

VOLUNTARY STATEMENT

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EVENT #: 970508-0583

STATEMENT OF: ARTHUR LEE SEWALL, JR.

Electronically Filed
Oct 04 2019 03:46 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

?: Ya.

?: Mm-hm.

A: 2018. That's a long time.

Q1: Right. Yep.

A: Do you think about events and try to place them or try to piece them together more than what you have? Most c-certainly, but as I've explained tonight, that's not always possible.

Q1: Right.

A: But it doesn't take the fact that, it doesn't take away from the fact that an event occurred, a trag—a tragic event, and now we're faced with this.

Q1: Yes. Well—

A: And for her loved ones and relatives, family, you can never explain it away. You can never—saying I'm sorry is not--what's the word I'm looking for? Is not comforting. How do you handle that?

Q1: I think you handle the way you are handling it by telling us what happened from what you remember, the best that you remember. You have anything else?

Q2: Nope, we're good.

Q1: Alright. That's gonna be the end of the interview. Uh, the same persons are present. The time is now 1846 hours.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

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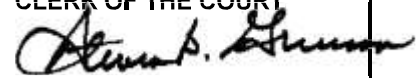
?: Need anything, water, toilet?

A: _____

THIS VOLUNTARY STATEMENT WAS COMPLETED AT RENO POLICE DEPARTMENT, 455 EAST 2ND STREET, RENO, NEVADA 89505, ON THE 11TH DAY OF JANUARY 2018, AT 1846 HOURS.

DO:KH:bk

DO001



1 **RPLY**

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14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 * * *

17 THE STATE OF NEVADA,)
18 Plaintiff,)

19 vs.)

20 ARTHUR SEWALL,)

21 Defendant)

Case No.: C-18-330650-1
Dept. No.: XXI

22 **REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS**
23 **ILLEGALLY OBTAINED STATEMENTS**

24 COMES NOW, Defendant ARTHUR SEWALL, by and through his attorneys of
25 record, CHRISTOPHER R. ORAM, ESQ., and JOEL M. MANN, ESQ., who hereby
26 files the instant reply to State's opposition to motion to suppress defendant's
27 statement. This reply is made and based upon the attached Point and Authorities,
28 the papers and pleadings on file herein, evidentiary hearing, together with
arguments of counsel for defendant's motion to suppress Defendant's statement.

POINTS AND AUTHORITIES

I. Mr. Sewall's Statement Was Not Voluntary and the Product of Coercive Tactics.

Mr. Sewall's statement was a product of coercion that developed an involuntary statement that must be suppressed. Mr. Sewall's will was overborne by such coercive police tactics that forced him to give a statement that was not a product of his free will. The coercive police tactics include the police deception stating that they would not use Sewall's statement, the police denying Sewall's request for an attorney, the police denying Sewall's request to speak with his wife, the police using the memory of Sewall's murdered daughter as a psychological inducement to confess, and the police denying his ability to leave the questioning. In looking at the totality of the circumstances it is clear and obvious that the police overborne Sewall's will and his statement must be suppressed.

A confession is only admissible if it is made freely and voluntarily, without compulsion or inducement.¹ A confession must be the product of a rational intellect and free will.² "A confession is involuntary whether coerced by physical intimidation or psychological pressure."³

To determine the voluntariness of a confession, the court must consider the effect of the totality of the circumstances on the will of the defendant.⁴ "The trial court should consider factors such as: 'the youth of the accused; his lack of education

¹ Passama v. State, 103 Nev. 212, 213, 735 P.2d 321, 322 (1987) citing Franklin v. State, 96 Nev. 417, 421, 610 P.2d 732, 734-35 (1980)

² Id. at 214, 735 P.2d at 323-24

³ Townsend v. Sain, 372 U.S. 293, 307 (1963)

⁴ Carroll v. State, 132 Nev. Adv. Rep 23, 14, 371 P.3d 1023, 1030 (2016)

1 or his low intelligence; the lack of any advice of constitutional rights; the length of
2 detention, the repeated and prolonged nature of questioning; and the use of physical
3 punishment such as the deprivation of food or sleep.”⁵
4

5 In this case, although Sewall does not satisfy all of the Passama factors, there
6 are some significant deficiencies the State is not able to overcome. First, Mr. Sewall
7 was denied his constitutional right to counsel. It is uncontroverted, and the State
8 does not deny, that Mr. Sewall was not advised of his constitutional right to remain
9 silent or his right to counsel. The State freely admits that Sewall was not advised of
10 his constitutional rights. However, what is worse, is that Mr. Sewall attempted to
11 exercise his 6th Amendment right to counsel, numerous times and the detectives
12 denied him his request.
13
14

15 Second, the repeated and prolonged questioning of Sewall ultimately
16 overborne his will to state what he knew to be true versus what the police wanted
17 him to say. Sewall said over and over again that he did not remember or did not
18 know what happened. However, the detectives went on and on and continued to
19 question him. The detectives with long diatribes about how it would be good for
20 Sewall to come clean, how it is necessary for the Nadia’s family to know what
21 happened, how he needs to release this burden. This incessant nagging and
22 questioning from the detectives, forced Sewall to capitulate and tell them whatever
23 they wanted to hear. The detectives fed Sewall the facts that they were looking for.
24 His ultimately involuntary statement was nothing more then the regurgitation of the
25 facts fed to him by the detectives.
26
27
28

⁵ Id. citing Passama v. State, 103 Nev. 212, 214, 735 P.2d 321, 323 (1987)

1 The State is correct in stating that the other Passama factors do favor the
2 State: Sewall is not young; Sewall's intelligence does not put him at a disadvantage;
3 and that although over 2 and half hours of detention, Mr. Sewall's length of
4 questioning is not relatively long.

5
6 However, the Passama factors are merely a guideline to help the trial court to
7 look at the totality of the circumstances surrounding the confession. The trial must
8 consider other issues surrounding the totality of the circumstances. The Court in
9 Passama and Carroll both looked to the police tactics to determine whether the
10 confession was a product of coercion. "If promises, implicit and explicit, tricked
11 Passama into confessing, his confession was involuntary." ⁶

12
13 In looking at the totality of the circumstances, Sewall's statement was a
14 product of coercive tactics that produced an involuntary statement. First, upon
15 questioning Sewall, Detective Hefner specifically and undeniably told Sewall that his
16 statement could not be used by Detectives against him.

17
18 Detective Hefner: "Um, you know, you – you did ask for
19 an attorney and **whatever comes after that we can't use.**
20 (Surreptitious Recording, pg. 23)(emphasis added)

21
22 This statement by Detective Hefner was a coercive and impermissible police tactic
23 that tricked Sewall into giving a statement that was not a product of his free will.
24 By having a detective tell a person that anything you say CANNOT be used against
25 you, it invites a person to state whatever the detective is asking him in order to get
26 out of the uncomfortable situation. This situation, in looking at series of other issues
27 below including Sewall's request for an attorney, demonstrates that Sewall was
28

⁶ Passama, 103 Nev. at 215, 735 P.2d at 323

1 desperate to relieve himself of the coercive environment presented by the detectives
2 in the interrogation room. When a detective not only fails to provide the
3 prophylactic that Miranda requires but instead provides to a suspect the exact and
4 direct opposite instruction, creating a confession based on a lie. A confession that is
5 not a product of free will, but a confession that is a product of coercive police tactics.
6
7

8 Sewall asked the detectives for him to be able to speak with his wife.
9 Detectives told him over and over again that he could speak with his wife once he is
10 done giving a statement to them.
11

12 Sewall: "I need to talk to my wife. Is that possible?"
13 (Surreptitious Recording, pg. 42)

14 Detective O'Kelley: "when you lay out for us and do like –
15 like – and we'll with the recorder – this is who's present,
16 date and time, dah – dah – dah and you tell us. The
17 guarantee with you is that you get that opportunity to
18 talk with your wife about it regardless. I promise. As a
19 man, I promise.
(Surreptitious Recording, pg. 43)

20 Detective Hefner: "Uh, we'll let you w- talk to your wife
21 quite a bit after we're done."
(Surreptitious Recording, pg. 43)

22 Detective Hefner: "Yeah – yeah and I don't think she's
23 [wife] gonna be able to – to give you much help. I think
24 she's just gonna add to your – your stress and your
25 burden right now."
26 (Surreptitious Recording, pg. 43)

27 Detective O'Kelley: "You start and finish and you talk to
28 your wife."
(Surreptitious Recording, pg. 50)

When you have a detective telling you that no matter what you say it cannot be used
against you, and then you have request that you speak with your wife and the

1 detectives tell you over and over again that once you have given a statement you can
2 speak with your wife, it is clear that your statement is a product of coercion. There
3 is no basis for the State to be able to argue Sewall's statement was voluntary after
4 the clearly and obvious coercive police tactics.
5

6
7 Despite being told that they can't use his statement, prohibiting him from
8 being able to call his wife, the police continued with even more coercion. The police
9 used the horrific murder of Sewall's daughter as another coercive tactic to force him
10 to give a statement. They used the pain that he felt from losing his child at the
11 hands of another to argue that Sewall must provide relief to the family of Nadia.
12

13
14 Detective O'Kelley: I mean, its – I don't know it's a
15 tough situation Art, you know, I know it's not easy to hear
16 especially, you know, given the fact that lost a daughter to
a violent death and murder, right

17 Sewall: Mm-hm

18
19 Detective O'Kelley: You know that, um, that Nadia had –
20 Nadia had a family too. You got answer to what
happened to your daughter?

21 Sewall: Yes her (unintelligible) would say six people
22 involved.
23 (Surreptitious Recording, pg. 17)

24 Detective O'Kelley: ... Well that's just kind what we're
25 tryin' to – tryin' to get answers for Nadia's family, you
26 know...
(Surreptitious Recording, pg. 18)

27 Detective O'Kelley: .. And so knowing that you can then
28 put yourself – you cannot sympathize but empathize with
what Nadia's family has gone through but for a lot longer.

Detective Hefner: It's a little different, you know, with
your daughter.... (Surreptitious Recording, pg. 42)

1 This tactic of using Sewall's murdered daughter as an emotional plea, placed on top
2 of the lie that Sewall's statement could not be used against him adds to the totality
3 of the circumstances that his statement was a product of coercion.
4

5 In looking at the totality of the circumstances, this Court can see that Sewall's
6 statement was nothing but a coerced statement. The police lied to Sewall by telling
7 him his statement would not be used against him. The police only would let Sewall
8 talk to his wife after he gave them what they wanted. The police then used the
9 emotion and memory of Sewall's murdered daughter as an emotional plea to give
10 something for Nadia's family to get closure. All these factors coerced Sewall to give
11 an involuntary statement to the police and must be suppressed.
12
13
14

15 **II. Mr. Sewall was In-Custody at The Time Of Questioning**

16 A person is in custody for Miranda purposes when "the circumstances
17 surrounding the interrogation" would case a reasonable person to have felt that he or
18 she was not free to leave.⁷ "There has been a formal arrest, or where there has been
19 a restraint on freedom of movement of the degree associated with a formal arrest so
20 that a reasonable person would not feel free to leave."⁸
21
22

23 The State argues that Mr. Sewall was not in custody at the time he was
24 interrogated by detectives. However, the State's argument is not supported by the
25 litany of facts and circumstances that would indicate to any reasonable person that
26 they were not free to leave. All of the following circumstances and more would lead a
27 reasonable person to believe he was not free to leave: detectives arrive at Sewall's
28

⁷ Thompson v. Keohane, 516 U.S. 99, 112, 116 S. Ct. 457, 465, (1995), Silva v. State, 113 Nev. 1365, 951 P.2d 591 (1997) ("The test for whether one is in custody is if a reasonable person would believe he was free to leave.")

