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Respondent.

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1 continuing to accelerate.

2 MR. MUELLER: Objection -- oh, never mind. I'll -- withdrawn.

3 THE COURT: Okay.

4 BY MR. DIGIACOMO:

5 Q Now, did you do any calculations as it relates to the speed of  
6 the vehicle, the force applied to Eduardo from the acceleration of the  
7 vehicle?

8 A I did.

9 Q And do you have that marked out in two different -- well, one's  
10 just the zoomed in version, but you have some diagrams associated with  
11 that as well?

12 A Correct.

13 Q Showing you what's been marked as State's Proposed Exhibits  
14 87 and 88, do you recognize those?

15 A I do.

16 Q And what are they?

17 A They're the scaled diagrams I created based on the roadway  
18 evidence we identified while we're out there on scene and physically  
19 looking at the asphalt and the markings on the roadway for evidence  
20 locations.

21 Q And do they fairly and accurately depict, not only the scene but  
22 your conclusions, as they relate to the evidence found at the scene?

23 A Correct.

24 MR. DIGIACOMO: Move to admit 87 and 88.

25 THE COURT: Any objection?

1 MR. MUELLER: No objection.

2 THE COURT: They will be admitted.

3 **[STATE'S EXHIBITS 87 AND 88]**

4 BY MR. DIGIACOMO:

5 Q And I'm actually going to use 88 because it's zoomed in from  
6 87.

7 You identify first a variety of evidentiary items that were found  
8 on the roadway and I'm just going to go through each one of those.

9 Describe for me what AIC stands -- or area of contact stands  
10 for?

11 A Area of initial contact, in the context and definition we use in  
12 reconstruction, is the first damage or injury producing event. That's not  
13 necessarily where the first contact is made but the area where we can say  
14 that somebody was injured at this location or something was damaged at  
15 this location.

16 Q And in this particular case, the first area of contact that had  
17 showed any evidence on the roadway, what type of evidence was it?

18 A So there were two irregular lines that spanned west and they  
19 were -- they were faint but white in color. And what that looked and  
20 appeared to be was shoe scuff marks, so the markings of a shoe as it's  
21 dragged across the asphalt surface.

22 Q Now, eventually you go to the hospital?

23 A I did.

24 Q And were you also at the autopsy as well?

25 A I was.

1 Q And did you, in fact, see the crime scene analyst recover the  
2 shoes?

3 A So the crime scene analyst Strumillo responded to the hospital,  
4 this was later that same morning after Eduardo had passed, and collected  
5 all his belongings. That was at about 3:17 in the morning. So, I guess, it  
6 was before he passed but.

7 When I'm looking for a vehicle involved, I want any and all  
8 evidence I can from that vehicle. So, typically, when I have a pedestrian  
9 who's transported to the hospital, I'll send a crime scene analyst to go and  
10 collect all their clothing. In case there's glass, paint fragments, anything I  
11 can tie this vehicle to this person.

12 So crime scene analyst Strumillo went down to the hospital and  
13 collected all his belongings.

14 Q Does there come a point in time when you are able to view  
15 these particular shoes?

16 A Correct.

17 Q And, first of all, they have a biohazard, so Courts don't love us  
18 to open these, so I have some photographs as well, but looking at those,  
19 they've been previously admitted as State's 85.

20 What type of shoes were they?

21 A They -- I don't even -- I'm not familiar with the brand, it's from  
22 Italy, but Bottega Veneta, if I'm saying that correctly.

23 Q Did you do any research as to -- are they cheap shoes or are  
24 they expensive shoes?

25 A No, they're high end Italian shoes.

1           Q     When you say, high end, what kind of price point are we  
2 talking?

3           A     More than I can afford. They were about \$750 for shoes of that  
4 type and style.

5           Q     Were there evidence on those shoes suggesting that they had,  
6 in fact, created scuff marks on the roadway?

7           A     There -- there was. So much of what I do is a cause and effect  
8 relationship. And when I have markings on the roadway that looks like  
9 shoe scuffs, I expect to see a similar type abrasion or scuff on the shoe  
10 that deposited the mark.

11                   And in that case we have a consistency and characteristics  
12 between the two.

13           Q     So then, after the shoe scuff marks, you now have a void of  
14 some distance, and do you know approximately what the distance is  
15 between the shoe scuff marks and the beginning of the body scuff marks?

16           A     I do. The shortest shoe scuff was 9 feet; the longest shoe scuff  
17 was 12 feet. There's an absence of about 30 feet before the onset of that  
18 next line, which is a body scuff mark.

19           Q     And what is a body scuff mark?

20           A     Body scuff mark is almost self-evident, but it's essentially what a  
21 mark looks like as a pedestrian slides laterally and parallel across the  
22 asphaltic surface.

23           Q     And then you have a mark, that's maybe self-explanatory, but  
24 blood stain onset, what does that mean?

25           A     That's, in that area of the body scuff marks, people don't always

1 have to start bleeding immediately; right, their clothing or their skin can  
2 leave a transfer and deposit on the roadway. But actually in that area you  
3 start to see evidence of apparent blood until its completion.

4 Q And then Mr. Osorio's final resting point, what is that?

5 A That's where Eduardo finally came to rest. We don't have any  
6 evidence after the fact but we have a large pool of apparent blood and I  
7 believe there was a chained necklace with a pendant in that area.

8 And the pooling of the blood was so thick and coagulated it  
9 starts to runoff the super elevation of the roadway. And when you get that  
10 much blood in one area, you're -- it's a real good indicator that that's  
11 where the pedestrian finally came to rest.

12 Q Now, in this particular case, you had a pooling where you make  
13 that mark where the final resting place of Mr. Osorio and that's in -- do I  
14 get this right -- is that in T2?

15 A It is.

16 Q Okay. Explain to us what the travel lanes are?

17 A So in traffic some people call this the fast lane, the left lane, the  
18 one closest to the median. In traffic we call that travel lane one. The  
19 middle travel lane is travel lane two. And then it proceeds on until you  
20 reach the curbing. And so the right lane, the slow lane, would be travel  
21 lane three.

22 Q Did you also have a large pooling of blood within travel lane  
23 three?

24 A It extended to and into the southernmost portion of three.

25 Q Did you learn during the course of your investigation that one of

1 the people had pulled him, pulled Mr. Osorio from travel lane two into  
2 travel lane three before medical arrived?

3 A Correct.

4 Q So once you have this information, what else do you need to do  
5 calculations as do speed of vehicle, acceleration of vehicle, those type of  
6 things?

7 A Okay. Here we go. So as I described earlier, there's a cause  
8 and effect relationship between everything that happens and we use  
9 physics, like I explained earlier, to establish the speeds of units involved.

10 Now, the law of conservation of momentum states that the total  
11 sum of forces before the action equals the total sum of forces after the  
12 action in a closed system.

13 In this system we have an Eduardo and ground system. We  
14 only have two objects that are interacting with each other.

15 So if we know what happened after, based on the law of  
16 conservation and momentum, we can determine what happened before.

17 Simply put, if I know a friction value, a weight, and a distance  
18 that this body slid laterally across the asphalt, I can solve for the total  
19 force, the total energy that was required for that body to be displaced over  
20 that distance.

21 Now, what that ultimately means is --

22 Q Let me stop you just a second --

23 A Sure.

24 Q -- because you just used three really big terms with us.

25 But you said a friction value?



1           A     Correct.

2           Q     What is a friction value?

3           A     So a friction value is the force resisting motion relative to a  
4 body. So Newton's laws of motion; right, a body at rest or uniform  
5 acceleration will remain at rest or uniform acceleration at the same speed  
6 and direction unless acted upon by an unbalanced force.

7                   Well, in this case Eduardo, if absence of any friction, he can just  
8 keep going in that direction, in that space; right. But we have an  
9 unbalanced force. And the unbalanced force is the asphalt as there's  
10 transfer, as he's sliding across.

11                   So that unbalanced force is a friction, it's a resisting motion,  
12 deceleration, a negative acceleration rate, the opposite negative force  
13 that's causing him to slow down.

14          Q     And is there studies that will tell you basically what the friction  
15 rate is between a human body and asphalt?

16          A     Absolutely. So I -- most of my trainings been done through  
17 Northwestern University. And Northwestern University as well as many  
18 other entities have all conducted testing to determine the friction value,  
19 that negative acceleration rate for bodies sliding across asphalt.

20                   Now, that's a range and that range is a decimal percentage  
21 relative to gravity. So a .5 is about half gravity. It's slowing down at half a  
22 G.

23                   Now, these tests have been repeated continually with recurring  
24 results. And what those results are, is that friction value for a human  
25 body, sliding across asphalt, is somewhere between .45, a little less than

1 half a G, to a .6.

2 Q So generally average around .5?

3 A Correct.

4 Q Now, hopefully nobody in this room has had to slide across  
5 asphalt before -- well, maybe you have, but, I mean, ultimately that's not a  
6 very fun experience. But are there something that we could utilize to --  
7 analogize with, for example, a baseball player sliding into a plate?

8 A Right. So you're -- if you have a baseball player run at full  
9 speed into second base and he needs to slide, if he's walking to second  
10 base and starts to slide, how far is he going to slide. Not very far at all;  
11 right, because he doesn't have enough force. He doesn't have enough  
12 momentum to slide for very far.

13 Now, you get your fastest athlete in the major league baseball  
14 and he's running as fast as he can and now he goes into a slide, he's  
15 going to slide agreeably further because he has more force. He has more  
16 momentum that his body of mass is attained before the start of slide so he  
17 can go a greater distance.

18 Q And what is the sliding on dirt, which is probably a lot easier  
19 than sliding on asphalt, what is the coefficient of friction for that?

20 A That's published data as well -- I don't know that off the top of  
21 my head -- but it's probably somewhere around a .3.

22 Q So you fast -- do you stop, start -- stop faster or slower on  
23 asphalt?

24 A You stop sooner because the friction value, the reduction of  
25 your forces is -- it's higher. It's countering more of your force.

1 Q How far does the body scuff show that Mr. Osorio slid?

2 A 42 feet.

3 Q And once you know how far he slid with the coefficient, what  
4 else do you need to know to figure out how much force was applied to him  
5 to cause him to do that?

6 A The only three variables you need, and it's simple Algebra, it  
7 that friction value, Eduardo's weight, and the distance he traveled or was  
8 displaced.

9 Q And so did you have Eduardo's weight from the autopsy?

10 A I did.

11 Q And so were you able to make a determination as to how much  
12 force had to be applied to Mr. Osorio to get him to slide 42 feet?

13 MR. MUELLER: Objection, there's no evidence any force was  
14 applied. Mr. Osorio was holding onto the car, not being hit by it.

15 THE COURT: I'm sorry, Mr. Mueller, could you restate your  
16 objection.

17 MR. MUELLER: Mr. Osorio was not hit by the car. He was  
18 holding onto it. No force was applied to him. He was holding on as the  
19 video very clearly shows.

20 THE COURT: Yes, but the video also shows the vehicle was  
21 moving.

22 MR. MUELLER: The vehicle was moving but --

23 THE COURT: So that would be force.

24 MR. MUELLER: -- my colleague asked, the force applied to  
25 him, as in, him getting hit by the car.

1 THE COURT: That wasn't his question. I'm going to overrule  
2 that objection. The form of the question was not improper.

3 MR. DIGIACOMO: Thank you.

4 BY MR. DIGIACOMO:

5 Q How much force was applied to the body of Mr. Osorio to get  
6 him to slide 42 feet?

7 A Roughly 56,000 foot pounds of force.

8 Q And to somebody just standing around, what the heck does  
9 56,000 foot pounds of force mean, like, to a lay person, what does that  
10 mean?

11 A It's a lot. You're -- it's not easy to slide across asphalt; right,  
12 none of us would go and run as fast as we can and slide across asphalt.  
13 If you did, you're not going to slide for very far because it's rough. You're  
14 going to have transfer, you're going to lose skin, material, clothing. And  
15 for a distance of 42 feet, that's a substantial amount of force and it's  
16 enough, as we see in this case, to cause fatalities.

17 Q Now, once you know how much force was applied to  
18 Mr. Osorio, do you have the ability to calculate the acceleration of the  
19 vehicle or do you need other information?

20 A No. We can use that same friction value because the  
21 acceleration rate of a vehicle is just your friction value times gravity.

22 So the acceleration is just the change of velocity. If I'm stopped  
23 here, and I go this distance with a continual acceleration rate, we can  
24 solve for the speed of the vehicle at any increment along that distance.

25 Q And so do you have to know which vehicle it is to make the

1 determination as to how fast it was accelerating at the time?

2 A If -- can you say that question one more time. I'm trying to  
3 understand what you're asking.

4 Q Do you have to have the vehicle itself to make the  
5 determination how fast it's accelerating?

6 A No, not based on evidence like this. Again, in the closed  
7 system of Eduardo ground, if he falls from the vehicle, while he's on top of  
8 the vehicle he's been accelerated to a certain acceleration rate. Once he  
9 separates and falls from the vehicle that is a closed system independent  
10 of the car. I don't need to know how fast -- I don't need to have a car  
11 present to know what kind of force was necessary to displace Eduardo  
12 over this distance.

13 Q So based upon that, can you determine the speed that Eduardo  
14 was going?

15 A I can. And that speed is about 38 feet per second, at the start  
16 of him sliding.

17 So in order for that cause and effect relationship to occur, in  
18 order to dissipate 56,000 foot pounds of force over this 42 feet, I had to --  
19 his body had to have been accelerated to at least 38 feet per second.

20 Q And I know it's simple math, but you don't probably have a  
21 calculator up there, any idea of 32 feet per second, what that is in miles  
22 per hour?

23 A 21, 23 miles per hour, right around there.

24 Q Now, did you calculate the distance from area of initial contact  
25 to where it is Osorio's body scuff first starts?

1           A     That was the 56,000 foot pounds of force, in that area, the start  
2 of his sliding, that's that -- that speed.

3           Q     I guess, my question was, how far was it from the point of area  
4 of initial contact to the point where his body starts sliding?

5           A     About 43 feet.

6           Q     43 feet.

7                     So in that 43 feet, the vehicle accelerated from essentially zero  
8 to 21?

9           A     To 23 miles an hour.

10          Q     23 miles per hour?

11          A     Right.

12          Q     Once you did all of that calculations, -- well, actually, come to  
13 think of it, you probably did these calculations not there immediately on  
14 scene; would that be fair?

15          A     Correct.

16          Q     Okay. Once you see that you have a suspect vehicle and that  
17 there is some sort of -- well, let me backup, do you do anything to see if  
18 you can follow the vehicle after it leaves the Westin videos?

19          A     I did. I got information. It's Las Vegas, the police department  
20 has access to cameras that are positioned all along the Strip corridors and  
21 the tourist corridors. And I got information from them that the vehicles  
22 path of travel could be tracked from the scene to Las Vegas Boulevard  
23 and Spring Mountain.

24          Q     So it went down Flamingo, hung a right up Las Vegas  
25 Boulevard, and the last time it was seen was at Spring Mountain?

1           A     Correct.

2           Q     Did you also have some still photographs -- I know they're here  
3 somewhere, that's what I'm looking for -- oh, here we go -- some still  
4 photographs pulled from a parking garage of this vehicle?

5           A     I did.

6           Q     I'm showing you what's been marked as State's Proposed  
7 Exhibits 37, 38, and 39. 37 and 38 are actually the stills of the complete  
8 video and 39 is zoomed in of 38; is that correct?

9           A     Correct.

10          Q     And are they fair and accurate depictions of stills from that  
11 video?

12          A     Correct; from the Westin parking garage.

13          Q     Correct; parking garage.

14               MR. DIGIACOMO: Move to admit 37 through 39.

15               THE COURT: Any objection?

16               MR. MUELLER: May I take a take a quick look at them, Judge?

17               THE COURT: Counsel wants to take a look at them.

18               MR. MUELLER: No objection.

19               THE COURT: All right. They will be admitted.

20               **[STATE'S EXHIBITS 37 THROUGH 39 ADMITTED]**

21               MR. DIGIACOMO: And I'm only going to display 39.

22               BY MR. DIGIACOMO:

23          Q     Did you attempt to try and get a license plate from this particular  
24 vehicle?

25          A     I did.

1 Q And were you successful at least at the Westin?

2 A No, it's too pixilated.

3 Q Now, once you finish your scene investigation in this particular  
4 case, you have information that the vehicle was last seen on Las Vegas  
5 Boulevard and Spring Mountain, what's the next step in your  
6 investigation?

7 A It was obtaining these views and this video.

8 Q Do you go to autopsy?

9 A I did the following day. First, I responded to Sunrise Hospital.  
10 About the time I'm finishing the on scene investigation, you know, we have  
11 the biohazard guys come out and clean the blood from the roadway, we  
12 finish up there, it's about 7:43 in the morning. I'm following backup with  
13 the Westin to make sure the security -- to see if the security supervisor is  
14 there to get better video. And while I'm not doing that, I get an update  
15 from dispatch that Eduardo was pronounced dead at the hospital.

16 Q So you go to both Sunrise and then ultimately the next day you  
17 go to the autopsy?

18 A Correct.

19 Q At the autopsy -- well, first of all, at Sunrise, the personal effects  
20 of Mr. Osorio are inventoried; correct?

21 A They were previously collected and impounded by analyst  
22 Strumillo.

23 Q And as far as you know, at that particular time, do you know  
24 anything about a watch or a missing watch?

25 A There was no evidence of that in inventory.



1 Q You go to autopsy and during the course of the autopsy do you  
2 learn that the, maybe it's somewhat obvious, but the cause of death is  
3 blunt force trauma from the -- of the situation with the vehicle?

4 A Correct.

5 Q At some point, either shortly before autopsy or after autopsy, do  
6 you receive information that a friend of Mr. Osorio, by the name of Lucas  
7 Siomes, has been -- was contacted or contacted the coroner's office?

8 A Correct.

9 Q And what information do you learn from Mr. Siomes?

10 A That he spoke limited English but it said he saw on the news  
11 that a UCLA student with a Brazilian passport had been injured and has  
12 died and that he wasn't released to the media. But that he had died and  
13 he also hasn't had contact with his friend who he knows is a student and  
14 Brazilian.

15 Q Based upon the contact -- well, do you request assistance from  
16 anybody other than the fatal detail?

17 A I did on January 5th.

18 Q And why is that?

19 A So, as I described earlier, the complexity of the investigation it  
20 was growing beyond what I could do by myself, so I sought the assistance  
21 of the vice section and their detectives and lieutenant.

22 Q Why would you contact vice based upon the information you  
23 have at this point?

24 A It's just not typical of what I see in auto pedestrian crashes,  
25 when somebody is hit by a vehicle crossing a crosswalk, or anything like

1 that, The witness statements by Timothy Landale, he's in Jay's parking lot  
2 saying this guy dove on the hood, is pounding on the windshield, these  
3 people are yelling at each other, none of that's typical. And then when I  
4 go and look at the Westin and the vehicles parked in seven minutes. I just  
5 start to infer what could possibly be something more.

6 Q Eventually do vice detectives contact Lucas Siomes?

7 A They do.

8 Q And based upon the information that he provides, do you realize  
9 that the Caesars Palace Casino may be relevant to this investigation?

10 A Correct; and has a better timeline.

11 Q Once -- do you eventually receive the video and review the  
12 video from the Caesars Palace?

13 A I did.

14 Q And I want to talk before Mr. Osorio goes into the Omnia, were  
15 you -- well, let me ask you this, I apologize, after Lucas Siomes is  
16 contacted, eventually do you have contact with the family of Mr. Osorio, in  
17 particular the mother and father?

18 A I did, on the 4th.

19 Q And when you had the conversation with the family on the 4th,  
20 did they raise a concern with you over a particular item?

21 A They did.

22 Q And what was that?

23 A His father, Nuno, said, Did you find Eduardo's watch?

24 Q And then at the time is that the first you had heard that there  
25 may be a watch in play?

1           A     That's the very first time.

2           Q     Did you request from them any information as to how to identify  
3 this particular watch?

4           A     Any evidence of cell, a serial number, the model, make, things  
5 like that.

6           Q     And did you get something?

7           A     I did.

8           Q     What did you get?

9           A     On January 6th I got an email from, I believe, Eduardo's brother  
10 that had two photos showing the packaging for the watch, that included a  
11 serial number.

12          Q     For the record, I'm putting up State's Exhibit Number 4, is that  
13 one of the photographs?

14          A     Correct.

15          Q     Once you know that there may be potentially a watch in play, do  
16 you do anything or do you research anything on the Caesars videotape to  
17 see if we could determine whether or not Mr. Osorio was even wearing his  
18 watch that night?

19          A     I did.

20          Q     And what did you do?

21          A     I went through and I tracked his whole path of travel, the entire  
22 time he's in the casino. I find out that he goes to this Cafe Americano bar,  
23 he removes his zip up hooded jacket, and while he's seated there his wrist  
24 is by his side and you see what -- a glare in the camera, which appears to  
25 be a watch on his left wrist.

1 Q State's Exhibit Number 61, and I'm going to focus in on  
2 Eduardo, and you can use that pointer, maybe it's self-obvious, but where  
3 does it appear he has a watch on his left arm?

4 A Correct.

5 Q Did you learn during the course of your investigation that  
6 Mr. Osorio, shortly before 2:00 a.m., left the Omnia nightclub?

7 A He did.

8 Q And there was a question asked yesterday of the custodian of  
9 records of Caesars, are you aware whether or not there was video  
10 surveillance that was recovered of Mr. Osorio while he was in the Omnia?

11 A The information I got that there was no video surveillance inside  
12 the club.

13 Q Once Mr. Osorio leaves the club, did you follow him to see if he  
14 came into contact with anybody that might be relevant to your  
15 investigation?

16 A I did.

17 Q And what did you see?

18 A That he comes into contact with a female that was seated at a  
19 bar talking on her phone.

20 Q After he talks to that female, where does he go?

21 A The two go together, arm and arm, and they go down hallways  
22 and eventually into an elevator down to the parking garage.

23 Q Once they get to the parking garage, did you do anything or did  
24 you recover any information as to can you identify this black vehicle now  
25 that's in the parking garage?

1           A     Correct. So inside the parking garage the Ace Security  
2 company had videos of the vehicles leaving the gates, at each gate. And  
3 the -- so we're able to track specifically to that vehicle and got a rear shot  
4 of the vehicle as it's leaving the gate from the parking garage, the license  
5 plate reader camera, is what they call it.

6           Q     And that license plate reader camera, what information were  
7 you able to gather from it?

8           A     So now what was a pixilated view of that rear plate on the back  
9 of the Mercedes from the Westin is much more clear. And it's got a paper  
10 license plate with an OC Cars and Credit U.S. business tag.

11          Q     And what do you do once you think that you -- well, let me ask  
12 you this, based upon all of that, did you believe that you had identified the  
13 black vehicle involved in your investigation?

14          A     I definitely have a good piece of the puzzle that I can follow up  
15 with.

16          Q     And then State's Exhibit Number 75, that's the reader plate of  
17 the OC Cars and Credit with the phone number?

18          A     Correct.

19          Q     What do you do with this phone number?

20          A     With the phone number I research an address for OC Cars and  
21 Credit U.S. and I find a business location in Costa Mesa, California.

22          Q     What do you do then?

23          A     I request permission from my supervisory staff to go to  
24 California and I -- that's ultimately granted. I get a partner of mine,  
25 Detective Freeman, and the two of us drove over to Costa Mesa to follow

1 up with the business owner.

2 Q And once you had contact with the business owner, what were  
3 you asking?

4 A If he remembered anything related to selling a vehicle to  
5 anybody in Las Vegas that would have had this paper plate.

6 Q And were you able to identify a suspect from that information?

7 A I was.

8 Q And what was -- who was the suspect you identified?

9 A Ronneka Ann Guidry.

10 Q What information -- you have information that Ronneka Guidry  
11 may have purchased a black 250 CLA Mercedes?

12 A Correct.

13 Q Did you have -- did he have any other paperwork that identified  
14 for you that potentially Ms. Guidry was your suspect?

15 A Everything. He had pictures of the car. He had the date of  
16 September 17th that he had sold her -- sold it to her. He had the shipping  
17 information of it being shipped to Las Vegas. He had a picture --

18 MR. MUELLER: Objection, hearsay.

19 THE WITNESS: -- he had a picture of --

20 MR. MUELLER: Objection.

21 THE COURT: Hold on.

22 MR. MUELLER: Objection, hearsay. He's --

23 MR. DIGIACOMO: It's not being offered for the truth of the  
24 matter asserted, only the offer as to where he goes and why he does it.

25 MR. MUELLER: But he's also testifying as to -- well beyond

1 that is the hearsay documents that are not in evidence or provided in  
2 discovery.

3 MR. DIGIACOMO: I'm happy to rephrase.

4 THE COURT: Yes. So that will be sustained. Rephrase the  
5 question.

6 BY MR. DIGIACOMO:

7 Q Did you see a driver's license picture of Ms. Guidry when you're  
8 at OC Cars and Credit?

9 A I did.

10 Q And did it appear to be consistent with you to the photograph  
11 from the elevator of -- or the video from the elevator of Ms. Guidry?

12 A It did.

13 Q Did you get address information for Ms. Guidry from OC Cars  
14 and Credit?

15 A I did, from a license.

16 Q And once you saw the address on the license, did you make a  
17 request of anybody?

18 A I did.

19 Q Now, you're in Costa Mesa, California?

20 A Correct.

21 Q What do you do?

22 A I relay the information back to Las Vegas and the detectives I've  
23 been working with that we had identified a possible suspect with her  
24 name, date of birth, and address.

25 Q And do you ask them to do anything?

1           A     I did. I asked them to follow up with the said address, that 5086  
2 Echo Shire, and see if they find the vehicle.

3           Q     And on your way back do you learn that Detective Gatus and  
4 her partner, William VanCleaf, had come into contact with both your  
5 suspect vehicle and your suspect?

6           A     Correct.

7           Q     And at that time did you learn that Ms. Guidry was in custody?

8           A     I did.

9           Q     Once you learned she was in custody, and I think there was  
10 testimony yesterday, that there was a warrant for Ms. Guidry, do you  
11 know what that warrant was?

12               MR. MUELLER: Objection.

13               THE COURT: As to what?

14               MR. MUELLER: May we approach?

15               THE COURT: Yes.

16                         [Bench conference begins]

17               MR. MUELLER: Why are we bringing up other crimes?

18               MR. DIGIACOMO: Because you brought it up yesterday with  
19 Detective Gatus that there was a warrant for her. It's a traffic warrant. So  
20 I wanted to bring --

21               MR. MUELLER: All right. Then I will --

22               MR. DIGIACOMO: -- out to fix the prejudice.

23               MR. MUELLER: -- if it's a traffic ticket, then I'll withdraw it.  
24 That's fine.

25               THE COURT: All right.



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[Bench conference ends]

THE COURT: All right. The objection is withdrawn. You may proceed.

BY MR. DIGIACOMO:

Q The warrant was for a traffic related offense, a traffic warrant?

A It was.

Q Based upon the fact that they had a warrant, did you ask them to hold her and do anything with Ms. Guidry?

A I asked that they would meet me down at headquarters. We were still driving back from California and -- but we were getting closer. So I asked them to transport her to headquarters to an interview room so I could speak with her.

Q Approximately what date and time was this?

A This is January 8th. I got information just after 9:00 p.m. that they located the vehicle and pulled it over and she was placed under arrest for the warrant. And I believe it was around 10:45, 11:00 p.m. that same night that I'm coming into town and meeting her at -- meeting them at headquarters.

Q Do you -- once you get to headquarters, do you meet somebody that you see here in court today?

A I do.

Q And can you point her out and describe something she's wearing?

A Ronneka Ann Guidry with a white collared shirt under a gray longer shirt.

1 MR. DIGIACOMO: May the record reflect identification of the  
2 defendant.

3 THE COURT: It will so reflect.

4 BY MR. DIGIACOMO:

5 Q Now, because Ms. Guidry's in custody is there certain  
6 procedures you have to go through before you speak to her?

7 A There are.

8 Q And what do you do?

9 A I read her her Miranda warning.

10 Q Do you do it from memory or did you do it from a card?

11 A From a card.

12 Q And after you read her her Miranda warnings, does she speak  
13 with you?

14 A She did. She agreed and consented to speak with me.

15 Q And from that point did you -- well, let me ask you this, how was  
16 that interview documented?

17 A Video and audio recording.

18 MR. DIGIACOMO: Judge, I have marked here State's  
19 Proposed Exhibit Number 11, which is the redacted version of the  
20 interview of Ms. Guidry, based upon the agreement of counsel, I move to  
21 admit.

22 THE COURT: All right. And, Mr. Mueller, any objection?

23 MR. MUELLER: No, Your Honor.

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

25 **[STATE'S EXHIBIT 11 ADMITTED]**

1 THE COURT: Ladies and gentlemen, during the course of the  
2 witness's testimony you're going to hear a videotape or watch a  
3 videotaped statement of the defendant. Portions of the statement have  
4 been redacted based upon agreement of the parties and order of the  
5 Court. You are not to speculate as to the content of the redacted portions  
6 or draw any inference from the fact that the statement has been redacted.

7 You may proceed.

8 MR. DIGIACOMO: The statement is fairly lengthy, so if the  
9 Court still wants to, I can stop it about 12:30, if that's the time you want to  
10 stop.

11 THE COURT: I think that's a good idea. I was able -- good  
12 news, I just got an update to move my 2 o'clocks to 1:30 and they will take  
13 less than 30 minutes. So we would be able to come back at 2:00.

14 So I think if we end at 12:30, that would give everyone enough  
15 time to get -- at least a good break and a solid lunch without everyone --

16 MR. DIGIACOMO: Perfect.

17 THE COURT: -- having a backup downstairs at Capriotti's. All  
18 right.

19 [Playing video]

20 MR. MUELLER: Your Honor, it's 12:30.

21 THE COURT: All right. Okay.

22 All right. Ladies and gentlemen, we're going to break for our  
23 lunch break.

24 During this lunch break, you're not to talk or converse amongst  
25 yourselves or with anyone else on any subject connected to this trial or

1 read, watch, or listen to any report of or commentary on the trial or any  
2 person connected with this trial by any medium of information, including,  
3 without limitation, newspapers, television, radio, or Internet. Or form or  
4 express any opinion on any subject connected with this trial until the case  
5 is finally submitted to you.

6 We will be back at 2 o'clock this afternoon. We'll see you then.

7 Thank you.

8 [Outside the presence of the jury panel]

9 THE COURT: All right. Let the record reflect that the jury has  
10 left the courtroom.

11 Is there anything we need to address outside the presence of  
12 the jury?

13 MR. DIGIACOMO: No.

14 MR. MUELLER: No, Your Honor.

15 THE COURT: All right. We will see everyone at 2 o'clock.

16 Thank you.

17 [Recess taken at 12:31 p.m.]

18 [Jury trial resumed at 1:58 p.m.]

19 [Outside the presence of the jury panel]

20 THE COURT: All right. We're back on the record in Case  
21 C-18-329810-1, the jury -- is the jury ready?

22 THE MARSHAL: No, Your Honor.

23 THE COURT: No?

24 THE MARSHAL: We're still missing one.

25 THE COURT: Okay. All right. What I want to address while

1 we're on the record now is jury instructions.

2 Mr. Mueller, you indicated that you had instructions, additional  
3 proposed instructions, and I asked yesterday to have them to the Court by  
4 12:00 and I still haven't received them.

5 What's the status?

6 MR. MUELLER: Oh, they were -- I'm sorry, Judge, they were  
7 sitting -- sitting right here. I tried to give them to you before lunch, I  
8 apologize.

9 THE COURT: Okay. If you can pass them to me, I'd appreciate  
10 it.

11 MR. MUELLER: Sure.

12 And as I was sitting there --

13 THE COURT: Thank you.

14 MR. MUELLER: -- as I was sitting there this morning I thought  
15 of an additional one that we really need to cover. Let me get it. So I  
16 wrote it in hand.

17 MR. DIGIACOMO: Did you bring us a packet?

18 MR. MUELLER: What's that?

19 MR. DIGIACOMO: Did you bring us a packet?

20 MR. MUELLER: No, Marc, it's sort of like the discovery with  
21 you, I get -- it's always much better when you're surprised.

22 THE COURT: Okay. Thank you.

23 MR. MUELLER: That's just the statute.

24 [Pause in proceeding]

25 [In the presence of the jury panel]

1 THE COURT: Please be seated. Welcome back, ladies and  
2 gentlemen.

3 Do the parties stipulate to the presence of the jury?

4 MR. DIGIACOMO: Yes, Your Honor.

5 MR. MUELLER: Yes, Your Honor.

6 THE COURT: All right. You may resume playing the video and  
7 examination of the witness.

8 MR. DIGIACOMO: And for the record we stopped it at 27  
9 minutes and 35 seconds. And I'm going to start it there.

10 THE COURT: Thank you.

11 [Playing video]

12 MR. MUELLER: Your Honor, may we approach?

13 THE COURT: Yes.

14 [Bench conference begins]

15 MR. MUELLER: Your Honor, this videotape is wandering past  
16 a post-Miranda interview, which defense unfortunately has no standing to  
17 object to -- to a Judge Jones surveillance video of her sitting in a jail cell  
18 and random conversations. I don't see the relevance of it. And I think  
19 they're -- just knowing police officers, there's a very high probability there's  
20 some random comment that might actually provoke a mistrial.

21 I object to -- unless counsel has something probative that he  
22 wants to get to with the rest of this video. We've got another 20 minutes.  
23 We're sitting in the room doing nothing.

24 THE COURT: Well, a couple different issues, one, I specifically  
25 asked if there's anything else you wanted to redact and you told me no.

1 My second issue is -- let me ask the State this -- looks like  
2 there's about 20 minutes of video-ish left.

3 How much of it is just her just sitting there?

4 MR. DIGIACOMO: I don't know. I redacted from the  
5 transcript --

6 THE COURT: Okay.

7 MR. DIGIACOMO: -- and my guy did it. But how much more of  
8 the transcript is there? I can tell you from that.

9 THE COURT: It looks like it's about 20 more pages so.

10 MR. DIGIACOMO: Usually it's a minute a page.

11 THE COURT: Yeah.

12 MR. DIGIACOMO: So for the most part we took out  
13 everything --

14 THE COURT: And start talking --

15 MR. DIGIACOMO: -- where's it's blank --

16 THE COURT: Yeah.

17 MR. DIGIACOMO: -- and just where they're talking to her.

18 THE COURT: Did you look at the --

19 MR. MUELLER: I read the transcript. I did not watch the video.

20 THE COURT: Okay. So.

21 MR. MUELLER: My concern is --

22 [Colloquy between the Court and the Marshal]

23 THE COURT: Oh, why don't we just go ahead and take a break  
24 now.

25 MR. DIGIACOMO: That would be great because I could use

1 the restroom also. I was going to wait 20 minutes.

2 THE COURT: Okay. Yeah, let's do that. Okay. All right. Let's  
3 do that.

4 [Bench conference ends]

5 THE COURT: Ladies and gentlemen, it looks like it's a good  
6 time to take a break. So we're going to take a break. We're going to take  
7 an afternoon break.

8 During this break, you're not to talk or converse amongst  
9 yourselves or with anyone else on any subject connected to this trial or  
10 read, watch, or listen to any report of or commentary on the trial or any  
11 person connected with this trial by any medium of information, including,  
12 without limitation, newspapers, television, radio, or Internet. Or form or  
13 express any opinion on any subject connected with this trial until the case  
14 is finally submitted to you.

15 It is 3:21. We'll see everybody at -- in 15 minutes. So about  
16 3:40, give you a little extra, 3:40.

17 [Outside the presence of the jury panel]

18 THE COURT: Let the record reflect the jury has left the room  
19 for the afternoon break.

20 I understand do you need a comfort break as well?

21 THE WITNESS: Yes, please.

22 THE COURT: All right. If you don't mind taking him to the  
23 back, I'd appreciate it. Let me talk to counsel here for a minute.

24 THE MARSHAL: Yes, Your Honor.

25 THE COURT: Everyone can be seated.



1 All right. We stopped the recording at about 1 hour, 42 minutes,  
2 and 43 seconds, give or take a few, and there was an objection regarding  
3 the continuation of the video. It appears there's less 20 minutes left and  
4 we were just at the equivalent of page 125 of the transcript.

5 MR. MUELLER: Where -- respectfully, Judge, I'm not following  
6 you, how did you find that 125?

7 MR. DIGIACOMO: Because she's been following with the  
8 transcript.

9 MR. MUELLER: Okay.

10 THE COURT: As you were approaching the bench the  
11 detective said, It's important that I try and be as low key as possible. I  
12 don't want to scare the kids.

13 And then shortly thereafter it was paused.

14 So I'm looking at page 125 in the middle of the page.

15 MR. MUELLER: All right. Thank you, Your Honor.

16 THE COURT: Okay.

17 MR. MUELLER: I concluded that because the officer had  
18 gotten up and walked out that that was the end of the interview and this  
19 last 20 minutes was nothing but ministerial functions beyond the  
20 transcript.

21 I was concerned that they were going -- officers were going to  
22 come and saying something that would provoke a mistrial trial or prejudice  
23 Ms. Guidry.

24 If we're still on the transcript, and we're following along, then I  
25 guess I have to withdraw my objection.

1 THE COURT: All right. The objection will be withdrawn.

2 I will note there -- it does appear to be a about a minute or so of  
3 additional ministerial conversation talking about the dogs and the kids.  
4 But then it picks backup, the equivalent would be starting on page 128 of  
5 the statement where then questioning resumes.

6 MR. MUELLER: All right. Thank you, Judge.

7 THE COURT: All right. So we'll take a break. We'll see  
8 everyone at 3:40.

9 The -- we do need to end no later -- actually no later than 4:30  
10 today.

11 MR. DIGIACOMO: What I was going to suggest was finishing  
12 my direct, which I think it'll probably about 4:00, 4:15, based upon what we  
13 have left here.

14 THE COURT: Okay.

15 MR. DIGIACOMO: And then maybe allowing Mr. Mueller to do  
16 cross. I'm sure Detective Salisbury would come back tomorrow morning.  
17 It wouldn't be a problem.

18 THE COURT: I'm okay with that, if counsel's okay with that.

19 MR. MUELLER: That's fine, Judge.

20 THE COURT: All right.

21 MR. MUELLER: I'd rather be fresh doing cross anyway.

22 THE COURT: Then we'll do that.

23 I do have some hearings in the morning that I'm going to try and  
24 work with that. And we also still have to do our charge conference. So let  
25 me ponder that.

