

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 SEAN MAURICE DEAN,

4 Appellant,

5 vs.

No. 81209

6 AITOR NARVAIZA,

7 ELKO COUNTY SHERIFF,

8 Respondent.

Electronically Filed
Oct 14 2020 12:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

9
10 APPELLANT'S APPENDIX - VOLUME 1 of 2

11 APPEAL FROM AN ORDER DENYING

12 PETITION FOR WRIT OF HABEAS CORPUS

13 FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

14 IN AND FOR THE COUNTY OF ELKO

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Attorneys for Respondent

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1 TRANSCRIPT OF PROCEEDINGS

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CERTIFICATE OF SERVICE

I certify that this document was filed electronically with the Nevada Supreme Court on the 14th day of October, 2020. Electronic service of the foregoing document shall be made in accordance with the Master Service List as follows:

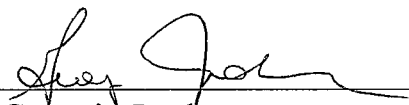
Nevada Attorney General

David B. Lockie

Elko County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid to the following address(es):

Sean Dean #61722
c/o Southern Desert Correctional Ctr
P. O. Box 208
Indian Springs NV 89070-0208


Georgia Jordan

CASE NO. CR-FP-15-1508

DEPT. NO. 2

FILED

2016 MAR 24 AM 10:13

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____

142

IN THE FOURTH JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

STATE OF NEVADA,

Plaintiff,

vs.

SEAN MAURICE DEAN,

Defendant.

AMENDED

CRIMINAL

INFORMATION¹

COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and informs the above-entitled Court that Defendant above-named, on or about the 8th day of December, 2015, at or near the location of City of Elko, within the County of Elko, and the State of Nevada, committed a crime or crimes described as follows:

COUNT 1

ATTEMPTED MURDER WITH THE USE OF A DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS 193.165, NRS 193.330, 200.010, 200.020 AND 200.030.

The Defendant, as more particularly described hereafter, committed an act or acts which tended to but failed to result in the commission of the completed offense of:

¹ This information has been amended to correct a clerical error. In Count 6 in the original information, the State listed the 5th felony as occurring in the Second Judicial District, County of *Elko*. It has been amended to state that the 5th felony occurred in the Second Judicial District, County of *Washoe*.

Murder With The Use Of A Deadly Weapon, A Category A
Felony As Defined By NRS 193.165, NRS 200.010, NRS
200.020, AND NRS 200.030.

The Defendant committed said offense in the following manner:

On the date and at the place alleged above, the Defendant, with the specific and deliberate intent to unlawfully to take away the life of another human being, unlawfully attempted to kill one Bert Minter by repeatedly stabbing him with a knife.

In addition to COUNT 1:

COUNT 2

**BATTERY WITH THE USE OF A DEADLY WEAPON RESULTING IN
SUBSTANTIAL BODILY HARM, A CATEGORY B FELONY AS
DEFINED BY NRS 200.481(2)(e)(2).**

The Defendant on or about the date and at the place alleged above willfully and unlawfully used force or violence upon the person of one hereinafter the Bert Minter. Further:

1. The Defendant employed a deadly weapon within the meaning of NRS 193.165, to wit: a knife, and
2. The Defendant's use of force or violence resulted in the infliction by the Defendant of substantial bodily harm upon the Victim within the meaning of NRS 0.060 in that the Victim suffered stab wounds resulting in scars.

The Defendant committed said offense in the following manner: by stabbing Bert Minter with a knife.

In the alternative to COUNT 2 only:

COUNT 3

**BATTERY WITH A DEADLY WEAPON, A CATEGORY B FELONY AS
DEFINED BY NRS 200.481(2)(e)(1).**

That the Defendant did willfully and unlawfully use force or violence upon the person of Bert Minter, with the use of a deadly weapon, to-wit: a knife.

///

///

In the alternative to COUNT 2 and COUNT 3 only:

COUNT 4

BATTERY RESULTING IN SUBSTANTIAL BODILY HARM, A CATEGORY C FELONY AS DEFINED BY NRS 200.481(2)(b).

The Defendant on or about the date and at the place alleged above willfully and unlawfully used force or violence upon the person of one Bert Minter, the Complainant, which force or violence resulted in the infliction by the Defendant of substantial bodily harm upon the Complainant within the meaning of NRS 0.060 in that the Complainant suffered the following injuries stab wounds resulting in scars.

Further, the Defendant committed said offense in the following manner: by stabbing Bert Minter with a knife.

In addition to the above counts:

COUNT 5

BATTERY WITH A DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS 200.481(2)(e)(1).

That the Defendant did willfully and unlawfully use force or violence upon the person of Denise Minter, with the use of a deadly weapon, to-wit: a knife.

COUNT 6

HABITUAL CRIMINAL, A FELONY AS DEFINED BY NRS 207.010.

That said Defendant is accused of being a habitual criminal under NRS 207.010(1)(b), having been previously three times convicted of felonies in the State of Nevada, and/or previously convicted of felonies in a sister state, as follows:

1. On or about January 31, 1986, said Defendant was convicted of the felony of Robbery, in the Superior Court of California, County of Sacramento, State of California.
2. On or about November 30, 1990, said Defendant was convicted of the felony of Unlawful Taking of a Motor Vehicle, in the Superior Court of California, County of Sacramento, State of California.

3. On or about February 28, 1998, said Defendant was convicted of the felony of Assault with a Deadly Weapon by Means of Force Likely to Produce Great Bodily Injury Upon a Peace Officer, in the Superior Court of California, County of Sacramento, State of California.

4. On or about April 20, 1999, said Defendant was convicted of the felony of Mayhem, in the Second Judicial District Court, County of Washoe, State of Nevada.

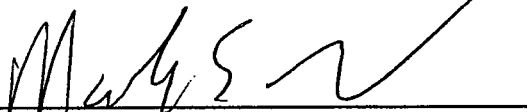
5. On or about December 17, 2009, said Defendant was convicted of the felony of Assault with a Deadly Weapon, in the Second Judicial District Court, County of Washoe, State of Nevada.

6. On or about April 24, 2014, said Defendant was convicted of the felony of Battery by Means of Strangulation, in the Fourth Judicial District Court of the State of Nevada, in and for the County of Elko, State of Nevada.

All of which is contrary to the form of the Statute in such cases made and provided, and against the peace and dignity of the State of Nevada.

Dated: March 24, 2016.

MARK TORVINEN
ELKO COUNTY DISTRICT ATTORNEY



MARK S. MILLS
Deputy District Attorney
State Bar Number: 11660

Witnesses' names and addresses known to the District Attorney at the time of filing the above Criminal Information, if known, are as follows.

JEREMY CATALANO, RENO POLICE DEPT, 455 E. 2ND ST., RENO, NV 89502

BERT MINTER, 764 S 5TH #12, ELKO, NV 89801

DENISE M MINTER, 764 S 5TH ST #12, ELKO, NV 89801

JASON PEPPER, 1401 COLLEGE AVE., ELKO, NV 89801

JACOB EISINGER, 1401 COLLEGE AVENUE, ELKO, NV 89801

CHRIS BALLESTEROS, 1401 COLLEGE AVE, ELKO, NV 89801

PETE NIELSON, 1401 COLLEGE AVENUE, ELKO, NV 89801

ZACHARY HESSING, 1401 COLLEGE AVENUE, ELKO, NV 89801

JOSEPH H SCHENK, 764 S 5TH ST #10, ELKO, NV 89801

BRITTNEY K TICE, 764 S 5TH ST #10, ELKO, NV 89801

CHRISTINA M HODGES, 701 S 5TH STREET, #7, ELKO, NV 89801

MARGGIE A AYERS, C/O CHRISTINA HODGES, 701 S 5TH STREET #7, ELKO, NV 89801

LINDSEY L STEELE, 701 S 5TH ST 5, ELKO, NV 89801

CLARENCE M THOMPSON, 701 S 5TH ST 5, ELKO, NV 89801

JOEL FAIRFIELD, 1401 COLLEGE AVENUE, ELKO, NV 89801

CERTIFICATE OF SERVICE


I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko County District Attorney's Office, and that on the 24th day of March, 2016, I hereby served a copy of the Criminal Information, by delivering, mailing, faxing, or causing to be delivered, faxed, or mailed, a copy of said document to the following:

By delivering to:

HONORABLE ALVIN R. KACIN
FOURTH JUDICIAL DISTRICT COURT
ELKO COUNTY COURTHOUSE
ELKO, NV 89801

By mailing to:

GARY D. WOODBURY
ATTORNEY AT LAW
1053 IDAHO ST.
ELKO, NV 89801



GEORGIA JORDAN
CASEWORKER

DA#F-15-00909

FILED

2016 NOV 28 PM 1:44

ELKO CO DISTRICT COURT

CLERK DEPUTY *W*

1 Case No. CR-FP-2015-1508

2 Dept. 2

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

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9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : JURY TRIAL - VOL. 1

12 SEAN MAURICE DEAN, :

13 Defendant. :

14 _____/

15

16 TRANSCRIPT OF PROCEEDINGS

17 BE IT REMEMBERED that the above-entitled matter
18 came on for hearing on June 21, 2016, at the hour of 9:11
19 a.m. of said day, before the HONORABLE ALVIN R. KACIN,
20 District Judge.

21

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25 Reported by Lisa M. Manley, CCR #271

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***** WARNING *****

THIS ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS IS PRODUCED IN
INSTANT FORM. THERE WILL BE DISCREPANCIES BETWEEN THE
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PLEASE CONTACT THE COURT REPORTER FOR FURTHER ASSISTANCE.

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1 Case No. CR-FP-2015-1508

2 Dept. 2

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

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9 THE STATE OF NEVADA :

10 Plaintiff, :

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12 SEAN MAURICE DEAN, :

13 Defendant. :

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21

22

23

24

25 Reported by Lisa M. Manley, CCR #271

1

1 APPEARANCES

2

3 For the Plaintiff:

MARK MILLS, ESQ.
Deputy District Attorney
540 Court Street
2nd Floor
Elko, Nevada 89801
(775) 738-3101

6

7 For the Defendant:

GARY D. WOODBURY, ESQ.
1053 Idaho Street
Elko, Nevada 89801
(775) 738-8006

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13

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15 PUBLIC OR THE MEDIA.

16

17 PLEASE CONTACT THE COURT REPORTER FOR FURTHER ASSISTANCE.

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1 PROCEEDINGS

2

3 THE COURT: Good morning, ladies and gentlemen.
4 We'll be on the record for Case CR-FP-2015-1508. And the
5 name of this case is the State of Nevada, the plaintiff,
6 versus Sean Maurice Dean, the defendant.

6

7 This is a criminal case, ladies and gentlemen.

7

8 We have five days set aside to try this case. We
9 expect it's going to go, including the jury selection,
10 Tuesday through Friday this week and then into Tuesday next
11 week, with a blackout date of Monday.

11

12 Monday is when I typically handle my law and

12

13 motion day, and I run a drug court that day, as well.

13

14 So anyway, that's what we got going with this

14

15 case.
16 You are here for a jury selection because this is
17 a jury trial. And what we need to do is find twelve fair
18 and impartial individuals, also two alternates, who can
19 fairly and impartially try this case, find the facts, apply
20 the law as instructed by the Court, and reach a decision in
21 this case, guilty or not guilty of the charges the
22 defendant faces.

22

23 I will have the charges read to you here in a
24 moment, so you understand what this case generally is
25 about.

24

25 Before I do that, though, I want to tell you,

4

1 thank you for appearing today. Sometimes people don't
2 appear, frankly, when there is a jury summons and we deal
3 with that.

4 But still, you showed up and you obeyed your
5 summons, and on behalf of the parties, as well as the
6 Court, again, I want to say thanks

7 We can't have this jury trial without you. I
8 want to remind that you that jury service is the back bone
9 of the criminal and civil justice system in our country.

10 None other than Thomas Jefferson called jury
11 service the only anchor yet devised by man by which a
12 government can be held to the principles of its
13 Constitution.

14 Those are heady words. But you are part of a
15 long tradition of people in our community, citizens who
16 come in, and serve as jurors.

17 This is as important a service, in my mind
18 anyway, as military service. It's as important a civic
19 duty as voting.

20 So I know I'm sounding repetitive. But again,
21 thank you for showing up today.

22 Before we go further, though, I would like to
23 introduce the people who will be involved in this trial. I
24 will start with the court personnel this time around.

25 Over to my left we have my law clerk, Kepa. He

5

1 I would also like to introduce to you the
2 defendant. That's Mr. Dean. And Mr. Dean is with his
3 counsel, Gary Woodbury. Gentlemen.

4 MR. WOODBURY: Good morning.

5 All right. So those are the people you will be
6 seeing in and about the courtroom during the jury
7 selection.

8 Rather than have the clerk read the role call of
9 the jury, we are not going to deal with that in front of
10 those who have showed up today. We'll deal with that
11 later, we have ways.

12 Anyway, I would like the clerk to read the
13 charging information. She is -- these are the charges that
14 Mr. Dean is facing. I want to remind you these are simply
15 charges, it's not evidence of anything.

16 There has to be a charging document that the
17 prosecutor files to get the defendant into court. That's
18 what this is.

19 At the end, the clerk will read the pleas of the
20 defendant.

21 Angie.

22 THE CLERK: Case Number CR-FP-2015-1508.
23 Department Number 2, in the Fourth Judicial District Court
24 of the state of Nevada, in and for the county of Elko
25 State of Nevada, plaintiff, versus Sean Maurice

7

1 will be handling working on projects with me during the
2 trial.

3 We have Angie, who is over there. She is the
4 clerk. She is checked you in, I think, this morning,
5 hopefully with a little assistance

6 We have Lisa Manley McCullough, our court
7 reporter. She takes down every word that is said during
8 the trial. Been doing this a long time, and we appreciate
9 her coming in, helping us with this trial.

10 We have got Jim Conner, our long-time bailiff in
11 this department of the Fourth Judicial District Court.

12 We're down here in the friendly confines of the
13 Elko County Commission room because frankly my courtroom
14 isn't big enough to handle a group this large.

15 So I hope this is a little more comfortable for
16 everybody today. In addition, it's helpful that we have a
17 good audio system down here.

18 Now I want to introduce the parties, though.
19 State of Nevada is represented by Elko County deputy
20 district attorney Mark Mills.

21 Mr. Mills.

22 MR. MILLS: Good morning, everybody.

23 THE COURT: He is prosecuting the case. Today I
24 think for the jury selection he has got an assistant with
25 him, Tanya Yell. She is a paralegal at the D.A.'s office.

6

1 Dean, defendant.

2 Criminal information.

3 Comes now the State of Nevada, the plaintiff in
4 the above-entitled cause, by and through its counsel of
5 record, the Elko County District Attorney's office, and
6 informs the above-entitled court that the defendant
7 above-named on or about the 8th day of December, 2015, at
8 or near the location of the city of Elko, within the county
9 of Elko, and the state of Nevada, committed a crime or
10 crimes described as follows:

11 Count 1, attempted murder with the use of a
12 deadly weapon, a Category B felony as defined by NRS
13 193.165, NRS 193.330, 200.010, 200.020, and 200.030.

14 The defendant, as more particularly described
15 hereafter, committed an act or acts which tended to but
16 failed to result in the commission of the completed offense
17 of murder with the use of a deadly weapon, a Category A
18 felony, as defined by NRS 193.165, NRS 200.010, NRS
19 200.020, and NRS 200.030.

20 The defendant committed said offense in the
21 following manner: On the date and at the place alleged
22 above, the defendant with the specific and deliberate
23 intent to unlawfully to take away the life of another human
24 being unknowingly attempted to kill one Bert Minter by
25 repeatedly stabbing him with a knife.

8

1 THE COURT: All right. Now, I think we had an
2 error in there. It would be not "unknowingly" attempted to
3 kill, it would be "unlawfully" attempted to kill. Is that
4 correct?

5 THE CLERK: Correct.

6 THE COURT: So the last part of is unlawfully
7 attempted to kill one Bert Minter by repeatedly stabbing
8 him with a knife.

9 All right. That happens, ladies and gentlemen.

10 This is live proceeding.

11 Angie, next charge, please.

12 THE CLERK: In addition to Count 1, Count 2,
13 battery with the use of a deadly weapon resulting in
14 substantial bodily harm, a Category B felony as defined by
15 NRS 200.481(2)(e)(2).

16 The defendant on or about the date and at the
17 place alleged above willfully and unlawfully used force or
18 violence upon the person of one hereafter, the Bert Minter.
19 Further, 1., the defendant employed a deadly weapon within
20 the meaning of the NRS 193.165, to wit; a knife and, 2.,
21 the defendant's use of force or violence resulted in the
22 infliction by the defendant of substantial bodily harm upon
23 the victim within the meaning of NRS 0.060, in that the
24 victim suffered stab wounds resulting in scars.

25 Defendant committed said offenses in the

9

1 All of which is contrary to the form of the
2 statute in such cases made and provided, and against the
3 peace and dignity of the State of Nevada.

4 Dated March 24, 2016. Mark Torvinen, Elko County
5 District Attorney.

6 Signed Mark S. Mills, deputy district attorney,
7 State Bar Number 11660.

8 To these charges the defendant has previously
9 entered pleas of not guilty.

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

11 And that's what brings us here into this jury
12 selection this morning and for the jury trial, ladies and
13 gentlemen

14 So the burden of proof beyond a reasonable doubt
15 is on the State of Nevada. It's the prosecutor's
16 obligation to show that the defendant committed these
17 offenses beyond a reasonable doubt.

18 And if the prosecution can't do that, the
19 defendant has to be acquitted.

20 Now, in making that decision, the jury that's
21 selected has to apply certain concepts, apply certain
22 concepts of criminal law, including the definition of
23 beyond a reasonable doubt.

24 Without further ado, I will go over those with
25 you now. It's key, these are bedrock principles when it

11

1 following manner: By stabbing Bert Minter with a knife.

2 In the alternative to Count 2 only, Count 3,
3 battery with a deadly weapon, a Category B felony as
4 defined by NRS 200.481(2)(e)(1), that the defendant did
5 willfully and unlawfully use force or violence upon the
6 person of Bert Minter with the use of a deadly weapon, to
7 wit; a knife.

8 In the alternative to Count 2 and Count 3 only,
9 Count 4, battery resulting in substantial bodily harm, a
10 Category C felony as defined by NRS 200.481(2)(b). The
11 defendant on or about the date and at the place alleged
12 above willfully and unlawfully used force or violence upon
13 the person of one Bert Minter, the complainant, which force
14 or violence resulted in the infliction by the defendant of
15 substantial bodily harm upon the complainant within the
16 meaning of NRS 0.060, in that the complainant suffered the
17 followed injuries, stab wounds resulting in scars.

18 Further, the defendant committed said offense in
19 the following manner: By stabbing Bert Minter with a
20 knife.

21 In addition to the above counts, Count 5, battery
22 with a deadly weapon, a Category B felony as defined by NRS
23 20 0.481(2)(e)(1). That the defendant did willfully and
24 unlawfully use force or violence upon the person of Denise
25 Minter with the use of a deadly weapon, to wit; a knife.

10

1 comes to the criminal law in our state and country.

2 The first is the presumption of innocence which I
3 just spoke of; the second is the burden of proof; the third
4 really would be the definition of beyond a reasonable
5 doubt.

6 First the presumption of innocence. The
7 defendant in a criminal case is presumed to be innocent of
8 the charges until his guilt is proved beyond a reasonable
9 doubt by the State of Nevada.

10 And in case of a reasonable doubt whether the
11 defendant's guilt is satisfactorily shown, the defendant is
12 entitled to be acquitted.

13 In other words, the burden of proof beyond a
14 reasonable doubt is on the State of Nevada. And again,
15 that's why we introduce the prosecutor, that's Mr. Mills,
16 he has got the burden of proof.

17 Definition of beyond a reasonable doubt is Nevada
18 Revised Statutes 175.211. This is the only definition that
19 can be read to you by district judges in this state.

20 A reasonable doubt is one based on reason. It is
21 not mere possible doubt, but is such a doubt as would
22 govern or control a person in the more weighty affairs of
23 life.

24 If the minds of the jurors, after the entire
25 comparison and consideration of all the evidence, are in

12

1 such a condition that they can say they feel an abiding
2 conviction of the truth of the charge, there is not a
3 reasonable doubt.

4 Doubt to be reasonable must be actual and not
5 mere possibility or speculation.

6 So the purpose of the trial then is to determine
7 whether Mr. Dean, the defendant, is guilty or not guilty of
8 each charge. Which you just heard the charges.

9 It's the jury's duty to make that determination,
10 ladies and gentlemen.

11 To make that determination, the jury has the duty
12 to determine the facts from the evidence that's presented
13 at the trial. And that comes in from the witness stand.
14 The jury of 12 and the two alternates sit there and listen
15 to the evidence and see the evidence as it comes in.

16 So in our system of trial by jury, the jurors are
17 what is known as fact finders. At the same time, it's the
18 Court's duty, the Judge's duty, and in this case my duty,
19 to determine the law that applies to this case.

20 And you get the law at the end of the trial and a
21 packet of instructions, so that you are not left out there
22 deliberating without some kind of a road map, okay.

23 As the judge, I will accept the jury's findings
24 of facts. At the same time, the jury must accept and
25 follow my instructions, apply my instructions, on the law

13

1 of the witnesses, and there can be follow-up by the parties
2 then.

3 That's for each witness.

4 After the State's finished its presentation, it
5 closes its case, rests its case, we then go to the
6 defendant for his case.

7 Now, the defendant doesn't have to put on a case
8 because he has got no burden of proof at all. Again, that
9 burden of proof rests with the State.

10 But if the defendant wants to, he can put on a
11 case, and the process starts all over again.

12 The defendant calls his witnesses on direct
13 examination, cross-examination, for the prosecutor, then
14 redirect examination, recross-examination, any jury
15 questions, and then follow-up.

16 After the defense rests its case, if there is
17 any, there can be a rebuttal case by the State that is
18 tailored to the issues brought up in the defense case, then
19 actually what is known as a surrebuttal case from the
20 defense.

21 Anyway, at some point the evidence part of the
22 case closes and then the parties, the -- excuse me, the
23 Court reads jury instructions to you, gives you the law
24 that applies in this case, you have to follow that law,
25 it's in a packet of instructions, written instructions.

15

1 in this case.

2 The jury trial is a truth seeking process.
3 That's what this is all about is determining the truth of
4 the matter in this case.

5 And it starts with jury selection. But before we
6 get down to the selection, I want to give you a thumbnail
7 sketch of jury trials.

8 If you are selected to sit in this case, this is
9 how it would go. The Court reads a couple of opening
10 instructions to you, including one on jury questions. Any
11 jurors that are selected in this case get to ask jury
12 questions of the witnesses.

13 I tell you how to do that in an instruction.

14 Then the parties can make opening statements.

15 Opening statements are made by each of the
16 parties to give you a thumbnail sketch about what they
17 think the evidence is going to show in this case. And the
18 defendant, if he wants to, can defer the opening statement
19 until the State's case closes.

20 Anyway, the State gets to put on its evidence
21 first. And that's because, again, the State has the burden
22 of proof beyond a reasonable doubt. The witnesses come up,
23 they testify under oath on direct examination, there can be
24 cross-examination by the defense, a redirect examination,
25 recross-examination, then the jurors get to ask questions

14

1 Then the parties get to argue the case to you,
2 and the prosecutor can argue why he thinks the defendant
3 should be found guilty and of what, and then the defendant
4 can argue why he should be found not guilty.

5 The State gets to close the case with a rebuttal
6 argument, because, again, the prosecutor has the burden of
7 proof.

8 Then the jury gets to go deliberate. That jury
9 of 12 has a secret deliberation just on their own. And you
10 go to the jury room and you decide guilty or not guilty of
11 the charges you just heard this morning.

12 So I hope that's helpful to you as you sit there
13 and you think about what we're doing here today.

14 But we have to start with jury selection, and
15 that's by law.

16 This system in our country I think is magnificent
17 because we bring in people who are everyday citizens in the
18 community. This is not an elitist system, like there is in
19 some countries, where there are professional jurors who are
20 paid quite handsomely to sit here and decide these cases
21 one after the other.

22 We don't do that here. A defendant who is being
23 tried, like Mr. Dean, and the prosecution, they get
24 citizens jurors who are just everyday people and make the
25 decision. Which is how it should be

16

1 And you have to sit in fair and impartial
2 judgment of the facts. We need 12 people to do that.
3 So what we are going to do is have you sworn in
4 in a moment and we're going to ask you questions that bear
5 on your qualifications to be fair and impartial in this
6 case, and you answer questions on your oath from me, then
7 the two lawyers

8 We're just trying to find people who can be
9 suitable jurors in this case.

10 And I want to tell you, if you are not selected
11 here, don't take it personally, okay. Not every juror is
12 suitable to be fair and impartial in every case.

13 Let me give you an example. This is not a
14 driving under the influence case, but let's pretend for a
15 moment that it was, and somebody was hurt in an accident in
16 this case.

17 That's not at all what this case is about, but
18 it's just an example.

19 And let's say yesterday there was a DUI driver
20 that ran into you and damaged your hotrod and you are
21 really angry about that right now. Normal human reaction.

22 But remember, you might not feel too fair and
23 impartial in a DUI case today if that was the circumstance
24 here, okay.

25 So just kind of keep that in mind; not everybody
17

1 nice facility. I do want to say, it's nice to be down
2 here, and I appreciate this facility.

3 Anyway, what we need to do is draw 24 names.

4 It's a bit of a musical chairs process is what I call it.

5 Some of you are probably going to be called from
6 the gallery area out here behind the attorneys and the
7 parties. And then you are going to come up into this area
8 where this group is over to my far right.

9 We'll have you switch back and forth.

10 Mr. Conner is going to be our traffic officer, he
11 will show you all where to sit when your name is called.

12 And just remember, once you do get seated,
13 remember your neighbor to your left and your neighbor to
14 your right. Because if we take a break, we need you to sit
15 in the exact same spot.

16 Anyway, I think that's he about where we're at,
17 and we can start calling names, Ms. Clerk.

18 THE CLERK: Janelle Rosalie Armendariz,
19 A-r-m-e-n-d-a-r-i-z.

20 Kimberly Nye, N-y-e.

21 Rhonda Erickson, E-r-i-c-k-s-o-n.

22 Kelly Joe Runyon, R-u-n-y-o-n.

23 Neil Eric Whitmer, W-h-i-t-m-e-r.

24 Janette Bundy, B-u-n-d-y.

25 Misty Rose Polish, P-o-l-i-s-h.

19

1 is well situated to be a juror in every case.

2 with that, why don't I have you all stand up,
3 raise your right hands, please, and Angie will swear you
4 in.

5 (WHEREUPON, the potential jurors were sworn)

6 THE COURT: All right. Now, with these cases,
7 when we got a large group and I come from my courtroom,
8 like I was saying, and I come down here because it's more
9 comfortable and the chairs are better and there is more
10 room for people to get around.

11 If you are selected in this case, you will see
12 why I did that, because our courtroom upstairs is so small.
13 And I think we ought to be able to do this in a courtroom,
14 so I always give you a little talk-up during these
15 selections.

16 You know, if you want to check out my courtroom,
17 even during a break, you can certainly do that. I don't
18 think we have enough space here.

19 These are your judicial facilities, ladies and
20 gentlemen, and if you feel like they are insufficient, you
21 certainly have my blessing to complain to the Elko County
22 Commission about that.

23 If you want to get a petition together, I will go
24 ahead and sign it right along with you.

25 But this is what we have to deal with. This is a
18

1 Kimberly M. Thompson, T-h-o-m-p-s-o-n.

2 Morgan Dingman, D-i-n-g-m-a-n.

3 James Greenlund, G-r-e-e-n-l-u-n-d.

4 Dwight Albertus Stake, S-t-a-k-e.

5 Kyle Scott Elfe, E-l-f-e.

6 THE COURT: By the way, if we get your name
7 mispronounced, just yell it out to us, all right. Tell us
8 how to pronounce it correctly. Thank you.

9 THE CLERK: Earnest William Gregory, Jr.
10 G-r-e-g-o-r-y.

11 Julie L. Levie, L-e-v-i-e.

12 Tara Snales, S-m-a-l-e-s.

13 Robert W. Malloy, M-a-l-l-o-y.

14 Aaron Poche, P-o-c-h-e.

15 Brett Flaig, F-l-a-i-g.

16 Elvis Holt, H-o-l-t.

17 Raul Martinez, M-a-r-t-i-n-e-z.

18 Jason Runyon, R-u-n-y-o-n.

19 Steven Sharp, S-h-a-r-p.

20 Eric Gonzalez, G-o-n-z-a-l-e-z.

21 Scott Samuelson, S-a-m-u-e-l-s-e-n.

22 THE COURT: All right. Thank you. That's the
23 group of 24.

24 Those of you standing, please make yourself
25 comfortable and have a seat. We need to have you remain.
20

1 You are going to see here why here in a bit. We'll be
2 calling people in and out of the area where we have the 24.
3 I call that the extended jury box now.
4 Anyway, I want to talk about the lawyers briefly
5 because I know we'll get to a break here about 10:30.
6 Anyway, the attorneys, they are advocates. They
7 are members of the State Bar of Nevada, which is a
8 mandatory bar. They are called officers of the court.
9 They have -- they have mandatory ethical duties
10 to follow as attorneys and counselors at law. So even if
11 you know one or both of the lawyers, maybe Mr. Woodbury or
12 Mr. Mills or both of them, they will be standoffish with
13 you at least in this context, in this world.
14 They are not going to be able to talk to you.
15 And it will seem odd, and rude maybe in normal
16 circumstances. But that's exactly what they are supposed
17 to be doing because they are officers of the Court.
18 And what they are trying to do is stay away from
19 you, so they are not accused of trying to curry favor or
20 appearing to curry favors with jurors outside -- or off the
21 record, I should say.
22 So remember that. Don't hold it against them.
23 They are just following the orders of the Court. That
24 applies to the attorneys' assistants as well. That's Ms.
25 Yell here today.

21

1 you don't want to talk about it in front of a bunch of
2 other people you may or may not know, simply raise your
3 hand and let us know. We can handle that outside the
4 presence of the others. It has to be on the record still,
5 but it would be outside the presence of the others. So
6 those are for private matters.
7 Please answer these questions openly, completely
8 and honestly.
9 It's the only way that we can get fair and
10 impartial jurors in this case. That's of course the
11 Court's interest and the interest of the parties, they want
12 fair and impartial jurors who can dispassionately weight
13 the evidence and find the facts in this case, ladies and
14 gentlemen, base a verdict only on the law as instructed by
15 the court and apply to the facts at that deliberation.
16 But let me tell you -- that's our interest. But
17 let me tell you something, this is also in your interest,
18 okay, to answer openly, completely and honestly.
19 Because you don't want to be here on a jury back
20 there deliberating in a case where you are simply not fair
21 and impartial. That's going to put you in a terrible
22 position, and it's going to mess you up, as well as the
23 process.
24 So please keep that in mind.
25 Let me tell you here, the great part about this

23

1 I think, for that matter, it would apply to Mr.
2 Dean in case any of you know him. He can't talk to you
3 either off the record or have contact with you during this
4 selection.
5 Anyway, people always ask me about jury fees.
6 They are prescribed by the legislature. I think it's still
7 \$40 a day to sit, which is not nearly enough, in my view,
8 for the vital service, the essential service you provide to
9 the community.
10 That's if you are selected to sit, then you get
11 paid the fees.
12 The fees, if you don't want to collect them, can
13 be donated to a fund for abused children in Elko County.
14 If you do live more than 30 miles from here you
15 can be paid motel, per diem for meals and travel. So the
16 clerk can assist you with that. If you are selected to
17 sit, that's what happens.
18 Now, some preliminary comments about the jury
19 questions. These are called voir dire questions, which
20 means literally to speak the truth. Voir dire, it's an
21 ancient term.
22 These questions aren't designed to embarrass you,
23 number one. They are not designed to get you to reveal
24 confidential information in public, like an illness.
25 If you do have to reveal something like that, and

22

1 is there are no wrong answers. Well, the untruth, if it's
2 untruthful, that is a wrong answer.
3 Other than that, if it's truthful, it's always a
4 right answer. Okay.
5 This is not like a test, okay, where you can get
6 a wrong answer, in other words. The only wrong answers are
7 untruthful answers.
8 That's the great part about it.
9 Some of you may not be very comfortable with the
10 public speaking. Let me tell you, there are a lot of people
11 out here in this same boat as you. We'll give you a mike
12 and you can talk into it, like me, so you don't have to
13 yell. That's kind of cool, it works really well, the mikes
14 do
15 All right. Anyway, that's my little talk-up for
16 you. Remember, you are on your oath, we gave that to you.
17 I will get started with the questions first.
18 We have five days set aside for the trial. We
19 may be able to get it done in four; that is, by Friday.
20 But it's entirely possible, and I want you to think it
21 likely, that we'll go and have to add on next Tuesday as
22 well.
23 Again, we would be off for the weekend, no jury
24 trials over the weekend. And we would also be off on
25 Monday because I have other court business on Monday, okay.

24

1 Anyway, so it would be four days, Tuesday,
2 Wednesday, Thursday and Friday, then Tuesday of next week.
3 So, first question. Would any panel member --
4 I'm talking to just this group of 24 right now over to my
5 right -- anybody in the box suffer a severe -- I want to
6 highlight severe -- business or personal hardship by being
7 a juror for that amount of time?

8 THE COURT: Okay. Why don't we start in the
9 back. We'll hand the microphone back to the gentleman in
10 the back.

11 BY THE COURT:

12 Q. I believe that's is that Mr. Greenlund, go
13 ahead.

14 A. My job. I am the only carpenter with my
15 company. I have got two bathrooms torn apart right now. I
16 should be there right now. There is no way I could take
17 off.

18 Q. Okay. There is no way -- I have to ask these
19 questions.

20 A. I understand that.

21 Q. Let me ask you, is there -- just to make the
22 record -- is there anybody who can be called in from some
23 other location to do this work for your company?

24 A. No, we don't. It's all tile work. I am the
25 only tile layer.

25

1 Q. Okay. So you are putting tile in?

2 A. Tile in two bathrooms.

3 Q. Okay. And is this --

4 A. I am only guy that is going to do these, we
5 don't have no one else.

6 Q. Is this new construction?

7 A. What's that?

8 Q. New construction?

9 A. Yes, it is.

10 Q. And where is it that --

11 A. Out in Spring Creek for Jim Hassle. He works
12 for Spring Creek Elementary School, at the high school,
13 too. We tore one past last week, then we'll rebuild it this
14 week, then we'll tear apart the other one.

15 Q. These are for private --

16 A. Yes.

17 Q. This is for --

18 A. Yeah, Anthony Construction.

19 Q. Let me ask you, does Anthony Construction pay
20 if you are in here for jury service?

21 A. No.

22 Q. Still pay you?

23 A. No.

24 Q. No? I'm asking because --

25 A. I am not getting paid now, I am not going to

26

1 get paid then.

2 Q. All right. Would you --

3 A. That's not the issue, though. The issue is
4 that I can't be here. I am not able to. Or I would be
5 here and then those people sit and wait for me.

6 THE COURT: All right. This man sounds actually
7 angry to be here to me.

8 Do you want to stipulate to release him,
9 Mr. Woodbury?

10 MR. WOODBURY: That's fine.

11 THE COURT: Mr. Mills?

12 MR. MILLS: Yes, Your Honor.

13 THE COURT: Good luck to you, sir.

14 We'll go ahead and release you at this time.

15 Have a nice day.

16 All right. What we need to do is have

17 Mr. Runyon, could you have a seat back there where

18 Mr. Greenlund was, sir.

19 Then Mr. Sharp, Mr. Agnate and Mr. Samuelson,

20 could you move over one to your right, gentlemen.

21 Thank you.

22 And seat 24, please.

23 THE CLERK: Wesley Paniagua, P-a-n-i-a-g-u-a.

24 THE COURT: Thank you, Mr. Paniagua. All right.

25 And we're continuing on with severe business or

27

1 personal hardship. We had another gentleman with his hand
2 up.

3 BY THE COURT:

4 Q. That is Mr. Elfe, is it?

5 A. Yeah.

6 Q. What's going on, sir?

7 A. Well, we were -- my family left for Idaho on
8 like a vacation yesterday.

9 Q. Some vacation time?

10 A. And I had to stay for this, so I would like to
11 go join them.

12 Q. Okay. I'm sure you would. Was this a
13 previously planned vacation that you had?

14 A. Yeah, it's been planned for about a month.

15 Q. You have like a lodging up there that you paid
16 for, all that?

17 A. We're -- it's kind of a family reunion. We
18 are going to be staying with the in-laws.

19 Q. Is that a once-in-a-year thing up there?

20 A. No, not -- it's not once a year. We planned
21 it out about a month ago. They have already left.

22 THE COURT: Okay. I will leave it up counsel.

23 Family reunions are important, I know.

24 Mr. Mills, what is the State's position?

25 MR. MILLS: I have no objection to him being

28

1 excused.
2 THE COURT: Mr. Woodbury?
3 MR. WOODBURY: That's fine, Judge.
4 THE COURT: We'll go ahead and excuse you, Mr.
5 Elfe. Maybe next time.
6 A. Thank you.
7 THE COURT: Mr. Sharp, could you please move into
8 Seat 12 up there, sir. Thank you.
9 All right. Then again Mr. Gonzalez, Samuelson
10 and Paniagua, could you please move over one to your right.
11 Seat 24, Ms. Clerk.
12 THE CLERK: Tiffany Ostler, O-s-t-l-e-r.
13 THE COURT: Good morning. We were talking about
14 severe, personal or business hardship.
15 Anyone else have a severe business or personal
16 hardship?
17 BY THE COURT:
18 Q. Mr. Sharp?
19 A. I got three kids and a wife at home. I am the
20 only one working.
21 Q. And where do you work?
22 A. Barrick.
23 Q. Okay. Barrick gives time off, they pay
24 actually if you're on the jury.
25 A. Okay. Cool.

29

1 Q. That's pretty little. Okay. You don't have
2 anybody that could cover for you, like a sister?
3 I have to ask the questions.
4 A. My sister works at the gold mines, my
5 brother-in-law works at the gold mines. I have got no
6 family here other than her.
7 Q. Do you have a regular baby-sitter you could
8 call? Anybody you could call?
9 A. No. I stayed home from work after I had my
10 16-month-old because of that, so.
11 Q. All right. Nobody has ever watched the
12 16-month-old?
13 A. Nope.
14 THE COURT: May we thank and excuse Ms. Ostler?
15 MR. MILLS: Yes, Your Honor.
16 MR. WOODBURY: Yes.
17 THE COURT: Thank you very much. Maybe when the
18 16-month-old is a little older we'll have you back.
19 A. Yes.
20 THE COURT: Have a nice day.
21 A. Thank you.
22 THE COURT: That's seat 24. Could we call
23 another one up, Angie.
24 THE CLERK: Alexander Grace Sweat, S-w-e-a-t.
25 BY THE COURT:

31

1 Q. Did you know that?
2 A. No.
3 Q. Now you know. All right. That's always been
4 my experience. Feel free to call during a break just to
5 confirm that. But the mines are very good. Newmont,
6 Barrick, others, Jerritt Canyon, they are all good about
7 that.
8 All we have do at the end of this thing, if
9 you are selected to sit, we just give you a slip of paper
10 that says Mr. Sharp was on the jury, then you get paid.
11 Okay.
12 A. That was my main concern, was getting paid.
13 I get it. All right. We'll keep you on.
14 BY THE COURT:
15 Q. Ms. Ostler?
16 A. I'm a stay-at-home mom with two kids and I
17 don't have a sitter. My fiance works for SMD and starts
18 back tomorrow, works seven. So I'm kind of in a crunch
19 there, I guess. I am a stay-at-home mom, so I don't have a
20 backup, nothing.
21 Q. You're doing it without a net. All right.
22 How many kids you got?
23 A. Two.
24 Q. Are they little kids?
25 A. I have got a 16-month-old and a 6-year-old.

30

1 Q. Good morning.
2 A. Hi.
3 Q. Would you be able to give us the time for the
4 trial?
5 A. I could.
6 Q. You could. Okay. Thank you.
7 THE COURT: All right. Look, I want to tell you,
8 I realize that time is an imposition for everybody. It's
9 the summer, people have things going on, usually more in
10 the summer, I get it.
11 Also you have jobs and you have families. I
12 realize we're taking time out of your lives.
13 That's why I say severe personal or business
14 hardship, and I put severe in there, because I know it's
15 going to be a time drain for people to be here, but this is
16 an important civic duty.
17 And the other thing I want to tell you is we have
18 trials that sometimes can be, you know, two weeks or more.
19 So this one is a relatively short one, okay.
20 All right. Anybody else have a severe personal
21 or business hardship?
22 BY THE COURT:
23 Q. All right. And your name is Mrs. Thompson?
24 A. Yes, sir.
25 Q. What is going on?

32

1 A. I apologize, it may not seem severe, it's
2 inconvenient. My son plays on a travel baseball team, and
3 I already paid for the fees for that and the room. And I'm
4 also taking another boy with me because another parent
5 can't go. And my husband is out of town for two weeks.

6 Q. For -- is he out working?

7 A. Yes.

8 Q. This is a sort of a vacation type thing, a
9 pre-paid vacation almost?

10 A. Well, I guess so.

11 Q. She is not looking at it as a vacation
12 necessarily. Okay. Is this out of state?

13 A. It's in Reno.

14 Q. Well, that's a long way obviously. Okay.

15 Pre-paid hotel, all the rest of it?

16 A. Yes. I have the -- I have it with me.

17 Q. I trust you. When is does the tournament
18 start?

19 A. Thursday. I have to leave by noon.

20 Q. That's through the weekend probably?

21 A. Through Monday.

22 THE COURT: May we thank and excuse Ms. Thompson?

23 MR. WOODBURY: That's fine.

24 MR. MILLS: Yes, Your Honor.

25 Q. May be a different trial. If you are in the

33

1 television, tweets, social networking sites? I guess
2 that's internet.

3 Newspaper? In any way? Talked to anybody about
4 the case?

5 Okay.

6 BY THE COURT:

7 Q. And the gentleman in the back, that's Mister?

8 A. Whitmer.

9 Q. In seat 5. Can you just tell me first what
10 type of media it was?

11 A. Radio, newspaper.

12 Q. Do you know how long ago each was?

13 A. Probably about the date the alleged crime took
14 place.

15 Q. Okay. And so that was back in 2015, you think
16 you heard this?

17 A. (Nods head)

18 Q. Okay. Well, would you be able to tell me -- I
19 think it kind of requires you to kind of step outside
20 yourself and think about it.

21 First of all, do you remember anything about
22 what you read or heard or anything?

23 A. Yes.

24 Q. Okay.

25 A. The victim's name and the alleged crime.

35

1 pool, you may be summoned back, okay.

2 What's the name of the team?

3 A. The Tribe.

4 THE COURT: Go Tribe.

5 Mr. Gonzalez, could you have a seat up there
6 where Ms. Thompson was in seat 8. Thank you.

7 Then Mr. Samuelson, Mr. Paniagua, Ms. Sweat,
8 could you move over one to your right.

9 Seat 24, please.

10 THE CLERK: Amanda Taylor-Collins, T-a-y-l-o-r
11 hyphen C-o-l-l-i-n-s.

12 BY THE COURT:

13 Q. Okay. Good morning.

14 A. Good morning.

15 Q. Would you be able to give us your valuable
16 time for this trial?

17 A. Yes.

18 THE COURT: Thank you. Anybody else with a
19 severe personal or business hardship up there in that group
20 of 24?

21 No. I will continue on.

22 Have any of you have read or heard anything about
23 this case by any medium of information or from any person?

24 By medium, obviously, we're talking about any
25 media. Read or heard anything on the internet, radio,

34

1 Q. The alleged crime and the alleged victim.
2 Would you be able to set aside whatever you read, decide
3 this case only from testimony and only from evidence
4 presented in court? Court tested?

5 A. Your Honor, I will try.

6 Q. Okay. All right. That's a typical answer, I
7 think, you know, because -- have you ever been a juror
8 before?

9 A. Your Honor, I'm a licensed attorney and so is
10 my wife.

11 Q. Your wife is, too?

12 A. She was a deputy district attorney for
13 Colorado before we moved here.

14 Q. Okay. All right. How long have you been a
15 lawyer?

16 A. Too long. '08.

17 Q. If you tried cases, you know that that's a lot
18 of times the answer we get, "I'll try." Well, the -- of
19 course, the judge then tries to nail you down a little bit
20 more.

21 Because obviously you understand the
22 importance of setting aside what you read outside the
23 courtroom or heard outside the courtroom, right?

24 A. Yes, Your Honor.

25 Q. Okay. And can you just kind of tell everybody

36

1 why that might be?

2 A. Well, you need to be fair and impartial. Like
3 I say, it's important. The State has the burden of proof
4 and you cannot assume anything, you have to assume they are
5 innocent until proven guilty. And it's a tenet of our
6 society.

7 Q. Okay. And what I like to add to that, too --
8 thank you for your answer -- is, the reason I ask this
9 question is we can only have this case decided by
10 testimony, evidence presented in court that's court tested,
11 vetted through cross-examination.

12 People come in, swear -- they are swearing to
13 tell the truth in court.

14 A lot of times what is happening in the
15 newspaper, especially right around the time of the alleged
16 crime, people are not under oath giving their statements.

17 So that's why I ask this question.

18 THE COURT: Well, why don't we pass that on off.
19 Anybody else who heard about the case or read about the
20 case?

21 BY THE COURT:

22 Q. That's Mr. Gregory.

23 A. Just casual conversation with my wife. She
24 reads the newspaper. I just talked with her about it for a
25 few minutes. I don't really remember anything, any huge

37

1 specifics. But I do remember, recognize the names.

2 Q. Okay. And did that happen about the time --
3 you know, you heard that this was alleged to have occurred
4 in December of 2015. Is that about the time you talked to
5 your wife?

6 A. Yes.

7 Q. Do you remember what you talked to her about,
8 other than the names?

9 A. Yeah. That's about it. Just, you know, she
10 reads the newspapers, kind of relayed it to me. No real
11 specifics.

12 Q. Okay. And, you know, the other thing that
13 happens sometimes is you hear the testimony and the
14 evidence come in during the trial, then maybe something
15 pops up in your mind where you say, oh, yeah, I remember
16 reading something about that or talking to Joe about that,
17 or -- you know, what we ask is, would you be able to set
18 that aside and decide the case only from testimony, the
19 evidence presented in court?

20 A. I believe so.

21 Q. All right. Then I will allow counsel to
22 follow up with questioning on this. Thank you, Mr.
23 Gregory.

24 THE COURT: Anybody else read or heard anything
25 about the case? Talked to anybody about the case? No.

38

1 Okay. All right. Please raise your hand if you
2 have yes answers here, right.

3 Have any of you formed or expressed an opinion as
4 to the guilt or innocence of the defendant?

5 Okay. No hands have gone up.

6 Do any of you have any personal knowledge of the
7 facts of this case?

8 Generally what I'm talking about is -- personal
9 knowledge is like maybe you think you were a witness or
10 that kind of thing, like an eye or ear witness.

11 No hands have gone up.

12 Okay. Are any of you related to or personally
13 acquainted with Mr. Dean? That's why I have a gentleman
14 charged with a crime stand up, the defendant stand up to
15 kind of introduce himself so you can see who we're talking
16 about.

17 Anybody related to or personally acquainted with
18 Mr. Dean?

19 No hands have gone up for related to personally
20 acquainted with Mr. Dean.

21 You heard the alleged victims here. These are
22 people the State claims are victims in this case. That's
23 Bert Minter, the other one is Denise Minter.

24 MR. MILLS: That's correct.

25 THE COURT: All right. Anybody related to or

39

1 personally acquainted with Bert or Denise Minter?

2 Okay. They will be witnesses in this case. We
3 actually have a witness list up on this board, and at the
4 appropriate time, I'm going to dim the lights and read
5 these off to you and have you read it.

6 Okay. Now, you heard the charges. There are a
7 few reasons why we read the charges to you.

8 Again, they are charges and not proof of
9 anything. But you have to understand why we're here,
10 that's why we read them.

11 So is there anything about the charges, just
12 hearing these charges -- was everybody able to hear them
13 okay? If you weren't let me know.

14 No hands have gone up saying no.

15 So anything about the charges that would affect
16 your ability to be fair and impartial, where you think, "I
17 heard the charges, now I cannot be fair and impartial"?

18 Anybody like that up here? If it is yes, please
19 raise your hand.

20 All right. No hands have gone up.

21 Do any of you have a personal interest in the
22 outcome of this case?

23 Any personal interest in the outcome that you
24 know of?

25 Okay. No hands have gone up saying yes.

40

1 Does any juror have a bias or prejudice for or
2 against the defendant, Mr. Dean? Bias or prejudice for or
3 against him?

4 If it's yes, please raise your hand.

5 No hands have gone up.

6 Okay, does any juror have a bias or prejudice for
7 or against the State of Nevada?

8 I want to tell you, the State is again
9 represented by Deputy District Attorney Mills. He works at
10 the Elko County District Attorney's Office with Mark
11 Torvinen, who is the district attorney in Elko County.

12 Their office is actually in this same building
13 here. That is where he is coming from to prosecute this
14 case.

15 Anybody have any bias or prejudice for or against
16 the State?

17 We have had a hand that has gone up.

18 BY THE COURT:

19 Q. That's Ms. Erickson?

20 A. Yes.

21 Q. Okay. Ms. Erickson --

22 A. It's something that I would rather not talk
23 about in public, but yes.

24 Q. Okay. If you want to talk about that outside
25 the presence of the others, we can do that during a break,
41

1 And Mr. Woodbury, as a lot of you probably know,
2 was our district attorney in Elko County, I think, maybe
3 for 12 years in the nineties, then the last decade for a
4 bit.

5 And he's also been -- he was an attorney in Elko
6 a long time before that, and now he is a practicing
7 attorney after D.A.-dom.

8 Anyway, is anybody related to personally
9 acquainted with Mr. Woodbury?

10 We have one hand that has gone up. Mr. Stake.

11 Anybody else?

12 By the way, if you come up with something that
13 you want to talk about in complete candor to the other
14 questions I have asked for way back, you know, raise your
15 hand and interrupt even if you have to.

16 BY THE COURT:

17 Q. Mr. Stake?

18 A. My wife used to be his legal secretary awhile
19 back, so I know him from there.

20 Another issue, too, is that I am on the law
21 side of it. My father was a cop in San Francisco for
22 years.

23 Q. Okay.

24 A. Now my son is a cop.

25 Q. He's a deputy?
43

1 which will be coming up. Thank you very much.

2 THE COURT: Anybody else have any bias or
3 prejudice against the State?

4 They are called the State of Nevada in the
5 charging document, but it's actually the Elko County
6 District Attorney bringing the prosecution on behalf of the
7 State.

8 BY THE COURT:

9 Q. Yes? That's Ms. Levie?

10 A. I don't have a bias or prejudice, but I do
11 work for the State.

12 Q. Who do you work for?

13 A. For the welfare division, child support
14 enforcement program.

15 Q. Here in Elko County?

16 A. Yes.

17 Q. Is there anything about that relationship that
18 would cause you to be fair and impartial in this case?

19 A. No.

20 Q. Does your work have anything to do with this
21 case as far as you are aware?

22 A. No.

23 THE COURT: Okay. Thank you very much.

24 Now, Mr. Woodbury, we introduce him because he
25 again is Mr. Dean's attorney.
42

1 A. Yes, he is a detective for the county.

2 Q. Okay?

3 A. And the witness list, I know a lot of cops and
4 officers up there that I know.

5 Q. Well, I have questions that relate to personal
6 employment in law enforcement, and then also friends, close
7 friends and loved ones employed in law enforcement.

8 A. Yeah.

9 Q. As we go along. These are generally down the
10 line, but I guess since you brought it up, is there
11 anything about these relationships with these witnesses or
12 your son being in local law enforcement and your father
13 having been --

14 A. Yeah. I think it would be unfair to him.

15 Q. Him meaning Mr. Dean?

16 A. Mr. Dean.

17 Q. The defendant?

18 A. Yeah.

19 Q. Okay. You don't think you could be fair and
20 impartial in judging this --

21 A. It would be tough.

22 Q. -- case with an open mind?

23 A. It would be tough.

24 THE COURT: May we thank and excuse Mr. Stake.

25 MR. MILLS: Yes, Your Honor.
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1 MR. WOODBURY: My inclination is to force him,
2 but I think I'll let him go.
3 THE COURT: Okay. One thing you didn't say was
4 he had a problem with your wife.
5 A. I didn't say that, no.
6 THE COURT: All right. Mr. Stake, maybe a
7 different trial, where you don't know so many of the
8 witnesses.
9 A. Yeah.
10 THE COURT: We'll thank and excuse you.
11 Appreciate you showing up.
12 A. Thanks.
13 THE COURT: This was seat 11. We may have
14 Mr. Runyon move into seat 11.
15 You already moved. You moved to seat 10.
16 Mr. Samuelson, excuse me, could you move to seat
17 11, please.
18 Mr. Paniagua, Ms. Sweat and Ms. Taylor-Collins,
19 move over one to your right, please.
20 Seat 24, please.
21 THE CLERK: Javier Robles, R-o-b-l-e-s.
22 BY THE COURT:
23 Q. Good morning, Mr. Robles.
24 A. Good morning.
25 Q. Have you heard the questions I have been

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1 asking?
2 A. Yes.
3 Q. Okay. Would you be able to give us the time
4 for the trial?
5 A. Yes.
6 Q. Thank you. All right. I'm just going to go
7 through the questions a little bit to refresh your memory.
8 I think it's that important.
9 Read or heard anything about the case?
10 A. No.
11 Q. Okay. Formed or expressed an opinion about
12 Mr. Dean's guilt or innocence?
13 A. No.
14 Q. Okay. Any personal knowledge of the facts of
15 this case?
16 A. No.
17 Q. Okay. Related to or personally acquainted
18 with Mr. Dean or either of the -- Bert or Denise Minter?
19 A. No.
20 Q. Okay. Anything about the charges where you
21 say, "man, I just cannot be fair and impartial here"?
22 A. No.
23 Q. Okay. Any personal interest in the outcome of
24 the case?
25 A. No.

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1 Q. Any bias or prejudice for or against the State
2 or the prosecuting side?
3 A. No.
4 Q. Okay. Are you related to personally
5 acquainted with Mr. Woodbury?
6 A. No.
7 Q. Okay.
8 THE COURT: Well, anybody else related to or
9 personally acquainted with Mr. Woodbury?
10 No other hands have gone up.
11 Mr. Mills, I think -- how long have you been at
12 the D.A.'s office now?
13 MR. MILLS: About six years.
14 THE COURT: Then I think he clerked for a judge
15 before that. He has been around a bit.
16 Now he works -- he is with the Elko District
17 Attorney's office, and he has got colleagues who practice
18 with him up there.
19 Why don't you let us know who are these
20 colleagues. The lawyers anyway.
21 MR. MILLS: Sure, Your Honor. So the other
22 prosecutors and attorneys at the District Attorney's office
23 are David Buchler, Robert Lowe, Tyler Ingram, Chad
24 Thompson, Mark Torvinen, the elected district attorney,
25 Jeffrey Slade, Joseph Barrett, Curtis Moor and Kristin

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1 McQueary.
2 THE COURT: That is with you, all ten of you?
3 MR. MILLS: That's correct.
4 THE COURT: All right. There are other employees
5 at the D.A.'s office who work in the child support
6 enforcement division and, you know, perhaps Ms. Levie knows
7 some of them since she is in that business.
8 There are case workers who work with the
9 prosecuting attorneys. Ms. McQueary, I think, works in the
10 civil division, advising boards and commissions, and among
11 other duties, I'm sure.
12 So these are the people at that office. Anybody
13 personally acquainted with or related to anybody at the
14 D.A.'s office that you are aware of?
15 BY THE COURT:
16 Q. Mr. Whitmer?
17 A. Just socially from county bar association
18 meetings.
19 Q. County bar meetings. Who is that?
20 A. Ms. McQueary, I -- I know -- probably met most
21 of them here or there.
22 Q. How long have you been here now?
23 A. I have been in Nevada four years. You swore
24 me in, Your Honor.
25 Q. Mr. Whitmer, I see so many people. I am

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1 embarrassed. You are just not hitting me right now.
2 A. I am not offended.
3 Q. That's a good personality for a lawyer, you
4 don't want to get offended easily. All right.
5 Well, is there anything about your knowledge
6 of these people that would cause you not to be fair and
7 impartial?
8 A. No, I don't believe so. I think they are all
9 very upstanding citizens, people.
10 Q. I will ask it another way, do you think you
11 could come to the case, the State's case and Mr. Dean's
12 case both, with an open mind?
13 A. Yes.
14 THE COURT: Okay. Thank you sir. Anybody else?
15 BY THE COURT:
16 Q. Ms. Levie knows somebody in child support
17 enforcement?
18 A. I know all of them.
19 Q. Yeah. And we know this case doesn't have
20 anything to do with child support enforcement, but I still
21 have to ask you, is there anything about your knowledge of
22 these people or working with these people that would cause
23 you not to be fair and impartial in this case?
24 A. No.
25 Q. Would you also be able to come to this case

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1 others, we can do that.
2 Okay. Or if it's a friend or a loved one.
3 And I wasn't going to go to you exactly, Ms.
4 Erickson, I just kind of assumed that is what we would be
5 talking about. So there is no harm in that. We have had
6 that done a lot of times. We just need to know about that,
7 see whether it impacts -- adversely impacts your ability to
8 be fair and impartial in this very important case.
9 Okay. So for right now, if anybody feels
10 comfortable about that, either attorney ever represented a
11 third party against you? All right. Or a friend or a
12 loved one that you know of? Except Ms. Erickson. We know
13 about her.
14 No other hands have gone up.
15 This is one of my favorite questions. Is there
16 any one of you who would like not to be tried by a jury
17 composed of people having the same frame of mind that you
18 now have?
19 And that's for whatever reason.
20 Any one of you who would not like to be tried by
21 a jury composed of people having the same frame of mind
22 that you now have?
23 That's assuming, of course, that if you were
24 being -- you were on trial, you would want a fair and
25 impartial jury, right?

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1 with an open mind for Mr. Dean's case and the State's case?
2 A. Yes.
3 THE COURT: Thank you very much.
4 Anybody else know anybody at the D.A.'s office?
5 No. Okay. Thank you.
6 I will move on. Has either attorney ever
7 rendered legal services for you? Either of the attorneys
8 been your lawyer?
9 Okay. That could be just not only in court, but
10 maybe representing you on some matter outside of court.
11 Lawyers do a lot of things outside of court, too.
12 So either lawyer ever represented you?
13 All right. No hands have gone up.
14 Has either party ever represented a third party
15 against you?
16 Okay. And third party would also include the
17 State of Nevada. Again, the prosecutor works at the office
18 with a lot of lawyers, like you heard, and colleagues, who
19 actually bring prosecutions for the State of Nevada against
20 some people in the community sometimes.
21 This is one example here, where the defendant is
22 being charged with some crimes.
23 So if somebody up here has been prosecuted by the
24 Elko County D.A.'s office, I need to know that. If you
25 want to talk about it outside the presence of all the

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1 All right. I will throw that in. It would be
2 the odd person who wouldn't want it that.
3 And if you have an answer to that, saying, "yes,
4 I would not want to be tried by me," please raise your
5 hand.
6 No hands have gone up.
7 All right. Do any of you -- this gets a little
8 into the personal area, but I still have to ask you. We
9 need people who can be jurors effectively, which means you
10 are in court, sitting for typically an hour and a half to
11 two hours at a time.
12 I do encourage people to stand up and stretch it
13 out if they need to, even during the testimony.
14 Our chairs aren't as comfortable as I would like
15 them to be, we are going to be getting more comfortable
16 chairs here soon.
17 But we need tomorrow who can see well, too, so
18 you can look at the witnesses, watch them testify. Also,
19 we need people with good hearing. I can mike up that
20 courtroom a little bit. It's a little louder in my
21 courtroom, though, because it's an old building, and you
22 can hear the air conditioner. In the winter you can hear
23 the old geothermal pipes pumping away.
24 So we need people with acute hearing, good
25 hearing.

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1 We need people -- in this day and age, I think I
2 should say, too, we need people with good mental health.
3 Some people have maybe some problems with that part of it,
4 where they can't pay attention because of that.

5 So is there anybody who has a health problem that
6 would prevent you from serving as a fair and impartial
7 juror?

8 okay. If you have something personal to bring up
9 with us, again, we can do that outside the presence of the
10 others.

11 BY THE COURT:

12 Q. That's Mr. Sharp?

13 A. I will do it personal.

14 THE COURT: All right. We'll deal with that
15 outside the presence of the others. We'll go back to back
16 with Ms. Erickson and Mr. Sharp.

17 Anybody else?

18 If you got back problems, some people have
19 bladder problems, I get that. We do take breaks every hour
20 and a half, okay.

21 The names of the prospective witnesses are on the
22 board. Mr. Bailiff, could we please dim the lights.

23 It's an extensive list. I don't know that all
24 these people will be called, ladies and gentlemen. But
25 this is the list of witnesses I have been told about.