⁸ State v. Taylor, 114 Nev. 1071, 1082, 968 P.2d 315, 323 (1998)

1 apartment and drive him down to the Reno Police Station, detectives take Sewall into
2 an interrogation room where they have him shut off his cell phone, shortly into
3 questioning Sewall asks for an attorney, detectives tell him he cannot leave until
4 they satisfy a warrant and get his fingerprints and DNA, Sewall asks to call his wife
5 where detectives tell him that once he has given a statement he can speak as long as
6 he likes, Sewall states that he is certain he is going to jail tonight and the detectives
7 tell him that the Reno PD may arrest him for failing to register, detectives talk to
8 Sewall about making accommodations in jail for him (before he gave substantive
9 information). These facts clearly show that a reasonable person would believe that
10 he was not free to leave.
11

12
13 In Mr. Sewall's interrogation a reasonable person would not have felt free to
14 leave. Mr. Sewall's statement was the product of coercive police tactics that coerced
15 him into giving a statement. When you look at the totality of the circumstances
16 surrounding the interrogation it is clear that Sewall was not free to leave. Therefore
17 Mr. Sewall's statement must be suppressed as the police conducted a custodial
18 interrogation without informing Mr. Sewall of his Miranda rights.
19

20
21
22
23 ***Invoked His Right To Attorney – Denied By Detectives***
24

25 The most telling evidence that Mr. Sewall was in custody at the time of the
26 questioning is when Sewall stated that he wanted an attorney. When he was denied
27 by the detectives, the detectives admitted that he was not free to leave by them
28 agreeing with Sewall that he was going to be charged with a crime.

///

1 Sewall: But being straightforward with you – information
2 that you had placed out here and, like, what you have
3 sitting over there and what you have said, I mean, I'm not
4 a rocket scientist but it's leading down the path of me
being charged with something.

5 Detective Hefner: Yeah you're right. You're correct.

6 Sewall: So I think at this point and time ...

7 Detective O'Kelley: Well I mean...

8 Sewall: ...whether I'm here voluntary or not – I need a
9 lawyer.

10 (Surreptitious Recording, pg. 42)

11
12 It is clear that when Sewall asked for a lawyer he stated that he believed he was
13 going to be charged with a crime. The detectives responded that yes he was. That
14 indication that he is going to be charged with not only a crime, but murder, would
15 lead a reasonable person to believe that they were not free to leave. The affirmation that the
16 State has the necessary information to charge him with a crime would indicate to any
17 reasonable person that he was not going home that night.

18
19
20 Detective Hefner believed the exact same thing, as when Sewall stated that he
21 wanted an attorney, Hefner immediately stopped questioning and informed Mr.
22 Sewall that the Detectives' had warrants for his DNA, fingerprints, and picture and
23 once that was done he would be free to leave. However, Detective O'Kelley ignored
24 Mr. Sewall's request for an attorney and continued questioning of Mr. Sewall.
25 Detective O'Kelley's interrogation, along with Detective Hefner, of Mr. Sewall went
26 on for another hour and a half.
27
28

1 The State argues that Sewall does not have a right to an attorney if he is not
2 in custody. That may be what the case law says, however the case law does not
3 support the State's position in this case. Sewall's situation is different. He
4 specifically asked for an attorney. He exercised his constitutional right to an
5 attorney and the detectives flat out ignored that request. This clearly, and
6 unequivocally demonstrates that the detectives had control over Sewall, and that he
7 was not free to leave.
8
9

10
11 ***Interrogation at the Police Station***

12 As the Nevada Supreme Court found in Carroll, the questioning at a police
13 station is a strong indicator of a person not feeling free to leave. "Police drove him
14 [Carroll] to the homicide office for questioning, so Carroll could not terminate the
15 interrogation or leave the homicide office unless the detectives agreed and gave him a
16 ride home."⁹ In this case, similar to Carroll, Mr. Sewall was surrounded by four
17 different officers and transported in their car to the Reno Police Station. The police
18 could have conducted the interrogation of Mr. Sewall in his apartment where he lived
19 alone, instead the police chose to intimidate Mr. Sewall into going to the Reno Police
20 Station to be interrogated in their interrogation room. The site of the interrogation
21 indicates that Mr. Sewall was not free to leave when he gave his statement.
22
23
24
25

26 If this was a voluntary statement without a person being in custody, why did
27 the detectives need Sewall to come down to the Reno Police Station? If the police
28 were really concerned about obtaining a truly voluntary statement from Mr. Sewall,
then it begs the very question of why did they not question Mr. Sewall in his own

⁹ Id. at 1032

1 apartment? The detectives knew that he lives alone. The detectives knew that he
2 did not associate with anyone at that apartment complex. The detectives wanted
3 Sewall to come to the station so that they would have control over Mr. Sewall and
4 control the environment to which they interrogated him.
5

6 The detectives specifically give, Mr. Sewall a ride down to the police station. If
7 Mr. Sewall was going to be leaving the police station after the interview, then they
8 would have allowed him to drive his own car and meet him there. However, they
9 controlled the situation by forcing him to get a ride with them. The police, with their
10 actions, demonstrate that they believed that Sewall was not going home that night.
11 This is obvious with the fact that the Reno Police Department already knew that
12 they were going to arrest him on the charge of felon failure to register. By making
13 him leave his car in his apartment complex they prevent him from having an
14 opportunity to leave the police station and go home and also demonstrates the police
15 mentality at the time of initial contact.¹⁰
16

17 *Interrogation Room*

18 Mr. Sewall was brought into an interrogation room. The State is attempting to
19 represent that the room Sewall was being interrogated in was an “office waiting
20 area”. This room was absolutely not an “office waiting area”. This was a small room
21 with a table, a couch, a chair into the police station he was placed in a small
22 interrogation room, where the two (2) LVMPD Detectives entered and asked him to
23 turn off his cell phone. Detective Hefner sat in a position against the wall that would
24

¹⁰ Sewall catches on to the fact the Reno Police were going to arrest him and that he was not free to leave during the interrogation. He even states to the detectives that he is being taken to jail tonight all before the detectives start substantively questioning him.

1 indicate that the detective had control over who would be able to leave the room.
2 Similar to Carroll, the detective made it that in order to leave the room Mr. Sewall
3 would have to physically go through Detective Hefner.
4

5 The significance of an interrogation room is whether the Defendant believed,
6 or a reasonable person would believe, that they had the ability to move freely. This
7 room was small enough to limit the amount of movement that Mr. Sewall had inside
8 this room. It is convincingly clear that Mr. Sewall could not just walk out of the room
9 at any time. In order to leave the room, he would have to go through Detective
10 Hefner. With two extremely seasoned detectives in the room, one by the door and the
11 other on the other side of the table, a reasonable person would not have felt like they
12 could get up and leave the room at anytime. The interrogation room is another factor
13 demonstrating that Sewall was in custody and not free to leave.
14
15

16
17
18 ***Not Allowed To Leave Without Providing Forensic Evidence***

19 It is clear that at the moment Mr. Sewall exercised his right to an attorney,
20 and that request was ignored that Mr. Sewall was in custody. A reasonable person
21 who requests an attorney at a so-called voluntary interview, would immediately
22 realize that this is not voluntary anymore. This is exactly how it played out in Mr.
23 Sewall's interrogation.
24
25

26 The Court Orders directed the detectives to collect the evidence with force if
27 necessary, this would cause a reasonable person to understand you cannot leave until
28 the detectives satisfy these Court Orders, a reasonable person has no choice other

1 than just wait. During that forced waiting period, the detectives used that
2 opportunity to continue to ask questions, after Mr. Sewall had requested an attorney.
3

4 It is clear that even Detective Hefner believed that Mr. Sewall was not free to
5 leave after Mr. Sewall asked for an attorney as he stated that, "Um, you know you –
6 you did ask for an attorney and whatever comes after that we can't use."
7 (Surreptitious Recording, pg. 23). If the Detective is telling Mr. Sewall that after he
8 has asked for an attorney that we cannot use any additional statements from you,
9 then he is implying that Mr. Sewall was in custody. In addition, this statement was
10 also used to coerce Mr. Sewall to give a statement when he believed that anything he
11 said would not be used against him.
12
13
14

15 Despite what Mr. Sewall actually said, Detective O'Kelley attempted to trick
16 Mr. Sewall to believe that he said he "thinks he needs an attorney". Detective
17 O'Kelley clearly did this as a manipulation ploy to coerce Mr. Sewall to give a
18 statement.
19

20 *Not Allowed To Use The Phone To Call His Wife*
21

22 The State attempts to argue that Mr. Sewall never stated that he wanted to
23 speak with his wife before or after the interrogation. However, that argument is just
24 the State trying to downplay the fact that he asked to speak with his wife and the
25 detectives stated that he had to wait until after they were done with their
26 interrogation. The detectives are using the emotions about Sewall's murdered
27 daughter and Sewall responds that he needs to speak with his wife. Then the
28 detectives spend their time convincing him that he needs to give his statement first

1 and unburden himself without his wife getting in the way. These tactics
2 demonstrate how much dominion and control the detectives had over Mr. Sewall.

3
4 Sewall: "I need to talk to my wife. Is that possible?"
5 (Surreptitious Recording, pg. 42)

6 Detective O'Kelley: "when you lay out for us and do like –
7 like – and we'll with the recorder – this is who's present,
8 date and time, dah – dah – dah and you tell us. The
9 guarantee with you is that you get that opportunity to
10 talk with your wife about it regardless. I promise. As a
11 man, I promise.
12 (Surreptitious Recording, pg. 43)

13 Detective Hefner: "Uh, we'll let you w- talk to your wife
14 quite a bit after we're done."
15 (Surreptitious Recording, pg. 43)

16 Detective Hefner: "Yeah – yeah and I don't think she's
17 [wife] gonna be able to – to give you much help. I think
18 she's just gonna add to your – your stress and your
19 burden right now."
20 (Surreptitious Recording, pg. 43)

21 Detective O'Kelley: "You start and finish and you talk to
22 your wife."
23 (Surreptitious Recording, pg. 50)

24 Just as in Carroll, Mr. Sewall asked to use the phone to call his wife before any
25 additional questioning and was denied his right to use the phone to call his wife. In
26 Carroll, the Nevada Supreme Court stated, "Police did not allow Carroll to use his
27 telephone when he said he needed to make a call."¹¹ The Carroll Court distinguished
28 Silva v. State¹² from Carroll based partly on Carroll being denied the use of a
phone.¹³

¹¹ Carroll, at 1033

¹² Silva v. State, 113 Nev. 1365, 951 P.2d 591 (1997)

¹³ Carroll, at 1033

1 Just like the Nevada Supreme Court found in Carroll, a reasonable person,
2 under the circumstances that Mr. Sewall was in, would not have felt free to leave,
3 especially when Mr. Sewall asked to use his phone to call his wife. The Detectives
4 clearly and distinctly stated that Mr. Sewall could not use the phone. Mr. Sewall
5 made numerous attempts to explain to the detectives that he wanted to pause the
6 questioning by asking to speak to his wife. Again and again as the interrogation
7 progressed, it became clear that the detectives would not let him do so, until after he
8 gave them what they wanted. He had to give a statement in order to speak with his
9 wife. This again demonstrates that Sewall was not free to leave and therefore in
10 custody.
11

12
13
14
15 ***Sewall Believed That He Was Going To Be Arrested By Reno PD***

16 The State agrees that Mr. Sewall believed he was going to jail that night and
17 was not free to leave as they completely ignored this issue in their opposition. Mr.
18 Sewall clearly believed that he was not leaving the station voluntarily after the
19 interrogation. In fact, it was strongly implied that Reno Police were going to arrest
20 Mr. Sewall after the interrogation for failure to register, no matter what Sewall did
21 in the interrogation room.
22
23
24

25 Sewall: 'Cause from my perspective (unintelligible) layin' up
26 in a jail cell tonight.

27

28 Hefner: Now what Reno might do on their own with this is,
you know, y- you didn't register as an ex-felon and
that's a crime. It's a misdemeanor but it's a crime.
Now if - if they decide want do that - that's up to
them. We don't have any control over that, um, you
know, jurisdiction.