1 In the meantime, please take a comfort break. I don't want  
2 anyone to be uncomfortable towards the end of the day.

3 MR. DIGIACOMO: Is there anyway, I know your clerk has to  
4 leave, but is there any way we could off the record discuss jury  
5 instructions, at the very least?

6 THE COURT: I don't discuss things off the record.

7 MR. DIGIACOMO: You don't do those.

8 THE COURT: Okay.

9 MR. MUELLER: That's that good federal training. I understand.

10 MR. DIGIACOMO: It's the federal training.

11 MR. MUELLER: We used to do it the old --

12 THE COURT: I know we're such sticklers.

13 MR. MUELLER: -- we used to do it old school back in  
14 chambers.

15 THE COURT: Yes, I remember those days. I too used to do  
16 them off the record but I've changed my ways.

17 So, no.

18 [Colloquy between the Court and the Court Clerk]

19 THE COURT: All right. During this break, we'll see if there's  
20 anyone who can come in and fill in.

21 MR. DIGIACOMO: Okay.

22 THE COURT: Because it will make it more --

23 THE CLERK: Will you be done by 5:00?

24 THE COURT: At least start the conversation.

25 THE CLERK: Because that's the problem getting someone to

1 stay past 5:00.

2 MR. DIGIACOMO: Well, at the very least we could always  
3 agree to end by 5:00. I just want to make sure that you don't miss your  
4 flight.

5 THE COURT: Right.

6 MR. DIGIACOMO: And so, I mean, if we have to do it  
7 tomorrow, it's just Mr. Mueller's handed me about 15 jury instructions and  
8 I think we should have some discussion of those before.

9 THE COURT: Some of them were standard and some of them  
10 were not, based on my quick review.

11 MR. DIGIACOMO: I didn't see any that were standard, but  
12 okay.

13 THE COURT: Some -- well, standard in terms of the request for  
14 an instruction on the crime. So I should say that's a very general and  
15 broad standard statement.

16 So, okay, let's go ahead and take a comfort break. Why don't  
17 we all come back in about ten minutes.

18 [Recess taken at 3:26 p.m.]

19 [Jury trial resumed at 3:40 p.m.]

20 [Outside the presence of the jury panel]

21 THE COURT: All right. I have the -- you know what I'm going  
22 do, before we bring the jury in, is make a copy of what Mr. Mueller  
23 provided to us.

24 MR. DIGIACOMO: Oh, he just -- he had a packet brought over  
25 for me.

1 MR. MUELLER: I had --

2 THE COURT: Oh, perfect. Okay, great. Easy enough.

3 MR. MUELLER: -- my -- in all fairness, Judge, I'm working, I've  
4 got a great staff and I've hired some very good people. I've got basically a  
5 new law firm. But they're civil lawyers, they weren't used to doing criminal  
6 jury instructions.

7 THE COURT: Oh.

8 MR. MUELLER: So I brought over two more copies.

9 THE COURT: Okay. Thank you.

10 All right. So it looks like we're going to be able to have some  
11 coverage so we can go until 5 o'clock, which is good news.

12 MR. DIGIACOMO: Okay.

13 THE COURT: So if we want to end, and then do jury  
14 instructions, we can do that.

15 MR. DIGIACOMO: Okay.

16 THE COURT: All right. Ready, everyone's here.

17 THE MARSHAL: Yes, ma'am.

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

19 [In the presence of the jury panel]

20 THE COURT: Please be seated. Welcome back.

21 Do the parties stipulate to the presence of the jury?

22 MR. DIGIACOMO: Yes, Your Honor.

23 THE COURT: All right. You may resume playing the video and  
24 examination.

25 [Playing video]

1 MR. DIGIACOMO: May I resume questioning, Judge?

2 THE COURT: Yes. Thank you.

3 BY MR. DIGIACOMO:

4 Q At the conclusion of this interview, there's a lot of discussion  
5 about charges, do you decide that night that you're going to arrest  
6 Ronneka Guidry for any crimes associated with the event involving the  
7 loss of Eduardo Osorio?

8 A Absolutely.

9 Q Do you actually book her in the Clark County Detention Center  
10 on any crimes associated with the death of Eduardo Osorio?

11 A I did not.

12 Q Why not?

13 A I had enough probable cause for some charges, but as we're  
14 putting that puzzle together there's still some missing pieces, and I  
15 decided to wait until I have more of those pieces so I can come up with  
16 more applicable charge to the circumstances connected to the offense.

17 Q Was there a major piece missing?

18 A Absolutely.

19 Q What's the major piece?

20 A The watch.

21 Q At the conclusion of this interview, do you go to the Echo Shire  
22 address during the execution of the search warrant?

23 A I did.

24 Q And we heard previously from your sergeant, Paul McCullough,  
25 that during that search there's \$3100 in cash found?

1           A     Correct.

2           Q     Do you see that money?

3           A     I did.

4           Q     Do you decide to impound it or not?

5           A     I did not.

6           Q     Why not?

7           A     While it's 31, \$100 bills in a pink purse, I couldn't conclusively  
8 say that this was the exact same purse or that this currency is directly  
9 related to those crimes. So I photographed it to document what we found  
10 but I didn't impound it.

11          Q     Now, subsequent -- well, before that search warrant, before  
12 Ms. Guidry winds up at the police department, you learned that her car  
13 has been recovered, sealed, and towed to the Las Vegas Metropolitan  
14 Police Department?

15          A     Correct; that's what I directed them to do.

16          Q     And sometimes -- well, let me back up, do you receive  
17 information that her phone is in plain view during the course of --

18          A     I did, from Detective Gatus. I learned that the phone was in the  
19 car and that she was under arrest. So I told them to seal it and take it to  
20 our tow yard so I can do a search warrant on it later.

21          Q     And in watching this video do you learn during the course of  
22 your interview that there's a lock code on that iPhone?

23          A     I did.

24          Q     And do you relay that information to Sergeant McCullough?

25          A     I did.

1           Q     At some point are you present with crime scene analyst when  
2 the vehicle was processed?

3           A     I was.

4           Q     And do you know how long after the 8th it was?

5           A     I'd have to refer to the report. I don't think I have that from  
6 memory. But I believe it was the 9th or 10th.

7           Q     Somewhere in that time period, it wasn't like it sat in the garage  
8 for weeks on end?

9           A     Correct.

10           [Colloquy between the District Attorney and Defense Counsel]

11           MR. DIGIACOMO: May I approach, Judge?

12           THE COURT: Yes. Thank you.

13           BY MR. DIGIACOMO:

14           Q     I'm showing you what's been marked as State's Proposed  
15 Exhibits -- unfortunately, two of these have been admitted, so I've got to  
16 do these individually -- 76, 77, 79, and 80, ask you if those photographs  
17 that were taken by the crime scene analyst while you guys were  
18 processing that vehicle?

19           A     That is correct.

20           Q     Well, flip through all four them to make sure I'm not trying to  
21 trick you.

22           A     Sure.

23                   And that's at the crime scene lab.

24           Q     And those are true, fair, and accurate depictions of the vehicle?

25           A     They are.



1 MR. DIGIACOMO: Move to admit the numbers that I just read  
2 out, which are 76, 77, and 79 and 80.

3 THE COURT: Any objection?

4 MR. MUELLER: No objection.

5 THE COURT: They will be admitted.

6 **[STATE'S EXHIBITS 76, 77, 79, AND 80 ADMITTED]**

7 BY MR. DIGIACOMO:

8 Q When you arrived at the crime lab, were the seals still in place  
9 that were placed there at the night it was taken into custody?

10 A They were.

11 Q And then showing you 82 and 83, are those photographs that  
12 the crime scene analyst took of the cell phone that was recovered?

13 A Correct.

14 Q And they're true, fair, and accurate depictions?

15 A They are.

16 MR. DIGIACOMO: Move to admit 82 and 83.

17 THE COURT: Any objection?

18 MR. MUELLER: No objection.

19 THE COURT: They will be admitted.

20 **[STATE'S EXHIBITS 82 AND 83 ADMITTED]**

21 BY MR. DIGIACOMO:

22 Q Well, first I'm going to start with State's 76, that's Ms. Guidry's  
23 vehicle, the Mercedes CLA 250?

24 A Correct.

25 Q And I'm just going to briefly go around the car to show that the

1 seals were in place.

2 That's State's 77.

3 This is State's 79.

4 And this is State's 78.

5 Now, when you saw this vehicle, was there any damage to the  
6 windshield?

7 A There was not.

8 Q And when you looked at this vehicle were you looking to see if  
9 there were any marks consistent with somebody having been on the hood  
10 of the vehicle?

11 A I was.

12 Q And were you able to see any?

13 A I was.

14 Q Did you try to have those photographed?

15 A I did.

16 Q And describe -- well, were they easily photographed?

17 A Not at all.

18 Q Explain that to the ladies and gentlemen of the jury.

19 A On the hood I saw, for the best, correct term, what appeared to  
20 be a smear on the hood of the vehicle. It was faint. It was light. I couldn't  
21 definitively say it was hand marks or attributed to anything. But I saw  
22 smearing on the hood of the vehicle that I tried to get it to capture,  
23 memorialize, via imagery but it just -- on the black paint it just wouldn't  
24 show up.

25 Q And I think Detective Gatus would have -- testified to this, but

1 do you recall there being some weather in the area between January 3rd  
2 and January 8th, the day the search warrant was executed -- or the day  
3 the search warrant on the house was executed?

4 A There was. It was raining that night.

5 Q Now, when you saw this vehicle, State's 81, Ms. Guidry's cell  
6 phone was still sealed inside that vehicle?

7 A Correct.

8 Q And then -- I don't think I need to show the pictures of this.

9 Now, previously, I want to go back to the crime scene,  
10 previously we talked about determining the amount of force that had  
11 applied to the body of Eduardo Osorio to cause him to go that 42 feet, and  
12 I was asking you questions about the acceleration of the vehicle and you  
13 told me, I don't need the vehicle to determine what the acceleration was.

14 So is that fair?

15 A Correct.

16 Q Did you need to know the vehicle, or at the very least, the  
17 vehicle type, in order to determine how much throttle was given to the  
18 vehicle to cause it to accelerate at that speed?

19 A Correct. Different makes, models of vehicles have different  
20 positive acceleration rates on what they're capable of. Like, we all know,  
21 an '84 Honda isn't going to match a Ferrari as far as how fast they can  
22 accelerate and take off.

23 Q I'm going to put up 86, ask a couple of questions, first of all  
24 about the path, during the course of the statement Ms. Guidry said  
25 something to the effect of, Why would I have gone back down south on

1 Koval in the area where Mr. Osorio was if I had taken his watch.

2 Do you remember her making statements similar to that?

3 A I do.

4 Q Did you check the curbing of the path of travel to determine  
5 whether or not she could go any way other than south on Koval?

6 A I did. And I had it photographed.

7 Q And what was the result of looking at that?

8 A Unless she traverses a curb that is the route she has to take.

9 MR. MUELLER: No, it's not.

10 THE WITNESS: When she's exiting the Westin parking garage  
11 here, because of this curbing, she can't make a left here unless she's  
12 going left of center. She has to make a right turn to come southbound  
13 back towards the intersection.

14 BY MR. DIGIACOMO:

15 Q Now, let's talk about vehicle acceleration, first of all, if we were  
16 to go to State's Exhibit 105, and jump to that 2:20:13 to 2:20:20,  
17 essentially, were you able to essentially calculate the speed of that black  
18 vehicle as it exited the screen?

19 A I was.

20 Q And what speed were you able to calculate?

21 MR. MUELLER: Objection, lack of foundation, what technique  
22 was used to calculate that speed.

23 THE COURT: Can you restate the question.

24 MR. DIGIACOMO: Sure. I asked him, did he calculate it. Then  
25 I asked him what the calculation was.

1                   He's free to ask him on cross how he calculated it.

2                   THE COURT: Okay. That -- I'm going to overrule that  
3 objection.

4 BY MR. DIGIACOMO:

5           Q     Were you able to calculate the speed as that traversed outside  
6 the picture?

7           A     I was.

8           Q     And what conclusions did you draw as to the speed of the  
9 vehicle?

10          A     Approximately 59 miles per hour.

11          Q     And did you then, or maybe before you did that, but did you  
12 determine how far that distance was from the point of area of initial  
13 contact to where that vehicle was?

14          A     Approximately 300 feet.

15          Q     So this went zero to 60, essentially -- or zero to 59 in 300 feet?

16          A     Correct.

17          Q     Now, in looking at the acceleration capability of the Mercedes  
18 250, that you had in custody at the Las Vegas Metropolitan Police  
19 Department, could you make a determination as to what type of throttle  
20 had to be produced on that vehicle to get it to go from zero to 59 miles an  
21 hour within the 300 feet?

22          A     I did.

23          Q     And what is that?

24          A     It's achieving maximum velocity for the published data for that  
25 year, make, model vehicle based on that VIN.

1 Q And, in layman's terms, does that mean the accelerator had to  
2 be fully floored in order to get it to accelerate that way?

3 A From a stop to 59 miles per hour in 300 feet, it has to achieve  
4 an acceleration rate of about 12.4 feet per second. That vehicles capable  
5 of 12.4 feet per second.

6 Q And the conclusion you can draw from that is, what, as it relates  
7 to the acceleration of the pedal?

8 A That it's at maximum acceleration. There's 100 percent throttle  
9 applied over that fixed distance.

10 Q Now, at some point did you get a subsequent search warrant to  
11 actually get into Ms. Guidry's phone?

12 A I did.

13 Q And were you provided the data back from Detective Beatty  
14 after he was able to download -- well, first some of the information, and  
15 then ultimately all the information from the phone?

16 A Correct.

17 Q Once you receive that information, what did you do?

18 A I followed up with a couple of additional puzzle pieces that I got.

19 Q Like what?

20 A One was there was a picture of a FedEx receipt with an address  
21 and a date and timestamp from January 3rd at approximately 12:30 p.m.

22 Q And did you go to that FedEx store and see if there was video  
23 for that particular transaction?

24 A I had Detective Solomon go and he retrieved the video, which I  
25 viewed.

1 Q After viewing that video, did you see what appeared to be  
2 Ms. Guidry conducting a transaction at FedEx?

3 A I did.

4 Q What else did you do?

5 A I also -- forgive me, there's a lot of information. I received the  
6 FedEx information and I received pictures of the watch with a text thread.

7 Q And based upon the pictures of the watch and the text thread,  
8 did you have an address and/or location that you felt the watch might be?

9 A I did.

10 Q And based upon that, what did you do?

11 A I contacted a detective in Miami, Florida and had him follow up  
12 with the suspected address.

13 Q At some point do you learn that the watch that you were looking  
14 for was recovered in Miami, Florida?

15 A On January 30th.

16 Q And let me -- before I get that. Now, on January 18th or so, did  
17 you have contact by telephone with Ms. Guidry?

18 A I did.

19 Q And what was the nature of that contact?

20 A She called my desk phone, asked what was happening with the  
21 case, and what was the status of her vehicle.

22 Q And what was her request as it relates to that vehicle?

23 A That it would be released to her.

24 Q So you told her you would release her vehicle to her?

25 A I said that no charges were being filed and that she could meet

1 with me that day or the following day to come pick it up.

2 Q And did you guys setup a time for her to come get the vehicle?

3 A We did.

4 Q And what date or what day was it that she was supposed to  
5 come get it?

6 A The following day on the 19th, on Friday.

7 Q Based upon the information you had gathered by the 19th in  
8 your investigation that morning, what did you do?

9 A I authored -- well, the -- on the 18th I authored a warrant and  
10 then I walked it through -- an arrest warrant for the applicable charges and  
11 had it signed by a judge.

12 Q So you just used some terms that we kind of bantie around here  
13 in the justice. So you type up the arrest warrant on the 18th?

14 A I did.

15 Q And on the morning of the 19th you said something about, you  
16 walked it through, what does that mean?

17 A That means I've -- instead of submitting it to the DA's office and  
18 it going through a screening process, I actually went before a judge, like,  
19 this is time sensitive and urgent, can you read it now and establish  
20 whether or not you feel I've met the probable cause and sign the warrant  
21 now.

22 Q And the charges that you had, did the charges include murder?

23 A They did.

24 Q Did they include robbery?

25 A They did.



1 Q Did they include grand larceny?

2 A They did.

3 Q Did they include leaving the scene of a collision?

4 A Correct.

5 Q So now you have your warrant in hand and you're supposed to  
6 meet Ms. Guidry on Friday afternoon?

7 A Correct.

8 Q Did Ms. Guidry show?

9 A She did not.

10 Q Did you make any efforts to find Ms. Guidry that afternoon?

11 A I did.

12 Q What did you do?

13 A I did a couple of things. First, Child Protective Services was  
14 supposed to go out and have a meeting with her. So I contacted the Child  
15 Protective Services rep and tried to get ahold of them so when they went  
16 out to the house, if they knocked on the door and established that she  
17 was there, I had a team of officers that was ready to surround the house  
18 so we knew where she was at.

19 Q And when officers went to the house, was Ms. Guidry or her  
20 children there?

21 A They were not.

22 Q Eventually do you have to reach out to another  
23 multi-jurisdictional agency to try and effectuate the arrest of Ms. Guidry?

24 A I did.

25 Q And what agency is that?

1 A Our Criminal Apprehension Team.

2 Q What is the Criminal Apprehension Team?

3 A They specifically --

4 MR. MUELLER: Objection, can we approach?

5 THE COURT: Yes.

6 [Bench conference begins]

7 MR. MUELLER: Is there any relevance to this testimony or is  
8 this just -- prejudicial for no good particular purpose?

9 THE COURT: Well, this --

10 MR. DIGIACOMO: Well, she fled the jurisdiction for the better  
11 part of four weeks and then was taken into custody in Mobile --

12 MR. MUELLER: And that's not a bad acts motion. That has not  
13 been charged --

14 MR. DIGIACOMO: It's flight.

15 MR. MUELLER: No. Your Honor, I object. It's nowhere in the  
16 discussion.

17 THE COURT: Are you seeking to introduce this for purposes of  
18 consciousness of guilt?

19 MR. DIGIACOMO: Correct.

20 MR. MUELLER: It's the first I've heard of it. I object. That's --

21 MR. DIGIACOMO: What do you mean first you've heard of it?  
22 She was arrested and extradited from Mobile, Alabama.

23 MR. MUELLER: So I wasn't attorney of record. The first I've  
24 heard of it. You need to make a motion on this and you didn't.

25 MR. DIGIACOMO: Absolutely do not --

1 THE COURT: How is it possible that this is the first you've  
2 heard of this when your --

3 MR. MUELLER: I was not the attorney --

4 THE COURT: -- Mr. Mueller, your colleague argued in the bad  
5 acts motion that she was arrested in another state with another watch on  
6 her arm.

7 MR. MUELLER: Yes, Judge.

8 THE COURT: And that there was -- there was a conversation  
9 about not seeking to introduce the other watch, which your colleague  
10 claimed to be hers that she purchased with lawful funds.

11 So I take issue with representation that you didn't hear about --  
12 this was the first you've heard about this.

13 MR. MUELLER: Your office may have heard of it; first I've  
14 heard of it.

15 Okay. That's fine. All right. I --

16 THE COURT: Well, I don't want to have a situation where  
17 we're -- be attempting to set an error in the record.

18 Do you need to take a moment to address this issue? Because  
19 I'll break for the day now. I'm not going to create error on the record,  
20 based on your representation that you didn't know about this.

21 MR. MUELLER: Your Honor, what is his -- I mean, the case  
22 has been presented, all he's just -- what would be the purpose of bringing  
23 the fact that she out of town?

24 MR. DIGIACOMO: Consciousness of guilt. She fled the  
25 jurisdiction when charges were arrested -- or charges were filed.

1 MR. MUELLER: I'll withdraw the objection.

2 THE COURT: The objection will be withdrawn, Mr Mueller.

3 And for the record I want to make sure that there aren't any  
4 misunderstandings regarding what you do and do not know about your  
5 client's case.

6 Are there any other questions you have about the  
7 circumstances of her arrest?

8 MR. MUELLER: No, Your Honor.

9 [Bench conference ends]

10 [Colloquy between the Court and the Marshal]

11 MR. DIGIACOMO: May I proceed, Judge?

12 THE COURT: Yes.

13 The objection has been withdrawn.

14 You may proceed.

15 BY MR. DIGIACOMO:

16 Q What is the Criminal Apprehension Team?

17 A They're a team that specifically deals with apprehending  
18 criminals that have either an outstanding charge or an active warrant and  
19 they have different tools and resources available to them that I don't to  
20 locate and take people into custody.

21 Q And is this a -- just a Metro -- or, well, it's a Metro team, the  
22 CAT team, but are they -- is it a multi-jurisdictional team?

23 A Correct. They work with different entities depending upon the  
24 circumstances surrounding the case, the FBI, the DEA, Marshals, if the  
25 person flees to Mexico, things like that.

1 Q And do you maintain contact with them over the course of their  
2 time searching for and trying to apprehend Ms. Guidry?

3 A I did.

4 Q And during that time period, how many different states was  
5 there efforts made in, if you recall?

6 A I just remember it being a lot. I don't remember an exact  
7 number.

8 Q Eventually is Ms. Guidry captured somewhere other than the  
9 State of Nevada?

10 A She was.

11 Q Where was she captured?

12 A Mobile, Alabama.

13 Q And approximately how long after January 19th was it that she  
14 ultimately was taken into custody?

15 A I'm trying to remember dates back then. I believe it was  
16 February 2nd or February 9th.

17 Q Now, on January 30th, did you learn that the watch had been  
18 recovered in Miami, Florida?

19 A I did.

20 Q And at some point did the Miami-Dade Police Department  
21 FedEx to the Las Vegas Metropolitan Police Department a box that when  
22 you opened it you found something?

23 A I did, on May 29th.

24 Q May 29th of 2018?

25 A Correct.

1           Q     What did you do with -- well, first of all, when you opened the  
2 box, what was in there?

3           A     A Rolex watch.

4           Q     And did you compare the serial number of that Rolex watch to  
5 the watch you were looking for?

6           A     I did.

7           Q     And did it match?

8           A     It did.

9           Q     And once you found -- or once you learned that this was, in fact,  
10 the watch you were looking for, what did you do with it?

11          A     Impounded it as evidence.

12          Q     I'm showing you what's been marked as State's Proposed  
13 Exhibit Number 84, do you recognize that?

14          A     I do.

15          Q     What is it?

16          A     The can I sealed the watch in on May 29th.

17          Q     And is that substantially the same or similar condition as when  
18 you impounded it then?

19          A     It is.

20          Q     It doesn't look like anybody's broken any seals on this?

21          A     Correct.

22          Q     I'm going to ask you to break the seals and open it.

23          A     [Witness complies.]

24               MR. DIGIACOMO: And, Judge, we're going to have this  
25 marked as 84A. It's been previously listed.

1 THE COURT: Okay.

2 BY MR. DIGIACOMO:

3 Q Is that, in fact, the watch you determined that belonged to  
4 Eduardo Osorio?

5 A It is.

6 Q And can you see a serial number on it?

7 A I can.

8 Q And where is that?

9 A It's located on this lower rim in the six o'clock position on the  
10 watch with an inverted serial number.

11 Q Can you read to us what that serial number is?

12 A 6KE22544.

13 MR. DIGIACOMO: Thank you, Detective.

14 Judge, that completes my questions for the witness.

15 THE COURT: All right.

16 MR. DIGIACOMO: Oh, I guess, I move to admit 84 and 84A.

17 THE COURT: I was going to ask the question. Thank you.

18 Mr. Mueller, do you have any objection to 84 and 84A?

19 MR. MUELLER: No, Your Honor.

20 THE COURT: All right. They will be admitted.

21 **[STATE'S EXHIBITS 84 AND 84A ADMITTED]**

22 THE COURT: All right. Ladies and gentlemen of the jury, we  
23 have finished the direct examination of this witness. And for ease of  
24 schedule, I think it makes sense for us to stop for the day, so Mr. Mueller  
25 can cross-examine the witness starting tomorrow.

1                   So you will need to come back. So I apologize for that.

2                   If I could see counsel at the bench to discuss scheduling for  
3 tomorrow morning.

4                   Feel free to stand and stretch, we're almost done for the day.

5                                 [Bench conference begins]

6                   THE COURT: All right. So I have a 10 o'clock hearing and  
7 potentially I need to do a change of plea, which will probably take about  
8 30 minutes, given my interactions with this particular defendant.

9                   Do we want to come in and do our charge conference at 8:30  
10 and then take a break and then have the jury come back at 10:30?

11                  MR. DIGIACOMO: Sure.

12                  MR. MUELLER: Sure. That'll work.

13                  THE COURT: Does that work for you all?

14                  MR. DIGIACOMO: That's fine with us, yeah.

15                  THE COURT: Okay. We'll take the next 20 minutes to discuss  
16 some of the ones that I've reviewed that have been proposed by  
17 Mr. Mueller.

18                  MR. MUELLER: Okay.

19                  THE COURT: And then we can finish the charge conference  
20 tomorrow morning.

21                  Does that work?

22                  MR. DIGIACOMO: Works for me.

23                  MR. MUELLER: Sure.

24                  THE COURT: All right. So 10:30 for the jury.

25                  MR. DIGIACOMO: Perfect.



1 THE COURT: Thank you.

2 [Bench conference ends]

3 THE COURT: All right. Ladies and gentlemen, here's what  
4 we're going to do, I have a couple of hearings I have to take care of in the  
5 morning and some additional things with just the parties.

6 So I am going to ask you to come back tomorrow morning at  
7 10:30, you get a late start. We don't, you do.

8 During this overnight break, I'm going to go ahead and read you  
9 this admonishment, which I'm sure by the end of this trial you'll be able to  
10 recite back to me, but you're not to talk or converse amongst yourselves  
11 or with anyone else on any subject connected with this trial or read,  
12 watch, or listen to any report of or commentary on the trial or any person  
13 connected with this trial by any medium of information, including, without  
14 limitation, newspapers, television, radio, or Internet. Or form or express  
15 any opinion on any subject connected with this trial until the case is finally  
16 submitted to you for deliberation.

17 And, with that, thank you very much for your attention this  
18 afternoon and we'll see you tomorrow morning at 10:30.

19 Thank you.

20 [Outside the presence of the jury]

21 THE COURT: All right. Let the record reflect that the jury has  
22 left the room.

23 I believe we're done with this witness for today; right?

24 MR. DIGIACOMO: We are. And he doesn't need to here until  
25 10:30.

1 THE COURT: 10:30 tomorrow morning.

2 THE WITNESS: Thank you.

3 THE COURT: Thank you very much. I appreciate that. Oh,  
4 good you got your coffee. All right.

5 All right. State, have you had an opportunity to look at all -- at  
6 any of Mr. Mueller's proposed instructions?

7 MR. DIGIACOMO: I briefly looked at them and sort of -- I think I  
8 can probably address each one of them, without sort of being final, but  
9 there's some case law I would like to look at. But I imagine I know the  
10 answer to most of this though.

11 THE COURT: All right. Well, I don't know what order you have  
12 them in. I'm just going to go through them in the order I got them.

13 Mr. Mueller, do you have a copy of the instructions in front of  
14 you?

15 MR. MUELLER: Yes, I do, Judge.

16 THE COURT: All right.

17 MR. MUELLER: And to the extent that I could get it done  
18 through the trial, I think they're mostly -- all three sets are in order.

19 THE COURT: Okay. So you all know how I'm going to  
20 reference -- there's actually just one instruction that matters for this  
21 particular one -- I numbered the proposed instructions I gave to each of  
22 you, page 1 being instruction 1, making page 2 instruction 2, going  
23 forward. All right.

24 So I had a proposed instruction from Mr. Mueller, the driver of  
25 any vehicle involved in any accident on a highway or premise, to which

1 the public has access resulting in bodily injury or death to a person, shall  
2 immediately stop his or her vehicle at the scene of the accident of as  
3 close there to as possible and shall forthwith return to and in the event  
4 remain at the scene of the accident.

5 That seems to match, for the most part, which would be marked  
6 in the proposed instructions, instruction number 17.

7 The only difference is the State had an additional sentence of,  
8 Any person who knowingly fails to comply, is guilty of the offense of  
9 leaving the scene of the accident.

10 So I am inclined to give this instruction as proposed by the  
11 State.

12 MR. MUELLER: There's actually a 2010 case, Judge,  
13 *Hoagland versus State* that --

14 MR. DIGIACOMO: Judge, I can't find that. So hold on one  
15 second.

16 THE COURT: Sure.

17 I have a copy of it here, if you wanted to grab it.

18 MR. DIGIACOMO: Actually I read that so.

19 Craig, I think she's talking about a different one than you're  
20 talking about.

21 MR. MUELLER: Okay.

22 THE COURT: So I'm going to grant -- I'm going to give this  
23 instruction as proposed by the State. It matches yours, Mr. Mueller, with  
24 the exception of the additional sentence.

25 And that additional sentence is, Any person who knowingly fails

1 to comply, is guilty of the offense of leaving the scene of an accident.

2 MR. DIGIACOMO: Okay. Well, I don't object to that obviously.

3 THE COURT: Right.

4 So, Mr, Mueller, is there any objection to that instruction?

5 MR. MUELLER: No, Your Honor.

6 THE COURT: Okay.

7 All right. The next instruction that I have from Mr. Mueller is, it  
8 starts, Robbery is a general intent crime, in order to find the defendant  
9 guilty of robbery the State must prove the defendant intended to do that,  
10 which the law prohibits by taking property from the person of another,  
11 physical force or threats of physical force.

12 I think that's -- I think there's a missing word there.

13 Anyway, you cite to four cases, *Winnerford H. versus State*,  
14 *Honeycutt versus State*, *Crawford versus State*, and *Brooks versus State*.

15 I'm going to start by saying I have read the State's proposed  
16 instruction on robbery and I'm inclined to give it.

17 So I will ask, Mr. Mueller, why I should give your instruction  
18 instead?

19 MR. MUELLER: No, Your Honor, I give my staff general lot --  
20 or latitude to go through. I laid out what I wanted them to do. To the  
21 extent that mine duplicates the State, I don't have any objection using the  
22 State. It's --

23 THE COURT: It does not duplicate the State.

24 MR. MUELLER: All right. Then what specifically --

25 THE COURT: it's quite different from the State actually. So in

1 the instructions that I gave you, it would be instruction number 9, number  
2 10 -- number 9 and 10.

3 So take a look at the proposed instructions that the State sent  
4 and let me know if you have an objection to them. I'm inclined to give  
5 those instructions.

6 MR. MUELLER: No, Your Honor. The custom and practice in  
7 the jurisdiction has always been to use the -- there's a pattern instructions  
8 that State -- acts as the custodian of them. And usually defense only  
9 provides amplifying instructions.

10 THE COURT: Okay. So you don't have an objection to the  
11 proposed 9 and 10?

12 MR. MUELLER: No, Your Honor.

13 THE COURT: Okay. All right. I'm a going to move on, there is  
14 a request to include an instruction on vehicular manslaughter.

15 MR. DIGIACOMO: Correct.

16 THE COURT: I'm going to actually hear from the State on this.

17 MR. DIGIACOMO: Judge, the definition of vehicular  
18 manslaughter, the elements are not lesser included, theoretically it's  
19 lesser related or maybe even factually we could have charged it in the first  
20 place. But since *Peck* came out, I think in 2008, you no longer give lesser  
21 related. We're entitled to preclude any less or related be given to the jury.

22 And so to the extent that Mr. Mueller wants a lesser related,  
23 unfortunately he didn't get to make the charging decisions here.

24 So we object to the giving of the instruction.

25 THE COURT: All right.

1 MR. MUELLER: All right. I couldn't disagree with my  
2 colleague. Nevada law is actually very well established. The defense is  
3 entitled to its theory of the case.

4 The practical facts as they've been adduced here is that the car  
5 was stopped, Mr. Osorio charged in traffic. Ms. Guidry stopped.  
6 Mr. Osorio, on his own initiative, hopped himself onto the hood of the car  
7 and started pounding on the windshield. By the eyewitnesses account  
8 he -- the car suffered at least ten blows. We have a fractured windshield  
9 to verify that.

10 The law does not require you to stay and suffer harm under any  
11 circumstances.

12 So her underlying misdemeanor felony traffic -- or misdemeanor  
13 offense would have been an unsafe stop from start, which is she took off  
14 when it was not safe to do so.

15 The underlying -- the resulting acts or neglect of duty here  
16 would have been the death of Mr. Osorio who fell off the car. Therefore,  
17 she's entitled to both the unsafe start from stop instruction and a vehicular  
18 manslaughter instruction.

19 THE COURT: So address for me the fact that the vehicular  
20 manslaughter is a lesser related offense as opposed to a lesser included  
21 offense.

22 MR. MUELLER: It is a lesser included by --

23 THE COURT: How is it a lesser included offense? Let me ask  
24 that question.

25 MR. MUELLER: This -- well, the -- the State has made it

1 several bizarre charging decisions here, instead of charging felony  
2 reckless driving, to wit, by driving off in a wanton, willful disregard with  
3 Mr. Osorio handing -- holding to the car, in which case we would have had  
4 a properly charged case. We are now defending an improperly charge  
5 charge of murder.

6 Now, you don't get to make wildly inaccurate charge and then  
7 deprive the defendant of getting the proper instruction on the case.

8 Now, specifically the facts --

9 THE COURT: Well, that's a matter of opinion, not a matter of  
10 law. So talk to me again how vehicular manslaughter is or is not a lesser  
11 included or a lesser related? I need you to distinct --

12 MR. MUELLER: Okay. Very specifically --

13 THE COURT: -- distinguish those for me.

14 MR. MUELLER: -- this is a lesser included from the charge of  
15 duty to stop or failure to crash involving death or personal injury.

16 Now, the State -- that's -- specifically has a duty to stop, means  
17 that someone's been injured, you knew about it, and you didn't stop.

18 Here, vehicular manslaughter would be, I have a duty to drive  
19 safely and someone died because I neglected my duty to stop safely -- or  
20 drive safely.

21 THE COURT: I think that duty to stop at a scene of a crash, or  
22 involving death or personal injury, would be the lesser included of  
23 vehicular manslaughter. If I'm going to follow your logic, it seems to be  
24 inverse.

25 I'll hear from the State on that argument.

1 MR. DIGIACOMO: Correct. And Mr. Mueller's confusing. Had  
2 we filed a felony reckless driving charge, theoretically the vehicular  
3 manslaughter would have been, because the reckless driving would have  
4 been the violation of the traffic law, and then negligence is a lesser  
5 included of recklessness.

6 That charge isn't in the Indictment. The Indictment is a duty to  
7 stop. The duty to stop has nothing to do with vehicular manslaughter.  
8 The vehicular manslaughter happens first, then you have the duty to stop,  
9 or you commit the felony crime of duty to stop when you've caused the  
10 death of somebody else.

11 Vehicular manslaughter is not a lesser included of duty to stop.  
12 He's trying to argue that vehicular manslaughter is a lesser included of  
13 murder and murder is the unlawful killing of a human being with malice  
14 aforethought, either expressed or implied and -- well, actually it's just the  
15 unlawful killing of a human being; right.

16 That is not -- these are not included. Violation of a traffic law,  
17 negligently causing the death of a person is not -- there's an element in  
18 both that is not included in the other.

19 MR. MUELLER: I would point out to the Court, respectfully and  
20 my colleague, as much as I enjoy the banter of a good intellectual  
21 argument, we are still very -- have a significant amount of evidence to be  
22 heard yet, specifically, the cross-examination of the detective.

23 And I'm going to ask -- and I'll pose it to the Court and my  
24 colleague, a very simple proposition, how many more times was that  
25 windshield going to be hit before it gave way and did she have any



1 obligation to sit there and be punched in the face.

2 And now --

3 THE COURT: That's a -- well, that's a whole different line of  
4 argument --

5 MR. MUELLER: Well, that's --

6 THE COURT: -- that goes to potentially self-defense. Or I  
7 understand that you have a -- what appears to be a proposed necessity  
8 instruction.

9 So I want to focus specifically on this instruction.

10 MR. MUELLER: All right.

11 THE COURT: And I agree with you that we still have additional  
12 evidence to consider. So I am going to defer on this ruling at this time.

13 But I will ask Mr. Mueller to provide me a case that specifically  
14 provides that vehicular manslaughter is the lesser included of murder with  
15 a deadly weapon. All right.

16 MR. MUELLER: All right. Thank you, Your Honor.

17 Then my colleagues -- okay.

18 THE COURT: Okay. So I'm going to defer ruling on that one.

19 MR. MUELLER: All right.

20 THE COURT: All right. The next proposed instruction reads, or  
21 starts as, The State has the burden of proving beyond and to the  
22 exclusion of every reasonable doubt that the defendant had a general  
23 intent to commit the offense of robbery.

24 So we already are giving instruction -- proposed instructions 9  
25 and 10 that define robbery. And then there is the proposed reasonable

1 doubt instruction, which is the stock instruction.

2 I'm inclined to give those in place of this proposed instruction.

3 MR. MUELLER: That's fine, Judge. We'll stick with the stock,  
4 the State's stock instruction. I don't have any objection.

5 THE COURT: All right. Then there's the next instruction that  
6 reads, Robbery is a combination of the crime of assault with that of  
7 larceny. As a result of larceny -- as a result, larceny can be a lesser  
8 included offense of robbery. If you decide that the facts do not support a  
9 conviction of robbery, you may consider the charge of larceny.

10 All right. I'm going to hear from State first regarding it's -- do --  
11 I'm assuming you have an opposition to his defense?

12 MR. DIGIACOMO: Yeah, I don't believe that assault or battery,  
13 and I think there's now case law, his case law seems to end in 2008, that  
14 specifically says, neither assault nor battery -- although battery might be  
15 very well. But battery might be the -- a lesser included of robbery. But  
16 assault certainly isn't a lesser included of battery. I'd have to go look to  
17 see if battery is. I don't know if the Supreme Court has ruled on that. But  
18 I can get you some case law. And I know for a fact that assault is not  
19 because they changed the statute for assault to add a whole bunch of  
20 elements.

21 THE COURT: So here's my -- your proposed instruction 14  
22 seems more appropriate and I think it's what Mr. Mueller's trying to get --  
23 Mr. Mueller's trying to get to. It reads, Any person who steals, takes and  
24 carries away, leads away or drives away from person goods or property of  
25 another, having a value of \$3500 or more, with the specific intent to

1 permanently deprive the owner thereof is guilty of grand larceny of more  
2 than \$3500.

