issue, Your Honor.

MR. ROUTSIS: And, Judge, if I could just clarify for a minute.

JUDGE KOSACH: Go ahead, Bill.

MR. ROUTSIS: Yeah, the fine attorney provided my client with an 8-page police report and asked my client to tell him, without any questions being asked, what's wrong with the report. What's inaccurate about the report?

I lodged an objection because my client is very nervous, and even during the recess, we looked over, and he is

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missing things right and left, because there are no specific questions being asked to him.

And my concern is at trial, Judge, the fine young -- the attorney is going to say, Mr. Spencer, I gave you an 8-page report at the deposition, and I asked you to point out all the inaccuracies, and you gave me these six inaccuracies.

So today, you have got ten other problems with the report, and what I am saying, Judge, is if you are going to try and impeach or cross-examine somebody with a document, the proper procedure is to lay the foundation, question by question, to ask him if this is true and accurate, so an objection can be lodged as to each issue of the report.

For example, you know, my client is giving answers, well, I don't think the police officer saw that.

Well, because -- if he asked the question, I could object to speculation.

So I'll submit it on that, Judge.

MR. BROWN: Your Honor, one of the allegations against my client is that he has given false statements to the police officer.

This police officer provided a narrative statement. I am simply asking Mr. Spencer to go through and identify anything, because I don't know. I wasn't there the night of the question.

I'm just simply asking him to go through this report,

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and if he feels that there is an error, an inaccuracy in the report, to identify it, so I can do further discovery on that issue, maybe redepose the officer, maybe look at another witness.

But I can't find out this information, and I can't ask a specific question unless you are telling me I need to ask each sentence, I need to read each sentence, and ask him if he believes that's an accurate sentence or not.

I can't figure out what the basis of his claims are if I don't know what he believes is inaccurate about the report that he believes he was wrongfully arrested on.

MR. ROUTSIS: And, Judge, one final short point.

For example, if he were to ask my client, Mr. Spencer, when the police officer wrote in the report that he spoke to Helmut Klementi, was that true, and I would object to speculation, because he has no way of knowing that.

But he is generalizing an 8-page report, saying, bring up everything that you think may not be correct about the report.

All I'm asking is that we follow the rules of evidence, and he ask specific questions to specific facts so we cover -- so we are protected by the evidence code.

You don't -- I mean, have you ever seen a trial where you give a ten-page report to somebody and say, okay. Tell me what's wrong with the report.

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I mean, it's just improper.

MR. BROWN: I'm not going to ask that question at trial, Your Honor, and I hope that you know that I would not ask that question at trial.

But this is in discovery. It's a fact-finding mission. And I'm entitled to his opinion on what he believes is accurate, which is reported about him, and he has already pointed out several things that he believes are inaccurate.

That, in fact, he has stated already that the officer wrote down things that were never said at this confrontation.

So I'm entitled to go in and say, what else is wrong with this officer's report?

JUDGE KOSACH: All right. I got the idea.

The objection overruled. This is discovery. Go ahead and complete your questioning, the narrative that's given by the witness. The objection is overruled.

Let me ask this: I put on an email, I changed the date -- I changed the time on August 11th to 12:30 to try to make sure that Mike can make it.

And, Mike, are you there, Pintar?

MR. PINTAR: I am here, Judge.

JUDGE KOSACH: Yeah. Is that okay? Is 12:30 Okay?

MR. PINTAR: Yeah, that's perfect. Thank you very much.

JUDGE KOSACH: All right. So everybody is on 12:30 in

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the Grand Jury room of the second -- the Washoe County courthouse, right?

MR. BROWN: Yes, Your Honor.

JUDGE KOSACH: All right.

MR. BROWN: Everybody is here that will be present.

JUDGE KOSACH: Okay. See you, then, guys.

MR. BROWN: Thanks, Your Honor. Have a good day.

MR. ROUTSIS: Take care.

JUDGE KOSACH: All right.

THE VIDEOGRAPHER: We are going back on the video record.

The time is approximately 1:46 p.m.

BY MR. BROWN:

Q All right. So, Mr. Spencer, I believe we left off, you were towards the bottom of page 5 of ten.

MR. ROUTSIS: How do you know that?

BY MR. BROWN:

Q Because he said -- well, okay.

Where do you want -- where -- do you recall where we left off?

A No.

Q Okay. Then let's go back up to the statement that I do know that you had issue with, and that's where it says, Helmut told me, and that's one -- about a paragraph up.

A I got you.

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Q Okay. Why don't you start with that?

Because I know we have already gone over that, but if we can't remember where we started, let's start at least where we were at, at one point.

A Let me understand this.

Everything I feel is inaccurate on here, you want me to mention?

Q Yes.

A Irregardless of who said it, or what it is?

Q Yeah. If you believe -- and whether that's something that comes out later, that's -- we'll deal with -- the attorneys will deal with that.

But if there's something in here that you have a problem with, you don't think is accurate in some way, shape or form, let's talk about it.

It may be a minor issue, and we can move on, or it might be significant.

But I would like --

A Okay.

Q -- anything that you have issue with.

A Right below that paragraph, two down.

MR. ROUTSIS: Can you --

BY MR. BROWN:

Q Starts off with "I confirmed"?

A No. "I asked". Right above that one.

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Q **Asked Helmut?**
A Yeah.
Q **Okay.**
A He said he was not in my driveway.
Video evidence showed he was. So that's not accurate.
Q **I think we talked about that before we went off the record.**
A Okay.
Q **So we were at least at that paragraph.**
A Okay. So right here.
MR. ROUTSIS: Well, have you reviewed these paragraphs?
Because he is asking you to go over every paragraph. Have you reviewed this paragraph and that paragraph?
THE WITNESS: No. I skipped through some stuff.
BY MR. BROWN:
Q **You need to start over?**
A No. I didn't realize I can -- I can disagree with what somebody else says.
I thought this was just disagreeing with the facts that officer wrote.
Q **I want you to take your time, absolute time, you know, that's not a concern of mine, from my perspective.**
So if you feel comfortable starting back over, and rereading it, I'm happy to do that, too.

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A Okay. Okay.
Next page. Second paragraph.
MR. ROUTSIS: What page?
BY MR. BROWN:
Q **Six of ten?**
A Six of ten.
Q **Starts Wednesday, December 19th?**
A Yes.
Q **Okay.**
A I was not yelling at Egon as he walked his dog by.
The video will show that I was talking to him for 20 minutes, and we were on Juniper, and not on Charles.
Q **And that was the following -- the day following the incident, correct?**
A No. She is -- she is referring to --
Q **Oh, prior altercation? I see.**
A Yeah.
Q **Okay. Do you know approximately when that exchange took place?**
And I'm trying --
A We have that on video also. It was around Memorial Day.
Q **Oh, so it was months --**
A It was the fence.
Q **It was several months prior to this?**

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A Yes.
Q **Okay. Understood.**
So it was incorrect, because you were not yelling. You had a conversation?
A Yes.
Q **And it was not on the correct street?**
A Correct.
Q **Okay.**
A She never stood between us, either.
Q **She never stood between you two?**
A Yes.
Q **Okay.**
A And I don't know, the next paragraph, I don't know how she can say what I have a dislike or like for.
Q **You are critical of her perspective of you?**
A Yeah.
Q **Okay.**
A I don't block the driveways of the neighbors --
Q **Okay.**
A -- that I'm not fond of.
Everybody gets a berm up there. It's how it is. We don't have gates on the snowplow, so as you go down the street, it blows the snow off the side, and that's how it is.
Q **Okay.**
A You know, over on the side of the lake, they have

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gates they can drop, which stops the snow from coming off the blade.
It's at the end of the blade. We don't have those.
Q **Okay. And that's what creates --**
A Yeah.
Q **-- the other than smooth surface in front of the blade?**
A Yeah.
Q **Okay.**
A And the comments about Marilyn making comments after the KGID meetings, saying she has a concealed weapons permit, that's just ridiculous.
Q **Does she have --**
A She has a concealed --
Q **Regardless of the comments that were alleged, does she have a CCW?**
A She does.
Q **Okay.**
A Which we don't even go to the KGID meetings. We haven't in the, in this whole time frame.
Q **Understood.**
A So then the officer says he checked, and that we were both CCW holders. We are not. I'm not and never have been a CCW holder.
Q **Just Marilyn?**

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A Just Marilyn.
Q Okay.
A She had the restraining order against Bruce. That was why she got it.
Q Okay.
A Next paragraph, he says he didn't locate a temporary restraining order against me.
Because it's not against me. It's against Bruce Taylor.
Q Well, then, that's accurate. He couldn't find one against you.
A Involving me.
Q If there is not one in existence against you, then that's an accurate statement.
I'm not quibbling with you. But you are doing what I told you, so continue. Sorry.
A It's against him from us. So I don't know if that is considered involving us, or how you look at that.
Q You are following the instructions to a T, and I appreciate it.
A Okay. The conclusion, he says, I go outside with a flashlight.
I think we went over that. I didn't.
Q I figured you would disagree with pretty much everything in that paragraph.

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A Yeah. So we'll just leave it at that. That I disagree with everything in there.
Q Fair enough.
A Let me go back.
The previous page, page 5 of ten. Sixth paragraph.
Q Hold on one second, sir.
A I'm not sure I mentioned this.
Q So go back to page 5 of ten?
A Yes.
Q All right.
A Where it starts off "Helmut told me".
Q Okay.
A And now I lost my point. Let's see.
MR. ROUTSIS: Just go on back.
THE WITNESS: Where it says, Jeff likes to harass all the neighbors in Kingsbury General Improvement District, blah, blah, blah.
I don't harass all my neighbors or anyone in the district. The only problems I have is with those that are involved in this lawsuit.
BY MR. BROWN:
Q Okay. Understood. And I figured you would have disagreed with that statement.
A Yeah.
The first page. Last paragraph.

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Q "Helmut said"?
A Yes, Helmut said.
Well, in the middle of the paragraph there, the next Helmut said.
Egon came to his aid and tried to help him stand up. He never did, and that's in the video. He walked up and started taking pictures of him.
Q Hold on one second. I'm trying to get there.
Helmut said Egon came to his aid. Tried to help him stand up. However, he was in pain and could not stand.
A Yeah.
Q Okay.
A Yes.
Q Okay.
A So in actuality the next, the next sentence, Egon stood next to Helmut to stop any cars.
Well, he wasn't paying attention to the cars driving down Meadow. He was taking pictures.
Q Okay.
A As much as I can read now, that covers everything I see.
Q Okay.
A My eyes are getting out of focus too much.
Q Thank you for that exercise. I just wanted to make sure we were on the same page with this report.

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So you -- we talked a little bit about the incident. We talked about the arrest.
You indicated that you were in jail for maybe a couple hours at most.
Bailed yourself out that evening, correct?
A Correct.
Q And then at some point, you had a criminal trial?
A Correct.
Q And as I recall, you were acquitted in that criminal trial, correct?
A Correct.
Q Okay. Approximately how much time or how long was it from the time you were released from jail until the criminal trial?
A I don't recall when it was.
Q Was it a year, 6 months?
I don't need an exact date. I'm just trying to get an idea of timewise because I want to talk about the in between time frame.
A I think it's eight months.
Q So probably less than a year, some point?
A Yeah.
Q So from the time that you were arrested, until the time of the criminal trial, did you have any interaction with Helmut Klementi that you can recall?

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A No.
Q Did he do anything during that period that you were aware of that -- did he give any false statements that you are aware of, as you have alleged in this lawsuit, from the time of the arrest until the criminal trial?
And we'll talk about the criminal trial in a minute.
MR. ROUTSIS: Could you repeat that? I'm sorry.
BY MR. BROWN:
Q Yeah.
You have alleged my client has made false statements about you in this lawsuit.
A Uh-huh (affirmative).
Q You understand that?
A Yes.
Q Okay. What I'm trying to get at is, whether -- are you aware, as you sit here today, of any false statements that Mr. Klementi, my client, may have made about you from the time you got out of jail, until the time of the trial?
And we're not talking about going into the trial yet.
A Yes, he has.
Q Okay. Tell me what statements you are aware of that you believe that he has made that are false during that time frame.
A I would have to look at our file to see. I know he has made more about the incident that night. I'm not sure about

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any meetings.
Q I'm sorry?
A I'm not sure about any other meetings.
Q Meetings?
A I don't think he went to the county meeting. Yeah.
Q So where else would he have made statements during that period?
A I said, I'm not sure about the meetings. I would have to look at the file, though.
Q But you do believe statements were made during that period?
A Yes.
Q What statements?
A Derogative stuff against me.
Q I'm sorry?
A Derogative stuff against me.
Q What sort of derogative stuff?
A Same stuff. The snowplowing, that I beat him up, all that.
Q Who did he make these statements to?
A I would have to look at the file.
Q Okay. What is going to help you about the file? What is going to refresh your memory about the file?
What documents?
A Looking at the documents that we have.

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Q Okay. Which ones? That's what I'm trying to get at is where -- where can I look?
You have alleged my client made false statements. I'm entitled to know when those statements were made, and who they were made to.
And so I'm trying to get a better handle on who, what, when, and where with respect to those statements during the time frame that we just talked about.
A Correct. So I need to add those to discovery, I guess.
Q What do you mean? There are statements that you haven't provided yet?
A There is a lot of stuff I haven't provided yet.
Q Like what?
A There's a lot of video. A lot of statements.
Q Why haven't you provided it?
A Because -- I think we went over this this morning. I work, and I haven't had time to do it.
Q In the last two years?
A No. I don't think the lawsuit has been going on the last two years.
Q Okay. But since the lawsuit has been filed, you just have had no time at all to produce this stuff?
A I have produced some of it, but not all of it.
Q Okay. So as you sit here right now, you can't

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identify any specific statements from the time you were released from jail to the start of the criminal trial of Mr. Klementi, Helmut Klementi?
A I don't want to say specifics when I can't remember exactly word for word.
Q That's fine, sir. The answer is, no, you can't, or is it yes?
A No. I can't remember specifics.
Q Okay. What I'd like to do, then, is let's go over your complaint, your second amended complaint because there's -- I brought a copy for you.
So you have alleged a claim of defamation against my client.
And, Counsel, I brought one for you, too.
MR. PINTAR: What exhibit, please?
MR. BROWN: We're going to mark this as an exhibit, the next line, which will be Exhibit 9.
MR. ROUTSIS: This is not a filed complaint.
MR. BROWN: It's the one that's pending, the amended complaint.
MR. ROUTSIS: Right. But we have not introduced it.
MR. BROWN: You have filed it. It's part of the case. It's an allegation, and I'm entitled to find out about it.
MR. ROUTSIS: Okay. Well, if you need, we can go over the other one, which is even more vague.

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This one is pretty vague. That's why we were getting another one done.

MR. BROWN: Take a look at this defamation.

(Exhibit 11 marked for identification)

BY MR. BROWN:

Q Okay. I believe that was on page 6. If you could come back to page 6.

A Isn't going to page 6 kind of jumping head ahead of this?

Q I'm looking to the defamation claim.

A Okay.

Q It's entitled defamation. I may have given you the wrong page number.

A Six.

Q You have alleged a claim of defamation in this proposed amended complaint.

I have read through that claim again this morning, and I don't find one reference to my client in there.

Can you take a look at that and confirm if there's any references to my client in the defamation claim?

A Not understanding what you are --

Q Is his name referenced where he has made a false statement under the claim of defamation?

A You want me to just take a look through and see if I see his name? Is that what you are saying?

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Q Because I'm trying to figure out how he has defamed you.

A Well, I'm not a legal writer. But it looks to me like he just has to have his name added to this.

But I would think that would be covered under the -- you are asking me something that's way above my understanding.

Q Okay. Well, so, I'm just trying to get the basis of, you know, you have sued somebody for defamation.

You sat here, and you told me you can't remember any statements that were made from the time of your arrest until the time of trial.

I have asked you to review the complaint and identify any statements under defamation, under the defamation claim.

And you haven't identified any. So I'm entitled to your best recollection of when my client made false statements and what those false statements were.

And as you are sitting here today, you don't -- you are not aware of any such statements?

A No. That's not what I said. I'm aware of them, but I can't accurately --

MR. ROUTSIS: This has been asked and answered now three times, Counsel.

THE WITNESS: Yeah.

MR. ROUTSIS: He has told you three times.

MR. BROWN: Number one, your client has filed a

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lawsuit --

MR. ROUTSIS: You cannot ask the same question three times. You got the same answer.

He does not have a recollection as he sits here today of any specific statements that Helmut made.

That's his answer.

BY MR. BROWN:

Q Fair enough. Then I'll move on.

What about trial? What statements did my client make at trial that was false?

A Buy the transcripts.

Q I'm asking you. You sat through the trial. I wasn't there. I'm asking your recollection.

A So buy the transcripts, and you can see.

Q That's not an acceptable answer.

My answer -- question to you is, what statements do you recall my client stated or made at trial that were inaccurate?

A It's the same question.

MR. ROUTSIS: Objection.

BY MR. BROWN:

Q I'm entitled to your recollection, Mr. Spencer.

A My recollection at this moment is not accurate enough to say anything.

Q Okay. So you can't testify as to trial, either, as to

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any statements that my client may have stated towards you?

MR. ROUTSIS: Asked and answered. He just gave you an answer, and now you are getting argumentative.

BY MR. BROWN:

Q Answer the question, please.

MR. ROUTSIS: He answered the question.

Hold on. Don't answer.

MR. BROWN: You are telling your client not to answer?

Can we get Judge Kosach back on the phone? I'm not going to play this game.

MR. ROUTSIS: Get him on the phone.

MR. BROWN: Let's get him on the phone.

MR. ROUTSIS: Call him, why don't you just keep him on the line.

MR. BROWN: I will. I am going to ask him if he will.

MR. ROUTSIS: You asked him a question. Here was your question.

MR. BROWN: Can we go off the record, at least off the video?

THE VIDEOGRAPHER: We're going off the video record. The time is approximately 2:08 p.m.

(A recess was taken)

THE VIDEOGRAPHER: We are going back on the video record. The time is approximately 2:12 p.m.

///

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BY MR. BROWN:
Q Okay. Mr. Spencer, we're just going to go over this complaint paragraph by paragraph, and if I have to read it to you, or you have to read it, either way is fine with me.
But I'm going to turn -- because there is a lot of just basic boilerplate allegations on the first page, and you are more than welcome to review over those, but I'm trying to cut to the chase.
Starting with paragraph eight, on page 3, is really where the factual allegations begin.
So I'd like you to take a look at that paragraph and tell me when you are done reading it. We're just going to go over it.
A So, I read it. What do you want?
Q Just asked you to let me know when you are ready.
A I read it.
Q Okay. So this indicates that Egon Klementi called KGID on or about, or in December of 2012 and complained that you were intentionally leaving a snow berm in his driveway when he plowed his road.
He also alleges, submitted a photograph, depicting snow at the edge of his driveway.
How do you know that fact?
A Video.
Q How do you know if he called --

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A Video, and, sorry, excuse me.
Video and subpoenas from the criminal trial.
Q Okay. So you got information from KGID --
A Yes.
Q -- that indicated that?
A Uh-huh (affirmative).
Q Okay.
A And when he calls and complains, KGID called my boss and tells him.
Q So then is that true statement that you were leaving a snow berm in his driveway?
MR. ROUTSIS: Well, excuse me. Stated, correct, intentionally leaving a snow berm.
BY MR. BROWN:
Q Okay.
A Not intentionally leaving a snow berm.
Q So there was no intentional --
A No.
Q -- part of it.
When it was left, it was unintentional is what you are saying?
A Correct. As I said, earlier, everybody gets snow berms. I can show you video of snow berms I get.
Q Okay.
A When it's snowing, and you are plowing the street, the

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snow has to go somewhere, and it goes off the blade.
Q I understand, and I understood that when you explained it earlier.
How do you -- how are you able -- you subpoenaed the records from KGID concerning Egon Klementi's call to KGID.
What sort of evidence was there? Was there a phone log, or was there testimony?
Or how were you able to confirm that he actually called on that day in December?
A They give you these sheets, I can't remember exactly what it was. But they gave us everything with stuff as long as they had been around about -- just gave us all snow berm complaints.
Q Did anybody --
A Anything.
Q I'm sorry. I didn't mean to cut you off, and I violated my own rule.
Did anybody from KGID testify at the criminal trial?
A I believe not.
Q Okay. So let's go to the next paragraph and tell me when you are done reading that.
A Okay.
Q Okay. You indicated here on December 12th that he reported to Douglas County that you used your snowplow again to intentionally cause snow and ice and other debris to strike him

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while he shoveled snow in his driveway.
Is that a true statement?
A It's kind of like a compound question, isn't it? This is multiple stuff in here.
Q Your attorney can object.
MR. ROUTSIS: Okay. Compound question. Objection.
THE WITNESS: Okay. That's a true statement that Egon called the sheriff's.
And it is untrue that Mary Ellen Kinion witnessed it, but she did call to try to collaborate the story.
BY MR. BROWN:
Q Okay. How do you know that Mary Ellen didn't witness this?
A Counsel, can you have your client removed? I heard that. I'm not sitting here --
MR. ROUTSIS: Listen, they are making snide comments. Control your clients, please. This is improper.
MR. BROWN: Those aren't my clients.
MR. ROUTSIS: Okay. This is a civil deposition. We're here to get to the truth, and there's no need for these -- Miss Kinion --
MS. KINION: Sorry.
THE WITNESS: You did that the last couple times.
MR. ROUTSIS: Why don't you state for the record what she did?

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THE WITNESS: For the record, Mary Ellen Kinion said, liar.

MR. ROUTSIS: So, Counsel, I would hope that you admonish your --

MR. BROWN: I'm going to say for the record sitting here I didn't hear anything coming from behind me.

I don't have the best hearing, but I didn't even hear --

MR. ROUTSIS: You also, for the record, you said you don't have your hearing aid in today, and you are having trouble hearing.

MR. BROWN: I just confirmed that to you, as well, but I didn't hear anything.

MR. ROUTSIS: I don't think there is a lot of relevance to your comments.

MR. BROWN: I would like to hear from other counsel on that issue, as well.

MR. PINTAR: I didn't hear.

MR. ROUTSIS: Okay.

THE WITNESS: I heard it and saw it.

Why don't you turn the camera that direction?

MR. ROUTSIS: Can we play the camera back? It won't show her.

Okay. Let's go on. Let's move on.

THE WITNESS: So to go on the lying part that she

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decided to say, she perjured herself on the stand, as Mister -- as William was there and admitted she didn't see it, which is in --

BY MR. BROWN:

Q At trial?

A Trial transcripts.

Q Okay. Was there an incident involving a snowplow with Mr. Klementi, Egon Klementi, that happened on or about December 12th, whether it was intentional or not?

Do you recall any such incident?

A Oh, I recall what he called and said was the incident.

Q I'm sorry?

A I didn't drive by and throw snow on him.

But I recall what you are talking about, obviously. This is one of the charges against me.

Q Okay.

A This was turned into an assault charge.

Q Okay. So you were contending in this paragraph, that Egon Klementi and Mary Ellen were not truthful when they reported this incident to Douglas County?

A Correct.

Q Okay. And the next paragraph, December 12th, it starts about December 12th, Mary Ellen Kinion called law enforcement officers and said she witnessed you striking Klementi.

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So again, that's something that you believe she testified to that, at trial, that she did not actually see?

A That's not what I said. She testified to seeing it. Then recanted her story and admitted that she didn't see it.

Q So all of this happened in this same trial, the same course of testimony?

A Yes.

Q If she testified at one point in trial that she did see it, and I'm assuming on cross-examination, or some other point in trial, you're telling me that she recanted that, and said, no, I actually didn't see it?

A Yes.

Q Okay.

A As I remember, that's it.

But, like I said, buy the transcripts.

Q Okay. You also state in that same paragraph that Miss Kinion called your employer and repeated the same thing to him.

Would that be Flipper?

A Yes.

Q Okay. What -- how do you know --

A Where do you see that?

Q Paragraph ten, the next sentence.

It says on or about the same date, Mary Ellen Kinion called your employer.

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A Okay. Got it, yes.

Q Do you see that?

A Yes.

Q Okay. How do you know that occurred?

A He told me.

Q He did tell you?

A Flipper Manchester told me.

Q Flipper?

A Yes.

Q What did Flipper tell you Mary Ellen had stated on the phone?

A I don't remember the exact conversation.

Q And how do you know, and why would you allege here that she said the same thing that she had said previously about what she had witnessed?

A Because you are asking me to be specific, and I can't be specific.

Q Okay. Did Flipper testify at the criminal trial?

A Yes, he did.

Q Do you know if he testified to this fact?

A I can't remember.

Q So next paragraph, 11. Take a minute to read that.

A Okay.

Q So how do you know that Deputy Sanchez concluded that no crime had been committed?

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A He called me on the phone that day.
Q And so --
A He called and talked to my boss, Flipper, and then he called me directly.
Q What did he say to you?
A He just wanted me to be aware of the situation. He told me that he talked to Flipper, and that he wasn't writing a police report because there was no evidence of anything happening.
I actually begged him to write a police report because I wanted him to do it. And he said, no, there's no evidence. He is not doing it.
MR. ROUTSIS: And for the record, you can take judicial notice of the court transcripts.
Deputy Sanchez testified at trial to these facts. If you read the transcripts, you will verify a lot of this information.
MR. BROWN: Well, I get to verify this with your client, Counsel. That's why --
MR. ROUTSIS: I'm just informing you.
BY MR. BROWN:
Q So Mr. Spencer, this all happened on the 12th.
Now I'm a little curious about something. You have a very vague recollection of everything that happened on paragraph 9 and 10.

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But you have a very specific recollection of your conversation with Deputy Sanchez --
MR. ROUTSIS: Objection. Argumentative. Misstates the evidence.
Your testimony about what his recollection is, is irrelevant.
Please just ask the question and don't give your input. That question is improper.
MR. BROWN: I'm entitled to question him.
MR. ROUTSIS: If he has vague recollection and a specific recollection, that's your opinion.
Your opinion is not relevant.
BY MR. BROWN:
Q Do you have any problems associated with your memory that we should know about here today at the deposition?
And that's why I'm asking that, Counsel, that question, Counsel.
MR. ROUTSIS: That's a fair question.
MR. BROWN: It's an acceptable question.
MR. ROUTSIS: That's a fair question. But your opinion as to what's vague or not --
MR. BROWN: That's why you should let me finish my question before you object.
BY MR. BROWN:
Q Do you have any problems associated with your memory here today, Mr. Spencer?

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A No.
Q Ever been treated for memory issues?
A No.
Q Are you on any medication?
A For memory issues? No.
Q Any kind of medication?
A Yes.
Q What are you on?
A I don't know the name of it.
Q Okay. Did you forget that, too?
A No, it's -- Seratellin? Sortolin? Sortolin? Something like that.
Q What is it for?
A Depression.
Q Okay. How long have you been on that medication?
MR. ROUTSIS: Objection. Relevance.
MR. BROWN: Absolutely it's relevant.
MR. ROUTSIS: Objection. Medication -- the question of medication is not -- you think is relevant?
MR. BROWN: Counsel, I don't know how much you do in the civil arena, but your client has alleged --
MR. ROUTSIS: Just answer the question.
I'm asking you, why is it relevant?
MR. BROWN: -- intentional infliction of emotional

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distress claim. I'm entitled to go into his potential damages.
MR. ROUTSIS: I agree. I'll withdraw the objection.
BY MR. BROWN:
Q Thank you.
How long have you been on that medication?
A I can't remember.
Q You forgot that, too?
A No.
MR. ROUTSIS: Objection. Argumentative.
THE WITNESS: You are asking for --
MR. ROUTSIS: Stop that. Okay? Enough. Enough.
Don't -- that's argumentative, and if you can't be civil, then let's cut this thing off right now.
Stop it. You are not going to do that.
MR. BROWN: If he has forgotten --
MR. ROUTSIS: Be civil or we're done.
MR. BROWN: If he has -- you are not being civil.
MR. ROUTSIS: I'm telling you, Counsel, you are going to push me.
Don't be rude to my client. He is under cross-examination. Be civil and decent or stop your examination.
MR. BROWN: I am entitled to probe his memory.
MR. ROUTSIS: No, you're not entitled to say you forgot that, too.

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That is argumentative, and it's improper.
MR. BROWN: I am entitled to that because it appears that he has memory issues.
MR. ROUTSIS: Counsel, you are going to stop this, or not go on. It's up to you.
BY MR. BROWN:
Q Who treats you, or who prescribes that medication?
A I just went to her. I can't remember. I can't remember her name.
MR. ROUTSIS: We're going to take a five-minute recess. Come on outside.
Counsel, you are going to stop this. You are not going to get rude with my client. He is under a lot of stress, and you are out of line.
MR. BROWN: I'm not getting --
MR. ROUTSIS: You're out of line.
MR. BROWN: He is the one that's brought it up.
MR. ROUTSIS: You're out of line.
MR. BROWN: No, you're out of line.
MR. ROUTSIS: No. You are.
MR. BROWN: You are out of line, and I'm not --
MR. ROUTSIS: Come on, Jeff.
THE VIDEOGRAPHER: We're going off the video record. The time is approximately 2:26 p.m.
(A recess was taken)

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THE VIDEOGRAPHER: We are going back on the video record. The time is approximately 2:32 p.m.
MR. ROUTSIS: Okay. Let me get his name right. I'm very --
MR. BROWN: Doug Brown.
MR. ROUTSIS: Yes.
Mr. Brown is questioning my client on the first amended third-party complaint, demand for jury trial.
Right. This is not file-stamped, but he has presented copies here today that are not file-stamped.
And William Swafford, the author of that document, has abandoned the Spencers during the course of representation. He is under a bar complaint.
And we have retained Lynn Pierce, who now has come in as attorney of record, will be filing an amended complaint.
My recollection is that at the first hearing with Judge Kosach, the only hearing we had in chambers, we addressed that a complaint had been filed, amended complaint, but -- we served the parties, but then during this period, Mr. Swafford, I believe, abandoned his client, and I believe the representations made to Kosach were we were going to hold off on the amended complaint and any rulings on it, and that's where we're at.
We are going to be filing our amended complaint, I believe Miss Pierce indicated this week or next week.
That will be the complaint that we're going to ask the

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judge, whatever the legal term is in civil court, so --
MR. PINTAR: Operative document.
MR. ROUTSIS: Yes.
So you can question him if you like regarding this, but we're going to be asking to vacate this document.
We do have an original complaint that's on file, that has been file-stamped. This one has never been accepted by the Court.
MR. BROWN: Right. It's never been ruled on.
MR. ROUTSIS: Right.
MR. BROWN: It was filed through a motion for leave to amend, so --
MR. ROUTSIS: Right.
MR. BROWN: -- what I'm asking you, Counsel, before we get back, are you going to withdraw that motion for leave to amend?
This is an exhibit --
MR. ROUTSIS: Yes, yes.
MR. BROWN: -- to that motion that I have pulled off.
MR. ROUTSIS: For this amended complaint, yes.
MR. BROWN: Okay. Then you will file a subsequent motion for leave to amend?
MR. ROUTSIS: That's correct.
MR. BROWN: Okay.
MR. ROUTSIS: Okay.

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MR. BROWN: And if that happens, I would reserve my right to retake Mr. Spencer's depo if there is any new information that's not in this or your previous complaint.
MR. ROUTSIS: Very good. It will have much less than this. I can confirm that.
MR. BROWN: Okay.
BY MR. BROWN:
Q I want to go back to the medication that you are on.
A Okay.
Q You said it's for depression?
A Yes.
Q How long approximately have you been on that medication?
A Year and a half. Two years. Something like that.
Q Have you ever been on any -- I'm going to refer to it, and you correct me if I'm wrong, it sounds like you're on an antidepressant?
A Yes.
Q And you just testified that you have been on it for approximately a year to a year and a half?
A I thought I said year and a half to two years.
Q Okay. If you did, I apologize. I didn't catch that. So a year and a half to two years, so that would have put that --
A I think.

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Q -- around 2014ish time frame?
A Yeah. Somewhere in there.
Q Had you ever been on antidepressants prior to 2014?
A No.
Q Not in your entire life?
A No.
Q And who do you see to get that medication?
A I had to ask my wife the doctor's name. That one is Steinmez.
Q I'm sorry?
A Steinmez.
Q Steinmez?
A Yeah.
MR. PINTAR: Can you spell it?
THE WITNESS: Let me look it up. I have got her in my phone.
S-T-E-I-N-M-E-Z.
MR. PINTAR: Thank you.
What's the address?
THE WITNESS: I don't know her address. It's down on Third Street by the hospital there.
BY MR. BROWN:
Q In Carson or Douglas?
A Tahoe.
Q In Tahoe?

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A South Lake Tahoe.
Q What type of doctor is Dr. Steinmez?
A Whoops. I just called her. Sorry.
General practitioner, and then she referred me to a psychologist, I guess.
Q Have you -- so how -- before I get into that.
How long has Dr. Steinmez been your doctor?
A I couldn't say.
Q Was she your --
A Probably more than five years.
Q Okay. That's what I was getting at.
Prior to this accident. Or prior to this incident in December of 2012?
A I think so, yes.
Q Okay. Since the incidents in December of, I'm going to call it -- I'm going to refer to the incident that happened on the night of the December 18th as "the incident".
A Okay.
Q Since the incident, after the incident occurred, do you recall when the first time you treated with Dr. Steinmez was?
A No, sir.
Q Approximately how many times have you received treatment with Dr. Steinmez since the accident?
And I don't need an exact number.

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A I could not tell you.
Q Would you be able to say with any certainty that it was less than half a dozen times?
A No. It would be more than that.
Q Okay. How about less than a dozen times?
A I don't -- I don't think so, but I can't say.
Q Okay. So, again, I'm not holding you to anything. I'm just trying to get an idea.
You think it is possibly between six and a dozen times, but you are not certain on that.
Is that a fair way of restating your testimony?
A I really have no recollection of how many times, so --
Q Okay.
A -- that's really a guess.
Q All right. Fair enough.
What sorts of things have you treated with Dr. Steinmez with since the date of the accident, or the incident?
A The stress. I don't -- I have a hard time with -- I can't think of what it's called.
Q If you don't know the name of it, you can try and describe what it is.
A It's an infection, but I can't --
Q And that's fine. I can stop you there.
An infection, and you can correct me, but an infection

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is not something that you are relating to arising out of that incident that happened in December, correct?
A No. It is.
Q Oh, it is?
A Because it's -- you get the infection, and if you are stressed, you can't fight it off. It's too hard to fight it off. So it came back 3 or 4 times.
Q Like a lung infection, or are you talking about --
A No. It's, it's a -- yeah, like a sore and a body infection.
Q Where did you get that at?
I mean, what part of your body did you have the sore on?
A My nose, my toes, usually goes to your outlying ends.
Q Is it like a staph?
A Yeah. Like -- it's like a staph infection, yeah.
Q And were you put on antibiotics for that?
A Yes.
Q Okay.
A Multiple antibiotics. Normal antibiotics didn't do it.
Q And you said it's come up in different places in your body. Your nose --
A Yes.
Q -- is one place.

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You said your fingers?
A Toes.
Q Toes. Anywhere else?
A My arm.
Q How was it treated, besides -- I know you said you got antibiotics.
A Antibiotics, and then they cut it and drain it. It's kind of gross.
Q Okay. And I assumed something based on your testimony, so you are going to correct me if I'm right or wrong.
But you believe that that infection is somehow related to the incident that occurred on December 18th, 2012?
A Yes.
Q Okay. What is the basis for that belief?
A My immune system is down to nothing. I'm stressed out so much that I get infections. I get sick constantly. Abdominal problems, you know. Stomach issues.
Q Has any doctor told you that those infections were related to the incident --
A Yes.
Q -- that happened on -- got to let me finish -- December 18th, 2012?
A To the situation, not to that specific day.
Q The overall situation?
A Yes.

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Q The arrest, the trial?
A Yes.
Q Okay. Who has told you that?
A Every one of my doctors.
Q Okay.
A Except for my heart doctor.
Q You have only talked about one doctor with me so far.
A I have four.
Q Okay. So we have got Dr. Steinmez?
A Yes.
Q Who else?
A I don't remember that. A GI doctor. I don't remember -- she is in Gardnerville and Carson.
Q This is a GI doctor?
A Yeah.
Q Would reference to your phone help you out?
A No, I don't have their number.
Q Okay. Who else?
A Cardiologist that I went to. They put me under stress test and have done all that and put a monitor on me.
I have episodes where I pass out, and they can't figure it out.
Q Okay. Anybody else?
A Dana, the psychiatrist, psychologist, whatever she is. She is in Reno, but I can't remember her last name.

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Q Do you know --
A I might have her in my phone.
Q Okay. Perfect.
A I think I do actually.
MR. ROUTSIS: Marilyn can provide you with all that, too, today because she knows everybody.
MS. CAPERS: Have these medical records been produced?
MR. BROWN: I haven't seen it.
MR. PINTAR: We may assume they will be part of the damages, right?
MR. ROUTSIS: Yes. I'll get Lynn right on it because I think we need to.
MR. PINTAR: If we send you an authorization, would you have Mr. Spencer sign it?
MR. ROUTSIS: Absolutely. I'm sharing with Lynn -- I mean, again, I'm just the trial attorney, but talk to Lynn about everything.
She will give you everything you need. This is her -- she is here to get me to trial and can follow the civil procedure. Okay.
THE WITNESS: I don't know how to go about getting my medical records.
MS. CAPERS: Has she been associated in yet?
MR. ROUTSIS: Yes. She has been associated in and has been in contact with these gentlemen here, I think.

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THE WITNESS: I don't have her number.
BY MR. BROWN:
Q Okay.
A Unless I looked through everything but --
Q Okay.
A It's probably under last.
Q As soon as Dave gets back, we'll pick back up.
THE VIDEOGRAPHER: We're going off the video record. The time is approximately 2:44 p.m.
(A recess was taken)
THE VIDEOGRAPHER: We are going back on the video record. The time is approximately 2:47 p.m.
BY MR. BROWN:
Q Mr. Spencer, before the break, I asked you to identify the doctors that you were seeing, and you identified Dr. Steinmez, a GI doctor, but couldn't remember the name, a cardiologist, and either a psychiatrist or a psychologist, is what I believe you testified to.
During the break, I believe your wife wrote down the names of your doctors.
Would it refresh your memory if I showed you the list that your wife provided, where she provided names of the doctors?
A Yes.
Q Okay. I'm going to show you that list, and then once

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you have looked at it -- would you hand that to the court reporter, and we'll mark this as an exhibit, also?

A I don't -- I think doctor --

MR. ROUTSIS: We will mark these. I don't know how you --

MR. BROWN: Yes.

MR. ROUTSIS: I'll let you do that.

THE WITNESS: I had hand it to her and she --

BY MR. BROWN:

Q Yes.

A -- first?

Q And then I'm going to ask you if looking at that list refreshed your recollection as to who your doctors were?

A Yes, it did.

Q Okay.

(Exhibits 12-13 marked for identification)

BY MR. BROWN:

Q So, Mr. Spencer, having looked at that list of your physicians, do you remember the names of the physicians?

A Yes.

Q Okay. And so we have got Dr. Steinmez.

You said, I believe earlier, she is some sort of a general practitioner?

A Yes.

Q Who is the GI doctor?

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A Gao.

Q Dr. Gao. Where is Dr. Gao located?

A I see her in Gardnerville.

Q Okay. And I'm certain you probably don't have her address, if I asked you.

And we can get that later, if you don't.

A No, I don't have it with me.

Q Okay. Who is the cardiologist?

A That, I don't remember. But it says it was Carson, Carson Cardiologists.

Q Okay.

A So it was in Carson hospital. Carson-Tahoe.

Q Oh, Carson-Tahoe in Carson City?

A Yes.

Q That's where you see the cardiologist?

A Yes.

Q All right. And then. The psychiatrist or psychologist you see, do you recall that individual's name?

A Dana Anderson.

Q And where is Miss Anderson located? In Reno?

A She is in Reno.

Q Do you know if she is either -- do you know which one she is? A psychologist or a psychiatrist?

A No, I don't.

Q Okay. Fair enough.

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Have any of these doctors -- and I think you indicated that Steinmez was your doctor before the incident in December, correct?

A Yes.

Q Okay. What about the GI doctor?

A No.

Q That's a new doctor?

A Yes.

Q Had you ever been treated by a GI doctor before the incident --

A No.

Q -- in December?

Okay. What about cardiologists?

A No.

Q You had never seen a cardiologist prior to what happened in December?

A No.

Q Okay. And I believe you testified earlier --

A Oh, wait. Let me change that.

I must have seen a cardiologist before then, because I did take a treadmill test some years ago, just a checkup.

Q Was that while you were living at the lake?

A Yes. Because I think it was in Carson hospital also. Carson-Tahoe, Carson City.

Q You believe it may have been with the same group?

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A It might have been, yeah.

Q Okay. How many times have you seen Miss Anderson approximately since 2012?

A I couldn't say approximately.

Q I'm going to ask you the same question I asked for Dr. Steinmez.

Do you know if it's less than a half a dozen times?

A I would say it's over.

Q Over?

A I would think.

Q Is it less than a dozen times?

A Oh, I meant over a dozen, sorry.

Q You meant -- so you have seen her over a dozen times?

A I'm guessing.

Q Okay.

A I can't --

Q That's fine.

A I can't swear to it.

Q If it turns out it's ten, and you said it's over a dozen, I'm not too concerned about that.

But I'm just trying to get an idea.

A Right.

Q You believe as you sit here, anyways, that it's at least over a dozen times?

A Yeah.

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Q Okay.
A It's a little hard to get appointments with her, because she is so far out and because of my work schedule.
Q Okay. So can I see 12, please? Let me grab it.
I'm going to give you another list that appears was prepared by your spouse, and which appears to be conditions that you have been treated for.
If I showed you this list, would it help refresh your memory as to what sorts of conditions you are being treated for?
A Yes.
Q Okay. This is the original.
Tell me when you are done reviewing that.
A I'm done.
Q Okay. I see the first on the list, which is Exhibit 13, it looks like it's either Barrett's or Barrett's esophagus.
Have you heard either one of those terms before?
A Yeah.
Q Okay. Which one is it because I can't --
A Barrett's.
Q Barrett's.
Tell me what that is, if you know? And I understand you are not a doctor.
A I could you tell the symptoms more than I can tell you what this means.

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Q Okay. Tell me what you believe the symptoms are.
A Problem swallowing. Problem keeping food down, which it's way out of my league. I just tell the doctor to fix me, you know.
Q Sure. I understand.
But you, obviously, went to a doctor for some complaint related to your esophagus.
A Yes. That was the same -- went to the GI doctor for that, and my intestines issue, and my stomach ulcers and everything else.
Q Okay. And so what it sounds like, what you testified is you have problems swallowing, keeping stuff down?
A Yes.
Q Okay. Anything else related to the esophagus that you can think of while we are here that you have experienced?
A I have to say no.
Q Are you on any sort of medication for that condition?
A Yes.
No. It's not for the esophagus. It's for the stomach, intestines.
Q Okay. Do you have to have any additional treatment for Barrett's esophagus that you are aware of?
A Possibly down the road.
Q Do you know what kind that could be? What sort of treatment?

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A No.
Q Is it, is your answer more of "I was told that I might need some sort of future intervention or treatment", or was it "I may need treatment if the condition arises again"?
A No. I will need treatment eventually, because it will stay there.
So what we're doing is trying to keep things at bay, as you might want to say.
Q Okay. High blood. Is that the cardiologist that treats that or Dr. Steinmez?
A The cardiologist.
Q And prior to the incident in December, you had never been diagnosed with high blood pressure before?
A Correct.
Q Acid reflux?
A Yes.
Q And the GI doctor treat you for that, as well?
A Yeah.
Q Are you on any sort of --
A Yeah.
Q -- antacids?
A I think it's Nexium or something. Something I have to take the rest of my life.
Q And that's something you had never been treated prior to --

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A Correct.
Q -- the incident?
Depression, we talked about that a little bit. You are on a medication that I don't think you can recall the name of completely?
A Correct.
Q How often do you have to take that medication? Once a day?
A 150 milligrams every morning.
Q What is nocturnal hypoxemia, if you know?
A Sleeping disorder. Sleeping at night and not breathing, I think.
Q Not breathing?
A Yeah.
Q Is that --
A I am not sure, you know, I, all this stuff is --
Q That's fine. I understand you are not a doctor.
A I don't understand doctor's lingo.
Q Okay. Has anybody told you, or do you recall hearing the term "sleep apnea", or anything like that?
A Oh, I know what that is.
Q Do you have that?
A No.
Q Okay. So this is different --
A Yes.

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Q -- than that condition?
A Yes.
Q What has been done to address that condition, the nocturnal hypoxemia?
A I'm not sure that that's some of the pills or stress-related, or what we're doing with that.
Q Who treats you for that condition?
A That would be the general, Steinmez.
Q Steinmez. Okay.
Die --
A Diverticulitis.
Q Okay. I'm not going to try to repronounce that.
A That's the GI doctor.
Q What is that?
A Intestine problem.
Q And is that something that -- when did that first arise?
A That was probably a year ago. I'm trying to think when I first went to her.
Yeah. A year, maybe a year and a half.
Q Okay. Fair enough. And that's all I want is your best estimate.
MERSA, chronic. And we talked about that a little bit.
How many times have you had MERSA since the incident

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in April?
A Four times.
Q Did it ever require a hospitalization?
A No.
Q Okay. So you were able to either treat it through antibiotics or lancing it --
A Yeah.
Q -- and keeping it clean?
A Yes.
Q Do you know what kind of antibiotics they put you on for MRSA?
A I know I have to take penicillin with some other ones. There is three different antibiotics. There is an antibiotic ointment, also. I can't really tell you.
If I don't take the penicillin, it doesn't even effect it. So it has to be penicillin, plus these other ones, also.
Plus you have to take baths in Clorox. Real fun, there. Other stuff.
Q And have you ever had MERSA prior to December 2012?
A No.
Q Okay. We talked about nocturnal hypoxemia earlier.
But there is also a reference to insomnia on this list.
Do you know -- again, if you know, that's fine. If you don't, that's fine, too.

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Is there a difference between those two conditions?
A I don't know.
Q Okay. What do they do to treat your insomnia?
A They tried changing my allergy medicine, try different things to see -- you know, that's also part of where the psychiatrist, psychologist, whichever, comes in.
Q Sleeping pills?
A No. I take some sometimes, but that's not a regular thing.
Q Okay. And you have got migraines listed on here, as well?
A Yeah.
Q Who treats you for that condition?
A Steinmez. And we just do -- like, the prescription Ibuprofen, 800 milligrams, or something like that.
Q Is that a symptom that you had prior to the incident in December of 2012 or after?
A No. After.
Q After. Okay.
A Dizziness, is that what you are reading, the last one?
Q Yeah. Well, there's something two point -- oh, fainting?
A Yeah. That is the cardiologist issue.
Q Now we talked about the conditions.
I'd like to know if you believe, based on what you

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have been told by your medical doctors, that -- whether these conditions that we have all identified are related to the stress that you allege that you sustained as a result of the actions of my clients or Mr. Pintar's clients in this case?
A Yes.
Q Okay. Who pays for your medical, your medical treatment? Is it you, or an insurance company?
A It was us for quite a while. We have insurance now.
Q So it sounds like a little of both?
A Yeah, a little of both. I can't think who the insurance company is now.
Q I'm going to ask two other questions regarding this, and I may have to break it down further.
But do you have any idea of what the total medical expense is, regardless of who has paid for them, are associated with the treatment that you have received for these conditions?
A No. I don't ever see the bills when the insurance pays them.
Q Do you have any idea of what you have paid out-of-pocket for these treatments?
A No.
Q Do you know if it's -- I'm going to ask you one of these general questions again.
Do you know if it's less than $10,000?
A No, I don't.

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Q Okay. And what has the psychiatrist, slash, psychologist, because we don't know which one she is, Anderson, done with respect to your treatment?

What is the course of treatment that you are supposed to go through?

A She kind of confirms what Steinmez prescribes to me, and then gives us tools to help fight the stress.

Q Has Miss Anderson -- and I call her that because I don't know whether she is a doctor or not -- but has Miss Anderson, to your knowledge, ever indicated that your depression-related symptoms for which you are receiving antidepressants for, are in any way related to actions of my client, or any of the other parties in this case?

A Yes.

Q Okay. And tell me what you recall her saying.

A It's directly, directly related. That's where all the stress came from.

Q Okay. And that's based on her interviewing you?

A Yes.

Q Okay. What about the cardiologist?

Has the cardiologist, and to your recollection, related the treatment here she has provided to you since December of 2012 to the actions of either my client or the other parties in this lawsuit?

A Yes.

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Q Okay. And --

A They said it would be stress-related.

Q Go ahead. I'm sorry.

A It's stress related, and you can't find out why it's happening.

Q Okay. So he believes that it's all stress-related?

A Yes.

Q Is it "he"?

A Yes, it is a he.

Q Okay. The GI doctor, has the GI doctor to your knowledge or recollection indicated to you that the treatment he has had to provide, he or she, has had to provide since December of 2012 is in some way related to the actions of my client, or any other parties in this case?

A Yes. She said it's stress-related also.

Q You said she?

A She. It's a she.

Q So she indicated it was stress-related?

A Uh-huh (affirmative). But that there's nothing you can do for it from here on out.

Q What do you mean by that? Is that --

A It's -- everything is kind of like an ulcer. Once you have it, you have it.

So all you do is try to maintain it to keep it from getting bad. Watch your diet and that kind of stuff. Take

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pills.

Q What sorts of treatment, if any, in the future has she suggested you might need?

A Checkup, you know. That kind of thing.

She said there's just -- you take the pills, and you have to do it all your life, and that should keep it, keep it to where it is.

Q And with respect to the -- and I apologize. We're getting late in the day. If I asked this question already, I'm sorry. We're going to move on here shortly.

What about Dr. Anderson? Has she indicated that you will need any treatment in the future?

A Yes.

Q Okay. What has she told you about that?

A That when this is all over, it will probably get better. You know, said we need to move, that kind of stuff.

Q Do you have any plans to move?

A No. Can't afford to. Owe more on the house than it's worth.

Q I'm sorry. I didn't hear that.

A We owe more on the house than it's worth.

Q Understood. Understood.

Are you planning on getting any other type of treatment that we haven't discussed?

A Not planning on any.

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Q Unless something arises that you don't anticipate or are not anticipating?

A Yes.

Q Okay. Let's go back to this.

And I know, Counsel, you are going to be withdrawing it, but it is a pleading that's filed in this case. It's got allegations. I know it has not been accepted, but I'm still going to go through it.

MR. ROUTSIS: Okay.

BY MR. BROWN:

Q Mr. Spencer, we were on page 3, and I think, and I'll have you confirm this for me.

I think we were talking about paragraph 11 at the bottom of the page.

Do you recall us discussing that paragraph? And I think you concluded that, and I think you will correct me if I am wrong, that deputy, I think you told me Deputy Sanchez advised you that no crime had been committed?

A Yes.

Q Okay. Let's go to the next page.

Now this -- and read that paragraph, and let me know when you are done. I'm just going to try and move this along a little bit.

A Okay.

Q This reference is a letter that was written by Dr. and

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Mr. Shaw on December 13th.
Did you actually ever see that letter?
A Yes.
Q Okay. How did you -- was that through the criminal trial?
A Yes.
Q Through a subpoena?
A Yes.
Q Okay. You also say that on the same day on the next paragraph, the 13th, she wrote similar letters to Douglas County and other Douglas County agencies making identical claims.
In other words, that you with your snowplow intended to batter and did batter Mr. Egon Klementi.
A Yes.
Q How do you know that that occurred? That she --
A Same thing. Subpoena.
Q Okay. You reference other agencies, but you don't say which ones.
What other agencies?
A There was multiple Douglas County agencies and KGID.
Q Okay. Now paragraph 14, read that if you would can, tell me when you are ready to go.
A Yeah.
Q First off, who is Mr. McKay?
A He is the head of KGID.

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Q Is he someone that you have personal familiarity with?
A (Witness shook head negatively).
Q No?
A I only know who he is. I have never talked to him.
Q Fair enough.
How do you know Egon called him directly on the 13th, and again informed Mr. McKay that you tried to batter him?
A That, I don't know. I don't know at this time.
Q Okay. We talked about this a little bit earlier, but next paragraph, December 18th -- or I'm sorry.
Paragraph 13 talks about the KGID meeting that happened on the date of the incident.
Tell me when you are done reading that.
A Okay.
Q When you talk about what both Egon and Mary Ellen Kinion said at that meeting, how do you know those statements were said?
A I don't know that this paragraph here is even accurate.
Q Okay. And that's what I want.
If it's not accurate you, obviously, tell me that you question its accuracy, or you are not sure.
A I don't remember anything on December 17th.
Q Was the allegation based on what we have talked about? What day -- and I know you dispute what happened, but

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what day did that occur where Egon says you tried to assault him with the snowplow?
Was that on the 17th or some day earlier?
A Earlier.
Q Okay.
A Possibly the 12th.
Q Okay. So let's, for a minute, assume that December 17th is a typo.
Is there anything else that you question in that paragraph besides the date?
A No. That is --
Q Sorry?
A It looks good to my knowledge.
Q Let's move on to the next one, 16.
A Outside of the time, it's accurate.
Q That's right, this happened later in the hour?
A Yes.
Q And this is consistent with what you testified to earlier, and this -- you also disputed how the report characterized the impact between you and my client?
A Yes.
Q Okay. Next page.
And when you are done with that, let me know. I think we can probably get rid of this one pretty quickly.
A I don't agree with what's in the parentheses. I

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don't --
Q Whom he believed was his twin brother Egon Klementi?
A Yeah. What's he referring to there? What's that referring to? I don't --
Q I don't necessarily understand that, either.
A Okay.
Q Let's cross that portion out, just for the time being, and ignore that, because I don't think it adds much one way or the other.
And again, it's just a statement that's filed in this case, and I don't know what that means either, but --
MR. ROUTSIS: Well, I think it's apparent.
He believed at the time when he was on the ground, he first thought it was Egon.
Didn't you?
THE WITNESS: Yeah, but it says --
BY MR. BROWN:
Q I don't think this is a statement by Jeff.
I think this is a statement by Egon or Helmut, and that's why that's confusing.
A Yeah.
Q So -- but there are a couple things I want to ask you about this.
There's a statement here that says plaintiff ran outside and punched my client, Helmut.

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Where did you get that word "punched" from?
A This looks like it's, to me, it looks like it's a quote.
Q From where?
We can go back and read the police report. I'd rather not do that, but --
A Because it says the police officers once again called to the scene, and they were informed by Egon and Helmut Klementi.
Q Uh-huh (affirmative).
A So that, to me, sounds like Egon and Helmut Klementi were talking to the police officers.
Q Let me just cut to this:
Are you -- do you have any knowledge, or are you aware of any document that says, where my client or Egon says, you punched Helmut?
A Yes.
Q Where?
A Police reports. Trial. And transcripts.
Q Well, then let's go back to the police reports.
A Not that one. I don't think -- yeah, it does say that. It does say that in there. Yeah. Look at their statements.
MR. ROUTSIS: And, for the record, if you read the trial transcripts, that's their testimony under oath.

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BY MR. BROWN:
Q Okay. Would you go back to Exhibit 1 and identify for me where it says "punched"?
A This is Exhibit 1, the police report?
Q Yes, sir.
A Okay.
Q You are looking --
A I saw Jeff Spencer hitting Helmut from the back and pushing him to the floor/street.
Q Okay.
A That is Egon Klementi's statement.
Q Okay. But does it say "punched"?
A No. It says hitting.
Q So when a car hits another car, does that require a physical punch? Or is that --
MR. ROUTSIS: Objection.
BY MR. BROWN:
Q I'm just asking you --
MR. ROUTSIS: That's argumentative. Let move on.
BY MR. BROWN:
Q Anywhere else that it says punched?
A This is -- okay. Something was out of order here. I think the officer said something like that.
MR. ROUTSIS: Just to expedite this matter, if you read the trial transcripts, I believe he testified he was

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punched.
MR. BROWN: Okay. Understood.
THE WITNESS: There's reference to it at page 6. Line 14.
BY MR. BROWN:
Q I'm sorry. Oh, in the complaint?
A Yeah.
Q Okay. Other than the complaint, are you aware --
MR. ROUTSIS: I think he was referring to testimony from trial.
THE WITNESS: Yes, that reference.
MR. ROUTSIS: Although that isn't in the report. It is referencing the trial transcripts.
BY MR. BROWN:
Q Okay. Page 16 or paragraph 16?
A Page 6?
Q Sorry?
A Page 6?
MR. ROUTSIS: Line 15.
THE WITNESS: 15, I guess you would call that.
MR. ROUTSIS: Right in the middle.
THE WITNESS: Yeah, 15 and a half.
BY MR. BROWN:
Q So the only quotes says substantial bodily injuries?
MR. ROUTSIS: No. It says Helmut testified that

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plaintiff punched --
BY MR. BROWN:
Q I got it. But when you -- I assumed when you said quote, I went for quotes, and I only saw --
A Yeah.
MR. ROUTSIS: I'll be quiet. He is. I'm not testifying.
BY MR. BROWN:
Q Okay. So other than the references in the complaint, and what you are saying here today that it's in the trial transcript, that's the only place you are aware of that that exists?
A No.
Q The word punched?
A I believe it's in other places.
Q Where?
A In other documents.
Q What other documents?
A I can't remember.
Q Do you have access to those documents?
A Yes.
Q And for my purposes, where are they? Are they at your house?
A Yes. I don't believe -- we don't have all that stuff turned in.

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Q Okay.
A So we have a lot of disclosure, I guess.
Q You do have a lot of disclosure. I'm also going to ask the court reporter to leave several blanks for you to identify any other documents where you -- where my client or Egon or anybody says that you punched Helmut Klementi.
INFORMATION REQUESTED: _____
_____
_____
_____
_____
_____
_____
_____
_____
_____
***
THE WITNESS: Okay.
BY MR. BROWN:
Q I'm going to ask you the same question.
I'm going to ask you to, if you independently recall this, and if not, I'm going to ask the court reporter to leave blanks for this, too.
But where it says in the -- paragraph 17 of the proposed amended complaint that --

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A Wait. Wait. Wait. Paragraph 17?
Q Yes, page 5. Paragraph 17. Top of the page.
A Top? Okay.
Q Right after the parenthetical that you and I had problems with, says before throwing him to the ground.
Who -- who has said that?
A I have no idea.
Q You don't know if it was Egon or Helmut?
A No. Like I said, I don't even understand that, that paragraph.
Q Okay. Are you aware of any allegation -- or I'm sorry.
Any statement by either my client or Egon or anybody else that has, basically, said you punched and then threw him to the ground?
A Yes.
Q Okay. And where was that statement?
A One of the reports. I don't remember where.
Q Okay. Did my client testify, to your recollection, to that in trial, as well?
A I can't say.
Q Okay.
A Excuse me. You said your client?
Q My client is Helmut.
A I don't believe he ever said that I threw him down.

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Q Okay. To your knowledge?
A Helmut, yes.
Q Okay.
A That I can remember.
Q Okay. I don't think there is any dispute about paragraph 18.
That you were arrested, and that an investigation was instituted concerning whether you willfully abused an elderly person pursuant to NRS 200.5092.
With that said, can you take a look at 19?
A Uh-huh (affirmative).
Q I'm curious about this. I think I have seen your surveillance video.
You had indicated somewhere, and maybe I read it in here -- oh, you did. That the video provided by the Shaws showing Helmut standing in the road was intentionally edited by Mr. or Dr. and Mr. Shaw.
Tell me what you know about that allegation.
A Well, I have three camera angles that shows him in my driveway, and their video does not show him in my driveway.
But shows me running around my truck. So, obviously, he has enough clarity that far away to see me and not see him.
That has to be edited. And the hour they turned in is not an hour long. Although the time stamp is an hour, you can go through, with surveillance equipment, you can click each

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frame.
So if you go through and click frames, some there's seven shots per second, some there's 24 shots per second. So we're missing frames.
So it's been shortened up. It's not an actual hour. And, obviously, he would be standing there -- even the pictures he turned in shows him placed there, yet it's not on his videotape.
And they did not turn in the video around 7 o'clock when he was on my property. Why was that?
Q Did they come out? I mean, did they come out -- were they --
A I don't know if they were at home.
Q Okay. Have you done anything to have that video analyzed to determine whether it was edited?
A No.
Q So that is your belief, but you don't have any -- anybody that's come out and looked at it, and said, no, that's not --
A Correct.
Q Okay.
A I think we would have to get -- to do that, don't you have to get a copy from the courts, and then have your chain of, whatever, and have it sent directly to someone to check it?
Q I don't know the process. I'm just asking if you had

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done that?
A Okay. Well, I know I can't do it because then you will question that.
Q Looking at paragraph 20, it just talks about the amended complaint being filed.
I have no way of verifying it, but I'm assuming that it was filed on that day, March 8th, 2013.
Anything that you find inaccurate or have concerns about in paragraph 20?
A No. I don't know what the standards are there, the NRS, the codes.
Q Yeah. That's why I'm asking. It seems pretty vanilla.
A Yeah, it's pretty cut and dry there.
Q Okay. So let's take a look at paragraph 21 and tell me when you are done.
A Yeah. That is kind of inaccurate.
Q It's inaccurate? It rolls over to -- I'm sorry.
A It says battering Helmut Klementi. That has never come up.
Q Where?
A Halfway down, line at the end of line 25.
Q Three -- yeah, okay. Battering -- you don't believe --
A Oh, I was thinking battering with the snowplow,

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because I was reading the line ahead. Excuse me.
Q Yeah. Okay.
And this is just the preliminary hearing, correct?
A Yeah.
Q This just refers to the preliminary hearing.
A Yeah. So this is, basically -- let's see. Okay. Yeah, that's correct.
Q Okay. And then on 22, read that and tell me when you are done.
A Okay.
Q Okay. You refer to the last sentence of that paragraph, says the statements of Egon and Mary Ellen were entirely false.
And what statements are you referring to?
A Again --
MR. ROUTSIS: I'm going to object to the form of the question. He didn't write the document.
THE WITNESS: Yeah.
MR. BROWN: Okay.
MR. ROUTSIS: I mean, he is not the author of the document.
BY MR. BROWN:
Q Well, you read it. So you are right. That's a bad question. I'll go back, and I'll redo that.
That, and I jumped to the end.

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So paragraph 22 talks about statements that were made, evidence presented at your criminal trial, established that the plaintiff never used his snowplow to either intentionally place berms of snow on anyone's driveway or batter Egon Klementi with snow and ice.
And then it goes on to say the statements of Egon and Mary Ellen were entirely false.
Understanding you didn't write this, but understanding that Egon and Mary Ellen testified at your criminal trial, what statements -- and I don't need -- if you can't remember specifics, but what general statements do you recall that were false that they provided at trial?
A Well, to me, the way that paragraph is written, what you are asking my opinion, I'm not an attorney on this --
Q And I think you misunderstood my question.
A I must have.
Q Let's go back.
You sat through the trial.
A Correct.
Q You have alleged, among other things, that my client just made false statements, and we have talked about that a little bit.
I believe you have alleged that the other defendants in this case --
MR. ROUTSIS: If I can just pose an objection,

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Counsel.
If you read the transcripts, not only did Mary Ellen Kinion and Egon testify that they called the police --
MR. BROWN: Counsel, Counsel, before you start testifying, I don't want to hear it.
I know you have told me "read the transcripts". I want to know what his knowledge is and what he remembers from trial.
MR. ROUTSIS: Well, it's irrelevant.
MR. BROWN: I don't want you to testify.
MR. ROUTSIS: Well, it's irrelevant, then. If you don't know the record, and you are asking him where this comes from, you don't know --
MR. BROWN: Don't matter whether I know the record. I am entitled to his recollection of what happened.
MR. ROUTSIS: It's irrelevant.
MR. BROWN: It's not irrelevant.
MR. ROUTSIS: It is.
MR. BROWN: It is his recollection. He is a party in this. He has made the allegations.
MR. ROUTSIS: If this is absolutely verified by certified trial transcripts, asking him if he remembers is irrelevant.
MR. BROWN: It's not irrelevant. Because I'm allowed to probe his memory. He has made claims in this case.

MR. ROUTSIS: Carry on. Go ahead. It's just a waste of time.

MR. BROWN: Thank you. It's not a waste of time.

MR. ROUTSIS: It really is.

MR. BROWN: I'm allowed to probe his memory.

MR. ROUTSIS: It really is.

BY MR. BROWN:

Q I'm allowed to probe his memory.

What statements did Egon and Mary Ellen make at trial that you believe were false?

And if you don't remember, just tell me that you don't remember, and I'll move on.

A I'm not, I'm not going to quote them. No, I don't remember.

Q Okay.

A The best, the best evidence would be the trial transcripts.

Q What is your recollection?

MR. PINTAR: Let's take a break.

MR. BROWN: Okay. And I've got about an hour left before I have got to get out of here.

THE VIDEOGRAPHER: We are going off the video record. The time is approximately 3:31 p.m.

(A recess was taken)

THE VIDEOGRAPHER: We are going back on the video record. The time is approximately 3:47 p.m.

MR. BROWN: We took a break, and while we are off the record, counsel had a discussion about continuing this depo to another date and time that is going to be convenient for the attorneys and parties.

In the meantime -- and we are going to work on getting some of the medical records that came up in this deposition.

And Mr. Routsis has also indicated that they will be filing a new motion for leave to file a new amended complaint.

MR. ROUTSIS: When that occurs --

MR. BROWN: Go ahead.

MR. ROUTSIS: Which is really just going to redact and simplify. We're going to put less than more.

Go ahead.

MR. BROWN: And so what we'll do is we will agree at another time, obviously before the discovery cutoff date, to retake or to finish and conclude Mr. Spencer's deposition.

We also did not get to Miss Spencer's deposition, and we'll work with counsel to reschedule that, as well.

MR. ROUTSIS: When is the discovery cutoff?

MR. BROWN: It's not for a long time.

MR. ROUTSIS: Okay.

MR. BROWN: I think it's October.

MR. PINTAR: Experts are -- are we off the record? Are we off record?

MR. BROWN: We can go off the record.

Does counsel agree to that course of action?

MR. ROUTSIS: Yes. Yes.

MR. BROWN: Okay. That's it.

THE VIDEOGRAPHER: This concludes the deposition of Jeffrey Spencer on July 28, 2016, which consists of four videotapes.

The original videotape will be retained by Sunshine Litigation Services.

Off the video record at approximately 3:48 p.m.

(Proceedings concluded at 3:49 p.m.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, DEBORAH MIDDLETON GRECO, a Certified Court Reporter in and for the State of Nevada, do hereby certify:

That on Thursday, July 28, 2016, at the hour of 10:01 a.m. of said day, at 151 Country Estates Circle, Reno, Nevada, personally appeared JEFFREY SPENCER, who was duly sworn by me to testify the truth, the whole truth and nothing but the truth, and thereupon was deposed in the matter entitled herein;

That I am not a relative, employee or independent contractor of counsel to any of the parties, or a relative, employee or independent contractor of the parties involved in the proceedings, or a person financially interested in the proceeding;

That said deposition was taken in verbatim stenotype notes by me, a Certified Court Reporter, and thereafter transcribed into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 225, is a full, true and correct transcription of my stenotype notes of said deposition.

DATED: At Reno, Nevada, this 1st day of August, 2016.

Deborah Middleton Greco

DEBORAH MIDDLETON GRECO
CCR #113, RDR, CRR

Henderson
2400 W. Horizon Ridge Parkway
Henderson, Nevada 89052
Telephone: (702) 477-7774
Facsimile: (702) 477-7778
Henderson (Satellite)
2340 W. Horizon Ridge Parkway, Suite 100
Henderson, Nevada 89052
Telephone: (702) 477-7774
Facsimile: (702) 477-7778
Reno
50 W. Liberty St., Suite 1050
Reno, Nevada 89501
Telephone: (775) 786-4441
Facsimile: (775) 786-4442
Tempe
209 E. Baseline Rd., Suite E-205
Tempe, Arizona 85283
Telephone (602) 845-5500
Facsimile: (602) 845-5502

RANALLI & ZANIEL, LLC
TRIAL ATTORNEYS

George M. Ranalli, Esq.
David M. Zaniel, Esq.
Jason Andrew Fowler, Esq.
Ernest MP Moran, Esq.

Kimberly C. Smith, Esq.
Vicki L. Driscoll, Esq.
Michael T. Nixon, Esq.
John W. Kirk, Esq.
Scott L. Rogers, Esq.
Brett J. Schwartz, Esq.
Lawrence R. Phillips, Esq.
Cher L. Shaine, Esq.
C. Benjamin Scroggins, Esq.
Erin L. Bittick, J.D.
Theodore W. Sell, J.D.
Michael G. Trippiedi, J.D.

Of Counsel
Brent Jordan, Esq., L.L.M.

Reply to: ***Reno Office***

September 29, 2016

VIA BOOTLEG COURIER
Sunshine Litigation Services
151 Country Estates Circle
Reno, Nevada 89511

Re	:	*Klementi v. Spencer*
Case No	:	14-CV-0260
Our File No.	:	3400.650

To Whom it May Concern,

Attached please find the corrections to the deposition transcript of Jeffrey Spencer. A copy of the corrections and this correspondence will be forwarded to all counsel and parties related to the case. Please do not hesitate to contact us with any questions or concerns.

Sincerely,

RANALLI & ZANIEL, LLC

David Zaniel, Esq.
dzaniel@ranallilaw.com

cc: Michael Pintar, Esq.; Douglas R. Brown, Esq.; William J. Routsis, Esq.; Lynn G. Pierce, Esq.; Tanika Capers, Esq.

DMZ/ko
Enc (as stated)

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing 226 pages of my testimony, taken on 7/28/16 (date) at Reno (city), Nv (state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

Page	Line	Should read:	Reason for Change:
6	2	Dale	Incorrect middle name
9	22	Charles	No street type
29	1	WD and Segate	
41	22/24	Alpen	Not Alpine

ERRATA SHEET

Page	Line	Should read:	Reason for Change:

Date: 09/25/16

Signature of Witness

Jeffrey Spencer

Name Typed or Printed

EXHIBIT 4

EXHIBIT 4

PC ATTACHMENT 6

COMMUNITY DEVELOPMENT
1594 Esmeralda Avenue, Minden, Nevada 89423
Shane Pieren
Code Enforcement Officer
spieren@co.douglas.nv.us
(775) 782-6214
FAX: 775-782-6297
website: www.douglascountynv.gov

Building Division
Engineering Division
Planning Division
Code Enforcement

May 31, 2012

HELEN L SCHOENE, TRUSTEE
PO BOX 2326
STATELINE, NV 89449

RE: VIOLATION OF DOUGLAS COUNTY CODE AT 321 CHARLES, STATELINE, NV
APN: 1318-23-810-085 CASE NO.: 12-052401

Dear Ms. Schoene:

In response to a number of reports received by Douglas County regarding the above referenced property, an inspection of the site has verified violation(s) of **Douglas County Codes 10.12.030, 20.690.030 (U), 20.690.030 (F), 8.14.020 and 20.692.080 (A).**
The County requires that you: **1.Remove from the property or store all unlicensed and junk vehicles in a garage.**
2. Cease parking the commercial truck and trailer on the street. It is unlawful for the owner or driver of a vehicle or trailer, which is rated by the manufacturer's nominal rating in excess of eight thousand unloaded pounds or which exceeds twenty-four feet in length to stand or park the vehicle or trailer at any time upon any public street, highway, or alley except for purposes of loading and unloading passengers, materials or merchandise in a residentially zoned area.
3. Storage of the commercial truck and trailer is not permitted on residentially zoned lots. Nor is the storage of the back hoe in the front yard.
4. The newly built fence does not meet height requirements for front and side yards adjacent to a street. Fences for front and side yards adjacent to the street are limited to 3 feet in height. Please lower fence heights to their permitted height.

Douglas County requires that these conditions be corrected within **fifteen (15) days** from the date of this letter.

Property owners within the County are required to maintain their property in a manner, which has a positive affect on the overall safety and appearance of our community. No property within the County may be maintained in a manner, which downgrades the value, use, enjoyment, or safety of one's own, or surrounding property.

Your cooperation in this matter is appreciated. If you desire additional information, you may contact me at (775) 782-6214/spieren@co.douglas.nv.us.

Respectfully,

Shane Pieren
Code Enforcement Officer

Enclosures

MAILING ADDRESS:P.O. BOX 218, Minden, NV 89423

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OFFICE OF THE DISTRICT ATTORNEY
DOUGLAS COUNTY

Mark B. Jackson
District Attorney

November 13, 2012

Certified Mail: 7010 0780 0001 5686 9617

Mailing Address
P.O.Box 218
Minden, Nevada 89423

Carson Valley Office
1038 Buckeye Road
Minden, Nevada 89423
775-782-9800
775-782-9807 (fax)

Lake Tahoe Office
175 U.S. Highway 50
Stateline, Nevada 89449
775-586-7215
775-586-7217 (fax)

Child Support
P.O.Box 1240
Minden, Nevada 89423
775-782-9881
775-782-9880 (fax)

Douglas V. Ritchie
Chief Civil Deputy

Thomas W. Gregory
Chief Criminal Deputy

Steven D. Schultz
Chief Investigator

Jan Budden
Office Manager

Connie Wenner
Child Support Coordinator

Jeff and Marilyn Spencer
P.O. Box 2326
Stateline, NV 89449

Dear Mr. and Mrs. Spencer:

On Monday, November 5, 2012, I along with Douglas County Code Enforcement Officer Shane Pieren and Douglas County Engineer Erik Nilssen inspected the fence you constructed on your property located at 321 Charles Avenue, Stateline, Nevada which is adjacent to the intersection of Charles and Juniper streets. The purpose of the inspection was to reassess the fence and any public safety concerns created by the fence as a result of decreased visibility to motorists traveling through the intersection of Charles and Juniper.

After conducting its review, the County determined that your fence creates a public safety hazard because it is located within the right-of-way, and does not allow sufficient visibility to motorists travelling through the intersection. Required sight lines at the intersection under standard street engineering guidelines are totally obscured by the fence, which does not allow motorists to adequately see crossing traffic before entering the intersection. The public safety hazard is heightened by the coming winter season which is likely to make travel through the intersection even more difficult due to snow and ice on the roadway, and the grade of Charles Avenue approaching the intersection with Juniper

As you know, you were previously notified of the non-compliant fence by Douglas County Code Enforcement. You first received notice of the code violation on May 31, 2012. You responded by indicating that you wanted to seek a variance from the County to allow your fence to remain on your Property. Under appropriate procedure, a variance should be sought *prior to* a property owner constructing a non-compliant structure, instead of the non-complaint structure being constructed before a variance is sought. In any event, you have not applied for a variance to date, although I am informed that you attended a pre-variance conference with County personnel on or about October 17, 2012. I further understand that you were given a deadline of December 4, 2012 to file your variance application, if any.

Notwithstanding your possible variance application and the ultimate resolution of any such application, due to the clear public safety hazard created by your non-compliant fence, the County requires that you remove the vertical fence boards from your fence immediately (you may leave the fence posts and framing in place pending your variance application). This will ensure that motorists passing

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through the intersection of Charles and Juniper have sufficient visibility to safely travel through the intersection. Should your variance application be denied, the remaining fence posts and framing must be removed. Should your variance application be approved, the vertical fence boards can be reattached upon notice of the variance approval by the County.