(Surreptitious Recording, pg. 39).

1
2 Sewall: Well I'm not certainly I- looking forward to
3 (unintelligible) a jail cell.

4 Hefner: That's - I've never been to the jail here. That's
5 understandable.

6 Sewall: (Unintelligible) but I see that happening in my very
7 near future. I'm sure that...

8 Hefner: (Unintelligible) concentrate so much on the very near
9 future as in, uh, the long term outcome. 'Cause, you
10 know, (unintelligible) this all adjudicated and justice
11 is meted out, uh, and go with what happens with
12 that (unintelligible). And it definitely impact big - big
time.

13 O'Kelley: And, you know, we don't - I - again - we just met
14 these detectives that we're working with here...

15 Sewall: Mm-hm.

16 O'Kelley: ...and, uh, you know, we don't know, like I said, I've
17 never been in the Reno jail -I don't know what any -
18 anything about it. But, you know, we'll have
19 discussions with them about you - whatever you
accommodations are, like, by yourself ...

20 (Surreptitious Recording, pg. 47)

21 Sewall: So I am going to jail today.

22
23 Hefner: Well it - not so much, like I said, not with us. Uh, i- if
24 you give us a statement -confession tonight, yeah
25 you'll go to jail, um, tonight. Um, you'll be here for a
26 few days until we're start the process to bring back
27 down to Las Vegas. Um, like I said they could arrest
28 you right now - they even mentioned that but
(unintelligible) - that's (unintelligible) stuff. That's
what you do to people that cause you aggravation
and grief, you know, and, uh...

(Surreptitious Recording, pg. 48)

1 It is clear that not only did Mr. Sewall believe that he was going to jail that
2 night, the detectives believed that he was going to jail immediately after the
3 interrogation as well. The detectives are even trying to assure Mr. Sewall that he
4 would be well taken care of in jail and that they would get him his own cell if he
5 wants. Whether he gave a statement or not, it was clear to Mr. Sewall and the
6 detectives that the Reno Police wanted to arrest him, and whether they arrested him
7 or not was based on whether the Reno Police wanted to “cause you aggravation and
8 grief.” Meaning, should the Reno Police want to give Mr. Sewall a hard time they
9 would arrest him on this misdemeanor charge. The only reason the Reno PD would
10 want to cause Sewall aggravation, is the Reno PD believed that he did not cooperate
11 with LVMPD and give them what they wanted. Any reasonable person would
12 believe that if they do not cooperate they would be arrested, Mr. Sewall definitely
13 believed that very idea.

14 This clearly demonstrates that the illusion that Mr. Sewall came to the station
15 voluntarily, or that he remained at the station voluntarily, is nothing more than just
16 plain wrong.

17
18
19 **III. Sewall’s In-Custody Statements Made Without Miranda Warnings Are**
20 **Inadmissible.**

21 The Fifth Amendment guarantees that no person “shall be compelled in any
22 criminal case to be a witness against himself.” Miranda v. Arizona requires law
23 enforcement to use procedural safeguards to secure this constitutional right.¹⁴ “[I]f a
24 person in custody is to be subjected to interrogation, he must first be informed in

¹⁴ Miranda v. Ariz., 384 U.S. 436, 444, 86 S. Ct. 1602, 1624 (1966).

1 clear and unequivocal terms that he has the right to remain silent.”¹⁵ This “warning
2 will show the individual that his interrogators are prepared to recognize his privilege
3 should he choose to exercise it.”¹⁶ Miranda’s warnings will also ensure that waiver of
4 this constitutional right is made freely, knowingly, and voluntarily.¹⁷

5
6 The Sixth Amendment guarantees “the Assistance of Counsel.” Miranda holds
7 that, as “an absolute prerequisite to interrogation,” the individual in custody “must
8 be clearly informed that he has the right to consult with a lawyer and to have the
9 lawyer with him during interrogation.”¹⁸

10
11 Miranda warnings are necessary whenever someone is “in custody or
12 otherwise deprived of his freedom of action in any significant way.”¹⁹ Whether a
13 person is in custody depends upon “how a reasonable person in the suspect’s
14 situation would perceive his circumstances.”²⁰ Central to custody is “how a
15 reasonable person in that position would perceive his or her freedom to leave.”²¹

16
17 In this particular case, it is clear and should be uncontested that Miranda
18 Warnings were not given to Mr. Sewall at any point during his interrogation. Mr.
19 Sewall was never advised of his constitutional rights during any course of his
20 interrogation.

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¹⁵ Id. at 467-468.

¹⁶ Id. at 468.

¹⁷ Id. at 468.

¹⁸ Id. at 471.

¹⁹ Id. at 445.

²⁰ Yarborough v. Alvarado, 541 U.S. 652, 662, 124 S. Ct. 2140, 2148, (2004).

²¹ Stansbury v. Cal., 511 U.S. 318, 325, 114 S. Ct. 1526, 1530, 128 L. Ed. 2d 293, 300 (1994).

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23 Id.

²⁵ Escobedo v. Ill., 378 U.S. 478, 491, 84 S. Ct. 1758, 1765 (1964).

1 Station. Mr. Sewall was also transported to the station without restraints but was
2 surrounded by several law enforcement personnel.
3

4 CONCLUSION

5
6 Detectives took Mr. Sewall into custody by preventing him from leaving when
7 he requested an attorney. They told him he needed to complete DNA tests,
8 fingerprints, and picturing before he could leave, and then refused to allow him to
9 call his wife until he gave them what they wanted. Mr. Sewall stated over and over
10 again that he did not believe he was free to leave, that he would be going to jail that
11 night. Never once did the Detectives inform Mr. Sewall of his Miranda rights.
12

13
14 Because the detectives coerced a statement from Mr. Sewall and failed to
15 inform Mr. Sewall of his Miranda rights, statements made during the interrogation
16 must be suppressed.
17

18 In addition, because Mr. Sewall invoked his rights to an attorney, but the
19 detectives refused to respect this right, subsequent statements must be suppressed.
20

21 DATED this 21st day of December, 2018.
22

23
24 By: /s/ Christopher Oram, Esq.
CHRISTOPHER R. ORAM, ESQ.
25 Nevada State Bar No. 004349
26 520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
27 Attorney for Sewall
28

By: /s/ Joel Mann, Esq.
JOEL M. MANN, ESQ.
Nevada State Bar No. 008174
601 South 7th Street
Las Vegas, Nevada 89101
Attorney for Sewall

1 **CERTIFICATE OF SERVICE**

2

3 The above **REPLY TO STATE'S OPPOSITION TO DEFENDANT'S MOTION**

4 **TO SUPPRESS ILLEGALLY OBTAINED STATEMENTS** was made this 21st

5

6 day of DECEMBER, 2018, via electronic mail to the Clark County

7 District Attorney:

8

9

10 GIANCARLO PESCI: giancarlo.pesci@clarkcountyda.com

11

12 PAMELA WECKERLY: pamela.weckerly@clarkcountyda.com

13

14 By: /S/ Maria Moas

15

16 Employee of JOEL M. MANN, CHTD.

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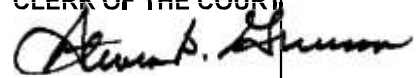
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DISTRICT COURT

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CLARK COUNTY, NEVADA

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STATE OF NEVADA,

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Plaintiff,

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vs.

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ARTHUR LEE SEWALL,

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Defendant.

12

13

BEFORE THE HONORABLE VALERIE ADAIR, DISTRICT COURT JUDGE

14

FRIDAY, JANUARY 18, 2019

15

**RECORDER'S TRANSCRIPT OF
JACKSON V. DENNO HEARING**

16

17

APPEARANCES:

18

19

20

For the Plaintiff:

PAM WECKERLY, ESQ.

Chief Deputy District Attorney

21

22

For the Defendant:

JOEL M. MANN, ESQ.

CHRISTOPHER ORAM, ESQ.

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RECORDED BY: SUSAN SCHOFIELD, COURT RECORDER

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Las Vegas, Nevada, Friday, January 18, 2019

[Case called at 9:09 A.M.]

THE COURT: All right. Are both sides ready to proceed?

MS. WECKERLY: Yes, Your Honor.

MR. MANN: Yes, Your Honor.

THE COURT: All right. Who's the first witness?

MS. WECKERLY: The first witness, Your Honor, is Dean O'Kelley, and just for the record I wanted to inquire that the Court had the opportunity to review the video of the interview itself.

THE COURT: Part of it.

MS. WECKERLY: Okay. So just for –

THE COURT: Here's everything. I left all of the materials on my desk. I ran in here without them. Now I have everything, thank you.

MS. WECKERLY: So for efficiency purposes –

THE COURT: Okay.

MS. WECKERLY: -- I was going to limit my direct to kind of what's before the recording and when it's after and then leave it for the Court's review.

THE COURT: I think that's fair. Okay. And then, obviously, Mr. Mann can proceed however he wants relating to the video. If he wants to go to a particular part of the video and ask the detective about that, that's clearly perfectly fine, but we don't need to all sit in here together and watch the video.

MR. MANN: Thank you.

1 THE COURT: I think that's what Ms. Weckerly is trying to
2 avoid, correct?

3 MS. WECKERLY: Yes.

4 THE COURT: All right.

5 MR. MANN: Efficiency.

6 THE COURT: So –

7 MS. WECKERLY: And he's -- I can grab him but he's right in
8 the ante room.

9 **DEAN O'KELLEY**

10 [Having been called as a witness and first duly sworn, testified as
11 follows:]

12 THE CLERK: Thank you. Please have a seat. State and
13 spell both your first and last names for the record.

14 THE WITNESS: It's Dean O'Kelley, D-E-A-N O-'K-E-L-L-E-Y.

15 **DIRECT EXAMINATION OF DEAN O'KELLEY**

16 BY MS. WECKERLY:

17 Q All right. Sir, how are you employed?

18 A Currently with the Marshal's office here in the Court.

19 Q And do you have other employment with Metro?

20 A Yes, I'm a cold case homicide investigator.

21 Q And were you working as a cold case detective back in
22 January of 2018?

23 A Yes, I was.

24 Q Prior to working as a cold case detective, were you employed
25 with Metro?

1 A Yes.

2 Q And in what capacity?

3 A My last nine years with homicide as detective.

4 Q And then you retired and then ultimately started working on
5 cold cases?

6 A That's correct.

7 Q Was one of the cold cases that you worked on involving a
8 suspect by the name of Arthur Sewell?

9 A Yes.

10 Q Okay. And you recall the homicide in which Mr. Sewell's a
11 suspect, what year that took place in?

12 A Nineteen Ninety-Seven.

13 Q So sort of moving to January of 2018, was, on the 11th of
14 January, was there a point in time when you and another detective from
15 cold case were attempting to conduct an interview with Mr. Sewell?