3 I think that's what you were trying to propose. And I'm more  
4 inclined to give that instruction.

5 MR. MUELLER: That'll be fine, Judge.

6 THE COURT: And then it continues to read, \$650 to -- \$3,500  
7 or less than 650.

8 All right. Any objection to that proposed instruction?

9 MR. MUELLER: No, Your Honor.

10 THE COURT: Okay.

11 All right. Then the next proposed instruction is kind of along the  
12 lines of what you were talking about, Mr. DiGiacomo, Nevada law  
13 prohibits assault, assault is deliberately making another person feel that  
14 she is about to be physically harmed. The statute defines assault as.

15 And then it gives two examples.

16 So assault isn't charged in the Indictment. So I'll hear from  
17 Mr. Mueller as to why we should include this instruction.

18 MR. MUELLER: Well, here's the practicable problem, and my  
19 colleague -- I kind of really wish we were done with -- the evidence was  
20 closed before we settled some of these because I'm going to have to tip  
21 my cards on a couple things here.

22 Specific --

23 THE COURT: Well, do you want -- do you want to reserve on  
24 that? I'm not going to force you to tip your hand early.

25 MR. MUELLER: There are a couple of things that have not

1 come out yet that I think might change the Court's view on a couple issues  
2 in this case. And I would like to reserve having to play my cards at the  
3 moment.

4 THE COURT: Okay. So that's probably going to be applicable  
5 to this instruction, the instruction related to your proposed instruction  
6 regarding legal necessity or self-defense.

7 MR. MUELLER: No, Your Honor, that's a little -- that's a little  
8 different argument than the one. I believe, that's absolutely -- we can talk  
9 about that now, if you want to review it.

10 THE COURT: Okay.

11 MR. MUELLER: The practical problem here is --

12 THE COURT: All right. Hold on one second, before we jump  
13 on.

14 So I'm going to defer on this assault question. Just so you  
15 know where the Court's going with this, Mr. Mueller, I'm not inclined to  
16 give this instruction. Assault isn't charged. And I'm just not sure how it's  
17 relevant at this time. But, you know, again, I'm not going to force you to  
18 tip your hand early. All right.

19 MR. MUELLER: Okay.

20 THE COURT: All right. So let's talk about the necessity,  
21 proposed necessity instruction.

22 MR. MUELLER: Thank you, Your Honor.

23 Let me see if I can find it here.

24 THE COURT: It starts at the top of the page, it says, The  
25 defendant is not guilty of failure to stop at the scene of a crash involving

1 death or personal injury if she acted because of legal necessity or  
2 self-defense.

3 MR. MUELLER: Oh, here it is. It's right at the bottom. Thank  
4 you.

5 THE COURT: No problem.

6 MR. MUELLER: All right. Thank you, Your Honor.

7 Here's the practical, and I come back to the point I just made a  
8 moment ago, the eyewitness testimony, and I don't want to vouch for  
9 Mr. Landale, but I found him very credible, was that the windshield was hit  
10 at least ten times. You can see from the photograph there's at least four  
11 impact sites on the windshield, that it was on the verge of or was going to  
12 give way under a few additional blows is not meaningful in doubt.

13 So the question becomes, there was a moment in time where  
14 Mr. Osorio and Ms. Guidry were separated, they were separated by a very  
15 large concrete building and they were out of each other's sight. Where  
16 the watch was and where -- how it was, if he, in fact, been the guilty of  
17 larceny, the larceny is now complete. He now is in the process of doing  
18 exactly what O.J. Simpson did, and found himself in prison for, which is  
19 going back to try to retrieve his property and runs into the traffic to do so.

20 Now, he's assaulting Ms. Guidry, there's apparently a language  
21 barrier, and an alcohol barrier, very tall alcohol barrier, and the windshield  
22 is starting to give way.

23 Now, had she sat there for --

24 THE COURT: I'm going to stop you right there, really quickly,  
25 and I'm sorry to interrupt you, but tell me what evidence I've heard that

1 suggest that his pounding is what broke the windshield, as opposed to his  
2 head getting hit during the course of the accident?

3 MR. MUELLER: Very simple, Mr, Landale --

4 THE COURT: I understand there was testimony that he was  
5 hitting it. I understand that. But what testimony or evidence do I have that  
6 his hitting the windshield caused it to break?

7 MR. MUELLER: Mr. Landale was very clear, the car --  
8 Ms. Guidry came to a very -- a complete stop. He ran out. She stopped  
9 the car. The car was stopped. He then hit the windshield repeatedly, ten  
10 times. There is no other --

11 THE COURT: But there was a -- did he testify that that caused  
12 the windshield to break?

13 MR. MUELLER: He was --

14 MR. DIGIACOMO: He did not. But to help mister -- not to help  
15 Mr. Mueller out. Ms. Guidry claims that it was the fist that caused the  
16 breaking so.

17 THE COURT: I realize that. So I understand that's her  
18 statement.

19 MR. DIGIACOMO: There's some evidence of that.

20 THE COURT: Sure.

21 MR. DIGIACOMO: Although I would submit --

22 THE COURT: Sure.

23 MR. DIGIACOMO: -- to the Court.

24 But, that being said, that misstates the law particularly since  
25 we're talking about the *Leonard* instruction. First of all, a person has the

1 right to use force to resist the taking of their property. And if the  
2 defendant chooses, she says it in her own statement, if I just handed him  
3 the watch and then he continues the force, yeah, then she has the right to  
4 defend herself. But while she's holding that property --

5 MR. MUELLER: That's --

6 MR. DIGIACOMO: -- that is her resistance -- or his resistance  
7 is lawful and she cannot accelerate that vehicle and kill him.

8 MR. MUELLER: The answer -- that's absolutely, fundamentally,  
9 absolutely 100 percent wrong. O.J. Simpson got a better part of a decade  
10 in prison for doing just this.

11 THE COURT: No, that's a different situation, Mr. Mueller, he  
12 planned --

13 MR. MUELLER: Respectfully --

14 THE COURT: -- to go in to commit a robbery. There's a  
15 different -- there's a -- completely different facts and circumstances.

16 MR. MUELLER: Respectfully, Judge, and this will come out  
17 tomorrow on cross-examination, A, number one, I went out there Sunday,  
18 the detective is incorrect, you can turn left and right. And I went out there.  
19 I'll go get a picture tonight to show you.

20 Having said that, there came a time, and you saw it, she doesn't  
21 speed off. She doesn't squeal, peel out, she just drives off. There's a  
22 minute, minute and a half, they're not talking to each other. There's  
23 nobody around. They have -- don't know each other's names. Done.  
24 Elevator music. Crickets.

25 Now, Mr. Osorio is the one who assaults Ms. Guidry by running

1 into traffic, steps in front of her car, hops on the windshield, and starts  
2 pounding it, and there's four fist impact sites consistent with his attack.

3 Now's he's the assaulter. This is his crime. Not hers. She sits  
4 there patiently, they're yelling -- or is patiently -- or yelling as patient as  
5 you can be with someone sitting on the hood of your car pounding out.

6 What you have not heard, and you're going to hear it tomorrow,  
7 is you're going to hear about five or six more eyewitness 9-1-1 calls who  
8 verify Mr. Landale's recollection is pretty much spot on.

9 So the fact that he was on the windshield -- hood of the car,  
10 pounding windshield is not meaningful in doubt. In fact, Mr. DiGiacomo  
11 actually showed a very grainy, but a pixilated view, of him holding onto the  
12 car, pounding on it. It was -- it was -- granted it was a small -- or a swatch  
13 of video but it very clearly confirms exactly what the eyewitnesses said.

14 So, now, he's using force in a unlawful replevin action. He isn't  
15 resisting the taking of his property. We still haven't -- it's not even  
16 established yet in his record whether the property was actually taken or  
17 inadvertently left.

18 He takes it on his own initiative to run into traffic, at a very busy  
19 intersection, and hops on a car and starts pounding on the windshield,  
20 under the influence of a lot of alcohol.

21 So the answer is, is he is the wrong doer at that particular  
22 moment, not Ms. Guidry. Ms. Guidry has the right to defend herself. And  
23 I don't know any doctrine of law, ever, in law school, here, prosecuting,  
24 defense, that requires you to sustain injury.

25 Now, she has the right to drive off. The fact that he held onto



1 the car, it was a very poor alcohol fueled decision, but it was his decision,  
2 not hers. She stopped. He didn't get off the car. He didn't stop and have  
3 her roll down the window and say, Hey, can you check to see if my watch  
4 is in there?

5 Now, none of that happened.

6 THE COURT: Well, there wasn't an opportunity for that to  
7 happen, was there?

8 MR. MUELLER: If the car -- no, and we won't know and that's a  
9 wonderful point.

10 But, having said that, I was very clear, and stood in the well of  
11 this courtroom, there was a moment in time when he's standing directly in  
12 front of her car, she's not moving, and at that moment he doesn't walk  
13 around to the window and tap, Hey, can you check for my watch. He  
14 hops onto the hood of her car. That makes him the aggressor in that time.

15 Now, you cannot use force and violence to recover property.  
16 That's black letter law.

17 Now, if she had turned left on Koval, these people would have  
18 never seen each other again. She turned right on Koval, not squealing,  
19 not speeding, nothing. The drunk, young man, God bless him, but ran out  
20 and hopped on the hood of a car and started pounding on a windshield.  
21 That's not appropriate behavior, even if she did steal the wallet -- or steal  
22 the watch.

23 THE COURT: All right. So I'm going to disagree with you on a  
24 couple of different points and I feel like we've kind of gotten off track here.

25 First, your argument seems to be based on the fact that there's

1 no testimony that the watch was stolen and therefore it can't be proven  
2 that a robbery occurred. The *Leonard* case specifically disagrees with  
3 that argument. It provides that a jury may not be instructed that a robbery  
4 be taken from a living person. It does allow for a person to be charged  
5 with robbery from a person who is deceased.

6 So let's start there and then work our way backwards.

7 MR. MUELLER: Well --

8 THE COURT: The case law that you provided in support of  
9 your necessity instruction, one, the case of *Jorgensen v State* involves an  
10 escape, and, two, *Hoagland v State* involves a necessity for a DUI, which  
11 actually in the end the Supreme Court determined that there was no error  
12 for not providing the necessity defense and we'll get to that in a minute.

13 But before I do that, let me ask the State this question, do you  
14 have an objection to a necessity defense?

15 MR. DIGIACOMO: I do. Because there's an element, and it's  
16 their burden to establish, that upon getting out of fear, in any necessity  
17 defense, they must immediately report. And that's *Lovercamp* that says  
18 that. I don't have the -- it directly in --

19 THE COURT: The citation. I read that one. I didn't write it  
20 down.

21 MR. DIGIACOMO: -- directly in front of me.

22 THE COURT: Yeah.

23 MR. DIGIACOMO: But they're missing an element for an  
24 affirmative defense, which is she immediately reports. It is the same thing  
25 as it relates to his instruction on the, if you're in fear for your life, you don't

1 have a duty to stop. You do once you're out of danger, then you do have  
2 a duty to stop, and you must report. Their affirmative defense they cannot  
3 meet because we can all stipulate she does not report.

4 MR. MUELLER: The answer is -- okay. And my colleagues  
5 going to have to answer a very tough question then, Was she obligated to  
6 have that windshield collapse on her car?

7 MR. DIGIACOMO: And why --

8 MR. MUELLER: And was obligated --

9 THE COURT: Well --

10 MR. MUELLER: -- was she --

11 MR. DIGIACOMO: -- she was holding the watch.

12 THE COURT: -- hold on, we're -- we're --

13 MR. MUELLER: -- if I could -- the floors mine.

14 THE COURT: -- we're interrupt -- though where you're starting  
15 the conversation about the evidence and it's presented midstream,  
16 because by the time that happens the evidence, even if you disagree with  
17 it, circumstantially supports that the watch was stolen and there was a  
18 robbery.

19 So I think there's a couple of different failures, one, I agree with  
20 Mr. DiGiacomo, there's a requirement to a duty to report. And, two, the  
21 case that you cited, *Hoagland v State*, 126 Nevada 381, discusses, in this  
22 instance, a necessity defense in terms of a DUI, there it discusses  
23 reasoning from foreign jurisdiction. But one of the cases that it talks  
24 about is that supporting element of a necessity defense is whether the  
25 defendant is blameless for creating the situation.

1           And at this point, understanding that you haven't put on your full  
2 defense. So I'm not going to make this decision tonight. I'm going to still  
3 defer on this case. Based on the evidence that's been presented thus far,  
4 I don't think you have that element or that situation on your side candidly,  
5 Mr. Mueller.

6           But -- but --

7           MR. MUELLER: Respectfully, Judge, and I --

8           THE COURT: Continue.

9           MR. MUELLER: Okay. Thank you.

10          I have -- made the practice of always going to crime scenes  
11 before I do trials. So I've been out there. I went out there Sunday  
12 afternoon before we started.

13          This case -- this -- if there was a robbery or a -- sorry, if there  
14 was a larceny, let's start at the predicate fact, if she actually took the  
15 watch and he didn't just leave it in the car or he bribed her for sexual  
16 favorites with it, if the car -- once they parked, whatever circumstances,  
17 it's over with. She's on the other side of a building. She's gone away.  
18 He's standing there, look -- standing there, and you can see him in the  
19 videotape, he's standing there. The case is over with. The larceny has  
20 occurred.

21          Now, he takes it upon himself to recover his property, not resist  
22 the taking of it. If it's been taken, it's taken. It's gone. And had she  
23 turned left there at the intersection, where I know she can do because I  
24 did it Sunday afternoon, is, the case is over with.

25          The problem with this case, and my colleague never seems to --

1 hasn't seemed to recognize this yet, is this is a replevin action. He is  
2 going on to the car, not to resist the taking because it's been taken. It's  
3 gone.

4 THE COURT: So --

5 MR. MUELLER: He assaults her car. He hops on a car,  
6 nobody in a right mind thinks hopping on a car and pounding on a  
7 windshield until it breaks, is a good idea. And she sits there and let's him  
8 breaks the windshield. Yelling at him, get off the car, get off the car,  
9 whatever she's yelling at him. It's not until the windshield looks like it's  
10 about ready to give way and she's going to get punched in the face that  
11 she take off. And then he makes the very poorly calculated decision to try  
12 to hold on.

13 Now, there's two -- there's a break in the action here. This  
14 isn't -- this isn't a continuous action. There's a break.

15 THE COURT: Where's the break?

16 MR. MUELLER: There's a -- the break is when the --

17 THE COURT: Because she continues to flee the scene.

18 MR. MUELLER: He doesn't. My -- my -- detective -- the  
19 detective -- the detective has a fairly creative -- or Salisbury has creative  
20 eyesight. Watch the video, Judge, the kids standing there, got his hand in  
21 his pocket, he's kind of looking around like this, he's not particularly doing  
22 anything. He starts walking this way --

23 THE COURT: Other than realizing his watch is missing  
24 perhaps?

25 MR. MUELLER: No, actually not. If the watch had been taken.

1 It doesn't matter. She's gone. He goes out and sees her on the other  
2 side about a minute and a half or 45 minutes -- 45 seconds later. And  
3 then he attacks her. That is unlawful.

4 If he ran out in the street and got a license plate or if he stood in  
5 front of her car and called the police, okay, he'd been rightfully with his  
6 actions. That's not what happened.

7 He's feloniously assaulting -- or maliciously destroying her  
8 vehicle on the assumption, presumably, and I no -- I don't want to put  
9 words into his head because I don't know what he was thinking -- but  
10 presumably under the assumption that the watch was in the car. But  
11 since he didn't knock on the window and ask we don't know.

12 THE COURT: Okay.

13 MR. MUELLER: There's a break in the action here. Everyone  
14 seems to forget this. There's two separate theaters of operation.  
15 Whatever happened in the car, whether it was sexual, whether the car --  
16 the watch was taken, whether there was an exchange of the watch for  
17 sexual services, we don't know yet, they haven't established.

18 THE COURT: Tell me where in that video we see an  
19 opportunity for the victim to walk up to the victim's car, knock, knock,  
20 knock, and, say, Hey, can I have my watch back?

21 MR. MUELLER: Look at -- he got out voluntarily. Everyone  
22 seems to forget this. She's sitting in the car. He gets out of the car, grabs  
23 his coat, and starts walking away. She pulls off. She doesn't squeal  
24 away. She pulls off.

25 MR. DIGIACOMO: The instruction would violate the instruction

1 he already agreed to, which is, Robbery is not confined to a fixed locus,  
2 but may spread over considerable and varying --

3 THE COURT: That's correct.

4 MR. DIGIACOMO: -- periods of time. All matters immediately  
5 antecedent to and having direct causal connection with the robbery are  
6 deemed so closely connected with it as to form in reality a part of the  
7 occurrence. Thus, although acts of violence or intimidation preceded or  
8 followed the actual taking of the property and may have been primarily  
9 intended for another purpose, -- i.e., to get out there because I'm scared  
10 of him -- it is enough to support the charge of robbery when a person  
11 takes the property by taking advantage of the terrifying situation she  
12 created.

13 He is in the effort to resist her escape with the property and she  
14 uses force. As a matter of law --

15 MR. MUELLER: I --

16 MR. DIGIACOMO: -- it's a robbery.

17 MR. MUELLER: It is a matter of law. It is not. He's in the  
18 wrong. She's gone. The car is gone.

19 THE COURT: All right.

20 MR. MUELLER: I've asked every witness, can --

21 THE COURT: Mr. Mueller, at this point I'm going to respectfully  
22 disagree with you. I think that -- and -- that's that's the great thing about  
23 our system we can respectfully disagree with each other.

24 Now, I'm going to defer ruling on that to let you complete the  
25 presentation of your case and we can finish the charge conference as to

1 that tomorrow at the conclusion of your presentation of the defense,  
2 whatever that defense might be, whether it's just cross-examination or you  
3 decide to put on a case, that's fine.

4 So let's defer ruling on that one.

5 I am going to end by 5:00. So we've got five minutes left.

6 The other ones -- the other one that's going to be, I think, an  
7 issue or there's going to be a question about, is related, we already have  
8 the voluntary manslaughter question. He also proposed an involuntary  
9 manslaughter question.

10 So why don't we answer those both tomorrow together, the  
11 involuntary and the voluntary.

12 MR. DIGIACOMO: Judge, I actually think that -- I don't object to  
13 the involuntary but his definition is not the complete statute.

14 THE COURT: Right.

15 MR. DIGIACOMO: And so I intend to give you --

16 THE COURT: I did see the proposed one.

17 MR. DIGIACOMO: -- in the morning. I didn't give you an  
18 involuntary, but I plan to give you an involuntary that essentially says, the  
19 involuntary statute, and then said, if you find there was a grand larceny, it  
20 cannot be involuntary.

21 THE COURT: Let's see here, involuntary. There's a couple  
22 of -- well, I have -- I think that's going to require you to also define  
23 manslaughter so.

24 MR. DIGIACOMO: Correct. Then there's two instructions in  
25 involuntary manslaughter. But basically manslaughter is the killing -- the



1 unintentional --

2 THE COURT: The unlawful killing of a human being without --

3 MR. DIGIACOMO: -- or the killing of another without the  
4 manner they intended to use so.

5 THE COURT: -- malice, express, or implied, yeah.

6 MR. DIGIACOMO: Yeah.

7 THE COURT: Okay. All right.

8 MR. DIGIACOMO: So I will get those to you in the morning  
9 before we start. Or I'll get them to you tonight. But I'll send them to Jaye  
10 and so she can give them to you in the morning.

11 THE COURT: Thank you.

12 All right. So then with -- the question will just remain regarding  
13 the vehicular manslaughter.

14 Then there is a proposed instruction regarding the reasonable  
15 doubt instruction. I'm going to give the, like I already said, the standard  
16 reasonable doubt instruction. So this one I'm going to deny.

17 There was also a proposed instruction regarding the burden of  
18 proof, but that is confusing, it would conflict with the proposed reasonable  
19 doubt instruction, so I'm not inclined to give that one. And it also  
20 discusses general intent, criminal intent, and it says that robbery is a  
21 general intent crime. So I'm not going to give that one.

22 Just so we're clear for the record the has the cases *State v*  
23 *Bolden*, *Sharma v State*, *Crawford v State*, and *Brooks v State* at the  
24 bottom.

25 Then there's a proposed instruction regarding larceny. We

1 already agreed to the instruction regarding larceny, which is instruction  
2 14, so I'll be giving that instruction as opposed to this one.

3 And the last one is an alternate, kind of combined definition of  
4 robbery with a deadly weapon, the reasonable doubt instruction, and the  
5 term in the commission of an assault. I'm not going to give this  
6 instruction. I believe the intent or purpose of this instruction is covered by  
7 proposed instructions 9, 10, 12, and 13. I am inclined to give those  
8 instructions in its place, those are the stock instructions.

9 MR. MUELLER: I understand, Judge.

10 THE COURT: All right. Any questions or objections to those  
11 instructions?

12 MR. MUELLER: I think final settling is a tad premature. I  
13 appreciate the need for judicial economy. And --

14 THE COURT: Well, we're -- we're, yeah.

15 MR. MUELLER: I'm cooperating, Judge, I'm not upset.

16 THE COURT: Yeah.

17 MR. MUELLER: I'm just -- it's a tad premature and I reserve the  
18 right to supplement my proposed instructions depending on tomorrow's  
19 testimony.

20 THE COURT: Absolutely. And there's -- I would expect you to.  
21 So that's no problem.

22 MR. MUELLER: And if I could impose on my colleagues,  
23 tomorrow, on defense, if they could bring their laptop so I don't have to  
24 load up everything, videos, and the 9-1-1 calls.

25 MR. DIGIACOMO: My -- you're free to tell me. I didn't offer it

1 and you used it the whole time.

2 MR. MUELLER: No, you're -- you've been very -- no, my  
3 colleagues been very professional. I just want to make sure that we have  
4 the 9-1-1 calls tomorrow morning.

5 MR. DIGIACOMO: Yeah, they're loaded so.

6 MR. MUELLER: Okay. That's fine.

7 MR. DIGIACOMO: They'll be here.

8 MR. MUELLER: All right. Thank you.

9 THE COURT: All right. So, actually, since we've done this, I  
10 don't think I need you-all to come back early, which is you guys are lucky  
11 tomorrow, unless you wanted to discuss anything else outside the  
12 presence of the jury before 10:30.

13 MR. MUELLER: I -- that's fine, Judge.

14 THE COURT: Are you sure?

15 MR. MUELLER: Yeah, I'm fine. I just -- I'm going to go back  
16 and do some research tonight. That's fine.

17 THE COURT: Okay. I'm happy to come back at 9:00. We can  
18 talk.

19 MR. MUELLER: I'll call your JEA if I think we need some more  
20 time. I've been doing this awhile. We can get through it.

21 THE COURT: Well, I've got to set another -- I've got to set that  
22 change of plea. So sets that going to be dictated by this. I can either set  
23 that plea at 8:30 and then have time available for you all to talk or we can  
24 just resume at 10:30 and finish the charge conference, for example, over  
25 lunch.

1 MR. MUELLER: All right. That'll be fine. Let's just -- we can  
2 come back at 10:30.

3 THE COURT: Okay. All right. So let's -- everyone be back by  
4 10:20 that way we're ready to roll right at 10:30.

5 MR. MUELLER: All right. Thank you.

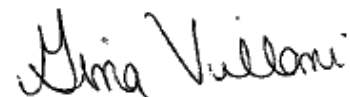
6 THE COURT: All right. Thank you very much. I appreciate it.  
7 Have a good night everyone.

8 MR. DIGIACOMO: Thank you, Judge.

9  
10 [Jury trial, Day 4, concluded at 5:00 p.m.]

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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
audio/video proceedings in the above-entitled case to the best of my ability.

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23 Gina Villani  
24 Court Recorder/Transcriber  
25 District Court Dept. IX



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
RONNEKA ANN GUIDRY,  
Defendant.

CASE#: C-18-329810-1  
DEPT. IX

BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE  
FRIDAY, AUGUST 16, 2019

**RECORDER'S TRANSCRIPT OF PROCEEDINGS:  
JURY TRIAL - DAY 5**

APPEARANCES:

For the State:

MARC DIGIACOMO, ESQ.  
Chief Deputy District Attorney  
MICHAEL J. SCARBOROUGH, ESQ.  
Deputy District Attorney

For the Defendant:

CRAIG A. MUELLER, ESQ.

RECORDED BY: GINA VILLANI, COURT RECORDER

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Las Vegas, Nevada, Friday, August 16, 2019

[Jury trial began at 10:35 a.m.]

[Outside the presence of the jury]

THE COURT: We're back on the record in Case  
C-18-329810-10, State of Nevada versus Ronneka Guidry.

Anything we need to address outside the presence of the jury?

MR. MUELLER: No, Your Honor.

THE COURT: All right.

MR. DIGIACOMO: No.

THE COURT: Then let's go ahead and bring the jury in.

THE MARSHAL: Your Honor, do you want me to bring the  
witness in?

THE COURT: Yeah, let's go ahead and actually put the witness  
on the stand.

And are we all set up with audio, et cetera?

MR. DIGIACOMO: Yeah, Mr. Mueller's told me what he's  
looking for so.

THE COURT: Great.

MR. MUELLER: And thank my colleague for cooperating, make  
it a lot easier for all of us.

THE COURT: Great.

[In the presence of the jury panel]

THE COURT: Good morning, ladies and gentlemen. Welcome  
back.

1 Do the parties stipulate to the presence of the jury?

2 MR. DIGIACOMO: Yes, Your Honor.

3 MR. MUELLER: Yes, Your Honor.

4 THE COURT: All right. Please be seated and I'll remind you  
5 that you're still under oath.

6 And when you're ready, Mr. Mueller, you can resume -- or you  
7 can begin cross-examination.

8 MR. MUELLER: All right. Thank you.

9 **CROSS-EXAMINATION**

10 BY MR. MUELLER:

11 Q Good morning, detective, how are you?

12 A Good morning. I'm doing well. Thank you.

13 Q All right. Thank you.

14 Sir, I want to go back and just touch a couple points on your  
15 resume and then I'll get right to the case.

16 A Sure.

17 Q How long have you been with the Metropolitan Police  
18 Department?

19 A 15 years.

20 Q 15 years.

21 All right. So put it, you know, in the colloquial terms, this isn't  
22 your first rodeo?

23 A Sure.

24 Q Okay. So you've been doing this -- you've been doing this quite  
25 some time; correct?

1           A     Yes.

2           Q     Now, being a detective has a few things that you kind of need to  
3 pick up over the years; correct?

4           A     Sure.

5           Q     All right. One of the things that a good detective knows is,  
6 never to be too hasty in forming a conclusion; correct?

7           A     Correct.

8           Q     All right. And a good detective examines all of the available  
9 evidence before he reaches a conclusion or follow -- figure out what the  
10 next step of an investigation should be?

11                   Would you agree with that?

12          A     Roughly, yes.

13          Q     Yes, sir.

14                   Now, there were a number of 9-1-1 calls that came in regarding  
15 the incident with Mr. Osorio in the street; correct?

16          A     There were.

17          Q     All right. And did you listen to all, and I do mean all of the 9-1-1  
18 calls?

19          A     I believe I listened to all of them, yes.

20          Q     All right. Thank you.

21                   MR. MUELLER: And with the help of my colleague, sir, will you  
22 go ahead and --

23 BY MR. MUELLER:

24          Q     I'm going to ask you to listen to the rest of the 9-1-1 calls that  
25 have been provided to me by the State. And if you just listen to them and



1 I have a few questions for you.

2 A Sure.

3 MR. DIGIACOMO: And for the record it's 110B, Judge.

4 THE COURT: Thank you.

5 MR. MUELLER: Thank you.

6 We'll stipulate it's 110B.

7 [Playing audio]

8 THE COURT: Can I have a brief -- are those all the calls?

9 MR. DIGIACOMO: Those are all the calls.

10 THE COURT: May I have a brief bench conference with  
11 counsel, please.

12 [Bench conference begins]

13 THE COURT: All right. Yesterday we discussed these calls, I  
14 had not heard them, and I do believe that the first two qualifies an ongoing  
15 emergency report, but the last two don't seem to meet that qualification.

16 But I want to make sure we state for the record you have -- you  
17 want -- it isn't your intention to introduce these calls?

18 MR. MULLER: No, it is my understanding that none of these  
19 witnesses were local and to save them the inconvenience, since they  
20 didn't have but a minor part, we just went ahead and played them. And I  
21 waive an objection of that.

22 THE COURT: All right. Thank you.

23 And you have no objection to that?

24 MR. DIGIACOMO: Correct.

25 THE COURT: All right. Thank you.

1 [Bench conference ends]

2 BY MR. MUELLER:

3 Q All right. Detective --

4 A Yes.

5 Q -- now to put too fine a point on it, everyone's got a job and you  
6 go to work every day and listen to those calls and have to sort out what  
7 happened?

8 A Correct.

9 Q All right. And, frequently, well intention, well-meaning people  
10 are confused, in fact, if you listen very carefully you would have thought  
11 the guy had been run over by a white minivan; correct?

12 A That's not the conclusion I drew, but if you did, okay.

13 Q Yes, sir.

14 But my point is, is dealing with and sifting through conflicting  
15 reports, sometimes emotional, is what you do for a living?

16 A It's --

17 Q At least part of what you do?

18 A Separating what I determine to be relevant information and  
19 irrelevant information, if that's what you're asking, then yes.

20 Q Okay. Now, the other thing that a detective has to be careful of  
21 is frame of reference. If you start investigating a case with this theory, you  
22 got to keep open or keep an open mind that maybe your theories not quite  
23 right or maybe you should be investigating something different; correct?

24 A Correct.

25 Q All right. Now, I want to go through some basics here, did you

1 call Mr. Alonsdale (phonetic) -- Langsdale, (phonetic) and interview him?  
2 That was the eyewitness that lives locally.

3 A Did -- I had Detective Atkinson do that.

4 Q Okay. And did we get a -- did you get a taped statement from  
5 him?

6 A I didn't, just his written voluntary statement.

7 Q Written voluntary statement.

8 Now, you would agree, sir, that he was the closest in proximity,  
9 and also lived locally, to where the event occurred; correct?

10 A As far as closest proximity, I can't say that.

11 Q All right. Now, Ms. Lovato and her daughter, the two from  
12 Colorado, they were also apparently very close; correct?

13 A Kelly, David, and Cassandra were in a car on Koval.

14 Q Right.

15 Now, you were confronted with a case where we have at least  
16 three close and credible witnesses that said somebody hopped onto a  
17 hood of a car; correct?

18 A Correct.

19 Q Now, when you physically went over and looked at the car that  
20 you suspected was involved, there was in factually scuff marks in the  
21 hood of the car, or at least dust placement on the hood of the car, fairly  
22 consistent with that; correct?

23 Showing you what's been marked as defense -- or State's  
24 Exhibit 80, you would agree that that's disturbed dust consistent with  
25 someone being on the hood of that car or at least could be?

1           A     No, I believe that's disturbed dust, sure. But whether that's from  
2 somebody on the hood of the car, I don't think I drew that conclusion  
3 anywhere from that photograph.

4           Q     All right. Now, there was a report also that there was a man on  
5 the car banging on the windshield; correct?

6           A     Correct.

7           Q     And you, in fact, were able to get downloaded photographs from  
8 a cell phone showing a smashed in windshield?

9           A     Correct.

10          Q     Okay. So you were confronted with two pieces of physical  
11 evidence and three eyewitnesses account before you even started your  
12 investigation, or merely early in your investigation, that shows someone  
13 was up on the hood of a car banging on a windshield, agree?

14          A     So your question is, whether I got that information after I started  
15 my investigation?

16          Q     Yes, sir.

17          A     No, I mean, my investigation started when I got called out;  
18 right?

19          Q     Yes, sir.

20                 But early in the course of the investigation, i.e., before you  
21 made any arrests, you knew that there was reports there was a smashed  
22 windshield and someone on the hood of a car?

23          A     That timeframe you mean. Oh, yes, I agree.

24          Q     Okay. Now, I want to go through some of your practical  
25 day-to-day experience. It is an unfortunate fact of life in the 20th Century

1 and the 21st Century people occasionally get hit by cars?

2 A Correct.

3 Q All right. And that's just unfortunate consequence of us all  
4 driving automobiles and crosswalks and pedestrians; correct?

5 A I don't know -- with what I do, I can't consider it unfortunate  
6 coincidence. There's neglect there in 99 percent of what I did do.

7 Q All right. When people get hit by cars, especially a car in fatal  
8 accidents, that generally leaves damage on the car; correct?

9 A It depends on the characteristics and dynamics of the  
10 engagement. But frequently, yes.

11 Q All right. And based -- and I'm talking, you know, I'm talking  
12 about your day-to-day working day world, sir, we all know there's always  
13 freak cases everywhere, but I want to get through what you do every day.

14 A Right. And even -- I still stand the same, even with what I've  
15 seen, it doesn't take very much speed for a vehicle engaging a pedestrian  
16 for there to be fatal type injuries, where there's simply transfer or, for lack  
17 of a better term, lack of dynamic collapses, what we all, essentially just  
18 crushed damage to the car.

19 Q All right. So the reality is, and I don't think it's any -- going out  
20 on a limb here, that when pedestrian and cars tangle at any speed, the  
21 pedestrian is always on the short end of the stick?

22 A Right. We call that the law of the lug nuts.

23 Q I'm sorry, the law of what?

24 A The lug nuts.

25 Q Law of the lug nuts, as opposed to law of gross tonnage, same

1 idea with boats?

2 A Right.

3 Q All right. Sir, showing you what's been marked as State's 76,  
4 that's the car that you believe Ms. Guidry was driving; correct?

5 A Correct.

6 Q And you would agree that you had physical control and time to  
7 examine that car in detail, the police department did?

8 A I did.

9 Q You would agree that there's no damage at all to indicate that  
10 Ms. Guidry hit a pedestrian?

11 THE COURT: Before you -- hold on.

12 Counsel, has this been admitted into evidence?

13 MR. DIGIACOMO: It is.

14 THE COURT: Okay. So it's actually State's Exhibit 76.

15 MR. MUELLER: State's exhibit, yes.

16 THE COURT: Okay. Just want to make sure.

17 THE WITNESS: Correct.

18 BY MR. MUELLER:

19 Q All right. So there's no evidence at all that she hit anybody?

20 A Correct.

21 Q All right. Now, sir, you, as the investigator, went to the scene of  
22 Mr. Osorio's death; correct?

23 A I did.

24 Q You prepared -- presumably, prepared State's 86 --

25 [Colloquy between the District Attorney and Defense Counsel]

1 BY MR. MUELLER:

2 Q You prepared State's 86; correct?

3 A I did.

4 Q All right. And are you proficient with computer graphics that put  
5 the arrows on?

6 A I believe so.

7 Q Okay. So you're -- you can do that. All right.

8 Showing you what has been marked and admitted as State's  
9 86; my colleague has an electronic copy up on the screen.

10 Now, I want to go through a few basics here, this line in was  
11 yellow and you base that on what you observed on the videotape;  
12 correct?

13 A Correct.

14 Q All right. And to the best of your recollection, with a few feet  
15 one way or the other, parking space one way or the other, that's yellow  
16 and that's what the videotape shows?

17 A Correct.

18 Q Okay. And she backed that car in because we know that the  
19 headlights were facing through a tree and they didn't move? We can see  
20 the headlights never -- were turned off?

21 A Correct.

22 Q Okay. Now, I want to understand, again, the red line -- the red  
23 dots, are the course of path that you believe she took?

24 A Correct.

25 Q And you believe that that's the course of path she took based

1 on snippets of videos in the garage and on the streets; correct?

2 A Correct.

3 Q All right. So, now, I want to go through and clear up a few  
4 things, yesterday you testified that it was impossible for her to turn left at  
5 the Westin parking garage.

6 Do you remember that?

7 A I don't remember saying impossible.

8 Q You said, and I think -- I don't want to paraphrase. I'll try to  
9 quote you at least paraphrase it, the phrase you used was, she would  
10 have to cross over the island.

11 Do you remember that?

12 A The curbing?

13 Q Yes, sir.

14 A Yes.

15 Q That's not true is it?

16 A I --

17 Q You can actually make a left turn out of that Westin parking lot?

18 A You can make a left turn out of that Westin parking lot.

19 Q All right. So if Ms. Guidry came out of the parking lot, out of the  
20 garage, and decided to turn left, she could do so?

21 A She could.

22 Q Now, you've been to the scene, have you not?

23 A I have.

24 Q Okay. I want to understand and help the jury understand  
25 because the Westin's garage is kind of laid out a little unusually.



1           A     It is.

2           Q     Correct?

3           A     It is.

4           Q     All right. To get out of the front parking lot you actually have to  
5 drive through the garage; correct?

6           A     Correct.

7           Q     All right. Showing you a couple of photographs here.

8           [Colloquy between the District Attorney and Defense Counsel]

9           BY MR. MUELLER:

10          Q     All right. Now, that's -- picture is State's evidence 23, that  
11 picture fairly and accurately represent the general conditions of the  
12 parking lot?

13          A     Correct.

14          Q     Okay. Now, I can't see the far side of that garage through the  
15 photograph, can I?

16          A     You cannot.

17          Q     All right. I can't even see daylight, can I?

18          A     Correct.

19          Q     So if I were in from out of town, another country perhaps, and I  
20 was standing in that parking lot, there would be no reason for me to  
21 suspect that I could go through that garage? It's a solid building from that  
22 angle; correct?

23                 MR. DIGIACOMO: Objection, speculation.

24                 MR. MUELLER: I'll rephrase.

25

1 BY MR. MUELLER:

2 Q There's no reason a pedestrian can see through that light,  
3 there'd be no light coming through the other side, no reason to see that  
4 that's nothing other than concrete solid building?

5 A Correct.

6 Q Okay. Now, I wanted to understand a few things, standing  
7 about where you are or moving yourself a little further to the right, about  
8 where Mr. Osorio is seen to be getting out of the car.

9 MR. MUELLER: Let me see if we got a better, slightly better  
10 photo.

11 State's 25, if you can.

12 MR. DIGIACOMO: Yeah, I'll put it up for you.

13 BY MR. MUELLER:

14 Q All right. This is a slightly closer view, even a little closer to the  
15 garage that the car is -- that you're supposed to drive-thru the garage to  
16 get out, is not immediately obvious?