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1 It's Marggie Ayers, Chris Ballesteros, Carl
2 Brannon, Jeremy Catalano, Jacob Eisinger, Joel Fairfield,
3 Zachary Hessing, Christina Hodges, Robert Lowe, Jared
4 Lowry, Bert Minter, Denise Minter, Joshua Morrell, Pete
5 Nielson, Kate O'Driscoll, Mike O'Farrell, Darrell Palmer,
6 Jason Pepper, Joseph Schenk, Jeremy Shelley, Monica
7 Siewertsen, Jeffrey Slade, Lindsey Steele, Clarence
8 Thompson, Brittney Tice and Christopher Ward.

9 Those are the witnesses we expect to be called.
10 Maybe not all of them, but again, they are listed.

11 So go ahead and take a gander at that. I have
12 read all of them, I think.

13 We heard Mr. Stake talk about the people that he
14 is related to in law enforcement, that he knew some of
15 these witnesses.

16 Anybody else up there in the group of 24, are you
17 related to or a personal friend of any of the these
18 witnesses? Related to or a personal friend?

19 BY THE COURT:

20 Q. I believe your name is?

21 A. Misty Polish.

22 Q. Okay.

23 A. And it's not so much that I am with them, but
24 I do go to church with Jeremy Shelley's parents. Never met
25 him.

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1 And then Darrell Palmer, I might have said
2 five words to in my whole time. I have met the parents, I
3 know his parents as well.

4 Q. Well -- and from where do you know his
5 parents?

6 A. I go to church with them.

7 Q. These --

8 A. Just acquaintances.

9 Q. So you know these people, you go to church
10 with people who are related to Mr. Palmer and Mr. Shelley?

11 A. Yes.

12 THE COURT: I think Shelley is a police officer?

13 MR. MILLS: He is, Your Honor.

14 Q. Is this a close personal friendship to either
15 Mr. Palmer or Mr. Shelley?

16 A. For me?

17 Q. Yes.

18 A. No.

19 Q. That's what it sound like. Well, do you think
20 you could still be fair and impartial in this case even
21 though you know of these people?

22 A. Definitely.

23 Q. Or have you even talked to them?

24 A. Yeah, yeah.

25 Q. At one time?

55

1 A. Yeah.

2 Q. Okay. Can you weigh their credibility just
3 like you would any other witness?

4 A. Yes, for sure.

5 THE COURT: Because a real important thing,
6 obviously, that jurors have to do is they have to decide
7 whether witnesses are being credible or not.

8 That involves deciding truthfulness or
9 untruthfulness, or whether they got their stories straight
10 even if they are truthful, even if you find that.

11 Credibility is what we're talking about.

12 We need jurors who can do that fairly and
13 impartially for every witness that comes up.

14 okay. Anybody else know any witnesses up there
15 or related to or personally acquainted with any other
16 witnesses up there?

17 No other hands have gone up.

18 okay. All right. Has anybody up here ever been
19 a juror before?

20 It's Elko County. We always get hands. Yeah,
21 all right. It looks like three gentlemen in the front.

22 Anybody in the back? No.

23 Okay. There are criminal jury trials like this
24 where a person is accused of crimes, and then there are
25 civil jury trials where a lot of times it's one party suing

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1 another for damages, money damages, for instance.
2 And what I want to remind you of is, this is a
3 case, because a person is charged with a crime, he is
4 entitled to the presumption of innocence. And the burden
5 of proof is the highest in the law, it's beyond a
6 reasonable doubt. And I read you what that means, okay.

7 In a civil case, it's called usually a
8 preponderance of the evidence is the burden of proof. And
9 if you think of the scales of justice is one tips in favor
10 of one party or the other just a little even, that party
11 wins.

12 But this isn't like that; it's beyond a
13 reasonable doubt in criminal case.

14 So I just wanted to point that out to those of
15 you who may have served on a civil jury before.

16 And let's see we only three hands go up. Please
17 hand that microphone down to Mr. Martinez.

18 BY THE COURT:

19 Q. Mr. Martinez, you served, sir?

20 A. Yes.

21 Q. Where was that? Can you tell us where that
22 was?

23 A. This was in Leadville, Colorado, probably the
24 late eighties.

25 Q. Okay. High altitude of Leadville, Colorado.

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1 A. Yes, 10,000 feet elevation.

2 Q. That's right. Was it a criminal case?

3 A. Domestic violence is what it was.

4 Q. And were you the foreperson on the jury?

5 A. Yes.

6 Q. Okay. Did the jury reach a verdict in that
7 case?

8 A. Yes, we did.

9 Q. Okay. And you were the foreperson. Is there
10 anything about that service that would make you think you
11 could not be a fair and impartial juror again?

12 A. No.

13 Q. Could you do it again in Elko County this
14 time? You could be fair and impartial?

15 A. Yes, I think so.

16 Q. If I am wrong, let me know, okay.

17 A. Okay.

18 THE COURT: Thank you. Who else has served?

19 BY THE COURT:

20 Q. Mr. Holt served as well. Where was that, sir?

21 A. Here in Elko County.

22 Q. How long ago?

23 A. '08.

24 Q. Okay. While back. Was it a criminal or a
25 civil case?

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1 A. It was criminal.

2 Q. Okay. Did the jury reach a verdict in that
3 case?

4 A. No.

5 Q. Okay. It was a hung jury or --

6 A. It was settled.

7 Q. Okay. Before the end of trial?

8 A. Yes.

9 Q. Thank you very much. Anything about that
10 experience where you did not get to deliberate in the end
11 that would cause you not to be fair and impartial this time
12 around?

13 A. No, Your Honor.

14 THE COURT: Thank you, sir.

15 BY THE COURT:

16 Q. I think Mr. Mallory raised his hand.

17 A. Malloy.

18 Q. I'm sorry, Mr. Malloy. You raised your hand?
19 You were a juror in Elko County?

20 A. Yes.

21 Q. How long ago was that?

22 A. Four years and two years.

23 Q. My goodness, you are getting back into the
24 pool quickly.

25 A. With you, same time, yes.

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1 Q. Okay. Well, were those criminal cases?

2 A. Yes.

3 Q. Did the jury reach verdicts in each of those?

4 A. Yes.

5 Q. And were you the foreperson on either of those
6 juries?

7 A. No.

8 Q. Is there anything about that experience that
9 would cause you not to be fair and impartial this time
10 around?

11 A. No.

12 Q. Okay. Thank you very much.

13 THE COURT: Anybody else? Thank you for your
14 service, all three of you gentlemen.

15 Anybody else who has been on a jury?

16 Okay. Nobody else.

17 All right. Well, we've now reached the first
18 break time. Thank you for bearing with us this morning. I
19 know you got here earlier, a lot of you, then we had to get
20 you in and get situated, and then they bring me down.

21 So we are going to take our morning break. I have
22 an admonishment that I have to read the jury once it's
23 selected. I like to get in practice now, I read this when
24 we take breaks.

25 So here it is.

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1 Please do not converse amongst yourselves or with
2 anyone else on any subject connected with the trial. Do
3 not read, watch or listen to any report or commentary on
4 the trial or any person connected with the trial by any
5 medium of information, including, without limitation,
6 newspapers, television, radio or the Internet.

7 And do not form or express any opinion on any
8 subject connected with the trial until the cause is finally
9 submitted to you.

10 You may not use any electronic device or media,
11 such as the telephone, a cell phone, smartphone, iPhone,
12 BlackBerry or computer, the internet, any internet service,
13 any text or instant messaging service, any internet chat
14 room, blog, or website such as Facebook, MySpace,
15 LinkedIn, YouTube or Twitter, to communicate to anyone any
16 information about this case until I accept your verdict.

17 In other words, you cannot talk to anyone on the
18 phone, correspond with anyone, or electronically
19 communicate with anyone about this case.

20 With this exception: You can certainly tell
21 loved ones or friends, I am still in jury selection in
22 Judge Kacin's court, I might not be back at work, you know,
23 at home, whatever, this morning. You can do that part of
24 it, but we don't want you talking about the content of this
25 case, okay.

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1 So we'll be in recess for 15 minutes. Bathrooms
2 are down the hall to the left, ladies and gentlemen.

3 And we do have two jurors to talk with. Ms.
4 Erickson and Mr. Sharp, please remain. Thank you.

5 We need everybody to come back, even those in the
6 gallery.

7 (WHEREUPON, the prospective jurors left the courtroom)

8 THE COURT: We'll be back on the record for Case
9 CR-FP-2015-1508, State versus Dean.

10 Lawyers are back in court. Mr. Dean is back in
11 court, as well, with counsel Gary Woodbury.

12 So we have three prospective jurors we want to
13 talk with outside the presence of the others.

14 Why don't we talk to the lady in the red here
15 first.

16 Ms. Erickson and Mr. Sharp, I will have you take
17 a seat, just have a seat outside there, take your bathroom
18 break, then we'll get to you right after this lady, okay.

19 (WHEREUPON, Ms. Erickson and Mr. Sharp left the
20 courtroom)

21 THE COURT: And I'm sorry, I didn't get your name
22 yet, ma'am.

23 A. Kathryn Lanni.

24 Q. Okay. And you came up and you talked to our
25 court reporter and you seemed extremely upset. So what's

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1 going on?

2 A. As I told you when I was called for jury duty
3 six weeks ago when I showed up --

4 Q. I'm sorry, I don't remember that.

5 A. Yeah, I'm sure you see thousands of people.

6 Q. Thank you for understanding.

7 A. In 2011 I was brutally attacked and stabbed in
8 the back and have multiple scars and was --

9 Q. Okay. I'm sorry for not remembering that.

10 A. Nearly murdered for my purse.

11 Q. I'm sorry. Did we excuse you from the other
12 panel as well because of that?

13 A. Yes.

14 Q. Okay. It was a crime violence alleged sort of
15 like this, right?

16 A. Yes.

17 Q. Okay. You heard what the allegations are. I
18 just have to ask, it seems pretty obvious to me, but can
19 you be fair and impartial?

20 A. Absolutely not.

21 THE COURT: May we thank and excuse this lady?

22 MR. MILLS: Yes, Your Honor.

23 THE COURT: Mr. Woodbury?

24 MR. WOODBURY: May I have the name again?

25 THE COURT: Lanni, L-a-n-n-i.

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1 MR. WOODBURY: Yes.

2 Q. Ms. Lanni, I'm sorry you are upset. We'll
3 thank and excuse you from this one today. If you are
4 called back, I hope it doesn't have anything to do with --

5 A. Is it normal just to have six weeks between?

6 Q. It can be, because you are in the pool. I
7 would think since you have shown up twice now for jury duty
8 that you should have a point for each show-up, which means
9 you should be removed from this pool now, okay. Two points
10 will remove you from this pool.

11 That's not to say you couldn't be brought back
12 with another pool someday, but it should be at least a
13 couple years I would think. Okay?

14 A. Okay. Thank you.

15 THE COURT: Thank you very much. Have a nice
16 day.

17 MR. WOODBURY: Your Honor, may I inquire what
18 juror number she was?

19 THE COURT: She was not seated, Mr. Woodbury.
20 She simply approached our court reporter when we broke for
21 recess.

22 Sorry, I should have told you fellows that, yeah.

23 BY THE COURT:

24 Q. Ms. Erickson, you can have any seat up front
25 here over there to my right. Thank you.

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1 Okay. Unfortunately, sounds like maybe a
2 loved one is being prosecuted or a friend?
3 A. Was. April 2013, ACLU versus Elko County,
4 Mark Torvinen at the helm. John Doe was my son. It was a
5 witch hunt. Very harsh feelings against Elko County.
6 Ended up winning, but terrorized my family. Mr. Pepper was
7 involved and Mr. McKinney.
8 Q. Was this in federal court then?
9 A. No. It was ACLU versus Elko County, so it was
10 the county. It was --
11 Q. I don't know if we have to get into it too
12 much. But you seem upset at the witnesses? Maybe am I
13 wrong.
14 A. Mr. Torvinen.
15 Q. Okay.
16 A. Very strong dislike. We're talking about a
17 child that he went after and it's -- he spent time in a
18 mental hospital after.
19 Q. The child did?
20 A. My child is John Doe.
21 Q. Do you think you could be fair and impartial
22 in a case where one of his employees, Deputy District
23 Attorney Mills --
24 A. I don't even know who else was behind the
25 scenes pushing the witch hunt is what I call it, yeah.

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1 presence of the other venire persons with Mr. Sharp now.
2 Of course he is still under oath.
3 BY THE COURT:
4 Q. Mr. Sharp, what is going on?
5 A. The question on the vision stuff, I'm actually
6 legally blind in one eye and pretty close to in the other.
7 Then also, you said with -- I graduated high
8 school in Special Ed. and I have a hard time focusing. I
9 wander, my mind does.
10 Q. All right. Did you have like an ADHD
11 diagnosis or --
12 A. I really don't know. My parents did all that.
13 I was in special education from first grade until I
14 graduated.
15 Q. You're pretty young. How old are you?
16 A. I'm 30.
17 Q. Well, do you think you would be able to sit --
18 you heard how I said you got to sit for long periods of
19 time, watch witnesses, study jury instructions, and
20 deliberate with other people. There is a lot to this, a
21 lot of moving parts.
22 We'll have a lot of -- probably, I would
23 think, details in the testimony.
24 Would you be able to do that kind of thing?
25 A. That's kind of where I'm kind of -- that's why

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1 Q. You are concerned maybe Mr. Mills was involved
2 in that case?
3 A. Very well could be.
4 Q. Well, do you think you could be fair and
5 impartial?
6 A. I'm going to tell you no.
7 Q. Okay.
8 A. Honest to God.
9 Q. Okay. We want you to be honest, and I
10 appreciate you bringing this up.
11 A. It was absolutely devastating to my family, my
12 son.
13 Q. Well, I'm sorry you are upset. We still have
14 to call people in --
15 A. Absolutely. I totally understand.
16 Q. Maybe next time it will be like a civil case
17 where we don't have this issue.
18 THE COURT: Okay. May we thank and excuse Mr.
19 Erickson today?
20 MR. MILLS: Yes, Your Honor.
21 MR. WOODBURY: Yes, Your Honor.
22 THE COURT: Thank you. And you can be excused.
23 Have a better day down the line.
24 Mr. Sharp can come in next, please.
25 THE COURT: Okay. And we are still outside the

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1 I mentioned it. Because I don't think it would be fair if
2 I wandered off and missed some parts, you know.
3 THE COURT: I will let the lawyers ask questions.
4 Mr. Mills, any questions for Mr. Sharp?
5 BY MR. MILLS:
6 Q. Mr. Sharp, in this case there might be some
7 exhibits that might be shown to some of the witnesses.
8 They will point stuff out on those exhibits: Photographs,
9 maps, that sort of thing.
10 Would your vision -- the issues with your
11 vision, would it interfere with that, with being able to
12 see what they are pointing out on the maps or exhibits?
13 A. From a distance, yeah. Like, the guy over
14 there, his face is kind of blended in. I can't see his
15 eyes very well.
16 Q. Talking about the guy back there sitting
17 against the wall?
18 A. Right.
19 Q. And do you think you would be able to give
20 your -- the attention issues that you mentioned, do you
21 think you would be able to give your full attention to the
22 case that is going to last about a week?
23 A. I could try. But my main problem is I -- like
24 noises. I'm constantly moving, I look around. It's --
25 it's hard to say. Like already I have kind of been in --

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1 not lala land, but, you know, kind of off topic and come
2 back. That was why I pretty much didn't really succeed in
3 high school very well.

4 Q. Do you feel comfortable and confident that you
5 could give the case your full attention? Sounds like there
6 is some hesitation?

7 A. Honestly, probably not. I want to be fair to
8 the person and everybody else about it. Probably not.

9 Q. Thank you for candor, Mr. Sharp.

10 MR. MILLS: I have no objection to him being
11 excused, Your Honor.

12 THE COURT: Do you have any questions,
13 Mr. Woodbury?

14 MR. WOODBURY: I have no questions and I have no
15 objection either.

16 THE COURT: Okay. Mr. Sharp, this what I am
17 talking about. Thank you for your candor today. We'll
18 excuse you at this time. Have a nice day. Now you got to
19 go to work.

20 We'll take a 10-minute recess for Mr. Dean and
21 counsel.

22 MR. MILLS: Your Honor, can I raise one issue.

23 THE COURT: Yes. We're outside the presence of
24 the venire.

25 MR. MILLS: I don't want to embarrass a

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1 convicted of a battery.

2 THE COURT: Do you remember his name?

3 MR. MILLS: John Smales.

4 THE COURT: John Smales?

5 MR. MILLS: That's correct. And she was there. I
6 remember her very vividly. I don't know if she testified
7 and I cross-examined her or not, but she was certainly
8 there in the courtroom, sitting with her husband, providing
9 moral support.

10 I could tell it was a distraught situation for
11 her and for her husband. I'm concerned that she might hold
12 some -- harbor some bad dealings about that.

13 I wanted to ask her. She didn't respond to the
14 question. I don't want embarrass her.

15 THE COURT: Let's do that outside the presence of
16 the others after the break. Let's let you fellows take a
17 10-minute break.

18 Is that okay, Mr. Woodbury?

19 MR. WOODBURY: Yes.

20 THE COURT: Good enough. We'll be in recess for
21 10 minutes.

22 (WHEREUPON, a short recess was taken)

23 THE COURT: Again, back on the record for our
24 Case CR-FP-15-1508, State versus Dean.

25 Mr. Dean is back in court with counsel

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1 prospective juror, but there is a prospective juror that I
2 am fairly confident is the spouse of somebody that I
3 prosecuted. We went to trial on it, misdemeanor
4 prosecution, and --

5 THE COURT: Who is that?

6 MR. MILLS: It's number 3, Tara Smales. I
7 prosecuted, I'm almost positive, her husband John Smales.
8 I prosecuted him in --

9 THE COURT: That's 15. She is in seat 15, right?
10 Three we just excused.

11 MR. MILLS: Three is right above her. You're
12 correct.

13 THE COURT: Okay.

14 MR. MILLS: So the question is -- and I remember
15 that it was fairly contentious trial. I could tell she and
16 her husband were upset. Her husband was convicted. So I
17 have some --

18 THE COURT: What was the charge?

19 MR. MILLS: It was a battery case, misdemeanor
20 battery charge.

21 THE COURT: Not domestic violence?

22 MR. MILLS: No, not domestic violence.

23 It was a work-related incident where her husband
24 had gotten in an altercation with some employees that were
25 doing a construction job, there was a fight, and he was

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1 Mr. Woodbury.

2 Again, Deputy Mills for the State.

3 We have had Ms. Smales, she is in seat 15,
4 brought in.

5 BY THE COURT:

6 Q. It's come to my attention, an issue, Ms.
7 Smales -- and I don't this to be uncomfortable for you, but
8 I have to ask.

9 A. Uh-huh.

10 Q. Were you ever -- did you have a loved one
11 prosecuted by D.A.'s office?

12 A. I wasn't sure of the question, that's why I
13 didn't say anything. Yes, yes, I did. Because -- yeah.

14 Q. Sometimes my questions aren't very clear?

15 A. I'm sorry, this is my first time doing this.

16 Q. Sure. And you recognize Mr. Mills then?

17 A. Uh-huh, yes.

18 Q. And what is that from?

19 A. That is from a battery charge.

20 Q. Okay. And he prosecuted who?

21 A. My husband.

22 Q. Your husband. And what is his name?

23 A. John.

24 Q. And do you know what the outcome of that
25 prosecution was?

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1 A. Yes. John was accused, yes.
 2 Q. Accused of what?
 3 A. Battery.
 4 Q. Was he convicted of battery?
 5 A. Uh-huh.
 6 Q. Was that at a trial?
 7 A. Yes.
 8 Q. Like in front --
 9 A. Not in front of a jury, just a judge.
 10 Q. In front of a judge. Did that happen in Elko
 11 County?
 12 A. Uh-huh.
 13 Q. Yes. How long ago was that, please?
 14 A. Let's see, let me think, two years ago. Yeah.
 15 Sorry, I'm not exactly sure.
 16 Q. Estimating is fine. Well, I think you can see
 17 why I am asking this. I don't want to embarrass anybody.
 18 And for a lot of people, that might be something
 19 embarrassing.
 20 But I still have to ask you, do you think you
 21 can be -- recognizing that this is the prosecutor here, and
 22 he prosecuted your husband a couple years back. Your
 23 husband was convicted of battery and I'm assuming you
 24 didn't like that.
 25 A. I don't judge anybody.

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1 Q. Well --
 2 A. I don't.
 3 Q. You would be in a position of judging this
 4 case if you were a juror, though.
 5 A. Yeah, yeah. I know. But I don't -- I don't
 6 unlike somebody. Or I am -- it's hard trying to say what I
 7 am trying to say.
 8 Q. Okay. I will just ask you an open-ended
 9 question then. What do you think about Mr. Mills?
 10 A. I think he's a great guy. He is honest and
 11 truthful. I think he's a good attorney, yeah.
 12 Q. You know him. Do you know -- do you know Mr.
 13 Woodbury?
 14 A. I don't. No, I don't.
 15 Q. Well, what we -- would you be able to -- do
 16 you think you can still be a fair and impartial juror in
 17 this case?
 18 A. I think I can. But if you don't feel that I
 19 can. I think I can.
 20 Q. I ask you, because I don't know you. So --
 21 and one of the things jurors have to do is you have to
 22 listen to arguments from the lawyers at the end of the
 23 case.
 24 It's -- all parts of a trial are very
 25 important. But that's key. That you be able to come to

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1 these arguments and listen to these guys, not just shut
 2 them down, and you listen to what they have to say.
 3 Could you do that for both Mr. Woodbury and
 4 Mr. Mills?
 5 A. Yes, I can.
 6 THE COURT: Okay. All right. Well, thank you.
 7 Any questions for Ms. Smales, Mr. Mills?
 8 BY MR. MILLS:
 9 Q. Ms. Smales, I remembered you. I'm trying to
 10 remember, did you testify at that trial or --
 11 A. I did.
 12 Q. -- just a spectator?
 13 A. Yeah, yeah, I did testify.
 14 Q. So I cross-examined you in the case?
 15 A. Yes.
 16 Q. Okay. And you understand that that wasn't
 17 anything personal, right? I was just doing my job?
 18 A. Oh, yeah.
 19 Q. Presenting the evidence and making arguments
 20 to the court as lawyers do?
 21 A. Yes.
 22 Q. That it wasn't anything personal against you
 23 or your husband or anything like that?
 24 A. Um-hmm.
 25 Q. So you don't harbor any sort of biases, one

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1 way or another, towards me or towards the District
 2 Attorney's office for prosecuting your husband?
 3 A. No.
 4 Q. So you understand that case is totally
 5 different, separate from this case?
 6 A. Yes.
 7 Q. Has nothing to do with one another?
 8 A. Yes.
 9 Q. So can you set aside everything that happened
 10 with that and just look at the evidence presented to you in
 11 this case and listen to the law and come to an independent
 12 decision?
 13 A. Yes.
 14 MR. MILLS: Thank you.
 15 THE COURT: Okay. Mr. Woodbury, questions?
 16 MR. WOODBURY: We have no questions.
 17 THE COURT: Okay. Thank you very much.
 18 And we're going to take a break for a few minutes
 19 because we have been working in here. Please bear with us.
 20 The bailiff is going to have to have everybody come in. You
 21 may stay here, if you would like.
 22 (WHEREUPON, a short recess was taken)
 23 THE COURT: We'll be back on the record for Case
 24 CR-FP-2015-1508, State versus Dean.
 25 Mr. Dean is back in court with counsel Gary

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1 Woodbury.
2 And Deputy District Attorney Mills for the State.
3 We have the group of 24 up there, with the
4 exception of Mr. Sharp in seat 12, who has been excused,
5 and Ms. Erickson in seat 3 has been excused.
6 So what we need now is seat 21, Mr. Paniagua,
7 would you please have a seat up in three there, sir.
8 Then, Ms. Sweat, could you have a seat in seat 12
9 there.
10 We'll have Ms. Taylor-Collins and Mr. Robles
11 move over two to your right.
12 Seat 24, please.
13 THE CLERK: Timothy Woods, W-o-o-d-s.
14 THE COURT: That's actually 23.
15 This would be seat 24.
16 THE CLERK: Chadoe Cervantes, C-e-r-v-a-n-t-e-s.
17 THE COURT: Thank you.
18 Everybody is still on their oath there on the
19 panel.
20 Okay. Welcome to the panel, Mr. Woods and Ms.
21 Cervantes.
22 Would you each be able give us the time for the
23 trial?
24 Both nodding. I like it.
25 I'm just going to kind of run through, hit the

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1 highlights on these questions.
2 Now, were you each able to hear the questions we
3 have been asking? That.
4 (both prospective jurors nod)
5 THE COURT: Read or heard anything about the
6 case, either of you?
7 (both prospective jurors shake their heads)
8 THE COURT: Formed or expressed an opinion about
9 the guilt or innocence of the defendant?
10 (both prospective jurors shake their heads)
11 THE COURT: Okay. Personal knowledge of the
12 facts of the case?
13 (both prospective jurors shake their heads)
14 THE COURT: Are either of you related to or
15 personally acquainted with Mr. Dean or either of these
16 Minters?
17 (both prospective jurors shake their heads)
18 THE COURT: Heard -- or is there anything about
19 the charges that would make you think, I just cannot be
20 fair and impartial?
21 (both prospective jurors shake their heads)
22 THE COURT: Okay. Any personal interest in the
23 outcome of the case for either of you?
24 (both prospective jurors shake their heads)
25 THE COURT: Okay. Bias or prejudice for or

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1 against a party?
2 (both prospective jurors shake their heads)
3 THE COURT: By party, of course, I mean the
4 defendant and the State. All right. It looks like no.
5 Related to or personally acquainted with Mr.
6 Woodbury, Mr. Mills, or any of Mr. Mills' colleagues there?
7 (both prospective jurors shake their heads)
8 THE COURT: All right. So neither attorney I
9 would think has ever rendered legal services for you? Is
10 that correct for both of you?
11 (both prospective jurors shake their heads)
12 THE COURT: Bad question by me. Neither attorney
13 has -- has either attorney ever rendered legal services for
14 you?
15 (both prospective jurors shake their heads)
16 THE COURT: Has either attorney represented a
17 third party against you?
18 (both prospective jurors shake their heads)
19 THE COURT: Okay. All right. Do you feel
20 like -- do you have an open mind today like you feel like
21 you could be a juror in this case?
22 (both prospective jurors nod)
23 THE COURT: Okay. Any health problems that would
24 prevent you from serving?
25 (both prospective jurors shake their heads)

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1 THE COURT: Okay. Well, we went through the
2 witnesses real quick -- well, kind of slow. I read them
3 through. Did you hear all the witnesses?
4 (both prospective jurors nod)
5 THE COURT: Okay. Either of you related to or
6 personally acquainted, friends with any of the witnesses?
7 (both prospective jurors shake their heads)
8 THE COURT: Okay. Have either of you ever been
9 jurors before?
10 (both prospective jurors shake their heads)
11 THE COURT: All right. Well, that catches us up
12 This is for the panel. Are any of you now or
13 have you ever been employed in law enforcement work? And
14 I'm going to add to this, are any of you related to or a
15 close friend of someone in law enforcement work?
16 By law enforcement I mean not only the police
17 officers on the street, but also code enforcement officers,
18 military police, wildlife officers.
19 Anybody related to or a close friend of someone
20 in law enforcement, or have you yourself ever worked in law
21 enforcement.
22 That's Mrs. Polish. Why don't we hand her the
23 mike, Mr. Bailiff.
24 THE BAILIFF: He knows or related to one of the
25 other jurors.

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1 THE COURT: Is that right? We'll get to that.
2 Thank you, Mr. Robles.
3 BY THE COURT:
4 Q. Okay. Mrs. Polish.
5 A. You said military, correct?
6 Q. Any law enforcement officers?
7 A. My dad is retired military.
8 Q. Military?
9 A. Yes.
10 Q. I guess I asked about military police, we can
11 expand it to military.
12 A. You said military, so I just wanted to make
13 sure that was okay.
14 Q. Certainly military has law enforcement
15 functions sometimes. I think we can all agree on that.
16 Is there anything about that relationship that
17 would prevent you from evaluating fairly and impartially
18 testimony given by the law enforcement officers?
19 A. No.
20 THE COURT: Okay. Because Mr. Mills, are we
21 going to have for sure law enforcement officers testifying
22 here?
23 MR. MILLS: Yes, Your Honor.
24 THE COURT: In this case. Okay.
25 The reason I ask this question is I -- well, let me ask the

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1 officers?
2 A. Yes.
3 THE COURT: Okay. Anybody else related to or a
4 close friend of someone in law enforcement or you yourself
5 in law enforcement?
6 BY THE COURT:
7 Q. Mr. Whitmer?
8 A. Yes, Your Honor. My aunt and uncle.
9 Q. Okay. And I think you said your wife had been
10 a deputy district attorney?
11 A. Yes.
12 Q. That is kind of law enforcement work. They
13 enforce in the courtroom.
14 Well, where are your aunt and uncle working?
15 A. Michigan.
16 Q. Are they working in the field?
17 A. They just retired.
18 Q. I see. Well, I know it's redundant, but do
19 you think you can judge credibility of a law enforcement
20 officer fairly and impartially?
21 A. Yes.
22 THE COURT: Anybody else worked in law
23 enforcement or friends? Close friends or relatives in law
24 enforcement ever?
25 No. Nobody else.

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1 next question -- anybody besides Ms. Polish related to or a
2 close friend of someone in law enforcement?
3 BY THE COURT:
4 Q. Okay. Mr. Malloy?
5 A. My sister and my brother-in-law are retired
6 police officers.
7 Q. Okay. And would you still be able to weigh
8 and judge the credibility of law enforcement fairly and
9 impartially?
10 A. Yes.
11 Q. Weigh and judge the testimony?
12 A. Yes. I could do it impartially, yes.
13 Q. You know I have to ask the questions. You are
14 an old pro now.
15 BY THE COURT:
16 Q. Ms. Levie?
17 A. My sister works for Las Vegas Metro in
18 homeland security.
19 Q. Well, your sister is it?
20 A. Yes.
21 Q. Do you talk to her about her job or -- a lot?
22 A. No, she can't.
23 Q. Homeland security. Makes sense. Well, even
24 though she is in law enforcement, do you think you can
25 fairly and impartially judge testimony of law enforcement

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1 If law enforcement officers were to testify in
2 this case -- and we know they are, so I should say, now
3 that we know law enforcement officers are going to testify
4 in this case, would any of you tend to give any more or any
5 less weight to that testimony simply because the witness is
6 a law enforcement officer?
7 So just hearing that they are law enforcement
8 officers, would anybody say, I'm going to give it more
9 weight or would anybody say, I'm going to give it less
10 weight or no weight? Just because you hear they are in law
11 enforcement?
12 Anybody?
13 Does everybody understand the question okay?
14 Yes?
15 If you don't understand the question, please
16 don't be embarrassed, raise your hand. Sometimes my
17 questions can be long.
18 BY THE COURT:
19 Q. Mr. Martinez?
20 A. My wife works for TSA. Is that considered law
21 enforcement service?
22 Q. Your wife is TSA? Yeah, I would say. Is she
23 a screener?
24 A. Yes.
25 Q. Okay. At the local airport?

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1 A. Yes.
 2 Q. Well, do you think you can still judge
 3 testimony fairly and impartially for law enforcement
 4 officers?
 5 A. Yes, I do.
 6 Q. I don't think we have any TSA officers in this
 7 case, so this isn't TSA material.
 8 A. Okay. All right.
 9 THE COURT: I think it's such a key point that
 10 people understand whether it's a law enforcement officer
 11 witness or any other witness, judging credibility sifting
 12 through the evidence is key for jurors.
 13 That's why I ask the question.
 14 Would everybody be able to do that now that you
 15 have thought about these issues? Anybody who says no,
 16 please raise your hand.
 17 No hands have gone up.
 18 Have any you or a close member of your family or
 19 a close friend been the victim of a serious crime? What I
 20 mean by serious is, if it's serious to you, it's serious to
 21 us. We would like to know about it, okay.
 22 We have one juror.
 23 BY THE COURT:
 24 Q. Mr. Flaig?
 25 A. Yep. Cousin of mine, about 15 years ago, he

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1 was in a murder.
 2 Q. Okay. Was he a victim of that crime?
 3 A. Yes, he was.
 4 Q. All right. Can you -- thank you for sharing
 5 that. I know these can be difficult questions. Where did
 6 that happen?
 7 A. Portland, Oregon.
 8 Q. And was there a prosecution?
 9 A. Yes, there was. And one of the suspects that
 10 was allegedly supposed to be the one who had done it
 11 actually is walking free.
 12 Q. Okay. And so did he go -- this person go to a
 13 jury trial?
 14 A. Yes.
 15 Q. And that was -- the outcome was not guilty?
 16 A. Yeah, there was a lot of things mishandled.
 17 Q. In your view, from what? The prosecutor or --
 18 A. From what the lawyers have said and officers
 19 that were investigating.
 20 Q. Okay. I never try to assume too much, but I
 21 have to move the proceedings along. I assume that you
 22 don't like that outcome, right?
 23 A. No, I don't. But I was young.
 24 Q. And does that case have anything to do with
 25 this case, as far as you know?

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1 A. No, it does not.
 2 Q. Okay. Well, even though this is part of your
 3 family history, and I'm sorry to hear that it is, would you
 4 be able to be fair and impartial in a case where a man
 5 stands accused of attempted murder?
 6 A. Definitely.
 7 Q. Okay. Okay. Would you be able to completely
 8 set aside whatever happened in that case involving your
 9 cousin, that unfortunate case, would you be able to set
 10 that aside and decide this case only from testimony and
 11 evidence presented in court?
 12 A. Definitely.
 13 THE COURT: Okay. Because that's the law. You
 14 can only decide, ladies and gentlemen, this case from the
 15 evidence that the court -- is presented in this case and is
 16 admitted by the court.
 17 So okay.
 18 Mr. Flaig, I appreciate you talking to me about
 19 that.
 20 Anybody else?
 21 BY THE COURT:
 22 Q. Mr. Martinez?
 23 A. Yes, I was -- back in the -- I don't know
 24 exactly the year, it was in the eighties, late eighties, I
 25 had a co-worker get in a fight with a -- it was in

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1 Leadville, I knew everybody in the town. But he got in a
 2 fight with another friend that I knew and one of them ended
 3 up dying because of the fight.
 4 Q. From the fight?
 5 A. Yes.
 6 Q. Okay. Both were friends, sounds like, suspect
 7 and --
 8 A. They both weren't friends; I was friends with
 9 both of them.
 10 Q. That's what I mean, you were friends with both
 11 of the guys that -- the combatants in this fight?
 12 A. Yes.
 13 Q. Same thing I asked Mr. Flaig. I mean, was
 14 there a prosecution in this case?
 15 A. Yes, they did go to a trial and everything.
 16 Q. And was the outcome okay for you, whatever it
 17 was?
 18 A. Yes. I -- yeah, I guess it was okay.
 19 Q. Well, what was the outcome?
 20 A. Tell the truth, I really don't remember what
 21 the outcome was. I stayed out of it.
 22 Q. That's fair. Whatever it was, and you can't
 23 remember now, you were --
 24 A. Yeah.
 25 Q. Do you remember being upset about the outcome

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1 or not?

2 A. I was kind of partial to the whole trial. I
3 knew the guy who died, and he was a co-worker. He was a
4 good friend and treated me good.

5 I knew the guy who kicked the other guy is
6 what happened, and he kicked him in the head, then ended up
7 dying on it. But he was a good friend.

8 And I knew how the thing started and
9 everything, and I was kind of partial to both of them.

10 Q. Okay. Well, would you be able -- that case
11 has nothing to do with this case; is that right?

12 A. No, it sure doesn't.

13 Q. Would you be able to be a fair and impartial
14 juror in this case even if this involves an allegation that
15 there was violence?

16 A. Yes, I believe so.

17 Q. Okay. All right.

18 THE COURT: Anybody else a victim of a serious
19 crime or friend or loved one the victim of a serious crime?

20 No. Okay.

21 No hands have gone up, so I will move on.

22 This goes to Mr. Robles' point. Do you know
23 other people up there in the group of 24?

24 Yeah, typical for Elko County. We are getting
25 bigger, but it's still small. So I always ask the

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1 question. We have got a lot of hands that have gone up.
2 Let me just tell you, what we need is individual
3 judgment. There is a jury instruction at the end that I
4 give.

5 It says you have to decide this case for yourself
6 without doing violence to your individual judgment, which
7 is a long way, a lawyer way of saying decide the case for
8 yourself.

9 But there is a catch. You also have to do that
10 after deliberating the case with all of your fellow jurors.
11 There will be 12 of you back there.

12 And before this defendant can be convicted of
13 anything, the State has to prove him guilty beyond a
14 reasonable doubt. A jury of 12 has to find that to convict
15 him of anything.

16 And so anyway, you know, of course to acquit
17 there has to be a unanimous verdict. And so it requires
18 deliberation.

19 And is there anybody who knows somebody, is a
20 very close personal friend of anybody else up here, related
21 to somebody up there or married to somebody up there,
22 domestic partners with somebody up there?

23 We have one hand that went up.

24 BY THE COURT:

25 Q. Mr. Runyon?

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1 A. My brother is right there.

2 Q. Who is your brother?

3 A. Jason Runyon.

4 Q. Oh, yeah. Okay. My brother and I like -- we
5 like to disagree a lot. Some brothers, they agree a lot.
6 Others are kind of -- can disagree.

7 And anyway, are you -- would you be able to
8 deliberate a case with your brother and do so civilly, but
9 still decide the case for yourself?

10 A. Yeah, I think so.

11 Q. Does that go for -- That was Mr. Runyon in
12 seat 4.

13 Mr. Runyon in seat 10, can you do that, too?

14 A. Yes.

15 THE COURT: Okay. Anybody else have a close
16 friend up there, family relation?

17 BY THE COURT:

18 Q. Mr. Martinez?

19 A. Yes.

20 Q. Who are you related to or close friends with?

21 A. Javier here.

22 Q. Mr. Robles. How are you guys related?

23 A. He is married to my niece.

24 Q. Oh, okay. Relation by marriage. So would you
25 be able to debate this or deliberate this case with the guy

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1 who is married to your niece?

2 A. Yes, I believe so.

3 Q. Mr. Robles, would you be able to debate this
4 case with your wife's uncle?

5 A. Yes.

6 Q. I think I got all that right. Okay. You can
7 still decide the case for yourself, both of you guys?

8 (both prospective jurors nod)

9 THE COURT: The other thing is, even though you
10 know these people, Mr. Martinez and Mr. Robles have the
11 family relation by marriage, there is a blood relation with
12 the Runyon brothers, you still need to deliberate with the
13 other people in the room; you can't just do it together,
14 okay.

15 Would everybody be able to do that?

16 Okay, if the answer is no, just raise your hand.

17 All right. No hands have gone up. Did you all
18 understand the question?

19 Okay. No hands have gone up so I will move on.
20 We need everybody, all 12, to be deliberating together,
21 then decide the case.

22 All right. I have instructed you on the
23 presumption of innocence, ladies and gentlemen. Will any
24 of you have difficulty following the Court's instruction
25 that Mr. Dean is presumed innocent until, and he is

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1 entitled to an acquittal unless, he is proven guilty beyond
2 a reasonable doubt by the State?

3 That is a long question. Everybody understand the
4 question? If you don't, raise your hand.

5 BY THE COURT:

6 Q. Mr. Runyon, I will ask it again because it's
7 long. I get it.

8 I told you about the presumption of innocence.
9 Remember, Mr. Dean is presumed innocent of these charges
10 until his guilt is proved beyond a reasonable doubt by the
11 State of Nevada.

12 And if there is a reasonable doubt about
13 whether he committed the offenses charged, Mr. Dean is
14 entitled to be acquitted.

15 Can you follow that instruction, Mr. Runyon in
16 seat 10? If it's no, please tell me no.

17 A. Yeah.

18 THE COURT: He said yes, he can follow that
19 instruction.

20 That's a refresher. Can everybody else still
21 follow the instruction?

22 Okay. You know, free country, and that's a
23 bedrock principle in the law, like I think Mr. Whitmer
24 talked about. But if you disagree with it, you can. We
25 just need to know that.

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1 Okay. Everybody is saying they will follow the
2 instruction. I see nods. So okay, I will move on.

3 I have also instructed you on the definition of
4 beyond a reasonable doubt. Will any of you have any
5 difficulty following that instruction?

6 Again, bedrock principle of law. But if you
7 disagree with that instruction, you're free to do that,
8 it's free country. You just need to tell me now, "I can't
9 follow the instruction," and I will get you out of here.

10 Anybody who cannot follow that instruction?

11 All right. No hands have gone up saying yes, so
12 I will move on.

13 At the conclusion of the evidence, I have other
14 instructions on the law that applies to this case. I will
15 instruct you that it is your duty to apply the law to the
16 facts as you find them.

17 Would any juror be reluctant to apply the law as
18 instructed by the court even if you find that you disagree
19 with the law?

20 And I know that's a hard question, okay.

21 We all know about laws that we disagree with.

22 Again, we're free to -- we have freedom of mind
23 in our country, which is a great thing. We have freedom of
24 speech in your country, which is a great thing.

25 What we ask you to do in jury service is

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1 follow -- well, what we require you to do is follow the law
2 as instructed by the Court.

3 Because if you think about it, in our democratic
4 process, the place where you look to change the law or add
5 new laws is at the legislature. And that's congress for
6 the federal government, right. And in Nevada it's every
7 other year in odd years at the assembly and the senate.

8 So I want you to keep that in mind. If you don't
9 like some law the Court instructs you on in this case, and
10 you are sitting back there, you do have a remedy. You can
11 go and lobby to have that law changed in our legislature.

12 But what we want you to do is not -- is decide to
13 yourself back there, "I'm not following that law because I
14 don't like it." That's undemocratic, if you think about
15 it.

16 And so I'm going to ask again because I know -- I
17 want to tell you, I can't instruct you on all the laws that
18 apply in this case right now because I can only do that
19 after all the evidence comes in and I know what laws are
20 implicated by the evidence okay.

21 If that makes any sense.

22 So I'm sorry I can't tell you all the law that
23 applies now. In principal I need to know everybody will
24 follow the law in this case. Is that correct? If it's no,
25 please raise your hand and tell me no.

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1 All right. No hands have gone up, so I will move
2 on.

3 Let me ask each of you to assume that after
4 hearing all of the evidence you decided the State had not
5 proven Mr. Dean guilty beyond a reasonable doubt.

6 Is there anyone you would have difficulty facing
7 out there if you announced your verdict of not guilty?

8 Anybody? If the answer is yes, please raise your
9 hand.

10 All right. No hands have gone up.

11 If you heard all the evidence and you thought the
12 State had proven Mr. Dean guilty beyond a reasonable doubt
13 of some charge, is there anyone you would have difficulty
14 facing if you announced your verdict of guilty?

15 All right. No hands have gone up saying yes.

16 All right. Just about done.

17 Anybody up here who knows of any reason why you
18 could not be a fair and impartial juror?

19 You can -- any reason at all out there under the
20 sun why you could just --

21 BY THE COURT:

22 Q. Yes, Ms. Nye.

23 A. I have to say, my stepdad is Roger Stewart.

24 Q. Okay.

25 A. Yes. I probably should have mentioned that.

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1 Q. He works at law office that's different from
2 Mr. Woodbury, right?
3 A. Okay. He is right across the street.
4 Q. Yeah. He's your stepdad?
5 A. Yeah.
6 Q. Roger has been in Elko County, what, 20 years
7 plus I think now?
8 A. Yeah.
9 Q. And he is your step -- how long has he been
10 your stepdad?
11 A. Well, him and my mom got divorced in 2012.
12 Q. He is your stepdad, though. Okay. How long
13 were -- how long has he been your stepdad?
14 A. He has been in my life since I was like eight.
15 Q. Do you talk to him a lot about the law and
16 stuff?
17 A. I talk to him, he is -- not about the law a
18 lot, no. He talks about, you know, his stuff, but.
19 Q. Sports probably?
20 A. A lot of that.
21 THE COURT: Well, Mr. Stewart, I don't think, has
22 anything to do with this case. Am I correct, Mr. Mills?
23 MR. MILLS: That's correct.
24 THE COURT: Is that correct, Mr. Woodbury? I
25 could be wrong, I don't know.

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1 MR. WOODBURY: Specifically with this case,
2 you're correct.
3 THE COURT: Well, I don't think he's a lawyer
4 specifically in this case or he would be here right now.
5 He is not representing him in this matter for sure. I
6 don't see his name on the witness board.
7 Q. Do you think you could still be a fair and
8 impartial juror in this case?
9 A. Yes.
10 Q. Okay. And you will follow an instruction that
11 you are not supposed to talk about it with anybody during
12 the breaks?
13 A. I know, no.
14 Q. Including Mr. Stewart?
15 A. I know.
16 THE COURT: Thank you.
17 All right. Any other --
18 BY THE COURT:
19 Q. Ms. Polish?
20 A. I wasn't thinking about this earlier, but my
21 husband was tried before.
22 Q. Oh?
23 A. It was before we were married or anything.
24 Q. Was it a jury case?
25 A. Yeah, I think so. Not a hundred percent sure

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1 about that.
2 Q. Was he a criminal defendant or a civil
3 litigant?
4 A. I don't know. It was before we were married.
5 I don't know. He was in a car accident and that evening
6 the other lady passed away, so they tried him for vehicular
7 homicide.
8 Q. I see. Where was that?
9 A. It was in Ohio in like -- it was 15 something
10 plus years ago, I think.
11 Q. I'm sure I can assume that has nothing to do
12 with this case?
13 A. It has absolutely nothing, but I just thought
14 of that, thought, oh, I should probably mention it.
15 Q. Does he talk about the case with you? Sounds
16 like he does.
17 A. You know what, he's only said little bits and
18 pieces. But I was not there for that. We don't really
19 bring it up.
20 Q. Is he angry about whatever the outcome was?
21 A. No, actually he is not.
22 Q. Do you think you could be a fair and impartial
23 juror even though this is in your husband's history?
24 A. For sure, yeah.
25 THE COURT: Thank you. Anything else?

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1 Appreciate you being honest with that.
2 Anybody else? Any reason why you could not be
3 fair and impartial? Okay. No other hands have gone up.
4 Remember, if something comes up in your mind,
5 just interrupt us, as we go along.
6 I go through these questions, ladies and
7 gentlemen. It's pretty easy. I will have you do it, but
8 I'll start it off.
9 My name is Al Kacin. I am a district judge here
10 in Elko County, Department 2, Fourth Judicial District
11 Court. My wife is a nurse practitioner. I have two
12 children. And I have lived in Elko County for 20 plus
13 years now. And I live in Elko city.
14 And with that, we'll start off in the back. We
15 can just pass the microphone along.
16 Ms. Amendariz?
17 A. My name is Janelle Amendariz. I'm a medical
18 assistant. I work for Pinion Clinic. Not married. No
19 children. I have been in Elko since I think I was in sixth
20 grade.
21 What else do you want me to answer?
22 Q. Where do you live? In Elko?
23 A. I live here in Elko, yeah.
24 THE COURT: Thank you very much.
25 Ms. Nye?

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1 A. My name is Kimberly Nye. I'm a driver for
2 Napa. I am single. I have no children. I have lived in
3 Elko County for 25 years. And I live in Spring Creek.
4 THE COURT: Thank you.
5 A. My name is Wes Paniagua. Maintenance
6 supervisor for J.S. Redpath. My wife is a preschool
7 teacher. I have two children. And I live in Spring Creek.
8 THE COURT: Thank you, sir.
9 Mr. Runyon in seat 4.
10 A. Kelly Runyon. Equipment operator. Single.
11 No kids. Twenty-six years in Elko County. I live in Elko.
12 THE COURT: Thank you.
13 Mr. Whitmer?
14 A. My name is Neil Whitmer. I'm an attorney. My
15 spouse is a stay-at-home mom. I have two children. I have
16 lived in Elko County for four years. I live in Spring
17 Creek.
18 THE COURT: Thank you.
19 Ms. Bundy?
20 A. I'm Barbara Bundy. I'm in property management.
21 My husband works for Barrick. I have four children. And I
22 have lived in Elko County for 16 years, live in Spring
23 Creek.
24 THE COURT: Thanks.
25 Mrs. Polish?

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1 A. My name is Misty Polish. I'm an author. My
2 spouse is -- he works for Terry's. We have four children.
3 And I lived in Elko for about 13 years and we live in Elko.
4 THE COURT: Mr. Gonzalez?
5 A. Eric Gonzalez. Right now I am working as a
6 powderman, temporary powderman. My spouse is an
7 orthodontic assistant. I have one child on the way. I have
8 lived here for 24 years and I currently live in Elko.
9 THE COURT: Thank you.
10 Mr. Dingman?
11 A. Morgan Dingman. I am a water operator for the
12 City of Elko. Spouse is a manager at Raley's. Couple kids.
13 And I have been a resident of Elko County on and off for 20
14 years or so. I live in town.
15 THE COURT: Thank you.
16 Mr. Runyon from seat 10.
17 A. My name is Jason Runyon. Wet mill operator at
18 Barrick. My spouse is a CNA at Highland Manor. I have
19 three kids. And lived in Elko County for 26 years.
20 THE COURT: Thank you, sir.
21 Mr. Samuelson.
22 A. My name is Scott Samuelson. Retired. Single.
23 No children. Lived in Elko 15 years in Spring Creek.
24 THE COURT: Thank you, sir.
25 Ms. Sweat

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1 A. My name is Alex Sweat. I am a dealer at The
2 Nugget in Wendover. My husband is a kiln operator at
3 Graymont. Four kids. Lived in Elko County for six years.
4 And I live in Wells.
5 THE COURT: Thanks much.
6 We'll go to seat 13. Mr. Gregory.
7 A. My name is Earnest Gregory. I work at Barrick
8 Cortez. My wife is an elementary school teacher. I am
9 married. I have four kids. I have been in Elko County for
10 29 years. And I live in Elko.
11 THE COURT: Thank you.
12 Ms. Levie?
13 A. My name is Julie Levie. I work for the state
14 child support office. My spouse is a supervisor at
15 Barrick. I have one child. I have lived in Elko for 20
16 plus years, and I live Elko.
17 THE COURT: Thank you.
18 Ms. Smales?
19 A. My name is Tara Smales. I am a realtor at
20 Elko Realty. My spouse works in construction. I have two
21 children. And I live at -- lived in Elko County for four
22 years and I live in Spring Creek.
23 THE COURT: Thank you.
24 Mr. Malloy?
25 A. My name is Robert Malloy. I work for Barrick

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1 as a data base administrator. My wife works at Khoury's.
2 I have three children. I have lived Elko 26 years, and in
3 Spring Creek.
4 THE COURT: Thank you.
5 Mr. Poche?
6 A. Yes. My name is Aaron Poche. I am an
7 industrial millwright for Barrick Goldstrike. My spouse
8 owns Candlelight Bridal and Prom. I have no children. And
9 I have lived and live in Spring Creek for over 20 years.
10 THE COURT: Thank you, sir.
11 Mr. Flaig?
12 A. My name is Brett Flaig. I'm an equipment
13 operator at Newmont. My spouse is a haul truck driver at
14 Newmont, as well. I am married. I have three children. I
15 live in Elko County, I have for the last eight years, and I
16 live in Spring Creek.
17 THE COURT: Thank you.
18 Mr. Holt?
19 A. My name is Elvis Holt. Mine operations
20 supervisor at Newmont. My wife is a stay-at-home mom. I
21 have five children. I have lived in Elko County 13 years
22 and I live in Spring Creek.
23 THE COURT: Thank you, Mr. Holt.
24 Mr. Martinez?
25 A. Raul Martinez. I'm a front line supervisor for

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1 the underground at Goldstrike. My wife works for TSA. I
2 have two boys. I have lived in Elko County for almost 20
3 years in November. And I live in Spring Creek.

4 THE COURT: Thank you.

5 Ms. Taylor-Collins.

6 A. My name is Amanda Collins and I work at
7 Maverik. I am single, two children, lived in Elko County 22
8 years. I live in the city.

9 THE COURT: Thank you.

10 Mr. Robles?

11 A. My name is Javier Robles. I'm a laborer for
12 Cortez. My wife is a stay-at-home mother. Three children.
13 Born and raised here in Elko 28 years.

14 THE COURT: Thank you.

15 Mr. Woods?

16 A. My name is Tim Woods. I am a welder for
17 Newmont. I am single. I have no children. And I lived in
18 Elko County for 27 years. And I live here in the city of
19 Elko.

20 THE COURT: Thank you.

21 Ms. Cervantes?

22 A. My name is Chadoe Cervantes. I work for Brahma
23 in the warehouse. Single, no children. I have lived in
24 Elko for almost 15 years and live in Elko.

25 THE COURT: Thank you.

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1 A. I am working for a gold exploration
2 corporation now.

3 Q. In-house counsel?

4 A. Yes, sir. Planning, environment.

5 Q. You don't have anything that has to do with
6 criminal law, correct?

7 A. In my past I have. And maybe I should add, I
8 guess the law enforcement thing is taken pretty broadly, it
9 seems, I did do child support enforcement and dependency
10 neglect cases in the past.

11 Q. As an attorney?

12 A. Yes, sir.

13 Q. Where was that?

14 A. In Colorado.

15 Q. Okay. So did anything about your working in
16 that area of law, does that impact your perception of
17 criminal cases in any way?

18 A. Yes. Maybe that might be a private response.

19 Q. Maybe I can ask the question in a way that
20 won't elicit stuff you don't want to talk about.

21 Does that prior experience working as that
22 kind of attorney, does it impact your ability -- or I guess
23 your perception of criminal law in any way that makes you
24 unable to be fair and impartial in this case?

25 A. No.

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1 All right, ladies and gentlemen, we'll go to
2 questioning of the lawyers. They get to ask you questions
3 now.

4 Of course you are still oath. We have some
5 supplemental voir dire.

6 Mr. Mills.

7 MR. MILLS: Thank you, Your Honor. Good morning.
8 Like the judge, I too would like to thank you for your
9 service, for your willingness to serve. It's not finalized
10 yet, but all of you and your willingness to serve and
11 showing up today.

12 I understand it's a sacrifice of your time, but
13 like the judge says, the -- our society and our criminal
14 justice system cannot function without your cooperation.

15 So thank you for being good citizens.

16 I will just ask a few follow-up questions. The
17 judge has covered most of the important ground that needs
18 to be covered in jury selection.

19 I just had a couple of follow-up questions for
20 the prospective jurors.

21 BY MR. MILLS:

22 Q. Mr. Whitmer?

23 A. Yes, sir.

24 Q. What kind of law do you practice? I'm
25 curious.

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1 Q. You hesitated there?

2 A. Well, maybe I would like to run something by
3 you in private, if that is possible. Because I don't want
4 to do anything to --

5 Q. Okay.

6 MR. MILLS: I am not sure how Your Honor would
7 like to handle that?

8 THE COURT: We'll handle it. We can have a -- if
9 it -- those types of cases, yeah, we can handle that
10 outside the presence of the others.

11 MR. MILLS: Okay.

12 A. Sorry about that.

13 MR. MILLS: That's fine. We want you to be
14 candid. We appreciate your candor.

15 BY MR. MILLS:

16 Q. Let's see, Ms. Nye, so Roger Stewart is your
17 stepfather?

18 A. Yes.

19 Q. And how -- I guess, how long has he been your
20 stepfather? When did he marry your mother? How long have
21 you known him basically?

22 A. I have known him since I was eight. He married
23 my mom when I was, like, eight or nine, I believe. They
24 got divorced in 2012.

25 Q. You all lived under the same roof for a while,

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1 sounds like?

2 A. Oh, yeah.

3 Q. And he has been -- he works at the Public

4 Defender's office and has worked there for quite sometime;

5 is that correct?

6 A. Yes. I am not sure exactly how long, but

7 yeah. Since I have known him or before.

8 Q. And has he -- have you ever had conversations

9 with him about his philosophies about the criminal justice

10 system or criminal defense work or anything like that?

11 A. He talked about a lot of stuff, yes.

12 Q. Including those topics?

13 A. Yes, everything. Law, everything, yeah.

14 Q. Those of us that know Roger knows that he

15 talks about a lot of topics. He has got a lot of

16 interests.

17 Did any of those conversations that you had

18 with him, or him telling you about his line of work, that

19 sort of thing, did it -- has that had any influence on your

20 perception of the criminal justice system?

21 A. No.

22 Q. So you understand that, you know, his cases,

23 what he has done, doesn't necessarily have anything to do

24 with this case?

25 A. Yes.

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1 Q. And you can view the evidence in this case,

2 just consider the evidence and the law that the judge is

3 going to read to you, just make your decision based on that

4 and not any other kind of relationship you have with

5 Mr. Stewart?

6 A. Yes.

7 Q. Thank you.

8 BY MR. MILLS:

9 Q. Mr. Flaig, I'm sorry to delve back into this.

10 Sounds like a very traumatizing thing and I'm sorry for the

11 loss of your cousin.

12 If I heard you correctly, your cousin was

13 murdered 15 years ago?

14 A. Correct.

15 Q. There was a criminal prosecution that came as

16 a result of that?

17 A. Yeah, he was --

18 Q. The person --

19 A. I don't know a whole lot about the case

20 itself. All I know is there was a lot of things that

21 weren't taken care of according to family members that have

22 talked to officers, attorneys.

23 And 15 years I would have to say is probably

24 not long enough. It was when I was 12 years old. It was

25 definitely longer than 15 years, mid-nineties.

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1 Q. Let me ask you this, I believe that the phrase

2 you used is things were mishandled.

3 Was that on the part of law enforcement or on

4 the part of how things played out in court? Or what is

5 your perception of that?

6 A. A little bit of everything from what I am

7 told. Like I said, I can't judge any of that. That's not

8 my place.

9 Q. Do you have any kind of disappointing or hard

10 feelings towards the criminal justice system as a result of

11 that?

12 A. No.

13 Q. So you can set all that aside, just look at

14 this case with fresh eyes, just consider the evidence that

15 you are going to hear and the law that the judge is going

16 to read to you and come to a decision?

17 A. Yes.

18 Q. Without having any of those feelings about

19 that other case affect your decision in this one?

20 A. Yes, I can.

21 Q. Thank you.

22 MR. MILLS: I have got some more generalized

23 questions for the entire group. So if your answer is yes

24 to any of these questions, please raise your hand.

25 There is some people and -- you know, everyone is

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1 different and that's fine, we want you to be honest with

2 us. But there are some people who for personal reasons or

3 for religion reasons who feel uncomfortable being in the

4 position of a juror as far as judging another human being,

5 it just goes against their personal or religious

6 philosophies for some reason.

7 Is there anybody here who has an issue with being

8 placed in the position, sitting as a juror, having to

9 decide either guilty or not guilty based on evidence you

10 will have heard?

11 Is everyone here comfortable with the idea that

12 he can reach a decision one way or another?

13 May the record reflect no hands have gone up.

14 THE COURT: It will.

15 MR. MILLS: Each of you needs to understand as

16 well that this case is about either guilty or not guilty on

17 the charges that the person is charged with, based on

18 evidence that you are going to hear, based on law that you

19 are going to apply to that evidence.

20 This case has nothing to do with any of sort of

21 subsequent penalty or punishment or anything like that;

22 that's not your place to decide that or to think about that

23 or consider that. You know, "I wonder what the penalty is

24 for these crimes," that's not what you're here to decide.

25 So is everybody comfortable with that idea? Can

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1 everybody set aside any considerations of the consequences
2 of your decision and possible, you know, punishment, that
3 sort of thing, and just focus on the law that's read to you
4 and the facts that you have, that you will have heard, and
5 just make a decision solely based on that?

6 Everybody is nodding their head in agreement that
7 they can do that.

8 THE COURT: If it's no, just let us know.

9 No hands have gone up saying no.

10 Go ahead, Mr. Mills.

11 MR. MILLS: I kind of went into this a little bit
12 with Mr. Flaig, maybe I will throw this out to the rest of
13 you, just a generalized question.

14 Do any of you -- again, people come in all
15 different persuasions and all different opinions. And
16 that's fine. We're a diverse country and people have a lot
17 of opinions about stuff, including about the criminal
18 justice system.

19 So does anybody here have strong feelings about
20 the criminal justice system, one way or another? You don't
21 like lawyers or judges or you think the criminal justice
22 system does not work or is unfair?

23 Any kind of strong feelings that would impair
24 your ability to be fair and impartial in this case to
25 either of the parties?

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1 May the record reflect nobody has answered
2 affirmative to that question.

3 This case is going to involve presentation of
4 some forensic evidence, some DNA evidence. I want to ask
5 some questions of you guys about your familiarity with that
6 sort of thing.

7 Does anybody here like crime scene investigation
8 shows, for example, CSI?

9 We have got some hands over here. Looks like
10 we've got some fans.

11 Everybody who has seen these kinds of shows, is a
12 fan of those, can you raise your hand?

13 That is most of the panel, so I probably won't
14 have time to go through each of you individually. I'm
15 going to pick on a few of you, just ask follow-up questions
16 about that.

17 Raise those hands again. Let's see, let's go
18 here on the end.

19 BY MR. MILLS:

20 Q. Mr. Gregory?

21 A. Yes.

22 Q. What kind of shows do you like to watch that
23 have to do with that sort of thing?

24 A. True crime, some of the law and order, C.S.I.

25 Q. Okay. And in those shows, I mean obviously

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1 the title of the show, Crime Scene Investigation, suggests
2 that they do all sorts of fancy scientific stuff with DNA
3 and that sort of thing?