16 A Yes, that's correct. An investigator, Ken Heffner, and I went
17 up to Reno.

18 Q And for the record, do you see Mr. Sewell in the courtroom?

19 A Yes, I do.

20 Q Could you point to him and describe what he's wearing today?

21 A He's sitting at the table here, he's wearing glasses, and he
22 has a CCDC dark blue outfit on.

23 THE COURT: The record will reflect identification.

24 Q So can you explain to the Court sort of the logistics of how it
25 was that you go to Reno to interview Mr. Sewell?

1 A We had through our investigator specialist, Debbie Flarity, she
2 had located Mr. Sewell working at Tesla up in Reno.

3 Q And prior to arriving in Reno, did you make contact with Reno
4 law enforcement to explain you were coming up there or requesting any
5 sort of assistance from them?

6 A Yes, we did.

7 Q And can you describe what was arranged between the two
8 police departments?

9 A It was actually days in advance we let Reno PD know that we
10 were going to be coming up, and they had gathered some plain clothes
11 detectives in advance and determined where Mr. Sewell was living in the
12 apartment complex, and also just conducted some casual surveillance to
13 determine what time he was getting home from work on a regular basis.

14 Q Okay. And specifically on the 11th when the interview of Mr.
15 Sewell was conducted, where was it initially that you went to make
16 contact with him?

17 A We went to the apartment complex where he was staying, it's
18 a gated community, with plain-clothes detectives from Reno, and we just
19 waited in our vehicle until his truck pulled into the apartment.

20 Q The vehicle you were in, can you describe what it was or what
21 it looked like?

22 A It was a rental car, I believe a Chevy; it was black.

23 Q Not a police vehicle?

24 A No.

25

1 Q And yourself and Detective Heffner, how were you both
2 dressed?

3 A In plain clothes. I know I was wearing jeans and a polo shirt.

4 Q Okay. About how many Reno officers were there?

5 A I'd say five.

6 Q And were they in uniform or in police vehicles?

7 A No, they were in plain vehicles and they were in plain clothes,
8 and not all of them became visible. They were throughout the apartment
9 complex. Only two of them exited their vehicle to talk to Mr. Sewell when
10 he got out of his truck.

11 Q And at the point Mr. Sewell gets out of his truck, is it morning,
12 afternoon, evening?

13 A It's afternoon. I'd say probably between 4:00 and 4:30.

14 Q Okay. So he drives into the complex and parks and gets out
15 of his vehicle?

16 A That's correct.

17 Q And were you and Detective Heffner the first officers to
18 approach him or was the Reno officers?

19 A The Reno officers did initially, and you could – we could hear
20 them as we left our vehicle. We could hear them introducing themselves
21 and letting Mr. Sewell know that there were some investigators from Las
22 Vegas that wanted to talk to him.

23 Q And the officers, just again, that approached him, they were in
24 plain clothes?

25 A That's correct.

1 Q Any weapons drawn, anything like that?

2 A No.

3 Q When they approached Mr. Sewell, you said you could hear
4 them explain that there were some officers from Las Vegas that wanted
5 to speak with him?

6 A That's correct.

7 Q Was there a point in time when either yourself or Detective
8 Heffner got out of the rental car?

9 A Yes we did.

10 Q Was it at that point?

11 A It was. We saw them, we saw the Reno detectives start
12 walking towards Mr. Sewell and so we exited our vehicle and we started
13 walking in that direction. That's how I was able to overhear them
14 introduce themselves and tell Mr. Sewell that we needed to talk to him.

15 THE COURT: What did – how did they introduce themselves?

16 THE WITNESS: They just identified themselves as Reno
17 police officers and that they – then they immediately said that there were
18 some Las Vegas investigators that wanted to talk to him.

19 THE COURT: Okay.

20 Q And at that point, did yourself and Detective Heffner introduce
21 yourselves to Mr. Sewell?

22 A Yes, we did.

23 Q When you were getting out of the vehicle, did yourself or any
24 of the officers for that matter have any kind of weapon or anything in your
25 hands?

1 A No.

2 Q And everybody's in plain clothes?

3 A That's correct.

4 Q Once you introduced yourself and Detective Heffner
5 introduced himself to Mr. Sewell, what was the conversation after that?

6 A Investigator Heffner talked to him primarily but explained to
7 him that we needed to go over some things with him and that we asked
8 him if he was willing to accompany us back to the Reno Police
9 Department to have that conversation, and he agreed.

10 Q Okay. At that point, do people get in vehicles?

11 A Yes.

12 Q Where – in what vehicle did Mr. Sewell get in?

13 A I don't remember the description of the vehicle. I know that
14 we walked back to our rental car as he went with the Reno detectives
15 and rode with them.

16 Q And do you recall where or, actually, could you see where he
17 sat in that vehicle?

18 A Yes, in the right front passenger seat.

19 Q So obviously there's an officer driving and Mr. Sewell's in the
20 right front passenger?

21 A Correct.

22 Q And was there another officer in the car?

23 A I recall that somebody sat in the back seat, yes.

24

25

1 Q The entire time that you were in the parking lot of the complex
2 until Mr. Sewell got in the vehicle, did you see anyone pat him down for
3 weapons or anything like that?

4 A No, I didn't see that.

5 Q Anyone search him in any respect?

6 A No, nor handcuff him, no.

7 Q Okay. So he gets in the vehicle with the two Reno detectives
8 and I assume you and Detective Heffner get back in your car?

9 A Yes, we did.

10 Q At that point, is it a straight drive to the Reno Police
11 Department?

12 A Yes.

13 Q Once you arrive at the Reno Police Department, where do you
14 go?

15 A We went in the front of the – of the police station and, and Mr.
16 Sewall went with the Reno detectives, and they took him back to the
17 room where we spoke with him.

18 Q Did you specify which room or what kind of room that you
19 wanted to use for the interview?

20 A No, we didn't ask for anything in particular, just a place where
21 we could talk.

22 Q Okay. And the room that you ultimately end up in, are you in
23 there first or is it the Reno people in there first and then you arrive; do
24 you recall?

25

1 A Mr. Sewall was in there first, then we came through the
2 building and right – went right back to where he was.

3 Q Okay. At the time he was in the room, was he handcuffed to a
4 bar or confined? Or did anyone have a weapon out?

5 A No, it wasn't that type of a room. It didn't have, you know, it
6 wasn't a typical interview room where there was a handcuff bar. That
7 wasn't even available and nobody had – nobody placed him in handcuffs
8 or anything like that.

9 THE COURT: Was it like a conference room or what kind of a
10 room was it?

11 THE WITNESS: It was more like a victim witness room, Your
12 Honor. Like – it had couches and there were some stuffed animals over
13 in the corner. It looked like where you might take children to be
14 interviewed.

15 THE COURT: Okay.

16 THE WITNESS: It was very casual.

17 THE COURT: Okay. Is there like a desk or a table or –

18 THE WITNESS: There was a round table.

19 THE COURT: Okay.

20 THE WITNESS: I sat on the furthest side of the table furthest
21 from the door and then Investigator Heffner sat to my right and Mr.
22 Sewall sat with the – sat at the door – or the chair closest to the door.

23 THE COURT: Okay.

24 MS. WECKERLY: You're one step ahead of me, Your Honor.
25 Can I approach?

1 THE COURT: I'm sorry.

2 MS. WECKERLY: That's okay. I provided defense counsel
3 with the same four photographs, but it's –

4 THE COURT: I don't do that if there's a jury here but if it's just
5 me.

6 MS. WECKERLY: I know.

7 THE WITNESS: Yes, Your Honor, I understand.

8 MS. WECKERLY: I know. You knew what was coming.

9 BY MS. WECKERLY:

10 Q These are State's proposed 1 through 4, could you look
11 through those and let me know when you're done, please.

12 Do those photographs depict the interview room that you use
13 to conduct the interview of Mr. Sewall?

14 A They do, other than, the blinds weren't –they were all the way
15 up to the top, so there – those windows were clear and I remember there
16 being some children's toys over in the corner. I don't see them in this
17 photograph.

18 Q And in fairness these were taken recently at our request by
19 the Reno Police Department?

20 A Yes.

21 Q State moves to admit 1 through 4.

22 THE COURT: Any objection?

23 MR. MANN: No objection as to demonstrative.

24 THE COURT: All right. Those will be admitted.

25

1 MS. WECKERLY: So Detective Kelly can you – Your Honor, I
2 don't know if you want these on the overhead, or would you prefer him
3 just to describe them to you?

4 THE COURT: I think it's probably easier if you put them on
5 the overhead.

6 MS. WECKERLY: Okay.

7 THE COURT: Then we can all look at them together.

8 MS. WECKERLY: Thank you.

9 THE COURT: That way defense counsel can know –

10 MS. WECKERLY: Sure.

11 THE COURT: -- if he was talking about it. You know, you can
12 just point – we can all figure it out. It probably would be easy.

13 THE MARSHAL: I just didn't turn the TV on, Judge.

14 MS. WECKERLY: Oh, I'm sorry.

15 THE MARSHALL: We usually don't use this during hearings.

16 [Colloquy between Counsel]

17 THE COURT: If we can't get it working we'll just do it the old
18 fashioned way.

19 MS. WECKERLY: Sure that's – I mean, there's only 4
20 pictures –

21 THE COURT: Okay.

22 MS. WECKERLY: -- so it shouldn't be

23 MR. MANN: Technology is great until you want to use it.

24 THE COURT: Right. Well it doesn't work and we all sit
25 around like –

1 THE MARSHAL: There's been issues since they've installed
2 this new stuff.

3 THE COURT: I guess we'll do it the old fashioned way.

4 MS. WECKERLY: Okay. So Counsel, I'm going to start with
5 this photo if --

6 MR. MANN: Do you mind if I just come up?

7 THE COURT: Yeah. I was going to say, Mr. Mann, if you
8 want to stand up here at the witness stand, we can all --

9 MS. WECKERLY: We can all look on.

10 THE COURT: Let's all look together. I can see.

11 BY MS. WECKERLY:

12 Q Okay. And Detective, I'm starting with State's proposed four.
13 I don't -- can you see it from theSo can you describe -- I'm going to just
14 step behind you if that's okay. Can you describe what we're looking at in
15 that photograph?

16 A This is the -- there's entries into the hallway into the room that
17 we were dealing with. It almost looks like a -- almost like a storefront, like
18 maybe they had added onto the building -- to the both store door.

19 Q Now there's blinds in those -- in that photograph and floor that
20 are down. Is that -- are those the blinds that you were speaking of
21 earlier?