17 A Correct.

18 Q All right. So it's a little unusual layout; you would agree?

19 A Yes.

20 Q All right. Now, you watched the videotape from the Westin  
21 parking lot; correct?

22 A I did.

23 Q All right. Now, I want to understand -- establish a few things,  
24 that's a wide screen photograph and you would agree that the video was  
25 kind of far from ideal for this case?

1           A     Sure.

2           Q     All right. So we could have had better video but we got what we  
3 have, that's what a case is; okay.

4           A     Correct.

5           Q     So the car comes in and it backs into a spot; you would agree?

6           A     I do.

7           Q     All right. Now, Mr. Osorio and Ms. Guidry sit there for how  
8 long?

9           A     Seven minutes.

10          Q     Seven minutes.

11                Now, what time in the video did you see or does Mr. Osorio get  
12 out of the car?

13          A     I believe the timestamp on the video was about 2:19 and 58  
14 seconds.

15          Q     So about how long before he gets out?

16          A     What's your question?

17          Q     Well, I want to --

18                MR. MUELLER: Your Honor, with a little Court's indulgence, a  
19 little demonstrative exhibit; if I could?

20                THE COURT: Well --

21                MR. MUELLER: I just want to try to clarify.

22                THE COURT: Go ahead. Let's see where you're going with  
23 this.

24                BY MR. MUELLER:

25          Q     All right. Now, Mr. Osorio is sitting in, and it's your videotape,

1 he's sitting in the passenger seat; correct?

2 A Correct.

3 Q All right. You see him get out, per your video, that he gets out  
4 of the passenger seat voluntarily?

5 A Correct.

6 Q Nobody forces him out?

7 A That I can see from the video?

8 Q There's no security pulling him out of a car, anything like that,  
9 he gets out of the car voluntarily; correct?

10 A As far as what I can see from the video, sure.

11 Q Okay. Now, the car, the black car that Ms. Guidry's driving, it  
12 goes out, turns to the right, and goes through the parking garage?

13 A Correct.

14 Q All right. From the time that Ms. Guidry's car drives away, till  
15 the time that Mr. Osorio runs over into the -- through the Jake's [sic]  
16 parking lot, about how much time elapses?

17 A Seconds.

18 Q All right. Sir, did you do the investigation or do we need to  
19 count it?

20 A If we could do the counter, I don't know off the top of my head  
21 how many seconds.

22 Q All right. Thank you.

23 MR. MUELLER: Mr. DiGiacomo, could you --

24 MR. DIGIACOMO: Sure.

25 MR. MUELLER: -- get us back to the video.

1 Thank you for your courtesy.

2 [Playing video]

3 MR. MUELLER: Thank you. If we could back up right there.

4 [Playing video]

5 MR. MUELLER: All right. It appears -- if we could just freeze  
6 frame it for a moment.

7 The timestamp is 01 -- I'm sorry, 03, 3rd of January, 18, 2:19 in  
8 the morning at 51 seconds.

9 And if we could just play it forward slowly.

10 [Playing video]

11 MR. MUELLER: Okay. And it starts moving at 2:58, 2:57 and a  
12 half, 2:58 seconds, and the car starts to move out.

13 [Playing video]

14 MR. MUELLER: All right. If we could stop it right about there.  
15 The cars just about ready to enter -- exit surveillance video on the left  
16 frame.

17 BY MR. MUELLER:

18 Q Now, I want to understand a few things, sir, at this moment  
19 Mr. Osorio is out of the car voluntarily, wasn't forced out of the car by  
20 security, he got out of the car and is standing there; correct?

21 A As far as I know.

22 Q Okay. Now, did you see Mr. Osorio run after that car?

23 A I did.

24 Q At this moment?

25 A Not at this moment.

1 Q Not at this moment. Okay.

2 So we're at 02:20:01, you would agree that in a few seconds, if  
3 not immediately, the car will disappear from sight? It has to go through  
4 the garage; correct?

5 A From sight of this camera, yes.

6 Q Okay. But you'll also go out of sight for Mr. Osorio?

7 A Within a matter of a few seconds, yes.

8 Q Okay. So I want to stop you at that moment in time, Mr. Osorio  
9 has been drinking, he's standing by himself in Las Vegas, with nobody  
10 around him; correct, he's standing there by himself?

11 A Correct.

12 Q Okay. Now, he makes no effort to chase after the car, at this  
13 moment, doesn't run after her?

14 A Correct.

15 Q All right. Now, she's literally gone from sight; correct?

16 A From his sight, I can't speculate what he can or can't see from  
17 his vantage point.

18 Q We know from the geometry of the parking lot, sir, it's not  
19 meaningfully in doubt, she's gone, he can't see her? Do I need to show  
20 you the aerial view?

21 MR. MUELLER: Sir, if we can go back to the --

22 MR. DIGIACOMO: You want to go back to --

23 MR. MUELLER: 86.

24 MR. DIGIACOMO: 86.

25

1 BY MR. MULLER:

2 Q All right. By your own work product, Detective, if the arrow is  
3 about where Mr. Osorio was standing, give or take a few feet, following  
4 the red line, he clearly cannot see Ms. Guidry?

5 A If I can -- sorry, the mouse is upside down. So if he's here and  
6 she's pulling in, where you're talking about right now in the video and  
7 she's here, I do believe there's a path.

8 But I do agree with what you're -- I think what you're getting at,  
9 that when he's over here there's line of sight issues. He cannot see her.

10 Q Okay. So we know he's not from around here; correct?

11 A Correct.

12 Q We can reasonably expect he's not familiar with the area?

13 A You can reasonably conclude that.

14 Q Well, reasonably expect that he's not familiar with the area?

15 A How do I know whether or not he's been there before?

16 Q Fair enough, sir.

17 He's not a local; correct?

18 A Correct.

19 Q All right. Now --

20 MR. MUELLER: If we could back to the video again and play it  
21 forward.

22 [Playing video]

23 MR. MUELLER: Now, if we can stop right there.

24 BY MR. MUELLER:

25 Q Mr. Osorio doesn't run after the Mercedes, he instead starts

1 walking over towards Jake's Market; agree?

2 A I believe I see him running in the video. But if you think it's  
3 walking, okay.

4 MR. MUELLER: All right. If we can play it forward,  
5 Mr. DiGiacomo.

6 Thank you.

7 [Playing video]

8 MR. MUELLER: And there we can -- just stop right there.

9 BY MR. MUELLER:

10 Q So we can see him now in the Jake's Market parking lot. It is at  
11 about 20 -- 27, about seven, eight, ten seconds later, probably about  
12 seven seconds; correct?

13 A Correct.

14 Q All right. Now, at that moment in time it is the State's theory of  
15 case that the watch is in her car; correct?

16 A Correct.

17 Q All right. Mr. Osorio got out of the car and didn't chase it;  
18 correct?

19 A From that seconds you're talking about?

20 Q Yeah.

21 A Correct.

22 Q All right. So I want to understand, he got out of the car, for  
23 seven, eight seconds, does not run in the direction that the car went, he  
24 starts walking over to Jake's Market, then he starts running towards the  
25 car through the parking lot; agree?



1 A Correct.

2 Q Now, you put in a search warrant to get the car that you thought  
3 Mr. Osorio did a personal inventory in this video?

4 MR. DIGIACOMO: Objection, assumes a fact not in evidence.

5 THE COURT: Sustained.

6 BY MR. MUELLER:

7 Q All right. Did you, in fact, request a search warrant?

8 A I did.

9 Q Okay. And did you ask for a search warrant of Ms. Guidry's  
10 residence and her house; correct?

11 A I did not.

12 Q Who did?

13 A Detective Freeman.

14 Q Detective Freeman.

15 MR. MUELLER: All right. Mr. DiGiacomo, if you could back this  
16 up for about -- to about 20:20:10.

17 [Playing video]

18 BY MR. MUELLER:

19 Q All right. And, sir, I know it's not a great video, but can you see  
20 in that video if you see Mr. Osorio, you personally see Mr. Osorio, do any  
21 personal inventory as it plays forward?

22 A I do not.

23 Q You do not; okay.

24 Now, yesterday you opined on several facts that -- about the  
25 accident; correct?

1           A     Correct.

2           Q     Now, this wasn't a traditional fatal accident workup was it?

3           A     Do I consider these dynamics similar to a typical fatal traffic  
4 crash, no.

5           Q     Okay. Did you go out and get the total station and measure and  
6 create a line diagram?

7           A     I did create the diaphragm from the points that Sergeant  
8 McCullough recorded with the tools.

9           Q     This diagram or did you actually produce an accident diagram?

10          A     The --

11          Q     Like --

12          A     -- for --

13          Q     -- you know what I'm talking about, the line drawings with the --  
14 showing all the marks and proper scale?

15          A     That's what I believe we have; right? The three diagrams.

16          Q     You created a graphic here on but not the scale?

17          A     With -- it's a computer assisted drafting program that is a scale  
18 diagram.

19          Q     All right. I understand, sir.

20                 But how many -- Detective, you've done a number of fatal  
21 cases; correct?

22          A     Correct.

23          Q     You and I've done a couple -- at least a half dozen fatal cases  
24 together; correct?

25          A     Maybe.

1 Q Somewhere; okay.

2 We'd agree this isn't our first rodeo; right?

3 A Correct.

4 Q Now, where is the line diagram with the total station with the  
5 measurements put on it? Did you make one of those?

6 A I did. And that's what this is.

7 Q You put it back on the -- over the graphic?

8 A When you say, graphic, are you referring to the aerial?

9 Q Yes.

10 A Correct. So what we used to do is just have a white sheet of  
11 paper and we would mark in black lines the curbing and stuff like that. As  
12 technology progresses and we can take satellite imagery from a scene,  
13 we overlay that into the diagram and we place that evidence to scale on  
14 top of the aerial so you get a better depiction of the surrounding area and  
15 curbing.

16 Q All right. So this is computerized and to scale?

17 A Correct.

18 Q All right. So you would of see the shoe scuff is the first mark  
19 here?

20 MR. DIGIACOMO: Do you want me back to 86, Counsel?

21 MR. MUELLER: Yes, please.

22 BY MR. MUELLER:

23 Q Showing you back 86. The shoe scuff --

24 MR. MUELLER: And it's possible could we explode up along  
25 Flamingo?

1 MR. DIGIACOMO: That's basically the area that you can --

2 MR. MUELLER: Yes, sir.

3 Thank you.

4 BY MR. MUELLER:

5 Q Now, shoe scuff. Now if someone's hit by a car, frequently it  
6 would knock their shoes off the them, you've seen that before, haven't  
7 you?

8 A I have seen that but I wouldn't say it's frequent.

9 Q It's not a frequent; agreed.

10 The shoes that were impounded actually don't even have heels  
11 on them, they're actually more like sandal sort of things?

12 A They're a flat sole.

13 Q All right. Now, a shoe scuff, you agree that we've got a  
14 videotape, or at least a poor -- or pixilated -- poorly pixilated tape that kind  
15 of shows Mr. Osorio hanging onto the side of the car?

16 A I -- what I see in that video is him on top of the hood.

17 Q Okay. He's on top of the hood.

18 Now, if he's on top of the hood, then the shoe scuffs are created  
19 how?

20 A As his legs are across that left front quarter panel.

21 Q Okay. So he's actually holding on to the car getting dragged?

22 A Dragged, yes.

23 Q Okay, dragged.

24 Now, you would agree that the Mercedes was actually, in fact,  
25 stopped?

1           A     Before that. If the Mercedes is stopped, he can't be dragged;  
2 right?

3           Q     Correct.

4                     But at one point, despite that being a lane of travel, the  
5 Mercedes was completely stopped?

6           A     That's what I believe, yes.

7           Q     Okay. And the eyewitnesses seem to confirm that as well;  
8 correct?

9           A     Correct.

10          Q     All right. So there's a time when the car is stopped?

11          A     Correct.

12          Q     Did you receive a report that Mr. Osorio went over and just  
13 knocked politely on the window of the car?

14          A     I did not.

15          Q     All right. Did you see a report that there -- from any witness, or  
16 have any reason to believe that there was a less draconian form of  
17 communication attempted, other than hopping on the hood of the car?

18                     MR. DIGIACOMO: Objection to the phraseology draconian.

19                     MR. MUELLER: Draconian? I'll rephrase.

20                     THE WITNESS: I don't know what it means either.

21                     THE COURT: That's sustained. Please, rephrase.

22                     MR. MUELLER: I can use smaller words.

23 BY MR. MUELLER:

24          Q     Did you see a report that there was any attempt to have a  
25 normal room level conversation between Ms. Guidry and Mr. Osorio?

1           A     I did not.

2           Q     Okay. And that was after -- they're interviewing all the  
3 witnesses?

4           A     Correct.

5           Q     Okay. Now, if Mr. Osorio had simply let go of the car, would he  
6 have been drugged?

7           A     Well, we know at some point he does let go of the car; right,  
8 because he doesn't remain attached to it.

9           Q     Yes, sir.

10                   But over here at the far right, where the scuff, the shoe scuff  
11 marks begin, if he simply let go, he'd fallen to the ground and that would  
12 have been it?

13                   MR. DIGIACOMO: Well, objection as to -- calls for speculation.

14                   THE COURT: Sustained.

15 BY MR. MUELLER:

16           Q     All right. From a standing start, and the car starts to move, if he  
17 simply let go, he wouldn't have gone anywhere?

18           A     I believe how the sequence of events occurs is the vehicle  
19 stopped, and that he is on the hood, the vehicle starts to accelerate, he,  
20 because of the displacement of the vehicle, starts to come off the side and  
21 is clinging to it. Once the forces are so great that he cannot anymore, he  
22 releases. And that's when he touched down on the asphalt and slides to a  
23 stop.

24           Q     All right. Sir, showing you State's Exhibit 92, you've done a  
25 number of automobile accidents with shattered windshields; correct?

1           A     Correct.

2           Q     And if they are struck hard enough, often enough, they will, in  
3 fact, give way; correct?

4           A     They -- the pedestrian?

5           Q     The windshield?

6           A     They can if they're acted upon by an unbalanced force, yes.

7           Q     Yes, sir.

8                     And the unbalanced force in this instance would be a fist?

9           A     I believe the fracturing of this windshield was created --

10          Q     Sir, if you could answer my question.

11                     THE COURT: Counsel, let --

12                     MR. DIGIACOMO: Well, I apologize, can you allow him to  
13 answer the question.

14          BY MR. MUELLER:

15          Q     Sir, if I hit that windshield often enough, will it eventually break  
16 out of its frame and allow me access through the windshield?

17          A     I would have a lot of trouble seeing you breaking through a  
18 windshield with your fist. It's safety glass. It's meant to fracture and --

19          Q     How many more hits would that safety glass have withstood  
20 before it -- either broke the window or more likely broke the windshield out  
21 of its frame?

22          A     I'd be speculating. I've only seen two or three pedestrians  
23 that -- or actually hit hard enough that they go completely through the  
24 windshield into the interior compartment of the vehicle. And that's when a  
25 pedestrian is standing still and speeds are greater than 50, 55 miles an

1 hour.

2 Q You would agree, sir, that hitting a windshield with your hand, to  
3 break it, you'd have to hit it pretty hard?

4 A Absolutely.

5 Q Okay. And you would agree that that impact, the impact on the  
6 windshield reflects a number of strikes?

7 A At least a couple, sure.

8 Q All right. And you agree the eyewitnesses indicated at least up  
9 to ten strikes according to Mr. Landale?

10 A The -- Mr. Landale said ten strikes?

11 Q Yes, sir.

12 A I -- if you're saying so. I don't remember reading that or hearing  
13 him say that.

14 Q Now, do you have your speed calculations there on the witness  
15 stand with you?

16 A I do not.

17 Q Okay. Now, you opine, Mr. DiGiacomo asked you a question  
18 and I think we need to clarify, it was your opinion that the vehicle might  
19 have been going 59 miles an hour as it exited the right frame of that video  
20 yesterday?

21 A Correct.

22 Q Okay. You said that towards the end of the day. That's not  
23 even remotely close to how fast the car was going when he fell off;  
24 correct?

25 A Correct.



1 Q All right. We have two witnesses said he traveled about 20 feet,  
2 one said 30 feet.

3 Do you agree with that or disagree?

4 A I agree that the witnesses said that, yes.

5 Q Okay. Now, how do we measure acceleration?

6 A Acceleration is -- so speed is the change of distance with  
7 respect to time, and acceleration is the change of speed with respect to  
8 time.

9 Q So it's equal feet per second, second square; correct?

10 A That -- what you just described is a unit of measurement for  
11 speed, feet per second --

12 Q Per second?

13 A -- per second.

14 Q Okay. Is the increase?

15 A No, that's a rate of travel.

16 So what you just described is feet, I have a distance per  
17 second, I have a time, so I'm describing a velocity or speed.

18 Acceleration is the change of a speed with respect to time. So I  
19 can be traveling 40 feet per second and I can continue to travel 40 feet  
20 per second. What's my acceleration? I don't have acceleration. I have a  
21 speed. And I'm at uniform velocity.

22 Now, if over that same distance I travel from 40 feet per second  
23 to 86 feet per second, I have an acceleration because my speed is  
24 changing with respect to time and distance.

25 Q Detective Salisbury, calculating the speed of the vehicle as it

1 left the frame is utterly irrelevant to the case; correct?

2 A I disagree. With --

3 Q How about if we ask a couple questions here?

4 A Sure.

5 Q The car --

6 MR. DIGIACOMO: I apologize. Can the detective finish his --

7 BY MR. MUELLER:

8 Q Go ahead. Go ahead.

9 MR. DIGIACOMO: -- can the detective please finish his  
10 question.

11 THE COURT: He can finish his question.

12 Counsel, please make sure you let the witness answer  
13 completely before move onto the next question.

14 THE WITNESS: So why I believe this is relevant in this case is  
15 because of the acceleration. Acceleration is extremely important. We're  
16 talking about force. And the amount of force is done by -- by the work  
17 that's created. And we talked a little bit yesterday about the speed the  
18 vehicle was going based on the kinetic energy Eduardo had to have when  
19 he touched down on the ground and slid to a stop.

20 Well, if we have an initial velocity of -- or initial speed of zero  
21 and now we have a fixed distance where we know Eduardo touched down  
22 on the ground and slid to a stop, we now have a final velocity here over  
23 this distance and an initial velocity here over this distance.

24 Now, knowing a distance between two points and two speeds,  
25 we can calculate the acceleration rate and that's what I did in this case.

1 BY MR. MUELLER:

2 Q Thank you.

3 Now, if we go back to the important part where Mr. Osorio was  
4 actually dragging on the ground.

5 MR. DIGIACOMO: I object to the form of the question.

6 THE COURT: That's sustained.

7 BY MR. MUELLER:

8 Q Sir --

9 THE COURT: Counsel, please don't testify, please ask the  
10 question.

11 BY MR. MUELLER:

12 Q -- Mr. Osorio was on the hood of the car; correct?

13 A Correct.

14 Q And the car was stopped at one point in time, we all agree with  
15 that, that's all -- that's the evidence in the case; correct?

16 A Correct.

17 Q At some point did you ever go out and try to figure out where  
18 the car was when it was stopped?

19 A I did.

20 Q Okay. And from the distance where the car was stopped at to  
21 the first scuff mark, or his feet are touching the ground, how far is that  
22 distance?

23 A So that we can't determine. I can't say --

24 Q I'm sorry, can or cannot?

25 A Cannot deter --

1 Q You cannot determine.

2 A The -- we can't say 100 percent that the left front tire was on  
3 this spot of the asphalt. But we can say a general area of what we see in  
4 the video with relation to where the intersection is and how it rounds the  
5 corner about in this circumference of 30 feet or so where the vehicle was  
6 at.

7 Q Sir, in the distance between the beginning of the shoe mark to  
8 the beginning of the body scuff, how far is that?

9 A 42 feet.

10 Q 42 feet.

11 From the beginning of the scuff mark from where the car was  
12 when it first started moving?

13 MR. DIGIACOMO: Well, I object, that misstates the testimony.

14 MR. MUELLER: Well, the question is, is --

15 THE COURT: That's overruled.

16 Clarify the question.

17 BY MR. MUELLER:

18 Q Sir, the car was stopped; correct?

19 A Correct.

20 Q To get a realistic estimation of a cars speed and relative -- or  
21 acceleration, you need to know from where it started from at rest; correct?

22 A Where it started from at rest?

23 Q The car was at rest, we all agree?

24 A Correct.

25 Q And that was the travel lane somewhere on West Flamingo?

1           A     Correct.

2           Q     All right. Now, you've created a speed workup based on  
3 distance and time but that all has to be measured from a zero reference  
4 point, where the car was known to be at rest at?

5           A     And that's where I disagree with you, because I don't have to  
6 have a zero reference point. I can have a general area and range based  
7 on the variables with relationship of distance and time and come up with  
8 an acceleration rate from 330 feet, from 315 feet, from 300 feet.

9                     Now, I've included this area of where the vehicle may have  
10 started within the circumference of about 30 feet. And all those  
11 calculations, with respect to an acceleration solving, all conclude that  
12 they're around that same -- we talked a little bit yesterday about the  
13 acceleration of a G -- they all --

14          Q     Sir, my question was, how did you -- okay. You didn't measure  
15 this from where you know the car had been at rest at?

16          A     I measured it from where this general area of where I believe  
17 the car originated from. So I have a start point and I have an ending  
18 point.

19          Q     Sir, you've ever been to drag races?

20          A     No.

21          Q     Okay. They measure the speed of a car at a quarter mile from  
22 a normal fixed location starting point and time; correct?

23          A     Correct.

24          Q     Now, you're telling me that you calculated a speed without  
25 knowing the starting point?

1           A     I don't think I said that.

2           Q     All right. Drawing your attention, sir, you would agree -- let's  
3 see what we can agree on at least -- the car that Mr. Osorio was still in  
4 front of Jake's Market when he was on the ground?

5           A     I'm sorry? The car was still?

6           Q     He was -- Mr. Osorio, where he finally came to rest at, he was  
7 still in front of Jake's Market?

8           A     I --

9           Q     Per your diagram?

10          A     Of the diagram? You're saying in front of Jake's Market?

11          Q     Yes. Osorio's final resting place, blue --

12               MR. MUELLER: Counsel, if you could -- I'm sorry, I see the  
13 problem here.

14               MR. DIGIACOMO: 86?

15               MR. MUELLER: If you could go to 86 again.

16               THE WITNESS: Correct, south of there towards the west hand  
17 side, sure.

18          BY MR. MUELLER:

19          Q     Okay. So you would agree that he got drugged about, say, two  
20 thirds of the way across the parking lot of a gas station, give or take?

21          A     I -- I don't believe he was dragged.

22          Q     Okay. Sir, did you go down to the coroner's office?

23          A     I did.

24          Q     All right. And you were aware --

25               MR. MUELLER: Counsel, if you could show 46.

1 BY MR. MUELLER:

2 Q All right. You would agree that Mr. Osorio's wallet did not have  
3 any cash in it?

4 A Correct.

5 Q Okay. Did you ask any questions about Mr. Osorio, as in, how  
6 long he'd been in town, who he was staying with.

7 Did you do any of that as part of your investigation?

8 A To Mr. Osorio, no.

9 Q Or any of his family or connections or friends?

10 A Yes, to his parents. And Detectives Charaska and Santiago  
11 spoke to Lucas Siomes.

12 Q Okay. Now, didn't it strike you as usual or a little odd about  
13 something, part of times of criminal investigation is trying to understand  
14 people's frame of mind; correct, what they're thinking at a moment of  
15 time?

16 A Sometimes.

17 Q All right. You can kind of tell what's in somebody's mind by  
18 what their action --

19 MR. MUELLER: Counsel, if we could return to 86 again,  
20 please.

21 BY MR. MUELLER:

22 Q Now, if someone's committed a crime, you would agree, sir,  
23 based on your experience, that they generally want to get away from the  
24 scene of the crime?

25 A Sometimes.

1 Q Yes, sir.

2 Hanging around the scene of a crime generally is a pretty good  
3 way of getting caught; do you agree?

4 A Absolutely.

5 Q Now, it struck me as a little unusual, and I just want to get your  
6 take on this, the car -- your theory is Ms. Guidry came out and turned right  
7 to drive right past Mr. Osorio; correct?

8 A I don't think I said that.

9 Q Well, a moment ago -- yesterday you said that she couldn't turn  
10 left but, in fact, she could have?

11 A She could have.

12 Q Okay. Now, if she committed a crime, how come she just didn't  
13 turn left and drive away?

14 MR. DIGIACOMO: Objection, speculation.

15 BY MR. MUELLER:

16 Q If you know?

17 A I don't. That's a good question.

18 Q All right. In fact, she came back to the right?

19 A Correct.

20 Q And in your training and experience, Detective, have you ever  
21 done or got any class or training as exactly how much force has to hit a  
22 windshield to break it?

23 A No, not -- not specific data with numerical values, no.

24 Q Okay.

25 MR. MUELLER: Can I get the Court's indulgence for just a



1 moment?

2 THE COURT: Sure.

3 BY MR. MUELLER:

4 Q Now, sir did you bring your calculations? Do you actually have  
5 your numerical calculations that I can review? Do you have them on the  
6 witness stand?

7 A I don't.

8 Q Did you give them to Mr. DiGiacomo?

9 A I did.

10 Q And when did you give them to him?

11 A They're included in my supplemental report.

12 MR. MUELLER: Okay. Nothing further.

13 THE COURT: Redirect examination?

14 MR. DIGIACOMO: All due respect, Mr. Mueller has that  
15 supplemental report. So the look he just gave me was completely  
16 inappropriate.

17 THE COURT: All right. Let's just make, for purposes of the  
18 record, Mr. Mueller, do you have that report?

19 MR. MUELLER: Let me check.

20 [Colloquy]

21 MR. MUELLER: No, I do not have and have not seen any  
22 speed calculation workup.

23 THE COURT: All right. Is that you don't have in here in court or  
24 you don't have it? There's a difference.

25 MR. MUELLER: Do not have it.

1 MR. DIGIACOMO: We can address that at the break. We have  
2 a receipt of copy.

3 MR. MUELLER: Okay.

4 THE COURT: Okay. We can address outside the presence of  
5 the jury, yes.

6 Go ahead and continue with your redirect examination.

7 **REDIRECT EXAMINATION**

8 BY MR. DIGIACOMO:

9 Q Detective, I'm going to start with State's Exhibit Number 92,  
10 Mr. Mueller asked you a number of questions about this -- the impacts  
11 that caused the damage to this windshield.

12 Do you remember those questions?

13 A I do.

14 Q And at one point you were going to say something about a fist  
15 and these -- this damage.

16 Do you know whether or not the fists caused this damage to this  
17 windshield?

18 A That's what I believe. With that type of fracturing and then  
19 going down to autopsy and seeing the lacerations on his hand, I believe  
20 those to have been caused by his fist.

21 If when the vehicle accelerates, he's falling into the windshield,  
22 that's absolutely a possibility. Just not something I can definitively say.

23 Q Right.

24 You don't know exactly how those cracks occurred to that  
25 windshield?

1           A     Correct.

2           Q     Okay. The only person who told you that the cracks from the  
3 windshield came from the hands itself was Ms. Guidry; correct?

4           A     Correct.

5                 MR. MUELLER: Actually, that misstates the evidence.

6                 THE COURT: That's overruled.

7 BY MR. DIGIACOMO:

8           Q     Now, the only other area I'm going to go is -- I'll put up 86.

9                 Actually maybe we'll use 87 to get the lines out of there.

10                Or 88 gets us a little closer.

11                Mr. Mueller was asking you questions about the place where  
12 the vehicle was at rest.

13                Do you remember those questions?

14           A     I do.

15           Q     And then he suggested to you that the vehicle was at rest  
16 where the shoe scuff starts.

17                Do you remember those?

18           A     I did.

19           Q     All right. Is it your opinion that the vehicle was at rest where the  
20 shoe scuffs start?

21           A     Start, no.

22           Q     Okay. Why not?

23           A     Like I described yesterday, the area of initial contact is the  
24 damage or first injury producing event. Because I have trace -- transfer  
25 evidence on the asphalt, I know that's where the damage, or first injury, at

1 least maybe not to the vehicle or to the person, but at least to the shoes.  
2 If I have evidence there, something has definitely transferred, there's  
3 movement, something has happened. That's why -- that's marked that  
4 area. I believe the start of the vehicle moving is prior to that or east of that  
5 area.

6 Q So then how did you -- you said you basically got a 30 foot area  
7 where the vehicle had sort of a start area from, how did you determine  
8 that location?

9 A That's all -- if we know she's coming south and she rounds this  
10 corner, and we see in that video that she does round the corner before  
11 coming to a stop, we know she is somewhere in this area. And we have a  
12 scale on our diagram. So we do have a known location with a known,  
13 approximate location of where the vehicle is.

14 I now have a start point, while it's a 30 foot range of a start  
15 point, I do have a start point.

16 Q And then Mr. Mueller was ask -- well, was asking you questions  
17 about why it is that you utilized 59 miles an hour when the vehicle leaves  
18 the screen of the videotape.

19 Why is it that you calculated the full distance for the 300 to 315  
20 feet or whatever it was?

21 A So from 300 to 330 feet, which is that start area we described to  
22 it leaving the area where it exits the video surveillance, we know if its -- if  
23 we have a distance and we have a time, we can solve for an acceleration  
24 rate.

25 Well, that acceleration rate becomes completely relevant and

1 important over the entire distance because if it goes from zero to 59 miles  
2 an hour and it's reaching an acceleration rate of that .38 of a G, the  
3 published data for that vehicle is about that point .38 of a G. That means  
4 not only did it go from a stop up to 59 miles an hour, it achieved maximum  
5 acceleration over that entire distance.

6 Q And that's relevant to the investigation because that explains  
7 what the driver had to do to get the vehicle to get up to that speed?

8 A Correct.

9 Q Meaning that the driver had to fully depress the accelerator to  
10 get the vehicle to accelerate?

11 A From a stop through the entire sequence.

12 MR. DIGIACOMO: Thank you.

13 Nothing further.

14 **RECROSS-EXAMINATION**

15 MR. MUELLER: Mr. DiGiacomo, if you could -- there's a video  
16 of the blowup showing the car passing by Jake's from the surveillance, it's  
17 grainy, likely why the number eludes me.

18 MR. DIGIACOMO: The one where he's on top or the one where  
19 he runs and the car turns the corner?

20 MR. MUELLER: The one where he's on top.

21 MR. DIGIACOMO: Okay. And do you want it full speed or  
22 slow?

23 MR. MUELLER: Slow.

24 MR. DIGIACOMO: 106C, Judge, for the record.

25 THE COURT: Thank you.

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[Playing video]

MR. MUELLER: If we could stop right there, sir.

BY MR. MUELLER:

Q All right. Now, we would all agree that that's far from ideal video; agree?

A Correct.

Q Okay. And --

THE COURT: And do you mean image quality, Mr. Mueller, just for the record?

MR. MUELLER: Just for the quality of the video, yes.

THE COURT: Okay.

BY MR. MUELLER:

Q It's a pixilated photograph but in context you can very clearly see Mr. Osorio holding onto the side of the car; correct?

A That's where I believe he's coming off the side; correct.

Q Okay. So he's very clearly there on the side.

Now, this spot, if he'd let go of the car right there, he'd fallen down and walked back to the hotel; correct?

A I don't think you can say that.

Q All right. Sir, do you know or did you make any effort to find out how long Mr. Osorio was on the hood of the car before the car started moving?

A You're saying how long of a timeframe he's --

Q How long was he on the car, beating the windshield, before Ms. Guidry started driving?

1           A     Based on the video and how long he's --

2           Q     The question is what I asked, did you make an effort to find out  
3 how long he'd been on the car before she drove off?

4           A     I did by analyzing the video.

5           Q     All right. Did you talk to Mr. Langsdale (phonetic) and ask him  
6 how long he witnessed him on the hood of the car beating on the  
7 windshield?

8           A     I did not.

9                   MR. MUELLER: All right. Nothing further.

10                               **FURTHER DIRECT EXAMINATION**

11           BY MR. DIGIACOMO:

12           Q     Based upon your analysis, how long do you believe he was on  
13 the vehicle beating the window?

14           A     A matter of just a couple seconds.

15                   MR. DIGIACOMO: Thank you.

16                   Nothing further.

17                   THE COURT: Thank you.

18                   Any recross-examination, Mr. Mueller?

19                   MR. MUELLER: No, Your Honor.

20                   THE COURT: All right. Do the jurors have any questions? All  
21 right. Go ahead and write those questions down and pass it to the  
22 marshal.

23                   And I'll see counsel at the bench, please.

24                               [Bench conference begins]

25                   THE COURT: While we're waiting for the jury questions that

1 are coming my way, did you find that supplemental report, Mr. Mueller?

2 MR. MUELLER: I'm sorry?

3 THE COURT: Did you find that supplemental report?

4 MR. DIGIACOMO: Are you telling me you don't have an  
5 investigative report --

6 MR. MUELLER: No.

7 MR. DIGIACOMO: -- associated with this?

8 MR. MUELLER: No, speed up.

9 MR. DIGIACOMO: How do you go to trial without that?

10 MR. MUELLER: I know speed workup.

11 MR. DIGIACOMO: No, no.

12 MR. MUELLER: It's not a speed workup case.

13 MR. DIGIACOMO: There's a speed workup in the investigative  
14 supplement that has all the witnesses and everything you've been talking  
15 about.

16 THE COURT: I'm not going to allow that kind of misleading in  
17 front of the jury. So if you have that supplemental report --

18 MR. MUELLER: I'll sit and go through it with him.

19 THE COURT: -- we're going to clarify that for the record.

20 MR. MUELLER: Oh, absolutely. I don't have a speed  
21 supplement, I promise.

22 THE COURT: All right. Okay. So first question, Was the driver  
23 side door window damaged.

24 Any objection to asking that question?

25 MR. DIGIACOMO: No.



1 MR. MUELLER: No.

2 THE COURT: Next question, Was the windshield pierced or  
3 was it just cracked still in one piece, and then in parenthesis, it says, at  
4 least in the photo.

5 So I think they're trying to get as much information about the  
6 windshield as possible.

7 Any objection?

8 MR. DIGIACOMO: To the extent he can answer it, yeah.

9 MR. MUELLER: Sure, no objection.

10 THE COURT: Okay. Last one, How does the clasp lock work  
11 on the Rolex watch.

12 Any objection?

13 MR. MUELLER: We didn't really cover it, but if you'd like to you  
14 can --

15 MR. DIGIACOMO: I can give him the exhibit.

16 MR. MUELLER: -- you can publish the --

17 THE COURT: Yeah.

18 MR. MUELLER: -- you can publish the watch. I don't care.

19 THE COURT: Okay. All right. Then we'll ask these questions.  
20 Thank you.

21 MR. MUELLER: It's my witness, so I'll do it.

22 MR. DIGIACOMO: It's my witness.

23 MR. MUELLER: It's my cross. All right.

24 [Bench conference ends]

25 THE COURT: All right. We do have a few questions from the

1 jury. I want to clarify something that was left unanswered previously.

2 Mr. Mueller, it's my understanding that you do, in fact, have that  
3 supplemental report that was mentioned regarding the speed; is that  
4 correct?

5 MR. MUELLER: No, actually, Judge, I don't necessarily have it.  
6 I don't believe I have it. I've done a lot of car wreck cases. I know what  
7 they look like. I don't have it.

8 THE COURT: All right. We're going to then, when we take our  
9 lunch break, I'm going to order you to look for that report and then we'll  
10 clarify that on the record when we come back.

11 MR. MUELLER: Certainly.

12 **EXAMINATION BY THE COURT [JURY QUESTIONS]**

13 THE COURT: Let's move forward regarding the driver's -- first  
14 question, the juries allowed to ask some questions. So the first one is,  
15 Was the driver side door window damaged?

16 THE WITNESS: It was not.

17 THE COURT: And how do you know that?

18 THE WITNESS: On that vehicle inspection, it's still intact.

19 THE COURT: Any follow-up questions from the State or from  
20 the defense based on that question?

21 MR. DIGIACOMO: No.

22 THE COURT: Mr. Mueller?

23 MR. MUELLER: The question was regarding the --

24 THE COURT: Was the driver's side door window damaged.

25 THE WITNESS: The driver's door, the window that rolls up and

1 down, was not damaged during my inspection.

2 THE COURT: Any questions?

3 MR. MUELLER: No question regarding that.

4 THE COURT: The Court has a question, again, when did that  
5 inspection take place?

6 THE WITNESS: The day after we impounded it, so  
7 January 9th, in the morning.

8 THE COURT: Okay. Would you have known whether it was  
9 damaged following the incident? If it had been fixed, would you be able to  
10 tell that?

11 THE WITNESS: I -- because I knew the windshield to be -- had  
12 been fixed, I looked at the window to see if it'd been fixed and it did not. It  
13 looked to be the original manufacturer's window.

14 THE COURT: And that's something you can tell by inspection?

15 THE WITNESS: They're serialized.

16 THE COURT: They're serialized. Okay. Thank you.

17 Any additional questions based on the Court's questions?

18 MR. DIGIACOMO: No.

19 MR. MUELLER: Yes.

20 THE COURT: Yes?

21 MR. MUELLER: Yes, I do.

22 THE COURT: Okay. Go ahead.

23 MR. DIGIACOMO: What number?

24 MR. MUELLER: This would be State's 77.

25

1 **FURTHER EXAMINATION**

2 BY MR. MUELLER:

3 Q Sir, a few moments ago the juror had a question regarding was  
4 there any damage to the driver's side window.

5 Do you remember that?

6 A I do.

7 Q Okay. And you said you inspected it, no damage.

8 Now, on the 77 there appears to be, I don't know, there's a  
9 series of scuff marks along the left side of the car.

10 Do you see that on the door?

11 A Are you talking about that --

12 Q Yes, sir.

13 A -- the white --

14 Q There appears to be a series of scallops, about a foot and a half  
15 apart from each other -- one, two, three, four, five maybe, depending on  
16 the length?

17 A I think what you're seeing is reflection.

18 Q These marks here, sir, I want to make sure we all understand  
19 each other, is your testimony that these marks here, recurring, repeating,  
20 are, in fact, reflections and not someone getting drugged down the side of  
21 the car?

22 A That's not typically what that looks like or what I concluded.

23 Q Okay. Would you agree -- did you document those marks as  
24 actually being there?

25 A They're documented by this imagery, sure.

1 MR. MUELLER: Okay.

2 **FURTHER EXAMINATION**

3 BY MR. DIGIACOMO:

4 Q Your opinion is those four lights up there are creating the four  
5 flashes on the side of the car from the picture?