4 A. Right.

5 Q. And do you understand that what's presented in
6 those shows isn't necessarily true to the way it actually
7 works in a real courtroom?

8 A. Exactly, yes.

9 Q. You can suspend your disbelief and recognize
10 that what you see on TV isn't necessarily the way it works
11 in real life?

12 A. Right, yes.

13 Q. All right.

14 MR. MILLS: Other hands on that?

15 BY MR. MILLS:

16 Q. Okay. Let's go to Ms. Taylor-Collins. Same
17 thing. You watch these types of shows?

18 A. Kind of. I watch the fictional ones, SVU,
19 NCIS.

20 Q. And do you understand that whatever the
21 science is that you see in those shows, it may or may not
22 be true, but it could be fictionalized and maybe not the
23 same way that it works in a real courtroom?

24 A. Yes.

25 MR. MILLS: So maybe I'll just throw this general

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1 question out there. There were a lot of hands.

2 Can everyone here set aside whatever it is you've
3 seen on TV, like CSI and NCIS -- aren't there like ten
4 versions of that, Elko is going to be the next one, they
5 are running out of cities -- but can everybody set those
6 shows aside and just focus on the words that come out of
7 the mouth of the actual DNA expert witness in this case and
8 the other evidence that you are actually going to hear?

9 Set Aside any preconceived notions that you might
10 have about this, the way this stuff should work, and what's
11 possible in these cases?

12 May the record reflect that everybody agreed to
13 do that.

14 And thank you for your time. That's all the
15 questions I have at this time.

16 I'll pass the panel for cause

17 THE COURT: All right. Of course, we'll conduct
18 an individual voir dire with Mr. Whitmer at his request,
19 and that's no problem.

20 Mr. Woodbury, questions for the panel.

21 MR. WOODBURY: Thank you, Your Honor.

22 BY MR. WOODBURY:

23 Q. Mr. Flaig, it's a hard question to answer,
24 isn't it, when you are asked whether or not what happened
25 in your family years ago will affect you today, right?

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1 A. Possibly.
2 Q. The issue has never come up before, has it?
3 A. It has been talked about. It's been kind of a
4 dead subject for some years now. We've all moved on, for
5 sure.
6 Q. Yeah. But the problem is, you have never been
7 in a position of judging somebody like Sean Dean and having
8 people ask you whether or not the mind-set you've developed
9 as a consequence of what happened to your cousin will
10 affect you. I assume that hasn't come up before?
11 A. No, never.
12 Q. So I assume you have to sit and think about it
13 for a while?
14 A. No, I don't know this man.
15 Q. Well, you don't, but what you said was -- and
16 you've said it twice -- you thought things were mishandled?
17 A. Based on the fact of my family members talking
18 to me, you know, and letting me know what was going on.
19 Q. Independent of what it was based on, the fact
20 is that in your mind it was mishandled?
21 A. That's a fair assumption, yes.
22 Q. So if it was mishandled, that means a guilty
23 guy went free?
24 A. Yes, it would.
25 Q. You certainly don't want that to happen,

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1 right?
2 A. No, I want to be fair.
3 Q. Well, suppose that somehow or another the
4 prosecution mishandles this case in your estimation and you
5 have to turn Mr. Dean free even though you think he is
6 guilty, what is going to happen?
7 A. That is not for me to decide.
8 Q. It is for you to decide exactly, sir.
9 A. Well, I mean, that was when I was twelve years
10 old, I'm 35 now. It's -- you know, I have a little bit more
11 understanding of, you know, the way things work. Maybe not
12 in this particular type of setting, but.
13 Q. You just sat here a couple minutes ago and you
14 listened to some questions about scientific evidence,
15 right?
16 A. Yes.
17 Q. And you were told to throw out everything that
18 you heard on television or you think you know about
19 scientific evidence on television, and you agreed to do
20 that, right?
21 A. Yes.
22 Q. And does that mean that you throw out the
23 common sense conclusions you reach about scientific
24 evidence from television shows?
25 A. Yes.

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1 Q. Are you going to throw away your common sense
2 about that?
3 A. I am not going to throw away common sense.
4 You know, a TV show is a TV show.
5 Q. The problem is one of the ways a juror, a fair
6 and impartial juror might do this -- and I realize we have
7 got you on the spot and I am being mean to you -- is that
8 you are getting prepped, this is a preparation for some
9 lousy DNA evidence on the part of the prosecution.
10 Did you think about that?
11 A. Whether it's lousy is not me to decide.
12 Q. It's exactly for you to decide, sir.
13 A. It's for me to decide, yes. To sit there and
14 say that it's lousy, I have yet to hear any evidence, so I
15 can't judge that.
16 Q. You haven't. But did you think you might be
17 being prepped to hear some lousy DNA evidence, that things
18 aren't working out the way --
19 MR. MILLS: Your Honor, I'm going to object to
20 that characterization.
21 A. Yeah, we don't need to be saying lousy.
22 THE COURT: I'm sorry, what is the objection?
23 MR. MILLS: I am going to object to the
24 characterization of the evidence that the jury hasn't even
25 heard yet --

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1 THE COURT: Okay.
2 MR. MILLS: -- as lousy.
3 THE COURT: There is no evidence at this point.
4 The jury will have to decide fairly and impartially what
5 the evidence is in this case, whether it's worthy of
6 belief, weigh the evidence.
7 I will allow questions on that subject. I don't
8 think I can prevent questions characterizing what the
9 evidence is going to be at this time.
10 Next question.
11 MR. WOODBURY: I certainly did not mean to
12 characterize the evidence that is going to come in. You
13 will make a determination of whether the characterization
14 is proper or not after you hear it.
15 Did anybody on jury notice whether Mr. Dean is
16 black or not?
17 Pretty clear, isn't it?
18 Anybody on the jury notice whether or not there
19 is another black person in the room?
20 Pretty clear, isn't it?
21 Did you ever think you would be sitting as a
22 juror with a black guy sitting in a defendant's box and you
23 would be asked to be fair about him?
24 Anybody that thinks they can't be fair?
25 Are there any jurors sitting here who do not have

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1 some kind of notion that black people have certain
2 attributes that are widely known, from your television or
3 things you have read or friends you have talked to?
4 You don't?
5 Is that right?
6 They all like watermelon, don't they?
7 Nobody ever heard that before?
8 Did you ever think about whether it's true or
9 not?

10 Ladies and gentlemen, I have no means to know all
11 of the things that are out there that one might assume
12 about black people. I can't know all of the things.

13 We know some of them. We know about the
14 watermelon. This case isn't about watermelon.

15 If you have heard they have an attribute of
16 violence, that they are sneaky, all of those things?
17 Clearly, some of you have heard things like that about
18 black people. Is there anybody that can raise their hand
19 and say they have never heard that?

20 What we're trying to accomplish is Mr. Dean,
21 we're not asking you to fall in love with black people; we
22 are not deciding anything like that. We are not asking for
23 you to be more than fair or to fall over backward to pull
24 Mr. Dean out of this.

25 But what we are asking is that when you hear
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1 where you come from, we're all equal, we all bleed red.

2 Q. Okay.

3 A. Just all of our skin is a different color, and
4 he's a person just like the rest of us.

5 Q. That part I got. But does he have any
6 characteristics?

7 A. Nope.

8 Q. Zero? None?

9 A. Just because of skin color, no. That's unfair
10 to assume somebody does something better or worse just
11 because of their skin color.

12 Q. Not better or worse, he has a propensity for
13 violence because he is black. You have heard that?

14 A. No.

15 PROSPECTIVE JUROR RUNYON: Never met the guy.

16 Q. Don't black people have that kind of
17 propensity?

18 A. (By Prospective Juror Holt) No. I have seen
19 folks from all walks of life get in trouble. It don't --
20 black, white, Hispanic, it didn't matter. It wasn't based
21 on their skin color.

22 So I can't agree that I would have an
23 assumption. And I -- I can't assume anything based on skin
24 color. And I won't.

25 Q. And you realize that that would be in
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1 evidence that triggers in your mind -- just in your mind --
2 that there is an attribute that black guys have that
3 explains his conduct, we're asking you to do one thing:
4 Take one second and think about whether or not the evidence
5 justifies that conclusion or whether you are just putting
6 an assumption that you have heard sometime before in other
7 circumstances and applying it to Mr. Dean.

8 Is there anybody that thinks they can't or
9 wouldn't or shouldn't do something like that?

10 Does everybody see what I am saying?

11 Is it clear?

12 That you have assumptions about black people.

13 They are in your head, I can't take them out. I don't know
14 what all of them are.

15 Everybody agrees that those assumptions are in
16 there in some form or another in every one of you guys. Is
17 that correct?

18 BY MR. WOODBURY:

19 Q. Sir, you say I'm dead wrong?

20 A. (By Prospective Juror Holt) No, I -- you know,
21 we're all equal, so why would you make an assumption about
22 somebody based on their skin color? That -- that's unfair,
23 right?

24 All of us don't do that. I don't -- I don't
25 have those assumptions about Hispanic, black. Don't matter
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1 accordance with the Nevada justice system. Fundamental
2 part of justice is everybody gets gauged on their own
3 personal state, not on something like color?

4 A. Yes, that's correct. I agree. It shouldn't
5 be based on where you come from, what color are your.

6 Q. Conversely, you also agree that not everybody
7 can do that, talk about it the same way you are?

8 A. I wish that everybody could, but I agree that
9 everybody can't.

10 Q. So then is it fair for us to ask that any
11 assumptions that any juror makes regarding Mr. Dean based
12 on his skin color is unfair?

13 A. Yes.

14 Q. Is it then unfair for us to ask that if they
15 hear something in the course of this trial about something
16 Mr. Dean did or is alleged to have done, that we ask them
17 to take a second to make sure that what they are doing is
18 evaluating Mr. Dean as just another guy, not a black guy?

19 A. I would hope they could judge him as another
20 guy and not based on his skin color. And if they can't,
21 then they need to speak up right now.

22 MR. WOODBURY: You have an opportunity and
23 invitation to speak up if there is anybody who can't do
24 that.

25 No further questions.
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1 THE COURT: All right. What we're going to do
2 is -- well, we're right at the noon hour, and I was fully
3 prepared to have this selection go into the afternoon.
4 We have to exercise what are known as peremptory
5 challenges, and I'm not going to go into that too much.
6 And this will give us an opportunity also to talk to
7 Mr. Whitmer one more time.

8 And what I need is everybody to come back, that
9 includes those of you in the gallery -- this is a very
10 important case, we're going to make sure we take our time
11 for jury selection -- you have to come back at 1:30.

12 Remember your neighbor to your left, remember
13 your neighbor to your right, this group of 24. We need you
14 sitting in the same spot. Okay.

15 Again, we need those of you in the gallery to
16 come back as well. We're almost to the point where we can
17 select a jury. I want you to come back at 1:30.

18 During the break -- this is for everybody --

19 Please do not converse amongst yourselves or with
20 anyone else on any subject connected with the trial. Do
21 not read, watch or listen to any report or commentary on
22 the trial or any person connected with the trial by any
23 medium of information, including, without limitation,
24 newspapers, television, radio or the Internet.

25 And do not form or express any opinion on any

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1 subject connected with the trial until the cause is finally
2 submitted to you.

3 You may not use any electronic device or media,
4 such as the telephone, a cell phone, smartphone, iPhone,
5 BlackBerry or computer, the internet, any internet service,
6 any text or instant messaging service, any internet chat
7 room, blog, or website such as Facebook, MySpace,
8 LinkedIn, YouTube or Twitter, to communicate to anyone any
9 information about this case until I accept your verdict.

10 In other words, you cannot talk to anyone on the
11 phone, correspond with anyone, or electronically
12 communicate with anyone about this case.

13 With again this exception, you can certainly tell
14 loved ones, co-workers, what have you, that you are still
15 going to have to be back at 1:30, you have further duties
16 as a juror. Don't talk about the case otherwise.

17 And we'll be in recess.

18 Why don't we have Mr. Whitmer stay on and then
19 the lawyers and Mr. Dean. We'll get that done.

20 The rest of you, we'll have you back at 1:30,
21 okay.

22 (WHEREUPON, the jury left the courtroom)

23 THE COURT: We're back on the record outside the
24 presence of the prospective jury panel with the exception
25 of Mr. Whitmer in seat 5.

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1 BY THE COURT:

2 Q. And then, I'm sorry, your name, ma'am?

3 A. Kari Manhire.

4 THE COURT: All right. Kari has not come up,
5 been given a seat number yet, but she wanted to talk to us.
6 Of course, I have to do that on the record.

7 Q. Is this a personal issue or something?

8 A. It is. I have got three kids. My husband is
9 at work.

10 THE COURT: Hold on. I also want to say, we have
11 also Mr. Dean back in court with counsel Gary Woodbury.
12 Again, Mark Mills, Elko County deputy district attorney,
13 for the State.

14 Q. This doesn't sound like a case where somebody
15 is being prosecuted, it sounds like a case where you are
16 going to have a hard time being a juror, right?

17 A. Correct. I have got three children I have to
18 go pick up from my sister-in-law, she has been calling my
19 phone, that I need to get to. I wasn't expecting to be
20 here all day.

21 Q. Well, let me tell you something, if you're
22 brought in on these things, a summons, you need to expect
23 to be here most of the day, okay?

24 A. I did call and I spoke with someone and they
25 told me it would be real quick, in an hour.

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1 Q. They are wrong. This generally takes a lot
2 longer than that. These are obviously very serious
3 matters, as you can see.

4 THE COURT: Can we thank and excuse her?

5 MR. MILLS: Yes, Your Honor.

6 MR. WOODBURY: Yes.

7 THE COURT: Thank you.

8 A. Thank you so much. I'm sorry to take your
9 time.

10 THE COURT: You didn't take our time. We
11 appreciate you coming in. Have a nice day.

12 BY THE COURT:

13 Q. Mr. Mills was asking some questions and
14 Mr. Whitmer had a response. What's up?

15 A. Well, okay. Mr. Mills, I appreciate the
16 question and I understand what you are trying to get at.

17 I did not want to do anything to bias any
18 potential juries or anyone else, but when I was in law
19 school a couple of professors always made the joke,
20 tongue-in-cheek, all clients lie, get paid in advance on
21 criminal and divorce cases.

22 It has been pretty good advice. I did do a
23 few criminal cases. I don't like doing it. But in my
24 experience, nothing against Mr. Dean, but no matter how
25 trivial a matter, I never did not have a client lie to me

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1 at some point.
2 And you were asking me personal experience, a
3 I -- I had a case where a guy, possession with intent, his
4 house looked like a motel room of a Kiss band after a
5 concert, scales and everything.

6 To this day, I call him up, he'd say, I didn't
7 know anything about that. So just trivial things, like
8 whether some person is working one night or not.

9 So that's -- I just didn't want to say -- I,
10 you know, not all -- not every client, but it was a lot of
11 clients that I had lie to my face. And I'd close the door,
12 explain to them the duty of confidentiality, and they never
13 came clean after that. Once they dug in their plow, that's
14 where we were.

15 Q. We've all got our history we bring to court.
16 I appreciate not doing that in front of the panel, Mr.
17 Whitmer, although, you know, we could still try to make it
18 work, but this is an easier way.

19 Any other questions for -- anything else, Mr.
20 Whitmer, you want to tell us about?

21 A. No, I was just worrying about biasing some of
22 the panel.

23 THE COURT: Yeah, thank you.

24 Mr. Mills, any follow up?

25 BY MR. MILLS:

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1 and get going up to district court upstairs.

2 We'll finish selecting the jury down here, Jim.

3 And then we'll get set up upstairs, get into opening
4 statements, and get ready for your first witness.

5 MR. MILLS: So did I understand that right that
6 we're coming back here to do our peremptories at 1:30?

7 THE COURT: Yeah. I've already told the panel to
8 be back. We've got a large group.

9 All right. Well, any anything else we got to
10 cover?

11 MR. WOODBURY: Not that I know of.

12 THE COURT: All right. We'll see you back at
13 1:30.

14 Jim when they come in, we'll be ready to exercise
15 peremptories. We'll just have them take a seat outside the
16 courtroom.

17 Thank you. Court's in recess.

18 (WHEREUPON, the noon recess was taken)

19 THE COURT: We're back on the record for Case No.
20 CR-FP-15-1508. State versus Dean.

21 We do have Mr. Dean back in court with counsel
22 Gary Woodbury.

23 Mark Mills, Elko County deputy district attorney,
24 back for the State.

25 We are outside the presence of the remaining

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1 Q. And thank you for that and thank you for your
2 discretion. Are you capable of setting aside your past
3 experience and just focusing on the facts of this case?

4 A. I believe so, yes.

5 Q. And this defendant and not any other -- not
6 speculating about him and, you know, attributing some of
7 the characteristics of your past clients to this defendant?

8 A. I believe so. I believe I can be impartial.

9 Q. Okay. So you can be impartial and fair and
10 just look at the evidence and the law and come to a
11 decision in this case?

12 A. Yes. Honestly, I kind of like to be on this
13 side of things.

14 MR. MILLS: Thank you. That's all I have.

15 THE COURT: Thank you. Mr. Woodbury, any
16 questions for our colleague here?

17 MR. WOODBURY: No questions.

18 THE COURT: All right. Good enough.

19 Mr. Whitmer, have a nice lunch. We'll see you
20 back at 1:30. Remember the admonishment. Thanks.

21 PROSPECTIVE JUROR WHITMER: Yes, Your Honor.

22 THE COURT: We now have no other venire persons
23 in the room. Have a nice break.

24 Before we go, I just ask the lawyers to be ready
25 with the peremptories because we'll get right down to it

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1 venire persons and we have got the group of 24. Does each
2 party pass the panel for cause?

3 MR. MILLS: Yes, Your Honor.

4 MR. WOODBURY: Yes, Your Honor.

5 THE COURT: All right. Then all we got to do is
6 exercise peremptory challenges.

7 I assume you want to do this -- we always have to
8 do this outside the hearing of the jury, outside the
9 presence as well.

10 MR. MILLS: Yes, Your Honor.

11 MR. WOODBURY: Yes, Your Honor.

12 THE COURT: Okay. Remember, we do have two
13 alternates for this one. The alternate panel is 21 through
14 24, they are last in the box.

15 1 through 20 are the panel from which the initial
16 jury of 12 will be chosen.

17 Four peremptories a side for this one. I think
18 we established with case law, even if there is a -- an
19 habitual criminal count, which I guess there is in this
20 case, it is still only four a side. We looked at the case
21 law this morning on that.

22 Anyway, if you waive one, you simply move up the
23 panel and that doesn't waive the remainder of your
24 challenges.

25 State first, then the defense. We alternate,

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1 starting with the panel of 20.
2 Mr. Mills, first peremptory challenge?
3 MR. MILLS: Number 2, Kimberly Nye.
4 THE COURT: All right. State's first peremptory,
5 she is in seat number 2, Ms. Nye.
6 Defense's first?
7 MR. WOODBURY: Juror Number 10, Mr. Runyon.
8 THE COURT: Okay. Mr. Runyon in seat 10, not in
9 seat 4, right, Mr. Woodbury?
10 MR. WOODBURY: Yes.
11 THE COURT: Just making sure. Mr. Runyon is seat
12 10.
13 Defense's first challenge is exercised against
14 him.
15 Over to the State for their second peremptory
16 challenge.
17 MR. MILLS: Number 4, Kelly Runyon.
18 THE COURT: State's second peremptory challenge
19 exercised against -- yeah, he is in seat 4. Mr. Runyon
20 there.
21 Okay. Defense's second, please.
22 MR. WOODBURY: Number 19, Mr. Holt.
23 THE COURT: Yeah, Mr. Holt is in 19.
24 Defense's second peremptory challenge exercised
25 against him.

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1 Over to the State's third, Mr. Mills
2 MR. MILLS: Number 12, Alexander Sweat.
3 THE COURT: She is in seat 12. State's third
4 peremptory challenge exercised against her.
5 Over to the defense for your third peremptory.
6 MR. WOODBURY: Number 16, Mr. Malloy.
7 THE COURT: Mr. Malloy is in seat 16. Defense's
8 third peremptory challenge exercised against him.
9 Over to the State for your fourth and final
10 peremptory challenge to the group of 20.
11 MR. MILLS: Number 15, Tara Smales.
12 THE COURT: Ms. Smales is in seat 15. State
13 exercises its fourth peremptory challenge against her.
14 Over to the defense for your fourth.
15 Mr. Woodbury?
16 MR. WOODBURY: Number 11, Mr. Samuelson.
17 THE COURT: Mr. Samuelson is in seat 11.
18 Defense's fourth and final peremptory to group 1 through 20
19 exercised.
20 We turn to the alternate panel.
21 First and only alternate panel challenge, Mr.
22 Mills?
23 MR. MILLS: Number 22, Javier Robles.
24 THE COURT: Okay. State's one and only alternate
25 panel challenge to Mr. Robles, who is in seat 22.

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1 The one and only for Mr. Dean?
2 MR. WOODBURY: Mr. Woods.
3 THE COURT: That's seat 23, right, Mr. Woodbury?
4 MR. WOODBURY: I kind of got that mixed up,
5 Judge.
6 THE COURT: He is second to the end, next to Ms.
7 Cervantes, who is in seat 24.
8 MR. WOODBURY: I think it was Mr. Woods.
9 THE COURT: Okay. Defense's one and only
10 challenge to the peremptory is Mr. Woods.
11 All right. Give me a moment and we'll move them
12 up.
13 (WHEREUPON, the jury was seated, Jury Instructions 1
14 and 2 were read by the Court, followed by opening
15 statements)
16 THE COURT: Okay. We're outside the presence of
17 the jury and alternates.
18 There was a late motion in limine filed June 14.
19 I guess it was opposed on June 17. Do we have to have a
20 hearing on this or what?
21 MR. MILLS: It's Mr. Woodbury's motion.
22 THE COURT: Right.
23 MR. MILLS: It might be advisable to have a
24 hearing on it to at least flesh this out a little bit.
25 THE COURT: Okay. Who are the witnesses that

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1 would have to testify here?
2 MR. WOODBURY: For that motion?
3 THE COURT: Yeah.
4 MR. WOODBURY: Mr. and Mrs. Minter. And if they
5 deny this, then there would be Mr. Lespade.
6 And then I think the State has already taken the
7 position that they did, in fact, prosecute -- sort of
8 prosecute Ms. Minter and gave her deferred prosecution. I
9 have no reason to doubt that they did that.
10 THE COURT: Okay. I have to tell you, I read
11 this, and I am kind of confused by this motion.
12 I mean, I -- I don't know, I certainly can hold a
13 hearing on this. How long would it take, though?
14 MR. MILLS: I am not sure if we need an
15 evidentiary hearing. I thought we would just argue the
16 legal issue as to whether he can -- whether certain
17 evidence that he wants to present is relevant or not.
18 THE COURT: We can do that, too. Do we need to
19 hold a hearing? I don't know.
20 MR. WOODBURY: I don't know either, Judge. But I
21 filed a motion for a couple reasons. One, what I just told
22 the jury is true for the Court, too.
23 I don't mean to disparage, but these are very
24 bizarre people. And you are going to hear evidence of that
25 the, jury is going to hear evidence of that.

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1 And whether we win the case or lose the case, the
2 fact is that what they do and why they do things is
3 remarkable.

4 And they are exactly the kind of people who take
5 the -- who will see the failure of the State to prosecute
6 Ms. Minter for going over to a lady's house with a baseball
7 bat -- or a friend of hers going over with a baseball
8 bat -- to evict her as bizarre.

9 And she did it. That's what the deferred
10 prosecution is all about.

11 The part about Mr. Minter, if the State says they
12 didn't get the motion or the letter from Mr. Lespade, okay.
13 But that's a failure on the part of the prosecution and the
14 police authorities, it's not a failure on our part.

15 That Mr. Minter brought Ms. Syddall back to the
16 Elko County Jail lit up like a Christmas tree on
17 methamphetamine and nothing happened, and she was released
18 into his custody to go to Reno.

19 And the conclusion that Mr. Minter is going to
20 draw from that is that clearly he is immune from any kind
21 of liability whatever.

22 THE COURT: What has that got to do with this
23 case? I am confused as all get-out in reading it.

24 MR. WOODBURY: It has to do with whether you tell
25 the truth or not, whether you feel that there is a kind of

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1 immunity setting out there on the part of the State of
2 Nevada regardless of what you do.

3 Do you want an example? One example, that guy
4 Minter sat in here for two hours on Monday and sat out
5 there for another hour with a lady, Ms. Syddall. And today
6 he is coming in with an oxygen machine plugged in out
7 there.

8 I mean, that's the kind of guy he is. The fact
9 is, he's coming in here to make the jury feel sorry for the
10 physical condition he is in, which is part of this case,
11 and it doesn't bother the State. It doesn't seem to bother
12 anybody except me when I can see him playing the game.

13 If the Court doesn't think that the jury will be
14 affected by him appearing like that, the Court doesn't
15 think that he is going to get a -- the feeling that he is
16 immune from anything in this here courtroom, fine. There
17 is nothing I can do about that except tell you that that is
18 exactly what he is thinking out there and that is exactly
19 what the lady is thinking out there.

20 The fact is, I mean, just to go on, I didn't
21 write it in the motion, Denise Minter was convicted in 1997
22 in California for selling dope. Did I get that in
23 discovery? No. No part of it.

24 She is still selling dope, and she is virtually
25 immune from it.

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1 And that is part of this case. That was why
2 they -- Sean Dean was a problem for them, for her and Mr.
3 Minter. They are broke, flat on their butt. That is
4 what -- getting rid of Sean Dean helps them get back in the
5 dope business, because they ain't got any money.

6 Now, I might be crazy and maybe that the Court
7 sees this as just some kind of silliness on my part. But
8 the fact is, I guarantee you, that from that witness stand
9 you are going to watch these two guys and you are going
10 to -- they are going to knock your hat off.

11 THE COURT: Well, I'm confused, though. Why -- I
12 mean, he says -- I guess your theory of the case is, he
13 says to the police, "I was set up with this"?

14 MR. WOODBURY: Yeah.

15 THE COURT: Okay. So does he give reasons why
16 he's set up to the police?

17 MR. WOODBURY: No.

18 THE COURT: Okay. Well, then if you can explain
19 to me why this is relevant, I am more than willing to go
20 along with you and permit relevant evidence to come in as
21 long as it's admissible under our evidence statutes.

22 MR. WOODBURY: What I should have said was that I
23 need -- I don't want the hearing now, what I want is I want
24 them to do their testimony and then see if I can persuade
25 you. It's going to make more sense then.

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1 THE COURT: Okay. Well, I don't know.

2 Mr. Mills?

3 MR. MILLS: I don't know if that's going to
4 entail him -- are you talking about just getting through
5 direct before your cross?

6 MR. WOODBURY: No, I will go through my cross,
7 recall them if I need to.

8 MR. MILLS: You will go through your cross
9 without going into this stuff.

10 Let me just comment on a couple of these things
11 that he has raised in his motion.

12 So I've got the file right here. Denise Minter
13 and Angela Cederstrom were prosecuted for an incident that
14 happened in -- back in September of last year, which is
15 months before the December 8 incident in this case.

16 This case has zero to do with the case that we're
17 here on. She was charged with trespassing.

18 THE COURT: Who is "she"?

19 MR. MILLS: Denise Minter.

20 THE COURT: Okay.

21 MR. MILLS: The State's witness -- yeah, there is
22 co-defendants, so I need to clarify it. Denise Minter, the
23 State's witness in this case that we're here on, was
24 charged by our office with trespassing.

25 THE COURT: Is that the only time you have

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1 prosecuted her?

2 MR. MILLS: I believe so.

3 THE COURT: Okay.

4 MR. MILLS: Off the top of my head, yeah. But
5 this is the one specifically that he raised in his motion
6 and this is the file I pulled to take a look at.

7 So she goes on to somebody's property to
8 basically evict them, and she is charged --

9 THE COURT: Little self-help with the baseball
10 bat.

11 MR. MILLS: I don't know about the baseball bat.
12 That was the co-defendant. She got charged with battery.

13 THE COURT: Okay. So she -- the co-defendant
14 allegedly --

15 MR. MILLS: Denise Minter was never charged with
16 battery, she was charged with trespassing.

17 And this case was resolved back on December 22,
18 2015. Deputy District Attorney Rob Lowe gave her a
19 deferred prosecution on the trespassing charge.

20 As I put in my response -- I mean, if there is
21 some kind of an insinuation -- not just an insinuation,
22 it's in the jury instruction -- the prosecution in this
23 case has provided benefits to Denise Minter and Bert
24 Minter, no, they haven't. That is patently 100 percent
25 false.

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1 that. But I'm going to continue to hide the ball.

2 There were a lot of reasons to set Sean Dean up;
3 some of them involved dope. All right. I --

4 THE COURT: Well, you can finish it up. I have
5 certain thoughts about hiding the ball. I mean, you can't
6 hide the ball and expect the evidence to come in if I don't
7 understand, based on your hiding the ball, what the
8 evidence is.

9 MR. WOODBURY: Well, the problem is -- that part
10 I get.

11 THE COURT: Okay.

12 MR. WOODBURY: That's why I'm saying, let me go
13 through the direct and cross of Mr. and Mrs. Minter so you
14 can see more easily where it is I'm coming from.

15 THE COURT: Okay. All right.

16 MR. WOODBURY: And I want to add, Rob Lowe does
17 not live in an isolated hole over in the Elko County D.A.'s
18 office.

19 If they have got information in that office, it
20 belongs to all of them, not excluding Mr. Lowe.

21 THE COURT: Okay. I would like to continue on
22 with the trial.

23 The -- based on this -- this discussion, which I
24 guess is sort of a partial argument on this motion in
25 limine, I would expect that there would be no

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1 Rob Lowe -- this is why I did this Amended Notice
2 of witnesses to add Rob Lowe as a witness to -- if this
3 crazy evidence that is not relevant is allowed to come in,
4 then Rob Lowe could take the stand and he could testify, I
5 -- at the time that I offered her that agreement, I had no
6 clue about her status as a victim or a witness in the Sean
7 Dean case, I had no idea about that, and it did not
8 influence my decision one way or another, I was handling
9 that separately and independently. The State did not
10 confer a benefit to her in order to bias her or persuade
11 her or because of her status as a witness in this case.

12 So I just fail to see how a trespassing charge in
13 September has anything -- any bearing whatsoever on this
14 case.

15 Now, there is also some --

16 THE COURT: Okay. Well, is that a factual
17 question then for the jury to resolve after hearing
18 testimony from the Minters about that and from Mr. Lowe?

19 MR. MILLS: If we want to go down that --

20 THE COURT: Is that what the defense is saying
21 here?

22 MR. WOODBURY: I am in a hard spot, Judge. I do
23 want to have this hearing later. There are some -- and I
24 realize that this puts Mr. Mills in a hard spot because I
25 am making -- I'm hiding the ball from him. And I realize

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1 cross-examination about this episode with the baseball bat
2 right now.

3 MR. WOODBURY: No, there will be none. Not at
4 this time.

5 THE COURT: All right. Then you are going to let
6 me watch these witnesses, and then this will be brought up
7 again to the Court for argument.

8 All right. Anything else?

9 MR. MILLS: What about the incident on April 4 or
10 7, about Minter giving Ms. Syddall a ride to Reno? He
11 wants to go into that?

12 MR. WOODBURY: Same outcome, I understand it. I
13 can't go into that until I --

14 THE COURT: Until I can understand what the
15 relevance is, correct.

16 MR. WOODBURY: Okay.

17 THE COURT: I think that's only fair. The
18 defense recognizes that. And we'll go ahead and at least
19 be able to put on some testimony today.

20 We'll be in recess for about five minutes.

21 (WHEREUPON, a short recess was taken)

22 THE COURT: We're back on the record for our
23 Case CR-FP-2015-1508. Again, State versus Dean.

24 Mr. Dean is back in court with counsel
25 Mr. Woodbury.

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1 Mark Mills from the Elko County D.A.'s office is
2 back to represent the State.
3 First witness, please.
4 MR. MILLS: Bert Minter.
5 THE COURT: Bert Minter.
6 Sir, let's have you come on up, have a seat.
7 THE WITNESS: Absolutely.
8 THE COURT: Door comes out to you. Watch your
9 step.

10 All right. Raise your right hand and be sworn.
11 (WHEREUPON, the witness was sworn)

12 THE COURT: All right. Mr. Mills.

13 BERT MACK DUFF MINTER

14 called as a witness in said case, having been first
15 duly sworn, testified as follows:

16 DIRECT EXAMINATION

17 BY MR. MILLS:

18 Q. Mr. Minter, could you please state and spell
19 your full name for the record?

20 A. Bert Mack Duff Minter. B-e-r-t, M-a-c-k,
21 D-u-f-f, M-i-n-t-e-r.

22 Q. And do you know a person by the name of Denise
23 Minter?

24 A. Yes.

25 Q. How do you know that person?

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1 I was in there about a month and a half month, three weeks.
2 I got out on November 17.

3 Q. What was the reason that you went there?

4 A. I was in such bad health that I couldn't do
5 pretty much anything for myself. I was living with Denise
6 at the time and my health was getting worse and worse, so I
7 decided to check myself into the nursing home.

8 Q. So prior to going into the nursing home, you
9 had been living with Denise?

10 A. Correct.

11 Q. Where were you guys living at?

12 A. 764 South Fifth Street, Number 12, Elko.

13 Q. Specifically, what were some of the medical
14 conditions or problems that led you to go to the nursing
15 home?

16 A. In May of last year I ended up having a
17 massive pulmonary embolism in my right lung. Sixty percent
18 of this lung has blood clots, isn't usable anymore.

19 And then, from that, I had two strokes.

20 Then now I have had COPD. And I have asthma,
21 bronchitis and emphysema. So it's -- I have shortness of
22 breath and I have enlarged arteries in my heart.

23 Q. I missed that last part?

24 A. I have enlarged arteries in my heart.

25 Q. What are the symptoms or manifestations of

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1 A. She is my ex-wife and my best friend.

2 Q. Okay. What was the general time frame that
3 the two of you were married?

4 A. We were married for five and a half years.

5 Q. And what were the -- what -- I guess, which
6 years were those? How long ago was that?

7 A. We met in '04, December 17, '04. Got married
8 about six months later, I believe. We have known each
9 other for almost twelve years.

10 Q. You said you were married about five years; is
11 that correct?

12 A. Married five and a half.

13 Q. So you divorced around 2009, would that be
14 accurate? Or 2010?

15 A. Yes. I believe so. I think -- 2010, I think,
16 somewhere around there.

17 Q. Since that time, from 2010, what has the
18 nature of your relationship been with Denise?

19 A. Best friends.

20 Q. I want to direct your attention back to last
21 year, 2015. Did there come a time that you went to live at
22 a nursing home?

23 A. Yes.

24 Q. When did that happen?

25 A. I'm not sure of the exact date I went in, but

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1 that?

2 A. No energy, no stamina, weakness, shortness of
3 breath, can't breathe in or out well, so I can't seem to
4 get oxygen.

5 I didn't know I was going to be a witness
6 first. My oxygen is in the truck, my portable. I didn't
7 think you would want my machine in here, so it's outside.

8 Q. If at any point you want that machine, go
9 ahead and let us know, we can make sure you get it.

10 A. Okay.

11 Q. Let me just ask that, do you need the machine?

12 A. It would be nice, it would be helpful. It
13 could actually be plugged in outside and the hose run to me
14 if it's close enough. It's a 50-foot hose.

15 Q. Would you like that machine now, or do you
16 want to give it a try?

17 A. Yeah, I'll try.

18 Q. During a break, if it gets to a point where --

19 A. We'll see how it goes. It just makes me dizzy
20 or -- because I'm not getting oxygen. I'm okay for now.

21 Q. And you had a cane, as well, as you walked up
22 to the witness box. What is that for?

23 A. It's to keep my balance from all the medical
24 issues. And I also have a knee problem and currently have
25 a back injury as well.

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1 Q. So you got out of the nursing home on November
2 17; is that correct?

3 A. Yes.

4 Q. When you got out of the nursing home -- by the
5 way, where was that? Was that here in Elko somewhere?

6 A. Yes. Highland Manor, over by Red Lion.

7 Q. When you were released from the Highland
8 Manor, where did you go to live?

9 A. For three days I stayed at -- at Cimarron RV
10 Park, then moved in with Denise.

11 Q. The same address you have been living with her
12 before?

13 A. Yes.

14 Q. 764?

15 A. Yes. I needed a place to go, so I asked her
16 and she said I could go live with her.

17 MR. WOODBURY: Your Honor, I can only hear a
18 third of what he is saying.

19 THE COURT: There is a microphone there. Would
20 you grab that, Mr. Minter, and go ahead and speak into
21 that. Thank you.

22 THE WITNESS: Sure.

23 THE COURT: All right. Mr. Mills.

24 Q. At the time that you were released from the
25 Highland Manor nursing home on November 17, and I guess a

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1 few days later when you moved in with Denise, did you know
2 a person by the name of Sean Dean?

3 A. Yes.

4 Q. And how did you know him?

5 A. At that time he -- earlier he had worked at
6 where Denise worked, and I had just said hi to him a couple
7 times in passing when he was at her work.

8 And I saw him and her one time over at the
9 Gold Dust gambling.

10 Q. Okay. So based on your -- any personal
11 interactions you might have had with him, did you -- what
12 was the nature of your relationship with him, if any at
13 all?

14 A. No relationship at all except for just saying
15 hi in passing. I didn't say anything to him when I saw him
16 at the Gold Dust, because as I got there, she saw me, they
17 left.

18 Q. At any point in time did you become aware of
19 the fact that he and Denise had been in a relationship
20 while you were in the Highland Manor?

21 A. Yes. A few days after I went in, she told me.

22 Q. I want to direct your attention to the evening
23 of December 8, 2015. Can you tell us what happened on that
24 evening?

25 A. Can I get some water?

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1 Q. Sure.

2 A. I was getting ready for bed. Denise was
3 getting ready for bed. Somebody -- she goes -- I believe
4 she was in the living room and I was in the bathroom
5 washing my hands.

6 And as I was doing that, I heard pounding on
7 the door. Got done washing my hands. And as I was doing
8 that, she was saying, "Let me get my shoes on, I'll be
9 right out."

10 And so then I got done with that, went out and
11 asked her who it was, who was there. She said it was Sean.
12 I said, "What the fuck is he doing here?"

13 Q. Let me just break in and ask you, why did you
14 ask her in that -- in such a way?

15 A. Because they had broken up. And he -- as far
16 as I knew, they weren't together anymore. She told me she
17 didn't want to have him around, she didn't want to see him,
18 didn't want to be around him. I had no idea why he was
19 there pounding on my door.

20 Q. What happened next?

21 A. She said that -- when I said, "What the fuck
22 is he doing here," she said, "I'll tell you when I come
23 back inside."

24 So then she began to go outside, and I sat on
25 the couch and I said okay, just started watching TV,

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1 waiting for her to come back in, tell me what was going
2 on.

3 Q. And could you hear what was going on outside?

4 A. At first, no. They were just talking. I
5 didn't hear anything at first.

6 Q. Then what happened?

7 A. Well, I could hear them talking but I couldn't
8 hear what they were saying.

9 And then after a couple minutes, they started
10 yelling at each other. I still couldn't discern what they
11 were saying, I just knew they were yelling at each other.

12 At that time I took my oxygen off, because the
13 hose doesn't reach all the way to the door, and I walked to
14 the door and opened it to see what was going on.

15 Q. And what was going on when you opened the
16 door?

17 A. They were yelling at each other.

18 Q. Where were they exactly outside the trailer?

19 A. On the porch just outside the door.

20 Q. So what happened then after you opened the
21 door, saw them there yelling?

22 A. I asked what was going on. I asked Denise.
23 And then, as I was saying that, he said, "You want
24 something?" And I said, "No." And then --

25 Q. What did he say to that?

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1 A. He said again, "You want something? I'll give
2 you something."

3 I said, "Nope, I just want you to get away
4 from my house. Just get out of here."

5 Q. When did he say at that point?

6 A. He said, "If you want something, I'll" -- it
7 was, "If you want something, I'll give you something."

8 I don't remember if I said nope again or not.

9 And then he said, "Come on outside. I'll give
10 you something."

11 And I said, "okay." And so I went outside.

12 We were on the porch. And he said, "Come on
13 down here." Then he started going down. Denise went down
14 to the ground. I went down to the ground.

15 And we were standing between the porch and her
16 Explorer, just arguing, just --

17 Q. The two of you were arguing?

18 A. He and I were arguing. Denise was in the
19 middle of us, kind of to the left a little bit.

20 Q. Do you remember the nature of that argument?

21 A. I don't remember exactly what we were saying.
22 We were just arguing. I know I told him to leave. And he
23 was saying things, I was saying things. I don't remember
24 exactly what we said.

25 Q. And what happened then?

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1 you let go." And then finally we both let go of each other.

2 And he said he was cool, I said I was cool,
3 meaning that we were, okay, fight was over.

4 We all got up, and I thought the fight was
5 done. And then he just walked away a few steps, then
6 turned back around, started saying things again.

7 Q. Who started saying things?

8 A. Sean.

9 Q. Do you recall what he was saying at that
10 point?

11 A. No. Just more derogatory -- he -- so he
12 started saying things to me, I started saying things to
13 him. And then he ran towards me and hit me again. We
14 started fighting again.

15 Then he said, "Fuck this, motherfucker." Then
16 he reached in his pocket -- I didn't know what he was
17 doing -- with his right hand. And I really don't remember
18 whether he was reaching into his pocket of his pants or
19 jacket or what he was doing.

20 And then I saw him reach his left hand over
21 his right hand, but I still didn't know what he was doing.

22 And then he started -- what I thought it
23 was -- giving me roundhouse punches to my side. I couldn't
24 figure out why he was doing that, why he wasn't continuing
25 to hit me in the face like we were before.

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1 A. Then he hit me in the face.

2 Q. What was the manner in which he hit you?

3 A. He punched me with his left hand, like this.
4 (indicating)

5 Q. And what happened after he hit you?

6 A. I went around Denise and hit him, and we
7 started fighting.

8 Q. What -- just elaborate on that. Describe what
9 you mean by fighting?

10 A. After I went around her, I hit him, and we
11 just traded blows, hitting each other. Ended up grappling,
12 grabbed on to each other, ended up on the ground. When I
13 went to the ground, I hurt my shoulder, so it wasn't
14 working anymore.

15 And I ended up face down. He ended up on top
16 of me. I was pushing him up, pushing up away -- on top of
17 me.

18 Denise got behind him, got him in a choke
19 hold, and turned him around. And then I turned around
20 towards them, because as I said I was face down, and then I
21 grabbed ahold of his jacket and he grabbed ahold of my
22 jacket.

23 And then he said something to Denise about
24 letting him go and then he told me to let him go. We just
25 kept saying that for a moment, "let go," "you let go," "no,"

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1 So he did that. He hit me in the butt once,
2 three times in my left side, and then three times on my
3 arm, where I tried to deflect the stabs.

4 But like I said, I didn't know he was stabbing
5 me, I thought he was just hitting me. I was trying to
6 deflect that.

7 Q. Where was Denise while this was going on?

8 A. She was behind me, but I don't remember how
9 far.

10 Q. Take it from there and tell us what happened
11 then.

12 A. Then after he stabbed me the seven times, then
13 he ran away down the driveway.

14 Q. You say Denise was behind you?

15 A. Yeah. I don't know. She was -- because we
16 were -- after the first fight stopped, she turned around,
17 started heading back towards the house.

18 I was going to turn around, he started saying
19 things again, so I never followed her back. Then she was --
20 she was still in the dirt, but she was up towards the
21 house.

22 And then I don't know where she was after that
23 because I was in a fight. So I didn't pay attention to
24 what she was doing. So I didn't know how far behind me she
25 was.

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1 Q. Eventually he stopped and ran away, you said?
 2 A. Yes.
 3 Q. What did you do then?
 4 A. Then I started walking back up to the house.
 5 And then I felt that my pants were warm, wet; I didn't know
 6 why. So I checked them and there was blood all over them.
 7 That's when I found out I was stabbed.
 8 Then he had stabbed Denise in the same time
 9 frame, but I didn't know he stabbed her. I was busy in the
 10 fight, I didn't know he had stabbed her as well.
 11 Q. Could you describe for the jury the different
 12 stab wounds that you had on you?
 13 A. I had one -- I had one on my left cheek, you
 14 would say; one here, left side, lower side; one in my
 15 middle left side; one on my upper left side; then there
 16 were three smaller wounds on my arm, left forearm.
 17 Q. And did you observe any puncture or stab
 18 wounds on Denise?
 19 A. After, yes. I didn't even know he was
 20 stabbing me. I didn't know he stabbed her or didn't know
 21 he hit her or did anything until after. And she said, "oh
 22 my God, I got stabbed, too."
 23 Q. Did you see that injury?
 24 A. I did.
 25 Q. Approximately where was that? what kind of

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1 injury was it?
 2 A. Right above her left breast, it was a stab
 3 wound, a puncture.
 4 Q. And what did the two of you do after he left
 5 and you guys realized that you were bleeding? what did you
 6 do?
 7 A. I -- my daughter had come out when we were on
 8 the ground, wondering what was going to on, and then saw
 9 that we were on the ground fighting.
 10 Then she went back inside and her fiance came
 11 out. And then he went back inside.
 12 Then he came back out after Sean had left, and
 13 he was there, we were just talking, like.
 14 And then the police came right away, just
 15 seconds after he left.
 16 Q. Did you give a statement to the police?
 17 A. Yes, I did.
 18 Q. At some point time did you and Denise end up
 19 at the hospital?
 20 A. Yes.
 21 Q. How did that happen?
 22 A. The ambulance came, checked my wounds. And
 23 one of those had pierced my peritoneum, so they wanted to
 24 check. And they did exploratory surgery to make sure they
 25 didn't have any vital organs get punctured.

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1 Q. What -- what was that word?
 2 A. That none of my vital organs got punctured.
 3 Q. Oh, vital organs.
 4 A. Didn't damage anything except going through my
 5 stomach cavity. So it went into my stomach inside. And so
 6 they had to do exploratory surgery to make sure that it
 7 didn't damage me inside, so there wasn't internal bleeding.
 8 Q. And was there, in fact, exploratory surgery
 9 done?
 10 A. Yes.
 11 Q. And do you recall when that was done?
 12 A. The next morning.
 13 Q. Now, as a result of these stab wounds, do you
 14 have any scars?
 15 A. Yes.
 16 Q. Could you describe those scars for the jury?
 17 A. There is a cross -- there is a cross-like scar
 18 here, I guess, about that big around or so. Then there is
 19 a smaller one.
 20 Q. Let's take them one at a time. Did you
 21 have -- can you stand up for us --
 22 A. Oh, sure.
 23 Q. I understand there is one on your -- take it
 24 from bottom to top. I understand there is one on your back
 25 side; is that correct?

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1 A. Yes.
 2 Q. Okay. Could you just point to the vicinity of
 3 where that one is?
 4 A. It's in this area here. (indicating).
 5 Q. And we are not going to have you show that to
 6 the jury, but if you could just describe for the jury, what
 7 kind of scar is there?
 8 A. It's like a three-quarter-inch straight scar.
 9 Q. Okay. Now, if you don't mind, could you
 10 actually show the jury some of the other scars that you
 11 have on your body?
 12 A. Yes. So there is one right here. Down there.
 13 There is one up further. There is one all the way up
 14 further.
 15 MR. MILLS: Permission to approach, Your Honor?
 16 THE COURT: You may.
 17 MR. MILLS: Okay. May the record reflect the
 18 defendant has shown and pointed out three scars along the
 19 left side of his torso.
 20 THE COURT: Record will reflect.
 21 Q. And there is -- is there a scar in the center
 22 of your belly?
 23 A. Yes.
 24 Q. And could you show that to the jury and
 25 describe what that is all about?

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1 A. That is from the exploratory surgery, goes
2 down there. (indicating)
3 Q. Okay. Thank you. Go ahead and have a seat.
4 Did those injuries cause you any pain?
5 A. Oh, yes.
6 Q. What kind of pain?
7 A. The -- like I said, initially I didn't even
8 know. Then once the -- everything calmed down, there was
9 just a lot of pain in the -- in the areas of the stab
10 wounds.
11 I don't know how to describe it exactly. I
12 know that the ribs got -- my ribs got bruised from the top
13 two, didn't penetrate through the ribs because they hit the
14 ribs.
15 But the one down lower, of course, went all
16 the way through.
17 But it was just pain from being cut, I don't
18 know how to explain it exactly.
19 Q. How long did that pain last?
20 A. It's still there. The lower one on the left
21 side and middle one on the left side still hurt. Top one
22 doesn't bother me at all.
23 MR. MILLS: Permission to approach, Your Honor?
24 THE COURT: Go ahead.
25 Q. I'm going to circle back around and ask you to

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1 kind of explain for us where this fight took place.
2 A. Yes.
3 Q. So what was the address where it took place
4 again?
5 A. 764 S. Fifth Street, Number 12.
6 Q. If you saw a map of -- just a general map of
7 the vicinity, would you be able to identify the trailer in
8 question for us?
9 A. Yes, sir.
10 Q. At the point in time that Mr. Dean threw the
11 very first punch, where were you standing?
12 A. Just down from the porch, right in front of
13 the porch, between the porch and the Explorer. I was right
14 in front of the porch.
15 Denise was at the end of it. He was just past
16 it. We were all like just a few feet apart, maybe a couple
17 feet apart.
18 Q. Mr. Minter, I am showing you what has been
19 marked as State's Exhibit 45-A.
20 Do you recognize what is depicted in this
21 photograph?
22 A. Yes.
23 Q. What are we looking at here?
24 A. This is the Fifth Street. This is the
25 driveway to the RV park. This is the trailer right there.

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1 Q. With this pink marker, could you circle the
2 trailer where you and Denise were residing where this
3 incident took place?
4 A. Certainly.
5 Q. Okay. And let me grab a different colored
6 marker real quick.
7 While I am doing that, I'm going to ask the
8 question, was there a vehicle parked there in the
9 vicinity?
10 A. Yes. The Ford Explorer, Denise's Ford
11 Explorer.
12 Q. So with this green marker, could you draw kind
13 of a small rectangle representing the Ford Explorer, where
14 it was parked approximately?
15 A. I would say about right there. Can't see
16 exactly where it is because it's -- the picture is from the
17 side, it's on the other side of the house.
18 Q. And could you draw with the -- let's go with
19 the green marker again -- would you draw an X where the
20 porch is, the entrance to that?
21 A. It's right in the same area, like right here.
22 Just in from where the Explorer was.
23 Q. Is it kind of on the other side of the
24 Explorer?
25 A. Yes. The Explorer is here. The RV trailer is

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1 here. Then the porch is just on this side, between the
2 Explorer and trailer. It's a small porch. It's like
3 probably from here to here about.
4 Q. Then with the pink one again. Could you
5 draw -- I will take the green one from you. Could you draw
6 just an X where the two of you were at when the fight first
7 started where he punched you?
8 A. Same place. Right between the --
9 Q. So right next to the --
10 A. Right between the -- yeah, right next to the
11 Explorer between --
12 THE COURT: We need him to keep his voice up.
13 Problem is, counsel can't hear.
14 Do we have a microphone still for Mr. Minter?
15 A. It was behind the picture.
16 THE COURT: Thank you.
17 A. The -- it was between the Explorer and the
18 porch.
19 Q. Now, with that pink marker, if you could,
20 after the altercation was over and after the defendant
21 left, could you just draw a general line indicating the
22 direction in which he left?
23 A. He just started heading down this way. He got
24 a few feet. He didn't even get this far. But he was
25 heading that way. But he got to around here, maybe ten

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1 feet.
2 Q. I'm talking about after it was all over and he
3 left for good.
4 A. After he left for good?
5 Q. Which direction did he head?
6 A. He headed down this way.
7 MR. MILLS: Okay. Okay. Could you just put your
8 initials at the bottom of this on the white.
9 Thank you.
10 I'm going to offer State's 45-A into evidence.
11 MR. WOODBURY: I would like to look at the
12 drawings and X's he has placed on it before I agree to
13 that.
14 May I inquire of counsel what this figure, this
15 red figure represents?
16 MR. MILLS: That was not drawn by the witness.
17 MR. WOODBURY: That's part of the map?
18 MR. MILLS: That's correct.
19 MR. WOODBURY: We have no objection.
20 THE COURT: 45-A is admitted.
21 (WHEREUPON, Exhibit 45-A was admitted into evidence)
22 Q. (By Mr. Mills) Mr. Minter, what kind of
23 clothing were you wearing that night?
24 A. I had on beige khakis and a -- some winter
25 work boots and a shirt, a t-shirt, and a wind breaker.

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1 Q. Mr. Minter, I'm going to show you what has
2 been marked as State's Exhibit 52. I want you to tell me
3 if you recognize this.
4 A. Okay.
5 Q. Do you recognize this?
6 A. Yes, sir, that's my wind breaker.
7 Q. What happened to this wind breaker that
8 evening?
9 I guess, at some point in time, did you lose
10 possession of or custody of it?
11 A. The police took it for evidence.
12 Q. And as you are looking at this right now, does
13 this -- is this in substantially the same condition as it
14 was in when you provided it to the police officers that
15 night?
16 A. It appears so, yes.
17 MR. MILLS: I'm going to offer State's 52 into
18 evidence at this time.
19 MR. WOODBURY: We object to it. Unless there is
20 something to identify it, it hasn't been sufficiently
21 authenticated here. He didn't pick it up, hold it, do
22 anything to show how it's different from any other wind
23 breaker. Plus he didn't show it to me.
24 THE COURT: Show it to him.
25 MR. WOODBURY: I have some questions in aid of

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1 the objection.
2 THE COURT: Of course. Voir dire.
3 VOIR DIRE EXAMINATION
4 BY MR. WOODBURY:
5 Q. Mr. Minter, how do you know this is yours as
6 opposed to somebody else's?
7 A. Because in Nevada there is not a lot of dart
8 tournament wind breakers like that from California.
9 Q. The Titan League Champions Fall 2011 is what
10 you are talking about?
11 A. That's correct.
12 Q. What is that?
13 A. That would be a dart tournament that I was in
14 and won.
15 Q. A what?
16 A. Dart tournament that I won.
17 Q. When was that?
18 A. 2011, the way it says on the jacket.
19 Q. Okay. And are there cut holes on this
20 someplace or penetration holes?
21 A. I would assume there are since there are
22 puncture holes on my body.
23 Q. Where are they?
24 A. The left side of the jacket.
25 Q. I don't know, do you want gloves to handle it?

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1 A. It's good. It's my jacket. My jacket, my
2 blood, I don't need gloves.
3 Q. Show me where they are at?
4 A. It would be better if I had my glasses, but
5 there is one there.
6 Q. Um-hmm.
7 A. I can't tell if that's one or not. It looks
8 like one there.
9 Q. How are you distinguishing that to be a
10 penetration hole as opposed to just a jacket getting old?
11 A. Because the jacket did not have any holes in
12 it prior to that night.
13 Q. You looked at it --
14 A. I looked at it pretty much every day because
15 it's a jacket I wore every day. It was my favorite jacket.
16 It was my jacket from winning that tournament.
17 Q. I'm sorry?
18 A. It was my jacket from winning that tournament.
19 I was proud of it, so I wore it all the time.
20 MR. WOODBURY: I would still say that we object
21 because I assume that he turned it over to the police. I
22 don't have any idea that -- we have no way to cross-examine
23 whether those holes were put in after he turned it over to
24 the police, unless he testifies that they existed before he
25 turned it over to the police.

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1 So he hasn't sufficiently authenticated it. We
2 object.

3 THE COURT: The objection will go to the weight
4 rather than the admissibility. Court believes that it's
5 admissible and the proper foundation has been laid.

6 Those are factual questions that can be resolved
7 by the jury about how the holes got there, I guess.

8 Mr. Mills, go ahead. It's 52, right?

9 MR. MILLS: That's correct, Your Honor.

10 THE COURT: Fifty-two is admitted.

11 (WHEREUPON, Exhibit 52 was admitted into evidence)

12 DIRECT EXAMINATION (Cont.)

13 BY MR. MILLS:

14 Q. Now, Mr. Minter, I'm going to show you what
15 has been marked as State's Exhibit 53.

16 MR. MILLS: Showing it first to defense counsel.

17 MR. WOODBURY: Okay.

18 Q. Do you recognize this?

19 A. I certainly do.

20 Q. What is that?

21 A. That's my t-shirt that I wore that night.

22 Q. Okay. And what -- what is particular about
23 this t-shirt that specifically identifies it as yours?

24 A. It says, "The Grandfather." There is -- my
25 grandkids gave it to me for Father's Day actually last

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1 year.

2 Q. That is a size quadruple extra large. Is that
3 the size you wore?

4 A. Yes.

5 Q. Are there indications that this shirt was
6 involved in the altercation that was going on that evening?

7 A. I haven't seen the side of that shirt.

8 Q. Do you want to take a look at that, examine
9 it? Do you want some gloves?

10 A. No. There is a hole right here on the bottom
11 of the left side of the shirt, there is dried blood.

12 Another hole here, upper middle side of the
13 shirt, more dried blood.

14 There is another hole up here on the top part
15 of the shirt with more dried blood.

16 Q. Is this the shirt that you provided to the
17 police officer on the evening of December 8?

18 A. Yes, sir.

19 Q. That you were wearing at the time of the
20 incident --

21 A. Yes.

22 Q. -- with Mr. Dean?

23 A. Yes.

24 MR. MILLS: Offer State's 53 into evidence.

25 MR. WOODBURY: Same objection as we had to 52.

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1 THE COURT: Objection is overruled. State's 53
2 is admitted.

3 (WHEREUPON, Exhibit 53 was admitted into evidence)

4 THE COURT: Same ruling as the last ruling.

5 MR. MILLS: Showing State's 54 first to defense
6 counsel.

7 MR. WOODBURY: All right.

8 Q. Do you recognize what I am holding?

9 A. Yes.

10 Q. What is this?

11 A. Pants I was wearing on that evening. That's
12 definitely my belt.

13 Q. This is definitely your belt?

14 A. Oh, yes. Been missing that ever since that
15 night.

16 Q. George brand khakis, size 48 x 32. Was that
17 your size at the time?

18 A. Yes.

19 Q. Are those, in fact, the khakis you were
20 wearing on that occasion?

21 A. Yes, sir.

22 Q. You provided those to the officer that evening
23 as well?

24 A. Yes, sir.

25 MR. MILLS: I'm going to offer State's 54 into

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1 evidence at this time.

2 MR. WOODBURY: Same objection we had to 52 and
3 53.

4 THE COURT: Overruled. Fifty-four is admitted.
5 (WHEREUPON, Exhibit 54 was admitted into evidence):

6 Q. Mr. Minter, this individual Sean Dean that you
7 have been testifying about, do you see that person in the
8 courtroom with us today?

9 A. Yes.

10 Q. Could you please point to him and describe
11 what he is wearing for the Court and jury?

12 A. He is right over there next to his lawyer. He
13 is wearing a white dress shirt and a blue tie with little
14 dots on it.

15 MR. MILLS: May the record reflect the
16 identification of the defendant.

17 THE COURT: Record will so reflect.

18 Q. And this trailer that you were talking about
19 where this altercation took place, is that located in the
20 city of Elko, county of Elko, state of Nevada?

21 A. Yes.

22 MR. MILLS: Thank you, Mr. Minter. That's all
23 the questions I have. I will pass the witness.

24 THE COURT: Cross-examination.

25 MR. WOODBURY: Thank you, Your Honor.

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CROSS-EXAMINATION

1
2 BY MR. WOODBURY:
3 Q. Mr. Minter, when did you incur the medical
4 problems that you --
5 A. May 3 2015.
6 Q. Just wait until I finish the question, all
7 right.
8 A. Okay.
9 Q. When did you incur those medical problems you
10 just described?
11 A. May 3, 2015.
12 Q. May 3 of which?
13 A. 2015, May 3 of 2015.
14 Q. Um-hmm. At that time, were you employed?
15 A. Yes.
16 Q. Who were you employed by?
17 A. Coach U.S.A.
18 Q. And could you describe what your job was with
19 Coach?
20 A. I was driving bus for Coach.
21 Q. Can you describe what your salary was?
22 A. Four to six thousand a month depending on
23 which runs I did.
24 Q. Were you in a supervisory position?
25 A. No.

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1 Q. How long had you worked for Coach?
2 A. At that time, I worked there for a year and a
3 half.
4 Q. I had the impression that -- I didn't hear you
5 clearly. How long have you known Ms. Minter?
6 A. Eleven years.
7 Q. Since 2004?
8 A. Yes.
9 Q. Didn't you live together in California in the
10 nineties?
11 A. In the nineties?
12 Q. Yeah.
13 A. No.
14 Q. Did you live in California in the nineties?
15 A. I certainly did.
16 Q. Where?
17 A. I lived in Long Beach, I lived in Mariposa.
18 Q. Didn't Ms. Minter live in Long Beach then as
19 well?
20 A. I believe she did, but I didn't know her then.
21 Q. And your addresses weren't the same?
22 A. In the 1990's, no.
23 Q. 1996, seven?
24 A. No.
25 Q. Okay.