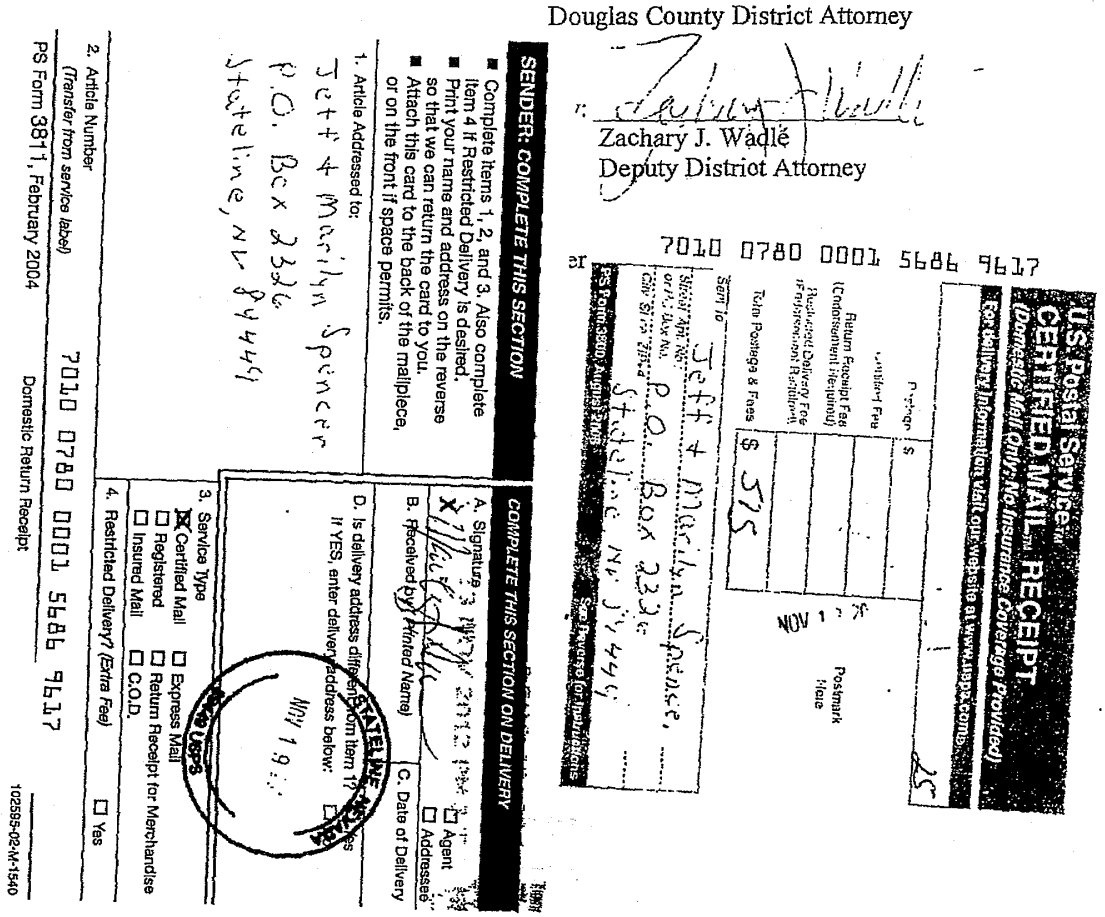
The County intends to conduct an inspection of your Property on November 28, 2012, to ensure compliance with the County's requirement that you remove the vertical fence boards from your fence. In the event that you do not comply, the County will have no choice but to initiate legal proceedings to obtain a court order directing you to remove the vertical fence boards, in addition to all other available legal remedies.

Should you wish to discuss this matter further, please contact me at 775-782-9803.

Thank you,

MARK B. JACKSON
Douglas County District Attorney

By: _____
Zachary J. Wadlé
Deputy District Attorney



OFFICE OF THE DISTRICT ATTORNEY
DOUGLAS COUNTY

Mark B. Jackson
District Attorney

November 2, 2012

Mailing Address
P.O.Box 218
Minden, Nevada 89423

Carson Valley Office
1038 Buckeye Road
Minden, Nevada 89423
775-782-9800
775-782-9807 (fax)

Lake Tahoe Office
175 U.S. Highway 50
Stateline, Nevada 89449
775-586-7215
775-586-7217 (fax)

Child Support
P.O.Box 1240
Minden, Nevada 89423
775-782-9881
775-782-9880 (fax)

Douglas V. Ritchie
Chief Civil Deputy

Thomas W. Gregory
Chief Criminal Deputy

Steven D. Schultz
Chief Investigator

Jan Budden
Office Manager

Connie Wenner
Child Support Coordinator

Peter and Rowena Shaw
P.O. Box 3006
Stateline, NV 89449

Dear Mr. and Mrs. Shaw:

This letter responds to your correspondence dated October 22, 2012, regarding the fence erected on the Spencer's property located at 321 Charles Avenue, Stateline, Nevada. Thank you for bringing your concerns to our attention regarding possible traffic dangers at the corner/intersection of Charles and Juniper given the impending Winter season. The County intends to review the site and current conditions in light of your concerns and will take corrective action if necessary. As to your questions related to possible liability for any accidents at the intersection, the County cannot answer such questions given the many variables that may bear upon liability in a hypothetical accident with unknown circumstances. In any event, the County takes your concerns seriously and will promptly review the intersection to determine if further action must be taken. Should you have further questions, please contact me at 775-782-9803.

Thank you,

MARK B. JACKSON
Douglas County District Attorney

By: _____
Zachary J. Wadle
Deputy District Attorney

ZJW:jf
cc: Shane Pieren, Code Enforcement Officer

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RECEIVED
OCT 24 2012
DOUGLAS COUNTY
DISTRICT ATTORNEY

October 22, 2013

Mr. Mark Jackson, District Attorney
P.O. Box 218
Minden, NV 89423

Mr. Jackson,
This letter is a follow-up to the one we sent last September regarding this ongoing issue. We received an update from Mr. Shane Pieren, Code Enforcer, that the Spencers attended the scheduled October meeting and was given a December 04, 2012 deadline to submit their application for a variance to retain the fence height, as is, and pay the requisite filing fee. If the application is finally submitted, it will take until January, 2013 to arrange for a hearing with county commissioners.

Given the fact that the Spencers erected the fence last Memorial Day weekend, motorists and pedestrians have been challenged and forced to contend with the hazardous blind corner for the past five months. Evidently, our neighborhood will continue to be exposed to the perilous intersection as this case drags.

At the corner of Charles and Juniper where the blind corner exists, the terrain is inclined and is on the shady side of the street. Consequently, during winter, ice builds up. Vehicles have to accelerate or risk sliding backward. Speeding up the slope on a blind intersection will inevitably result in an accident. We have seen children walking from the bus stop, drop to their knees to clamber up the slippery slope. Drivers cannot see children crouched on the road! These incidents are not exaggerations. We witnessed and experienced such occurrences multiple times. Dreadfully, the first winter snow of the year fell last October 22, 2012.

Our questions at this point are:

Is Douglas County liable for any damage and/or injury to motorists and/or pedestrians since the county granted several extensions for filing to the Spencers, thus, allowing the "danger to the public" situation to persist.

Are the Spencers liable for any damage and/or injury for creating the public safety issue?

We would appreciate a reply.

Sincerely,

Peter Shaw and Dr. Rowena Shaw
P.O. Box 3006
Stateline NV 89449
(775) 588-2890

Cc: Mr. Zach Wadle, Community Development, Douglas County Commissioners, Planning Commission

OFFICE OF THE DISTRICT ATTORNEY
DOUGLAS COUNTY

Mark B. Jackson
District Attorney

October 8, 2012

Mailing Address
P.O.Box 218
Minden, Nevada 89423

Carson Valley Office
1038 Buckeye Road
Minden, Nevada 89423
775-782-9800
775-782-9807 (fax)

Lake Tahoe Office
175 U.S. Highway 50
Stateline, Nevada 89449
775-586-7215
775-586-7217 (fax)

Child Support
P.O.Box 1240
Minden, Nevada 89423
775-782-9881
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Douglas V. Ritchie
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Steven D. Schultz
Chief Investigator

Jan Budden
Office Manager

Connie Wenner
Child Support Coordinator

Todd L. Torvinen, Esq.
232 Court Street
Reno, NV 89501

Re: *Marilyn & Jeff Spencer vs. Bruce Taylor,* Case No: PO 12-0005
Notice of Subpoena Duces Tecum for Douglas County Community Development Department

Dear Todd:

Enclosed are copies of the responsive records to the Subpoena Duces Tecum for 321 Charles Avenue, Stateline, NV 89449 from April 1, 2010 to present. Below is also the Privilege Log for the records produced.

Should you have any questions, please do not hesitate to contact this office.

PRIVILEGE LOG: ***Spencer v. Taylor***

Bate Stamp No.	Date	Doc Type	Document Summary
DC01-02	05-24-12	Complaint Form	Reporting Party Redacted due to pending criminal investigation/anticipated prosecution, *Donrey v. Bradshaw 106 Nev. 630 (1990).*
DC35 & 41	08-29-12	E-mail	Nonresponsive, Redacted information regarding a distinct and separate code enforcement case involving a different address.
DC42	09-04-12	E-mail	Attorney Client Privileged Communication E-mail exchange between Shane Pieren and Zach Wadle, DDA.

Sincere Regards,

MARK B. JACKSON
Douglas County District Attorney

By: Cynthea Gregory
Cynthea Gregory
Deputy District Attorney

CG:jaf
Enclosures
cc: Mimi Moss, Community Development Director (w/enclosures)

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2567

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A I had no contact with the Spencers.
Q Are you aware as we sit here today whether they retaliated in any capacity against Egon or Helmut Klementi?
A I don't know about Helmut. I know about my husband. But I was not there.
Q Okay. Well, considering the fact that we may not be able to get your husband's testimony, could you tell us what they were?
What retaliations were you aware of?
A My husband came home one evening, and when he was walking his dog, and he said that Mr. and Mrs. Spencer confronted him.
And that Mr. Spencer say to my husband, I punch you in the face.
Q Okay. That he would punch him in the face?
A Yes.
Q So a threat --
A If he comes around again, threatening, I punch you in the face.
Q Let's go over that a little bit more, because I'm not sure I understand it.
So your husband came home one day after walking his dog, and your husband told you that he had met both Mr. and Mrs. Spencer somewhere outside?
A Around the area. Around, yeah, where they build the

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fence.
Q Okay. And the specific conversation that you, your husband told you was that Mr. Spencer said something?
A Yes.
Q And what specifically did he say, then?
I heard that "I'm going to punch you in the face", but you also said some other things.
If you come around here again or --
A This are my words. This are not my husband's words.
Q Do you remember specifically what your husband said?
A I remember very clear that he said that Mr. Spencer say to him, I punch you in the face.
Q And -- I'm sorry. I cut you off.
A No.
Q And you're summarizing or generalizing the "if you come around here again".
When you said "if you come around here again", that may not have been exactly what your husband had said, but that's what you are summarizing it to be.
Do you not understand?
A No. No, I don't. Can you phrase it different?
Q I can.
So the conversation was that Mr. Spencer told Egon that he would punch him in the face.
I guess there was a condition to that: I'm going to

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punch you in the face if something else happens.
I'm trying to find out what that condition was. If they -- if you continue to fight me on the fence, if you come around here again, or do you remember what the condition was that the threat was made?
A I don't know what Mr. Spencer had in mind by saying that.
Q Okay. And whatever your husband said, you don't recall the exact words?
A No.
Q What did you and your husband do with regard to that threat?
Did you contact the police?
A No. My husband was quite upset and shaken up.
Q Okay. Did a report get made to the sheriff's office?
A No.
Q Did you file a restraining, you or your husband, file a restraining order at that time?
A No.
Q Did you notify any of the neighbors about that conversation?
A No.
Q Okay. And that, approximately, that was after the 18-wheeler and before the fence or after the fence?
A During the fence.

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Q During the fence.
Before the planning commission meeting, or after the planning commission meeting?
A I don't remember.
Q Okay.
A Oh, I'm sorry. I do remember. The planning commission was in December.
Q December of --
A 2012.
Q Okay. So the planning commission, when you all went down there was in 2012, and that was about the fence?
A Correct.
Q Okay. That wasn't the same meeting, the KGID meeting, about the snow berm, so that's a different issue, right?
A Yes.
Q Okay. All right. So the threatening -- your husband told you about the threatening comments by Mr. Spencer.
That would have been before December 2012?
A Yes.
Q Okay. But you are not sure how long before December 2012?
A Yeah. It was around the time when they build the fence.
Q Okay. So around December 2012?
A No. May 2012, they build the fence.

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Q And that's when the threatening comments were made?
A Correct.
Q Okay. And then did the fence continue to get built, up until December 2012 when the planning commission meeting happened?
A The fence was built over the Memorial weekend. It was completely built.
Q Okay. And the meeting with the commission wasn't until December 2012?
A Correct.
Q All right. So were there any other complaints or disputes that you made to any government agency other than the 18-wheeler and the planning commission with regard to the fence?
A No.
Q Were there any other threatening remarks made by Mr. Spencer or Mrs. Spencer other than the one we talked about between the time that you first met the Spencers up until December 18th of 2012?
A No.
Q Is there a reason that you didn't, when I say "you", is there a reason that you or your husband didn't make a report, or call 911, or file a restraining order if Mr. Spencer threatened to physically harm your husband?
A We didn't think about it. We never had anything to do with police or sheriff. And he was just shaken up, and we

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talked about it.
Q Okay. But you called the Douglas County Sheriff's Department about the 18-wheeler, though, right?
A Yeah. To find out if it's allowed to park in a residential area.
Q Okay.
A Because it was a hazard. It blocked half of the street. And people had a hard time to go around, from, coming from Juniper or driving up from Meadow Lane.
Q I understand.
Helmut and Egon are twin brothers?
A Yes.
Q Okay. And where does -- I mean, I could ask Helmut too, where does Helmut live relative to you guys?
A Two streets lower. It's called Pine -- Pine Ridge?
Q I'll ask him. That's fine. I just want to know the approximate location.
Between May of 2012 and December of 2012, how often would you see Helmut?
A Nearly daily.
Q Did Helmut typically come to your house, or did you guys go to Helmut's house or a combination of both?
A Mostly he comes to our house.
Q Did Helmut ever report -- did Helmut ever speak to you about any physical comments or threatening comments made by the

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Spencers prior to December 18th, 2012?
A To us?
Q Yes.
A No.
Q Helmut never told you or your husband about any threatening comments made by the Spencers before December 18th, 2012?
A No.
Q Okay. All right. So let's go to December 12, 2012.
There was a KGID, was there a KGID meeting on December 12, 2012?
A No. 18th.
Q Okay. Tell me about the snow plowing issue that -- you were here during all these depositions last week?
A Uh-huh (affirmative).
Q Do you have any information regarding the snow removal issues?
I guess, let's start with, you heard testimony last week that Mr. Spencer put snow on Egon in his driveway at some point.
Did you hear that testimony?
A Yes.
Q And do you remember when that was?
A December 12.
Q Okay. And were you home at that time?

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A No.
Q Where were you at?
A I was working.
Q Okay. I didn't get that part.
Where do you work at, ma'am?
A You have to do your homework.
Q I have to do my homework.
A No. I'm working at Harrah's. Harrah's Casino in Stateline.
Q And what do you do there?
A I work for entertainment.
Q The entertainment department?
A The department, yeah.
Q What do you do specifically for the entertainment department?
A I take care of all the entertainers, bands who come to the South Shore Room or outdoor concerts.
Q Okay. So Miss Kinion described a job similar to that, I believe, when she was deposed.
Is it a similar job that you have?
A I think my job is more -- I don't know what she said. I don't remember.
Q That's fine.
So if Harrah's books a concert or a band, they contact you, and they say, you are responsible for meeting the needs of

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the band?
A Yeah. When they make -- when Harrah's makes a contract with the agency, then they send you a letter, it's called a hospitality letter, or technical letter.
It comes to me. I check it out. Make my decision, you can have this, or you don't have this.
And then the band has to be in advance, and then I deal with the tour manager, and then the band arrives. I have everything ready for them.
I arrange meet-and-greet. Sometimes change their transportation and so on.
Q Okay. That's not a full-time job, then?
A Yes. It's a full-time job.
Q Okay. So what days of the week do you work?
A I work five days a week, 4 to 5 days a week.
Q Is it Monday through Friday?
A I can make my own days, depending on when we have the shows.
Q And about how many hours a day do you work?
A It depends. From 4 to 13, 14. Depending on what kind of show.
Q And the hours depend upon what time the show is?
A Correct.
Q Are you required to be present at the time of the show?

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A Yes. I am there before the band arrives, and I'm the last one leaving from the dressing room area.
Q Okay. And how long have you had that position in the hospitality department of Harrah's?
A 27 years.
Q And has it been the same position over that course of the 27 years?
A No. I started out as a dresser for the Broadway shows for the stars.
And then I got promoted, and --
Q And when you say a dresser for the Broadway shows, at Harrah's?
A Yes.
Q Like a costume?
A Meaning, yeah. You have to take care of the costumes of the leading lady. You have to do quick changes in the backstage area. And take care of all her need.
Q Okay. You did that for the early years of the 27 years?
A I did this '89, from May, for three months. Started May '89.
Q Okay. And then how long did you do that for up until the time you were promoted to the hospitality department?
A Oh, it gradually changed with the shows. You never know. One year, we had Broadway shows. The next year you had

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bands.
Q Okay. Did you do anything else within Harrah's other than those two jobs?
A I was also worked for special events.
Q For the past 27 years, have you had any other employers other than Harrah's?
A No.
Q Before Harrah's, what did you do?
A I was in show business for 27 years.
Q Okay. And can you tell me about that?
A My husband, my brother-in-law, and I, we did a bicycle act.
Q Okay. And when did that start? In Austria?
A I started with the Klementi Twins being on stage in Paris, France, 1965.
Q Okay. So -- which is the approximate time you were married?
A Yeah. I got married, was 24 or 25.
Q Okay. So soon after your marriage is when you joined Egon and Helmut?
A Correct.
Q In their act?
A Correct.
Q Prior to that, had you had any type of entertainment --

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A No.
Q -- experience?
A No.
Q When you met your husband, what was him and his brother doing? Like, what was the act at that time?
A They were already ten years in show business as Klementi Twins and traveled worldwide.
Q And what was the show that they did, a bicycle act?
A A bicycle act for two.
Q I'm sorry. A bicycle act?
A A bicycle act for two.
Q And tell me what that means, a bicycle act for two? Did they both ride bicycles?
A Yeah. I have a brochure in case you like to see it.
Q I would like to see it.
A Instead of explaining this to you. Because people don't understand.
Q I don't understand.
So if you have it, I would like to see it. Can you leave it with us?
A Sure. You can try to practice.
Q Well, I assume it takes a lot of work to be in show business.
A Okay. Okay.
Q When was this brochure made?

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A Oh, this is in the '80s.
Q **Okay. And this is in Caesar's Palace in Las Vegas?**
A This is different pictures.
Q **Okay.**
A I can tell you where the pictures were taken.
Q **So they were international?**
A Yes.
Q **This was an international act?**
A Yes.
Q **Okay. All right. So when you met -- do you all want to see this?**

MR. PALMER: Sure. Have not seen this before.

BY MR. ZANIEL:

Q **When you met your husband, then, he was part of the act, and then you started to go on tour with the act?**
A Right.
Q **Okay. And you went internationally wherever they did?**
A Correct.
Q **What did you -- it was a bicycle act for two.**

What, where do you come in?

A Well, I met him in Austria. Fell in love. Dated two years, and he asked me to marry.
Q **No. I understand that.**

But where did you come in, in the act, if it was a bicycle act for two? Did you perform?

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A No.
Q **Okay.**
A You mean what I did private?
Q **I wanted -- my question was, did you perform in the show?**

Or did you just follow your husband with Helmut as they toured around?

A I started being in the act 1965.
Q **Okay. And what was your role in the act?**
A I was always on top.
Q **Okay.**
A I mean --
Q **So it was a three-person show?**
A Yes.
Q **And how long did that act continue?**

A better question is, when was your last performance?

A May '89 at Harrah's in Lake Tahoe.
Q **And is that the time that you started working for Harrah's in the capacity that you are?**
A Three months after, I started with Harrah's.
Q **Okay. After the last performance at Harrah's in May of 1989, do you know if your husband worked in any capacity after that?**
A No. He had hip replacement after we quit show business in May '89.

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Q **So Egon had hip replacement?**
A Correct.
Q **Which hip did he have replaced?**
A The right one.
Q **And then from that point forward, he didn't work at all?**
A No. He was an artist. He did art and gave lessons and was in the art association.

And then later on, he started driving limousines for Harrah's.

Q **Okay. So let's talk about the artist.**

So your husband was an artist. Did he have his own studio, or did he work out of the house on Meadow Lane?

A He worked out of the house. At this time, he had no studio.
Q **Has he ever had a studio?**
A No. We just built on a room, and that's where he did.
Q **His artwork?**
A Yeah.
Q **And is it painting? Is that the type of art?**
A He is doing painting, mixed media, photography. Sculptures.

He is a multi-talent, multimedia, I have to say.

Q **Okay. All right. And then he also drove limos for Harrah's.**

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How long did he do that job for?

A I think he did it for 6, 7 years.

And after that, he was a butler for Harrah's for the VIPs at the 16th floor.

Q **Okay. Now if you know, I'm going to ask Helmut, but if you know, did Helmut have hip replacement surgery at some point as well?**
A No.
Q **Okay. So I think that takes us through your career. Yes?**
A Yes.
Q **All right. So let's go back to where we left off before we got into that.**

The December 12, 2012, incident. You were not home at the time you said?

A No.
Q **How did you find out about this incident?**
A My husband called me at work.
Q **Okay. And approximately what time did your husband call you, if you remember?**
A Must be around noonish, 1 o'clock, something like that.
Q **And when your husband called you, what did he say?**
A He had a teary voice, and he said, guess what happened to me?

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That Mr. Spencer put snow and debris over his body, when he was in the driveway.

Q Okay. That was pretty specific.

Was that the exact words, or are you just kind of summarizing?

A I'm summarizing what happened.

Q Fair enough.

And in response to that, what did you say?

A I said, should I come home? And he said, no. He can deal with it.

Q Okay.

A He knew it was a difficult day for me not to come home, so he said he can deal with it.

Q Okay. What do you mean it was a difficult day for you?

A I had a lot of work there.

Q Oh, busy day?

A A busy, yeah, sorry.

Q All right. So did you ask Mister -- your husband, if he was injured in this incident?

A I don't remember.

Q Did you recommend that the police be called for that incident?

A No.

Q Okay. How long were you on the phone with your

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husband about that? Couple minutes?

A Yeah.

Q Do you know if the police were called about that incident?

A Yeah, he told me later.

Q Okay. What time did you get home that day?

A I don't remember.

Q Did Egon, did he say he had any physical injuries as a result of that incident?

A No.

Q Did you and your husband ever talk about that incident after that day?

In other words, you had a phone call what happened.

When you got home from work, did you guys talk about it again?

A Probably.

Q You don't have any specific recollection of conversations?

A No.

Q Okay. Did Egon go show you where he was standing when this happened?

A He said in front of the driveway, near to the street.

Q Okay. And did he describe with any detail how the snow came out of the plow at all or anything like that?

A No, he said he saw him coming. And just came over his

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body.

Q I just want to make sure.

Up until that point, with regard to snowplowing, you don't have any information about Mr. Spencer doing anything inappropriate with regard to his plowing around your home; is that true?

A Yeah. Once we were bermed-in.

Q Okay. So when was that?

A Sometime in December.

Q Of 2012?

A I assume so, yeah.

Q I don't want you to assume.

A No. I say so. Sorry.

Q That's okay.

So in December 2012, was that before or after the throwing of the snow onto Egon?

A This was before.

Q Okay. So before December 2012 there was an incident where you were bermed-in?

A Correct.

Q Did you see that happen?

A No.

Q As we sit here today, do you know for a fact that Mr. Spencer was the operator of the plow that bermed you in?

A Yes.

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Q How do you know that?

A Because I saw him coming from the Meadow Lane, driving into Charles, to his house.

He parked his snowplow there and went in his house.

Q Okay. Was that after or before the berm was in your driveway?

A I had the berm there already.

Q Okay. So just so I am clear.

You didn't see the snow being bermed into your driveway.

You observed Mr. Spencer get out of a plow that was parked in front of his residence and go in.

And your conclusion was that it must have been Mr. Spencer that was operating the plow at that time?

A Because he came -- I don't know where east and west is, sorry.

He came by our house.

Q Yes.

A I didn't see that.

And usually to turn around, end of Meadow Lane, and come back down Meadow Lane, and I saw the snowplow going from Meadow Lane in the intersection going up to his house, and he stopped there, and he went into his house.

Q Okay. So he passed -- a snowplow passed your house on Meadow Lane.

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Went to the end, made a U-turn, came down Meadow Lane, and then made a left on Charles?
A Correct.
Q Okay. And you saw the snowplow make the left turn onto Charles?
A Yes.
Q And you watched the snowplow from that point up until it stopped, and you saw Mr. Spencer get out?
A Correct.
Q Where -- were you outside or inside at this time?
A Inside.
Q Where were you inside your home?
A In the -- in our computer room facing Meadow Lane, second floor.
Q Okay. So your home is a two-story home, then?
A Correct.
Q You were on the second floor, which you labeled the computer room, and there is a window there, and that faces out to Meadow Lane?
A Meadow Lane.
Q From that vantage point, you were able to see the snowplow go by on Meadow Lane?
A Correct.
Q You were able to see the snowplow make a left turn on Charles?

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A Yes.
Q Were you able to see Mr. Spencer from that vantage point?
A I saw the snowplow.
And I saw that Mr. Spencer is parked at his house and came out of the snowplow, so he was in the snow driving by.
Q I understand that.
But just from your vantage point of being in the computer room, you were able to see the parked snowplow, and Mr. Spencer get out of it?
A No. We have more windows.
I followed. I went to a different room and looked where the snowplow is going.
Q Okay.
A Sorry about that.
Q That's fine. I just want to follow that.
A Yeah.
Q So did you stay on the second floor, or did you go down to the first floor to follow the snowplow?
A No. I stayed on the second floor.
Q So there is a window on your second floor that looks out over Charles Street?
A Correct.
Q Okay. When you were in the computer room, were you able to observe the berming-in part of it, or when did you

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realize that you were bermed-in?
A When I watched the snowplow going to Charles, I came back to the room, and then I saw that we had the snow berm there.
Q Okay.
A And my husband saw it earlier.
Q So your husband was home at that time, as well?
A Yeah, he was downstairs.
Q Okay. And we talked about berming-in, I think a few times, and I guess for definition purposes, let's be on the same page with it.
So berming-in, as far as you would define it -- I don't want to testify for you, but I just wanted to make sure I understand.
Berming-in is when snow, ice, debris is deposited in front of your driveway making it impossible for you to enter or exit your driveway?
A Correct.
Q Would you define it any other way?
A No, I agree with you.
Q Okay. On that particular day, which was before December 12 of 2012, did any other driveways that you could see have any berming-in issues?
A Before this time?
Q Before that time?

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A Yes.
Q That was -- let me go back.
On that day, whenever that day was when you got bermed-in, it was before December 12.
You are not sure of the exact day, though?
A No. Sorry.
Q But on that specific day that you watched the snowplow come around, when you looked out the window, did other driveways also have bermed-in issues?
A I didn't check on this day.
Q Okay. But on prior days, you had seen that?
A Yes.
Q Okay. So we can talk about that in a minute.
As a result of that berming-in issue, did you contact anybody, on that day now, the day that you actually observed the snowplow come around.
Did you contact the Douglas County Sheriff's Office?
A No.
Q Did you contact KGID?
A No, I did not.
Q Did you make any reports to anyone?
A I did not.
Q Okay. How did the snow and debris get out of the berming-in?
Did your husband have to go out and shovel it?

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A We both had to shovel it, at least to make one space so we can leave with the car.
Q Okay. Did you or your husband ever go talk to Mr. and Mrs. Spencer about that?
A No.
Q Did you take any pictures of that?
A No.
Q Did your husband take any pictures of that?
A No.
Q Did Helmut take any pictures of that?
A No. He doesn't live there.
Q Okay. So then you mentioned some other berming-in issues that you observed, but weren't part of, yourself?
A We were always included in different berms, too.
Q So that -- before December 2012, before December 12, 2012, when you specifically have that recollection of the snowplow coming around, prior to that, you also had issues of being bermed-in?
A Yes.
Q Okay. And how many times would you say that you have been bermed-in?
A Oh, I could not tell you.
Q More than ten, or less than ten?
A Less than ten. I don't know.
Q I don't want you to guess at anything.

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A So I don't know.
Q Okay. But more than one?
A Yes.
Q Have you ever taken any photographs of your driveway in a condition where it's been bermed-in?
A I did not.
Q Did Helmut or Klementi -- or did Helmut or your husband take any photographs?
A Helmut did some pictures.
Q Okay.
A December 18th.
Q Okay. Before December 18th -- let's go from December 12th right now.
Before December 12th, did anybody that you are aware of take any pictures of bermed-in areas?
A I don't know.
Q As we sit here today, have you ever seen any photographs of any bermed-in driveways before December 12th, 2012?
A I don't think so.
Q Okay. But it happened, but there was just no photos?
A Yeah.
Q Were there any complaints made by you or Egon or Helmut to KGID about the berming-in issue?
A Yeah. I think, I believe my husband went on

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December 12th, when this happened, he reported it to KGID.
Q Okay. Now it had happened before, though, correct? The berming-in had happened before?
A Yes.
Q At least one time we know?
A Yes.
Q There was no complaints made at that time?
A No.
Q On any of those prior times, do you have any evidence that Mr. Spencer was operating the plow at that time?
A No.
Q Okay. Is there a reason that it had happened on prior occasions, and there was no complaints made to KGID, but on December 12th, there was a complaint made?
A This was when he got sprayed with the snow and debris.
Q Okay.
A So he had to report it.
Q Okay. The one time, though, that you actually observed, and I don't want to keep asking the same question.
But the one time that you actually observed Mr. Spencer coming around Charles Street and getting out of his plow, that was before December 12, 2012?
A Correct.
Q But you didn't report it, then?
A No.

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Q And that particular time wasn't the first time that you had been bermed-in?
A Yes.
Q Is there a reason you hadn't reported it up through that time?
A We live in a snow country. We know you have certain berms.
But if the berms are too high, like on this one day, then, you know, it's different.
Q Okay. So just so I'm clear, then.
Up until that time before December 12th, 2012, there was berms, but you didn't think they were too high?
A Good question. There were some berms too high.
Q But how come you didn't report those?
A We reported all this December 18th.
Q No. I understand that.
But how come you didn't report it at the time?
A We don't run every time to an office and report it.
Q Okay. All right. December 12th happens.
Your husband makes a complaint to KGID.
Do you know if he physically went down and wrote a report, or did he just call?
A I think he went down physically.
Q Okay. Have you ever seen a copy of a report that was written on that day?

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A No.
Q All right. So that's December 12th, 2012.
The incident that we're talking about is December 18th, 2012.
A Yes.
Q What happened between December 12, 2012, and December 17th, 2012, the day before the incident, regarding you and the Spencers, anything?
A On December 17th?
Q From December 12th, when your husband had snow on him, up until the day before of this incident.
Were there any incidents involving you and the Spencers with regard to any snow berm issues or any retaliation or any disputes?
A No.
MR. PINTAR: Dave, can we take a break? I need to make a phone call.
MR. ZANIEL: Yes.
(A recess was taken)
BY MR. ZANIEL:
Q All right. So we're back on the record.
We're going to mark as Exhibit 8, next in order, the Klementis' brochure that talks about their act.
And we're going to get a color copy made by the court reporter to put in there as Exhibit 8, so we'll --

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MR. PINTAR: Dave, can I see that? I'll bring it back.
BY MR. ZANIEL:
Q That's fine.
All right, ma'am. So we kind of left off in between December 12th and December 17th, that time frame now.
Leading up to the day of the incident that we're really here to talk about today.
But in between that time frame, I just want to make sure that nothing happened that you can recall with regard to any disputes or berming issues or anything like that?
A On December 17th, we had a berm against our fence on Charles.
Q Okay. And so Charles Street there, that's not your -- there is a circular driveway there?
A We have a circular driveway.
Q Where do you typically park your vehicles? On Charles or on Meadow Lane?
A On Meadow.
Q Okay. So that circular driveway is not in use?
A No. Not in winter. No.
Q All right. I guess, let me just -- we have, I think, one of the exhibits shows -- maybe we didn't.
Yeah, okay. So in Exhibit Number 7 here, this is your circular driveway?

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A Correct.
Q And that's Charles Street?
A Correct.
Q Is that ever used for vehicle traffic?
A No.
Q Okay.
A Very seldom.
Q But there are operating gates that open?
A Yes.
Q Okay.
A Two gates.
Q Okay. Now the berm on the 17th that you are referring to, if we're looking at Exhibit 7 here, where -- could you just point for me where those were?
A Can I take this?
Q No, I don't want you to --
A I don't mark it. Just with my finger.
Q Okay. So --
A Yes.
Q More towards -- and you are not good at north, south, east or west, but more toward the Spencers?
A Yes, before our --
Q Okay. And you say it was bermed against your fence?
A Yes.
Q How far is your fence from the street, do you know?

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A Three feet.
Q From the street?
A Yeah.
Q Three feet? Okay.
Were there any photographs taken of that berm on the 17th?
A My brother-in-law tried to take a picture.
Not on the 17th.
Q Helmut?
A Yes. I'm sorry. Helmut.
Q So Helmut tried to take a photo of the berm on -- that was done on the 17th.
Did he take, did he try to take the pictures on the 17th?
A No. On the 18th.
Q Okay. What time of day did the berm happen on the 17th?
Was it daytime or nighttime?
A I couldn't tell you.
Q How did you realize that there was a berm there? Did you see it, or did somebody tell you?
A I don't remember.
Q Okay. Did you see the berm, though, at any time after you first got notice of the berm?
A Yes.

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Q When you say Helmut tried to take photos of the berm, he did that not on the 17th, but on the 18th?
A Correct.
Q Okay. Was he present at your house on the 17th, Helmut. Was Helmut present at your house?
A I understand. Yes.
Q Okay. But no photos were taken on the 17th?
A No.
Q You mentioned Egon is into photography, as well?
A Yes.
Q Did Egon ever take any photographs of any berm issues that you are aware of as we sit here today?
A I don't know.
Q Have you seen any photos that Egon has taken of any of the berm issues?
A No.
Q The berm on the 17th, you didn't see the berm being deposited there?
A No.
Q Do you know if anybody saw that?
A I don't know.
Q You don't know who would have done the berm, "who" being the snowplow operator, which snowplow operator would have deposited the berm there?
A I don't recall.

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Q Do you know how many snowplow operators there are that plow that particular neighborhood?
A No.
Q Do you know how many pieces of equipment are responsible -- how many different types of plows, and those types of things, the type of equipment, and the number of equipment that plow that neighborhood?
A No.
Q Tell me about the week between the 12th and the 18th in terms of weather.
What you remember? Do you remember that week being -- snowing at all during that week?
A Yeah. We had snow on the ground.
Q Okay. If you remember, great, if you don't, just let me know. We can probably look it up on a weather forecasting station.
But do you know how much snow you received that week at all?
A No.
Q The week between the 12th and the 18th?
A No.
Q Okay. So that takes us to December 18th of 2012.
Do you remember what time you got up that day?
A No.
Q Do you remember if you worked that day?

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And to help you, we might be able to see from the police report what day of the week it was, and that may assist you in your recollection.
Sometimes the police reports have it, sometimes they don't.
I don't see the day on here, and I'm not going to look through entire report to see it.
As we sit here today do you know what day -- oh, Tuesday, December 18th. It was a Tuesday.
Do you remember, does that help you know what you did on that day on December 18th of 2012?
A No.
Q Do you know if you worked that day?
A I don't remember.
Q Okay. You did go to a KGID meeting on that day.
A Yes.
Q When was that planned?
In other words -- I guess, let me ask you this:
How often did KGID have meetings at that time? Was it a scheduled meeting?
A I think they have meetings every month.
Q So this was a scheduled meeting on the 18th?
A Yes.
Q Had you, Egon, or Helmut ever been to a KGID meeting prior to December 18th, 2012?

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A No.
Q What was the reason that you attended the December 18th, 2012, meeting?
A About the snowplowing.
Q Okay. Specifically what about the snowplowing?
A Getting berms.
Q I'm aware -- you have testified here today as to one berm on the 17th on Charles Street, one berm on the 12th, and then one berm prior to the 12th.
And then at least one other berm prior to that, but we don't know how many exactly, correct?
A Yes.
Q But you had never attended a meeting before this one?
A No.
Q How about in December 2011?
Did you have any snow berms during that winter season?
A I don't remember.
Q Okay. Okay. So how did you get notice that there was a KGID meeting on the 18th?
Do you guys receive mail saying that "our next meeting is on this day", or did somebody come to you and say, "hey, there's a KGID meeting on the 18th. Let's plan on going to that"?
A I don't remember, sir.
Q That's fine.

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I don't know what you know until I ask you, so that's the reason.
What time did the meeting start?
A 6 o'clock.
Q Okay. What time did -- did you see Helmut at all on December 18th prior to the meeting?
A We met at the Kingsbury Grade meeting.
Q So Helmut did not come over to the house on that day?
A I don't recall.
Q When you say you don't recall, it's possible, you just don't have a recollection of it happening?
A Correct.
Q Okay. Had you eaten dinner before you left for the KGID meeting? Or, no?
A We ate after the meeting.
Q Okay. So the meeting starts at 6 o'clock?
A Yes.
Q How far away is the meeting from your residence?
A By car, two minutes.
Q Okay. How did you go to the KGID meeting?
A We drove.
Q And who was present in your vehicle?
A My husband and I.
Q And when you arrived at the KGID meeting, who was present at that time?

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A You mean how many people attended?
Q Yes.
A Mr. Shaw and Dr. Shaw, Mr. and Mrs. Wells, their daughter and her husband, Miss Kinion, us three Klementis.
There was a young gentleman there, a young fellow. I don't know the name. I never saw him before.
And that's it.
Q I guess where did the meeting take place? Is there a specific building that it happened in?
A Yes. It's a KGID building at Pine Street. Pine Ridge.
Q That's close to where Helmut lives?
A Correct.
Q Okay. So those are the people there that you remember being there.
You went over the list, and there was one person that was present that you didn't know?
A No.
Q As we sit here today, have you seen him again after this meeting?
A No.
Q Do we know who that person is at all?
A No.
Q Okay. Who was there for KGID?
A I have a problem, too.

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The whole board. The whole board.
Q And how many people are on the board?
A I don't know. I can mention a few names.
Q Who is the leader?
A Dr. Norman, chairman of the board. Daniel Norman.
Q Prior to that board meeting, did you know that Dr. Daniel Norman, was the leader of the board, the KGID board?
A No.
Q Okay. So Dr. Norman was the leader of the board.
How long did the meeting last for?
A Probably an hour.
Q Was there any other business discussed at this board meeting other than the berming-in issue?
A They had a meeting after we got done without us being there.
Q Okay. So the first -- so you were there during public comment?
A That's what it's called, yeah.
Q Who spoke at that board meeting?
A Several people and myself.
Q Okay. Could you -- do you have a recollection? Could you tell me who actually spoke at the board meeting?
A Dr. Shaw, Janet Wells, myself. I don't know anyone else. I don't remember.
Q Do you remember what the content of Dr. Shaw's

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speaking was about? Was it about berms?
A Yes.
Q Were you present when she testified about her flower bed issue?
A Yeah.
Q Was that what she was speaking about to your recollection?
A Yes.
Q Okay. How about Miss Wells? What did she speak about?
A That if they have berms, they have problems. She has a business, takes care of children, and the people have a problem driving up if the berm is still there.
Q Was Miss Kinion at that meeting that you recall?
A Yes.
Q But she didn't speak?
A I don't remember.
Q Okay. And then you spoke?
A Yes.
Q Tell me what you said at the board meeting.
A I think you have everything in the file.
That we had the same problem.
Q Okay.
A That we have been bermed-in.
That in 2011, when my husband was shoveling snow at

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our gate on Charles, that Mrs. Spencer came over, and said, her husband is now driving snowplows, and if we were interested, he can put the snow away from us, from our driveway, and my husband declined.

And I told them the whole story about the 18-wheeler, the fence, and about the berm problem.

Q Okay. Did you specifically mention the December 12th incident with snow being put onto Egon's body?

A I think so. I'm not sure.

Q Okay. Did you mention the December 17th berming-in issue?

A I don't remember.

Q Okay. You mentioned something before, which we hadn't talked about, and that was in 2011, Miss Spencer came over to you?

A To my husband.

Q Were you present during that?

A No.

Q Okay. So you found out about this from Egon?

A Correct.

Q And what did Egon tell you about this meeting between himself and Miss Spencer in 2011?

A What I just told you. That she offered -- she said her husband is now snowplowing, and if he likes, if he is interested, that he would take the berms away from our driveway.

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Q Okay. The driveway on Charles?

A Correct. No. The driveway on Meadow Lane.

Q Was there a berm on the driveway at that time?

A I don't remember.

Q Okay. And then Egon declined that offer?

A Correct.

Q Do you know why he declined that offer?

A Because he is doing it himself.

Q Who is doing it himself?

A At this time, my husband.

Q And how was he doing it, with a shovel?

A With a shovel, depending on the snow, or with the snowplow.

Q So you yourself, you guys own a snowplow?

A Yes.

Q Okay. So Mrs. Spencer made that offer to your husband in 2011. It was declined.

Were there any similar offers like that other than that one in 2011?

A No.

Q That was mentioned at the board meeting?

A I think I read it in my letter.

Q Okay. So you submitted a letter to the board?

A I wrote the letter because I was better in reading than talking.

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Q So you wrote something down on paper. You brought that to the board?

A Correct.

Q And did you give that letter to the board then?

A I said it can be --

Q Introduced as a document?

A Correct.

Q Okay. Do you know at that board meeting, were there any pictures introduced into the meeting itself?

A No.

Q No, there were not?

A No.

Q Okay. All right. So everybody spoke, and it sounded like it took about an hour for all of the speakers to speak?

A Yes.

Q Did the board ask questions back to the speakers?

A I think so.

Q Do you have any recollection of those questions?

A No.

Q The board stayed at the meeting, and then it sounded like the room emptied out, because public comment was over?

A Yes.

Q Did the board give any suggestions to any of the people in attendance at the meeting about this berm issue?

A Yes.

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Q And what were the suggestions the board said?

A Dr. Norman suggested everyone can take pictures of the berms and bring it to KGID attention.

Q Okay.

A We should speak up.

Q Okay. So he suggested that photos be taken?

A Correct.

Q Okay. Anybody else offer any suggestions? Either Dr. Norman or anybody else on the board?

A Dr. Norman was the main speaker.

Q Okay. Did Dr. Norman say at that time that the next board meeting is on this date, and to come back?

Or did it -- did this issue end on the 18th, as far as you know?

A He did not mention any further meetings.

He only said we should come forward if anything happened, meaning going to KGID.

Q So you leave the meeting at approximately 7 o'clock?

A Correct.

Q And you and your husband get into your vehicle?

A Correct.

Q And where did you go there, from there?

A We drive home.

Q Is Helmut with you at that time?

A No.

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Q How did Helmut get to the meeting if you know?
A He has his own car.
Q Okay. So you arrive home at 7 o'clock, and in December, it's dark at that time, I assume?
A Yes.
Q You arrive. You pull into your garage?
A I think so.
Q Okay. Is that where you typically park your vehicle, inside a garage?
A Most of the time.
Q How many vehicles do you and Egon own?
A At this time, we had two.
Q Okay. So when you arrived home that evening after the board meeting, to the best of your recollection, you pulled into the garage in your home?
A Yes.
Q And I didn't ask you.
There were no stops between you leaving the board meeting and arriving home?
A No.
Q So you get out of the garage, and you walk into your residence?
A Yes.
Q And now what do you do once you get inside your residence?

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A I am preparing for dinner.
Q Okay. And when you say you're preparing, are you cooking? Preparing -- are you making a full meal or just sandwiches?
A No, full meal. Dinner.
Q All right. So where is the kitchen in your home?
Is there a window in your kitchen?
A Yes.
Q Which way does that face, Meadow or --
A Charles.
Q Okay. So you are preparing dinner.
And what happens next? You're in the kitchen preparing dinner.
What happens next?
A We eat.
Q Okay.
A And then when we are done with the dinner, Helmut, my brother-in-law, says, he goes home, and he -- before he leaves, he takes a picture of the berm.
Q Okay. All right. Hang on a second.
So we get through dinner. So when did Helmut come over to your house?
A After the meeting. After the KGID meeting.
Q Do you know if Helmut went home first, and then came to your house, or did he come straight to your house from the meeting?
A I assume he had to go home to his house because he has his car parked there, and then he drove to us.
Q Okay. So he didn't have his car at the meeting?
A No. He lives nearby.
Q Okay. So he arrives at your house.
Do you know where he parked his vehicle when he arrived at your house on December 18th, "he" being Helmut?
A He usually parks in the driveway.
Q Okay. Does your home have any exterior lighting?
Is there any outside lights at that time, such as a front porch light, any floodlights, anything like that?
A We have this -- what they call it? If you come nearby the garage, then the light --
Q A motion light.
A A motion light, yeah.
Q And the garage being on Charles Street?
A Yes.
Q Okay.
A No. The garage on Meadow Lane.
Q I meant Meadow Lane. Thank you for correcting me.
A Okay.
Q Okay. So there is a motion light on Meadow, by the garage on Meadow Lane, and that's activated in the evening time if there's motion?

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A Correct.
Q Okay. Any other exterior lights on your residence other than that?
A On the corner of our house.
Q On the corner of Meadow/Charles?
A Meadow/Charles.
Q Okay.
A Meadow/Charles.
Q Do we know if that was on -- that doesn't even show your whole residence.
So was that exterior light on, on the evening of December 18th?
A If there was a motion, then it goes on. If there is no motion, then it does not go on. I don't know.
Q So the motion light was by the garage, you said?
A Garage.
Q And the corner?
A I can show you.
Q So we're looking at Exhibit 7.
A Is this our house?
Q Yeah. But that's not the whole house.
A Well, here is the garage. One light is here, one light is here, and one light is here.
Q So on three of the four corners of the house?
A Actually four corners. The back of the house.

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Q Okay. So the four corners of the house, they all have motion lights?
A Correct.
Q Okay. And all these lights are operated in the evening time only if there's motion?
A Yes.
Q Okay. Any other exterior lights that work just on a switch? Like, the front porch or something?
A Yes.
Q Were those on or off on the 18th, if you know?
A I don't know.
Q Okay. So you get home. You are preparing dinner. Helmut comes over.
Does he come over before you eat dinner?
A Yes.
Q And how long -- approximately what time do you eat that night?
A Took us about an hour.
Q Okay. Did Helmut or Egon help you prepare dinner?
A No.
Q You were the cook?
A I am the cook.
Q Okay. So about an hour.
So you ate. Then, according to our timeline, you would have eaten dinner at approximately 8 p.m.?

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A Correct.
Q Is that fair?
A Yes.
Q Okay. And was there any alcohol served at dinner?
A I don't know. I don't remember.
Q Typically did either you, Egon, or Helmut have a glass of wine with dinner? Was that a typical thing that was done, or an occasional thing that was done?
A It was an occasional thing.
Q Okay. On this particular day, do you know if Helmut had a glass of wine or any alcohol before the incident took place?
A No. Helmut drinks really nothing.
Q Okay. So the answer is he had no wine --
A Yeah.
Q -- in your presence?
A Yeah.
Q So dinner ends at approximately 8 p.m.
After dinner ended, do you clean up?
A Yes.
Q So you are the cooker and the cleaner.
Do you clear the table and put the dishes in the sink?
A In the sink and the dishwasher.
Q Okay. How long did the cleaning -- well, strike that.
While you were cleaning up, was Helmut and Egon still

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in the residence?
A Yes.
Q And where did they go while you were cleaning up?
Did they stay at the table, or did they go into a different area of the house?
A My -- Helmut said he is going to leave, and my husband went to his studio.
Q Okay. So that left you alone in the kitchen area?
A Correct.
Q Was there any discussion among the three of you during dinner about what had happened at the board meeting?
A I'm sure we talked about it.
Q Do you have specific recollection about that issue?
A No.
Q Do you know if Helmut brought his camera to your residence on that evening?
A Yes.
Q Do you have a specific recollection of seeing the camera while he was inside your home eating and right after dinner?
A No.
Q How do you know he brought the camera to your house?
A Because Helmut usually has a camera in his pocket.
Q Okay. Now Egon is the photographer.
Is Helmut also, if you know, an artist in that sense?

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Does he enjoy photography?
A Both are amateur photographers, if you -- if this is the question.
Q Yes.
A Amateur photographs. Not professional photographs.
Q No.
A Hobby photographs.
Q No. I understand.
So Helmut, as far as you recall, Helmut typically had a camera on him when he was walking around the neighborhood?
A I don't know.
Q Okay. Prior to December 18th of 2012, had you ever seen any photographs of the neighborhood that Helmut showed you?
A No.
Q Do you know if there were any photographs that Helmut took of the neighborhood that he had showed Egon before December 18th, 2012?
A No.
Q That Egon would have told you about? No?
A No.
Q All right. So you finished dinner.
About the time you are leaving -- about the time you are cleaning up, Helmut says I'm going to go home.
And your husband says, I'm going to the studio.
A Yes.

Q And the studio, I apologize if I asked this before, the studio is on the second floor?
A No. Next to the kitchen.
Q Next to the kitchen.
A Bottom floor.
Q And is there a window in the studio?
A Yes.
Q How many windows?
A All around. One -- the whole, the whole wall is windows.
Q And which way does the window face out?
A One faces, two -- a glass door and a window faces Charles direct, and the other ones face our backyard.
Q Okay. The door and the window that face Charles Street, what type of window coverings are on those windows?
Blinds, curtains, drapes?
A Blinds.
Q What type of blinds? Vertical blinds?
A Something like that.
Q These type of blinds in this room?
A Correct.
Q Yes, like these blinds?
A Yes.
Q Okay. On the evening of December 18th, do you know if the blinds were open or closed?

A No.
Q No what?
A I don't know.
Q Okay. The art studio, it has a light in it, a lamp?
A Yes.
Q How many lighting fixtures are in the studio at that time?
One lamp, two lamps, an overhead light, do you remember?
A We have overhead lights.
Q Is that the only source of lighting in the studio at that time?
A Yeah.
Q Okay. I assume that if your husband retired to the studio at this time, he would have turned the light on?
A Yes.
Q Okay. All right. So did you say goodbye to Helmut?
A Yes.
Q You knew that he was leaving your residence?
A Yes.
Q Did you walk him to the door?
Or is he family, and he just comes and goes as he wants?
A He comes and goes.
Q Okay. So he left the residence.

Was there a discussion before him leaving that he was going to take any photographs of the area that evening?
A He said he would take a picture of the berm.
Q Okay. And when did he say this?
A Before he left.
Q During dinner or on his way out?
A On his way out.
Q And which berm are you referring to?
A The berm on Charles.
Q Okay. All right. So he leaves the front door.
And do you see -- was the next time you see Helmut after he walks out your front door?
A I hear his voice screaming help, help.
Q And approximately in a time fashion, how long after you hear the door close behind Helmut, do you hear the noise help, help, how much time elapses, approximately?
A I must say four minutes.
Q That's your best estimate?
A It's my -- I don't -- I don't.
Q I don't want you to guess, but I would like to get an estimate from you.
I'm not trying to pin you down to two minutes, 18 seconds, but 3 to 4 minutes is that an estimate?
A Yeah.
Q During this 3 to 4 minutes, did you stay in the same

location, or were you going back and forth clearing the table?
A I'm in the kitchen.
Q Okay. And the kitchen, which -- there are windows in the kitchen?
A Yes.
Q And which way do those windows face?
A Charles.
Q Okay. Is there lighting in the kitchen?
A Yes.
Q And what is the lighting in the kitchen? Overhead lighting?
A Overhead lighting. Ceiling lighting.
Q Okay. And the window coverings for the kitchen, same as we have already discussed?
A Yes.
Q Were those open or closed at that time?
A Closed.
Q Okay. Typically is that your, what you do, you, in the evening time, you close your window coverings?
A Yes.
Q Your blinds?
Okay. Okay. So you're in the kitchen cleaning up.
When you hear these sounds of help, help, where exactly are you standing?
Are you in the kitchen?

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A Yes.
Q Okay. You are not outside the residence? You are inside the residence?
A Inside the residence.
Q And where is Egon at that time?
A In his studio.
Q Okay. Now during the 3 to 4 minutes approximate between when Helmut left, did you see Egon during that time frame?
A I did not see him, but I heard him.
Q Okay. So I'm trying to find out if it's possible that he went outside the home at that time?
A No.
Q You are a hundred percent sure of that?
A 1,000 percent.
Q And although you didn't see him, you heard him?
A I heard him.
Q Did you hear him for the entire 3 to 4 minutes?
A Yes.
Q What did you hear? Like, was he talking to himself, or was he rustling papers?
Or tell me what sounds did you hear emanating from the studio?
A He prepared artwork because he had an appointment the next day with the Tahoe Tribune, it was a journalist coming to

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our home, and that's why he put pictures back and forth, and arranged things to show, whatever the interview was all about.
Q Okay. Just so I'm clear, so the Tahoe Tribune, a reporter was coming over to your home on the 19th to interview Egon and discuss his artwork?
A Yes.
Q And he was getting ready for that appointment?
A Correct.
Q So you heard him moving photographs around?
A Yes.
Q Okay. All right. So you hear help, help.
When you hear that sound, are you -- and I'm trying to picture how your house looks, which I have never been in it, so I don't know.
Does your sink face the window?
A Yes.
Q Were you at your sink when you heard this sound?
A I don't remember.
Q Could you tell -- because you were inside, and the sound came from outside, correct?
A Yes.
Q Could you tell where the sound was coming from, which direction it was?
A It came from Charles Street.
Q Okay. Okay. So you hear the sound help, help.

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You have known Helmut a very long time. So could you identify the person that said help, help as Helmut immediately?
A Immediately.
Q You knew it was him?
A Yes.
Q What do you do now?
A I ran automatically to our entrance door.
Q On -- which is that located?
A It faces Charles.
Q Okay. So your entrance door faces Charles. So you run there from the kitchen?
A Correct.
Q Do you say anything to Egon before you reach the door?
A I remember, I scream, it's Helmut.
Q Okay. All right. So who -- do you get to the door before Egon?
A I don't know.
Q Do you remember opening the door?
A The entrance door?
Q Yes.
A Yes.
Q Okay. If you had to estimate for me how much time would have elapsed between the time you heard help, help, and the time you first walked out the door, five seconds?

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A Seconds.
Q Less than ten?
A Yes.
Q Less than five?
A 5, 6, 5, 10 seconds. Immediately.
Q Okay. So now you are outside. Right?
A Yes.
Q Tell me about the lighting that you see now.
Because -- did you see any of your motion lights that had activated at that time?
A Yes.
Q Which lights had activated?
A By the entrance door.
Q Which corner? There are four corners.
A Charles, by the entrance door on Charles. Right here.
Q Okay. So was that a motion light or an automatic -- or was that a switch light?
A We have a motion light and a switch light.
Q Okay. So that light was activated.
A Yes.
Q Was any of the corner lights activated? Strike that.
Were any of the corner lights on when you first walked out the door?
A I don't remember.
Q When you walked out your door, could you see Helmut at

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that time?
A Yes.
Q And was he directly in front of you? Was he off to your right? Or was he off to your left?
A He was off to the left.
Q If we use a clock dial, walking straight out your door is 12 o'clock on a clock dial, was he at 10 o'clock, 11 o'clock or 9 o'clock somewhere in that -- trying to see, what angle he was at?
A Can you explain this different?
Q Yes.
When you walked, when you walked straight out your door, if you keep going straight out your door, you get to Charles Street, correct?
A I didn't go to Charles Street. I stayed at my house on the porch.
Q Okay. But I'm trying to find out where Helmut was.
You said he was on Charles Street?
A Up here.
Q So approximately by the circular driveway?
A Near to the end of the -- more than, between circular driveway and our fence. He was not -- you know, this area.
Q Okay. So what did you see? How was he positioned?
A He was laying on his back.
Q Okay. I think -- let me show you this photo.

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Does that appear to be your home there? Can you make that out as your home?
A Yeah. Yeah.
Q And that's Charles Street there?
A Correct.
Q Could you mark for us where you saw -- the approximate location where you saw Helmut on the ground on Charles Street when you first walked out the door?
A (Witness complied with the request). Around here.
MR. ZANIEL: Is that going to show?
MR. PALMER: No. Do you have something better?
MR. ZANIEL: No. Is there a marker in there?
MR. PALMER: Which way is Meadow Lane on that?
THE WITNESS: This is Meadow Lane. This is Charles.
MR. PALMER: Where is your front door on the house?
THE WITNESS: Right here, here.
BY MR. ZANIEL:
Q Can we -- why don't you mark -- we just went over a bunch of testimony.
Why don't you mark it on the exhibit?
Can you put "Meadow Lane" over there, and maybe "Charles" -- I don't know if it will show up here. You can draw maybe a line down here and put "Charles" down in the white.
A (Witness complied with the request).
Q Okay. And then did that show up on the -- did you

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draw an X where you first observed Mr. Klementi?
A No. I didn't mark that. I was thinking.
Q Okay.
MR. MOORE: The record will reflect the witness does not have to draw an X, you can draw a circle in the general area, if that's more consistent with your recollection.
BY MR. ZANIEL:
Q You can draw anything you want to represent where Mr. Klementi was.
A (Witness complied with the request).
Can you see that?
Q Yes. So you have drawn an oval?
A Yes.
Q And that represents Mr. Klementi's approximate body position on Charles?
A Yes.
Q When you first walked out the door?
A Yes.
Q Was he -- was he on his, I think you said this, he was on his back --
A Back.
Q -- looking up at the sky?
A Yes.
Q Okay. Were his feet more toward your front door pointing to your -- were his feet pointing more towards your

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front door, or towards the Spencers' or pointing away from your front door?
A I didn't see that.
Q Okay. What did Mr. Klementi -- what did Helmut wear clotheswise to the board meeting?
A I think he wore a leather jacket and slacks.
Q Okay. Do you remember what kind of shirt? Like a button-down shirt or a polo shirt?
A Button-down shirt.
Q Okay. Do you remember what color it was?
A No.
Q Did he wear the same thing to your home, if you know?
Did he change when he went to get his car?
A He had the same outfit on.
Q Okay. And what color was the leather jacket?
A Black.
Q Okay. Okay. So you see Mr. Klementi when you go to the -- you walk out the front door.
Do you physically go, do you leave your house and walk towards him at this point?
A No.
Q Okay. How far do you get out of the front door before you stop?
A Two steps out of the door on our porch.
Q Okay.

A Not any further.
Q Okay. And what do you do at that point? Why do you stop there?
A I saw him, and I run immediately to the phone and called 911.
Q Okay. Between that time frame, from when you first heard help, help, until you went in and called 911, did you hear any other sounds from Helmut?
A No.
Q When you went in to call 911, where was Egon?
A He was running -- Egon was already running when I was on the steps, to the gate, to check out his brother.
Q Do you know how Egon got to that point?
Did he exit the front door or the studio door?
A When I came out our entrance door, Egon came out, running, from his studio door.
Q Okay. And then while you were standing two steps out, you observed Egon running at that time?
A He passed me.
Q Okay. By the time you turned around and went inside to dial 911, had Egon left your property line at all, entered into the street?
A No. He had to go through Meadow because he could not come out the gate on Charles.
Q Are those gates locked?

A Frozen. It was winter.
Q Okay. All right. So he would have went around to Meadow Lane, and then had to walk to --
A Correct.
Q All right. So you called 911.
Tell me, what do you say to 911? Tell me about the conversation the best you can recall. You dial 911.
They say, "emergency dispatch. What's your emergency?"
What do you say?
A I said my brother-in-law got just attacked, pushed, what I say, and he is laying on the floor, and I need help.
Q Okay. Now you didn't see the incident happen?
A No.
Q How -- why would you tell the dispatcher that he got pushed?
A I saw Mr. Spencer running from Helmut towards his house, walking up his steps.
Q Okay. So when you were outside during that time period, you saw Mr. Spencer?
A Yes.
Q And where did you see Mr. Spencer at?
A Leaving Helmut, a few feet away from Helmut, running up Charles, going up his stairs.
Q Okay. Could you describe Mr. Spencer's clothing on

that night?
A No.
Q Would you describe Mr. Spencer's movement as you saw him heading back to his residence as walking slowly, walking normally, walking quickly or running?
A Running.
Q Now I understand that you observed Helmut on the ground at this time, and you observed Mr. Spencer running towards his house.
But you still don't know what happened at this time, correct?
A No.
Q It could have been possible that Helmut just slipped on ice?
A Then would the -- Mr. Spencer wouldn't run away from Helmut. He would help him to get up.
Q Okay. So you just told the 911 dispatcher that your brother-in-law had been pushed down on the roadway, something like that?
A Yes.
Q And what did the 911 dispatcher say?
A Street address, my name.
And during our conversation, he said, wait a moment. I get another call in.
Q Okay. As we sit here -- and he says another call,

about this incident, or about a different incident?
A I didn't know about which incident.
Q As we sit here today, do you know if anybody else dialed 911?
A Yeah. It was probably Mrs. Spencer.
Q Okay. Did the dispatcher then come back on with you?
A Immediately, yes.
Q And what -- tell me about the rest of the conversation.
A That he is sending someone.
Q And was that the end of the conversation with the 911 dispatcher?
A Yeah.
Q If you had to estimate for me how long was it before an EMS or anybody arrived in terms of police, fire or paramedics, how long of time was it, after you hung up the phone?
A I could not tell you.
Q After you hung up the phone, what did you do?
A I stayed at our house in the porch. We had the, both doors open, and I watched what happened.
Q When you had both doors open, you had the front door open and the studio door?
A Correct.
Q Okay. Where were you positioned?

A By the entrance door.
Q Okay. And you were looking out?
A Yes.
Q Okay. Did you ever move from that position before the police or fire or paramedics arrived?
A No.
Q From that position, could you hear any conversations that were taking place?
A No.
Q Where was -- from that position, was Helmut still in the same position that you had seen him when you first came out?
A He was always on the, on the street, laying on the street.
Q When you were waiting on the porch for the police to arrive, where was Egon?
A He was by Helmut.
Q Okay. And you couldn't hear any conversations between Egon and Helmut at that time, while you were standing on the porch?
A No.
Q Did you see any other people around Helmut prior to the police or paramedics arriving?
A No.
Q Do you remember who arrived first? Was it a police officer, a paramedic?

A Police officer.
Q And which way did they pull up? From Meadow or from Charles, if you remember?
A They came from, down from Juniper, Charles.
Q Okay. And did you speak to the police that evening?
A I made a statement after the ambulance was there, the situation.
Q On that evening?
A Yes.
Q Was it a written statement?
A It was a written statement.
Q Okay. Okay. Did you give that to the police?
A The police took it.
Q Okay. So in Exhibit 1 -- these are Bates-stamped. Let me show you what has been marked already as Exhibit 1. There is a police statement there. Is that your handwriting?
A Yes.
Q When did you write that statement out, that evening?
A Yeah.
Q Had Helmut already gone by ambulance from the scene at the time you wrote this statement out?
A Yes.
Q There is also a statement that's typed that's right behind that statement.

Do you see that?
A Yeah.
Q Is that also your statement?
A Yes.
Q When did you write the typed statement that you are looking at now?
A Later, the next day.
Q So the 19th?
A 19th or 20th. I don't remember.
Q Who did you write this statement for? Did somebody ask you to provide further information?
A I don't remember.
Q Okay. Have you -- did you read these statements at all after you wrote them? Did you read them ever again until you just saw them last week?
A Last week.
Q Okay. Did you have the opportunity to read those?
A Yeah.
Q Is there anything that's inaccurate that, as we sit here today, in either of those statements?
MR. PALMER: Before she answers that question, I would like her to read them completely.
MR. ZANIEL: That's why I asked you if you read them.
MR. PALMER: I want you to actually read them.

MR. ZANIEL: We'll go off record for a couple minutes.
(Exhibits 8-9 marked for identification)
MR. PALMER: Are you done reading?
THE WITNESS: Yeah.
BY MR. ZANIEL:
Q Okay. Now that you have had the opportunity to read those, is there anything inaccurate in either of those statements?
A No. That's correct.
Q Okay. And I'm sorry. I think I just asked you this, who asked you to write this typewritten statement out?
A No one.
Q Why did you write it?
A So I can read it, instead of -- I think this is the report I read from with the KGID meeting --
Q Okay.
A -- on the 18th.
Q Okay. So that's the report that you prepared for KGID?
A Correct.
Q Okay. Other than this statement here, the police statement, have you written any other statements about this incident up until the time that you have spoken to your attorney?
A No.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Doyle Law Office, PLLC and that on the 3rd day of June, 2019, a true and correct copy of the above APPELLANT'S APPENDIX was e-filed and e-served on all registered parties to the Nevada Supreme Court's electronic filing system as listed below:

Douglas R. Brown
Sarah M. Molleck
Christian L. Moore
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno NV 89519

Michael A Pintar
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP
241 Ridge Street, Suite 300
Reno NV 89501

Tanika M. Capers
American Family Mutual Insurance Company
6750 Via Austi Parkway, Ste. 310
Las Vegas NV 89119

DATED this 3rd day of June, 2019.

/s Kerry S. Doyle
Kerry S. Doyle

Kerry S. Doyle, Esq.
Nevada Bar No. 10866
DOYLE LAW OFFICE, PLLC
4600 Kietzke Lane, Ste. I-207
Reno, NV 89502
(775) 525-0889
kerry@rdoylelaw.com

Attorneys for Appellant

IN THE SUPREME COURT FOR THE STATE OF NEVADA

JEFFREY D. SPENCER, Appellant, v. HELMUT KLEMENTI, EGON KLEMENTI, ELFRIEDE KLEMENTI, MARY ELLEN KINION, ROWENA SHAW, and PETER SHAW, Respondents.	Case No. 77086

APPELLANT'S APPENDIX

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Docket 77086 Document 2019-24088

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Case No. 14-CV-0260

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI, Plaintiff, vs. JEFFREY D. SPENCER, Defendant	Case No. 14-CV-0260 Dept. No. I
JEFFREY D. SPENCER, Counterclaimant, vs. HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5, Counter-defendants.	

COUNTER-DEFENDANT HELMUT KLEMENTI'S ANSWER TO AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT

Counterdefendant HELMUT KLEMENTI ("HELMUT" or "Counterdefendant") by and through his undersigned counsel, Lemons, Grundy & Eisenberg, hereby admits, denies, and alleges the following to Counterclaimant's *Amended Counterclaim and Third-Party Complaint* filed March 3, 2017:

1. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

LEMONS, GRUNDY & EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

2. This answering Counterdefendant admits the allegations contained in paragraph 2 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

3. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

4. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

5. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

6. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

7. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

8. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

9. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of

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(775) 786-6868

Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

STATEMENT OF FACTS

10. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

11. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

12. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

13. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

14. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

15. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

16. This answering Counterdefendant is without knowledge or information

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sufficient to form a belief as to the truth of the allegations contained in paragraph 16 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

17. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

18. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 18 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

19. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

20. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 20 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

21. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

22. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

23. This answering Counterdefendant is without knowledge or information

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THIRD FLOOR
RENO, NV 89519
(775) 786-6868

sufficient to form a belief as to the truth of the allegations contained in paragraph 23 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

24. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 24 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

25. The allegations in paragraph 25 do not pertain this answering Counterdefendant, therefore, no response is required of this answering Counterdefendant. However, to the extent a response is required, this answering Counterdefendant denies the allegations contained in paragraph 25.

26. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

27. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 27 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

28. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 28 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

29. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

30. This answering Counterdefendant is without knowledge or information

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sufficient to form a belief as to the truth of the allegations contained in paragraph 30 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

31. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 31 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

32. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 32 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

33. This answering Counterdefendant admits that JEFFREY SPENCER collided with him in the street on December 18, 2012 and that JEFFREY SPENCER saw that it was HELMUT KLEMENTI with whom he collided. This answering Counterdefendant denies the remaining allegations of contained in paragraph 33 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

34. This answering Counterdefendant admits the allegations contained in paragraph 34 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

35. This answering Counterdefendant denies the allegations contained in paragraph 35 of Counterclaimant's Amended Counterclaim and Third-Party Complaint,

36. This answering Counterdefendant denies the allegations contained in paragraph 36 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

37. This answering Counterdefendant denies the allegations contained in paragraph 37 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

38. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 38 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

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39. In response to paragraph 39, this answering Counterdefendant admits that on or about December 24, 2012, HELMUT KLEMENTI filed for a restraining order against JEFFREY SPENCER. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 39 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

40. This answering Counterdefendant admits the allegations contained in paragraph 40 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

41. This answering Counterdefendant denies the allegations contained in paragraph 41 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

42. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 42 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

43. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 43 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

44. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 44 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

45. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 45 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

46. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 46 of

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6005 PLUMAS ST.
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RENO, NV 89519
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Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

47. This answering Counterdefendant denies the allegations contained in paragraph 47 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

48. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 48 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

49. Upon this answering Counterdefendant's information and belief, the only preliminary hearing at which he testified was April 24, 2013; therefore, this answering Counterdefendant denies the allegations contained in paragraph 49 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

50. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 50 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

51. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 51 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

52. This answering Counterdefendant denies the allegations contained in paragraph 52 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

53. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

54. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of

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Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

55. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

56. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

57. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 57 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

58. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

59. This answering Counterdefendant admits the allegation that JEFFREY SPENCER was tried on criminal charges brought against him but denies the remaining allegations contained in paragraph 59 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

60. In response to paragraph 60, this answering Counterdefendant admits that HELMUT KLEMENTI testified at JEFFERY SPENCER's trial against JEFFERY SPENCER. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 60 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

61. The allegations contained in paragraph 61 of Counterclaimant's Amended

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Counterclaim and Third-Party Complaint are legal conclusions. To the extent an answer is required, this answering Counterdefendant denies the allegations contained in paragraph 61.

62. The allegations contained in paragraph 62 of Counterclaimant's Amended Counterclaim and Third-Party Complaint are legal conclusions. To the extent an answer is required, this answering Counterdefendant denies the allegations contained in paragraph 62.

63. The allegations contained in paragraph 63 of Counterclaimant's Amended Counterclaim and Third-Party Complaint are legal conclusions. To the extent an answer is required, this answering Counterdefendant denies the allegations contained in paragraph 63.

64. This answering Counterdefendant denies the allegations against him as set forth in paragraph 64 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

65. This answering Counterdefendant denies the allegations against him as set forth in paragraph 65 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

66. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 66 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

67. This answering Counterdefendant admits the allegations contained in paragraph 67 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

68. The allegations contained in paragraph 68 of Counterclaimant's Amended Counterclaim and Third-Party Complaint are legal conclusions. To the extent an answer is required, this answering Counterdefendant denies the allegations contained in paragraph 68.

69. In response to paragraph 69, this answering Counterdefendant admits that, upon information and belief, the jury returned with verdicts finding JEFFERY SPENCER not guilty. This answering Counterdefendant denies the remaining allegations in paragraph 69.

70. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 70 of

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Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

71. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 71 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

72. This answering Counterdefendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 72 of Counterclaimant's Amended Counterclaim and Third-Party Complaint, and therefore denies the same.

73. The allegations contained in paragraph 73 of Counterclaimant's Amended Counterclaim and Third-Party Complaint are legal conclusions. To the extent an answer is required, this answering Counterdefendant denies the allegations contained in paragraph 73.

FIRST CLAIM FOR RELIEF – DEFAMATION

74. In answer to paragraph 74, this answering Counterdefendant adopts and incorporates by reference and makes a part hereof each and all of this answering Counterdefendant's answers to Counterclaimant's Amended Counterclaim and Third-Party Complaint.

75. This answering Counterdefendant denies the allegations contained in paragraph 75 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

76. This answering Counterdefendant denies the allegations contained in paragraph 76 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

77. This answering Counterdefendant denies the allegations contained in paragraph 77 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

78. This answering Counterdefendant denies the allegations contained in paragraph 78 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

79. This answering Counterdefendant denies the allegations contained in paragraph 79 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

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SECOND CLAIM FOR RELIEF – MALICIOUS PROSECUTION

80. In answer to paragraph 80, this answering Counterdefendant adopts and incorporates by reference and makes a part hereof each and all of this answering Counterdefendant's answers to Counterclaimant's Amended Counterclaim and Third-Party Complaint.

81. This answering Counterdefendant denies the allegations contained in paragraph 81 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

82. Paragraph 82 is omitted from Counterclaimant's Amended Counterclaim and Third-Party Complaint.

83. This answering Counterdefendant denies the allegations contained in paragraph 83 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

84. This answering Counterdefendant admits the allegations contained in paragraph 84 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

85. This answering Counterdefendant denies the allegations contained in paragraph 85 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

THIRD CLAIM FOR RELIEF – CIVIL CONSPIRACY (DEFAMATION)

86. In answer to paragraph 86, this answering Counterdefendant adopts and incorporates by reference and makes a part hereof each and all of this answering Counterdefendant's answers to Counterclaimant's Amended Counterclaim and Third-Party Complaint.

87. This answering Counterdefendant denies the allegations contained in paragraph 87 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

88. This answering Counterdefendant denies the allegations contained in paragraph 88 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

89. This answering Counterdefendant denies the allegations contained in paragraph 89 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

90. This answering Counterdefendant denies the allegations contained in paragraph 90 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

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91. This answering Counterdefendant denies the allegations contained in paragraph 91 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

92. This answering Counterdefendant denies the allegations contained in paragraph 92 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

FOURTH CLAIM FOR RELIEF – CIVIL CONSPIRACY (MALICIOUS PROSECUTION)

93. In answer to paragraph 93, this answering Counterdefendant adopts and incorporates by reference and makes a part hereof each and all of this answering Counterdefendant's answers to Counterclaimant's Amended Counterclaim and Third-Party Complaint.

94. This answering Counterdefendant denies the allegations contained in paragraph 94 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

95. This answering Counterdefendant denies the allegations contained in paragraph 95 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

96. This answering Counterdefendant denies the allegations contained in paragraph 96 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

97. This answering Counterdefendant denies the allegations contained in paragraph 97 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

98. This answering Counterdefendant denies the allegations contained in paragraph 98 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

99. This answering Counterdefendant denies the allegations contained in paragraph 99 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

FIFTH CLAIM FOR RELIEF – PUNITIVE DAMAGES

100. In answer to paragraph 100, this answering Counterdefendant adopts and incorporates by reference and makes a part hereof each and all of this answering Counterdefendant's answers to Counterclaimant's Amended Counterclaim and Third-Party Complaint.

101. This answering Counterdefendant denies the allegations contained in paragraph 101 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

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102. This answering Counterdefendant denies the allegations contained in paragraph 102 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

103. This answering Counterdefendant denies the allegations contained in paragraph 103 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

SIXTH CLAIM FOR RELIEF – INFLICTION OF EMOTIONAL DISTRESS

104. In answer to paragraph 104, this answering Counterdefendant adopts and incorporates by reference and makes a part hereof each and all of this answering Counterdefendant's answers to Counterclaimant's Amended Counterclaim and Third-Party Complaint.

105. This answering Counterdefendant denies the allegations contained in paragraph 105 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

106. This answering Counterdefendant denies the allegations contained in paragraph 106 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

107. This answering Counterdefendant denies the allegations contained in paragraph 107 of Counterclaimant's Amended Counterclaim and Third-Party Complaint.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Counterclaimant has failed to state a claim against Counterdefendant on which relief can be granted.

Second Affirmative Defense

Counterclaimant's injuries, if any, are not attributable to any acts, conduct or omission on the part of Counterdefendant and Counterdefendant denies that he acted wrongfully in any manner or in any degree with respect to the matters set forth in Counterclaimant's Amended Counterclaim and Third Party Complaint.

Third Affirmative Defense

No act or omission of this Counterdefendant was a substantial factor in bringing about the damages alleged by Counterclaimant, or was any act or omission a contributing cause thereof. Any alleged act or omission of this Counterdefendant was superseded or preceded

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by the acts or omissions of others, which were the independent, intervening, legal and proximate cause of the damage, if any there be, alleged by Counterclaimant.

Fourth Affirmative Defense

Counterdefendant's statements are statements of opinion and not actionable at law because they are protected speech under the First Amendment of the United States Constitution.

Fifth Affirmative Defense

Counterdefendant's statements are true or substantially true and made in good faith and thus not actionable at law.

Sixth Affirmative Defense

Counterdefendant's statements are privileged by reason of the statements being made without actual malice.

Seventh Affirmative Defense

Counterdefendant's statements are protected by an absolute privilege because they were uttered in the course of judicial and quasi-judicial proceedings and pertinent to the subject of the controversy.

Eighth Affirmative Defense

Counterdefendant's statements are protected by a qualified or conditional privilege because they were made in good faith on a subject matter in which Counterdefendant has an interest and in reference to which he has a right or duty.

Ninth Affirmative Defense

Counterdefendant's statements are protected by privilege because they were made in good faith, aimed at procuring governmental action, and made to an officer or employee of a political subdivision of this state.