22 A Right. I don't even recall seeing blinds so that way they had to
23 have been pulled all the way to the top.

24 Q And so the -- when the windows or the glass panes are
25 obviously see through?

1 A Correct.

2 Q Okay. And the room itself – this is – four is sort of the
3 entryway into that room.

4 A That's correct.

5 Q Is there any kind of locking mechanism or any extra security
6 on that door that you noticed when you were up there?

7 A I know that there was a, a key lock on the front so it'd be a
8 deadbolt. I don't remember if it was – if you had a twist on the other side
9 or if you had to use the key like you would normally in a store, it was that
10 type of a door.

11 Q Okay. I'm going to show you next one, and that's obviously in
12 the room looking towards that door.

13 A It is, and unfortunately the blinds are covering where that dead
14 bolt would be if it – if it did have a twist on it. It was – we never even
15 considered locking that so.

16 Q In that, which is State's 1, there's a round table.

17 A Yes.

18 THE COURT: I was going to ask that.

19 Q And can you, maybe for the Court, describe where – if you
20 can, in that photograph, point out where everybody was positioned in
21 relation to the front door.

22 A I was sitting here so basically that was the view that I had.

23 THE COURT: So you were sort of facing towards the wall --

24 THE WITNESS: Mm Hmm.

25 THE COURT: -- even with the door?

1 THE WITNESS: I was kind of –

2 THE COURT: Is that fair?

3 THE WITNESS: -- so there's a – this is a couch --

4 THE COURT: Okay.

5 THE WITNESS: -- that matches that chair. It's a longer
6 couch. So the couch is against the back wall. This chair's here. This –
7 there's a little corner here and another couch over here. It's about – I'd
8 say 12 by 15 room. Investigator Heffner sat there, I sat here, and Mr.
9 Sewall sat over here.

10 BY MS. MS. WECKERLY:

11 Q So was there anyone, either yourself or Detective Heffner,
12 blocking Mr. Sewall's access to the door?

13 A No.

14 Q Okay. I'm going to show you State's 2 and you just spoke
15 about that but –

16 A Mm.

17 Q -- those are the couch and the chair that you were describing?

18 A Right. This is around – so this is the -- couch sits on the back
19 so the door is right here. And then that little L shape and another couch
20 is over – of course it's going to start working now.

21 Q And looking at that angle, can you just point out where
22 everybody was again.

23 A Mr. Sewall was here. I was in this – stuck in this corner here.
24 And Investigator Heffner was there.

25 Q Okay. And then the last –

1 A He was standing here just – in this general area kind of
2 moving over at that – because he was sitting in a chair before.

3 Q And this is State's 3. That's just another view of the, the room
4 and the – I guess the table?

5 A Correct. From that, that second couch that was along the
6 back wall here. And you can see there's some toys that are in that little
7 toy box and stuff where they had for kids.

8 Q Thank you.

9 So once you were all in the room, did yourself or Detective
10 Heffner handcuff Mr. Sewall at all?

11 A No.

12 Q Did you pat him down for weapons?

13 A No.

14 Q Did you tell him where he needed to be seated?

15 A No.

16 Q In your experience as a homicide detective and cold case
17 detective, have you interviewed suspects before?

18 A Yes, I have.

19 Q And in a suspect interrogation room where you've interviewed
20 suspects, how would you describe that room – those types of rooms in
21 contrast to this one?

22 A Well a standard interview room is, is drastically smaller. The
23 ones that we have over at MLK and Alta are probably 6 by 8 or 6 by 10 at
24 the most. A couple of them are deeper and they do have a fixed table
25 that's on, on the floor – anchored to the floor and then there's a handcuff

1 bar that's anchored to the wall on the backside or onto the table in a
2 couple of the interview rooms.

3 Q And had, had you wanted that type of room, certainly the
4 Reno Police Department probably had that type of room available.

5 A Yes, they do.

6 Q But you – this interview was conducted in this more office like
7 room?

8 A Yes.

9 Q Okay. So once – once you all sat down, obviously you had
10 introduced yourselves to Mr. Sewall back at his apartment. Was there a
11 videotape going of the interview or of the contact with Mr. Sewall?

12 A Yes, there was.

13 Q And was that requested by yourself and Detective Heffner,
14 how do you know when the video from the time you guys got in the
15 room?

16 A Yes.

17 Q And once you were in the room, was there any request made
18 with regard to Mr. Sewall's cell phone?

19 A Yes. Well, actually Investigator Hefner suggested we all turn
20 off our cell phones so that we wouldn't be interrupted by anybody.

21 Q Did anyone take either I guess either yourself or Detective
22 Heffner, did either one of you take Mr. Sewall's cell phone from him?

23 A No, we didn't touch it.

24 Q You asked him to turn it off?

25 A That's correct. And we turned ours off as well.

1 Q Is that something that you typically do in witness interviews so
2 the people's phones aren't going off at all during –

3 A Yes, even if they're on silent they're sitting on a table and they
4 start bzzz, bzzz. They're – it's almost louder than a ringtone sometimes.

5 Q So that's a normal step that's taken in interviews?

6 A Correct.

7 Q Once the interview started, was there any, I guess, discussion
8 about the interview being terminated at the request of Mr. Sewall if he
9 had wanted to?

10 A Yes. Early on.

11 Q And was Mr. Sewall issued Miranda warnings during this
12 interview?

13 A No, he was not.

14 Q And why was that?

15 A Well, number one, he wasn't in custody. And he had – he had
16 accompanied us back to the Reno police station voluntarily on his own.
17 We discussed that as well.

18 Q And during the interview, did Mr. Sewall ever say he wanted to
19 terminate the interview?

20 A No.

21 Q Did he ever request like a break, I – you know, I need to use
22 the restroom or I need some water or anything like that?

23 A No, as I recall the only request that he made of us was at one
24 point that he able to call his wife and we told him that he would be able to
25 do that.

1 Q Okay. And was that request actually fulfilled?

2 A Yes, it was.

3 Q Was there any point during the interview where – that you
4 recall where voices were raised or he was threatened?

5 A No, not at all.

6 Q Was there any point in the interview where either yourself or
7 Detective Hefner lied to him about what the state of the evidence was?

8 A No.

9 Q Was there any point in the interview where, I mean, where a
10 weapon was drawn or anything like that?

11 A No.

12 Q At the – at the conclusion of the interview, was there
13 discussions with Mr. Sewall about how he was treated during the
14 interview?

15 A Yes, there was.

16 Q And do you recall whether or not he expressed that he was
17 mistreated at all during the interview?

18 A He acknowledged that he was not.

19 Q Okay. Did he also acknowledge that, you know, he had come
20 there voluntarily?

21 A Yes.

22 Q At the conclusion of the entire interview with the Las Vegas
23 Metropolitan representatives, was Mr. Sewall taken into custody?

24 A Yes, he was.

25 Q And what was he taken into custody on?

1 A Reno Police Department took him into custody for the ex-felon
2 failure to register.

3 Q Was that issue discussed during your interview with Mr.
4 Sewall?

5 A Yes. We discussed that possibility but it wasn't up to us; it
6 was Reno's decision.

7 Q At the time you were interviewing him, did you know whether
8 or not Reno was going to take him into custody?

9 A No.

10 Q Did you give him any kind of assurance regarding what Reno
11 was going to do with that charge?

12 A No.

13 Q But you – you did mention that that was a possibility?

14 A Yes.

15 Q And he chose to continue interviewing with you?

16 A That's correct.

17 Q And ultimately, at the end of the interview, Reno decided to
18 take him into custody on their charge?

19 A That's correct. We didn't object to it.

20 THE COURT: And was that done by the two – one of – one or
21 both of the two officers who had initially made contact with Mr. Sewall?

22 THE WITNESS: I don't recall, Your Honor –

23 THE COURT: Okay.

24 THE WITNESS: -- if it was – if it was one of those.

25

1 MS. WECKERLY: Thank you. I'll pass the witness, Your
2 Honor.

3 THE COURT: All right, Mr. Mann.

4 MR. MANN: Thank you, Your Honor.

5 **CROSS-EXAMINATION**

6 BY MR. MANN:

7 Q Detective O'Kelly, you said that you retired from Metro, is that
8 correct?

9 A Yes, I did.

10 Q You are currently employed from the State Court Marshal
11 Office, is that correct?

12 A Yes, District Court – Eighth Judicial District Court.

13 THE COURT: It's actually – so you're a district court – I just
14 found this out today. I didn't know.

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: So you're a District Court Marshal?

17 THE WITNESS: That's correct.

18 THE COURT: Like this fellow over here --

19 THE WITNESS: Exactly.

20 THE COURT: -- Kenny Hawkes, right?

21 THE WITNESS: Yes.

22 THE COURT: Okay. And just to be clear it – they're County
23 employees. Only the judges are State employees.

24 MR. MANN: Thank you, Your Honor.

25 BY MR. MANN:

1 Q And as a County Court Marshal, what are your duties,
2 currently?

3 A Well, I'm in field training because I'm new.

4 Q So it's, it's a new position.

5 A It's a new position, yes, that's correct.

6 Q Okay. How long have you been employed in that capacity?

7 A This'll be my sixth week.

8 Q Okay. Now in January of 2018 you were not in that capacity,
9 correct?

10 A No, I was not.

11 Q Okay. And you had retired from Metro but you were working
12 cold cases, is that correct?

13 A Yes, September of '15 is when I started working cold case
14 homicides.

15 Q So about this time it was 2 and ½ years you had been working
16 cold case homicide?

17 A Correct.

18 Q Okay. And how were you getting paid to do this?

19 A Through the –

20 Q Are you getting a salary –

21 A -- from the County.

22 Q -- from Metro?

23 A Well, it's a part-time position, so a maximum of 19 hours a
24 week. We gave them more than that, then they paid for it, paid us for it.
25 The welcome to Wal-Mart money that they pay us. But it's a – it was --

1 Q What, what does that mean, welcome to Wal-Mart money?

2 A It was miniscule, it wasn't – it's not very much money. It's an
3 hourly wage.

4 Q Okay.

5 A There's no benefits attached to it. It's not associated with
6 PERS and it's just a County paycheck every two weeks.

7 Q Okay.

8 THE COURT: And you may not know this but there was a
9 critical labor shortage declared for the marshals which is why people who
10 are retired in PERS such as retired police officers are able to work as
11 County marshals. So – and I don't know if it's part-time, full-time or
12 whatever but that's –

13 MR. MANN: Thank you, Your Honor.

14 THE COURT: -- how they're able to do that and not have it
15 take away from their PERS.

16 THE WITNESS: Correct.

17 THE COURT: I think it was the Legislature right, Kenny?

18 THE MARSHAL: Yes.

19 THE COURT: Declare a critical – authorize that so.

20 THE WITNESS: There's several of us now.

21 MR. MANN: Thank you.

22 BY MR. MANN:

23 Q But you were working through Metro getting an hourly wage to
24 do these cold cases?

25 A That's correct.

1 Q Okay. Now when you had met with Mr. Sewall you had told
2 him that or Mr. – Sergeant Hefner had said that you guys were there on a
3 federal grant.

4 A I know initially that's how it was funded, yeah.

5 Q Okay. And did you have direct contact with that federal grant
6 or is that just what they would just give Metro and Metro then hired you
7 guys out?