6 A Correct.

7 MR. DIGIACOMO: Thank you.

8 THE COURT: All right. Any additional questions on that one?

9 MR. MUELLER: No, Your Honor.

10 THE COURT: All right. Next question, Was the windshield  
11 pierced or was it just cracked still in one piece, and then in parenthesis, it  
12 says, at least in the photo?

13 THE WITNESS: So it has to be in the photo because I never  
14 got to examine that windshield for myself. But based on what I've seen in  
15 the past and what I've seen from that photo, is that it's not pierced.

16 It takes a lot, this is safety glass that's meant to fracture and  
17 bow and displace and actually spread. So it doesn't actually pierce, so  
18 things don't actually come through it, and that's just for driver safety.

19 THE COURT: Any additional questions for the witness based  
20 on that question -- or answer?

21 MR. DIGIACOMO: No.

22 **FURTHER EXAMINATION**

23 BY MR. MUELLER:

24 Q Sir, the windshield clearly had been replaced by the time you  
25 guys got the car?

1           A     Correct.

2           Q     Did you check and see if the driver side passenger -- or driver's  
3 side glass has been replaced as well?

4           A     I did.

5           Q     Okay. Did you call a glass shop?

6           A     No. Like I told Your Honor, I inspected the window out, those  
7 windows are serialized. It didn't look like it'd been replaced.

8                 MR. MUELLER: All right. Thank you.

9                 THE COURT: All right. And the next question, How does the  
10 clasp/lock on the Rolex watch work?

11                So I believe you have the watch in front of you.

12                Could you tell me what exhibit number that is marked with?

13                THE WITNESS: 84A, Your Honor.

14                THE COURT: 84A.

15                All right. So 84A is in front of the witness.

16                MR. MUELLER: Your Honor, as the jury has a question about  
17 it, I have no objection if we publish it to the jury, inspect the watch.

18                THE COURT: Okay. Perhaps it would be helpful if you could  
19 step down and show the jury.

20                Any objection to that?

21                MR. DIGIACOMO: No.

22                THE COURT: Okay. So for the record the witness has  
23 approached the jury box and is showing the clasp to the jury.

24                THE WITNESS: And you'll have to forgive me, I've never  
25 unclasp this or know because I don't have a Rolex.

1 Does anybody have a Rolex?

2 THE COURT: Do you want to try, Mr. DiGiacomo?

3 MR. DIGIACOMO: I don't own a Rolex either, Judge. But if he  
4 doesn't know, he doesn't know.

5 THE COURT: Sure.

6 MR. DIGIACOMO: They'll have this back there and hopefully  
7 someone back there would know how to do it.

8 Sounds like someone over there does but. I have no idea how  
9 it unclasps.

10 It was unclasped when you opened it out of that --

11 THE COURT: Okay. So it was unclasped but now it is clasped  
12 and -- Detective Salisbury, so you don't know how it works; is that fair to  
13 say?

14 THE WITNESS: Yeah, I've never had a Rolex.

15 THE COURT: Okay. All right. And just for the record, jury, you  
16 will have that watch back there and you will be able to manipulate the  
17 watch and the clasp when you're deliberating. Okay.

18 Any follow-up questions for this witness from either the State or  
19 defense based on that question?

20 MR. MUELLER: No, Your Honor.

21 THE COURT: All right.

22 All right. Anything further from the State or from the defense  
23 before I release this witness?

24 MR. MUELLER: No, Your Honor.

25 MR. DIGIACOMO: No, Your Honor.

1 THE COURT: All right. Thank you very much, Detective. You  
2 may step down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: State, do you have any additional witnesses to  
5 call?

6 MR. DIGIACOMO: No.

7 Reserving the right to make sure that the clerk and I are in  
8 agreement on the exhibits, we would rest.

9 THE COURT: That request will be granted.

10 All right. It is 11:50.

11 May I have counsel approach the bench.

12 [Bench conference begins]

13 THE COURT: Okay. The State has rested.

14 Mr. Mueller, obviously I want to canvass your client outside the  
15 presence of the jury regarding testifying.

16 MR. MUELLER: Yeah.

17 THE COURT: Do you have any additional -- or do you  
18 anticipate putting on a defense case?

19 MR. MUELLER: No, Your Honor, I don't believe I'm going to.

20 THE COURT: Okay. So should we break for lunch, we can -- I  
21 can canvass her and then we can all go get something to eat and then  
22 come back to settle jury instructions.

23 Does that work?

24 MR. MUELLER: Yes.

25 MR. DIGIACOMO: Do you want to give them a pretty long



1 lunch?

2 THE COURT: Yeah, we're going to give them a long lunch.  
3 Probably -- what do you think two hours, that's enough time, two and a  
4 half hours? What do you guys think?

5 MR. MUELLER: Yeah.

6 THE COURT: Why don't we do two and a half just to be safe so  
7 that we're done.

8 MR. DIGIACOMO: Okay.

9 THE COURT: Have you sent over those involuntary  
10 manslaughter instructions?

11 MR. DIGIACOMO: Last night I sent over a whole bunch of  
12 additional instructions.

13 THE COURT: Okay. I didn't see them. So I want to make sure  
14 that --

15 MR. DIGIACOMO: And I sent them to Mr. Mueller too.

16 THE COURT: Yeah, okay. All right. Fair enough.

17 All right. So you have rested on the record. I'm going to break  
18 them for lunch and then we'll canvass her. All right.

19 MR DIGIACOMO: Thank you.

20 [Bench conference ends]

21 THE COURT: All right. The State has finished its presentation  
22 of the case. And I think a couple of things need to happen procedurally  
23 with the Court outside the presence of the jury. So to get that done, I'm  
24 going to go ahead and break for lunch now and give you a little bit of a  
25 longer lunch that way we can finish, hopefully, what needs to be

1 completed this afternoon.

2 It is 11:52. We're going to take our lunch recess.

3 And during this recess, you're not to talk or converse amongst  
4 yourselves or with anyone else on any subject connected with trial or  
5 read, watch, or listen to any report of or commentary on the trial or any  
6 person connected with this trial by any medium of information, including,  
7 without limitation, newspapers, television, radio, or Internet. Or form or  
8 express any opinion on any subject connected with the trial until the case  
9 is finally submitted to you for deliberations.

10 We're going to take a little bit of a longer lunch, and so I  
11 apologize, but I want to make sure that you're not waiting around for the  
12 Court so we can start right at -- we're going to break for two and a half  
13 hours, so 2:30 p.m., please be back and we will start right at 2:30.

14 With that, you're free to go to lunch.

15 Thank you.

16 [Outside the presence of the jury panel]

17 THE COURT: Let the record reflect that the jury has left the  
18 courtroom. Everyone may be seated.

19 All right. At the bench conference I talked to the counsel about  
20 what's going to happen next.

21 It's my understanding that the defense does not intend to put on  
22 a case --

23 MR. MUELLER: I -- the State has called --

24 THE COURT: -- or call any witnesses?

25 MR. MUELLER: -- I believe the State has called all of the

1 witnesses who had any first-hand knowledge. Judge, I don't believe  
2 there's anybody left to call.

3 Ms. Guidry has been advised of her right to testify. Based on  
4 my advice, she is not going to testify.

5 THE COURT: All right. I have a few questions.

6 I was going to say good morning, but we're so close, I'll say  
7 good afternoon.

8 How are you?

9 THE DEFENDANT: Fine. How are you?

10 THE COURT: We're going to put you under oath.

11 [The Defendant was duly sworn]

12 THE CLERK: Please state your full name for the record.

13 THE DEFENDANT: Ronneka Ann Guidry.

14 THE COURT: All right. Good afternoon, again.

15 Ms. Guidry, under the Constitution of the United States and the  
16 Constitution of the State of Nevada, you cannot be compelled to testify in  
17 this case.

18 Do you understand that?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: You may at your own request give up this right  
21 and take the witness stand and testify. If you do you'll be subject to cross  
22 examination by the deputy district attorney and anything you say, be it on  
23 direct or cross-examination, would be subject to fair comment by the  
24 deputy district attorney, and they may talk to the jury about it in their final  
25 closing arguments.

1 Do you understand that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: I understand that you do not want to testify, if  
4 you choose not to testify, the Court will not permit the deputy district  
5 attorney to make any comments to the jury because you elected not to  
6 testify.

7 Do you understand that?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: All right. If you elect not to testify, the Court will  
10 instruct the jury, but only if your attorney specifically requests, as follows,  
11 the law does not compel a defendant in any criminal case to take the  
12 stand and testify, and no presumption will be raised and no inference of  
13 any kind may be drawn from the failure of a defendant to testify.

14 Do you have any questions --

15 THE DEFENDANT: No, I don't.

16 THE COURT: -- about these rights? All right.

17 You're further advised that if you have a felony conviction and  
18 not more than ten years has lapsed from that conviction or discharge from  
19 prison, parole, or probation, whichever is later, and the defense has not  
20 sought to preclude that from coming in front of the jury and you ultimately  
21 elect to take the stand and testify, the deputy district attorney in the  
22 presence of the jury would be permitted to ask you whether or not you've  
23 been convicted of a felony, what was the felony, when did it happen, but  
24 no details about that felony conviction could come before the jury.

25 Do you understand that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: All right. And it's my understanding you still are  
3 electing not to testify?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. Thank you very much. You may be  
6 seated.

7 All right. So when we come back, I'll have you rest on the  
8 record in the presence of the jury.

9 Have we resolved the missing supplemental -- or report?

10 MR. DIGIACOMO: We have. And I have Mr. Mueller's discs,  
11 I'm looking at them. Unfortunately these aren't our original discs because  
12 that is not my discovery persons writing. We ROC'd all of these and I  
13 actually check because they don't go in our electronic file unless they get  
14 turned over.

15 THE COURT: Okay.

16 MR. DIGIACOMO: But it may be that he's missing a disc. I  
17 don't know. I'm going through a 750 page PDF right not trying to see if it's  
18 in there.

19 THE COURT: All right. We can resolve that during the lunch  
20 hour as well. So when you come back you can update the Court as to  
21 where we are as to that issue.

22 I certainly would want all the original discs in --

23 MR. MUELLER: Your Honor, it would my suggestion, since  
24 there has been a voluminously large number for a state court criminal  
25 case of proposed jury instructions, including several late additions by the

1 State and a couple late additions to me -- by me, it would be my  
2 suggestion that Mr. DiGiacomo and I, before lunch, get-together and at  
3 least put them in working order so we can go through them and pursue  
4 we're all on the same page. Otherwise we're going to spend a couple  
5 hours, where's this one, where's that one. And --

6 MR. DIGIACOMO: Did you bring more today?

7 MR. MUELLER: Yes.

8 THE COURT: Do you have more --

9 MR. DIGIACOMO: Oh, well, I've received anything more today.

10 MR. MUELLER: Okay. That's why I thought we should sit --

11 THE COURT: Other than -- well, I thought -- well, the  
12 involuntary manslaughter; right?

13 MR. DIGIACOMO: I sent more --

14 THE COURT: Yeah.

15 MR. DIGIACOMO: -- sorry, I sent more to the Court, but  
16 Mr. Mueller's suggesting he's got more.

17 THE COURT: Right.

18 MR. MUELLER: I haven't seen anything from Mr. Mueller.

19 THE COURT: No, I haven't got anything additional than what  
20 we had last night. And so where we left last night was regarding your  
21 request instruction for legal necessity or self-defense.

22 MR. MUELLER: Yes, Judge, I would --

23 THE COURT: And --

24 MR. MUELLER: -- I would suggest a brief recess for he and I to  
25 pow-wow so we at least have them in all presentable order. So we're at

1 least all on the same page and we can go through them together.

2 THE COURT: Okay. I don't have a problem with that.

3 Do you still have a copy of the State's -- the proposed  
4 instructions I provided to both sides yesterday?

5 MR. MUELLER: I've got them right here, Judge.

6 THE COURT: All right. So if you just want to add those in  
7 where you think they're appropriate.

8 MR. MUELLER: Oh, I --

9 THE COURT: I'm sure we're going to have additional argument  
10 regarding the necessity instruction.

11 MR. MUELLER: All right. Thank you.

12 THE COURT: All right. So why don't we break, how about we  
13 come back at 1:15, will that work for everybody?

14 MR. DIGIACOMO: That's fine with me.

15 THE COURT: Is that enough of a break for everybody? Or  
16 1:30? That will give us an hour to work through jury instructions.

17 MR. MUELLER: 1:30 works.

18 THE COURT: All right.

19 MR. MUELLER: We're done with the jury instructions. We'll  
20 close the case today.

21 THE COURT: Okay. And, Mr. Mueller, do you have any  
22 additional argument regarding your request to include a necessity  
23 instruction?

24 MR. MUELLER: Yes, Judge, I do. Specifically I --

25 MR. DIGIACOMO: And I apologize, Judge, I don't want to cut

1 Mr. Mueller off, but I -- maybe I should tell you what I did because you  
2 haven't seen the email.

3 So I sent an email last night, I take Mr. Mueller's request for  
4 necessity as actually self-defense essentially.

5 THE COURT: It actually reads, legal necessity or self-defense  
6 so.

7 MR. DIGIACOMO: So I've provided self-defense instructions. I  
8 also supplemented them with the victim's right to resist, as well as, you  
9 know, in the case of a felony murder she doesn't have a right to  
10 self-defense.

11 So I've provided the Court some of those. I also provided the  
12 Court transition instructions to an involuntary instruction.

13 And I tried to cover what I believe Mr. Mueller was saying by -- I  
14 think he was just not articulating it really well. But really what he's  
15 claiming is she had the right to drive away because she was in fear for her  
16 life. And the only question then becomes is, one, was she ever actually in  
17 fear, but, two, whether or not she had the legal right to use force.

18 THE COURT: Sure.

19 MR. DIGIACOMO: So I've supplied those to the Court.

20 THE COURT: Okay.

21 MR. DIGIACOMO: And I think maybe once Mr. Mueller reads  
22 those, he might be happy with those, or the Court might have a better  
23 understanding of what the issue --

24 THE COURT: Do you have an objection to the ones that you  
25 have sent the Court?



1 MR. DIGIACOMO: I don't. The ones I sent to the Court I do no  
2 object to.

3 THE COURT: Okay. All right. So I will take a look at that and  
4 then we can resolve that in a --

5 MR. MUELLER: All right. Thank you.

6 THE COURT: -- if you can read them and see what your issue  
7 is with -- if you have any issues with those and we'll go from there.

8 MR. MUELLER: All right. And I thought I had printed out  
9 everything Marc had given me. This is literally it. So apparently I didn't  
10 get all of it printed out.

11 So if there anyway I could get a second copy of the ones that  
12 you just proposed?

13 MR. DIGIACOMO: I emailed them to you.

14 MR. MUELLER: Yes, you did. You emailed me a ton of stuff  
15 and I printed it all out. Except apparently that one so.

16 THE COURT: Sure. We'll printout a copy for you so you'll have  
17 it over the lunch break. Okay.

18 MR. MUELLER: All right. Thank you.

19 THE COURT: And then, just to be clear also, last night there  
20 was a request for inclusion of vehicular manslaughter in the instructions. I  
21 want to be clear that I am not going to include that instruction. It is not a  
22 lesser included of the charged offenses. And to the degree I wasn't clear  
23 last night, I'm going to be clear now, I'm not including it is a -- I'm not even  
24 sure if it's a lesser related, but certainly it isn't a lesser included and so will  
25 not be included in the instructions.

1 MR. MUELLER: All right. Thank you, Your Honor. I object  
2 and -- but when we settle these, I'll make a full record.

3 THE COURT: All right. Thank you.

4 Anything further?

5 MR. DIGIACOMO: Not from the State.

6 THE COURT: All right. Thank you very much.

7 [Recess taken at 12:01 p.m.]

8 [Jury trial resumed at 1:37 p.m.]

9 [Outside the presence of the jury panel]

10 THE COURT: All right. Good afternoon. Everyone get some  
11 lunch?

12 MR. MUELLER: Yes, Judge.

13 MR. DIGIACOMO: We did. Thank you.

14 MR. SCARBOROUGH: Yes, Your Honor.

15 THE COURT: All right. We're back on the record in  
16 C-18-329810-1, State of Nevada versus Ronneka Guidry. The defendant  
17 is present, as well as the State, and counsel for the defendant.

18 I have reviewed the additional instructions that were sent to the  
19 Court and to defense counsel last night from the State.

20 Did you all agree on the instructions or are there disagreements  
21 on the instructions, where are we?

22 MR. MUELLER: I will give my colleague credit for having a little  
23 clearer thought process on the subject than I had -- previously had. He's  
24 correct, the self-defense instruction seem to clarify or bring my thinking  
25 into focus, which is my assertion and Ms. Guidry, in fact, was lawfully

1 acting in a right to speed away from the scene for fear of her safety.

2 Having said that, the only -- two things that I did think we should  
3 add over and above this is a definition of accident from the statute, which  
4 in NRS 616A.030, and a definition of injury, which is found at 428.165.

5 And with that I believe we've covered everything.

6 THE COURT: State, what is your position on including a  
7 definition of accident? As written, or provided to by Mr. Mueller yesterday,  
8 accident means an unexpected or unforeseen event happened suddenly  
9 and violently or without human fault and producing at the time --

10 MR. MUELLER: -- objective symptoms of an injury.

11 THE COURT: Okay. Objective symptoms of an injury, sorry. I  
12 can't read my own chicken scratch sometimes so.

13 MR. MUELLER: I've got it typed up.

14 MR. DIGIACOMO: Well, my question is, is why are we defining  
15 a traffic accident?

16 THE COURT: Yeah, I'm not sure either, which is why I'm  
17 asking you.

18 MR. DIGIACOMO: Because the --

19 MR. MUELLER: Well, it's actually -- if I --

20 MR. DIGIACOMO: -- the statute says collision.

21 MR. MUELLER: Well, and defense would contest, and it's  
22 defense's theory of the case, and the evidence is strongly supports  
23 Ms. Guidry, is that Mr. Osorio didn't collide with anything. He was actually  
24 the one who jumped up on the hood of the car and was beating the  
25 windshield. That's not a collision in any traditional sense of the word.

1 And there was no two -- in fact, I went so far as to show the  
2 detective the front of the car. And he said do you have any injuries there  
3 was -- any indication there was a collision. The answer is no.

4 So the -- this is not a collision. It's not a duty to stop kind of  
5 case. There was no collision.

6 Now, if Ms. Guidry -- if Mr. Osorio had imposed himself in the  
7 lane of travel, Ms. Guidry had run him straight over, clean, and then not  
8 stopped, then the State would have a legitimate case here for duty of  
9 stop. But that's not this case.

10 This case is there's a crazed man, a drunken crazed man  
11 beating a windshield and it appears to be with -- and I don't say this with  
12 any exaggerated hyperbole, just a hammer -- or hand blow or two away  
13 from knocking the windshield in and hitting her in the face.

14 So I think we need to define what an accident is because he's --  
15 and personal injury because that's what they've charged, duty to stop at  
16 scene of crash involved with death or personal injury.

17 MR. DIGIACOMO: Okay. I actually -- reading these they're a  
18 proper statement of the law.

19 I don't know that Mr. Mueller's reasons are correct. But if you  
20 want to add these definitions during the duty to stop section, I don't  
21 necessarily oppose that.

22 THE COURT: Well, I'll -- going to double check them.

23 Thank you.

24 MR. MUELLER: Thank you.

25 They are just literally copied straight out of the statute.

1 THE COURT: All right. The other instruction requested is,  
2 injury in a motor vehicle accident means any personal injury accidentally  
3 caused in, by or the proximate result of the movement of motor vehicle on  
4 a public street or highway, whether the injured person was the operator of  
5 the vehicle or another vehicle, a passenger in the vehicle or another  
6 vehicle, a pedestrian, or had some other relationship to the movement of  
7 a vehicle.

8 All right. Give me one second here.

9 [Pause in proceeding]

10 THE COURT: I did have one question, Mr. DiGiacomo,  
11 regarding the instruction on the driver of any vehicle involved in a collision  
12 resulting in bodily injury or death. The last sentence of that instruction  
13 says, if no police officer is present, the driver of any vehicle involved in  
14 such accident shall forthwith report such accident to the nearest office or  
15 of a police authority or of the Nevada Highway Patrol.

16 Is that drawn specifically from a statute?

17 MR. DIGIACOMO: It is.

18 THE COURT: Okay.

19 MR. DIGIACOMO: I think it's 484E.

20 THE COURT: .080.

21 MR. DIGIACOMO: Correct.

22 THE COURT: Oh, it is. I was reading the one underneath it. I  
23 was accidentally reading .404.

24 MR. DIGIACOMO: And I got these from the vehicular crimes  
25 unit.

1 THE COURT: .040.

2 Yes.

3 MR. DIGIACOMO: So they tell me that anyway.

4 THE COURT: Yes, no, thank you. I was reading the wrong --  
5 the one underneath it. All right.

6 [Pause in proceeding]

7 THE COURT: All right. If the State doesn't have an objection  
8 to these two instructions, I will include them. And I want to make sure  
9 that's correct, you all have no objection?

10 MR. DIGIACOMO: That is correct, Judge.

11 THE COURT: All right. Any other disagreements?

12 MR. MUELLER: No, Your Honor.

13 I just need to make a quick record on a couple of things.

14 THE COURT: Okay. One second.

15 MR. MUELLER: Sure.

16 THE COURT: My inclination is to give the definition of -- let me  
17 see where I want to stick these in -- in order.

18 So my inclination is to give the instruction about, injury in a  
19 motor vehicle accident means any personal injury accidentally caused in,  
20 et cetera, et cetera, after, the driver of any vehicle involved in a collision  
21 resulting in injury to any person shall immediately stop --

22 MR. MUELLER: There's an element --

23 THE COURT: -- such vehicle at the scene.

24 MR. MUELLER: -- there is an element, and I want to make  
25 sure we've got it in the instructions, there is a -- the duty to stop also

1 requires an element of knowing. You have to know that someone's been  
2 injured or reasonably --

3 MR. DIGIACOMO: And it's in our instructions.

4 MR. MUELLER: -- it's -- just --

5 MR. DIGIACOMO: You don't have to know someone's injured,  
6 you just have to know someone was struck.

7 MR. MUELLER: No reasonably -- someone knew or  
8 reasonably should have known --

9 MR. SCARBOROUGH: That they're struck.

10 MR. MUELLER: That they're struck.

11 MR. SCARBOROUGH: Yeah, not injury.

12 MR. MUELLER: Not injury.

13 MR. SCARBOROUGH: Yeah.

14 MR. DIGIACOMO: That's in there.

15 MR. MUELLER: Okay. All right.

16 MR. SCARBOROUGH: Yeah.

17 MR. MUELLER: Now, make sure we got that in there.

18 THE COURT: Okay. So where I was going was I intend to put  
19 the instruction regarding, injury in a motor vehicle accident means any  
20 personal injury accidentally caused in, by or as a proximate result of, et  
21 cetera, after the instruction that ends, any person who knowingly fails to  
22 comply is guilty of the scene -- of leaving the scene of an accident.

23 MR. DIGIACOMO: Okay.

24 THE COURT: And then following that instruction with, accident  
25 means an unexpected or unforeseen event happening suddenly, violently,

1 or without human fault.

2 And that will be followed then by, the driver of any vehicle  
3 involved in a collision resulting in bodily injury to or death of any person, et  
4 cetera.

5 Any objection to that?

6 MR. DIGIACOMO: No.

7 MR. MUELLER: No, Your Honor, that works.

8 THE COURT: Okay. All right. Anything further in regards to  
9 the jury instructions?

10 MR. MUELLER: Yes, Judge. I want to -- I'm going to make  
11 one last effort to -- or ask for an -- vehicle manslaughter. I know the  
12 Court's inclined to rule against that position, but I would like to at least get  
13 one more hearing on this.

14 Specifically the crime of -- or manslaughter is the wrongful  
15 act -- a wrongful, unlawful act that ends up in a death that was not  
16 intended. That's manslaughter.

17 Vehicular manslaughter is a lesser included by definition  
18 because it requires negligence instead of intent and it has a violation of  
19 duty.

20 In this instance, it's defense's contention that if there is any  
21 criminal liability here, at least for the acceleration of the automobile, it  
22 would be vehicular manslaughter. Specifically the underlying  
23 misdemeanor would be unlawful start from stop. Specifically she started a  
24 car knowing that someone was on the hood of the car that was unsafe  
25 and that when he fell off that breach of duty caused her to cause his



1 death.

2           The elements are -- it's a reduced -- it is the same basic legal  
3 theory, the elements are, in fact, reduced from the element of intent to  
4 simple negligence and the breach of duty is still a -- is a misdemeanor  
5 breach of duty as opposed to a felonious breach of duty but using and  
6 reasoning by analogy I believe vehicular manslaughter should, in fact, be  
7 given, as should be the unlawful start from stop instruction, which I believe  
8 is lesser included in the State's theory of liability, which is that her  
9 speeding off from the car was, in fact, the instrumentality of death and  
10 therefore if that -- speeding off is a lesser included by definition goes  
11 from -- down to second, then down to voluntary, then down to vehicular  
12 manslaughter, and I believe the Court should give it.

13           THE COURT: All right. The State shared a case with both the  
14 Court and the defense yesterday evening following your first argument  
15 requesting this lesser related instruction. You're defining it as a lesser  
16 included instruction but I disagree.

17           I'm looking at *Barton v State of Nevada*, the citation is 117  
18 Nevada 686, a decision from 2001.

19           Now, it was overruled but it looks like it was overruled on other  
20 grounds. And this case discusses how you take a look at lesser included  
21 offenses on -- starting at -- what looks like pincite 694 it states, under the  
22 federal rules of criminal procedure 31C, which contains language identical  
23 to that of NRS 175.501, an offense is not a lesser included offense unless  
24 the elements of the lesser offense are entirely included subset of the  
25 elements of the charged offense.

1           It goes on and discusses that essentially it's pulling from the  
2 *Blockburger* test and making a determination as to whether or not an  
3 offense is the lesser included offense.

4           In looking at the elements of the offense for the charge -- the  
5 murder charge and the proposed charge, the defendant wishes to include  
6 as a lesser included and it does not meet the test set forth in *Barton*, nor  
7 does it meet the test set forth in *Blockburger v United States*. And  
8 therefore I'm going to decline to include the -- what you're defining as a  
9 lesser included. I think it's even a stretch to say is a lesser related offense  
10 at this time.

11           MR. MUELLER: Thank you, Your Honor.

12           I understand and obviously respectfully disagree. And I just  
13 want to make sure that my proposed vehicular manslaughter and two --  
14 the two vehicular manslaughter instructions and my unlawful stop from  
15 start instruction are included in the -- well, marked and included.

16           THE COURT: Okay. Let's go ahead and make those Court --  
17 let's make them Court's exhibits that way we can make sure they're in the  
18 record.

19           MR. MUELLER: All right. Thank you, Your Honor.

20           THE COURT: If you could provide copies -- I might have an  
21 extra copy here. One second.

22           Your vehicular manslaughter reads, a vehicular manslaughter  
23 occurs when -- and it has one next to it -- 1, a person.

24           MR. MUELLER: Yes, Judge.

25           THE COURT: Okay. And then you want -- what was the other

1 instruction you wanted?

2 MR. MUELLER: In Nevada vehicle manslaughter -- may I  
3 approach?

4 THE COURT: Yes, yeah, I have an extra copy so I'm providing  
5 it to the clerk.

6 MR. MUELLER: This is the one I was --

7 THE COURT: All right. I have an extra copy of that too. Let's  
8 see.

9 All right. I've provided the clerk with a copy of that proposed  
10 instruction.

11 All right. Anything further in regards to the jury instructions?

12 MR. DIGIACOMO: Not from the State.

13 THE COURT: Okay.

14 MR. MUELLER: No, Your Honor.

15 THE COURT: All right. And anything further -- the jury won't  
16 be back for another 35 minutes or so, anything else that we need to  
17 address outside the presence of the jury?

18 MR. MUELLER: Yes, Judge, I --

19 MR. DIGIACOMO: Hold on, one thing on instructions.

20 THE COURT: Yes.

21 MR. DIGIACOMO: I just looked at my verdict form, the  
22 involuntary is not on the verdict form. So we'll have to get that --

23 THE COURT: I think we fixed that.

24 MR. DIGIACOMO: If you fixed it, then great.

25 THE COURT: I think we did. We have an extra copy but

1 we'll -- I'll make sure that -- and you-all will get a copy of these before we  
2 give them so.

3 MR. DIGIACOMO: Okay. Perfect.

4 MR. SCARBOROUGH: Thank you, Your Honor.

5 THE COURT: Yes, thank you.

6 MR. SCARBOROUGH: No, I was just saying thank you.

7 THE COURT: Oh, sorry, yeah, yeah, sorry.

8 MR. MUELLER: Your Honor, Mr. DiGiacomo and I have been  
9 doing this a long time and handled a number of cases against each other  
10 and this is -- I'm in my six figures as jury trials go. So I'm not particularly --  
11 or particular formal about discovery. I know usually what to expect and I  
12 usually get everything.

13 Over the lunch hour Mr. DiGiacomo, did, in fact, give me a 63  
14 page document titled, Homicide Investigative Supplement.

15 Now, the document is well and thoroughly prepared, the vast  
16 majority, on casual examination, has already been provided to us by other  
17 disclosures and I'm not complaining of not getting the report in total.

18 What I do however complain about and complain about fairly  
19 bitterly is page 55 or so has a document called, Speed Calculations and  
20 Speed Workup.

21 Now, I want to put this in a little context, respectfully, Judge, I  
22 used to be on the DUI team. I've probably done 10 or 15 DUI trials. I  
23 don't think anybody in here is going to question that I know how to put one  
24 of those cases together. I have the mathematical training to actually  
25 independently review those calculations and have access to at least half

1 dozen investigators on a moment's notice who could review those  
2 calculations.

3 I heard it, very first time yesterday, this 59 mile per hour  
4 number. It is wrong factually, it is wrong logically, and it is wrong in an  
5 assumption.

6 And as you saw in cross-examination, it is the number of the  
7 car exiting the speed and the assumption that, A -- I don't know how he  
8 even gets there because there is no starting point -- but it is the  
9 assumption of speeding -- calculation of a speed of this vehicle leaving  
10 the frame under the assumption that there's been uniform acceleration  
11 from a spot that's unknown. That's wrong legally, it's wrong factually, and  
12 it's wrong intellectually, and it's wrong scientifically, it's wrong  
13 mathematically.

14 And I got caught completely by surprise about it. That is wasn't  
15 disclosed. Mr. DiGiacomo came in here and unfettered access. He  
16 looked through my file. He looked through my discs. He looked through  
17 my investigator's discs. We never got that document.

18 I'm not complaining that I didn't get the document. I've got  
19 almost everything else in there. The few pictures I didn't get, I don't care  
20 about. Nothing's changed the trial.

21 What I do complain about specifically is that speed calculation.  
22 It was created unfairly and incorrectly in the jury's mind that this man was  
23 flung off this car at 60 miles an hour or 59 miles an hour, which simply is  
24 not true. We have two eyewitness testimonies. He went 20 feet and one  
25 said 30 feet. That man probably was thrown off somewhere between 15

1 and 17 miles an hour and would be alive to this day but for an unfortunate  
2 bounce on the pavement.

3 Now, this idea that the speed is going closer to 60 miles an  
4 hour is unfair. It's prejudicial. And I have been completely surprised by it.  
5 And at this point I'm going to have to ask to move for a mistrial on it.

6 We either ask that the speed calculation be stricken and I get a  
7 curative instruction or I'm going to have to ask for a mistrial on the case.  
8 And I don't want to. I would like -- I'm happy with the way the case has  
9 gone for the most part.

10 THE COURT: State, what is your response to not -- or the  
11 accusation that this was not provided in discovery?

12 MR. DIGIACOMO: Yeah, I don't have an -- when I went back  
13 at lunch my discovery person wasn't there so I grabbed a copy of the  
14 report. I gave it to him.

15 I will tell the Court that this detective was noticed as an expert  
16 in reconstruction from Mr. Mueller saying he didn't have the speed  
17 calculations for somebody that was noticed as an expert.

18 I will tell you two days ago he said, hey, what were the  
19 numbers on the speed calculation?

20 And I said to him, it's in the main officer's report.

21 Which is what that is, the main officer's report associated with  
22 this particular case. I heard nothing about it.

23 Yesterday, the detective did not testify that the victim fell off the  
24 car at 59 miles an hour. Mr. Mueller keeps saying that. But the detective  
25 testified the victim fell off the car when the car was going 23 miles an

1 hour; that the car was going 59 miles an hour when it left the screen on  
2 the videotape.

3 And to the extent that Mr. Mueller is saying that he needs till  
4 tomorrow to start -- or till Monday to start his case in order to have  
5 somebody review that, I have no objection to that happening with him.  
6 But to suggest that somehow he's prejudiced in a situation where the  
7 expert was noticed, and if he didn't have the underlying data to the  
8 expert's opinion, he should have told us sometime before right now.

9 MR. MUELLER: A couple of things, Judge, if you'll see the  
10 cover sheet on that document it is not the main officer's report. It says,  
11 supplemental.

12 Number 2, specifically, I think, and I'm -- I would like a curative  
13 instruction. There's -- to the words of, there's been testimony that the  
14 vehicle is seen leaving the scene at 59 miles an hour.

15 THE COURT: That's not what the testimony was though.

16 MR. MUELLER: Actually, respectfully, that's the way I recollect  
17 the testimony.

18 THE COURT: No, the testimony was that the car got up to  
19 59 -- we can go back and replay it. But if I recall correctly, the testimony  
20 was, the vehicle got up to 59 miles an hour and the way that it would get  
21 to that speed would be from the driver accelerating to get to that point.

22 MR. MUELLER: Long -- additional acceleration long after  
23 young Mr. Osorio has fallen off of the car.

24 THE COURT: But that's not what the testimony was.

25 MR. DIGIACOMO: No, that's true. The car continues to

1 accelerate after Mr. Osorio fell off the car.

2 THE COURT: Well, sure, but that --

3 MR. DIGIACOMO: But, I mean, why that's relevant.

4 THE COURT: -- but the way -- the way it's being presented  
5 was not the way that the testimony came out.

6 MR. MUELLER: The -- okay. The way I recollect it and -- was  
7 that they brought out the fact that the car was going 59 miles an hour as it  
8 was exiting screen right.

9 THE COURT: Yes.

10 MR. MUELLER: Long before the car got to screen right the --  
11 young Osorio was off of the car and in the middle of the road. The car  
12 continued to accelerate. Not -- it was -- I'm fairly created the impression in  
13 the jury's mind that she was going 50 or 60 miles -- 59, 60 miles an hour  
14 when this kid was flung off the car. That's simply not the case.

15 The car, and you saw from the diagram, the guy had only gone  
16 about 20 or 30 feet. They hadn't even covered the length of a corner  
17 service stations parking lot when he was off of the car. You can see that  
18 from his diagram.

19 I'm concerned that we've unfairly created that impression on  
20 the speed and I'd ask -- well, I think we can cure -- I'm not asking to delay  
21 the proceedings. I'm not particularly concerned about any of the other  
22 material that's in the discovery. But I am concerned that we've created a  
23 false impression.

24 I think maybe we should have a curative instruction, something  
25 like, the parties have stipulated that the car -- Mr. Osorio was off of the car



1 by X number feet from the corner but was not going 59 miles an hour at  
2 the time.

3 MR. DIGIACOMO: The testimony that's in front of this jury,  
4 and I'm not creating any stipulation, the testimony to the jury was that the  
5 victim was -- when he fell off the car was going 23 miles an hour and that  
6 the car continued to accelerate to its maximum speed of 59 miles an hour  
7 when it left videotape.

8 MR. MUELLER: If that's --

9 MR. DIGIACOMO: That is the testimony.

10 MR. MUELLER: If my colleague wants that in the -- I'll stip to  
11 that testimony. We just write it up as a jury instruction, that's fine.

12 THE COURT: All right.

13 MR. DIGIACOMO: That was the testimony.

14 MR. MUELLER: Okay.

15 THE COURT: I'm looking at a notice of expert witnesses filed  
16 by the State on April 17th of 2018, on page 3 of that notice it provides  
17 that, K. Salisbury of LVMPD, with his P number, is employed by LVMPD.  
18 He is an expert in accident reconstruction. He is expected to testify to the  
19 methodologies generally used in accident reconstruction and he's  
20 expected to testify as to the details and conclusions of the accident  
21 reconstruction done in this case.

22 MR. MUELLER: Yes, I'll agree and I'll stipulate it's all correct.

23 My complaint is not that he's not qualified or that he's not  
24 entitled to have his opinion. My complaint is only I found about his speed  
25 estimate and calculation on the witness stand.

1 THE COURT: Is there a secondary police report or additional  
2 police reports in this case, Mr. DiGiacomo --

3 MR. DIGIACOMO: There is --

4 THE COURT: -- that would talk about the conclusions of  
5 Detective Salisbury?

6 MR. DIGIACOMO: No, I believe there's an incident report and  
7 then that is the main officer's report written by Detective Salisbury.

8 MR. MUELLER: Marked as supplement.

9 MR. DIGIACOMO: He calls it a supplement, that's what I  
10 would call the main officer's report. The way this works is the CAD -- not  
11 the CAD system but the report system --

12 PremierOne?

13 -- PremierOne the night of would have a report generated.  
14 After that, the next police report that is generated, it's not, you know, that  
15 has a description of the investigation, is the main officer's report. That is  
16 the main officer's report.

17 And I imagine that that notice also said the report has been  
18 provided in discovery. So he didn't have that report way back then, I  
19 would be somewhat surprised because the notice says that it's been  
20 provided in discovery.

21 It's probably the very last line.

22 THE COURT: The substance of each expert witness's  
23 testimony and copies of all reports made by or at the direction of each  
24 expert witness has been provided in discovery. And a copy of each  
25 expert witness's Curriculum Vitae is available -- or is attached hereto.

1 All right. So it appears though Ms. Guidry was previously  
2 represented by Mr. Pandullo.

3 When did you take over this case, Mr. Mueller?

4 MR. MUELLER: I'm going to trust my memory, about seven  
5 months ago.

6 THE DEFENDANT: Last August.

7 MR. MUELLER: Last August she says. I have no reason to  
8 dispute --

9 THE COURT: So a year ago?

10 MR. MUELLER: Thereabouts.

11 Your Honor, it's -- and I want to draw -- I'm drawing my  
12 critique -- or my -- concerns is a rifle shot here. I'm not even concerned  
13 that I didn't get all the paperwork. I'm a big boy and I read everything. I'm  
14 prepared for this trial. The only thing that causes me deep concern is  
15 twofold, the accident and speed calculation I just fundamentally disagree  
16 with scientifically.