Tenth Affirmative Defense

Counterdefendant's statements are protected by privilege because they were made after the initiation of criminal proceedings against Counterclaimant.

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Eleventh Affirmative Defense

Counterdefendant is informed and believes and thereupon avers that at all times relevant hereto, Counterclaimant was negligent, at fault, and otherwise responsible for the allegations which are the subject of this litigation.

Twelfth Affirmative Defense

Counterdefendant is informed and believes and thereon avers that the injuries and damages sustained by Counterclaimant, if any, were caused by acts or conduct of other parties, persons or entities who were and are not the agents or employees of this Counterdefendant and over which this Counterdefendant had no control and, therefore, any recovery by Counterclaimant against this Counterdefendant is barred or diminished in proportion to the amount of negligence, fault, or carelessness attributable to such other parties, persons, or entities.

Thirteenth Affirmative Defense

The occurrence referred to in Counterclaimant's Amended Counterclaim and Third Party Complaint, and all injuries and damages resulting therefrom, if any there be, were caused by intervening and superseding causes over which this answering Counterdefendant had no control.

Fourteenth Affirmative Defense

The alleged injuries and damages claimed in Counterclaimant's Amended Counterclaim and Third Party Complaint were caused in whole or in part by pre-existing medical conditions neither caused nor contributed to by this answering Counterdefendant.

Fifteenth Affirmative Defense

The alleged injuries and damages claimed in Counterclaimant's Amended Counterclaim and Third Party Complaint are not reasonable, not related to the injuries alleged to have been sustained by Counterdefendant's alleged negligence, if any, and are not medically necessary.

Sixteenth Affirmative Defense

Counterclaimant has failed to mitigate his damages.

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Seventeenth Affirmative Defense

The alleged injuries and damages claimed in Counterclaimant's Amended Counterclaim and Third Party Complaint were caused in whole or in part by accidents and/or causes occurring subsequent to the occurrence referred to in Counterclaimant's Amended Counterclaim and Third Party Complaint and are not the responsibility of this answering Counterdefendant.

Eighteenth Affirmative Defense

Without acknowledging liability, this answering Counterdefendant is entitled to contribution to the extent co-counterdefendants and third party defendants are found liable to Counterclaimant and in the event this answering Counterdefendant pays more than his equitable share of liability.

Nineteenth Affirmative Defense

This answering Counterdefendant is entitled to indemnification to the extent co-counterdefendants and third party defendants are found liable to Counterclaimant and in the event this answering Counterdefendant is not found liable for Counterclaimant's alleged injuries and damages.

Twentieth Affirmative Defense

While this answering Counterdefendant denies all allegations against him contained in Counterclaimant's Amended Counterclaim and Third Party Complaint, if found negligent, he is liable to Counterclaimant severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to this answering Counterdefendant.

Twenty-First Affirmative Defense

Counterclaimant is prohibited from more than one recovery for the same injury or harm.

Twenty-Second Affirmative Defense

Counterclaimant's claims, and each alleged cause of action thereof, fails to state facts sufficient to support a claim or award of attorney's fees under any legal or equitable theory.

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Twenty-Third Affirmative Defense

Counterclaimant is barred from recovering any special damages as a result of his/her failure to comply with NRCP 9(g).

Twenty-Fourth Affirmative Defense

Counterclaimant's claim for punitive damages is not a separate cause of action in this state.

Twenty-Fifth Affirmative Defense

Counterdefendant hereby incorporates by reference those affirmative defenses enumerated in Rule 8 of the Nevada Rules of Civil Procedure as if fully set forth herein. In the event further investigation or discovery reveals the applicability of any such defenses, Counterdefendant reserves the right to seek leave of court to amend his answer to specifically assert the same. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein, in that sufficient facts were not available after reasonable inquiry at the time of the filing of Counterdefendant's answer. Therefore, Counterdefendant reserves the right to amend his answer to allege additional affirmative defenses if subsequent investigation warrants such an amendment.

WHEREFORE, Counterdefendant prays as follows:

1. That Counterclaimant take nothing by reason of his Amended Counterclaim and Third-Party Complaint herein and that the same be dismissed with prejudice.

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2. That Counterdefendant be awarded his costs of suit and attorneys' fees as provided by law.

3. For such other and further relief as the court may deem just and proper.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: March 9th, 2018.

Lemons, Grundy & Eisenberg

BY: _____
Douglas R. Brown, Esq.
Sarah M. Molleck, Esq.
Attorneys for Counterdefendant
Helmut Klementi

LEMONS, GRUNDY & EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on March 6, 2018, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **COUNTER-DEFENDANT HELMUT KLEMENTI'S ANSWER TO AMENDED COUNTERCLAIM AND THIRD-PARTY COMPLAINT**, addressed to the following:

William J. Routsis II, Esq.
1070 Monroe Street
Reno, Nevada 89509
Attorney for Jeffrey Spencer

Lynn G. Pierce, Esq.
515 Court Street, Suite 2f
Reno, Nevada 89501
Attorney for Jeffrey Spencer

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Attorney for Jeffrey Spencer

Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, Nevada 89509
Attorney for Mary Ellen Kinion, Egon Klementi and Elfriede Klementi

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, Nevada 89119
Attorneys for Rowena Shaw and Peter Shaw

Susan G. Davis

EMONS, GRUNDY
& EISENBERG
005 PLUMAS ST.
SUITE 300
ENO, NV 89519
775) 786-6868

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MAR - 7 2018
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District Court Clerk

RECEIVED
MAR 12 2018
Douglas County
District Court Clerk

FILED
2018 MAR 12 PM 3:27
BOBBIE R. WILLIAMS
CLERK
BY _____ DEPUTY

CASE NO.: 14-CV-0260

DEPT. NO.: I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, ELFRIDE KLEMENTI, an individual, MARY ELLEN KINION, an individual, ROWENA SHAW, an individual, PETER SHAW, an individual, and DOES 1-5,

Counterdefendants & Third Party Defendants.

JOINDER TO MOTION FOR SUMMARY JUDGMENT

Counter-defendants, Mary Ellen Kinion ("Kinion") and Elfie Klementi ("Klementi"), by and through their attorneys of record, Glogovac & Pintar, hereby join the Motion for Summary Judgment filed by Third-party Defendants, Peter and Rowena Shaw ("Shaws").[1]

[1] By way of correction, in the Shaw's statement of undisputed facts, they have erroneously stated that Helmut Klementi has passed away when it was his brother, Egon Klementi, that has passed. See, Suggestion of Death dated November 16, 2017.

The same facts and issues which entitled the Shaws to summary judgement on the Spencer's third-party claims for malicious prosecution and civil conspiracy, entitle Kinion and Klementi to summary judgment on those third-party claims as well. Indeed, this Court previously granted partial summary judgment to Kinion on the Spencer's third-party claims for malicious prosecution against her. Kinion's motion for partial summary judgment is adopted and incorporated herein.

AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 7th day of March, 2018.

GLOGOVAC & PINTAR

By: _____
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorney for Counterdefendants,
Mary Ellen Kinion and Elfie Klementi

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

JOINDER TO MOTION FOR SUMMARY JUDGMENT

On the party(s) set forth below by:

X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

addressed as follows:

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Counter-Defendant Helmut Klementi

Tanika M. Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorneys for Defendants Rowena Shaw and Peter Shaw

William Routsis, Esq.
1070 Monroe Street
Reno, NV 89509
Attorneys for Counter-Claimant Jeffrey Spencer

Lynn G. Pierce, Esq.
515 Court Street,Suite 2F
Reno, NV 89501
Attorneys for Counter-Claimant Jeffrey Spencer

Dated this 16th day of March, 2018.

Jennifer Heston

RECEIVED
MAR 28 2018
Douglas County
District Court Clerk

FILED
2018 MAR 28 AM 11:08
BOBBIE R. WILLIAMS
CLERK
BY _____ DEPUTY

CASE NO. 14-CV-0260

Dept. No. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER

Defendant.
_____/

RESPONSE TO MOTION FOR SUMMARY JUDGMENT

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, ELFRIDE KLEMENTI, an individual, MARY ELLEN KINION, an individual, ROWENA SHAW, an individual, PETER SHAW, an individual, & DOES 1-5,

Counterdefendant & Third Party Defendants.
_____/

Counterclaimant JEFFREY SPENCER, by and through his attorneys WILLIAM J. ROUTSIS II, Esq. and LYNN G. PIERCE, Esq., hereby responds to Third Party Defendants ROWENA SHAW and PETER SHAW's Motion for Summary Judgment. This Opposition is made and based upon and incorporates all of the pleadings and papers on file herein, and upon the Points and Authorities and Exhibits following hereto, and such other evidence as may be presented at time of hearing on this matter.

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POINTS AND AUTHORITIES

Claimed Undisputed Statements of Fact & Other Relevant Undisputed Facts

The statement of undisputed facts includes both undisputed and disputed facts, and leaves out some very relevant undisputed facts.

This case arose out of conflicts between a very small group among the residents of a neighborhood on the south shore of Lake Tahoe where all the parties reside, except HELMUT KLEMENTI (who is not deceased). EGON KLEMENTI is deceased, but his widow ELFRIDE KLEMENTI continues to reside across the street from Mr. SPENCER.

In the spring of 2012, Mrs. and Mrs. SPENCER put up a fence around their property to give themselves some privacy from certain intrusive neighbors. As an example of intrusion, on May 27, 2012, EGON KLEMENTI came yet again onto their property and was taking photographs. Mrs. Spencer called 911. The responding Officer Flagg told EGON KLEMENTI about the complaint and that if he went on the Spencers' property again he would be subject to arrest for trespassing.[1] A few neighbors, Third Party Defendants, later claimed to have issues with the fence.

Mrs. SHAW testified the fence created a blind intersection making it difficult for her to get into her driveway safely. Mr. and Mrs. SHAW admitted they **never** spoke to the Spencers about this. The SHAWs did testify of complaints to the Kingsbury General Improvement District (hereinafter "KGID"), knowing JEFFERY SPENCER was working for a sub-contractor of KGID and did snow removal in their neighborhood. Mrs. SHAW testified they were referred by KGID to the DA's Office and the Planning Commission. Mrs. SHAW thereafter communicated with the DA's Office and with the Planning Commission.

Mr. Zaniel previously served a subpoena on the District Attorney's Office for their file, which the District Attorney's Office refused to produce. Mr. Zaniel thereafter prepared and served a Motion to Compel. The DA's Office did not produce the entire file, and redacted pages such that some of the SHAWs admitted communications, and further communications between KGID and the County, and among County staff including the DA's office, regarding the SHAWs complaints were

[1] EGON KLEMENTI made no report about an alleged assault or battery on him that day by Mr. SPENCER, yet many months later this was alleged, and Mr. SPENCER was acquitted.

not produced despite subpoena. Exhibit 1 attached hereto, a few of the communications which were produced.

December 13, 2012, Mr. and Mrs. SHAW sent a letter to KGID and similar letters to Douglas County agencies stating MARY ELLEN KINION witnessed JEFFREY SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snow plow causing injuries. Mr. and Mrs. SHAW admitted neither of them had any personal knowledge of any such incident and, in fact, there was no such incident. December 12, 2012, Douglas County Sheriff's Deputy Sanchez responded to a report from Ms. KINION who claimed she had witnessed such an incident. After speaking with both EGON KLEMENTI and Ms. KINION regarding the alleged snowplow attack, Deputy Sanchez determined no such crime had been committed.

Mr. and Mrs. SHAW asserted that in the December 2012, there was one instance of a snow berm in their driveway and their flower bed was destroyed. They admitted they did not know who was driving the snow plow on that day, but went to a KGID Directors meeting which was open to the public on December 18, 2012, their first attendance at any KGID meeting in 37 years of living in the neighborhood, to complain about JEFFERY SPENCER. Although they did not see the snowplow driver, they blamed the berm and claimed damage to their flower bed on Mr. SPENCER, while admitting no knowledge as to whether such a berm occurred in the normal course of plowing the street, but asserting Mr. SPENCER did it intentionally, and also complained about the Spencer's fence which had been erected in May 2012, seven months before, even though they knew KGID had no responsibility for fencing. Mrs. SHAW testified that prior to that December 18, 2012, meeting, they had never even spoken to the Spencers.

Mr. and Mrs. SHAW left town directly from the KGID meeting and, when they returned a couple of days later, had an emotional voicemail from ELFRIDE KLEMENTI, with whom Mrs. SHAW thereafter spoke. Mrs. SHAW testified they had a surveillance video camera recording the Spencer's home, and she copied a segment from their recording from the hard drive onto a memory stick for the period of 7:00 to 9:00 p.m. on December 18, 2012. Mrs. SHAW was specific she followed instructions of the surveillance video camera company and entered the exact start and end time for the recording. Deputy McKone came to her house to view the recording, but Mrs. SHAW

testified she did not give him the memory stick. Mrs. SHAW also testified the DA's office later contacted her and she made a copy on a memory stick which she claimed to be of the 7:00 to 9:00 p.m. segment of the tape which an Officer Schultz picked up.

Deputy McKone testified that around two weeks after the incident, he saw the tape on their computer at Mr. and Mrs. SHAW's residence. He testified Mrs. SHAW was speeding through the very long tape to get to the time in issue, and he actually saw a very short section of the tape prior to time of the incident at regular speed, but "we were unable to download it onto a zip drive or disk or anything and burn a copy, so I just told her to just keep the video in the event that the District Attorney's Office would want it" as he did not want to take her computer. Mrs. SHAW testified that the original recording on the hard drive was recorded over at some time. The recording used in the criminal trial, which had to have been a memory stick Mrs. SHAW created, was six minutes short of two hours, and does not show the time before Mr. SPENCER ran down his stairs. That was the time when he saw someone he believed was breaking into his truck, and yelled at the intruder to identify himself, to which Mr. SPENCER received no response.

January 15, 2013, Mr. and Mrs. SHAW attended another KGID Directors meeting at which members of the public were present. ROWENA SHAW spoke, stating she was thankful a Sheriff's Deputy was there at her request as though Mr. SPENCER was a physical threat to her, and both Mr. and Mrs. SHAW read prepared written speeches making unfounded accusations against JEFFREY SPENCER of claimed incidents to which they were not witnesses.

April 9, 2013, ROWENA SHAW attended a Douglas County Planning Commission meeting at which members of the public were present and used the agenda item of the Spencer's fence to speak, stating the Spencers were neighborhood bullies and accusing JEFFREY SPENCER of battering HELMUT KLEMENTI. When she spoke, Mr. SPENCER had not be convicted of any crime, and in September 2013, Mr. SPENCER was acquitted of that alleged battery and the other crimes of which he had been wrongfully accused. Unfortunately for the Spencers, the Planning Commission denied the fence variance in April 2013, prior to his acquittal.

Former Deputy District Attorney Pence testified to this Court that no witness to anything had any involvement in nor were a cause of her charging decisions. However, she had to rely on

something, that something being the investigative reports, which included statements made by others to the investigators. No DA decides to press criminal charges against an individual in a vacuum, so making her claim that the persons who made statements to the deputies and officers, in person and/or in writing and/or in presentation of claimed evidence, such as video records, had no connection to her decision to charge is disingenuous.

Mr. SPENCER was initially arrested for a misdemeanor on December 18th based upon a decision of the responding Deputy. The Deputy testified he had not obtained statements from all of the persons present when or shortly after the officers arrived; he had not recorded any interview nor made notes at the time so relied on his later recollection when using quotation marks as to what Mr. SPENCER allegedly said; he had not taken any picture nor measurement of the evidence of a footprint in the snow on the Spencer's property; he had not gone to the location from which Mr. SPENCER said he had seen the intruder, believing Mr. SPENCER could not have seen the driveway from there, even though later evidence showed he could; and, he had not questioned the alleged victim about Mr. SPENCER's statement of attempting to effect a citizen's arrest of an unidentified person apparently breaking into his truck. Thereafter, with supplemented information, including statements of Counterdefendant and Third Party Defendants, charges were brought and then increased to felonies. After a two week trial, JEFFERY SPENCER was acquitted of all charges.

Third Party Defendants ELFRIDE KLEMENTI and MARY ELLEN KINION have filed a joinder in the underlying Motion but have provided no specific facts regarding themselves to which Mr. SPENCER could respond.

Mr. SPENCER's 1st Claim for Relief - Defamation

Defamation is defined as "(1) a false and defamatory statement by [a] defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 718, 57 P.3d 82, 90 (2002). Publication occurs when the statement is communicated to a third person. *M & R Investment Co. v. Mandarino*, 103 Nev. 711, 715, 748 P.2d 488, 491 (1987).

ROWENA SHAW and PETER SHAW repeatedly made false and defamatory statements about JEFFREY SPENCER, publically claiming that: he not only failed to properly do his job as

a contract snow plower, but intentionally use his snowplow to strike an elderly neighbor with snow, ice and debris causing injuries, when such an incident had not occurred; he not only failed to properly do his job as a contract snow plower, but intentionally created a berm in their driveway and destroyed their flower garden, when they did not see him even driving a snowplow that day; he was a neighborhood bully, when he had no such reputation and many friends in their neighborhood; he battered an elderly person, when they had not witnessed any such event and he was acquitted of such a charge; and, he had committed felonies against elderly persons, when they had not witnessed any such events and he was acquitted of all such charges.

All of these statements were unprivileged, and several were made in writing and/or verbally: to KGID, knowing Mr. SPENCER was working for a sub-contractor of KGID; in part to the DA's office long before December 18th; and, to the Planning Commission, knowing that would create a negative impression of Mr. SPENCER when his fence variance was being considered. Many of the most egregious statements were made verbally at scheduled meetings at which not only agency board members were present, but also members of the public: to the KGID board, statements irrelevant to KGID's operation, knowing it could compromise Mr. SPENCER's employment; and, to the Planning Commission, statements irrelevant to the SHAW's objection to the Spencer's fencing, knowing it created a negative impression of Mr. SPENCER when the variance was being considered, which was then denied.

The SHAW's knew they had no first hand knowledge of these accusations; these statements were based solely upon representations of a few other people, all of whom had an axe to grind against the Spencers. If they did not know their statements were false when made, then at a minimum, the statements were negligently made with an utter disregard for the truth.

"While the determination of whether a statement is defamatory is generally a question of law, when there are different possible constructions of the statement, one of which is defamatory and the other not, the determination of whether it is defamatory is left to the fact finder." *Meyer v. Johnson*, 281 P.3d 1201 (Nev., 2009), *citing Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425-26 (2001). "[T]he question of whether a statement is true or false is a question of fact to be decided by the fact finder." *Meyer* at 1201, *citing K–Mart Corporation v. Washington*, 109 Nev. 1180 1193, 866 P.2d

274, 283 (1993) (*receded from on other grounds by Pope v. Motel 6*, 121 Nev. 307, 114 P.3d 277 (2005)). Defamatory per se statements are: "(1) the imputation of a crime; (2) the imputation of having a loathsome disease; (3) imputing the person's lack of fitness for trade, business, or profession; and (4) imputing serious sexual misconduct." *K–Mart Corporation, supra* 109 Nev. at 1192, 866 P.2d at 282.

The defamatory statements made by the SHAWs, outside of and unconnected to the criminal proceeding against Mr. SPENCER, included accusing him of crimes which he did not commit, and accusing him of being unfit for his business or profession. The SHAWs defamation was per se, for which Mr. SPENCER does not, as a matter of law, have to even prove damages.

Mr. SPENCER's 2nd Claim for Relief - Malicious Prosecution

The Motion misstates the cited case for Mr. SPENCER's burden of proof. *LaMantia v. Redisi*, 118 Nev. 27, 38 P.3d 877 (2002), identifies the elements of malicious prosecution as:

> 1) initiating, procuring the institution of, **or actively participating in the continuation of a criminal proceeding**;
> 2) malice, shown by statements made with the knowledge they were false and/or making such statements with a reckless disregard for the truth;
> 3) termination of the criminal proceeding in favor of the accused; and
> 4) damages.

ROWENA SHAW made various conflicting statements under oath regarding copying of the SHAW's recording on their surveillance camera pointed at the Spencer's residence and their interactions with the Sheriff's and DA's offices. Further, some of her sworn statements directly conflict with testimony of the Deputy who came to their home to view the recording a couple of weeks after the incident. The Deputy testified he was shown a very short segment at regular speed, was unable to obtain a copy of the recording, and specifically advised the SHAWs to retain the recording for possible use by the District Attorney. The SHAWs not only did not retain the original recording, the copy of the recording which Mrs. SHAW made for the DA prior to the decision to prosecute Mr. SPENCER for felonies, was 6 minutes short of the two hours she claimed she made. Although the copy starts at 7:00 p.m., well before the incident, it does not include Mr. SPENCER shouting at an intruder on their property to identify himself, as he had described to the initial reporting Deputy that evening.

Had the SHAWs presented a complete record of the two hours, that intermediate event which was missing on the presented copy, would have shown that the arrest on the night of the incident was precipitous; the Deputy, upon whose report the DA had to have relied, was missing key evidence. Mr. SPENCER should be given the opportunity to submit this to a fact finder at trial, and to argue that the missing 6 minutes was deliberate, and not only led to "the continuation of a criminal proceeding", but to additional and enhanced felony charges.

Malice can be inferred from the SHAWs failure to preserve the recording as instructed by the Deputy and the presentation of modified evidence in support of the criminal proceeding which was false and/or made with a reckless disregard for the truth. JEFFREY SPENCER was acquitted of all charges, but sustained harm in his business and/or profession, loss to his reputation, good name and standing in the community as a result of the enhanced charges and continuation of the criminal proceeding.

Mr. SPENCER's 3rd Claim for Relief - Civil Conspiracy (Defamation)

The Motion correctly cites the law that "civil conspiracy arises where two or more persons undertake some concerted action with the intent to accomplish an unlawful objective for the purpose of harming another, and damage results." In this case, numerous statements were disseminated by Mr. and Mrs. SHAW which could have no purpose other than to harm Mr. SPENCER with respect to his fence variance request and/or his employment. Their unfounded criminal allegations came from Counterdefendant HELMET KLEMENTI and Third Party co-Defendants Ms. KINION, EGAN KLEMENTI and/or ELFRIDE, and their attendance at various public meetings were with and/or in support of Counterdefendant HELMET KLEMENTI and Third Party co-Defendants Ms. KINION, EGAN KLEMENTI and/or ELFRIDE KLEMENTI, all of whom also wanted to have the fence variance denied and/or to cause Mr. SPENCER to lose his job.

The SHAWs public statements that Mr. SPENCER had intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris from the snowplow causing injuries, was an assertion of fact of which Mr. and Mrs. SHAW had no personal knowledge and these unfounded allegations came from Third Party co-Defendants Ms. KINION, EGAN KLEMENTI and/or ELFRIDE KLEMENTI. The SHAWs attendance at the KGID meeting on December 18, 2012, their

first attendance at any KGID meeting in 37 years of living in that neighborhood, to complain Mr. SPENCER intentionally cased a berm in their driveway and damaged to their flower bed, even though they did not see him driving a snowplow, was planned in concert with Third Party co-Defendants Ms. KINION, EGAN KLEMENTI and/or ELFRIDE KLEMENTI who were making similar complaints, alleging retaliation by Mr. SPENCER over the fence issue.

This was clearly concerted action against Mr. SPENCER to defeat his fence variance and/or cost him his job. Whether each specific act was done with explicit agreement or simply tacit agreement would be a question for the jury. For a person to publically accuse another of a crime, especially so heinous a crime as attacking an elderly neighbor, when one has not observed and has no direct knowledge of such an act, and evidence ends up showing there was no such act, a jury can infer malice. For a person to publically accuse another of deliberately creating hardships for elderly neighbors by berming them into their homes, when one has not observed any such act and has no direct knowledge of such an act, and evidence ends up showing there was no such act, a jury can infer malice.

This is not a free speech case of a right to petition; nor is this a case of privilege. The *Circus Circus* case cited in the Motion is absolutely irrelevant. The defamatory statements made by the SHAWs in writing to and verbally at meetings of KGID and the Planning Commission open to the public were not "judicial proceedings." There was no privilege.

Mr. SPENCER's 4th Claim for Relief - Civil Conspiracy (Malicious Prosecution)

The SHAWs first contact regarding the incident between HELMET KLEMENTI and Mr. SPENCER was from ELFRIDE KLEMENTI, two days after the incident. Mrs. SHAW admitted she made a flash drive of the recording of their, the SHAWs, surveillance camera aimed at the Spencer's home, which she gave to the KLEMENTIs. Mrs. SHAW claims she did not get that flash drive back. Weeks later, the SHAWs provided another copy by flash drive, missing 6 minutes of a key part of the recording, to a officer for use against Mr. SPENCER by the District Attorney's office. Most important, the SHAWs did not preserve the original recording as directed by the Deputy which would have shown those 6 minutes.

/////

The criminal charges against Mr. SPENCER, after his December 18th arrest for misdemeanor battery of HELMET KLEMENTI, ultimately ended up as felony charges for alleged acts against HELMET KLEMENTI, EGON KLEMENTI and ELFRIDE KLEMENTI. Statements made by Counterdefendant HELMET KLEMENTI and Third Party co-Defendants EGON KLEMENTI and ELFRIDE KLEMENTI relative to the criminal charges were later shown to be lies and/or misrepresentations. The missing 6 minutes of the SHAWs recording would have been important evidence before decisions on those additional and elevated charges were brought. Whether this was done with explicit agreement or simply tacit agreement would be a question for the jury.

Mr. SPENCER's 5th Claim for Relief - Punitive Damages

The Motion does not address this Claim for Relief.

Mr. SPENCER's 6th Claim for Relief - Infliction of Emotional Distress

The Motion does not address this Claim for Relief.

Conclusion

JEFFERY SPENCER has demonstrated numerous genuine issues of fact to support his claims. NRCP 56; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 254 (1986). The Motion for Summary Judgment should be denied.

The undersigned affirms pursuant to NRS §239B.030 that this pleading does not contain the social security number of any person.

DATED this 26 day of March, 2018.

WILLIAM J. ROUTSIS, II, Esq.
Nevada State Bar No. 5474
1070 Monroe Street
Reno, Nevada 89509
Phone 775-337-2609/Fax 775-737-9321

LYNN G. PIERCE, Esq.
Nevada State Bar No. 3567
515 Court Street, Suite 2f
Reno, Nevada 89501
Phone 775-785-9100/Fax 775-785-9110

Attorneys for Counterclaimant/Third Party Plaintiff Jeffrey D. Spencer

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I certify that on this date I served a true and correct copy of the foregoing pleading vis email and depositing into the U.S. Postal Service, first class postage fully pre-paid, addressed to the following:

drb@lge.net
Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, NV 89519*Attorneys for Helmut Klementi*

tcapers@amfam.com
Tanika M. Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorney for Rowena and Peter Shaw

mpintar@gplawreno.net
Michael A. Pintar, Esq.
Glogovac & Pintar
427 W. Plumb Lane
Reno, NV 89509
Attorneys for Egon Klementi, Elfriede Klementi & Mary Ellen Kinion

dzaniel@ranallilaw.com
David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty Street, Suite 1050
Reno, NV 89501
Attorney for Jeffrey D. Spencer

DATED this 27th day of March, 2018.

Elizabeth Martinez Assistant to
WILLIAM J. ROUTSIS, II

INDEX OF EXHIBITS

Exhibit No.		No of Pages.
1.	Communication with Government Agencies.	(14)

EXHIBIT "1"

EXHIBIT "1"

Pieren, Shane

From: Wadle, Zach [zwadle@douglas.nv.gov]
Sent: Thursday, August 30, 2012 1:37 PM
To: Pieren, Shane
Subject: RE: Code Violation Follow-up

Understood .thanks Shane.

From: Pieren, Shane [mailto:SPieren@co.douglas.nv.us]
Sent: Thursday, August 30, 2012 12:51 PM
To: Wadle, Zach
Subject: RE: Code Violation Follow-up

Thanks Zach. We have indicated to the Spencers on numerous occasions that the county does not support a variance, and their chances of receiving one are slim to none, but they are welcome to file an application, pay the $1600 fee, and have a public hearing before the planning commission.

I have spoken with Rowena and Pete Shaw numerous times as well and explained what is happening. The folks up there are a bit anxious to see this through.
Shane

Shane Pieren
Code Enforcement Officer
Douglas County Community Development Department
P.O. Box 218
Minden, NV 89423
775-782-6214

From: Wadle, Zach [mailto:zwadle@douglas.nv.gov]
Sent: Thursday, August 30, 2012 11:35 AM
To: Pieren, Shane; Frank, Juley - Courts email
Subject: RE: Code Violation Follow-up

Shane – Attached is a letter that our office received from a homeowner near 321 Charles in Stateline. I am forwarding a copy to you for consideration in advance of the pre-variance meeting with the Spencers on September 5th.

-- Zach

Zachary J. Wadle'
Deputy District Attorney – Civil Division
Douglas County District Attorney's Office
PO Box 218
Minden, NV 89423

(775) 782-9803 Office
(775) 783-6490 Facsimile
zwadle@douglas.nv.gov

9/28/2012

DC36

August 29, 2012

RECEIVED

AUG 30 2012

DOUGLAS COUNTY
DISTRICT ATTORNEY

Mark B. Jackson, District Attorney
PO Box 218
Minden, Nevada 89423

Mr. Jackson,

Following is a sequential summary of problems created by Jeff and Marilyn Spencer, residents of 321 Charles St. Stateline, NV which led to numerous complaints lodged by several folks residing within the areas of Charles, Juniper and Meadow streets. Shane Pieren, Douglas County Code Enforcer, has an active record of the multiple protests.

In March of 2012, the Spencers chose to store an eighteen-wheeler on a vacant lot owned by KGID, adjacent to their house. An officer who responded to the complaint about the intrusive, long term presence of the massive transport, questioned the Spencers and informed them that large commercial trucks were only allowed to be parked in residential areas for ten days. The Spencers claimed the vehicle was only occasionally parked in the space. The fact was that the business vehicle was never moved for three weeks. After follow-up complaints the truck was finally removed the last week of May, 2012.

During Labor Day weekend, 2012, in response to neighbor complaints about vehicles with no plates parked on the Spencer's weed infested lawn and on the street, they hastily erected a wooden fence around the back and sides of their house. The cars were moved in the side yard enclosed by the new fence.

The fence was conformed to the slope of the property, thus, was elevated to the height of around ten feet in certain sections. The towering horizontal row of the solid wood enclosure by the road created a blind spot on the corner of Charles and Juniper streets. Residents in the area voiced their concerns to Mr. Pieren about the danger posed by the fence. Mr. Pieren advised the Spencers that the county code allowed residential fences to be built to three feet in height, therefore, their fence needed to be shortened.

In response to Mr. Pieren's letter, the Spencers requested for an extension period to file for a variance so they could leave the fence, "as is." The Spencers rationalized that the fence was erected to keep their dog in, to beautify the neighborhood and slow down traffic.

Due to the terrain of the Spencer property, the bottom of the fence on the Juniper street side has a three foot gap above the ground, several feet in length. To state that the fence confines the dog in is blatantly false.

The Spencers' claim of beautifying the neighborhood is incorrect. The imposing fence is an eyesore. Last week, they stapled black plastic garbage bag material at the bottom of the fence to conceal the cavernous space between the wood and the ground. They installed a mirror on a pole to "address" the obstructed views; problem not solved.

Stating that the fence slows down traffic fundamentally belies logic. The Spencers created a blind, dangerous corner and are trying to irrationally justify their violation by claiming to help reduce vehicular speed. The county needs to consider the following:

- Continuing to approve filing extensions to the Spencers only exacerbate the problem. Worse, granting a variance to the Spencers essentially mean that the county is approving/sanctioning the blind corner created, consequently, absolving the Spencers of any liability for accidents and injuries resulting from the dangerous situation they created by building a fence in excess of the three feet prescribed by code. Accidents will most definitely occur, especially in the winter months with the presence of snow on the road. The fence was built at the edge of the street with no provisions for snow accumulation and removal.
- Granting a variance to the Spencers will render the county responsible for the "permanent defect" on impacted properties, due to the dangerous intersection and the resulting lowered resale values.
- The reasons purported by the Spencers for keeping the illegal, full height of their fence are evidently absurd and invalid grounds to grant a variance.

A short drive to the Spencer's house by a rep from the DA's office will clearly reveal the driving/pedestrian hazards.

Sincerely,

Mr. Pete Shaw and Dr. Rowena Shaw - P. O. Box 3006, Stateline, NV 89449

DC37

RECEIVED
SEP 18 2012
DOUGLAS COUNTY
DISTRICT ATTORNEY

September 17, 2012

Mr. Mark Jackson
District Attorney
Minden, Nevada

Mr. Jackson,

We are resending the letter we sent to your office two weeks ago to ensure that you are aware of the facts regarding the fence erected by Jeff and Marilyn Spencer at 321 Charles St. Stateline.

To date, no action had been taken to reduce the height of the fence to alleviate the blind intersection created by the high wooden structure. The fence continues to pose serious risks to motorists and children who walk to and from their bus stop.

Please advise/update us as to the current status of the Spencers' case with regards their request for a variance to keep the fence "as is," as well as, the extension period to file.

Sincerely,

Dr. Rowena Shaw and Peter Shaw
P.O. Box 3006
Stateline, NV 89449

DC39

August 29, 2012

Mark B. Jackson, District Attorney
PO Box 218
Minden, Nevada 89423

Mr. Jackson.

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- The reasons purported by the Spencers for keeping the illegal, full height of their fence are evidently absurd and invalid grounds to grant a variance.

A short drive to the Spencer's house by a rep from the DA's office will clearly reveal the driving/pedestrian hazards.

Sincerely,

Mr. Pete Shaw and Dr. Rowena Shaw - P. O. Box 3006, Stateline, NV 89449

Peter M. Shaw - Rowena Shaw

DC40

September 28, 2012

Ms. Mimi Moss, AICP
Community Development
P.O. Box 218 Minden, NV 89423

Ms. Moss,

Please help our neighborhood resolve a hazardous situation at the corner of Charles and Juniper Drive (Lower Kingsbury). Jeff and Marilyn Spencer (321 Charles) constructed a wooden fence, adjacent to the curb, last Memorial day weekend and created a blind intersection, a dangerous situation for motorists and pedestrians, particularly children, walking to and from the bus stop.

In response to numerous complaints from neighbors, Shane Pieren, Code Enforcer, informed the Spencers that their fence violated the three foot ordinance and should be shortened. Due to the uneven terrain of the property, the fence is over eight feet high in certain sections. In response, the Spencers replied that they would apply for a variance. Mr. Pieren responded that the hazard created, due to the lack of visibility, would not be permitted any variance. The Spencers countered that they would proceed with the application and pay the requisite $1,500.00 fee.

According to Mr. Pieren, the Spencers cancelled several appointments to initiate the variance application process. Mr. Pieren informed the District Attorney's office of the situation and the Spencers received a letter indicating that the fence was not in compliance and should be cut to three feet in height.

The complaints were lodged in May. Another meeting with the Spencers, Mr. Pieren and Community Development staff is scheduled for October 15. Mr. Wadle, from the D.A.'s office, stated that no variance should be granted at the meeting. Surprisingly, even with the violation and denial for a variance, the Spencers would still have the right to appeal to the County Commission. The facts are incontrovertible. Any form of variance should never be allowed, essentially, not even considered.

Given their history of delay strategies, the Spencers would likely bide their time to complete the application. In the meantime, winter is approaching fast. Snow and ice would certainly create even more dangerous conditions at the blind intersection.

The Code enforcer's role is basically limited to sending letters to violators; no enforcement power. In other areas, cases of code violations are efficiently addressed since Code Enforcers are authorized to actually "enforce" deadlines and issue fines. Douglas County needs to adopt a comparably successful enforcement system. Financial loss would determinedly create a more significant impact, specially for repeat offenders. The District Attorney's Office is not the appropriate department to handle these kinds of issues. We urge County Commission members to enact provisions to amend the ineffective policy. There needs to be an expedient, timely process to address code violations which pose serious risks to public safety.

Thank you in advance for your consideration, assistance and response.

Sincerely,

Peter Shaw & R. M. Shaw

Peter Shaw and Dr. Rowena Shaw
P.O. Box 3006 Stateline, NV 89449

DC44

RECEIVED
OCT 01 2012
DOUGLAS COUNTY
DISTRICT ATTORNEY

September 28, 2012
Ms. Cynthea Gregory
Deputy District Attorney
P.O. Box 218 Minden, NV 89423

Ms. Gregory,
Please help our neighborhood resolve a hazardous situation at the corner of Charles and Juniper Drive (Lower Kingsbury). Jeff and Marilyn Spencer (321 Charles) constructed a wooden fence, adjacent to the curb, last Memorial day weekend and created a blind intersection, a dangerous situation for motorists and pedestrians, particularly children, walking to and from the bus stop.

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Thank you in advance for your consideration, assistance and response.

Sincerely,

Peter Shaw and Dr. Rowena Shaw
P.O. Box 3006 Stateline, NV 89449

DC45

OFFICE OF THE DISTRICT ATTORNEY
DOUGLAS COUNTY

Mark B. Jackson
District Attorney

November 2, 2012

RECEIVED
NOV 05 2012

Mailing Address
P.O.Box 218
Minden, Nevada 89423

Carson Valley Office
1038 Buckeye Road
Minden, Nevada 89423
775-782-9800
775-782-9807 (fax)

Lake Tahoe Office
175 U.S. Highway 50
Stateline, Nevada 89449
775-586-7215
775-586-7217 (fax)

Child Support
P.O.Box 1240
Minden, Nevada 89423
775-782-9881
775-782-9880 (fax)

Douglas V. Ritchie
Chief Civil Deputy

Thomas W. Gregory
Chief Criminal Deputy

Steven D. Schultz
Chief Investigator

Jan Budden
Office Manager

Connie Wenner
Child Support Coordinator

Peter and Rowena Shaw
P.O. Box 3006
Stateline, NV 89449

Dear Mr. and Mrs. Shaw:

This letter responds to your correspondence dated October 22, 2012, regarding the fence erected on the Spencer's property located at 321 Charles Avenue, Stateline, Nevada. Thank you for bringing your concerns to our attention regarding possible traffic dangers at the corner/intersection of Charles and Juniper given the impending Winter season. The County intends to review the site and current conditions in light of your concerns and will take corrective action if necessary. As to your questions related to possible liability for any accidents at the intersection, the County cannot answer such questions given the many variables that may bear upon liability in a hypothetical accident with unknown circumstances. In any event, the County takes your concerns seriously and will promptly review the intersection to determine if further action must be taken. Should you have further questions, please contact me at 775-782-9803.

Thank you,

MARK B. JACKSON
Douglas County District Attorney

By: _____
Zachary J. Wadle
Deputy District Attorney

ZJW:jf
cc: Shane Pieren, Code Enforcement Officer

DRUG USE IS LIFE ABUSE
We support a drug free community

1/24

D1097

December 11, 2012
Ms. Mimi Moss, AICP
Community Development
P.O. Box 218 Minden, NV 89423

Dear Ms. Moss,

We sent you a letter a few weeks back regarding the public safety issue in our neighborhood. We are following up with this correspondence since a meeting to address the request for variance for the fence built by the Spencers, which is the primary cause of the serious sight restriction problem on our street, is scheduled to be heard by the Planning Commission on January 08, 2013.

The rationale we outlined in our previous letter to not approve the request of the Spencers to maintain the current fence height are reiterated as follow:

a. The solid wood fence, significantly over three feet in height, erected at the corner of Charles and Juniper, created a blind corner for motorists. Accidents and injuries are most likely to occur.
b. There is no school bus stop on Juniper. Young children need to cross Juniper and traverse Charles to reach the stop on Meadow Lane. Due to the sight restriction imposed by the fence, drivers cannot see the kids. The risk for an accident is major.
c. No easement was provided when the fence was constructed. The fence sits at the edge of the road. Snow removal is severely restricted. Consequently, snow accumulates and leads to ice build-up on the road.
d. The stretch of Juniper Street by the fence, slopes down and is shaded, thus, ice tends to build up on the roadway. Motorists cannot safely stop to avert an accident.
e. The stretch of Charles Street by the fence slants down and is shaded, thus, ice tends to build up on the grade. Since our house is situated in front of Charles, we have actually witnessed a seven year old neighbor, crouched on her hands, struggling to make it up the icy slope. The fence completely blocks any motorist's view of a child bent down low on the road.
f. Granting a variance to the Spencers will conceivably make Douglas County responsible for the "permanent/incurable defect" on impacted properties, due to the dangerous intersection and the resulting lowered resale values.
g. Granting the Spencers a variance will plausibly render Douglas County liable for any damage and/or injury to motorists and/or pedestrians since the county approved the variance, thus, sanctioned the "danger to the public" situation to prevail.

We were assured by Mr. Shane Pieren, Code Enforcer, and Mr. Zach Wadle, District Attorney's Office, during separate phone conversations, last 12/07/2012, that based on several site inspections with county engineers, the variance would not be granted due to the obvious safety violation.

If indeed, the variance would not be granted, we urge the Planning Commissioners to impose a strict deadline when the fence would be cut down to the allowed three feet height. Given the multiple delays perpetuated by the Spencers to file for the variance, the pattern is evident. Additionally, even after a letter from the District Attorney's Office, based on their site inspection with a county engineer, to remove the fence boards creating the sight restriction, the Spencers yet again "dodged" the directive by countering that they will hire an engineer who will provide a diverse opinion. No report from the Spencers' engineer was received by the District Attorney's office per my recent phone conversation with Mr. Wadle.

This dangerous situation was created when the Spencers built the fence, with a crew working from the early daylight hours till late at night, last Memorial Day weekend, 2012. Close to a year later, there is still no remediation.

Please do not allow this "accident waiting to happen" problem to endure.

Sincerely,

Peter Shaw and Dr. Rowena Shaw

Cc: Douglas County Planning Comm., District Attorney, Ms. Mimi Moss, Com. Dev., Mr. Shane Pieren, Code Enforcer

D1101 28

December 14,
2012

The neighborhood problem started when the Spencers parked an 18 wheeler, which Mr. Spencer drove for a racing company, on Charles Ave., between April and May, 2012. The large vehicle blocked the views for drivers turning from Meadow Lane to Charles and from Charles to Meadow. After several police reports, the truck was moved by the side of their house, on an empty lot owned by Douglas County, not the Spencers. It took several weeks for the 18 wheeler to leave the area for good.

The Spencers, who reside at 321 Charles Ave., built a six foot, completely solid wood fence last May 27, 2012. TRPA's standard is three feet high. The fence is absolutely a code violation. The six foot fence encloses the property on Charles and Juniper and behind their house. Part of the fence on Juniper is right next to the neighbor's garage. The wooden fence is a fire hazard to the adjacent residence.

Vehicles driving from Charles to Juniper have no clear sight of coming traffic; the fence is too high. People who walk from Charles to Juniper have the same safety problem. The corner is dangerous.

When the Douglas County Code Enforcement Office was informed of the fence problem, the Spencers rescheduled and postponed several meetings and did not cut the fence down even after letters from the Code enforcer. Our neighborhood needs help to address this long time problem and give us residents some peace.

Mr. and Mrs. E.
Klementi
187 Meadow Lane

1/30

D1103

December 17, 2012

Ms. Margaret Pross
Planning Commission
P.O. Box 218
Minden, NV 89423

Ms. Pross

Mr. Wadle, District Attorney's Office and Mr. Shane Pieren, Code Enforcer, provided copies of letters sent to the Spencers to the Planning Commission, including site inspection reports by the county engineer. Mr. McKay, General Manager for Kingsbury General Improvement District, sent us an email last December 13, 2012 stating that, **"Prior to the hearing, KGID will send a letter to the planning commission to voice our concerns with snow removal and traffic lines of sight."** Letters from residents were sent to the Planning Commission as well, detailing concerns about the public safety issue in the neighborhood. All the letters are in agreement that the fence built by the Spencers last Memorial weekend is in violation of the county code requirement of three feet in height. Additionally, the Spencers received letters from the county and the D.A. which stipulated that the fence needed to be reduced per county code to resolve the sight restriction issue at the corner of Juniper and Charles.

We were recently informed that the Spencers requested for a stop sign to be placed by the blind intersection. The request for a stop sign is on the Kingsbury General Improvement District (KGID) Board's agenda for January, 2013.

The stop sign is an obvious "back door Plan B" in anticipation of the Planning Commission's denial of the request for a variance. The sign will be used to "justify" the height of the fence, "as is," to not comply with directives to decrease the fence height. The scheme is equivalent to the Spencers' response to the D.A.'s letter asking them to remove boards on the fence to mitigate the blind intersection problem while waiting for the Planning Commission meeting. The Spencers countered that they were going to secure the services of an engineer who will supposedly provide a different opinion about the hazardous corner. Did the Planning Commission receive a copy of an engineer's report?

The stop sign is immaterial to the blind intersection problem. Motorists and pedestrians need to be able to see and be safe. We ask the Planning Commission to consider the motive behind the stop sign, deny the variance and underscore the need to lower the fence to the legal three feet height using the ground as baseline for accurate measurement.

Sincerely,

Peter Shaw and Dr. Rowena Shaw
Cc: Planning Commission, Mr. Shane Pieren, Code Enf.

D1102 1/29

December 17, 2012

Mr. Shane Pieren
Douglas County Code Enforcer
P.O. Box 218
Minden, NV 89423

Mr. Pieren,

Mr. Wadle, District Attorney's Office and Mr. Shane Pieren, Code Enforcer, provided copies of letters sent to the Spencers to the Planning Commission, including site inspection reports by the county engineer. Mr. McKay, General Manager for Kingsbury General Improvement District, sent us an email last December 13, 2012 stating that, **"Prior to the hearing, KGID will send a letter to the planning commission to voice our concerns with snow removal and traffic lines of sight."** Letters from residents were sent to the Planning Commission as well, detailing concerns about the public safety issue in the neighborhood. All the letters are in agreement that the fence built by the Spencers last Memorial weekend is in violation of the county code requirement of three feet in height. Additionally, the Spencers received letters from the county and the D.A. which stipulated that the fence needed to be reduced per county code to resolve the sight restriction issue at the corner of Juniper and Charles.

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The stop sign is immaterial to the blind intersection problem. Motorists and pedestrians need to be able to see and be safe. We ask the Planning Commission to consider the motive behind the stop sign, deny the variance and underscore the need to lower the fence to the legal three feet height using the ground as baseline for accurate measurement.

Sincerely,

Peter Shaw and Dr. Rowena Shaw
Cc: Mr. Mark Jackson, District Attorney and Planning Commission

1/31
D1104

My name is Dr. Rowena Shaw and I reside at 185 Juniper Drive. Every single time I need to get to my driveway from Charles, I have to go past Juniper, which means that the whole front end of my car, up to the windshield area, is stopped in the middle of the road, to enable me to see past the fence. The entire time, I pray that vehicles see me on time.

County letters were sent to the Spencers, stipulating that the fence be reduced to mitigate the obstructed line of sight. In a conversation with Mr. Wadle, DA's office, last Jan. 04, he shared that the Spencers were informed that same day to remove all the fence boards at the intersection, since they are still non-compliant and no variance has been granted, until a decision is made by the Planning Commission.

Letters have been sent in support of the illegal fence; some from people who live several streets away who do not travel the intersection.

I called Ms. Rao last week to ask for Douglas County security for today's meeting. Ms. Rao explained that they were aware of the violence and the need for security was already arranged. Mr. Spencer was arrested last Dec. 18 after he punched 78 year old Helmut Klementi while he was on the street. Helmut is the identical twin of Egon Klementi, who lodged complaints against the illegal fence.

Mr. McKay, KGID manager, informed me that the Spencers' request for stop signs was placed on the KGID agenda <u>after</u> the Planning Commission meeting so that the variance decision would be available. Due to the 90 day delay, the intent is that if the stop signs are approved by KGID, the fence would be "justified," therefore, the Planning Commission would be inclined to grant a major variance. If such approval was granted, the dangerous corner would essentially be sanctioned by the county, thus, resulting in possible liability issues for damages or injuries and the consequential permanent and incurable defect, which would lower property values of impacted homes.

The likelihood of a collision, personal injury, worse, serious physical harm to children who walk, to and from the bus stop, unseen by motorists, need to be resolved. The variance should never be granted. Even if the fence is cut, views will still be obstructed. The most effective remediation is to remove the fence, as recommended by Mr. Erik Nilssen, Douglas County engineer. Thank you for your time.

dr. Rowena Shaw

EXHIBIT
public comment
For Identification Only
1/8/13
By: _____ Deputy
D1127 1/54

My name is Peter Shaw and I reside at 185 Juniper Drive for the past 30 years. My home is located directly at the intersection of Juniper Drive and Charles Avenue. The current issue I am bringing to your attention is a fence that had been built by my neighbors, Marilyn and Jeff Spencer at 321 Charles Avenue. This fence was constructed during the Memorial Day weekend of 2012. The fence currently, is over built by 4 ½ feet per county code and is obstructing the line of sight at the intersection of Charles and Juniper. This fence has created a public safety hazard for motorists and pedestrians navigating this intersection. At this time, a driver has to enter the intersection to see around the fence.

According to the "Minimum Setback Requirements for Corner Lots," a triangular safety sight area of 45 feet from the corner up Juniper and down Charles is required. At the triangular traffic sight area, the maximum permitted height of a fence is limited to 2 ft. 6 inches.

Douglas County DA's office has repeatedly sent letters to Marilyn and Jeff Spencer to remove fence boards obstructing the line of sight until a final decision is made by the Planning Commission in regards to their request for a variance to keep the fence, "as is." As of today, no fence boards have been removed and the line of sight at this intersection continues to create public safety hazards.

The Spencers requested and were granted a 90 day delay in their request to keep the overbuilt fence at the intersection.

Finally, I would like to ask this question, "What does Douglas County intend to do to ensure public safety since the fence will still pose a serious line of sight restriction during the next three months."

(Peter Shaw)
EXHIBIT
Public Comment
For Identification Only
Filed 1/8/13
By _____ Deputy
1/55
D1128

Chair, Planning Commission
P.O. Box 218
Minden, NV 89423

Dear Ms. Pross,

Please note that there are two corrections in the January 08, 2013 public comments summary.

Helmut Klementi was confronted and **punched** by Mr. Jeff Spencer (as read by Helmut Klementi last 01/08/13 during public comment).

Jim Slade **drove up and saw the fence** (as stated by Jim Slade last 01/08/13 during public comment.

Please amend the two mentioned items to accurately reflect the statements shared by Mr. Helmut Klementi and Mr. Jim Slade.

Thank You,

Dr. Rowena Shaw
P.O. Box 3006
Stateline, NV 89449

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MAR 0 8 2013
DOUGLAS COUNTY
COMMUNITY DEVELOPMENT

157

D1130

CASE NO.: 14-CV-0260

DEPT. NO.: II

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Douglas County
District Court Clerk

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2018 APR 10 AM 10: 56
BOBBIE R. WILLIAMS
CLERK
BY [illegible] DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, ELFRIDE KLEMENTI, an individual, MARY ELLEN KINION, an individual, ROWENA SHAW, an individual, PETER SHAW, an individual, and DOES 1-5,

Counterdefendants & Third Party Defendants.

REPLY IN SUPPORT OF THIRD-PARTY DEFENDANT MARY KINION'S MOTION FOR SUMMARY JUDGMENT

Counter-defendants, Mary Ellen Kinion ("Kinion") and Elfie Klementi ("Klementi"), by and through their undersigned counsel, Glogovac & Pintar, hereby submit this Reply in Support of Motion for Summary Judgment. Third-Party Defendants, Rowena and Peter Shaw ("Shaw") filed their Motion for Summary Judgment on February 23, 2018. Kinion and Klementi filed a Joinder to that motion on March 6, 2018. Counterclaimant, Jeffrey Spencer ("Spencer") filed his response/opposition to the motion on March 26, 2018.

I.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Background

Kinion and Klementi are neighbors who have been witness to various bad acts that defendant Spencer has perpetrated on brothers, Helmut and Egon Klementi,[1] and others. All of them live in the Kingsbury Grade General Improvement District in Stateline, Nevada. The woman have done nothing more than their civic duty to report Spencer's actions to the police, the deputy district attorney who prosecuted Spencer, KGID, and/or the Douglas County Planning Commission.

The gist of Spencer's claims is that everyone in the neighborhood is conspiring against him and his wife by accusing Spencer of physically assaulting and battering Helmut Klementi on December 18, 2012, and by also accusing Spencer of using his snowplow to commit retaliatory actions against the neighbors who objected to the Spencers putting up a fence around their property. They claim these allegations are not true and that the allegations caused criminal charges to brought against Spencer and for the Douglas County Planning Commission to deny the Spencer's request to build a fence.

As this court has previously ruled, the Spencer's claims are frivolous and not supported by facts or law. While indeed, Spencer was acquitted of the criminal charges arising from his assault and battery, the acquittal only means that the state did not meet its burden of proof. More importantly, by reason of Spencer's insurance company now paying $150,000 to settle the personal injury claims brought against Spencer by Helmut Klementi, and by reason of the assault being caught on videotape, a strong probability exists that Spencer did in fact commit the acts he was accused of committing and that the third-party claims against Kinion and Klementi are nothing more than vexatious claims designed to harass and intimidate.

---

[1] Egon Klementi has passed away. Elfie Klementi is the widow of Egon Klementi.

Kinion has previously moved for, and been granted summary judgment in her favor on Spencer's claims for malicious prosecution.[2] Now, Kinion joins in the Shaw's motion and seeks to have Spencer's claims for defamation, civil conspiracy (defamation), and civil conspiracy (malicious prosecution) dismissed as well. Ms. Klementi joins in the Shaw's motion and seeks to have Spencer's claims for defamation, civil conspiracy (defamation), malicious prosecution, and civil conspiracy (malicious prosecution) dismissed.

The Shaw's motion for summary judgment -- and Kinion's and Klementi's joinder to that motion – must be granted because Spencer's opposition brief contains no admissible evidence on the issues raised in the motion for summary judgment. Specifically, Spencer's response/opposition is deficient for three (3) reasons: First, the response is not supported or accompanied by an affidavit. Second, the response ignores this Court's order dated April 3, 2017 which granted partial summary judgment to Kinion on the claims for malicious prosecution and further ignores this Court's order dated October 19, 2017, which found those claims to be brought and maintained without reasonable grounds. Third, the response fails to address *where* the statements were made. Specifically, that any statements made by Kinion and/or Klementi which are at issue in this matter, were made during either judicial and/or quasi-judicial proceedings. Thus, even if the statements were not true – they are – the statements are absolutely privileged and/or immune from liability under NRS 41.650.

B. Law and Discussion.

1. Summary Judgment Standard.

Nevada law long has held that only admissible evidence may be considered on a motion for summary judgment. NRCP 56(e). *See, Adamson v. Bowker*, 85 Nev. 115, 119, 450 P.2d 796, 799 (1969) ("[E]vidence that would be inadmissible at the trial

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[2] Indeed, on October 19, 2017, this Court entered an order finding Spencer's claim for malicious prosecution against Kinion to have been brought and maintained without reasonable grounds. Notwithstanding, Spencer refuses to voluntarily dismiss this claim as to the other third-party defendants.

of the case is inadmissible on a motion for summary judgment."). Because authentication is a condition precedent to admissibility, all evidence presented on summary judgment must be authenticated. NRS § 52.015. See Thomas v. BAC Home Loans Servicing, LP, No. 56587, 2011 WL 6743044, *2 (Nev. Dec. 20, 2011) (Order of Affirmance) (unpublished) (documents offered in support of summary judgment were properly authenticated and admissible when attached to an affidavit made on personal knowledge affirming that the documents were true and correct copies of the originals).

On summary judgment, documents which are authenticated through personal knowledge must be attached to an affidavit that meets the requirements of NRCP 56(e), and the affiant must be a person through whom the exhibits could be admitted into evidence. NRS § 52.025. Documents may also be authenticated in any another manner permitted under the Nevada rules. *See e.g.,* NRS § 52.085 (evidence that a public record "is from the public office where items of this nature are kept is sufficient to authenticate [it]"). However, Nevada courts consistently hold that unauthenticated documents cannot be considered in a motion for summary judgment. See Employers Ins. Co. of Nevada v. Employco Servs., Ltd., 281 P.3d 1170, n.1 (Nev. 2009) (Table) (Order of Reversal) ("unauthenticated documents cannot be considered in a summary judgment motion"); Whalen v. State, 100 Nev. 192, 195-96, 679 P.2d 248, 250 (1984) (NRCP 56(e) requires documents offered in opposition to summary judgment be authenticated); Buss v. Consol. Casinos Corp., 82 Nev. 355, 357, 418 P.2d 815, 816 (1966) (reversing grant of summary judgment where documents submitted in support were not authenticated).

Nevada law is equally clear and consistent that even when a document is sworn and admissible, inadmissible hearsay statements within the document will not give rise to a material issue of fact. For example, in Collins v. Union Fed. Savings & Loan, the Nevada Supreme Court affirmed summary judgment in favor of defendants where plaintiff's opposition rested on inadmissible hearsay statements offered in an affidavit.

99 Nev. 284, 302 (1983) ("Evidence introduced in support of or opposition to a motion for summary judgment must be admissible evidence."). The Court held that in offering only hearsay, plaintiff had "failed to show that he could produce the requisite quantum of evidence to enable him to reach the jury with his claims." *Id.* Nevada appellate rulings consistently instruct that hearsay statements are as inadmissible on summary judgment as they are at trials. *See e.g.*, *White v. Mediati*, No. 57710, 2012 WL 6588980, at *1-2 (Nev. Dec. 14, 2012) (Order of Affirmance) (unpublished) (affirming grant of summary judgment where opposing party offered only hearsay statements and speculation); *Soebbing v. Carpet Barn, Inc.*, 109 Nev. 78, 81, 847 P.2d 731, 734 (1993) (affirming district court's finding that out-of-court statements of a non-party offered in opposition to summary judgment were inadmissible hearsay and could not create a material issue of fact).

In his opposition/response brief, Spencer again attempts to create questions of fact based on speculation as to what he thinks caused the Douglas County Sheriff's Office to arrest Spencer in 2012 and what he thinks later caused the Planning Commission to deny the Spencer's variance for a fence in 2013. The opposition/response brief also continues to assert – wrongly -- that Spencer's acquittal of the criminal charges means that the underlying acts did not occur. In truth, of course, all the acquittal means is that the state did not meet its burden of proof. More tellingly, the opposition/response brief is silent on Spencer's recent settlement with Helmut Klementi. By way of that settlement, Spencer paid $150,000 to Mr. Klementi. That settlement may or may not have come with an admission of liability. In either event, the settlement is relevant and admissible evidence.

2. Malicious Prosecution Claim Has Already Been Deemed Baseless.

For purposes here, third-party Defendants adopt and incorporates Kinion's motion for partial summary judgment dated April 22, 2016, this Court's Order dated April 3, 2017 which granted that motion, and this Court's Order dated October 19, 2017, determining Spencer's claim for malicious prosecution to have been brought and

maintained without reasonable grounds. For the reasons set forth therein, Spencer's claim for malicious prosecution against Klementi must be dismissed.

3. Defamations Claims Must Be Dismissed Because Third-Party Defendants Are Entitled to Judicial Immunity

Spencer claims that third-party Defendants are not entitled to immunity because the alleged statements that were made to the police, district attorney, Planning Commission and/or KGID were false or made with reckless disregard for the truth. Nonetheless, even assuming the statements were false – they're not – the statements are privileged.

Any statements made to the police enjoy a qualified privilege. To this and, the Nevada Supreme Court has stated:

> Under a qualified privilege, the plaintiff must prove by a preponderance of the evidence that the defendant abused the privilege by publishing the defamatory communication with actual malice. Actual malice is a stringent standard that is proven by demonstrating that "a statement is published with knowledge that it was false or with reckless disregard for its veracity."

Pope v. Motel 6, 121 Nev. 307, 114 P.3d 277 (2005).

As shown, to be actionable, any statements made to the police investigating Spencer by the third-party Defendants would have to be either knowingly false or made with reckless disregard for their veracity in order for them to be actionable. However, other than citing to his acquittal of the criminal charges, Spencer has provided no evidence which would suggest the statements made to police are knowingly false. Moreover, Spencer's settlement of the civil action brought against him Helmut Klementi strongly suggests the statements were true.

Second, any statements made by the Third-Party Defendants to the district attorney or in any criminal proceeding are absolutely privileged. In this regard, Nevada recognizes "an absolute privilege for communications published in the course of judicial proceedings, *even when the statements are false or malicious and are republished with the intent to harm another.*" Id. citing Sahara Gaming v. Culinary

Workers, 115 Nev. 212, 984 P.2d 164 (1999); Circus Circus Hotels v. Witherspoon, 99 Nev. 56, 657 P.2d 101 (1983)(Emphasis added).

Third, in Knox v. Dick, 99 Nev. 514, 665 P.2d 267 (1983), the Nevada Supreme Court recognized that the privilege granted to a witness in the regular course of judicial proceedings extends to statements made in the course of quasi-judicial proceedings as well. 665 P.2d at 270. Thus, any statements made by the Third-party Defendants to the KGID or Planning Commission are absolutely privileged as well. In addition, any statements made by the Third-party Defendants to the KGID or Planning Commission are protected by Nevada's anti-SLAPP law. In this regard, NRS 41.637 provides:

> "Good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern" means any:
>
> 1. Communication that is aimed at procuring any governmental or electoral action, result or outcome;
>
> 2. Communication of information or a complaint to a Legislator, officer or employee of the Federal Government, this state or a political subdivision of this state, regarding a matter reasonably of concern to the respective governmental entity;
>
> 3. Written or oral statement made in direct connection with an issue under consideration by a legislative, executive or judicial body, or any other official proceeding authorized by law; or
>
> 4. Communication made in direct connection with an issue of public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of its falsehood.

The statements made by the Third-Party Defendants in regard to Spencer's fence to either the KGID and/or the Planning Commission were clearly made in an effort to procure government action. Further, statements made to the KGID and/or the Planning Commission in relation to Spencer's aggression while operating a snowplow were made in direct connection to a public interest (neighborhood safety) and/or were made in a public forum (open meetings).

For these reasons, Spencer's claims for defamation must be dismissed.

4. Conspiracy Claims Must be Dismissed.

"To establish a claim for civil conspiracy, a plaintiff must establish . . . the commission of an underlying tort." Peterson v. Miranda, 991 F.Supp.2d 1109, 1120 (D. Nev. 2014) citing GES, Inc. v. Corbitt, 117 Nev. 265, 21 P.3d 11, 15 (2001) (emphasis added). In addition to establishing an underlying tort, a claim for civil conspiracy must establish the following elements: (1) defendants acted in concert; (2) defendants intended to accomplish an unlawful objective for the purpose of harming the plaintiff; and (3) plaintiff sustained damages resulting from the defendants' acts. Consol. Generator-Nevada, Inc. v. Cummins Engine Co., Inc., 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1999). None of these elements are satisfied.

Initially defeating the conspiracy claim is the fact that the underlying claim for malicious prosecution has already been deemed by this Court to be without basis and dismissed. Without a valid and actionable tort for malicious prosecution, Spencer's claim for civil conspiracy based on malicious prosecution must fail. Similarly, since all of the alleged defamatory statements were made in either a judicial or quasi-judicial proceeding, the statements are privileged. Without a valid and actionable tort for defamation, Spencer's claim for civil conspiracy based on defamation must also fail.

II.

CONCLUSION

For these reasons, Kinion and Klementi respectfully request that the claims asserted against them be dismissed by way of summary judgment.

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AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 9 day of April, 2018.

GLOGOVAC & PINTAR

By: _____
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789

Attorneys for Third-Party Defendant, Mary Ellen Kinion and Third-Party Defendant, Elfie Klementi

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that, I served the foregoing document(s) described as follows:

REPLY IN SUPPORT OF THIRD-PARTY DEFENDANT MARY KINION'S MOTION FOR SUMMARY JUDGMENT

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

addressed as follows:

William Routsis, Esq.
1070 Monroe Street
Reno, NV 89509
Attorneys for Jeffrey Spencer

Lynn G. Pierce, Esq.
440 Ridge Street, Suite 2
Reno, NV 89501
Attorneys for Jeffrey Spencer

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Helmut Klementi

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorneys for Rowena Shaw and Peter Shaw

Dated this 16th day of April, 2018.

Employee of Glogovac & Pintar

Case No. 14-CV-0260

Dept. No. I

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2018 APR 12 PM 3:40
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CLERK
BY DEPUTY

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER,

Defendant

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counter-defendants.

Case No. 14-CV-0260

Dept. No. I

COUNTER-DEFENDANT HELMUT KLEMENTI'S MOTION FOR SUMMARY JUDGMENT ON ALL COUNTERCLAIMS

Comes now, Counter-Defendant HELMUT KLEMENTI, by and through his counsel of record, Lemons, Grundy & Eisenberg, and hereby files *Counter-Defendant's Motion for Summary Judgment on all Counterclaims* contained in Counterclaimant Jeffrey Spencer's *Answer to Amended Complaint and Amended Counterclaim and Third-Party Complaint* on file herein as those claims pertain to Helmut Klementi. This Motion is made pursuant to NRCP 56, and is based on the pleadings and papers on file with the Court, the following memorandum of points and authorities, the attached exhibits, oral argument presented at the hearing of this matter, if any, and any other information this Court deems appropriate to consider.

LEMONS, GRUNDY & EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND SUMMARY OF ARGUMENT

This case stems from a dispute between neighbors in the Kingsbury General Improvement District (KGID) in Douglas County, Nevada that ultimately culminated in criminal proceedings against Defendant/Counterclaimant Jeffrey Spencer ("Mr. Spencer") after he was arrested for the battery of Plaintiff/Counter-Defendant Helmut Klementi ("Helmut").[1] Helmut filed a civil action for damages against Mr. Spencer and this claim was settled and dismissed. However, Mr. Spencer has filed the following counterclaims against Helmut: (1) defamation, (2) malicious prosecution, (3) civil conspiracy for defamation, (4) civil conspiracy for malicious prosecution, (5) punitive damages, and (6) intentional infliction of emotional distress.

After engaging in significant discovery and conducting countless depositions, including obtaining the testimony of Deputy District Attorney Maria Pence, the evidence has revealed that summary judgment in favor of Helmut is appropriate for the following reasons. First, as a matter of law, the statements Helmut made to law enforcement, the Douglas County Planning Commission and his testimony before the court in Mr. Spencer's criminal proceedings are privileged as a matter of law. Moreover, the evidence demonstrates that Helmut's statement that Mr. Spencer confronted and knocked him to the ground while he took pictures of snow berms is true. Mr. Spencer has admitted in his deposition that he confronted and knocked Helmut to the ground; thus, the truth of this statement is established. Semantic arguments on the differences between knock, punch, and collide are not enough to establish a genuine issue of material fact in this case. The evidence also demonstrates that Mr. Spencer himself cannot identify a single, specific derogatory statement that Helmut has said about him:

> [Mr. Brown]
> Q: What is your understanding of the nature of the statements that were made at the meeting?
> [Mr. Spencer]
> A: Derogative against me.

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[1] Because Helmut Klementi and his twin brother, Egon Klementi, share the same last name, this motion will refer to each brother by his first name for the purpose of clarity.

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Q: Okay. In what respect? Are we talking derogative as in you are ugly, derogative as in you just plowed my street and bermed in my driveway? **Can you give me any more specifics than derogatory?**
A: No.

Exhibit 3, *Deposition of Jeffrey Spencer* dated July 28, 2016, p. 84 (emphasis added).

Q: You have alleged my client has made false statements about you in this lawsuit.
A: Uh-huh (affirmative).
Q: You understand that?
A: Yes.
Q: Okay. What I'm trying to get at is, whether – are you aware, as you sit here today, of any false statements that Mr. Klementi, my client, may have made about you from the time you got out of jail, until the time of the trial? And we're not talking about going into the trial yet.
A: Yes, he has.
Q: Okay. Tell me what statements you are aware of that you believe that he has made that are false during that time frame.
A: **I would have to look at our file to see.** I know he has made more about the incident that night. I'm not sure about any meetings.
Q: I'm sorry?
A: I'm not sure about any other meetings.
Q: Meetings?
A: I don't think he went to the county meeting. Yeah.
Q: So where else would he have made statements during that period?
A: I said, I'm not sure about the meetings. I would have to look at the file, though.
Q: But you do believe statements were made during that period?
A: Yes.
Q: **What statements?**
A: Derogative stuff against me.
Q: I'm sorry?
A: Derogative stuff against me.
Q: What sort of derogative stuff?
A: Same stuff. The snowplowing, that I beat him up, all that.
Q: Who did he make these statements to?
A: I would have to look at the file.
Q: Okay. What is going to help you about the file? What is going to refresh your memory about the file? What documents?
A: Looking at the documents that we have.
Q: Okay. Which ones? That's what I'm trying to get at is where -- where can I look? You have alleged my client made false statements. I'm entitled to know when those statements were made, and who they were made to. And so I'm trying to get a better handle on who, what, when, and where with respect to those statements during the time frame that we just talked about.

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A: Correct. So I need to add those to discovery, I guess.
Q: What do you mean? There are statements that you haven't provided yet?
A: There is a lot of stuff I haven't provided yet.
Q: Like what?
A: There's a lot of video. A lot of statements.
Q: Why haven't you provided it?
A: Because -- I think we went over this this morning. I work, and I haven't had time to do it.
Q: In the last two years?
A: No. I don't think the lawsuit has been going on the last two years.
Q: Okay. But since the lawsuit has been filed, you just have had no time at all to produce this stuff?
A: I have produced some of it, but not all of it.
Q: Okay. So as you sit here right now, you can't identify any specific statements from the time you were released from jail to the start of the criminal trial of Mr. Klementi, Helmut Klementi?
A: I don't want to say specifics when I can't remember exactly word for word.
Q: That's fine, sir. The answer is, no, you can't, or is it yes?
A: No. I can't remember specifics.

Exhibit 3, *Deposition of Jeffrey Spencer* dated July 28, 2016, pp. 158-161 (emphasis added).

Q: What about trial? What statements did my client make at trial that was false?
A: Buy the transcripts.
Q: I'm asking you. You sat through the trial. I wasn't there. I'm asking your recollection.
A: So buy the transcripts, and you can see.
Q: That's not an acceptable answer. My answer -- question to you is, what statements do you recall my client stated or made at trial that were inaccurate?
A: It's the same question.
BY MR. ROUTSIS: Objection.
BY MR. BROWN:
Q: I'm entitled to your recollection, Mr. Spencer.
A: My recollection at this moment is not accurate enough to say anything.

Exhibit 3, *Deposition of Jeffrey Spencer* dated July 28, 2016, p. 164 (emphasis added). This is just one example of Mr. Spencer's obtrusive, nonresponsive answers to specific questions asking what statements he believes Helmut said about him. Mr. Spencer's deposition transcripts are replete with this nonresponsive testimony because the undisputed fact is, he simply has no evidence to support his claims.

Second, as to Mr. Spencer's claim for malicious prosecution, the evidence reveals that

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the decision to arrest Mr. Spencer was not Helmut's decision – it was the decision of Deputy Jesse McKone. The decision to charge Mr. Spencer was solely the decision of Deputy District Attorney Maria Pence. Because Helmut had a good faith belief a crime had been committed against him and the decision to arrest and charge Mr. Spencer was not Helmut's, he cannot be liable for malicious prosecution. Similarly, the testimony provided by Helmut during Mr. Spencer's criminal proceedings is privileged as a matter of law because absolute privilege is not limited to claims for defamation.

Third, Mr. Spencer's claims for civil conspiracy cannot stand because Mr. Spencer cannot prove commission of the underlying torts. Moreover, Helmut never conspired with other defendants in this case to defame or maliciously prosecute Mr. Spencer.

Fourth, as to the claim for intentional infliction of emotional distress Helmut's cooperation with the police investigation and judicial proceedings against Mr. Spencer is simply not "extreme and outrageous conduct" as a matter of law. Mr. Spencer has presented no law to support his claim that Helmut's conduct was extreme and outrageous in this case. Importantly, as well, Mr. Spencer has failed to produce any evidence of physical manifestations of severe emotional distress that is necessary to support his claim for damages.

Fifth, and finally, "punitive damages" is not a stand-alone claim in Nevada and, more importantly, Mr. Spencer has produced no evidence – let alone, clear and convincing evidence, that Helmut's action of reporting a crime to law enforcement and testifying against Mr. Spencer is conduct that warrants an award of punitive damages. This Court may make that determination as a matter of law; therefore, summary judgment is also appropriate on this claim.

For all these reasons, as more fully set forth below, it is undisputed no genuine issue of material fact remains in this case for trial and Helmut is entitled to judgment as a matter of law in his favor.

II. STATEMENT OF UNDISPUTED MATERIAL FACTS

1. Helmut Klementi is eighty-three years old and lives at 163 Pine Ridge Drive, Stateline, Nevada, in the Kingsbury General Improvement District ("KGID"). **Exhibit 1**, Affidavit

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of Helmut Klementi in Support of Motion for Summary Judgment on All Counterclaims ("Affidavit of Helmut") ¶3; **Exhibit 2**, Deposition of Helmut Klementi dated April 14, 2016 ("Helmut Deposition"), pp. 8:2-9, 12:15.

2. Helmut had a twin brother, Egon Klementi ("Egon"), who lived with his wife Elfriede "Elfie" Klementi at 187 Meadow Lane, Stateline, Nevada at the corner of Meadow Lane and Charles Avenue. Affidavit of Helmut ¶4; Exhibit 2, Helmut Deposition, p. 94:3—5.[2]

3. Counterclaimant Mr. Spencer resides at 321 Charles Avenue, Stateline Nevada, with his wife Marilyn Spencer ("Ms. Spencer"). **Exhibit 3**, Deposition of Jeffrey Spencer dated July 28, 2016, p. 8:8-15.

4. There existed a dispute between Mr. Spencer and the other neighbors in the KGID district, including Helmut's brother Egon, regarding a fence that Mr. Spencer had built on his property in May 2012 in violation of Douglas County Code. Affidavit of Helmut ¶¶5-6; **Exhibit 4**, Letters from Douglas County Code Enforcement and Douglas County District Attorney regarding violations of Douglas County Code, bates-stamped D2539, D2563-2567.

5. In December 2012, Mr. Spencer operated a snow plow in the neighborhood streets of KGID, including Charles Avenue, Meadow Lane, and Juniper Drive. Exhibit 3, Jeffrey Spencer Deposition, p. 16:22-25, 17:1-4; 68:12-15.

6. During December 2012, residents of the neighborhood, including Egon and Elfie, experienced issues with Mr. Spencer "berming-in" their driveways with snow and debris in the course of his duties as a snow plow operator. Exhibit 3, Jeffrey Spencer Deposition, p. 68:12-15; **Exhibit 5**, Deposition of Elfriede Klementi dated April 14, 2016, pp. 46-50.

7. On December 18, 2012, Helmut attended a meeting of the Board of Trustees for the KGID with Egon and Elfie. Affidavit of Helmut ¶7; Exhibit 2, Helmut Deposition, p. 86:8-11.

8. Although he attended, Helmut did not make a statement or otherwise speak at the December 18, 2012 meeting before the Board of Trustees for the KGID. Affidavit of Helmut ¶¶8-9; Exhibit 2, Helmut Deposition, p. 92:21-22, p. 93:10-12; **Exhibit 6**, "Minutes of the Regular

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[2] Egon Klementi passed away in the fall of 2017. See *Notice of Suggestion of Death Upon the Record.*

Meeting of the Kingsbury General Improvement District Board of Trustees," dated Tuesday, December 18, 2012, bates-stamped KLEMENTI-127—128.

9. At the December 18, 2012 KGID Board of Trustees meeting, Chairperson Norman gave instructions for the neighbors concerned about the snow berms to take pictures. Affidavit of Helmut ¶10; Exhibit 2, Helmut Deposition, p. 107:12-15; Exhibit 6, "Minutes of the Regular Meeting of the Kingsbury General Improvement District Board of Trustees," dated Tuesday, December 18, 2012, bates-stamped KLEMENTI-127—128.

10. When the December 18, 2012 KGID Board of Trustees meeting concluded, Helmut went to Egon's and Elfie's home for dinner. Affidavit of Helmut ¶11; Exhibit 2, Helmut Deposition, p. 93:16-24.

11. After dinner, Helmut left Egon's house to take pictures of the snow berms in front of Egon's property and to then return home. Affidavit of Helmut ¶12; Exhibit 2, Helmut Deposition, p. 97:18-25, p. 107:12-15.