8 A Correct.

9 Q Okay.

10 A I, I didn't have contact with anybody federally and our check
11 comes from the County.

12 Q Okay. So no matter what you did you got paid for 19 hours a
13 week?

14 A Nineteen hours a week, correct.

15 Q As long as you worked those 19 hours?

16 A Exactly.

17 Q Okay. And how did you get these quote, unquote "cold" cases
18 to go and investigate?

19 A Well it depends. I mean, we had detectives that were retiring
20 that asked us to – so officially a case is cold when no detective assigned
21 to that case is in homicide. So if they retire or if they transfer or if they
22 promote out and there's no original detective then it becomes a cold
23 case. So we could have that be 2013 cases. We've, you know, we've
24 gotten confessions on 25 year old cases that came to us based on DNA

25

1 or fingerprints, or we're randomly picking cases off the shelf and
2 reviewing them to see if there's anything that – that's worthy of follow-up.

3 Q Okay. And so you had some new information in this cold case

4 –

5 A That's correct.

6 Q -- and led you to suspect Mr. Sewall, correct?

7 A That's correct.

8 Q Okay. And you had testified that you had reached out to the
9 Reno Police Department to, once you knew that Mr. Sewall was in the
10 Reno area, to find out more information.

11 A That's correct.

12 Q Okay. And did you tell the Reno Police Department what kind
13 of case you were investigating Mr. Sewall about?

14 A I'm certain that we did.

15 Q Okay.

16 A Investigator Hefner's was the point of contact for them, but
17 yes, I'm sure that we did.

18 Q Okay. And so it's your understanding that Sergeant Hefner
19 would have reached out and said, hey, we have this murder case, can
20 you look into this particular person?

21 A Absolutely.

22 Q Okay. And so then on January 11, 2018, you had testified that
23 there were five different Reno police department officials in the area of
24 Mr. Sewall's apartment?

25

1 A That's an estimate. I know when we went to the briefing room
2 there were more people than that in there, but approximately five is what
3 I was aware of.

4 Q Okay. So let's back up a second. Before you even went out
5 there to confront Mr. Sewall, there was a briefing with the Reno Police
6 Department?

7 A Correct.

8 Q Okay. And in your estimation, how many people were in that
9 briefing?

10 A I'd say 10.

11 Q Okay. And were these just regular patrol officers or higher
12 ups?

13 A My impression is they were almost all detectives and one
14 sergeant was in there.

15 Q Okay. So, so not just regular run of the mill officers, these
16 were seasoned officers that have made it to the grade of detective?

17 A Correct.

18 Q Okay. And 10 of them were there all discussing a potential
19 murder suspect?

20 A Correct.

21 Q Someone that has a previous felony conviction?

22 A Yes.

23 Q And Reno PD didn't know that he was there because Reno
24 PD believed that he had failed to register?

25 A Correct.

1 Q Okay. And so, are you saying then that in that briefing it was
2 never discussed that Reno PD would have a claim to arrest him for
3 failure to register?

4 A No, I'm not saying that. There, there was – it was obviously
5 there. They, they were aware of it, we just didn't have a decision made
6 at that point as to whether or not he'd be taken into custody.

7 Q So there was definite discussion that Reno PD would have
8 that ability to arrest him for that charge?

9 A Yes.

10 Q Okay. And the reason that it was never determined whether
11 they were going to actually arrest him at that point in time was whether
12 he decided to come down to the Reno station voluntarily or not, correct?

13 A That wasn't discussed.

14 Q To --

15 A That if he had – if he had voluntarily – if he didn't – if there
16 wasn't a voluntary accompaniment of – to – with us to the Reno PD, it
17 wasn't discussed that he would then be arrested on the spot for that, no.

18 Q So let's just play this out for a second. If you addressed Mr.
19 Sewall at his apartment complex and said, Mr. Sewall, come down to the
20 station with us, we have a few things to talk to you about. And he said,
21 You know what, no, thanks, not doing it, that Reno PD and you would just
22 walk away with, with no consequences?

23 A No, actually the intention was that Mr. Sewall wanted to have
24 the discussion there at his apartment that that would be fine as well. So
25 we – that was our intention – was to talk to him. See if he would be

1 willing to talk to us voluntarily, either at his apartment or back at the Reno
2 substation.

3 Q Okay. You had testified that Reno PD approached him first.

4 A They did.

5 Q Okay. If this was your investigation, if this was your suspect
6 and Reno PD was merely there as a courtesy to help because this was
7 their jurisdiction, why would they approach him first?

8 A Because it is their jurisdiction. Because they are the people
9 that are familiar with that area.

10 Q Now they approached him first so much so that you didn't
11 even hear the very beginning of their introduction to him.

12 A No, I did, absolutely I did.

13 Q Okay. So you guys got out of the car at the same time?

14 A We were get – as Mr. Sewall parked deeper into the parking
15 lot underneath a patio cover for the apartment complex – I don't know if
16 it's an assigned spot but deeper in the parking lot and we were up at the
17 front row kind of – and I don't know north, south, east, west there, but we
18 were to the left of where his apartment building was.

19 So as we saw Mr. Sewall get out of his vehicle, because we
20 were alerted to the fact that he pulled into the parking lot, we could see
21 that he was getting out of his vehicle. We could see that the detectives
22 from Reno were getting out and we were all basically coming together at
23 the same time.

24 Q Right.

25

1 A Just they got – they were in a position to talk to him first and
2 introduced him – basically introduced us simultaneously to introducing
3 themselves.

4 Q All right. Now as seasoned officers, you guys have various
5 positioning to protect yourself when you're addressing a strange person
6 or a suspect in order to make sure they were safe, correct?

7 A We have various positioning when we're talking to anyone.

8 Q Okay.

9 A We develop that over time, yes.

10 Q And so in this particular moment you had the Reno PD that
11 was addressing him front on and you and Detective Hefner or Sergeant
12 Hefner came up from behind him, correct?

13 A No, from the side.

14 Q From the side?

15 A Um hmm.

16 Q So it would really be from the side –

17 THE COURT: Is that yes?

18 MR. MANN: -- and --

19 THE WITNESS: Yes, Ma'am, from the side.

20 THE COURT: For the recording.

21 THE WITNESS: Yes.

22 BY MR. MANN:

23 Q It was from the side and back to an angle, correct?

24 A Back to -- no, Mr. Sewall was deeper in the parking lot. As he
25 came out we were at the curb that -- of the sidewalk that he was walking

1 towards. So he would actually – as he was walking we would have been
2 off to his left but forward of where he was at.

3 Q All right. Now Ms. Weckerly had asked you that you guys
4 were all in plain clothes --

5 A Yes.

6 Q -- correct? When you're in plain clothes you have a gun?

7 A Yes.

8 Q You have a badge?

9 A Yes.

10 Q Same with Reno PD?

11 A Yes.

12 Q Do they wear any sort of bullet proof vests under their
13 clothes?

14 A It's possible. I didn't – I didn't.

15 Q Do you?

16 A No, I did not.

17 Q Does Sergeant Hefner, to your knowledge?

18 A No. I've never seen Sergeant Hefner with a vest.

19 Q Okay. Fair enough. And when you started to take over the
20 conversation with Mr. Sewell, the Reno PD stepped off to the side to be
21 slightly behind Mr. Sewall, correct?

22 A I don't remember where they stood. As I recall they were
23 more off to – off to my right as, as was Investigator Hefner as he spoke to
24 Mr. Sewall.

25

1 Q All right. And it would be fair to say thought that here we have
2 Mr. Sewall being addressed out of the blue, right? He had no idea that
3 you guys were coming?

4 A No, he didn't.

5 Q In the parking lot of his apartment building now being
6 addressed by four separate detectives?

7 A No, I know there were -- yes.

8 Q Yes.

9 A Yeah. Yes.

10 Q Okay.

11 A Because there were approximately five of them and then I
12 know two and then the two of us --

13 Q So.

14 A -- investigators.

15 Q To your knowledge, Mr. Sewall knew of at least four detectives
16 wanting to talk to him directly?

17 A He --

18 Q That's you --

19 A -- he was --

20 Q -- Sergeant Hefner --

21 A -- immediately informed that two people want --

22 Q -- and the two Reno PD.

23 THE COURT: Don't talk over each other.

24 THE WITNESS: He was immediately informed that two
25 people wanted to speak to him.

1 BY MR. MANN:

2 Q Okay. But four of them were addressing him?

3 A Yes.

4 Q Okay.

5 A Well, no. One Reno person spoke and one of us spoke, that
6 was Investigator Hefner, so two people were speaking to him. There
7 were four people present.

8 Q All right. Thank you. Now you're not aware --

9 THE WITNESS: Bless you.

10 Q -- whether Mr. Sewall was aware of the other three Reno PD
11 that, that were there, correct?

12 A I don't see how he could have known, no. I didn't see them.

13 Q You didn't see them, but that doesn't mean you don't know if
14 Mr. Sewall saw them.

15 A He may have.

16 Q Okay. Now when talking to Mr. Sewall you said we'd like to
17 talk to you, you never offered the option of we can go to your apartment
18 and talk to your apartment, correct?

19 A No --

20 Q You never made --

21 A -- not at that point.

22 Q -- that offer. You said, "Please, let's go down to the station
23 and let's talk."

24 A Correct.

25

1 Q Okay. So to say that you would have talked to him anywhere,
2 it was in your interest to go down to the station and talk?

3 A It'd be a better environment, yes.

4 Q Okay. And you had already arranged with Reno PD that
5 here's the room, make sure the recording's on and we'll bring him in here
6 and have a conversation with him?

7 A We didn't know which room they were going to be putting him
8 in but we specifically talked about a room where there would be recording
9 capabilities, yes.

10 Q Now you said you were in a rental car.

11 A Yes.

12 Q And they were in government issued police cars that were
13 unmarked, correct?

14 A No, their vehicles are basically u/c vehicles, undercover
15 vehicles. They're at – they didn't have any – there was nothing that
16 would indicate that they were police vehicles.

17 Q Okay, but –

18 A They may have had emergency equipment they were secreted
19 on them but I didn't see that.

20 Q Did you see the inside of these vehicles?

21 A No.

22 Q Okay. So you can't testify as to what was inside those
23 vehicles?

24 A No.

25 Q All you can testify to is how they looked on the outside?

1 A Correct.

2 Q Okay. And to you they looked like a undercover Lincoln-type
3 car?

4 A They just looked like regular vehicles.

5 Q Okay.

6 A I didn't – I didn't – no, one of them was a truck as a matter of
7 fact.

8 Q So if this was your suspect and you have a perfectly good
9 working car, why didn't you take Mr. Sewall in your car?

10 A Again because it was – it was Reno's jurisdiction and we had
11 items in the back seat of our car. We had our luggage in the back seat of
12 our car. We had – the case file was in the back seat of our car, so it was
13 just more conducive to have Reno give him a ride.

14 Q And so then when you – you let Reno PD take him over to the
15 station?

16 A We all went together, yes.

17 Q You weren't in the car with Mr. Sewall?

18 A No, we were driving together.

19 Q Yeah. So you let Reno PD take him?

20 A Correct.

21 Q All right. You don't know what was said in the car?

22 A No.

23 Q You don't know anything about how he was addressed or
24 anything about what was going on inside that car?

25 A No.

1 Q You don't know what the inside of the car looked like, so you
2 don't know how -- how the situation looked --

3 A No.

4 Q -- inside the car? You agree though that one of the seasoned
5 detectives sat directly behind Mr. Sewall?

6 A Well, I don't know what the experience level of the person that
7 was in the vehicle behind -- or the seat behind him but there was
8 somebody sitting in the back seat as I recall.