17 And number two --

18 THE COURT: Well, you're not an expert in this case. So you  
19 were on notice that they were going to call an expert --

20 MR. MUELLER: Then --

21 THE COURT: -- to testify to the conclusions about the  
22 accident. You too could have noticed an expert to testify or to rebut that  
23 testimony; correct?

24 MR. MUELLER: Yes. And if I'd known the young man was  
25 going to come in here and say 59 miles an hour, I would have. Because

1 my calculations was just about what came out of testimony, which is about  
2 15 to 17 -- 17 to 20 miles an hour is what I figured the speed was.

3 So that -- why we brought out that 59 number is gratuitous and  
4 potentially misleading.

5 Now, if the calculation is -- agrees with mine, which is 17 to 20  
6 miles an hour, you know, give or take a mile or two, okay, that's fine.

7 THE COURT: Mr. Mueller, are you going to make yourself a  
8 witness in this case?

9 MR. MUELLER: No. The problem is I can do this stuff myself,  
10 which is what I know when I something's not right. And I know 59 miles  
11 an hour is gratuitous and designed to mislead the jury.

12 Why are we talking about a speed down the road? The speed  
13 at the time would have been the irrelevant speed at when he got -- he fell  
14 off the car.

15 THE COURT: All right. Here's the secondary issue, the State  
16 renoticed its expert witnesses on July 3rd of 2019, naming the same  
17 expert witnesses, to include Mr. Salisbury, with the notification of what he  
18 is expected to testify to, including --

19 MR. MUELLER: You may recall I asked him, do you have your  
20 calculations on the stand with you?

21 And he said, no.

22 Now --

23 THE COURT: I don't know what that has to do with this  
24 argument.

25 MR. MUELLER: Okay.

1 THE COURT: So you were on notice not just once but twice of  
2 what this expert was going to testify to.

3 Hold on one second.

4 Then I look at your list of witnesses and you include Kenneth  
5 Salisbury as a potential defense witness.

6 MR. MUELLER: No, I don't --

7 THE COURT: Would you like to recall the detective to the  
8 stand to conduct additional cross- examination?

9 MR. MUELLER: I accept. That's a good cure. I'll do that.

10 MR. DIGIACOMO: You haven't rested yet.

11 MR. MUELLER: I haven't rested yet.

12 THE COURT: You haven't rested yet.

13 MR. DIGIACOMO: Detective Salisbury, he's here.

14 THE COURT: All right.

15 MR. MUELLER: All right. Detective, you've heard the whole  
16 argument, so if you'll step outside now that you're a witness again. I'll get  
17 two, three questions. Okay.

18 All right. Thank you, Your Honor. I think addresses everyone's  
19 concern.

20 THE COURT: All right. So here you go, perhaps you'll need to  
21 use this.

22 MR. MUELLER: Thank you.

23 THE COURT: All right. So -- so we'll bring the jury in, we  
24 will -- I'll allow you to call Detective Salisbury, and then we will --

25 MR. SCARBOROUGH: Have you canvassed on the record or

1 have you canvassed on the record yet?

2 MR. DIGIACOMO: Did we do that before lunch?

3 MR. MUELLER: Yes.

4 THE COURT: I canvassed her, yeah, yeah.

5 MR. SCARBOROUGH: Sorry, Your Honor, just making sure.

6 THE COURT: No, that's okay. No, no, I canvassed her before  
7 lunch. And so then after we're done with your -- do you want to continue  
8 cross-examination or do you just want to call her as a defense -- call --  
9 excuse me, call him as a --

10 MR. MUELLER: I'll just call him a defense witness.

11 THE COURT: Okay. A defense witness.

12 MR. MUELLER: Just make two or three questions.

13 THE COURT: So when you finish your examination of the  
14 detective, then you can rest on the record and we'll roll right into jury  
15 instructions.

16 MR. MUELLER: All I -- all right. Thank you, Your Honor

17 The only purpose is to establish the speed at the time the kid  
18 fell off the car.

19 THE COURT: Okay. All right. So we will take a break until  
20 2:25. We'll come back here so we can bring the jury right in.

21 THE MARSHAL: Yes, Your Honor.

22 THE COURT: All right. Thank you.

23 MR. DIGIACOMO: Thank you, Judge.

24 [Recess taken at 2:06 p.m.]

25 [Jury trial resumed at 2:32 p.m.]

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[Outside the presence of the jury]

THE COURT: Go back on the record in Case C-18-329810-1,  
State of Nevada versus Ronneka Guidry.

I do have a copy of the proposed verdict form. Do you all want  
to take a look at that?

We're cleaning up the last of the jury instructions and we'll bring  
out a copy for each of you to inspect before we read them.

And while you're taking a look at that, I'm just put on the record,  
prior to the -- to resuming this afternoon there was a motion from  
Mr. Mueller regarding a report he contends was not provided to him in  
discovery. As I noted on the record, there were -- this witness was  
noticed twice in the course of the case, to include most recently in July of  
this year. It noticed what he was going to be testifying to.

I proposed to alleviate any concerns Mr. Mueller had about the  
witness in his prior testimony to call him in the defense's case in chief. He  
accepted that. And that is what we're going to do once we bring the jury  
back in.

MR. MUELLER: All right. Thank you, Your Honor.  
And I've only got several questions I believe will address  
Ms. Guidry's concerns.

THE COURT: All right. Do you have any edits to that? Yeah,  
it's okay.

MR. DIGIACOMO: I had one issue.

THE COURT: Go for it.

MR. DIGIACOMO: That involuntary manslaughter doesn't say

1 guilty of. Other than that, the verdict form looks fine to me, Judge.

2 THE COURT: Oh, yes. All right. I see what you're saying.  
3 Sorry. Thank you.

4 Any additional edits to this, Mr. Mueller?

5 MR. MUELLER: None that I saw, Your Honor.

6 THE COURT: Thank you. All right.

7 Okay. All right. Well, let's go ahead and bring the jury in.

8 [In the presence of the jury panel]

9 THE COURT: Please be seated. Welcome back, ladies and  
10 gentlemen.

11 Mr. Mueller, do you have any witnesses to call -- or you may  
12 call your first witness?

13 MR. MUELLER: Thank you, Your Honor.

14 Defense will call, as its first witness, recalling  
15 Detective Salisbury.

16 And I promise the jury and the Court I will be brief.

17 **KENNETH SALISBURY**

18 [Having been called as a witness and being first duly sworn, testified as  
19 follow:]

20 MR. MUELLER: Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 BY MR. MUELLER:

23 Q Detective, as you know, I had just a couple of questions that  
24 came up over the lunch hour and wanted to ask you before we rest the  
25 case.



1 Sir, the concept of area of initial contact; do you remember  
2 that?

3 A I do.

4 Q What is the area of initial contact?

5 A The first damage or injury producing event.

6 Q All right. You remember, and on our diagram here, it is marked  
7 as Defense -- or State's 88, I've got the diagram here. I'm going to zoom  
8 in here for clarity.

9 Now, you've got area of initial contact marked as the first  
10 addition of the -- on the right-hand side of the aerial view; correct?

11 A Correct.

12 Q Sir, what did you define, in this particular investigation what did  
13 you define as area of initial contact?

14 A The area of initial contact was the area of the first damage or  
15 injury producing event.

16 Q All right.

17 A Which was the onset of the shoe scuff marks.

18 Q Are you quite certain of that?

19 And would it refresh your recollection if I were to show you page  
20 9 of your supplemental officer's report.

21 And how did you define area of initial contact in the report?

22 A At the area of initial contact would be before he started  
23 pounding on the windshield with his fist.

24 Q Okay. So that's where -- basically that's where the car was  
25 when he was on the windshield pounding with his fist?

1           A     Witnesses said -- that's what you're referring to --

2           Q     Yes, sir.

3           A     -- what witnesses said?

4                     Witnesses said the decedent was on the hood of the Mercedes  
5 Benz at the area of initial contact before he started pounding on the  
6 windshield with his fist.

7           Q     Okay. So that's where we're at, that's what your AIC is here,  
8 that's where he's at, on the car before he starts pounding?

9           A     That's where witnesses said the vehicle was.

10          Q     Okay. So that's not where he's actually -- she starts driving off  
11 initially, there's where he's on the hood beating it and then she eventually  
12 pulls away?

13          A     Right.

14          Q     Okay. The next thing, sir, there was a moment in time where  
15 you seemed a little confused as to whether the damage to the windshield  
16 was actually caused by Mr. Osorio beating it with his hand.

17                     Do you remember that?

18          A     I don't remember being confused. But I said I couldn't prove  
19 one way or the other.

20          Q     All right. Well, you weren't quite so confused when you wrote  
21 your report.

22                     Would it refresh your recollection if you --

23          A     Sure.

24          Q     -- would review it?

25                     THE COURT: Counsel, will you reframe from commentary. If

1 you have a question to pose, please pose the question.

2 MR. MUELLER: Certainly, Judge.

3 BY MR. MUELLER:

4 Q Sir, would it refresh your recollection to review page 45 of your  
5 report?

6 A Okay. This image was recovered from Guidry's phone. It was  
7 taken minutes after the incident occurred. The damage on the front  
8 windshield was caused by Osorio pounding with his fist.

9 Q Okay. So in your report you had no ambiguity about it?

10 A Correct.

11 Q All right. Now, I also want to ask about two speed calculations.  
12 One of the things an investigator -- or traffic investigator has to do is  
13 estimate the coefficient of friction across the ground; correct?

14 A We don't really estimate it. We do that by conducting a sliding  
15 test.

16 Q Did you use a slide here to get the friction measurement?

17 A I can't hear you.

18 Q Did you use the sled to get the friction measurement here or did  
19 you just use the tables?

20 A No, we did not. In this case, with the pedestrian, we used  
21 published data because we're not going to re-slide a pedestrian on the  
22 asphalt out at the scene.

23 Q Okay. So you calculated two speeds, you said it was 59 miles  
24 an hour, but that was as the car was leaving the scene, that's not the  
25 speed when Mr. Osorio fell off?

1           A     To be perfectly clear, the speed of 59 miles per hour is the  
2 speed the vehicle is leaving that video surveillance footage off to the right  
3 after Mr. Osorio has already fallen from the vehicle.

4           Q     All right. And, in fact, Mr. Osorio was off the -- fell off the car  
5 not even the length of the gas station --

6           A     Incorrect.

7           Q     -- Jake's Market?

8           A     And I think that's where you may be confused. When -- this  
9 area here is the onset of the body scuff mark.

10                   Now, when a body is carried upon a vehicle, that body will be  
11 accelerated to the same speed of the vehicle, they're two, two move  
12 something as one unit.

13                   When the body falls from that vehicle, or removes from that  
14 vehicle, is now independent of that vehicle, it's at the same speed of the  
15 vehicle until it's acted upon by that unbalanced force. That unbalanced  
16 force is the asphalt and is all the kinetic energy calculation we talked  
17 about yesterday and how much kinetic energy it takes to slow that body of  
18 mass to a stop.

19           Q     And the speed that Mrs. Osorio either fell off or let go of the car,  
20 by your calculation was what?

21           A     23 miles per hour.

22           Q     23 miles on hour.

23                   And that is an approximation; correct, it could be a few miles  
24 per hour lower or a few miles per hours faster?

25           A     I don't know if I would say a few. But is it possible one or two,

1 possibly.

2 MR. MUELLER: Okay. And with that, Judge, I don't have any  
3 further questions.

4 THE COURT: Any cross-examination?

5 MR. DIGIACOMO: No.

6 THE COURT: All right. Any additional questions from the jury?  
7 I am seeing none. All right.

8 Thank you. You may step down from the witness stand.

9 THE WITNESS: Thank you.

10 MR. MUELLER: All right. Thank you, Your Honor.

11 And with that the defense rests.

12 THE COURT: All right. Thank you.

13 Well, ladies and gentlemen, that's the conclusion of the  
14 presentation of evidence. I do need to see counsel at the bench.

15 [Bench conference begins]

16 THE COURT: Any motions that we need to make outside the  
17 presence of the jury? I don't really feel like sending them out of the room  
18 again, I'd just rather keep them here.

19 MR. MUELLER: No.

20 MR. DIGIACOMO: No.

21 THE COURT: No? Okay.

22 All right. We're going to print these instructions. I'll give you-all  
23 a minute to take a look at them and then we'll read them. I'm going to let  
24 the jury be at ease so.

25 MR. MUELLER: Okay.

1 MR. DIGIACOMO: Thank you. Perfect.

2 THE COURT: All right.

3 [Bench conference ends]

4 THE COURT: All right. Ladies and gentlemen, we are going to  
5 be reading the jury instructions next and after jury instructions will be  
6 closing arguments from both the State and the defense.

7 Want to give both attorneys an opportunity just to make sure the  
8 jury instructions are in order. Because we just came from back from  
9 lunch, we are -- I'm going to ask that you not leave the courtroom, unless  
10 you need to use the facilities, but you are free to stand and stretch while  
11 we finish this process and then we'll sit down and go through the  
12 instructions together.

13 All right. So it'll just be a few moments. Please be at ease.  
14 And I'll remind you of the admonition about not talking about the case  
15 during this break.

16 All right.

17 And also here's a copy of the verdict form. Do you-all want to  
18 inspect the updated version?

19 MR. DIGIACOMO: It's fine, Judge.

20 [Pause in proceeding]

21 THE COURT: You-all must be tired after that long lunch  
22 because you are all still seated. Or it's so hot outside you're just tired,  
23 maybe a combination of both.

24 UNIDENTIFIED JUROR: It's hot.

25 THE COURT: It is really hot outside. I fooled myself into

1 thinking it was August and we would be done with the heat.

2 [Pause in proceeding]

3 THE COURT: The joys of technology, as soon as we need to  
4 print something, something goes wrong. That's what's happening here.  
5 So I apologize for the delay. But they're on their way.

6 [Pause in proceeding]

7 [Bench conference begins]

8 THE COURT: All right. I found one error and it says that she  
9 was charged by Information instead of Indictment. I have already  
10 changed that. Yours say Information, but I changed it to Indictment.

11 MR. DIGIACOMO: Oh, that's fine.

12 THE COURT: Okay. That's the only error I saw, but let me  
13 know if you see anymore.

14 MR. DIGIACOMO: Sure.

15 THE COURT: Take your time.

16 [Bench conference ends]

17 THE COURT: All right. We got the printer working. They're  
18 going to take a moment, take a look at these, and then we'll read them.

19 MR. DIGIACOMO: Judge, instruction number 4.

20 THE COURT: Yeah, instruction number 4.

21 MR. DIGIACOMO: That's the one?

22 THE COURT: That's the one.

23 MR. DIGIACOMO: Okay.

24 THE COURT: So yours are incorrect but I corrected it.

25 MR. DIGIACOMO: Oh, okay.

1 THE COURT: Right.

2 [Pause in proceeding]

3 THE COURT: While they're reviewing these, I'll let you know,  
4 what we're going to do is we're going to -- my judicial assistant is going to  
5 stand at the Elmo and put the instructions on there. They'll be displayed  
6 on the screens so you guys can read along with them as we go through  
7 them. And then you'll have a paper copy in the back to take with you to  
8 refer to.

9 I used to printout copies for each of the jurors, but in my attempt  
10 to contribute to -- or reducing waste just a little bit, I'm -- we're -- we  
11 switched to doing it this way to -- can't surprise anybody that this a very  
12 paper intensive process in general, as evidenced by this.

13 [Pause in proceeding]

14 MR. DIGIACOMO: Can we approach on one issue?

15 THE COURT: Yes, please.

16 [Bench conference begins]

17 MR. DIGIACOMO: Are these recorded?

18 THE COURT: Yes.

19 MR. DIGIACOMO: Okay. Just -- the only thing that struck me  
20 is the defense didn't specifically request the constitutional right of the  
21 defendant not to testify and that has to be done on the record.

22 So I'm assuming he wanted it.

23 MR. MUELLER: That's fine. No, I don't -- which, the instruction  
24 says she's got the right to testify?

25 THE COURT: No, it just says --



1 MR. DIGIACOMO: Constitutional right, you can't draw any  
2 inference.

3 Do you want it or not want it?

4 MR. MUELLER: Nah, that's fine. I don't want to call any  
5 attention to it.

6 MR. DIGIACOMO: So then we have to take it.

7 THE COURT: We have to take it out.

8 MR. MUELLER: Okay. Then leave it in. Just leave it in. I've  
9 never been all that fired up with that instruction one way or the other. It  
10 doesn't seem to change any --

11 THE COURT: Okay. So you don't have any objection to  
12 leaving it in?

13 MR. MUELLER: I don't have any objection leaving it in.

14 THE COURT: Okay.

15 MR. DIGIACOMO: You're affirmatively requesting it --

16 THE COURT: You're affirmatively requesting it?

17 MR. MUELLER: I -- yes --

18 MR. DIGIACOMO: Okay.

19 THE COURT: Because the law requires you to.

20 MR. MUELLER: -- I am affirmatively requesting the instruction  
21 to be included.

22 MR. DIGIACOMO: The statute says, I'm sorry, dude.

23 MR. MUELLER: Okay.

24 THE COURT: Okay.

25 MR. MUELLER: I've never noticed any difference one way or

1 the other with that instruction.

2 THE COURT: Okay. All right. Any other issues with the  
3 instructions?

4 MR. DIGIACOMO: No, everything else looked fine to me.  
5 That's the only thing that struck me.

6 THE COURT: All right. And from the defense, anything, any  
7 edits or anything else that needs to be changed with the instructions?

8 MR. MUELLER: No, Your Honor. I think we've done a pretty  
9 good job with the jury instructions.

10 THE COURT: Okay. All right. Then we will get started here in  
11 a moment.

12 Thank you, both.

13 MR. DIGIACOMO: Thank you.

14 [Bench conference ends]

15 [Pause in proceeding]

16 THE COURT: And State and defense, for your records, this is  
17 the corrected number 4, for your records.

18 All right. One for you and one for him. It says, the Information.

19 [Bench conference begins]

20 MR. DIGIACOMO: It does but --

21 THE COURT: Oh, wait, hold on, let me show you mine.

22 MR. DIGIACOMO: I don't know if it makes a difference. But  
23 when I added, involuntary, it should be murder of the first degree, murder  
24 of the second degree, and involuntary.

25 THE COURT: So I changed it to Indictment -- oh, well, yeah,

1 we didn't catch that.

2 MR. DIGIACOMO: It should be first degree murder, second  
3 degree murder, and involuntary.

4 THE COURT: Okay. Hold on.

5 MR. DIGIACOMO: Manslaughter.

6 THE COURT: Is that the only edit on that one?

7 MR. DIGIACOMO: Yes.

8 THE COURT: It doesn't affect any of the other ones?

9 MR. DIGIACOMO: It -- no, because the transition instructions  
10 are all there.

11 MR. MUELLER: Who's going to be the next DA?

12 MR. DIGIACOMO: Not me.

13 MR. MUELLER: Well, how much longer does Steve got an  
14 office this term. He's got four more years?

15 MR. DIGIACOMO: If he doesn't run for something else in 2020,  
16 it's 2022.

17 [Colloquy between the Court and the Law Clerk]

18 MR. DIGIACOMO: I apologize, Judge, I should have seen that  
19 last night.

20 THE COURT: No, that's okay. I missed it too. That's why we  
21 do this though.

22 [Colloquy between the Court and the Law Clerk]

23 MR. DIGIACOMO: Okay. Should we step back?

24 THE COURT: Yep. Thank you.

25 MR. DIGIACOMO: Perfect.

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[Bench conference ends]

[Pause in proceeding]

THE COURT: Ladies and gentlemen of the jury, can you read that or does it need to be a little closer? I'm seeing some nods and some a little. You can read them okay. All right.

[Colloquy between the Court and the Marshal]

THE COURT: Usually all this finalization takes place behind the scene. You're so lucky you get the front row view to it.

[Pause in proceeding]

THE COURT: Ray, could you pass one to each of them to make sure?

THE MARSHAL: Yes, ma'am.

THE COURT: Thank you.

Mr. DiGiacomo, okay?

MR. DIGIACOMO: Yes, Judge.

THE COURT: All right. Any objection, Mr. Mueller?

MR. MUELLER: No, Your Honor.

THE COURT: All right. Then let's go ahead and get started.

[The Court read the instructions to the jury]

THE COURT: All right. With that, State, are you ready to present your closing arguments?

MR. SCARBOROUGH: Yes, Your Honor.

If I can have the WePresent, please.

THE COURT: Yes.

Whenever you're ready.

1 MR. SCARBOROUGH: Thank you, Your Honor.

2 **CLOSING ARGUMENT BY THE STATE**

3 MR. SCARBOROUGH: Well, here we are. Ladies and  
4 gentlemen in the State of Nevada versus Ronneka Guidry there is  
5 absolutely no doubt that Eduardo Osorio was killed by the crimes  
6 committed by that woman sitting over there Ronneka Guidry.

7 Now, in every criminal case the State has to prove two things  
8 and once we prove identity, which we have. We have to prove the crimes  
9 that are committed.

10 So let's walk you through the crimes. Now, the charges are  
11 murder with use of a deadly weapon, robbery with use of a deadly  
12 weapon, grand larceny of value over \$3500, and duty to stop at the scene  
13 of a crash involving death or personal injury.

14 Now, when you look at these charges and you contemplate  
15 them you're going to look at what's called the verdict form. And on the  
16 verdict form there's going to be a series of options for count.

17 For example, on Count 1, for first degree murder with use of a  
18 deadly, first degree murder without the deadly, and so on and so forth.

19 So for the next counts it's Count 2, robbery with use of a deadly  
20 weapon.

21 Count 3, grand larceny, as you see all the options.

22 Finally bringing you to Count 4, the duty to stop.

23 Now, when I go through lists like this, and deal with issues, I like  
24 to do a process of elimination; right, you want to eliminate the things that  
25 don't have really any debate. So you can cross them off the list.

1                   And while we're here at Count 4, the duty to stop, well, let's  
2 move right into it. I don't need to spend much time discussing whether or  
3 not Ronneka Guidry stopped at that scene and rendered aid to Eduardo  
4 Osorio. The law will tell you that any person involved in a collision  
5 resulting in injury shall immediately stop such vehicle at the scene of  
6 collision. Below are the requirements that you have to do, you give your  
7 name, info, you render aid.

8                   Now, what triggers the duty to stop is whether or not the driver  
9 knew or should have known that she had been involved in a collision.  
10 And more importantly you also need not find that the driver knew that she  
11 injured somebody.

12                  But, ladies and gentlemen, Ronneka knew she had hit  
13 somebody. Ronneka knew that she was in a collision. And there's  
14 absolutely no doubt that she didn't stop at the scene.

15                  Now, related to that is whether or not you have to immediately  
16 stop. And the law will tell you that a stop is possible, even though if it's  
17 not immediate, if it's at a safe enough distance not to fear for your own  
18 safety.

19                  So if you believe she was fearing for her own safety when  
20 Eduardo Osorio was pounding on that windshield to get the watch back  
21 that was just stolen from him, she didn't have to stop. But at some point,  
22 when she got away, she had to stop and render aid.

23                  Well, obviously, based on, and this is the diagram, you, again,  
24 you heard the evidence, Ronneka didn't stop. She didn't come back to  
25 see Eduardo Osorio take his last breath. She left.

1                   And, furthermore, you know she got to a safe place because  
2 you heard in the testimony of the cell phone expert, James Beatty, when  
3 we saw this picture, that minutes later she's getting her windshield  
4 repaired or trying to make arrangements to do so. Not calling the police.  
5 Not calling an ambulance for the man she just ran down dying on the  
6 road.

7                   So when you look at your verdict form and you go to Count 4,  
8 obviously, you can eliminate the not guilty.

9                   Ladies and gentlemen, at minimum, at minimum we have a duty  
10 to stop, that she is guilty. She didn't stop.

11                  Now, because she didn't stop and because Eduardo Osorio laid  
12 down in the road ultimately he died. Well, that brings us to Count 1,  
13 because when there's a dead body, ladies and gentlemen, that triggers a  
14 murder.

15                  And as we go forward, again, we're going to eliminate what  
16 doesn't apply. Well, right off the bat let's eliminate that not guilty.

17                  Now, the Judge read you a litany of instructions, a lot of  
18 instructions on self-defense. I'm not going to waste your time on going  
19 through every one of them because it's quite simple. Whether or not it's a  
20 justified killing depends on whether or not the person here is engaged in a  
21 criminal activity and that person must either retreat instead of using  
22 deadly force when they're engaged in criminal activity.

23                  It's whether or not someone who's stealing someone's watch  
24 and then when Eduardo Osorio was trying to stop her from doing, so can  
25 you then claim self-defense. No. Not at all.

1               So I'm not going to spend a bunch of time on the self-defense  
2 instructions.

3               The law tells you, and you were also read, that the victim of a  
4 larceny has a right to use force to resist the taking. So Eduardo, under  
5 the law, he had a right to go stop Ronneka from taking the watch. He had  
6 a right to go do so.

7               And, like I said before, you can't be Ronneka in the driver's seat  
8 and when someone's trying to stop you from taking the \$8,000 Rolex that  
9 you had, well, then you can't say, oh, I'm in danger, no, you can't stop me  
10 from taking your watch unlawfully. That's not how self-defense works.

11              Well, let's talk about taking the watch. Ladies and gentlemen,  
12 there's a grand larceny and a robbery and a taking of the watch. Well, this  
13 picture right here, I mean, you know the defendant took the watch, that's  
14 the cell phone picture. You've got all the text messages of her arranging  
15 conversations to fence the watch to the Miami-Dade Dade pawn store.

16              Well -- and there's the receipt right there.

17              You saw the FedEx footage and the FedEx packaging showing  
18 that she shipped the watch.

19              Now, what's more important is this, You got an all gold, sending  
20 to one of her friends is at 2:51 a.m. that same night. Right around when  
21 Eduardo Osorio was drawing his last breath of life, that's when she's  
22 fencing that watch. So you know she took the watch.

23              Well, you know she drove off with the victim's watch, I mean,  
24 because she's gone. She didn't return. She's at home. That pictures  
25 there.



1           You're looking at the defendant's actions were -- the victims  
2 trying to bang on the window to stop her. Well, again, that's not  
3 self-defense when he's trying to stop you from taking the \$8,000 watch.  
4 You can't claim it.

5           So when he gets on top of the hood, according to Mr. Landale,  
6 the car stopped, if you remember that.

7           Now, defendant floors it.

8           Detective Salisbury says, well, it's opened up full throttle. And  
9 that victim is still on the hood.

10                           [Playing video]

11           MR. SCARBOROUGH: That's not self-defense.

12           So, as you'll notice, the not guilty's gone. Self-defense is out  
13 the window, folks. You can't steal someone's stuff and then claim  
14 self-defense when they try to stop you from doing it.

15           So, next, what you eliminate would be the involuntary  
16 manslaughter. And involuntary manslaughter, generally, is the killing of a  
17 human without any intent to do so in the commission of an unlawful act.

18           Well, there are limits to involuntary manslaughter. When the  
19 involuntary killing occurs in the commission of an unlawful act, which in its  
20 consequences naturally tends to destroy the life of a human being, an  
21 example of an act that naturally tends to destroy the life of a human being.  
22 Like, opening up your car full throttle when someone's on it. When they're  
23 trying to stop you from stealing their watch. That'll tend to destroy the life  
24 of a human being and it did.

25           Well, the offense is murder. It's not involuntary manslaughter.

1 It's murder.

2           So, again, you look at the defendant's actions. She drives off  
3 with the victim's watch. He tries to stop her from leaving by banging on  
4 her window. He gets on top of her car while it's stopped. She floors it,  
5 goes full throttle and the victim's on the hood. These facts apply to  
6 everything.

7           Not only is it not self-defense but this also makes it not  
8 involuntary manslaughter either. Because that naturally tends to destroy  
9 the life of a human being when you floor it and someone's on your hood.  
10 It's not involuntary manslaughter, folks.

11           And while we're here another limit to involuntary manslaughter,  
12 that we'll get to, has to do with the deadly weapon.

13           So as we talk about eliminating, you know, easier concepts, a  
14 deadly weapon, as you're instructed, is an any instrument under the  
15 circumstances in which it's used is readily capable of causing substantial  
16 bodily harm.

17           I think at this point, folks, you can say it with me, when you floor  
18 the car with someone on it, a 3,500 pound car, traveling at full throttle,  
19 folks, that can be a deadly weapon. And, in fact, it was.

20           Now, why that's related to involuntary manslaughter is because  
21 the law tells you that involuntary manslaughter does not involve the  
22 conscious use of a deadly weapon in the commission of the crime.

23           Well, we have a robbery with deadly here, and we'll get to that,  
24 but she floored that deadly weapon full throttle to get away with the watch.  
25 You can't do that and still be found responsible only for involuntary

1 manslaughter. The law doesn't allow it.

2 So when you're on your verdict form, you can cross off  
3 involuntary manslaughter.

4 And related, you could also cross off the options without the  
5 deadly weapon; right. The deadly weapons present here, that vehicle  
6 when she floors it, that's the deadly weapon.

7 So now we have murder left, second degree and first.

8 Well, let's walk through in terms, before we get to degrees, let's  
9 talk about what murder is. Murder is the unlawful killing of a human being  
10 with malice aforethought, malice aforethought either expressed or implied.

11 Now, on the bottom it says, the unlawful killing may be affected  
12 by any of the various means by which death may be occasion. That's just  
13 saying that there's not a specific way you have to kill someone in order to  
14 murder them. It's anyway death can be occasion. So don't let that trip  
15 you up.

16 Well, let's talk about what malice aforethought is. It's an  
17 intentional doing of a wrongful act, a killing. And that killing is done  
18 without legal cause or excuse, without reason. Or what the law considers  
19 adequate provocation. So without legal cause, aka, self-defense, which is  
20 not present here, and without legal reason. You can't kill someone when  
21 you're stealing their watch and they try to stop it.

22 The law also tells you certain -- it defines and it allows you to  
23 glean where malice aforethought may arise from, and when you look at  
24 the list, anger, hatred, revenge, ill will. But if you go down, it also may  
25 arise from an unjustifiable or an unlawful motive. Stealing the watch, I'll

1 say every time.

2 And it's also done with a reckless disregard of consequences  
3 and social duty. Flooring it when he's on your hood. Opening it up full  
4 throttle until he careens off and ultimately dies. That's a reckless  
5 disregard of consequences and social duty. Not only are you committing  
6 the crime, you're -- it's reckless to just floor it to get him off your car.  
7 That's -- that's malice aforethought, folks.

8 Now, when we're talking about malice aforethought, you can  
9 ignore all that what I just said if you want to. You could. Because under  
10 the law, under the felony murder law, there's a kind of murder which  
11 carries with it conclusive evidence of premeditation and malice  
12 aforethought.

13 What does that mean? There's a class of murder committed in  
14 the perpetration or attempted perpetration of a robbery. And that  
15 perpetration of a robbery, which results in a killing, if the killing was  
16 intentional, unintentional, or accidental it doesn't matter because, ladies  
17 and gentlemen, that's a first degree murder.

18 When you rob someone and they die trying to stop you, it  
19 doesn't matter if it was an accident, it doesn't matter if it was unintentional  
20 or intentional, that is a first degree murder, ladies and gentlemen.

21 Robbery, plus a death during a robbery, equals first degree.

22 Well, now, in this case the felony murder applies. Why? We  
23 know Eduardo Osorio is dead. But is it the result of a robbery?

24 Now, before we get to the robbery, the grand larceny is alleged.  
25 So when you personally steals, takes and carries away the property of

1 another, with the intent to permanently deprive, is guilty of the grand  
2 larceny.

3           Again, you know Ronneka took the watch. She took it. She  
4 tried to fence it, arguably, minutes later. She had the watch, there's the  
5 grand larceny. There's value to it. It's a Rolex watch, folks. You heard  
6 multiple people come up and testify to the value of it, Eduardo's father,  
7 Nuno. And you also realize that she fenced it for \$4500. That meets the  
8 limit. I'm not going to spend any more time on that.

9           But, ladies and gentlemen, the grand larceny that Ronneka  
10 committed upon Eduardo Osorio evolved -- I apologize, so you can cross  
11 those off now on Count 3.

12           Well, that evolved into a robbery with a deadly weapon when he  
13 tried to stop her and she floored it.

14           Now, ladies and gentlemen, the watch that she took, that she  
15 was driving away with, that he, Eduardo, tried to stop her from taking it,  
16 died doing so. That's a robbery now.

17           Well, what's a robbery? Well, the elements of a robbery are the  
18 unlawful taking of a property against his will by means of force or violence.  
19 Now, that force or violence must be used to obtain or retain the  
20 possession to prevent or overcome resistance to the taking.

21           Now, there's another instruction that has to do with the location  
22 and the timing of the robbery. Now, all matters immediately antecedent to  
23 and having direct causal connection with a robbery, are deemed so  
24 closely connected with it as to form a reality apart of the occurrence.

25           Ladies and gentlemen, that's telling you that robberies just don't

1 take place in one area. They can take place over a distance, over a time.  
2 They're not confined to a fixed locus. They can spread over considerable  
3 and varying periods of time.

4 Like, when Eduardo gets out of the vehicle, realizes his watch is  
5 no longer in his possession, sees her come around, and even though  
6 she's driving away, she's not getting away yet. Him going to try to stop  
7 her and then her flooring the vehicle when he's on it, that's still all a part of  
8 the robbery. The robbery isn't just completed where she takes the watch  
9 and leaves. That's all still a part of it.

10 Now, although acts of violence and intimidations preceded or  
11 followed the actual taking, or even if they were primarily intended for  
12 another purpose. Like, just trying to get away or anything like that. It's  
13 enough to support the robbery.

14 So it doesn't matter the timing of it or how long he spent in the  
15 parking lot searching himself and looking and finding out that his watch  
16 was taken by Ronneka, because he goes to stop her and when she floors  
17 it that's all a part of the robbery.

18 And using that vehicle to get away with that watch is the deadly  
19 weapon and that's all the robbery with the deadly weapon.

20 You see over on the Jay's Market and where he was over here.  
21 He ran all the way out there to try to stop her.

22 Ladies and gentlemen, the distance running and how far she  
23 got before he got a chance to try to stop her for the robbery, doesn't  
24 matter. It's all a part of it.

25 Well, let's return to force. We heard a lot of testimony about

1 whether the vehicle and who struck who. And, well, ladies and  
2 gentlemen, 56,000 square foot pounds and opening up full throttle, the  
3 vehicle, and having Eduardo slide 42 feet on the asphalt, that's absolutely  
4 force. That's absolutely force for a robbery. And more importantly that  
5 force was to prevent the overcome -- or prevent or overcome the  
6 resistance to the taking.

7 So, ladies and gentlemen, you cross off the not guilty on the  
8 robbery too.

9 And now that we've gone through everything, I mean, you do  
10 one final recap. At 2:01 a.m., Eduardo Osorio meets Ronneka Guidry in  
11 front of that Omnia bar.

12 2:06 they're in the elevator going towards the car.

13 Minutes later they're in the car leaving the area.

14 And after seven minutes in the vehicle, where she backed in,  
15 looking for the quick escape, she commits the grand larceny by taking his  
16 watch. And when Eduardo Osorio notices that the watch is taken, he  
17 goes to try to stop her. And when he ends up on the hood trying to stop  
18 her, she commits robbery with a deadly weapon by flooring the vehicle  
19 with him on the hood.

20 And by leaving him in that road and not rendering aid, she  
21 committed the duty, the failure to stop.

22 And later on, as a result of this event, when Eduardo Osorio  
23 drew his last breath, Ronneka Guidry committed first degree felony  
24 murder.

25 Now, we've gone through all of the options, ladies and

1 gentlemen, on all of the counts in the verdict form to leave you with only  
2 one real choice, guilty on all counts.

3 Thank you.

4 THE COURT: Thank you.

5 MR. MUELLER: Judge, do have an extra copy of the -- do you  
6 have a copy of the verdict form?

7 Can I get a copy?

8 THE COURT: Sure. That's the actual verdict though,  
9 Mr. Mueller.

10 MR. MUELLER: Yeah, I need a photocopy.

11 THE COURT: We don't have a copy here but you can use that  
12 one, you're going to write on it?

13 MR. MUELLER: I was going to actually write on it.

14 THE COURT: Go ahead and write on it. We'll print a new one.  
15 Go ahead and write on that one.

16 MR. MUELLER: Thank you. I appreciate it.

17 THE COURT: No problem.

18 MR. MUELLER: And with Court's permission may I proceed?

19 THE COURT: Yes. Thank you.

20 **CLOSING ARGUMENT BY THE DEFENSE**

21 MR. MUELLER: Ladies and gentlemen of the jury, this is  
22 actually a very case and what you'll find is the analysis of this case is  
23 much simpler if you start and analyze it the proper way.

24 But, first, a couple points, thank you for your jury service. This  
25 is a very old system and it works a lot better than it's given credit for. The



1 reason we have juries is that 12 of you collectively have 20 or 30 years of  
2 life experience, and the 12 of you together have 400 something years of  
3 life experience. That hopefully means always, and almost means, that  
4 collectively you will all bring some insights to the jury that you individually  
5 may not have. You know how people behave. You know how people  
6 think. You know how people see the world. You know how people  
7 become when they've been drinking. And you know how young men  
8 behave when they're on vacation. Things that aren't necessarily found in  
9 law books. Things that are from the school of hard knocks.

10 So, a couple of the jury instructions, and you're going have  
11 these, so I'm not going to sit here and have to tell them to you. All right.

12 But what you heard from the State's opening analysis is very  
13 light on the facts. I'm going to advocate a very different way of analyzing  
14 this case. I would ask to you look specifically at the facts and draw  
15 reasonable conclusions.

16 The heart of this case happens very simply in the seven  
17 minutes that the car is parked at Jake's Market or backed up at Jake's  
18 Market in front of the Westin.

19 Now, there are several things that are there that are obvious but  
20 not really commented upon. You, with your commonsense and your  
21 everyday commonsense and experience, which is actually found at jury  
22 instruction, in this particular case, I think it was 46. It says use your  
23 everyday commonsense and experience.

24 A man and woman who just met are sitting unintended, for no  
25 obvious reasons, in a parking lot at 2:00 in the morning.