12. As Helmut was taking pictures of the snow berm, he was knocked to the ground by Mr. Spencer. Affidavit of Helmut ¶13; Exhibit 2, Helmut Deposition, p. 117:1-3; p. 119:19-24, p. 127:11-14; Exhibit 3, Jeffrey Spencer Deposition, pp. 98:1-25—99:1-23, 100:15-19.

13. Mr. Spencer has admitted that he knocked Helmut to the ground, that it was not an accident, that he knew it was a Klementi brother, and that he stood over Helmut screaming after he knocked him to the ground. Exhibit 3, Jeffrey Spencer Deposition, pp. 98:23-25—99:1-23.

14. Mr. Spencer also stated that he pushed the person now known as Helmut in order to stop them from getting away. Affidavit of Helmut ¶17; **Exhibit 7**, Douglas County Sheriff's Department Investigation Narrative, Case No. 12SO41608, bates-stamped D0309.

15. It was Helmut's opinion and belief that Mr. Spencer punched him in his side and knocked him to the ground. Affidavit of Helmut ¶14; Exhibit 2, Helmut Deposition, pp. 117:1-3, 119:19-24, 130:23-25—131:1-10.

16. Because Helmut sustained injuries as a result of this incident, emergency services were called and Douglas County Sheriff's Deputy Jesse McKone responded and commenced an

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investigation. Affidavit of Helmut ¶15; **Exhibit 8**, Deposition of Deputy Jesse McKone dated April 7, 2016, pp. 13:1-25—23:1-10.

17. Helmut reported in good faith his belief to Deputy McKone that Mr. Spencer had assaulted him and knocked him to the ground. Affidavit of Helmut ¶16.

18. After interviewing witnesses and investigating the scene, Deputy McKone concluded that Mr. Spencer's testimony regarding the incident was not credible and he opined that Mr. Spencer used the excuse of someone breaking into his truck as a reason to confront and commit a battery upon Helmut when he saw Helmut taking photographs of the snow berms. Exhibit 8, McKone Deposition, p. 36:14-22; p. 62:2-9; Exhibit 7, Douglas County Sheriff's Department Investigation Narrative, Case No. 12SO41608, bates-stamped D0302.

19. Accordingly, based on his investigation and opinion, Deputy McKone arrested Mr. Spencer for battery/abuse of an elderly person. McKone Deposition, p. 62:2-9; Exhibit 7, Douglas County Sheriff's Department Investigation Narrative, Case No. 12SO41608, bates-stamped D0299—D0302.

20. The decision to arrest Mr. Spencer was solely Deputy McKone's decision, based on "the inconsistences with what [he] had seen on scene and Mr. Spencer's rendition." Exhibit 8, McKone Deposition, p. 62:8-9.

21. On or about December 26, 2012, Helmut obtained a Temporary Restraining/Protective Order against Mr. Spencer. Affidavit of Helmut ¶¶18-19; **Exhibit 9**, *Temporary Order Against Stalking, Aggravated Stalking or Harassment*, filed December 26, 2012.

22. On January 8, 2013, Helmut attended a meeting before the Douglas County Planning Commission and its members. Affidavit of Helmut ¶¶20-21; **Exhibit 10**, Douglas County Planning Commission Meeting Minutes dated January 8, 2013, bates-stamped D1132—1138.

23. At that meeting, Helmut read a statement during public comment that stated Mr. Spencer confronted and punched him while he was taking pictures of a snow berm pushed against his brother Egon's fence and that Helmut had a restraining order against Mr. Spencer. Affidavit of Helmut ¶¶22-23; **Exhibit 11**, Statement of Helmut Klementi, bates-stamped D1124.

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24. Ultimately, Mr. Spencer was charged with battery upon Helmut and criminal complaints were filed against him by the Douglas County District Attorney's office. Amended Counterclaim, ¶¶ 53-57; *Counterclaimant's Opposition to Motion for Summary Judgment [Mary Ellen Kinion]*, Exhibits 1—2.

25. District Attorney Maria Pence testified before this Court on January 30, 2017 extensively regarding charging decisions of the district attorney's office and she testified that "no one is involved in the charging decision except for myself and ... the charging decision is made solely by whichever Deputy District Attorney was assigned that case." **Exhibit 12**, selected pages of Transcript of Hearing – Motion for Summary Judgment ("January 30, 2017 Hearing"), dated January 30, 2017, pp. 16:23-25—17:1-2.[3]

26. D.A. Pence also testified the decision to enhance the gross misdemeanor battery charge against Mr. Spencer to a felony charge stemmed from her receipt of medical records showing that Helmut had sustained substantial bodily harm. Exhibit 12, January 30, 2017 Hearing, p. 14:8-24, p. 64:6-9.

27. The criminal proceedings against Mr. Spencer proceeded to a preliminary hearing and criminal trial, where Helmut testified against Mr. Spencer on behalf of the State of Nevada as a victim of a crime. Affidavit of Helmut Klementi ¶23.

28. The only statements Helmut made about Mr. Spencer were (1) his statement to Deputy McKone on December 18, 2012, (2) his statement to the Douglas County Planning Commission on January 8, 2013, and (3) his testimony at Mr. Spencer's preliminary hearing and trial. Affidavit of Helmut ¶25; Exhibit 7, Douglas County Sheriff's Department Investigation Narrative, Case No. 12SO41608, bates-stamped D0299—D0300; Exhibit 9, Douglas County Commission Planning Meeting Minutes, bates-stamped D1132—1138; Exhibit 10, Statement of Helmut Klementi, D1124; **Exhibit 13**, selected pages of Transcript of Preliminary Hearing dated

[3] Due to its length and the fact it is part of the court record, select pages from this transcript are attached.

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April 24, 2013, bates-stamped D1618, 1724—1764;[4] Exhibit 2, Helmut Deposition, p. 114:9-13.

III. STANDARD OF REVIEW

Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil Procedure when the pleadings, depositions, answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. NRCP 56; *Wood v. Safeway, Inc.*, 121 Nev. 724, 731, 121 P.3d 1026, 1031 (2005). *Id.* A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party. *Id.* The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Id.* at 731.

Although the pleadings and proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid summary judgment. *Id.* at 732. The nonmoving party is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture. *Id.*

The manner in which each party satisfies its burden of production "depends on which party will bear the burden of persuasion on the challenged claim at trial." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007). If the nonmoving party will bear the burden of persuasion at trial, the moving party "may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim, or (2) 'pointing out ... that there is an absence of evidence to support the nonmoving party's case.'" *Francis v. Wynn Las Vegas, LLC*, 127 Nev. Adv. Op. 60, 262 P.3d 705, 714 (2011) (internal citations omitted). In this case, because Mr. Spencer bears the burden of persuasion at trial, Helmut may satisfy his burden of production by submitting evidence that negates essential elements of Mr. Spencer's claims and by pointing out that there is an absence of evidence to support Mr. Spencer's case.

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[4] Due to its length and the fact it is part of the public record of Mr. Spencer's criminal trial, select pages from this transcript are attached.

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To withstand summary judgment, Mr. Spencer as the nonmoving party cannot rely solely on the general allegations and conclusions set forth in the pleadings, but must instead present specific facts demonstrating the existence of a genuine factual issue supporting its claims. *Ransdell v. Clark County*, 124 Nev. 847, 860, 192 P.3d 756, 765 (2008). Again, the substantive law controls what factual disputes are material to Mr. Spencer's claims – other factual disputes are simply irrelevant.

IV. LEGAL ANALYSIS OF EACH COUNTERCLAIM

*A. **Defamation:** summary judgment on Helmut's affirmative defenses in response to Mr. Spencer's claim for defamation against Helmut is appropriate because Helmut's statements are privileged as a matter of law.*

Liability for defamation may only arise if the plaintiff proves the following: "(a) a false and defamatory statement concerning another; (b) an **unprivileged** publication to a third party; (c) fault amounting at least to negligence on the part of the publisher; and (d) either actionability of the statement irrespective of special harm, or the existence of special harm caused by the publication." *Lubin v. Kunin*, 117 Nev. 107, 111, 17 P.3d 422, 425 (2001) (emphasis added).

Whether a statement is defamatory is generally a question of law, unless it is subject to two different interpretations. *Id.*; *K-Mart Corp. v. Washington*, 109 Nev. 1180, 1191, 866 P.2d 274, 281 (1993) ("Whether or not a statement is capable of defamatory construction is a question of law for the court."). A court reviewing an allegedly defamatory statement reviews "the words in their entirety and in context in order to determine whether they are susceptible of defamatory meaning." *Lubin*, 117 Nev. at 111, 17 P.3d at 426.

In this case, Mr. Spencer alleges Helmut is liable for defamation because Helmut told Douglas County Sheriff's Deputies and the Douglas County Planning Commission that Jeffrey Spencer had punched him and knocked him to the ground. *Amended Counterclaim and Third-Party Complaint*, ¶¶34, 41. Mr. Spencer also asserts Helmut is liable for defamation because Helmut testified at Mr. Spencer's preliminary hearing and criminal trial that Mr. Spencer had punched or hit him in the chest and knocked him to the ground, causing injury. *Id.*, ¶¶ 52, 60,

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and 67. However, each of Helmut's statements, even *if* this Court found them defamatory (which, they are not), is protected by either a qualified privilege or absolute privilege because each statement was made in the context of reporting a crime or in a quasi-judicial or judicial proceeding, as explained further herein. Both the qualified privilege and the absolute privilege are defenses to Mr. Spencer's defamation claim and Helmut has properly alleged these privileges in his affirmative defenses to Mr. Spencer's *Amended Counterclaim and Third-Party Complaint*. See, *Lubin v. Kunin*, 117 Nev. at 114, 17 P.3d at 427.

1. Helmut's statements to Douglas County Sheriff's Deputies are protected by qualified privilege.

In this case, it is undisputed that Helmut's statements to law enforcement are protected by a qualified privilege. The Nevada Supreme Court has held that, where a person makes communications to police before initiation of criminal proceedings, that party enjoys a qualified privilege if the statements are made in good faith. In *Pope v. Motel 6,* 121 Nev. 307, 114 P.3d 277 (2005), the court clarified its holding in *K-Mart Corp v. Washington* by finding that a qualified privilege satisfied the balance between safeguarding reputations and encouraging full disclosure by citizens "in order to discharge public duties and protect individual rights." *Id.* at 316-317. This privilege exists so that citizens, like Helmut, can report what they perceive in good faith as the commission of a crime and not be subject to "frivolous lawsuits." *Id.* at 317.

Importantly, the court held that after an individual has reported a crime, a plaintiff must prove, by a preponderance of the evidence, "that the defendant abused the privilege by publishing the defamatory communication [to law enforcement] with **actual malice**." *Id.* at 317 (emphasis added). "Actual malice is a stringent standard that is proven by demonstrating that a statement is published with **knowledge that it was false or with reckless disregard for its veracity**." *Id.* citing *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 722, 57 P.3d 92, 92 (2002) (emphasis added).

In *Pope*, the manager for Motel 6 believed that a former employee and her husband were stealing from the motel and responsible for "problems" on the premises. The manager reported this fact to local law enforcement. The trial court granted summary judgment in Motel

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6's favor, because the former employee could not demonstrate that the manager's statements to the police were made with knowledge that they were false. Upholding the trial court's decision on appeal, the Nevada Supreme Court found:

> Suspicions of criminal wrongdoing are commonly expressed to police, and often the suspicion is misplaced. **Without more, the mere fact that an individual informs police of possible criminal wrongdoing does not establish malice.** To overcome the qualified privilege, Juanita was required to establish that Inman acted with reckless disregard for veracity or with knowledge of falsity. She failed to do so.
>
> As a qualified privilege applies to Inman's statements to the police and Juanita failed to advance any evidence of malice, we conclude that the district court properly granted summary judgment to Motel 6 on this issue.

Pope, 121 Nev. at 318, 114 P.3d at 284 (emphasis added).

Similarly, in *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 657 P.2d 101 (1983), the Nevada Supreme Court explained that a qualified or conditional privilege exists where the allegedly defamatory statement is made in good faith "on any subject matter in which the person communicating has an interest, or in reference to which he has a right or a duty, if it is made to a person with a corresponding interest or duty." Whether a statement is conditionally privileged is a question of law for this Court. *Id.* The burden then shifts to the plaintiff to prove that the defendant abused the privilege by making the defamatory statement with malice in fact. *Id.* This issue does not even go to the jury unless there is sufficient evidence for the jury to reasonably infer that the defendant made the statement with actual malice. *Id.* In fact, the court in *Circus Circus Hotels Inc.* reversed the trial court for allowing the jury to decide the initial question of whether an employer's statements were protected by qualified privilege. *Id.*

Both *Pope* and *Circus Circus Hotels, Inc.* are controlling in this case. Here, it cannot be disputed that Helmut believed Mr. Spencer punched him in the ribs and knocked him to the ground. Based on that belief, Helmut immediately reported this fact to Deputy McKone as part of his public duty and his individual right to report what happened to him on the night of December 18, 2012. The mere fact that Helmut reported to law enforcement an incident in which he was harmed does not constitute malice and this Court may make that determination

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as a matter of law. In fact, the burden shifts to Mr. Spencer to establish that Helmut acted with reckless disregard for the veracity of the situation or with knowledge of his statement's falsity.

However, there is simply no evidence that Helmut reported facts to Deputy McKone that Mr. Spencer knocked him to the ground with reckless disregard or with knowledge that his statement was false (which, it was not). As stated in the *Statement of Undisputed Facts*, supra, Mr. Spencer has admitted that (1) he intended to collide with Helmut, (2) he knocked Helmut to the ground, (3) he realized "immediately" that it was a Klementi brother, and (4) he stood over Helmut screaming at him. *Statement of Undisputed Facts*, ¶13. Because Helmut made his statement to law enforcement without malice and with protection of a qualified privilege, this issue cannot even go to the jury unless this Court finds there is sufficient evidence that Helmut made his statements with actual malice. Mr. Spencer has not, and cannot, advance any evidence of malice by Helmut in this case. Therefore, summary judgment is appropriate on Helmut's affirmative defense of qualified privilege as to Mr. Spencer's First Claim for Relief for defamation because the statements Helmut made to law enforcement after the incident are protected by qualified privilege as a matter of law.

2. Helmut's statements to the Douglas County Planning Commission and at Mr. Spencer's criminal proceedings are protected by an absolute privilege as a matter of law.

Mr. Spencer asserts that the statements Helmut made to the Douglas County Planning Commission and at Mr. Spencer's criminal trial are defamatory statements for which Helmut is liable. However, Nevada recognizes and follows the "long-standing common law rule that communications uttered or published in the course of judicial proceedings are absolutely privileged." *Circus Circus Hotels, Inc.*, 99 Nev. at 60-61, 657 P.2d at 104; *Nickovich v. Mollart*, 51 Nev. 306, 274 P. 809, 810 (1929) (a witness who testifies in the course of judicial proceedings is not liable for the answers he makes to questions posed by the court or counsel and all his answers are privileged).

The absolute privilege also applies to "quasi-judicial proceedings before executive officers, boards, and commissions...." *Id.* The absolute privilege precludes liability as a matter

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of law even where the defamatory statements are "published with knowledge of their falsity and personal ill will toward the plaintiff." *Id.* The policy behind this privilege is that, "in certain situations, the public interest in having people speak freely outweighs the risk that individuals will occasionally abuse the privilege" by making defamatory statements. *Id.*; *Knox v. Dick*, 99 Nev. 514, 518, 665 P.2d 267, 270 (1983) (holding that the absolute privilege is applicable to quasi-judicial proceedings so "the right of individuals to express their views freely upon the subject under consideration is protected."). There is no question our supreme court has applied the absolute privilege in the quasi-judicial context. *Id.*

The scope of absolute privilege in Nevada is "quite broad." *Fink v. Oshins*, 118 Nev. 428, 433, 49 P.3d 640, 644 (2002). The defamatory communication "need not be strictly relevant to any issue involved" in the judicial or quasi-judicial proceeding; rather, it needs only to be "in some way pertinent to the subject of controversy." *Id.* citing *Circus Circus Hotels, Inc.*, 99 Nev. at 61, 657 P.2d at 104 (defamatory material need only have "some relation" to the proceeding and as long as it has "some bearing" on the subject matter, it is absolutely privileged). The privilege applies even where actual judicial proceedings have not yet been initiated, so long as the statement is made "in contemplation of the initiation of the proceeding." *Id.* Courts should apply the privilege "liberally, resolving any doubt in favor of its relevancy or pertinency." *Id.* (internal quotations omitted) citing Club Valencia Homeowners v. Valencia Assoc., 712 P.2d 1024, 1027 (Colo.Ct.App.1985) ("No strained or close construction will be indulged to exempt a case from the protection of privilege") and Chard v. Galton, 277 Or. 109, 559 P.2d 1280, 1282 (1977) (noting that the absolute privilege should apply liberally).

The issues of absolute privilege and relevance are questions of law for this Court to decide. *Circus Circus Hotels, Inc.*, 99 Nev. at 62, 657 P.2d at 105. In *Circus Circus Hotels, Inc.*, the court concluded that a letter written by plaintiff's former employer, Circus Circus, presented in the context of an administrative proceeding was protected by the absolute privilege and should not have been presented to the jury at plaintiff's trial against Circus Circus for defamation. Because the letter from Circus Circus was related to the unemployment security division's decision on whether to grant plaintiff unemployment benefits, it was privileged. The court also

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held the trial court erred by allowing the jury to decide whether the letter's content was relevant to fall under the absolute privilege. *Id.* at 62.

Similarly, in *Knox*, the court disagreed with the plaintiff that the quasi-judicial privilege did not extend to the Clark County Personnel Grievance Board. 99 Nev. at 518, 665 P.2d at 270. Rather, the court found that that the quasi-judicial privilege applied because the board conducted its meetings in a quasi-judicial manner pursuant to the guidelines set forth in the Clark County Code that permitted the taking of evidence and examination of witnesses. *Id.*

Here, there is simply no question that any statement Helmut made during Mr. Spencer's criminal proceedings, including the preliminary hearing and criminal trial, are protected by absolute privilege for which liability cannot attach. Even if the statements made by Helmut were false or malicious (which, they are not), Helmut cannot be liable for defamation as a matter of law. *Nickovich*, 51 Nev. at 306, 274 P. at 810.

Further, Helmut's statements to the Douglas County Planning Commission are also protected by absolute privilege as a matter of law. First, the Douglas County Planning Commission is a quasi-judicial body. *Knox*, supra. It is governed by the Douglas County Code, Title 20, and conducts itself in "a manner consistent with quasi-judicial administrative proceedings," because it notices and conducts hearings, takes evidence, permits questioning of witnesses, and exercises its discretion to consider or exclude evidence. D.C.C. §§ 20.24.010—.070.[5] It even permits appeals. D.C.C. §§ 20.28.010—.040. Thus, the Douglas County Planning Commission is a quasi-judicial body. Second, Helmut's statement to the Douglas County Planning Commission on January 8, 2013 is privileged because it is relevant to the subject controversy: Mr. Spencer's construction of a fence that violated Douglas County Code and the resulting dispute between the neighbors that ensued, culminating in the events on the night of December 18, 2012. *Circus Circus Hotels, Inc.*, 99 Nev. at 61, 657 P.2d at 104 ("relevance" is not measured in the traditional evidentiary sense, but rather must have "some relation" to the proceeding). Helmut's statement to the Douglas County Planning Commission certainly has

[5] This Court may take judicial notice of the Douglas County Code. NRS 47.140.

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"some relation" to the Planning Commission's meeting and public comment on Mr. Spencer's illegal fence because it provides context to why the neighbors testified before the Planning Commission. Because it has some bearing on the subject matter of the January 8, 2013 meeting, Helmut's statement to the Planning Commission is privileged as a matter of law, even *if* his statement is found defamatory.

It is an undisputed fact that the only published statements Helmut made regarding Mr. Spencer were made to the Douglas County Planning Commission and to the court in context of Mr. Spencer's criminal proceedings. Because this fact is undisputed and because this Court may apply the absolute privilege liberally and as a matter of law, summary judgment on Helmut's affirmative defenses asserting absolute privilege is proper.

3. Alternatively, Helmut's statement that Mr. Spencer punched him is not defamatory because it is substantially true and is Helmut's generalization and opinion of what occurred December 18, 2012.

As stated, whether a statement is defamatory is generally a question of law, unless it is subject to two different interpretations. "A statement is defamatory when it would tend to lower the subject in the estimation of the community, excite derogatory opinions about the subject, and hold the subject up to contempt." *Lubin*, 117 Nev. at 111, 17 P.3d at 425. However, a statement is not defamatory "if it is absolutely true, or substantially true." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715, 57 P.3d 82, 88 (2002). A statement is also not defamatory if it is "an exaggeration or generalization" that a reasonable person could interpret as mere rhetorical hyperbole. *Id.* Finally, a statement of opinion is protected speech under the First Amendment of the United States Constitution. *Lubin*, 117 Nev. at 112. The court examines whether a reasonable person would be likely to understand the remark as an expression of opinion or a statement of fact. *Id.* A court reviewing an allegedly defamatory statement reviews the words in their entirety and in context in order to determine whether they are susceptible of defamatory meaning." *Id.* at 111.

Here, if for some reason this Court does not apply the qualified and absolute privileges to Helmut's statements, which are protected as a matter of law, then Helmut is not liable for

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his statements because they are substantially true and they are statements of opinion protected by the First Amendment. This Court must examine Helmut's statements in their entirety and in context.

Helmut stated that on December 18, 2012, he was taking pictures of the snow berms in front of his brother Egon's home when Mr. Spencer yelled at him and then ran into the street, punched or hit him, and left him lying in the street. Although it is Helmut's opinion that Mr. Spencer punched or hit him, thus causing him to be knocked to the ground, it is an undisputed fact that Mr. Spencer stated in his police statement that he pushed Helmut and admitted in his deposition that he collided with Helmut, knew it was a Klementi brother, intended to collide with that person, and stood over Helmut screaming. See, *Statement of Undisputed Facts*, ¶13. Mr. Spencer testified in his deposition as follows:

> [Mr. Brown]
> Q: It was an accident; is that your testimony?
> [Mr. Spencer]
> A: **Not an accident. I meant to stop whoever was breaking into my truck.**
> Q: Okay. And so –
> A: I went out looking for whoever it was. I just ran into him because he was right there. At the last minute I seen him.
> Q: Okay. So when was it that you first became aware that it was – I know Egon and Helmut are twins. So when was it you first became aware that it was a Klementi that you had impacted?
> A: **I knew it was a Klementi almost immediately –**
> Q: Okay.
> A: -- because they started talking in their native tongue or whatever, and I can tell by the accents.
> Q: Once you collided with him -- I have seen the video. He hits the deck. You don't. What do you do?
> A: **I recognize it's him, or one of them, as I said. I can tell. I hear him talking. And I start screaming and yelling at him, why didn't he say who you were.** You know, why didn't he identify himself. I hear one of them yelling to call 911. I say, we have already called them. Then I walked back to my house.
> . . .
> Q. Why didn't you say, we collided, I didn't intend to push him [in Mr. Spencer's police statement]?
> A: **Because I intended to hold him**, and I didn't think of it. I don't have the vocabulary that you do. I mean, you know, I was under duress and just trying to write down what happened...

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Exhibit 3, *Jeffrey Spencer Deposition*, p. 99:1-23, 121:7-12 (emphasis added).[6] Viewing Helmut's statement in its entirety and in context, it is clear that Helmut's statement is not false or defamatory because it is substantially true in light of Mr. Spencer's statement to police that he "pushed the person" and his deposition testimony that he intended to collide with Helmut and stop him. Simply because Helmut believed he had been assaulted or punched by Mr. Spencer does not make his statement in this regard defamatory. Helmut's statement that he had been assaulted by Mr. Spencer is a generalization of the events that occurred on December 18, 2012 and it is not defamation. Moreover, Helmut's opinion that Mr. Spencer punched or assaulted him is protected. See *Lubin*, 117 Nev. at 112, 17 P.3d at 423 ("statements of opinion are protected speech under the First Amendment and not actionable at law).

Helmut also stated before the Douglas County Planning Commission that he had a restraining order against Mr. Spencer. This is an undisputed statement of fact that is absolutely true. See, *Statement of Undisputed Facts*, ¶21. Thus, Helmut's statement is not defamatory and not actionable at law. *Pegasus*, 118 Nev. at 715, 57 P.3d at 88.

In conclusion, should this Court believe that the qualified and absolute privileges afforded to crime victims not apply, it is clear that Helmut's statements are not defamatory because they are substantially true and they are his generalization and opinion of what happened to him. It is an undisputed fact that Mr. Spencer knocked Helmut to the ground and intended to do so. This renders Helmut's statement substantially true. Helmut's generalization of the event is not defamatory and, thus, summary judgment should be granted in Helmut's favor on Mr. Spencer's First Claim for Relief for defamation because it fails as a matter of law.

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[6] It is well within the province of this Court to judge the credibility of the witnesses before it. *Douglas Spencer & Associates v. Las Vegas Sun, Inc.*, 84 Nev. 279, 281, 439 P.2d 473, 475 (1968).

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*B. **Malicious Prosecution:** summary judgment is appropriate because the undisputed facts demonstrate that Helmut was not involved in the decisions to arrest and charge Mr. Spencer and he had a good faith belief that Mr. Spencer criminally assaulted him.*

1. Mr. Spencer's prima facie claim for defamation fails as a matter of law.

To establish a prima facie case of malicious prosecution in Nevada, a plaintiff must prove the following: "(1) want of probable cause to initiate the prior criminal proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4) damage." *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P.3d 877, 879 (2002) citing *Jordan v. Bailey*, 113 Nev. 1038, 1047, 944 P.2d 828, 834 (1997). This claim also requires that the defendant "initiated, procured the institution of, or actively participated in the continuation of a criminal proceeding against the plaintiff." *Id.*

Want of probable cause is judged by an objective test. *Jordan*, 113 Nev. at 1047-48. "It is for the court to decide whether a reasonable attorney would have considered the prior action legally tenable – ignoring any subjective factors such as the attorney's expertise and belief." *Id.*; *Boren v. Harrah's Entm't, Inc.*, 2010 WL 4934477, at *4 (D. Nev. Nov. 30, 2010) (interpreting Nevada law and finding that the "reasonable attorney" test applies to both attorneys and non-attorneys under *Jordan*). Only when a reasonable person would find that the action was "completely without merit" can a court authorize a malicious prosecution action to proceed. *Boren*, 2010 WL 493447 at *4.

A defendant cannot be held liable for malicious prosecution when he or she reports information they believe to be true to law enforcement and without directing, requesting, or pressuring law enforcement to commence criminal proceedings. *Lester v. Buchanen*, 112 Nev. 1426, 929 P.2d 910 (1996). Specifically, the Restatement (Second) of Torts as cited by *Lester*, explains that:

> [G]iving the information or even making an accusation of criminal misconduct does not constitute a procurement of the proceedings initiated by the officer if it is left entirely to his discretion to initiate the proceedings or not. **When a private person gives to a prosecuting officer information *that he believes to be true*, and the officer in the exercise of his uncontrolled discretion initiates criminal proceedings based upon that information, the informer is not liable under the rule stated in this Section even though the information proves to be false and his belief was one that a reasonable man would not entertain.**

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> The exercise of the officer's discretion makes the initiation of the prosecution his own and protects from liability the person whose information or accusation has led the officer to initiate the proceedings.

Lester, 112 Nev. at 1429, 929 P.2d at 912-13 citing Restatement (Second) of Torts § 653 (1977), comment g (emphasis added). In *Lester*, the Nevada Supreme Court upheld the trial court's order granting summary judgment in favor of a defendant video store against the plaintiff customer's claim of malicious prosecution. The video store filed a complaint with the police department after a customer failed to return a videotape. The customer was arrested on an outstanding warrant, but charges against the customer were later dismissed. The court found summary judgment was proper because the undisputed facts demonstrated the video store's good faith belief that the customer had not returned the video.

Further, in examining whether the video store initiated, procured, or actively participated in the continuation of criminal proceedings against the customer, the court found summary judgment was appropriate in favor of the video store based on undisputed testimony from the prosecuting attorney. Specifically, the court found:

> [T]he record is devoid of any evidence that the police officers commenced the criminal prosecution at the direction, request, or pressure of Video Express. At his deposition, the Deputy District Attorney in charge of prosecuting this matter testified that Video Express had no further involvement, beyond their initial police report, in the decision to institute criminal proceedings. Further, Lester testified that she does not have any evidence that Video Express did anything more than submit an initial statement to the Reno Police Department.

Lester, 112 Nev. at 1430, 929 P.2d at 913. Finally, it is axiomatic that the presence of probable cause negates the existence of malice. *Boren*, 2010 WL 493447 at *6 (in order to find malice, the proceedings must have been initiated primarily for a purpose other than to bring the offender to justice).

The undisputed facts coupled with the case law set forth herein demonstrates that summary judgment in favor of Helmut is warranted. As an initial matter, it is undisputed probable cause existed to arrest and prosecute Mr. Spencer for battery of Helmut. This Court accepted the testimony of Deputy District Attorney Maria Pence at the January 30, 2017 hearing; thus, there is no need to belabor the point that D.A. Pence believed a crime had been

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committed and that Mr. Spencer had committed the crime. D.A. Pence testified repeatedly that she was the only person involved in the charging decision for Mr. Spencer's case. See *Statement of Undisputed Facts*, ¶25. Probable cause also existed when the justice court bound Mr. Spencer over for trial on the charges after the April 24, 2013 preliminary hearing.

Further, it is an undisputed fact that Deputy McKone's decision to arrest Mr. Spencer was solely the decision of the deputy, who based his decision on "the inconsistences with what [he] had seen on scene and Mr. Spencer's rendition." See *Statement of Undisputed Facts*, ¶¶18—20. This is consistent with Deputy McKone's report. *Id.*

Finally, it is undisputed that when Helmut reported the assault to Deputy McKone, he reported the facts of the incident as he believed them to be true -- that Jeffrey Spencer ran up and hit him, knocking him to the ground.[7] *Affidavit of Helmut* ¶14.

There are simply no facts demonstrating that Helmut requested or pressured law enforcement or the Douglas County District Attorney's office to commence a criminal proceeding against Mr. Spencer. As a matter of law, because Helmut had a good faith belief that Mr. Spencer assaulted him, he cannot be held liable as a matter of law, even if the information later proves false or Helmut's belief is one that a reasonable man would not entertain. *Lester*, 112 Nev. at 1430, 929 P.2d at 913 (even if criminal action was commenced at direction of defendant, summary judgment was proper because defendant had good faith belief plaintiff did not return the property). Moreover, because probable cause clearly existed to arrest Mr. Spencer for assault and proceed to a preliminary hearing and trial, there is no question that a reasonable person would have considered the criminal proceedings against Mr. Spencer "legally tenable." *Jordan*, 113 Nev. at 1047, 944 P.2d at 834. Therefore, no disputed material facts remain and Helmut is entitled to judgment as a matter of law on Mr. Spencer's Second Claim for Relief for malicious prosecution.

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[7] These facts actually are true, as established in the Statement of Undisputed Facts and Section A, Defamation.

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2. The privilege of absolute immunity extends to claims for malicious prosecution; thus, Helmut's statements made in this case are privileged as a matter of law.

Helmut is further not liable to Mr. Spencer for malicious prosecution because his statements are protected by absolute immunity. The Nevada Supreme Court recently confirmed in *Harrison v. Roitman*, 131 Nev. Adv. Op. 92, 362 P.3d 1138 (2015) that the absolute immunity doctrine is not limited to claims of defamation. Instead, the court, citing to the United States Supreme Court, recognized that "[t]he common-law and United States Supreme Court jurisprudence indicate that absolute immunity protects witness statements made during judicial proceedings from tort liability *in general* and do[es] not limit absolute immunity's application to defamation claims." *Id.* at 1143, n. 6 (emphasis in original) citing *Briscoe v. LaHue*, 460 U.S. 325, 330-31, 103 S. Ct. 1108, 1113-14 (1983) (surveying English common law and early American law). In reaffirming the "functional approach" to absolute immunity outlined by the United States Supreme Court, the court held that "functional categories, not ... the status of the defendant, control[s] the immunity analysis." *Id.* (alterations in original) (internal citations omitted).

The functional approach to absolute immunity examines the following: (1) "whether the [person seeking immunity] performed functions sufficiently comparable to those of [persons] who have traditionally been afforded absolute immunity at common law;" (2) "whether the likelihood of harassment or intimidation by personal liability [is] sufficiently great to interfere with the [person']s performance of his or her duties;" and, (3) "whether procedural safeguards exist in the system that would adequately protect against [illegitimate] conduct by the [person seeking immunity]." *Harrison*, 131 Nev. Adv. Op. 92, 362 P.3d at 1140.

The reasons why Helmut's statements are protected and privileged are fully and completely set forth under Section A of this motion. Application of absolute immunity is a question of law for the court to decide and there is no question it applies in this case. As to the first prong of the functional approach, the Nevada Supreme Court has already established that witnesses are traditionally immune at common law for subsequent damages liability arising

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from their testimony in judicial proceedings. *Id.*, at 1140-41. This is because the law recognizes that the rights of an individual "yield to the dictates of public policy" to ensure that witnesses are free to testify without fear of intimidation or liability. *Id.* at 1141.

The second prong is also met because the looming threat of liability, harassment, and intimidation for victims of a crime absolutely may interfere with their right and public duty to testify. This principle is exemplified by the fact that Mr. Spencer was charged in the underlying proceeding with Intimidation of a Witness to Influence Testimony, a violation of NRS 199.230. There is no question the looming threat of liability to witnesses and crime victims in criminal cases warrants absolute immunity.

Finally, the third prong of "procedural safeguards" is met through the availability of cross-examination and appellate review in the judicial system. *Id.* at 1142-43. The third prong is satisfied by the mere existence of the procedural safeguards and does not depend upon whether the party successfully uses them. *Id.* Here, it is absolutely undisputed that Helmut was subject to cross-examination at Mr. Spencer's preliminary hearing and trial. Thus, the third prong for functional immunity is satisfied.

Helmut has fully established the doctrine of functional immunity applies to bar Mr. Spencer's claim against him for malicious prosecution in the event this Court determines that Mr. Spencer's prima facie claim does not fail as a matter of law. Because Helmut was a witness who testified in Mr. Spencer's criminal proceedings and because the doctrine of absolute immunity is not limited to defamation claims, Helmut's status as a testifying witness protects him from liability and gives him immunity for malicious prosecution as a matter of law. *Harrison*, 131 Nev. Adv. Op. 92, 362 P.3d at 1143 (finding no good reason to depart from principle that doctrine of absolute immunity applies to claims outside defamation, including malicious prosecution and negligence). As such, summary judgment in Helmut's favor on his affirmative defense of privilege is appropriate on this claim.

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C. Civil Conspiracy: *summary judgment is appropriate on Mr. Spencer's claims for civil conspiracy in Helmut's favor, because torts underlying the civil conspiracy claims fail and Mr. Spencer cannot demonstrate any unlawful agreement between the parties.*

Mr. Spencer's Third and Fourth Claims for Relief assert civil conspiracy for defamation and malicious prosecution. An actionable claim for civil conspiracy ""consists of a combination of two or more persons who, by some concerted action, intend to accomplish an unlawful objective for the purpose of harming another, and damage results from the act or acts. *Consol. Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 1311, 971 P.2d 1251, 1256 (1998) (finding summary judgment was appropriate on civil conspiracy claim where there was no evidence defendants agreed and intended to harm plaintiff); *Sharda v. Sunrise Hosp. & Med. Ctr., LLC*, 2017 WL 2870086, at *10 (D. Nev. July 3, 2017) (plaintiff's claim for civil conspiracy failed where he did not plead a plausible underlying agreement).

It is crucial that, in order to prevail on a claim for civil conspiracy, a plaintiff must show the commission of the underlying tort and an agreement between defendants to commit that tort. *Jordan v. Dept. of Motor Vehicles & Pub. Safety*, 121 Nev. 44, 75, 110 P.3d 30, 51 (2005),[8] (the underlying tort is a "necessary predicate" to a cause of action for conspiracy); *Sharda*, 2017 WL 2870086, at *10 (same).

Here, as fully set forth under Sections A and B, the underlying claims for defamation and malicious prosecution fail as a matter of law. There are no genuine issues of material fact remaining as to the allegations of defamation and malicious prosecution against Helmut – and, he is immune from liability under the doctrines of qualified and absolute immunity. Because Mr. Spencer's claims for defamation and malicious prosecution fail as a matter of law, his claims for civil conspiracy likewise necessarily fail because he is unable to prove the commission of the underlying tort.

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[8] Abrogated on other grounds by *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 181 P.3d 670 (2008).

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Moreover, Mr. Spencer simply cannot meet the elements for a claim of civil conspiracy. There are no facts demonstrating the existence of an agreement between Helmut and any of the defendants in this case to accomplish an unlawful objective, such as to maliciously prosecute or defame Mr. Spencer. That would require Helmut to concoct a scheme to undergo substantial physical pain and suffering in order to get Mr. Spencer arrested and then work with the other defendants to present false testimony against him. Such a proposition is completely absurd. Mr. Spencer cannot prove the existence of an agreement by Helmut and the other defendants or intent by Helmut and the other defendants to purposely cause Mr. Spencer harm, because the undisputed facts are, there is no agreement or intent. In the absence of admissible and authenticated evidence establishing a genuine issue of material fact, Mr. Spencer's claims for civil conspiracy fail as a matter of law and summary judgment is appropriate.

D. Punitive Damages: *summary judgment is warranted on Mr. Spencer's claim for punitive damages because this claim is not a stand-alone claim in Nevada and, more importantly, there is no evidence that Helmut acted with malice, oppression, or fraud.*

Mr. Spencer asserts a claim for punitive damages as his Fifth Claim for Relief. However, it is well-established that punitive damages is not a stand-alone claim; rather, it is a prayer for relief tied to a specific cause of action. *Clark v. Lubritz*, 113 Nev. 1089, 1096, 944 P.2d 861, 865 (1997) (holding that Nevada's statute on punitive damages is a verbatim copy of the California statute); *McLaughlin v. Nat'l Union Fire Ins. Co.*, 29 Cal. Rptr. 2d 559, 578 (1994) (there is no separate cause of action for punitive damages and plaintiffs must still prove the underlying tortious act). Flatly put, Mr. Spencer cannot assert a separate cause of action for punitive damages and the Fifth Claim for Relief can be dismissed on this basis alone.

However, summary judgment is appropriate on the merits of Mr. Spencer's request for punitive damages in this case because there is absolutely no evidence that Helmut acted with malice, oppression, or fraud. Before even submitting the issue of punitive damages to a jury, the district court should conduct a threshold inquiry of whether the alleged misconduct is properly subject to this form of civil punishment. *Evans v. Dean Witter Reynolds, Inc.*, 106 Nev.

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598, 612, 5 P.3d 1043, 1052 (2000); see also *Countrywide Home Loans, Inc. v. Thitchener*, 124 Nev. 725, 740, 192 P.3d 243, 252-53 (2008). "[T]he district court has discretion to determine whether the party's conduct merits punitive damages as a matter of law." *Winchell v. Schiff*, 124 Nev. 938, 948, 193 P.3d 946, 953 (2008). Punitive damages are not a compensatory measure of recovery; rather, they are intended to punish and deter a defendant's culpable conduct. *Bongiovi v. Sullivan*, 122 Nev. 556, 580, 138 P.3d 433, 450 (2006).

Punitive damages are governed by statute and may only be awarded when the plaintiff proves, by clear and convincing evidence, that the "defendant has been guilty of oppression, fraud, or malice, express or implied ...." NRS 42.005(1). "Oppression" means "despicable conduct that subjects a person to cruel and unjust hardship with conscious disregard of the rights of the person." NRS 42.001(4). "Fraud" means "an intentional misrepresentation, deception or concealment of a material fact known to the person with the intent to deprive another person of his rights or property or to otherwise injure another person." NRS 42.001(2).[9] "Malice, express or implied" means "conduct which is intended to injure a person or despicable conduct which is engaged in with conscious disregard of the rights or safety of others." NRS 42.001(3).

The statutory definitions of "'oppression" and "malice, express or implied" include the term "conscious disregard," which means "knowledge of the probable harmful consequences of a wrongful act and a willful and deliberate failure to act to avoid those consequences." NRS 42.001(1). In accordance with that statutory language, conscious disregard "denotes conduct that, at a minimum, must exceed mere recklessness or gross negligence." *Countrywide Home Loans*, 124 Nev. at 743, 192 P.3d at 255.

Clear and convincing evidence is evidence that is "so strong and cogent as to satisfy the mind and conscience of a common man, and so to convince him that he would venture to act upon that conviction in matters of the highest concern and importance to his own interest." *In*

[9] Mr. Spencer's claim for punitive damages does not include a claim for fraud and, even if it did, he did not satisfy the NRCP 9(g) heightened standard for pleading a fraud claim. Therefore, this motion does not address fraud.

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re Discipline of Drakulich, 111 Nev. 1556, 1566, 908 P.2d 709, 715 (1995).

In this case, Mr. Spencer cannot come forward with any evidence – let alone clear and convincing evidence – that Helmut's conduct was "despicable conduct" that was intended to injure Mr. Spencer or made in conscious disregard for his safety. In fact, the converse is true – Mr. Spencer acted with conscious disregard for Helmut's safety when he admittedly pursued Helmut on an icy street and knocked him to the ground. There is also no evidence that Helmut had knowledge of probable harmful consequences resulting from a wrongful act (reporting a crime is not a wrongful act) and that he willfully and deliberately failed to act to avoid those consequences. A request for punitive damages in this context is simply absurd.

Further, it is an undisputed fact that Helmut acted in good faith and with a reasonable belief that Mr. Spencer had punched or assaulted him on the night of December 18, 2012. *Affidavit of Helmut* ¶¶14-16. Consistent with that good faith belief, Helmut reported the incident to law enforcement and testified at Mr. Spencer's criminal proceedings. As stated under Section A, Defamation, and Section B, Malicious Prosecution, the existence of a good faith belief negates the presence of malice. *Lester*, 112 Nev. at 1430, 929 P.2d at 913 (good faith belief that a crime had been committed); *Boren*, 2010 WL 493447 at *6 (the existence of probable cause negates malice); *Pope*, 121 Nev. at 318, 114 P.3d at 284 (no malice where reporting party believed crime had been committed). Subjecting Helmut to punitive damages for his good faith belief that he was the victim of a crime and fulfilling his civic duty and individual right to report that crime smacks of injustice. Such an award in this case would establish unwanted precedent and deter citizens and victims from coming forward and reporting crimes out of fear that they will later be subject to liability and obscene damage amounts for contacting local law enforcement and participating in the judicial process. This result is clearly not the type of conduct that a punitive damage award is meant to deter.

Because there is no evidence that Helmut's conduct is the type where an award of punitive damages is appropriate and because this Court can make this determination as a matter of law, summary judgment should be granted in Helmut's favor on Mr. Spencer's Fifth Claim for Punitive Damages.

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E. *Intentional Infliction of Emotional Distress:* *summary judgment is appropriate on Mr. Spencer's claim for intentional infliction of emotional distress because there is no evidence Helmut acted intentionally or with a reckless disregard of causing emotional distress and Mr. Spencer's reported symptoms do not satisfy the requirement of "physical manifestations" of emotional distress.*

1. Helmut's conduct is not extreme and outrageous and the record is devoid of evidence that Helmut acted intentionally or with a reckless disregard of causing Mr. Spencer severe emotional distress.

Mr. Spencer's Sixth Claim for Relief asserts that Helmut acted intentionally or with reckless disregard for the likelihood of causing emotional distress when he reported to law enforcement that he had been injured, when he stated at the Planning Commission he was hurt by Mr. Spencer, and when he testified at Mr. Spencer's criminal proceedings regarding the same.[10] However, there is absolutely no evidence that Helmut acted intentionally or that his actions of reporting a crime constitute reckless disregard in this case.

In a claim for intentional infliction of emotional distress, a plaintiff must prove the following: "(1) extreme and outrageous conduct with either the intention of, or reckless disregard for, causing emotional distress, (2) the plaintiff's having suffered severe or extreme emotional distress, and (3) actual or proximate causation." *Barmettler v. Reno Air, Inc.,* 114 Nev. 441, 447, 956 P.2d 1382, 1386 (1998) (concluding summary judgment was proper where plaintiff failed to establish either the first or second elements of this claim) citing *Star v. Rabello,* 97 Nev. 124, 125, 625 P.2d 90, 91–92 (1981) (citation omitted).

A prima facie claim of intentional infliction of emotional distress requires a plaintiff to prove that the defendant's conduct was "extreme and outrageous." *Maduike v. Agency Rent-A-Car,* 114 Nev. 1, 4, 953 P.2d 24, 26 (1998). Extreme and outrageous conduct "is that which is outside all possible bounds of decency and is regarded as utterly intolerable in a civilized

[10] To be clear, Mr. Spencer's claim for "infliction of emotional distress" is the intentional tort of intentional infliction of emotional distress because, (1) he alleges Helmut acted with intentional or reckless disregard; and, (2) there is no counterclaim for negligence in this case.

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community." *Id.* citing California Book of Approved Jury Instruction 12.74 (internal citations omitted). In *Maduike*, the Nevada Supreme Court upheld the trial court's decision that the first element of the tort was not met when a car rental agency's employees were rude and refused to provide a family with a new rental car after the brakes on the car they rented failed and caused a collision. *Id.* at 4-5. The court agreed with the rental agency's argument that its employee's conduct was, at most, unkind or inconsiderate behavior but it did not rise to the level of being "atrocious, intolerable, or outside all possible bounds of decency." *Id.* at 5; and see, *Barmettler*, 114 Nev.at 443, 956 P.2d at 1384 (no extreme and outrageous conduct where employer violated its own policy to keep confidential the fact that employee entered substance abuse rehabilitation); *Chowdhry v. NLVH, Inc.*, 109 Nev. 478, 483, 851 P.2d 459, 462 (1993) (accusations by hospital that surgeon abandoned patient were insufficient to constitute extreme and outrageous behavior); compare, *Olivero v. Lowe*, 116 Nev. 395, 400, 995 P.2d 1023, 1026 (2000) (conduct was extreme and outrageous where construction laborer was physically attacked by homeowner and threatened with handgun).

Here, Helmut's actions of reporting a crime and making a statement about what happened to him on the night of December 18, 2012 simply do not rise to the level of extreme and outrageous conduct as a matter of law. Similarly, testifying before a judge in Mr. Spencer's criminal trial is not extreme and outrageous conduct. Again, subjecting victims and citizens to damages when they exercise their civil obligation to report a crime and testify in judicial proceedings is simply against public policy and would set dangerous precedent. Victims and witnesses report crimes and testify multiple times a day and this conduct is simply not "extreme and outrageous" as a matter of law. See, e.g., *Churchill v. Barach*, 863 F. Supp. 1266, 1275 (D. Nev. 1994) (customer's conduct was not extreme and outrageous as a matter of law when he wrote letter to airline complaining about employee because this type of conduct occurs "thousands of times each day").

Moreover, even if Helmut's conduct was extreme and outrageous (which, it is not), Mr. Spencer cannot demonstrate that Helmut intended to cause Mr. Spencer emotional distress or acted with reckless disregard in causing Mr. Spencer severe emotional distress. This case is

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completely distinguishable from cases where the court has found extreme and outrageous conduct. For example, in *Olivero*, the Nevada Supreme Court found that a homeowner who physically attacked and threatened a construction laborer with a handgun and forced him to work at gunpoint was liable for intentional infliction of emotional distress because that conduct was extreme and outrageous. 116 Nev. at 400, 995 P.2d 1026. That is the type of conduct this tort is meant to address. Here, there is simply no evidence in the record supporting Mr. Spencer's allegation that Helmut's conduct was extreme and outrageous with the intention or reckless disregard of causing emotional distress. Therefore, Mr. Spencer's Sixth Claim for Relief for infliction of emotional distress fails as a matter of law on the first element and summary judgment must be granted in Helmut's favor.

2. Mr. Spencer has failed to present proof of severe or extreme emotional distress.

In Nevada, when a party claims emotional distress damages that precipitate physical symptoms (as opposed to emotional distress damages secondary to a physical injury), then either a physical impact must have occurred or, in the absence of a physical impact, the plaintiff must prove "serious emotional distress" causing physical injury. *Barmettler*, 114 Nev. at 448, 956 P.2d at 1387.

Absent physical impact, "the less extreme the outrage, the more appropriate it is to require evidence of physical injury or illness from the emotional distress." *Chowdhry*, 109 Nev. at 483, 851 P.2d at 462 citing *Nelson v. City of Las Vegas*, 99 Nev. 548, 555 665 P.2d 1141, 1145 (1983); and *Churchill*, 863 F. Supp. at 1276 (where the outrage is less extreme, evidence of physical injury or illness is required). The stress "must be so severe and of such intensity that no reasonable person could be expected to endure it." *Alam v. Reno Hilton Corp.*, 819 F. Supp. 905, 911 (D. Nev. 1993). "Insomnia and general physical or emotional discomfort are insufficient to satisfy the physical impact requirement." *Id.* The physical impact requirement is not met even where a party has "great difficulty in eating, sleeping, and suffers outward manifestations of stress and is generally uncomfortable." *Churchill*, 863 F. Supp. at 1276; *Alam*, 819 F. Supp. at 911 (feelings of inferiority, headaches, irritability and weight loss did not amount

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to severe emotional distress).

In this case, the "emotional distress" suffered by Mr. Spencer does not rise to the level of "severe or extreme emotional distress" that is required to recover damages for this tort. Mr. Spencer has never produced any medical records or documentation of severe and extreme emotional distress in this case and the records that have been produced by third-party defendant Mary Ellen Kinon reveal that Mr. Spencer's claims for emotional distress fail as a matter of law. Mr. Spencer may argue that the opinion of his therapist, Dana Anderson, is sufficient to prove that Mr. Spencer has suffered severe and extreme emotional distress because Ms. Anderson diagnosed him with "PTSD." However, a careful look at the specific symptoms Mr. Spencer experiences demonstrates his symptoms are insufficient to constitute severe and extreme emotional distress: "reliving the trauma," "stomach ache," "nervousness," "bad dreams," "frightening thoughts," "feeling tense," "difficulty sleeping," "lack of concentration," "inability to deal with stressful situations," "negative thoughts," "depression, anxiety," and, loss of having fun. *Affidavit of Helmut* ¶ 26; **Exhibit 14**, letter from Dana Anderson dated May 21, 2017, bates-stamped KINION-350—351. As explained in case law above, these symptoms do not constitute severe and extreme emotional distress. Mr. Spencer's complaints of stress, fatigue, and weight loss similarly do not constitute severe and extreme emotional distress. *Churchill*, 863 F. Supp. at 1276; *Alam*, 819 F. Supp. at 911.

Moreover, Mr. Spencer's physical symptoms he attributes to this case are pre-existing conditions and symptoms he suffered long before this case even started. His treating physicians note that his past medical history includes pre-existing depression and a "long history of gastrointestinal reflux disorder." *Affidavit of Helmut* ¶27; **Exhibit 15**, medical records of Jeffrey Spencer, bates-stamped KINION-138—140, 151—156 (noting that heartburn and regurgitation issues started 10-15 years ago). With this medical history, Mr. Spencer simply cannot attribute his heartburn and depression to Helmut's actions in this case.

Therefore, because Mr. Spencer has not suffered severe and extreme emotional distress as a matter of law, summary judgment in Helmut's favor on the Sixth Claim for Relief for infliction of emotional distress is appropriate.

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V. CONCLUSION

The Nevada Supreme Court has held that Rule 56, "should not be regarded as a disfavored procedural shortcut," but instead as an integral part of the rules of civil procedure as a whole, "which are designed to secure the just, speedy and inexpensive determination of every action." *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005) citing *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S. Ct. 2548 and FRCP 1. As our court has recognized, a nonmoving party may not rely on "gossamer threads of whimsy, speculation and conjecture." *Id.* at 7.0. Instead, when a motion for summary judgment is properly made and supported as required by NRCP 56, the non-moving party must, "by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue." *Id.* (emphasis added). Factual disputes that are not genuine and material to the issues cannot defeat summary judgment. *Id.*

Helmut has demonstrated that summary judgment is proper in this case on each of Mr. Spencer's counterclaims and upon Helmut's affirmative defenses. Helmut's statements are privileged as a matter of law, and this Court can make that determination on summary judgment. Helmut's good faith belief that he was hurt by Mr. Spencer negates any "intent" or "malice" in this case for the purpose of Mr. Spencer's claims for defamation, malicious prosecution, intentional infliction of emotional distress, and punitive damages. There is simply zero evidence of any conspiracy and Mr. Spencer cannot prove the underlying tort. Mr. Spencer's complaints of stomach aches and sleepless nights are insufficient as a matter of law to warrant damages for severe and extreme emotional distress. Despite the fact this case has been pending for years, Mr. Spencer has not come forward with any evidence that would raise a genuine issue of material fact for the purpose of defeating summary judgment in Helmut's favor. Therefore, Helmut respectfully requests this Court grant summary judgment in his favor

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and against Mr. Spencer on each claim against Helmut in Mr. Spencer's *Amended Counterclaim and Third-Party Complaint*.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated: April 11, 2018.

Lemons, Grundy & Eisenberg

BY: _____
Douglas R. Brown, Esq.
Sarah M. Molleck, Esq.
Attorneys for Counterdefendant Klementi

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6005 PLUMAS ST.
THIRD FLOOR
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(775) 786-6868

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of Lemons, Grundy & Eisenberg and that on April 11, 2018, I deposited in the United States Mail, with postage fully prepaid, a true and correct copy of the within **COUNTER-DEFENDANT HELMUT KLEMENTI'S MOTION FOR SUMMARY JUDGMENT ON ALL COUNTERCLAIMS**, addressed to the following:

William J. Routsis II, Esq.
1070 Monroe Street
Reno, Nevada 89509
Attorney for Jeffrey Spencer

Lynn G. Pierce, Esq.
515 Court Street, Suite 2f
Reno, Nevada 89501
Attorney for Jeffrey Spencer

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Attorney for Jeffrey Spencer

Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, Nevada 89509
Attorney for Mary Ellen Kinion, Egon Klementi and Elfriede Klementi

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, Nevada 89119
Attorneys for Rowena Shaw and Peter Shaw

Susan G. Davis

Susan G. Davis

LEMONS, GRUNDY & EISENBERG
6005 PLUMAS ST. SUITE 300
RENO, NV 89519
(775) 786-6868

INDEX OF EXHIBITS

Exhibit No.	*Description*	*Length of Exhibit*
1	Affidavit of Helmut Klementi	4 pages
2	Deposition of Helmut Klementi dated 4/14/16	38 pages
3	Deposition of Jeffrey Spencer dated 7/28/16	60 pages
4	Letters from Douglas County Code Enforcement and Douglas County District Attorney	6 pages
5	Deposition of Elfriede Klementi dated 4/14/16	43 pages
6	Minutes of the Regular Meeting of the Kingsbury General Improvement District Board of Trustees	2 pages
7	Douglas County Sheriff's Department Investigation Narrative, Case No. 12SO41608	14 pages
8	Deposition of Deputy Jesse McKone dated 4/7/16	29 pages
9	Temporary Order Against Stalking, Aggravated Stalking or Harassment	4 pages
10	Douglas County Planning Commission Meeting Minutes	7 pages
11	Statement of Helmut Klementi	1 page
12	Selected Pages of Transcript of Hearing-Motion for Summary Judgment	6 pages
13	Selected Pages of Transcript of Preliminary Hearing	43 pages
14	Letter from Dana Anderson dated 5/21/17	2 pages
15	Medical records of Jeffrey Spencer	29 pages

EXHIBIT 1

EXHIBIT 1

AFFIDAVIT OF HELMUT KLEMENTI IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON ALL COUNTERCLAIMS

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, HELMUT KLEMENTI, being first duly sworn, depose and say under penalty of perjury:

1. I am over the age of 18 years and am a resident of Stateline, Nevada. I am making this Affidavit based upon my personal knowledge, except as to those matters where I may state they are based upon information and belief, and as to those matters and information I believe them to be true. If called as a witness to testify as to the contents of this declaration, or any of the facts stated herein, I am and would be legally competent to testify as to those matters in a court of law.

2. I am a counter-defendant in case no. 14-CV-0260 in the Ninth Judicial District Court of the State of Nevada.

3. I am eighty-three years old and live at 163 Pine Ridge Drive, Stateline, Nevada, in the Kingsbury General Improvement District.

4. At the time of the events complained of in Mr. Spencer's *Amended Counterclaim and Third Party Complaint*, I had a twin brother, Egon Klementi ("Egon"), who lived with his wife Elfriede "Elfie" Klementi at 187 Meadow Lane, Stateline, Nevada at the corner of Meadow Lane and Charles Avenue.

5. At the time of the events complained of in Mr. Spencer's *Amended Counterclaim and Third Party Complaint*, there was a dispute between Mr. Spencer and the other neighbors in the KGID district, including my brother Egon, regarding a fence that Mr. Spencer had built on his property in May 2012 in violation of the Douglas County Code.

6. Attached as **Exhibit 4** is a true and correct copy of letters from Douglas County Code Enforcement and the Douglas County District Attorney regarding violations of the Douglas County Code, bates-stamped D2539 and D2563-2567, and produced by Counterclaimant Jeffrey Spencer in this case.

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7. On December 18, 2012, I attended a meeting of the Board of Trustees for the KGID with Egon and Elfie.

8. Although I attended the meeting, I did not make a statement or otherwise speak at the December 18, 2012 meeting before the Board of Trustees for the KGID.

9. Attached hereto as **Exhibit 6** is a true and correct copy of the "Minutes of the Regular Meeting of the Kingsbury General Improvement District Board of Trustees," dated Tuesday, December 18, 2012, bates-stamped KLEMENTI-127—128, and produced by me in this case.

10. At the December 18, 2012 KGID Board of Trustees meeting, Chairperson Norman gave instructions for the neighbors concerned about the snow berms to take pictures.

11. When the December 18, 2012 KGID Board of Trustees meeting concluded, I went to Egon's and Elfie's home for dinner.

12. After dinner, I left my brother Egon's house to take pictures of the snow berms in front of Egon's property and to then return to my home.

13. As I was taking pictures of the snow berms, I was knocked to the ground by Mr. Spencer.

14. It was my opinion and belief that Mr. Spencer punched me in my side and knocked me to the ground.

15. I sustained injuries as a result of this incident and Douglas County Sheriff's Deputies responded.

16. I reported to Deputy McKone my good faith belief that Mr. Spencer had assaulted me and knocked me to the ground.

17. Attached hereto as **Exhibit 7** is a true and correct copy of the Douglas County Sheriff's Department Investigation Narrative, Case No. 12SO41608, bates-stamped D0302 and produced by Counterclaimant Jeffrey Spencer in this case.

18. On or about December 26, 2012, I obtained a Temporary Restraining/ Protective Order against Mr. Spencer.

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19. Attached hereto as **Exhibit 9** is the *Temporary Order Against Stalking, Aggravated Stalking or Harassment*, filed December 26, 2012 in Tahoe Justice Court, bates-stamped D1573—1576, and produced by Counterclaimant Jeffrey Spencer in this case.

20. On January 8, 2013, I attended a meeting before the Douglas County Planning Commission and its members.

21. Attached hereto as **Exhibit 10** is a true and correct copy of the Douglas County Planning Commission Meeting Minutes dated January 8, 2013, bates-stamped D1132—1138, and produced by Counterclaimant Jeffrey Spencer in this case.

22. At that meeting, I read a statement during public comment that stated Mr. Spencer confronted and punched me while I was taking pictures of a snow berm pushed against my brother Egon's fence and that I had a restraining order against Mr. Spencer.

23. Attached hereto as **Exhibit 11** is a true and correct copy of the statement that I read, bates-stamped D1124, and produced by Counterclaimant Jeffrey Spencer in this case.

24. I testified on behalf of the State of Nevada as the victim of a crime in Mr. Spencer's criminal proceedings before the court, including the preliminary hearing and criminal trial.

25. The only statements I made about Mr. Spencer were (1) my statement to Deputy McKone on December 18, 2012, (2) my statement to the Douglas County Planning Commission on January 8, 2013, and (3) my testimony at Mr. Spencer's preliminary hearing and trial.

26. Attached hereto as **Exhibit 14** is a true and correct copy of a letter from Mr. Spencer's marriage and family therapist, Dana Anderson, dated May 21, 2017, bates-stamped KINION-350—351, and produced in response to a subpoena in this case.

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(775) 786-6868

27. Attached hereto as **Exhibit 15** are true and correct copies of medical records from Gastroenterology Consultants and Dr. Gao for Jeffrey D. Spencer, bates-stamped KINION-138—140, 151—156, and produced in response to a subpoena in this case.

I declare under penalty of perjury the foregoing is true and correct.

Dated: this 29 day of March, 2018.

Helmut O. Klementi

HELMUT KLEMENTI

SUBSCRIBED and SWORN to before me this 29th day of March, 2018.

SUSAN G. DAVIS
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 99-37796-2 - Expires July 24, 2019

Susan G. Davis

Notary Public

LEMONS, GRUNDY & EISENBERG
6005 PLUMAS ST.
THIRD FLOOR
RENO, NV 89519
(775) 786-6868

EXHIBIT 2

EXHIBIT 2

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

-o0o-

HELMUT KLEMENTI,
Plaintiff,

vs.

JEFFREY D. SPENCER, et al.,
Defendants.
AND RELATED COUNTERCLAIMS.

Case No. 14-CV-0260

Dept. No. II

DEPOSITION OF

HELMUT KLEMENTI

April 14, 2016

Reno, Nevada

JOB NO. 299004-C

REPORTED BY: DEBORAH MIDDLETON GRECO, CCR #113, RDR, CRR

A P P E A R A N C E S

FOR THE PLAINTIFF: Nicholus Palmer, Esq.
Laub & Laub
630 E. Plumb Lane
Reno, NV 89502
323-5282
Nik@lawlaub.com

FOR THE DEFENDANTS: David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 West Liberty St., #1050
Reno, NV 89501
786-4441
Dzaniel@ranallilawyers.com

FOR THE COUNTERCLAIMANT: William J. Routsis, II, Esq.
1070 Monroe Street
Reno, NV 89509
337-2609

FOR COUNTERDEFENDANTS KLEMENTI: Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, #300
Reno, NV 89509
786-6868
Clm@lge.net

FOR COUNTERDEFENDANT KINION: Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, NV 89509 333-0400
Mpintar@gplawreno.net

(Continued on Next Page)

A P P E A R A N C E S (Continued)

FOR THE SHAWS: Tanika M. Capers, Esq.
6750 Via Austi Parkway, #310
Las Vegas, NV 89119
(702) 371-5657
Tcapers@amfam.com

ALSO PRESENT: Mary Ellen Kinion
Elfriede Klementi
Jeffrey Spencer
Marilyn Spencer

I N D E X

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(NO EXHIBITS MARKED FOR THESE PROCEEDINGS)

BE IT REMEMBERED that on Thursday, April 14, 2016, at the hour of 1:14 p.m. of said day, at the offices of SUNSHINE LITIGATION SERVICES, 151 Country Estates Circle, Reno, Nevada, before me, DEBORAH MIDDLETON GRECO, a Certified Court Reporter, personally appeared HELMUT KLEMENTI, who was by me first duly sworn and was examined as a witness in said cause.

-o0o-

HELMUT KLEMENTI

called as a witness, having been duly sworn,

testified as follows:

EXAMINATION

BY MR. ZANIEL:

Q Can you state your name for the name, sir.

A Helmut, H-E-L-M-U-T, Klementi, K-L-E-M-E-N-T-I.

Q All right. Mr. Klementi, you have been in the room for this morning's deposition, correct?

A Yes.

Q Were you here -- you weren't here last week, I don't believe.

A No.

Q Okay. So you have had the opportunity at least see what the process is today with Elfie Klementi, correct?

A Yes.

Q Okay. I'm going to go over some rules of a deposition. I went over these rules with her as well, but I

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think it's important and prudent of me to go over these with you just so I know that you understand them, okay?

A Yes.

Q Okay. The first rule is that you are under oath this afternoon. That oath that we just took, that you just took, is the same oath as if you were sitting in a courtroom.

So it obligates you to tell the truth today under the penalty of perjury.

Do you understand that?

A Yes.

Q If you don't understand a question that's asked of you, stop us and let us know that you don't understand the question.

If you answer the question today, I will have assumed that you have understood it and answered the question to the best of your ability.

Is that fair?

A Yes.

Q The last rule is that you will have the opportunity to review your testimony. It's going to come out in a book, and you can go through it line by line.

If you make any changes to your testimony after today, I would be able to comment upon those changes, and it may affect your credibility.

Do you understand that?

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A Yes.

Q Okay. As with the other rules that you heard, if you want to take a break, you let me know. We're going to be taking a couple of breaks, I'm sure, during your deposition.

If you need to speak to your attorney, let me know. If there's a question pending, I just ask that you answer the question.

And if we don't talk over each other, that will make the court reporter's job easier, okay?

A Yeah.

Q All right. So in an effort to speed things up, I have a meeting I have to get to at 5:30, and I -- my wife's birthday is tomorrow, and I haven't gotten her a present yet.

So what I'm going doing to do is, I'm going to go over some background information with you, okay?

A Yes.

Q And then I'm going to ask about, a little bit about that evening of December 18th.

And then I'm going to ask about your injuries and your treatment, okay?

A Yeah.

Q And then I'm going to have Mr. Routsis here ask you questions about the other things.

So this way, we're not kind of duplicating our efforts, and we can save some time, okay?

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A Okay.

Q What is your date of birth, sir?

A April 11, 1934.

Q 19 --

A '34.

Q So you just had a birthday?

A Yes.

Q And how old does that make you today?

A 82.

Q Very good.

And where were you born, sir?

A Bregenz, Austria. In Austria.

Q Can you spell the city?

A B-R-E, G like George, E-N-Z.

Q And now my understanding, and I can kind of speed things along a little bit.

I think you and Egon are twin brothers?

A Yep.

Q And at some point early on, in the '50s, you and your brother started a bike act; is that --

A Yes.

Q The proper way to say that, a bicycle act?

A Yes. Yes.

Q Okay. How did you learn to start -- how did you learn that?

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A We were amateurs for seven years, Austrian champions. Then we had to decide business at home or show business.

And my brother and myself, we chose show business.

Q Okay. So in the '60s, then, is when you started to do this act professionally?

A '53 or so.

Q Okay. And you started in Austria, and then, eventually, the show went international?

A Yes.

Q And at the beginning it was just the two of you?

A Yes.

Q Then your brother met Elfie?

A Got married.

Q Then Elfie joined the act?

A Yes.

Q And that was in the '60s?

A Yeah.

Q Okay. And for how long did you perform this act for?

A 35 years.

Q Okay. We looked at Exhibit 8 here, which is a brochure of the act, I believe that you have done.

You have seen the brochure, I take it?

A Yeah.

Q Are you in all these photos?

A Yes.

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Q Okay. So these --
A Mostly the bottom man.
Q You look really young in these photos.
A Yes.
Q So these were a little while ago?
A Oh, yeah.
Q Okay. Is there any part of the performance that you did that your brother didn't do, or vice versa, or could you interchange?
A No. We couldn't interchange. We --
Q You had your own specific --
A Yeah.
Q Okay.
A He was the top man. I was the bottom man.
Q Okay. So can you tell us what that means to somebody that has no idea about bike acts?
What does the bottom man mean?
A Well, he carries Elfie and my brother, the two on top or -- but, I mean, we had such variation, it's --
Q So you were always on the bike at the bottom?
A No. That's just Egon where you pointed. Usually, I am always on the bottom. Here I'm on the bottom. Elfie stay on the bottom, and I was the rider, riding the bike.
Q Okay. So for the most part, you were on the bottom?
A Yes.

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Q But in that one particular photo Egon was?
A To fool the audience.
Q To fool the audience.
But for the most part, you were on the bottom?
A Yes.
Q So you typically had your brother and Elfie on top of you as you were riding?
A Yeah.
Q Okay. And how long are these performances for?
A 10 to 12 minutes.
Q Okay.
A Each performance.
Q All right. During -- your career was about 50 years, then?
A 35 years.
Q 35 years.
During the 35 years did you ever injure yourself during any of these performances?
A Yeah.
Q Did you ever fall off the bike?
A Myself, very little, yeah.
Q What injuries did you have?
A Just broke the wrist once.
Q Okay.
A That's it.

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Q When was that?
A I don't remember.
Q Okay. You broke a wrist. Was it in a different country or in the United States?
A It was in Germany.
Q What other injuries did you sustain while performing the bike act?
A I don't remember any serious injuries.
Q So the one serious one you do remember is the broken wrist?
Which wrist was it?
A The left one.
Q All right. So let's go back.
What is your address, sir?
A 163 Pine Ridge Drive, Stateline, Nevada. 89449.
Q Okay. And how long have you been in that house for --
A Since --
Q Approximately?
A -- '80 something.
Q Did you move to that neighborhood at a different time than your brother?
A No, about the same time.
Q And you heard Elfie this morning?
She said that they came to the United States for a short period of time, 3 to 6 months, and then returned.

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Did you do the same?
A Exactly the same.
Q Okay.
A Ed Sullivan show and different TV shows and --
Q You said the Sullivan show?
A Yeah.
Q Ed Sullivan show?
A '58, yeah.
Q So you performed on the Ed Sullivan show?
A Yeah.
Q What other major type shows have you been a performer on?
A All around the world. But always Las Vegas show, I mean, you know, style.
Q Did you have a standing Las Vegas type show for a while? Like at Caesar's Palace, were you there every night for a certain period of time?
A Six months in the Dunes before they tore it down.
Q So that was in the '80s?
A '78. No. No. After -- I mean, I'm not sure.
Q Okay. So you did a nightly act at the Dunes for a while?
A Yes.
Q How about at Caesar's?
A TV show.

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Q Okay. Was your act part of a bigger act, like a traveling-type circus or traveling show?
A Three years Circus Vargas. That was the only one. Only circus within the states.
Q What was the name of that circus?
A Circus Vargas.
Q Circus Vargas?
A V-A-R-G-A-S.
Q And where was that at? Here in the United States?
A United States and Canada.
Q Okay. All right. So you moved into that Pine Ridge Street in the '80s, approximately the same time your brother did?
A Exactly.
Q Have you ever been married, sir?
A No.
Q Do you have any children?
A No.
Q Did you guys -- tell me about the schooling in Austria.
Did you and your brother go to -- I'm not sure how schooling works in Austria.
A Different. You start, and then you go to high school. That's about it.
This time it was the most, you know, and then

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professional, like, business school for three years, and then we changed to show business after four years working in the shop, you know, I mean, like, first apprentice, and then --
Q Okay. Let me summarize to make sure I understand.
You went to, and this is your brother. You did the same thing.
You and your brother went to high school, completed high school?
A Yes.
Q Then you furthered your education by going to a business school?
A Yes.
Q You didn't finish the business school, you went --
A No. I finished, yeah.
Q You finished your business school.
Is that equivalent to a college degree?
A No, it's different. It's really different. You do it, if you -- like, to open a shop or a business, you know, restaurant or anything.
Q So they teach you business principles?
A Okay.
Q Is that what they did for you?
A Yes.
Q Was it show business stuff or just business?
A No. No. No. Business.

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Q Business. Okay. And then at the end of that three years, you had a choice to make, you and your brother.
You could have gone into business for yourself, or you could have gone into show business?
A Yes.
Q And you and your brother chose show business?
A Yes.
Q And you worked under somebody else as an apprentice for a certain number of years, and then you went out on your own.
Did I get that right?
A Not exactly. I mean, apprentice, and then four years in the shop. I mean, you know, salesman or whatever. And then we changed to professional show business.
Q Okay. So while you were doing your apprentice, you were also doing some business work, and then you made a choice just to do the shows?
A Yeah.
Q Okay. Good enough.
How about any military-type stuff? Again, I'm not sure how Austria works.
Is it mandatory that you enter a military?
A At this time, after the war, we didn't have a military.
Q Okay. So you have never been in the military?

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A No.
Q Have you ever filed a lawsuit other than the lawsuit that we're involved in now?
A Never.
Q Have you ever been named as a defendant in a lawsuit other than for this lawsuit?
A No.
Q Nobody has sued you?
A No.
Q Okay. What -- did you have a doctor that you would see on a regular basis, a primary care doctor?
I don't know if you are familiar with that term.
A Yes. Yeah.
Q Did you have one of those before December of 2012?
A Yes.
Q What was your doctor's name?
A Dr. Steven Brooks.
Q How do you spell the last name?
A B-R-O-O-K-S.
Q And where has Steven Brooks' office located?
A Stateline Medical Center.
Q And is, to your knowledge, is Dr. Brooks just a general doctor, or was he some type of specialist?
A General.
Q Okay. How long had Dr. Brooks been your general

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doctor for before December 2012? 5 years, ten years?
A Ten years or more.
Q Okay.
A But I'm not sure.
Q Well, who was your doctor before Dr. Brooks?
A I can't, didn't have --
Q Didn't have a specific --
A No.
Q -- steady doctor?
A No. No.
Q Okay. So when you started seeing Dr. Brooks, you would see him for, if were you sick or physicals or anything, blood work, or anything like that?
A Yeah.
Q And it was like that up until December 18th of 2012?
A Yes.
Q Okay. From, say, December 2005 to December 2012, were you ever in a ambulance for any reason?
A Never.
Q Before our day, do you ever recall being in a ambulance?
Before December 18th, do you ever recall being in an ambulance at any time?
A No. I don't recall it.
Q Okay. But definitely you were not in an ambulance for

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the past five years before our incident?
A No. Never.
Q Okay. What's the Lake Tahoe hospital? Is that Barton Memorial?
A Yes. Correct.
Q Okay. Before December 18th, 2012, had you ever been a patient at Barton Memorial Hospital?
A Yeah.
Q Could you tell me what for?
A I don't exactly recall. I mean, you know, I had kidney stones. I had things like -- yeah. That's about it.
Q How about a heart condition?
A No.
Q Okay. In December of 2012, were you taking any medication on a daily basis?
A Yes. Lisinopril, but it was only a while and then --
Q To the best you can recall.
A One took for cholesterol and one for --
Q Blood pressure?
A -- diabetes.
But, I mean, beginning, you know. I mean --
Q So you had taken medication, one for cholesterol, one for diabetes, but at different times?
A No. No. At the same time.
Q Okay. Who prescribed those medications?

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A Dr. Brooks.
Q And where did you get those medications filled at? What pharmacy did you use?
A Safeway.
Q Safeway?
A Safeway. And --
Q Safe --
A -- OptumRX.
Safeway.
Q Safeway?
A But also the pharmacy.
Q Okay. So Safeway. And then the other one?
A OptumRX.
Q OptumX?
A RX.
Q RX.
And how long had you used those pharmacies? For at least five years?
A Yeah.
Q Okay. All right. So let's talk about the injuries you sustained in this incident, okay?
A Yeah.
Q Do you remember the incident as we sit here today?
A Yes.
Q Can you picture in your head?

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A Yes.
Q Okay. Can you tell me how you landed on the roadway?
A Yes. On my back.
Q Okay. Did your head hit the ground?
A I don't recall it --
Q Okay.
A -- because I was --
Q When you say you landed on your back, did you -- tell me the mechanics of it.
Did you go straight back and hit the ground?
A I don't remember this.
Q Okay. Did you lose consciousness for any period of time?
A Yes.
Q Do you know how long you lost consciousness?
A No.
Q What is the last thing you remember -- well, strike that.
Do you remember actually falling to the ground, or, no?
A Flying to the ground, yeah.
Q Okay. So you remember flying to the ground.
What was the next thing you remember after that?
A The deputy talking to me, asking me.
Q Okay. Just so I'm clear, then, your recollection is

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that you were flying to the ground, and then it wasn't -- there was no recollection of anything happening until a policeman was talking to you?
A Yeah.
Q Okay. So in between that time frame, you don't know what was going on?
A No.
Q Okay. So if I asked you if your shoulder hit the ground, or your hip hit the ground, you wouldn't know because you just don't have a recollection of how you came down, true?
A True.
Q Okay. All right. So following the accident, did you have any bruises or contusions or black-and-blue marks anywhere on your body?
A I don't know.
Q How -- what do you mean you don't know? Either --
A No, because I didn't look at my body.
Q From the parts you saw on your body, could you see any black or blue marks?
A No.
Q Okay.
MR. PALMER: Just to clarify, are you asking immediately afterwards? Or within the next few days?
BY MR. ZANIEL:
Q Yeah. Any time after.