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1 A. I didn't know her 20 years ago.
2 Q. Okay.
3 A. In 1996, actually, I lived in Coeur d'Alene,
4 Idaho. I moved to Coeur d'Alene, Idaho, in 1996 with my
5 first wife.
6 Q. Who was that?
7 A. Rena Lorene Minter, Rena Lorene -- I can't
8 remember her last name now. She's got a new husband.
9 Q. And as a consequence of the medical
10 difficulties, did you continue to have a job with Coach?
11 A. I was employed there still for three months
12 because of the Family Medical Leave Act. Then, after that
13 time, they didn't know -- Disability did not know when I
14 was going back to work, so I was let go.
15 Q. Okay. So you didn't have a job after May --
16 after July?
17 A. That's correct.
18 Q. Okay. And when did you start living with
19 Ms. Minter again? Or start living with her?
20 A. Which time.
21 Q. In May of 2015, were you living there?
22 A. Yes.
23 Q. And do you remember when -- when that had
24 started?
25 A. Remember when I started?

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1 Q. I gather that you were divorced when? In
2 2011?
3 A. Somewhere around there, yes.
4 Q. Yeah. And then periodically you went back to
5 live with her?
6 A. We were best friends and roommates, yes.
7 Q. I am not asking you best friends and
8 roommates, I'm just asking whether you went back to live
9 with her?
10 A. Yes, I did.
11 Q. Okay. When was that?
12 A. Different times. She would leave to
13 California for a while, then come back. Then I would stay
14 with her when she was here, we would live together. And
15 then she would leave, go back to California again. And
16 then she would come back and we would be together again.
17 Q. And during the time that you lived with her
18 after the divorce, did you -- were you living at the same
19 place this incident took place?
20 A. Right after the divorce, no.
21 Q. Where were you divorced at?
22 A. We were divorced in Coeur d'Alene, Idaho.
23 Q. Okay. And then when did you move to Elko?
24 A. It's now been three years we have been here.
25 Q. All right. So that would be in 2013?

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1 A. Yes.
2 Q. Okay.
3 A. July 17, 2013, I moved here.
4 Q. So when you came to live in Elko, did you move
5 into where this incident took place?
6 A. No.
7 Q. Where did you move to?
8 A. I moved to my daughter's house for just a
9 couple weeks alone. And I actually had a motorhome, I
10 lived outside of her house in my motorhome.
11 Then Denise had been living in California and
12 she wanted to move up here. So I went and got her from
13 California -- actually Vegas. She went to Vegas and I went
14 to Vegas, met her, brought her up here and she had been
15 here since.
16 Q. When did you say you met Denise?
17 A. When I did I meet her? Eleven years ago.
18 Q. Eleven years ago would be 2006 or five?
19 A. 2065? Probably not.
20 Q. 2005?
21 A. I believe it was 2004. December 17, 2004.
22 Q. Where was that at?
23 A. Long Beach, California. The Camelot Bar.
24 Q. So you did meet her in California?
25 A. I did meet her in California, yes. You didn't

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1 ask me that.
2 Q. That would have been in 2004?
3 A. Correct. Not in the 1990's like you said.
4 Q. Right. When did you move -- did she live in
5 that trailer where this incident occurred -- when did she
6 move into the trailer where the incident occurred?
7 A. Now it's been about a year and a half.
8 Q. Okay. A year and a half would be -- June
9 2015, so it would have been January of 2015?
10 A. Approximately.
11 Q. How much is approximately?
12 A. Month or so. I'm not absolutely sure.
13 Q. Who owned that trailer?
14 A. I owned it.
15 Q. Excuse me?
16 A. I owned it.
17 Q. Okay. And did you own it as a joint tenant
18 with her?
19 A. No.
20 Q. Any kind of joint ownership?
21 A. No, she rented from me.
22 Q. Where was Denise employed from the time she
23 got up here in Elko?
24 A. When she first got up here, she was employed
25 at Khoury's gas station in Spring Creek. And then, after

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1 that, she was employed at Sinclair on Idaho Street.
2 Q. And at the time that you were living with her
3 in May of 2015, she was employed at the Sinclair?
4 A. Correct.
5 Q. Okay. And did you remember -- did you know
6 her salary?
7 A. As far as I know, it was 9.50 an hour.
8 Q. Nine-fifty an hour?
9 A. Yes.
10 Q. Okay. And what kind of rent were you
11 charging?
12 A. Seven hundred a month.
13 Q. And she was able to pay all of that?
14 A. Yes.
15 Q. Did you owe money on the trailer?
16 A. Yes. I was paying the mortgage, she was
17 paying me rent.
18 Q. And your mortgage was a thousand bucks a
19 month?
20 A. No.
21 Q. How much was it?
22 A. \$780.81.
23 Q. So you paid the 80.81 out of your own pocket?
24 A. I did.
25 Q. That wasn't -- how did it work out after you

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1 lost your job with Coach? How did you make that 80 bucks
2 up?
3 A. She started paying it.
4 Q. She did?
5 A. Yes.
6 Q. She have kind of a gambling habit?
7 A. Yes.
8 Q. What was that costing her?
9 A. Umm, sometimes lots of money, sometimes she
10 won. Just depended on the month.
11 Q. Did she testify at the preliminary hearing it
12 was three thousand bucks a month?
13 A. Some months, yes.
14 Q. How did she pay that?
15 A. Winnings from the other month.
16 Q. She would win enough to pay -- to gamble three
17 thousand bucks a month?
18 A. Well, it was my money at first because I had a
19 business.
20 Q. I'm sorry?
21 A. It was my money at first. I had a business.
22 But I lost that business because I lost my job.
23 Q. What business did you have?
24 A. Rentals.
25 Q. When did you start the rental business?

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1 A. I started the rental business about two years
2 ago, two -- two years ago, two months, somewhere around
3 there.
4 Q. Can you describe for the jury what the rental
5 business was?
6 A. I owned and was purchasing RVs and mobile
7 homes to rent to other people.
8 Q. Okay. And did you pay cash for them?
9 A. Some of them I paid cash for. Some of them I
10 had I was paying for them monthly.
11 Q. And how -- where were you getting the
12 resources to pay for them?
13 A. From rents.
14 Q. Okay. And did you have to use any part of
15 your salary from Coach to pay that?
16 A. I did.
17 Q. Excuse me?
18 A. I did.
19 Q. And so what happened after you lost your Coach
20 job?
21 A. It started going downhill from there.
22 Q. How far downhill?
23 A. I lost everything.
24 Q. Okay. When did you lose everything?
25 A. I think it's been nine months ago now.

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1 Q. So by December 8 of 2015, you didn't have
2 anything? No assets left, right?
3 A. I have one that I own right now that I -- it's
4 just for pleasure. And I was in the process of selling one
5 at that time.
6 Q. Which one were you selling?
7 A. I call it Number 62 over at Cimarron.
8 Q. All right. And what happened to the home that
9 you were living in up at the Palacio Trailer Park?
10 A. Where?
11 Q. The trailer Denise and you were living in in
12 December?
13 A. She still lives there.
14 Q. That was one of yours?
15 A. Yes. But now she made a contract with them
16 and she is renting to own it. Because I couldn't pay for
17 it, so she did. Now she owns it, she is buying it.
18 Q. When did that happen?
19 A. I do not recall.
20 Q. Excuse me?
21 A. I do not recall.
22 Q. Wasn't -- it wasn't in effect in December, was
23 it?
24 A. I do not recall.
25 Q. When did you lose it?

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1 A. I do not recall. I didn't lose it, I gave it
2 to her.
3 Q. Well --
4 A. I wasn't able to pay the money on it, so I
5 thought she might as well just have it. And I do not
6 recall the month it was.
7 Q. Excuse me?
8 A. I do not recall the month that that happened.
9 Q. Do you recall the season?
10 A. I do not.
11 Q. Did you get a disability income?
12 A. I do now, starting in December.
13 Q. It started in December?
14 A. Yes.
15 Q. After this event with Mr. Dean?
16 A. Yes.
17 Q. Okay. How much does it amount to?
18 A. It's \$1,348 a month.
19 Q. You still get that?
20 A. Yes, I do.
21 Q. Where are you living now?
22 A. Living at my daughter's house.
23 Q. Where is that?
24 A. 328 Dove Creek Drive, Spring Creek.
25 Q. What daughter is that?

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1 A. My oldest daughter.
2 Q. What is her name?
3 A. Her name is Brandy.
4 Q. And this is not the daughter that lives with
5 Mr. Schenk?
6 A. No.
7 Q. Where does Mr. Schenk and your other daughter
8 live?
9 A. They live at 764 South Fifth Street, Number
10 10.
11 Q. They still live there?
12 A. Yes.
13 Q. All right. When you got the medical illness in
14 May, were you totally incapacitated?
15 A. Could you define that for me.
16 Q. Well, I gather you had a couple heart attacks
17 and --
18 A. No, I didn't have a heart attack.
19 Q. Oh, what did you have?
20 A. I had two strokes.
21 Q. The strokes.
22 A. COPD, asthma, emphysema, bronchitis, enlarged
23 arteries in my heart. Sixty percent of this lung has blood
24 clots and isn't usable anymore.
25 Q. All of those came on in May, or did they --

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1 A. I can't tell for sure. I think it took a
2 couple months to come on. In May I just thought I had a
3 really bad flu, wasn't doing well. I went to the doctor
4 and found out I had all these things.

5 Q. How big are you? How much do you weigh?

6 A. Three hundred thirty pounds.

7 Q. How tall are you?

8 A. Six-three.

9 Q. At the end of that three-month period, were
10 you totally incapacitated?

11 A. What three-month period?

12 Q. I'm sorry?

13 A. What three-month period?

14 Q. From the two months it took you to get the
15 COPD and all the other things, and the strokes, and after
16 that, after everything that came on and you felt like you
17 had the flu and didn't feel well, were you totally
18 incapacitated?

19 A. That's why I asked you, what does totally
20 incapacitated mean?

21 Q. It means that you can't get up and walk
22 around.

23 A. I was able to get up and walk around.

24 Q. I'm sorry?

25 A. I was able to get up and walk around.

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1 Q. What?

2 A. Alicia Syddall.

3 Q. Okay. And did you and Denise have some
4 quarrels about Ms. Syddall?

5 A. Yes.

6 Q. What were the quarrels about?

7 A. Different things.

8 Q. What -- excuse me?

9 A. Because Denise didn't like her. She did
10 drugs, then she would stop, then she would start doing
11 drugs again. She'd stop and I'd go be with her; she'd
12 start again and I wouldn't be with her anymore.
13 We kept breaking up a bunch of times, be
14 together for two weeks. Then she would -- so we went back
15 and forth on being together and being on. When I wasn't
16 with her, Denise, she was my best friend.

17 Q. Say that again?

18 A. So when I wasn't with Alicia, then Denise
19 would be my best friend. When I was with Alicia, then
20 Denise would be mad at me for being with her, then she
21 would not exactly be my best friend.

22 Q. And you were allowing Ms. Syddall to live in
23 the -- at least one of your rentals rent free?

24 A. No, I was not allowing her to live there rent
25 free, no.

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1 Q. What else were you able to do?

2 A. Not much. I walked from the couch to the
3 living room, and I would be exhausted. I was able to walk
4 maybe 20, 30 feet at first, and that's it.

5 Q. Who took over management of the rentals that
6 you had?

7 A. Denise did.

8 Q. All right. And how long did that go on?

9 A. I think for six months, seven months, I don't
10 really recall for sure. Kind of a blur. I was in pretty
11 bad shape. I don't really recall exactly how long it was.
12 Everything just started coming to an end and I
13 was very depressed. You know, I just lost my job, lost my
14 health, lost my business. Everything was, you know, not
15 doing very well, so.

16 Q. Did there come a time when you had a romantic
17 interest with a lady different from Denise?

18 A. Oh, yes.

19 Q. How many times did that occur?

20 A. How many women or how many times with the same
21 woman?

22 Q. How many women?

23 A. One.

24 Q. What is her name?

25 A. Her name is Alicia Syddall.

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1 Q. Never?

2 A. I did not allow her to. She did -- she got
3 evicted.

4 Q. By Denise?

5 A. No, by Denise and I.

6 Q. By who?

7 A. Denise and I.

8 Q. Evicted her?

9 A. Yes.

10 Q. Where was that at?

11 A. Space number 29, 764 S. Fifth Street, Elko.

12 Q. Then did she live, Ms. Syddall, in a residence
13 that you owned out at Cimarron West?

14 A. She stayed there for a few days, she didn't
15 live there. She did stay at number 19 for about a month,
16 but that was after I sold it.

17 Q. And did she also live at a place that you
18 owned on Douglas Street?

19 A. Yeah, actually it was my place on Douglas
20 Street. She stayed there with me.

21 Q. But she was evicted ultimately when Denise
22 took over management?

23 A. She wasn't evicted. She ended up just
24 leaving.

25 Q. She was rent free, right?

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1 A. She lived with me, so yes, she was rent free
2 when she lived with me.
3 Q. But at the time of that eviction, you were
4 incapacitated, were you not?
5 A. As I said, I wasn't incapacitated. You said
6 that means I can't get up and do anything. I wasn't
7 incapacitated, I was able to walk and able to go places.
8 Q. When did you go to the Manor?
9 A. I don't remember the date I went. I was there
10 about a month and a half. I got out on -- on November 17.
11 Q. I'm sorry, you are going to have to speak up a
12 little bit. I didn't understand that.
13 A. I don't remember exactly the date I went, but
14 I was there about a month and a half and I got out on
15 November 17.
16 Q. So if you got out on November 17, and you went
17 back -- so you went in the first of October?
18 A. Somewhere around there. I just remember it
19 was about a month and a half. I don't remember the exact
20 date.
21 Q. When did you get out of the hospital?
22 A. When did I get out of the hospital which time?
23 I was in the hospital quite a bit.
24 Q. The time before you went to the Manor?
25 A. I was probably out for two or three months by

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1 then. Then it just -- my health was getting worse and
2 worse. I thought I better go get somewhere that can really
3 take care of me as opposed to the hospital for a few days,
4 then back to just having somebody help me with my meds and
5 foods. I was getting really bad.
6 Q. How was Ms. Syddall employed?
7 A. What is that.
8 Q. How was Ms. Syddall employed while she was
9 your fiancée?
10 A. She had an online business, she was doing
11 electronics repair.
12 Q. Doing what?
13 A. Electronics repair.
14 Q. Electronics repair?
15 A. Um-hmm.
16 Q. And successfully?
17 A. I don't know.
18 Q. Well, she was living with you and you were
19 paying for her rent. Was -- were you also paying for the
20 food and other things?
21 A. I was paying for everything, yes. She was my
22 girlfriend so I paid for everything, yes.
23 Q. How was she paying for her drugs?
24 A. I don't know. I -- I guess it was money she
25 was making from her online stuff. Whenever she was doing

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1 that, I wasn't around her, so I don't know.
2 Q. It had to start at some point so you could
3 become aware of that, right?
4 A. Sure.
5 Q. Did you know Ms. Syddall told the court that
6 she had no source of income?
7 A. No.
8 Q. That she was incapacitated mentally?
9 A. I didn't know that.
10 Q. Was she?
11 A. Mentally incapacitated.
12 Q. Um-hmm.
13 A. I think she's bipolar.
14 Q. Did she know Denise?
15 A. In what way.
16 Q. Friends? Anything like that?
17 A. Friends, no. They knew each other.
18 Q. They have some friendly moments, I guess?
19 A. Well, they -- Alicia was my girlfriend and
20 Denise was my best friend, so they would see each other.
21 But they never hung out together or did anything together
22 or anything like that.
23 Q. I thought that you took Denise with you down
24 on April 4 to the justice court -- or the court down at the
25 jail when Ms. Syddall had an arraignment. Did you not take

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1 Denise with you?
2 A. Yes, I did.
3 Q. What was that for?
4 A. Because Denise likes to keep an eye on me.
5 Q. Okay. And you were accompanying -- you went
6 down there because you and Ms. Syddall were still one?
7 A. At the time we were together, yes.
8 Q. You had some romantic interest in Denise even
9 after your divorce, right?
10 A. Yes, sometimes.
11 Q. How did you work that out?
12 A. Didn't work out.
13 Q. Excuse me?
14 A. It didn't work out.
15 Q. When did it not work out?
16 A. Ever. Obviously we are not together, so it
17 didn't work out.
18 Q. So I guess when you got out -- let me go back
19 for a second. You got out of the Manor on November 17,
20 correct?
21 A. Yes.
22 Q. And where did you go?
23 A. I went to Cimarron, Number 19, for a few days,
24 and then I asked Denise if I could stay there.
25 Q. Cimarron 19 was the rental you had?

192

1 A. Yes.
2 Q. Was Ms. Syddall there?
3 A. No.
4 Q. And then you asked Denise if you could come
5 over to her place and stay?
6 A. Yes.
7 Q. And I gather that worked out?
8 A. Yes.
9 Q. Okay. And you went there on November 17.
10 Stayed there how long?
11 A. I didn't go there on November 17.
12 Q. Where did you go?
13 A. I got out of the Manor on the 17th.
14 Q. I'm sorry.
15 A. Went to number 19 on the 17th, then three days
16 later went to Denise's house. So the 20th, 21st is when I
17 went to Denise's house.
18 Q. Of November?
19 A. Yes.
20 Q. And what was your purpose in going to Denise?
21 A. To have a place to live.
22 Q. What was the matter with number 19?
23 A. Wanted to rent it, then somebody decided they
24 wanted to buy it.
25 Q. Who bought it?

193

1 A. What's that?
2 Q. Who bought it?
3 A. I just remember his name is Chris. I don't
4 remember his last name.
5 Q. Did Ms. Syddall get in some trouble over there
6 over some dope in her possession?
7 A. Yes, she did.
8 Q. After November 20?
9 A. I believe so, yes. She lived there after he
10 bought it.
11 Q. Did Denise help with her eviction out of
12 number 19?
13 A. She did not get evicted from number 19.
14 Q. I'm sorry?
15 A. She didn't get evicted from number 19.
16 Q. Ever?
17 A. Ever. Not by us. I don't know if she got
18 evicted by him or what happened with that. With us, she
19 didn't get evicted, so.
20 Q. So what did you think about Mr. Dean and
21 Denise having a romantic relationship?
22 A. I thought it was amazing at first.
23 Q. Why?
24 A. Because he was treating her extremely well,
25 treated her like a queen.

194

1 Q. How did you know that?
2 A. Because of what she was telling me. She said
3 he was doing the dishes for her and doing the housework for
4 her, treating her amazingly. I was really happy.
5 Q. When were you receiving that information?
6 A. When I was in the home.
7 Q. Excuse me?
8 A. When I was in the home.
9 Q. By that you mean the Manor?
10 A. Yes.
11 Q. And how often did you talk to Denise?
12 A. Not too often. Once every week or two maybe.
13 Q. How long did this relationship that was being
14 explained to you by Denise go on between her and Mr. Dean?
15 A. Well, at first she said it was just about a
16 month, month and a half. But it was actually more than
17 that. I'm not sure how long because she never really told
18 me, she kept it secret.
19 Q. Why? Do you know?
20 A. She said she was afraid to tell me because I
21 would get mad. I said, "Why would I get mad? I'm really
22 happy for you." I even told her how to keep him, how to
23 make sure he is happy because he was making her happy.
24 And then I found out that they were seeing
25 each other when I was living there with her, and I couldn't

195

1 figure out why she wouldn't tell me. But she wouldn't.
2 Q. You actually received text messages from
3 Denise?
4 A. Are we talking about a time frame.
5 Q. While you were in the Manor.
6 A. Yes.
7 Q. Um-hmm. And is that -- was that more regular
8 communication between you and she?
9 A. No. Not very often, no. When I moved into the
10 Manor, she had Sean. She didn't talk to me very much
11 because she had him.
12 Q. Well, she kind of had to talk to you a little
13 bit because she was doing the rentals?
14 A. That is very true. Whenever she needed
15 something or whenever she had questions, she would text me
16 or call me.
17 Q. How many rentals were there?
18 A. At that time I don't recall how many we had
19 left.
20 Q. I'm sorry?
21 A. At that time I don't recall how many we had
22 left.
23 Q. It was getting kind of critical, wasn't it?
24 A. When I first went into the Manor, it was
25 pretty much getting -- yeah, pretty much getting pretty bad

196

1 with having -- you know, I wasn't able to manage them
 2 anymore.
 3 Q. Excuse me?
 4 A. I wasn't able to manage them anymore, and she
 5 was doing her best.
 6 Q. And nothing had changed if the rent -- people
 7 stopped renting from you, or what?
 8 A. No. I was paying for a bunch of the rentals.
 9 So the income from the rentals was less than I was making,
 10 my job was paying for it. Then I lost my job and slowly --
 11 I slowly had to get rid of them.
 12 Q. None of the rentals paid for themselves?
 13 A. Yes, some of them did.
 14 Q. You ultimately lost all of them?
 15 A. Yeah, I lost all of them.
 16 Q. How come you lost the ones that were paying
 17 for themselves?
 18 A. Because I didn't have any income to pay for,
 19 like, repairs or upkeep or anything like that. And I
 20 didn't have any -- I had no capital left to do anything.
 21 Like, if a water heater went out or the refrigerator went
 22 out, cost hundreds of dollars. I just doesn't have any way
 23 to do it.
 24 So I just decided to sell the -- actually give
 25 the properties back to the owners I bought them from.

197

1 Q. Were you getting angry at Denise about her
 2 inability to make that work?
 3 A. No. I thought she did a great job.
 4 Q. Excuse me?
 5 A. I thought she did a great job.
 6 Q. You lost everything?
 7 A. Yes. She did a great job trying. I wasn't
 8 angry about it.
 9 Q. Okay. Did you think that Mr. Dean was part of
 10 the problem?
 11 A. No.
 12 Q. How was he assisting?
 13 A. I have no idea if he was or not.
 14 Q. Seems to me like a question you might have
 15 asked her if you were interested in trying to save any part
 16 of these rentals?
 17 A. Mr. Dean wasn't my problem and my -- he had
 18 nothing to do with me.
 19 Q. Well --
 20 A. She was -- she was his -- you know, his
 21 girlfriend. I didn't -- it wasn't mine.
 22 Q. And what about the \$3,000 a month she was
 23 gambling? Did you ask her why she couldn't help you with
 24 that?
 25 A. That was -- that I didn't like very much,

198

1 yeah, but she kept doing it.
 2 Q. Right. If she is gambling away the money,
 3 then you are saying that you didn't say to her, "why you
 4 don't you try to save one or two of these trailers,"
 5 something like that?
 6 A. I said it to her, yeah. I said, "You need to
 7 stop gambling. You're addicted to gambling, you need to
 8 stop doing it." She wouldn't.
 9 Q. You said to her, "I'm losing everything.
 10 Everything is gone"?
 11 A. That's correct.
 12 Q. And you are still saying you are pretty calm
 13 about it all?
 14 A. Yes. It happens.
 15 Q. I'm sorry?
 16 A. It happens. It's life. You go on.
 17 Q. Okay. So you don't have much of a temper
 18 problem?
 19 A. No, I don't. Never have.
 20 Q. Excuse me?
 21 A. Never have, no.
 22 Q. You testified at the preliminary examination
 23 that you had a romantic interest in Denise, correct?
 24 A. Yes.
 25 Q. And I assume that on -- when you found out she

199

1 was still texting back and forth with Mr. Dean you were
 2 upset about that?
 3 A. Yeah. Not because of that. Because she said
 4 she didn't want to be with him anymore, and I couldn't
 5 figure out why she was still texting him because of his --
 6 the reasons why she -- they weren't together anymore.
 7 Q. And you didn't want her to get back together
 8 with him?
 9 A. Not at that time, no. Prior he was treating
 10 her really well, but lately his actions --
 11 Q. Now --
 12 A. -- made it so I don't want that to happen.
 13 Q. Now you are back living with her and got some
 14 romantic aspirations toward her?
 15 A. Not anymore. Not after that. It was only for
 16 a few days. Like I said, it didn't work out again like it
 17 never does. We are great friends, but we are not great
 18 lovers.
 19 Q. And so now she is gambling three thousand
 20 bucks a month. She's lied to you about being in a
 21 relationship with Mr. Dean?
 22 A. Yes.
 23 Q. This is all taking place at a point at which
 24 you are still aspiring to reestablish some romantic
 25 relationship with her. And you are still not mad?

200

1 A. It's her choice.
 2 Q. I'm sorry?
 3 A. It's her choice who she wants to be with and
 4 what she wants to do, not mine.
 5 Q. At the same time Ms. Syddall has gone off the
 6 deep end and is taking drugs again?
 7 A. Yes.
 8 Q. And you still haven't asked Denise where that
 9 three thousand bucks a month is coming from?
 10 A. No.
 11 Q. Where was it coming from?
 12 A. I have no idea. It was coming from the
 13 business and she wasn't paying bills. I know that much.
 14 She wasn't paying the owners of the RVs, she was gambling
 15 instead.
 16 Q. And you are still not mad?
 17 A. I lived with her 11 years and put up with it.
 18 Q. I'm sorry?
 19 A. I lived with her 11 years, put up with it for
 20 11 years, so I was used to it.
 21 Q. Then you divorced her?
 22 A. Sure did.
 23 Q. Because you were mad.
 24 A. Because I was mad? I divorced her because I
 25 didn't want to be married to her anymore. But being best

201

1 watched TV, made myself lunch. That was pretty much it.
 2 Q. Then you texted back and forth with her a
 3 little bit during the day?
 4 A. Sometimes.
 5 Q. Okay.
 6 A. We did not text a whole bunch. Just if she
 7 wanted something or if I wanted her to bring something
 8 home, something like that, from work, to eat. Things like
 9 that.
 10 Q. How did you have enough money to eat?
 11 A. I got on food stamps.
 12 Q. Excuse me?
 13 A. I got on food stamps.
 14 Q. And she had a car?
 15 A. Yes.
 16 Q. And she was paying insurance on it?
 17 A. Actually it's my car.
 18 Q. The SUV is your car?
 19 A. No, the Explorer is her car, but she doesn't
 20 drive it. I have a Suburban and it's mine.
 21 Q. And the Explorer that fight with Mr. Dean took
 22 place around, that was her car?
 23 A. It's her car, yes. But it doesn't -- she
 24 doesn't drive it.
 25 Q. She doesn't drive it?

203

1 friends works out really well.
 2 Q. I'm sorry?
 3 A. Being best friends works out really well.
 4 Being married didn't work anymore. I lost the feelings of
 5 her for that.
 6 Q. I'm sorry?
 7 A. I lost the loving feelings of that. We would
 8 try again and it didn't work.
 9 Q. Okay. When -- did you continue to have a cell
 10 phone that you and Denise texted on even after you got out
 11 of the Manor?
 12 A. Yes.
 13 Q. Okay. And do you still have the same cell
 14 phone?
 15 A. I do not.
 16 Q. Okay. And you and Denise continued to text
 17 periodically, even after you got out of the Manor and
 18 started to live together?
 19 A. I would imagine, yes.
 20 Q. She was living -- she was working at Sinclair,
 21 right?
 22 A. Yes.
 23 Q. While she was gone, what did you do with your
 24 day?
 25 A. Just depended on the day. Mostly I just

202

1 A. No.
 2 Q. Even on December 8?
 3 A. I don't know. I don't recall.
 4 Q. It was parked right in front of your house,
 5 bud?
 6 A. I don't recall.
 7 Q. So it would be fair to say that as of December
 8 8 you didn't own any part of that house? That trailer
 9 house that you were living in?
 10 A. I believe it was before that when we
 11 exchanged.
 12 Q. So what right do you have to tell Sean Dean to
 13 get out of there?
 14 A. Because I lived there as well. And so when
 15 you move into a house, it becomes yours.
 16 Q. Is that how it works?
 17 A. Yeah, that's how it works. Like if I own a
 18 house, somebody moves into the house, rents it, it's their
 19 house. Even though I am the owner, it's their house. They
 20 are renting.
 21 So when I moved in there as her roommate, the
 22 house -- it's my house as well.
 23 Q. Okay.
 24 A. So my right is that I am the renter or the
 25 roommate. I live there, too. So it's my house.

204

1 Q. Okay. In the evening hours of December 12 --
2 let me ask you this. When did you first find out that your
3 wife was not being truthful with you about her relationship
4 with Mr. Dean?

5 A. It was probably a month before I moved -- went
6 to the Manor.

7 Q. I gather there came a time when she told you
8 that she and Mr. Dean had broken up?

9 A. Oh, that time. You didn't make it specific
10 which time you were talking about. About two weeks prior
11 to December 8, they had broken up.

12 Q. She told you that?

13 A. Yes.

14 Q. All right. And then you found out that wasn't
15 true?

16 A. On December 8 when -- after he came over
17 and -- and stabbed us, then I found out that she had been
18 texting him that day.

19 Q. Actually, you found out beforehand because he
20 came over -- she told you that a long time before she --
21 Mr. Dean stabbed you, right?

22 A. He was there. I don't remember when he was
23 there before that.

24 Q. Okay.

25 A. But he came over to talk to her one time, I
205

1 business, not mine.

2 Q. Well, there must have been some curiosity on
3 your part about how she was getting the money and about Mr.
4 Dean and what she was doing at the time, who she was
5 talking to, the lady you wanted to resume a romantic
6 relationship with?

7 A. No.

8 Q. Just none?

9 A. I wasn't worried about it.

10 Q. How about Mr. Schenk? Did you talk to him
11 while you were in the manor?

12 A. While I was in the Manor? A couple times
13 maybe.

14 Q. Excuse me?

15 A. Couple times maybe he came and saw me at the
16 Manor. Him and my daughter and their kids came and visited
17 me a couple times.

18 Q. He had a pretty close relationship with you?

19 A. Pretty close, yeah. He was my daughter's
20 fiance.

21 Q. Yeah. And you share information, right?

22 A. Not really.

23 Q. So how would Mr. Schenk know there were hard
24 feelings about -- between you and Mr. Dean?

25 A. There were no hard feelings between me and Mr.
207

1 don't remember when it was.

2 Q. Okay. What time did Denise get off work that
3 day, December 8?

4 A. I have absolutely no idea.

5 Q. Excuse me?

6 A. I have absolutely no idea. I don't know.

7 Q. It was in the afternoon, was it not?

8 A. Oh, yes.

9 Q. So you know that she must have got off before
10 evening?

11 A. I am not even sure if she worked that day. I
12 don't recall at all what her --

13 Q. Okay.

14 A. Whether she worked that day or not. I don't
15 know what day of the week or anything. I don't remember.
16 I think it was Tuesday or Wednesday. Likely, if it was
17 Tuesday or Wednesday, she would have been working in the
18 morning.

19 Q. Did you ever have occasion to see her cell
20 phone?

21 A. I don't look at people's cell phones. It's
22 their privacy. I don't do that.

23 Q. Excuse me?

24 A. It's their privacy. I don't do that. I -- I
25 don't check other people's electronics. It's their
206

1 Dean.

2 Q. Excuse me?

3 A. There were no hard feelings between me and Mr.
4 Dean.

5 Q. Can you tell the jury, please, why Mr. Schenk
6 might think there would be?

7 A. When did this happen? After the stabbing?

8 Then there would be, right.

9 Q. Before the stabbings.

10 A. I don't know. I mean, after they broke up,
11 then sure.

12 Q. Hadn't you spent a considerable amount of time
13 talking to Mr. Schenk about how you would like to see Mr.
14 Dean and Denise not be one? Didn't like him?

15 A. No, I did not.

16 Q. If he said you did, then he would just be
17 wrong about that; would that be right?

18 A. I haven't talked to anybody a lot about it.

19 I'm a very private person. I don't tell a lot of people my
20 business.

21 Q. All right. Then assuming that you did care
22 about the relationship between Denise and Mr. Dean, would
23 you be -- first of all, Denise has a history of not being
24 very truthful with you?

25 A. No. Just recently.
208

1 Q. Excuse me?
2 A. No, she does not have a history of being
3 untruthful. Just recently.
4 Q. Like December 8?
5 A. Yes, just when she started a relationship with
6 him and she didn't tell me. Things like that. Because she
7 was actually usually very truthful.
8 Q. Excuse me?
9 A. She was usually very truthful.
10 Q. And I don't assume she ever told you a --
11 fabricated anything about where she was getting that three
12 thousand bucks a month?
13 A. Once again, no.
14 Q. She didn't tell you that she was using your
15 money from the rental to do the gambling?
16 A. I already told you that she was.
17 Q. I know you told me. Now, did she tell you?
18 A. She didn't have to tell me, I knew. The
19 owners of the properties are calling me and telling me they
20 are not getting paid.
21 Q. So you must have asked, "what are you doing
22 with that money, Honey? Why am I getting these calls?"
23 A. I knew what she was doing with it. She was
24 gambling with it. Because she wasn't paying the bills.
25 Q. And the subject never came up?

209

1 A. I just told you it did. I asked her about it.
2 Q. And what did she say?
3 A. She said yes, that's what she was doing.
4 Q. And you said "stop that"?
5 A. Well, something along those lines. I don't
6 recall exactly.
7 Q. And she didn't?
8 A. She -- no, she didn't.
9 Q. Did you have the impression she was gambling
10 with Mr. Dean?
11 A. I saw them gambling together.
12 Q. Did you have the impression she was financing
13 his gambling?
14 A. I don't believe so.
15 Q. Excuse me?
16 A. I don't believe so.
17 Q. Well --
18 A. Doesn't seem that way to me.
19 Q. I'm sorry?
20 A. Doesn't seem that way to me.
21 Q. Okay. Why is that?
22 A. Because he doesn't seem like the kind of
23 person that would sponge off her. That he would pay for
24 his own.
25 Q. You had some significant problems with your

210

1 mental health in conjunction with this medical issue?
2 A. Can you repeat the question, please?
3 Q. Well, you have -- after you got out of the --
4 after you got the medical problems more or less resolved,
5 you had significant mental health problems, right?
6 A. Significant mental health problems? Can you
7 explain that?
8 Q. Yeah. Did you go to counseling?
9 A. No.
10 Q. You never did?
11 A. No.
12 Q. Still don't?
13 A. No.
14 Q. Do you have depression?
15 A. Yes.
16 Q. And what do you do about that?
17 A. I take medication for it.
18 Q. Who do you get it from?
19 A. My doctor.
20 Q. What doctor?
21 A. Dr. Patel.
22 Q. And how many medications have you got for the
23 depression?
24 A. One.
25 Q. And how many for anxiety?

211

1 A. One.
2 Q. And do you have a -- do you have other stuff?
3 First of all, what are you taking for the depression?
4 A. I cannot remember what it's called. I think
5 it's similar to Effexor.
6 Q. Similar to what?
7 A. Effexor.
8 Q. You would have to spell that. Can you do that?
9 A. E-f-f-e-x-o-r, I believe. But it's not
10 Effexor, it's a generic. Venlafaxine, that might be it.
11 And I'm taking Xanax.
12 Q. What is the Xanax for?
13 A. Xanax is for anxiety.
14 Q. For what?
15 A. Anxiety.
16 Q. And any other medications you take prescribed
17 by Dr. Patel?
18 A. Yes, I take it about 17 medications.
19 Q. Okay. Any others -- any barbiturates?
20 A. I have hydrocodone. And that's all of the --
21 that's all of that type.
22 Q. What is that for?
23 A. It's for pain.
24 Q. So you take pain medication, depression
25 medication, and anxiety medication?

212

1 A. Yes.
2 Q. And you were taking those in December 8?
3 A. Yes.
4 Q. Dr. Patel is a heart doctor?
5 A. Yes, he is.
6 Q. And how were you -- I am not allowed to ask
7 how you were -- what -- did you see somebody else in
8 addition to Dr. Patel about the mental health problems?
9 A. Yes.
10 Q. Who?
11 A. I saw a counselor.
12 Q. I just thought I asked you about seeing a
13 counselor and you said no?
14 A. I saw a counselor for about three months.
15 Q. When did you see the counselor?
16 A. I don't recall what it was. It was just after
17 I got into the accident -- or after the health problems.
18 Q. Was it in December or before December?
19 A. It was before.
20 Q. Who is the counselor?
21 A. Her name is Levi. Her last name is Levi. I
22 can't remember her first name. I don't recall you asking
23 me if I went to a counselor, you said did I go to CASA.
24 Q. I'm sorry?
25 A. You said did I go to CASA. I don't recall you

213

1 bedroom, she took showers, she made some food, she plays on
2 her phone. She does what she wants; I am not her keeper.
3 I am not -- you know, I am her friend, so I don't have --
4 had or worry about control over here.
5 Q. She is on Facebook?
6 A. I assume she is.
7 Q. You are one of her friends on Facebook, right?
8 A. Yeah.
9 Q. You can actually go on Facebook and look and
10 see what she is writing to other friends, right?
11 A. I could, yes.
12 Q. And you never did?
13 A. I don't do that, no. I don't go on and check
14 on her, no.
15 Q. Excuse me?
16 A. I don't go on and check on her, no.
17 Q. Okay.
18 THE COURT: All right. This is probably a good
19 time to break.
20 All right. The Court is going to invoke rule of
21 exclusion for witnesses.
22 So, Mr. Minter, don't discuss this case or your
23 testimony with any of the other witnesses, or anybody else
24 for that matter, while the trial is going on.
25 THE WITNESS: Yes, sir.

215

1 asking did I go to a counselor.
2 Q. I asked you about CASA?
3 A. Yeah. Isn't that what you said?
4 Q. Maybe it's time to end the day. I don't know
5 how --
6 A. Maybe you said counselor and I heard CASA.
7 Q. All right.
8 A. That's what happened.
9 Q. Okay. So I take it that, now moving to
10 December 8, you had no idea that your ex-wife had been in
11 communication with Sean Dean for five or six hours through
12 text messages?
13 A. That's correct.
14 Q. She never told you anything about that?
15 A. No.
16 Q. What did -- assuming that she was there in the
17 residence with you for the five or six or seven hours, did
18 you guys interact at all?
19 A. Yeah.
20 Q. Excuse me?
21 A. Yes.
22 Q. What would be the nature of your interaction
23 if it wasn't to discuss what was going on in your life and
24 in her life?
25 A. We lived together. She -- she was in her

214

1 THE COURT: We are not going to be done until
2 next Tuesday maybe, so.
3 THE WITNESS: Yes, sir.
4 THE COURT: An exception is you can discuss it
5 with Mr. Woodbury or Mr. Mills. But if you do that, please
6 make sure no one else is in earshot.
7 THE WITNESS: Yes, sir.
8 THE COURT: All right.
9 Ladies and gentlemen, please do not converse
10 amongst yourselves or with anyone else on any subject
11 connected with the trial. Do not read, watch or listen to
12 any report or commentary on the trial or any person
13 connected with the trial by any medium of information,
14 including, without limitation, newspapers, television,
15 radio or the Internet.
16 And do not form or express any opinion on any
17 subject connected with the trial until the cause is finally
18 submitted to you.
19 You may not use any electronic device or media,
20 such as the telephone, a cell phone, smartphone, iPhone,
21 BlackBerry or computer, the internet, any internet service,
22 any text or instant messaging service, any internet chat
23 room, blog, or website such as Facebook, MySpace,
24 LinkedIn, YouTube or Twitter, to communicate to anyone any
25 information about this case until I accept your verdict.

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1 In other words, you cannot talk to anyone on the
2 phone, correspond with anyone, or electronically
3 communicate with anyone about this case.

4 Please be in the jury room about 8:45. We'll get
5 started at 9:00.

6 We need Mr. Minter here, too. We'll get started
7 at --

8 THE WITNESS: 8:45?

9 THE COURT: 8:45 would be good. Thank you.

10 (WHEREUPON, the trial adjourned for the day at 5:01
11 p.m.)

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1 STATE OF NEVADA)

2) SS.

3 COUNTY OF ELKO)

4

5 I, Lisa M. Manley, Official Reporter for the Fourth
6 Judicial District Court, Dept. II, of the State of Nevada,
7 in and for the County of Elko, was present in the
8 above-entitled court on June 21, 2016;

9

10 The foregoing transcript is an uncertified rough draft
11 transcription of my stenotype notes of said proceedings.
12 This transcript has not been edited, proofread, finalized,
13 indexed or certified.

14

15 DATED: At Elko, Nevada, this 18th day of November,
16 2016.

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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4

5 I, Lisa M. Manley, Official Reporter for the Fourth
6 Judicial District Court, Dept. II, of the State of Nevada,
7 in and for the County of Elko, was present in the
8 above-entitled court on June 21, 2016;

9
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12 This transcript has not been edited, proofread, finalized,
13 indexed or certified.

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15 DATED: At Elko, Nevada, this 18th day of November,
16 2016.

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ELKO CO DISTRICT COURT

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1 Case No. CR-FP-2015-1508

2 Dept. 2

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 00000

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. :

JURY TRIAL - VOL. 2

12 SEAN MAURICE DEAN, :

13 Defendant. :

14 _____/
15
16 TRANSCRIPT OF PROCEEDINGS

17 BE IT REMEMBERED that the above-entitled matter
18 came on for hearing on June 22, 2016, at the hour of 9:06
19 a.m. of said day, before the HONORABLE ALVIN R. KACIN,
20 District Judge.

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25 Reported by Lisa M. Manley, CCR #271

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1 A P P E A R A N C E S

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1 P R O C E E D I N G S

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THE COURT: We are back on the record for Case
No. CR-FP-2015-1508. Again, State versus Dean.

We do have Mr. Dean back in court with his
counsel, Gary Woodbury.

And again Deputy District Attorney Mills is here
representing the State.

We're continuing -- will counsel stipulate to the
presence of the jury and the alternates?

MR. WOODBURY: So stipulated.

MR. MILLS: Yes, Your Honor.

THE COURT: Thank you. We're continuing on with
Mr. Minter's testimony, I believe, Mr. Mills?

MR. MILLS: That's correct.

THE COURT: Sir, we'll have you take the witness
stand again.

And of course, Mr. Minter, I remind you, you are
under oath. And I think you are on continued
cross-examination with Mr. Woodbury.

Again, feel free to grab that mike. You don't
have to put it right up to your mouth, keep it down a
little bit. That will amplify your voice, you won't have
to yell.

Mr. Woodbury.

MR. WOODBURY: Thank you, Your Honor.

4

1 BERT MACK DUFF MINTER
2 called as a witness in said case, having been first
3 duly sworn, testified as follows:
4 CROSS-EXAMINATION (Cont.)
5 BY MR. WOODBURY:
6 Q. Mr. Minter, my understanding was that the
7 stroke has caused you -- strokes, I guess -- have caused
8 you some problems with your memory?
9 A. With remembering words and things like that.
10 Q. And are you under the impression that your
11 recollection of the events of December 8, 2015, are
12 somewhat tainted by that problem?
13 A. No.
14 Q. You think you recall it pretty well?
15 A. Yes.
16 Q. Oh, okay. Approximately what time was it that
17 the knock came on the door?
18 A. I believe it was around eight o'clock.
19 Q. Okay. And prior to eight o'clock you had been
20 just sitting watching television?
21 A. Getting ready for bed. I was in the bathroom
22 washing my hands.
23 Q. I'm sorry?
24 A. I was in the bathroom washing my hands.
25 Q. How were you dressed?

5

1 A. In the clothing that I wore when I went
2 outside.
3 Q. Okay. And was there a reason that you were
4 wearing all that clothing inside your house?
5 A. Yeah, because the house is cold inside. She
6 keeps the house kind of cold to save money on the heat
7 bills.
8 Q. Okay. And how cold was the house?
9 A. About 65 degrees, that's what she has it at.
10 Q. I'm sorry?
11 A. That's what she has the temperature set at,
12 65.
13 Q. That was uncomfortable for you?
14 A. For me, yes. For her, no.
15 Q. When the knock came on the door, did you and
16 Ms. Minter have a conversation about it?
17 A. Yes. Pounding on the door.
18 Q. I'm sorry?
19 A. Pounding on the door.
20 Q. It wasn't a knock?
21 A. It wasn't. If it was just a knock, I wouldn't
22 have heard it in the bathroom. But yes, when he pounded on
23 the door, I got done washing my hands and came out. And
24 before I came out, I heard Denise say, "I'll be out" --
25 "I'll be out in a minute. I'm going to put my shoes on."

6

1 And then before she went out, I came out of
2 the bathroom and I said, "who is it?" And she said it was
3 Sean. And I said, "what the fuck is he doing here?"
4 Q. You said what?
5 A. "What the fuck is he doing here?"
6 Q. And she answered?
7 A. She said --
8 Q. I'm sorry?
9 A. She said, "I'll let you know when I come back
10 in." So I sat down and starting watching TV.
11 Q. All right. It sounds like, from the
12 expression that you used, you were angry that Mr. Dean was
13 there?
14 A. I wasn't happy that he was there.
15 Q. Is that different from being angry about it?
16 A. What is that?
17 Q. Is that different from being angry about it?
18 A. I didn't know why he was there.
19 Q. I know that. But you were not angry, I gather,
20 that he was there?
21 A. I wasn't angry about it, but I wasn't happy
22 about it. He -- they had broken up and she said she didn't
23 want to see him, didn't want to be around him, didn't want
24 to talk to him.
25 And then he was at the door and I didn't know

7

1 why he was there. That's why I asked her.
2 Q. And at the preliminary hearing you told us
3 that she had told you that she had been in communication
4 with Mr. Dean?
5 A. That day, no.
6 Q. When did -- didn't she tell you about the time
7 he pounded on the door that she had been in communication
8 with him?
9 A. That day, no.
10 Q. So you expected -- you thought that he had
11 come up there uninvited or --
12 A. That's correct. He did come up uninvited.
13 She didn't ask him to come.
14 Q. Is that right?
15 A. Yes, that's right.
16 Q. How do you know that?
17 A. Because she told me. After the fact.
18 Q. Excuse me?
19 A. After the fact she told me she didn't ask him
20 to come.
21 Q. Up to that point -- well, I had the impression
22 yesterday that you testified that after you had gotten out
23 of the Manor you had seen Mr. Dean and Denise together?
24 A. No.
25 Q. At the Gold Dust?

8

1 A. No, it was before I went in the Manor.
 2 Q. Oh, okay. So when I asked you at preliminary
 3 examination if you were angry when you found Mr. Dean at
 4 the door, and you said "Yep," that's wrong?
 5 A. When I went to the door, I was angry. After I
 6 heard them yelling.
 7 Q. Do you recall me asking you the question?
 8 A. I do not.
 9 Q. Excuse me?
 10 A. I do not.
 11 Q. You had an opportunity to review your
 12 preliminary hearing transcript --
 13 A. Yes, I did.
 14 Q. -- before you came here to testify today?
 15 A. Yes, I did.
 16 Q. So do you recall me asking you, "All right.
 17 So I guess when December 8 came and you found out that it
 18 was Sean Dean at the door, I have the feeling by the use of
 19 the expletive that you used that you were not happy that he
 20 was at the door?"
 21 "ANSWER: No, I was not."
 22 Do you recall testifying to that?
 23 A. That's correct. And I just told you I wasn't
 24 happy he was at the door.
 25 Q. Then I asked you a question: "All right. You

1 You answered, "That's correct?"
 2 A. Yes.
 3 Q. There was a relationship?
 4 A. Evidently, since she was still talking to him,
 5 yes.
 6 Q. Not talking, a relationship?
 7 A. She was talking with him and texting, that's
 8 all I knew. He wanted to get back together with her.
 9 Q. And you have since seen the text messages,
 10 right?
 11 A. No, I did not see the text messages.
 12 Q. You haven't seen them?
 13 A. I already told you yesterday I didn't see
 14 them.
 15 Q. You had -- at the conclusion of the incident
 16 out at the front of the house, there were two cell phones
 17 on the ground, maybe three. Were those your cell phones?
 18 A. One of them was, yes.
 19 Q. Excuse me?
 20 A. One of them was, yes.
 21 Q. Whose was the other?
 22 A. One was, I believe, Denise's.
 23 Q. Who was the third?
 24 A. I have no idea.
 25 Q. So now she opened the door -- or did she open

9

11

1 were angry?" And your answer was, "Yep"?
 2 A. When I went to the door, Yes.
 3 Q. Excuse me?
 4 A. When I went to the door, yes, I was.
 5 Q. Didn't say nothing about going to the door.
 6 when you found out he was at the door?
 7 A. Okay.
 8 Q. All right. When I asked you what you were
 9 angry about, do you recall what you said?
 10 A. I do not.
 11 Q. Were you angry because you had no idea she was
 12 communicating with him?
 13 A. Yes. I was wondering why he was there,
 14 because she said she wasn't going to be communicating to
 15 him, wasn't talking to him. So I didn't know why he was
 16 there and why he was arguing with her.
 17 Q. Actually she deliberately deceived you about
 18 having talked to him, right?
 19 A. Apparently so.
 20 Q. Then I asked you, do you recall, about there
 21 being no relationship between them anymore and your
 22 knowledge of that?
 23 A. Yes, they did not have a relationship anymore.
 24 Q. Then I asked you, "But you have since found
 25 that that wasn't quite true?"

10

1 the door to the pounding?
 2 A. Yeah, after -- after the pounding on the door,
 3 she went outside and started talking to him.
 4 Q. And the conversation you had with her
 5 preceding opening of the door, that was just simply, "who
 6 is it," and she told you?
 7 A. Yeah. Who was at the door. Sean was there.
 8 "What the fuck is he doing here?"
 9 "I'll let you know when I come back."
 10 I said okay, sat down. Watching TV, waiting
 11 for her to come back in, tell me what was going on.
 12 That was it, that was my plan.
 13 Q. Okay.
 14 A. Figured they would go out, talk, I would find
 15 out what was going on.
 16 Q. Then she went to get her shoes out of her
 17 bedroom, I guess?
 18 A. I don't know where she got her shoes from,
 19 because she was already putting them on when I came back
 20 out.
 21 Q. Then she went out the door and closed it?
 22 A. Correct.
 23 Q. What did you do?
 24 A. As I told you three times, I believe, I sat on
 25 the couch.

12

1 Q. Well, then what happened?
2 A. Then they were talking. And then after I --
3 after a couple minutes, they started arguing.
4 Q. A couple of minutes?
5 A. Yes, couple minutes.
6 Q. All right. Are you using that exactly as a
7 measurement of time? Or are you just saying --
8 A. Two or three minutes.
9 Q. Okay. They talked out there for two or three
10 minutes, then started yelling at each other?
11 A. Yeah. Started out talking, then started
12 yelling at each other after two or three minutes.
13 Q. The television was close enough that you could
14 hear the talking?
15 A. Television was close enough so I could hear
16 them talking.
17 Q. Well, as I understand it, you went back and
18 watched television?
19 A. Yes, I did.
20 Q. You said yesterday you could still hear them
21 talking?
22 A. Yes, I could.
23 Q. All right. And what were they talking about?
24 A. I couldn't hear the words, I just could hear
25 people talking.

13

1 Q. Did you turn the television down, the sound
2 down, so you could hear?
3 A. No.
4 Q. Were you communicating on your cell phone?
5 A. No.
6 Q. Did you know where they were talking?
7 A. On the porch. Yes, I knew they were on the
8 porch. You could tell from where the sound was coming from
9 that they were on the porch.
10 Q. I'm sorry?
11 A. You could tell from where the sound was coming
12 from they were on the porch.
13 Q. And then what happened?
14 A. Then they started yelling at each other.
15 Q. What were they yelling?
16 A. I didn't hear what they were yelling, I just
17 knew they were yelling at each other. So I went outside to
18 make sure that my best friend was okay.
19 Q. Did you testify at the preliminary hearing
20 that you couldn't hear the words, "I just heard the
21 yelling"?
22 A. That's what I just said.
23 Q. And I assume you were curious about what the
24 yelling was about?
25 A. Yes. That's when I went outside to find out

14

1 what was going on. I didn't care what they were yelling
2 about, I just wanted to make sure that my friend was okay.
3 Q. And if the Denise testified it was her that
4 was talking loudly -- not yelling, but talking loudly --
5 and Mr. Dean was not, she would be wrong about that?
6 A. That's correct. I heard him talking just as
7 much as she was.
8 Q. I'm sorry?
9 A. I heard him talking loudly just as much as she
10 was.
11 Q. So then what did you do?
12 A. Then I asked, said, "what's going on?" Then
13 before I could even finish that, Mr. Dean said, "Do you
14 want something?" And I said, "Nope."
15 Q. What were the next words said?
16 A. I believe it was he said, "Do you want
17 something? I'll give you something." And I said "nope"
18 again. I believe that's what it was next.
19 Q. Did he have his hands on Denise?
20 A. No, he did not.
21 Q. Look like he was doing something physical to
22 her?
23 A. No, it did not.
24 Q. Look like he was going to do something
25 physical to her?

15

1 A. Not yet. He was standing out there in a -- on
2 a winter night shaking and sweating.
3 Q. Shaking and what?
4 A. Shaking and sweating.
5 Q. He was shaking and sweating?
6 A. Yes.
7 Q. You didn't mention that at the preliminary?
8 A. I didn't, no.
9 Q. How come?
10 A. I didn't think about it at the time.
11 Q. Now you recall it?
12 A. Yes.
13 Q. Okay. Do you recall telling me at preliminary
14 examination that it sure looked like he was going to do
15 something physical to you?
16 A. Not at the time, no. But he was definitely
17 looking at me and asking me if I want something, and I kept
18 telling him no. Then he told me to come outside, so I did.
19 Q. Okay.
20 A. "Do you want something? Come outside." So I
21 said okay.
22 Q. But the conversation had stopped between
23 Denise and Mr. Dean?
24 A. Yes. Because he wouldn't let anybody get a
25 word in. He kept telling me, "Do you want something? Do

16

1 you want something? I'll give it to you."

2 Q. Um-hmm. What was Denise telling you?

3 A. At the time, nothing. Then she told me that I
4 should go back inside. And I did not go back inside
5 because my best friend is out there with a man that's
6 angry, and I am not going to let her be unprotected
7 outside. She is my best friend and I am not going to let
8 her be out there with a man like that.

9 Q. I had the impression yesterday that when it
10 came time to interfere in her relationships or her
11 activities you felt that it was best just to leave things
12 alone?

13 A. Well, there is a difference between
14 interfering with somebody's relationship and interfering in
15 an argument that may become physical. Huge difference in
16 my opinion.

17 Q. She asked you to go back in the house?

18 A. Yes, she did.

19 Q. Sir?

20 A. Yes, she did.

21 Q. Did you assume from that that she didn't fear
22 anything physical?

23 A. No. I assumed from that she wanted me to go
24 back to the house because she wanted to protect me from
25 being injured.

17

1 A. I was also legally right to have to tell the
2 person to leave my house as well.

3 Q. Okay. But you didn't call the police?

4 A. I did not, no.

5 Q. Why?

6 A. I don't need to. Just wanted him to leave my
7 house, so I told him to.

8 Q. And he didn't go?

9 A. No, he didn't.

10 Q. He didn't say anything to you about it,
11 though?

12 A. He didn't tell me what?

13 Q. He didn't tell you, "I don't have to go, you
14 don't own this house"?

15 A. He didn't, no.

16 Q. I asked you at the preliminary examination,
17 Did your wife tell you that you needed to go back in the
18 house because it was just going to be a conversation
19 between she and Mr. Dean?

20 A. I don't recall her saying it in those exact
21 words, no.

22 Q. Do you recall at preliminary examination,
23 saying -- when I asked you why didn't you go back in the
24 house, you said, "Because I can do what I want. She is not
25 my boss. It's my house"?

19

1 Q. You knew what she was up to? She asked you to
2 go back in the house to protect you?

3 A. Right. I figured she knew what was going on
4 with him and she thought she might want me to go back in
5 the house so I didn't get hurt. I don't know that. That is
6 what I am assuming.

7 Q. So you could have -- theoretically, if this
8 thing was really going to pieces, you could have gone back
9 into the house and called the police, right? 911?

10 A. I could have.

11 Q. Why didn't you?

12 A. Why didn't I?

13 Q. That's the question.

14 A. Because I didn't know what was going on
15 outside. I didn't know I was going to get hurt.

16 Q. As I understood you yesterday, you felt you
17 had every right to tell him to get out of there --

18 A. I did. It's my house.

19 Q. Let me finish the question. I understood you
20 to say you had every right to tell him to get out of there
21 because he would be trespassing against you?

22 A. That's correct.

23 Q. And all you had to do was call the cops
24 because you were right, legally right, and he was legally
25 wrong?

18

1 A. I do definitely recall that, yes.

2 Q. Do you recall testifying at preliminary
3 examination that what you were doing out there was you were
4 going to make sure that your ex-wife didn't get hurt?

5 A. Yes.

6 Q. Even though there was nothing physical going
7 on or nothing physical between him and her that looked like
8 it was going to happen?

9 A. Not at the time. He had already threatened
10 her prior to that.

11 Q. Sir?

12 A. He had already threatened her before that.

13 Q. I'm sorry?

14 A. He had already threatened her before that with
15 bodily harm.

16 Q. Where was that?

17 A. In her house.

18 Q. In her house?

19 A. Yes.

20 Q. But there had never been any physical harm
21 between him and her, had there?

22 A. Not that I know of. Just threats of it.

23 Q. I'm sorry?

24 A. Just threats of it.

25 Q. Physical harm?

20

1 A. Um-hmm.
 2 Q. You knew, or you described at preliminary
 3 hearing that you knew, that Sean Dean was, quote, a bad
 4 ass, didn't you?
 5 A. Right.
 6 THE COURT: Mr. Woodbury, before we go further,
 7 did you want the limiting instruction on any of this? I
 8 mean, you are bringing it out on cross.
 9 MR. WOODBURY: I don't need a limiting
 10 instruction.
 11 THE COURT: Okay. State satisfied?
 12 MR. MILLS: That's fine, Your Honor.
 13 THE COURT: Good enough. Please proceed.
 14 A. I said yes, he was supposed to be a bad ass,
 15 that's what I heard him he was.
 16 Q. I'm sorry?
 17 A. He was supposed to be a bad ass, that's what
 18 his reputation was.
 19 Q. Okay. And where had you heard that reputation
 20 from?
 21 A. Bars, places he hung out, his work before he
 22 got fired.
 23 Q. Any particular person?
 24 A. Just people that worked at Denise's work; guy
 25 named Chris that knows him at the bar that does karaoke;

21

1 Clarence, his brother or friend or whatever he is supposed
 2 to be, street brother, whatever you want to call him.
 3 Q. Okay. So it became very clear to you as you
 4 were talking to Mr. Dean that there was going to be a
 5 physical altercation between you and he, right?
 6 A. No, it did not.
 7 Q. Never?
 8 A. Not until he hit me in the face, no.
 9 Q. Well, you knew he was a, quote, bad ass,
 10 closed quote, before you walked out the door right?
 11 A. Yes.
 12 Q. You knew you were walking into a circumstance
 13 where there was loud talking going on?
 14 A. Yes.
 15 Q. You knew that there was very likely to be a
 16 physical altercation if you went out there, right?
 17 A. I did not know there was a likelihood, no.
 18 Q. What did you think was going to happen?
 19 A. Well, they were talking. Why can't I just
 20 talk as well? If her and him were talking and can just
 21 have an argument, why can't he and I just have an argument?
 22 Q. Because you were interfering with what both of
 23 them wanted to do. They wanted to have --
 24 A. Do you think --
 25 Q. Excuse me. They wanted to have a conversation

22

1 and you wanted to be a part of that. They obviously didn't
 2 want you there?
 3 A. You think Denise wanted to have a conversation
 4 with him?
 5 Q. Didn't she go out to have a conversation with
 6 him?
 7 A. She did. I am not so sure she wanted to go
 8 out there.
 9 Q. So did you think about -- when you got up off
 10 your chair and watching television, did you think about
 11 maybe you better arm yourself to take care of this, quote,
 12 bad ass?
 13 A. No.
 14 Q. Why?
 15 A. Not at all. Because I was going to the door
 16 to see what was going on, not going to the door to fight
 17 somebody or to hurt somebody.
 18 Q. But you know that you're walking into a tough
 19 situation, right?
 20 A. No.
 21 Q. You didn't know that?
 22 A. They were just yelling at each other, so I was
 23 going out the door to make sure that my roommate was okay.
 24 As I keep telling you, I was going to the door to see that
 25 my best friend was okay.

23

1 That's why I was going to the door. Not to
 2 get in a fight, not to protect myself from a -- with a
 3 weapon. I was going to make sure she was okay because she
 4 was my best friend. So that's what I was doing.
 5 Q. She is very concerned about you, right?
 6 A. She is.
 7 Q. Wasn't she?
 8 A. Yes, she was. I just got out of the nursing
 9 home, yes.
 10 Q. And so I assume that you saw that if you
 11 didn't call 911, their conversation was going to continue,
 12 and you weren't very far into the conversation between you
 13 and Mr. Dean when you could see things going to pieces,
 14 right?
 15 A. It never crossed my mind to call 911. I
 16 didn't think it was going to be a fight. I didn't see --
 17 Q. You didn't think about getting a weapon?
 18 A. About what?
 19 Q. About getting a weapon?
 20 A. No, not at all. I have never used a weapon.
 21 I don't use weapons. I don't carry weapons.
 22 Q. You don't use weapons. That means that you
 23 sometimes get in fights and they are just plain fist
 24 fights?
 25 A. I have gotten in fights before. I never

24

1 started a fight in my entire life, but I have gotten in
2 fights before, yes.