1 Now, is there any doubt why they're there? All right. I told you  
2 in opening instructions Ms. Guidry occasionally works as a prostitute.  
3 There's no meaningful doubt about that.

4 What has been established that they are in the car, they're in  
5 the car and don't even turn off the lights. The car is there for seven and a  
6 half minutes, seven and a pair of seconds, minutes. The door opens up,  
7 Mr. Osorio gets out on his own, on his own, no sign of force, no scuffle, no  
8 hubbub. He gets out of the door; closes the door.

9 Ms. Guidry drives off. Doesn't peel out. Doesn't speed away.  
10 She goes through a garage that is on the far side of the garage and they  
11 are physically separated, they are geographically separated, and there's  
12 absolutely no indication of trouble.

13 Now, one of three things would appear to suggest themselves,  
14 number one, the watch fell off. Well, we kind of know that didn't happen.  
15 Actually, Mr. DiGiacomo proved the point this morning in court. The clasp  
16 on this watch is pretty strong. It is nearly, unlikely that the watch fell off  
17 accidentally in the car. Mr. DiGiacomo was having trouble even getting  
18 the clasp to unlock in the car.

19 However, comma, this clasp also tells us something else very  
20 important. The State has yet to and cannot explain, and I want you to  
21 understand this, and the State has the burden to prove this beyond a  
22 reasonable doubt, the State has to prove the case beyond a reasonable  
23 doubt. They haven't even proved the watch was stolen.

24 The watch is in the car; the watch changes hands. What are  
25 the circumstances around that? The watch changes hands when the

1 young man's wallet contains no money. Young man had been in town on  
2 vacation in Las Vegas for almost a week. He's getting ready to leave  
3 tomorrow. What does he have? He's out of money. It's 2:00 in the  
4 morning. He's been drinking for how long? This is the State's case. How  
5 long has this young man been drinking? By his friends own admission he  
6 had a couple of drinks before he went in the club and he went in the club  
7 and was in the club for three hours. You saw him come out of the club  
8 and he's actually kind of woozy on his feet. He's drunk. And that's not  
9 meaningfully in doubt. His blood level is a .168 or -- almost twice the legal  
10 limit. So that he's drunk at that point is also not meaningful in doubt.

11 Now, here's where your everyday commonsense and  
12 experience comes in. He walks out of the club. He's been drinking. He's  
13 been Vegas'd. He'd been drinking, raising hell, he's in the club, and he  
14 meets a woman whose company might be had. A few minutes later they  
15 drive out of the house -- or drive to a far away or relatively small -- or  
16 close location, where they park, and guess what we find out? Mr. Osorio  
17 has no money.

18 Now, young man drinking on vacation, looking for a little  
19 romance, a little sexual services, has no money. The watch was given as  
20 a gift or traded. The watch doesn't have to be stolen. The watch doesn't  
21 come off. The watch doesn't fall off. And here it is.

22 Now, how do we know that this was given away voluntarily by a  
23 drunk, young man? He gets out of the car, closes the door, gets out,  
24 starts walking over to Jake's Market, and off Ms. Guidry drives.

25 Now, whether he has buyer's remorse or he suddenly realizes

1 as the blood supply comes back to his head that maybe he's done  
2 something foolish. He becomes the aggressor. At this point, the watch  
3 has been transacted. There is no disturbance. There is no complaint.

4 And if Ms. Guidry had turned left, instead of right, you guys  
5 wouldn't be sitting here and that young man would have been alive today.

6 But what happens? At that moment, that's the nugget of this  
7 case, what happened in that car? And the State can't tell you because  
8 they don't know. That's the evidence of this case. What happened in the  
9 car? The State has to prove beyond a reasonable doubt.

10 Now, there are three suggestions. One of which is this watch  
11 fell off and -- actually, you're right, it didn't fall off. I assure you. You'll  
12 have this watch back in there and you can see how good this clasp works.

13 Number two, this clasp also tells us something else because  
14 that means in seven minutes Ms. Guidry, who's sitting in the driver's  
15 seat -- if I could, grab a chair here.

16 Mr. Osorio does not get out of the car. He's sitting in car seat,  
17 on the passenger side, Ms. Guidry's here, this watch is on his left hand.  
18 She has to figure out how to unclasp this watch, take it from him, secrete  
19 it away without him noticing, and then have him get out and discover it's  
20 gone all the while she's doing something else.

21 Now, how does that happen? The State can't explain it and  
22 they won't. They want you to pay -- not pay attention to what happened in  
23 the car because what happened in the car is the case.

24 How did that happen? The answer is very simple, he took it off  
25 and gave it to her. Whether he gave it to her as payment in services or

1 whether he gave it to her as a pledge for money back at the Monte Carlo,  
2 which is what she said they were going -- he wanted to go. The watch  
3 changes hands. She drives away. And interestingly enough -- and  
4 people act at the moment based on what they are thinking.

5 If he turned around and got out and says, wait a minute, she's  
6 got my watch. He reaches back in. If he got out and said, that, she stole  
7 my watch. He chases after her. That's what happens when you realize  
8 your watch is gone. This is a nice heavy watch. If you don't have it on,  
9 and you're used to having it on, you would notice it's gone quickly.

10 But he doesn't runoff after her. What does he do? She drives  
11 off. He goes the other way. Goes over to Jake's Market, thinks about  
12 things for a second, like, wait a minute, I just gave away an expensive  
13 watch, here comes the car, and now he's got a separate idea, buyer's  
14 remorse.

15 So, number one, the State has not established a grand larceny  
16 and they can't establish a grand larceny. They can't do it.

17 Now, the idea of robbery, now we focus in narrowly, like a laser  
18 beam, because what transacted in the car is the heart of this case. Then  
19 there's a second moment that's almost as equally as important and that is  
20 Mr. Osorio. Who in their right mind runs into traffic and steps in front of a  
21 moving car? Nobody in their right mind does it. Who does that? A drunk  
22 person does that. So Mr. Osorio runs in front of a car.

23 Now, if Ms. Guidry was malignantly vent on malice, as the State  
24 would have you believe -- or as my colleague here wants you to believe,  
25 there it is, run him over. Okay.

1 Oh, I asked the detective, Detective, did you look at the car?

2 Yeah.

3 See any evidence at all, collision on the front of the car?

4 No.

5 Mr. Langsdale, (phonetic) who probably was the most credible  
6 witness here because he had no -- no emotion and no ties to the case,  
7 says Ms. Guidry stops. And after Osorio stopped, does he walk around  
8 the car and said, excuse me, I think I might have made a bad deal, can I  
9 get my watch back? Or, excuse me, I need my wallet and my watch back,  
10 I left it in the cup holder. Or, excuse me, can I get my watch back? Does  
11 he do any of those things? The answer is no. What does our drunk  
12 young man do? He leaps on the hood of a car.

13 Now, you're on this planet for a long time, how many times  
14 you've somebody leap on the hood of a car in traffic? It's not an everyday  
15 occurrence. It is not the actions of someone who's using good judgment  
16 or in their right mind.

17 Now, this is the most -- functional equivalent of actually being  
18 the victim of an armed robbery by telling the guy to pull out his gun and  
19 shoot -- point it at him. He goes in front of the car. The cars not used as  
20 an instrumentality of the crime. It's Mr. Osorio who introduces himself to  
21 the element of danger. And even then Ms. Guidry holds back, shows  
22 remarkable restraint. He's on the hood of that car, by, according to  
23 Langsdale -- or what was the young man's name? Landale -- he's on the  
24 hood the car for about ten seconds.

25 Now, ten seconds doesn't sound like a lot if you're watching TV

1 or a commercial or if you're watching a football game or you got to get to  
2 the bathroom and get between half times. But ten seconds is forever  
3 when someone's pounding on your car and you're scared to death.

4 One thousand one, one thousand two, one thousand three, one  
5 thousand four, one thousand five, one thousand six, one thousand seven,  
6 one thousand eight, one thousand nine, one thousand ten. She's sitting  
7 there and he's pounding the windshield in.

8 Now, you're going to have this photograph, the photograph is  
9 back there in evidence.

10 I think it was 92. I'm sorry, madam clerk, I'm going to get these  
11 out of order on you again.

12 THE CLERK: No worries.

13 MR. MUELLER: Now, we've all been on this planet for a while,  
14 I don't know that everyone of us hasn't had a rock hit a windshield,  
15 occasionally cracking it or chipping it. Most of you guys have a feel for  
16 exactly what force that kind of represents. You don't get that kind of  
17 damage to a windshield unless you are really pounding on it.

18 Look at that, at least four, at least three, perhaps four separate  
19 areas of repeated impacts.

20 Now, how many more times could he hit that before the  
21 windshield gave way? How many more times she should she sat there  
22 and let him hit it before it gave way? At a certain point she has a  
23 reasonable fear that the windshields going to come in and she's going to  
24 receive the very next blow.

25 When she drives off Mr. Osorio makes a remarkably bad

1 decision to hold onto the car. Mr. Osorio, God bless him, is dead today  
2 because of his actions. He ran into the street. He hopped on the hood of  
3 a car. And after more, and sufficient provocation to make someone fear  
4 for their safety, he continued to hold onto the car. And when he fell off, he  
5 took a remarkably unfortunate bounce and landed on his head.

6 Mr. Osorio would be alive today, having filed an insurance claim  
7 on his watch, and back in college if he hadn't gotten drunk and run into the  
8 street. That is his fault. God rest his soul. He's a young man, sounded  
9 like he had a lot of promise. But we are not here for feelings or for  
10 prejudice or for sentimentality. We are here to get to the facts of a case.

11 There's two key moments in this case inside the car, there's no  
12 indication that a crime has been committed, none. He doesn't act like  
13 one's been committed. She doesn't act like she's getting away from one.  
14 She doubles back and drives right past him. Does that sound like  
15 someone's trying to get away? No.

16 Second bad fact, second bad decision, Mr. Osorio, angry,  
17 frustrated, intoxicated, hops on the hood a car, okay, take a second to  
18 calm off, calm down, you roll off the hood of the car, get the license plate,  
19 hey, if you're a victim of a crime, you drive off, and you get the plate  
20 number and you give a description,

21 That's not what happened here. He's twice the legal limit. He  
22 has no money. It is unfortunate but there's no crime here. It is  
23 unfortunate but there is no crime here. The watch wasn't stolen. The  
24 State hasn't proved. And when they come up for rebuttal, you know,  
25 maybe they can explain how the watch was stolen because there's no



1 proof of it.

2           Then how is there a robbery? A robbery is the elements of  
3 crime of taking, carrying away personal property of another by force or  
4 threat of force. It could be, if it immediate -- immediate consequence you  
5 use force to retain the property when challenged, that force could be  
6 sufficient to commit a robbery. But that's not this case. The cars gone.  
7 Guidry's gone. Watch is gone. There's no force. He then introduces the  
8 element of danger himself. He actually pulls the car on himself. He jumps  
9 on the hood of the car in traffic. He doesn't call for police. He doesn't call  
10 for assistance. He jumps on the hood of a car.

11           Now, O.J. Simpson went to prison for trying to get his property  
12 back. This young man goes out and tries to get his property back in the  
13 middle of traffic. You can't do that. You can't go and use force and  
14 commit crimes to get your property back. You've got to call the police and  
15 use legal process.

16           Now, when you go back there you'll have a large number of  
17 instructions. They can be a bit overwhelming. There are two that I want  
18 to draw your attention to. Number one is the commonsense instruction, in  
19 this particular case, it's found in page 46.

20           And then number 21, evidence of self-defense. The law does  
21 not require you to suffer injury.

22           Now, there's a couple things and we can kind of expand and  
23 work backwards a little bit because you know what people are thinking by  
24 their actions. Ms. Guidry is standing there confronted by this man in the  
25 middle of the road. She sits there for ten seconds while he's pounding the

1 windshield.

2 I want you to understand a few things that didn't happen. She  
3 didn't run him over. He was standing there. She could have said, oh, oh  
4 no, boom, and squealed off on him. She could have gone up over the  
5 curb and try to go around him. She could have backed up. None of that  
6 happened. She sat there and he was the attacker.

7 Now, the duty to stop. Ms. Guidry gave a long statement, much  
8 could be said about it, but the reality was, as you all saw her reaction  
9 when she found out that he was dead.

10 Now, there's a couple things, the State is using this failure to  
11 stop at the scene of an accident as a Hail Mary theory of liability. The  
12 reality is, is you have a duty to stop when there's an accident and a  
13 collision. Neither one of those were activated here. She didn't run into  
14 anything. She didn't hit anybody. She didn't run into them. She had an  
15 attacker on her car. She drove a short distance and he fell off. That's not  
16 an accident. If she did it intentionally, then that's not a collision because  
17 she didn't run into anything. That doesn't activate that felony theory of  
18 liability.

19 When you get back there you can read this law very clearly and  
20 it's very simple. We've included in the pack -- the jury instruction  
21 package, you have it, what an accident is and what a collision is. And in  
22 either case it does not apply.

23 She was the victim of a crime. This is the -- she was -- what  
24 Mr. Osorio was doing is exactly the sort of stuff that got O.J. sent back --  
25 sent to prison for trying to get his property back.

1 MR. DIGIACOMO: I object, Judge.

2 THE COURT: That is sustained.

3 MR. MUELLER: All right.

4 THE COURT: The Court is to disregard the commentary  
5 regarding an unrelated matter.

6 MR. MUELLER: You're going to go back there with the jury  
7 instruction and instructions in how to check this off. It's actually very  
8 simple.

9 There's no murder here. Not at all. There's no knife. There's  
10 no gun. There's no malice. These people barely know each other. Not  
11 guilty of any sort of murder. Just not guilty. Doesn't happen. It's not  
12 there. They haven't proved -- if you can't prove that the watch was stolen,  
13 which it's not. In fact, in all likely -- to a near certainty, it wasn't given  
14 away. It's wasn't stolen.

15 Number 2, robbery with use of a deadly weapon. There's no  
16 use of force. Not guilty. You can't have a robbery. Who introduced the  
17 element of danger to the case? Osorio did. He's the one who ran into  
18 traffic. He's in danger because of his actions. If you just stands there,  
19 there's no robbery. You can't impose criminal liability by jumping in front  
20 of a car.

21 Finally, grand larceny, how do we know the watch was stolen?  
22 Osorio is sure not acting like his watch was taken. He doesn't get out of  
23 the car and start wrestling with her. He doesn't -- he's not fighting with  
24 her. The car drives off to the north; he walks away to the south.

25 Where's the element of the crime? And we get that clasp, get

1 that clasp and look at it, because you're going to ask yourself two  
2 questions, when you feel that clasp you're going to ask, could this watch  
3 have just fallen off? The almost is almost certainly nothing. It was on all  
4 night. He's had it for four yours. It didn't fall off. And feel it. When you  
5 see how tight that clasp is. Mr. DiGiacomo couldn't get it done. And I was  
6 trying to do it right here in front of you, I couldn't get it done.

7           So how did Ms. Guidry get it undone and how did Osorio not  
8 notice it in seven minutes in a car in close, intimate contact? Didn't  
9 happen. He gave it to her. That's the only way that watch could have  
10 come off.

11           And then, finally, duty to stop at scene of accident involving  
12 death or personal injury. You will find that there's an exception for  
13 knowing. You have to know that somebody or reasonably should have  
14 known that somebody was hurt or killed. You'll see the definition and  
15 statues of collision or accident. Neither of which apply to escaping  
16 someone who's attacking you. All right. So the reality is this is also a not  
17 guilty.

18           Grand larceny, not guilty.

19           Now, these are tough -- this is a tough case. There's absolutely  
20 no one happy that this young man is dead. It brings absolutely nobody  
21 any joy. It is not one of the higher uplifting cases I've been involved in.  
22 But the reality was he was in town, Las Vegas, for a week over the  
23 holidays, he'd been partying like a rock star, out drinking, he's at 2:30 in  
24 the morning, he's spent all his money, and he falls in with a woman,  
25 they're in a car going together, and the watch changes hands.

1           What evidence do you have that it was a theft? The answer is  
2 none. Not a scintilla of evidence. In fact, all the surrounding  
3 circumstances kind of indicated it was a gift or some other sort of  
4 exchange was worked out in the car. You're all adults, you can figure out  
5 what happened in there for those seven minutes.

6           But when he gets out he's not looking for his watch and he's not  
7 chasing after the car.

8           So, tough case, folks, but respectfully the law and the facts lead  
9 you to the conclusion that you have to find Ms. Guidry not guilty of all four  
10 charges. Okay.

11           THE COURT: Thank you, Mr. Mueller.

12           Rebuttal.

13           MR. DIGIACOMO: Thank you.

14           **REBUTTAL CLOSING ARGUMENT BY THE STATE**

15           MR. DIGIACOMO: In any given trial, criminal or civil, it doesn't  
16 really matter, any time 12 people are sitting here at the end of the day  
17 there's only one question that really has to be answered by 12 jurors  
18 during deliberation, it's our system of justice and the answer is always, it's  
19 a search for the truth.

20           What is the truth? And Mr. Mueller says, there is absolutely no  
21 way the State established that the watch was taken, although he's  
22 ignoring a really large piece of evidence, which would be the pain staking  
23 two hours we sat here with Ronneka Guidry denying that the watch fell off,  
24 denying that the watch was given to her, denying that the watch was  
25 accidentally left in her car.

1                   And if you say to yourself, why would people lie? Watch what  
2 Ms. Guidry does during her interview, people only lie for a reason, it's to  
3 benefit them.

4                   So if the answer was, because she clearly admits at the very  
5 end there, she's a prostitute; right? So if the answer is, hey, he gave me  
6 the watch so that I can have -- so he could have fellatio performed on me,  
7 although there's zero evidence that fellatio or any sexual conduct  
8 happened in that vehicle, that would have been her answer.

9                   And if it was, it was accidentally fell off in the car and I found it  
10 later when I was taking the picture of my windshield, that would have been  
11 a defense to her. She wouldn't have lied about that particular fact. Why is  
12 she lying if she didn't steal the watch?

13                  But that's not the only thing you have here to establish she's the  
14 perpetrator of this particular crime. And I agree with Mr. Mueller that the  
15 really -- this case comes down to the vehicle and what happened in that  
16 vehicle for that seven minutes.

17                  Because as a matter of law, no way you can look at this, if she  
18 has the watch in her possession unlawfully at 12 -- or 2:20 and 12  
19 seconds, when she hits the accelerator, she's guilty of first degree murder,  
20 robbery with use of a deadly weapon, grand larceny over \$3500.

21                  And to be honest with you, the count that matters probably the  
22 least is the duty to stop. But Mr. Mueller suggested it was a Hail Mary.  
23 Who cares one way or the other. But she did have a duty to stop. Read  
24 the definition of an accident.

25                  First of all, was there a collision? Well, I would think that

1 Edward Osorio would suggest to you, if he was here, Eduardo would  
2 suggest to you, that when his head hit that cement or that asphalt, that  
3 was what he would consider a collision. And a vehicle that is involved in  
4 causing a collision is something that if the driver's involved, they have the  
5 duty to stop. But I'll leave you guys to the jury instructions there.

6 What I want you to do is actually go back there and do your job.  
7 Don't go back there, huddle in the hall, and make some sort of decision.  
8 Look at this evidence. Because this is what the evidence is going to show  
9 you. And I'm going to use things that Ms. Guidry said during her  
10 statement to tie into other pieces of evidence. And this is what a jury is  
11 supposed to do in that back room, figure out what the truth is.

12 You know that Edward Osorio is here, Eduardo Osorio is here,  
13 you know that he has no money, as far as anybody can determine  
14 whatsoever, but he has a credit card and he has a debit card. His friend  
15 went upstairs to go to sleep and he went into the Omnia nightclub and  
16 when he got out of the Omnia nightclub he was pretty darn drunk. You  
17 see him sort of walk and sit on a wall and sit there next to another girl who  
18 looks really drunk because she keeps going to like this, and pushing her  
19 nose up. And eventually she gets -- he gets up and he walks towards the  
20 bar area.

21 And Ms. Guidry is right, Mr. Osorio is the first one to make any  
22 communication between him and Ms. Guidry. He says to her, according  
23 to her, Hey, where are the taxi stands? And her response is, Hey, I got a  
24 car, I can drive you.

25 That is the predator and the prey. And Mr. Osorio is the prey.

1 He is the drunk young \$500 or \$750 shoe wearing kid, who is highly  
2 drunk, who comes upon a pro, who says, Hey, come get into my vehicle, I  
3 can drive you to the Monte Carlo. And that conversation had to occur  
4 because Mr. Osorio is at the Monte Carlo. How does she know that fact  
5 unless that conversation occurred?

6 But back yourself up and watch Ms. Guidry as she's on the  
7 phone with Amber. Remember from the call logs that we showed you?  
8 She's on the phone with Amber. Amber's the woman who she is proud to  
9 tell she got an all gold from.

10 Watch what she does, she's talking to a man, he's like in a  
11 T-shirt or something, and she's talking to him and she doesn't really touch  
12 him. But then she walks up to a man in a suit and she comes onto him,  
13 and it looks just like a prostitute coming onto to a john, and what is the  
14 first thing Ms. Guidry does? She slides her hand right down his arm  
15 sleeve. What do you think Ms. Guidry is checking for when she does  
16 that?

17 And then when she has contact with Osorio and they're sitting  
18 there talking and she plays with his little silver necklace, notice her hand  
19 slides right down his arm, on his left arm. What is Ms. Guidry checking  
20 for? This is the pro. The predator and he is the prey. He don't know  
21 better. And he gets into that vehicle.

22 Mr. Mueller suggests to you that there's some sort of sexual  
23 activity in that vehicle. And there's no evidence of sexual activity. There's  
24 evidence of some sort of distraction. But I would suggest to you, probably  
25 not even that.



1           The odds are Mr. Osorio falls asleep; right? Because how do  
2 you get this watch off somebody? Well, it's one of two things, either she  
3 did start to play with his genitals and he was distracted or he just fell  
4 asleep because he's so drunk.

5           Well, what else do you know? She says, Oh, the reason I'm  
6 going this way to Koval. For those of you who's lived in town talk about it.  
7 If you're in the Caesars garage and you come out of that garage, what do  
8 you have to do? You make a quick left, you're right on Martin Street  
9 there, and you are -- or sorry, Frank Sinatra, and you go straight down  
10 and you pull into the Monte Carlo. There are no police officers behind the  
11 casinos. So if you want to avoid your plate, that's the way you go.

12           That's not what she does. She drives out of the Caesars, she  
13 waits at a light to turn left onto Flamingo, she drives down Flamingo, she  
14 drives into a parking lot, and she backs her car in. Why is she backing  
15 her car in? Because she's a pro and she knows she has to getaway.

16           And then what does she do? She tells you exactly what she  
17 did. Hey, get out of the car, your taxis over there.

18           A disoriented, drunk Mr. Osorio, what is he doing? Okay, okay,  
19 okay. She gets him out of the car. Whether or not it's voluntary or she  
20 pushes, whatever he does, he gets out of the car and she drives off.

21           And the suggestion that this is not an ongoing crime when 17  
22 seconds elapsed between the time she pulls away and her car door shuts.  
23 And if you even look, she uses the momentum of the car to close that car  
24 door. She pulls out and turns right. That's what causes the door to close.  
25 She doesn't even wait for him to be fully out of the vehicle. She drives off

1 to the right, the curbing forces her to go through that way. You don't think  
2 she knows exactly where she is and exactly where she's going?

3 And for those of you who live in Las Vegas, sure you can make  
4 a left on Koval, but then you're going to be in the middle of the Linq, those  
5 parking garages, and you're going to have to get through a bunch of lights  
6 to get to Sands.

7 You don't have an escape route. And so if he has a phone and  
8 calls 9-1-1 and reports that, she's likely to get caught. So what's the  
9 easiest way out there? Right on Koval, right on the street.

10 She doesn't think, first of all, he's behind that building. She  
11 doesn't think that he's going to see her coming down Koval and can make  
12 a bee line to her car in time.

13 Ask yourself, how is it possible she did not steal this watch?  
14 She tells people she's going to work. The immediate thing that she tells  
15 people, on all those text messages, isn't, Hey, some guy attacked me and  
16 it's really weird because he gave me a watch.

17 No. It's, I'm reporting to my friend, I got an all gold. And, Oh,  
18 she's sending it to the fence. And, Oh -- you saw in one of those text  
19 messages -- send it to the same address you sent before. So it's a friend  
20 she already had lined up for the watch.

21 And you're suggesting to me that we didn't establish?  
22 Mr. Mueller told you to use your commonsense and tells you this isn't a  
23 grand larceny. And once it becomes a grand larceny, as a matter of law,  
24 every other crime falls into place. Because once she takes the watch, he  
25 has the right to stop.

1           Now, I know the detective says that all those injuries on that  
2 windshield are from -- or at least he believes are from the hand pushing.

3           But I ask you to do me something else, and I'm not going to pull  
4 out the picture, but pull out the autopsy picture where Mr. Osorio is laying  
5 on that slab, that slab that she put him on, and look at his injuries. Ask  
6 yourself, you can look at the photograph within the hospital too if you're  
7 worried somehow he had been cleaned up. But ask yourself, how it is the  
8 mark on the left side of his face has those little circular marks that are on  
9 there. Does that look like asphalt to you? And he has an injury right here.

10           So when she hit the pedal, whether or not he had cracked that  
11 windshield before with that fist or not, because he doesn't have a broken  
12 hand. So, I, you know, potentially -- there's no doubt he's punching the  
13 windshield or hitting the windshield. But not all of that damage is  
14 necessarily from the fist because he has that injury on his face and an  
15 injury on his shoulder consistent with hitting, then falling off, the back of  
16 his head, look at that injury, it's got this big rip on the back of his skull, and  
17 then he slides for 42 feet.

18           And the suggestion is there's no force? There's 52 or 56,000  
19 pounds of force that's applied to his body in an effort to escape with his  
20 property. That's a robbery.

21           And once you get to the robbery, well, someone died,  
22 intentional, unintentional, or even accidental.

23           Nobody's suggesting to you that Ms. Guidry went out that night  
24 and decided, I'm going to kill somebody for their watch. Nobody is  
25 suggesting to you that when she decided to hit the accelerator on the car,

1 she reasonably perceived that he necessarily was going to die, but she  
2 certainly didn't really care about him. And that's the one thing you can  
3 take from her statement. The absolute one thing you can take from her  
4 statement that there is absolutely no empathy within Ms. Guidry for the  
5 fact that Mr. Osorio died.

6 But she does tell you that she knows exactly why he's banging  
7 on her window. She says it before the detective even says it. She says, If  
8 a guy's acting like that, I would have given him back the property if I had  
9 the property.

10 Now, he's already told you, Mr. Mueller, that the evidence  
11 establishes she has the property. So why is it if she's not stealing that  
12 property, she doesn't just hand him the watch. And the answer is really  
13 simple, because she cared more about the watch than she did his life. It  
14 really wasn't that serious to her. It really wasn't.

15 Unfortunately for Mr. Osorio he made some bad choices. And  
16 you're instructed here, you're not here to decide whether or not Mr. Osorio  
17 did or didn't do something wrong that night. He made horrible choices.  
18 He got the death penalty for his choices that night.

19 The question for you, as a jury is, what are the facts and then  
20 apply it to the law?

21 In this particular case, if you're doing your duty, which is apply  
22 the facts, make a determination, and apply it to the law, you can't come up  
23 to any other conclusion than guilty of all four counts.

24 There's at least one person in this room who knows beyond any  
25 doubt that she took Eduardo Osorio's watch.

And I suggest to you, if you're doing your job, you'll go back to that room, you'll talk about it, you'll look at the evidence, and you will make a determination and come back to this room and tell Ms. Guidry you know exactly what happened in that car.

Thank you.

THE COURT: All right. Ladies and gentlemen, that concludes the argument. I will tell you at this time who are alternate jurors are. And I'm going to ask that you stay behind so I can talk to you and give you some additional instructions. You will not be excused from jury service until the jury reaches a verdict but we'll talk about that.

So our alternates for this jury are juror 13, Jeffrey Wang, and, juror 14, Tiffany Johnson. So you will not be going back to deliberate.

The rest of the jurors, you'll please go with the marshal to the jury room. He will bring in all of the exhibits, which were admitted together with the verdict form, and you will have a copy of those instructions -- of the instructions I read to you also brought to you.

Let's see here. Now, the exception to the exhibits that I'm going to allow to go back to the jury room are the shoes. The shoes were not cut open in open court so they're still sealed in the package. If for some reason someone wants to see the shoes, I'm going to have to talk to counsel about that and we will decide that presence -- or that decision before you'll be allowed to see that exhibit, if you so deem necessary.

So with that we can -- yes, thank you, swear them in.

[The Court Clerk swears in the officers to take charge of the jury and the alternates]

1 [Jury panel exits the courtroom to deliberate]

2 [In the presence of juror number 13 and 14]

3 THE COURT: All right. Let the record reflect that the jury has  
4 left the room. We still have our two alternate jurors present.

5 You may be seated. Yes, thank you.

6 All right. Mr. Yang and Ms. Johnson, thank you so much. I  
7 know you were diligently paying attention during the course of the trial to  
8 the evidence. As I mentioned earlier, you are not released as jurors  
9 because should anything come up during deliberations, somebody gets  
10 sick, something else happens, we may need to call one or both of you  
11 back to begin deliberations again in order to reach a verdict in this case.

12 I know that the marshal has your contact information. I ask that  
13 you do not discuss the facts of this case with -- amongst yourselves or  
14 with anybody else until you receive a phone call that either, A, we're  
15 bringing you back in to help deliberate, or, B, that a verdict has been  
16 reached and the case has concluded. That being because of that  
17 admonition that I gave you over and over and over again, you're not to talk  
18 about the facts of the case or consider it until you deliberate with your  
19 fellow jurors. And because you're not in there with them, you're not doing  
20 that.

21 Do both of you understand that?

22 [Alternate Jurors in Unison: Nods head.]

23 THE COURT: All right. So you are free to leave, you're also  
24 free to stay. So my -- we need to -- right we need to give you guys your  
25 payments for being jurors.

1 I thank you so much for your patience during the course of the  
2 presentation of evidence. The wheels of justice are never quick. This  
3 moved along relatively quickly. But I appreciate your service.

4 All right. We have these for you. And why don't we actually  
5 take them out this way.

6 THE JUDICIAL EXECUTIVE ASSISTANT: Okay.

7 THE COURT: Okay. So you follow my judicial assistant,  
8 Ms. Beltran, out.

9 And thank you again.

10 [Outside the presence of the jury panel]

11 THE COURT: Let the record reflect the alternate jurors have  
12 left the room.

13 We can all be seated again.

14 Counsel, do we have your contact information?

15 MR. DIGIACOMO: You don't yet, but you will shortly.

16 MR. MUELLER: We will.

17 What's the Court's pleasure? We used to -- we used to let them  
18 sit out until 1:00, 2:00, 3:00 in the morning as long as they're deliberating.

19 THE COURT: Well --

20 MR. MUELLER: But the budget crisis changed all that.

21 THE COURT: -- in full disclosure, at least one juror said they  
22 would have difficulties coming back on Monday. So my intention is to let  
23 them go -- we'll do a check in about 6 o'clock, if we don't have a verdict, to  
24 see where they are. My inclination is to stay until about 7:00 or 8:00, if  
25 they're not back with their verdict. And then we'll see where we are.

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[Colloquy]

THE COURT: Anything further we need to put on the record?

MR. DIGIACOMO: No, Your Honor.

MR. MUELLER: No, Your Honor.

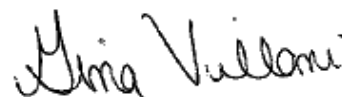
THE COURT: Okay. We can go off the record.

Thank you.

[Jury trial, Day 5, concluded at 4:29 p.m.]

\* \* \* \* \*

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Gina Villani  
Court Recorder/Transcriber  
District Court Dept. IX





RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,  
Plaintiff,  
vs.  
RONNEKA ANN GUIDRY,  
Defendant.

CASE#: C-18-329810-1  
DEPT. IX

BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE  
MONDAY, AUGUST 19, 2019

**RECORDER'S TRANSCRIPT OF HEARING:  
DAY 6 - JURY TRIAL**

APPEARANCES:

For the State:

MARC DIGIACOMO, ESQ.  
Chief Deputy District Attorney  
MICHAEL J. SCARBOROUGH, ESQ.  
Deputy District Attorney

For the Defendant:

CRAIG A. MUELLER, ESQ.

RECORDED BY: GINA VILLANI, COURT RECORDER

1 Las Vegas, Nevada, Monday, August 19, 2019

2  
3 [Jury Trial began at 1:18 p.m.]

4 [Outside the presence of the jury panel]

5 THE COURT: All right. We are back on the record in Case  
6 C-18-329810-1, State of Nevada versus Ronneka Guidry.

7 The record will reflect the presence of the State, as well as  
8 counsel for the defendant, and the defendant.

9 Good afternoon.

10 THE DEFENDANT: Good afternoon.

11 THE COURT: All right. So the jury has a question, it reads, If  
12 we find defendant guilty of robbery, can involuntary manslaughter be the  
13 accompanying verdict, question mark, or, comma, does by definition,  
14 comma, turn into first degree murder.

15 So before I came in here I looked at the instructions we sent  
16 back with them, my inclination is to refer them back to the instructions.

17 Specifically, or not, it's up to you-all, the specific instructions  
18 that I thought were appropriate based on the question would be instruction  
19 number 8, which defines the felony murder rule.

20 Instruction number 11, which talks about all murder that isn't  
21 first degree is second degree.

22 Instruction 12 which goes on about that.

23 Instruction 13 is involuntary manslaughter.

24 And instruction 14 talks about if you find the State has  
25 established the defendant has committed murder, you shall select the

1 appropriate degree as your verdict.

2 So it'll be 11 through 14 -- oh, sorry, 8 and 11 through 14. Or  
3 we can just refer them back to the instructions in general.

4 State, I'll hear from you first.

5 MR. DIGIACOMO: Normally it's better to identify the  
6 instructions that cover it. I don't know if we necessarily needed all of  
7 them.

8 But if the Court wants to, I don't necessarily have an objection  
9 to 8, 11 through 14. I would think it's -- I'm now knowing them off the top  
10 of my head, but it would basically be the felony murder and the involuntary  
11 instruction. Because I believe the involuntary instruction specifically says  
12 that if the felonious intent is robbery, than the crime is first degree murder.

13 I guess there is one of that in the second degree murder too.

14 THE COURT: Correct.

15 MR. DIGIACOMO: So, yeah, all right, 8, 11 through 14 is fine  
16 with the State.

17 THE COURT: Mr. Mueller.

18 MR. MUELLER: Defense -- Your Honor, this is a unique, as the  
19 Court's seen now, this isn't your run of the mill, hey, you ripped me off my  
20 drug deal and I -- and shot the guy dead in broad daylight kind of murder.

21 The theories are kind of complex and they interplay with each  
22 other and I am deeply concerned that if we draw any intention to the jury  
23 instructions that we will be simply directing them to reach a verdict.

24 And upon consideration and reflection, on a moment's notice, I  
25 actually decline. I think we should just tell them they've got to read the

1 instructions as they exist.

2 THE COURT: Oh, I see. Okay. That's a little different than  
3 your initial statement.

4 So you're worried about directing them to an instruction?

5 MR. MUELLER: I think what we would be doing is we don't  
6 have a particularly learned jury, as I recollect, we don't have a lot of  
7 advanced degrees on there.

8 And I believe that if you draw any attention to any jury  
9 instructions at this point, you're simply going to be suddenly signaling  
10 them what the verdict should be and I think we should just send them  
11 back and they've got to live with the rules as we've given 'em to them.

12 THE COURT: I appreciate your position, I'm going to -- I am  
13 going to direct them to some of the instructions.

14 Based specifically on the question that is, Can involuntary  
15 manslaughter be the accompanying verdict, or if by definition, does it turn  
16 to first degree murder.

17 I am going to write down -- and I'll let you-all take a look at it  
18 after I write it down -- instruction 8, which defines the felony murder rule,  
19 and then instructions 11 through 14, which talk about the different degrees  
20 of murder.

21 And specifically if first degree -- if -- all murder that's not first  
22 degree is second degree and then it goes down from there to involuntary  
23 manslaughter.

24 So let me write this down.

25 Actually -- I'm actually going to direct them to rule number 2

1 also, instruction number 2, which says, If in these instructions any rule,  
2 direction, idea is repeated or stated to you in different ways there's no  
3 emphasis thereon intended by me.

4 And so it directs them not to single out any single instruction.

5 Any objection to that one?

6 MR. DIGIACOMO: No.

7 THE COURT: Okay.

8 MR. MUELLER: I'm going to have to lodge an objection, Judge,  
9 you've heard me politely, I thank you, but I think we are at peril and we're  
10 engaging in a perilous activity. I think --

11 THE COURT: And what's the peril?

12 MR. MUELLER: That we're going to suggest a verdict to them.

13 They have so many conflict -- there's so many jury instructions,  
14 for a criminal case it's extraordinarily large number, at least for a state  
15 court criminal case, there's 54 jury instructions, that's almost twice the  
16 normal.

17 And I'd ask the Court to just read number 2 to them and be  
18 done with it. Or give them number 2 and tell them to go back and reread  
19 it.

20 THE COURT: All right. I'm going to note your -- I'll call it an  
21 objection for the record.

22 It's my duty to help the jury and the instructions are designed to  
23 help them. So I'm going to direct their attention to the applicable  
24 instructions.

25 [Pause in proceeding]

1 THE COURT: Let me ask what term you-all would like to use,  
2 please refer no instructions 2, 8, 11, 12, 13, 14 to resolve, to? Any word  
3 in particular?

4 MR. MUELLER: For just -- for guidance.

5 MR. DIGIACOMO: For guidance.

6 THE COURT: All right. I like that.

7 MR. DIGIACOMO: That's fair.

8 MR. MUELLER: And remember that -- and then --

9 THE COURT: Well, 2 tells them that they can't take any  
10 instruction --

11 MR. MUELLER: Right.

12 THE COURT: -- more.

13 MR. MUELLER: Okay.

14 THE COURT: That's why I included 2 in that instruction.  
15 Okay.

16 MR. MUELLER: All right.

17 THE COURT: All right. It reads, Please refer to the instruction  
18 numbers for guidance.

19 And I said, thank you and I signed it. And I will date it today  
20 also and the time.

21 All right. That's the only question we have received. You-all  
22 going to be in the area?

23 MR. MUELLER: I've got to be down in the basement.

24 I've actually got four minutes. I've got to take an arraignment.

25 THE COURT: Okay. All right. No problem.

1 Do you get service down there, Mr. Mueller?

2 MR. MUELLER: No.

3 Actually -- actually, fortunately I had a few minutes to kill, so I  
4 walked upstairs just to see if I got any cell phone messages and that's  
5 how I got the message to be here.