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Within a week, two weeks after the accident?
A After, no.
Q Okay. So at any time after the accident, you had never -- you didn't see any black-and-blue marks on your body, true?
A I didn't look at it. I'm sorry.
Q Okay. Well, you took a shower --
A Just had pains.
Q I understand. We're going to talk about the pain.
A Okay.
Q But you took a shower every day, so I assume you looked at yourself at some point.
Did you see any black-or-blue marks anywhere?
A No. No.
Q Okay. You were taken from the scene by ambulance?
A Yes.
Q Do you remember being loaded onto the ambulance?
A Part, yeah.
Q Okay. When you say "part", were you going in and out of consciousness?
A Yeah. Yeah. Because, I mean, yeah.
Q Yes?
A I don't know exactly because I can't remember exactly how they turned me around, and --
Q Well, let me ask you this.

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So you remember a deputy talking to you. That's the first thing you remember --
A Yes.
Q -- after being in the air?
A Yes.
Q What's the next thing you remember after the deputy being with you?
A That the ambulance put me in the car.
Q Okay. Did they put you on a back board? Do you know what a back board is?
A No. They put me on the stretcher.
Q Okay. Did they tie something down to your neck?
A I don't recall.
Q Do you recall them putting you in the ambulance?
A Yes.
Q Did they start any type of injections, IV, in the ambulance?
A I don't remember.
Q Do you know if anybody went with you in the ambulance? Your brother, Elfie?
A No.
Q So it was you and the ambulance person?
A Yes.
Q And which hospital did they take you to?
A Barton Memorial.

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Q Okay. And that would have been on Tuesday, December 18th, approximately 9 o'clock or so, in that time area?
A Yes.
Q Okay. When did you leave the hospital?
A After midnight.
Q Okay. Did anybody come to the hospital, your brother, Elfie, anybody else?
A My brother.
Q Okay. And did he stay with you until you were released?
A Yes.
Q Okay. And how did you leave the hospital?
A He brought me in his car home.
Q Okay. Did you have an opportunity to talk to the doctors at the hospital about what the injuries were?
A No. I didn't.
Q Do you remember the doctor coming in and saying, this is what we found, or these are the tests that we did, these were the results?
A I don't recall.
Q Did the doctor tell you to follow up with any other doctors or Dr. Brooks at that time?
A Yes.
Q Did -- the emergency room doctor told you to follow up with your own doctor?

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A Yeah.
Q Okay. Do you know if the emergency room prescribed any medication for you?
A Pain medication, but I don't recall what size or whatever.
Q Okay. Do you know if you got that filled?
A Yes.
Q And was that at Safeway or the other pharmacy?
A Safeway.
Q Okay. Did you take those pain medication pills?
A Yes.
Q Okay. At some point -- who would have been the next person that you saw after being released from the hospital?
MR. PINTAR: You mean medical provider?
BY MR. ZANIEL:
Q Medical, yes.
A Medical?
Q Yes. Sorry.
A I saw -- Dr. Brooks, he was on vacation, so I had to see Dr. Rork or one of the doctors who was working there.
Q Okay.
A In the emergency. At the Stateline Medical.
Q So Stateline Medical?
A Yeah.
Q Because Dr. Brooks was on vacation?

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A Yeah.
Q Do you know how many days after the incident happened that you went to Stateline Medical?
A Two days after.
Q Are you sure it was two days?
A Dr. Brooks was already gone, but, I mean --
Q Okay. So you went to Stateline Medical, and your recollection is it was two days after?
A Yeah.
Q How were you feeling at that time?
A Very bad.
Q Tell me what was bothering you when you went to Stateline Medical two days after.
A The left chest, I mean, you know, and the hernia.
Q What else?
A That's it.
Q Okay.
A And, I mean, the shoulder.
Q Right shoulder?
A Yeah. Right shoulder.
Q Okay. How about hip? Did you have hip pain at that time?
A Yes.
Q Which hip?
A Right.

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Q Okay. Anything else you can recall?
A Not at the moment.
Q Okay. Before December 18th, of 2012, had you ever had any hip pain at all?
A I had hip replacement 2005.
Q And who did that hip replacement in 2005?
A In Carson City, Doctor, I think, Martin Anderson.
Q Do you remember the -- was it Tahoe Fracture, or do you remember the name of the place where you had that done?
A I don't remember.
Q But you believe it was Dr. Martin Anderson?
A In Carson City.
Q And where did you have the hip replacement surgery done?
A In Carson City.
Q At Carson Hospital, Carson-Tahoe Hospital?
A I don't remember that. Yeah. I mean --
Q At the hospital in Carson?
A Yeah.
Q How long were you in the hospital for, for that surgery?
A I don't remember.
Q Okay. So that was when you had the surgery itself?
A Yes.
Q Did they replace one hip or both hips?

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A No. No. Only one hip.
Q Which hip did they replace?
A Right.
Q Okay. So if they did a surgery in 2005, you must have gone to a doctor about hip pain before the surgery, correct?
A Yes.
Q When is your first recollection that you have of having any hip pain before this surgery, 2005?
A About 2 or 3 months before.
Q Okay. So about 2 to 3 months before, before the surgery, you started to develop pain in your right hip?
A Yes. I had the pain when I jumped off or -- not when I jumped off -- I was driving for Harrah's.
Q I'm sorry.
A I stepped off the shuttle bus I drove, and the next day I couldn't walk.
Q Okay. So something happened where you stepped off a shuttle bus?
A Yes.
Q Did you ever work at Harrah's?
A Yes.
Q What did you do at Harrah's?
A Transportation.
Q Were you a limo driver?
A Yes.

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Q Was Egon a limo driver?
A Also.
Q Okay.
A But I was 14 years limo driver.
Q Okay. All right. So -- but were you working at the time that this happened?
A Yes.
Q Okay. So you were driving a shuttle bus for Harrah's?
A Yes. With VIPs.
Q Okay. And then you stepped off the shuttle bus, and you felt some pain in your right hip?
A Yes.
Q Prior to the shuttle bus incident, had you had pain in your right hip before?
A No.
Q Okay. What was the day of the shuttle bus incident?
A I don't remember.
Q Do you remember the year?
If the surgery was in 2005, was it in 2005?
A No. 2005? 2004.
Q Okay.
A Maybe.
Q All right. So in 2004, you were walking down the stairs of the shuttle bus, and something happened where you had pain in your right hip?

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A Yeah.
Q Did you file a workers' compensation claim?
A Yes.
Q Okay. And that was through Harrah's?
A Yes.
Q Okay. And then did you -- what doctors did you see that led you up to Dr. Anderson, who did the surgery?
Do you remember all the doctors you saw?
A No. I only remember that they treated me wrong at the hospital, stretching me.
Q Okay. So they tried to do some therapy?
A They didn't know that it was fractured.
Q Okay. So you had, as a result of the shuttle incident, you had a fractured right hip?
A Yes.
Q Okay. They tried doing some therapy, it sounds like. They stretched it, but that didn't help?
A No.
Q Okay. Did you ever have any injections into your hip?
A No.
Q Put needles? No?
A No.
Q Do you remember where had you had the surgery done?
A At Memorial.
Q Okay. So when did -- I guess, how soon after the

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incident did they realize that you fractured your right hip?
A I told them that it cannot be muscle strain or something, and I asked for --
Q An x-ray?
A -- they send me to another doctor.
Q Okay. You realized it wasn't a muscle strain because you were in significant pain?
A Yeah.
Q Okay.
A And they couldn't fix it.
Q All right. So that led you to Dr. Anderson who did the replacement surgery?
A Yes.
Q And that was in 2005?
A Yes.
Q Did you have follow-up appointments with Dr. Anderson after that?
A Only physical therapy, and that's it.
Q When would you say you completed your treatment for your hip?
Was it in 2005 or 2006?
A 2006, I guess. Sorry.
Q All right. So you are estimating 2006?
A Yeah.
Q All right. So from 2006 until 2012, did you ever

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experience any occasional aches or pains with regard to your right hip?
A No.
Q Did you ever tell Dr. Brooks or any other medical doctors that you had occasional aches or pains with your right hip in between 2006 and 2012?
A I don't recall.
Q Okay. How about in the year before this incident, going back one year, from 2011, December 2011 to December 2012?
As we sit here today, do you have any recollection of having any pain in your right hip during that time period?
A Yeah. I had sometime, I had once some problems, and they took an x-ray, and they said it's perfect.
Q Okay. Do you know, did Dr. Brooks order the x-ray?
A Yeah. Yeah.
Q Do you know where the x-ray was taken at?
A I don't know. I'm not sure. I'm -- no. I'm -- at Barton, but I'm not sure, Barton at the hospital or Barton emergency. I don't recall.
Q Okay. The year before the incident, did you ever have to take any prescription pain medication for any pain with your hip?
A No.
Q Did you ever have to take any over-the-counter medication, like Tylenol or Aleve for pain in your hip?

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A No.
Q Once you had your hip replacement surgery done, did you walk with any type of limp or different gait than you had before the hip surgery?
A Yes. I needed some special insoles because Dr. Anderson -- I mean, the foot, I mean, the leg was shorter.
Q Okay. So as a result of the hip surgery, your right leg was shorter than your left leg?
A Yes.
Q Now at the time that Dr. Anderson was doing your right hip, did he also examine your left hip, just to compare the two?
A I don't know. I don't know.
Q How is your left hip doing around that time frame?
A It's staying fine all the, I mean --
Q So you never had any problems with your left hip?
A No.
Q All right. So you had pain in your right hip after our incident in December 2012, correct?
A Yes.
Q Okay. You had right shoulder pain you said?
A Yeah.
Q Before December 12th of 2012, had you ever had any type of right shoulder pain?
A I'm -- maybe slightly when I am snow shoveling or something.

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Q Okay. Are you right-handed or left-handed, sir?
A Right.
Q Okay. Did you ever treat with any medical providers that you can recall for any right shoulder pain or injury before December of 2012?
A No.
Q Okay. Did you ever have any type of x-rays or any testing done on your right shoulder before December of 2012?
A I don't recall.
Q Okay. You don't have a recollection if you had an x-ray done of your shoulder at all before our incident?
A No, I used -- no. On the hip, yes.
Q The shoulder, you don't know?
A No.
Q You could have, but you just don't know, or you didn't?
A I don't recall it.
Q So that's -- when you say you don't recall, that means --
A I don't --
Q -- you don't think so?
A No.
Q Okay. And then you said you injured the left side of your chest as a result of the December 18th incident?
A Yes.

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Q Did you break a rib?
A Yes. Dr. Brooks took x-rays, and he told me two ribs, 8 and 9, was fractured.
Q Okay. What did Dr. Brooks say with regard to your right shoulder?
A I don't recall anything.
Q Okay. Did Dr. Brooks ever order any additional testing of your right shoulder?
A No. Not really.
Q And how about your right hip?
Did Dr. Brooks order any testing of your right hip?
A X-rays.
Q Okay. And what did he say with regard to the x-rays?
A He could not see anything.
Q Okay. How about hernia?
A Hernia.
Q Did you have a hernia following the December 18th accident?
A Yes. 2011 I had a hernia operation in Austria.
Q Okay. So in --
A And then I came back.
Q I'm sorry to cut you off. Go ahead.
2011, you had a hernia operation in Austria, and you came back?
A And when I had this fall, and I went to Dr. Brooks.

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He told me that it's, I have to get another operation.
Q Okay. So how often, say, in the ten years before December 2012, from 2002 to 2012, how often would you travel back to Austria?
One time a year, or more than one time a year?
A One time a year, about four times in four years, you know.
Q So it averaged about once a year?
A Yeah.
Q Okay. During those ten years, did you get any medical treatment in Austria other than the hernia operation?
A Yes. The kidney stones.
Q Okay.
A I had a blockage for kidney stone, and then the same medical hospital.
Q Okay. And when was that approximately? Before the hernia?
A That was just -- no, last year.
Q Okay. Kidney stones don't have anything to do with this incident?
A No. No.
Q Okay. So in 2011, did you injure yourself in Austria somehow that you developed a hernia?
I'm trying to find out why you went to Austria to have the hernia surgery.

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A Yeah. Because I lifted a suitcase and injured my hernia.
Q Okay. So while traveling in 2011, to Austria --
A On the flight.
Q -- on the flight, you lifted something, and you felt a groin injury?
A Yeah.
Q You lifted something overhead?
A Yeah.
Q Okay. And at that point, you felt a groin injury?
A Yeah.
Q When you got to Austria, you went to the doctor, and they said, yes, you have a hernia?
A Yeah.
Q And they recommended that you have surgery of that hernia at that time?
A Yes.
Q Okay. Where did you have this surgery in Austria?
A In the hospital.
Q That's a good -- that's a good thing.
A Okay.
Q What was the name of the hospital?
A Landeskrankenhaus.
Q Could you spell that for us?
A No. Can I write it down for you?

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Q Yes.
If I were to get medical records from Austria --
A Can I?
Q Yes. Go ahead.
If I were to get medical records from Austria, would they be in English or Austrian?
A Austrian. I'm sorry.
Q That's all right. So I'm just going to give that to you.
Okay. So in 2011, you went to the hospital that you have written down for us here?
A Yeah.
Q And did they indicate that you should have surgery quickly?
A Yes.
Q It wasn't something you could wait for to get back to the United States?
A Correct.
Q Okay. Now if you know the answers to these questions, great. If you don't, let me know.
My understanding is that there is different types of hernias, and there is right-sided and left-sided.
In 2011, do you know what type of hernia you had, and do you know if it was right-sided or left-sided?
A Left-sided.

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Q Okay. Was it -- do you know the name of the hernia?
A No.
Q Okay. Did you have to spend more than one night in the hospital in Austria when you had that surgery done?
A Yes.
Q How long were you in the hospital for?
A I don't recall exactly. Four to seven days.
Q Okay. Sometimes they put a, some mesh in or some device in?
A That's what they always if you have -- yeah.
Q Did they put that in --
A Yes.
Q -- in Austria?
Okay. Did you treat, once you got released from the hospital, did you go to any other doctors while you were in Austria before you came back to the United States?
A No.
Q Okay. Did you have a doctor in Austria in the past ten years?
Or did you just go to the emergency room that one time, before December -- I know the kidney stone issue.
But before December 2012, did you just go to one medical provider in Austria, that being the hospital that you told us about?
A No. Not -- not that I recall.

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Q You can't recall any other providers?
A No. Dentists and -- wasn't specialist.
Q So maybe a dentist, but nothing to do with your shoulder, your hip or your --
A No.
Q -- hernia?
A Yeah. No.
Q Other than what you have told us?
A Yeah.
Q Okay. The hernia that you had worked on after the December 2012 incident, did you end up having surgery on that?
After December 2012, have you had hernia surgery?
A Yes.
Q Okay. And who did that surgery?
A Dr. Eyre, or some kind of --
Q Where did the surgery take place?
A Barton Memorial.
Q Okay. And with regard to the post 2012 surgery, do you know if it was left-sided or right-sided?
A Left-sided.
Q Was it in a similar position as the last surgery that you had, or a new position altogether?
A Similar position.
Q Okay. Did you ever talk to a doctor after December 2012 about that hernia surgery, whether it was related

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to the fall, or related to the incident of December 2012, as opposed to just you having had a surgery in 2011?
A Definitely because of the fall.
Q A doctor told you that?
A Yes.
Q Okay.
A Dr. Brooks.
Q Which -- I'm sorry. The name of the doctor?
A Dr. Brooks. B-R-O-O-K-S.
Q Brooks. Brooks.
A Yeah.
Q Once you had the surgery in Austria in 2011, did you have any problems with your groin, or any hernia issues, up until the time of December 18th, 2012?
A They did a fantastic job, and I had no problems, no pain.
Q Okay. In -- after our fall in December of 2012, after the incident that we're here about, when is the first time you noticed any type of groin issues or hernia issues?
How soon after the fall?
A Right away.
Q Within a couple of days?
A Yeah. After one day or so.
Q And you said they did surgery on that?
A Yes.

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Q And when did they do the surgery, if you remember?
A I don't remember.
Q Was it in 2013? Or 2014? Or --
A No. No. 2013.
Q Okay. Because the incident was 2012, December?
A Yeah. Yeah.
Q So 2013? Early 2013?
A Yeah.
Q Okay. And you said you went to the hospital, Barton Memorial?
A Yes.
Q How long were you in the hospital for that time?
A I don't recall it, because they were advanced.
Q When you said you were in the hospital, seven days for a hernia operation?
A In Austria, yes. That's a different story.
Q Are you sure you only had a hernia issue in Austria?
A Yes.
Q Okay. Okay.
So in America, when you had your surgery, that was a quick surgery?
A Not a quick --
Q How long were you in the hospital for?
A I'm not sure. I'm not sure.
Q Couple days?

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A I don't know.
Q Okay. Once you had the surgery in 2013, until we sit here today, have you had any type of hernia problems at all?
A No.
Q Did they repair your hernia?
A Yes.
Q Did the doctors say it was a successful repair of your hernia?
A He said it was difficult, but he thought it was successful, I'm sure, but he didn't tell me.
Q Okay. Well, you know your body.
Have you had any problems since the surgery?
A No.
Q Okay. All right. Let's talk about the ribs.
You said you fractured ribs number 8 and 9?
A Yeah.
Q Did you have any treatment for your ribs? Did they do anything for you?
A No.
Q Okay.
A They can't do anything.
Q Did you have to wear a brace, a wrap, around your chest at all?
A No.
Q Okay. Were the rib fractures painful?

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A Very.
Q How long would you say that it took for the pain to go away with regard to your rib fractures?
A One month, until it, you know.
Q It slowly started to go --
A Yeah. Yeah.
Q I understand.
So one day -- you just didn't wake up, and the pain was gone?
A No.
Q But after a month, it started to get better?
A Yeah.
Q And then after a couple months, was it better?
A Better.
Q And then after three months --
A Now if I sleep on this side, then I feel it.
Q Okay. So today you still have pain in your ribs?
A Slight pain, yeah.
Q But it's only if you sleep on them?
A Yeah.
Q Other than that, there's no pain?
A No.
Q Okay. And when you get pain in the ribs if you sleep on it, how long does that last for before it goes away?
A I turn around, it's going away, and I fall asleep.

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Q Okay. So not too long?
A No.
Q Okay. Let's talk about the shoulder. So you said you injured your right shoulder.
Did you have any treatment on your right shoulder since the accident until today, any physical therapy?
A I myself work on it. I did have physical therapy now for the full leg.
But for the shoulder, I have a stationary bike, and I try to get the strength back, what I lost, because I couldn't do anything after that.
Q Okay. You had -- you have had therapy on your hip; is that what you are talking about?
A No. On the -- no.
Q You said on your leg?
A Leg, yeah.
Q Okay. What therapy did you have on your leg?
A Electric, and they can't find what it is.
Q Okay. So do you have pain in your leg?
A Well, it's -- I have no strength in my leg.
Q Okay. Do you have any lower back pain?
A No.
Q Okay. So you just have a weakness feeling in your right leg?
A Yeah.

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Q When did that start?
A Long time ago.
Q Before December of 2012, or after December 2012?
A After December 2012, it was acute. I mean, you know.
Q No. We have to go over that because what I'm trying to find out is if the accident, if before the accident you had absolutely no problems with your right leg, and them after the accident, you have had problems with your right leg.
Or did it just get worse after December?
A It got worse.
Q Okay. So before December 2012, you had some issues with your right leg?
A Yes.
Q The incident happens, and now it's gotten worse?
A Yeah.
Q Okay. Before December 2012, did you have any treatment on your right leg?
A No. I went to the doctor, and he couldn't find anything.
Q Okay. Which doctor did you go to?
A Dr. Sullivan.
Q Okay.
A He retired in the winter.
Q Is Dr. Sullivan at Tahoe Fracture? Where is Dr. Sullivan?

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A No. He is a neurologist.
Q Okay. He is a neurologist.
A In --
Q Carson?
A No, no. Up at the lake. He was.
Q He is retired?
A Yeah.
Q Do you know if anybody has taken over his practice, or you don't know?
A I don't know.
Q What was Dr. Sullivan's first name, if you know?
A I don't know.
Q When did you go see Dr. Sullivan before 2012?
A I probably went to Austria.
Q Before 2011?
A No. Now, 2013.
Q Okay. Hang on a second.
Because I was under the understanding that you saw a doctor before 2012 for your right leg issues.
Did you see a doctor before 2012 for your right leg?
A Yes.
Q Was that Dr. Sullivan?
A Yeah.
Q When did you see him before 2012? In 2011, 2010?
A No. No. 2011. Before I went to Austria 2012.

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Q Okay. So before the hernia, you went to see him?
A Oh, yeah.
Q Okay. How long had that problem or that issue been going on for? Five years, or longer?
A No. No. '11, '12, '13, '14.
Q Since 2011?
A Yeah. About.
Q Okay. Do you remember, was there a certain event that happened, like the shuttle bus, back in the day, back -- was there a certain event that happened that you first started to notice right leg problems?
A No.
Q Okay. So one day you just kind of noticed that there was some right leg issues.
Was it a shooting pain down your right leg?
A No.
Q Was it a numbness or tingling feeling?
A No.
Q Just the weakness feeling?
A Weakness.
Q It felt like your leg was going to give out?
Does that make -- that's a slang sentence, so I don't know.
It felt like you were just unstable in your right leg?
A Yeah.

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Q Okay. What did Dr. Sullivan say? Did he say what was causing that, or what the problem could be?
A He could not find out what problem.
He just told me I have to check it again, and when I came back, he was retired.
Q Okay. Did you see anybody else other than Dr. Sullivan about the right leg problem before December of 2012?
A No. Dr. Brooks. I mean, Dr. Sullivan.
Q Right.
Now I know Dr. Brooks isn't a specialist.
A Yeah.
Q But does he know about that, as well?
Did Dr. Brooks know about the right leg issues?
A Yeah. Should.
Q Did they ever prescribe any medication for you with regard to your right leg?
A No.
Q Okay. How often would you have problems with your right leg before December 2012?
Was it an everyday thing, or just once in a while?
A Only once in a while.
Q Okay. All right. So then the incident of December 2012 happens, and then did you notice an increase in problems in your right leg after that incident?

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A Yes.
Q And are you still having problems with your right leg?
A Yes.
Q Is it back to the way it was before the incident, or is it still worse?
A It's still worse.
Q What doctors --
A Because the physical therapy, I hope they can get it back to strength.
Q So you have gone through some physical therapy for your leg?
A Yeah.
Q Okay. And that's helping?
A I hope.
Q Are you still in physical therapy now?
A Oh, yeah.
Q How many days a week do you go now?
A Twice.
Q Do you go to Stateline Rehab? Is that where you are going?
A Correct.
Q Okay. So they are working on your leg.
Does that physical therapist also do anything with your shoulder at all?
A No.

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Q Okay. Are you still having problems with your shoulder now?
A No.
Q Okay. When, after December 2012, when would you say that your shoulder problems went away?
How long did you have shoulder problems for?
A Maybe until a few months ago.
Q Okay. So up until a few months ago, then, from that point until today, we're good with your right shoulder?
A Yeah.
Q And with regard to the hip, have you had any treatment on your hip at all?
A No.
Q Does the physical therapist work on your hip?
A No.
Q Are you still having problems with your right hip?
A Yes. Like now, I have pain.
Q Okay. So if you sit for periods of time?
A Yeah.
Q Okay. How bad is the pain?
So pain is subjective. So pain means something different for you than it does for me.
For you, if ten is the worst pain possible, where are you from zero to ten?
A Six.

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Q And is it -- it's not a constant pain, then. Just when you sit for long periods of time, right?
A Right.
Q What else causes you pain in your hip?
A Nothing else, just when I sit.
Q Okay.
A It's like a screw is loose.
Q Okay. So there is pain in your hip when you sit.
But your testimony is, before this fall, after your hip replacement, you didn't have this pain if you sat?
A No.
Q Okay. And Dr. Brooks knows about the hip pain?
A Yes.
Q No other doctor knows about the hip pain?
A No.
Q Okay. Have you seen any other medical providers other than the ones we have talked about so far?
I know you went by ambulance to the hospital on December 18th.
You followed up with Dr. Brooks.
You have gone to physical therapy.
You have had your hernia surgery done at the doctor's office.
Any other doctors or medical providers that you have been to?

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A Only Dr. Nixon with kidney stones.
Q Okay. But, again, kidney stones are not part of this?
A No.
Q Okay. When -- did the accident prevent you from doing things that you were doing before the accident?
You don't own -- do you own dogs, or you don't own dogs?
A No.
Q That's Elfie?
A Yes.
Q What did you do for exercise before this incident?
A Before the incident?
Q Yes.
Did you walk around the neighborhood?
A I rode the bike. I worked on my stationary bike for my shoulders and upper muscles and legs, knees.
Q This is before the incident?
A Yeah.
Q Okay. So you rode -- you did, you rode your bike.
You mean a bike outside?
A And outside. Yeah.
Q And you rode a stationary bike?
A At home every day.
Q Okay. And when you -- how is that going to help your shoulders?

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Do you have, like, pedals on top?
A I have pedals on the bottom and handles on the top.
Q And those handles move?
A And that is very important, because after the incident, my muscles were gone.
Q Okay. So you, before the incident happened, though, you had some type of stationary bike at home that you were able to work on your legs by pedaling, and your arms by going back and forth on a machine?
A Right.
Q Okay.
A And outside.
Q And then you rode a bike outside.
Any other forms of exercise you did before December 18?
A I was walking a lot.
Q Okay. How often would you walk before the incident happened?
I guess it depends on the season. In ice cold weather, you may not walk as long?
A Right.
Q But if it was warm, how often or how long would you walk before December 18? Every day?
A Yeah. Every day.
Q How many miles is it between your house and your

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brother's house?
A It's only two streets up.
Q Quarter of a mile? Less?
A Yeah, about.
Q Okay. Did you walk to your brother's house often before the incident happened?
A If I didn't ride the bike, I walked.
Q Okay. After the incident happened, were you able to ride your bike outside at all?
A I tried it once or twice, and then I realized I couldn't.
Q Okay.
A Because Dr. Brooks said it's better not to.
Q Okay. So you tried to ride your bike.
Was this pretty soon after the accident?
A No. No. No.
Q The summer or -- spring or summer?
A It was maybe -- I asked the doctor, and when he said it's not, doesn't recommend it, and I didn't ride it anymore, you know.
The only way I rode it, from my house two streets up to my brother's.
Now I have always take with the car because --
Q Okay. I just want to go back and clarify that.
So before the accident, you were able to ride your

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bike to your brother's any time you wanted?
A Yeah.
Q After the accident, you tried riding your bicycle a couple of times?
A Yeah.
Q And then Dr. Brooks told you not to ride your bike any longer?
A Yeah.
Q Did you stop riding your bike outdoors at that time?
A Yes.
Q And from that point, until we sit here today, you haven't rode your bike outside?
A I tried once. One months ago, when about.
Q Okay. How did you do a month ago?
Because we're pretty far -- we're in 2016 now.
A Yeah.
Q How did you do a month ago?
A It would be good, if I could ride it, but I have to talk to my doctor first.
Q Did you notice any increase in pain when you rode it a month ago?
A No.
Q So it was good, then?
A Yeah.
Q All right. So that would have been the third time you

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rode your bike, after this incident, outdoors?
A Yeah.
Q All right. How about walking?
After this incident, were you able to resume walking around the neighborhood?
A I can't walk more than one block.
Q Okay. So one block is less than a quarter of a mile. So you don't walk to your brother's house any longer?
A No, because it would take me -- I mean, then I get pain, and I get so tired. I mean --
Q Okay. Have you tried walking to your brother's house at all since the accident?
A I tried to walk when he walks with the dogs, you know.
Q And are you able to do that?
Or you just tell him I can't do it because I'm in too much pain?
A I can't. Yeah, it's just --
Q Too painful?
A -- too painful.
Q Okay. How about the bike inside that you talked about with the pedals and the movement?
Have you done any of that since the accident?
A Yes.
Q Okay. Are you doing that consistently now?
A I would be.

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Q How long do you spend on the bike every day now?
A Ten minutes.
Q Okay. When did you start doing that? Was that just recently, or in 2015, '13, '14?
A No. About 3 or 4 months ago.
Q So the shoulder has cleared up. The ribs are occasionally painful. Your right hip bothers you now.
Anything else bother you other than those areas?
A No.
Q You didn't, after this incident, you didn't notice any neck pain or back pain, correct?
A Correct.
Q Any knee pain?
A Correct.
Q Any ankle or foot pain?
A Yeah.
Q You noticed an increase in pain down your right leg, but you really haven't been treated for that at all?
A Well, they, now with the physical therapy.
Q That's helping now?
A They try.
Q I'm sorry?
A They try now.
Q Okay. They are trying to work on that?
A Yeah.

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Q Okay. And then you had the hernia pain.
You had the surgery, and no more hernia pain?
A Right.
Q Okay. No elbow, wrist, or hand pain after December 2012?
A Yeah.
Q Any memory loss issues? So you're 82? Yes?
A Yes.
Q Okay. So 82, you probably normally get some type of memory issues.
My understanding is it's not as bad your brother. Your brother is having some issues.
But for you, have you noticed any significant memory problems?
A No. Not at all.
Q Any headaches since the accident?
A Never.
Q Any vision problems? Outside of normal aging?
A Cataract operation.
Q Okay. So that wasn't affected by the accident?
A No. No.
Q Any balance problems?
A Sometime --
Q Okay.
A -- I get up too quick.

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Q Have you talked to any doctor in the past few months that said what additional treatment you are going to need at this point?
You are still in physical therapy?
A Yes.
Q Has your physical therapist or doctor told you how much longer you are going to need therapy for?
A No.
Q Okay. You find the therapy is helping?
A Yes. I believe in it.
Q Okay.
A Dr. Louie, he transferred me to the physical therapy. He is from Reno.
Q So Dr. Louie?
A Yeah.
Q Is he a neurologist?
A Yes.
Q Okay. And he is a neurologist here in Reno, and he suggested you go to physical therapy?
A Yes.
Q Okay. Have you -- how many times have you seen Dr. Louie?
A Since I am back from Austria, only once, before he changed hospital, so --
Q All right. Let's talk about the Austria trips, I

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guess, after the accident.
So I know you went in 2011, and you had time at that hospital.
The incident that we're here about today is December 2012.
When is the first time you went to Austria after December 2012?
A After? In April 11, I mean, April 9, just before my birthday.
Q April of 2013?
A Yes.
Q Okay. So --
A Just a minute. No. No. '15, because now we have '16.
Q Right. But I'm going back to 2012 now. So --
A Oh, no.
Q -- December 2012, this incident happens.
A Yeah.
Q Okay. When is the first time you went to Austria of after that?
A I'm not sure. But I, you know --
Q Was it in 2013? Or you don't remember?
A No. No. It was in -- I went 2013.
Q Okay.
A And 2014. And now I don't know.

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Q Okay. Because I thought I saw somewhere in the records in 2013 that you were planning a trip back there?
A Yes.
Q Okay. Okay. So in May of 2013 it says that you're leaving for Austria for three months.
A Yeah.
Q Is that how long you typically would go to Austria for, three months?
A I try to get there for six months, but, I mean, three months is the shortest.
Q Okay. Do you have family still in Austria?
A Only Egon's son, his family.
Q Rene?
A Otherwise, no.
Q Okay.
A A girlfriend.
Q And do you have -- do you have dual citizenship?
Do you have dual citizenship? Are you a citizen of Austria?
A Austria only.
Q Not in United States?
A No.
Q Okay.
A We can't get -- sorry.
Q So you go to Austria for 3 to 6 months at a time?

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A Yeah.
Q Okay. So in 2013, you went to Austria for 3 to 6 months?
A Three months.
Q Three months.
Did you seek any medical treatment during that time while you were in Austria, in May, June, July of 2013?
A The kidney stones.
Q Okay. Nothing to do with your shoulder?
A No.
Q Your hip?
A No.
Q Was it painful then?
A The kidney stones?
Q No. Your other body parts?
A No. No.
Q In May of 2013, were you having problems with your shoulder?
You have to listen to my question, okay?
A Yeah. I'm listening, but --
Q December 2012, the incident happens.
A Yeah, yeah.
Q In May of 2013, when you go to Austria, are you still having problems with your shoulder?
A I don't recall.

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Q Your hip?
A I don't remember.
Q Okay. You don't see any medical doctors in Austria for any problems other than kidney stones in the spring/summer of 2013, correct?
A But that was 2014, the three months.
Q No. 2013.
Well, I don't know. I don't have your plane ticket, so I don't know.
But the records indicated that you were leaving for Austria for three months in May of 2013.
And then you actually went to Barton Memorial. You had -- they thought you may have been having a stroke.
And then the next record I have is not until Dr. Sullivan in, in September.
So I am missing June, July, August, around the summer of 2013.
A Sorry. I don't know. I don't remember.
Q Okay. Is it possible you went to a doctor in Austria for your shoulder, back -- or your shoulder, your hip, your -- or your shoulder or your hip?
A No.
Q Okay. I just want to make sure that I have all the medical records, so that's why I ask.
A Yeah.

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Q Okay. So you -- do you own a home in Austria, too?
A Yes.
Q That's where you stay when you go back there?
A Yes.
Q In your own home?
A Yes.
Q Do you exercise when you are over there?
A Yeah.
Q By walking, biking? What do you do there?
A Biking.
Q Okay. All right. So that's 2013.
And then in 2014, did you go to Austria?
A Yes.
Q And what months did you go to Austria in 2014, if you know?
Is it typically the same spring/summer?
A No. That was in April 2014 -- that was 2015. Just a minute now.
Q Let me try to help you out.
A Yes.
Q I have, in 2014 in March, you went to see Dr. Sullivan. It says you are doing better.
Then my next record after that is in September of 2014. So I don't have anything from March to September.
In September 2014, it says he lives here and in

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Austria, and he just got back from Austria.
A Okay.
Q While there, he saw numerous specialists, and has a new diagnosis of footdrop.
Which I don't know what footdrop is.
But doctor -- Barton Memorial's hospital talks about you seeing specialists in Austria about some of your medical problems.
Did you see any specialists while you were in Austria?
A Yes.
Q Not for the kidney stones?
A For the foot -- for the footdrop, I saw a specialist.
Q Who did you see there?
Let me give you a piece of paper.
Do you know his name?
A Oh, yeah.
Q Okay.
A It's a lady doctor.
Q I'm sorry. A Navy?
A A lady.
Q A lady doctor.
A Person I know.
Q And what city is that doctor in?
A Bregenz.
Q Okay. So this is the lady doctor?

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A Federspiel.
Q Federspiel.
What did she do for you while you were in Austria?
A She tried to find out, if she can, you know, with this electric shock and so on, on my foot.
Q Did you get treatment while you are Austria?
A She sent me to the hospital.
Q Which hospital did you go to?
As an Austrian resident, do you have to pay for -- do you have to pay for healthcare in Austria?
A No.
Q So when you went --
A Because I'm --
Q Austrian?
A -- retired and Austrian and insured.
Q So they have, like, a Medicare system set up in Austria?
A Yeah.
Q Okay. So they, they went, this doctor said you should go to the hospital.
And what treatment did you have at the hospital? Electric shock?
A They again tried electric shock, and everything was positive about for one or two weeks and so then --
Q Okay.

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A And then -- yeah.
Q Has any doctor said that they think this footdrop issue is related to this accident or this incident in December of 2012?
A No.
Q You had the condition before the incident, right?
A Slightly.
Q Okay.
A But then it increased, you know, so I don't know if it's -- yeah.
Q Okay. And then in 2015, have you been to Austria?
A Yeah. I left on April 9th for three months.
Q I don't -- so you think it was April of 2015 for three months? In April of 2015.
A Yeah, because --
Q Okay.
A -- they allowed me from here.
Q Did you get any treatment in 2015 when you were in Austria?
A Only kidney stone.
Q Okay. And now we're in 2016. We're in April.
You haven't been to Austria yet? No?
Are you planning on going soon?
A I would like to, but I don't know.
Q You don't have any plans at this point?

A Well, at this point, this is -- has to go away.
Q The case?
A Yeah.
Q Okay.
In July of 2015, it looks like you had a chin -- cut on your chin.
Do you remember what happened with that? Did you fall or do anything in July of 2015?
No?
A No.
Q See, my records end in July of -- well, for this incident, my records end in June of 2015 when you were discharged from Barton Rehab.
But you said that you have been back since then. You are in physical therapy now?
A Yes.
Q At Barton Rehab or Stateline Rehab?
A Yes.
Q Which one? Barton or Stateline?
A That's --
Q Same?
A -- Barton.
Q Stateline --
A Stateline.
Q -- Rehab?

All right. So I'm going to finish with you for now, and we'll see where Mr. Routsis goes.
And I may have some other questions, because I do want to know what happened that night.
But instead of us both asking you the same questions, I'm going to let him ask you the questions, and I'll see where we get.
A Thank you very much.
Q Do you want to take ten minutes?
A Yes, please.
(A recess was taken)
EXAMINATION
BY MR. ROUTSIS:
Q Okay. We're all ready.
Mr. Klementi, how are you?
A Okay.
Q Okay.
A How are you?
Q I'm well. Thank you.
I forgot your age. How old are you?
A 82.
Q Okay. So back in 2012, you would have been four years younger, right?
A Yes. 78.
Q 78.

Now in 2012, did you live in the same house that you live in now?
A Yes.
Q And if you can, please, again tell us the address of that house?
A 163 Pine Ridge Drive.
Q Okay. And about how far is that from where Egon Klementi lives?
A Two streets up. I mean, two streets down.
Q Okay. Is it a quarter of a mile, about?
A I think so.
Q Okay. Okay.
A I mean --
Q And how long have you lived there?
A Same like Elfie and Egon. Since -- I mean, you know.
Q Okay. It's been --
A 1985.
Q 1985?
A No. No. Not '85. '89, we retired.
Q Okay. Now do you know if Jeff Spencer plows your area? Snowplows your area where you live?
A I don't know.
Q Okay. Have you had any problems with the snowplow in your area?
A I usually am either in Austria in wintertime, but I

didn't have problems.
Q Okay. Do you know who your snowplowers are?
A No.
MR. MOORE: Objection. Asked and answered.
You can keep saying the same answer, if you want.
I'm just pointing out that counsel is asking the same question again.
THE WITNESS: No.
BY MR. ROUTSIS:
Q Now back in 2012, how often would you go stay at your brother's house or have dinner or see him?
A I don't count.
Q Would you see him almost every day?
A Yes.
Q Would he ever come to your house? Would you most usually go to his house?
MR. MOORE: Objection. Compound.
Can you just ask one question at a time?
MR. ROUTSIS: He can answer it, if --
MR. MOORE: Do you know which question you are to answer?
BY MR. ROUTSIS:
Q Would he more come to your home, or would you visit him more?
MR. MOORE: Same objection.

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THE WITNESS: No. He comes to my house. Or I go to their house.
BY MR. ROUTSIS:
Q You are a bachelor, though, right?
A Yes.
Q So his home is more of a home environment, correct?
A I don't understand the question.
Q The question, Helmut, is, would you visit him more at his house, do you think, than he would come to your house?
A More to Elfie.
Q Yes. Would you eat dinner there often?
A Not any more.
Q Why?
A Because I like to cook myself.
Q Okay. Back in --
A And get some, lose some weight.
Q Back in 2012, would you eat dinner over there a lot?
A Yes.
Q A few times a week?
A I don't count on this. I mean --
Q I'm just asking.
A More than two times a week.
Q Now prior to December 18th, 2012, I take it you have never had any problems with Jeff or Marilyn Spencer yourself?
A No. I live --

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Q Okay.
A -- too far away.
Q Now did your brother Egon ever tell you that, prior to December 18th, the night that you were knocked to the ground, okay?
Prior to that day, did you have discussions with Egon regarding whether Jeff ever plowed snow into him, while he was standing in his driveway?
A I heard about the run-in. I mean --
Q Okay. Did Egon tell you prior to December 18th, 2012, that he was angry with Mr. Spencer for parking an 18-wheel truck in front of, on Charles Avenue?
Did he tell you he was upset about that?
MR. MOORE: Objection. Compound.
Which question do you want him to answer?
BY MR. ROUTSIS:
Q Did he tell you that he was upset, your brother Egon, about Jeff Spencer parking an 18-wheeler on Charles Avenue?
A Yes. He was not happy.
Q Right.
Did he also tell you that he was upset with Jeff Spencer and Marilyn Spencer about having some motorcycles parked on the street years before?
A Yes. I mean, this was ridiculous.
Q Right.

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And Egon has quite a temper, doesn't he?
MR. MOORE: Objection. Vague and ambiguous.
If you can answer, answer.
BY MR. ROUTSIS:
Q You can answer.
A No. What do you mean, temper? I mean, we are twins.
Q Well, twins can be very different, can't they? I mean, I don't know. But can't they?
A Okay. Good.
Q Yes?
A Yes, sure.
Q Egon has more of a temper than you do; is that a fair comment?
A Yes.
Q And if you cross Egon, Egon likes revenge. He gets angry, and he wants payback?
MR. MOORE: Objection. Argumentative.
MR. ROUTSIS: What's argumentative about that, Counsel?
I mean, if you don't want him to answer because it's too relevant, I understand.
But it's a fair, simple question, and it's not argumentative.
BY MR. ROUTSIS:
Q You can answer the question.

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MR. MOORE: If you are able to.
MS. CAPERS: Calls for speculation, also.
MR. MOORE: Do you understand?
THE WITNESS: State again. I don't understand because --
BY MR. ROUTSIS:
Q Yes.
You indicated that Egon has a greater temper than you have?
A Yeah. Different.
Q Yes. And you have known Egon, obviously, your whole life, right?
A Yeah.
Q And if someone crosses Egon, or does something that Egon perceives is wrong, based on your observations of Egon for over 70 years, is it a fair comment that Egon's character trait is to exact revenge or get back at that person?
A No.
MR. MOORE: Objection. It is vague and ambiguous, and it does call for speculation.
MR. ROUTSIS: He has already answered the question.
MR. MOORE: And it is argumentative.
I'm just saying my record.
Counsel, if you mind not interrupting, I would just like to make a record.

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BY MR. ROUTSIS:
Q Very good. Okay.
Now, Mr. Klementi, Egon Klementi expressed to you that he was unhappy with Mr. Spencer having friends that parked motorcycles up and down his street, correct?
MR. MOORE: Objection. You are mischaracterizing the testimony by using your words, rather than the witness's words.
MR. ROUTSIS: It's called an examination.
BY MR. ROUTSIS:
Q You can answer if you understand the question.
A No, I don't understand the question, Mr. Routsis.
Q I'm just going over what has already been established. Egon expressed --
MR. MOORE: Objection. You are characterizing at this point. You can ask a question.
BY MR. ROUTSIS:
Q Egon expressed to you, Mr. Klementi, did he not, that back in 2010, he was upset with Jeffrey Spencer or the Spencers because they had their friends park all these motorcycles up and down Charles Avenue, correct?
MR. MOORE: Objection. You are characterizing -- you are not using his words. You use the word "friends". He did not use the word friends.
BY MR. ROUTSIS:
Q You can answer the question, Mr. Klementi.

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A I don't know how to answer it.
Q Well --
A We are so close together.
Q Right.
Egon, did he express to you that he was upset that the Spencers had friends that parked motorcycles on Charles Avenue?
Very simple question.
MR. MOORE: Same objection. You are mischaracterizing testimony.
You can answer if you are able to.
THE WITNESS: No, I'm not.
BY MR. ROUTSIS:
Q Well, at some point in 2012, you became aware that your brother Egon had witnessed motorcycles parked on the street in front of the Spencers' residence, correct?
At some point it was brought to your attention that Egon had witnessed that motorcycles were parked on Charles Avenue?
A I saw it when I -- when I visited him.
Q Very good.
And tell me how Egon felt about that.
MR. MOORE: Objection to the extent you are asking him to speculate.
If you're asking him what he may have said, that's different.

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BY MR. ROUTSIS:
Q Fair.
Did Egon express how he felt about that?
A No.
Q He did not?
A No. I mean --
Q Did he express he was unhappy about that, it was disrespectful?
A Okay. Yes, he was unhappy.
Q Yes.
A For sure.
Q Okay. And did that make him angry, that the Spencers would do something like that?
MR. MOORE: Objection. Speculation.
BY MR. ROUTSIS:
Q Did he express to you whether -- that he was angry about the Spencers having -- allowing motorcycles to park up and down Charles Avenue?
MR. MOORE: Objection. Speculation.
And you keep characterizing it as friends.
You can answer if you can.
BY MR. ROUTSIS:
Q Did he express to you anger about the motorcycles?
A No. I mean -- no.
Q I thought you just said he did express anger.

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A He was not happy. I said --
Q Okay.
A But, I mean, I don't know how --
Q How did he express that to you? What did he say?
A No idea. I forgot.
Q Okay.
A I forgot.
Q Did there come another episode regarding an 18-wheel truck that Egon expressed some concerns to you about?
That's probably poorly worded. Let me rephrase it.
Did Egon ever talk to you about an 18-wheel vehicle that the Spencers parked on Charles Avenue?
A Yes.
Q What did he tell you about that?
A I saw it, and he said --
Q That's not my question. I'm asking, what did he tell you about that?
A We had other things to talk about.
Q Did Egon express anger about that? Disrespect of the neighborhood? How could he do something like that?
MR. MOORE: Objection. Compound.
Do you understand the question? He has asked you several questions now.
THE WITNESS: No.
///

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BY MR. ROUTSIS:
Q What did he express to you about the 18-wheel vehicle?
A He wasn't happy about it.
Q What did he say to you?
A He, I don't remember.
Q Did he go into a -- did he have a rage about it?
A No.
Q Okay. Did he say -- what did he say?
MR. MOORE: Objection. Asked and answered.
MR. ROUTSIS: Okay.
MR. MOORE: He already testified he doesn't remember. You can keep answering the same way.
BY MR. ROUTSIS:
Q Did he bring it up on more than one occasion with you?
A No.
Q No?
A No.
Q Just one time or -- do you remember how many times?
A No, I don't remember.
Q Could it have been more than one time?
MR. MOORE: Objection. Asked and answered.
BY MR. ROUTSIS:
Q No. It hasn't been.
You can answer the question. Is it possible that he brought it up on more than one occasion with you?

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MR. MOORE: That's a different question. You can answer it.
THE WITNESS: Maybe.
BY MR. ROUTSIS:
Q All right. In fact, Mr. Klementi, it was something that deeply bothered Egon, this 18-wheel vehicle, wasn't it?
MR. MOORE: Objection. Argumentative. This is not what this witness has testified to. Speculation. And lack of foundation. Object as to form.
MR. ROUTSIS: And I'd overrule every one of those if I was a judge.
MR. MOORE: Fortunately, Counsel, you are not.
BY MR. ROUTSIS:
Q In any event, Helmut, you can answer that question, if you can.
A I can't.
Q Egon was -- expressed a lot of anger towards the Spencers for the motorcycles and the 18-wheel truck, did he not?
MR. MOORE: Objection. Argumentative. Lack of foundation. Object as to form.
BY MR. ROUTSIS:
Q You can answer.
MR. MOORE: Use your words. Not his words.
///

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BY MR. ROUTSIS:
Q Yes. Please. Use your own words.
A Mr. Routsis, we have other things to talk about than the neighborhood.
I mean, I don't go to Egon and Elfie to talk about anything else, I mean.
Q My question, Mr. Klementi, is, did Egon express on more than one occasion his anger about the 18-wheel and the motorcycles we have discussed?
Yes or no?
A Yes. Yes. Maybe twice.
Q Okay.
MR. MOORE: Please don't cut off the witness. Make sure he has finished, Counsel.
Just be patient. Make sure this witness is finished with his answer, please.
Will do you that?
MR. ROUTSIS: I'm doing it.
Maybe you should listen to me. It's very, very nice going on here. It's peaceful.
And you are -- you may be the one involving yourself. I know you are excited, but maybe you should calm down a bit. But I appreciate --
MR. MOORE: Counsel, you are mischaracterizing things. We're going to go off the record right now.

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MR. ROUTSIS: No, we're not. Let's just continue.
MR. MOORE: Yes, we are. We are going to go off the record.
I'm going to start videoing you, because you are mischaracterizing things, and we'll stay on the record, if that's what you want to do, Counsel.
And we'll just video the process from now on.
And when you are trying to characterize things, we can have the judge see whether or not you are accurate here.
So I'm just --
MR. ROUTSIS: Take a deep breath. It's okay.
MR. MOORE: You can take a deep breath. You're on camera now.
MR. ROUTSIS: It's okay. Take a deep breath.
Everything is going to be all right. Okay?
MR. MOORE: Your condescending tone is coming on the camera.
You realize that now, don't you?
BY MR. ROUTSIS:
Q Mr. Klementi, let's get back to the issues at hand.
Now your brother, Egon, prior to December 18th, the night that you were pushed to the ground or something happened between you and Jeff --
MR. MOORE: Objection. Compound. He is characterizing.

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BY MR. ROUTSIS:
Q Take a deep breath.
Okay. Now, Mr. Klementi, prior to December 18th, did Egon Klementi or Elfie Klementi ever express to you that they wanted -- they really, really wanted to get payback against Jeff Spencer in any form?
A No.
Q Okay. Now December 18th, you at some point went over to your brother Egon's house prior to a meeting at the KGID, right?
A Yes.
Q And what kind of car do you drive at that time?
A Ford Mercury Montego 2005.
Q Thank you.
And was it gold in color; is that right? It was gold?
A Some kind of --
Q Yeah.
A Not gold, yeah.
Q Okay. Did you go to your brother Egon and Elfie's house prior to the KGID meeting that evening that started at about six?
A I am -- I was going there for coffee in the afternoon.
Q Okay. So I -- go ahead.
A Yeah.
Q So you went to their house prior to the meeting?

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A In the afternoon.
Q My question, though, was, when you went there in the afternoon, that was before the evening meeting --
A Right.
Q -- at KGID --
A Yeah.
Q -- correct?
A Yeah.
MR. MOORE: Why don't you pause here?
You guys should speak separately. So wait for him to ask his question, and this way you can have your turn.
I'm sure he will give you a turn. At least I'm hopeful.
BY MR. ROUTSIS:
Q You can answer the question, Mr. Klementi.
A I told you.
Q Did you go to Egon and Elfie's house prior to going to the KGID meeting on the 18th of December?
A The afternoon was prior.
Q Okay. Now what caused you to go over to his house?
Did Egon call you and ask you to come over, or did you just stop by?
A Just stopped by because I love Elfie's cake and coffee.
Q Okay. Very good.

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Did she make some cake that day?
A I don't remember.
Q Okay. Have you ever been to a KGID meeting other than the meeting on December 18th?
A No.
Q Why did you go to that meeting?
A Because I got in my -- when I pay my bill, I got the reminder that they have this meeting.
Q There had to be a reason you went to the meeting on the 18th.
Do you know what the reason was?
MR. MOORE: Objection. Asked and answered.
You already answered the question. He is asking the same question now.
BY MR. ROUTSIS:
Q You can answer the question.
Was there a reason you went to the meeting?
MR. MOORE: Same objection.
BY MR. ROUTSIS:
Q Did Egon ask you to go to the meeting?
A No, I wanted to go to the meeting to see how the meeting in this KGID, Kingsbury Improvement District is.
Q Did Egon tell you that on December 18th, 2012, that numerous people were going to be going to a meeting to complain about Jeffrey Spencer?

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Was that your understanding?
A I knew it myself.
Q How did you know that? Somebody had to tell you, right?
A Yes.
Q Who told you?
A It might have been in the schedule.
Q Okay.
A But I don't remember.
Q Now you have never been to a meeting, as you testified, prior or after December 18th, correct?
A Correct.
Q So did your brother Egon ask you to go to the meeting with him?
A No. I decided myself.
Q What purpose did you have in going to the meeting?
MR. MOORE: Same objection. Asked and answered.
You can go ahead, answer.
THE WITNESS: Just to see a meeting like I go to the town meeting.
BY MR. ROUTSIS:
Q Right.
But you understand, Mr. Klementi, you have never been to a meeting before December 18th or after December 18th.
So what was it about that meeting that was

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so different? Why did you go on that, of all nights, your whole life, why did you go that one night?
MR. MOORE: Same objection. Asked and answered.
You are also being argumentative here.
BY MR. ROUTSIS:
Q Mr. Klementi, I'm not being argumentative.
You can answer the question. You have been to one meeting in your whole life at KGID, and it was on December 18th, 2012.
What was it about that night that led you to go to that meeting?
MR. MOORE: Same objection.
BY MR. ROUTSIS:
Q You can answer the question.
A I just was interested to go to the meeting because of this schedule, what they had on the agenda.
Q We know that your brother Egon was upset with the Spencers for prior conduct that had occurred.
We know that that evening everybody had gathered to talk about the Spencers.
MR. MOORE: Is that a question, Counsel?
BY MR. ROUTSIS:
Q If you would let me continue, please, Counsel.
So weren't you asked by somebody to go to that meeting that night to address the Spencer issue?

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Or -- I'm trying to figure out why you went. Do you know why you went?
MR. MOORE: Same objection. Asked and answered.
BY MR. ROUTSIS:
Q You can answer the question.
MR. MOORE: There is no judge to rule right now on this.
So he can ask the questions a lot of times and --
THE WITNESS: Okay.
MR. MOORE: There is a certain point where he can't, but at this point you can answer.
You can keep answering the same way if you need to.
Answer truthfully, but it has been asked before.
BY MR. ROUTSIS:
Q Mr. Klementi, we're just -- I just want to understand. It's very simple.
Why did you go to that meeting of all meetings?
A Because I was interested about the outcome.
Q Okay. So you were -- you were interested as to what they were saying about Mr. Spencer?
MR. MOORE: Objection.
THE WITNESS: No.
MR. MOORE: Please wait for me to have the objection.
You're mischaracterizing testimony. You are testifying, Counsel. Let this witness testify.

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BY MR. ROUTSIS:
Q Mr. Klementi, again, we'll get to this, I'll go all day if we have to, but take a deep breath.
Your brother was angry at Mr. Spencer. The meeting was about Mr. Spencer that evening, correct?
MR. MOORE: Objection. Foundation.
THE WITNESS: I don't know.
BY MR. ROUTSIS:
Q Were you aware before you went to the meeting on December 18, 2012, that the meeting was going to be a lot of discussion about Jeffrey Spencer?
A About the snowplowing, not about Jeffrey Spencer.
Q Okay. And you didn't have any information regarding Jeffrey Spencer's snowplowing personally, correct?
MR. MOORE: Objection. Vague and ambiguous.
BY MR. ROUTSIS:
Q Did you have any personal information to give the KGID -- at the KGID meeting regarding satisfaction or unsatisfaction with Jeffrey Spencer's plowing?
A Only about the plowing.
Q Did you make any statements at the meeting?
A No.
Q Because you had nothing -- you had nothing to give, no pertinent information, correct?
A No, because I am not --

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Q A witness?
MR. MOORE: Counsel, can you please not cut him off?
Let him answer --
BY MR. ROUTSIS:
Q Go ahead.
MR. MOORE: Let him answer the question, please.
Did you finish your answer?
BY MR. ROUTSIS:
Q Let me rephrase, Mr. Klementi.
You made no statements or gave no information at the December 18th, 2012, meeting, correct?
A Correct. I'm not, I'm too far away from the whole situation because I'm mostly in Austria, or if I'm here --
Q Okay. So after the meeting, you had already been at your brother's house.
Why did you go back to your brother's house after the meeting?
A Because of the dinner invitation from Elfie, because we had planned this dinner before.
Q Okay. So there was a prior invitation to go have dinner at your brother's house after the meeting?
A Just like most of the evenings, I was --
Q Okay.
A -- at the dinner with Egon and Elfie.
Q So did you drive your car from the KGID meeting to

your brother's house?
A Yes.
Q And your brother's house is on the corner of Meadow and Charles, correct?
A Yes.
Q And did you have dinner that evening?
A Yes.
Q Do you remember what you ate?
A No.
Q Was it good?
A It's always good.
Q I believe that.
A Yeah.
Q Okay.
And, in any event, at some point -- let me rephrase that.
During the dinner, did you and Egon discuss or have any conversations about going out and taking pictures that evening near Jeffrey Spencer's home?
A No.
Q Did you bring a camera? Did you have a camera on you that evening when you were eating dinner?
A I, since I was coming back from Austria, I had two cameras, it's many cameras, in my pockets.
Q What kind of cameras?

A It's -- one is a -- both are Olympus at this time.
Q And these are not little instamatic cameras. These are good-size cameras?
A No. No. No. Those are small cameras.
Q Okay. So I'll ask you again, Mr. Klementi.
Did you bring a camera at seven or so at night to dinner at your brother's house?
MR. MOORE: Objection. Asked and answered.
This witness has already provided you with the answer, Counsel.
BY MR. ROUTSIS:
Q Mr. Klementi, I'm going to ask you again. You can answer the question.
Did you personally bring a camera over to your brother Egon's house that evening?
MR. MOORE: Same objection. He has asked and answered.
What's unclear about his testimony?
BY MR. ROUTSIS:
Q I don't have an answer.
Please answer the question.
A I did have two mini cameras at any time with me.
Q I understand that, Mr. Klementi.
But I'm -- you can answer the question.
Did you bring a camera on December 18th after the KGID

meeting with you over to your brother Egon's house, yes or no?
MR. MOORE: Objection. He has already asked and answered that.
BY MR. ROUTSIS:
Q No, he really hasn't.
A I have it with me all the time.
Q Did you bring it that evening?
MR. MOORE: Same objection.
THE WITNESS: Yes.
MR. MOORE: He answered it.
BY MR. ROUTSIS:
Q Yes?
A I had it with me every day.
Q Okay. It's all I'm asking, because -- so you're saying it's your testimony that you brought a camera to dinner?
MR. MOORE: Objection. Asked and answered.
BY MR. ROUTSIS:
Q Why did you bring a camera to dinner?
A I didn't bring it to dinner. I just had it with me.
Q Well, when you say you had it with you, did you have it in your possession when you went to the house to eat dinner?
A Yes.
Q Why?
A Because I always have it in my pocket.
Q Okay. Okay. And when was the last time prior to

December 18th that you had taken a picture on that camera?
A I don't know. I would have to look it up in my storage --
Q Okay.
A -- Picasa with the date.
Q During the dinner after the KGID meeting, at some point after dinner, you walked out onto Charles Avenue, close to the Spencers' house and started taking pictures?
MR. MOORE: Objection. Vague and ambiguous.
Use of the word "close".
BY MR. ROUTSIS:
Q Correct?
MR. MOORE: You can answer it, if you understand it.
BY MR. ROUTSIS:
Q Correct?
A After the dinner?
Q Yes.
A I was planning on going home. And said before I left the house, I am taking pictures from the berm.
Q Okay.
A What Dr. Norman asked us to do.
Q You just indicated that you said you were going to go take pictures of the berm.
Did you say that to Egon and Elfie?
A It was very quick. Just a remark. And out I went.

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Q So the remark that was very quick was something to the effect of, I'm going to go take pictures of the berm?
A Dr. Norman told us to do it, and so I --
Q That's not the question.
The question is, did you tell Egon and Elfie that you were going to go take pictures of the berm before you did?
MR. MOORE: Actually I'm going to object.
He already asked and answered and described it.
You can go ahead and try and clarify if you need to.
BY MR. ROUTSIS:
Q Did you tell them you were going to go take pictures of the berm on the evening of December 18th, 2012?
A We said good night. I'm taking the pictures for --
Q Okay. So now from the time of the meeting that -- when you drove over to your brother's house, was it snowing?
A I don't recall.
Q And do you know your brother uses the driveway on Meadow Drive to park his vehicles, correct?
A Yes.
Q And you know that the pictures -- you went and took pictures on Charles Avenue on the other side of his house, correct?
A Yes.
Q And no matter how big the berm was on Charles Avenue, it would have no effect on his parking his car, correct?

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Correct? Correct?
A Yes. But --
Q Okay.
MR. MOORE: Counsel --
THE WITNESS: But --
MR. MOORE: Let him finish answering.
THE WITNESS: But -- but it is, the fence, where the berms, where the snow was plowed onto.
BY MR. ROUTSIS:
Q Okay. Were you, Mr. Klementi, were you ever told by Egon on December 18th, 2012, that earlier in that day that he had taken pictures on Charles Avenue of whatever berm there was or wasn't?
A No.
Q Do you have any information as you sit here today that prior to taking pictures on December 18th, 2012, that pictures had already been taken in that area?
MR. MOORE: Objection. Vague and ambiguous.
Are you talking about the same day? Or are you now shifting the line of questioning to talking about other days?
BY MR. ROUTSIS:
Q Were you aware before -- I'm going to assume that you did take some picture on December 18th, 2012, after you left dinner; is that correct?
A Yes.

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Q Were you aware that pictures had already been taken earlier in the day by your brother?
MR. MOORE: Objection. Lack of foundation.
BY MR. ROUTSIS:
Q Let me rephrase it.
Did your brother ever express to you that he had taken pictures earlier that day?
A No way. And I am quite sure he didn't.
Q Okay.
A He would not. I mean --
Q Okay. Now isn't it true that two separate cameras were used to take pictures that evening?
A Yes.
Q How did that happen?
A I had two cameras with me in the pocket and on my arm, wrist.
Q Well, you just said that you brought one camera with you.
A No. I said two.
Q So you brought two cameras with you?
A I always had two cameras, one for bad weather, snow or ice or rain.
And one camera for good weather.
Q So you brought two cameras to dinner that night?
A I have them with me all the time.

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Q The answer is yes? Two cameras you brought to dinner that night?
MR. MOORE: I'm going to object. Asked and answered.
He really did explain, and the record will be clear that he has.
You can keep explaining again and again. We don't have a judge to rule on this, even though these are redundant questions.
BY MR. ROUTSIS:
Q Thank you. You brought to dinner --
A I have them with me. I didn't bring them. I keep them with me.
Q Okay. You brought them with you, then, to dinner at your brother's house, two cameras, correct?
MR. MOORE: Same objection. Asked and answered.
BY MR. ROUTSIS:
Q Just if you did --
A I keep them with me all the time.
Q So --
A I didn't bring them with me.
Q I understand that you keep them with you, Mr. Klementi.
My question is very simple: Did you bring them to dinner that night at your brother's house, both cameras?
A I had both cameras with me.

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Q **Did you bring them both to their house for dinner?**
A No.
MR. MOORE: Objection. Asked and answered.
You are now badgering this witness.
MR. ROUTSIS: No, I'm not.
MR. MOORE: Yes.
MR. ROUTSIS: And I will explain why.
MR. MOORE: Yes. Counsel. Counsel. Counsel. Please, Counsel.
BY MR. ROUTSIS:
Q **Mr. Klementi --**
MR. MOORE: Counsel, take a breath. Take your own advice, breathe.
Now let the attorney ask the questions, and please don't speak at the same time, so our court reporter can clearly say who is saying what.
BY MR. ROUTSIS:
Q **Mr. Klementi, I understand that at some point you had two cameras that evening. That's what you are saying. I understand that.**
My question is, did you bring both of those cameras to Egon's house that evening?
MR. MOORE: Same objection.
Do you understand what he is asking?
///

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BY MR. ROUTSIS:
Q **Of course.**
A No. Because I had them with me all the time. I didn't bring them with me.
MS. CAPERS: Just for the record, this is Tanika Capers. I'm going to object, as well, as asked and answered.
It's a mischaracterization of the witness's testimony.
BY MR. ROUTSIS:
Q **Well, again, and I appreciate that, Tanika.**
But it's a very simple question, and it hasn't been answered.
The question again, and it's very important, is, did you bring two cameras to your brother's house for dinner on December 18th, 2012?
Did you bring them over to his house that evening?
A No.
Q **Said no. You did not?**
A I had them with me. I didn't bring them in to my brother's house.
Q **Okay. When you walked into your brother's house for dinner, did you have both cameras on you in your possession?**
A Yes.
Q **Where were they?**
A In my pockets.
Q **Which -- do you normally keep them in certain pockets?**

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A One on my belt maybe.
Q **Maybe or --**
A And one in my pocket or both in pockets, wherever I have space for these little cameras.
Q **So you have a specific memory of having one on your belt that evening?**
A No.
Q **Oh, you don't have a memory of that?**
MR. MOORE: Objection. Asked and answered.
This witness has already testified. You are being argumentative, Counsel.
MR. ROUTSIS: Actually I'm trying to get to the truth here, and I'm not getting a clear answer on a simple question which is concerning.
MR. MOORE: Is that a question, Counsel, or are you seeking to debate? Or note the objection is valid?
BY MR. ROUTSIS:
Q **I have already expressed myself to you.**
Again I'm concerned, Mr. Klementi. You seem to be struggling with a very simple question.
MR. MOORE: Objection.
MS. CAPERS: Objection. Mischaracterizes the testimony.
MR. MOORE: Counsel, you are testifying. Counsel, you're being argumentative.

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MR. ROUTSIS: Okay. Okay.
THE WITNESS: Counsel, please don't speak over other people.
This is inappropriate for you to keep asking the same question of this witness until you get the words you want.
The record is clear. You have asked the same line of questioning repeatedly.
And I'm going to instruct this witness not to answer, and we can bring it to Judge Kosach's attention.
BY MR. ROUTSIS:
Q **Thank you, Counsel.**
Mr. Klementi, this is very important.
Why would you bring not one, but two cameras, to dinner that evening? Why would you bring two cameras?
MR. MOORE: Objection. Asked and answered.
The witness has already testified he usually brings cameras.
BY MR. ROUTSIS:
Q **Okay. Okay.**
MR. MOORE: Any questions?
BY MR. ROUTSIS:
Q **Mr. Klementi, so did you have any wine at dinner that evening? Do you recall?**
A Say it again, please.
Q **Any wine at dinner?**

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A No.
Q **Okay. So after dinner ended, did you discuss with Egon why you were going to go take pictures on his neighbor's, near his neighbor's house?**
MR. MOORE: Objection. Compound question.
He changed the verbiage.
Do you understand what question is being asked?
THE WITNESS: I did not discuss with my brother anything about taking pictures.
BY MR. ROUTSIS:
Q **Was it your understanding that Egon was going to be outside his studio while you took pictures?**
A No.
Q **I'm going to ask that again.**
MR. MOORE: Objection.
BY MR. ROUTSIS:
Q **When you took pictures on Charles Avenue, on December 18th, 2012 -- I'm going to rephrase the question.**
Was Egon Klementi, your brother, your twin brother, outside of his studio when you took pictures?
A I have no idea.
Q **Did you see any flashes from his camera while you were outside taking pictures?**
MR. MOORE: Object as to form. Lack of foundation.
You can answer if you are able to. If you understand.

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THE WITNESS: Yes.
BY MR. ROUTSIS:
Q **Yes.**
A The flash Mr. Spencer saw most likely was from my camera when I took the picture, Charles from the middle up, and one I took from Egon's fence on the left.
Q **Did you see a flash from some other camera during the time you were out on the street?**
A No.
Q **Why were pictures taken on both cameras?**
A I took them only on one.
Q **Okay. Now why did you take pictures in that area that night?**
A Because Dr. Norman told us to take pictures to prove the berms.
Q **Now certainly you are a very -- taking pictures of a berm that has no effect on Egon's driveway doesn't -- does that make any sense to you?**
MR. MOORE: Objection. Argumentative.
Is that a question, Counsel?
BY MR. ROUTSIS:
Q **It is a question.**
Why would you do that?
MR. MOORE: That's a question.
THE WITNESS: Because the berm was, if you look at the

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pictures, the berm was, he put a lot of snow and debris against Egon's fence, and that's what Dr. Norman would have liked to see.
BY MR. ROUTSIS:
Q **Right.**
But it did not effect the ability of your brother to get in and out of his driveway.
MR. MOORE: Objection.
BY MR. ROUTSIS:
Q **The berm has no effect on that, so why take the picture?**
MR. MOORE: Objection. Argumentative.
MR. ROUTSIS: I'll move ahead.
MR. MOORE: Thank you.
BY MR. ROUTSIS:
Q **Now why, if your brother thought it was important, why didn't you just let your brother take a picture?**
A Because it was a stupid idea of me. And didn't come from anywhere, from Elfie or Egon.
It was just my -- I don't know why I did it because it didn't really concern me.
Q **Did Egon ever express to you that evening that Mr. Spencer is very sensitive to people taking pictures at night of his property?**
Did he express that to you?

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A No.
Q **You were aware that -- weren't you made aware through Egon, that the Spencers had called the police because of Egon taking pictures of the Spencers?**
MR. MOORE: Objection as to form. Lack of foundation.
BY MR. ROUTSIS:
Q **Were you made aware of that by Egon?**
MR. MOORE: Same objection.
THE WITNESS: No.
BY MR. ROUTSIS:
Q **Okay. When you went out onto Charles Boulevard that night with two cameras, correct?**
Is that correct?
A Yes. One in the pocket and one in my hand.
Q **And you took how many pictures?**
A I took three pictures: Up the street, east, and then the fence, and then another one on the fence, if I remember right.
Q **So you took one picture --**
A Yeah.
Q **-- up the street of Charles Avenue, right?**
A Yeah.
Q **Now you know at night that the Spencers are going to see a flash, if you are taking a picture up the street, correct?**
MR. MOORE: Objection. Argumentative. Speculation.

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Lack of foundation. Object as to form --
BY MR. ROUTSIS:
Q Did you believe --
MR. MOORE: Counsel, can I please finish?
MR. ROUTSIS: Please do.
MR. MOORE: Object as to form.
You can go ahead and answer, if you can.
BY MR. ROUTSIS:
Q You are aware that if you take a picture up the street, there's a greater possibility the Spencers are going to see the flash, correct?
MR. MOORE: Objection. Speculation. Objection. Lack of foundation.
BY MR. ROUTSIS:
Q You understand that if you take a picture, that that is a probability, right?
MR. MOORE: Objection.
MR. ROUTSIS: The state of mind is critically important, Counsel. Please try to think ahead just a bit.
BY MR. ROUTSIS:
Q Did you believe that the Spencers --
A No. I didn't believe anything.
And I'm sorry I interrupted.
Q Let me ask you this question. Why would you --
MR. MOORE: Counsel, Counsel --

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BY MR. ROUTSIS:
Q Why would you take a picture of a street? What's the purpose?
MR. MOORE: Let's stop. Pause.
Were you able to finish answering your question? Or do you remember -- do you remember what your answer was?
THE WITNESS: No.
MR. ROUTSIS: I'll rephrase it.
MR. MOORE: Thank you.
BY MR. ROUTSIS:
Q Mr. Klementi, what was the purpose of taking a picture of Charles Avenue at nighttime? What was the purpose?
MR. MOORE: Objection. Asked and answered.
MR. ROUTSIS: It's never been asked, Counsel. You know that.
Why are you making objections that you know are disingenuous? That's a violation, okay? That's an obstructionist.
I have never asked that question, and you should know that.
So take a breath. But think about what you are doing.
MR. MOORE: You have a lot of -- Counsel --
MR. ROUTSIS: Go ahead.
MR. MOORE: Are you posing a question right now, or are you trying to make some sort of record?

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BY MR. ROUTSIS:
Q Mr. Klementi, why would you take a picture of Charles Avenue?
MR. MOORE: Same objection. Asked and answered.
BY MR. ROUTSIS:
Q Please answer the question.
A Why not? Why not?
I didn't think, I mean, I just, it was out of -- if Dr. Norman wouldn't have told us to take pictures, I never would have had the idea.
Q That wasn't a picture of a berm. That was just a picture of a street, right?
MR. MOORE: Objection. Argumentative.
MR. ROUTSIS: You know, Counsel, it's very interesting. You are getting very dangerously close to being obstructionist, and I'll tell you why.
When counsel asks a question that is clear, concise, and very relevant, and you continue to make objections, you are defeating the purpose of being an attorney and to try to get to the truth.
If Dr. Shaw said to take pictures of a berm, and I'm asking him, why did you then take a picture of the street that has nothing to do with the berm, I think we're getting into a very interesting area.
Why are you objecting to that? Don't you want to

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know?
MR. MOORE: Counsel, it's very interesting that you want to argue with the objections. The point is this:
The record will speak clearly for itself. I disagree with your characterization, which is a tendency we have observed in this case, which is why we're documenting this.
Do you have a question that's pending?
MR. ROUTSIS: Counsel, I just want to let you know for the record that I will be requesting sanctions.
You are being obstructionist. And if you are going to object continually, and your purpose is simply to stop the relevant objections, that is almost an unethical act for an attorney to do.
And you should consider your objections because they really are not making any sense.
BY MR. ROUTSIS:
Q I would ask the question again.
Mr. Klementi, if you were told to take a picture of the berm, why would you take a picture of a street?
MR. MOORE: Objection. Argumentative.
MR. ROUTSIS: There's nothing argumentative about it. It's a simple question.
MR. MOORE: I'm not asking for you to argue.
I'm just having a record. Objection. Argumentative.
If you can answer the question, go ahead.

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BY MR. ROUTSIS:
Q Yeah.
A I took three pictures.
One I took up the street to see the left side with the berms, and also where Mr. Spencer turned around and left a berm on the street like -- like this. Okay?
And then I took a picture from the fence on the left side. Twice.
Q Mr. Klementi, do you recall that prior to the jury trial -- do you remember the trial where you testified, where Jeff Spencer was accused of criminal conduct?
Do you remember that trial? Where you testified?
A Yeah.
Q Okay. And do you recall prior to that trial that my office issued a subpoena duces tecum for the cameras.
Do you recall that?
A Yes.
Q And do you recall that we wanted to get all the pictures on both the cameras?
MR. MOORE: Objection. Speculation as to what you wanted.
Is the question, does he recall what was in the subpoena?
BY MR. ROUTSIS:
Q Do you recall that we issued a subpoena to get the

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pictures that were in both cameras?
MR. MOORE: Objection. Asked and answered.
I think he said yes, right?
THE WITNESS: Yes.
BY MR. ROUTSIS:
Q Okay. And do you remember the response that we got from you and your brother was that there was something broken with the memory stick?
A Not from my brother.
MR. MOORE: Objection. Lack of foundation. Object as to form.
BY MR. ROUTSIS:
Q Was there a problem with getting all the pictures?
A There was no problem. I got the pictures and gave them to you.
And I also gave a flash drive. The memory card was broken, and I tried to get it fixed, but could not.
Q And as a result --
A But --
Q Go ahead.
A But I had all the pictures on Picasa stored, with the date and everything, except that the date was from Austria, part of the cameras.
Q Now were pictures taken that evening after dinner on December 18th, 2012, were pictures taken on both cameras?

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MR. MOORE: Objection. Asked and answered.
Go ahead.
The record will speak.
THE WITNESS: There was three pictures, including two pictures by mistake when I tried to put it on video.
That was -- they were taken in one camera.
The other camera, I don't know how Egon got it out of my pocket, or what, if I have it down here, the one -- he took the pictures, and I was lying on the ground.
That's it. More, I can't tell you more because I was --
BY MR. ROUTSIS:
Q Okay. Now on the 18th at some point, you heard Jeffrey Spencer yelling to you?
MR. MOORE: Objection. Foundation.
BY MR. ROUTSIS:
Q Let me rephrase.
On December 18th, 2012, when you were out on Charles Avenue, did you hear any words from Jeffrey Spencer?
A Yes, I heard --
Q What?
A -- him screaming.
Q What did you hear him screaming?
A I don't know exactly what he screamed about his truck. And I was not close to his truck.