3 Q. And recently?

4 A. Just with Mr. Dean.

5 Q. Prior to that, how long had it been?

6 A. Many years.

7 Q. You don't even pack a pocket knife?

8 A. No, I do not. No weapon of any kind ever. I
9 do not ever carry a weapon.

10 Q. You sometimes carry tools?

11 A. Not unless I am at a job.

12 Q. Sir?

13 A. Not unless I am at a job doing work. I do not
14 carry tools, no.

15 Q. You had a pocket knife in the house?

16 A. What's that?

17 Q. Did you have a pocket knife in the house?

18 A. In the house, no, I don't have a pocket knife.

19 Q. Did you have a butcher knife in the house?

20 A. Butcher knife? No.

21 Q. No?

22 A. No, I don't have a butcher knife.

23 Q. Any kind of knife at all?

24 A. Yes, I have a knife that I use in the house.

25 Q. I'm sorry?

25

1 A. Yes, I have a knife that I use in the house,
2 house knives. I do not have a butcher knife, no.

3 Q. So now Mr. Dean is, I guess, focused on you
4 and telling you that he is not going to leave?

5 A. He didn't tell me he was not going to leave,
6 he just kept telling me, "You want something? Come
7 outside." "You want something?" So I went outside.

8 Q. When you went to the door, did you have your
9 cane?

10 A. No, I did not.

11 Q. Did you have your oxygen?

12 A. No. Oxygen doesn't reach the door.

13 Q. So you knew you were in tough physical shape
14 if a fight developed?

15 A. I'm sorry, could you represent the question?

16 Q. You were in tough physical shape. If a fight
17 developed, it wasn't going to go well?

18 A. I didn't think about a fight developing. I
19 just went to the door to find out if my friend was okay.

20 Q. Yes, but Mr. Dean -- well, somehow or another
21 you got down to the ground level. You knew a fight was
22 about to start then, right?

23 A. No, I did not know a fight was going to
24 start. We were arguing, that's it so far. I didn't know a
25 fight was going to start until he hit me in the face.

26

1 Q. How did you get down to the bottom level?

2 A. We walked down the stairs.

3 Q. And what preceded that? What caused you to go
4 down the stairs?

5 A. He said, "Come down here." And I said okay.

6 Q. And "Come down here," you thought, was what?

7 He wanted to get on a more level playing field with you, or
8 what?

9 A. I didn't know what he wanted, I just went down
10 there. There was no mention of a fight.

11 Q. But the guy's a bad ass?

12 A. Just "come down here." Supposedly.

13 Q. All right. Well, supposedly, yeah. Seems
14 like you are not paying very close attention to the
15 likelihood you were going to get in a fight?

16 A. All I was doing was protecting my friend, like
17 I keep telling you. Then he and I were arguing down on the
18 grounds. That's it. That's where I was. I don't know
19 what was going on in his mind, I am telling you what was
20 going on in mine.

21 Q. So you went down and got on level ground with
22 him?

23 A. Yes.

24 Q. And what was -- how were you people arranged
25 as you were down on the ground?

27

1 A. We were in between the -- my ex-wife's
2 Explorer and the porch. I was, like, in the middle of the
3 porch. My ex was at the end of the porch. Then Sean was
4 just past her. She was facing him.

5 Q. And she was essentially between you?

6 A. She was between us and a little bit to the
7 left.

8 Q. Okay. Then what happened?

9 A. And then we were arguing.

10 Q. Arguing about what?

11 A. I don't even recall exactly what we said, we
12 were just arguing.

13 Q. Well, let's stop there.

14 A. Okay.

15 Q. Some of stuff you remember. Some of the words
16 you remember, some you don't?

17 A. Yes.

18 Q. How long did this argument go on?

19 A. Just a couple minutes, if that.

20 Q. Two minutes in an argument leaves room for
21 lots and lots of subjects right?

22 A. Sure. I do not recall what we said.

23 Q. You don't know what you said to him and you
24 don't recall what he said to you?

25 A. I do not.

28

1 Q. If you said something like, "You better get
2 out of here or I'm going to shoot you" --
3 A. First, I don't have a gun. That would
4 probably be impossible. But I did not say that, no.
5 Q. That wasn't the question, whether you could --
6 A. No, I did not say that.
7 Q. How do you know if you don't know what was
8 said?
9 A. I know what wasn't said, how about that. I
10 know I didn't tell him about harming him in any way like
11 that, no.
12 Q. You didn't make any threats?
13 A. No.
14 Q. So this argument goes back and forth for a few
15 minutes. And you know what was not said, but you don't
16 remember --
17 A. At first I know I told him again to get out of
18 here.
19 Q. You see, that only takes about a tenth of a
20 second for you to say that. And you got a two-minute
21 argument down there?
22 A. Yeah. So I don't know what was said, but I
23 know I didn't threaten him, because I don't threaten
24 people.
25 Q. Call him names?

29

1 A. I don't believe so. I don't know what was
2 said. I just know I didn't threaten him.
3 Q. Sir?
4 A. I know I didn't threaten him.
5 Q. And --
6 A. I never threaten anybody.
7 Q. Did you --
8 A. I don't make threats.
9 Q. Did you say things to him that you knew was
10 going to make him angry?
11 A. We both said things. I don't know what --
12 exactly what we said.
13 Q. And then what happened?
14 A. Then he punched me in the face.
15 Q. Where at in the face?
16 A. Right here. (indicating)
17 Q. Did you see the photographs of your face at
18 the hospital?
19 THE COURT: I think he was indicating the right
20 side of the face, for the record. Is that correct?
21 THE WITNESS: Yes.
22 Q. (By Mr. Woodbury) Did you see the photographs
23 of you at the hospital?
24 A. Yes, I did.
25 Q. Did they depict any injury to your face?

30

1 A. No.
2 Q. How come it doesn't?
3 A. What's that?
4 Q. How come? Why would that be?
5 A. Because he didn't hit me very hard.
6 Q. Do you recall testifying at the preliminary
7 hearing that Mr. Dean -- you said Mr. Dean said, "'If you
8 want something, come outside.' And I said, 'okay,' so I
9 came outside"?
10 A. Yes, that's what I told you already.
11 Q. When I asked you, "you knew you were going to
12 get into a fist fight," and you said, "Yes, I did. Figured
13 it was going to happen"?
14 A. I don't recall that, but I do now that you
15 said it.
16 Q. Do you think I'm telling you the truth? Am I
17 making this up out of this preliminary hearing?
18 A. I just said I don't recall, but now that you
19 said it, I do.
20 Q. As you came down the steps, did your ex-wife
21 tell you to go back in the house?
22 A. Yes.
23 Q. How many times?
24 A. I don't recall.
25 Q. Could it have been a number of different

31

1 times?
2 A. No.
3 Q. Did she say it more than once?
4 A. I don't recall. I know it wasn't a lot of
5 times. I do remember one time.
6 Q. Do you have any reason to believe that Mr.
7 Dean would know that you were at that residence when he
8 came up there?
9 A. No.
10 Q. Had you and your wife determined that she
11 should not tell Mr. Dean that you had moved back in?
12 A. I have no idea what she determined.
13 Q. How would you know whether she told him or
14 not?
15 A. I don't know. That's why I just told you I
16 didn't know if she -- he knew I was there or not. I don't
17 know if he knew I was there or not.
18 Q. Did you see the lights come on -- first of
19 all, who is Joseph Schenk?
20 A. Joseph Schenk is my daughter's fiancé.
21 Q. What is your daughter's name?
22 A. Brittney Tice.
23 Q. Where do they live?
24 A. They live just right next to us.
25 Q. How far away from your -- that residence --

32

1 A. About 30 feet.
2 Q. Wait. How far away from the residence you and
3 Denise lived in?
4 A. Thirty feet.
5 Q. And had you been visiting with Mr. Schenk
6 earlier in the evening?
7 A. No. I mean, I saw him. We didn't --
8 Q. Didn't visit with him?
9 A. We didn't talk a lot or anything. I saw him
10 that day because he lives right there. So if he comes
11 outside, I go outside, you know, to go walk the dog or
12 whatever.
13 Q. Denise was trying to keep between the two of
14 you? Mr. Dean and you?
15 A. Yes.
16 Q. Unsuccessfully?
17 A. Correct.
18 Q. Because after Mr. Dean hit you in the right
19 side of your eye --
20 A. No, the right side of my face.
21 Q. Oh, I'm sorry. I thought you pointed up
22 there?
23 A. No, I didn't. I pointed right here.
24 (indicating)
25 Q. Oh, okay. Then I understand that she must

33

1 down. And I was trying to get him off of me with my right
2 hand, and I was -- he was getting him moved up, moving him
3 up a little bit.
4 Then Denise grabbed him from behind with her
5 right hand on his -- around his neck, then put her left leg
6 around his legs, and then pulled him back.
7 So they were on their right sides. Then I was
8 on my left side, kind of top of him, and holding -- I
9 grabbed on to his jacket, he grabbed on to my jacket. We
10 both kept saying, "Let go, let go." He said, "Let go." I
11 said, "Let go." We just both kept saying that.
12 Then he said, "Denise, let me go." And then
13 we just both were like -- like, I'm cool, I'm cool. You
14 know, we're okay, fight's over. Then we both let go. She
15 let go. And we all stood up.
16 And I thought it was over. I think he thought
17 it was over, I don't know. But I thought it was all over.
18 We let go.
19 Q. So when I asked you what happened in the
20 fight, sounds kind of rehearsed what you just said.
21 A. No.
22 Q. You have been thinking about how you were
23 going to tell the jury about this fight?
24 A. You just asked me and I just told you.
25 Q. What I asked you was how did it begin, not how

35

1 have got between the two of you to keep you from hitting
2 Mr. Dean back?
3 A. She was already in between the two of us to
4 the left, as I said. Then, when he hit me, I went around
5 her and we started fighting.
6 Q. You went around to her left or to her right?
7 A. To her right.
8 Q. What did you do?
9 A. Went around to her right and started fighting
10 him.
11 Q. Tell me about that fight?
12 A. I went around to her right, we started
13 fighting.
14 Q. Tell me what the fighting is. What
15 happened that --
16 A. That's what I am doing.
17 Q. Sir?
18 A. That's what I am doing right now.
19 Q. All right. Okay.
20 A. Start fighting. We were throwing punches at
21 each other. And then we grabbed each other, kind of
22 wrestling around. Ended up on the ground. When we ended
23 up on the ground, I landed on my left shoulder and damaged
24 my rotator and both tendons are broken off.
25 And then he got on top of me and I was facing

34

1 it ended.
2 A. Now I just need to tell you a little part at a
3 time? That's fine. Now I know.
4 Q. You hit him?
5 A. Yes, I did. After he hit me.
6 Q. You stepped around the left of Denise and you
7 hit him?
8 A. Yes.
9 Q. Okay. Did you notice anything physically
10 wrong with Mr. Dean?
11 A. No. Except for the sweating and --
12 Q. Sweating and shaking?
13 A. Yes.
14 Q. And where did you hit him?
15 A. In the face.
16 Q. So you're walking without your cane. You have
17 lousy balance, right?
18 A. Yes, I do.
19 Q. And you have all of these other physical
20 maladies?
21 A. Yes, I do.
22 Q. And Mr. Dean stood there and let you hit him?
23 A. He did not let me hit him.
24 Q. How did you manipulate him to get him in a
25 position where you could hit him? If he is not

36

1 physically -- got physical problems, why wouldn't he just
2 move back? Step back?
3 A. Why don't you ask him that.
4 Q. He didn't. He just stood there and let you
5 hit him in the -- where?
6 A. In the face. why don't you ask him? I don't
7 know why he didn't move.
8 Q. Where did you hit him in the face?
9 A. I don't recall.
10 Q. Did you see the photographs of Mr. Dean at the
11 hospital?
12 A. I did not.
13 Q. Have --
14 A. Nobody showed me the photographs of him.
15 Q. Did you hit him softly?
16 A. I don't recall how hard I hit him.
17 Q. You intended to hit him hard?
18 A. Yes, I did. He intended to me hit me hard as
19 well. Just didn't work out for him.
20 Q. When he didn't -- if there were no physical
21 marks on him at the hospital from you hitting him, why
22 would that be?
23 A. I didn't hit him --
24 Q. Sir?
25 A. I didn't hit him hard either, evidently. Just

37

1 like he didn't hit me hard. I had no marks either except
2 for where he stabbed me.
3 Q. Okay. And then what happened after you threw
4 a punch and hit him?
5 A. What's that?
6 Q. What happened after you threw the punch and
7 hit him?
8 A. Then we started fighting.
9 Q. What did the fighting consist of at that
10 point?
11 A. Throwing blows at each other, hitting each
12 other.
13 Q. Did you hit each other again?
14 A. That's what I just said.
15 Q. Did you hit him in the face again?
16 A. Yes.
17 Q. Where?
18 A. I don't recall.
19 Q. Did he hit you in the face again?
20 A. Yes.
21 Q. Where?
22 A. I don't recall.
23 Q. How many blows were struck between the two of
24 you?
25 A. Five or ten between us.

38

1 Q. Where was Denise at?
2 A. She was right there trying to break us up.
3 Q. By doing what?
4 A. Telling us to stop. Telling me to stop.
5 Telling him to stop. Trying to move us apart.
6 Q. Stepping in between you?
7 A. Trying to.
8 Q. But she was unable to accomplish that?
9 A. She was unsuccessful yes.
10 Q. Sir?
11 A. She was unsuccessful.
12 Q. So after five or ten blows are exchanged, then
13 what happened?
14 A. Then, as I said, we started grabbing on to
15 each other and we ended up on the ground.
16 Q. Is there any reason Mr. Dean was unsuccessful
17 in evading your swinging at him, even though you had
18 physical problems?
19 A. I don't know. We were just fighting. I
20 wasn't thinking about how sick I was or how well he was or
21 why he wasn't moving or why he was standing there. I was
22 just in a fight, that's where my mind was.
23 We were fighting and I was trying to get him
24 away from house, get him away from my ex-wife. After he
25 started fighting with me, then I was going to fight him,

39

1 so.
2 Q. Comparatively speaking, you are a very large
3 person and Mr. Dean is a relatively small person, right?
4 A. That's correct.
5 Q. And at that time, while five or ten blows were
6 being exchanged, did you see him do anything to try to
7 avoid having you hit him or being able to hit him?
8 A. No.
9 Q. He just kind of stood there and let 'er
10 happen?
11 A. We just kept hitting each other.
12 Q. And then somebody grabbed somebody's clothes?
13 A. Yeah, we both grabbed each other and we were
14 wrestling around and fell on the ground. We hadn't grabbed
15 each other's clothes yet. Well, we might have then. But I
16 don't recall exactly how we started grappling and how we
17 ended up on the ground. I just know we did. It happened
18 really fast.
19 Q. All right. And as I understood you to say
20 before, when you went to the ground, he was on top of you?
21 A. Yes.
22 Q. Did you have a bloody nose or anything like
23 that?
24 A. No.
25 Q. Did he?

40

1 A. What's that?
2 Q. Did he?
3 A. Not that I know of.
4 Q. Ground was hard and frozen?
5 A. No.
6 Q. Soft and muddy?
7 A. No. It was dry.
8 Q. Sir?
9 A. It was dry.
10 Q. Dry?
11 A. It wasn't frozen. It was dirt. But it was
12 fairly hard, it is not soft dirt.
13 Q. How was it -- how did it come to happen that
14 you fell down on the ground -- and I guess you fell on your
15 face?
16 A. No, I fell on my left shoulder.
17 Q. Sir?
18 A. I told you I fell on my left shoulder.
19 Q. And hurt your rotator cuff?
20 A. Yes.
21 Q. That wasn't the first time your rotator cuff
22 had been hurt?
23 A. No, it's not.
24 Q. You had had an operation on it years before?
25 A. Yeah, long time.

41

1 I don't know what was going on. I was facing down, trying to
2 get up and get him off of me. And that just lasted a
3 couple seconds.
4 And then Denise grabbed him from behind,
5 pulled him off me. Then I turned around and grabbed him
6 and he grabbed me by our jackets.
7 Q. So I guess while he had you down and he was on
8 top of you, He must have pummeled you with his fists a
9 bunch?
10 A. No. As I just told you, I am not sure what he
11 was trying to do, but it was just a couple seconds and then
12 Denise grabbed him.
13 Q. Okay. But while he has got you down there --
14 A. No. He didn't pummel me, no.
15 Q. Did he hit you with his fists?
16 A. Not that I recall, no.
17 Q. Is he talking to you?
18 A. I don't recall. I was just trying to get him
19 off me and get up. I wasn't in a state of mind to be
20 worrying what else was going on, I just wanted him to get
21 off of me.
22 Q. Did he put his hands around your throat to
23 choke you to death?
24 A. If he choked me to death, I wouldn't be here.
25 Q. Tried to do that?

43

1 Q. And what was the effect of hurting your
2 rotator cuff?
3 A. This time or the last time?
4 Q. This time?
5 A. What is the effect?
6 Q. Yeah.
7 A. I don't have much use of my shoulder at all.
8 Q. And you didn't have any shoulder -- use of
9 your shoulder that night after that fall, right?
10 A. Correct. It's better now because my other
11 muscles are taking over for what I can't use.
12 Q. And so Mr. Dean had you in a hard spot. You
13 not only had the medical problems from before, your left
14 arm is now essentially disabled?
15 A. That's correct.
16 Q. And so you fell on your left shoulder. Then
17 what happened?
18 A. I fell on to my left shoulder. Like I say, if
19 this was my left shoulder here, I fell like this, then
20 ended up on my stomach with my head face down and he was on
21 top of me.
22 Q. Okay. Then what happened while he was on top
23 of you?
24 A. He was grabbing me. And I don't know if he
25 was trying to get me in a choke hold or trying to hit me. I

42

1 A. No.
2 Q. Bite you or anything like that?
3 A. I just said no. I don't know what he was
4 doing. But she grabbed ahold of him before he could do
5 anything.
6 Q. Before he could do anything?
7 A. Yeah. He was just -- it was just a couple
8 seconds that he was on top of me.
9 Q. He could hit you several times in a couple
10 seconds, couldn't he?
11 A. I guess he could have.
12 Q. But he didn't?
13 A. Apparently not. I don't recall anything, him
14 hitting me. He was up quite a ways further. He was up
15 like to where his -- my head -- my head was about his
16 stomach level or chest level.
17 So he was up further when we ended up landing.
18 He was up a little further than I was. We weren't head to
19 head. He was up further and I was pushing him up off me.
20 Q. With your right hand?
21 A. Yes. My left arm wasn't working then, so.
22 Q. Lot of yelling going on?
23 A. At that time?
24 Q. Yeah.
25 A. I don't recall what was going on. I just

44

1 remember pushing him up, trying to get him off me.
 2 Q. My question is, is he yelling at you and you
 3 yelling at him?
 4 A. Again, I don't recall. I just recalling
 5 pushing up, trying to get him off me.
 6 Q. Was Denise yelling?
 7 A. I don't recall. I just recall pushing him,
 8 getting him off of me.
 9 Q. So now Denise gets him in a head lock of some
 10 sort?
 11 A. Yes.
 12 Q. What happened then?
 13 A. Then she pulled him off of me and they landed
 14 on their right side.
 15 Q. Um-hmm?
 16 A. After she pulled him off of me.
 17 Q. Okay. Then what did you do?
 18 A. Then I turned off me -- got off my stomach,
 19 turned around, and went to him and grabbed his jacket and
 20 he grabbed my jacket at the same time.
 21 Q. And he had the advantage because he could use
 22 two arms and you only could use one?
 23 A. I was able to use this arm, because it was
 24 facing down. So I was able to grab him with both arms.
 25 Q. Then how long did that go on?

45

1 A. Oh, just -- I don't know, probably 10 seconds,
 2 15 seconds. Because it was just -- we grabbed each other,
 3 and then he said, "Denise," like, "let go me," or "let the
 4 fuck go of me," whatever, I can't remember. It was
 5 something about letting go of him.
 6 And then he said to me, "Let go." I said,
 7 "Let go." He said, "Let go." I said, "Let go." And then
 8 eventually we were, like, calming down, like I said, maybe
 9 15 seconds. And then we both said okay. I said, "I'm
 10 cool." He said he's cool. Which means, like, we're good,
 11 we're okay, fight's over, we can get up.
 12 And so we both let go. Denise let go. We all
 13 got up. We thought the fight was over. Or I thought the
 14 fight was over.
 15 Q. I'm sorry, I didn't get the last part?
 16 A. I thought the fight was over.
 17 Q. You didn't have any trouble getting up?
 18 A. Yeah, my son-in-law helped me up. But I don't
 19 even remember that. I don't remember him helping me up.
 20 Q. You know it because he told you?
 21 A. He told me, yes, but I don't recall it. I
 22 thought I just got up myself, but he said he helped me up.
 23 I don't recall it.
 24 Q. Wasn't anything to prevent you from getting up
 25 by yourself?

46

1 A. Nothing except for weakness. And I don't have
 2 any stamina or anything to get up. By the time that fight
 3 was over, I was pretty damn exhausted.
 4 Q. You were pretty what?
 5 A. Exhausted.
 6 Q. And so you and your son-in-law must have had
 7 quite a few conversations about who did what?
 8 A. No, we didn't.
 9 Q. Just the one where he told you he helped you
 10 up?
 11 A. Where he what?
 12 Q. Where he told you he helped you up?
 13 A. He also told me he was down there where the
 14 next fight happened, too. But I don't recall that either,
 15 I don't recall him being there.
 16 Q. Got that part. I am asking how many
 17 conversations you and your son-in-law had about what
 18 happened in this fight?
 19 A. Two.
 20 Q. Huh?
 21 A. Two.
 22 Q. Two. When were they?
 23 A. That night.
 24 Q. And you have never discussed it with him
 25 since?

47

1 A. Oh, sure.
 2 Q. How much?
 3 A. Just a little bit about the fight. We never
 4 had any in-depth conversations about it.
 5 Q. Don't have to be in depth, just to kind of
 6 coordinate what you say happened and what he says happened?
 7 A. We have different opinions of what happened,
 8 because I don't remember him being there. He has his
 9 opinion, I have mine.
 10 Q. Okay. And your opinion is that he wasn't
 11 there to help you up?
 12 A. I don't recall him being there. But he said
 13 he helped me up.
 14 Q. Okay. Do you remember testifying at the
 15 preliminary examination, "and then we both got up and both
 16 let go"?
 17 A. Yes, that's what I just said.
 18 Q. And, in fact, you didn't mention your
 19 son-in-law being there to help you at all; is that right?
 20 A. No, I didn't.
 21 Q. So --
 22 A. Because I didn't --
 23 Q. So the conversation had to take place after
 24 the prelim, didn't it?
 25 A. No.

48

1 Q. Because if he would have told you before, you
2 would have mentioned it at the prelim?
3 A. No. He did tell me before, I just didn't
4 think about it.
5 Q. Denise continue to hold Mr. Dean in a choke
6 hold while you were still on the ground and talking about
7 letting go of each other and being cool and that?
8 A. Yes.
9 Q. And how long did you lay there on the ground
10 talking about letting go and being cool?
11 A. Like I said, about 10 or 15 seconds.
12 Q. So now there was a couple minute conversation
13 after you came out of the door?
14 A. Um-hm, yes.
15 Q. A couple minutes of argument when you were on
16 the ground with Mr. Dean face-to-face?
17 A. We were on the ground 15 seconds, 10 or 15
18 seconds.
19 Q. No, when he invited you to come down off of
20 the porch?
21 A. Oh, off the porch, yes.
22 Q. Then 15 seconds worth of a fight laying on the
23 ground?
24 A. Something like that, yes. It all happened
25 pretty fast.

49

1 Q. Pretty fast. So now you are standing back up,
2 as I understand it?
3 A. Yes.
4 Q. And what happened after you stood back up?
5 A. Then Denise and I started walking back to the
6 house, and he started walking away and then turned back
7 around. He was -- he just took a few steps.
8 Q. Stir?
9 A. He took a few steps and then stopped.
10 Q. Then what happened?
11 A. Then we started arguing again.
12 Q. About what?
13 A. I don't recall. I don't recall exactly what
14 we said. We just started arguing again.
15 Q. What was left unresolved?
16 A. I don't know. I thought the fight was over.
17 I thought we were done. And evidently it wasn't done for
18 Mr. Dean.
19 I was -- you know, I had been in fights
20 before. You fight, you're done, you go on about your
21 business. That's where I thought we were.
22 Q. Why didn't you follow Denise?
23 A. Because he started arguing with me again, so I
24 turned.
25 Q. Sir?

50

1 A. He started arguing with me, so I started
2 arguing back with him again. Then he came running towards
3 me.
4 Q. Why didn't you go in the house with her?
5 A. Because he started arguing with me again so I
6 started arguing with him again.
7 Q. Right. But you already had your fight,
8 everything was over, everything is resolved, right?
9 A. Evidently not.
10 Q. You wanted to fight some more?
11 A. No, I didn't.
12 Q. Why didn't you go with the Denise to the
13 house?
14 A. Because he started arguing with me and I
15 started arguing with him.
16 Q. But you don't know about what?
17 A. I don't, no.
18 Q. What happened then?
19 A. Then he started running towards me.
20 Q. Sir?
21 A. Then he started running towards me.
22 Q. Running towards you?
23 A. Yes. Not like full running, like you're
24 racing. But he was definitely faster than walking. Like
25 jogging, a little faster than jogging at me.

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1 Q. What did he do when he got to you?
2 A. Hit me.
3 Q. Where?
4 A. In my face.
5 Q. Where?
6 A. I don't recall.
7 Q. What did you do?
8 A. Hit him back.
9 Q. Where?
10 A. Face.
11 Q. Where?
12 A. Don't recall. Then we started fighting again.
13 Q. Well, throwing --
14 A. We just --
15 Q. Wait a minute. Throwing punches is fighting,
16 right? Did you start wrestling again?
17 A. No.
18 Q. Just throwing punches back and forth?
19 A. Yeah, threw a few punches. Then he said, "Fuck
20 this, motherfucker."
21 Q. And were you hitting him with the punches you
22 were throwing?
23 A. I don't think I was hitting him with all of
24 them. I was trying to, like I said, use my right hand
25 because my left arm wasn't working. I was just trying to

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1 hit him.
 2 Q. what's your left arm doing?
 3 A. what's that?
 4 Q. what is your left arm doing?
 5 A. My left arm? I was trying to block him from
 6 hitting me, but it wasn't working very well.
 7 Q. And you are just waving your arm below the
 8 elbow? You couldn't move your arm below the elbow?
 9 A. I could move it, like this, (indicating) but
 10 it wouldn't go up very far. But I could move it.
 11 Q. Okay.
 12 A. Now it's better than it was because the other
 13 muscles are taking over for that, what the rotator cuff
 14 can't do.
 15 Q. was he hitting you with every punch he threw?
 16 A. No.
 17 Q. could you tell why?
 18 A. Because I was moving, he was moving. So I
 19 don't think we were hitting each other every time. I have
 20 no idea how many blows hit or not.
 21 Q. So now you are done throwing punches. what
 22 happened?
 23 A. Well, we weren't really done. we just went
 24 automatically from we were hitting each other, and then he
 25 said, "Fuck this, motherfucker," reached in his pocket. I

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1 didn't know what he was doing. And then he reached over
 2 with his other hand, and I still didn't know what he was
 3 doing.
 4 And then instead of hitting me in the face,
 5 you know, he started hitting me in the side. And I thought
 6 he was just hitting me with roundhouse punches. And I
 7 couldn't figure out why he was doing that. And I thought
 8 that's what he was doing was hitting me with roundhouse
 9 punches to my side and my butt. And I couldn't figure it
 10 out.
 11 I was, like, whatever. So I kept trying to
 12 hit him in the face and he kept doing that. (indicating)
 13 And then he ran away.
 14 Q. Okay.
 15 A. But he was really stabbing me.
 16 Q. Sir?
 17 A. But he was stabbing me.
 18 Q. But you didn't know it?
 19 A. I didn't know it, no.
 20 Q. And he was stabbing you in one place where
 21 your right arm would protect -- or your left arm would
 22 protect you, right?
 23 A. He stabbed me in four different places, as we
 24 showed yesterday.
 25 Q. All of them on the left side?

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1 A. Correct.
 2 Q. All of them precisely where your arm could
 3 have been used to protect you?
 4 A. I did protect it three times. He stabbed me
 5 in the arm three times.
 6 Q. Got you once in the arm pit?
 7 A. Just be a little bit below that.
 8 Q. So how did your arm get up for him to be able
 9 to do that?
 10 A. Possibly he stabbed me up, like this.
 11 (indicating) I don't really know because I wasn't doing the
 12 stabbing. I wasn't paying attention to exactly how he was
 13 stabbing me. I just thought he was hitting me, I was
 14 trying to block it. So possibly I was trying block it and
 15 then he went under.
 16 But he stabbed me in the butt, as we showed
 17 yesterday, here, and then in the middle, and then at the
 18 top.
 19 Q. And all on your left side?
 20 A. Correct. With his right hand, yeah.
 21 Q. And he is doing it with roundhouse stuff?
 22 A. Yes.
 23 Q. Have I got that right?
 24 A. That's correct.
 25 Q. The way I am holding my hand?

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1 A. That's correct.
 2 Q. wouldn't be like that?
 3 A. No, it wasn't like that. It would have been
 4 hard for him to reach around, get back of my butt going
 5 like that. (indicating)
 6 Q. Those roundhouse stab motions are kind of easy
 7 to protect against, right? They are kind of telegraphed
 8 where they are going to go?
 9 A. You can't really tell where they're going to
 10 go. Plus the fact that my arm wasn't working, plus the fact
 11 that it's night time, plus the fact that I'm trying to hit
 12 him, we're in a fight, adrenaline is going.
 13 So I am not exactly standing there watching to
 14 see exactly where his stabbing of me is going to go, I am
 15 trying to protect myself.
 16 Q. He's not punching you anymore?
 17 A. I thought he was punching me.
 18 Q. You thought what?
 19 A. I thought he was punching me, as I told you.
 20 Q. while he was stabbing you?
 21 A. What he was stabbing me, I thought he was
 22 punching me. I couldn't figure out why he was punching me
 23 where he was.
 24 Q. where did he get the knife from?
 25 A. From his pocket.

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1 Q. Which pocket?
2 A. I don't know. I thought he reached into his
3 jacket, but I really wasn't sure if it was his jacket or
4 his pants.
5 Q. See the knife?
6 A. I didn't. I saw there was nothing in his
7 hands.
8 Q. You saw what?
9 A. There wasn't anything in his hands when we
10 were fighting. Then he reached in his pocket, then he was
11 stabbing me. So I am assuming that's where he got the
12 knife from is the pocket.
13 Q. Did you ever see a knife?
14 A. I didn't.
15 Q. Do you remember at the preliminary examination
16 saying that you thought he got the knife out because he
17 wasn't winning the fist fight?
18 A. Yes.
19 Q. What led you to believe he wasn't winning the
20 fist fight?
21 A. Well, nobody was winning. We were just
22 standing there hitting each other.
23 Q. Sir?
24 A. We were just standing there hitting each
25 other. He wasn't winning, so I thought maybe he wanted to

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1 have the advantage and so he got the knife out.
2 Q. I thought you said that you were unaware of
3 how well you were doing in hitting him?
4 A. That's correct.
5 Q. So if you know how well you are doing with
6 hitting him, how do you know he wasn't winning?
7 A. I don't think anybody was winning. It wasn't
8 going anywhere, was it? We were just standing there
9 hitting each other.
10 Q. Right. Just then moves from a fist fight into
11 a knife fight?
12 A. That's correct.
13 Q. For no reason that you are aware of?
14 A. I guess he just got madder, I don't know.
15 Q. Do you have any reason why he would stab you
16 in the butt?
17 A. None that I know of. That was the first blow.
18 I don't understand that at all.
19 Q. It was the first blow?
20 A. Yes.
21 Q. Oh, you recall that?
22 A. Yeah, I do. He went from the bottom up.
23 Literally.
24 Q. He never tried to stab you in the stomach or
25 in the throat or anything like that?

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1 A. No.
2 Q. How long did the stabbing go on?
3 A. I -- actually I have no idea. Seemed like
4 awhile, but I bet you it was only 10 seconds. But I don't
5 really recall. You know, it was part of the fight. So
6 adrenaline is going, we're fighting, I don't really
7 remember the time period.
8 Doesn't seem like it would take very long to
9 do it, you know, to -- because it was just like seven
10 punches, so it doesn't seem like it would take very long.
11 Q. Then I understood yesterday for you to have
12 given some testimony about your daughter coming out of the
13 house during the fight?
14 A. Yes.
15 Q. Tell us -- tell the jury what that was again?
16 A. She came out. She thought I had just fallen
17 down. She didn't see Mr. Dean or Denise at first. She
18 thought I had just fallen down, had a heart attack, or
19 something happened with my health issues.
20 So she started screaming, "Dad, what
21 happened?" And then her husband -- or then her fiance
22 heard her. He came out to see what was going on.
23 Q. She came out to where?
24 A. To the dirt. I am not sure exactly where she
25 came to. I don't remember how far she came out. I just

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1 remember she came out, I heard her talking. And then Joe
2 was there and he told her to go back inside.
3 I don't remember what part of the fight that
4 was or anything, I just remember hearing that.
5 Q. I thought she came all the way down --
6 A. Yeah, I don't remember exactly where she was
7 standing or anything like that. I know she came out.
8 Q. She was down off the porch, trying to help
9 you?
10 A. Oh, yeah. She came down off her porch for
11 sure. She came down off the porch and came down towards,
12 but I don't know if she got all the way down to where I was
13 or if she just got down partway before her fiance came out.
14 I know she was there and saying that. Like
15 saying, "Dad, what happened?" Like I said, she thought I
16 had just fallen or had a heart attack or some kind of, you
17 know, fall from balance or something like that.
18 And then she got closer and saw that they
19 were -- they were -- they were there, too. So she had to
20 have been pretty close.
21 And then, like I said, then her husband -- or
22 then her fiance came out and told her to go back in the
23 house. And I don't know how fast she went or if she
24 listened to him or what happened with that.
25 Then he was out there, and then I remember him

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1 saying something to me. I know he was out there, but I
2 don't remember him being right next to me when he was
3 stabbing me or anything, but he said he was. But I don't
4 remember that. Then he said after he started stabbing me
5 he went in the house to get his gun.

6 Q. Then after the fight was over and Mr. Dean
7 had, I think, ran away?

8 A. Yes.

9 Q. You witnessed him run away?

10 A. Yes. Same thing. He wasn't running away like
11 a sprinter, but he was, like, jogging down the --

12 Q. Jogging?

13 A. Jogging down the road. Faster than walking
14 pace. He wasn't just walking.

15 Q. So you must have seen him throw that knife
16 away?

17 A. No, I didn't.

18 Q. You watched him as he went away, right?

19 A. I did not see him throw a knife away, no.

20 Q. But you did watch?

21 A. I watched for a moment, then -- yes, then I
22 turned around and started walking back up to the house.

23 Q. How far was Dean down away from your house?

24 A. When I stopped watching him?

25 Q. Sir?

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1 A. When I stopped watching him?

2 Q. Yeah.

3 A. Maybe 20, 30 feet.

4 Q. Afraid he was going to come back again?

5 A. No.

6 Q. How come?

7 A. I wasn't afraid when he was there.

8 Q. Okay. And Mr. Schenk was there watching him
9 walk away, too?

10 A. I don't know -- yeah, yeah, he had come out.
11 And I was talking to Denise and then Denise was saying that
12 she got stabbed. And then I -- I was kind of tripping out
13 on that. Then I noticed that I got stabbed, too. I hadn't
14 noticed until after he left.

15 As I was saying yesterday, my pants were all
16 warm and wet, so I felt them and then there was blood all
17 over my hands. Then I was like, "Oh my God, he stabbed
18 me."

19 Q. Did you understand the theory to be that Mr.
20 Dean was also cut on his hand, his right hand?

21 A. I had no idea.

22 Q. You didn't know that?

23 A. No, I didn't.

24 Q. And did you find any blood on you in places
25 that looked like it shouldn't have been after this was

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1 over?

2 A. I didn't check for blood on me. I was, you
3 know, stabbed seven times. So after it was over and I
4 found out I was bleeding, the cops came, they asked me what
5 happened, I told them what happened. Ambulance came, put
6 me in the ambulance, took off my shirt and my jacket and
7 checked my wounds, brought me to the hospital. I wasn't
8 worried about where blood was or where Mr. Dean was or what
9 was going on with him or anything else.

10 Q. Okay. So the answer is no, you didn't see any
11 blood on you in a place that seemed strange?

12 A. No. Just consistent with my wounds.

13 Q. How did Denise come to get stabbed in this
14 fight?

15 A. She was behind us. And again, I don't
16 remember her even getting stabbed as well. I don't
17 remember her getting stabbed. But he -- she came up to the
18 area and he stabbed her in the -- just above her left
19 breast while he was stabbing me.

20 Q. Did he have to turn away from you to do that?

21 A. I don't recall. I don't know if he -- if it
22 was after he was done with me, right after, and then he ran
23 away, or in the middle. I really don't remember at all. I
24 just remember me and him. I don't remember her being there
25 at all.

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1 Q. She didn't attempt to engage him in a head
2 lock again?

3 A. Evidently not, because she wasn't in front of
4 me.

5 Q. Where was she during this fight, this second
6 part of it?

7 A. I don't know. I know she was behind me
8 somewhere, but I don't even recall seeing her. I was busy
9 with him. Just like I didn't see Joe. I heard Joe, but I
10 didn't see him.

11 Q. And then it was obvious to you Denise didn't
12 know she had been stabbed?

13 A. Yes. She thought that he hit her, too.

14 Q. Excuse me?

15 A. He thought that he just hit her.

16 Q. I couldn't hear you?

17 A. She thought that he had just hit her, as well.
18 But then she noticed it was a stab.

19 Q. When did she voice that knowledge that she has
20 been stabbed, too?

21 A. When I walked back up to the -- where she was,
22 further -- closer by the house.

23 Q. This was after Mr. Dean was gone, right?

24 A. Yes, yes. Right after he left.

25 Q. As far as you know, she was stabbed only the

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1 one time?

2 A. One time in the -- above her left breast, yes.

3 Q. Do you know why during the course of the fight
4 she was yelling, "Sean, quit stabbing me," or words to that
5 effect?

6 A. I don't recall that, no.

7 Q. You never heard that?

8 A. No. I don't recall hearing that, no.

9 Q. It would seem improbable because she didn't
10 even know she had been stabbed until after the fight was
11 over?

12 A. That would be correct.

13 Q. There was a discussion where Mr. Schenk said
14 he was going to get his gun. Did you hear that discussion?

15 A. Not at all.

16 Q. He never told you that?

17 A. Well, after the fact, yes.

18 Q. But you never heard him say, "I'm going to go
19 get my gun"?

20 A. No.

21 Q. And you didn't tell him to go get his gun?

22 A. Absolutely not.

23 Q. And absolutely not is because you thought
24 there was no chance Mr. Dean was going to kill you?

25 A. I was in a fight. I wasn't thinking about

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1 A. I never had a problem with him at all. As I
2 told you before, he treated her really well and I liked him
3 being with her.

4 Q. Did there ever come a time during this second
5 fight where you and Mr. Dean were in physical contact with
6 each other other than through punches, where you grabbed
7 each other again?

8 A. No. Not to my knowledge. We were just
9 hitting each other and it just turned into him stabbing me.
10 I don't recall grappling at all or anything like that.

11 Q. You don't know what caused Mr. Dean to stop
12 stabbing you and walk away rapidly?

13 A. I don't. I didn't know why he did. As I
14 said, I didn't know he was stabbing me, so it was -- like
15 in the middle of the fight, he just went away. I didn't
16 know. I couldn't figure it out.

17 Q. But if he had wanted to or chose to, there was
18 nothing you were doing to prevent him from stabbing you
19 more if he wanted?

20 A. Yeah. I was trying, but yeah, he would have
21 stabbed me more if he wanted to, yes.

22 MR. WOODBURY: Okay. Thank you. I have no
23 further questions.

24 THE COURT: Redirect.

25 REDIRECT EXAMINATION

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1 listening to other people's opinion or what they had to
2 say. I was just in a fight and that's what I was
3 concentrating on.

4 Q. You didn't think you were going to suffer
5 serious injuries in this fight?

6 A. I didn't know he was stabbing me. I already
7 told you that.

8 Q. Okay. Do you remember telling the officer
9 when he arrived that you were not going to let this one
10 slide?

11 A. That I was going to do what?

12 Q. You were not going to let this one slide?

13 A. No, I don't recall that.

14 Q. And so if you said something like that, you
15 have no reason -- there had never been an altercation
16 between you and Mr. Dean before?

17 A. No.

18 Q. And sounds like -- if you said that, it sounds
19 like you had some knowledge that something had happened
20 between you and Mr. Dean before?

21 A. I don't recall saying that.

22 Q. Okay. But if you did say it to the officer,
23 you have no idea what it refers to?

24 A. No, I never had a problem with him at all.

25 Q. Sir?

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1 BY MR. MILLS:

2 Q. Mr. Minter?

3 A. Yes.

4 Q. A couple minutes ago, Mr. Woodbury was asking
5 you about your daughter Brittney?

6 A. Yes.

7 Q. And I believe you mentioned that she came out
8 at some point; is that correct?

9 A. Yes.

10 Q. Did you see her in the midst of this fight at
11 any time?

12 A. I just heard her.

13 Q. You heard her?

14 A. I heard her, yes. I didn't see her, because I
15 was busy with the fight.

16 Q. Could you hear what she was saying at any
17 point in time?

18 A. I just remember her saying, "Dad, Dad," that
19 kind of stuff. And then I remember Joe telling her to go
20 back in the house and then her kind of arguing with him
21 about it, saying, "you make sure he's okay," whatever.

22 Then I remember later on, too, I did see her
23 after the fight. She came back out. Then she said, "You
24 make sure he goes to the hospital. He's a stubborn
25 son-of-a-bitch."

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1 Q. So during the fight, you heard her and Joe, it
2 sounds like?

3 A. Yeah, her and Joe were talking. He was trying
4 to get her to go back inside.

5 Q. You actually saw her at some point after the
6 fight, is what --

7 A. Yes.

8 Q. -- you said? You saw her come out?

9 A. Yes, yes. After the police and the ambulance
10 showed up, then she came back out. Joe told her to go back
11 in the house again. So that's when she said, "Make sure he
12 goes to the hospital."

13 Q. There was some discussion both on direct and
14 cross-examination about your physical condition?

15 A. Yes.

16 Q. I just wanted to follow up on that and ask you
17 questions specifically about the night in question on
18 December 8.

19 A. Sure.

20 Q. So how long had you been out of the nursing
21 home at that point in time?

22 A. About three weeks.

23 Q. Now, you testified that you had a couple of
24 strokes, is that correct, back in May of 2015?

25 A. Yes.

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1 Q. Something about an enlarged artery?

2 A. Enlarged arteries in my heart, COPD. This
3 lung -- only 40 percent of this lung only works. I have
4 shortness of breath, dizziness, instability. And I don't
5 have a lot of energy or stamina.

6 Q. Okay. Was --

7 A. Can only walk, like, half a block and I am
8 done.

9 Q. I'm sorry, I missed that last --

10 A. I can only walk, like, half a block and then I
11 have to rest.

12 Q. And everything that you just described, was
13 that your condition on the evening of December 8?

14 A. Yes. Worse than now, but yes.

15 Q. What do you mean worse than that?

16 A. Worse than now.

17 Q. Oh, worse --

18 A. I am getting a little bit better now. Back
19 then, it was really bad. I had just gotten out of the
20 nursing home.

21 Q. Did you leave the oxygen tank inside the house
22 when you went out?

23 A. Yes.

24 Q. Did you have a cane or walker or anything like
25 that that you took out with you?

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1 A. No. The cane was right next to me, sitting
2 next to me. When I heard yelling outside, I just

3 instinctively got up to go see what was going on. I didn't
4 think about grabbing that. I didn't think about anything
5 else but protecting my ex-wife.

6 MR. MILLS: Permission to approach, Your Honor.

7 THE COURT: Go ahead.

8 Q. Mr. Woodbury asking you about a cell phone?

9 A. Yes.

10 Q. Did you have a cell phone on your person when
11 you walked out of the trailer that evening?

12 A. Yes.

13 Q. At some point in time did that cell phone end
14 up on the ground?

15 A. Yes.

16 Q. Where was that cell phone and how were you
17 carrying it?

18 A. It was in either my right pants pocket or
19 pocket of my jacket, right pocket of my jacket. That's
20 where I usually keep it.

21 Q. I'm going to show you what has been marked as
22 State's Exhibit Number 17. Do you recognize anything in
23 that photograph?

24 A. There's three cell phones. I know the middle
25 one isn't mine. But the other two, I couldn't tell you for

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1 sure if either of them were mine.

2 Q. Okay.

3 A. What they looked like, you know, it could be.
4 But no way to tell they are.

5 Q. Are they consistent with what -- the cell
6 phone you had at the time?

7 A. Yeah, they appear to be the right -- but like
8 I said, I couldn't tell for sure if there was -- they were
9 mine or not, because it's just so far away, looking that
10 way.

11 Q. You had a cell phone in your pocket when you
12 went out that evening?

13 A. Yes.

14 Q. Did you ever get that cell phone back?

15 A. Yes, yes.

16 Q. Okay. How did that happen?

17 A. Unless I'm remembering wrong, they gave it
18 back to me that night.

19 Q. Who gave it back to you that night?

20 A. The police. They found it and gave it back to
21 me.

22 Q. There has been some discussion about a vehicle
23 parked outside the trailer that evening, a Ford Explorer?

24 A. Yes.

25 Q. Whose vehicle is that?

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1 A. Denise's.
2 Q. Showing You State's 15. Do you recognize
3 anything in this photograph?
4 A. Yes. That's her Explorer. Then that's the
5 porch. And then that's the trailer that we were in.
6 MR. WOODBURY: I can't hear him, Your Honor.
7 Q. Would you say that a little bit louder?
8 A. That's the Explorer, Denise's Explorer, the
9 porch next to the Explorer, and her trailer next to the
10 porch.
11 THE COURT: Did you hear that?
12 MR. WOODBURY: Yes.
13 THE COURT: Just stand off to the side a little
14 bit like you are, Mr. Mills, so these fellows can see him
15 and hear him.
16 MR. MILLS: Okay. I will do that, Your Honor.
17 THE COURT: Thank you.
18 Q. Just in relation to this Ford Explorer --
19 whose Ford Explorer was that, by the way?
20 A. Denise's.
21 Q. Denise's. Is this where it was parked that
22 evening?
23 A. Yes.
24 Q. Now, where -- this altercation took place down
25 on the ground. Where in relation to the Ford Explorer did

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1 it take place?
2 A. The ground part?
3 Q. Yes.
4 A. Right behind it. Right here.
5 Q. That was State's 15 that the witness was
6 looking at.
7 Now, Mr. Woodbury was asking you why you
8 didn't call the police.
9 A. Yes.
10 Q. When you came out and saw -- or heard the
11 arguing or whatever. Now, at that point in time had
12 anything gotten physical?
13 A. No.
14 Q. Were you aware of the fact that Mr. Dean had a
15 knife at that point?
16 A. No.
17 Q. Did you have any reason to call the police at
18 that point?
19 A. No.
20 Q. Were you armed when you went out of that
21 trailer?
22 A. What's that?
23 Q. Were you armed when you went out of the
24 trailer --
25 A. No.

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1 Q. -- to see what was going on? Did you have a
2 knife with you?
3 A. No. I don't carry any weapons.
4 Q. At any point in time, did you see whether
5 Denise had a knife with her?
6 A. I never saw her with anything.
7 Q. With anything, do you mean --
8 A. Any kind of weapon. She didn't have any kind
9 of weapon her.
10 MR. MILLS: Thank you. That's all I have.
11 THE COURT: All right. Before we go to recross,
12 we'll go ahead and take our morning recess.
13 Got to read the admonishment, ladies and
14 gentlemen.
15 Again, remember the rule of exclusion, Mr.
16 Minter, during the break.
17 Ladies and gentlemen, please do not converse
18 amongst yourselves or with anyone else on any subject
19 connected with the trial. Do not read, watch or listen to
20 any report or commentary on the trial or any person
21 connected with the trial by any medium of information,
22 including, without limitation, newspapers, television,
23 radio or the Internet.
24 And do not form or express any opinion on any
25 subject connected with the trial until the cause is finally

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1 submitted to you.
2 In addition please recall my admonishment I add
3 to the statutory admonishment, anyway, recall my
4 admonishment regarding the use of electronic devices or
5 media.
6 Don't talk to anyone on the phone, correspond
7 with anyone or electronically communicate with anyone about
8 the case.
9 We'll be in recess for 10 minutes.
10 (WHEREUPON, a short recess was taken)
11 THE COURT: Back on Case CR-FP-2015-1508. Again,
12 State versus Dean.
13 Mr. Dean is back court with his counsel, Gary
14 Woodbury. We do have Mark Mills, Elko County deputy
15 district attorney, for the State.
16 Counsel stipulate to the presence of the jury and
17 the alternates?
18 MR. MILLS: Yes, Your Honor.
19 MR. WOODBURY: So stipulated.
20 THE COURT: Good enough.
21 We have Mr. Minter on the stand and he is under
22 oath for recross-examination.
23 I remind you, you are under oath. Mr. Woodbury.
24 MR. WOODBURY: I have nothing on recross.
25 THE COURT: Any jury questions for Mr. Minter? I

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1 usually give a few seconds anyway for you to think about
2 it.

3 Just as a refresher, if you do come up with any
4 jury questions, remember to write your juror number on the
5 question. You can use the full sheet of paper. We have
6 got plenty of paper. One question on each sheet.

7 Any questions for Mr. Minter?

8 All right. It appears not.

9 He is held subject to recall, I'm sure?

10 MR. MILLS: Yes, Your Honor.

11 THE COURT: So we'll have him step down.

12 Mr. Minter, please remember the rule of
13 exclusion.

14 THE WITNESS: Yes, sir.

15 THE COURT: Thank you.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Who is your next witness?

18 MR. MILLS: Joseph Schenk.

19 THE COURT: Joseph Schenk.

20 Please raise your right hand, be sworn, sir.

21 (WHEREUPON, the witness was sworn)

22 THE COURT: Mr. Schenk, please have a seat there.

23 The door comes out to you. Watch your step.

24 Mr. Mills.

25 JOSEPH SCHENK

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1 Minter?

2 A. Yes.

3 Q. Who is that?

4 A. My father-in-law.

5 Q. Is he the father of Brittney?

6 A. Yes.

7 Q. Does he go by Duff as well?

8 A. Yes.

9 Q. How long have you known Bert Minter?

10 A. About the same amount of time.

11 Q. Now, back on December 8, 2015, did you have
12 any knowledge of where Bert Minter was residing at that
13 time?

14 A. He was in a nursing home and getting out of a
15 nursing home at that time.

16 Q. After he left the nursing home, where did he
17 go to live?

18 A. In between his girlfriend and that space, unit
19 12, and his daughter's house.

20 Q. And the space in unit 12 who resided there?

21 A. Denise, and Sean was there at that time, too.

22 Q. And how long had Sean resided there?

23 A. I am not entirely sure. He was there outside
24 when I seen him. That's probably about it. So I seen him
25 probably a couple months coming in and out of the house

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1 called as a witness in said case, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MILLS:

5 Q. Mr. Schenk, could you please state and spell
6 your first and last name for the record?

7 A. Joseph, J-o-s-e-p-h. Last name Schenk,
8 S-c-h-e-n-k.

9 Q. Where do you live?

10 A. 764 South Fifth Street, Unit 10.

11 Q. How long have you lived at that residence?

12 A. Say probably a couple years now.

13 Q. And you were living there back on December 8,
14 2015?

15 A. Yes.

16 Q. And who was residing with you there at that
17 time?

18 A. Brittney Tice, which is my fiancée.

19 Q. She currently is your fiancée?

20 A. Yes.

21 Q. Was she at that time as well?

22 A. Yes.

23 Q. How long have the two of you known each other?

24 A. Almost five years, going on five years.

25 Q. And do you know a person by the name of Bert

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1 there.

2 Q. And at some point in time prior to the
3 incident in question on December 8 that we're here in court
4 on, did Sean Dean cease residing there?

5 A. What was that, sorry.

6 Q. At some point in time did -- first of all,
7 let's clarify. When you say Sean, who are you talking
8 about?

9 A. Sean Dean.

10 Q. Do you see that person in the courtroom with
11 us?

12 A. Yes.

13 Q. Could you point to him, describe what he's
14 wearing in court?

15 A. He is wearing a dress shirt with a tie, tan
16 kind of shirt with a tie.

17 Q. All right. Seated next to Mr. Woodbury here?

18 A. Yes.

19 MR. MILLS: May the report reflect the
20 identification of the defendant.

21 THE COURT: The record will so reflect.

22 Q. So during that month or two that you saw him
23 around, did you know him?

24 A. Not personally, no.

25 Q. Had you ever interacted with him?

80

1 A. Yes.
2 Q. And what were the nature of those
3 interactions?
4 A. Hi, how are you doing. Nothing over that.
5 Came over for a barbecue once, that was about it.
6 Q. Was Denise with him when he came over?
7 A. No.
8 Q. I'm trying to remember, did you say that you
9 had the impression that he was living with Denise at some
10 point?
11 A. Yes.
12 Q. Did he stop living with her at some point?
13 A. I'm not entirely sure. Something happened in
14 between that time and I didn't really see him much after
15 that.
16 Q. After Bert came out of the nursing home, did
17 you ever become aware of him residing at Denise's trailer?
18 A. No. I just seen him come and go.
19 Q. Okay. So you just seen him come and go but
20 didn't know whether he was living there or not?
21 A. Yeah, I wasn't too sure.
22 Q. And based on any of the other interactions you
23 had with the defendant, what was your -- I guess, what were
24 your feelings towards him? What was the nature of your
25 relationship with him?

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1 A. It was respectful. He was very respectful
2 towards me and my fiancée and my kids. He never did any
3 wrong to me, so.
4 Q. Directing your attention to the evening of
5 December 8, 2015, at about eight o'clock in the evening,
6 could you tell the jury what happened that evening?
7 A. On December 8 I was in with my then-fiancée
8 talking about Christmas, and we heard the dogs barking and
9 we were like, oh, just barking.
10 Then, all of a sudden, they started yipping
11 and howling, and then we heard screaming. So I was like,
12 "oh, I better get up." Went out to my front door, opened
13 my front door. I did not have my glasses on at that time,
14 so I couldn't really see.
15 Q. Let me -- I don't mean to cut you off, I just
16 wanted to follow up on something?
17 A. Okay.
18 Q. You heard some screaming?
19 A. Yes.
20 Q. Was it a male or female voice that you heard
21 screaming?
22 A. Female.
23 Q. Did you understand what -- if there were any
24 words being uttered; or if there were, if you could
25 understand them?

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1 A. No, just the screaming. I just heard the
2 screaming and then that was it, I got up.
3 Q. Okay. What happened next?
4 A. I went to my door. I opened my door, could
5 not really see, I didn't have my glasses on. I seen --
6 what I could see is Duff laying on his left side on the
7 ground.
8 And then my fiancée is like, "what's going
9 on?" And then I was like, "oh, your father is on the
10 ground."
11 Looked like a medical issue, so I went and got
12 my glasses, my house shoes on, ran outside.
13 Q. What you ran back outside, what did you see?
14 A. He was on his left side. And when I
15 approached him, I picked him up, helped him up off the
16 ground.
17 Q. Okay. What happened then?
18 A. Then every -- people to my left was Denise and
19 Sean and --
20 Q. What were they doing?
21 A. They -- everybody stood up at that time. And
22 I kind of looked around, and I seen that everybody was kind
23 of angry and out of breath. So I seen that, you know, they
24 were -- looked like they were fighting.
25 And I looked at Sean. I seen that he was

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1 really distraught and disoriented, and he kind of stumbled
2 back.
3 And I was like, "what's going on?" You know,
4 they seemed mad. And then he started saying some stuff,
5 and I was like, "Leave my family alone."
6 THE COURT: You're going to have to get off the
7 narrative, because he starts using pronouns. We've got two
8 he's and a she.
9 MR. MILLS: I will have him clarify, Your Honor.
10 I was about to interject.
11 Q. So when you used the pronoun "he" started
12 saying stuff, who were you referring to?
13 A. Duff and Sean.
14 Q. Okay. You said "he," which is singular, one.
15 Do you know at that point who you were referring to?
16 A. Sean.
17 Q. Okay. What was Sean saying?
18 A. Sean said, "Eff this, motherfucker," after Duff
19 Minter had said something. Not too sure what he said. And
20 then Sean said, "Eff this, motherfucker," then pulled out a
21 knife.
22 Q. Okay. Could you describe for the jury how he
23 pulled out the knife?
24 A. He took his right hand. He was fumbling
25 through his pockets, reached his right hand into his right

84

1 pocket, pulled out the knife with two hands, opened the
2 knife.

3 And that's when he continued to say, "Eff
4 this, motherfucker," then started stabbing him.

5 Q. Okay. Was there a porch light on in the
6 vicinity?

7 A. Yes.

8 Q. Could you see what was going on pretty well?

9 A. Yes.

10 Q. Could you describe the manner in which he
11 started stabbing Duff with the knife?

12 A. Can you rephrase, please?

13 Q. How was he stabbing him? If you could
14 describe how he was doing it?

15 A. He had it in his right hand, knife was
16 pointing out this direction in front, and he started
17 stabbing towards his waist first, towards Duff's waist, and
18 continued to stab him, and almost hit me on the second
19 stab, and that's where I ran inside my house.

20 Q. Where was Denise when that was going on?

21 A. To my left.

22 Q. And how many stabs did you actually see?

23 A. I saw the total of two.

24 Q. Then after that, what did you do after you saw
25 those two stabs?

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1 the time I got out there, because I was in there for
2 probably three or four minutes, by the time I got back
3 outside, Sean was already gone.

4 Q. What were Bert and Denise doing when you went
5 back out there?

6 A. They were just walking around, just Denise
7 had -- by the time I got back out, Denise had a stab wound
8 to her chest here, and then Duff was bleeding out of his
9 left side and from his arm.

10 Q. Did you personally see those injuries?

11 A. Yes, I did.

12 Q. At the point in time that you saw the
13 defendant stab Bert, how far away were you from those two
14 when that happened?

15 A. I was probably, I would say, half a foot from
16 Duff from my right, and then Sean was directly in front of
17 me.

18 MR. MILLS: Thank you. That's all the questions
19 I have. I will pass the witness.

20 THE COURT: Cross-examination?

21 MR. WOODBURY: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. WOODBURY:

24 Q. Mr. Schenk, do you recall giving a statement
25 to the Elko Police Department about these events?

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1 A. Oh, I looked down, seen that there was a knife
2 clearly in his hand, and I turned to my left to run into my
3 house.

4 Q. Could you describe the knife for the jury?

5 A. The knife was one of the knives that you fold
6 out of the handle, and it looked four to six inches, not
7 totally clear on how long it was.

8 Q. At the point in time that the defendant said
9 "Eff this, motherfucker," and pulled out the knife, what was
10 Bert doing at that time?

11 A. It happened so fast, I couldn't really
12 recollect what was going on. So I told myself to get in
13 the house to have somebody call 911.

14 Q. Did you ever see a knife or any other weapon
15 in Bert's hands?

16 A. No.

17 Q. Or in Denise's?

18 A. No.

19 Q. So you ran inside, what did you do then?

20 A. I had my fiancée call 911. She was panicking,
21 so I was trying to calm her down so she could talk to 911.
22 Then I went to my bedroom, grabbed a firearm.

23 Q. What did you do then?

24 A. I loaded my firearm, came out to the living
25 room, and said, "Relax, calm down." I ran out there. By

86

1 A. What was that, sorry?

2 Q. Sir?

3 A. I didn't hear what you said. I said -- sorry,
4 I didn't hear you.

5 THE COURT: He didn't hear your question.

6 A. Sorry.

7 Q. All right. Do you recall writing a statement
8 for the police about these events?

9 A. Yes, yes.

10 Q. All right. The copy I have of that statement
11 appears to be typed. Why?

12 A. Yes.

13 Q. Why is it typed?

14 A. Because my handwriting is not very legible.

15 Q. And who wrote the statement for you?

16 A. I wrote my statement through typing.

17 Q. Oh, you typed it?

18 A. Yes, yes.

19 Q. Where at?

20 A. On my computer.

21 Q. Where at?

22 A. At my house.

23 Q. After you left the incident that took place on
24 December 8?

25 A. Yes.

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1 Q. when did you give it to the police?
2 A. It was around four o'clock in the morning,
3 because I didn't have it written out at that time.
4 Q. why did it take you so long to write it?
5 A. Because we were -- I was trying calm my kids
6 down, I was trying to calm Brittney down. It was very
7 traumatic for my family.
8 Q. It's got a time on it that says 8:45?
9 A. Yeah, that's when the incident happened.
10 Well, it happened at 8:00, I typed it at 8:45. The police
11 could not come back until later that morning.
12 Q. Okay. And after the incident was over, I
13 guess what you testified to was you got your weapon loaded,
14 and it took you three to four minutes, I guess, to get your
15 weapon loaded?
16 A. Yes. It was a revolver, and I was panicking,
17 so it wasn't something quick.
18 Q. Oh, okay. And when you came back out of your
19 residence with your weapon, what was going on then?
20 A. I just ran out, and Duff and Denise were just
21 walking around, panicking, wondering what happened.
22 Q. How did they -- how did this panic manifest
23 itself? what were they doing that made you think they were
24 panicking?
25 A. Well, they were touching their head, walking

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1 before that led up to this?
2 A. No. Not at all. They got in the ambulance
3 and went to the hospital.
4 Q. And you were the fellow who initially talked
5 to the police when the police arrived?
6 A. Yeah. And I'm sure others, too.
7 Q. But the first one to do the talking, right?
8 A. Yeah.
9 Q. What did you tell them?
10 A. That -- well, they told me I have to do a
11 statement. They really did not talk much. He gave me a
12 paper to do the statement, that was about it. They asked
13 me what happened, and I said that Sean stabbed Duff and
14 Denise. That was --
15 Q. That's all you said?
16 A. Yeah.
17 Q. Okay. Denise -- or, excuse me, I guess you
18 and Mr. Minter are close personal friends?
19 A. We are not necessarily friends.
20 Q. What are you?
21 A. Just family members, my family.
22 Q. You said in your statement, or your direct
23 examination testimony, that when you got over there, I
24 guess, that Sean and Bert were separated?
25 A. Yeah.