9 Q Okay. But it is a detective who has to pass various tests,
10 correct?

11 A It's possible. he could be brand new. I have no idea.

12 Q Okay. And the person driving was also a detective?

13 A Yes.

14 Q And they drove down to the Reno Police Station?

15 A Yes.

16 Q And then you guys all got out of the car, all four of you, and
17 walked Mr. Sewall into the Reno Police Station?

18 A Again, I believe Mr. Sewall went in a different entrance and
19 then went back to the interview room. And we went through the front of
20 the station because we parked out front. They -- we have public parking
21 that was out in front.

22 Q All right. So Mr. Sewall, in fact, came in through the back
23 where all the other suspects -- Reno PD, go through the back?

24 A I have no idea. I don't know what their -- I don't know what
25 their habit is.

1 Q Okay.

2 A I just know that their, their vehicle parking is there.

3 Q All right. And so when you arrived Mr. Sewell was placed into
4 this interview room?

5 A Correct.

6 Q And that's when Detective Hefner came in and said, "Hey, let's
7 all shut off our phones."

8 A Correct.

9 Q All right. Now you said that when Mr. Sewall was placed in
10 the car, Ms. Weckerly had asked you did anyone pat him down, or
11 anything like that, correct?

12 A Yes.

13 Q And you said you didn't see him being pat down or anything?

14 A That's correct.

15 Q Okay. But you don't know exactly – you had to walk back to
16 your car. They had to walk to their car so you weren't – didn't have your
17 eyes on Mr. Sewall the entire time?

18 A I saw Mr. Sewall get in the vehicle and I saw that he had not
19 been patted down by anyone or placed in handcuffs.

20 Q All right. And then when he went to the station you said you
21 entered from the front entrance and he entered from the back entrance,
22 you don't know if he was patted down at that point?

23 A I have no idea. No one informed us that he had been patted
24 down.

25

1 Q All right. So you have no direct knowledge as to whether he
2 was ever actually patted down or not?

3 A No..

4 Q Okay. Now -- sorry. In looking at the State's proposed
5 exhibits 1 through 4, this looked like the interview room to which you
6 conducted.

7 A Yes.

8 Q Okay. And you said that in State's proposed 2 and State's
9 proposed 3, that the orange chair in that -- in those pictures was in fact
10 where, where Sergeant Hefner sat; is that correct?

11 A That's the location, I don't know if it's the same chair.

12 Q Okay. But that was the location. Do you need to see these
13 pictures or --

14 A No, I, I recall.

15 Q So I'm going to show you -- if I can get this marked, Your
16 Honor, please.

17 THE COURT: Sure. So that'll be defense A?

18 MR. MANN: And actually, Your Honor, this was attached to
19 the State's motion. Do you want it marked or is it --

20 THE COURT: Well, we can mark that.

21 MR. MANN: Okay.

22 THE COURT: I mean, it's already part of the record by -- so
23 it's clear what you're talking about we'll just mark it defense A.

24 MR. MANN: All right. And Ms. Weckerly, do you have any
25 problem getting it?

1 MS. WECKERLY: No, no.
2 THE COURT: Obviously there's no objection.
3 MR. MANN: Okay. So we're going to be admitting it, Your
4 Honor.
5 THE COURT: Right.
6 MR. MANN: Okay. If I may approach?
7 THE COURT: You may. You may move freely.
8 MR. MANN: Thank you.
9 THE MARSHAL: And the overhead is working, Counsel --
10 MR. MANN: Ahh.
11 THE MARSHAL: -- if you'd like to utilize that.
12 MR. MANN: So I'm completely inexperienced -- perfect.
13 THE MARSHAL: And there's a focus button on there. I don't
14 think --
15 MR. MANN: Okay. Good it's not actually there. Auto tune
16 maybe?
17 THE MARSHAL: Yeah.
18 THE COURT: Oh, there we go.
19 THE MARSHAL: There we go.
20 BY MR. MANN:
21 Q All right. So this is a screen shot. This is defense admitted 1
22 -- A, of your interview with Mr. Sewall, does that look correct?
23 A Yes.
24 Q All right. Now you are, as you said, at the corner of those two
25 chairs?

1 A That's correct.

2 Q The two couches, sorry. And Mr. – or Sergeant Hefner is
3 actually in a different spot than the chair that you had said where he was
4 sitting, correct?

5 A He is currently, yes.

6 Q Okay. And so that is directly in front of the door, correct?

7 A No.

8 Q Okay.

9 A The door – the door – you can see my mouse is more in this
10 direction. So this is against where the wall's at.

11 Q Okay. So this is, I think, actually -- do you have yours? So I
12 make sure that I use the right numbers?

13 A I think I –

14 Q So this is State's 1. This chair here.

15 A Mm hmm.

16 Q That was where you said Detective Hefner was sitting, but
17 actually you agree that he was sitting more about here, correct?

18 A Right. With his back to the wall.

19 Q Okay.

20 A And that's when that's –

21 Q So closer to where the door is, correct?

22 A Right.

23 Q Okay.

24

25

1 A Where the still shot's taken, yes. But he's on rollers. I'm the
2 only one in a fixed chair. So he had times where he was closer to the
3 couch because he had his items sitting on that chair.

4 Q So this is a picture –

5 A So he's moving around.

6 Q -- that the State put in their motion. This is what they put
7 together. Are you saying now that Detective Hefner was just rolling back
8 and forth around?

9 A Not saying it – at different points in the hour and a half that we
10 were in there but, yes, Investigator Hefner's position wasn't always
11 exactly where he is. It was closer to the couch where, or where he's at
12 now.

13 Q All right. But you agree though that he was closer to the door
14 in this picture?

15 A He's closer to the door now in this picture.

16 Q Okay. And that Mr. Sewall is actually further from the door in
17 this picture than you had originally suggested?

18 A Mr. Sewall's in the position that I originally said that he was at.
19 He, he – he's in a roller chair as well. I was sitting – I was sitting in a
20 fixed chair and for – but for most of the interview Mr. Sewell's in almost
21 the exact position that he's in. Investigator Hefner moved a little bit --

22 Q Okay.

23 A -- now and again because he was sitting closer to me at some
24 points.

25

1 Q Now Mr. Sewall couldn't just get up and leave without having
2 Detective Hefner move from his current position, correct?

3 A No, absolutely not. Investigator Hefner doesn't have to move
4 at all for Mr. Sewall to get up and walk to the door.

5 Q Now, have you watched the video recently?

6 A Not recently, no.

7 Q You do know that you had testified today that he -- there was
8 no time that Mr. Sewell needed to go to the bathroom, correct?

9 A No, I don't remember him ever saying anything about needing
10 to go to the bathroom.

11 Q All right. There was a time though that when Mr. Sewall had
12 requested an attorney and Sergeant Hefner then switched to, "We need
13 to take your DNA," that Mr. Sewall told him, in fact, I have chew in my
14 mouth, or as he said, "Copenhagen in my mouth, do we need to wash it
15 out?"

16 MS. WECKERLY: Objection. I don't -- it's up to the Court
17 obviously to interpret what he said about whether or not he actually
18 requested an attorney or thought about whether or not he, you know,
19 would need an attorney. Obviously the Court can make that
20 determination because it's on video.

21 THE COURT: All right. So Mr. Mann just say when this was
22 said or that was said --

23 MR. MANN: Your Honor, I have --

24 THE COURT: -- interpreted or, I mean, I think that's your
25 question really.

1 MR. MANN: Well, I mean it – there's a litany of questions we
2 might as well get to –
3 THE COURT: Okay. Go ahead.
4 MR. MANN: I have the transcripts of the surreptitious
5 recording.
6 THE COURT: Okay.
7 MR. MANN: Do you want – it was also –
8 THE COURT: I've got that.
9 MR. MANN: -- attached to the –
10 THE COURT: Right. I've got it –
11 MR. MANN: -- State's –
12 THE COURT: -- in front -- I've got it in front of me.
13 MR. MANN: Okay. If I may approach with the witness –
14 THE WITNESS: As do I, Your Honor.
15 THE COURT: I'm sorry.
16 THE WITNESS: As do I.
17 THE COURT: Okay, we've all got the transcript in front of us.
18 MR. MANN: Okay.
19 THE WITNESS: May I consult mine, Your Honor?
20 THE COURT: Sure. Well, wait.
21 THE WITNESS: I'll bring it out –
22 THE COURT: Let him ask you –
23 THE WITNESS: -- at least.
24 THE COURT: -- a question and then if you need to consult
25 the transcript to say –

1 THE WITNESS: Sitting right there.

2 THE COURT: -- I'm going to consult the transcript if that's
3 okay so we know what you're doing.

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: All right.

6 BY MR. MANN:

7 Q Can you turn to page 14? Are you there?

8 A I am there.

9 Q Okay. In the middle of page 14 you have Mr. Sewall saying to
10 Detective Hefner that there's Copenhagen in his mouth so does it – and
11 asking whether it needs to be washed out or not, correct?

12 A Correct.

13 Q Okay. And that was in direct response to Sergeant Heffner
14 saying that we need to take your DNA?

15 A That's correct.

16 Q Okay. And there is a break in the video at this point where
17 Sergeant Hefner then escorts Mr. Sewall out of the room, correct?

18 A No.

19 Q No?

20 A No.

21 Q At 5:22 p.m. on January 11th, 2018, Sergeant Hefner does not
22 escort Mr. Sewall out of the room?

23 A I don't recall him leaving the room.

24 Q Okay. And so you don't know if Mr. Sewall ever took the
25 Copenhagen out of his mouth and washed it out?

1 A I, I – I didn't – I wasn't there when he spit out the Copenhagen
2 so he may have gone with Investigator Hefner for the – for the chew. I
3 don't recall that though.

4 Q Okay. Your memory of that day though, good, bad,
5 indifferent?

6 A Well, apparently at this point you're talking about him spitting
7 out the chew. I don't recall that so I'd have to review the video for that.

8 Q All right. Now you – sorry. Ms. Weckerly had also asked you
9 whether – whether – let me rephrase. When you sat down with Mr.
10 Sewall you had asked – you being you and Sergeant Hefner because
11 you guys were both asking him questions -- asked him information about
12 his gun, correct?

13 A Yes.

14 Q Okay. That was how you started the conversation, correct?

15 A Yes. Investigator Hefner.

16 Q And in that conversation Investigator Hefner told him that the
17 gun that was seized in San Diego had been test fired, is that correct?

18 A He suggested that the destroyed firearm in 2004 had been
19 test fired.

20 Q Okay. But that is not an accurate statement, is it?

21 A No.

22 Q Okay. So when Ms. Weckerly had asked you, "Did you ever
23 lie to him about the state of the evidence?" And you said, "No, I did not,"
24 or "we did not." That is not a correct statement, correct?

25 A No, that is a correct statement.

1 Q So how is it correct if you lied to him about the fact that it had
2 been test fired but you say you didn't lie to him?

3 A That – we didn't say that that particular – his fire – his firearm
4 had been test fired. We suggested that there are jurisdictions that prior
5 to destroying a firearm, will test fire them.