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And I was trying to take the video going, and before I even -- it was so fast, I got a punch. I flew back on my back and laid on the ground and could not move.
Q You heard -- didn't you hear Jeffrey Spencer ask you to identify who you are?
MR. MOORE: Objection. Argumentative. Object as to form. And object as to lack of foundation.
MR. ROUTSIS: Counsel, I want to file a request for sanctions at this point.
The question I asked him for the record was, Mr. Klementi, did you hear Jeffrey Spencer ask you to identify yourself?
Excuse me, Counsel. It is a clear, concise, relevant question.
And Counsel is making objections that are illogical and irrational. He is consistently doing it to prevent the truth from coming out, and it's improper.
And I'm going to request sanctions because you continually made objections that are obstructionist.
And it's unfortunate because that's not what we should be doing. The record is made. I'm going to continue.
MR. MOORE: Counsel, if you are characterizing this as a motion, I get to be heard. Wouldn't you agree?
MR. ROUTSIS: Please.
MR. MOORE: And this is a motion that is inappropriate

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at this point.
You are, of course, welcome to make a motion that you think is appropriate in written motion practice.
The other thing you should consider, Counsel, is that you have previously asked this witness whether or not he had heard something that was said by Mr. Spencer.
This witness testified to it.
Now that question subsumes what you were now trying to ask here.
So the record will speak --
MR. ROUTSIS: Subsumes? I don't even know what that means.
MR. MOORE: I understand that you don't know what --
MR. ROUTSIS: Subsumes? I'm sorry, Counsel. I'm just having a lot of problems with your logic. I really am.
MR. MOORE: I understand you are having problems with logic, and what I am trying to do is make sure --
MR. ROUTSIS: Oh, my.
MR. MOORE: Can I speak without your speaking?
MR. ROUTSIS: I don't know if you can.
Are you asking me if you can speak? Not very well if you ask me to be honest.
MR. MOORE: I'm not asking for permission.
Permission would be "may I speak".
When I say can I speak --

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MR. ROUTSIS: I wish you would ask me that.
MR. MOORE: -- I'm asking whether or not it's possible for me to continue speaking without you interrupting.
That's the question.
MR. ROUTSIS: Okay. I'm ready to continue, Counsel.
Are you done?
MR. MOORE: No. I'm not.
If you wish to make a motion, go ahead and do it in writing.
BY MR. ROUTSIS:
Q I just made an oral motion, and we will address it at some other time.
And I would hope you would consider your objections.
Mr. Klementi, on December 12, 2012 -- December 18th, 2012, did you hear Jeff Spencer when you were out on Charles Avenue, ask you to identify yourself?
MR. MOORE: Objection. Asked and answered.
You can go ahead.
THE WITNESS: I heard him screaming like a mad man.
And when I was -- my head down and trying to find this button, he came so fast that I didn't even have a chance.
And I flew back because he punched me in my left side, and I flew, and I couldn't -- couldn't move, in the middle of, in the middle of the street.
///

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BY MR. ROUTSIS:
Q My question, do you remember Jeffrey Spencer asking you the question, to please identify who you are?
MR. MOORE: Objection. Asked and answered.
You keep repeating the same question again, not only this one, but others, Counsel.
The record will stand, and there is a reason to interpose these objections because you are abusing the discovery process by repeatedly asking witnesses the same question again.
BY MR. ROUTSIS:
Q Mr. Klementi, did you have an opportunity to answer Mr. Spencer's question to identify yourself on January -- December 18th, 2012?
Did you have an opportunity to answer his question to identify yourself?
MR. MOORE: Objection. Lack of foundation. Object as to form.
BY MR. ROUTSIS:
Q You can answer the question.
MR. MOORE: The witness has not testified as to whether or not there was a question.
You are saying there was one, but this witness has not said that.
BY MR. ROUTSIS:
Q Mr. Klementi -- it's very interesting, Counsel. You

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see the frustration?
I have asked --
MR. MOORE: I do.
MR. ROUTSIS: -- the question, and you said it's been answered.
I then ask another question. And you said, well, you're assuming facts not in evidence, because he never answered the question.
It shows you the illogic of your conduct. It really -- Counsel, you really need to take a step back.
You are not making any sense.
BY MR. ROUTSIS:
Q I'll ask you again, Mr. Klementi.
When you were out on Charles Avenue on December 18th, 2012, after having dinner with Egon Klementi, and you have testified to taking some pictures on Charles Avenue.
Do you remember Jeffrey Spencer asking you to identify who it is out there?
MR. MOORE: Objection. Asked and answered.
BY MR. ROUTSIS:
Q Do you remember that question?
Yes or no?
A He didn't ask me. He screamed down, what is -- what are you doing to my truck? But he didn't ask me.
Q Okay. So you remember him asking you, what are you

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doing to my truck?
A Not me. He screamed it down --
Q Who did you think -- okay.
A -- a few words.
I didn't move. I didn't -- didn't go back. I didn't -- I just took the pictures, and that's it.
Q Okay. So you do recall hearing Mr. Spencer formulate a question of what are you doing to my truck?
Is that what you remember?
MR. MOORE: Objection. Asked and answered.
You are rephrasing this witness's testimony here. That's inappropriate, Counsel, and you should not be doing that.
BY MR. ROUTSIS:
Q Mr. Klementi, could you please tell us what you recall Mr. Spencer asking you?
MR. MOORE: Objection.
THE WITNESS: Not me.
MR. MOORE: Asked and answered.
THE WITNESS: I don't know if he asked me, or he saw something on the monitor that somebody was with his truck.
I was not close to his driveway. I was far away.
BY MR. ROUTSIS:
Q Okay. So maybe it wasn't to you.
What did you hear him say?
MR. MOORE: That's a question.

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THE WITNESS: I was working on my camera, and I --
BY MR. ROUTSIS:
Q You don't recall what he said?
MR. MOORE: Let's stop. Let's stop.
THE WITNESS: Okay.
MR. MOORE: We're going to take a break now.
THE WITNESS: Okay.
MR. MOORE: Because you keep asking the same question again and again.
We'll take a five-minute break.
(A recess was taken)
BY MR. ROUTSIS:
Q Helmut, we're not going to be that much longer.
A Thank you. Thank you.
Q Yes.
Okay. Are we ready? I think everybody is here.
Helmut, let me continue. I hope not to be that much longer. I wanted to go back to May 27th of 2012.
Do you remember the time period when the Spencers were building their fence on their property?
Do you remember about that time period?
A I remember vaguely.
Q Do you remember driving your brother around when he was taking pictures of the fence?
A No. I am not sure. If I was driving around?

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Q Did you drive your brother when he took pictures of the fence?
A I don't. You know, if we have a camera, it's not always that we take pictures.
Q I'm just asking on May 27th when the Spencers were building their fence, do you remember driving Egon while he was taking pictures of the fence?
A I'm not sure.
Q I'm sorry?
A I'm not sure.
Q I've always struggled with that.
What does that mean? I'm not sure? You don't remember?
A I don't remember.
Q Okay. Do you have those two cameras on your person right now?
A No.
Q I thought you always carried them with you?
A Yes. But not in a court case, I don't. I don't have the phone with me. And I don't have the cameras with me.
Q Okay.
A They are in the car.
Q Okay.
A But they are different ones because they don't last that long.

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Q Okay. So you don't always --
A I mean, we tried -- I tried to save everything on memory, flash drives, memory cards.
Q Okay. Moving ahead again to December 18th, 2012, you recall hearing Jeff yell some words prior to him coming out onto the street, correct?
MR. MOORE: Objection. Asked and answered.
BY MR. ROUTSIS:
Q Do you recall that? Him saying some things?
A I heard him screaming, but --
Q Can you tell us to the best of your memory what he said?
MR. MOORE: Objection. Asked and answered.
One last time, tell him to the best of your memory what you heard.
And, Counsel, that's the last time you are going to be able to ask that question in this proceeding here today.
BY MR. ROUTSIS:
Q Yeah, right.
Go ahead.
A What are you doing? Best thing would be if he screams it now, then you hear it.
Q Tell me, what did he say?
A What are you doing to my truck? What are you -- but I'm not close to his truck. I didn't walk away. I was working

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with my camera.
And before I even could say anything, he punched me down.
Q When you heard --
A And then I don't know any more.
Q Okay.
A And until the policeman came and asked me questions.
Q When you heard those words from Mr. Spencer, did he appear to be up on an upper balcony on his house?
A Some kind of far away.
Q Okay. So after the words to when he came out onto the street, was about what time period?
A minute, two minutes?
A No. No. No. It was maybe 1, 2, 3 seconds. I mean, I tried to work on my camera, punch, I flew.
Q Did you answer Mr. Spencer?
A No, because I didn't have a chance. I didn't know that he asked me. I mean --
Q Was there anybody else --
A -- because I was not close to his driveway.
MR. MOORE: Counsel, can you just pause and let this witness finish answering the questions?
BY MR. ROUTSIS:
Q Egon, are you done?
A Helmut. You said Egon. Helmut.

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Q Helmut. I'm sorry.
Mr. Klementi, was there anybody else on the street that evening that he could have been talking to?
MR. MOORE: Objection. Speculation.
THE WITNESS: No.
BY MR. ROUTSIS:
Q Did you see anybody else on the street that evening that he could have been talking to?
A No. And I'm glad nobody came, because otherwise I wouldn't be here. I would be dead.
Because Mr. Spencer punched me so nice that I flew.
Q Okay. At some point you and Mr. Spencer had some contact with each other that evening, correct?
A Contact when he punched me in the rib.
Q Well, that's what I'm going to ask you.
How long after you heard Mr. Spencer yell some words to you that you didn't respond to, was it that he had contact with you?
MR. MOORE: Objection. You are being argumentative. Object as to form.
THE WITNESS: I told you. It was 2, 3 seconds. I don't know how fast he ran down. I mean, I don't know.
BY MR. ROUTSIS:
Q How could someone get from the second floor out of the house in two seconds?

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MR. MOORE: Objection. Argumentative. Speculation. Object as to form.
BY MR. ROUTSIS:
Q Okay. So at some point, Mr. Spencer and you had some type of physical confrontation, correct?
MR. MOORE: Objection. Ambiguous. The way you are characterizing it is argumentative.
MR. ROUTSIS: Wow. Again, for the record, I'm going to add this to my motion for sanctions.
That to ask a man, at some point you and Mr. Spencer had a physical confrontation, could possibly be conceived as argumentative, is not possible logically, and it's a continuing plan from Counsel simply to prevent a proper, professional deposition from occurring.
It's obstructionist, and even though he is couching it in soft-spoken words, it is -- he should be sanctioned for that.
And I'll submit it on that.
MR. MOORE: Objection.
MR. ROUTSIS: Okay.
MR. MOORE: This is not a proper format for a so-called motion.
We all know that when someone makes a motion, that there is a fair opposition that can be articulated.
We disagree with your characterization of your own questions.

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We disagree with your characterization as to what the purpose is for the objections.
We do not know what makes you an omniscient person who knows what the purpose is of an objection.
The record will stand on itself, and it's improper to make this kind of oral verbal motion.
If you have a motion to make, Counsel, you certainly can make one in writing.
MR. ROUTSIS: How does a motion stand on its own?
How does that happen?
BY MR. ROUTSIS:
Q In any event, Mr. Klementi --
MR. MOORE: Do you want me to answer the question?
MR. ROUTSIS: Not really.
MR. MOORE: Okay. Well, the record is clear on that.
BY MR. ROUTSIS:
Q Mr. Klementi, at some point Jeffrey Spencer and you had some type of physical confrontation, correct?
MR. MOORE: Objection as to form.
BY MR. ROUTSIS:
Q Correct?
A I didn't have -- I don't know what you call confrontation.
I am standing there and doing nothing.
Q Yes.

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A Am not moving. Just working with the camera -- with the camera, and here he comes flying down the street.
Q That's what I'm asking. Tell me what happened?
MR. MOORE: Objection. Asked and answered.
THE WITNESS: I flew.
MR. MOORE: He already told you what happened, Counsel.
BY MR. ROUTSIS:
Q Tell me what happened, Mr. Klementi?
A Yeah. I came --
MR. MOORE: You know what? I'm going to instruct you don't answer, don't answer that question.
You have already testified as to what happened.
Counsel, if you ask a specific question that elicits testimony that has not been provided, please go ahead and do so.
BY MR. ROUTSIS:
Q Tell me what happened.
MR. MOORE: You are not going to answer that question.
MR. ROUTSIS: Okay.
MR. MOORE: Because of the way you are asking it.
BY MR. ROUTSIS:
Q Very good.
Is it your testimony that Jeffrey Spencer punched you?
A Yes. He punched me.
Q With which hand?

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A I don't know if it he is left- or right-handed, but he punched me so hard that I couldn't move anymore.
Q And is that what knocked you to the ground?
A Say it again.
Q Was it the punch that knocked you to the ground?
A Yes.
Q Where did the punch hit you?
A Right here.
Q In the ribs?
A Yes.
Q Okay. Now when you went to the ground, did Mr. Spencer speak to you?
MR. MOORE: Objection. Lack of foundation.
MR. ROUTSIS: What's the foundation we lack?
MR. MOORE: Why don't you ask the question --
MR. ROUTSIS: No. What is the foundation we're lacking? I'm curious.
What foundation?
MR. MOORE: You don't even know if he could hear something.
This witness has already testified that he thought he lost consciousness.
So I can suggest you can ask the question, did you hear Mr. Spencer say anything.
///

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BY MR. ROUTSIS:
Q That's fair.
Did you hear Mr. Spencer say anything?
A No.
Q So from the time he hit you, while you were on the ground, you don't ever remember hearing Mr. Spencer say anything to you?
MR. MOORE: Same objection. Asked and answered.
THE WITNESS: No.
BY MR. ROUTSIS:
Q At some point did Mr. Spencer leave you on the street?
MR. MOORE: Objection. Foundation.
BY MR. ROUTSIS:
Q After he knocked you down?
MR. MOORE: Same objection. Foundation.
If you know.
THE WITNESS: I called for help because I was lying there alone, and I had no idea how I get out off the street if some car comes, because he runs over me, and I could not move.
BY MR. ROUTSIS:
Q Okay. Do you recall seeing Mr. Spencer leave you and walk back towards his home?
A No.
Q Okay. Do you recall your brother coming out and talking to you?

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A I must have come to my -- the first thing was when Egon was out there, and the deputy was, Officer McKone was there talking to me.
That's the first time I understood something.
Q Okay. Did Egon or Elfie give you anything while you were laying on the ground that you remember?
A Somebody gave me a pillow under my head, and I was glad that people were there.
Q Okay.
A And the police came and the ambulance.
Q Did you give one of your two cameras or both of them to anybody prior to law enforcement --
A I don't remember.
Q Okay. You don't -- okay.
Do you recall speaking to law enforcement when they arrived at the scene later?
A Yes. They talked to me.
Q Okay. Do you recall telling law enforcement that you thought you heard a gun?
A Yes. I told them this because it sounded like a gun, a muffled gun, coming from the balcony.
Q Did you tell law enforcement that there was some type of restraining order that Mr. Spencer had against him?
A No, because my mind was absolute, gone.
Q At some point did you provide the pictures you took

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from the camera to law enforcement?
A They might have asked me -- the camera there, I might have in my hand, or whatever. Like I had my glasses on.
Q Now you were taken to the hospital that evening, correct?
A Yes.
Q And you were released within how long?
A I don't know.
Q Hours, minutes?
A Hours, but I don't remember.
Q Okay. And do you recall if you were provided any type of pain medication?
A I don't know.
Q Isn't it true you were only provided aspirin?
A I have no idea.
Q Okay.
A Aspirin?
Q And isn't it true that they x-rayed your ribs that evening?
A They did not x-ray me, not to my recollection.
Q Okay. You don't recall when you were taken to the hospital that you had been given some type of CAT scan, or x-ray? You don't recall that?
A I'm not familiar with these things.
Q Okay. Did you complain when you were arrested of pain

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to your ribs?
MR. MOORE: Objection.
BY MR. ROUTSIS:
Q I mean -- arrested? Strike that.
Did you complain, when you went to the hospital, to pain in your rib area?
A I'm sure.
Q And you don't recall any x-rays being done?
MR. MOORE: Objection. Asked and answered.
BY MR. ROUTSIS:
Q I think you went back to your doctor about ten days later; is that correct?
MR. MOORE: Objection. Asked and answered.
THE WITNESS: I'm sorry.
MR. MOORE: It's on the record, Counsel.
THE WITNESS: Yeah.
BY MR. ROUTSIS:
Q Thank you, Mr. Klementi.
A I thank you, Mr. Routsis.
Q You are welcome.
MR. ZANIEL: Actually, I have just a couple follow-up questions. Let me know if this has been asked before.
FURTHER EXAMINATION
BY MR. ZANIEL:
Q When you said, Mr. Klementi, that you felt a punch to

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the left side, you pointed at your ribs, I think?
A Yeah.
Q But for the record, I don't think we're going to know where you are pointing to.
So it looks like the left side of your body?
A Right here. And I can feel -- yeah.
Q Okay. So when you say "right there", we're still not going to know.
A That's left.
Q Left side?
A Yeah.
Q If you know, because I know you are not a doctor, but if you know, was that the ribs that were broken?
A Yes. Fractured, yes.
Q I thought you were about to say something like, you can still feel something?
A Yes. If I lie on this side, I wake up in the night sometime, sometime.
Q You still feel pain?
A Yeah.
Q But if you rub them right now, can you notice a difference between your ribs now?
A No.
Q Okay. From the time you heard screaming from Mr. Spencer, until the time he punched you, did you move?

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A No, not to my recollection, because I was trying to adjust the camera --
Q From pictures to video?
A Yeah.
Q I'm sorry. I cut you off.
You were trying to adjust the camera?
A Yeah.
Q From picture to video?
A Yeah.
Q Okay. Did you ever adjust the camera to --
A No.
Q Did you ever get it to video?
A No. I didn't get it.
Q When you heard the screaming, were you facing towards the Spencer house, or towards your brother's house?
A No. I was always right up on top from Charles, facing, you know.
Q Facing --
A Facing due west. Up Charles.
Q Towards the Shaws' house?
A Yeah.
Q Okay.
A Sorry.
Q Was there any other contact other than the punch to the ribs?

Was there --
A I must have been out because, no, I don't think so.
Q In other words, was there a punch and a push?
A No. No. I flew.
Q Just one punch?
A One punch. And that's what I had in my mind.
Q Okay. All right. Those are all the questions I have. Thank you.
A Thank you very much.
MR. PINTAR: I don't have any questions.
MS. CAPERS: No. Pass the witness.
(Proceedings concluded at 4:13 p.m.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, DEBORAH MIDDLETON GRECO, a Certified Court Reporter in and for the State of Nevada, do hereby certify:

That on Thursday, April 14, 2016, at the hour of 1:14 p.m. of said day, at 151 Country Estates Circle, Reno, Nevada, personally appeared HELMUT KLEMENTI, who was duly sworn by me to testify the truth, the whole truth and nothing but the truth, and thereupon was deposed in the matter entitled herein;

That I am not a relative, employee or independent contractor of counsel to any of the parties, or a relative, employee or independent contractor of the parties involved in the proceedings, or a person financially interested in the proceeding;

That said deposition was taken in verbatim stenotype notes by me, a Certified Court Reporter, and thereafter transcribed into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 139, is a full, true and correct transcription of my stenotype notes of said deposition.

DATED: At Reno, Nevada, this 21st day of April, 2016.

DEBORAH MIDDLETON GRECO
CCR #113, RDR, CRR

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

Page	Line	Should read:	Reason for Change:

ERRATA SHEET

Page	Line	Should read:	Reason for Change:

Date: _____ _____
Signature of Witness

_____
Name Typed or Printed

ERRATA SHEET

I declare under penalty of perjury that I have read the Foregoing 139 pages of my testimony, taken on April 14, 2016 (date) at Reno (city), Nevada (state),

and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

Page	Line	Should read:	Reason for Change:
30	20	2005	Date Correction
31	24	At Carson City	Location Correction
72	19	1990	Date Correction
69	12	Aug. 11	Date Correction
88	5	yes ,I attended other KGID meetings	Correction

ERRATA SHEET

Page	Line	Should read:	Reason for Change:
89	12	incorrect,see correction PG 88	Correction
41	2	yes,Dr,Wolfgang Kleiner,Prim.Phys.	Correction
		Hard,6971,AT	
62	11	May 25, 2013	Date Correction

Date: May/07/2016

Helmut Klementi

Signature of Witness

Helmut Klementi

Name Typed or Printed

EXHIBIT "B"

EXHIBIT "B"

Docket 77086 Document 2019-24088

IN THE NINTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

---o0o---

HELMUT KLEMENTI,

Plaintiff,

-vs-

JEFFREY D. SPENCER,

Defendant.

_____/

JEFFREY D. SPENCER,

Counterclaimant,

-vs-

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

_____/

Case No. 14-CV-0260

Dept. No. 1

DEPOSITION OF JESSE McKONE

04/07/2016

Reno, Nevada

REPORTED BY: KRISTINE BOKELMANN
NV CCR #165, CA #5979

JOB NO: 297108A

APPEARANCES OF COUNSEL:

For the Plaintiff:

LAUB & LAUB
Attorneys at Law
By: Nicholus C. Palmer, Esq.
630 East Plumb Lane
Reno, Nevada 89502
(775) 333-5282

For the Defendant:

RANALLI, ZANIEL, FOWLER & MORAN, LLC
Attorneys at Law
By: David M. Zaniel, Esq.
50 West Liberty Street
Suite 1050
Reno, Nevada 89501
(775) 786-4441

For the Counterclaimant:

WILLIAM J. ROUTSIS, II, ESQ.
Attorney at Law
1070 Monroe Street
Reno, Nevada 89509
(775) 337-2609

For the Counterdefendants
Helmut and Egon Klementi:

LEMONS, GRUNDY & EISENBERG
Attorneys at Law
By: Chris Moore, Esq.
6005 Plumas Street
Third Floor
Reno, Nevada 89519
(775) 786-6868

APPEARANCES OF COUNSEL: (Continued)

For the Counterdefendant Mary Ellen Kinion:

GLOGOVAC & PINTAR
Attorneys at Law
By: Michael A. Pintar, Esq.
427 West Plumb Lane
Reno, Nevada 89509
(775) 333-0400

Also present:

Mary Ellen Kinion
Elfriede Klementi
Jeffrey Spencer
Marilyn Spencer

I N D E X

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* * *

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* * *

Pursuant to Notice, and on the 7th day of April, 2016, at the hour of 10:18 a.m. of said day, at the office of Sunshine Litigation Services, 151 Country Estates Circle, Reno, Nevada, before me, KRISTINE BOKELMANN, a Certified Court Reporter, personally appeared DEPUTY JESSE McKONE.

JESSE McKONE,

called as a witness by the Counterdefendants herein, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. MOORE:

Q Please state your name.

A Jesse McKone.

Q Have you ever been deposed before?

MR. ROUTSIS: Excuse me. I'm sorry to interrupt you, but don't we have an exclusionary rule? These are going to be other witnesses.

MR. MOORE: They're all parties.

MR. PINTAR: They're all parties.

MR. ROUTSIS: The parties need to be -- I think if we have multiple defendants, they shouldn't be privy to the testimony of other people. I think that's a big problem. I think they should be excluded.

MR. MOORE: You can have an objection, but we disagree.

MR. ROUTSIS: Okay. Very good.

THE WITNESS: Okay.

MR. ROUTSIS: I'm probably wrong.

THE WITNESS: Where were we?

MR. MOORE: I'm going to pause here and let's go off the record.

(Off-the-record discussion.)

BY MR. MOORE:

Q We'll go back on the record and I'll start again.

A Okay.

Q My question that I had asked before other attorneys needed to make their record was have you ever been deposed before?

A Never.

Q Okay. This process, I'll just explain it briefly to you because it's not an every ordinary thing for people other than lawyers such as us who do this.

What you're saying here today will be put down, while it's on the record, into a deposition transcript. You will have an opportunity to review that deposition transcript and make any changes and corrections. Do you understand that now?

A Yes.

Q If you make any changes or corrections and they're very substantive in nature, any lawyer or party could comment on that at any future civil trial in this matter. You understand that?

A I do.

Q You, therefore, understand that it's important today that you do the best you can to answer questions as accurately as you can. Do you understand that?

A Yes.

Q Understanding, however, that much of what we're going to ask about happened several years ago, it's fine for you to tell us if you're unsure of something or if you don't remember. Do you understand that?

A I do.

Q Now, the oath which you have taken is the same oath which you would take if you were actually testifying in a court of law. Do you understand that?

A Yes.

Q And of course, you would expect to be telling the truth at any rate, correct?

A Yes.

Q All right. You're already doing a good job of waiting for me to ask my questions. Sometimes my

questions are long-winded. I ask you that you be patient so we do not speak at the same time so that the court reporter is sure to pick out who is saying what, when. You understand that's important?

A I do.

Q Also, you're already providing verbal audible answers. People communicate nonverbally in everyday life. We will even do that ourselves, but if you can please be patient and be sure to always give a verbal audible answer in response to any question someone asks so there's no confusion on the record. You understand that's important?

A I do.

Q If you need to take a break, you may do so. The only thing we will ask is if you can answer a question that's pending. Hopefully you do not need to take a break. I'm hopeful that we don't take a big chunk of time here today, but you understand you can take a break. Is that correct?

A Yes.

Q All right. What is your occupation?

A Deputy sheriff.

Q With what entity?

A Douglas County Sheriff's Office, Nevada.

Q How long have you worked with the Douglas

County Sheriff's Office in Nevada?

A I am in my 25th year.

Q A stretch of time perhaps. When you first started working at Douglas County in the sheriff's department, had you had prior experience in law enforcement?

A No.

Q In order to work as a deputy sheriff at that time when you first started, did you have to go to any kind of training or academy before you actually started full-time patrol duties?

A Yes.

Q What did you do?

A July 1992 I attended the Nevada POST Academy in Carson City and graduated in late October.

Q After graduation you were assigned to regular duties at the Douglas County Sheriff's Department; is that correct?

A Yes.

Q And can you just tell us generally what those duties encompassed.

A For a deputy sheriff or me specifically?

Q For you specifically.

A Okay. I was -- prior to the academy I was assigned to the jail. Upon graduation from the academy,

I returned to the jail until there was a slot opening in the field training program. I was reassigned to patrol a few months after the academy, spent nine years in the patrol division, went from patrol division to the court services and judicial protection services for -- it was somewhere between five and six years.

At the end of that sixth year, I returned back to the patrol division in I think it was probably 2008, 2009, and I believe -- I've had multiple assignments within the patrol division during that stint from 2008, 2009 up until present.

Q When part of your assignment involved court protection services, did some of that include working with any of the district courts or district court judges?

A Yes.

Q That's where I recognize you.

A Okay.

Q I was thinking I saw you. You've been in Judge Gibbons' courtroom before?

A Many times.

Q All right. Now, as part of your professional background, have you had any training that has helped prepare you to investigate matters when you have been called out to incidents?

A Yes.

Q And can you summarize that for me, what that training has consisted of.

A I've been through three different death investigation schools. I am a coroner. I've done an internship with Washoe County Medical Examiner's Office to get a basic coroner's certification.

I spent an internship with the Clark County Medical Examiner's Office, and have worked hundreds of death investigations over the course of my career, and have also supervised the coroner's division.

Q The training that you've summarized for me here, was substantially all of that training training you had the benefit of when you responded to an incident on December 18th of 2012, which is the incident that brings us here today?

A Yes.

Q And throughout your years of training, you have established a protocol, perhaps, for yourself that when you arrive at an incident, there are certain things you try to do to find out what's going on?

MR. ROUTSIS: I'm going to object. That's leading. You're telling him.

MR. MOORE: You can have a running objection if you feel more comfortable.

MR. ROUTSIS: I'm just saying that's leading. You shouldn't be telling him what he did. You should ask him.

BY MR. MOORE:

Q Objection noted.

You have a protocol, don't you, that you have established for yourself so that when you go to an incident, you are able to start trying to figure out what happened so you can do an investigation; is that correct?

A Correct.

Q All right. And of course, we understand the reason we're here today is because of an incident that happened on December 18th, 2012, that you responded to for the purpose so that you could investigate. You understand that?

A Yes.

(Marked Defendant's Exhibit 1.)

BY MR. MOORE:

Q All right. Now, one thing that we have marked for today as an exhibit is Exhibit 1, which is a document that I'll show to you. I'm going to show that to you and then we're going to go off the record to make sure everyone has copies. So it looks like Exhibit 1 is in front of you.

A Yes.

MR. MOORE: Okay. We're going to go off the record.

(Off-the-record discussion.)

BY MR. MOORE:

Q We'll go back on the record.

Prior to your coming to today's deposition, did you review any documents to prepare for the deposition?

A No.

Q Prior, before us going on the record, did you take a look at what has been marked as Exhibit 1?

A Today, yes.

Q Good. And thanks for your specificity here. When we look at Exhibit 1, can you tell us what that document is.

A That is the report that I completed from the incident in 2012.

Q All right. When we look at Exhibit 1, it does not have every single page numbered, but I'd like to see if it's the complete report. When we look at Exhibit 1, the first 10 pages have some numbering after the second page. It says page 2 of 10.

A Yes.

Q And it looks like we have 10 pages. And then

after those 10 pages there appear to be witness statements. And once you've looked at those witness statements and the first 10 pages, do they collectively, to the best of your memory, consist of the entire incident report that you were involved in preparing?

A Yes.

Q And the reason I'm asking this, I'm just seeing if there's any document that would be missing that perhaps you could tell us about if it was missing or not.

A Not that I can recall.

Q Fair enough. The first 10 pages of Exhibit 1, is that something that you had prepared as part of your involvement in this matter?

A Somewhat. Page three through most of page eight, the first -- where it ends with my name there, that's mine. The other pages, like page one and page -- half of page eight, nine, and 10, those are all software generated that are auto-populated in the report.

Q I understand, and I appreciate your specificity. So what you pointed out is when we look at pages three up to a portion of page eight where it starts with narrative, investigation narrative, that would be mostly, in large part, what you had prepared --

A Yes.

Q -- in order to provide a narrative of what happened, correct?

A That's actually my typewritten report, yes.

Q You shared with us a little bit that when one starts creating a report, you go to a computer to input the information; is that correct?

A Yes.

Q And are there other people who, to your knowledge and understanding, are involved in inputting information in the computer data that is eventually printed out to consist of this report?

A Yes.

Q Okay. All right. You understand that you're welcome to look at your report at any time if you need to help to refresh your memory to answer any questions that may be posed to you here today. Do you understand that?

A Yes.

MR. ROUTSIS: And for the record, would you acknowledge when he's looking at the report, he can't answer a question, so say please may I look at my report so we know it's not from your personal memory and we know it's coming from your refreshed recollection of your report.

THE WITNESS: You want me to state that

verbally?

MR. ROUTSIS: Yes.

THE WITNESS: Yeah, sure.

BY MR. MOORE:

Q So let's take you to the date of the incident that brings us all here today. I presume that you get a dispatcher call of some sort in order to get you to the location; is that correct?

A Yes.

Q And if you can walk us through what happens once you get the dispatch call. What happens next that you're involved in?

A I acknowledge that I am en route and I respond to the area or the residence, whatever it happens to be.

Q Do you have any recollection if you had previously responded to that specific area for any kind of disturbances or disputes, if you remember?

A Not for disturbances or disputes.

Q Okay. Considering the amount of time that you were involved as being a deputy sheriff, you were generally familiar with the area; is that accurate?

A Very.

Q All right. And we are bringing to the time when you arrived to the area because you received a report. What happens upon arrival?

A I turned onto Charles and could see a man laying in the snowpack-covered road.

Q And as we look at page three of the report, which is the narrative that you prepared, and we can look through there, let's perhaps save us a little bit of time. You had an opportunity to review that narration before this deposition started this morning, correct?

A Yes.

Q Looking at that narration, is there anything that you looked at that is inaccurate or you believe to be inaccurate?

A No.

Q All right. So if one were to read through the narration, that is what you would be testifying to. If we asked you to go through and tell us what happened, you would just basically go through the narration; is that accurate?

A Yes.

Q All right. Now, obviously if you remember any fact independently that may not be written down here, you can certainly refer and share that fact. You understand that?

A Yes.

Q All right. Looking at the narration, it

appears that upon seeing what had -- there was a man on the ground, you took certain steps in order to make sure that the man would be taken care of and that he would be kept safe. For example, you parked your vehicle so that no one would run over him because he was in the middle of the road, correct?

A Yes.

Q All right. And then at a certain point you had to ask people questions to try and find out what was going on, correct?

A Yes.

Q All right. Now, there was a certain point in time when you had contact with a Mr. Spencer; is that correct?

A Yes.

Q And can you please tell us what that contact consisted of in chronological order. In other words, when's the first time you can recall having any contact with Mr. Spencer when you have arrived at the scene of the incident?

A I believe my first contact with Mr. Spencer was at the front door of his residence.

Q And why is it that you were at the front door of his residence?

A I was investigating this incident and I was

pointed in that direction by the male on the ground.

Q When you arrived at the incident, do you recall if your lights were on, not just your vehicle lights, but your emergency lights?

A I believe they were. I believe I turned them on so that anybody coming down the street would stop.

Q As part of your effort to make sure that, while Mr. Klementi was laying in the street, no one would run him over, you wanted to alert people there was some sort of unusual situation, and putting on your lights would be consistent with that?

A That, and it gives a visual for -- you know, I wouldn't want the firemen to round that corner either and make things worse. So it's so that they can see where they need to go and where they need to stop.

Q Okay. Now, when you went to Mr. Spencer's door of his house, could you see from the door of the house your vehicle with the lights on?

A I don't know.

Q Do you have a recollection around how far away from your vehicle, with the lights on, the door of Mr. Spencer's house was?

A It was elevated. The front door is on the second floor, I believe, or an elevated, maybe, basement, above a basement. I would say it's probably

40 feet.

Q All right.

A 60 feet maybe.

Q When you first go to Mr. Spencer's house to speak with him, were you there with the idea you wanted to speak to him specifically or were you thinking I'll speak to any occupant in the house?

A Well, I was also advised that the 911 call came from that residence, so I didn't know exactly. I just wanted to speak to whoever was in the residence.

Q Understood. So you go to the Spencers' residence and you start speaking to someone, presumably. Who is that person?

A I don't remember if it was Mr. or Mrs. Spencer.

Q Fair enough. Is there a point in time when you do recall, though, conversing or speaking with Mr. Spencer?

A Yes.

Q And are you able to either recall independently, or if you need to look at your report, can you tell me what the contents were of the conversation you had with Mr. Spencer when you first spoke to him as you're investigating what's happening.

A In detail without looking at my report, no.

Basically about the incident itself.

Q Okay. And I appreciate that. And we can read through the narrative report which would have been rendered. And let's just establish some basis here. How long after your investigation would you have prepared your narrative report?

A I believe it was the same night. It was probably within probably three to four hours.

Q And at that point would you believe that your investigation, what people had told you, was still fairly fresh in your mind?

A Yes.

Q And you would defer to what's in your report as opposed to your independent recollection here today? Is that an accurate statement?

A Correct.

Q All right. Is there anywhere in the report where Mr. Spencer shared with you that he had surveillance cameras around his house?

A I don't think so.

Q If Mr. Spencer would have shared with you that, hey, I have surveillance cameras that can show some part of this incident, would you have noted that in your report?

A Yes.

MR. ROUTSIS: Objection. Calls for speculation, what he would have done if the facts were different. Move to strike.

BY MR. MOORE:

Q Did Mr. Spencer ever volunteer to you that "I have video of this event"?

A No.

Q As a trained investigator, would that have been a significant fact to you as part of your investigation?

A Yes.

Q There comes a point in the investigation, according to the narrative report, where you ask questions of Mr. Spencer as to what happened, and Mr. Spencer tells you that he had, according to your report, that he had yelled from his upper deck, quote: "Who are you? Identify yourself." Close quote.

And then he went on to explain that, according to your narrative report, Mr. Spencer said, quote: "I ran down the street, then pushed him down. I would have tackled him, but then we both would have gotten hurt." Close quote.

When I've quoted that language, is that the precise language that you recall Mr. Spencer would have told you?

A Yes.

Q All right. And that's why you put it in quotes; is that correct?

A Yes.

Q One of the things that Mr. Spencer told you was that he chased down the street a person who he thought was a teenager because the person was wearing a hood. That was your understanding as to what he told you?

A I believe he said a hoody.

Q Okay.

MR. ROUTSIS: Gentlemen, I'd like to interrupt for a second. I don't know what your position is on judicial notice; however, had you gentlemen got the trial transcripts -- I'm going to ask you take judicial notice -- that Helmut Klementi verified that Jeff Spencer asked him repeatedly what you're doing by my truck.

Helmut Klementi testified further -- I'm asking judicial notice for the record -- Helmut Klementi then responded he did not respond to that request and that was the basis --

MR. MOORE: Counsel.

MR. ROUTSIS: Excuse me. I'm not done.

MR. MOORE: No, you are.

MR. ROUTSIS: No, I'm not done. I'm not done. And --

MR. MOORE: Counsel.

MR. ROUTSIS: -- I'm asking judicial notice be taken because you're responsible to have the court transcripts of sworn testimony. So in that regard I want the record and judicial notice to be taken that that's what this record establishes, and we should be taking judicial notice of sworn testimony under oath.

MR. MOORE: Counsel, I'm going to give you an opportunity here. We'll try doing this again. If you persist in these objections, we will stop and we'll go and we'll get a remedy from the court.

MR. ROUTSIS: I'd be more than happy to do that. What I've done here -- again, I'm going to repeat myself. You should be responsible to know what the record is of the testimony under oath at trial, so when you're asking questions that are misleading, I think we should take judicial notice of the sworn testimony.

I'll submit that. I'm not being difficult. This is just a simple request for judicial notice. We'll submit it on that.

MR. MOORE: The record will be clear here.

MR. ROUTSIS: And I'm more than happy to go before a judge, so please don't threaten me like that's

some big event. If you want to go before Judge Kosach, that's fine. Let's proceed.

MR. MOORE: Why would we go in front of Judge Kosach?

MR. ROUTSIS: Well, you said you were going to go before the court for a remedy to these outbursts when I'm asking you to take judicial notice.

MR. MOORE: Why would --

MR. ZANIEL: He's our judge.

MR. MOORE: Okay.

MR. ROUTSIS: He's our judge. Did you know that?

MR. MOORE: Yeah, the thing --

MR. ROUTSIS: Did you know it? Did you know he was our judge?

MR. MOORE: The thing that I'm asking --

MR. ROUTSIS: No, I'm asking you a question. Were you aware he was our judge?

MR. MOORE: No. Mr. Routsis --

MR. ROUTSIS: So that's why I mentioned Judge Kosach.

MR. MOORE: Mr. Routsis, you are interposing yourself inappropriately into this process.

MR. ROUTSIS: That's your opinion. I disagree.

MR. MOORE: And --

MR. ROUTSIS: I think I'm imposing myself properly into the process. And I'm willing to go on. We could sit here and debate all day. Let's go on.

MR. MOORE: No, we won't debate all day, but what I'm trying to do is make the record clear that it's your position that you can have these kinds of speaking objections at any time in this deposition; is that your position?

MR. ROUTSIS: No, no, no, no. You see, counsel, why don't you let me speak for myself and you speak for yourself.

MR. MOORE: Good idea.

MR. ROUTSIS: It's my position that you should be aware of sworn testimony under oath, and I'm just making a record that there was a trial transcript in this case, and that's the only record I'm making. That may be relevant or not. You may not like it or you may like it. I'm just making a record.

MR. MOORE: Have you produced the trial transcript?

MR. ROUTSIS: They're public record. I would think if you're representing all these people, and there's a lot of money at issue, I would think you would take the time to go get the public record and read it.

MR. MOORE: Have you taken the time to get the public record? Do you have that in your possession?

MR. ROUTSIS: Absolutely -- well, I'm not going to answer that question.

MR. MOORE: I would suspect so. Are you aware, sir, that there are rules of civil procedure --

MR. ROUTSIS: Oh, I'm aware.

MR. MOORE: -- that if you have a document that is probative, you should have produced that prior to today's proceeding?

MR. ROUTSIS: Oh, no, no, no. I think you've been fully informed, if you read the letters and the emails, that you were informed that there was a trial transcript in this case and that it costs money to get the trial transcript. It's a public record and you can go to the reporting company and get the record. Your failure to do that is your decision.

MR. MOORE: So counsel --

MR. ROUTSIS: But I would presume that when you're representing people for a great deal of money, you'd at least be aware of the public record.

MR. MOORE: Which is exactly why you have not obtained the record, correct?

MR. ROUTSIS: I'm not -- no, no, no. I'm not going to ever misstate a fact in this case, okay?

MR. MOORE: Have you obtained the record? Do you have the record, yes or no?

MR. ROUTSIS: I'm not going to answer your questions. I don't have any responsibility to answer your question.

MR. MOORE: Do you have any --

MR. ROUTSIS: If you want to go before a judge and get an order to compel, great, but I'm not answering your questions. The real relevant question is you didn't get the record.

MR. MOORE: Do we have a discovery sanction that would be appropriate here?

MR. ROUTSIS: Sir, why don't you file your motions for sanctions. Don't threaten me. I'm not concerned about your threats. If you have a problem with you not getting the judicial record, then file a motion. Don't threaten me. I could care less what you think.

MR. MOORE: I'm finished with my questions. I'm going to reserve the ability to ask this witness questions later on.

MR. ROUTSIS: Very good.

EXAMINATION

BY MR. PINTAR:

Q What time did you start your shift on 12/18?

A 1400. That's 2:00 p.m.

Q Okay. And what was your shift at that time?

A It's swing shift. It's 2:00 p.m. to midnight.

Q Okay. And where were you stationed at the time?

A I was -- well, we're centrally deployed from Minden, but I was assigned to beat three, which is everything outside the casino core of Stateline where Lake Parkway is and the golf course is there, up Kingsbury and out to Round Hill.

Q And how were you notified of the events on December 18th that we're here about?

A I was notified from the 911 dispatcher via our radio.

Q Okay. Do you know, do you remember what was said to you?

A No, sir. We get notified in two ways.

Q Okay.

A We get notified via the radio, and then we have an MDC that looks much like a laptop that the call actually pops up on so we don't have to commit everything to memory anymore.

Q Okay. And you indicated that when you arrived on the scene, you saw a person lying in the street?

A Yes.

Q Were you the first officer at the scene?

A Yes.

Q Was there any other emergency personnel at the scene?

A Yes.

Q Who else was there?

A My partner, Deputy Nate Almeida.

Q So he arrived with you?

A I don't know in what proximity he was to me, but I know he followed me in onto Charles and he arrived with -- I don't know what time he arrived, but it was within a minute, I'm sure.

Q Was there an ambulance or any medical personnel on the scene?

A No, not yet.

Q When you saw Mr. Klementi -- it was Mr. Klementi in the street, correct?

A Yes.

Q Helmut Klementi?

A Yes.

Q Okay. Was there anybody else around him?

A I don't believe so. Maybe his wife may have -- I wasn't sure -- I'm not sure if she was there or if she came out while I was talking to him. Somebody came out.

Q Okay. So could you kind of take us through step by step what your investigation was.

A Initially my investigation, I wanted to make sure medical attention was the priority there and then to establish what had occurred to get to that point.

Q Okay. So were you the one who called for the ambulance?

A Yes.

Q Okay. And then once the ambulance was arrived and took care of Mr. Klementi, what did you do as part of your investigation to find out what had occurred?

A I went to the Spencer home and made contact there and established the circumstance of the call.

Q So when you went to the Spencer home, you spoke with Mr. Spencer and Mrs. Spencer?

A Yes.

Q Anybody else?

A No.

Q Okay. Other than the Spencers, did you speak with anybody else in investigating what happened?

A At the residence or just in the case in general?

Q On that evening.

A Yes, I spoke to, I believe it was a neighbor, outside.

Q Do you remember the neighbor's name?
A It was a woman neighbor. I'd have to --
Q Feel free to look at your report.
A Okay. I have to refer to my report.
Q That's fine.
A All right. It was two people.
Q Okay. Who were they?
A Elfi Klementi and Janet Wells.
Q Anybody else?
A Not at that time.
Q So when you went to the Spencers' house, what was their physical condition? I guess, first of all, let's ask for Mr. Spencer.
A Physical condition?
Q Well, I mean -- by that I mean, had he had anything to drink, was he intoxicated or anything like that?
A No, I don't believe so.
Q Okay. What about Mrs. Spencer?
A I don't believe so. I can't completely recall, but I do not recall them being intoxicated or belligerent.
Q Did you ask them to fill out a statement?
A I believe so, yes.
Q And did they fill out a statement for you, a

written statement?

A I believe Mr. Spencer did.

Q Okay. What about Miss Wells, was she intoxicated or anything like that?

A I don't know.

Q Did she fill out a written statement?

A Yes.

Q Okay. And there at the scene?

A I believe I left it with her and then returned to pick it up. So yes, at the scene.

Q Okay. When would you have returned to pick it up?

A I don't recall. It was either after I completed my investigation at the hospital or it was the following day. I'm not 100 percent sure.

Q Okay. Did you get a statement from Helmut Klementi?

A A written statement?

Q Yes.

A I don't know. I'd have to look at my reports to see if it's attached.

Q Please do.

A I'm going to look at my report.

MR. ROUTSIS: Certainly.

THE WITNESS: No, I did not.

BY MR. PINTAR:

Q Attached -- just for the record, attached to your report is Exhibit No. 1. There's a written statement from Egon Klementi, correct?

A Yes.

Q When did you speak with Egon Klementi?

A I believe it was after -- no, I think he came out to the scene. My initial contact, he came out to the scene where his -- when his brother was still there before the ambulance took him.

Q Okay. And you also have a statement here from Elfi Klementi?

A Yes.

Q When did you speak with Mrs. Klementi?

A There at the scene.

Q And then there's Mr. Spencer's statement. I don't see a statement from Miss Wells. Is there one?

A No. It may have just been Egon's and Elfi Klementi.

Q Okay. Is there anything else that you did in terms of your investigation at the scene on the evening of December 18, 2012?

A At the scene?

Q Yes.

A Other than what I -- meeting with the

Spencers --

Q Yes.

A -- and the Klementis and Miss Wells, no.

Q Okay. And then you indicated you went to the hospital?

A Yes.

Q And what did you do at the hospital?

A I got a briefing from the ER staff on Mr. Klementi's injuries and then they allowed me to speak to him briefly.

Q And what did Mr. Klementi tell you occurred?

MR. ROUTSIS: We're getting into hearsay, so I'm going to object to hearsay.

BY MR. PINTAR:

Q It's okay. We're in a civil matter.

Go ahead.

A He told me that he had been out in the street and that Jeff Spencer had attacked him.

Q Okay. What were Mr. Klementi's injuries?

A I don't recall. I'd have to speculate.

Q Okay. We don't want you to speculate.

So then after you went to the hospital, spoke to Mr. Klementi, what did you do then?

A I believe I returned back to the area and collected the written statements from the Klementis.

Q And then what did you do once you obtained all these written statements?

A I went back to the station -- I mean, I finished my shift with the other calls not related to this.

Q Right.

A And then I went back to the station and wrote my report.

Q So this report we've marked Exhibit 1?

A Yes.

Q When was this report completed?

A I believe it was -- the narrative was written on the same shift before I left for the night.

Q Okay. In this report it says that it is your opinion that Jeffrey Spencer was upset with Klementi, saw Helmut taking photographs of the snow berm, and used the excuse of someone breaking into his truck to confront and to commit a battery on Helmut Klementi.

A Yes.

Q And that conclusion was formed by you on the evening of December 18th?

A Yes.

MR. ROUTSIS: I'm going to object and move to strike his opinion, which is not relevant.

BY MR. PINTAR:

Q Have we --

MR. ROUTSIS: It's a relevance objection.

BY MR. PINTAR:

Q Have we talked about all the investigation that you performed in forming that opinion and conclusion?

A Yes.

Q Okay. At any point in time prior to forming this opinion and conclusion in this report did you speak with Mary Ellen Kinion?

A I did not.

Q And based on your report, it was forwarded to the Douglas County Sheriff's Department or the district attorney for prosecution, correct?

A Yes.

MR. PINTAR: Thank you. That's all I have.

MR. PALMER: I just have a couple questions.

EXAMINATION

BY MR. PALMER:

Q To follow up on what Mr. Pintar asked you regarding alcohol, I noticed in your report on page nine and 10 -- do you want to turn to that? -- that there's -- been drinking was listed in the top right-hand corner. I just wanted to clarify what that

meant.

A I don't know. That's -- those are fields that are filled in by the 911 dispatcher that are auto-populated into these fields and --

Q Okay.

A -- I wouldn't know where that came from.

Q Then one other question I had for you. At any time during your investigation did anyone ever state there was video of the incident regarding Mr. Spencer and Mr. Klementi?

A On a follow-up --

MR. ROUTSIS: I'm going to object to the form of the question.

MR. PALMER: You can answer.

MR. ROUTSIS: Excuse me. Let me complete my objection. The form of the question, did anybody ever state. All he can answer is does he have a recollection. He can't give a statement of fact. He can give his opinion that he doesn't remember anybody doing it. So the form of the question is improper.

BY MR. PALMER:

Q You can answer now.

A Yes, the doctor that lives at the end of the street had a video surveillance from her home.

Q And did you ever review the tapes from that?

A I did, and I was unable to -- with her computer program, we were unable to download it onto a zip drive or a disk or anything and burn a copy, so I just told her to just keep the video in the event that the District Attorney's Office would want it.

Q Do you remember if that video showed the incident between Mr. Spencer and Mr. Klementi?

A I believe it showed part of the incident.

MR. PALMER: All right. I have no further questions.

MR. ZANIEL: Do you want me to go with it? We're going to skip, so --

MR. ROUTSIS: Sure.

EXAMINATION

BY MR. ZANIEL:

Q All right. Officer, I'm sorry. You said what time did you start your shift that day?

A 2:00 p.m.

Q And what time did this incident occur or when did you get the dispatch call, approximately?

A I would have to look at my report to do that. I believe it was reported at 2044, 8:44 p.m.

Q Okay. And your shift was from 12:00 to --

A No, no, from 2:00 p.m. to --

Q Midnight?

A -- midnight.

Q Okay. How long had -- you mentioned that sector that you were patrolling earlier. How long had you been assigned to that sector, for how many years or months or --

A Oh, with the exception of the five or six years in the middle there, I've been assigned to that area multiple times over 15 years.

Q Okay. So you were familiar with that area?

A Yes.

Q Prior to the date of this incident, had you ever responded to that area for any type of 911 calls either on Charles Street or on the surrounding streets?

A Yes.

Q How many times had you responded to calls in that area prior to the date of this incident, approximately?

A I don't know. I can only remember one specific incident that I went to that general area for.

Q Okay. And what was that incident regarding?

A It was a bicycle accident, but I just remember it because it was really bad.

Q Okay.

A Yeah.

Q So that didn't involve any of the folks that

we've talked about in this case?

A No, no, it did not.

Q Prior to this incident, have you ever responded to any calls in that area that directly involved the folks that we're talking about in this incident?

A Never.

Q Prior to this incident, were you aware if there were any type of break-ins or vehicle threats or burglaries that were being reported within, say, a mile of the Charles Street residence?

A Well, within a mile as the crow flies, probably so.

Q I guess, in other words -- and I'm not a police officer, but I watch TV shows, so in briefings like -- and is that how Douglas County works? Like when you go to your shift, does your sergeant have a briefing and you kind of get a 15-minute little surmise, hey, we've had some break-ins in this area so I want a little extra patrol once in a while, those types of things? Does that happen in your job?

A Every day.

Q So those TV shows are accurate. All right.

All right. So the question is, I guess, had you had briefings from your sergeant in the, say, six

months or year -- I mean, that may be too long -- six months before this incident that there have been some burglaries and break-ins in this area?

A Yes.

Q Had you stepped up patrol in the area to any extent? In other words, I'm not sure if -- because that's a pretty secluded area back there where this case happened, where this incident happened.

A Yes.

Q Does your patrol normally take you through those secluded type streets if you're just kind of looking around and patrolling the area?

A At times. It depends. Really depends on the season. I know that sounds strange, but that area up there has two seasons that are notorious for break-ins and burglaries, and that's the hot areas up there in the summer and when the skiing is really well.

Q Okay. And what was the date of this incident?

A December 18th.

Q So would that fit into when the skiing is well season?

A Under -- it depends. I mean, that year --

Q On that year.

A On that year, maybe not. I don't know, because --

Q All right. So do you have a recollection of actually patrolling some of these areas within a mile of this location because of the fact that there had been reports of break-ins within the six months before this incident?

A In the commercial areas, yes.

Q Okay. When you got the 911 call -- I don't think we've got the logs. Does Douglas County keep a separate log of emergency calls that come in? In other words, if I subpoenaed Douglas County records, would they have a log, call log on this particular case where it says received 911 call, and then you come in and you get on your radio and say I'm responding, and then your partner, he would have done the same thing? Is there a log of those?

A An audio log?

Q A dispatch log.

A I don't know. I believe there is, but I don't know what the length of history they keep on those audio logs.

Q Okay. When you got the call in this case, you said you got it two ways, one on your radio and one on your computer.

A Yes.

Q How did the 911 call come in? Was it a call

of an injured person in the street, man down, burglary, break-in? How did the 911 call come in?

A On the audio, the radio or --

Q Through to you. Have you heard any 911 calls in this case before?

A I don't believe I have.

Q Okay. So then you can only testify I guess what you heard. So when you were contacted by dispatch, how did the call come in to you?

A I believe the call came in that they received a 911 call that a burglary had occurred and either the suspect or somebody involved was down.

Q Okay. And when you responded -- I know you talked about your emergency lights. When you responded, did you respond -- again, this is a police call, like code three with your lights and siren or did you just respond in a normal expedited fashion?

A Which is what we call code two.

Q Okay.

A Is expedited. You hurry and you just don't use your lights and sirens. And especially, you know, if there's no traffic, you just turn your lights on and you stay -- you don't drive like a mad man and you just arrive on scene.

Q Okay. All right. So now you arrive on scene,

and which direction on Charles do you come from? How do you --

A I came -- I went Kingsbury past I believe Meadow or Chimney Rock, one of the two up there, and turned left onto Juniper and came and turned left onto Charles west.

Q Okay.

A Came from above.

Q Okay. And then when you parked your patrol car, it was generally in the middle of the street with your headlights focused on a person that was on the snow-covered road?

A Yes.

Q Okay. And how far away was your vehicle from the person on the snow-covered road, approximately?

A I would say probably 40 to 60 feet maybe.

Q Okay. And then you're on the -- do you tell dispatch that you've arrived at the scene now?

A Yes.

Q Okay. You get out of your vehicle, and then do you go to the person that's on the ground? Is that your initial contact with anybody at the scene?

A Somewhat. Not directly. I mean, directly to them, but in a safe manner as -- with that type of 911 call, you know, I don't know if he's shot or if there's

somebody waiting. So you make an approach. You don't just get on the front of your headlights. You come down the street and figure out what's going on, if that person's deceased or if --

Q I believe you said that your partner, Almeida, was there.

A Yes.

Q Where was his patrol car parked?

A He was behind me. So he followed my same route. And I don't know if he was directly behind me coming in or if he just came the same way I came.

Q Okay. So when you get out then, the only person that you see is the one on the ground?

A Yes.

Q There was nobody standing around?

A I don't believe so.

Q Okay. So that's why you used a little caution because you didn't know if somebody was lurking out in the dark or anything?

A Right.

Q All right. So caution, you used caution. You approached the man down. You get to the man down, and tell me what you see at that point.

A I see -- I don't know who it is at first, but I see an elderly man laying supine in the street.

Q Face up, face down?

A Face up.

Q Okay. And conscious?

A Yes.

Q And did you have a conversation with that person at that time?

A I believe I did.

Q And was the conversation regarding whether he was injured or hurt, or do you remember the details of that conversation?

A Yeah, I don't remember the details. It was like any other call in that situation, just to establish that they're conscious and breathing, and because you want to -- then you relay the information to the incoming medics so they have a brief idea about what they need to do.

Q Was he trying to get up at this point?

A Yes.

Q When you initially made contact he was making an effort for himself to get up?

A Yes, he was trying to get up.

Q And what did you do with regard to that?

A I told him that the medics were minutes out and that he needed to just lay where he was, you know, with the unknown injuries.

Q Okay. Now, at that point did you ask him basically what happened?

A I believe so, yes.

Q And what was his response?

A He told me that Jeff had knocked him down.

Q Okay. Was there any other further detail other than that, for instance, what was he doing out at that time or why was he out on the roadway at that time?

A I don't know. I don't recall of getting into the details of why it happened at that point.

Q Okay. What clothes do you recall Mr. Klementi wearing when he was down on the ground in the middle of the road?

A I believe he had on a pair of slacks and either black or brown leather jacket, a wind breaker type, and a pair of like loafer type shoes, and I think he had a sweater on underneath the jacket.

Q Okay. Did he have anything in his hands?

A Yes, he had a camera.

Q Okay. And that camera that he had in his hands, was he still holding on to it?

A I believe he was, yes.

Q Did you take possession of that camera on the evening of this incident?

A I don't believe I did.

Q Did you ever take possession of that camera?

A I don't recall seeing the camera ever again after that.

Q At some point in your investigation was it -- did you find out or did Mr. Klementi tell you that he was out taking pictures that night?

A Yes.

Q At that point did you go back and ask to see the camera to see if in fact what pictures were on the camera?

A I don't recall.

Q As we sit here today, you don't ever recall seeing any photographs on the camera?

A On the camera, I do not.

Q Not on -- did you ever see -- as we sit here today, do you have a recollection of looking at the photos that were on Mr. Klementi's camera that he had on him at the night of the incident?

A I don't know for sure. I saw some photos during the criminal case, but I'm not -- I couldn't even tell you what they were at this point.

Q Okay. All right. So the call initially came in as a burglary call you said.

A Yes.

Q You see a man down as you are approaching.

Tell me about crime scene preservation. I assume for the 911 call, as you approached, you saw a man down. It came in as a burglary call. Your initial thought that a crime may have been committed?

A Yes.

Q Tell me about crime scene preservation. Is that something you learn at the POST Academy?

A Multiple places, yes.

Q What did you do in this particular case in terms of crime scene preservation?

A Nothing other than parked my vehicle away from the area and just observed at that point.

Q All right. So do you stay with Mr. Klementi on the ground until the medics arrive?

A I believe, yes. I believe as they arrived, Deputy Almeida was there with me, and as the medics approached Mr. Klementi, I gave them just a little brief of what was here and then I went to the Spencers' house.

Q Okay. And when you went to the Spencers' house, had anybody else come to the scene other than your partner was there and the medic's there now? Was there any other folks that had gathered around the scene at all?

A Miss Wells and Miss Klementi.

Q Okay. How about Mr. Klementi's brother, Egon,

had he --

A Oh, yes, and Mr. Klementi, Egon.

Q So there was three people there now present?

A Yes.

Q Did any of those three people tell you that they actually witnessed what had happened on that evening?

A I believe Miss Wells told me she may have saw something leading up to the incident.

Q Did you find that out before you talked to Mr. Spencer or after?

A I don't know.

Q Can you tell us what Miss Wells told you in terms of what she observed on that evening?

A I'd have to refer to my report.

Q Go ahead, sir.

A Thank you.

Q Have you located the section there?

A Yes, sir.

Q What page are you on?

A Page six of 10, second paragraph. It was the following day.

Q Okay. So there was follow-up to the investigation the following day by you then?

A Yes, sir.

Q Okay. And that's when you made contact with Janet Wells?

A Yes.

Q And did Janet Wells tell you that she observed things on the evening of the incident?

A Prior incidents.

Q Okay. So not on that evening but on prior incidents?

A Yes.

Q Okay. And what did she tell you she observed on prior incidents?

A May I read from my report?

Q Of course.

A A specific incident where Jeffrey came out of his house and was yelling at Egon Klementi as Egon was walking his dog on Charles Avenue. Janet said Jeffrey was hostile and she went to the street and stood between Egon and Jeffrey because she was afraid Jeffrey might hit Egon.

Q Okay. So that was the day after this incident?

A Yes, sir.

Q Okay. The evening of the incident you had arrested Mr. Spencer, though, correct?

A Yes.

Q Okay. So then going back to the incident again, Miss Wells was not present at the scene and did not witness anything?

A No.

Q So the only people present at some point after you arrived would have been Mrs. Klementi and the brother, Egon Klementi?

A No, I believe Miss Wells was out there. Not during the incident, but at some point I believe she was there, and that's why I went back the next day, so I could spend more time with her.

Q But it was confirmed the next day that she didn't see anything on the evening of the incident, only relating to you things that had happened prior?

A Yes, sir.

Q Okay. All right. So now you make contact with Mr. Spencer. When you approached the Spencer residence, what vehicles were present at the Spencer residence?

A I know a yellow truck for sure.

Q Where was the yellow truck?

A Parked in the driveway.

Q Okay. It's pretty dark out there at this time?

A Yes.

Q Did you have -- you know on the police cars you have your floodlight issue?

A The spotlight.

Q Spotlight.

A Yes.

Q Did you have that pointed in any direction?

A I believe I had it pointed on Mr. Klementi so he was lit up when -- so nobody would run him over.

Q Okay. So now through the 911 call you had knowledge that there would -- it had been reported as a burglary. Did you use your flashlight when approaching the Spencer household at all?

A Yes.

Q And did you see -- I guess foundationally, was there snow on the ground on that day?

A Yes.

Q As you approached the area of the Spencer household, did you see any footprints in the ground?

A I don't recall.

Q Okay. You knock on the door. The first contact that was made with the Spencers, who was present? You were present, Mrs. Spencer was present, and Mr. Spencer was present?

A And Deputy Almeida.

Q So there's four of you?

A Yes.

Q Okay. And then were you invited into the residence?

A Yes.

Q And inside the residence, did the four of you stay together in one area?

A I believe we all stayed in the great room, the living room/entranceway area.

Q Okay. And did you specifically ask Mr. Spencer what happened?

A Yes.

Q Did you also ask Mrs. Spencer what happened?

A I believe so.

Q Did you separate the two of them? In other words, did Officer Almeida take Mrs. Spencer in one area and you take Mr. Spencer in another area to get their versions of what happened?

A No.

Q Typically is that done?

A In a domestic violence situation, yes, but to separate the parties out.

Q Okay. All right. But in this case that wasn't done?

A No, sir.

Q All right. Then can you just kind of run

generally through when you asked Mr. Spencer what happened, what was the response?

A What did he tell me?

Q Yes.

A He told me that he saw a man in his driveway and he had been -- he went out to identify -- ask for the guy to identify himself, and he thought he was breaking into his truck.

Q Okay. Did Mr. Spencer ever tell you on that evening that he heard somebody out in his driveway before he even left his residence?

A Yes.

Q Did you ever ask Mr. Klementi if he heard -- and this is Helmut -- if he heard anybody, Mr. Spencer or anybody, calling out and saying, hey, identify yourself?

A No.

Q You didn't ask that question?

A I don't recall asking that question.

Q That would be important, though, no? That's Mr. Spencer's version of the story.

A Well, after -- yeah, after I had already spoken to him it would be, yes. I wouldn't know to ask him that question prior to speaking to Mr. Spencer.

Q I understand.

A And now he's at the hospital.
Q You went to the hospital?
A Yes.
Q Did you ask him at the hospital?
A I don't think I did.
Q Okay. All right. So Mr. Spencer tells you that he is -- what is he doing when he initially hears somebody in his driveway? Do you know?
A I don't know.
Q Okay. So he hears somebody in his driveway. He asks to be identified. Did Mr. Spencer tell you at that time that nobody responded to his -- that when Mr. Spencer asked somebody -- he heard somebody in the driveway, Mr. Spencer asked that person to identify themselves, did Mr. Spencer tell you that that person did not identify themselves?
A Yes, I believe he said they did not identify themselves.
Q And what did Mr. Spencer tell you he did with that information now?
A I would have to refer back to my report.
Q You can.
A Thank you. Ask me the question again.
Q The question was after -- Mr. Spencer, did Mr. Spencer -- or what did Mr. Spencer do after he called

out, asked the person to identify themselves and that person didn't identify themselves, what did Mr. Spencer do next? What did he tell you that he did next?

A He said he went -- he ran down the street.

Q Okay. Is there anything in the report about the 911 call?

A Yeah, I believe there is.

Q Is it in there that Mr. Spencer asked Mrs. Spencer to call 911 as he was leaving the residence?

A I'd have to read through this again.

Q Sorry to --

A No, that's okay.

Q I probably should have gave you that before today.

A Yeah, it doesn't state that.

Q Do you have a recollection of that issue, that Mrs. -- when the 911 call was placed relative to these events?

A No, I -- all I know is what the dispatcher told me, there was somebody already down in the street. So I would have to speculate that it was after the incident.

Q Okay. But you don't know?

A No, I do not.

Q As we sit here today, do you have any factual

information that Mr. Spencer didn't have a good faith belief that somebody was trying to break into his vehicle when he left his residence?

A Do I have --

Q Do you have any factual information, any evidence that you determined in the course of your investigation that Mr. Spencer did not have a good faith belief that somebody was trying to break into his vehicle when he left the front door of his residence?

MR. MOORE: Other than the lack of footprints.

BY MR. ZANIEL:

Q Well, I guess we didn't really -- did you see any footprints on the ground?

A Mine and Deputy Almeida's.

Q Okay. Did Mrs. Spencer ever point out a different footprint?

A I believe she pointed out footprints that I compared to document Almeida's boots, because they're a lot smaller than mine, and they seemed to match.

Q Did you take any photographs of the footprints?

A I don't believe so.

Q That would have been important?

A If they would turn out. I mean, taking picture of snow with a flash.

Q When you were at the scene talking to the Spencers, you learned that Mr. Spencer's version of the incident was that he believed somebody was in his driveway at or close to his vehicle?

A Yes.

Q And there were footprints in that area?

A No. Where he said he saw the subject?

Q Yes.

A No.

Q There were no footprints at all?

A No.

Q Did you photograph the lack of footprints?

A No.

Q Okay. All right. So was there any evidence that you saw that Mr. Klementi was on the Spencer property that evening?

A That Mr. Klementi was on the Spencer property at that evening?

Q On that evening.

A No.

Q Did you ask Mr. Klementi if he was on the Spencer property that evening?

A I believe I did.

Q And what did he say?

A He said no.

Q Okay. So I guess when did -- we talked about Mrs. Spencer pointing a footprint out or something to the effect. When did that take place? And let's go back, I guess.

The four of you were inside the residence. You asked Mr. Spencer what happened. Did you ever ask Mrs. Spencer what she recalls about this incident or any details about the incident?

A I believe Deputy Almeida was speaking with her. I'm not 100 percent sure though.

Q Okay. I didn't -- I didn't see a statement from Mrs. Spencer in the report.

A Mrs. Spencer?

Q Yes. Is there a statement from Mrs. Spencer?

A No, there's not.

Q Did she offer to provide a statement?

A I don't recall.

Q Okay. All right. So how long does that conversation last in the living room of the Spencer house?

A Five to seven minutes at most.

Q Okay. And then from that point do you and Deputy Almeida leave the Spencer residence?

A Yes.

Q Was Mr. Spencer under arrest at this point?

A Yes.

Q Okay. So during the five to seven minutes in the residence of the Spencer house, somebody, either you or Deputy Almeida, made the decision to arrest Mr. Spencer?

A It's my case. I made the decision.

Q What did you base your decision on?

A The inconsistencies with what I had seen on scene and Mr. Spencer's rendition.

Q Okay. And I guess just to try to get a little more detail, had you looked at that point -- when you arrested him, had you looked in the area around the truck for any footprints?

A Yes.

Q Okay. So when did you do that?

A When?

Q When.

A I believe after we spoke in the house, we went outside to look to see -- because he told me somebody was at his truck, to look for the footprints. And then I think we went -- I'm not sure if we went back in the house and I placed him under arrest at that point or I placed him under arrest outside. I'm not 100 percent sure.

Q Okay. What was the weather that night?

A It was cold.
Q What about precipitation?
A It wasn't snowing. It was --
Q There was snow on the ground?
A Yes.
Q But there was no snow -- it was not snowing during the time you were present on scene?
A If it was, it was a really light snow or no snow.
Q All right. So you place Mr. Spencer under arrest at that time.
A Yes.
Q Did he have any marks on him?
A Yes.
Q Tell me about those.
A I'm not sure which arm it was, but he had a scratch on one of his forearms.
Q Okay. And did you ask him how he got that scratch?
A Yes.
Q And what was his response?
A He said the guy's fingernail or hand -- I think he said fingernail scratched him.
Q Did you have any conversations with Egon Klementi on that evening?

A I don't think so.
Q Did you have any conversations with Egon Klementi in follow-up -- well, before I even ask that, so on that evening you place Mr. Spencer under arrest, you place him in your patrol car, and you drove him to the jail?
A Yes.
Q Was there a follow-up interview at the jail?
A I believe so, yes.
Q Okay. And is that taped?
A No, it is not.
Q Is there audio?
A There is not.
Q Is there a video?
A No.
Q Is that standard procedure for an interrogation room?
A It wasn't in the interrogation room.
Q Where was it at?
A It was in the booking center.
Q Okay. Tell me about that conversation.
A I'd have to refer back to my report.
Q Go ahead.
A Thank you.
MR. PINTAR: How you doing, Officer? You need

a break?

THE WITNESS: I've just got to take one minute to answer my phone real quick, if you guys are --

MR. ZANIEL: If you need to take a phone call, you should have let me know. I would have stopped.

THE WITNESS: No, it's cool.

(Recess 11:34 - 11:45 a.m.)

BY MR. ZANIEL:

Q All right. So we left off at the conversation at the jail. You've had a chance to refresh your recollection?

A Yes, I've looked at my report.

Q And what can you tell us about that?

A At the jail I advised Mr. Spencer of his Miranda rights and asked if he wanted to provide a written statement.

Q Okay. You didn't do that at the home, the Miranda rights?

A No.

Q Okay. I don't want to repeat myself. Did Egon Klementi ever have a conversation with you at some point after this issue?

A Yes, I think so.

Q Did he ever say that he saw this occur?

A No, I don't believe he did.

Q Okay. Let's talk about the camera. You said that Dr. Shaw had a camera that you actually went in and seen but couldn't duplicate the images, but told her to keep it for the DA?

A Yes.

Q So you saw what's on that video?

A Yes.

Q What did you see?

A On the video it's lit right to the edge of the Spencers' house and then it goes like almost pitch black, and in the video I could see Mr. Spencer come out of his house and go into the street, into the black.

Q Okay.

A And that was about all you can see.

Q Okay. So you saw that. You didn't see the incident then on that video?

A No, sir.

Q How long a footage was it prior to Mr. Spencer coming out of the house, that you observed? In other words, did you go back five minutes before that or 10 minutes before that?

A I don't know.

Q Was there any effort to do that, that you recall, go back five minutes to see if you could see anything on the video in the five minutes before Mr.

Spencer comes out?

A Dr. Shaw was running the playback.

Q Right.

A And she was -- I mean, we had gone back like hours, and then we were fast-forwarding up to where it was. So I did see five, 10, 20 minutes before, but it was all in, like, fast-forward framing to get to where we could see anything that had occurred.

Q Did you see anything -- as you were fast-forwarding, did you see anything at all, anybody, any person, any light, any camera flash, anything?

A I do believe there is -- in the dark there is some camera flashes.

Q Was that before Mr. Spencer was on the video exiting his house or after?

A I believe it's before he exited the house.

Q And do you know where those camera flashes were directed, came from? Were they from --

A Just the street general, the darkness and the camera, the general street area.

Q And was it on the Spencer side of the street or on the Klementi side of the street?

A No idea.

Q Okay. How soon after those flashes was it that Mr. Spencer exited his house?

A I don't know.

Q Okay. So the video shows Mr. Spencer exiting his house and getting into the street, and then that's it, you don't see anything else?

A No, then I don't know what time lapsed, but it shows him going back towards the house.

Q Okay. How long was it, the best you can recall? Because that's not reflected in any of your report, correct?

A No, this is weeks later when I met with her.

Q Was there a supplemental report ever done?

A I don't recall.

Q Okay. Well --

A I believe there is, but I can check and see if there's one in here.

Q Yeah, could you see, because I guess the question is are we missing some information. I mean, you did some follow-up investigation. You went back the next day and talked to the Wells. You went and talked to the Shaws you just said. Is there another report that's out there?

A I don't think so.

Q Is there a reason you didn't write another report after obtaining all this information?

A I'm not 100 percent sure I didn't. I just

can't tell you for sure I did.

Q Okay. If you did, where -- would it be in the records department at Douglas County Sheriff's Office?

A Yeah, it would be -- I'm assuming I didn't because it would be under the same case number and it would just be supplemental, two or three or whatever it happened to be.

Q All right. So let's go back to that video again. So the video shows flashes from the street in general. Can't tell which side. How many flashes were there, if you remember?

A (Shakes head no.)

Q Then it shows Mr. Spencer running out at an unknown time after the flashes, and then it shows Mr. Spencer -- well, I said running out. I need to ask you. When you saw the footage of Mr. Spencer going out, tell me about that. Was he running, walking, walking quickly?

A From my recollection, I believe it was just a quick walk.

Q Okay. And then there's the video that shows him going back into the house?

A Yes.

Q And can we estimate how much time it was between those two events?

A Under a minute.

Q Okay. As we sit here today, do you know if the Shaw -- that video was ever preserved?

A I believe after trying to get it to download and being unsuccessful, and I didn't want to take Dr. Shaw's computer and book that into evidence, I called the Deputy DA involved in the case and told her what we had on scene there, and I believe she advised me just to tell them to hold on to it and if she wanted it, she would send one of her investigators to go get it.

Q Let's go through the other follow-up investigation, since we don't think -- there may be another report, but we're not sure.

So what I know of is you went back, you talked to the Wells the next day, you talked to the Shaws, Dr. Shaw, with the video as part of a follow-up investigation. What else did you do in terms of follow-up investigation?

A I believe that's it.

Q Going back to the footprints again, you said that you saw Mr. Spencer walking quickly out of his house. Did you see footprints that belonged to Mr. Spencer?

A I don't recall.

Q In your patrol car, do you have a camera?

A No.

Q Does any Douglas County Sheriff's Office have a camera as part of their normal patrol vehicle equipment?

A One. It's a specialized DUI vehicle.

Q Okay. And was that -- which officer was that designated officer that night?

A It's not a designated officer. It's used on like DUI task force and it's a car that isn't assigned to anybody specifically and it's not always in use.

Q Is that like a dash cam that you're using for field sobriety testing imaging?

A Yes.

Q Okay. I'm just talking about like a regular Polaroid or a digital camera.

A Oh, okay. I'm sorry. We all have cameras, yes.

Q Okay. So you had a digital camera in your vehicle that day?

A Yes.

Q Did you take any photographs of anything on the night in question?

A Yes.

Q What did you take photographs of?

A I took a photograph of Mr. Klementi in the

hospital, and I believe I took a photograph of his shoes, the bottoms, the soles.

Q At the hospital?

A Yes.

Q Did you take any photographs of the scene -- well, I guess we should foundationally. Where was Mr. Klementi lying, supine you mentioned, relative to the Spencer driveway? Was it farther west?

A Yes, it was west of the driveway.

Q Could you estimate the amount of distance between them?

A No. It was somewhere between west of the driveway and Charles, where Charles intersects down there, so I couldn't tell you.

Q So if we took the edge of the Spencer driveway and that intersection at the end of the street there, was it the halfway point, was it closer to the Spencers' or closer to the other intersection?

A I would say it was probably closer to the Spencers' than the other intersection.

Q Okay. So did you take any photographs of the area where Mr. Klementi was on the ground the evening of the incident?

A No.

Q Did you take any photographs of the area

between the edge of the Spencer driveway and where Mr. Klementi was laying on the ground?

A The edge of the driveway and where he was laying?

Q Right.

A No.

Q That would have been indicative of footprints leading up to the event, right?

A If there were footprints there, yes.

Q Did you see any footprints on the ground there?

A No, the only thing I saw on the ground there were vehicle tracks.

Q Okay. So there were no footprints from the Spencer driveway to where Mr. Klementi was lying on the ground?

A Not in that area. On the opposite side, the east side of the driveway, I mean, there could have been. There was vehicular tracks in the snow there and there was -- where Deputy Almeida had walked up there was his footprints.

Q Okay. But specifically -- well, strike that.

Did you conclude that Mr. Klementi was walking prior to the time of the incident? Was he in motion at the time of this incident?

A I don't know. I don't know if he was standing or walking.

Q Okay. He said he was out taking pictures that night.

A Yes.

Q Did he ever tell you how far he came -- how close he came to the Spencer residence that night?

A How close he came -- no, he just said he wasn't on their property.

Q Were there any footprints from the Spencer driveway up until where the Klementi body was laying in the street, that you observed?

A In the street?

Q In the street.

A It was all hard-packed snow there.

Q Okay. Just about done.

MR. PINTAR: Would you mark those next.

MR. ZANIEL: Hang on one second.

(Marked Defendant's Exhibits 2 through 6.)

MR. ZANIEL: Nick, you produced these?

MR. PALMER: I believe so. I think that's our Bate stamp at the bottom.

MR. ZANIEL: Yeah.