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1 around, upset.
2 Q. Upset and talking?
3 A. Yeah.
4 Q. About what had happened?
5 A. Well, saying, "he stabbed me," "he stabbed
6 me." That's pretty much what they were saying the whole
7 time.
8 Q. So they just repeated "he stabbed me," "he
9 stabbed me," "he stabbed me," "he stabbed me," "he stabbed
10 me," "he stabbed me," "he stabbed me," "he stabbed me,"
11 just like that, went on forever?
12 A. Yeah, yeah. Pretty much, yeah.
13 Q. And nothing else?
14 A. Nothing really. I tried to get them to sit
15 down, you know, sit down, don't -- so they didn't fall over
16 and hit their head from passing out from blood loss or
17 anything. I was just trying to calm down the situation for
18 them.
19 Q. Okay. And at no point was there a discussion
20 between you and Denise or you and Bert or all three of you
21 about what had actually happened other than "he stabbed
22 me"?
23 A. Yeah, that's pretty much -- I was, like,
24 "yeah, he stabbed you."
25 Q. And there was no talk about what had happened

90

1 Q. How far apart were they?
2 A. I would say probably three or four feet maybe.
3 Are you talking about the initial -- when I walked up to
4 them?
5 Q. Um-hmm.
6 A. Yeah, probably like three or four feet.
7 Q. And I think in your -- you didn't say it this
8 time in direct, but you talked about it at the prelim,
9 where Mr. Minter could not get up off the ground by
10 himself?
11 A. Yes.
12 Q. Could you tell the jury about that?
13 A. Yes.
14 Q. Could you tell what you did to help him?
15 A. I picked him -- I helped him up, I picked him
16 up off the ground.
17 Q. While you were doing that, where was Denise?
18 A. Denise was on the ground.
19 Q. What was she doing?
20 A. Holding Sean.
21 Q. How was she holding him?
22 A. From the back, trying to hold him down.
23 Q. Was he struggling?
24 A. Was she struggling?
25 Q. Was he struggling? Sean?

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1 A. Sean?
2 Q. Yeah.
3 A. I'm not sure. I wasn't really paying
4 attention to what they were doing. I was trying to help
5 Duff up off the ground.
6 Q. That was more important to you, getting him
7 off the ground, as opposed to what Denise was doing with
8 Mr. Dean?
9 A. I don't know exactly what she was doing to
10 Dean.
11 Q. I know you don't, but weren't you interested
12 in finding out?
13 A. Not entirely. I was more concerned for Duff's
14 situation, with him being on the ground.
15 Q. If you thought that Duff had a medical
16 condition, why'd you help him up off the ground?
17 A. Because I didn't want him on the ground.
18 Q. Well, if you have a medical condition, you
19 might want to leave him lie?
20 A. True, that's right.
21 Q. So why did you pick him up?
22 A. It's just -- it was just instinct of -- it was
23 just instinct to pick him up, help him off the ground.
24 Q. Duff was telling you what had happened?
25 A. During the -- during that instance, no,

93

1 training with first aid or anything like that?
2 A. Yeah, first-aid training. But it's not a
3 certification.
4 Q. Excuse me?
5 A. We got first-aid training but not any type of
6 certification.
7 Q. So starting back up, what happened was you and
8 your fiancée were in bed?
9 A. Yes.
10 Q. Unclothed?
11 A. No, we were clothed, in our pajamas.
12 Q. In your pajamas?
13 A. Yes.
14 Q. So all of your activities outside took place
15 in your pajamas?
16 A. Yes.
17 Q. Your house, the front door of your house --
18 the front door of your house is how far from where Mr.
19 Minter was laying?
20 A. I would say probably a hundred feet maybe.
21 Q. When you heard the dogs barking and the woman
22 screaming, did you recognize the source of the -- who the
23 woman was?
24 A. No.
25 Q. The woman screaming?

95

1 nothing was said to me. I was just helping him off the
2 ground.
3 Q. And he was totally silent?
4 A. Yes.
5 Q. You didn't ask him how he had come to get on
6 the ground?
7 A. No, I didn't.
8 Q. You didn't ask him if he a broken leg or arm?
9 A. No.
10 Q. Or any of those --
11 A. No, I didn't.
12 Q. You didn't ask him if he wanted you to pick
13 him up off the ground?
14 A. No.
15 Q. Just picked him up?
16 A. Yeah.
17 Q. Okay. That was your day off, December 8?
18 A. Yes.
19 Q. Where do you work?
20 A. I work for Newmont.
21 Q. What is your job?
22 A. Warehouse technician.
23 Q. Okay. Are you medically trained?
24 A. Am I medically trained, no.
25 Q. All right. Newmont give you any kind of

94

1 A. No.
2 Q. What was she screaming?
3 A. I just heard screaming. I couldn't understand
4 what was being said.
5 Q. Did this screaming contain words?
6 A. No, I didn't hear any words, because I was
7 inside the home.
8 Q. I'm sorry?
9 A. I was inside my house. I didn't -- I couldn't
10 hear what anybody was saying.
11 Q. And then you ran from, I guess, your bedroom,
12 which is even further away from the Minter house, up to the
13 front door?
14 A. I couldn't see from inside my bedroom, I
15 walked up --
16 Q. Sir?
17 A. I walked --
18 Q. So you ran up to the front door then?
19 A. Yeah, yeah. I opened the door. I just heard
20 screaming so I thought somebody was injured outside. I
21 didn't grab my glasses or anything. I opened the door to
22 see, and I seen a person laying on the ground about a
23 hundred feet or so.
24 To see better, I went and grabbed my glasses
25 and my house shoes to go outside.

96

1 Q. How long did the screaming go on before you
2 got out of the bed?

3 A. I heard a couple screams, it sounded like
4 somebody was in trouble.

5 Q. So the time you heard the screams until the
6 time you -- I assume the screaming stopped after a
7 couple --

8 A. I am not totally -- entirely sure if the
9 screaming stopped. I was panicking, trying to get my
10 glasses and my house shoes on.

11 Q. Then you ran up to the front door?

12 A. Yes.

13 Q. And you opened it?

14 A. Yes.

15 Q. Was the screaming still going on at that time?

16 A. Yes.

17 Q. Sir?

18 A. Yes.

19 Q. And did you get the words this time?

20 A. No, I -- I just -- all I heard was screaming.
21 I can't remember exactly what happened, what the words
22 were.

23 Q. I take it you and Mr. Minter, although you are
24 not friends, he is just family, you love him, right?

25 A. Yeah, yeah. I do.

97

1 A. Yeah.

2 Q. And were Bert and Denise up there, too?

3 A. Yes.

4 Q. And in the same city as Brittney?

5 A. Yeah, in Hayden, Idaho.

6 Q. Then you all moved to Elko?

7 A. After -- we were together two years, then we
8 moved here for work.

9 Q. All right. Did you live together with Denise
10 and Bert, or did you live in a separate place?

11 A. Me and Brittney lived in Spokane, and then we
12 lived with them for a couple months.

13 Q. When was that?

14 A. Oh, man, it was only for the winter. It was
15 only a couple months. I can't really recollect.

16 Q. I'm sorry?

17 A. I don't really remember when that was.

18 Q. And it was during that period of time that you
19 got to be close personal friends with Sean -- with Bert?

20 A. Not close. They were never really home. It
21 was just me, Brittney, and the kids. They were always out
22 doing something, so.

23 Q. And you have come to know Bert enough to know
24 that he is a pretty thoughtful guy?

25 A. Yeah, he is thoughtful. He has helped me out.

99

1 Q. And there is almost nothing you wouldn't do
2 for him?

3 A. Well, I'm his family, so I would help him
4 because he is disabled.

5 Q. And would you help him in other ways?

6 A. What do you mean by that?

7 Q. If he asked you to fix his car, or do
8 something like that, you would be willing to help?

9 A. Depends on my situation.

10 Q. Sir?

11 A. It depends on my situation.

12 Q. You have lived with Brittney since you lived
13 in Idaho; is that correct?

14 A. Yes.

15 Q. And that was -- you are from Seattle,
16 Washington?

17 A. From Spokane, Washington?

18 Q. Spokane?

19 A. Yes.

20 Q. How did you come to meet up with Brittney in
21 Spokane, Washington?

22 A. She lived in Idaho and I lived in Spokane and
23 we met online.

24 Q. All right. And then you moved in together in
25 Idaho?

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1 Q. But he also has had some business successes,
2 too?

3 A. I'm sure. I mean, I've heard stories. Not
4 totally knowledgeable of what he has done.

5 Q. And he works hard?

6 A. Oh, yeah. Well, he used to, yeah.

7 Q. And tries to keep kind of ahead of the game a
8 little bit?

9 A. What do you mean by that?

10 Q. Well, just kind of keep up, so if something
11 bad is coming down the road, he can fix it before it
12 happened?

13 A. Right.

14 Q. That's Bert in a nut shell, right?

15 A. Pretty much, yeah.

16 Q. Well, I don't know -- are you qualifying it
17 for some reason?

18 A. What do you mean by that?

19 Q. Well, you said -- you say "pretty much."
20 Sounds like there are occasions when he is not too
21 thoughtful or not ahead of the game?

22 A. Well, when he came down with his health
23 issues, he lost his job and everything else, so.

24 Q. Okay. And things were pretty rough for him?

25 A. Yeah, yeah.

100

1 Q. So you must have visited with him quite a bit?
2 A. Yeah.
3 Q. While he was in the Manor?
4 A. Yes. Yeah. Well, I went to see him twice
5 with my fiancée, with Brittney.
6 Q. So going back to December 8, they were --
7 apparently everyone is standing up now and you are all
8 within a close proximity to each other?
9 A. Yes.
10 Q. How close?
11 A. I would say Duff -- Duff was half a foot away
12 from me, he was right next to me. And then Sean was in
13 front of Duff and in front of me. And Denise was to my
14 left.
15 Q. And how far away was Sean?
16 A. Sean, from me, it was probably four feet.
17 Q. And when you got out there, Sean was still on
18 the ground with Denise's hand around him?
19 A. Yes. Holding him, yeah.
20 Q. Excuse me?
21 A. Yes.
22 Q. And was there a conversation going on back and
23 forth between Denise and Sean and --
24 A. No, not that I can remember.
25 Q. Sir?

101

1 Q. And did he stand up by himself?
2 A. Sean?
3 Q. Yeah.
4 A. Yes.
5 Q. Denise stand up by herself?
6 A. Yes.
7 Q. After they all stood up, where did Denise go?
8 A. Still standing on my left.
9 Q. Well, I have the impression now that Mr.
10 Minter is standing to your immediate right?
11 A. Yes.
12 Q. And now Denise is standing to your immediate
13 left?
14 A. Yes.
15 Q. And where is Mr. Dean -- Mr. Dean is facing
16 all three of you?
17 A. He was facing me and Duff.
18 Q. Denise was looking some other direction?
19 A. I'm sure she was looking at all three of us.
20 Q. But she was right next to you?
21 A. Yes.
22 Q. And then what happened?
23 A. And then Duff said something, not sure what he
24 was saying. And then Sean said, "Eff this, motherfucker,"
25 then reached into his pocket. And I looked down, seen his

103

1 A. Not what I can remember.
2 Q. There might have been conversation and you
3 just don't recollect it?
4 A. Yeah, I don't remember what was said.
5 Q. But there were things being said, do you
6 think?
7 A. Yeah.
8 Q. Do you recall what those things were?
9 A. I'm pretty sure it was just "stop," "stop,"
10 "stop it," that kind of stuff.
11 Q. Whatever had happened had already stopped,
12 correct?
13 A. Yeah, well she was panicking and --
14 Q. Denise was panicking?
15 A. Everybody was panicking.
16 Q. How did she show that to you?
17 A. Just freaking out.
18 Q. Okay. But those are just words, you have to
19 say what she physically or mentally did that demonstrated
20 to you that she was, quote, freaking out?
21 A. Just "stop," "stop," and holding him, pretty
22 much what I remember hearing.
23 Q. And Mr. Dean wasn't doing anything?
24 A. He stood up after I helped Duff up off the
25 ground.

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1 hand in his pocket. Then he pulled out the knife, it was a
2 colored knife. And then he used both hands to open it.
3 Then he was like this, standing with two hands, like this,
4 balled. Then started swinging. That's pretty much what
5 happened.
6 Q. What did Duff say?
7 A. I am not sure what he said.
8 Q. Did it seem apparent that that triggered Sean
9 to do something with the knife?
10 A. I'm not sure.
11 Q. Up to that point, there was no conversation
12 whatever?
13 A. No.
14 Q. Except what Duff said?
15 A. I am not sure what he said.
16 Q. I know you are not. But what I am trying to
17 point out, or trying to get out of you, is whether there
18 was a conversation going on other than what Duff said?
19 A. That's -- I -- he mumbled something, Duff
20 mumbled something. Then Sean said that. And then
21 everything fell apart.
22 Q. We have moved from mumbled -- from said to
23 mumbled. What did he mumble?
24 A. I don't know. I couldn't hear it. That's
25 what I am trying to say.

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1 Q. You couldn't hear it?
2 A. I couldn't hear him.
3 Q. Say that again?
4 A. I couldn't hear what he was saying. Then Sean
5 said that and then he stabbed him, so.
6 Q. Did he say something like "get your gun"?
7 A. No.
8 Q. How do you know that if you couldn't
9 understand what he mumbled?
10 A. He didn't say get his gun.
11 Q. Huh?
12 A. He didn't say that, I'm sure.
13 Q. What did he say?
14 A. I have no idea.
15 Q. But you know it isn't that?
16 A. What was that?
17 Q. But you know it isn't that?
18 A. He could have. I have no idea. I don't know
19 what he said, I have no idea.
20 Q. So the possibilities of what Duff might have
21 said are endless?
22 A. Yes.
23 Q. You couldn't eliminate any of them?
24 A. No.
25 Q. Up to that point, your relationship with Mr.

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1 Dean had been, "hi, how are you," and a barbecue that
2 Denise did not attend?
3 A. She came back and forth, but she wasn't -- she
4 didn't stay. She didn't stay long.
5 Q. And did you look -- did you have a
6 conversation with Mr. Dean at that barbecue?
7 A. Oh, yeah. Yeah, we did.
8 Q. What was that conversation about?
9 A. It was about kids, we watched a football game.
10 You know, just normal conversating, laughing, talking.
11 Q. And how long did that go on?
12 A. Probably three or four hours.
13 Q. And was there discussion about what was going
14 on between Denise and Sean?
15 A. Only thing that me and him talked about is how
16 good he was treating Denise at that time.
17 Q. Who talked about that?
18 A. Me and Sean.
19 Q. Did you notice a change in Bert's mental
20 health since these issues, this December 8 issue?
21 A. It's more of his -- his bodily health. He has
22 bad health.
23 Q. I got that. That's why I asked you about the
24 mental health issues.
25 A. Oh, it's causing mental issues, yes.

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1 Q. What kind of issues?
2 A. Forgetting things. He had a stroke, so he
3 mumbles and you can barely hear him. He can't hear you
4 very well. Stuff like that.
5 Q. So there was a time when the fight was
6 apparently over?
7 A. Yeah.
8 Q. You all were standing there and Duff mumbled
9 something, and then what happened?
10 A. Then he said "Eff this, motherfucker," and he
11 pulled out the knife, Sean did.
12 Q. Why would Duff, for example, think that Mr.
13 Dean came running up and a fist fight started again?
14 A. What was that? Why would he --
15 Q. Excuse me, why would Mr. Minter think that a
16 rather than the fight picking up with Mr. Dean getting a
17 knife out of his pocket, why would Mr. Minter think that it
18 devolved again into a fist fight?
19 A. I am not understanding your question.
20 Q. What you are saying is that you were all
21 standing there, and the next thing that happened is Mr.
22 Dean is uttering the expletives and getting a knife out?
23 A. Yeah.
24 Q. And I'm asking, if Mr. Minter thinks that that
25 didn't happen that way, that they were all standing there

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1 and it went into a fist fight, is there some explanation
2 for that difference?
3 A. No. I have no idea. I don't know what you
4 mean by that.
5 Q. I'm sorry?
6 A. I don't know what you mean by that.
7 Q. What I mean is there is a difference between
8 what you and Mr. Minter are saying happened after he got up
9 off the ground?
10 A. Oh, we're saying two different things?
11 Q. Oh, yeah.
12 A. I don't know. I'm just explaining exactly
13 what I saw.
14 Q. So after the -- after the police came, how
15 long did you spend with the police officers?
16 A. Probably five minutes.
17 Q. What was your role?
18 A. What was my role?
19 Q. Yeah. What did you inform them about?
20 A. Of the stabbing.
21 Q. If I understand the statement you typed up,
22 you got your glasses and house slippers to take a closer
23 look and seen that Bert Minter was fighting with someone on
24 the ground.
25 You didn't see that?

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1 A. Not initially, no. I also was freaking out at
2 that time, trying to type that.

3 Q. So naturally you misled the officers in what
4 you had seen?

5 A. No.

6 Q. So why did you say that you saw them fighting
7 on the ground?

8 A. I don't know. Probably because I knew at that
9 time, when I started typing that, that they were fighting,
10 so. I'm trying to say before I knew they were fighting, I
11 thought he had medical issue so I went over there to help
12 him out. And I noticed they were fighting after -- when
13 everybody stood up. That's what I meant in the statement.

14 Q. And then you wrote, did you not -- I guess you
15 have seen this statement?

16 A. No, I haven't seen it. I didn't really look
17 at it at all.

18 Q. Maybe I will let you see the statement and
19 kind of refresh your recollection.

20 MR. WOODBURY: I'm going to show him discovery
21 62.

22 MR. MILLS: I have got it marked.

23 THE COURT: What is it marked as?

24 MR. MILLS: State's Number 6.

25 THE COURT: Go ahead and pull out 6.

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1 the ground, fighting with someone on the ground, that
2 person on the ground fighting with him was Sean Dean,
3 right?

4 A. (Nods head)

5 Q. Yes?

6 A. Yes.

7 Q. Any fair-minded person would think that you
8 had actually seen that fight?

9 A. No, I didn't see the fight.

10 Q. But from that statement, any fair-minded
11 person would assume that you had seen it?

12 A. Right.

13 Q. Okay.

14 A. Made the mistake of writing that, because when
15 I wrote that it was after the incident.

16 Q. Then you wrote -- you identified Bert Minter
17 and your father-in-law?

18 A. Yeah, that is my father-in-law.

19 Q. All right. But he is not?

20 A. Not -- no. But I consider him my
21 father-in-law.

22 Q. You didn't mention the fact that Denise was
23 holding Mr. Dean down, did you?

24 A. No, I didn't.

25 Q. Then you said, "when I did this" -- meaning

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1 Q. (By Mr. Woodbury) I'm going to show you a
2 document. Are you familiar with that -- the original of
3 that document?

4 A. Am I -- what was that, sorry?

5 Q. Is that your statement?

6 A. Yes. This is my statement, yes.

7 Q. And is there any differences between it and
8 the original statement you wrote with the exception of the
9 number on the bottom right?

10 A. The very bottom right? I'm sorry? 62? I
11 don't know what that means.

12 Q. I know. I am only asking you --

13 A. I'm sorry?

14 Q. I am asking about whether that is your
15 statement?

16 A. Yes, this is my statement.

17 Q. And you have read it?

18 A. I read it one time, that was way back when we
19 first.

20 Q. Read that.

21 A. Okay.

22 Q. Is that what you wrote?

23 A. Yes.

24 Q. So you told the officers in your report to the
25 police that you not only saw Mr. Minter fighting someone on

110

1 when you got Mr. Minter up off the ground -- "Sean Dean
2 said, 'Fuck this, fool. Fuck it,' and pulled out what
3 looked like a 6-inch flip-out knife."

4 That's a different statement now than "Eff
5 this, motherfucker"?

6 A. It's -- I didn't read the statement again, and
7 it's been since December.

8 Q. Um-hmm.

9 A. So --

10 Q. Where is the mention about Bert mumbling
11 something to trigger that reaction by Mr. Dean?

12 A. What was that? Sorry.

13 Q. Where is the mention in here about Mr. Minter
14 mentioning or saying something that triggered that
15 reaction, that knife reaction, from Mr. Dean?

16 A. It is not in there. I don't know.

17 Q. If you want to read it again, I'll show it to
18 you?

19 A. No.

20 Q. Is it in there?

21 A. I -- no, I'm -- I don't know. No, it's not in
22 here.

23 Q. Did the officers tell you to leave certain
24 stuff out?

25 A. No.

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1 Q. They told you to write what you knew, right?
2 A. Yeah.
3 Q. If it's correct, what you testified to on
4 direct examination, Mr. Schenk, your father-in-law, who is
5 a family member and a guy you love, is getting stabbed?
6 A. Right.
7 Q. In your direct vicinity, within a foot or foot
8 and a half of you, right?
9 A. Yes.
10 Q. Why didn't you take Mr. Dean by the neck and
11 throw him down?
12 A. I didn't want to get stabbed.
13 Q. If somebody was stabbing your father-in-law,
14 your father-in-law was very likely to be a dead man. True?
15 A. True.
16 Q. And you -- all you could think of was to run
17 in your house and get a gun?
18 A. Run in the house and call 911.
19 Q. Well, your wife -- your fiancée was standing
20 on the porch watching all this, right?
21 A. Yeah.
22 Q. All you would have had to do was yell, "Call
23 911"?
24 A. I could have, yes.
25 Q. Excuse me?

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1 A. I could have, yes.
2 Q. Why not?
3 A. I panicked and ran. I didn't want to get
4 stabbed too.
5 Q. Excuse me?
6 A. I didn't want to get stabbed, so I ran into my
7 house.
8 Q. And left your helpless father-in-law standing
9 out there to take the stabbing himself?
10 A. That's not what I was thinking at that time.
11 Q. Do you remember testifying at a preliminary
12 examination that you knew there were really bad feelings
13 between Mr. Dean and Mr. Minter?
14 A. Well, I'm sure.
15 Q. Not you're sure, you said that you knew that?
16 A. Yep.
17 Q. How did you know that?
18 A. Because after they started fighting, and then
19 Duff would tell me all the stuff, so.
20 Q. That all came after Duff telling you. He
21 never told you before, like when you visited him in the
22 Manor or you had talked to him out when you saw him coming
23 and going from Denise's house, he had never mentioned bad
24 feelings?
25 A. No.

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1 Q. It all came after?
2 A. It came after, yeah.
3 Q. How long after?
4 A. I'm sorry, are you talking the incident?
5 After the incident.
6 Q. I'm sorry?
7 A. Or before?
8 Q. Did you know there were bad feelings between
9 Mr. Minter and Mr. Dean before that incident? Did you know
10 it before?
11 A. Yes.
12 Q. How did you know it?
13 A. Because he came to me talking about what he
14 had done to his neighbor beforehand, and things starting
15 getting violent with Sean.
16 Q. Who came to you?
17 A. Duff. And he was worried about Denise's
18 safety.
19 Q. And was he also worried about the fact that --
20 did he mention the fact to you that Denise was now gambling
21 huge amounts of money?
22 A. No.
23 Q. You knew that?
24 A. Did I know that?
25 Q. Yeah.

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1 A. She was going to the casino a lot, but I
2 didn't know money or what her income status was or
3 anything.
4 Q. And did Duff mention to you that he was very
5 upset because he was trying to reestablish a relationship
6 with Denise and Mr. Dean was interfering with it?
7 A. No. I didn't know that part. I just seen
8 them come and go, come and go. That's all I seen.
9 Q. Saw who come and go?
10 A. Huh? What was that?
11 Q. Saw who come and go?
12 A. Sean and Duff.
13 Q. Well, you can draw certain conclusions, can't
14 you, when a man and woman are living together?
15 A. Well, yeah.
16 Q. Okay. And but my question is, did Mr. Minter
17 tell you that he didn't like that part of it either?
18 A. No, he just -- only thing he mentioned was
19 that he was afraid for Ms. Minter's safety.
20 Q. Well-being?
21 A. Yes.
22 Q. Physical well-being?
23 A. Yes. Because of the violent acts that Sean
24 has done.
25 Q. Well, did he mention that Sean was a bad ass?

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1 A. Did he mention?
2 Q. Yeah.
3 A. No.
4 Q. Where did this conversation take place?
5 A. At my house.
6 THE COURT: Mr. Woodbury, did you want a limiting
7 instruction on any of this stuff?
8 MR. WOODBURY: I don't.
9 THE COURT: It just goes to Bert's state of mind
10 or --
11 MR. WOODBURY: No.
12 THE COURT: All right. Go ahead.
13 Q. The conversation took place where?
14 A. At my house.
15 Q. When?
16 A. Say in the middle of November, end of
17 November.
18 Q. Mr. Minter had moved out of the Manor and was
19 now living with Denise?
20 A. I wasn't sure on where he was living at that
21 point. He was bouncing around, trying to find a place to
22 live.
23 Q. Trying to find?
24 A. (Nods head).
25 Q. What did you understand the problem with that

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1 Q. About what had prompted all this? What this
2 was all about?
3 A. No, they didn't talk about what came to that
4 point. They were saying, "Oh, I got stabbed. I got
5 stabbed." And I was trying to calm them down.
6 Q. And they just repeatedly said, "I got stabbed.
7 I got stabbed"?
8 A. Yes.
9 Q. And then, when the police came up, you took a
10 pretty forceful role, right?
11 A. Yeah, I told -- I asked them, "Can you get
12 them an ambulance? Can you get them an ambulance?"
13 Especially Duff because he had medical issues. So I was
14 trying to get him -- get them to get him into the
15 ambulance.
16 Q. Then they got the ambulance, the ambulance
17 came and took Mr. Minter away?
18 A. Yes.
19 Q. And Ms. Minter?
20 A. Yes.
21 Q. They went to the hospital?
22 A. Yes.
23 Q. And did you go?
24 A. No.
25 Q. Did your wife -- or your fiancée?

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1 to be?
2 A. I didn't -- I didn't ask questions about that.
3 I don't get into their personal business.
4 Q. Why not? You're family?
5 A. Family. I just don't get into people's
6 business like that.
7 Q. So, now, may I assume that you did not see
8 Sean Dean leave the area that night of December 8?
9 A. I didn't see him?
10 Q. Leave the area?
11 A. When I came back outside, he wasn't there, no.
12 Q. Okay. So my question is, did you see him
13 leave?
14 A. No.
15 Q. How long after you came back out, I assume,
16 with your loaded weapon, did it take for the police to
17 arrive?
18 A. I would say three to five minutes.
19 Q. Excuse me?
20 A. Three to five minutes.
21 Q. And it was during that period of time when you
22 had a conversation, or at least had an opportunity for a
23 conversation, with Denise and/or Mr. Minter about what had
24 preceded the stabbing?
25 A. Conversation?

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1 A. No.
2 Q. You both stayed there?
3 A. We stayed in our home.
4 Q. Okay. And was there a reason you didn't
5 accompany them to the hospital to find out what was going
6 to happen?
7 A. Because I wanted to accompany my children.
8 Q. I'm sorry?
9 A. Because of my children were at home.
10 Q. So both you and your fiancée stayed home?
11 A. Yes.
12 Q. Okay. When is the next time that you talked
13 to your father-in-law, or your putative father-in-law?
14 A. After he got out of the hospital.
15 Q. Two days later?
16 A. Yes.
17 Q. What was that conversation about?
18 A. Just talking about his wounds and how he was
19 feeling. And he was talking about his health and his
20 medication he had to take, stuff like that.
21 Q. And when did you learn the ins and outs of
22 what had happened?
23 A. Ins and outs? What do you mean by that?
24 Q. What the fight was about.
25 A. I didn't. I didn't ask.

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1 Q. That wasn't the question. The question is,
2 when did you learn about it?
3 A. About the ins and outs?
4 Q. About the fight, what had preceded it, what it
5 was all about.
6 A. Probably like three months later.
7 Q. Three months?
8 A. After we had the first hearing. We didn't
9 really talk because we were -- I didn't want any part of
10 that with my family. I didn't want to be around them at
11 all.
12 Q. Okay. Did Mr. Minter ever mention to you it
13 might be a good thing for all concerned if Mr. Dean went to
14 jail?
15 A. What do you mean by that? I'm sorry.
16 Q. Did Mr. Minter ever mention to you that all
17 things -- all things considered, it would be better for
18 everybody concerned if Mr. Dean went to jail?
19 A. Like going -- like -- I'm sorry, can you
20 please rephrase that?
21 Q. I don't think I can make it any clearer. Did
22 Mr. Minter ever talk to you about the fact that everybody
23 would be better off -- everybody, the Minters, you,
24 everybody -- if Mr. Dean went to jail?
25 A. Yes.

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1 Q. When did he tell that you?
2 A. He told -- after he got out of the hospital.
3 Because we were all --
4 Q. I'm sorry?
5 A. He talked about that after he got out of the
6 hospital.
7 Q. And before he got out of the hospital,
8 actually before December 8, you knew that was his opinion,
9 right?
10 A. His opinion on him going to jail?
11 Q. It's good to get Mr. Dean out of the picture?
12 A. No, not about that. No. Because he was
13 violent. We were afraid.
14 Q. So it must be a good thing to have him in jail
15 if he is violent and you are afraid of him?
16 A. Yeah, now. We're scared of him now.
17 Q. Excuse me?
18 A. My family is scared of him now.
19 Q. And Mr. Minter was -- found cause to be scared
20 of him before the December 8 incident?
21 A. Before? Are you talking about Mr. Minter?
22 Q. Yeah.
23 A. Being afraid of him? I didn't ask him that.
24 My family, my immediate family is scared of him.
25 Q. You talked to Denise before December 8 about

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1 Mr. Dean?
2 A. Yeah.
3 Q. What did she have to say with respect to her
4 relationship with Mr. Dean?
5 A. That she was scared of him.
6 Q. Okay. And so you took it into your head that
7 everybody is scared, everybody in my family is scared of
8 Mr. Dean?
9 A. (Nods head)
10 Q. Right?
11 A. Yeah.
12 Q. And so you had a pretty fair to middling
13 incentive to make sure that Mr. Dean was the person who
14 stabbed Mr. Minter, right?
15 A. What do you mean by that?
16 Q. What I mean is that you're intending, by your
17 testimony and by your statement, to help Mr. Minter and
18 Mrs. Minter? Your family?
19 A. No. I -- my testimony is due to what I seen.
20 Q. I'm sorry?
21 A. To what happened.
22 Q. You're absolutely sure that Mrs. Minter did
23 not know she was stabbed until after Mr. Dean left?
24 A. Yeah, she was like, "oh God, I have a stab
25 wound," when I walked up to her. She didn't even know she

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1 was stabbed.
2 Q. All right. Is there any explanation for her
3 yelling the fact that -- repeatedly that, "Sean, stop
4 stabbing me," during this altercation?
5 A. I'm not sure. What do you mean by that? I'm
6 getting confused.
7 Q. Assuming there were a witness that says that's
8 what she was yelling, is there any reason that you can
9 think of for her yelling that?
10 A. She was yelling?
11 Q. Yelling, "Sean, stop stabbing me."
12 A. I was inside. I don't --
13 Q. I'm sorry?
14 A. Are you talking about when I was outside?
15 Q. I'm talking about --
16 A. I'm sorry, I'm getting confused.
17 Q. If Denise Minter did not know she had been
18 stabbed because you were there and saw her discover it, is
19 there any reason for her, that you know of, to be yelling
20 before she discovered she was stabbed, "Sean, stop stabbing
21 me"?
22 A. No.
23 Q. There is no reason?
24 A. No. I didn't hear her say that.
25 Q. Really?

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1 A. No. I was inside. I came outside, and I was
2 like, "Oh my gosh, you have a stab wound on your chest." I
3 don't know what you are saying, I'm sorry. I don't
4 understand.

5 Q. That's fine. I gather that Mr. Dean took one
6 swipe at Mr. Minter that missed you by just a couple
7 inches?

8 A. Yeah.

9 Q. Can you tell the jury how that came to pass?

10 A. How it happened?

11 Q. Yeah?

12 A. He took the first stab at the lower end. And
13 it happened really fast. And I --

14 Q. Let's just stop with the first stab. What are
15 you talking about? What did he do?

16 A. Oh, he went like this (indicating) and stabbed
17 him in the side.

18 Q. In the side?

19 A. Yeah, his left side.

20 Q. Up here in the side?

21 A. Yeah. Duff got stabbed by Sean in the left
22 side.

23 Q. All right.

24 A. Lower hip.

25 Q. Where you pointing?

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1 were showing us before, you had it going up, like that.

2 (indicating)

3 A. Yeah. He was trying to protect himself from
4 getting stabbed. I can lift my arm a lot higher than his.
5 I'm just demonstrating, trying to show what he was trying
6 to do.

7 Q. While this is going on, what is Denise saying?

8 A. I don't know. It happened really fast, so I
9 don't know what anybody was saying.

10 Q. Was she screaming?

11 A. I don't know. At that point, by the second
12 stab, I ran inside.

13 MR. WOODBURY: That's all I have got.

14 THE COURT: Redirect?

15 REDIRECT EXAMINATION

16 BY MR. MILLS:

17 Q. Mr. Schenk, just to clarify and follow up on
18 what Mr. Woodbury was just asking you. If you could just
19 make that motion again. And as far as your recollection
20 goes, about how high could he lift his arm, as you were
21 motioning?

22 A. How high? He was moving like this, to block
23 the knife. (indicating)

24 Q. That's about as high as he could lift it?

25 A. Yes, he couldn't really move at all, so --

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1 A. To my hip.

2 Q. To your hip?

3 A. Yeah, that's where he got stabbed. Which is
4 on my right side. So then the second stab came and almost
5 swiped my arm.

6 Q. And swiped your right arm?

7 A. Almost. It didn't hit me. That's when I ran
8 inside.

9 Q. Where did that stab hit?

10 A. That hit right above in his rib area.

11 Q. Really? What was Duff's left arm doing at
12 that time?

13 A. Doing this, (indicating) Because that is all I
14 saw. I saw the first stab, then he went like this,
15 (indicating) Second stab. Then I ran inside.

16 Q. Duff lifted his arm up to accommodate the stab
17 wound, or what?

18 A. I don't know. I don't know. Just what I saw,
19 that's all.

20 Q. And the fact that Duff said he couldn't lift
21 his arm like that, that would have no meaning, because in
22 truth he did, right?

23 A. He couldn't lift it that high, he was just
24 trying to protect himself.

25 Q. You have changed quite a bit there. When you

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1 because he is disabled.

2 MR. MILLS: I am not quite sure how to describe
3 that for the record, Your Honor. May the record reflect
4 that the witness is lifting his left elbow up a few inches.

5 THE WITNESS: Yes.

6 THE COURT: Well, you asked him a question, so --
7 and he gave you an answer. I don't think I will
8 characterize it any more than that.

9 MR. MILLS: Sure. And he was just making
10 nonverbal motions with his body that I was trying to
11 describe and preserve the record.

12 THE COURT: Sure. I think you have brought out
13 evidence regarding that. Jury can weigh it and consider
14 it.

15 Q. (By Mr. Mills) Now, one of the last things you
16 said is that you came out and you said, quote, "I was like,
17 'Oh my gosh, there is a stab wound on your chest.'"

18 So were you describing the point in time that
19 you became aware of the fact --

20 A. Yes.

21 Q. -- she had been stabbed?

22 A. Yes.

23 Q. Do you personally know at which point in time
24 she became aware of that fact?

25 A. No, I wasn't aware of when she found out. I

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1 was aware of when I came outside and saw her chest.
 2 Q. Okay. Mr. Woodbury was asking you if Bert had
 3 ever mentioned to you that it might be a good idea to get
 4 Dean arrested or get him out of the picture.
 5 A. And I believe you answered in the affirmative,
 6 but that that was after the attack at the hospital?
 7 A. After the attack.
 8 Q. Had he made any similar statements before the
 9 attack --
 10 A. No.
 11 Q. -- on December 8?
 12 A. No.
 13 Q. Mr. Woodbury asked you about your statement,
 14 and you confirmed that that was, in fact, the statement you
 15 wrote on that evening. Is that correct?
 16 A. Yes, that is correct.
 17 Q. And he asked you, for example, why you didn't
 18 mention that Bert was mumbling. And you confirmed that you
 19 had not written that in the statement; is that correct?
 20 A. Yeah.
 21 Q. Now, did you write every single fact and
 22 detail of the incident in that statement?
 23 A. No.
 24 Q. Why didn't you include every single fact and
 25 detail that you could remember in that statement?

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1 A. I just wasn't aware that I needed to. Also,
 2 it was 45 minutes after the attack, so I wasn't really
 3 comprehending everything at that time.
 4 MR. MILLS: Thank you, Mr. Schenk. That's all
 5 the questions I have.
 6 THE COURT: Any recross?
 7 MR. WOODBURY: Thank you.
 8 RECROSS-EXAMINATION
 9 BY MR. WOODBURY:
 10 Q. Do you remember testifying at the preliminary
 11 examination you spent a lot of time with Duff Minter?
 12 A. A what?
 13 Q. A lot of time.
 14 A. Yeah. Before that. Before we moved down
 15 here, we spent a lot of time together.
 16 Q. Do you recall testifying at the preliminary
 17 examination that you knew about the ill feelings between
 18 Mr. Minter and Mr. Dean because they were just arguing and
 19 them talking to each other all the time?
 20 A. What was that? Sorry.
 21 Q. You said at preliminary examination, "because
 22 I guess there was some sort of drawn out beef between
 23 them"?
 24 A. Yeah.
 25 Q. Do you remember saying that?

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1 A. Yes.
 2 Q. All right. You have had this preliminary
 3 hearing transcript to go over a dozen times, right?
 4 A. Right.
 5 Q. All right. And then I asked you, "where did
 6 you learn that?" And you said, "Just arguments and then
 7 talking to each other all the time."
 8 You were under the impression they were
 9 talking to each other all the time?
 10 A. Yeah. Between him and Denise, them talking to
 11 each other.
 12 Q. Do you think that you weren't talking about
 13 Mr. Minter and Mr. Dean talking to each other all the time?
 14 A. I'm not sure.
 15 Q. Do you remember saying that after you said
 16 that you guys talk all the time, that you then came back
 17 and said, "I just talk to him here and there and when I see
 18 him."
 19 Now you're talking about talking to Mr.
 20 Minter?
 21 A. Am I -- am I talking about Mr. Minter?
 22 Q. Yeah. You don't -- at one point you're saying
 23 you talk to him all the time, and at another point you're
 24 saying, I just talk to him here and there and now and then?
 25 A. Yeah, it's off and on. It's not all the time.

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1 Sometimes we have talked more than other times. I haven't
 2 seen him in the last three months or talked to him.
 3 MR. WOODBURY: I don't have anything right at the
 4 moment in addition.
 5 THE COURT: Any jury questions for Mr. Schenk?
 6 Is Mr. Schenk held subject to recall?
 7 MR. MILLS: Yes, Your Honor.
 8 MR. WOODBURY: Yes.
 9 THE COURT: The rule of exclusion is invoked, Mr.
 10 Schenk. I like to explain this to the witnesses.
 11 Don't discuss the case or your testimony with
 12 other witnesses, or any anybody else for that matter, while
 13 the trial is going on.
 14 This trial is probably going to go on until
 15 Tuesday of next week.
 16 There is an exception to that. You can discuss
 17 it with Mr. Mills or Mr. Woodbury. If you do that, make
 18 sure no one else is around.
 19 THE WITNESS: Okay.
 20 THE COURT: Thank you, Mr. Schenk. And I assume
 21 Mr. Mills has your phone number.
 22 May he be released for today at least?
 23 MR. MILLS: Yes.
 24 THE COURT: He can go about his business today?
 25 MR. MILLS: Yes, Your Honor.

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1 THE COURT: And he is local, so he can be called
2 back, if need be.
3 Thank you, sir.
4 Ladies and gentlemen, we'll go into recess. I
5 would like you back in the jury room at 1:20 so we can fire
6 up again at 1:30.
7 Please do not converse amongst yourselves or with
8 anyone else on any subject connected with the trial. Do
9 not read, watch or listen to any report or commentary on
10 the trial or any person connected with the trial by any
11 medium of information, including, without limitation,
12 newspapers, television, radio or the Internet.
13 And do not form or express any opinion on any
14 subject connected with the trial until the cause is finally
15 submitted to you.
16 You may not use any electronic device or media,
17 such as the telephone, a cell phone, smartphone, iPhone,
18 BlackBerry or computer, the internet, any internet service,
19 any text or instant messaging service, any internet chat
20 room, blog, or website such as Facebook, MySpace,
21 LinkinDin, YouTube or Twitter, to communicate to anyone any
22 information about this case until I accept your verdict.
23 In other words, you cannot talk to anyone on the
24 phone, correspond with anyone, or electronically
25 communicate with anyone about this case.

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1 And we'll be in recess. We'll start up again at
2 1:30 p.m. We'll have the jury back in the jury room at
3 1:20. Thank you.
4 (WHEREUPON, the noon recess was taken)
5 THE COURT: We're back on the record for case
6 CR-FP-2015-1508. Again, State versus Dean.
7 Mr. Dean is back in court with Counsel, Gary
8 Woodbury.
9 And we have Mark Mills, Deputy District Attorney,
10 back for the State.
11 Counsel will stipulate to the full presence of
12 the jury and the alternates?
13 MR. MILLS: Yes, Your Honor.
14 THE COURT: Very good. Next witness, please.
15 MR. MILLS: The State calls Christina Hodges.
16 THE COURT: Please raise your right hand and be
17 sworn.
18 (WHEREUPON, the witness was sworn.)
19 THE COURT: Have a seat at the witness stand,
20 please.
21 Thank you.
22 All right. Now, another young lady came into the
23 court. She is not a witness, correct?
24 MR. MILLS: Nope.
25 THE BAILIFF: She said she was not.

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1 MR. MILLS: She is not.
2 THE COURT: Good enough. It is a public
3 proceeding. She can be in here as long as she is not a
4 witness.
5 Mr. Mills, go ahead.
6 CHRISTINA HODGES,
7 called as a witness in said case, having been
8 first duly sworn, testified as follows:
9 DIRECT EXAMINATION
10 BY MR. MILLS:
11 Q. Ms. Hodges, could you please state and spell
12 your full name for the record.
13 A. It's going to be Christina Hodges. It's going
14 to be C-h-r-i-s-t-i-n-a, H-o-d-g-e-s.
15 Q. Ms. Hodges, where were you living back on
16 December 8, 2015?
17 A. I was living at 701 South Fifth Street,
18 Number 7.
19 Q. Okay.
20 MR. MILLS: Permission to approach, Your
21 Honor?
22 THE COURT: Of course.
23 Q. (By Mr. Mills) Ms. Hodges, I'm going to show
24 you what has been marked as State's Exhibit 45B.
25 Do you recognize what I am showing you?

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1 A. Yes, I do.
2 Q. What are you looking at here?
3 A. You're looking at an area of about where I
4 live.
5 Q. Okay. Where is Fifth Street on this map?
6 A. Fifth Street is right here.
7 Q. Okay. Where were you living on this map?
8 A. Right where all these trees are.
9 Q. Okay. I'm going to come back to this in a few
10 minutes.
11 I want to direct your attention specifically
12 to just after eight o'clock in the evening on December 8,
13 2015. Where were you at that time?
14 A. I was in what used to be my bedroom. I was
15 getting ready for work.
16 Q. And did something happen at that time that
17 caught your attention?
18 A. I believe I heard screaming.
19 Q. Could you tell the jury about that?
20 A. I was getting ready for work, and I was
21 listening to music. And I listen to music very loud.
22 The music went down, and I believed I heard
23 screaming. So I kind of stopped my music for a second.
24 And I thought it might have been my neighbors watching a
25 scary movie or something because they have a ridiculous

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1 surround sound.
2 It kind of went on, kept going. I stepped out
3 of my room, went into the living room, went outside to the
4 porch, waited for a second, listened. It wasn't my
5 neighbors. As soon as I could get outside, I could tell it
6 wasn't them.

7 I kind of let cars go by, and I found out the
8 screaming was across the street

9 Q. Let me just follow up on that.

10 So when you initially heard the screaming, you
11 were inside the bedroom?

12 A. Yes, sir.

13 Q. Sounds like there was kind a lull in the music
14 when you heard the screaming?

15 A. When I first heard it, it sounded like
16 mumbling, a TV of sorts. That's why I stopped the music to
17 listen.

18 Q. Okay. So when you were inside your bedroom
19 and you first heard the screaming, at that point in time
20 could you make out what was being said?

21 A. All I could hear was "Stop" at that point.

22 Q. Then after you went outside, could you
23 continue to hear the screaming?

24 A. Yes.

25 Q. And what -- first of all, was it a male or a

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1 A. Right, wrestling.

2 Q. Wrestling, I'm sorry, wrestling and moving?

3 A. Yes.

4 Q. Where did you see that taking place at?

5 A. Across the street, into the trailer park.

6 Q. Okay. So on this map, if you could -- let me
7 just ask you this: Is the trailer where you were living,
8 is it visible in this picture?

9 A. Kind of. It's in the trees right here.

10 Q. Kind of underneath those trees there?

11 A. Yeah. It's in the trees, and I came out.

12 It's in this general area where all the trees are.

13 Q. Why don't you put a red X kind of out on the
14 street right -- it would be directly where your trailer
15 was. You can actually write on there, if you want.

16 A. It would be right about here, is where my
17 house is, or my old trailer was. That is about it right
18 there.

19 Q. Okay. Thank you.

20 So you came out of your house, and then you
21 went down --

22 A. In front of this neighbor's house right here,
23 you can actually see that truck right there.

24 Q. Okay. And then the wrestling and the movement
25 that you saw, why don't you draw a green X -- a green X

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1 female's voice or both, or what could you tell us about
2 that?

3 A. It was a female's voice screaming.

4 Q. And was it just general screaming or was she
5 screaming words?

6 A. She was saying, "Stop it. He is hurting me.
7 Sean, stop hurting me." Generally mixed and mumbled things
8 was what I could hear.

9 Q. Was the word "stabbed" ever used?

10 A. Yes.

11 Q. How so?

12 A. After a few cars went by and I could actually
13 hear, I heard, "He's stabbing me. You're hurting me. Stop
14 stabbing me."

15 Q. And where were you exactly as you heard this?

16 A. I was on my porch, walking off it.

17 Q. Okay. And when you walked off the porch,
18 where did you go?

19 A. A little in front of my neighbor's house, who
20 lives directly across the street.

21 Q. What happened then?

22 A. I could see wrestling, moving. I still heard
23 yelling, but there was cars going by again.

24 Q. And did you say you could see some rustling
25 and moving?

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1 kind of in the vicinity of where you saw the wrestling and
2 movement going on.

3 A. In this general vicinity.

4 Q. So you were looking down this street?

5 A. Yep.

6 Q. Okay. Thank you.
7 What did you do at that point?

8 A. When I came outside?

9 Q. Yeah. After you came outside and looked down
10 the street and saw the wrestling and movement, what did you
11 do?

12 A. I was on the phone with 911.

13 Q. At which point in time did you call 911?

14 A. About when I first heard the screaming or -- a
15 little bit after I was outside.

16 Q. Did you take your phone outside with you or
17 did you go back inside for the phone?

18 A. I went back inside for it.

19 Q. And then when you called 911, were you inside
20 your residence or outside?

21 A. I was dialing 911 as I walked outside, and
22 then I was on the phone outside with them.

23 Q. And what did you -- what did you report in the
24 911 call?

25 A. I reported that I heard a woman being stabbed.

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1 And she asked me how I knew that, and I told her that she
 2 was screaming it.
 3 Q. And at the time you were describing this to
 4 the 911 dispatcher, was -- were you describing something
 5 that you were either seeing or had just barely seen and
 6 heard?
 7 A. I was describing what I was hearing to her,
 8 yes.
 9 Q. What you were hearing at the time that you
 10 were on the phone talking to her?
 11 A. Yes, sir.
 12 Q. Have you had a chance to listen to that --
 13 that portion of the 911 call that has you telling the
 14 dispatcher these things?
 15 A. Yes, I did.
 16 Q. In fact, did you listen to that yesterday?
 17 A. Yes, sir.
 18 Q. Was that your voice on there?
 19 A. That was my voice.
 20 Q. That was the brief conversation you had with
 21 the 911 dispatcher?
 22 A. Yes, sir.
 23 Q. Okay.
 24 MR. MILLS: Your Honor, I'm going to offer
 25 into evidence State's Number 58, which is the recording of

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1 her conversation with the dispatcher.
 2 THE COURT: Any objection?
 3 MR. WOODBURY: No.
 4 THE COURT: 58 is admitted.
 5 (WHEREUPON State's Exhibit 58 was admitted into
 6 evidence.)
 7 MR. MILLS: Permission to publish that to the
 8 jury at this time?
 9 THE COURT: You mean you want to play it?
 10 MR. MILLS: That's correct.
 11 THE COURT: So play it.
 12 Got a couple speakers then, Mr. Mills?
 13 MR. MILLS: I do, Your Honor.
 14 THE COURT: All right. Then, not that she can
 15 really do this anyway, but the parties understand, I mean,
 16 the court reporter is not going to take down contents of
 17 the recording. It will have to speak for itself.
 18 MR. MILLS: That's fine with the State, Your
 19 Honor.
 20 THE COURT: Okay.
 21 MR. WOODBURY: That's fine.
 22 THE COURT: Mr. Woodbury understands.
 23 Okay. Thank you.
 24 (Pause.)
 25 THE COURT: How long is it, please?

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1 MR. MILLS: One minute.
 2 (WHEREUPON the recording was played.)
 3 Q. (BY MR. MILLS) Ms. Hodges, that was the
 4 conversation you had with the 911 dispatcher?
 5 A. Yes, it was.
 6 Q. What happened next after you made that phone
 7 call?
 8 A. I started seeing wrestling movement still and
 9 then someone started running towards me, so I ran and hid
 10 behind one of my cars, and I kind of just sat there for a
 11 moment.
 12 And then my mother-in-law, Marggie Ayers, came
 13 out of the car -- out of her car, and told me that somebody
 14 ran across the street. I kind of poked my head out, and
 15 then I heard a door slam.
 16 And then literally a moment later, a patrol
 17 officer came up.
 18 Q. So this person, you saw a person running?
 19 A. Yes.
 20 Q. Where was the person running at?
 21 A. He was running down the road, like towards me
 22 and coming towards the trailer park, towards Fifth Street.
 23 Q. I'm showing you again what has been marked
 24 State's 45B. When you say he was running down the road,
 25 could you point that out for the jury? Which road you are

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1 talking about?
 2 A. This road right here. He was coming down this
 3 road. And I was standing a little bit over here, and I
 4 could see him running towards town, so I just kind of went
 5 and hid behind my car.
 6 Q. Then where did he go from there?
 7 A. He went to the trailers, between the trailers,
 8 and then I heard a door slam.
 9 Q. Did you see him heading across Fifth Street?
 10 A. Yes, sir.
 11 Q. And saw him running between the trailers?
 12 A. Yes, sir.
 13 Q. How long after the point in time that he ran
 14 in between the trailers did you hear that door slam?
 15 A. Not even 15 seconds after he ran into the
 16 trailer park.
 17 Q. And just what was the general vicinity where
 18 you heard the door slam come from? Where was that?
 19 A. I wouldn't say it was my -- right next door to
 20 me, but it was one house over.
 21 Q. In which direction next door on the map, if
 22 you could?
 23 A. It would be -- so this would be my trailer.
 24 Not this house, but it would be this trailer right here.
 25 Q. Okay. Could you write your initials at the

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1 bottom of this?

2 MR. MILLS: The State's going to offer

3 State's 45B into evidence at this time.

4 THE COURT: 45B.

5 MR. WOODBURY: No objection.

6 THE COURT: 45B is admitted.

7 (WHEREUPON State's Exhibit 45B was admitted into
8 evidence.)

9 Q. (BY MR. MILLS) What happened after that?

10 A. After the door slammed?

11 Q. That's correct.

12 A. I would say about two minutes later, a police
13 cruiser pulled up, and I ran up to him and I said, "I
14 believe somebody went in there from the fight that was
15 going on over there."

16 And he had me stand by my house, then a bunch
17 of other police cruisers came, and they went over there,
18 and an ambulance came and went to the other side of the
19 road.

20 Q. Did you fill out a witness statement at one
21 point?

22 A. Yes, sir, I did.

23 Q. Did you have any other involvement in the case
24 after that, that evening?

25 A. One more time? I'm sorry.

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1 MR. WOODBURY: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. WOODBURY:

4 Q. What time were you supposed to go to work that
5 night?

6 A. At ten o'clock.

7 Q. And I gather you were getting ready for work?

8 A. Yes, sir.

9 Q. What were you doing?

10 A. At that point I was putting makeup on.

11 Q. In your room?

12 A. Yes, sir.

13 Q. And can you describe the characteristics of
14 the trailer that you lived in at that time?

15 A. As soon as you walk in through the door, on
16 the left side is the living room, on the right is the
17 kitchen. You go through the living room, down the hall;
18 the first door on the left is where my bedroom was. You
19 can continue to go down the hall, then there is a bathroom
20 on the left. And straight down the hall is my mother's
21 bedroom.

22 Q. Did you have the window open?

23 A. Yes. My window is always open.

24 Q. Okay. And the first thing that came to your
25 attention was what?

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1 Q. Did you have any other involvement in the case
2 after that, that evening? Did you see or do anything else
3 that pertains to the case?

4 A. Oh, no. No.

5 Q. At that point in time, back on December 8, did
6 you know a person by the name of Bert or Duff Minter?

7 A. No, sir.

8 Q. Did you know a person by the name of Denise
9 Minter?

10 A. No, sir.

11 Q. At that point in time did you know a person by
12 the name of Sean Dean?

13 A. At that point in time, yes, in December.

14 Q. Okay. Did you get -- how good a look did you
15 get of the person who -- that you saw running?

16 A. I got his structure.

17 Q. Did you ever see his face or anything like
18 that?

19 A. No. I didn't see his face.

20 Q. So nothing distinctive enough to make an
21 identification?

22 A. No.

23 MR. MILLS: Thank you. That's all the questions
24 I have. I will pass the witness.

25 THE COURT: Cross-examination.

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1 A. Screaming.

2 Q. Did you associate words with that screaming?

3 A. Not at that moment.

4 Q. You just heard a loud female voice without any
5 defined words?

6 A. At that moment I just heard a loud female
7 voice, it -- she was saying words, but they were mumbled at
8 that point.

9 Q. And it took a second or some time for you
10 to -- like I gathered that you thought it might be your
11 neighbor's television or something like that?

12 A. Yes.

13 Q. How long did it take you to discern it wasn't
14 your neighbor's television?

15 A. Well, I turned off the music and listened some
16 more, I still heard it, and it took me a moment to go
17 outside. So it was about not even 30 seconds before I went
18 outside and realized it wasn't the neighbor's TV.

19 Q. So it is 30 seconds between the time you hear
20 the scream and the time you go out the front door?

21 A. Yeah.

22 Q. And it was not possible to be any more than
23 that?

24 A. It could have been a little bit, like 45, but
25 nothing --

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1 Q. You weren't keeping track of it in any way?
2 A. No, I wasn't keeping track. I just paused the
3 music and stood up and went outside.
4 Q. I'm sorry?
5 A. I paused the music that I was listening to and
6 then stood up and went outside.
7 Q. And the screaming continued as you paused the
8 music?
9 A. Yes.
10 Q. And when you went outside, where did you go?
11 A. I stood on my porch.
12 Q. And by the time you stood on your porch, the
13 words were clear to you or you could understand what the
14 words were?
15 A. When I stood on the porch, there was cars
16 going -- driving by, so I still couldn't really hear until
17 the street settled down and got quiet.
18 Q. How many cars drove by?
19 A. I want to say about four or five.
20 Q. And could you -- did you have a sense of where
21 the screams were coming from?
22 A. Once I stood on my porch and I could actually
23 hear, I could hear them coming out of my left ear.
24 Q. And that had some meaning to you in terms of
25 where the voices -- voice was coming from?

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1 A. Yes. From the left, across the street.
2 Q. And that would be up where you have pointed
3 out on that State's Exhibit 45 --
4 A. Yes, sir.
5 Q. -- B, I guess?
6 A. Yes, sir.
7 Q. All right. And after you heard the screams as
8 you were standing on the porch, could you identify words?
9 A. I could hear, "Stop. You're hurting me. Stop
10 stabbing me. Sean, stop." A bunch of words were being
11 said.
12 Q. And the stabbing words were repeated on a
13 couple, three occasions, right?
14 A. Yes, they were.
15 Q. Perhaps more than three occasions?
16 A. More than that.
17 Q. I will impose on your time again and ask you
18 how long between the time that you heard, "Sean, you're
19 stabbing me," and this guy running down the street? How
20 much time passed?
21 A. About two minutes.
22 Q. And is that -- do you feel comfortable with
23 that estimate?
24 A. Not really. I wasn't keeping track of time.
25 It was probably a little bit less.

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1 Q. Then after the cars passed, did you move off
2 the porch?
3 A. Yes.
4 Q. Where did you go?
5 A. I stepped down off my front porch and stood in
6 my neighbor's parking spot.
7 Q. I'm going to impose on you again. I didn't
8 get to see where your neighbor's parking spot was, so I'm
9 going to show you, I think, State's Exhibit 45, 45B.
10 All right. Showing you State's Exhibit 45B,
11 where is your neighbor's parking spot?
12 A. My trailer -- it would be this trailer right
13 here, so it's that parking spot right there.
14 Q. Okay. It's a little bit to the right of the X
15 that you have written there, or is it the X?
16 A. Yeah. This is my -- my X is -- the X right
17 here is my house and this is his spot right here.
18 Q. Ah, okay.
19 And you looked up where you sensed the yelling
20 coming from?
21 A. Yes, sir.
22 Q. What was going on up there?
23 A. When I finally got down off the porch and went
24 into his -- my neighbor's parking spot, I could see people
25 wrestling around. It looked like people trying to stop a

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1 fight. I heard, "You're hurting me," still.
2 And then after a brief moment of standing
3 there, I want to say about 20 seconds or so, I saw somebody
4 start to run towards me. I'm not sure if they heard me or
5 saw me looking over there and seeing what was going on, so
6 that's when I ran behind a car, my car.
7 Q. All right. So when you say you saw people
8 wrestling around and trying to stop a fight, can you
9 describe what it was actually you saw, how many people?
10 A. I saw about three or four people, and it was
11 night, so I just saw a bunch of wrestling around that
12 looked like they were fighting.
13 Q. And some were on the ground, some were
14 standing up, or what?
15 A. From what I briefly saw, it looked like one
16 person was trying to get somebody off somebody else, and
17 then a whole bunch of other people were trying to help.
18 Q. That one person was down and other person was
19 on top of the person, sort of?
20 A. Yes. Yes.
21 Q. And there was activity going on?
22 A. Yes.
23 Q. And could you describe any other thing that
24 was going on with more particularity?
25 A. Like I said, I was only standing there for a

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1 brief moment. And I just mostly saw like people trying to
2 stop a fight.
3 Q. A brief moment being 10 seconds?
4 A. About 10, 15 seconds, standing there.
5 Q. And then you saw this other person start to
6 run towards you?
7 A. It was --
8 Q. Saw a person?
9 A. I saw a person. The fight broke up and then I
10 saw a person run towards this way, towards me.
11 Q. May I assume, then, you didn't see a fight
12 between two males or two men, two guys or two people, in
13 which both of them were standing up?
14 A. Like I said, I saw people, what looked like
15 three or four people wrestling to break up a fight.
16 Q. Right. But you also described one guy being
17 down on the ground, one person being down on the ground,
18 another person over top of him or her.
19 And then now my question is: You didn't see
20 anybody standing up, two people standing up, having a
21 fight?
22 A. Not that I saw.
23 Q. Now, I assume that you were more or less
24 frightened?
25 A. I was terrified.

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1 Q. All right. And you had at some point to go in
2 and get your cell phone?
3 A. Yes, but I was -- when I first stood on the
4 porch and I heard the screaming is when I turned around,
5 went back in my room, grabbed my phone, then came out.
6 Q. Ah.
7 A. And as I was walking out of my house, that was
8 when I was on the phone with 911, by the time I got outside
9 and was standing in front of the trailer, that's when I was
10 on the phone with them.
11 Q. Okay. Just to make it clear to me, you were
12 on the phone while you were standing in your neighbor's --
13 A. Yes.
14 Q. -- lot and looking up there?
15 A. Yes.
16 Q. Then you identified somebody by structure, I
17 think you said, running down toward you?
18 A. Yes.
19 Q. And was the person really running hard or --
20 A. Not running for their life, but running to get
21 away.
22 Q. Well, you don't know what he was doing, right?
23 Sometimes you run fast; sometimes you run less fast. Which
24 was the person doing?
25 A. I'm going to say sprinting, then.