6 THE COURT: Oh, okay, good. All right.

7 Well, if we need you, we'll attempt to call you or find you.

8 [Pause in proceeding]

9 THE COURT: Anything further?

10 MR. MUELLER: No, thank you, Your Honor.

11 THE COURT: Okay. We'll see you in a little bit.

12 MR. SCARBOROUGH: Not from the State, Your Honor.

13 THE COURT: Thank you.

14 [Recess at 1:26 p.m.]

15 [Jury trial resumed at 3:31 p.m.]

16 [Outside the presence of the jury panel]

17 THE COURT: All right. We're back on the record in  
18 Case C-18-329810-1, State of Nevada versus Ronneka Guidry.

19 I understand that there is a verdict.

20 My marshal is currently lining the jurors up to bring them in.

21 Anything we need to address before we bring the jury in?

22 MR. DIGIACOMO: No, Your Honor.

23 MR. MUELLER: No, Your Honor.

24 THE COURT: All right. Please be seated.

25 We'll wait for them to come in.

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[Pause in proceeding]

[In the presence of the jury panel]

THE COURT: Welcome back, ladies and gentlemen. It's my understanding that we have a verdict.

Have we chosen a foreperson, and if so, who is that person?

JUROR NUMBER 4: [Raises hand.]

THE COURT: All right.

Good afternoon.

Has the jury reached a unanimous verdict as to each count in the Indictment?

JUROR NUMBER 4: Yes.

THE COURT: All right. If you could please hand the verdict form to Marshal Enriquez.

Okay. All right. I have reviewed the verdict form. It appears to be properly completed.

The clerk will now read the verdict of the jury.

THE CLERK: District Court, Clark County, Nevada, The State of Nevada, Plaintiff, versus Ronneka Ann Guidry, Defendant, Case Number C329810, Department Number 9.

Verdict, we the jury in the above entitled case, find the defendant Ronneka Ann Guidry as follows:

Count 1, murder with use of a deadly weapon, guilty, of second degree murder.

Count 2, robbery with use of a deadly weapon, guilty of robbery.

Count 3, grand larceny, guilty of grand larceny \$3500 or more.



1 Count 4, duty to stop at a scene of crash involving death or  
2 personal injury, guilty of duty to stop at scene of crash involving death or  
3 personal injury.

4 Dated this 19th day of August 2019, Justin Jackson, foreperson.

5 Ladies and gentlemen of the jury, is this your verdict as read so  
6 you say you one so say you all.

7 [The Jury Panel in Unison: Yes]

8 THE COURT: All right. Does either party wish to have the jury  
9 individually polled?

10 MR. MUELLER: Yes, defense would ask that the jury be polled.

11 THE COURT: Okay.

12 THE CLERK: Juror Number 1, are these your verdicts as read?

13 JUROR NUMBER 1: Yes.

14 THE CLERK: Juror Number 2, are these your verdicts as read?

15 JUROR NUMBER 2: Yes.

16 THE CLERK: Juror Number 3, are these your verdicts as read?

17 JUROR NUMBER 3: Yes.

18 THE CLERK: Juror Number 4, are these your verdicts as read?

19 JUROR NUMBER 4: Yes.

20 THE CLERK: Juror Number 5, are these your verdicts as read?

21 JUROR NUMBER 5: Yes.

22 THE CLERK: Juror Number 7, are these your verdicts as read?

23 JUROR NUMBER 7: Yes.

24 THE CLERK: Juror Number 8, are these your verdicts as read?

25 JUROR NUMBER 8: Yes.

1 THE CLERK: Juror Number 9, are these your verdicts as read?  
2 JUROR NUMBER 9: Yes.  
3 THE CLERK: Juror Number 10, are these your verdicts as  
4 read?  
5 JUROR NUMBER 10: Yes.  
6 THE CLERK: Juror Number 11, are these your verdicts as  
7 read?  
8 JUROR NUMBER 11: Yes.  
9 THE CLERK: Juror Number 12, are these your verdicts as  
10 read?  
11 JUROR NUMBER 12: Yes.  
12 MR. MUELLER: You skipped juror six.  
13 MR. DIGIACOMO: We skipped number six, madam clerk.  
14 THE COURT: 6, yes.  
15 THE CLERK: Oh.  
16 Juror number 6, is this your verdict as read?  
17 JUROR NUMBER 6: Yes.  
18 THE CLERK: Thank you.  
19 Sorry.  
20 THE COURT: Thank you.  
21 That's okay.  
22 All right. Ladies and gentlemen, thank you, on behalf of the  
23 Court and the parties for your service here as jurors. I know it was a long  
24 week and a lot of complicated subjects to deal with. So I really appreciate  
25 all the time and effort you put into your service here.

1 I hope that you would look forward to being a juror again.  
2 Although, you will now be free of service here in Clark County, at least in  
3 the county level, for approximately two to three years. It depends on  
4 when they call you again.

5 You know, I think I said this at the beginning, but, you know, we  
6 all get to play a role in electing all kinds of officials. But in the end, as  
7 citizens, jury service is one of the only ways you can play a direct role in  
8 our government. And so it's so important and so we're so grateful for your  
9 service.

10 I am going to let you know that -- I'm going to meet you in the  
11 back, just to give my individual thanks to each of you.

12 Now, the case is over you can talk to the parties, if you so wish,  
13 but you do not have to. It's possible that the attorneys will want to speak  
14 with you outside the courtroom when you're done here.

15 Again, I ask that you respect your fellow jurors in having those  
16 conversations, if you choose to talk to them. And they will understand  
17 completely if you ultimately decide not to talk to them.

18 So, with that, thank you again.

19 If you could follow Marshal Enriquez to the jury room, I'll be right  
20 with you.

21 MR. MUELLER: Your Honor --

22 THE COURT: Hold on, let's let the jury leave the room.

23 [Outside the presence of the jury panel]

24 THE COURT: All right. Let the record reflect that the jury has  
25 left the room.

1 Yes, sir.

2 Please be seated.

3 MR. MUELLER: Just -- when Judge Johnson was on his first  
4 year on the bench from the U.S. Attorney's Office I did by happenstance  
5 ended up doing three of his first four trials so. And in each one of those  
6 occasions the jury disappeared in the room and I never got a chance to  
7 talk to any of my jurors, which obviously, as you know, is a good way for,  
8 even if you lose, to get some feedback on a case.

9 So I just want to sure that I understand where they're going to  
10 be and when they're going to be. Because I'd like to debrief them for -- or  
11 at least listen to what they had to say.

12 THE COURT: Well, they will come out this side door here, once  
13 I finish talking to them.

14 MR. MUELLER: Okay.

15 THE COURT: And then if they want to talk to you, they can. As  
16 I instructed them, they don't have to but they can talk to you so.

17 MR. MUELLER: That's fine.

18 THE COURT: They might -- they might opt out of that.

19 MR. MUELLER: All right. Thank you.

20 THE COURT: Anything further?

21 MR. DIGIACOMO: Just a sentencing date.

22 THE COURT: All right. The defendant will be remanded  
23 pending sentencing.

24 THE CLERK: October 7th, 8:30.

25 MR. MUELLER: All right. Thank you.

1 THE COURT: Hold on.  
2 Actually, October 7th -- give me one second. I might need to  
3 change that sentencing date.  
4 I'm going to be at judicial college that week.  
5 Are the parties available for a sentencing on Friday the 18th?  
6 MR. MUELLER: That will work.  
7 THE COURT: Mr. DiGiacomo.  
8 MR. DIGIACOMO: Just checking my calendar right now.  
9 We'll make it work.  
10 THE COURT: Make it work, okay.  
11 MR. DIGIACOMO: Either myself or Mr. Scarborough will be  
12 here.  
13 THE COURT: Let's set sentencing for this at 11 o'clock in the  
14 morning because I have another contested sentencing at 9:30.  
15 THE CLERK: Okay. So that will be October 18, at 11:00 a.m.  
16 THE COURT: Do we anticipate the victim's family being  
17 present for that?  
18 MR. DIGIACOMO: I don't think they'll come back --  
19 THE COURT: Okay.  
20 MR. DIGIACOMO: -- knowing the mandatory nature of the  
21 sentencing, at least on one count.  
22 So I will confirm and let you know. But I don't think so.  
23 THE COURT: Okay. Yes, obviously just file something so I'm  
24 prepared and set enough time aside to allow for them to address.  
25 MR. DIGIACOMO: Yeah, certainly, we'll file the file the witness

1 notice, if necessary.

2 THE COURT: All right. Anything further from the State or from  
3 the defense?

4 MR. MUELLER: No, Your Honor.

5 MR. DIGIACOMO: No, Your Honor.

6 THE COURT: Thank you.

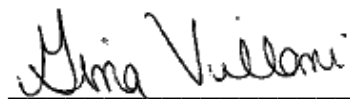
7 MR. DIGIACOMO: Thank you, Judge.

8 THE COURT: Thank you, both.

9 [Jury Trial, Day 6, concluded at 3:39 p.m.]

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20 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
audio/video proceedings in the above-entitled case to the best of my ability.

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23 Gina Villani  
24 Court Recorder/Transcriber  
25 District Court Dept. IX



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 THE STATE OF NEVADA,  
9 Plaintiff,

CASE#: C-18-329810-1  
DEPT. IX

10 vs.

11 RONNEKA ANN GUIDRY,  
12 Defendant.

13  
14 BEFORE THE HONORABLE CRISTINA D. SILVA, DISTRICT COURT JUDGE  
15 FRIDAY, OCTOBER 18, 2019

16 **RECORDER'S TRANSCRIPT OF HEARING:**  
17 **SENTENCING**

18  
19 APPEARANCES:

20 For the State:

MARC DIGIACOMO, ESQ.  
Chief Deputy District Attorney  
MICHAEL J. SCARBOROUGH, ESQ.  
Deputy District Attorney

21  
22  
23 For the Defendant:

CRAIG A. MUELLER, ESQ.

24  
25 RECORDED BY: TRISHA GARCIA, COURT RECORDER

1 Las Vegas, Nevada, Friday, October 18, 2019

2  
3 [Hearing began at 11:56 a.m.]

4 THE COURT: Calling Case C-18-329810-1, State of Nevada  
5 versus Ronneka Guidry.

6 I always say that -- did I say that right, Ms. Guidry?

7 THE DEFENDANT: Yes.

8 THE COURT: Good morning.

9 THE DEFENDANT: You too.

10 THE COURT: All right. This is the date and time set for  
11 sentencing. Are the parties ready to proceed?

12 MR. DIGIACOMO: Yes, Your Honor.

13 MR. MUELLER: We are, Your Honor.

14 May I -- before we proceed, may I have Ms. Guidry stand out at  
15 the defense table with me?

16 THE COURT: Are there any victim speakers?

17 MR. DIGIACOMO: There will be at least one.

18 THE COURT: Okay. So not at this time. We can -- we can  
19 move her over after -- after the victim speakers, if you'd like. Just let me  
20 know if you want to do that. All right.

21 MR. MUELLER: Never mind, Judge, I'll just stand next to her.

22 THE COURT: Okay. All right. So we are here for sentencing,  
23 jury returned a verdict on August 19th of 2019, finding her -- finding  
24 Ms. Guidry guilty of second degree murder, robbery, grand larceny, and  
25 duty to stop at the scene of a crash involving death or personal injury.



1 I have reviewed the presentence investigation report dated  
2 October 1st, 2019.

3 I'll start with defense counsel, have you had a chance to review  
4 that PSI?

5 MR. MUELLER: Yes, I have, Your Honor.

6 THE COURT: Anything in there that needs to be changed or  
7 brought to my attention?

8 MR. MUELLER: No, Your Honor.

9 THE COURT: All right. Ms. Guidry, have you reviewed the PSI  
10 from October 1st of 2019?

11 THE DEFENDANT: I have seen it.

12 THE COURT: Anything in there that needs to be changed or  
13 brought to my attention?

14 THE DEFENDANT: No.

15 THE COURT: All right. So I'm going to start with the State and  
16 if you could let me know your position regarding sentencing and why you  
17 are seeking that sentence. When you're ready.

18 MR. DIGIACOMO: I am. I just have a question for the Court.  
19 Yesterday we sent over four jail calls with transcripts that have been  
20 previously provided to Mr. Mueller as well. I brought them with me, if the  
21 Court didn't have a chance to review them. Otherwise I'll just make them  
22 a court exhibit.

23 MR. MUELLER: I object to these exhibits. I learned about  
24 them about five minutes ago in the hallway. They're -- if -- taking my  
25 colleague at his word, they're completely superfluous and after the fact

1 and they're inappropriate for argument.

2 THE COURT: I'm going to overrule the objection on that basis.

3 Do you need additional time to review those transcripts or calls  
4 with your client before we proceed with sentencing here today?

5 MR. MUELLER: Yes, Judge, I do.

6 THE COURT: Okay. We will take a brief recess to allow him to  
7 go over those calls because I will consider them. I will make them a court  
8 exhibit. It'll be a composite exhibit. It will be one disc. It has four  
9 recorded calls and four transcripts.

10 And for the record, I did review them before sentencing here  
11 today.

12 MR. DIGIACOMO: Okay. I'll play them for Mr. Mueller.

13 THE COURT: Oh, all right. So I'll step out, you play it, let him  
14 talk to his client for a moment, and I'll be right back.

15 MR. DIGIACOMO: Sure.

16 THE COURT: All right. Thank you.

17 MR. DIGIACOMO: Thank you.

18 [Recess taken at 11:58 a.m.]

19 [Hearing resumed at 12:07 p.m.]

20 THE COURT: Back on the record in Case C-18-329810-1,  
21 State of Nevada versus Ronneka Guidry.

22 Everyone may be seated.

23 All right. Are we ready to proceed?

24 MR. MUELLER: Yes, Judge. I want to renew my objection to  
25 these conversations. These apparently are a series of conversations

1 immediately and promptly after Ms. Guidry was convicted. Having been  
2 around in litigation for a long time on both sides, sometimes people vent  
3 and say things that they don't mean. I don't see that there's anything  
4 dispositive or evidentiary value on these phone calls. And they seem to  
5 be designed to simply inflame the Court's passion without getting us to the  
6 sentencing result that is appropriate here. And I object to their admission.

7 THE COURT: All right. I'm going to overrule the objection. I do  
8 believe they are relevant to things I should consider when it comes to  
9 sentencing, including acceptance of responsibility, and therefore I will  
10 overrule the objection.

11 So the four phone calls and the transcripts will be admitted as  
12 Court Exhibit 1, as a composite exhibit.

13 MR. DIGIACOMO: Thank you, Judge.

14 THE COURT: All right. When you're ready.

15 MR. DIGIACOMO: And I do not intend to speak at length. I  
16 would ask that the mother, Isabel, get to speak late pursuant to the  
17 statute.

18 THE COURT: Yes, she will.

19 MR. DIGIACOMO: I just have a few comments. And my first  
20 would be as it relates to the Department of Parole and Probation's  
21 recommendation. I actually don't -- I guess this is the reason why they're  
22 going to no longer be making recommendations because I don't really  
23 understand the scoresheet that indicates that these should be a  
24 medium-high sentence and then any recommendation that deviates  
25 suggested sentence must include justification, there's no justification. But

1 when I read their actual recommendation, it's the minimum possible  
2 sentence for the defendant for the charges -- the crimes that were found  
3 by the jury.

4 So to me the Department of Parole and Probation's  
5 recommendation is meaningless and often is in cases, but it certainly  
6 doesn't have an understanding, the Department didn't apparently have an  
7 understanding of the nature of both the way the justice system should  
8 work and the way that sentencing should work.

9 And I would start with in this case you have sort of three  
10 separate events in my mind, you have, what would you sentence  
11 Ms. Guidry for had she just stolen the watch? If that had been the only  
12 crime she committed, what, you, as a sentencing judge, would have  
13 decided her sentence should be.

14 And that, in my mind, mostly goes back to her criminal history.  
15 And when you look at that criminal history she is a professional thief.  
16 She's who has received probation before and one who's violated her  
17 probation, and even after being paroled, committed another subsequent.  
18 Essentially, her crimes are all sort of the same thing. She's preying upon  
19 people, much like she preyed upon the victim in this particular case.

20 And from my standpoint she, for this crime, taking that watch,  
21 with this criminal history, would get a 48 to 120 on the grand larceny  
22 conviction.

23 And so from my mind that's sort of the starting point and so  
24 where do you go from? Well, from there you go to the murder charge. In  
25 my mind, and I would suggest to the Court that the murder and the

1 robbery should run concurrent. Because in my mind the murder and the  
2 robbery are sort of this same court of conduct that, you know, I don't think  
3 she should be doubly convicted of.

4 If the jury had not rejected the felony murder rule, the Court  
5 would be required to give 20. And in my mind since the jury did not find  
6 the felony murder rule, that the Court should be somewhat constrained in  
7 your sentence. And so ultimately, I can tell the Court, I'm going to ask for  
8 an 18 to life sentence. Because I don't believe that you should correct  
9 whatever the jury ultimately decided. I think that she should get less than  
10 what the first degree murder charge would have carried with her.

11 But as it relates to the murder charge, once they rejected the  
12 felony murder rule, then you have to think of, what did they find in the  
13 second degree murder? And at the very least they found a reckless  
14 disregard for human life. By hitting that accelerator and accelerating away  
15 at the speed that she accelerated away, that certainly buys her a life  
16 sentence. And so for the murder charge I'm going to ask the Court to give  
17 her the 10 to life.

18 One, I don't believe someone with this criminal history deserves  
19 the minimum sentence on any charge and that would be the minimum  
20 sentence, if you give her anything other than the 10 to life.

21 But her actions in this case, actions that, and I will talk about  
22 that, clearly she does not believe is that big a deal, based upon those  
23 phone calls, that, to me, she earns a life sentence for. And I believe that,  
24 you know, because she could have just gotten away with the watch and  
25 she didn't have to hit that accelerator that she deserves consecutive time

1 from the grand larceny and the murder.

2 The robbery, whatever sentence you choose on to me should  
3 be concurrent.

4 And then you actually have the leaving the scene. And, you  
5 know, no matter what else happens, what do you know about her leaving  
6 the scene? Not only does she flee the scene when she has no need to  
7 flee the scene. Had she stopped, yes, she might have been liable and  
8 maybe we can accept that, in the mind of a defendant, oh, my God, I've  
9 just done something horrible and I don't want to get caught.

10 But that's not Ms. Guidry's actions. The first thing she does is  
11 stop, she takes a picture of her windshield because she needs to get it  
12 fixed, and she's contacting the fence. Because to her this is just a  
13 business transaction. She has absolutely and completely no concern for  
14 the damage done by her to this particular victim. And the law requires her  
15 to be held accountable for that leaving the scene and I'm going to ask for  
16 a 48 to 120 and I'm going to ask that one to be consecutive. Ultimately  
17 resulting in an 18 to life sentence for Ms. Guidry.

18 The last thing I would say -- and I'm not going to speak to the  
19 pain that it has caused this family. I'm sure Isabel will explain that to the  
20 Court -- that these phone calls, I do not want the Court to sentence  
21 Ms. Guidry for her behavior as a mother in speaking to her children. That  
22 wasn't the purpose I sent this to the Court. That's something she has to  
23 deal with on her own and somebody else should judge her for that  
24 conduct.

25 But the statements made in those recordings, things, like, I

1 wouldn't have even gotten caught if my ten year old daughter hadn't  
2 given -- opened up her mouth, that the ten year old daughter deserves to  
3 get punched in the face for giving up that number, that Derrontae, you  
4 should have stopped her.

5 Her suggestion is, is basically this wouldn't have been any big  
6 deal but for my daughter. And so she's shifting responsibility for where  
7 she is right now, and what she's about to face in front of this Court, to her  
8 children because she's unwilling and unable to accept the responsibility.

9 And the Court can also consider that in the context of the  
10 sentencing letters that were provided by Promise and Derrontae. And ask  
11 yourself, is that actually mitigation or is that something that the Court  
12 should not consider as mitigation? That the behavior of Ms. Guidry in this  
13 case is something she clearly has no concept of either the damage she's  
14 done to herself, to her children, and most importantly to the victim and the  
15 victim's family in this particular case.

16 And I believe that a sentence of 18 to life is an appropriate  
17 sentence for her and I'd ask the Court to impose it. And I would submit it.

18 THE COURT: All right. Mr. DiGiacomo, let me ask you, just for  
19 clarification, so for Count 1 you're asking for 10 to life, Count 2, you're  
20 asking for whatever I give to run concurrent.

21 MR. DIGIACOMO: Correct.

22 THE COURT: Count 3, 48 to 120?

23 MR. DIGIACOMO: Correct, consecutive.

24 THE COURT: Consecutive; right.

25 And Count 4, 48 to 120 consecutive also?

1 MR. DIGIACOMO: Correct.

2 THE COURT: Okay. Thank you.

3 All right. Mr. Mueller, do you -- I -- for the record, I did receive  
4 the letters that were submitted and I have reviewed them prior to  
5 sentencing here today here.

6 I'll hear from you regarding sentencing.

7 MR. MUELLER: Thank you, Your Honor.

8 The recommendation from the Department of Parole and  
9 Probation is appropriate and properly calibrated sentence here.

10 Ms. Guidry has --

11 THE COURT: Which -- which recommendation?

12 MR. MUELLER: The 10 to 25 with the other counts running  
13 concurrent.

14 THE COURT: Okay.

15 MR. MUELLER: Which is by statute, I've double checked the  
16 statute. 10 to 20.

17 Ms. Guidry's a mother of three. And despite what  
18 Mr. DiGiacomo thinks of her the reality is she does have a loving and  
19 supportive family in the back of the courtroom. In from Portland is her  
20 father. She's got additional family members here, despite the fact that  
21 they don't have any real local ties, came here to support her. She does  
22 have a lot of people who are loved and concerned about her, as you saw  
23 in those letters.

24 The practical problem with the case, the reality is this case has  
25 always caused me some concern, is the nature of the transaction that



1 happened in the car. Whether there was a quid pro quo sexual services  
2 for a watch, which is a prob -- the probability here that I was -- always  
3 deeply concerned about, was happening here.

4           Given the totality of the circumstances and the fact that  
5 unfortunately the State has not adduced any evidence, and you saw the  
6 trial, so I don't need to re-litigate it. The State adduced no evidence of  
7 exactly what happened in that car and how that watch was transferred.

8           THE COURT: What's the evidence that you are saying  
9 supports your position that it was a consensual or --

10           MR. MUELLER: Your Honor, the --

11           THE COURT: -- sexual act for a watch? Because the evidence  
12 that I saw suggest otherwise.

13           MR. MUELLER: There was two people in that car at night, for  
14 about seven or eight minutes, and neither of them testified as to what  
15 transpired inside of the car. Now, that's the practical problem with this  
16 case and always has been.

17           Now, having said that, on the totality of the circumstances the  
18 jury didn't see Ms. Guidry's way of understand. But having said that, I see  
19 no legal or logical conclusion to run a concurrent sentence on this case.

20           And I believe the Department of Parole and Probation, which is  
21 also charged with managing the State's prison load and try to get some  
22 consistency between our 34 different departments, has recommended  
23 that -- this particular sentence.

24           Now, the others thing that's going to happen in the next 10  
25 years is Ms. Guidry's going to be become older. She's going to become

1 more insightful. And she's going to become more retrospective, which  
2 despite everyone's best efforts, is something that usually happens to  
3 almost all of us.

4 In 10 years she's not going to be the same person she is now.  
5 That will be long after you've forgotten about this case. It will be the  
6 Department of Parole and Probations and the Parole Boards decision to  
7 see if she's gained maturity and insight into her actions as a younger  
8 woman.

9 Now, she's cost herself and her family and the family of the  
10 victim dearly by her actions. There's no argument here on that point. But  
11 I do not see any compelling, moral, or legal reason to give her anything  
12 other than 10 to 25 and let her personal growth and development in prison  
13 be monitored by the Department of Parole and Probation.

14 Mr. DiGiacomo's recommendation is inappropriate and does not  
15 reflect the nature of human condition, which is that we all get older and  
16 wiser with the passage of time, which is why we have parole because  
17 frequently young people do things that older people wouldn't do.

18 So, Your Honor, given the totality of circumstance and the  
19 horrific sadness of this case, and it brings me no pleasure to bring -- be  
20 involved with this case. It's a tough case across the board. But the reality  
21 is is a 10 to 25 is the appropriate sentence.

22 THE COURT: All right. Thank you.

23 MR. MUELLER: And, Your Honor, miss --

24 THE COURT: And you're asking for 10 to 25 on --

25 MR. MUELLER: The minimum sentence recommended,

1 concurrent, for the --

2 THE COURT: Everything else run current?

3 MR. MUELLER: Yes, ma'am.

4 THE COURT: Okay.

5 MR. MUELLER: I'm asking the Court to follow the  
6 recommendation.

7 I'm also going to ask -- Ms. Guidry's asked to read a statement  
8 to the Court. In 25 years, I've almost never allowed a client to read it.  
9 This letter I felt was sincerely -- and she did it by herself, I'll serve as the  
10 officer of the court, this was composed independent of any input from me.

11 I want the Court to hear the letter and believes -- and I believe  
12 you'll see why so.

13 THE COURT: All right. Fair enough.

14 And just for a clean record, I understand you want to make a  
15 statement this morning; is that correct?

16 THE DEFENDANT: Yes.

17 MR. MUELLER: She's very emotional, Judge --

18 THE COURT: All right. When you're ready.

19 MR. MUELLER: -- and she --

20 THE DEFENDANT: Can I begin?

21 THE COURT: Yes.

22 THE DEFENDANT: Okay. First, I want to thank you, Your  
23 Honor, for your time and presence. It has been an honor to be in your  
24 courtroom.

25 I want to thank my attorney for his patience and for his

1 assistance. My attorney's hard work, effort on my case is greatly  
2 appreciated.

3 I also give my gratitude to the district attorney in my case  
4 because the outcome of this case has turned out to be a blessing to my  
5 life in ways no one can understand but me and my God.

6 MR. MUELLER: Take a deep breath.

7 THE COURT: If you need to take a break, it's okay.

8 MR. MUELLER: Do you want some water?

9 THE DEFENDANT: Uh-uh.

10 I would like to direct the remainder of my words towards the  
11 victim's family.

12 MR. MUELLER: Take your time.

13 THE DEFENDANT: All right.

14 -- towards the victim's family.

15 I would like to start by not expressing my innocence but by  
16 expressing the honest truth. I am truly sympathetic and apologetic for  
17 your loss. As a mother myself of three kids, I can never imagine the  
18 heartbreak that comes with losing a child. Yet this is the --

19 MR. MUELLER: Take a deep breath.

20 THE COURT: Take a deep breath and take your time.

21 MR. MUELLER: Take your time. No rush.

22 THE DEFENDANT: I never have malice intentions or malice --  
23 towards harming your son, hurting him never crossed my mind nor was it  
24 ever my intention to do.

25 I often think if given the chance to rewind the hands of time

1 what would I have done differently? What could I have done differently?  
2 The answer is that it was a moment that I was afraid and I do not know  
3 what I could have do to overcome that fear I felt in that particular moment.

4 That night between Eldorado [sic] and I occurred because of a  
5 misunderstanding between the two of us. I know closure and honest  
6 explanations which you wish to seek. The only explanation I can give you  
7 is that night ended as a result of misunderstanding that went unresolved.

8 Although there are no words I can say to aid or account for such  
9 a reason for your loss. I ask that you find in your hearts to forgive me for  
10 being a part of this misunderstanding that took your son from you.

11 And though I cannot undue what has been done, I still pray that  
12 his soul may now rest in peace.

13 And I also want to say because at trial Mr. DiGiacomo said that  
14 I had no -- in my video as recorded that I had no sympathy when I got  
15 recorded. I actually was like thrown back. I was shocked. I've never  
16 been through that like this in my life. I didn't believe it. And until I got  
17 released on my traffic ticket, before they put a warrant out for my arrest,  
18 and they told me and I went to go look it up myself. I would never ever in  
19 life have any intentions of harming anybody. I am a mother of three kids.  
20 I can never just take -- life ever. And I'm truly, truly sorry and my  
21 condolences. I'm -- I'm so sorry.

22 THE COURT: Anything else you would like to say?

23 MR. MUELLER: Just in passing, it's a minor, relatively minor  
24 point, but Mr. DiGiacomo's -- seems to forget that she didn't know that he  
25 had died for several days after the fact. Those initial pictures were not

1 taken with knowledge that he had died or for that matter was even  
2 seriously injured. He was talking about the windshield photograph.

3 THE COURT: Oh, understood. And that's how I recall the  
4 evidence coming in at trial.

5 MR. MUELLER: Okay.

6 THE COURT: Okay. Anything further?

7 MR. MUELLER: No, Your Honor.

8 THE COURT: Thank you very much.

9 I understand we have victim speakers.

10 MR. DIGIACOMO: Yes.

11 Where are you -- are you going to put her --

12 THE COURT: She's welcome -- you know what, would you like  
13 to sit? Yes.

14 MR. DIGIACOMO: And we have a standby interpreter here as  
15 well.

16 THE COURT: No problem.

17 Good morning. Good to see you again.

18 What is your name for the record?

19 THE INTERPRETER: Thirawat Apichonrattanakorn,  
20 A-p-i-c-h-o-n-r-a-t-t-a-n-a-k-o-r-n,

21 THE COURT: Thank you very much. I appreciate that.

22 THE INTERPRETER: You're welcome, Your Honor.

23 THE COURT: We're going to go ahead and put you under oath  
24 first and then we'll put her under oath next.

25 THE INTERPRETER: Okay.

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**THIRAWAT APICHONRATTANAKORN**

[having been called an interpreter and being first duly sworn to interpret  
from Portuguese into English and from English into Portuguese]

THE COURT: This is part of the court record, so we're going to  
put you under oath.

Okay?

THE SPEAKER: Yes.

THE COURT: All right. And if you don't mind -- she -- yeah,  
she can remain seated, that's fine, if you could raise your right hand.

**ISABEL GAIOLLI**

[having been called as a speaker and being first duly sworn, testified  
through the interpreter as follows:]

THE COURT: All right. Thank you.

And you're welcome to proceed in English or in Portuguese, or  
if you want to go back and forth, that's fine with me also.

THE SPEAKER: [In English] I'm going to read in Portuguese.

THE COURT: Okay. And have him interpret, sure.

[Colloquy between the Interpreter and the Speaker]

THE SPEAKER: Dudu is my --

[Colloquy between the Interpreter and the Speaker]

THE SPEAKER: -- Dudu is my older child. We love him so  
much that's before because I had lost one child before that.

Yeah, because of the -- only six months with the problem,  
genetic problem.

He's beautiful with blue eyes and his face that really catch all

1 the eyes.

2 Always have a nice life, full of friends. He loved practice sports  
3 and studied a lot. And he's a boy -- I mean, a very family boy type.

4 Always like to be at home, around his siblings and family. And  
5 he's very respectful person, you know, with his grandparents.

6 Our holidays is always with the family all together and that's  
7 why it left us a very, you know, strong memory about it.

8 Dudu studied in very particular and very famous school in San  
9 Paulo and that's one of the best university. He decided to study finance  
10 and law. For six months and he want to be, you know, proficient in his  
11 English in order that he can put it in his resume and try to construct his  
12 future.

13 I'm the mother and I have a lot of -- I'm very proud him. But on  
14 the other hand, it's very tough for us and very suffering moment that I had  
15 to leave my son outside a house. But always, you know, participating in  
16 his life.

17 I suffer quite a lot. The first six months that he was outside the  
18 family, I visited him, you know, on his 21st birthday. 40 day -- 40 days  
19 after he left the house. Maybe it was premature, but I'm thankful for this --  
20 all this moments. And we never have any idea about the next birthday.

21 He went to Brazil during the Christmas time and that was our  
22 last get-together. Very happy because he seems like in his best part of  
23 his life at that moment. He was able to achieve all his personal goal and  
24 things in that nature.

25 Yeah, with -- our plan to visit Las Vegas, you know, and spend



1 New Year's together with friends and visit other family as well, members,  
2 and we say goodbye to each other.

3 In -- soon enough, in -- on the 3rd of January and the messages  
4 that we used to receive did not arrive anymore. And we in search of his  
5 state of his being and we did not find anything in the messages. And we  
6 was very, very worried and very, very strange with the situation. He  
7 always communicated with us but once in a while he might have missed  
8 but we never be pessimistic about it, the situation. And we spent some  
9 time in search. And with his father and we receive the message by phone  
10 that he was -- had an accident and die.

11 THE SPEAKER: [In English] And we never going to see Dudu  
12 again.

13 THE INTERPRETER: And we never going to see him, Dudu,  
14 again.

15 THE SPEAKER: This is -- this moment my world had come  
16 down. No, no that's not true at all. And what happened now. And I  
17 receive and try to deal with it. Soon enough I try not to be very sad  
18 person and I want to try to find my time and proceed. I want to live. I  
19 want to live on and I have so much to live on but I don't know how  
20 anymore. And without doubt it got to be something else, some other  
21 person.

22 And we had -- and I had to learn again how to live under  
23 different conditions. Literally, I have to start to learn how to live all over  
24 again. I -- I went through many, many months hearing something in my --  
25 in my brain, in my memory, the repetition of, Dudu had an accident and

1 die, he was -- he had an accident and died. This is my thinking daily and I  
2 did not have enough room for anything else. And now I understand that  
3 something that very suffering deep from my heart, you know, it's -- that  
4 when I start to experience that and know that it's very painful.

5 And all this I hope that there's a solution and another  
6 alternative. But in this situation, that nothing I could do is impossible to  
7 reverse everything, mainly with the death. Everything with just coming out  
8 from the past. He was -- he was and he was a being. And this is so hard  
9 for a heart of a mother. And this is -- I try to learn how to be resilient.

10 I have two more children that needing me. And at this moment I  
11 believe I need them more than they need me. My middle son is about to  
12 enter a university in Colorado and supposed to have -- study in  
13 September. And he plan to volunteer in some kinds of work in a short  
14 period of time. And all this was kind of like impeded and the time with the  
15 family, and et cetera.

16 We all -- we all would show up and been through this situation  
17 and we were very confused and I believe we will be needing some  
18 professional help in this -- in this sense. And approaching September  
19 another son of mine had to go away as well. But my condition, my head  
20 was much worse than before. And I'm so afraid now to leave again, the  
21 repeating story, and feel being distance away and fear of unable to control  
22 the situation. I think I need to be able to in control daily because of the  
23 fear of not able to control and something like this will happen. And I'll be  
24 in panic if that were the case. I learn and try to accept it that things can  
25 happen.

1           My youngest daughter is finishing her high school and getting  
2 ready to go to university. She has a pass -- exam, interim exam, you  
3 know, in the nutrition. She's having headache and also she's getting  
4 overweight due to this stress. And -- and final -- there's another person --

5           [Colloquy between the Interpreter and the Speaker]

6           THE INTERPRETER: Oh, okay.

7           THE SPEAKER: She was diagnosed that there was some, a  
8 problem in her cranial, in her brain. Something that had to been swollen  
9 in her brain that causes all this mishap. And that has kind of like disturbed  
10 the -- one of the nerves. And hopefully that this process can -- will not  
11 be -- interfere with something else, that she should have some good  
12 nutrition and things like that. And could lead her to some, you know --

13          THE SPEAKER: [In English] To get blind.

14          THE INTERPRETER: Yeah, blind.

15          THE COURT: Affects the optical nerve; right, the optical nerve?

16          THE INTERPETER: H'm?

17          THE COURT: The pressures affecting the optical nerve?

18          THE SPEAKER: [In English] Yeah, the brain got --

19          THE COURT: The pressure?

20          THE SPEAKER: [In English] Yeah.

21          THE COURT: Right. Okay.

22          THE SPEAKER: And this is a signal of some disequilibrium and  
23 stress. I tried to take care of myself because I know that in totality seems  
24 like I'm afraid of -- unable to control. And I had to go through a lot of  
25 therapy weekly. Therapy of trauma and medication, some mourning type

1 of situation that I have to go through, and other -- and many other  
2 therapeutic treatment that I try to search for in order to take control of my  
3 situation again.

4 And physical symptom and everything else like pain in my body,  
5 hard to sleep, difficulty sleeping. I never could go back to the environment  
6 that I used to in my professional career, my work. I had to work from  
7 distant or from remote distance.

8 And after the mourning, I -- just to be clear, that I had been  
9 mourning for my parents and now my own son. But nothing, nothing can  
10 be compared to mourning for your own child. So the spiritual -- spiritual  
11 reason would be I hope is my final alternative.

12 And there's a question, how? We live in Brazil, which is the  
13 country of some violence, there's a lot of ammo cars. And my son went to  
14 another country in order to -- for his own safety and become a victim of a  
15 crime. Why?

16 How many people that face an accident, you know, in the air.  
17 And Dudu seemed to have no chance at all and had died. He could have,  
18 you know, his whole body broken. No, but he lost all that chances to live  
19 again. Why?

20 And all these questions I would never find an answer for it. And  
21 we had to go through all this, a trial, jury trial, and all those steps. And  
22 change my -- my children, you know, had to go through all this days of  
23 torturing. Very profound sadness and anxiety. Fear and pain had just  
24 started and follow me around.

25 I had a stable life before. My health and everything else seems

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RONNEKA GUIDRY, ) No. 80156  
 )  
 Appellant, )  
 )  
 v. )  
 )  
 THE STATE OF NEVADA, )  
 )  
 Respondent. )

<b>DARIN IMLAY</b> Clark County Public Defender 309 South Third Street Las Vegas, Nevada 89155-2610  Attorney for Appellant	<b>STEVE WOLFSON</b> Clark County District Attorney 200 Lewis Avenue, 3 <sup>rd</sup> Floor Las Vegas, Nevada 89155  <b>AARON FORD</b> Attorney General 100 North Carson Street Carson City, Nevada 89701-4717 (702) 687-3538  Counsel for Respondent
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I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 23 day of March 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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

RONNEKA GUIDRY, #1138388  
FLORENCE MCCLURE WOMENS CORRECTIONAL CENTER  
4370 SMILEY RD, LAS VEGAS, NV 89115

BY /s/ Rachel Howard  
Employee, Clark County Public Defender's Office