BY MR. ZANIEL:

Q Okay. So you've looked at Exhibits 2 through

6, Officer?

A Yes.

Q Having looked through these, did you take these photographs?

A I did not take those.

Q Have you seen these photographs before today?

A I believe I saw them at trial.

Q Okay. Exhibit No. 2 actually shows what I assume is Mr. Klementi on the ground. Do you know if this was taken on the evening of the accident?

A I don't know.

Q Okay.

A I mean, it's conducive to how I found him, so --

Q Okay. I would assume there would have been more lighting, though, had this been on the evening of the accident, including your police lights, spotlights, paramedic flashlights, I mean --

A Well, unless it's before I got there.

Q Okay. So you didn't take these and you're not sure when they were taken?

A No, because if it was when I was on scene, my patrol car would be sitting right there somewhere.

Q Okay. So we can say that they weren't taken when your patrol car was there?

A You can say that, yes.

Q All right. Sorry.

MR. PINTAR: That's all right. Thank you.

BY MR. ZANIEL:

Q At some point during the course of the investigation were you ever made aware of any complaints between the residents of this area that had taken place before this evening?

A Before I got there you mean?

Q No, during the course your investigation.

A Oh, yes.

Q Did you become aware that the Klementis and the Spencers had complaints prior to this incident?

A Yes, yes, I learned at some point that there was issues in the neighborhood.

Q And can you tell us how you learned that and when you learned that and what you learned. That's a compound question, so --

A Okay. Obviously, after this incident I learned it, so I don't know exactly when and what time, but I know I started getting information about ongoing issues I believe it was the following day from Miss Wells.

And then the Klementis had given me information that there was ongoing neighborhood

disputes. And I believe I looked in our local database and saw that there had been some harassment reports prior, I don't know if it was months, years prior, but involving the same neighborhood and the same people. And then Dr. Shaw also advised me that -- of the ongoing disputes.

Q Generally, could you tell us what the disputes were about.

A Harassment and snow removal and an issue about a fence.

Q Okay. Were there any statements that you obtained from any of the witnesses regarding any of these other disputes or was this just information that you were verbally told?

A This was information that was just told to me at points.

MR. ZANIEL: All right. I think that's all I've got for now. I may come back and just ask a few follow-up after.

EXAMINATION

BY MR. ROUTSIS:

Q Back at it again. How are you? Are you a detective?

MR. PINTAR: Excuse me. Are you guys representing --

MR. ZANIEL: I'm representing Jeff as a defendant. He's got the counterclaim.

MR. PINTAR: Separate? Okay.

MR. ROUTSIS: Are you done?

MR. PINTAR: Yeah. I'm sorry.

MR. ROUTSIS: Okay.

BY MR. ROUTSIS:

Q How are you? Is it investigator, detective, or deputy?

A It's deputy.

Q And how long have you been a deputy again?

A 25 years.

Q Okay. Let's go back to the night you were called out on this original case. Now, you were asked earlier your opinion as to whether or not Jeff committed a crime and you gave your opinion that you thought he did, correct?

A Yes.

Q And you're aware that a jury, after two weeks of trial, gave the opinion that he did not commit a crime? You're familiar with that?

A I'm familiar with it.

Q Okay. Now, when you arrived on scene December 18th, you actually responded to a dispatch call from the Spencers claiming that these individuals were claiming

that someone had committed some type of burglary or theft offense, correct?

A Yes.

Q You then arrived on the scene at that point to investigate a crime, correct?

A Yep.

Q Okay. When you arrived on the scene, I believe it was your testimony -- and correct me if I'm wrong -- here today you said Mr. Klementi, Helmut Klementi was laying in the street and nobody was around him, correct?

A I believe so, yes.

Q Okay. Now, we'll get into that in a moment. The first person you spoke to on the scene was who?

A That he spoke to?

Q That you spoke to.

A That I spoke to? I believe the first person I spoke to was Mr. Klementi, Helmut.

Q Okay. And at that point you went up to him and he was laying on the street and nobody was around him, correct?

A I believe so, that nobody was around him, yes.

Q Okay. Now, you then went back and spoke to Jeff Spencer and his wife at the residence, correct?

A Correct.

Q Now, not to belabor the point, but there's been testimony here today regarding footprints, correct?

A Yes.

Q And obviously, Jeff Spencer, if he left his house to go onto the street, just by deduction, would have had to have left some footprints in the area by his truck. Is that a fair comment?

A He would have had to have left footprints?

Q Yes.

A No.

Q Well, you're familiar with the home there, correct?

A Yes.

Q And you're familiar that there's some steps that come down from the front door?

A Yes.

Q And those steps basically go right into the driveway area, correct?

A Yes.

Q And in the driveway area was where Jeff's big vehicle was parked, correct?

A Yes.

Q So in order to get out onto the street, he'd have to walk through the driveway area, correct?

A Yes.

Q Wouldn't that leave footprints?

A It depends on the surface.

Q Well, you testified that your recollection at first was that it was not snowing that night, but I think you corrected yourself and indicated it may have been lightly snowing that night, correct?

A Yes.

Q And there was fresh snow that had accumulated during the day, correct?

A Yes.

Q So there would have been probably some snow that wasn't plowed on the roadway, going to the roadway that could leave imprints, correct?

A But I believe it was -- had tire tracks all through it.

Q You don't have a memory or just -- are you saying that because you have a clear recollection regarding the snow condition in that area or are you just saying that --

A I'm telling you I remember seeing snow tracks leading from the bottom of the tires, out the driveway, and into the street.

Q Well, you reference in your report that there were in fact footprints.

A Yes.

Q So we can assume, can we not, that there were footprints that were left in snow that was not packed to a degree to where you could see someone had stepped in the snow, correct?

A Yes.

Q Now, your investigating officer -- you've been an officer for the sheriff's department for many years prior to being called out that evening, correct?

A Yes.

Q And Mrs. Spencer was quite adamant with you, was she not, that there were some footprints that she believed was in the exact location or the near proximity of where Helmut Klementi was when Jeff first observed him on his property, correct?

A Yes.

Q And she pointed to them, correct?

A Yes.

Q And when she pointed to them, you made a determination, apparently, in your report that those footprints were not Jeff's but were somebody else's, correct?

A Yes.

Q And you had -- now, tell us what -- and I'm not trying to be silly here, but what is the purpose of a camera?

A To take pictures.
Q It is the best evidence; is it not?
A It is.
Q And you didn't take any pictures of the footprints, but you made a conclusion on scene at night, when it was dark, that those footprints were not in fact Helmut Klementi's, correct?
A Correct.
Q Okay. Did you take a tape measure out and measure the length of the footprints?
A No.
Q So when you apparently -- and this is the first I've heard of it. Apparently you said you went to the hospital and you took pictures of Helmut Klementi's feet or shoes?
A The bottom of his shoes, right.
Q But you had no reference point that -- no measurements at the scene and you had no photographs to compare them to, correct?
A I had the comparison to what the imprint that I saw compared to Deputy Almeida's boot compared to the difference of the shoes at the hospital.
Q Let's discuss that.
A Okay.
Q Did you have a photograph to compare the shoe

print to?

A A photograph of?

Q Of the imprint in the snow. You had no photograph to compare the shoe size to the imprint in the snow?

A It wasn't going to photograph.

Q Well, did you try taking a picture?

A I don't believe so.

Q Well, let me ask you about that, because this is -- I mean, we had a criminal trial and now we're here. And you're testifying that you don't have the technology to have a camera take a picture of a shoe print at night. Is that your testimony?

A No, I have a camera that can take pictures of shoe prints.

Q Okay. Why didn't you do that?

A Because of my experience taking a picture of a white shoe imprint in the snow with a flash camera, it's just going to be a white -- it's going to look like a white piece of paper.

Q Well, you know, certainly, sir, if you have a shoe print in the snow and you put a ruler down, a reference point that you know the dimensions, at the very least you're going to have critical evidence as to the length of the shoe print, correct?

A Correct.

Q So obviously for purposes of the man being accused of a crime and for the purposes of civil litigation, you could have done that in this case so we could tell exactly how long the footprint is. We can't do that at this time because there's no photograph for comparison or measurements, correct?

A Correct.

Q Okay. So we know you arrested Jeffrey Spencer, who is a homeowner in that area, right?

A Correct.

MR. PINTAR: I'm going to object. That's incorrect.

MR. ROUTSIS: Well, you're not testifying. You have an objection --

MR. PINTAR: You're not making up --

MR. ROUTSIS: Give your objection.

MR. PINTAR: He doesn't own the house, so don't say --

MR. ROUTSIS: What's your objection? What's your objection?

MR. PINTAR: You're misleading.

MR. ROUTSIS: Well, what's your objection? That's not a legal objection.

MR. PINTAR: It absolutely is.

MR. ROUTSIS: He answered the question yes.

BY MR. ROUTSIS:

Q Is your answer yes, he's a homeowner in that area?

A I am assuming that's his home, yes.

Q Okay. In any event, when you were called out there and you started speaking to the Spencers, you had some foundational facts that they called a property crime in.

Now, you've testified, based on being an officer in that location, that there had been evidence of tampering with vehicles. Is that not a fair statement?

A On that street?

Q In that area, in Kingsbury Grade area.

A Sure, yes.

Q And I don't know if you're aware of the trial testimony, but we had subpoenaed records and produced evidence that there had been a newspaper article that very morning to citizens in that area regarding the illegal tampering of vehicles and informing homeowners of that. Are you aware of that?

A No.

Q Okay. So after failing to take any photographs, you then have what's called a recording

device, and a recording device actually records the words that are said between parties so we can have no confusion as to what's occurring, correct?

A I do.

Q Don't you have the ability to record statements when you talk to people?

A No.

Q You don't?

A No.

Q Let's talk about that. Are you saying that when you go out to a crime scene, all right, that you don't have the technology to carry with you a recording device?

A Do I have the technology to carry --

Q Are you aware of that technology, that you can --

A I'm aware that it exists, yes, sir.

Q And do officers in your department not have the ability to carry those recording devices with them?

A Do they not have the ability?

Q Do you guys carry recording devices with you?

A Some do.

Q Why don't you?

A Because I'm capable of understanding of having a conversation in an interview.

Q Yes, but wouldn't you agree that when you're dealing with people's liberty and criminal acts, that every word can be important; is that a fair comment?

A Yes, sir.

Q And certainly recording device is far more accurate than your recollection; is it not?

A It is.

Q There would be no reason that you would carry a recording device and utilize a recording device, that I can think of. Can you give us a reason?

A Practicality.

Q Practicality. So the fact that maybe a few words here and there can affect a man's liberty is not important as you carrying a little recording device and turning it on; is that what you're saying?

A No, it's not what I'm saying.

Q Okay. Let me carry on. Did you take notes in this case?

A Yeah.

Q During the time you were talking to Jeff Spencer and Marilyn Spencer were you taking notes?

A Written notes?

Q Yes.

A I don't believe so.

Q Okay. So what we have now then is no

photographs were taken, no recording device was brought, no written notes were taken. Okay.

So Mr. Spencer made a statement to you not only did they call 911, but he made a statement, as his wife did, that they were concerned somebody was on their property and that Mr. Spencer announced to them his name, what are you doing on my property, and no response was given. Correct?

A He announced that his name?

Q Well, let's look at your report. What was your understanding Mr. Spencer said in that regard?

A That he asked from the party to identify themselves.

Q Yes. That's correct, correct?

A Yes.

Q And did Mr. Spencer tell you what was -- what, if anything, was done in regard to his question that evening when someone he believed was on his property tampering with his vehicle, what response he was given?

A I believe he wasn't given a response.

Q Now, certainly if -- let me just ask you a question as a police officer. If you're in your home and late at night, you see somebody on your property and you call out to them, what are you doing, identify yourself, and you had information that there's been car

thefts in the area, and that person doesn't respond, you're probably going to assume he's committing some type of crime, wouldn't you?

A On my property, not identify himself to me, probably.

Q Okay. Now, wouldn't it be a relevant question in this type of case, before we arrested any people, to speak to Helmut Klementi and say, Helmut, listen, this guy's saying that you were on his property late at night, he called the police, and did he identify himself or did he ask you to identify yourself and what you're doing on his property? You never asked that question, correct?

A Prior to the arrest?

Q Right.

A No.

Q Are you aware that at the trial in this matter the jury acquitted this man because Helmut Klementi testified to that, exactly what Jeff told you, exactly what he told you, that he refused to identify himself? Jeff was trying to -- was very concerned. Are you aware of that?

A No.

Q Now you are, right?

A Now I am.

Q It would have been an important question to ask in an investigation before this thing happened to this level; don't you agree?

A Sure.

Q You also made another finding in your report that was unequivocally proven to be inaccurate at the trial, and you said that Jeff Spencer was not in a position to perceive anybody on his property from the upper deck that he was alleged to have been on. Do you recall that --

A Yes.

Q -- report? Now, did you go up to the third floor, where Jeff Spencer told you he was where he viewed the person on his property, to see if in fact he had a visual and was able to determine or see if somebody was on his property?

A No, I did not.

Q But you made a conclusion in your report without doing any investigation, correct?

A Without doing any investigation?

Q Well, certainly, sir, if you're going to say in your report -- my concern -- I mean, we can refer to the line if you like.

A Sure.

Q But basically you're saying that Mr.

Spencer -- you didn't believe Mr. Spencer could visually see from the location he said he was at whether or not someone like Mr. Helmut Klementi was on his property. Do you remember that?

A Yes.

Q But you did no investigation to confirm whether or not that that was a truthful or accurate statement, correct?

A Not correct.

Q Tell me the investigation you did.

A From where he said he saw somebody in his driveway next to his truck --

Q Right.

A -- is where I was.

Q Uh-huh.

A I cannot see the back third floor deck from that position.

Q Well, are you aware that we had an investigator go up to the exact location Mr. Spencer represented he was at, and are you aware that photographs were taken, and were you aware that all you had to do was look down at an angle, and we took the photographs and you can clearly see the area that Mr. Spencer told you that he had a visual of was in fact -- he did in fact have the ability to perceive from his

location that he told you that he -- did you ever go -- and I'm not going to belabor the point.

You never went to the deck and looked over from the deck to see if you could see what Jeff Spencer told you he could see from the deck?

A Like I said, no.

Q Okay. Kind of important, isn't it?

In any event, so now we -- at that point Helmut Klementi told you several things that you later found out to be untrue. Did he not tell you that he actually heard a gunshot?

A I'm not sure. I'd have to look at my report.

Q Please do. And I can probably assist you on the page.

A Please do.

Q It would be page five of 10 and it would be one, two, three, four, five, six paragraphs up from the bottom.

A Yes.

Q "Helmut said he was in fear of Jeffrey and said he may have heard a gunshot from Jeffrey's balcony prior to the battery."

And you confirmed that there were no gunshots that evening, correct?

A Yes.

Q Helmut Klementi also told you there was a restraining order against Jeff, or a civil stay away order; did he not?

A I believe he did, yes.

Q And that was in fact -- you tried to verify that and that was also inaccurate, correct?

A Correct.

Q In fact, you went to the hospital to see Helmut after this event, correct?

A Yes.

Q And Helmut -- you were aware that Helmut was released fairly shortly and he was only prescribed aspirin. Were you aware of that?

A I was not.

Q Okay. Were you aware that he was released that evening?

A No, I learned that the following day.

Q Okay. So the following day you learned that Helmut Klementi was released from the hospital. And did you speak to any doctors or did you speak to Helmut regarding why he was released so quickly?

A No.

Q But in any event, based on the lack of injuries or his release from the hospital, he filed -- you recommended misdemeanor charges be filed, correct?

A Yes.

Q And misdemeanors were filed, correct?

A Yes.

Q Now, after the misdemeanors were filed, you started receiving other information in this matter; did you not?

A Yes.

Q And you're aware that this case escalated up to felony conduct, elderly abuse, et cetera, et cetera, correct?

A Yes.

Q Okay. And I'd like to talk to you about the Shaws to begin with. You received information, I believe you testified was it weeks later, that the Shaws had a video?

A I don't know if it was days or weeks. At some point well after the incident.

Q And obviously the Shaws were not directly -- they weren't witnesses that night?

A No.

Q They weren't there at the scene with this alleged situation?

A No, they were not.

Q How was it that you became aware that the Shaws had videotape evidence?

A I believe -- I don't know. Somebody sent me there. I don't know if it was the District Attorney's Office or if they had called dispatch and dispatch asked me to go there and meet with them. Somehow I was sent there.

Q Okay. And it's not documented in any report as to where -- who called you or why you went out there, who told you that they had video --

A No.

Q -- recording equipment?

In any event, you end up at the Shaws and you believe it's a couple weeks after the misdemeanor charges have been filed in this case, correct?

A It could be up to a couple weeks.

Q And you, I assume, went and knocked on the door and you were allowed into the house?

A Yes.

Q And I've heard your testimony today. Are you aware that Miss Shaw did testify at trial in this matter?

A I believe -- I remember seeing her on the witness list. I don't remember her testimony.

Q Well, would it refresh your memory if her testimony was that she had an actual -- I forget the terms that's used -- a little stick, a memory stick that

she played for you that was not her hard drive, it was a memory stick and it was her only copy; do you recall that?

A I do not.

Q In any event, you indicated that you left there and you did not want to take the evidence with you because it was her only copy or --

A No. I did not want to take her laptop with me. At the time, I do not recall seeing it on a memory stick.

Q Okay. Well, if I told you that was her testimony, does that refresh your memory?

A No.

Q In any event, somehow the Shaws were informed and they may have put their information apparently from their video surveillance equipment onto a memory stick. They may have. You don't know. You don't remember, right? And you indicated that -- well, I'm not sure you did. I'm going to ask you.

You indicated you saw Jeffrey Spencer running or walking quickly out of his residence on the night in question, which would have been December 18th, correct?

A Correct.

Q And what's obviously critical, couldn't be more critical, perhaps, is what evidence was there prior

to Jeffrey Spencer running out of his house. Okay?

A I'm not understanding the question.

Q Okay. So I think your testimony was that you went fast-forward through a lot of video that evening but you recall specifically Jeff leaving his house.

A Yes.

Q But you don't recall in slow motion or normal speed, five, 10 minutes prior to Jeff leaving the house; is that a fair comment?

A Before?

Q Correct.

A No, I do not.

Q Okay. Do you know why that information -- do you know if that was provided to you or you just don't recall seeing it?

A If the video was shown to me, is that what you're --

Q Yes. I'm saying prior to Jeff walking quickly out of his house, do you have a specific recollection of viewing, let's say, five minutes at normal speed prior to that?

A No, I do not.

Q Okay. And now, at some point the video was produced from the Shaws. Were you involved in that, getting the video to the prosecutor?

A I was not.

Q Do you know when, where, and how it was produced to the prosecutor?

A I do not.

Q Okay. Now, during the course of this case you're aware that the prosecutor on the case was a prosecutor named Maria Pence; is that correct?

A Yes.

Q And you and Maria Pence actually worked together for quite a period of time preparing this case for the preliminary examination and the trial as well, correct?

A No.

Q Well, you testified at the preliminary examination?

A Yes.

Q You went into her office, went over the evidence?

A Yes.

Q You did further investigation after the arrest of Mr. Spencer, spoke to other witnesses?

A Yes.

Q Why -- let me ask you this question regarding Egon Klementi. So we know on the night in question that you arrested Jeff, no photographs were taken, nothing

was recorded. You never questioned Helmut Klementi about the statements that were made that would probably show good faith belief that he was making a citizen's arrest. You failed to speak to what apparently was an eyewitness. You never spoke to Egon Klementi that evening?

A I don't believe so.

Q Well, were you aware? I mean, your report indicates that Almeida spoke to Egon Klementi and Egon Klementi wrote a handwritten statement that evening. You were aware of that? Because the statement was written on the 18th, right?

A Yes.

Q Did you read the statement before you arrested Mr. Spencer?

A It was written after I had already arrested Mr. Spencer.

Q So is it your practice to arrest people before you speak to eyewitnesses?

A If I have probable cause for an arrest, yes.

Q Well, okay. Well, that's the big issue here. Now, have you had the opportunity to review Egon Klementi's statements?

A Yes.

Q And Egon Klementi actually said that he was in

his house arranging his artwork in his studio east side of the house for a meeting with a Tahoe Tribune journalist tomorrow afternoon. "I heard my twin brother scream for help." Right?

A (Nods head yes.)

Q "I saw my twin brother laying on the street and ran out to help him." Right?

A (Nods head yes.)

Q And then in the statement that I'm having problems even comprehending, he said, "I saw Jeff Spencer hitting Helmut from the back and pushing him to the floor, street." So he was a material eyewitness, apparently.

Did you at any time speak to him directly?

A No.

Q Okay. Now, were you the lead officer in this case or was Deputy Almeida?

A I was.

Q Well, isn't it your job to make sure that if there are witnesses and you're making an arrest of a citizen, that Deputy Almeida writes a report as to what Mr. Klementi said to him and what other investigation he did or did not do?

A Is it up to me to get Deputy Almeida to write a report?

Q Well, you're the lead officer that went out to the scene and you made an arrest. Deputy Almeida came out to the scene, and you were the lead officer, right?

A (Nods head yes.)

Q Apparently Deputy Almeida went and spoke with a material eyewitness to the event. You apparently did not review that written --

MR. PINTAR: Can I -- he's not making a verbal response. Can you say yes or no?

THE WITNESS: Okay.

MR. PINTAR: Sorry. You guys are just talking and --

BY MR. ROUTSIS:

Q Okay. Now, did you direct Deputy Almeida to write a report as to what Egon Klementi and/or anybody else he spoke to said in this case?

A I don't believe I gave him direction to write a report.

Q Okay. Do you know when you first read Egon Klementi's handwritten report?

A No.

Q Now, another person who is a peripheral witness is Marilyn Spencer, correct?

A Yes.

Q Marilyn Spencer was so upset that evening, she

went out and showed you footprints that we've gone over ad nauseam and you concluded were not relevant, right?

A I didn't say they weren't relevant.

Q Okay.

A I said they belonged to Deputy Almeida.

Q And Marilyn Spencer, isn't it true, on numerous occasions requested to do a handwritten statement and none was ever taken in this case?

A I don't know.

Q You don't know or you -- do you have any recollection of that?

A No, I do not.

Q Okay. Now, there's another major player in this case, Mary Ellen Kinion. Are you familiar with her?

A I don't know.

Q Okay. She's the young lady or -- the young lady sitting right here.

A Okay.

Q Did you have occasion to do any investigative work, take reports, or speak to Mary Ellen Kinion from the time of this event till today?

A I don't recall if I've ever spoken to her.

Q I've always been troubled with that response. It means you have no recollection at all or you may have

and you just don't remember it.

A You have trouble with me answering it that way?

Q I don't know what "I don't recall" means. What does it mean? Does it mean you're certain you never spoke to her or you may have spoken to her but you didn't record it? I don't know what it means. Maybe you can clarify.

A It means I don't remember having a conversation or an interview with her.

Q Okay. Are you familiar that Mary Ellen Kinion generated a letter to the prosecutor in this case to escalate or to assist -- let me rephrase that -- a letter to the prosecutor in this case regarding conduct that the Spencers may have committed or allegedly committed against the Klementis? Are you aware of that letter?

A I am not.

Q Okay. So I could take it if you're not aware of the letter, that you didn't get it from her and provide it to the prosecutor?

A That would be a good analogy.

Q Okay. I noticed in your report that Elfi Klementi gave a handwritten statement on December 18th as well as Egon did, and it's attached to your report,

correct?

A Correct.

Q And I can assume again that you didn't read her report prior to arresting Mr. Spencer?

A No, those were collected after, both of them.

Q Okay. And you don't know what these two witnesses said at the time you made the arrest in this case, correct?

A At the time of the arrest, no.

Q Right. Okay. Now, I noticed that Elfi Klementi generated -- and it's attached to your report -- almost a full page of a handwritten report or statement. Are you familiar with that document?

A You're asking me if she wrote a handwritten statement?

Q Well, we know she did. It's attached to your report.

A Right.

Q Would you have knowledge that it is in fact attached to your report?

A Yes.

Q Would you be kind enough to tell us when and under what circumstances you received that document.

A I received it with Egon's statement from Deputy Almeida. He collected them from them.

Q Are you sure that they're collected on the same day?

A No.

Q Okay. And I appreciate that, but it's important. So this may have been generated at a later time?

A Yes, it could have been.

Q Okay. Now, when you arrived on the scene, it would have been somewhat dangerous to leave a man laying on the street with nobody around him, correct?

A Yes.

Q And Egon Klementi indicated in his report that he made sure that he was -- I think -- well, let's just read it. "That I was saving him from being run over in the middle of the street." But that wasn't in fact a correct statement either, according to you. There was nobody in the street when you arrived; is that correct?

A I don't remember seeing him in the street.

Q In fact, nobody had brought him a blanket or a pillow. You had to request one be brought to him; isn't that true? You asked Egon Klementi to please go get a blanket for his brother, when you finally did?

A I asked somebody. I'm not sure who.

Q Okay. Now, procedurally when you -- just for the record, and we'll keep it as simple as we can. When

you go out to investigate a criminal act, you make an on-the-scene determination if there's probable cause to make an arrest. That's the first step, correct?

In this case you did that --

THE REPORTER: I'm sorry. I didn't hear an answer. Yes or no, please?

THE WITNESS: Yes, ma'am.

BY MR. ROUTSIS:

Q And in this case you went to the scene. We've been over what was and was not done at the scene, and you made an arrest, correct?

A Correct.

Q And when you make an arrest, you took Jeff to the jail and you write down the charges you feel that the probable cause supports for the arrest, correct?

A Yes.

Q In this case you felt that the probable cause that the facts supported was a misdemeanor battery, correct?

A I believe that was one of them, yes.

Q Okay. And there was another misdemeanor, and I don't recollect, so maybe you can enlighten me.

A I don't believe it was misdemeanor because of the age of Mr. Klementi.

Q Do you recall what you arrested him for?

A I'm going to refer to my report.
Q Please.
MR. PINTAR: Page six.
BY MR. ROUTSIS:
Q There was an elderly abuse as a battery --
MR. PINTAR: Let him finish.
BY MR. ROUTSIS:
Q And while you're looking at it --
A You said it's on page six?
MR. PINTAR: Your conclusion.
THE WITNESS: Oh, there it is.
MR. ZANIEL: Page eight I think is the charge. Elderly abuse, battery.
THE WITNESS: Yes, that's it.
BY MR. ROUTSIS:
Q Okay. And do you know if that was filed as a felony or a gross misdemeanor?
A Gross misdemeanor.
Q Okay. And you are aware that the DA, I believe -- and I may be incorrect because I don't have the charge in the complaint with me, but the DA filed misdemeanor conduct originally. Are you aware of that or not?
A I'm not aware of it.
Q Okay. Now, other than going to the Shaws

after December 18, did you provide any other information to Maria Pence or the prosecutor's office regarding hostilities between the Spencers and the Klementis by way of any evidence?

A No.

MR. ROUTSIS: Okay. I don't have anything further.

MR. ZANIEL: Any other questions? I think we should probably give him the opportunity to waive or review those, since Chris started up, since he's not here, or do you want to go over that?

MR. PINTAR: So, okay. Officer McKone, this is going to be transcribed and put into a booklet type form, probably two to three weeks, and the court reporter will contact you and give you the opportunity to review that deposition transcript, okay?

THE WITNESS: Okay.

MR. PINTAR: Now, you can either come to this office and do it or we can send it to you. Do you have an address we can send it to you? You can give it to us off the record.

THE WITNESS: Are you going to mail it or are you going to email it?

MR. PINTAR: Probably be mailed to you.

THE WITNESS: Okay. Just use work mailing

address.

MR. PINTAR: And then you'll have 30 days to review that report and send back any changes or corrections. But if you make any changes or corrections to the report, it's just like if you changed your testimony here today and all the attorneys here will see those changes or corrections, okay?

THE WITNESS: Okay.

MR. PINTAR: And if you don't do anything at all, if you don't make any changes or corrections, we'll just assume, or the court will assume that you didn't have any changes.

THE WITNESS: Okay.

MR. PINTAR: Anything else?

MR. ZANIEL: No. We're done.

(Deposition concluded 12:44 p.m.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, KRISTINE BOKELMANN, a Certified Court Reporter in and for the County of Washoe, State of Nevada, do hereby certify:

That on Friday, April 7th, 2016, at the hour of 10:18 a.m. of said day, at Sunshine Litigation Services, 151 Country Estates Circle, Reno, Nevada, personally appeared JESSE McKONE, who was duly sworn by me to testify the truth, the whole truth, and nothing but the truth, and thereupon was deposed in the matter entitled herein;

That the deposition was taken in verbatim stenotype notes by me, a Certified Court Reporter, and thereafter transcribed into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 113, is a full, true, and correct transcription of my stenotype notes of said deposition, to the best of my knowledge, skill and ability.

Dated at Reno, Nevada, this 8th day of April, 2016.

Kristine A Bokelmann

KRISTINE A. BOKELMANN, CCR #165

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

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Date: _____ _____

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Doyle Law Office, PLLC and that on the 3rd day of June, 2019, a true and correct copy of the above APPELLANT'S APPENDIX was e-filed and e-served on all registered parties to the Nevada Supreme Court's electronic filing system as listed below:

Douglas R. Brown
Sarah M. Molleck
Christian L. Moore
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno NV 89519

Michael A Pintar
McCormick, Barstow, Sheppard, Wayte & Carruth, LLP
241 Ridge Street, Suite 300
Reno NV 89501

Tanika M. Capers
American Family Mutual Insurance Company
6750 Via Austi Parkway, Ste. 310
Las Vegas NV 89119

DATED this 3rd day of June, 2019.

/s Kerry S. Doyle
Kerry S. Doyle

Kerry S. Doyle, Esq.
Nevada Bar No. 10866
DOYLE LAW OFFICE, PLLC
4600 Kietzke Lane, Ste. I-207
Reno, NV 89502
(775) 525-0889
kerry@rdoylelaw.com

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Elizabeth A. Brown
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Attorneys for Appellant

IN THE SUPREME COURT FOR THE STATE OF NEVADA

JEFFREY D. SPENCER, Appellant, v. HELMUT KLEMENTI, EGON KLEMENTI, ELFRIEDE KLEMENTI, MARY ELLEN KINION, ROWENA SHAW, and PETER SHAW, Respondents.	Case No. 77086

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CASE NO. 14-CV-0260

Dept. No. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER

Defendant.
_____/

OPPOSITION TO MOTION FOR ATTORNEY'S FEES & COSTS & TO MEMORANDUM OF COSTS AND DISBURSEMENTS

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, ELFRIEDE KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.
_____/

Defendant/Counterclaimant JEFFREY SPENCER, by and through his attorneys WILLIAM J. ROUTSIS II, Esq. and LYNN G. PIERCE, Esq., opposes Counterdefendant MARY ELLEN KINION's Motion for Attorney's Fees and Costs and her Counsel's Memorandum of Costs and Disbursements. This Opposition incorporates the pleadings and papers on file herein and Points and Authorities following hereto.

POINTS AND AUTHORITIES

A. BACKGROUND FACTS

1. Initial Incident Involving HELMET KLEMENTI on December 18, 2012

The incident which precipitated criminal charges against JEFFREY SPENCER occurred the

evening of December 18, 2012, when he heard someone near his vehicle in his driveway, told his wife to immediately call the Douglas County Sheriff, and ran down the front stairs of his home, yelling to the person near the vehicle to identify himself and to answer why he was breaking into the vehicle. Mr. SPENCER ran onto the icy street in the dark in pursuit of the intruder who did not identify himself. The intruder suddenly turned back toward Mr. SPENCER and they collided, causing the intruder to fall down.

When officers responded to Mrs. Spencer's call, HELMUT and EGON KLEMENTI claimed HELMUT KLEMENTI had not been on the Spencer's property, and that Mr. SPENCER ran outside, punched HELMUT KLEMENTI and threw him to the ground. The officers spoke with ELFRIEDE KLEMENTI and non-witness neighbors who showed up, and arrested Mr. SPENCER for misdemeanor battery. This misdemeanor charge was later increased to a felony, which according to testimony of then Deputy DA Maria Pence, was due to medical records she said showed HELMUT KLEMENTI suffered severe bodily harm from the incident.

MARY ELLEN KINION and the officer at the scene both claimed she was not a witness nor even there that night. Yet December 19, 2012, Ms. KINION called KGID to say Mr. SPENCER was arrested the night before for beating up HELMUT KLEMENTI. Ms. KINION wrote a letter to Ms. Pence, stamped received by the DA's office February 22, 2013, in which she claimed Mr. SPENCER "came up and punched him [HELMUT KLEMENTI] in the chest so hard that he landed on his back and couldn't get up." At trial, Ms. KINION testified the Deputy DA did not ask her to write the letter, and **the purpose of the letter was "to try and get her to prosecute Mr. Spencer."**

There was no credible evidence at trial that Mr. SPENCER punched HELMUT KLEMENTI, and he was acquitted of the charge of assault and battery against HELMUT KLEMENTI.

2. Additional Charges for Which Mr. SPENCER Was Prosecuted

Additional charges were brought against Mr. SPENCER that EGON and ELFRIEDE KLEMENTI were also victims, that Mr. SPENCER threatened EGON KLEMENTI with physical violence on May 27, 2012, and that he assaulted and battered EGON KLEMENTI by snowplow on December 12, 2012. At trial, Ms. Pence included testimonial accusations that Mr. SPENCER deliberately created snow berms at EGON and ELFRIEDE KLEMENTI's home, trapping them in.

Ms. KINION's letter to then Deputy DA Maria Pence made numerous accusations against Mr. SPENCER in addition to the alleged assault and battery on December 18, 2012, alleging a threat of physical violence to EGON KLEMENTI on May 27, 2012, an assault and battery by snowplow of EGON KLEMENTI on December 12, 2012, and deliberate creation of snow berms in driveways.

(a) Regarding May 27, 2012, Mrs. Spencer called the Douglas County Sheriff to complain EGON KLEMENTI came on their property without consent and took photographs of two underage boys, nephews of their close friend, who were shirtless and working the front yard. The responding officer spoke with EGON KLEMENTI to advise him of the complaint and that if he went on the Spencers' property again, he would be subject to arrest for trespassing. Mr. KLEMENTI made no report nor complaint about Mr. SPENCER's alleged threat of physical violence to that officer, nor to any other officer or court agent or entity until seven months later.

Ms. KINION's letter to Ms. Pence claimed that May 27, 2012, Mr. SPENCER "yelled" at EGON KLEMENTI and "threatened to punch Egon in the face." Yet Ms. KINION was not a witness to that alleged assault.

There was no credible evidence at trial that Mr. SPENCER verbally assaulted EGON KLEMENTI or threatened to punch him on May 27, 2012, or any other time, and he was acquitted of all charges.

(b) Regarding December 12, 2012, EGON KLEMENTI called the Douglas County Sheriff to complain Mr. SPENCER intentionally used his snow plow to strike him with snow, ice and debris as he was in his own driveway, and claimed Ms. KINION was a witness. Over one hour later, Ms. KINION called 911 and claimed she witnessed Mr. SPENCER intentionally use his snow plow to strike EGON KLEMENTI with snow, ice and debris, causing him injury. The responding officer testified at trial that he spoke with Mr. KLEMENTI and Ms. KINION regarding the allegations and determined there was no evidence, no crime had been committed, and accordingly wrote no police report.

Ms. KINION's letter to Ms. Pence included the accusation that she saw Mr. SPENCER drive by her with a "big grin on his face" and "he turned the blade on the snow plow to spray Egon with ice and snow. Egon was fortunately not hurt."

Ms. KINION testified at trial she "immediately called" EGON KLEMENTI, admitting she did not call 911 until after her lunch, over an hour and a half after she claimed to have witnessed an assault and battery on her elderly neighbor. Further, her trial testimony is in direct conflict with EGON KLEMENTI's that he initiated the contact, calling Ms. KINION. A reasonable conclusion from trial evidence is that Ms. KINION could not have seen the alleged attack based on location of the homes and size of the snowplow, that EGON KLEMENTI called Ms. KINION to create a "witness" for him of this alleged incident, and that, although she saw nothing, she complied.[1]

There was no credible evidence at trial that Mr. SPENCER used the snow plow to assault and batter EGON KLEMENTI on December 12, 2012, or any other time, and he was acquitted of all charges.

The claims in this action by Mr. SPENCER against Ms. KINION were also based on a pattern of behavior which could have reasonably influenced others to create a negative image of Mr. SPENCER and thereby color how any investigation would proceed and/or any evidence would be viewed. December 12, 2012, Ms. KINION called KGID and claimed she witnessed Mr. SPENCER intentionally strike EGON KLEMENTI with snow, ice and debris from the snowplow causing injury. The next day, ROWENA and PETER SHAW sent a letter to KGID saying Ms. KINION had witnessed Mr. SPENCER's alleged intentional assault and battery on EGON KLEMENTI with the snowplow, and they sent similar letters to various Douglas County agencies making the same accusations, saying Ms. KINION was a witness. December 18, 2012, EGON KLEMENTI claimed at a public KGID meeting that Mr. SPENCER intentionally used his snow plow to strike him with snow, ice and debris from the road, and Ms. KINION claimed she personally witnessed that incident, and Mr. SPENCER had a big grin when doing so. Any investigator or DA with a number of sources for an accusation would reasonably be expected to be influenced.

(c) Regarding accusations of deliberately created snow berms, the prosecution pursued testimony at trial that Mr. SPENCER deliberatly created snow berms at EGON and ELFRIEDE KLEMENTI's home, trapping them in.

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[1] In contradiction to her letter and trial testimony, in Ms. KINION's Summary Judgment Motion, she claimed she "thinks" she saw Mr. SPENCER driving that snowplow.

Ms. KINION's letter to Ms. Pence included claims that she "woke up one morning after it snowed to find a huge ice filled snow berm in front of [her] driveway. No other neighbor had one...", that Mr. SPENCER was "not allowed to snowplow on Juniper St because he was caught putting huge berms in front of the Taylor's house the year before. ... that Janet Wells said Marilyn bragged to her about how Jeff was going to plow huge berms in front of the Shaw's and Klementi's houses this winter" and that a "few days later Jeff plowed snow from his property and jammed it up against the Klementi's fence and driveway."

Ms. KINION testified at trial admitting she never saw Mr. SPENCER deliberately create a berm in her driveway or in any other driveway.

There was no credible evidence at trial that Mr. SPENCER had deliberately created berms in EGON and ELFRIEDE KLEMENTI's driveway, or any other driveway, and he was acquitted of all charges.

Again, the allegations by Mr. SPENCER against Ms. KINION were based in part on a pattern of behavior which could have reasonably influenced others to create a negative image of Mr. SPENCER and thereby color any investigation and/or prosecution. December 12, 2012, Ms. KINION called KGID and complained Mr. SPENCER intentionally left a snow berm in her driveway. December 18, 2012, EGON KLEMENTI claimed at a public KGID meeting that Mr. SPENCER had been intentionally using his snow plow to create berms in his driveway to "seal him in", and Ms. KINION claimed she had personally witnessed the events complained of by EGON KLEMENTI, and that Mr. SPENCER deliberately created snow berms in driveways. Any investigator or DA with a number of sources for an accusation would reasonably be expected to be influenced.

3. Other Legal Action

December 24, 2012, HELMUT KLEMENTI, and EGON and ELFRIDE KLEMENTI filed for restraining orders against Mr. SPENCER. Although not a party in that matter, in April 2013, Ms. KINION wrote an ex-parte letter to the Justice of the Peace hearing that matter trying to get more restrictive restraining orders against Mr. SPENCER. In March 2014, the restraining orders were all dissolved as there was no credible evidence that Mr. SPENCER was a threat of any kind to HELMUT KLEMENTI, EGON and/or ELFRIEDE KLEMENTI.

B. LEGAL BASIS FOR CLAIMS OF FEES AND/OR COSTS

1. Statutory Basis for a Claim of Fees or Costs

NRS §18.010 provides for an award of attorney's fees as follows:

> 1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.
>
> 2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:
> (a) When the prevailing party has not recovered more than $20,000; or
> (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

NRS §18.020 provides for an award of costs to a prevailing party as follows:

> Costs must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases:
> ...
> 3. In an action for the recovery of money or damages, where the plaintiff seeks to recover more than $2,500.

2. Fees Pursuant to NRS §18.010(2)(b)

The Court "may" make an award of fees only if Ms. KINION proves that the Complaint against her by Mr. SPENCER "**was brought or maintained without reasonable ground or to harass the prevailing party**." The Legislative intent as stated in the statute is "to punish for and deter **frivolous or vexatious** claims..." *Emphasis added.* Mr. SPENCER's Complaint was brought with good grounds, not frivolous, nor with an intent to harass or be vexatious.

First, when Mr. SPENCER was acquitted of all criminal charges on September 27, 2013, he did not initiate a legal proceeding against anyone who made complaints or testified against him in that criminal process. It was two years later, only after Mr. SPENCER was served with a December 17, 2014, lawsuit by HELMUT KLEMENTI, that he counterclaimed and took action against the Third Party Defendants for their roles in the criminal charges and other wrongful acts against him, which included Ms. KINION.

Second, the argument is made by Ms. KINION that Ms. Pence said "that nothing Kinion said or did affected the criminal charges filed against Spencer." Motion for Attorney's Fees and Costs, pg 3, lns 22-24. What Ms. Pence actually said about bringing criminal charges is that:

> ... we [referring to Deputy DA's at that time] constantly have a stack of reports. And when we have time, we go through these reports, and we file certain guidelines that we're given, and we make a charging decision. No one is involved in the charging decision except for myself, and then, for example, if I have a question of the deputy that writes the report, I'll call downstairs. I would try and find that out.

Transcript of Proceedings January 30, 2017 (hereinafter "Transcript"), pg 16, lines 20-25. The initial officer report which resulted in Mr. SPENCER's arrest on December 18, 2012, does not mention Ms. KINION and, according to her testimony and the responding officer, she was not even there as a non-witness to the incident. However, whatever Ms. KINION said and did after that which influenced the reports upon which Ms. Pence relied, could have impacted the bringing of criminal charges, which charges went far beyond the incident of December 18, 2012, going back to May 2012.

Third, the whole purpose of the discovery process in civil proceedings is to gather evidence. Before the complaint against Ms. KINION was filed, Mr. ROUTSIS, who represented Mr. SPENCER in the criminal proceeding, knew she had written a letter to Ms. Pence making many accusations against Mr. SPENCER. Mr. ROUTSIS had seen the letter, and had cross examined Ms. KINION in the criminal proceeding about the letter, as did Ms. Pence, but did not have a copy of that letter. There was no way of obtaining that letter from the DA's Office prior to filing the complaint against Ms. KINION. Much later, long after the complaint against Ms. KINION was filed and requests had been made to amend the complaint, Mr. ROUTSIS learned that a copy of that letter was in a file Mr. ROUTSIS' investigator had kept from the criminal proceeding, which Mr. ROUTSIS had not known existed.

As part of the standard civil discovery process, the DA's Office had been served with a Subpoena for their records in this case. For an extended period of time the DA's Office failed and refused to respond, and opposed the Subpoena. The partial response to the Subpoena resulted in official production from the DA's Office of that letter from Ms. KINION just shortly before the hearing at which the Court ruled on the Summary Judgment Motion. Further, discovery in response to the Subpoena on the DA's Office is still not complete.

In response to the Subpoena, the DA produced a Privilege Log associated with the criminal proceeding, which is a list of emails between 07-18-12 and 12-19-12 relating to Douglas County Planning Commission c/o Community Development. *See* Exhibit 1 attached hereto. The emails produced in response to the Subpoena were nearly totally redacted, none showing as coming from Ms. KINION, and no Privilege Log for anything other than the Douglas County Planning Commission emails. Yet, Mr. ROUTSIS has discovered that a copy of an email from Ms. KINION to Ms. Pence on April 10, 2013, was also in the file his investigator had kept from the criminal proceeding. *See* Exhibit 2 attached hereto. As noted, Mr. ROUTSIS had no idea until long after the filing of the complaint against Ms. KINION that his investigator had kept any files after conclusion of the criminal proceedings in 2013.

The first Criminal Complaint filed by Ms. Pence on January 16, 2013, alleged intimidation of a witness by an assault on December 18, 2012, of HELMUT KLEMENTI. Transcript, pg 49, lns 1-18. According to the language of that first Criminal Complaint, Mr. KLEMENTI was to have testified at the Planning Commission on January 8, 2013. The DA's Office Privilege Log is emails related to the Planning Commission. That charge was dropped from all further proceedings, which leads to a reasonable conclusion there was a change from the initial investigative reports to the subsequent investigative reports. Documentation from the DA's Office in response to the Subpoena, which can reasonably be expected to explain that change in the charges, is still lacking.

Ms. Pence testified that with respect to Count 2, which is the gross misdemeanor charge of exploitation of an elderly person, the "information came from a multitude of people. I would guess that in addition to Miss Kinion, I must have had some other information ... such as a police report or law enforcement reports." Transcript pg 72, ln 6 through pg 73, ln 3. This testimony specifically refers to the alleged verbal assault on EGON KLEMENTI of May 27, 2012, an incident for which no complaint was made to any enforcement agency until after the December 18, 2012, incident which led to Mr. SPENCER's initial arrest; to the assault with a snowplow on EGON KLEMENTI of December 12, 2012, to which Ms. KINION was the only claimed witness and for which the investigating officer found no crime had been committed; and to the alleged deliberate snow berms for which there was no evidence, not then and not at trial.

Based on the record, which is from incomplete discovery in this matter, the question remains what communications Ms. KINION had which influenced the investigators' reports used by the prosecutor in deciding what charges to file and to pursue against Mr. SPENCER. Although the Court has dismissed the malicious prosecution claim against Ms. KINION, in initiating the case against her, Mr. SPENCER had a very reasonable good faith belief that Ms. KINION was an actor in "initiating, procuring the institution of, or actively participating in the continuation of a criminal proceeding." See *LaMantia v. Redisi*, 118 Nev. 27, 38 P.3d 877 (2002), defining the elements of a malicious prosecution claim.

Fourth, it is unknown what records of the criminal proceeding, and specifically filings of charges, Mr. SPENCER's prior civil counsel who prepared the initial Complaint against Ms. KINION had in his possession. As Ms. Pence testified, she made changes in the charges from the initial Criminal Complaint. Transcript, pg 49, lns 1-18. It is not uncommon for charges to be dismissed, amended and/or enhanced as more discovery is obtained in a criminal matter. Ms. PIERCE, who had to replace that prior counsel and who prepared the Opposition to the Summary Judgment Motion, did not have all of the records of the criminal proceeding, which was voluminous and not all in the possession of Mr. ROUTSIS, and as a civil practice attorney she did not clearly understand the record as it related to the criminal process prior to the criminal trial. There was no deliberate attempt to mislead the Court in this matter.

Further, the issue of those criminal process records is a red herring, not relevant to the standard for malicious prosecution claims. As cited in opposing Summary Judgment, *LaMantia v. Redisi*, 118 Nev. 27, 38 P.3d 877 (2002), does not limit malicious prosecution claims only to those who have a role in "initiating" a criminal action, but also to those who have a role in "procuring the institution of, or actively participating in the continuation of a criminal proceeding." Ms. KINION made many allegations in multiple forums against Mr. SPENCER to which she was not a witness and for which there was no evidence, but which allegations were repeated by others and were included in the criminal charges against him. She wrote unsolicited letters to Ms. Pence and testified at the criminal trial against Mr. SPENCER. Malicious prosecution also requires a showing of "malice" defined as "statements made with the knowledge they were false and/or making such statements with

a reckless disregard for the truth." *Id. LaMantia.* Ms. KINION made multiple statements she knew were not true or, at a minimum, with a reckless disregard for the truth.

Mr. SPENCER did not bring his complaint against Ms. KINION without good grounds based on reasonable investigation prior to his initial filing against her. It was not frivolous, nor with an intent to harass or be vexatious. Had that been his intent, he could have filed suit in 2013 immediately following his acquittal on all charges.

2. Fees Pursuant to NRS §18.010(2)(a)

The Court "may" make an award of fees only if Ms. KINION is "the prevailing party". Although Ms. KINION received Summary Judgment on the malicious prosecution claim, she is not the prevailing party until all the claims against her are resolved. Mr. SPENCER had previously moved the Court to amend his counterclaim and third party claims. At the same hearing in which the malicious prosecution claim was dismissed as to Ms. KINION, the Court ordered that as a matter of judicial economy, rather than accept the previously proffered Amended Counterclaim and Third Party Complaint from Mr. SPENCER, the Amended Complaint of HELMUT KLEMENTI would be answered by Mr. SPENCER with his counter and third party claims, excluding only a malicious prosecution charge against Ms. KINION. That Amended Counterclaim and Third Party Complaint was filed, and the claims in that pleading against Ms. KINION have not yet been heard.

Case law cited by Ms. KINION is inapplicable. In *MB Am., Inc. v. Alaska Pac. Leasing Co.*, 367 P.3d 1286, 132 Nev. Adv. Op. 8 (2016), the district court had granted summary judgment in favor of Alaska Pacific and dismissed of MBA's complaint, which the Supreme Court found to be sufficient to find Alaska Pacific the prevailing party. In this matter, the case is still proceeding without adjudication of other charges.

The Supreme Court in *Parodi v. Budetti*, 115 Nev. 236, 984 P.2d 172, 175-176 (1999), addressed the application of NRS 18.010(2)(a) to determine if attorney's fees were warranted in a matter of a consolidated action, where different parties prevailed on different claims, and reversed an award of fees holding: "Here, after offsetting the three monetary awards in the separate claims, the net verdict was in favor of Parodi. Thus the award of fees and costs to the Budettis cannot be affirmed and must be reversed."

The *Parodi* Court cited to *Robert J. Gordon Constr. v. Meredith Steel*, 91 Nev. 434, 439, 537 P.2d 1199 (1975), in which the Supreme Court reversed an award of fees, holding:

> NRS 18.010 explicitly limits award of attorneys fees by a court to those cases in which the recovery is $10,000 or less. **We have interpreted the statute to mean that the total amount of the judgment is to be considered** in arriving at the $10,000 limit. Person v. Freeman, 86 Nev. 850, 477 P.2d 876 (1970). In Peterson, as here, the total award represented recovery on two separate counts. That case is controlling and the district court's award of attorneys fees is reversed.

The *Parodi* Court also cited to *Peterson v. Freeman*, 86 Nev. 850, 856, 477 P.2d 876 (1970), saying:

> In Gordon and Peterson, multiple claims were litigated in the same lawsuit. Some of the claims were worth less than the statutory cap under NRS 18.010(2). However, the aggregate or net judgments in the case exceeded the statutory cap. "**The court held that it is the value of the total judgment which controls, not the individual claims.**"

Id. at 984 P.2d 175, *emphasis added.*

Until such time as Ms. KINION can be said to be the prevailing party on all claims against her, she has no statutory right to attorney's fees.

3. Costs Pursuant to NRS §18.020

An award of costs can only be made to a prevailing party, and as addressed hereinabove, Ms. KINION cannot be said to be the prevailing party until all claims against her have been adjudicated.

In an abundance of caution, the items claimed in the Memorandum of Costs and Disbursements are also objected to by Mr. SPENCER. Ms. KINION is claiming costs for "Clerks' Fees" for Demand for Change of Venue, Initial Appearance, Reply in Support of Demand for Change of Venue, and for "Court Reporters' Fees" for depositions of Rowena & Peter Shaw and Jeffery Spencer, transcripts of Pre-Trial Conference, Marilyn & Jeffery Spencer Trial[2], and Status Hearing. All of these costs are part of the larger case expenses, which case is continuing, and cannot be said to have been incurred on the grounds asserted by Ms. KINION for Summary Judgment of the malicious prosecution claim. It is not clear to what extent the remaining costs claimed could be said to be incurred solely due to the Summary Judgment Motion since no detail is provided, so such costs are also disputed.

---

[2] There was no trial of Marilyn Spencer; she faced no charges and is not a party herein.

Conclusion

Mr. SPENCER's Complaint was based on his reasonable belief, with investigation that could be done prior to a civil filing, that by inserting herself into this matter, Ms. KINION's making allegations against him of things she did not witness, including two of the three crimes she alleged and, based on the evidence, the third crime she alleged never even occurred, contributed to either initiating, procuring the institution of, and/or actively participating in the continuation of a criminal proceeding against him. The evidence shows Ms. KINION lied, including under oath, about what she supposedly witnessed, and testified under oath about things that did not happen, which is evidence of malice.

Since there cannot be a finding that Mr. SPENCER brought or maintained the malicious prosecution claim against Ms. KINION without reasonable ground, or to harass her, or that the claim was frivolous, and there cannot be a finding that Ms. KINION is the prevailing party as long as there are unlitigated claims against her, the Motion for Attorney's Fees and Costs must be denied.

The undersigned affirm pursuant to NRS §239B.030 that this pleading does not contain the social security number of any person.

DATED this 24th day of March, 2017.

WILLIAM J. ROUTSIS, II, Esq.
Nevada State Bar No. 5474
1070 Monroe Street
Reno, Nevada 89509
Phone 775-337-2609/Fax 775-737-9321

LYNN G. PIERCE, Esq.
Nevada State Bar No. 3567
515 Court Street, Suite 2f
Reno, Nevada 89501
Phone 775-785-9100/Fax 775-785-9110

Attorneys for Counterclaimant/Third Party Plaintiff Jeffrey D. Spencer

Declaration of Lynn G. Pierce, Esq.

Pursuant to NRS §53.045(1), I, Lynn G. Pierce, declare under penalty of perjury, that:

1. I am an attorney licensed to practice law in the states of Nevada and California.

2. I am a attorney for Jeffrey Spencer in the above entitled matter.

3. Exhibit 1 is a true and correct copy of a Privilege Log produced by the DA's Office in response to Subpoena.

4. Exhibit 2 is a true and correct copy of an email from Ms. KINION to Ms. Pence on April 10, 2013, found in the file Mr. Routsis' investigator from the prior criminal proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on the 24th day of March, 2017, in Reno, Nevada.

Lynn G. Pierce, Esq.

CERTIFICATE OF SERVICE

Pursuant to NRCP Rule 5(b), I certify that on this date I served a true and correct copy of the foregoing pleading by deposit into the U.S. Postal Service, first class postage pre-paid, addressed to:

Douglas R. Brown, Esq.
Christian L. Moore, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, NV 89519
Attorneys for Helmut Klementi

Tanika M. Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorney for Rowena and Peter Shaw

Michael A. Pintar, Esq.
Glogovac & Pintar
427 W. Plumb Lane
Reno, NV 89509
Attorneys for Egon Klementi, Elfriede Klementi & Mary Ellen Kinion

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty Street, Suite 1050
Reno, NV 89501
Attorney for Jeffrey D. Spencer

DATED this 24th day of March, 2017.

EXHIBIT LIST

Exhibit 1	Privilege Log produced by the DA's Office in response to Subpoena	1 page
Exhibit 2	Email from Ms. KINION to Ms. Pence on April 10, 2013	1 page

Exhibit 1

Exhibit 1

PRIVILEGE LOG for Subpoena Duces Tecum: Case No. 13-CR-0036
Douglas County Planning Commission c/o Community Development

	Date	Doc Type	Document Summary
	07-18-12	E-mail	Attorney Client Privileged Communication E-mail exchange between Shane Pieren and Zach Wadle, DDA.
	08-29-12	E-mails	Nonresponsive, Redacted information regarding a distinct and separate code enforcement case involving a different address.
	08-30-12	E-mail	Attorney Client Privileged Communication E-mail exchange between Shane Pieren and Zach Wadle, DDA.
	09-04-12	E-mail	Attorney Client Privileged Communication E-mail exchange between Shane Pieren and Zach Wadle, DDA.
	10-02-12	E-mail	Attorney Client Privileged Communication E-mail exchange between Tami Eslick, Candace Stowell and Jeane Cox.
	10-02-12 & 10-03-12	E-mail	Nonresponsive, Redacted information regarding a distinct and separate code enforcement case involving a different address; and Attorney Client Privileged Communication E-mail exchange between Shane Pieren and Zach Wadle, DDA.
	11-09-12 & 11-13-12	E-mails	Attorney Client Privileged Communication E-mail exchange between Shane Pieren, Erik Nilssen, Juley Frank, secretary to the Civil Division of the District Attorney's Office, and Zach Wadle, DDA.
	12-10-12	E-mail	Nonresponsive, Redacted information regarding a distinct and separate code enforcement case involving a different address.
	12-19-12	E-mail	Attorney Client Privileged Communication E-mail exchange between Shane Pieren and Zach Wadle, DDA.

D1041

Exhibit 2

Exhibit 2

WIT- KINION

Pence, Maria

From: kinionm@aol.com
Sent: Wednesday, April 10, 2013 10:49 AM
To: Pence, Maria

Dear Maria Pence,

I met you once with Elfie Klementi. Yesterday I was excited about the denial of the Spencer fence. Marilyn's lawyer made a comment that has alarmed me because it could come up in the future. He stated something to the effect that Marilyn walks her dog every day at 4 pm and was very fearful of Egon Klementi because she has had to pass him in the woods 4 or 5 times. From Marilyn's past history, I think she will try to turn this into a stalking issue. The truth is, Marilyn could walk up Juniper, her street, and enter the woods on a perfectly good trail and shorter route from her house and she would not even run into Egon. She instead elects to walk all the way around the Klementi's house and up Meadow Lane to the woods. Egon takes short walks with his two tiny dogs many times during the day.

Thanks for you time, Mary Ellen Kinion

CASE NO.: 14-CV-0260

DEPT. NO.: II

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

ORDER

On April 22, 2016, Third-Party Defendant, Mary Kinion ("Kinion"), by and through her counsel, Glogovac & Pintar, filed a Motion for Summary Judgment. On May 13, 2016, Defendant/Counterclaimant, Jeffrey Spencer ("Spencer") filed an Opposition. Kinion replied on May 23, 2016. On January 30, 2017, a hearing and oral argument was held.

This action arises out of a dispute between neighbors that live in the Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake Tahoe. In 2013, Spencer was criminally prosecuted by the Douglas County District Attorney's office for the alleged

assault of an elderly neighbor, Helmut Klementi. Spencer was acquitted of the criminal charges. Helmut Klementi then filed a civil action against Spencer seeking recovery for personal injuries arising from the alleged assault. In turn, Spencer asserted a counterclaim against Kinion and others consisting of claims for malicious prosecution and civil conspiracy.

Kinion now moves this Court for an Order granting summary judgment. Kinion avers that, as a matter of law, Spencer cannot prevail on his claim for malicious prosecution against her.

Summary Judgment Standard

Summary judgment is appropriate when the record demonstrates that no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. Wood v. Safeway, Inc., 121 Nev. 724,729,121 P.3d 1026, 1029 (2005). The pleadings and the record are construed in the light most favorable to the nonmoving party. Id. However, the nonmoving party must do more than simply show that there is some metaphysical doubt as to the material facts. Id. at 732 See also Torrealba v. Kesmetis, 124 Nev. 95, 100, 178 P.3d 716, 720 (2008) (explaining the burden on the moving party is to set forth facts demonstrating the existence of a genuine issue in order to withstand a disfavorable summary judgment.")

The Supreme Court of Nevada follows the federal approach outlined in Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986) with respect to burdens of proof and persuasion in the summary judgment context. See Cuzze v. Univ. & Comty. College Sys. Of Nevada, 123 Nev. 598, 601, 172 P.3d 131, 134 (2007). The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323, 106 S.Ct. 2548. If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact. Wood. 121 Nev. At 732, 121 P.3d at 1031. The manner in which a party may satisfy its burden of production depends on which party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim. Or (2) "pointing out ... that there is an absence of evidence to support the nonmoving party's case." Cuzze, 123 Nev. At 302-03, 172

P.3d at 134. In such cases, in order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact. Wood, 121 Nev. At 732, 121 P.3d at 1031.

Discussion

On February 3, 2015, Spencer filed a document entitled Answer and Counterclaims. In the Counterclaim, Spencer alleges the following:

> 14. On December 18, 2012, Kinion attended a KGID board meeting and stated that she witnessed Spencer use his snow plow to intentionally batter E. Klementi with snow, ice and debris.
>
> 21. That the statements of Counterdefendants E. Klementi, El. Klementi and Kinion concerning Spencer's use of the snow plow to (i) berm in the Klementi's driveway and (ii) intentionally cause E. Klementi to be battered with snow, ice and/or debris from the road were false.
>
> 24. The above-mentioned false statements were made by the Counterdefendants for the purpose of persuading and inducing the State to prosecute Spencer for Exploitation of an Elderly Person pursuant to NRS 200.0592 and NRS 200.0599.
>
> 26. The false statements outlined above actually caused the State to institute criminal proceedings and charge Spencer with three counts of Exploitation of an Elderly Person pursuant to NRS 200.0592 and NRS 200.0599 predicted entirely upon the false and malicious statements of the Counterdefendants.

The Counterclaim alleges claims for Malicious Prosecution (First Claim for Relief) and Civil Conspiracy (Second Claim for Relief). The elements for a claim of malicious prosecution are: "(1) want of probable cause to initiate the prior criminal proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4) damages." LaMantia v. Redisi, 118 Nev. 27, 38 P.3d 877, 879-80 (2002). The Nevada Supreme Court has explained that "[a] malicious prosecution claim requires that the defendant initiated, procured the institution of, or actively participated in the continuation of a criminal proceeding against the plaintiff." Id.

In this case, the undisputed facts show that on December 18, 2012, the incident between Helmut Klementi and Spencer occurred. It is alleged that Spencer assaulted Helmut Klementi while he was in the street taking pictures of the snow berm in front of his brother's house. The Douglas County Sheriff's Office responded and conducted an investigation of the incident. As

part of that investigation, Douglas County Deputies interviewed Helmut Klementi, Egon Klementi, Elfie Klementi, Janet Wells, Spencer and Marilyn Spencer. According to the Douglas County Sheriff's Report Spencer informed the sheriff deputies that he attacked Helmut because he believed Helmut was breaking into his truck. Spencer also claimed that he thought Helmut was a teenager in a hoodie. Ultimately, the sheriff deputies did not find Spencer's account to be credible and, as a result, Spencer was arrested for battery and abuse of an elder.

Following Spencer's arrest, the Douglas County Deputy District Attorney's office pursued criminal charges. At the hearing on January 30, 2017, Maria Pence, the Douglas County Deputy District Attorney who prosecuted the criminal matter against Spencer testified. Ms. Pence testified that no one was involved in the charging decision other than herself. She further testified that the original charges filed against Spencer were for Battery, a misdemeanor, Intimidation of a Witness to Influence Testimony, a Category D Felony, and Exploitation of an Elderly Person, a gross misdemeanor. Later, the gross misdemeanor charge was enhanced to a felony by Ms. Pence based on the medical records that showed that Helmut Kelmenti had received substantial body injuries.

The undisputed facts show that Kinion had no involvement in the Douglas County Deputy Sheriff's decision to arrest Spencer on December 18, 2012. The facts also show that while Kinion met with Ms. Pence at the Tahoe Justice Court, nothing that Kinion did or said resulted in the charges against Spencer being enhanced. Kinion was simply told by Ms. Pence that, "if you have any information you think that would be relevant or helpful, please write it down and send it to the District Attorney's Office." Transcript p. 22: 16-23. Kinion did that and sent a letter to the District Attorney's Office that was received in that office on February 22, 2013. Exhibit 1.

Based on the foregoing, Spencer has failed to provide any evidence that would support a claim for malicious prosecution against Kinion. For these reasons, summary judgment on the claim for malicious prosecution is GRANTED.

///

Conclusion

The Court has considered the pleadings, the exhibits attached thereto, and the record in its entirety. Accordingly, and good cause appearing, the Court **GRANTS** the Motion for Summary Judgment.

IT IS SO ORDERED

DATED this 30 day of March, 2017.

DISTRICT JUDGE

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CASE NO.: 14-CV-0260

DEPT. NO.: I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS

Counter-defendant, Mary Ellen Kinion ("Kinion"), by and through her attorneys of record, Glogovac & Pintar, and pursuant to NRCP 18.005 and NRS 18.010, respectfully submits this Reply in Support of her March 7, 2017 Motion for Attorney's Fees and Costs ("Motion").

This Reply is based upon the attached Memorandum of Points and Authorities along with all papers and pleadings on file herein.

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I.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Kinion is Entitled to Attorney Fees and Costs.

NRS 18.010(2)(b) states:

> Without regard to the recovery sought, when the court finds that the claim, **counterclaim**, cross-claim or third-party complaint or defense of the opposing party **was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations.** It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and **impose sanctions pursuant to Rule 11** of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.(*Emphasis added*).

The evidence and testimony in this matter unequivocally shows that Kinion had absolutely nothing to do with Spencer's arrest, the charges brought against him, or the enhancement of the gross misdemeanor for exploitation of an elderly person. Rather, these decisions were made solely by Douglas County law enforcement. This fact has already been litigated and culminated with this Court granting Kinion's Motion for Summary Judgment in regard to Spencer's malicious prosecution claim on January 31, 2017.

In Spencer's Opposition to Kinion's motion for attorney's fees and costs ("Opposition"), Spencer attempts to re-litigate the extent of Kinion's involvement in an effort to justify his malicious prosecution claim. However, in doing so, he only confirms that such claim was brought without reasonable grounds. Accordingly, Kinion's motion must be granted pursuant to NRS 18.010.

Central to this dispute is a letter Kinion wrote to Ms. Pence on or around February 22, 2013. According to Ms. Pence, the letter was drafted after Ms. Pence spoke to Kinion and stated "if you have any information you think would be relevant or helpful, please write in down and send it to the District Attorney's Office." "Exhibit 1," Hearing Transcript, p. 22:21-23. In his Opposition, Spencer states "whatever Ms. Kinion said and did after that which

influenced the reports upon which Ms. Pence relied, could have impacted the bringing of criminal charges, which charges went far beyond the incident of December 18, 2012, going back to May 2012." Opposition, p. 7:10-12. This statement is speculative, conclusory, and completely contrary to all evidence and testimony. Indeed, the criminal charges against Spencer were filed *before* the February 22, 2013 letter. Moreover, Ms. Pence has stated, under oath, that Kinion had no effect on Spencer's arrest or the charges brought against him, and that the decision to enhance the exploitation of the elderly charge from misdemeanor to felony was based on the medical records rather than statements from Kinion. Exhibit 1, p. 14:8-10.

In his Opposition, Spencer even admits that neither he, nor his counsel, had a copy of the February 22, 2013 letter when the claim against Kinion for malicious prosecution was asserted. The Opposition also relies on alleged testimony made at the criminal trial but has failed to produce the transcripts from that trial for Kinion or the court to review. See, Opposition Brief p. 2:19-20, p. 3:22-25, p. 4:1-3. In essence, Spencer's claim that Kinion did or said something to affect Spencer's criminal is not only untrue, but is also based on supposition as to what the evidence of the criminal trial was, as opposed to the evidence itself. This is a simple, clear, and obvious example of bringing a counterclaim without "reasonable grounds," and it is readily apparent that the counterclaim was frivolous and vexatious. A frivolous claim is one that is "both baseless and made without a reasonable and competent inquiry." Bergmann v. Boyce, 109 Nev. 670, 676, 856 P.2d 560, 564 (1993), citing Townsend v. Holman Consulting Corp., 929 F.2d 1358, 1362 (9th Cir.1990).

B. Kinion is Entitled to Attorney's Fees and Costs Despite Spencer Having Outstanding Claims

Spencer argues that Kinion has no right to attorney's fees, because she is not the prevailing party on all the counterclaims against her. This is an incorrect interpretation of the law. Kinion does not need to succeed on each claim in order to recover attorney's fees for one baseless claim. First, such an interpretation of the law is contrary to the plain language of NRS 18.010(2)(b), which provides for an award of attorney's fees. "***when*** the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was

brought or maintained without reasonable ground." (Emphasis supplied). The statute is silent in regard to final adjudication of all claims between parties, and instead provides, for an award of attorney's fees at the time *a* claim is found to be baseless. Moreover, the statute reads that the courts should punish the filing of baseless claims, as they "hinder the timely resolution of meritorious claims." This inherently implies that the statute is designed to allow courts to quickly dispose of frivolous claims in order to more efficiently adjudicate over the remaining meritocrats claims.

Nevada caselaw also supports the notion that Kinion need not prevail on each and every claim in order to be awarded attorney's fees incurred in defending a frivolous claim. As the Nevada Supreme Court has noted, "the prosecution of one colorable claim does not excuse the prosecution of five groundless claims." Bergmann, at 675, 856 P.2d at 563 citing Trus Joist Corp. v. Safeco Ins. Co. of Am., 153 Ariz. 95, 735 P.2d 125, 140 (Ct.App.1986). In that case, the Court determined that even if some claims were meritorious while others were baseless, trial courts should allocate attorney's fees between the grounded and groundless claims. Id. at 676, 856 P.2d at 563, citing Hornwood v. Smith's Food King No. 1, 107 Nev. 80, 87, 807 P.2d 208, 213 (1991).

C. Conclusion

Nothing that Kinion said or did affected the criminal charges brought against Spencer. Based on the evidence and admissions contained in Spencer's Opposition, it is clear the malicious prosecution claim was filed without reasonable grounds and solely to harass. Nevada statute and caselaw encourages quick disposal of such frivolous claims and provides for an award of reasonable attorney's fees and costs in order to discourage litigants from bringing baseless claims. Accordingly, Kinion should therefore be awarded her attorney's fees and costs.

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AFFIRMATION

Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 5th day of April, 2017.

GLOGOVAC & PINTAR

By: _____

MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Counterdefendant,
Mary Ellen Kinion

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and that I served the foregoing document(s) described as follows:

REPLY IN SUPPORT OF MOTION FOR ATTORNEY'S FEES AND COSTS

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

addressed as follows:

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Counter-Defendant Helmut Klementi

Tanika M. Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorneys for Defendants Rowena Shaw and Peter Shaw

William Routsis, Esq.
1070 Monroe Street
Reno, NV 89509
Attorneys for Counter-Claimant Jeffrey Spencer

Lynn G. Pierce, Esq.
440 Ridge St., Suite 2
Reno, NV 89501
Attorneys for Counter-Claimant Jeffrey Spencer

David Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty St., Suite 1050
Reno, NV 89509
Attorneys for Defendant Jeffrey Spencer

Dated this 5 day of April, 2017.

Melissa L. Welch

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SUSAN R. WILLIAMS
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CASE NO. 14-CV-0260

DEPT. NO. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER,

Defendant.

JEFRFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, ELFRIDE KLEMENTI, an individual, MARY ELLEN KINION, an individual, ROWENA SHAW, and individual, PETER SHAW, an individual, & DOES 1-5,

Counterdefendant & Third Party Defendants.

Case No. 14-CV-0260

Dept. No. I

DEFENDANT ROWENA SHAW AND PETER SHAW'S ANSWER TO DEFENDANT/COUNTER-CLAIMANT/THIRD-PARTY PLAINTIFF JEFFREY SPENCER'S AMENDED COUNTERCLAIM AND THIRD PARTY COMPLAINT

COMES NOW Defendants ROWENA SHAW and PETER SHAW, by and through attorney Tanika M. Capers, Esq. and in answer to Defendant/Counterclaimant/Third-Party

Plaintiff Jeffrey Spencer's Amended Counterclaim and Third Party Complaint states as follows:

1. Answering Paragraphs 6 and 7 of the Complaint, these answering Defendants admit to each and every allegation contained therein.

2. Answering Paragraphs 1, 2, 3, 4, 5, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72 and 73 of the Complaint, these answering Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth of the allegations contained therein and, therefore, upon said grounds, deny each and every allegations contained therein.

FIRST CLAIM FOR RELIEF - DEFAMATION

3. Answering Paragraph 74 of the Complaint, these answering Defendants repeat and reallege their responses to the Paragraphs preceding these Paragraphs, respectively, as though fully set forth herein.

4. Answering Paragraphs 75, 76, 77 78, 79 and 80 of the Complaint, these answering Defendants deny each and every allegation contained therein.

SECOND CLAIM FOR RELIEF – MALICIOUS PROSECUTION

5. Answering Paragraph 80 of the Complaint, these answering Defendants repeat and reallege their responses to the Paragraphs preceding these Paragraphs, respectively, as though fully set forth herein.

6. Answering Paragraphs 81, 82, 83, 84 and 85 of the Complaint, these answering Defendants deny each and every allegation contained therein.

THIRD CLAIM FOR RELIEF – CIVIL CONSPIRACY (DEFAMATION)

7. Answering Paragraph 86 of the Complaint, these answering Defendants repeat and reallege their responses to the Paragraphs preceding these Paragraphs, respectively, as though fully set forth herein.

8. Answering Paragraphs 87, 88, 89, 90, 91 and 92 of the Complaint, these answering Defendants deny each and every allegation contained therein.

FOURTH CLAIM FOR RELIEF – CIVIL CONSPIRACY (MALICIOUS PROSECUTION)

9. Answering Paragraph 93 of the Complaint, these answering Defendants repeat and reallege their responses to the Paragraphs preceding these Paragraphs, respectively, as though fully set forth herein.

10. Answering Paragraphs 94, 95, 96, 97, 98 and 99 of the Complaint, these answering Defendants deny each and every allegation contained therein.

FIFTH CLAIM FOR RELIEF – PUNITIVE DAMAGES

11. Answering Paragraph 100 of the Complaint, these answering Defendants repeat and reallege their responses to the Paragraphs preceding these Paragraphs, respectively, as though fully set forth herein.

12. Answering Paragraphs 101, 102 and 103 of the Complaint, these answering Defendants deny each and every allegation contained therein.

SIXTH CLAIM FOR RELIEF – INFLICTION OF EMOTIONAL DISTRESS

13. Answering Paragraph 104 of the Complaint, these answering Defendants repeat and reallege their responses to the Paragraphs preceding these Paragraphs, respectively, as though fully set forth herein.

14. Answering Paragraphs 105, 106 and 107 of the Complaint, these answering Defendants deny each and every allegation contained therein.

AFFIRMATIVE DEFENSES

Affirmative Defense One: *Failure to State a Claim.* The allegations contained in the Plaintiff's Complaint fails to state a cause of action against Defendants upon which relief can be granted.

Affirmative Defense Two: *Comparative Fault of the Plaintiff.* Plaintiff's damages, if any, were proximately caused and contributed to, in whole or in part, by Plaintiffs' own conduct, thereby completely or partially barring the Plaintiffs' recovery herein; and any judgment in favor of the Plaintiffs against these answering Defendants should be reduced in proportion to Plaintiffs' own comparative negligence.

Affirmative Defense Three: *Comparative Fault of the Plaintiff as Complete Bar to Recovery.* The incident alleged in the Complaint and the alleged injuries and damages, if any, to Plaintiff was proximately caused or contributed to by Plaintiff's own negligence, and the negligence of the Plaintiff exceeds the negligence, if any, of the Defendants, and the Plaintiff is therefore barred from any recovery at all.

Affirmative Defense Four: *Fictitious Defendants.* Defendants are not legally responsible for the acts and/or omissions of those who are named as fictitious defendants.

Affirmative Defense Five: *Comparative Fault of Unnamed Third Parties.* Plaintiff's injuries and damages, if any, were proximately caused and contributed to, in whole or in part, by the acts or omissions of others not named in this lawsuit; wherefore any recovery obtained by Plaintiff from these Defendants should be reduced by an amount equal to the percentage of the fault of those unnamed persons.

Affirmative Defense Six: *Apportionment of Fault among Named Defendants.* Plaintiff's damages, if any, were proximately caused and contributed to, in whole or in part, by the acts or omissions of the other named defendants; wherefore any fault assigned in this case must be divided between the defendants so that each defendant pays only his, her, or its own share.

Affirmative Defense Seven: *Pre-existing or Otherwise Unrelated Cause.* The injuries and damages claimed to have been suffered by the Plaintiff, if any, were caused by pre-existing, subsequent, or otherwise unrelated medical conditions, diseases, illnesses, infections, or other incidents affecting the Plaintiff.

Affirmative Defense Eight: *Treatment Not Reasonable, Related, or Medically Necessary.* Plaintiff's alleged medical treatment and related expenses were not reasonable, not related to injuries sustained as a result of Defendants' negligence, if any, and/or not medically necessary.

Affirmative Defense Nine: *Speculative Damages.* The damages alleged by the Plaintiff are speculative, are not supported by proof, and are not compensable as a matter of law.

Affirmative Defense Ten: *Unforeseeability of Injuries and Damages.* The injuries and damages Plaintiff allege to have sustained were unforeseeable.