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1 Q. Excuse me?
2 A. I'm sorry. I want to say sprinting.
3 Q. All right. And I take it because you were
4 terrified, you then ducked behind a car?
5 A. Yes, sir.
6 Q. Where was that car at?
7 A. It was parked in front of my house, my car.
8 Q. It was your car?
9 A. Yes, sir.
10 Q. Oh, okay. And all you had to do was walk
11 forward a little bit?
12 A. Not walk forward, but I turned to the left and
13 went back towards my house.
14 Q. Oh, okay. All right.
15 A. Yes.
16 Q. And you kept your eye on this person that was
17 running?
18 A. For a brief moment before I turned around and
19 kind of ducked, I saw him come across Fifth Street, then I
20 ducked. And then I heard -- I went up to my window a
21 little bit, saw him through my windows, and he went into
22 the trailer park.
23 Q. And when the officers came, you described with
24 particularity where he went?
25 I assume it was a male? You knew it was a

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1 male?
2 A. Yes.
3 Q. I assume that you described to the officers
4 with particularity what two trailers he went between and
5 where you thought the -- where you heard the door slam and
6 so on?
7 A. Yes, sir, I did.
8 Q. Okay. And may we assume, since you didn't
9 write it in your statement, you didn't see that person
10 running throw anything?
11 A. No, I did not.
12 Q. And did you have occasion later that evening
13 to walk around a little bit after the police --
14 A. They were there until about 9:30 and I was
15 still going to go to work.
16 MR. WOODBURY: All right. Thank you.
17 I don't think we have any further questions.
18 THE COURT: Any redirect?
19 REDIRECT EXAMINATION
20 BY MR. MILLS:
21 Q. Ms. Hodges, this wrestling and moving and
22 possible fighting that you saw, how much of that did you
23 have a chance to see, if you had to just estimate the
24 number of seconds that you actually looked down there and
25 saw what was going on?

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1 A. 15, 20 seconds, I stood in front of my
2 neighbor's and saw movement.
3 Q. And do you know how many different distinct
4 figures you saw during the course of those 15 or 20
5 seconds?
6 A. Three or four. It was dark.
7 Q. Down that street, were there -- well, first of
8 all, this was December 8, correct?
9 A. Yes, sir.
10 Q. It was middle of -- in the wintertime?
11 A. Yes, it was.
12 Q. Was it dark out already?
13 A. Oh, yes.
14 Q. There wasn't much natural light?
15 A. There was no light at all. It was eight
16 o'clock at night.
17 Q. And was there artificial lighting by way of
18 either street lamps or porch lights or anything like that
19 down that street?
20 A. Well, not down where I saw the fighting.
21 There's one street lamp, and it's right at the corner of
22 the street.
23 Q. The person you saw running you were able to
24 distinguish whether it was a male or a female?
25 A. Yes, sir.

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1 Q. You identified him as a male?
2 A. I did, sir.
3 Q. Did you see what kind of clothing he was
4 wearing, generally?
5 A. I saw pants and a shirt, I want to -- I was to
6 say it was a short-sleeved shirt. That was about -- I saw
7 that not when he was down the road, but when he was
8 crossing the road.
9 Q. When you say "crossing the road," do you mean
10 Fifth Street?
11 A. Yes, sir.
12 Q. Is there more lighting there on Fifth Street
13 than there was down the road that he was coming from?
14 A. Did you say "fighting"?
15 Q. Lighting.
16 A. Oh, lighting.
17 Q. More light?
18 A. It was that one street lamp, and it goes on
19 and off as it is. And it is really kind of -- I don't want
20 to say gold-looking, but it gives a little bit of like gold
21 light off.
22 Q. How sure are you about what he was wearing?
23 A. Not sure. I know pants for certain. Pants
24 for certain.
25 Q. Hope so, right? Because it's December.

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1 A. I hope so.
2 Q. Whatever was on the upper part of his body,
3 you are not sure about what he was wearing?
4 A. No, because I -- like I said, I was hiding. I
5 kind of saw a brief -- out of my windows, I saw his pants
6 and -- he ran across the street. I got a good look at his
7 structure, his build. I could say he was taller than me.
8 Q. How tall are you?
9 A. I'm five-two, five-three.
10 MR. MILLS: Thank you. That's all I have.
11 THE COURT: Any recross?
12 MR. WOODBURY: Thank you, Your Honor.
13 RECROSS-EXAMINATION
14 BY MR. WOODBURY:
15 Q. On the issue of the short-sleeved shirt, this
16 is December 8, right?
17 A. Yes, sir.
18 Q. It's cold?
19 A. I wear shorts sometimes in the middle of
20 December.
21 Q. That's why you're only five-foot-two.
22 A. Yes, I am.
23 MR. WOODBURY: Okay. I have nothing further.
24 THE COURT: All right. Any jury questions for
25 the witness?

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1 It appears one, at least.
2 Remember to put your juror number on your
3 question. Okay, sir.
4 (WHEREUPON, the following proceedings were held at the
5 bench:)
6 THE COURT: All right. We're at sidebar.
7 Juror 10 asks, "The witness stated she knew Sean
8 at the time of December 8, 2015. What specific relation
9 did she have with the said defendant? How did she know
10 him?"
11 MR. WOODBURY: We object that would be a prior
12 bad act.
13 THE COURT: Can of worms.
14 MR. MILLS: That is going to elicit a bad act,
15 yeah.
16 THE COURT: You're also objecting.
17 MR. MILLS: I think it's playing with fire.
18 THE COURT: Okay. Yeah, because in my reading of
19 the briefing, on the -- I think it was a motion in limine
20 that was filed, he is alleged to have committed an offense
21 against her at some time prior to December 8.
22 MR. MILLS: That's correct. That is how she
23 knows, I think that is what she'd say, if asked.
24 THE COURT: I think we're courting a mistrial.
25 The Court will sustain the objection. I will

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1 take responsibility for it, of course
 2 (WHEREUPON, the bench conference was concluded.)
 3 THE COURT: Okay. Back on the record. There was
 4 one jury question for the witness. However, under the
 5 Rules of Evidence, I cannot ask this question. So I won't
 6 be asking the question of the witness.
 7 Any other questions for the witness?
 8 Appears not. No other jury questions.
 9 May we excuse Ms. Hodges, or do you want her
 10 retained?
 11 MR. MILLS: I would like her retained subject to
 12 recall.
 13 THE COURT: Okay. The rule of exclusion is
 14 invoked, so don't discuss this case or your testimony with
 15 anybody until the trial is over. The trial is not going to
 16 be over until Tuesday night.
 17 There is an exception to that. You can discuss
 18 it with Mr. Mills or Mr. Woodbury. Okay?
 19 THE WITNESS: Yes, sir.
 20 THE COURT: Anyway, the D.A.'s office will be in
 21 touch if they have to have you come back. You're done for
 22 the day, I think. Have a nice day.
 23 THE WITNESS: Thank you.
 24 THE COURT: Next witness, please.
 25 MR. MILLS: Lindsey Steele.

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1 THE COURT: Ms. Steele, please raise your right
 2 hand. Our clerk will swear you in.
 3 (WHEREUPON, the witness was sworn.)
 4 THE COURT: Please have a seat at the stand.
 5 Door comes out to you. Watch your step.
 6 All right. Mr. Mills.
 7 LINDSEY STEELE,
 8 called as a witness in said case, having been
 9 first duly sworn, testified as follows:
 10 DIRECT EXAMINATION
 11 BY MR. MILLS:
 12 Q. Ms. Steele, could you please state and spell
 13 your name for the record, please.
 14 A. Lindsey Steele. You want me spell it, right?
 15 Q. Yes, please.
 16 A. L-i-n-d-s-e-y, S-t-e-e-l-e.
 17 Q. Ms. Steele, I want to direct your attention
 18 back to December of last year, December of 2015, and
 19 specifically on December 8, where were you living at that
 20 time?
 21 A. 701 South Fifth Street, trailer no. 5.
 22 Q. And who else was living with you at that time?
 23 A. Well, my ex-boyfriend and my son.
 24 Q. Okay. Who is your ex-boyfriend?
 25 A. Clarence Thompson.

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1 Q. And at some point in time after that, have you
 2 and Mr. Thompson separated, it sounds like?
 3 A. Yeah. I live in Wells with my parents.
 4 Q. Okay. Now, on the evening of December 8, did
 5 you and Clarence -- I want to direct your attention to
 6 around eight o'clock at night. Did you come into contact
 7 with Sean Dean?
 8 A. During that time we went to Pizza Hut.
 9 Q. When you say "we," who are you referring to?
 10 A. Well, my son and my ex-boyfriend.
 11 Q. You and Mr. Thompson and your son went to
 12 Pizza Hut?
 13 A. Yeah, um-hmm.
 14 Q. Okay. And about what time was that?
 15 A. I'm guessing like around 8:00. I don't know.
 16 I can't remember.
 17 Q. And after you went to Pizza Hut, did you come
 18 back to your trailer?
 19 A. Yes.
 20 Q. What happened when you got back to your
 21 trailer?
 22 A. We pulled up and we saw Sean walking across
 23 the street, back to our trailer.
 24 Q. Which street was he walking across?
 25 A. Where -- right across the street from our

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1 trailer.
 2 Q. So you are -- you said your address was -- you
 3 stated your address was South Fifth Street; is that
 4 correct?
 5 A. Yes.
 6 Q. So was it Fifth Street that he was walking
 7 across?
 8 A. Here is our trailer, and then just right
 9 across. I don't know the street.
 10 Q. Okay. Did you know Sean Dean at that time?
 11 A. Yeah.
 12 Q. How did you know him?
 13 A. Because my boyfriend -- well, Mr. Thompson.
 14 Q. What is their relationship, Mr. Thompson and
 15 Sean Dean?
 16 A. They are friends.
 17 Q. How long had you been together with -- with
 18 Clarence Thompson at that time?
 19 A. Three years.
 20 Q. And during the course of those three years,
 21 how long had Clarence Thompson been friends with Sean Dean?
 22 A. I don't know.
 23 Q. How long had you known Sean Dean?
 24 A. Three years.
 25 Q. For the full three years?

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1 A. Um-hmm.
2 Q. Okay. So what happened when you saw Sean Dean
3 that evening? What happened next?
4 A. I was getting my son out of the car and they
5 walked inside, and then I walked right behind them and then
6 I went straight to my room.
7 Q. What happened then?
8 A. They were in the back and I was just getting
9 my son's stuff because I had a bad feeling something
10 happened, so I just left. I was going to leave.
11 Q. Did you say you had a bad feeling that
12 something was going to happen?
13 A. Um-hmm. Because the whole -- the whole day,
14 he -- well, he was drinking, so he was kind of upset. So I
15 had a feeling that something happened.
16 Q. When you say "he," who are you referring to?
17 Who was drinking?
18 A. Sean.
19 Q. What led you to believe that he was upset?
20 A. Because of the way he was throughout the day.
21 Q. Was he hanging out at your trailer with you
22 and Clarence that day?
23 A. Um-hmm.
24 Q. What?
25 THE COURT: What?

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1 A. Oh, yes.
2 THE COURT: Okay.
3 A. Yes. Sorry.
4 THE COURT: Sometimes the um-hrms and huh-uhs,
5 that is how we usually talk, but they can sometimes be hard
6 to follow sometimes.
7 A. Sorry about that.
8 THE COURT: It makes it easier for the court
9 reporter if you avoid those.
10 A. Okay.
11 THE COURT: Thank you. I know it's how you
12 usually talk.
13 All right. Mr. Mills.
14 Q. (By Mr. Mills) So what happened then?
15 A. No sooner than that, the cops came to my
16 trailer.
17 Q. And when did you first become aware of the
18 fact that there were cops at your trailer?
19 A. When I was going to leave with my son.
20 Q. So you walked out the door of the trailer with
21 your son?
22 A. Um-hmm. Cops were there already.
23 Q. The cops were already there?
24 A. Um-hmm.
25 Q. What happened then?

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1 A. I went outside and then Clarence came behind
2 me, and then they went in the trailer.
3 Q. And sometime after that did you ever -- did
4 you ever see Sean Dean again?
5 A. No.
6 Q. Did you see them take him out of the trailer?
7 A. Yeah. They took him out of the trailer.
8 Q. So you did see him?
9 A. Um-hmm.
10 Q. How long after they went into the trailer did
11 the cops come out of the trailer with Sean Dean?
12 A. Just a few seconds later, they came out with
13 him.
14 Q. When did you go back into the trailer?
15 A. After they took him out.
16 Q. And when you went back into the trailer, were
17 there police there as well?
18 A. Yeah.
19 Q. Did you find anything that you eventually
20 turned over to the police on that evening?
21 A. There was a knife on the floor in the living
22 room.
23 Q. Where exactly on the floor in the living room
24 was the knife?
25 A. Right next to my couch.

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1 Q. Next to the couch?
2 A. Um-hmm.
3 Q. When did you --
4 THE COURT: "Yes"?
5 A. Oh, yes.
6 MR. MILLS: Thank you.
7 Q. When did you first see the knife?
8 A. Right when I walked in, after we just got to
9 the house from Pizza Hut.
10 Q. So you were aware of the knife there on the
11 floor before the police entered into the house?
12 A. Um-hmm.
13 Q. Did you know where the knife came from?
14 A. No, I don't.
15 Q. What was the order in which you guys went into
16 the house after you got back from Pizza Hut and Sean showed
17 up?
18 A. They both walked in the trailer, then I walked
19 right in after them with my son. Then I went straight to
20 the room. But before I went to the room, I saw the knife
21 right next to the couch.
22 Q. Had the knife been there prior to you going to
23 Pizza Hut?
24 A. No.
25 Q. Was that knife yours?

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1 A. No.
2 Q. Was it Clarence's, to your knowledge?
3 A. I believe not.
4 Q. Had you ever seen it before?
5 A. No.
6 Q. So I guess after the police went in and took
7 Sean out, then you went back into the house, and did you do
8 anything with the knife?
9 A. I gave it to the police.
10 Q. So you bent over and picked it up?
11 A. Um-hmm.
12 Q. And gave it to police officer?
13 A. Well, I had already, and then I handed it to
14 them after I found out what happened.
15 Q. Which part of the knife did you pick it up by?
16 A. Just picked it up. It was like a little --
17 like a little pocket knife.
18 Q. Did you pick it up by the blade or by the
19 handle? Which part of the knife did you pick it up by?
20 A. It was a pocket knife.
21 Q. Which part of the knife did you touch when you
22 picked it up?
23 A. I just picked it up.
24 Q. Did you pick it up by the handle or by the
25 blade?

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1 A. The handle.
2 Q. Okay. Did you ever touch the blade?
3 A. No.
4 Q. Was it cold out that night?
5 A. I don't remember.
6 Q. Do you recall if you were wearing gloves due
7 to the wintertime conditions or anything like that?
8 A. No.
9 Q. You don't recall whether you were wearing
10 gloves or you weren't wearing gloves?
11 A. I was not wearing gloves.
12 Q. You were not wearing gloves. Okay.
13 So after you handed the knife to the police
14 officer, what did you do next?
15 A. I sat on the couch with my son.
16 Q. At any point in time did you see evidence that
17 anyone had been bleeding?
18 A. I did not.
19 Q. Okay. Didn't see any blood on the floor or
20 anything like that?
21 A. After they took him out of the house, I did,
22 when I saw them taking pictures.
23 Q. So you saw the police officers taking pictures
24 of --
25 A. Yeah.

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1 Q. -- something they suspected to be blood on the
2 floor?
3 A. Um-hmm.
4 MR. MILLS: Thank you. That's all I have. I
5 will pass the witness.
6 THE COURT: Cross-examination.
7 MR. WOODBURY: Thank you, Your Honor.
8 CROSS-EXAMINATION
9 BY MR. WOODBURY:
10 Q. Ms. Steele, can you describe the residence
11 that you and Mr. Thompson lived in?
12 A. A trailer.
13 Q. How big was it? Was it doublewide?
14 A. I guess. It was only like two rooms, though.
15 Q. There were only like what?
16 A. There was only two rooms. So I guess
17 doublewide trailer, yeah.
18 Q. Two bedrooms or just two rooms?
19 A. Two bedrooms and a bathroom.
20 Q. Okay. Then there -- when you go into the
21 front door, what room did you walk into?
22 A. The living room.
23 Q. The living room?
24 A. Um-hmm.
25 Q. Okay. And then to get to the bedrooms, you

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1 had to go towards the back?
2 A. Umm, because -- when you walk in, there is a
3 living room, and then you have to walk past the living room
4 to go to our room. Then you have to pass the bathroom to
5 go to the back room.
6 Q. I'm sorry, I didn't follow that too well. The
7 bedrooms aren't next to each other?
8 A. No.
9 Q. One is at one end of the trailer --
10 A. Um-hmm.
11 Q. -- and one is at the other?
12 A. Yes.
13 Q. Correct?
14 A. Yes.
15 Q. Okay. When you walked in the front room of
16 the trailer, this knife that you found was where?
17 A. Umm, right when you walk in, it was on the --
18 the right side, right next to the couch.
19 Q. All right. And where is the couch when you
20 walk in the front door? Look to the right and see the
21 couch?
22 A. Yeah. There was one couch, then I walk, and
23 then there is another couch. It was like right next to --
24 between the couches.
25 Q. Between them?

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1 A. Yeah, like, because the couch is like this, so
2 it's like right here.
3 Q. And the blood that you saw, where was that?
4 A. On the kitchen floor when you walk in.
5 Q. When you walk in, you walk into the front
6 room, and then the kitchen is where?
7 A. Right on the left.
8 Q. All right. The knife is to the right, and the
9 blood --
10 A. Yeah.
11 Q. Blood is to the left?
12 A. Yeah.
13 Q. Okay. And I think that you said essentially
14 that Clarence and Mr. Dean -- is this Mr. Dean, to my
15 immediate left here?
16 A. Yes.
17 Q. All right. That Clarence and Mr. Dean came in
18 first?
19 A. Yeah.
20 Q. All right. This is Clarence's residence?
21 A. Yes.
22 Q. All right. And when they went in, where did
23 they go?
24 A. I believe the back room.
25 Q. All right. Which way do you go to the back

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1 room?
2 A. To the left.
3 Q. Okay. So he didn't go to the right. Mr. Dean
4 didn't go to the right where the knife was found; he went
5 to the left where the blood was found, right?
6 A. By the time I walked in there, they were in
7 the back room already. And I went towards our bedroom, to
8 the right.
9 Q. So they have to -- to get there, you have to
10 be -- go to the left, right?
11 A. I believe so, yes.
12 Q. When you come in the front door, you go to the
13 left, go to the room that they went to?
14 A. Um-hmm.
15 Q. Correct?
16 A. Yes.
17 Q. And the blood on the floor of the kitchen --
18 in order to get to the room they went to, you have to go
19 through the kitchen?
20 A. You have to go through the kitchen to get to
21 the back room.
22 Q. Where was this blood at?
23 A. On the kitchen floor.
24 Q. Do you know a guy -- well, how long did it
25 take you to go to get a pizza?

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1 A. within like an hour.
2 Q. Was somebody at the house when you left?
3 A. I believe so.
4 Q. And who was that?
5 A. Carl. Carl Brannon.
6 Q. Carl Brannon?
7 A. Yeah.
8 Q. And was he staying there at the house?
9 A. No.
10 Q. He'd just come over for a visit or something?
11 A. Yeah.
12 Q. Who was he -- was he visiting with you or
13 Clarence or Sean or who?
14 A. I don't remember. I wasn't there at the time.
15 I showed up and then I picked up Clarence.
16 Q. Oh, you had been out someplace else and just
17 picked up Clarence?
18 A. Yeah.
19 Q. You had been at work or something?
20 A. No. I was seeing my parents.
21 Q. Ah. All right.
22 How long had you been at your parents' house?
23 A. No. I was meeting them at Walmart.
24 Q. I'm sorry?
25 A. I was meeting them at Walmart.

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1 Q. Ah.
2 A. Because my mom wanted to see my son.
3 Q. Mom wanted to what?
4 A. See my son, because they were only in town for
5 a little bit. So I met them at Walmart.
6 Q. Ah. About when did that occur?
7 A. A little bit before 8:00.
8 Q. So it was just a very short meeting with them?
9 A. Yeah.
10 Q. Prior to that, where had you been?
11 A. I was at home before that.
12 Q. And did you have a job at that time?
13 A. No, I did not.
14 Q. And you said something about Sean was drinking
15 that day?
16 A. Yes.
17 Q. What was he drinking?
18 A. I don't remember.
19 Q. Was Clarence drinking that day?
20 A. I believe so, a little bit, yeah.
21 Q. A little bit?
22 A. Um-hmm.
23 Q. And Sean was drinking a little bit or drinking
24 a lot?
25 A. I don't remember.

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1 Q. You have no idea?
2 A. I don't remember.
3 Q. And Clarence drank a little bit every day?
4 A. Here and there, yeah, um-hmm.
5 Q. And was Carl there when you had left before
6 you went up to Walmart to see your parents?
7 A. Yes.
8 Q. Was Carl drinking as well?
9 A. I don't think so, no.
10 Q. And I had the impression -- I didn't have the
11 impression; I think you said it directly -- that you had --
12 that Sean seemed to be troubled that day?
13 A. Yeah. He was upset that day.
14 Q. How do you know?
15 A. Because of the way he was acting.
16 Q. Okay. How was he acting?
17 A. Mad.
18 Q. Like what, saying mean things --
19 A. He was just like --
20 Q. -- to you?
21 A. Yeah, uh-huh.
22 Q. What did he say mean to you?
23 A. No. He wasn't mean to me.
24 Q. Who was he being mean with?
25 A. He was upset, so --

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1 Q. I have to wait for the car to get by. I can't
2 hear you too well.
3 A. He was upset throughout the day, so --
4 Q. How did you know he was upset?
5 A. Because of the way he was acting.
6 Q. So again, can you tell me specifically what he
7 was doing that made you -- how he was acting that made you
8 know he was upset?
9 A. Because of the way he was talking about
10 Ms. Minter.
11 Q. The way he was talking about it?
12 A. Yes. He was just upset because of their
13 relationship and everything. So --
14 Q. And you knew Ms. Minter?
15 A. Yeah. I used to work with her, um-hmm.
16 Q. Where was that?
17 A. At Sinclair's.
18 Q. And were you still working at the Sinclair in
19 those days?
20 A. No, not at that time.
21 Q. And so he mentioned some of his romantic
22 problems with Ms. Minter to you?
23 A. Well, me and Clarence.
24 Q. Both of you?
25 A. Yeah.

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1 Q. Oh, okay. Were you under the impression he
2 was corresponding with her by text messages?
3 A. I believe so.
4 Q. I'm sorry?
5 A. I believe so, yeah.
6 MR. WOODBURY: All right. And -- okay. That's
7 fine. Thank you. I have no further questions.
8 THE COURT: Any redirect?
9 REDIRECT EXAMINATION
10 BY MR. MILLS:
11 Q. So, Ms. Steele, you just said that he would
12 talk to you and Clarence about his relationship with
13 Denise?
14 A. Yes.
15 Q. Just that day, for example, when he was upset,
16 was he saying anything about his relationship with Denise?
17 A. Just -- he was just mad because he wanted to
18 see her, but she said she would see him the next day, but
19 he wanted to see her now.
20 Q. Did you see him either on the phone talking or
21 texting that day with her?
22 A. I believe he was texting.
23 Q. So when you left to go to Walmart, it sounds
24 like Carl Brannon was there at your residence?
25 A. Yes.

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1 Q. And was Sean there as well when you left?
2 A. Yes.
3 Q. Then you didn't come back home until after
4 Pizza Hut?
5 A. After I left Walmart, then I picked up
6 Clarence and my son.
7 Q. I think I missed this. Where did you pick up
8 Clarence from?
9 A. Our trailer.
10 Q. From your trailer?
11 A. Yeah.
12 Q. Then you went to the Pizza Hut?
13 A. Yeah.
14 Q. At that point in time, was Carl still there?
15 A. Yes.
16 Q. So, again, it was still Carl and Sean that
17 were there?
18 A. Yeah.
19 Q. When you got back, was Carl still there?
20 A. I don't remember.
21 Q. Like when the police showed up and all of
22 that, was Carl around?
23 A. Well, when I went in, he was already gone when
24 I went in the trailer.
25 Q. Okay. Now, on cross-examination -- on direct,

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1 you said that you went in after Sean and Clarence, you
2 know, after you got back from Pizza Hut and you saw Sean
3 approach.

4 And on cross-examination, you said, quote, "By
5 the time I walked in, they were already in the bedroom."

6 A. Yes, in the back room.

7 Q. Is that correct?

8 A. Yes.

9 Q. So how much time was there between when they
10 walked into the house and got back to the bedroom and you
11 came into the house?

12 A. Like five seconds, because I walked in right
13 after them, because I was getting my son out of the car
14 seat.

15 Q. Okay. Where was the car in relation to the
16 front door to your trailer?

17 A. Umm, it was parked on the side of the road.

18 Q. About how far from the front door to your
19 trailer?

20 A. I don't know.

21 Q. If I understand this correctly, they go into
22 the house; you're getting the kid out of the car seat, and
23 then -- well, what kind of car seat is it? How do you get
24 a kid out of that car seat?

25 A. Umm, he was a toddler, so -- I don't know.

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1 He's getting older, so --

2 Q. Is it one of those booster seats?

3 A. Yeah, a booster seat.

4 Q. Okay. Then did you -- how old was your
5 toddler?

6 A. He was one already, yeah.

7 Q. He was one?

8 A. Yeah.

9 Q. Okay. Did you carry him in the house or did
10 he kind of walk?

11 A. I carried him.

12 Q. By the time you entered the house, they were
13 already in the bedroom?

14 A. In the back room, yes.

15 Q. In the back room. Okay.

16 MR. MILLS: Thank you. That's all I have.

17 THE COURT: Anything else, Mr. Woodbury.

18 MR. WOODBURY: Just a couple questions, Judge.

19 RECROSS-EXAMINATION

20 BY MR. WOODBURY:

21 Q. Ms. Steele, when you came back from Pizza Hut
22 and you saw Mr. Dean, where was he at when you first saw
23 him?

24 A. Walking across the street.

25 Q. Okay. And you are not sure of which street?

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1 A. Well, where Ms. Minter lives.

2 Q. All right. There is a street there that has a
3 large turn in it, that has a lot of traffic on it. Is that
4 the street you're talking about?

5 A. Well, yeah, because we live right here. So he
6 just walked right -- right next to the -- across the street
7 from the vet.

8 Q. I'm sorry?

9 A. Across from the vet.

10 Q. Okay. When you pulled up to your trailer, did
11 you park on that street or did you park somewhere else?

12 A. I parked on the street.

13 Q. And you saw him walking across that street?

14 A. From the other street, yeah.

15 Q. All right. And are you using the term
16 "walking" because it's --

17 A. Like fast-paced, yeah.

18 Q. At a fast pace?

19 A. Yeah.

20 Q. But he was not running?

21 A. No.

22 MR. WOODBURY: Thank you. I have no further
23 questions.

24 THE COURT: Jury questions for this witness?

25 No jury questions.

183

1 May this witness be excused?

2 MR. MILLS: I would like her retained.

3 THE COURT: Ms. Steele, the rule of exclusion is
4 invoked, so don't discuss this case or your testimony with
5 anyone until the trial is over. We are not done until
6 Tuesday. But you can talk about it with Mr. Mills or Mr.
7 Woodbury.

8 THE WITNESS: Okay.

9 THE COURT: But that's it, just the lawyers.

10 THE WITNESS: Thanks.

11 THE COURT: Next witness.

12 MR. MILLS: Jeremy Catalano.

13 THE COURT: All right. Please raise your right
14 hand and be sworn, sir.

15 (WHEREUPON, the witness was sworn.)

16 THE COURT: Mr. Mills.

17 JEREMY CATALANO,

18 called as a witness in said case, having been first
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. MILLS:

22 Q. Would you please state and spell your full
23 name for the record, please.

24 A. It is Jeremy Catalano. J-e-r-e-m-y,

25 C-a-t-a-l-a-n-o.

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1 Q. What is your current occupation?
2 A. Currently I am an officer with the City of
3 Reno.
4 Q. And how long have you been employed with the
5 City of Reno?
6 A. I have been employed with them since
7 January 11th, this year.
8 Q. Prior to that, how were you employed?
9 A. I was employed with the City of Elko, employed
10 with them from January 12 of 2012 until I was hired with
11 Reno.
12 Q. And were you on duty back on December 8, 2015?
13 A. Yes.
14 Q. Around eight o'clock, were you dispatched to
15 investigate an alleged crime at that time?
16 A. Yes, I was.
17 Q. Where were you dispatched to?
18 A. I was dispatched to the area of 701 South
19 Fifth Street. I believe it was Number 7. The call that I
20 was dispatched to was a call of a stabbing in progress.
21 Q. And what -- did you arrive at that location?
22 A. Yes, I did. I was right down the street. I
23 was by Lamoille and Southside Drive when I responded to the
24 call.
25 Q. I'm sorry. Go ahead.

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1 A. So I immediately drove to the area and tried
2 to listen for anything or see if I could find anything in
3 the area.
4 Q. When you arrived at the area, what did you
5 see?
6 A. Initially I didn't see anything. So I drove
7 around by -- I believe it was Carlin and South Fifth
8 Street. I had dispatch ask the person that called to meet
9 me to show me where the incident was happening.
10 Q. And for state of mind purposes, what were you
11 informed at that point?
12 A. By dispatch or?
13 Q. By dispatch.
14 A. I believe they told me that the R.P. was at
15 Number 7. I can't remember if they told me the name of the
16 R.P. or not, the reporting party.
17 Q. Could you describe -- yeah. I was going to
18 ask what the R.P. stands for.
19 A. R.P. is the reporting party. That's the
20 person that makes the call to dispatch to tell them what is
21 going on, so in this incident, a stabbing in progress. The
22 R.P. was the person who called dispatch, and that person
23 was Christina Hodges.
24 Q. So at some point did you actually make contact
25 with her?

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1 A. Yes, I did.
2 Q. Where did that take place at?
3 A. Right out in front of her residence.
4 Q. For state of mind purposes, what did she tell
5 you that directed the course of your investigation?
6 A. Christina told me where the incident was
7 happening was across the street, and that was at 764 South
8 Fifth Street, the Palacio Trailer Park, Number 12.
9 I believe she had made mention that a person
10 named Sean had stabbed a female.
11 Q. And did you proceed in that direction?
12 A. Yes, I did.
13 Q. What did you -- tell us what happened next in
14 the course of your investigation.
15 A. I ran over to where she had pointed and --
16 which was the trailer Number 12 at the Palacio Trailer
17 Park. When I ran over there, I saw a group of people.
18 One of the individuals that was over there was
19 -- I believe was Joseph Schenk. Bert Minter was over
20 there. Denise Minter was over there. And I think Brittney
21 Tice was over there as well.
22 Q. And which of those individuals did you make
23 contact with when you arrived there?
24 A. Initially with Joseph, and then Bert came up
25 to me and I spoke with him a little bit.

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1 Q. What was the first thing he said to you?
2 A. I think he made a comment along the lines of,
3 "I am not going to let this one slide," something in that
4 manner.
5 Q. Did you see -- did you observe the physical
6 condition of Bert Minter?
7 A. Yes, I did. While I was talking to him, I saw
8 blood on him. So since there was a stabbing, I was just
9 wanting to -- I believed that Bert was one of the people
10 that was stabbed, so I asked him where he was stabbed. So
11 he lifted up the left side of his shirt to me and I could
12 see that he was bleeding. It looked like he had, from what
13 I could see, a stab wound on the left side of his abdomen.
14 Q. Did you have contact with Denise Minter?
15 A. No, not then.
16 Q. Where was she when you were talking to Bert?
17 A. While I was talking to Bert, she was -- I
18 believe she was either standing or sitting on the porch of
19 her residence, which is just one of the trailers. And from
20 where I was, I could see the entrance to her trailer, and
21 there is a little porch that comes down, some stairs. I
22 think she was either standing or sitting on those stairs.
23 Q. So based on what Joseph Schenk and Bert Minter
24 had advised you, what did you do next in the course of your
25 investigation?

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1 A. From those two, I gathered that the person
2 that was involved with the stabbing, who did the stabbing,
3 was Sean Dean. So I advised dispatch what was going on.

4 And I asked them where he was, and they
5 pointed to me that he ran back to the direction where I
6 just came from, which was the 701 South Fifth trailer park
7 area.

8 So I told dispatch that he was in the area,
9 and ran back towards that area to try to set up some sort
10 of perimeter to see if we could find who they said was
11 Sean.

12 Q. Were there other officers on scene at that
13 point?

14 A. I was the first officer on the scene. Once I
15 started going back towards the area of the original trailer
16 park, 701 South Fifth, other officers started to arrive on
17 scene.

18 Q. Okay. Who were some of those other officers?

19 A. There was Corporal Joel Fairfield, Officer
20 Jared Lowry, Officer Michael O'Farrell. There was Officer
21 Jake Eisinger; one of our detectives, Josh Morrell;
22 Sergeant Pepper, Jason Pepper.

23 I believe there was two deputies that showed
24 up as well, but they just kind of helped with traffic
25 control to block off the street.

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1 Q. So you mentioned something about setting up a
2 perimeter. Could you just take it from there and describe
3 what you guys did and -- and, yeah, just what happened
4 next?

5 A. So we decided to set up a perimeter, and the
6 way that we did that is the two deputies that I mentioned,
7 we had them blocking traffic on South Fifth Street going
8 both directions; just so that way we can keep any cars from
9 getting into the area.

10 We had other officers go over into the Carlin
11 side of the street, and then just kind of surround the
12 trailers in that area.

13 I think quite a few of us have met Sean
14 before, so we knew who he was. We knew who to look for.
15 When we set the perimeter, we had an idea that he ran into
16 those trailers, so we were just monitoring people coming in
17 or out of those trailers to see if we could contact
18 anybody.

19 Q. At some point in time did you focus in on one
20 particular trailer?

21 A. Yes.

22 Q. Which trailer was that?

23 A. Number 5. Trailer Number 5.

24 Q. And whose trailer was that?

25 A. I believe that was Lindsey Steele's and a

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1 person named Clarence.

2 Q. How were you guys -- how did you come to focus
3 in on that particular trailer?

4 A. I wasn't in the exact area when other officers
5 met with Lindsey and Clarence, so I don't know if they had
6 came out of their trailer and spoke with other officers or
7 if they were walking to the trailer or exactly how we came
8 into contact with them.

9 Q. So what was your involvement in that -- I
10 guess in the -- the setting up the perimeter and tracking
11 down Sean Dean? What did you do?

12 A. I notified dispatch where Sean was -- where I
13 was told Sean ran. So I gave the area where I thought we
14 should set up around, the perimeter, which is around the
15 trailers on 701 South Fifth Street.

16 And then I also directed Corporal Fairfield to
17 block off some traffic; also advised dispatch, I believe,
18 to have the deputies block off some other areas.

19 And then during that, I think, is when some of
20 the officers said that they had found out that Sean was in
21 the trailer Number 5.

22 Q. Okay. At some point in time did you respond
23 to trailer Number 5?

24 A. Yes, I did.

25 Q. And when you arrived there, what was going on?

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1 A. When we arrived there, there was some
2 officers, I believe, talking with Clarence and Lindsey, and
3 said that Sean was inside of the trailer.

4 And so we got permission from them to go
5 inside and find Sean.

6 Q. And did you go inside the trailer at that
7 point?

8 A. Yes, I did.

9 Q. And do you recall how many other officers went
10 in there with you?

11 A. I believe there was three other officers that
12 were with me.

13 Q. Did you locate Sean inside?

14 A. Yes, we did.

15 Q. Where was he inside the trailer?

16 A. Sean was in a room in the trailer. Sergeant
17 Pepper was the one that called out to Sean. Sean was
18 called out of the room. He was directed to face away from
19 us, walk backwards towards us with his hands in the air so
20 that we could see his hands, make sure he didn't have any
21 weapons or anything on him.

22 And he complied with us, did exactly as he was
23 told, walked back to where we were, and then I was able to
24 place Sean into handcuffs.

25 Q. Did that take place inside the trailer or

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1 outside?

2 A. Inside of the trailer.

3 Q. Then after you placed him into the handcuffs,
4 what happened?

5 A. I had Sean come with me outside of the
6 trailer. And where the trailer is, the sidewalk and street
7 is right next to the trailer, so I had him come out there
8 with me.

9 And while I was with him, since I was going to
10 be questioning him, and since he was being -- since he was
11 in custody, I read him his Miranda Rights.

12 Q. And did he agree to speak to you at that time?

13 A. Sean -- I asked Sean if he understood the
14 Miranda Rights. He said he did. I asked him if he wished
15 to speak with me. He said he wanted to speak with either a
16 detective or a supervisor at that point. So I didn't talk
17 to him any further.

18 Q. What did you do at that point?

19 A. Sean had also said that he had an injury. I
20 believe it was to his right hand. And so I checked his
21 hand, saw that he was bleeding. I also saw, I think inside
22 the trailer, that he had some blood on his hand.

23 So I contacted our dispatch to have someone
24 come from the ambulance to check out Sean's hand to get him
25 whatever kind of help he needed.

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1 Q. And what did you do next?

2 A. After that, I went over, back to where the
3 trailer was, where Bert and Denise were, trailer Number 12,
4 and at that point they were already being seen by the
5 ambulance, so I didn't speak with them any further, really.
6 The only contact or only thing that I spoke to

7 Denise about was if I can go inside of her residence to
8 look inside of her residence; and she told me all of the
9 fighting that had taken place was outside and she didn't
10 want me to go inside the residence.

11 Q. All right. Were there photographs taken of
12 the scene of where the -- where the alleged crime took
13 place?

14 A. Yes.

15 Q. And how did that come about?

16 A. Officer Ballesteros was also another officer
17 who was on scene, and he had taken pictures of the area
18 where I was told the fight happened, where the fight
19 occurred.

20 He had taken pictures, I believe, inside of
21 the trailer where we had found Sean.

22 Q. So back at the crime scene, did you have some
23 contact with some of the witnesses there?

24 A. Yes, I did.

25 Q. And who did you have contact with at that

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1 point?

2 A. Both Joe, Joseph Schenk, and Brittney.

3 Sergeant Pepper spoke with Joseph and I spoke with

4 Brittney.

5 Q. And after speaking with Brittney, what did you
6 do?

7 A. After speaking with Brittney, she provided a
8 written statement for me, and I believe Joseph did as well.
9 Shortly after I spoke with them, I went up to the hospital
10 to where Bert, Denise, and Sean were.

11 Q. At the hospital, who did you have contact
12 with?

13 A. I had contact with all three of them, but
14 primarily with Denise in the hospital.

15 Q. What other officers were there at the
16 hospital?

17 A. Officer Jared Lowry was at the hospital.
18 Corporal Joel Fairfield was at the hospital. And Sergeant
19 Pepper was at the hospital, I think.

20 Q. What was Corporal Fairfield doing?

21 A. Corporal Fairfield was talking to Bert about
22 the incident that night.

23 Q. I believe you said you primarily had contact
24 with Denise; is that correct?

25 A. Yes.

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1 Q. Did you observe her -- her injuries?

2 A. Yes, I did.

3 Q. What was her physical condition as you
4 observed her there in the hospital?

5 A. When I spoke with Denise, she was on the
6 hospital bed in the emergency room. And I could see from
7 where I was standing, just walking into the room, she had
8 above her left breast what appeared to be some kind of a
9 wound -- what I learned was a stab wound, from what she
10 told me. And I took pictures of those stab wounds as well.

11 Q. Officer, I'm going to show you what has been
12 admitted as State's Exhibit 26 through 29. Could you
13 reference those one at a time by exhibit number and
14 describe what the photos depict?

15 A. Yes.

16 THE WITNESS: May I stand up?

17 THE COURT: Of course.

18 A. This picture is of Denise. This will be
19 Exhibit Number 26. This is kind of an overall picture of
20 Denise. And what I am talking about as far as what I could
21 see, it's a little small, but the red mark on her chest.

22 The next picture will be Exhibit 27. This is
23 another picture of the stab wound as well. And with this
24 one, it has the ruler next to it to help depict the size of
25 the injury that she received.

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1 This is Exhibit 28. Same thing. This one is
2 a little bit of a -- more of a close picture of her wound;
3 same thing, has the ruler next to her to kind of show an
4 idea of the size of the injury she received.

5 Then the last one, you can see the same wound
6 on her.

7 So these are the pictures that I took. And
8 the ruler that was provided to me was from the hospital.

9 Q. Okay. Thank you, Officer.

10 Do these photographs fairly and accurately
11 depict the condition of Denise Minter and the injury that
12 you observed on that occasion?

13 A. Yes.

14 MR. MILLS: I'm going to offer State's 26 through
15 29 into evidence at this time.

16 MR. WOODBURY: We object, Judge. The witness has
17 described 26, 27, 28, 29, as exactly the same photograph of
18 the same thing. I am not sure why we need four of them.

19 THE COURT: Let's see the exhibits.

20 MR. MILLS: They are different, Your Honor,
21 different perspectives.

22 MR. WOODBURY: And our view is what in Heaven's
23 name is -- are we fighting about in this case that has to
24 do with whether you need four photographs of Denise
25 Minter's chest?

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1 much.

2 Okay. Mr. Mills.

3 Q. (By Mr. Mills) Officer, how are the
4 photographs different, and why did you take the different
5 photographs?

6 A. The photos show different lengths as far as
7 the length, width, and diameter of the injury that she
8 received, so they are a little bit different from each
9 other.

10 Q. What else did you do while you were over there
11 at the hospital?

12 A. So I primarily spoke with Denise, she told me
13 her -- what her recollection of the night was. Also went
14 to the emergency room where Bert was and saw, while he was
15 in there, Corporal Fairfield was interviewing Bert.

16 And initially when I saw Bert at the scene
17 when I first arrived, I could only see one -- I think it
18 was one stab wound from what he told me.

19 And then, while I was in there, I could see
20 that he had several more; I think it was three stab wounds
21 that he had on his left abdomen. And I listened in on the
22 interview with Corporal Fairfield and Bert for a little
23 while.

24 Then also while I was at the hospital, I went
25 to the emergency room where Sean was, and Sean was also

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1 THE COURT: I suppose the argument could be that
2 it's cumulative, but the foundation has already been laid.
3 The probative value of these photographs is not
4 substantially outweighed by the danger of unfair prejudice.
5 They are clearly relevant.

6 Objection is overruled. They are admitted.

7 (WHEREUPON State's Exhibits 26, 27, 28, and 29 were
8 admitted into evidence.)

9 MR. MILLS: Your Honor, permission to show those
10 to the jury at this time?

11 THE COURT: Go ahead.

12 THE WITNESS: They also show the length and
13 diameter, the widths. They are not just the same picture.
14 I try to get --

15 MR. WOODBURY: I object to the witness responding
16 to the objection without any question pending.

17 THE COURT: Correct. All right. We have to wait
18 for the next question --

19 THE WITNESS: Yes, sir.

20 THE COURT: -- Officer. So the Court will strike
21 the last answer.

22 THE WITNESS: Yes, sir.

23 THE COURT: Jury is admonished to disregard it.
24 We need to make sure that you answer just questions so that
25 I can see whether there is an objection. Thank you very

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1 receiving care. He had an injury to his right index
2 finger. I took pictures of those injuries as well.

3 MR. MILLS: State's 30 and 31, Mr. Woodbury.

4 Q. Officer, I am showing you what has been marked
5 as State's Exhibit 30 and 31. Could you describe what
6 those are for us?

7 A. Yes. So the first picture, this is Sean in
8 the emergency room. This exhibit is 30.

9 And the next picture, Exhibit 31, this is the
10 injury that Sean received to his finger that night. That's
11 on his right hand, on his right index finger.

12 Q. Do these photographs, State's 30 and 31,
13 accurately represent Sean Dean and his condition and the
14 condition of his finger on that occasion?

15 A. Yes.

16 MR. MILLS: We would offer State's 30 and 31 into
17 evidence.

18 MR. WOODBURY: No objection.

19 THE COURT: 30 and 31 are admitted.

20 (WHEREUPON State's Exhibits 30 and 31 were admitted
21 into evidence)

22 MR. MILLS: May I show these to the jury.

23 THE COURT: Yes.

24 Thank you, Mr. Mills. Go ahead.

25 Q. (By Mr. Mills) Officer, aside from the injury

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1 to Mr. Dean's finger, did you observe any other injuries on
2 his person that evening?

3 A. No, I did not.

4 Q. Did you get a good look at his face and his
5 head area?

6 A. Yes, I did. The room where we were, where he
7 was receiving treatment, was a pretty well-lit room. The
8 only injury that I could see was the one that he had on his
9 finger. I didn't see any what I could tell were injuries
10 on his face or the rest of his body.

11 Q. Okay. So after photographing Mr. Dean and the
12 injury to his finger, what did you do next?

13 A. I think that was pretty close towards the end
14 of the time I spent at the hospital.

15 I had received clothing from Mr. Dean, from
16 Bert, from Denise, that I later entered into our evidence
17 at the police station.

18 Q. Do you recall what the -- what the clothing
19 was from Bert that you received?

20 A. I had taken a -- I believe it was a jacket,
21 windbreaker jacket, from Bert, a darker-colored black
22 shirt, some khaki-type jeans and some boots from Bert.

23 Q. Showing you what has been marked and admitted
24 as State's Exhibit 52.

25 First of all, if you could just tell us a

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1 into evidence, which would come back to me; and also my
2 handwriting on the bag as well.

3 Q. Is that your handwriting, in fact?

4 A. Yes.

5 Q. What was this piece of paper on the other
6 side?

7 A. So on the other side, this is one of the --
8 one of the chain of custody forms. It will have the
9 officer who is entering the property, which would be
10 myself, Jeremy Catalano, along with my signature, too, to
11 signify that this property that was entered was entered by
12 me.

13 Q. Okay. Go ahead put that back.

14 Could you look inside that bag and tell us if
15 you recognize what's in there.

16 A. So inside this bag, this looks like this would
17 be the jacket that Bert was wearing that night.

18 So this would be the jacket that he was
19 wearing. I believe on the side, there is some holes or a
20 hole. So on the left side of the jacket, a hole on the
21 left side.

22 Then also looks like there is dried blood on
23 the bottom left as well.

24 Q. Where and how did you come into possession of
25 that?

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1 little bit about the packaging there, and tell us about
2 evidence procedures at the Elko Police Department.

3 A. So when I receive something that I'm going to
4 be placing into evidence, for this type of item, type of
5 clothing, if there is any kind of blood or anything like
6 that, we'll put a biohazard thing on there just so people
7 that are handling it know that there's some kind of
8 biohazard, blood, any kind of bodily fluid on there.

9 A paper bag usually suffices for something
10 like this. The way that I seal it is from -- the top the
11 bag is up here. It's sealed by evidence tape. I will
12 usually write my badge number, the date, initials, and then
13 when it is opened, someone else will open it up
14 conspicuously, like this. They won't mess with the
15 original seal.

16 And then it's entered into the evidence locker
17 and entered in the chain of custody sheet. And the bar
18 codes have a little description on them, too, for what is
19 going to be entered into evidence so the evidence tech
20 knows what she is going to be dealing with.

21 Q. What identifiers are there on this packaging
22 that links it back to you specifically?

23 A. On this, like I said, I usually have my badge
24 number, my initials. Also, for the bar code, when they do
25 scan the bar code, they will see who entered the property

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1 A. This was given to me at the hospital. I
2 believe it was Joel Fairfield or myself that initially
3 retrieved it from Bert.

4 Q. Go ahead and put that back in the bag.

5 Showing you now what has been marked and
6 admitted as State's 53. Same questions with regards to the
7 outer bag: Is that your handwriting and are there markers
8 on there indicating that you are the one that packaged that
9 into evidence?

10 A. Yes, it is.

11 Q. Okay. Go ahead and just pull out what is
12 inside that bag and show the jury.

13 A. So this one says "Black shirt, Bert."

14 Q. That's your handwriting that wrote that on
15 there?

16 A. Yes, it is.

17 Q. Okay.

18 A. This one here, from the evidence that was
19 entered, would be Bert's shirt. Once again on the left
20 side, there is the two cuts in the shirt with dried blood
21 around that -- or I guess three cuts on the shirt, right
22 here, right here, and also down at the bottom.

23 Q. Okay. Go ahead and put that back in the bag.

24 THE COURT: All right. We're going to take our
25 afternoon recess.

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1 Ladies and Gentlemen, please do not converse
2 amongst yourselves or with anyone else on any subject
3 connected with the trial. Do not read, watch, or listen to
4 any report or commentary on the trial or any person
5 connected with the trial by any medium of information,
6 including, without limitation, newspapers, television,
7 radio, or the Internet.

8 Do not form or express any opinion on any subject
9 connected with the trial until the cause is finally
10 submitted to you for deliberation.

11 In addition, remember my admonishment regarding
12 the use of electronic devices or media. Don't talk to
13 anyone on a phone, correspond with anyone, or
14 electronically communicate with anyone about the case.

15 Of course, the rule of exclusion is invoked, and
16 Officer Catalano, I'm sure, understands what that means.

17 THE WITNESS: Yes, sir.

18 THE COURT: You can discuss it with the lawyers
19 during break, but of course nobody else.

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. We're in recess for 10
22 minutes.

23 (WHEREUPON, a short recess was taken.)

24 THE COURT: All right. All right. We'll be back
25 on the record for CR-FP-2015-1508.

205

1 The State of Nevada, Plaintiff, again, versus Mr.
2 Dean, Defendant. He is back here with counsel, Gary
3 Woodbury, and again, Mr. Mills is back to represent the
4 State.

5 We have the officer on the witness stand. I'd
6 remind him he is under oath, of course. And continued
7 examination on direct.

8 Mr. Mills.

9 MR. MILLS: Thank you.

10 MR. WOODBURY: I hate to bring it up, Your Honor,
11 but we haven't stipulated to the presence of the jury.

12 THE COURT: Correct. Thank you very much. All
13 right. Well, I take that to mean you think they're all
14 here?

15 MR. WOODBURY: I do.

16 THE COURT: Mr. Mills?

17 MR. MILLS: The State stipulates.

18 THE COURT: Yes. We have to do that each time.
19 Thank you for reminding me.

20 Mr. Mills, go ahead.

21 Q. (By Mr. Mills) Officer, I'm going to hand you
22 this last item of evidence, Number 54. I don't know if you
23 are more comfortable wearing latex gloves?

24 A. What is it?

25 Q. These are the pants.

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1 A. Some gloves, please.

2 Q. Okay. Same question about whether this
3 packaging and handwriting is yours?

4 A. Yes, it is. My handwriting, once again, is on
5 the label, what was on the bag, my initials, my badge
6 number across the evidence tape; then also with part of
7 the -- the chain of custody sheet, my name, Jeremy
8 Catalano, my signature saying this was the property that I
9 entered into evidence.

10 Q. Go ahead and take a look at what's inside that
11 bag, and tell the jury if you recognize it.

12 A. Yes. These would be the pants that Bert was
13 wearing on the night of the incident. And this is also --
14 the blood that I could see while he was walking towards me
15 was kind of what let me know that he was probably one of
16 the ones that was involved. So I asked him where he was
17 stabbed. That's when he showed me.

18 But these items were collected at the
19 hospital, and then I entered these pants along with the
20 rest of Bert's property into our evidence at the Elko
21 Police Department.

22 Q. Thank you, Officer. Go ahead and place that
23 back in the bag.

24 So from the hospital, where did you go?

25 A. From the hospital, I left with Mr. Dean, and I

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1 was going to transport him to the Elko County Jail.

2 Q. As you were driving Mr. Dean to the jail, did
3 he make any kinds of unsolicited statements to you?

4 A. Yes, he did.

5 Q. What was that?

6 A. He made one to me, saying that Denise had
7 invited him over that night and that he had proof on his
8 cell phone with text messages that she had invited him over
9 to her place that night.

10 Q. Did you ask him where the phone was?

11 A. I don't know if I asked him or if he told me,
12 but he had told me that it was at Clarence's house, 701
13 South Fifth Street, Number 5, where we found him earlier
14 that night.

15 Q. What happened when you got to the jail?

16 A. When I got to the jail, Mr. Dean was searched
17 and booked and he was allowed to call someone. And he
18 called who I believe to be Clarence, told Clarence that I
19 was going to be coming over to the trailer, told Clarence
20 to give me his cell phone so that way I could look through
21 the text messages to see that Denise had texted him,
22 telling him to come over to her house that night.

23 Q. And did he tell Clarence anything else?

24 A. Not that I can recall.

25 Q. Do you recall writing in your report that --

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1 that he told Clarence multiple times, "You know what to
2 do"?

3 A. I do remember that. He did.

4 Q. So that happened?

5 A. Yes. And I never found out what that was in
6 regards to.

7 Q. Did you follow up with Mr. Dean's request that
8 you go look at his cell phone?

9 A. Yes, I did. I went over to Clarence's
10 trailer. I went over there with another officer and I
11 knocked on the front door to Clarence's trailer. And
12 Clarence knew I was there, so he closed the door, and I
13 believe he closed the door on me and then went somewhere
14 into the trailer, and then gave me a cell phone that he
15 told me was Mr. Dean's.

16 Q. Based on Mr. Dean giving you consent to search
17 through his phone, did you look at the text messages on the
18 phone?

19 A. Yes, I did.

20 Q. Did you find anything in there supporting his
21 claim that he didn't show up uninvited?

22 A. No, I did not.

23 Q. In other words -- that's a lot of double
24 negatives. Let me reask the question.
25 Was there anything in there inviting him over?

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1 A. No.

2 Q. Did you take photographs of those text
3 messages?

4 A. Yes, I did. I took photographs of all the
5 text messages and entered them into our evidence system for
6 pictures.

7 Q. Just generally, what kind of phone was it?

8 A. It was a -- it was a black LG type of
9 smartphone.

10 Q. I'm showing you what has been marked as
11 State's Exhibit Number 33. If you could just take a few
12 minutes to look through that briefly.

13 A. So those would be the pictures that I -- the
14 stack of photos would be the pictures that I took of the
15 text messages from Denise and Sean, not just from that
16 night, but I think partially from the day before too, as
17 well.

18 Q. Is there a name Denise associated with the
19 phone number that Sean was communicating with?

20 A. Yes, there is. It shows the text messages,
21 then also "Denise," and then the phone number underneath
22 "Denise."

23 Q. And do you recall the general time frame in
24 which those text messages took place?

25 A. Not without looking at these pictures.

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1 Q. Could you take a minute to just look, review
2 those to refresh your memory of what -- approximately the
3 dates of when those text messages were sent?

4 A. Yes.

5 So from one of the first ones I can see, it
6 looks like it started December, it looks like 7, 2:32 p.m.
7 So look a little bit more clearly, a 7.

8 Then the last ones occurred were on December 8
9 at 7:47 p.m., a little bit before the time of the incident.

10 Q. Do those photographs fairly and accurately
11 depict the text messages you saw on Sean Dean's phone that
12 evening?

13 A. Yes, they do.

14 MR. MILLS: I'm going to offer State's 33 into
15 evidence.

16 MR. WOODBURY: May I look at it, please?

17 THE COURT: Of course.

18 (discussion off record between counsel)

19 MR. WOODBURY: Mr. Mills and I have reached an
20 agreement, Your Honor, that I will have no objection to the
21 texts coming in except as to one of them, and he has
22 offered to redact that.

23 THE COURT: Okay. Is that correct, Mr. Mills?

24 MR. MILLS: That's correct, Your Honor.

25 THE COURT: All right. During a break maybe we

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1 can get that handled and 33 would then be admitted by
2 stipulation. Once you get it figured out, bring it back up
3 to me; we'll do that in front of the jury.

4 MR. MILLS: Sounds good, Your Honor.

5 THE COURT: Maybe tomorrow? Is that -- will that
6 work, or do you want to do it now?

7 MR. MILLS: We could do it tomorrow.

8 THE COURT: Okay. I didn't know if you needed to
9 do it while this witness was here.

10 MR. MILLS: He is going to be here tomorrow
11 morning, so that shouldn't be a problem to just put him
12 back on tomorrow if we have to.

13 THE COURT: Okay. All right.

14 Please proceed, Mr. Mills.

15 Q. (By Mr. Mills) At that point, after taking
16 photographs of the text messages, did you have any other
17 involvement in the case?

18 A. With that, I entered the cell phone into a
19 temporary evidence locker for Detective Hessing to take,
20 and I believe that was pretty much my involvement for
21 everything that night.

22 Q. And how was -- why did you put it into the
23 temporary evidence locker for Detective Hessing?

24 A. One of the things that we think about in --
25 just in a -- kind of a general idea is, I don't know if

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1 Clarence had deleted any text messages or anything like
2 that; and so in order to see if there are any deleted
3 text messages or anything else from that night,
4 Detective Hessing was one of the -- was the only detective
5 that can basically download the information from a cell
6 phone, get information that will show stuff that I can't
7 see at face value.

8 So there could be text messages that were
9 deleted. If there is a file that says "deleted text
10 messages," they can delete those again. I don't know if
11 that was the case on this phone, but there is still
12 sometimes a way to see the text messages that were taken
13 off of a phone that are still stored in some -- I can't
14 speak to all the forensics of it, but there is usually a
15 way to see if there are other -- if there's other data on
16 the phone.

17 Detective Zach Hessing is the one that takes
18 care of all that, to see if there is any other information
19 on the phone that would help, or just whatever. He would
20 be the one that could get that information.

21 Q. So the intent was for him to do a forensic
22 download of the contents of the phone?

23 A. If that's what he wanted to do. I gave the
24 phone to him in case that is what he wanted to do with the
25 phone.

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1 Q. I guess how was he alerted to the fact that
2 the phone was there for him, or how was that communicated
3 to him?

4 A. Typically by e-mail. I believe that night or
5 that morning I sent Detective Hessing an e-mail, saying
6 that I had put a cell phone into temporary evidence for
7 him, for him to retrieve.

8 Q. So when he would come to retrieve it, how
9 would he know, like, where to look for it, which phone,
10 that sort of thing?

11 A. So there is evidence lockers that we had in
12 the back of the police department for our temporary
13 evidence lockers. We have to sign out the locker, and
14 there is also a sheet that we fill out we turn in. So I
15 can tell Detective Hessing that the phone is in that locker
16 for him to retrieve.

17 MR. MILLS: Thank you, Officer. I have no
18 further questions.

19 THE COURT: Cross-examination.

20 MR. WOODBURY: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. WOODBURY:

23 Q. Officer Catalano, when you are dispatched, as
24 you were, would you customarily speed fairly rapidly to the
25 scene of the report to 911?

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1 A. In a situation with a call like I responded
2 to, for a stabbing in progress, I would try to get there as
3 fast and safely as I could. Luckily I was right down the
4 street, so it didn't take me very long at all.

5 Q. I'm sorry?

6 A. So I was -- luckily I was right down the
7 street from where dispatch said the incident occurred, so
8 in that instance, and like I said, I just get there as fast
9 and safely as I can, and that would be with my lights and
10 sirens on.

11 Q. Okay. And they were going? Your lights and
12 sirens were going?

13 A. For a situation like that, yes.

14 Q. Yeah, okay.

15 When you got there, you did not see anybody
16 out on the street or anybody that you recognized -- well,
17 let me ask it this way: I assume what you are looking for
18 when you are dispatched to the scene of a stabbing is you
19 look for where the scene of the stabbing is?

20 A. Yes. And this call, they said it was in the
21 area of 701 South Fifth Street, Number 7, and so I knew
22 that that residence is right next to the street.

23 And so when I get there, then I will turn off
24 my lights and sirens so that way I am not having any
25 distractions from my sirens going, so that way I can roll

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1 down my windows and be able to look -- or look and listen
2 to see if I can see or hear anything.

3 Q. And in a sense, I guess, the dispatch was kind
4 of misleading because it gave the address as the place
5 where the caller was, not necessarily the scene of the
6 stabbing?

7 A. Correct. They dispatched me to that area,
8 when the incident that occurred was --

9 Q. Okay. Then if I understand correctly, you had
10 to call dispatch again to get you the address and perhaps
11 the name of the caller?

12 A. I -- since I couldn't find anyone or see or
13 hear anything, I asked dispatch to have Christina, who was
14 the R.P., meet me so she can -- so I can find out where the
15 incident was occurring.

16 So then I did meet with her outside of her
17 residence.

18 Q. And you were present when Mr. Dean was taken
19 into custody?

20 A. Yes.

21 Q. And that -- you were familiar, then, with what
22 trailer Mr. Thompson and Ms. Steele lived in?

23 A. Can you say that again? Sorry.

24 Q. You were familiar, then, with what trailer
25 Mr. Thompson and Ms. Steele lived in because that was the

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1 trailer that Mr. Dean was in?

2 A. They had given us permission to go into that
3 trailer. So like I said, I wasn't there for the whole time
4 while they were speaking to us. So from what I gathered, I
5 gathered that that was their trailer.

6 Q. Is the parking for that trailer on Fifth
7 Street, on South Fifth Street?

8 A. Typically people will park on South Fifth
9 Street for that trailer park.

10 Q. And you were not familiar with Mr. Thompson's
11 car or Ms. Steele's car?

12 A. I didn't know Mr. Thompson before that night,
13 and I didn't -- I had known Ms. Steele, but I didn't know
14 what she drove either. I didn't know that they lived there
15 either.