6 Q Now – so it was strongly suggested then that the gun had
7 been, in fact, test fired, but you're saying that he was nuanced that it was
8 not actually his gun that had been test fired, but that most guns are test
9 fired before they're destroyed?

10 A It was suggested to him that in some jurisdictions that prior to
11 destroying a firearm that it's test fired.

12 Q Okay.

13 THE COURT: And was the point of that to create in his mind
14 the possibility that it may have been test fired?

15 THE WITNESS: Yes, Your Honor.

16 THE COURT: All right.

17 BY MR. MANN:

18 Q Now during the course of the interview with Mr. Sewall he
19 became – he became concerned that he was about to be arrested,
20 correct?

21 A That's accurate.

22 Q And in fact he went over again and again with you about the
23 fact that he is going to be in a jail cell tonight?

24 A I recall at least twice where he had – he had mentioned that –
25 the possibility of being in a jail cell, yes.

1 Q And this was before he gave a statement to which you brought
2 out your personal recorder to record him?

3 A No, the recorder was out but, yeah, prior to turning it on
4 officially, yes.

5 Q And he said to you that the way he saw it, that he would
6 definitely be going to jail tonight?

7 A I don't recall the word definitely, but that's a possibility that he
8 said that.

9 Q All right. Can you turn to page 39? On the top he says,
10 "Cause from my perspective -- unintelligible -- laying up in a jail's tonight
11 -- cells -- cell -- jail cell tonight," correct?

12 A Yes.

13 Q All right. To which Hefner ultimately responds, "Now what
14 Reno might do on their own with this is, you know, you, you didn't register
15 as an ex-felon and that's a crime. It's a misdemeanor but it's a crime.
16 Now if they decide -- want to do that, that's up to them. We don't have
17 any control over that, you know, jurisdiction." Right?

18 A Correct.

19 Q Okay. And then on page 47 -- are you there detective?

20 A I am.

21 Q Okay. Mr. Sewall says, "Well, I'm not certainly -- I'm looking
22 forward to -- unintelligible -- a jail cell." Right?

23 A Yes.

24 Q All right. And Hefner responds that, "I've never been to the jail
25 here, that's understandable."

1 A Yeah.

2 Q But I see – and Sewall responds, “But I see that happening in
3 my very near future, I’m sure of that.” Correct?

4 A I’m sure –

5 Q I’m sure that.

6 A I’m sure that and then it – he stops. Either that or it connects
7 to his, his next response but that’s, “Mm hmm,” which is an
8 acknowledgement or affirmed it.

9 Q Okay.

10 A So he just trailed off, he didn’t – he didn’t finish the sentence.

11 Q Okay. And later down you say, “And you know, we don’t – I,
12 again, we just met these detectives and we’re working with here,” and he
13 responds, “Um hmm,” meaning Sewall.

14 A Mm hmm.

15 Q And you say, “And you know, we don’t know -- like I said, I’ve
16 never been in Reno jail, I don’t know what anything – what any –
17 anything about it. But you know, well, have discussions with them about
18 you. Whatever your accommodations are, like, by yourself, right?

19 A Correct.

20 Q Okay. And this is again before he gives any substantive
21 statement to you.

22 A Yes.

23 Q Okay. And you guys are already talking about him being in jail
24 and making good accommodations for him when he goes to jail, correct?

25 A Should that be Reno’s decision, yes.

1 Q Okay. But we all know that you have a murder suspect that
2 Reno has been involved in that dedicated at least 10 detectives to a
3 briefing room and then five detectives at the condo, you think they're just
4 not going to arrest him?

5 A I – the probabilities, I, obviously they did but I – it's, it's a – it
6 wasn't our concern at this point.

7 Q All right. And at page 48, are you there detective?

8 A I am.

9 Q Okay.

10 A We – I think we already switched to it. Yeah.

11 Q In the middle you have Sewall saying, "So I am going to jail
12 today." Correct?

13 A Yes.

14 Q Okay. And it is – Hefner responds, "Well, it – not so much like
15 I said, Not with us. If you give us a statement, confession tonight, yeah,
16 you'll go to jail, um, tonight. Um, you'll be here for a few days until we
17 start the process to bring back down to Las Vegas. Um, like I said, 'They
18 could arrest you right now. They even mentioned that but, unintelligible,
19 that's, unintelligible, stuff.' That's what you do to people that cause you
20 aggravation and grief, you know, and uh."

21 And it looks like you then respond, "That's why I want – that's
22 why we wanted to come get you voluntarily."

23 A Yes.

24 Q Okay. So you are essentially telling him, hey, look, give us a
25 confession and we'll take good care of you.

1 A In what, in what sense?

2 Q Well, we'll talk to Reno PD about giving you accommodations.

3 A Well again –

4 Q Right?

5 A -- we didn't know – and I'm still to this day not been to Reno
6 jail, so I don't know what it's like. I know here at CCDC that, you know,
7 we can talk to the corrections officers and see that somebody be
8 secluded by themselves.

9 Q Okay. And so it was your understanding, hey, give us what
10 we want and, Mr. Sewall, we'll see what we can do about giving you
11 some sort of accommodations at the Reno jail?

12 A No, that should the decision be made by Reno that he be – he
13 be taken into custody for the ex-felon failure to register, that we would
14 talk to them about him being secluded by himself.

15 Q So let's say he tells you to pound sand about having any sort
16 of further conversation with you about anything that you wanted to talk
17 about. You would then go to the Reno PD and say, "Hey, look, I know
18 you're arresting him for failure to register, but can you make
19 accommodations for him?

20 A Well, again that's hypothetical because it didn't happen that
21 way.

22 Q Okay. But we're trying to understand what you were saying to
23 regarding the statement of, "We'll see that you get accommodations."

24 A Again there – he was concerned about the possibility of, of
25 being in a jail cell. We told him that should Reno take him into custody

1 for the ex-felon failure to register, that we would talk to him about being in
2 his own jail cell. We were being courteous towards him.

3 Q Okay.

4 A It was a friendly environment. It was – the exchange back and
5 forth was.

6 Q So it was friendly when Mr. Sewall says, “The way I see it I’m
7 going to jail tonight.” That was friendly?

8 A In, in the sense that we were having a conversation again that
9 was not heated in any way or angry in any way. It was – I mean, I think
10 objectively from the outside you’d think there were three guys that just
11 sitting there talking.

12 Q And one of those guys saying, “You’re taking me to jail
13 tonight.”

14 A That’s not – that’s not how he put it, but he was concerned
15 about going to a jail cell. Or he saw it going that direction, I guess.

16 Q Court’s indulgence.

17 So referring back to the issue of the gun being test fired, can
18 you turn to page 5? Are you there detective?

19 A I am.

20 Q Okay. On the top, now just for clarification, Q1 in this – in this
21 transcript is referring to Detective Hefner, right?

22 A Investigator Hefner, yes.

23 Q And Q is referring to you? All right. And I apologize. You’re
24 referring to him as Investigator Hefner; is that the appropriate –

25

1 A It is. We're cold case investigators. Detectives are
2 commissioned officers with the police department so. I was a former
3 detective. He was a former detective sergeant, so we're investigators.

4 Q I, I always apply the status of, whatever your highest status is
5 that's what you keep.

6 A I'll answer to whatever you use, Counsel.

7 Q Fair enough

8 Okay. And Hefner says at the, the last part at the top line.
9 "Like I said, there's always somebody in every department. And oh, the
10 gun was destroyed but it was test fired and that woman found it." And
11 the woman that he's talking about is that -- that Debbie person that you
12 were talking about, the investigator specialist, right?

13 A Right. Well --

14 Q Okay. And so --

15 A -- just -- he's not referring to this lady. He's referring to that
16 hypothetical person in every department that has all of the inside
17 knowledge, that can find things so it's not a specific person that he's
18 talking about. He's talking about that type of a person who can dig
19 deeper and find all this information out and that we had -- we suggested
20 to him that we had contact with that type of a person with San Diego PD
21 that can get that kind of information.

22 Q If you turn to page 4.

23 A I'm there.

24 Q And towards the middle top, Q1, it says, "Um, since your
25 experience is exclusively --

1 A Patrol.

2 Q Huh? Patrol. It says, "unintelligible" but –

3 A I believe it's –

4 Q -- there's always a person or two at a police department. We
5 had one in Metro, her name was Florence Kitchen and she worked in
6 records. And then he proceeds to tell a story about this person Florence
7 Kitchen, correct?

8 A Right.

9 Q About her physical issues and things like that, but that she
10 could find anything.

11 A Right.

12 Q And then he goes onto say that, that you guys had a
13 investigative specialist find his gun that you say was a .357 that San
14 Diego took, right?

15 A Right. With San Diego, that archetypal person --

16 Q Right.

17 A -- was able to find that --

18 Q Okay.

19 A -- ...yeah.

20 Q And it says – so our records. In Q1 towards the bottom our
21 records from San Diego show that they took a .357 from you when you
22 got arrested in '99, and uh, so we tried to find the gun and they said, oh,
23 uh, we destroyed it." And then Mr. Sewall goes on and says, well, I think
24 it was a .22, correct?

25 A Yes.

1 Q Okay. And then we get to page 5 where he then goes through
2 this process of – like I said there’s always somebody in every department
3 and, oh, the gun was destroyed but it was test fired and that woman
4 found it. Okay?

5 A Yes.

6 Q So the implication is that woman being the person from San
7 Diego.

8 A That archetypal person, right.

9 Q Okay. But, in fact, to your knowledge to this day, that gun, in
10 fact, was never test fired?

11 A It was destroyed in 2004, and to my knowledge it was never
12 test fired.

13 Q All right. Now in this interview, relatively quick, about 15
14 minutes into the interview there was a time when Mr. Sewall made a
15 mention of a woman, correct?

16 A Yes.

17 Q Okay. Can you turn to page 13, please?

18 A I’m there.

19 Q And Mr. Sewall says, “But being straightforward with you,
20 information that you had placed out here and like what you have sitting
21 over there and what you have said, I mean, I’m not a rocket scientist, but
22 it’s leading down the path of me being charged with something.”

23 Hefner responds, “You, yeah, you’re right. you’re correct.”
24 And then Sewall responds, “So I think at this point in time,” and you say,
25

1 "Well, I mean, whether I'm here voluntary or not, I need a lawyer."

2 Correct?

3 A Yes.

4 Q Okay. Now he didn't say, "I think I need a lawyer," correct?

5 He says, "I need a lawyer."

6 A Well he does say I think – it's all connected. "The well, I mean
7 is" kind of an interruption. So it's all –

8 Q Okay.

9 A -- one sentence.

10 Q Well, he says, "I think at this point in time, whether I'm here
11 voluntarily or not, I need a lawyer." Right?

12 A That's what – that's what it says.

13 Q We all agree that's what he said.

14 A That's what the sentence reads, yes.

15 Q Okay. Now you and Investigator Hefner took that to mean two
16 different things?

17 A Yes.

18 Q Okay. You took that to mean that Mr. Sewall was saying, "I, I
19 think I need a lawyer." Correct?

20 A Yes.

21 Q And it is clear to you at that time that Investigator Hefner took
22 it as, "I need a lawyer."

23 A It wasn't clear to me until he sat back down in the room. He
24 had left momentarily to talk about the crime scene analyst arranging for
25 them to come in at some point in time.