Affirmative Defense Eleven: *Attorney's Fees and Costs.* Defendants have employed the services of an attorney to defend this action and a reasonable sum should be allowed Defendants for attorney's fees and for costs incurred in defending this action.

Affirmative Defense Twelve: *Additional Affirmative Defenses.* Pursuant to Nevada Rules of Civil Procedure, Rule 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as sufficient facts were not available after reasonable

inquiry upon the filing of the Defendants' Answer, and therefore, Defendants' have the right to amend this answer to allege additional affirmative defenses as subsequent investigation warrants.

WHEREFORE, Defendants, Rowena Shaw and Peter Shaw, pray:

1. That Plaintiff take nothing by way of his Complaint on file;

2. For an award of costs to these answering Defendants; and

3. For such other and further relief as the Court deems proper.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned affirm that this document does not contain the social security number of any person.

Dated this 1st day of July, 2017

TANIKA M. CAPERS
Nevada Bar No. 10867
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Phone: (702) 733-4989, Ext. 51652
Fax: (877) 888-1396
tcapers@amfam.com
Attorney for Defendants Rowena Shaw and Peter Shaw

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that on this ~~1st~~ 5th day of July, 2017, the foregoing **DEFENDANT ROWENA SHAW AND PETER SHAW'S ANSWER TO DEFENDANT/COUNTER-CLAIMANT/THIRD-PARTY PLAINTIFF JEFFREY SPENCER'S AMENDED COUNTERCLAIM AND THIRD PARTY COMPLAINT** was served on the following by placing an original or true copy thereof in a sealed envelope placed for collection and mailing in Las Vegas, Nevada, to:

Christian Moore, Esq.
Douglas Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Ste. 300
Reno, NV 89519
Attorneys for Helmut Klementi

William J. Routis, II, Esq.
1070 Monroe St.
Reno, NV 89509
Attorney for Jeffrey Spencer

Lynn G. Pierce, Esq.
440 Ridge Street, Suite 2
Reno, NV 89501
Attorney for Jeffrey Spencer

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 West Liberty Street, Ste. 1050
Reno, NV 89501
Attorney for Counterclaimant Jeffrey Spencer

Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, NV 89509
Attorney for Mary Ellen Kinion

Virginia Montezal
Legal Assistant to Tanika M. Capers, Esq.

ORIGINAL

FILED

DAVID M. ZANIEL, ESQ.
Nevada Bar No. 7962
RANALLI, ZANIEL, FOWLER & MORAN
50 West Liberty Street, Suite 1050
Reno, Nevada 89501
Telephone: (775) 786-4441
Attorneys for Defendant
Jeffrey D. Spencer

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2017 SEP 12 PM 3:10
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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendant.

Case No. 14-CV-0260
Dept. No. I

JEFFREY D. SPENCER,

Counterclaimant,

Vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, ROWENA SHAW, an individual, PETER SHAW, an individual & DOES 1-5,

Counterdefendants & Third Party Defendants

STIPULATION FOR DISMISSAL WITH PREJUDICE

IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff, HELMUT KLEMENTI, by and through his attorney of record, Christian Moore, Esq., of LEMONS,

GRUNDY & EISENBERG, and Defendant, JEFFERY D. SPENCER, by and through his attorney of record, David Zaniel, Esq., of RANALLI, ZANIEL, FOWLER & MORAN, that this matter be dismissed with prejudice, with each party bearing their own fees, costs, and interests. This Stipulation is inclusive of JEFFERY SPENCER as a Defendant in this action only, and is not applicable to the Counterclaim filed into the above-titled case.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 8th day of September 2017.

RANALLI, ZANIEL, FOWLER & MORAN

David M. Zaniel, Esq.
Nevada Bar No. 7962
50 West Liberty Street, Ste 1050
Reno, Nevada 89501
Attorney for Defendant

DATED this 7th day of September 2017.

LEMONS, GRUNDY & EISENBERG

for Christian L. Moore, Esq.
Nevada Bar No. 3777
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Attorney for Plaintiff

CERTIFICATE OF MAILING

Pursuant to Nevada Rules of Civil Procedure 5(b), I certify that I am an employee of RANALLI & ZANIEL, LLC and that on the 12th day of ~~December~~ September 2017 and I certify that service of the foregoing STIPULATION FOR DISMISSAL WITH PREJUDICE was made to all parties to this action by:

_____ placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada;

_____ personal delivery, received by _____;

_____ facsimile;

_____ United States Postal Service Express Mail or other overnight delivery; or

X Reno/Carson Messenger Service

addressed as follows:

Lynn G. Pierce Esq.
LYNN G. PIERCE ATTORNEY AT LAW
515 Court Street, Suite 2f
Reno, Nevada 89501
Attorney for Counter-Claimant

GLOGOVAC & PINTAR
427 West Plumb Lane
Reno, Nevada 89509
Attorney for Counter-Defendant Kinion, Klementi

Michael Pintar, Esq.
Douglas R. Brown, Esq.
LEMONS, GRUNDY & EISENBURG
6005 Plumas Street, Third Floor
Reno, Nevada 89519
Attorney for Plaintiff

William Routsis, Esq.
1070 Monroe Street
Reno, Nevada 89509
Attorney for Counter-Claimant

Tanika Capers, Esq.
AMERICAN FAMILY INSURANCE
6750 Via Austi Parkway, Suite 310
Las Vegas, Nevada 89119
Attorney for Peter and Rowena Shaw

Employee of *Ranalli, Zaniel, Fowler & Moran*

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BOBBIE R. WILLIAMS
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Case No. 14-CV-0260

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

v.

JEFFREY D. SPENCER,

Defendant.

_____/

ORDER

JEFFREY D. SPENCER,

Counterclaimant,

v.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual,
ELFRIDE KLEMENTI, an individual,
MARY ELLEN KINION, an individual,
ROWENA SHAW, an individual,
PETER SHAW, an individual,
and DOES 1-5,

Counterdefendant and Third Party Defendants.

_____/

THIS MATTER comes before the Court upon a Stipulation for Dismissal with Prejudice in which the parties to the complaint, Plaintiff Helmut Klementi and Defendant Jeffrey D. Spencer, stipulate to the dismissal of the causes of action alleged within Plaintiff

Helmut Klementi's Amended Complaint filed on August 12, 2016, with prejudice; each side bearing their own fees, costs, and interest. The stipulation notes that the dismissal is not applicable to Jeffrey Spencer's counterclaim, now contained within his Second Amended Counterclaim & Third Party Complaint.

THEREFORE, good cause appearing, and pursuant to the stipulation, it is hereby ORDERED, ADJUDGED, and DECREED, that Plaintiff's Amended Complaint is dismissed with prejudice, with each of the parties thereto bearing their own fees and costs incurred as a result. The Second Amended Counterclaim & Third Party Complaint remains pending.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the jury fees posted herein on behalf of Defendant Jeffery Spencer in defense of the complaint, as amended, be returned to RANALLI & ZANIEL, LLC.

IT IS SO ORDERED.

Dated this 12 day of September, 2017.

STEVEN R. KOSACH
Senior District Judge

Copies served by mail this 17 day of ~~September~~ October, 2017, to:

Douglas R. Brown, Esq., Lemons, Grundy & Eisenberg, 6005 Plumas St., 3rd Floor, Reno, NV 89519; William Routsis, Esq., 1070 Monroe St., Reno, NV 89509; David Zaniel, Esq., Ranalli & Zaniel, LLC, 50 W. Liberty St., Ste. 1050, Reno, NV 89509; Michael A. Pintar, Esq., Glogovac & Pintar, 427 West Plumb Lane, Reno, NV 89509; Lynn G. Pierce, Esq., 440 Ridge St., Ste. 2, Reno, NV 89501; Tanika M. Capers, Esq., 6750 Via Austi Parkway, Ste. 310, Las Vegas, NV 89119.

Brenda Nilson

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Case No. 14-CV-0260

Dept. No. I

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

v.

JEFFREY D. SPENCER,

Defendant.

_____/

ORDER

JEFFREY D. SPENCER,

Counterclaimant,

v.

HELMUT KLEMENTI, an individual,
EGON KLEMENTI, an individual,
ELFRIDE KLEMENTI, an individual,
MARY ELLEN KINION, an individual,
ROWENA SHAW, an individual,
PETER SHAW, an individual,
and DOES 1-5,

Counterdefendant and Third Party Defendants.

_____/

THIS MATTER comes before the Court upon Counter-defendant Mary Ellen Kinion's Motion for Attorney's Fees and Costs. The motion is opposed. Having examined all relevant pleadings and papers on file herein, the Court now enters the following Order, good cause

appearing:

THAT the motion is partially GRANTED as set forth below.

On January 30, 2017, the Court granted Mary Ellen Kinion's motion for summary judgment regarding the claim of malicious prosecution alleged against her by Jeffrey Spencer.[1] The resulting written Order was filed on April 3, 2017. Mary Ellen Kinion now seeks an award of attorney's fees and costs pursuant to NRS Ch. 18, having prevailed with regard to that claim.

Nevada Revised Statute 18.010(2)(b) provides that "the court may make an allowance of attorney's fees to a prevailing party:"

> Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations.

The Court finds that Jeffrey Spencer's claim for malicious prosecution was brought and maintained without reasonable ground. Not only did the facts not support such a claim as delineated within the written order granting summary judgment, probable cause to initiate the prior criminal proceeding was *not* wanting, eliminating a necessary element to the malicious prosecution claim.

"[T]he elements of a malicious prosecution claim are: '(1) want of probable cause to initiate the prior criminal proceeding; (2) malice; (3) termination of the prior criminal proceedings; and (4) damage.'" *LaMantia v. Redisi*, 118 Nev. 27, 30, 38 P. 3d 877, 879 (2002). A "malicious prosecution claim requires that the defendant initiated, procured the institution of, or actively participated in the continuation of a criminal proceeding against the plaintiff." *Id.*, 118 Nev. at 30, 38 P.3d at 879-80. "[T]o recover for malicious prosecution,

---

[1] Egon Klementi and Elfriede Klementi formally joined in the motion for summary judgment.

plaintiff had to demonstrate that police officers 'commenced the criminal prosecution because of direction, request, or pressure' from defendants." *Lester v. Buchanen*, 112 Nev. 1426, 1429 (1996) (summary judgment sustained because record uncontroverted that defendant had a good faith belief that crime committed).

"It is only when the facts relating to probable cause are not in dispute that it becomes a question of law. *Bonamy v. Zenoff*, 77 Nev. 250, 362 P.2d 445. When such facts are in dispute, the issue is one of fact to be resolved by the trier of fact." *Miller v. Schnitzer*, 78 Nev. 301, 313, 371 P.2d 824, 830 (1962) ("conflicting evidence in malicious prosecution action raised jury question as to whether defendant had given 'housekeeping money' to plaintiff to do with as plaintiff pleased or whether plaintiff had embezzled such money").

Focusing on the first two elements of the four required to sustain a civil claim for malicious prosecution, malice can be inferred from a want of probable cause. *Id.*, 371 P.2d at 831. Regarding want of probable cause however, within his opposition to the motion for summary judgment Jeffrey Spencer attached a copy of the criminal complaint initiating the criminal court case against him. That complaint alleged a misdemeanor violation of NRS 200.481 and NRS 193.167, Battery on a Person Over 60 Years of Age, to wit: Jeffrey Spencer "did willfully and unlawfully use force and violence against Helmut Klementi" when he "struck Mr. Klementi in the back and knocked him to the ice covered road of Charles Avenue, all of which occurred in the County of Douglas, State of Nevada" on or about December 18, 2012. *See* Exhibit 1 to Opposition to Motion For Summary Judgment filed on May 18, 2016.

Within the Second Amended Complaint and Third Party Complaint, Jeffrey Spencer alleged the following:

/ / /

> 67. Evidence presented at trial established that HELMUT KLEMENTI had been knocked down by JEFFERY SPENCER who had run down his stairs and chased the figure he had seen by his truck, but there was no evidence that JEFFERY SPENCER had punched HELMUT KLEMENTI, and there was no credible evidence of intent to cause substantial bodily injury.

Second Amended Counterclaim and Third Party Complaint filed on August 19, 2016, p. 9, lines 23-26.

Thus, by his own admission it is uncontroverted that Jeffrey Spencer knocked down Helmut Klementi, who is known to be a man over sixty years of age. "It is firmly established . . . that the finding of probable cause may be based on slight, even marginal, evidence. *Sheriff v. Badillo*, 95 Nev. 593, 600 P.2d 221 (1979); *Perkins v. Sheriff*, 92 Nev. 180, 547 P.2d 312 (1976). The state need only present enough evidence to create a reasonable inference that the accused committed the offense with which he or she is charged. *LaPena v. Sheriff*, 91 Nev. 692, 541 P.2d 907 (1975)." *State v. Boueri*, 99 Nev. 790, 795, 672 P.2d 33, 36 (1983).

The Court finds it is established that Jeffrey Spencer knocked Helmut Klementi down as alleged within the relevant criminal complaint. The Court concludes that such act in and of itself provides probable cause for the crime originally alleged, noting that a magistrate also previously concluded probable cause was present, thereby allowing the criminal prosecution of Jeffrey Spencer to have moved forward; with probable cause established, the first element of a claim for malicious prosecution, specifically that there be want of probable cause, cannot be satisfied and no reasonable jury could so find.

With no basis factually or legally to bring the claim, the Court finds and concludes that Jeffrey Spencer's claim for malicious prosecution was alleged without reasonable basis. Therefore, pursuant to NRS 18.010(2)(b), attorney's fees are hereby awarded to the prevailing party, Mary Ellen Kinion, in the amount of $14,870.00 with regard to that claim.

In determining whether an award of attorneys' fees is reasonable, four factors provided within *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), are to be

considered. Based upon those four factors, the Court hereby determines that attorney's fees of $14,870.00 are reasonable in accordance with the following findings:

1. Professional Qualities: The law firm of Glogovac & Pintar is known to practice regularly and successfully in the State of Nevada, serving clients well during formal litigation of disputes. Based upon the quality of the pleadings contained within the record and the breadth of knowledge required to properly conduct the motion practice and defense conducted thus far in this matter, the Court finds the professional qualities of the primary billing attorney, Michael Pintar, as well as the law firm of Glogovac & Pintar, to be more than satisfactory and reasonable, particularly considering the maximum billing rate of only $150.00 per hour reflected within the supporting affidavit.

2. Character Of Work To Be Done: The motion for summary judgment, opposition, reply, and supporting documentation reflect the substance of the underlying and current disputes between the parties, with the nature of the matter being important to both sides. The legal work necessary consisted of conducting and participating in contested litigation, which in turn required legal analysis and research in preparation for, and specific to, this matter as it has progressed through the specific motion practice. Motion practice itself is an acquired skill possessed by the parties' counsel, including the presentation of oral arguments during multiple hearings in this instance. Pursuit of discovery was also necessary.

3. The Work Actually Performed: Based upon the Court's observations during oral argument and while analyzing the substance of the pleadings during the course of this motion practice, the Court finds the work presented by Glogovac & Pintar to have been eminently satisfactory and reasonable.

4. The Result Obtained: After pursuit of discovery, submission of written briefs, and presentations in open court, including examination of a testifying witness, summary judgment

was entered in favor of the counter-defendant with regard to malicious prosecution. Entry of summary judgment is not a result often achieved in litigation practice.

"[G]ood judgment would dictate that each of these factors be given consideration by the trier of fact and that no one element should predominate or be given undue weight." *Brunzell*, 85 Nev. at 349, 455 P.2d at 33. Considering the subject matter presented during the motion practice at issue, the quality and character of the work, the work actually performed, and the result achieved, the Court finds the amount of attorney fees originally requested to be in accordance with the *Brunzell* factors and reasonable.

However, the requested fees of $16,160.00 have been reduced by $1,290.00 based upon a review of the supporting billing sheets, which reveals several items not pertinent to the summary judgment motion such as entries dated 4/8/16 (re: declaratory relief action), 4/20/16 (review of case file regarding procedural irregularities), 5/6/16 (meeting with insured re: legal status), 5/22/16 (substitution of counsel and re: amending complaint), and 8/18/16 (opposition to motion to amend).

Regarding an award of costs, to the extent discretion is afforded the Court within NRS 18.050, costs of $1,083.75 are hereby awarded to Mary Ellen Kinion, consisting of court reporters' fees of $262.50 for the deposition of Rowena and Peter Shaw, $330.00 (appearance fee for hearing), and $491.25 for transcripts of Marilyn & Jeffery Spencer Trial. All other costs contained within the Memorandum of Costs and Disbursements filed into the Court's record on March 21, 2017, may be pursued further upon the conclusion of this matter.

IT IS SO ORDERED.

Dated this 17 day of September, 2017.

STEVEN R. KOSACH
Senior District Judge

Copies served by mail this 19 day of October, 2017, to:

Douglas R. Brown, Esq., Lemons, Grundy & Eisenberg, 6005 Plumas St., 3rd Floor, Reno, NV 89519; William Routsis, Esq., 1070 Monroe St., Reno, NV 89509; David Zaniel, Esq., Ranalli & Zaniel, LLC, 50 W. Liberty St., Ste. 1050, Reno, NV 89509; Michael A. Pintar, Esq., Glogovac & Pintar, 427 West Plumb Lane, Reno, NV 89509; Lynn G. Pierce, Esq., 515 Court Street, Reno, NV 89501; Tanika M. Capers, Esq., 6750 Via Austi Parkway, Ste. 310, Las Vegas, NV 89119.

Brenda Nelson
Judicial Assistant

CASE NO.: 14-CV-0260

DEPT. NO.: II

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

_____/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on the 19th day of October, 2017 the above-entitled court entered its Order awarding attorney's fees and costs to Counter-defendants/Third-party Defendants. A copy of said Order is attached.

///

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///

GLOGOVAC & PINTAR
ATTORNEYS AT LAW
427 W. Plumb Lane
RENO, NEVADA 89509
(775) 333-0400

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 25 day of October, 2017.

GLOGOVAC & PINTAR

By: _____
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Third-Party Defendants,
Egon Klementi and Elfriede Klementi

GLOGOVAC & PINTAR
ATTORNEYS AT LAW
427 W. Plumb Lane
RENO, NEVADA 89509
(775) 333-0400

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and I served the foregoing document(s) described as follows:

NOTICE OF ENTRY OF ORDER

On the party(s) set forth below by:

X Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

____ Personal delivery.

____ Facsimile (FAX).

____ Federal Express or other overnight delivery.

addressed as follows:

William Routsis, Esq.
1070 Monroe Street
Reno, NV 89509
Attorneys for Jeffrey Spencer

Lynn G. Pierce, Esq.
515 Court Street, Suite 2f
Reno, NV 89501
Attorneys for Jeffrey Spencer

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Helmut Klementi

David Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty St., Suite 1050
Reno, NV 89509
Attorneys for Jeffrey Spencer

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorneys for Rowena Shaw and Peter Shaw

Dated this 30th day of October, 2017.

Employee of Glogovac & Pintar

CASE NO.: 14-CV-0260

DEPT. NO.: II

RECEIVED
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Douglas County
District Court Clerk

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI,

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5,

Defendants.

/

JEFFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

SUGGESTION OF DEATH ON THE RECORD

Pursuant to NRCP 25(a)(1), the undersigned attorney for the above-named Counterdefendants suggests upon the record the death of Egon Klementi.

///

///

///

///

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 2nd day of November, 2017.

GLOGOVAC & PINTAR

By: _____
MICHAEL A. PINTAR, ESQ.
Nevada Bar No. 003789
Attorneys for Counterdefendants

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law offices of Glogovac & Pintar, 427 W. Plumb Lane, Reno, NV 89509, and I served the foregoing document(s) described as follows:

SUGGESTION OF DEATH ON THE RECORD

On the party(s) set forth below by:

__X__ Placing an original or true copy thereof in a sealed envelope placed for collection and mailing in the United States Mail, at Reno, Nevada, postage prepaid, following ordinary business practices.

_____ Personal delivery.

_____ Facsimile (FAX).

_____ Federal Express or other overnight delivery.

addressed as follows:

William Routsis, Esq.
1070 Monroe Street
Reno, NV 89509
Attorneys for Jeffrey Spencer

Lynn G. Pierce, Esq.
515 Court Street, Suite 2f
Reno, NV 89501
Attorneys for Jeffrey Spencer

Douglas R. Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas St., 3rd Floor
Reno, NV 89519
Attorneys for Helmut Klementi

David Zaniel, Esq.
Ranalli & Zaniel, LLC
50 W. Liberty St., Suite 1050
Reno, NV 89509
Attorneys for Jeffrey Spencer

Tanika Capers, Esq.
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
Attorneys for Rowena Shaw and Peter Shaw

Dated this 2nd day of November, 2017.

Employee of Glogovac & Pintar

RECEIVED
FEB 26 2018
Douglas County
Clerk

FILED
2018 FEB 26 PM 3:21
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CASE NO. 14-CV-0260

DEPT. NO. II

IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF DOUGLAS

HELMUT KLEMENTI;

Plaintiff,

vs.

JEFFREY D. SPENCER & DOES 1-5;

Defendant.

JEFRFREY D. SPENCER,

Counterclaimant,

vs.

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, ELFRIDE KLEMENTI, an individual, MARY ELLEN KINION, an individual, ROWENA SHAW, and individual, PETER SHAW, an individual, & DOES 1-5,

Counterdefendants & Third Party Defendants.

Case No. 14-CV-0260
Dept. II

THIRD PARTY DEFENDANT ROWENA SHAW AND PETER SHAW'S MOTION FOR SUMMARY JUDGMENT

COMES NOW Third-Party Defendants, ROWENA SHAW and PETER SHAW (hereinafter referred to as "Shaws"), by and through their counsel of record, Tanika M. Capers, Esq., and hereby move this honorable court for Summary Judgment as to the Shaws only, pursuant to N.R.C.P. 56.

This Motion is made and based upon the Nevada Rules of Civil Procedure, the pleading and papers on file herein, the Memorandum of Points and Authorities herein, the exhibits attached hereto, and upon such other oral or documentary evidence as may be presented at the time of the hearing.

Dated this 23rd day of February, 2018

TANIKA M. CAPERS
Nevada Bar No. 10867
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
tcapers@amfam.com
Attorney for Defendant Rowena Shaw and Peter Shaw

MEMORANDUM OF POINTS AND AUTHORITIES

I.

UNDISPUTED STATEMENT OF FACTS

1. This is an action stemming from disputes in the Kingsbury Grade General Improvement District ("KGID") on the south shore of Lake Tahoe.

2. Peter and Rowena Shaw ("Shaws") have lived in the KGID neighborhood for over thirty-seven (37) years. During the summer of 2012, Helmut and Egon Klementi also lived in the neighborhood. Since then, Mr. Helmut Klementi has passed. His brother Egon still lives in the neighborhood with his wife Elfie Klementi. Egon and Elfie Klementi live across the street from Defendant/Third-Party Plaintiff Jeffrey Spencer ("Spencer").

3. Spencer is employed as a snowplow operator during winter months.

4. In the summer of 2012, a dispute arose between the aforementioned neighbors including Mary Ellen Kinion ("Kinion") and Spencer. The dispute escalated to the point that in 2013, Spencer was criminally prosecuted for assault on Helmut Klementi. In response, Spencer asserted a counterclaim against Helmut Klementi, Kinion, Egon and Elfie Klementi

and the Shaws.

5. During the spring of 2012, Spencer built a six foot tall fence around his property.

6. The height of the fence created a blind intersection in front of the Shaws residence and created a public safety risk. **See** Exhibit A, Rowena Shaw's Deposition, Page 8, lines 23-25 and Page 9, lines 1 & 2. Due to the risk factor the fence presented, Rowena Shaw contacted KGID because she believed they were responsible for code enforcement and was eventually referred to the DA's Office and the Planning Commission. Id. at Page 9, lines 3-8.

7. The Shaws wrote a letter to the Planning Commission regarding the risk the fence presented and was informed the Spencers requested a variance. Id. at Page 9, lines 9-17.

8. Eventually, the fence was required to be removed.

9. The Shaws have approximately 6 security cameras on their property. The hard drive stores what the video records. Mrs. Shaw is not sure if the storage is 15 or 30 days. Id. at Page 11, Lines 18-25

10. Around December of 2012, the Shaws installed the cameras because of difficulties between the Spencers and neighbors. Id. at Page 14, lines 10-25 and Page 15, line 1.

11. In mid-December 2012, the Shaws' driveway was bermed and their flower bed was destroyed by the plow. Id. at Page 15, lines 2-19.

12. On December 18, 2012, the Shaws went to a KGID meeting for the first time due to concerns regarding their driveway being bermed and flowerbed being destroyed. Id. at Page 17, lines 16-23. They spoke at the meeting during the public comment portion and also commented on the Spencer's fence. Id. at Page 20, lines 1-12.

13. The Board President at the KGID meeting, Dr. Norman suggested the Shaws "keep documenting and to take pictures." Id. at Page 20, lines 20-15 and Page 21, line 1.

14. After the KGID meeting, the Shaws went out of town and have no first-hand knowledge of the incident involving Spencer and Helmut Klementi. Id at Page 21, lines 9-25.

15. When the Shaws returned home two days after the KGID meeting, a voicemail from Elfie Klementi informed them that Helmut had been assaulted. Id at Page 22, lines 1-9.

16. Around two weeks after the incident, a police agency contacted the Shaws and asked to look at any videos from their cameras from the night of the incident. Id at Page 24, lines 3-24

17. The DA's office eventually contacted the Shaws and asked for a copy of their video. Id at Page 40, lines 6-22.

18. Mrs. Shaw made a copy of the video and Officer Schultz picked it up at her home. Id. at Page 41, lines 12-25.

19. There is no evidence that the Shaws had any involvement in Deputy McKone's decision to arrest Spencer on December 18, 2012. **See** Exhibit B, Deposition of Officer McKone, Id. at Page 62, lines 2-24.

20. The Shaws were not involved in the criminal prosecution against Spencer until the Deputy District Attorney contacted them and requested they provide any information that they may have regarding the incident and events relevant to the neighborhood.

21. As part of Spencer's trial, only Mrs. Shaw was subpoenaed and required to provide testimony. Her only testimony was regarding her security cameras.

22. In a January 2017 hearing before this Court, Deputy District Attorney Maria Pence testified that the Shaws had no involvement in her charging decisions regarding Spencer.

II.

LAW AND ARGUMENT

1. Summary Judgment is appropriate when there is no dispute as to the material facts in question.

Summary judgment is appropriate under NRCP 56 when the pleadings, depositions,

answers to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 Nev. 724, 121 P.3d 1026 (Nev. 2005).

A genuine issue of fact is one that is relevant to an element of a claim or defense and whose existence might affect the outcome of the suit. The materiality of a fact is thus determined by the substantive law governing the claim or defense. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986).

When reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party. *Wood v. Safeway, Inc.*, 121 P.3d 1026 (2005) citing *Tucker v. Action Equip. and Scaffold Co.*, 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997). "This court has often stated that the nonmoving party may not defeat a motion for summary judgment by relying 'on the gossamer threads of whimsy, speculation and conjecture.' As this court has made abundantly clear,' [w]hen a motion for summary judgment is made and supported as required by Rule 56, the nonmoving party may not rest on upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue." Id. at. 730-7310, 1030-31. The nonmoving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Matsushita Electric Industrial Co. v. Zenith Radio,* 475 U.S. 574, 106 S.Ct. 1348. (1984). Mere conclusory allegations are not enough to satisfy this burden. *Bird v. Casa Royale West,* 624 P.2d 17, 19 (1981).

With respect to the burden of proof and burden of persuasion in the summary judgment context, Nevada follows the federal approach outlined in *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986). See *Clauson v. Lloyd*, 103 Nev. 432, 743 P. 2d 631 (1987) (explaining *Celotex's* application in Nevada). See also *Wood v. Safeway, Inc.*, 121 Nev. 724, 731-32, 121P.3d1026, 1031 (2005) (adopting the summary judgment standard set forth in *Celotex* and other Supreme

Court decisions).

The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. *Celotex,* 477 U.S. at 323. If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact. *Id.*; *Wood*, 121 Nev. At 732, 121 P.3d at 1031; *Maine v. Stewart*, 109 Nev. 721, 726-27, 857 P.2d 755, 758-59 (1993). The manner in which each party may satisfy its burden of production depends on which party will bear the burden of persuasion on the challenged claim at trial. *Celotex*, 477 U.S. at 322-24. If the moving party will bear the burden of persuasion, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. NRCP 56 (a)(e). But, if the non-moving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim (*Celotex*, 477 U.S. at 331), or (2) "pointing out ... that there is an absence of evidence to support the nonmoving party's case." (Id. at 325). In such instances, in order to defeat summary judgment, the nonmoving party must transcend the pleadings, and by affidavit or other admissible evidence, introduce specific facts that show a genuine issue of material fact (*Wood*, 121 Nev. at 732, 121 P.3d at 1031). The opposing party is not entitled to build a case on gossamer threads of whimsy, speculation and conjecture (*Collins v Union Fed Sav. & Loan Ass'n.*, 99 Nev. 284, 662 P.2d 610 (1983); *Henry Prods., Inc. v. Tarmu*, 114 Nev. 1017, 967 P.2d 2d 444 (1998)).

2. Malicious Prosecution Claim

For Plaintiff to prevail on his claim of malicious prosecution, he must prove against the Shaws:

1. Want of probable cause to initiate the prior criminal proceeding;
2. Malice;
3. Termination of the prior proceedings; and

4. Damages.

See LaMantia v. Redisis, 118 Nev. 27, 38 P.3d 877, 879-80 (2002).

The Nevada Supreme Court has further explained that "[a] malicious prosecution claim requires that the defendant initiated, procured the institution of, or actively participated in the continuation of a criminal proceeding against the Plaintiff. In this case, there is no evidence that supports a finding that the Shaws initiated or actively participated in the continuation of Spencer's criminal action. Nor is there evidence that there was a lack of probable cause created by the Shaws, much less malice on their part in respect to Spencer's arrest and prosecution. Mr. Shaw did not testify at all in the Spencer trial. More importantly, on or about January 30, 2017, Deputy District Attorney, Maria Pence, came before this Court and testified the Shaws had no involvement nor were a cause in her charging decisions regarding Mr. Spencer. As such, this claim should be dismissed.

3. Civil Conspiracy Claim

A cause of action for "**civil conspiracy** arises where two or more persons undertake some concerted action with the intent to accomplish an unlawful objective for the purpose of harming another, and damage results." *See* Guilfoyle v. Olde Monmouth Stock Transfer Co., 130 Nev., Adv. Op. 78, 335 P.3d 190, 198 (2014) "Thus, a plaintiff must provide evidence of an explicit or tacit agreement between the alleged conspirators" for the purpose of harming the plaintiff.

In *Carlton v. Manuel*, 64 Nev. 570, 187 P.2d 558 (1947), the Court recognized the principle that what one may lawfully do, many may do in combination. That ruling would lead one to conclude that an alleged conspiracy is not actionable unless the combination results in the perpetration of an unlawful act, or some injurious act by unlawful means.

The principle acknowledged in *Carlton* appears to have been expanded by the more recent opinions of *Short v. Hotel Riviera, Inc.*, 79 Nev. 94, 378 P.2d 979 (1963) and

Riviera, Inc. v. Short, 80 Nev. 505, 396 P.2d 855 (1964). The Court "recognized that there may be a conspiracy to commit an act that would not be unlawful if done by an individual actor. The Short opinion approved two propositions. First, that an act lawful when done, may become wrongful when done by many acting in concert taking on the form of a conspiracy which may be prohibited if the result be hurtful to the individual against whom the concerted action is taken. Second, that when an act done by an individual is not actionable because justified by his rights, such act becomes actionable when done in pursuance of a combination of persons actuated by malicious motives, and not having the same justification as the individual." There is absolutely no evidence that the Shaws along with any other persons undertook some malicious concerted action with the intent of harming the Plaintiff. The Shaws were not home at the time of the incident between Helmut Klementi and Spencer. In addition, only Rowena Shaw testified at Spencer's trial and it was concerning her security cameras.

Mrs. Shaw's communications with the District Attorney and testimony at trial would be protected under the testimonial or judicial proceeding privilege. In *Circus Circus Hotels, Inc. v. Witherspoon*, 99 Nev. 56, 60, 657 P.2d 101, 2014 91983), the Court stated "[p]olicy underlying absolute privilege accorded to communications uttered or published in course of judicial proceedings so long as they are in some way pertinent to subject of controversy. [I]n certain situations public interest in having people speak freely outweighs risk that individuals will occasionally abuse privilege by making false and malicious statements, absolute privilege attached to judicial proceedings has been extended to quasi-judicial proceeding before executive officers, boards and commissions. Id. There is no evidence that statements made by the Shaws were malicious or defamatory. However, it is important to note that the Court in *Circus* opined, '[d]efamatory material need not be relevant in traditional evidentiary sense, but need have only "some relation" to proceeding; so long as material has some bearing on subject matter of proceeding, it is absolutely privileged.

Comments made by the Shaws at the KGID meeting were absolutely privileged. If the Plaintiff believes they were not, the burden shifts to them to prove the statements were not protected. Last, under *NRS 41.650, Limitation of liability*, a person who engages in a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern is immune from any civil action for claims based upon the communication. As such, statements the Shaws made or may have made to the police or Deputy District Attorney are immune from civil liability.

III.

CONCLUSION

Based on the foregoing, the Shaws request the claims against them be dismissed.

AFFIRMATION
Pursuant to NRS 239B.030

The undersigned does hereby affirm that the proceeding document does not contain the social security number of any person.

Dated this 23rd day of February, 2018

TANIKA M. CAPERS
Nevada Bar No. 10867
6750 Via Austi Parkway, Suite 310
Las Vegas, NV 89119
tcapers@amfam.com
Attorney for Defendant Rowena Shaw and Peter Shaw

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of February, 2018, the foregoing **THIRD PARTY DEFENDANT ROWENA SHAW AND PETER SHAW'S MOTION FOR SUMMARY JUDGMENT** was served pursuant to NRCP 5(b) via the following method indicated below:

[ ] ELECTRONIC Filing & Service System (Odyssey) to all the parties on the current service list;

[X] U.S. MAIL by placing an original or true copy thereof in a postage prepaid sealed envelope placed for collection and mailing in Las Vegas, Nevada, and addressed to the following:

Christian Moore, Esq.
Douglas Brown, Esq.
Lemons, Grundy & Eisenberg
6005 Plumas Street, Ste. 300
Reno, NV 89519
Attorneys for Helmut Klementi

William J. Routis, II, Esq.
1070 Monroe St.
Reno, NV 89509
Attorney for Jeffrey Spencer

Lynn G. Pierce, Esq.
440 Ridge Street, Suite 2
Reno, NV 89501
Attorney for Jeffrey Spencer

David M. Zaniel, Esq.
Ranalli & Zaniel, LLC
50 West Liberty Street, Ste. 1050
Reno, NV 89501
Attorney for Counterclaimant Jeffrey Spencer

Michael A. Pintar, Esq.
Glogovac & Pintar
427 West Plumb Lane
Reno, NV 89509
Attorney for Mary Ellen Kinion

Virginia Mantigal
Legal Assistant to Tanika M. Capers

INDEX OF EXHIBITS ATTACHED

EXHIBIT #	DESCRIPTION	# OF PAGES
A	Rowena Shaw's Deposition Transcript	65
B	Officer Jesse McKone's Deposition Transcript	131

EXHIBIT "A"

EXHIBIT "A"

IN THE NINTH JUDICIAL DISTRICT COURT

OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF DOUGLAS

---o0o---

HELMUT KLEMENTI,

Plaintiff,

-vs-

JEFFREY D. SPENCER,

Defendant.

Case No. 14-CV-0260

Dept. No. 1

JEFFREY D. SPENCER,

Counterclaimant,

-vs-

HELMUT KLEMENTI, an individual, EGON KLEMENTI, an individual, MARY ELLEN KINION, an individual, and DOES 1-5,

Counterdefendants.

VIDEOTAPED DEPOSITION OF ROWENA SHAW, PH.D

04/07/2016

Reno, Nevada

Job no. 299003-A

REPORTED BY: KRISTINE BOKELMANN
NV CCR #165, CA #5979

APPEARANCES OF COUNSEL:

For the Plaintiff:

LAUB & LAUB
Attorneys at Law
By: Nicholus C. Palmer, Esq.
630 East Plumb Lane
Reno, Nevada 89502
(775) 333-5282

For the Defendant:

RANALLI, ZANIEL, FOWLER & MORAN, LLC
Attorneys at Law
By: David M. Zaniel, Esq.
50 West Liberty Street
Suite 1050
Reno, Nevada 89501
(775) 786-4441

For the Counterclaimant:

WILLIAM J. ROUTSIS, II, ESQ.
Attorney at Law
1070 Monroe Street
Reno, Nevada 89509
(775) 337-2609

For the Counterdefendant
Helmut Klementi:

LEMONS, GRUNDY & EISENBERG
Attorneys at Law
By: Chris Moore, Esq.
6005 Plumas Street
Third Floor
Reno, Nevada 89519
(775) 786-6868

APPEARANCES OF COUNSEL: (Continued)

For the Counterdefendant Mary Ellen Kinion:

GLOGOVAC & PINTAR
Attorneys at Law
By: Michael A. Pintar, Esq.
427 West Plumb Lane
Reno, Nevada 89509
(775) 333-0400

For the Shaws:

TANIKA M. CAPERS, ESQ.
Attorney at Law
6750 Via Austi Parkway
Suite 310
Las Vegas, Nevada 89119
(702) 733-4989 Ex. 51652

Also present:

Elfriede Klementi
Peter Shaw
Jeffrey Spencer
Marilyn Spencer
Stewart Campbell, Videographer

I N D E X

EXAMINATION:	PAGE:
By Mr. Zaniel	5
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* * *

INDEX OF EXHIBITS

(No exhibits were marked)

* * *

Pursuant to Notice, and on the 7th day of April, 2016, at the hour of 4:26 p.m. of said day, at the office of Sunshine Litigation Services, 151 Country Estates Circle, Reno, Nevada, before me, KRISTINE BOKELMANN, a Certified Court Reporter, personally appeared ROWENA SHAW, PH.D.

THE VIDEOGRAPHER: We are going back on the video record. The time is approximately 4:26 p.m.

ROWENA SHAW, PH.D.,

called as a witness by the defendant herein, being first duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. ZANIEL:

Q Good morning -- or good afternoon, ma'am.

A Good afternoon.

Q Can you say your name for the record.

A Dr. Rowena Shaw.

Q All right. Dr. Shaw, my name is David Zaniel and I represent Jeffrey Spencer in a lawsuit that's been filed by Helmut Klementi.

A Yes.

Q My only role in this case is the defense of Mr. Spencer in the alleged incident of 12-18, 2012.

A Yes.

Q So with that said, let me just go over a couple rules, and for the record, let me just indicate that Mr. Shaw is also here; is that correct?

MR. SHAW: That is correct.

BY MR. ZANIEL:

Q What I'd like to do to speed things along is to go over these rules of a deposition for both of your knowledge. This way, when we rotate seats, I'm going to ask you, Mr. Shaw, have you heard these rules, and you're going to say yes, and I'm going to say do you understand these rules, you're going to say yes, and I'm going to say do you need me to repeat these rules, and hopefully you'll say no. Okay? All right.

So you're under oath this afternoon. That obligates you to tell the truth under the penalty of perjury. Do you understand that?

A Yes.

Q If you change your testimony after today, people can comment upon those changes. That may affect your credibility. Do you understand that?

A Yes.

Q If you don't understand a question that's asked of you, tell us you don't understand that question. We'll rephrase the question. If you answer

the question today, we're going to assume you've understood it and answered it to the best of your ability. Is that fair?

A Yes.

Q Okay. Those are the main rules I wanted to get out.

A Okay.

Q Can you tell us your address, please.

A 185 Juniper Drive, Stateline, Nevada.

Q Okay. And relative to where the Spencers live, are you at the end of Charles Street?

A We're on a "T." We are at the end of Charles, correct.

Q So when you walk out your front door, you can see clear down Charles Street to Meadow Lane?

A Correct.

Q Okay. And how long have you lived at that location?

A 37 years.

Q Okay. Could you state approximately when the Spencers moved in? You don't have to give a specific date. Was it in the '90s, 2000s?

A I know it's been over 10 years, but I don't know exactly.

Q Okay. Could you describe your relationship

with Mr. and Mrs. Spencer from the time they moved in up until December 18th of 2012.

A We do not socialize with them.

Q Were you neighbors with them? In other words, when they drove by, did you wave even or no --

A No.

Q -- conduct at all?

A No.

Q Okay. Did you ever have a conversation with Mr. Spencer or Mrs. Spencer before December 18th of 2012 for any reason that you can recall?

A No.

Q Prior to December 18th, 2012, did you ever contact any government entity, the police, KGID, any other government agency to lodge a complaint against Mr. and Mrs. Spencer?

A What was the date that you said?

Q This is before December 18th of 2012.

A Before December -- yes, about the fence. I did.

Q Okay. Can you just tell me approximately when that was.

A When the fence was built on Memorial Day, 2012, it created a blind intersection in front of our driveway. So when I have to drive to my driveway, I

would have to inch my car more than halfway into the street, and so it created a public safety risk.

So I believe I contacted KGID because I thought they were responsible for that, and I was directed to code enforcement. And code enforcement said that the DA's Office is responsible for code violators, and then the planning commission was in charge of illegal construction. So I wrote letters to them.

Q Okay. So when you wrote letters to the planning commission, what actions did the planning commission take?

A We -- when I -- when we wrote the letter, we were told that the Spencers requested a variance, so everything was on hold, because we were saying that it has to be remediated ASAP, that the blind intersection needs to be removed, but we were told that the Spencers applied for a variance.

Q Okay. At some point were you told that the variance was denied?

A Yes, at a meeting.

Q Okay. And approximately when was that?

A I'm not exactly sure about the timeline. I do know that the planning commission -- I'm not sure if the denial of the variance coincided with the decision of the planning commission to direct the Spencers to remove

the fence in April of 2013. I don't know the time frame.

Q Okay. The removal of the fence was approximately April of 2013?

A Correct. I had to endure that for a whole year.

Q Okay. Following -- well, when did the process start? Was it before December of 2012 when you made the initial complaint to the KGID and then were directed to code enforcement?

A Correct, because it was already a problem with the blind intersection in May of 2012.

Q Okay. In response to your lodging a complaint with regard to the fence, did the Spencers, either Mr. or Mrs. Spencer, ever do any type of retaliation against you that you can testify to?

A Retaliation.

Q I know it's kind of a vague word, and it's just kind of late, so I'm trying to speed things up.

Did they ever do anything that you would consider negative behavior or did they threaten you or do any type of inappropriate behavior towards you once you wrote the letter about the fence?

A No.

Q Okay. Your house has security cameras?

A Yes.
Q How many cameras does it have?
A I believe six.
Q Who installed the cameras?
A My husband did.
Q Okay. And how were the cameras installed in terms of -- or how are they connected? Do they go to a computer that has a hard drive?
A It's connected to a recorder that as far as I know.
Q Does your husband know more about this than you do?
A I do.
Q You know more?
A A little bit more.
Q Okay.
A And that's very, very limited.
Q Okay. Do you know if the hard drive stores what the video records?
A Yes, it does.
Q And how long does it store it for?
A I don't know. I was trying to find that out and the tech could not give me 15 days or 30 days.
Q Okay. So it's either one of those, either 15 days --

A He told me it's either 15 or 30, and he did not give me a definitive answer.

Q Okay. And after 15 or 30 days, what do you do with that drive? Do you rewrite over it again or do you take that out and keep it somewhere else?

A We don't do anything. It just continuously records.

Q So it just rewrites over the last 15 days?

A I think that's what it does.

Q Okay. I'm sorry if I asked you this. When did you get these recorders, the video cameras? When did you get that system?

A I remember it was approximately two weeks before December 18th, 2012.

Q Okay. So in December 2012?

A In December of 2012.

Q Was there one particular event that prompted you to make the decision to get security cameras?

A There were difficulties that the Spencers encountered with some neighbors, which we never had for 30 something years, and so we felt that there was a need to install video cameras.

Q Okay. Let me ask you this. Prior to December 18th, 2012, did you know or have information that there may have been break-ins in that neighborhood?

A No, no, no.

Q Okay. So nobody ever told you that?

A No.

Q And you never heard it from any news outlet?

A No.

Q Okay. You said that the Spencers were having trouble?

A Yes.

Q What do you mean by that?

A When the house was being built, I testified at the restraining hearing meeting. The judge asked me the same question, and I said that I saw a police car in front of the -- my house is here. There's a neighbor across the street. The Spencer house is right here.

I saw a police car in front of the neighbor across the street, and her name is Diane Tedrick. And so I was curious why there was a police car there.

And I found out later that while the Spencers were constructing their house, there were construction vehicles blocking the driveway over here, and Mrs. Tedrick called 911 because when she was asking Mr. Spencer to move the vehicles, he came charging towards her, and so the 911 operator said call the police, and so that's when I saw the police car there. So that was one of them.

Q What year was that?

A I don't know when they -- this was when their house was being constructed. I don't know when.

Q That was way back, though?

A Way back, even before they moved into the house.

Q Okay. But that didn't prompt you to get security cameras in December of 2012?

A Not at that time, yeah.

Q Okay. What -- in closer in time to December of 2012, what event or what was the decision-making behind getting these security cameras?

A I -- when -- I was told by the code enforcer that whenever I make a complaint of this matter, it's a matter of public record. So he said that the variance application that the Spencers applied for contained letters that the Spencers wrote to justify the fence -- the variance.

And so I was able to read in one of those letters that they were being threatened by a couple -- they had problems with a couple named Bruce and Nancy Taylor.

So I called Mrs. Taylor, and she said that they were bermed in in their driveway. So that was the closer incident with regard to your question that

prompted us to think about a security camera.

Q Okay. Was your house ever bermed in with snow?

A Yes.

Q Okay. How many times?

A The one time. Our driveway was bermed in and our flowerbed was destroyed by the plow.

Q Okay. And approximately when was that?

A It was very close to the December 18 meeting, and that's what prompted us to go to the KGID meeting.

Q Okay. The evening of December 18th?

A It was not on December 18 but very close to it.

Q Okay. All right. We'll get to the meeting in a sec. Do you have video evidence of the time when your driveway was bermed in?

A We took pictures.

Q Okay. So you have pictures of that?

A Correct.

Q Okay. You mentioned before that there was some, I guess, court appearance because some judge asked you a question. Can you tell me about that. What court appearance are you referring to?

A Mr. Egon Klementi filed for a restraining order against the Spencers and I was asked as a witness.

Q Who asked you to be a witness?

A The judge.

Q Okay.

A I had a --

Q One rule I didn't tell you is if you don't know the answer, don't guess at anything. So if you don't know, just tell me you don't know.

A I don't know who asked me to be there.

Q Fair enough. So somebody asked you to be a witness. You went to court and it was a court appearance about a restraining order that Egon Klementi had issued against Mr. Spencer only or both Spencers?

A I don't know.

Q Okay. And you testified at that hearing?

A Correct.

Q Were you asked questions about the berm incident at the hearing?

A I was asked questions -- no, not about the berm.

Q What were you asked questions about at that hearing?

A My relationship with the Spencers, problems that occurred in the neighborhood.

Q Okay. Problems that occurred in the neighborhood being berming in?

A About the lady who was boxed in in the driveway.

Q With the construction equipment?

A Correct, way before, yeah.

Q Okay. Before December 18th of 2012, were you aware of any other incidents that were going on in the neighborhood concerning the Spencers, any other disputes between other neighbors?

A The Spencers, Mr. Spencer parked an 18-wheeler truck right on the corner of Meadow and Charles that created a blind intersection, and people were very concerned about that with the public safety issue.

Q Did you make a complaint to any government entity about that issue?

A No, I did not.

Q Okay. So what's the first time you went to a KGID board meeting?

A December 18.

Q Okay. And who asked you to go to that meeting, or did you go on your own volition?

A I had a concern about being bermed and my flowerbed being destroyed, so I had a concern to express to the board.

Q Okay. Do you know who was driving the snowplow on December -- on the time you got bermed in?

A I do not, but I do know Mr. Spencer is assigned to our area.

Q Okay. So you assumed it was Mr. Spencer, but you didn't see him in --

A I did not see him.

Q Okay. Describe your relationship with the Klementis.

A They've been neighbors for close to 30 years. They walk their dogs in front of my house. I sit out in my yard and weed and we say hi and hello and --

Q Do you socialize with them?

A Not really. I've been to their house because I was invited by the restraining order lawyer for informational meeting at their house.

Q Okay. Is that the only time you've been to their house?

A I'd also been there with my daughter because Mr. Klementi is an artist and he has open house artist exhibits and -- oh, and their son came from Austria and my husband and I were invited to meet him, so about three times.

Q Okay. Over the course of 30 years?

A That's right.

Q Okay. All right. So that takes us up to the board meeting on December 18th, 2012. You go to that

meeting. Who is present there?

A Present there were the board members, the KGID manager, Mr. McKay, there was somebody recording, my husband and I, the three Klementis, Janet Wells, Mr. and Mrs. Wells, Rebecca Wells and Rebecca -- I forget her married name -- and her husband.

Q Okay. Did the KGID leader open it up to public comment at the beginning of the meeting?

A Correct.

Q And did you speak at that meeting?

A Yes.

Q What did you say at the meeting?

A That we were extremely concerned about the berming. Being a disabled individual, if I needed medical attention, I needed that driveway to be clear.

Q Did you specifically say at that meeting that you believe Mr. Spencer is the one that did it?

A Did I say that? I don't remember.

Q Okay. Is that all you said at the meeting that you can remember, is that you were -- you had a concern about being bermed in and you could potentially need medical assistance?

A And that my flowerbed was destroyed, which I take care of very diligently.

Q Okay. So nothing else other than those two

things that you spoke of?

A We also were very concerned about how the street was getting narrower and narrower because the fence was blocking the snow removal.

Q What fence?

A At that time the fence was already erected because it was erected of that -- May that year.

Q Right. And so they were going through the variance issue at that time?

A Correct.

Q Okay. Did your husband speak at that meeting?

A Yes, he did.

Q Okay. Who else spoke at that meeting that you can remember?

A I remember Mary Ellen reading a letter from Elfi. My husband did. Janet Wells did, yeah.

Q Okay. That's the best of your recollection, that's all that spoke?

A Yes.

Q Okay. What -- once the speaking was done, did the leader say anything about what was going to be done in response to these open comments?

A The board president, Dr. Norman, suggested, because I emailed my complaint and so they had pictures of my berm, but he said keep documenting and I encourage

you to take pictures. That was his suggestion to us.

Q Okay. So do you know what time the board meeting started that evening?

A I believe it was 6:00 p.m.

Q Do you know how long the board meeting lasted that evening?

A There was a lively discussion. I believe it went about an hour or so.

Q Okay. And then did you and your husband leave the board meeting and go home?

A No.

Q Where did you go after the board meeting?

A We went out of town. From the KGID office, we went out of town. We drove away.

Q Okay. So you did not return to your home?

A No, we did not.

Q Okay. So on the evening of December 18th, 2012, at about 8:44 p.m., were you at your residence then?

A No.

Q Okay. So in terms of what occurred on the evening of December 18, 2012, after the board meeting involving Mr. Spencer and Mr. Klementi, you have no factual information about that?

A Correct.

Q How did you find out about this incident?

A When we got home, there was a message from Elfi on the phone explaining what happened.

Q When did you get home?

A Two days later, so the 20th. And Elfi explained that Helmut was assaulted.

Q Okay. So you had a message on your home voice mail?

A Correct.

Q I assume you had a cell phone at that time. Did anybody contact you on your cell phone between December 18th and December 20th regarding this incident?

A No.

Q Okay. So you get home and you listen to your voice messages and there's a message from Elfi. Do you still have that voice mail message?

A No, no.

Q Okay. Could you, to the best you can recall, tell us what that voice message said, in as much detail as you can remember.

A At first I could not understand it because she was crying and she was very distraught. All I could figure out what -- Helmut was hurt, Jeff punched him, and an ambulance came. That's what I got from the message.

Q After hearing that message, what did you do?

A I called Elfi and asked her what happened.

Q Immediately after hearing that or within a couple of hours?

A Immediately? I don't remember.

Q Let me ask you this. You arrived back home on the 20th. Did you call her on the 20th?

A I want to say no because I knew she was working, so I think it was the next day. I'm not sure.

Q Where does Elfi work?

A Elfi works at Harrah's Casino.

Q All right. So it may have been the next day. So whenever you did contact Elfi, that was by phone, not in person, correct?

A By phone.

Q Okay. Tell me about that conversation.

A Elfi said that -- excuse me. What did Elfi say? I don't clearly remember. She -- excuse me. I think she said -- I'm not quite sure. He was taking pictures and he was attacked. Something to that effect.

Q Okay. At some point were you contacted by a police agency?

A Yes.

Q And approximately when was that?

A Oh, gosh. I want to say maybe a couple of

weeks after the incident. I don't know. I don't remember.

Q All right. Did a police officer ever ask to look at any of the video that you had from your cameras?

A Yes.

Q And did an officer come into your residence and look at it?

A Yes.

Q And did you run the computer system while the officer was standing there?

A Yes.

Q Is that -- can you make a flash drive of that video footage?

A Yes.

Q Do you still have that flash drive?

A Yes.

Q Okay. So you have a copy of that now?

A With me?

Q No, but at home?

A At home.

Q Okay. How many times have you watched it from 15 minutes before the incident to 15 minutes after the incident, just that 30-minute period? How many times have you seen that footage? More than 10?

A Oh, no. Probably about four.

Q I'm trying to -- because I haven't seen it, so I want to ask you in as much detail as you can tell me, what do you see on the video?

A Oh. Yeah, no more than four. It was a short video.

Q What do you see on the video?

A It was at 8:43 at night, so it was very dark. It was snowing. And the Spencers' porch light is on. Our house is here and their house is here, so the camera had a view of the street, Charles.

It showed a figure running down from the Spencers' staircase, running across the truck -- let me backtrack a little bit. I'm so sorry. There -- on the right side of the screen initially are two flashes.

Q On the Klementi side of the street?

A On the Klementi side of the street there's two flashes.

Q Could you tell where the flashes were coming from? Were they coming from the Klementi property or in front of the Klementi property or could you tell?

A I couldn't tell if it was inside their property or by the road because it was completely dark. All you see are two flashes.

Q Okay. And then next you see a figure come down the stairs?

A About 30 seconds or less after the flashes, two flashes, there's a figure running down the stairs and going across the pickup truck onto where the flashes were seen.

Q Okay. And what's the next thing you see on the video?

A After about less than a minute the figure crosses the road, across the pickup truck, and back up to the stairs.

Q Could you see any confrontation between -- well, strike that.

Did you see another figure in the video?

A No.

Q Just one figure?

A Correct.

Q Okay. So you couldn't see any type of confrontation on your video?

A No.

Q Okay. Do you have any other video evidence in your possession that shows any type of unusual behavior or questionable behavior by the Spencers at all?

A No.

Q So as we sit here today, in dealing with this case now years later, do you know of anybody that actually saw what happened on December 18th on Charles

Street?

A An eyewitness was your question?

Q Yes.

A No.

Q Do you know if anybody -- have you heard rumors or has anybody come to you and said I saw what happened?

A No.

MR. ZANIEL: All right. Those are all my questions.

THE WITNESS: Okay.

MR. ROUTSIS: I have some questions.

EXAMINATION

BY MR. ROUTSIS:

Q Okay. Good afternoon, Miss Shaw.

A Good afternoon.

Q Miss Shaw, how long have you lived up at Lake Tahoe?

A About 37 years.

Q Now, everybody gets berms on their driveways when it snows a lot, don't they?

MS. CAPERS: Objection; calls for speculation, but go ahead and answer.

THE WITNESS: We haven't had any reason to complain to KGID prior to that incident.

BY MR. ROUTSIS:

Q What I'm asking, though, is you seem to be making a big deal about berms, but when you -- when someone is plowing a neighborhood up at that elevation at Lake Tahoe, every driveway is going to get a berm in front of it.

A I don't know that.

Q Well, would you expect that the snowplow driver to stop before every house and turn right?

A I don't know how they operate, sir. I really don't know.

Q Okay. But you've been up there a long time, haven't you?

A Yes.

Q You know that when there's a lot of snow, snowplow drivers don't have enough time to stop and make sure every person's driveway doesn't get a berm? That's just the --

A I don't know that for a fact. I really don't.

Q You really don't?

A I really don't.

Q Okay.

A And we've never encountered that before.

Q So you haven't driven around your neighborhood during the winter and see snowplows just driving down

the street and everybody has a little berm and everybody comes and shovels their berm?

A I haven't paid that attention.

Q Isn't that just common practice?

MS. CAPERS: Objection. Again, calls for speculation.

THE WITNESS: I don't know.

BY MR. ROUTSIS:

Q Okay. You don't -- so when you say you don't pay attention, so you don't know if your berm was any different than the kind of berms in front of everybody else's house then, if you don't pay attention; is that correct?

A I paid attention to our berm.

Q Right. But you don't know that your berm is any different than anybody else's berms, do you?

A I haven't made a study about that. I don't know. I really don't know how to answer your question.

Q Okay. So when you make a complaint about a berm and you don't know if there's anything improper about the berm, why are you making a complaint?

A Because I knew that I could not get out in my car and I knew that my flowerbed was destroyed.

Q Certainly. But, and that's kind of the issue, Miss Shaw.

A Dr. Shaw.

Q Doctor. Mrs. Shaw. You want to be called Dr. Shaw?

A Yes, please.

Q The gut of the issue is a snowplow driver has to do his job; don't you think? It's just fair. He has to do his job?

A Correct.

Q And he's got to plow the roads?

A Correct.

Q And you've lived up there quite a while. When a snowplow goes down a road during storms, they've got to get a lot of roads plowed, don't they?

MS. CAPERS: Objection; calls for speculation.

BY MR. ROUTSIS:

Q In any event --

MS. CAPERS: And you just asked her that question.

BY MR. ROUTSIS:

Q In any event, you've made complaints about Mr. Spencer and the manner in which he does his snowplow driving, but you don't know if he treated your driveway or the Klementis' driveway any different than anybody else's driveway, do you?

A I don't understand your question.

Q Well, you don't know if Mr. Spencer intentionally put a berm up in front of your driveway.

A I have no idea about his intention.

Q Okay.

A I don't know.

Q Very good. Thank you.

So what were you complaining about?

A That basically our driveway was bermed in excessively and my flowerbed was destroyed.

Q Okay. And did you make any inferences that you believe Mr. Spencer did that intentionally? Did you make any inferences in any of your complaints that you thought it was intentional?

A I believe -- yes, I said that it was probably because I made concern -- expressed concerns about the fence.

Q So what you, in effect, did is you made a complaint impugning the state of mind of Mr. Spencer that you felt it was intentional, but you had no evidence to support that?

A I made a correlation.

Q A speculation. Would you call it a speculation?

A I don't know what the proper term is.

Q Okay. In any event, you made an implication

that Mr. Spencer intentionally left a berm in front of your house, when in reality, it may not have been intentional at all, that he was simply doing his job?

A I don't know that.

Q Okay. Let's go to the video that you had. Do you remember Officer McKone coming to your residence to look at the video that you had on the incident on the 18th?

A Correct.

Q And your video cameras face the Spencers' residence, correct?

A It's focused on Charles.

Q Okay. And it goes down Charles, so you could see the Spencers' residence, correct?

A Correct.

Q It actually shows your house, correct?

A Yes. It also shows the house across the street on a daytime view.

Q At nighttime it only shows the Spencers' house, right?

A Yeah, because they had a porch light.

Q Did you feel at all that was an intrusion into their privacy?

A Our camera?

Q Yes.

A No.

Q Okay. In any event, detective -- or Deputy McKone came to your residence.

A Correct.

Q A couple weeks after the 18th, correct?

A Approximately.

Q Did you contact him?

A No.

Q How did he -- how did it happen that he came to your residence?

A Well, in fact he called me and he said I'm the officer who responded, can I see the video. And I said, I don't know you.

Q Okay.

A I said, I don't know who you are.

Q Did you have a talk, previous to that conversation with Mr. McKone, with Miss Elfi Klementi explaining to her that you had some video of the incident?

A What was that?

Q Did you have a conversation with Elfi Klementi that you had some video --

A Yes.

Q -- about what happened on December 18th?

A Yes.

Q And did you review that video with Elfi Klementi?

A No, I did not.

Q Did you review that video with Egon or Helmut Klementi?

A No, I did not.

Q Did you tell Elfi Klementi, prior to your meeting with Deputy McKone, what you saw on the video?

A I don't think so. I just said that the incident was on video.

Q So you did tell her what you saw?

A Not in detail.

Q Did you tell her that prior to Jeff running out of the house that, when you originally viewed the video, that you saw some individual next to the defendant's driveway?

A Not at all, no.

Q Excuse me?

A No, no. I did not say that.

Q Well, did you see that on the video when you --

A No, I did not.

MS. CAPERS: Let him finish asking the question.

THE WITNESS: Oh, sorry.

MS. CAPERS: Thanks.

THE WITNESS: Sorry.

BY MR. ROUTSIS:

Q That's okay. When you first originally looked at the video --

A Okay.

Q -- did you look at the video about five minutes or six minutes prior to seeing to when Jeffrey Spencer left his house?

MS. CAPERS: Again, that's assuming facts not in evidence. She said she saw a figure, but go ahead and answer.

THE WITNESS: No. You're asking about before Mr. Spencer went down?

BY MR. ROUTSIS:

Q Yes. It's your testimony that in your video you see somebody from the Spencers' residence leave the residence and then come back to the residence --

A Yes.

Q -- on the evening of the 18th.

A Yes.

Q Correct? Now, about 10 minutes prior to that, for 10 minutes --

A Uh-huh.

Q -- do you have that video?

A Yes.

Q Okay. And did you give that video to the detective?

A Detective? I did not speak with the detective.

Q Deputy McKone?

A No. Deputy McKone did not get a copy of the video. He just wanted to see it.

Q Right. What I'm saying, though, when Deputy McKone came out --

A Okay.

Q -- you had the video copied to a memory stick. Do you recall that?

A Correct.

Q So you had already taken it off your hard drive, correct?

A Correct.

Q And did you do that on your own?

A Yes.

Q And did you lose some video when you did that? Do you know if you did it correctly?

A I submitted a video from 7:00 to 9:00.

Q From 7:00 o'clock to 9:00 o'clock?

A Correct.

Q And do you know if you lost any time when you

transferred the video from what I'll call the hard drive to the memory stick?

A I don't understand your question. Did I lose time?

Q Yes. There is about 10 minutes prior, before what appears to be Mr. Spencer leaving his house, okay?

A Okay.

Q We're concerned that there's about five to 10 minutes of the video that's missing.

A When I submitted a video and Mr. McKone, Deputy McKone viewed it, the clock was ticking from 7:00 to 9:00 continuously without interruption. So I don't know what you're talking about with the 10-minute gap.

Q Okay. So --

MR. MOORE: Counsel, if I can interrupt here. It's after 5:00 o'clock and I'm going to be leaving because I can't be in two places at once and I have to be somewhere else.

This deposition was not noticed to go past 5:00 o'clock. I understand the Shaws -- I really don't want to have to ask you folks to come back, so I think the best way to handle it is I have an objection now to this deposition proceeding.

In the event that there's testimony elicited that I would have objected to and I think is improper, I

reserve my right to move to strike at a later date. Thank you.

MR. ROUTSIS: Well, that seems fair. Thank you, counsel.

BY MR. ROUTSIS:

Q Mrs. Shaw, you testified that you believe -- first of all, the surveillance equipment you have is infrared, isn't it? It's nighttime equipment that works at night to lighten things up, correct?

A It caught the figure at night, so it must be. I don't know.

Q Well, your husband's shaking his head. Do you know if it's infrared surveillance equipment so it can take pictures at night and lighten the picture up?

A I don't know the answer.

Q Because you testified that you believe that Jeffrey Spencer had their porch light on from the video that you viewed, correct?

A Correct.

Q Now, you're aware that they have surveillance cameras of their own, are you not, the Spencers?

A Correct.

Q And that there's a certain light that comes out from the surveillance cameras. Are you aware of that?

A No.

Q Okay. And that if you have infrared video surveillance equipment, it will brighten up any light tremendously. Are you aware of that?

A No.

Q Okay. So as you sit here today, you're unaware of whether or not the video surveillance equipment that you provided was infrared or not?

A I don't know.

Q Okay. Now, why didn't you give the memory stick to Deputy McKone?

A He did not ask for it.

Q So he came to your house and viewed the video equipment and then left?

A Yes.

Q Leaving the evidence with you?

A Correct.

Q And never asked for the evidence?

A Correct.

Q Because I believe his testimony was that you didn't want to give it to him because it was your only copy.

A Well, I remember he did not ask for it.

Q Okay. So that's fine. But would it refresh -- if his memory was different, is it possible

you did not want to provide it to him, that you wanted to make other copies?

A I don't remember that part. I remember --

Q Okay. So that's possible then, correct?

A I don't know.

Q Okay. Now, the question is at some point you did in fact provide law enforcement with a copy of the video, correct?

A The DA's office asked for a copy.

Q How soon after your meeting with Deputy McKone did the DA's Office ask for the video equipment -- or the video surveillance memory stick?

A You know what, I really don't remember. I have no recollection.

Q Okay. Did you get a call from the prosecutor's office, do you recall, or did you reach out to the prosecutor yourself?

A I think I got a call from Officer Schultz.

Q Okay. Now, from the time Deputy McKone left your residence to the time you got a call and provided the memory stick --

A Uh-huh.

Q That may be two different dates, so let me be clear. From the time Deputy McKone left your residence when you reviewed the memory stick with him --

A Yes.

Q -- to the date when you provided it to the prosecution, about how long -- about how long was that?

A week, two weeks?

A Oh, gosh. I don't remember at all.

Q Okay. Now, here's a concern. How did you copy the memory stick that you had? What did you do to copy that? And is it possible you lost valuable time on the copy?

MS. CAPERS: I'm going to object to compound.

BY MR. ROUTSIS:

Q Okay. I'll rephrase it.

Did you personally copy that memory stick yourself?

A Yes.

Q And you gave the copy to?

A The DA's Office.

Q Did you drive down to the DA's Office or did somebody come to your house and pick it up?

A Officer Schultz picked it up.

Q So he came to your home?

A Correct.

Q And at that point you gave him -- I'm not a great computer gentleman. I don't know much about them. But you gave him a memory stick?

A Correct.

Q And originally you had surveillance equipment, right?

A Yes.

Q And in order to get what's on your surveillance equipment to a memory stick, there's a procedure you need to follow?

A Correct.

Q Correct? Did you follow that proceed -- did you do it all on your own?

A Yes.

Q Do you remember testifying at the criminal trial in this case?

A Yes.

Q Do you remember stating that you didn't know what to do or you didn't know how to do it and you had to call the video surveillance company and they had to come to your house?

A No, no, no, they didn't come to the house. It was all by phone.

Q Okay. So they didn't come to the house but by phone you were apparently given instructions on --

A Correct.

Q -- how to transfer the material from the surveillance equipment to the memory stick?

A Yes.

Q Okay. Now, to transfer the material from one memory stick to another memory stick, how did you do that?

A You plug the original -- the donor and you plug a blank memory and then you copy it.

Q Okay. Now, I guess the $50,000 question is can we get access to the original hard drive of the original surveillance material that was taken on the 18th so we can determine if it is an actual identical replication of what you have on the memory stick? Do you still have that on the hard drive?

A Not from four years ago.

Q What happened to it?

A It erases.

Q Okay. When you called the company -- what was the name of the company that was giving you the information on how to copy the hard drive to a memory stick? What company did you call?

A Swan.

Q Okay. Is that the same company you bought the surveillance equipment from?

A Yes.

Q And are they located in South Lake Tahoe?

A I believe we got it online. We bought it --

he purchased it online.

Q Okay. What prompted you -- prior to Deputy McKone coming to your residence and copying, what prompted you to copy that information from the hard drive to the memory stick? Did somebody -- did the --

A Say again.

Q Yes. You had surveillance equipment regarding what occurred on December 18th, correct?

A Correct.

Q And did somebody ask you to preserve that evidence or to copy that evidence?

A My husband and I had the discussion, after we spoke with Elfi about three, four days later, he said, maybe our surveillance camera captured the incident. And so we looked and there it was.

Q When you -- in your surveillance equipment, how long will it -- if you go to bed at 6:00 o'clock and you turn it on, will it run all night long or does it only run when there's motion? How does it work?

A It runs continuously.

Q So if you were to wake up in the morning, you could review the whole night?

A Yes.

Q And then if you wanted to copy it onto a memory stick, you're given certain directions, correct?

A Correct.

Q And what happens if you made a mistake? How would we be aware if you made a mistake in the copying and you lost some time? Is there any way for us to be sure you didn't lose valuable time? Do you know?

A Could you say that again?

Q Yes.

MS. CAPERS: I'm going to object, kind of vague. What do you mean, "valuable time."

BY MR. ROUTSIS:

Q Okay. You called the Swan company.

A Correct.

Q Is that the full name, Swan Electronics? Is it --

A Swan Cameras? I don't know.

Q Do you have their phone number that you called?

A It was in the manual.

Q Okay. And you have that manual?

A Yes.

Q Okay. And you called them and you said, look, I'd like to copy, make a -- download the information?

A Uh-huh, yes.

Q And they gave you procedures to follow?

A Correct.

Q All right. How do we know that you did it correctly and you copied the full amount of time and you didn't lose any time? How do we know you did it correctly is what I'm asking you.

A The procedure is for you to type in the day, the date that you want and the time that you want. So if you're alluding to errors, I typed the date, I typed the time.

Q But isn't it true that you had the incorrect date on your surveillance equipment?

A It's the correct date. It was just transformed. I did what's logical is month, day, and year, and the -- for some reason the camera works with day, month, and year.

So I explained that at the trial that it might have a different date on the top, but it showed the incident because it was the correct -- when I did the recording, it was the correct date, but on top of the frame of each single frame it was transposed.

Q Okay. Now, at any time did you have either Egon, Helmut, or Elfi Klementi come to your residence and review the video surveillance footage either in the memory stick form or in the hard drive?

A No.

MS. CAPERS: Asked and answered, but --

BY MR. ROUTSIS:

Q Okay. Did you ever give them a memory stick to look at?

A Yes.

Q Okay. When did you do that? Was that prior to giving it to the prosecutor?

A I really don't remember.

Q Did you give the prosecutor the memory stick that you gave -- did the Klementis return the memory stick to you at some point?

A No.

Q They still have it?

A I believe so.

Q Is it possible that the memory stick you gave them, they gave back to you and you gave that to the prosecutor?

A They never gave back the memory stick I gave them.

Q Okay. Why did you give them the memory stick?

A Because it showed the incident.

Q Okay. At any time when -- and I'm assuming that you and your husband both reviewed the video surveillance on the hard drive before you transferred it.

A We had to look for the footage, so yes, we

did.

Q Okay. And when did you begin running the footage? How many minutes before the gentleman that left the Spencers' house, who we believe is Mr. Spencer, how many minutes before the gentleman left the house did you begin recording or putting on the memory stick?

Did you begin your -- the memory stick, where did it start? Did it start exactly when Mr. Spencer left the house, a minute before he left the house, two minutes before? When did you start the recording?

A 7:00 p.m.

Q And how many minutes prior to him leaving the house do you believe that was?

A The footage showed the figure leaving the house at 8:43:43.

Q So you're saying it goes from 7:00 to 8:43; you provided all that on the memory stick?

A In fact, it --

MS. CAPERS: Incomplete evidence, but go ahead.

BY MR. ROUTSIS:

Q Go ahead.

A It was 7:00 to 9:00.

Q So you provided the time -- so that memory stick that the State has would go from 7:00 to 9:00

o'clock?

A Correct.

Q Okay. Now, here's the question. Did you ever time it from 7:00 to 9:00 to see if it's actually two hours?

A I viewed 7:00 to 9:00 with the clock ticking continuously from 7:00 to 9:00.

Q Why did you do that? Because you --

A Because I wanted to see what was in there.

Q Were you worried that you may have lost some time?

A No.

Q Okay. But you -- so you took a clock, you hit the button, and you wanted to make sure that your equipment caught -- was accurate and that it was a full two hours, correct?

A I did not do that. I did not time it.

Q You did not time it?

A I timed it based on the clock running for each frame.

Q Okay. So we'll be able -- we should be able -- I'm trying to -- I'm not trying to be difficult. I'm trying to be technical. If we were to take that video --

A Uh-huh.

Q -- which you purport to go from 7:00 to 9:00 o'clock --

A Yes.

Q -- and we run it and it's six minutes short, that means somewhere we lost six minutes. Fair enough?

A That's your supposition.

Q Okay. Now, at any time during the whole course of your viewing the hard drive or the memory stick, did you ever see another individual, other than what appears to be Mr. Spencer, anywhere near his property?

A No.

Q You're 100 percent certain?

A 100 percent.

Q Okay. When you see Mr. Spencer running, leaving his residence --

MS. CAPERS: I'm just going to object because she said she sees a figure, not Mr. Spencer.

MR. ROUTSIS: Very good. Very good.

BY MR. ROUTSIS:

Q When you see a figure leaving Mr. Spencer's residence --

A Correct.

Q -- and he's going down Meadow Drive or --

A Charles.

Q -- Charles, at some point do you lose sight of him because of the darkness?

A Yes.

Q Okay. And I'll just leave with this question. Do you know why you'd make a complaint to KGID that Mr. Spencer intentionally bermed you in when you don't know if he intentionally bermed you in at all?

A I believed that he did.

Q But you don't know.

A That was my belief.

Q But you don't know.

A He was the one assigned to our area.

Q But you don't know if it was intentional.

MS. CAPERS: Is there a question?

MR. ROUTSIS: Yes.

MS. CAPERS: I think she --

BY MR. ROUTSIS:

Q My question to you --

MS. CAPERS: Let's not be argumentative.

BY MR. ROUTSIS:

Q My question to you is why wouldn't you just say that I've got a berm, the berm's this high? Why would you say that he intentionally bermed me in and damaged my property? Why wouldn't you just state --

A Because it destroyed my flowerbed.

Q But you don't know if it was intentional.
A I cannot go into --
Q Okay.
A -- his mindset.
MR. ROUTSIS: Okay. Nothing further.
MR. ZANIEL: I have no other questions. Do you guys have questions?
MR. PINTAR: I have no questions.
MR. PALMER: I don't have any questions.
THE VIDEOGRAPHER: We are going off the video record. The time is approximately 5:17 p.m.
(Deposition resumed 5:50 p.m.)
(Witness sworn.)
BY MR. ZANIEL:
Q Dr. Shaw, you understand your deposition was taken, correct?
A Correct.
Q And you understand that you were under oath during that time period? In fact, I gave you that rule that you were under oath, right?
A Yes.
Q Okay. And you wouldn't change any of your testimony now, knowing that you've been sworn in by a court reporter, correct?
A No, I would not.

MR. ZANIEL: Okay. That's all. Thank you.

THE WITNESS: Thank you.

THE VIDEOGRAPHER: We are going off the video record. The time is approximately 5:50 p.m.

(Deposition concluded 5:50 p.m.)

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

I, KRISTINE BOKELMANN, a Certified Court Reporter in and for the County of Washoe, State of Nevada, do hereby certify:

That on Friday, April 7th, 2016, at the hour of 4:26 p.m. of said day, at Sunshine Litigation Services, 151 Country Estates Circle, Reno, Nevada, personally appeared ROWENA SHAW, PH.D, who was duly sworn by me to testify the truth, the whole truth, and nothing but the truth, and thereupon was deposed in the matter entitled herein;

That the deposition was taken in verbatim stenotype notes by me, a Certified Court Reporter, and thereafter transcribed into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 56, is a full, true, and correct transcription of my stenotype notes of said deposition, to the best of my knowledge, skill and ability.

Dated at Reno, Nevada, this 13th day of April, 2016.

Kristine A Bokelmann

KRISTINE A. BOKELMANN, CCR #165

ERRATA SHEET

I declare under penalty of perjury that I have read the foregoing _____ pages of my testimony, taken on _____ (date) at _____(city), _____(state), and that the same is a true record of the testimony given by me at the time and place herein above set forth, with the following exceptions:

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Date: _____ _____

Signature of Witness

_____

Name Typed or Printed

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