16 Q. Okay. You didn't have any reason to believe
17 their car wasn't parked on Fifth Street?

18 A. Can you reword that?

19 Q. You didn't have any reason to believe that the
20 car belonging to either Mr. Thompson or Ms. Steele was not
21 parked on Fifth Street that night?

22 A. I didn't even know that there was a car there,
23 so --

24 Q. So I guess what I am getting at, was there a
25 driveway for the trailer that came off another street?

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1 A. Unless there is one on the back side of the
2 street off of Carlin, then usually the people that live in
3 that trailer would just park on the Fifth Street side of
4 the trailer.

5 Q. Okay. When you arrived, I think you said you
6 ran -- you left your car parked, I assume, on Fifth Street
7 or thereabouts, and you ran up to Number 12 in the Palacio
8 Trailer Park?

9 A. Yes.

10 Q. Okay. And when you got there, do you remember
11 who all was there?

12 A. From what I can remember, it was Joseph Schenk
13 who was there; Bert Minter; Denise Minter was there; and
14 Brittney Tice I believe. Those four were the ones that
15 were present in the area.

16 Q. Denise was up on the porch?

17 A. Of her residence, yes.

18 Q. Yeah. And you talked to Mr. Schenk first?

19 A. I did. He called -- when I was running over
20 there, he called out to me, asking if I was a police
21 officer. And so I responded to him and started speaking
22 with him, asking what had happened.

23 Q. And where were you when -- well, first of all,
24 I assume you were in full uniform?

25 A. Yes.

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1 Q. And where was Mr. Schenk and where were you
2 when he called out to you, asking if you were a police
3 officer?

4 A. I would say it was further away than I am to
5 that wall, and the area there is a -- it doesn't have a
6 whole lot of lighting except for by the trailers.

7 Q. And I assume that when he asked you, you
8 responded that you were a police officer and that he then
9 began to tell you what had happened?

10 A. I don't remember if I responded that I was an
11 officer or not. I think when I got into close proximity
12 that he recognized that I was.

13 Q. What did he tell you?

14 A. If I remember, he -- I think he said it was
15 --the person who was involved was Sean Dean. I think -- I
16 can't remember if it was he or Bert that said there was
17 someone else that was stabbed as well, and told me that
18 Denise, who was the owner of the trailer, was the other
19 person that was stabbed, that they needed an ambulance.

20 Q. Did he talk to you about at all what had been
21 involved in this stabbing?

22 A. I don't remember that he did. I remember I
23 spoke to Bert pretty quickly after I spoke with Joseph.

24 Q. And was he worked up? Mr. Schenk? Did he
25 appear to be pretty worked up?

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1 A. He seemed calmer when I spoke with him.

2 Q. Okay. And -- but he did name Mr. Dean as the
3 person who had done the stabbing?

4 A. I believe it was him, and I think that Bert
5 did as well.

6 Q. Okay. But I'm just --

7 A. Sorry.

8 Q. -- asking about Mr. Schenk.

9 A. Yes.

10 Q. He did identify Mr. Dean?

11 A. I believe he did.

12 Q. Okay. And did he tell you where Mr. Dean had
13 gone?

14 A. They told me that he ran back to the area
15 where I just came from, which was the trailer park at
16 701 South Fifth Street.

17 Q. They did or did Mr. Schenk?

18 A. I'm sorry. I don't know who was -- I don't
19 know who the exact person was that told me.

20 Q. Somebody told you?

21 A. Yes.

22 Q. Okay. Did you become aware, through one of
23 the folks that was there -- let me -- first let me ask you:
24 You probably don't know Brittney Tice personally, but was
25 she there?

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1 A. Yes.
2 Q. Where was she at?
3 A. She was towards the back of the group. So do
4 you have a picture so I can kind of depict a little better
5 but -- just for frame of mind for the jury?
6 So when I go into the trailer park, there is a
7 dirt road. So if the dirt road is here, the trailer for
8 Number 12 where Bert and Denise live is right here. Joseph
9 and Brittney back here.
10 They all met me in front, and it was Bert,
11 Joseph, and I believe Brittany was in the back, closer to
12 her trailer, and then Denise was on the porch of her
13 trailer.
14 Q. You mentioned on direct examination that
15 Mr. Minter said, "I am not going to let this one slide."
16 A. Correct.
17 Q. And were you aware of one that had slid
18 before?
19 A. No.
20 Q. With respect to Mr. Minter?
21 A. No, I was not.
22 Q. Did you have some other indication of what he
23 was talking about?
24 A. No, sir.
25 Q. You have not interacted with Mr. Minter on a

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1 prior occasion?
2 A. That is the first time I've ever had any kind
3 of encounter with him.
4 Q. Okay. How long do you think you spent talking
5 to Mr. Minter, Denise, Brittney, and Mr. Schenk before you
6 did something different?
7 A. It wasn't very long at all. I gathered
8 basically who was involved, where Sean had ran, and when I
9 learned that he -- from what they told me, he wasn't in the
10 area, I got -- I advised dispatch to have the paramedics
11 arrive, told them that it was safe for them to enter so
12 that way Bert and Denise could get the care that they
13 needed as quickly as they could.
14 Q. Then I think on direct examination you said
15 that you had suggested to Denise you might want to go in
16 the house and have a look at things?
17 A. I didn't make any suggestion to her.
18 Q. Excuse me?
19 A. I didn't make any suggestion to her. I asked
20 if I could go inside to look.
21 Q. Okay. Well, I'm sorry. Bad choice of words.
22 And she said no, there was no need to do that?
23 A. Yes. She said the fighting happened outside.
24 Q. And did, in suggesting -- wrong word, but in
25 asking if you could go inside, did you have something in

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1 mind that you wanted to see in there?
2 A. I didn't know if they had all fought outside
3 or inside, so I wanted to go inside to see if maybe inside
4 was in some kind of disarray from people fighting inside.
5 So she told me they didn't, they fought outside the
6 residence, didn't say nothing happened inside.
7 So that was my frame of mind, was to go inside
8 to take pictures of everything if they were fighting
9 inside.
10 Q. What was the ground like around the back of
11 the car where the fight was described to you to have
12 occurred?
13 A. It's dirt.
14 Q. Was it wet?
15 A. No. No.
16 Q. Icy?
17 A. No.
18 Q. Just dirt?
19 A. Just dirt. It was a dirt driveway.
20 Q. And you took and saw three cell phones there?
21 A. I think there were two. I believe both of
22 them were Bert's.
23 Q. Excuse me?
24 A. I believe both of the cell phones were Bert's.
25 Q. And was there anything significant about the

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1 cell phone location?
2 A. Not that I thought. The only thing would be
3 if that's where they were fighting, if the cell phones came
4 out of the pocket, then they were in the general area of
5 where they were fighting.
6 Q. That cell phone that belonged to Mr. Dean, did
7 you describe it by make?
8 A. It was an LG.
9 Q. An LG?
10 A. LG cell phone.
11 Q. What is that?
12 A. It's just a brand of cell phone.
13 Q. But it's typically denominated a smartphone of
14 some sort?
15 A. For the type of cell phone that he would have,
16 it would be a type of smartphone.
17 Q. Okay. The other one that belonged -- ones
18 that belonged to Mr. Minter, do you recall what they were?
19 A. No, I do not.
20 Q. Did you seize them?
21 A. I took them, and then while at the hospital,
22 they were given back to Bert.
23 Q. Okay. When you are the closest officer to the
24 dispatch point and you arrive there first, are you
25 denominated into some kind of position?

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1 A. I was the first one on scene.
 2 Q. Right. Does that make you something like a
 3 lead officer or something?
 4 A. No, not necessarily. But that night, the area
 5 where the trailer park is for 701 South Fifth Street and
 6 also 764 is an area that I'm patrolling. So if it's in
 7 my -- what we designate as a beat, then it would be the --
 8 my responsibility to handle that call initially. And then
 9 if something greater happened, my supervisor might take
 10 over, or a detective might take over the investigation.
 11 Q. But you are not denominated the lead officer
 12 simply by appearing first at the scene?
 13 A. No.
 14 Q. Who directed the course of the investigation?
 15 A. It was a combined effort.
 16 Q. By who?
 17 A. All the officers there.
 18 Q. Well, there were sheriff deputies there,
 19 right?
 20 A. Correct. So not the deputies. They would be
 21 the ones that would be helping us out with the traffic
 22 control.
 23 So the ones that were actually helping with
 24 the investigation were Sergeant Jason Pepper. He is the
 25 one that interviewed Mr. Dean at the hospital.

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1 Joel Fairfield. He is the one that interviewed Bert Minter
 2 at the hospital. Officer Jake Eisinger assisted in
 3 recovering the knife.
 4 And as far as any kind of investigation, it
 5 was us, mainly.
 6 Q. Who decides who is going to do what? Or is
 7 there a director of all this?
 8 A. So in the situation with Mr. Dean, when he
 9 didn't want to talk to me, basically that's kind of out of
 10 my hands now since he wanted to speak with a sergeant or
 11 supervisor or detective. So he spoke with the sergeant on
 12 scene, who was Jason Pepper. And so if I need help from
 13 somebody, I will ask for help.
 14 For instance, with Officer Ballesteros, he was
 15 an officer on scene, he was asked to take pictures; or with
 16 Corporal Joel Fairfield, I asked him to block some of the
 17 traffic at one point. So if an officer asked me to do
 18 something, I will do it; if I ask another officer to do
 19 something, they will do it.
 20 So there was a lot of me asking people to do
 21 things, and also when Clarence and Lindsey were spoken to
 22 by other officers, I don't know who kind of took over that.
 23 I wasn't there for the initial contact with them.
 24 But for the first part, I was the one that
 25 directed people to go in certain areas since I was the one

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1 that received the information on where Mr. Dean ran to.
 2 Q. And at what point did detectives -- did
 3 detectives become involved in this case?
 4 A. Must have been when I e-mailed Detective Zach
 5 Hessing about the phone. That's the earliest I can think
 6 of when they were involved.
 7 Q. Well, if I understand it, you saw Mr. Dean's
 8 bloody right index finger, right?
 9 A. At what point in the night?
 10 Q. You went and saw him at the hospital --
 11 A. Yes.
 12 Q. -- or you arrested him -- I don't know, you
 13 took him up there, didn't you?
 14 A. Yes. I didn't take him up there, but, yes, I
 15 saw his finger.
 16 Q. And I assume it would occur to you that the
 17 location of Mr. Dean's blood at various spots on Mr. Minter
 18 or on the ground up there or on Mrs. Minter might have
 19 meaning down the road.
 20 Did that come to your attention?
 21 A. What kind of meaning?
 22 Q. Well, let me ask it this way: When you were
 23 hauling Mr. Dean down to the Elko County Jail, he said to
 24 you, "Why am I going to jail? I am the guy that's cut."
 25 Right?

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1 A. Yes.
 2 Q. Did that suggest anything to you?
 3 A. Not that statement alone. Through the events
 4 that happened that night, it would, of course, be taken
 5 into consideration what Mr. Dean said.
 6 Q. Right. One of the things that you could have
 7 read from that statement is that he didn't really realize
 8 that Mr. Minter was cut.
 9 A. I can't make that assumption.
 10 Q. I am not asking you to make the assumption. I
 11 am just asking you if that isn't one of the things a police
 12 officer could think.
 13 A. It could be.
 14 Q. And if that's the case, then you might want to
 15 take a look and see where Mr. Dean's blood from this cut
 16 finger was at up there at that scene, right?
 17 A. When I took pictures and looked around, I
 18 didn't see anything that resembled blood.
 19 Q. All right. So I guess that in order to
 20 determine if Sean Dean's finger -- first of all, let me go
 21 at it this way.
 22 I think you reached a conclusion about how
 23 that finger had been cut, right?
 24 A. I didn't reach any kind of conclusion.
 25 Q. Didn't you state that it was consistent with

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1 a -- his hand slipping off the handle of the knife and
2 sliding up on the blade as he hit something hard and cut
3 his finger?

4 A. From the training that I have received through
5 schooling and everything, that's one reason why that cut
6 can appear. I can't say for a fact that that did happen,
7 but that's probably how it happened.

8 Q. Yeah. I am not trying to pin you down like
9 that. I am just trying to get you to tell us what you were
10 thinking, and how, if at all, you thought it would be -- in
11 the face of Mr. Dean possibly being -- having bled or being
12 bloodied in the knife fight, and in the face of him saying,
13 "What the heck is going on? I'm the guy that is cut. I'm
14 going to jail," from which you could conclude he might mean
15 he didn't know Mr. Minter was cut, that maybe you want to
16 put Dean's blood someplace on Mr. Minter?

17 A. I see what you are saying now.

18 Q. Yeah. Did that happen?

19 A. No. It was -- usually what will happen is if
20 there are any clothes that are sent off to be examined,
21 then it's usually a detective that will do that.

22 I will enter the property into evidence for a
23 case like this. If there is any reason that someone would
24 want the clothes to be sent off, then a detective would be
25 the one that would fill out a form and have that sent off

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1 to the Washoe County Crime Lab to be examined for blood.

2 Q. I am not saying it didn't happen in this case
3 or it should not have happened in this case, but you patrol
4 officers get on a scene, oftentimes recognizing that you
5 hear and see things, that unless you report it, the
6 detectives aren't ever going to know about it, right?

7 A. Correct.

8 Q. And like every other officer, you are trying
9 to write a report that contains what is relevant, what you
10 think is important stuff, but you have had experiences, I'm
11 sure dozens of times, where you have omitted something that
12 you later found out probably had more significance than you
13 thought?

14 A. I can't say that.

15 Q. So you don't know, I guess primarily because
16 you moved to Reno, the -- whether or not Mr. Minter's
17 clothing got sent off to see if Mr. Dean's blood was on it?

18 A. I don't know. You're correct.

19 Q. In any event, you didn't -- who was -- I guess
20 Detective Nielson became the detective on this case?

21 A. From what I learned, he was one that spoke
22 with Mr. Dean. I don't know if he took everything under
23 his wing or not, but I know that he did -- he and
24 Detective Zach Hessing became involved with the case.

25 Q. And were the detectives invited up to look at

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1 the actual scene where this fight had taken place?

2 A. Not to my knowledge.

3 Q. I gathered from your report that you wrote
4 that you thought that old -- excuse me, you thought that
5 Mr. Dean was kind of talking to Clarence Thompson in a
6 funny way when he kept telling him, "You know what to do,"
7 right?

8 A. It seemed odd to me.

9 Q. It did. What you concluded from that -- maybe
10 you didn't conclude it -- at least became a possibility
11 that Mr. Dean was telling Mr. Thomas to clean some of those
12 text messages off there, they could be bad for me.

13 A. That could have been a possibility. It just
14 seemed odd to me that he would say that.

15 Q. And you kind of cut that conversation off,
16 right?

17 A. No.

18 Q. You did not?

19 A. No.

20 Q. Okay. And that's why you notified
21 Detective Hessing that you had Sean Dean's cell phone and
22 you wanted to make sure that -- that he looked at it,
23 downloaded it to make sure, if there were deleted texts
24 between him and Denise, you got to see them, right?

25 A. I notified him -- I can't remember exactly

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1 what the e-mail said, but I think I told him that Mr. Dean
2 had made comments like that. So just kind of telling him,
3 you know, I got the phone, what I heard.

4 And I don't know -- I can't remember if the
5 phone was actually downloaded by Detective Zach Hessing or
6 not, so I can't say whether or not there was anything else
7 on there.

8 Q. Denise told you that Mr. Dean was drinking,
9 right?

10 A. She made mention of that that night.

11 Q. And you made mention of it in your report?

12 A. Not in my written area, but in the part of the
13 face sheet of the report, yes.

14 Q. And you didn't see any evidence of it?

15 A. Not that I could tell for myself, no.

16 Q. Okay. And how -- you were in the company of
17 Mr. Dean how long after this event had concluded?

18 A. Can you repeat again?

19 Q. You came into the company of Mr. Dean how long
20 after the event concluded?

21 A. I am not understanding your question.

22 Q. I don't blame you.

23 Do you have some idea when things stopped up
24 there at the Minter household, the fight stopped, how long
25 was it before you got in the company of Mr. Dean?

232

1 A. Okay. Maybe about 10, 15 minutes. I don't
2 know that to be exact, though.
3 Q. Did Bert ever tell you that he, during the
4 knife incident, knife part of the incident, had a hold of
5 both of Sean's arms?
6 A. I can't remember exactly. I know I spoke with
7 him briefly. And I would have to refer to my report to
8 refresh what he said to me.
9 Q. I had the impression on direct examination you
10 said that the overcoat or windbreaker that Mr. Minter was
11 wearing only had one hole in it. That is not true, is it?
12 A. I corrected myself.
13 Q. And said what?
14 A. I think I said there was two on there that I
15 could see.
16 Q. I'm sorry? You are going to have to speak up.
17 A. I think I saw there was two on there, from
18 what I could see just from briefly looking at it.
19 Q. Oh, okay. So there is more than one hole on
20 it?
21 A. On the jacket?
22 Q. Yeah.
23 A. Yes.
24 Q. You looked at some of the photographs or
25 looked at Mr. Dean -- are you the guy that took the

233

1 three cell phones, that's -- on the ground, that's just
2 unexplained?
3 A. The three cell phones?
4 Q. Yeah.
5 A. I believe it was the backing to one cell phone
6 and two cell phones there. So if one of the cell phones
7 came out, I think it was the back of the case on one of the
8 cell phones that came off.
9 Q. So it's not a cell phone; it's just a holder
10 for cell phone?
11 A. It's not a holder, but a battery case on some
12 of the old cell phones. I believe that's what it was.
13 Q. Oh, okay.
14 Bert had -- I think you looked at the
15 exhibits, and there is some dried blood on some of those
16 clothes?
17 A. Yes.
18 Q. And where was the dried blood?
19 A. Can you repeat that last part?
20 Q. Where was the dried blood?
21 A. So it was on the left part of the clothing for
22 the jacket. It looked like it was towards the bottom on
23 the shirt by each opening; it looked like there was dried
24 blood around it.
25 And also on Bert's pants, there was blood

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1 photographs up at the hospital?
2 A. At the hospital, yes.
3 Q. A little bit of mud on Mr. Dean's shoes?
4 A. I can't remember.
5 Q. If there was a little bit of mud on Mr. Dean's
6 jacket, that would be inconsistent with the way you
7 remember the ground being?
8 A. I would have to refer to my report as far as
9 the grabbing and during the fight.
10 Q. I thought you said the ground was dry?
11 A. Yes. There might have been dirt on his -- his
12 back or clothing.
13 Q. Did Denise tell you -- I'm going to withdraw
14 that question.
15 What was Denise wearing when you got there?
16 A. When I got there, just some type of shirt. I
17 can't remember if it was the -- like a shirt with the robe
18 that they gave her from the hospital.
19 Q. When you got to the scene is what I am --
20 A. Oh, from the scene? I don't remember. I just
21 remember her being at the porch. I didn't direct too much
22 of my attention towards Denise.
23 Q. Do you recall if she had a coat on?
24 A. I don't remember now.
25 Q. If the photographs you took of the ground show

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1 around the waistband and down the side.
2 Q. And did you examine the hole of the shirt and
3 the windbreaker and the pants to see if there was dried
4 blood anywhere else other than around those holes?
5 A. Today or when I collected that evidence?
6 Q. When you collected it.
7 A. When I go through it, I lay it out and I look
8 at everything. So from when I entered the evidence, I
9 can't remember what I saw exactly. I remember seeing the
10 blood where I saw it on the left side, primarily.
11 Q. Did you take photos of that, photographs of
12 that?
13 A. I don't remember if I did. I thought I had
14 taken photographs of them, but I can't remember if I did or
15 did not.
16 Q. Mr. Dean, I assume, was isolated, essentially,
17 up at the hospital?
18 A. He was placed into an emergency room, where he
19 was with Sergeant Pepper and Officer Lowry for a while.
20 Q. Then you showed up?
21 A. Yes.
22 Q. And by that time, he had already declined to
23 talk to you?
24 A. He declined to talk to me right after I placed
25 him into handcuffs.

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1 Q. You were actually inside Clarence Thompson's
2 residence and that of Ms. Steele?

3 A. Yes.

4 Q. All right. Describe what you did in that part
5 of your --

6 A. So when we were given permission by them to go
7 inside the trailer to find Sean, there was myself, and
8 Sergeant Pepper was in there; I believe Officer O'Farrell
9 and Detective Morrell were in there as well.

10 So we entered into the trailer, and I don't
11 know if Sergeant Pepper heard something down the hallway or
12 what, but he started calling out to Sean, telling him to
13 come out. And Sean came out of the room, and he was
14 directed to face away from us, keep his hands in the air,
15 and he complied with what we asked him to do.

16 Then we asked him to walk backwards towards
17 us. When he got close enough, I placed Sean into
18 handcuffs.

19 Q. And at the time that you got there, were the
20 other officers already there? Got to the Thompson
21 residence, were the other officers already there?

22 A. Yes.

23 Q. And were Mr. Thompson and Ms. Steele already
24 outside?

25 A. Yes.

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1 you asked if you could look at a map, would that help you
2 to articulate that a little bit more effectively if you had
3 a map?

4 A. I believe it will help describe what I was
5 looking at to the jury.

6 MR. MILLS: Can I get 45C.

7 Q. Officer, just to give a visual depiction of
8 what you verbally described for the jury, could you
9 describe what we're looking at here?

10 A. Yes. This would be South Fifth Street. This
11 would be the area for 701 South Fifth Street for the
12 trailer park. Then the trailer park where the incident
13 happened is this trailer park right here. This is the
14 Palacio Trailer Park, 764 South Fifth Street.

15 So where Christina Hodges was from when she
16 called, I believe was -- I can't figure out the exact
17 trailer, but it was one of the trailers over here. And
18 this trailer right here would be Bert and Denise's trailer.

19 So when I initially responded, I was coming
20 from over by Southside Drive. Drove to the area. When I
21 got to the area over here, I had my lights and sirens off.
22 I was looking around for anything, had my windows down,
23 could not hear or see anyone.

24 And so I went around to Carlin to see if maybe
25 they were on the back side. I didn't see anything

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1 Q. Was there a baby with them?

2 A. I don't remember.

3 Q. And were they standing toward Fifth Street or
4 toward Carlin Court?

5 A. More towards Carlin Court. They were, I
6 guess, with their backs towards Carlin, facing their
7 trailer and facing Fifth Street, looking at their door and
8 us.

9 Q. And had they -- you were not the person
10 requesting permission to go in?

11 A. No, I was not.

12 Q. And you were not present for any of the
13 conversation with respect to where Sean was and where
14 Mr. Dean was in the house?

15 A. Correct. I was not there.

16 MR. WOODBURY: That's all the questions I have
17 for the officer right at the moment. I have refrained from
18 asking other questions for some reasons I will explain to
19 the Court, I think.

20 THE COURT: All right. Any redirect?

21 MR. MILLS: Yes, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. MILLS:

24 Q. Officer Catalano, when Mr. Woodbury was asking
25 you to describe the location of some of these events and

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1 initially there, so I had our dispatch contact call
2 Christina back to have her come meet with me and stuff. I
3 met her at her trailer, and that is when she told me that
4 the fight was over here and the stabbing was over here.

5 So that's when I ran over here, when I saw
6 Joseph when he called out to me. He was just a little
7 bit -- a ways away from the trailer. I was down here by
8 the trailer, so it was a decent ways away for him to see.

9 Q. Last thing I would like you to describe is
10 where the trailer was located at where you eventually
11 located Mr. Dean.

12 A. So in this case, I guess from counting -- 1,
13 2, 3, 4, 5. So Number 5 is the trailer that we would have
14 found him.

15 Q. If I could just have you -- let's do like a 1,
16 2, 3. If you could write a one in the vicinity where your
17 initial contact with Christina Hodges was?

18 A. That would be 1, 2, 3, 4, 5, 6, 7. So 1 is
19 kind of hard to see.

20 Q. Then a 2 near where the Minters' trailer was
21 at, where the crime scene was?

22 A. 2 would be about right here.

23 Q. Then a 3 where you located Mr. Dean?

24 A. So 1, 2, 3, 4, 5. It would be 3, inside the
25 residence.

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1 Q. Okay. Could you write your initials at the
2 bottom of this?
3 A. Yes.
4 Q. Thank you.
5 MR. MILLS: I would offer 45C into evidence.
6 MR. WOODBURY: We have no objection.
7 THE COURT: 45C is admitted.
8 (WHEREUPON State's Exhibit 45C was admitted into
9 evidence.)
10 Q. (By Mr. Mills) Mr. Woodbury was asking you
11 about the cell phones at the scene. I'm going to show you
12 what has been marked as State's 16 and 17. Do you
13 recognize what's in those photographs?
14 A. Yes. From face value, it looks like there's
15 three cell phones. That would be Exhibit 16.
16 Then the next picture, that would be Exhibit
17 17, would be -- from what it looks like here, it would be
18 the back of a cell phone and another cell phone and
19 possibly the back of that cell phone for the battery
20 cover.
21 Q. The two black ones, are those the -- are those
22 the ones that are the possible front and back, or are those
23 two separate phones?
24 A. I don't remember exactly, but just kind of
25 what it looked like, it looked like that might have been

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1 the back of that phone.
2 Q. I see. So this black one might be the back to
3 this white one, and this might be a separate cell phone?
4 A. Yes. I don't remember exactly.
5 Q. Regardless of whether it was two or three cell
6 phones, was it you that recovered those cell phones?
7 A. Yes.
8 Q. And you provided those to Bert Minter at the
9 hospital?
10 A. Yes.
11 MR. MILLS: Thank you. That's all the questions
12 I have.
13 THE COURT: Any recross?
14 MR. WOODBURY: We have no recross, Your Honor.
15 We do ask that he be retained.
16 THE COURT: All right. Okay. Jury questions for
17 the witness, Officer Catalano?
18 All right. He is being held subject to recall,
19 so remember the rule of exclusion: Don't discuss the case
20 with anyone until the trial is over. It won't be over
21 until next Tuesday. The exception is you can talk to the
22 lawyers.
23 Thanks. We'll have you step down.
24 THE WITNESS: Yes, sir. Thank you.
25 THE COURT: Next witness, please.

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1 MR. MILLS: State calls Christopher Ward.
2 THE COURT: Thank you. Chris Ward.
3 This is Dr. Ward, right?
4 MR. MILLS: Yes.
5 THE COURT: Door comes out to you. Please come
6 up here with us, sir.
7 And would you swear in Dr. Ward, please.
8 (WHEREUPON, the witness was sworn.)
9 THE COURT: Please have a seat, sir. The door
10 comes out to you. Watch your step. Thank you.
11 Mr. Mills. Please proceed.
12 CHRISTOPHER HART WARD, M.D.,
13 called as a witness in said case, having been first
14 duly sworn, testified as follows:
15 DIRECT EXAMINATION
16 BY MR. MILLS:
17 Q. Could you please state and spell your full
18 name for the record, please.
19 A. Christopher, C-h-r-i-s-t-o-p-h-e-r, Hart,
20 H-a-r-t, Ward, W-a-r-d.
21 Q. What is your occupation?
22 A. I am a general surgeon.
23 Q. Where do you work at?
24 A. Elko Hospital or the Elko Clinic.
25 Q. How long have you worked there?

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1 A. Been in Elko 30 years.
2 Q. And to become a general surgeon, did you go to
3 medical school?
4 A. I did.
5 Q. Just briefly before that, where did you
6 complete your undergraduate training at?
7 A. United States Naval Academy.
8 Q. That's where you received your bachelor's
9 degree?
10 A. That's correct.
11 Q. Where did you go to medical school?
12 A. Northwestern University.
13 Q. And in medical school, did you specialize in
14 anything or was it just a general degree in medicine?
15 A. In medical school, you get an M.D.
16 Q. After the M.D., what did you do with your
17 medical training?
18 A. I did a five-year surgery residency.
19 Q. Where was that at?
20 A. The Naval Hospital at San Diego, California.
21 Q. And what were your primary responsibilities or
22 focus of your work during that residency?
23 A. Basically, learning how to do surgery.
24 Q. Any particular kind of surgery or just general
25 surgery?

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1 A. Well, general surgery deals primarily with
2 surgery, abdomen, breast, some head and neck surgery, and
3 soft tissue surgery.
4 Q. Was that first word you said "abdomen"?
5 A. Yes.
6 Q. So you weren't like doing podiatry, like foot
7 surgery or anything like that?
8 A. No.
9 Q. After that, what did you do?
10 A. I spent two years in Naples, Italy, as a
11 surgeon at the Naval Hospital there. I spent one year in
12 Libby, Montana. And then I spent the last 30 years here in
13 Elko, practicing surgery.
14 Q. Again, here in Elko, your specialization has
15 been general surgery?
16 A. That's correct.
17 Q. Have you testified in court before as a
18 doctor?
19 A. Yes.
20 Q. Approximately how many times?
21 A. Maybe a half a dozen.
22 Q. Have you been qualified as an expert in court
23 before?
24 A. Yes.
25 MR. MILLS: Okay. Your Honor, at this time I'm

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1 going to offer Dr. Ward as an expert in general surgery,
2 specifically for the purpose of talking about his treatment
3 of Bert Minter in this case, which involved surgery of that
4 nature.
5 THE COURT: Any voir dire on qualifications?
6 MR. WOODBURY: No, Your Honor.
7 THE COURT: All right. Of course, Dr. Ward,
8 then, can give his opinion in the area of the surgery,
9 general surgery, his treatment of -- I guess we'll hear
10 some evidence that he treated Mr. Minter?
11 MR. MILLS: That's correct, your Honor.
12 THE COURT: Certainly he can give his opinions on
13 what he did and his diagnosis and treatment, his surgery.
14 Okay. Mr. Mills, please proceed.
15 MR. MILLS: Your Honor, at this time I'm going to
16 offer into evidence State's 41, which is the certified
17 medical records from the treatment that the doctor
18 performed on Mr. Ward.
19 THE COURT: Mr. Minter, you mean?
20 MR. MILLS: Yes, Mr. Minter. I apologize, it's
21 late in the day.
22 THE COURT: Of course. It's my job, right?
23 All right. Mr. Woodbury, any objection?
24 MR. WOODBURY: No.
25 THE COURT: All right. 41 is it, Mr. Mills?

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1 MR. MILLS: That's correct, Your Honor.
2 THE COURT: That is admitted.
3 (WHEREUPON State's Exhibit 41 was admitted into
4 evidence.)
5 Q. (By Mr. Mills) Dr. Ward, now that this has
6 been admitted into evidence, if you need to, you can use
7 that as a reference in discussing your treatment of Bert
8 Minter.
9 So, Dr. Ward, I want to direct your attention
10 to December 9. Did you have occasion to treat a patient by
11 the name of Bert Minter?
12 A. I did.
13 Q. Okay. Could you tell the jury how that came
14 about and how you became involved in his treatment?
15 A. I received a call from the emergency room that
16 there was a patient in the emergency room with stab wounds
17 he had suffered in an assault. I instructed the emergency
18 room physician to admit him to the hospital. I saw him
19 that morning in a hospital room.
20 Q. About what time did you see him?
21 A. Probably about 6:30.
22 Q. What was his condition when you saw him?
23 A. He was in some pain, but he was alert and
24 oriented.
25 Q. Where was this at again when you first

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1 encountered him? Was this in the emergency room?
2 A. No. It was in a hospital room.
3 Q. A hospital room. Okay.
4 And what did you do then at that point?
5 A. I talked to him, examined him, and reviewed
6 some of the studies in his chart.
7 Q. And at which point in time did you examine his
8 injuries and decide what you were going to do?
9 A. I examined him the first time when I first saw
10 him. I came back and examined him again a couple of hours
11 later.
12 Q. What can you tell the jury about what you
13 remember about the injuries that you observed on him?
14 A. He had I believe four wounds in the posterior
15 axillary line described in my note, which basically is this
16 area back here.
17 Q. Which part of the body -- just if you could
18 verbalize what you're doing -- which part of the body are
19 you pointing to, for the jury?
20 A. From the lower part of the chest down to the
21 iliac crest, which is the pelvic bone. Well, we call it
22 technically the flank, but in the posterior axillary line.
23 Q. And what -- so you said there were four
24 different injuries?
25 A. Yes.

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1 Q. And where were the other injuries at?
2 A. They were in a line.
3 Q. You were talking --
4 A. Going down.
5 Q. You were describing all of them in a line --
6 A. From top to bottom.
7 Q. What was the nature of those injuries?
8 A. They were small, short lacerations.
9 Q. They were small, what lacerations?
10 A. They were short lacerations, "short" being
11 maybe an inch.
12 Q. So the short describes the diameter or the --
13 A. The length.
14 Q. -- the width or length of the laceration?
15 By "short," you mean less than an inch on each
16 of them?
17 A. Yes.
18 Q. Could you get a sense of how -- I guess the
19 depth of the lacerations?
20 A. The lacerations had been stapled closed by the
21 time I saw him. Based on the studies, the x-ray studies
22 that had been done, it appeared that at least one was deep
23 enough to be close to the peritoneal cavity, which is the
24 inside of the abdomen.
25 Q. Okay. Which of the four was that?

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1 A. It was the lowest.
2 Q. Okay. Could you just elaborate on what you
3 just said and describe that term for the jury. As close to
4 the what again?
5 A. Peritoneal cavity, which is the inside of the
6 abdominal cavity. It's where the guts are.
7 Q. On Mr. Minter, I guess, how much -- how much
8 distance would there be between the -- I guess the top of
9 the skin to that layer that you just described?
10 A. Probably three or four inches.
11 Q. Does that vary depending on the person?
12 A. Yes.
13 Q. Based on, I guess, you know, fat and muscle
14 content, that sort of thing?
15 A. Yes.
16 Q. So based on making that observation, what did
17 you decide to do in the course of your treatment for
18 Mr. Minter?
19 A. Well, the second time I saw Mr. Minter, he was
20 complaining of more abdominal pain and his abdomen was more
21 tender, so I decided to take him to surgery and explore his
22 abdomen to make sure there was no injury to his intestines.
23 Q. And describe how you would conduct that sort
24 of exploratory surgery?
25 A. I went through a midline incision -- that is

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1 a standard incision in the middle part of the abdomen --
2 and then systematically examined the abdominal contents.
3 Q. Okay. Did you do that in this case?
4 A. Yes.
5 Q. And what were your observations?
6 A. There was a retroperitoneal hematoma in the
7 area of the stab wound that I was concerned about, but
8 there was no evidence of peritoneal penetration or bowel
9 injury.
10 Q. Now, could you translate that to lay terms for
11 the jury, the hematoma -- the things you said about the
12 hematoma?
13 A. Well, a hematoma is a bruise, basically, a
14 large bruise. It's just bleeding into the tissues. The
15 injury -- visceral injury means injury to the intestines,
16 which was a concern, but there was no injury found to the
17 intestines.
18 Q. Where was that hematoma located at?
19 A. It was on the left side, just above the iliac
20 crest, which is the top of the pelvic bone.
21 Q. Could you describe for the jury whether there
22 were any vital organs in the vicinity of where those --
23 those puncture wounds were?
24 A. Basically, the structures that are in the
25 retroperitoneum, which is, that is, outside the line of the

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1 inside of the abdominal cavity but inside the abdominal
2 wall, are in the area where he had stab wounds, the basal
3 line, the diaphragm, the kidney, and the left colon.
4 Q. Going up higher on the body, what are some of
5 the vital organs in that neighborhood of the higher
6 puncture wounds?
7 A. Like I started from top to bottom: The basal
8 line would be the highest; kidneys kind of in the middle;
9 left colon would be the lower part of it.
10 Q. Okay. And what kind of damage could it do to
11 a human body if any of those had been lacerated by a knife?
12 A. It could result in serious, even life-
13 threatening injuries.
14 Q. Those lacerations that you described, are they
15 consistent with being stabbed with a sharp metal point, as
16 in a knife?
17 A. Yes.
18 MR. MILLS: Thank you, Doctor. That is all the
19 questions I have. I will pass the witness.
20 THE COURT: Any cross-examination, Mr. Woodbury?
21 MR. WOODBURY: Thank you, Your Honor.
22 CROSS-EXAMINATION
23 BY MR. WOODBURY:
24 Q. A lot of this is going to be repetitive,
25 Doctor. I'm sorry, but I don't understand too well.

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1 There were four stab wounds to the left side
2 of Mr. Minter?
3 A. That's correct.
4 Q. All right. And if I say "stab wounds," you
5 don't -- there is nothing else that is consistent with a
6 stab wound? No other kind of wound you can have that looks
7 like a stab wound?
8 A. Well, in all the time I had, I really can't
9 think of one, but I am sure that you could perhaps come up
10 with some other explanation. But as I said, I can't think
11 of one.
12 Q. In any event, they are -- in terms of width,
13 they are very narrow, and in terms of length, they are --
14 less than an inch, I think you said?
15 A. That's correct.
16 Q. All right. And would you say way less than an
17 inch?
18 A. No. I would say probably approximately an
19 inch.
20 Q. Okay.
21 A. Or a little less. Not more than that.
22 Q. Or a little more?
23 A. Not more.
24 Q. Oh, okay.
25 The depth of the penetration -- well, first of

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1 all, did you find some ribs bruised?
2 A. No. But I didn't see any ribs.
3 Q. Okay.
4 A. You won't normally see ribs during an
5 exploratory laparotomy.
6 Q. And the determination of how deeply into the
7 body the object that caused the injuries penetrated, I take
8 it you didn't exactly see that either with respect to at
9 least three of the four wounds?
10 A. No. They had been closed, as I said, in the
11 emergency room before I saw the patient.
12 Q. Okay. And so you wouldn't have an idea of how
13 deeply they penetrated?
14 A. No.
15 Q. And I suppose that penetration of the human
16 body depends on the sharpness of the object that is
17 penetrating it as to how easy it is to penetrate it?
18 A. Sure.
19 Q. And were any of the wounds in places where you
20 would think it would be particularly -- take a particular
21 amount of -- a greater amount of energy to penetrate it
22 than other places?
23 A. They were -- they were fairly consistent, I
24 mean, as far as -- as far as that goes. I wouldn't say
25 there was a lot of difference between one or the other.

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1 Q. All right. Fairly -- I guess what I am
2 getting at is, you can't tell the amount of force it takes
3 to create a wound that you were looking at?
4 A. No.
5 Q. And I take it there was a wound on
6 Mr. Minter's buttocks? Do you recall that?
7 A. I don't recall.
8 Q. Okay. So when you described the one that you
9 thought might have invaded the peritoneal cavity, that is
10 the lowest of the wounds that you did look at?
11 A. Yes.
12 Q. By lowest, we mean from the top of the head to
13 the bottom of the feet, it's the lowest?
14 A. Yes.
15 Q. All right. And was it -- in terms of being in
16 the front or the back of the left side, is it possible to
17 describe that or is there some medical term you'd use?
18 A. Well, the medical term I used was posterior
19 axillary line. Basically, if you take a fold behind your
20 armpit and drop a line straight down from that, that is the
21 posterior axillary line. So that is roughly where it was.
22 Q. On the line?
23 A. Yeah. Yes.
24 Q. That's -- all right. All of them were on that
25 line?

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1 A. Fairly close.
2 Q. And the one that -- I realize you have already
3 testified to this, mostly. What is this peritoneal cavity?
4 A. Well, if you start at the skin, there is -- in
5 the abdomen, there is skin, there is fat, there is muscle,
6 there is fascia, which is the tough stuff, kind of like the
7 gristle on your steak. It binds all that stuff together.
8 Then there is another layer of fat, and then there is
9 peritoneum, which is the thin layer that lines the inside
10 of the abdominal cavity.
11 Q. Ah.
12 A. The intestines for the most part are inside
13 the peritoneal cavity. The kidneys, for example, are
14 outside of the peritoneal cavity, but inside the abdomen.
15 Q. And are the things -- are the layers that
16 start at the outside and go in at the area where this --
17 these injuries occurred, are they particularly difficult to
18 penetrate with a sharp object?
19 A. No, not necessarily more so than other places.
20 Q. Okay.
21 A. I don't recall exactly how high the highest
22 one was, if it was over the ribs, and then, obviously, that
23 would have been -- that would have taken more force. But
24 between the ribs and the iliac crest, that is pretty much
25 the same.

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1 Q. All right. The reason that it would take an
2 object three to four inches is that Mr. Minter's quite
3 heavy?
4 A. That's correct.
5 Q. Okay. And in the area where he was, is an
6 area, I guess, where fat accumulates?
7 A. Well, yeah. I mean, fat accumulates under the
8 skin just about everywhere when you are heavy.
9 Q. But in the -- assuming that a person were not
10 as heavy as Mr. Minter, then the area between the
11 peritoneum, I guess --
12 A. Yeah.
13 Q. -- and the outer skin is substantially less?
14 A. It's less, that's correct.
15 Q. It might only be an inch or so or less?
16 A. In an adult, it's probably a great more than a
17 inch; probably more like a couple inches unless someone is
18 really skinny.
19 Q. And you did not find that the peritoneum had
20 been penetrated?
21 A. No.
22 Q. So it hadn't -- and in your surgery, may I
23 assume that the emergency room closed that injury up that
24 you thought might have penetrated the peritoneum?
25 A. They did.

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1 Q. Okay. And so you are looking it at from the
2 inside looking out, right?
3 A. That's correct.
4 Q. And it was bruised or --
5 A. There was -- there was blood behind the
6 peritoneum in the abdominal wall. That's what I meant by
7 hematoma.
8 Q. Okay. And so it wasn't -- all that had
9 happened, essentially, was it had been hit or hurt, but not
10 penetrated?
11 A. That's correct. The injury was apparently
12 confined to the abdominal wall.
13 Q. Okay. All right. When you go to the
14 hospital -- when did you do the surgery?
15 A. Let me see if I can find my operative note
16 here. I dictated my post-operative note at 11:57. So it
17 was probably sometime around ten o'clock when we went to
18 the operating room.
19 Q. When a person comes in -- if you know, when a
20 person comes into the emergency room and they are on other
21 medications, what steps are taken by emergency room
22 personnel to keep the medications or to stop the
23 medications to prepare for a further medical procedure, or
24 do you know?
25 A. Normally with a trauma patient they would not

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1 continue with a patient's normal medications.
2 Q. Okay. So to the extent that Mr. Minter had
3 taken any medications, you would expect for the most part,
4 by ten o'clock the next morning -- if he came in at ten
5 o'clock at night, by ten o'clock the next morning, the
6 effects of those medications would have essentially worn
7 off?
8 A. Not anticoagulants.
9 Q. I'm sorry?
10 A. I said not anticoagulants. I believe
11 Mr. Minter was on an anticoagulant. It could take several
12 days for those to wear off.
13 Q. And you looked at all of the medications that
14 he was on?
15 A. I'm sure I reviewed them before he went to
16 surgery.
17 Q. Do you remember there being quite a list?
18 A. I didn't. But I don't remember specifically
19 what they are. I don't think I have them in my note here.
20 No.
21 MR. WOODBURY: Okay. I don't think we have any
22 further questions.
23 THE COURT: Any redirect?
24 REDIRECT EXAMINATION
25 BY MR. MILLS:

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1 Q. So, Dr. Ward, let me see if I've got the
2 sequence of layers correct. So starting from the skin, it
3 goes fat, muscle, then was it gristle after that or --
4 A. Fascia.
5 Q. What was that?
6 A. Fascia. There is actually fascia around the
7 muscle on both sides.
8 Q. So fat, muscle, fascia. Then what came next?
9 A. Then muscle. Fascia, muscle, fascia.
10 Q. Okay.
11 A. More fat, peritoneum, then inside abdominal
12 cavity.
13 Q. What was the gristle that you mentioned?
14 A. I was talking about fascia.
15 Q. Okay. That is the same thing?
16 A. When you eat a steak, there is kind of a tough
17 stuff around the muscle in the steak. That is what fascia
18 is.
19 Q. In this case the laceration had gone -- had
20 penetrated all of that until it got to the peritoneum?
21 A. That's correct.
22 Q. And it hit but didn't penetrate the
23 peritoneum?
24 A. It did not penetrate the peritoneum.
25 Q. And the blood behind the peritoneum, I wanted

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1 to clarify, was that -- I guess on which side of the
2 peritoneum was that blood hematoma?
3 A. It was in the muscle, basically, in the
4 abdominal wall outside of the peritoneal cavity.
5 Q. It was outside; it wasn't inside?
6 A. No.
7 Q. Could you tell from the exploratory surgery
8 that you conducted I guess the width of the laceration as
9 it went through those layers?
10 A. No.
11 MR. MILLS: Thank you. That is all the questions
12 I have.
13 THE COURT: Any recross?
14 MR. WOODBURY: Nothing.
15 THE COURT: Any jury questions for the doctor?
16 All right. Appears not.
17 Is Dr. Ward ever going to be recalled?
18 MR. MILLS: I -- I hope not. I'm going to excuse
19 him, if -- I am not sure if the defense counsel wants to
20 retain him. I know he has got a vacation planned tomorrow,
21 needs to hit the road.
22 I don't plan on recalling him. I am willing to
23 excuse him.
24 MR. WOODBURY: A vacation planned tomorrow?
25 MR. MILLS: Something. He had some plans or

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1 something like that he was telling me about.
2 THE WITNESS: Yes, sir.
3 THE COURT: Okay. Well, then, he is excused.
4 MR. WOODBURY: That's fine.
5 THE COURT: Super. Have a nice time. Thank you,
6 Dr. Ward.
7 THE WITNESS: Thank you.
8 THE COURT: Have a good day.
9 Okay. Do you have any short witnesses?
10 MR. MILLS: No, Your Honor. If there is even a
11 witness out there at this point, it's going to be a very
12 long one.
13 THE COURT: Okay. What witness would that be?
14 MR. MILLS: Possibly Ms. Minter.
15 THE COURT: Okay. Well, we have a couple things
16 I have to deal with before 5:00 anyway. So we'll break a
17 little earlier for today.
18 Please be back in the jury room at 8:30 tomorrow;
19 maybe we'll try to start up just a tad early tomorrow,
20 quarter till.
21 Ladies and gentlemen, please do not converse
22 amongst yourselves or with anyone else on any subject
23 connected with the trial. Do not read, watch or listen to
24 any report or commentary on the trial or any person
25 connected with the trial by any medium of information,

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1 including, without limitation, newspapers, television,
2 radio or the Internet.
3 And do not form or express any opinion on any
4 subject connected with the trial until the cause is
5 submitted to you for deliberation.
6 In addition, you may not use any electronic
7 device or media, such as the telephone, a cell phone,
8 smartphone, iPhone, BlackBerry or computer, the internet,
9 any internet service, any text or instant-messaging
10 service, any internet chat room, blog, or website, such as
11 Facebook, MySpace, LinkedIn, YouTube or Twitter, to
12 communicate to anyone any information about the case until
13 I accept your verdict.
14 In other words, don't talk to anyone on the
15 phone, correspond with anyone, or electronically
16 communicate with anyone about this case.
17 Court's in recess. See you tomorrow at 8:30,
18 please.
19 (WHEREUPON, court adjourned at at 4:47 p.m.)
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263

1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4
5 I, Lisa M. Manley, Official Reporter for the Fourth
6 Judicial District Court, Dept. II, of the State of Nevada,
7 in and for the County of Elko, was present in the
8 above-entitled court on June 22, 2016;
9 The foregoing transcript is an uncertified rough draft
10 transcription of my stenotype notes of said proceedings.
11 This transcript has not been edited, proofread, finalized,
12 indexed or certified.
13

14 DATED: At Elko, Nevada, this 18th day of
15 November, 2016.
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2) SS.
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15 November, 2016.

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FILED

2016 NOV 28 PM 1:45

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY Me

Case No. CR-FP-2015-1508

Dept. 2

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF ELKO

00000

THE STATE OF NEVADA :

Plaintiff, :

v. : JURY TRIAL - VOL. 3

SEAN MAURICE DEAN, :

Defendant. :

_____/

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter
came on for hearing on June 32, 2016, at the hour of 8:54
a.m. of said day, before the HONORABLE ALVIN R. KACIN,
District Judge.

Reported by Lisa M. Manley, CCR #271

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***** WARNING *****

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1 Case No. CR-FP-2015-1508

2 Dept. 2

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 00000

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : JURY TRIAL - VOL. 3

12 SEAN MAURICE DEAN, :

13 Defendant. :

14 _____/

15

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18 came on for hearing on June 32, 2016, at the hour of 8:54
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20 District Judge.

21

22

23

24

25 Reported by Lisa M. Manley, CCR #271

1

APPEARANCES

1

2

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***** WARNING *****

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17 PLEASE CONTACT THE COURT REPORTER FOR FURTHER ASSISTANCE.

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PROCEEDINGS

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THE COURT: Good morning. We'll be back on the
record in Case CR-FP-2015-1508. Again, State versus Dean.

Mr. Dean is back in court with counsel Gary
Woodbury. And Mark Mills, Elko County deputy district
attorney, is here for the State.

I hope you had a nice break last night, ladies
and gentlemen.

Will counsel stipulate to the full presence of
the jury and the alternates?

MR. MILLS: State will, Your Honor.

MR. WOODBURY: For the defense.

MR. MILLS: Your Honor, before the State calls
its first witness, the State is going to reoffer State's
Exhibit Number 33 into evidence, which is the photographs
of the text messages that Officer Catalano testified to
yesterday.

THE COURT: All right. As presently constituted
or --

MR. WOODBURY: We have no objection as presently
constituted.

THE COURT: Exhibit 33 then is admitted.

(WHEREUPON, Exhibit 33 was admitted into evidence)

THE COURT: Thank you. All right. Mr. Mills.

MR. MILLS: The State calls Denise Minter.

4

1 THE COURT: Please raise your right hand and be
2 sworn, ma'am.
3 (WHEREUPON, the witness was sworn)
4 THE COURT: Please have a seat at the stand. The
5 door comes out to you. Watch your step.
6 All right. If we are not hearing you too well,
7 we may have you grab that microphone. You can pull it out
8 there
9 THE WITNESS: Okay.
10 THE COURT: You can just kind of hold it down a
11 few inches from your mouth. You don't have to talk right
12 into it, okay. It removes from that fixed position there.
13 All right. Mr. Mills.
14 DENISE MARIE MINTER
15 called as a witness in said case, having been first
16 duly sworn, testified as follows:
17 DIRECT EXAMINATION
18 BY MR. MILLS:
19 Q. Could you please state and spell your full
20 name for the record?
21 A. Denise Marie Minter. D-e-n-i-s-e, M-a-r-i-e,
22 and M-i-n-t-e-r.
23 Q. And Ms. Minter, where do you live?
24 A. 764 S. Fifth Street, Number 12.
25 Q. And how long have you lived there?

5

1 A. About a year maybe, about a year.
2 Q. So were you living there back on December 8 of
3 2015?
4 A. Yes.
5 Q. At that point in time in your life was there
6 anyone else staying there with you?
7 A. Yes.
8 Q. Who was that?
9 A. Bert Minter, Bert Minter.
10 Q. And what is your relationship to Bert Minter?
11 A. He's my ex-husband slash best friend.
12 Q. How long have you known Bert?
13 A. Eleven years now.
14 Q. And approximately how long had he been staying
15 with you back on December 8?
16 A. Just a couple days, because he was in the
17 nursing home.
18 Q. Do you know a person by the name of Sean Dean?
19 A. Yes.
20 Q. And how do you know that person?
21 A. He used to work at my job at Sinclair, and
22 then also Lindsey was my co-worker.
23 Q. And where were you working?
24 A. At Sinclair on Idaho Street.
25 Q. And Lindsey worked there with you as well?

6

1 A. Yes.
2 Q. Is that Lindsey Steele?
3 A. Yes.
4 Q. And Sean Dean worked there as well?
5 A. Yes.
6 Q. And at some point in time, did you and Sean
7 become more than just co-workers?
8 A. Yes.
9 Q. And so did you start dating at some point?
10 A. Yes.
11 Q. And how long did your, I guess, dating
12 relationship last?
13 A. I am not exactly sure.
14 Q. Just generally, if you had to characterize it,
15 was it days or weeks or months?
16 A. I am not sure.
17 Q. Okay.
18 A. It wasn't that long, but.
19 Q. And what was the -- I guess the status of your
20 relationship with -- with Mr. Dean on December 8 of last
21 year?
22 A. We had been broken up.
23 Q. And this Sean Dean that we're talking about,
24 do you see that person in the courtroom with us?
25 A. Yes.

7

1 Q. Would you point to him, describe what he is
2 wearing for the Court?
3 A. He is right over there. He is wearing a green
4 shirt, and I can't see the rest.
5 Q. Okay.
6 MR. MILLS: May the record reflect the
7 identification of the defendant?
8 THE COURT: The record will so reflect.
9 Q. Now, on December 8, and I guess a day before
10 or the days leading up to that, had you been communicating
11 with -- with the defendant?
12 A. Yes.
13 Q. And how were you communicating with him?
14 A. On December 8 it was through text messages.
15 MR. MILLS: And permission to approach, Your
16 Honor.
17 THE COURT: Yes.
18 Q. Ms. Minter, I'm showing you what has been
19 marked as and admitted as State's Exhibit Number 33. If you
20 could take a couple minutes to review that.
21 THE COURT: Did she get a chance to look at these
22 before?
23 MR. MILLS: She did.
24 THE COURT: Okay. How many pages does she have
25 to look at?

8

1 MR. MILLS: I think she's almost done.
2 Q. How many more pages do you have there, Ms.
3 Minter?
4 A. Just a few more.
5 Q. Okay.
6 A. Yep.
7 Q. Ms. Minter, are these the text messages that
8 you and Sean were sending to each other on December 7 and
9 December 8?
10 A. Yes.
11 Q. Is there anyone else involved in that -- in
12 those text messages that you just reviewed, or is it just
13 you and just Sean?
14 A. Just me and him.
15 Q. Generally, what is the nature of those text
16 messages the two of you were sending each other?
17 A. He had seen somebody come to my house in a
18 gray SUV, and I was so distraught with this arguing over
19 whatever that I -- I couldn't remember anybody in a gray
20 SUV.
21 Q. And was that --
22 A. At that time.
23 Q. And so that would have been on December 7 that
24 he was texting about seeing a person go into your trailer?
25 A. I'm sorry?

9

1 Q. Was that on December 7 that he was asking you
2 about the person in the gray SUV that was going into your
3 trailer?
4 A. I believe it was the 7th and -- I don't know.
5 Q. Do you know anybody in a gray SUV?
6 A. Umm, Duff's daughter has a silver Chrysler.
7 Q. Were you around on December 7 or 8?
8 A. I'm sorry?
9 Q. Were you at the trailer on December 7 or 8
10 during the day?
11 A. Probably. Well, not during the day because I
12 worked.
13 Q. What was your schedule at that time? Like,
14 were you working day shift or night shift? What kind of
15 schedule were you working?
16 A. I believe it was the day, from seven to two.
17 Sometimes I had to stay late because somebody comes in
18 late, but.
19 Q. And what were the times of the day shift that
20 you would typically work?
21 A. It would be seven to two. On the weekends it
22 would be 3:45 in the morning to noon usually.
23 Q. What else were you guys talking about in those
24 text messages?
25 A. Basically he wanted me to come see him, and I

10

1 didn't want to. He was threatening me because I would not
2 come.
3 So finally, at the end, I gave up -- or I gave
4 in. I said, "I'll just come see you tomorrow." I was just
5 exhausted. I was just exhausted from fighting back and
6 forth, and I just wanted to go to bed that night.
7 Q. And then after you told him that you were
8 exhausted and wanted to go to bed, what happened after
9 that?
10 A. I sat on the couch and kicked off my shoes.
11 And then the next thing I knew was a knock on my door. So
12 I got up and I pulled back the little curtain and I seen
13 that it was him. And so I told him, "Hold on, I got to get
14 my shoes on."
15 Q. Just the clarify for the jury, so this is --
16 is this December 8?
17 A. That is December 8.
18 Q. And about what time was this happening that he
19 showed up at the door?
20 A. About 8:00, around 8:00.
21 Q. Okay. All right. So take it from there. You
22 hear a knock at the door. Then what happened next?
23 A. So I go, put my shoes on, and I proceeded to
24 walk to the door. Bert was coming out, actually coming out
25 of the bathroom, and he asked me who was -- or where I was

11

1 going. I said, "Sean's out there. I am just going to go
2 talk to him. He wants to talk to me."
3 And so -- so I opened the door, and I was
4 going to step outside. Then he started pushing, trying to
5 back me up into the house. And then I backed him back
6 outside, and then I shut the door behind me.
7 And then I smelled the alcohol on his breath
8 and I got upset -- upset with him because -- and I said,
9 "You have been drinking."
10 And then, from there, I don't know. I do know
11 that I -- I got loud. I wasn't screaming, though, but I
12 did get loud because I was upset that he was drinking.
13 Q. Ms. Minter, I don't mean to interrupt. Just
14 let me -- if I can just follow up on a couple of things?
15 A. Um-hmm.
16 Q. How did feel when you realized that he had
17 shown up at your door step?
18 A. Well, I couldn't believe it, because I was so
19 exhausted, I just wanted to go to bed, and I had told him
20 in the text, "I want to go to bed."
21 He had sent a couple texts after that, and, I
22 believe, called. I didn't answer it. Because I just -- I
23 just wanted to go to bed. And then he showed up.
24 Q. And had you invited him over that evening?
25 A. No.

12

1 Q. Now, aside from these text messages, had you
2 guys been -- were there any phone calls or anything like
3 that between the two of you?
4 A. At one point in time there was a phone call.
5 Q. Did you call him or did he call you?
6 A. I'm not sure.
7 Q. Did you talk to him on the phone?
8 A. I did. I finally -- I finally answered. I
9 have no idea what we said. At this time I can't even
10 remember.
11 Q. What did -- when did that phone call take
12 place, I guess, in relation to eight o'clock on the 8th?
13 Like, how far before?
14 A. It was earlier.
15 Q. Earlier in the same day?
16 A. The same day, but yeah, earlier.
17 Q. So bringing you back around to what you were
18 talking about. So you come out on the porch with him and
19 you smelled some alcohol. What happened from there?
20 A. Like I said, I don't remember any of the
21 conversation. I know I was being loud, but I wasn't
22 screaming or anything, or -- he wasn't -- I don't believe
23 he was being all that loud or anything.
24 I do recall him saying something -- something
25 to the effect of "you're going to do me like this" or "how

13

1 are you going to do me like this," or something like that.
2 And then that's when Bert came to the door.
3 He opened up the door to check on me and see if everything
4 was okay.
5 Q. Where were you and the defendant at that point
6 in time when you were having that conversation right before
7 Bert came out?
8 A. On the porch.
9 Q. All right. So what happened when Bert came
10 out?
11 A. He -- well, I turned around and I looked, I
12 said, "It's okay. We're just talking. It's all right."
13 And then -- and then I believe I just started
14 going down the stairs, like, leading Sean down the stairs.
15 But they had locked eyes with each other and started
16 talking crap to each other, so I figured that I would lead
17 them off the porch to go talk, to go, like, to separate
18 them two.
19 Q. To lead who down off the porch?
20 A. To lead Sean off the porch and away from --
21 away from the -- where Bert was standing in the doorway.
22 Q. You used a phrase that they were talking smack
23 to each other. And what do you mean by that?
24 THE COURT: I thought she said "talking crap."
25 A. Crap.

14

1 Q. Did you say "crap" or "smack"?
2 A. Crap.
3 Q. I apologize. I think she did say crap. Could
4 you clarify what you meant when you said that they were
5 talking crap to each other?
6 A. I think somewhere along the lines of --
7 like -- I don't know, just -- I don't know, just talking --
8 they were just talking smack to each other -- now I did say
9 "smack" -- just back and forth. It's like his eyed locked
10 on to him and that was it. And it was like --
11 Q. Do you remember any of the specifics of what
12 they were saying to each other?
13 A. Something about Sean saying, "what? Do you
14 want some?" Meaning like a fight. And Duff saying no.
15 And then I believe that went on a few times as we were
16 walking down the steps.
17 Q. And what were -- what were their demeanors
18 like as they were talking smack or crap to each other? In
19 other words, what were their emotional states like? Were
20 they having -- just could you describe that?
21 A. I don't know what -- I don't remember. I
22 mean, I don't know.
23 Q. And do you know what I mean by, you know, what
24 their demeanors were like? What I mean is, were they
25 having a calm conversation? Were they agitated?

15

1 A. Oh, yeah, they were agitated.
2 Q. And --
3 A. Can I have some water, please?
4 MR. MILLS: We'll get a cup of water for you.
5 Q. So what happened next?
6 A. So I led him off, off the stairs. I believe
7 at one point in time I did tell Duff to go back in the
8 house. I said "we're okay," I believe, at one point.
9 And then we just continued walking off. But
10 then he didn't, he was just standing there, because Sean
11 kept on talking to him, well, talking crap to him, and
12 saying, "Do you want some?"
13 And Duff was like "no." Because Duff didn't
14 want to fight with him or anything. But I don't know, I
15 just was -- like, my whole thing was trying to get --
16 trying to get them away from each other.
17 And then I don't know what they were saying.
18 I can't remember exactly what they were saying after that.
19 Q. And then what happened at that point?
20 A. Umm, the next thing you knew, they were in a
21 fist fight.
22 Q. Where did that -- when the fist fight started,
23 where did that take place at?
24 A. Behind my -- my Ford Escort -- not Escort,
25 Explorer.

16

1 Q. Okay.
2 MR. MILLS: Permission to approach, Your Honor?
3 THE COURT: Yes.
4 Q. Ms. Minter, I'm showing you what has been
5 marked as State's Exhibit Number 15.
6 A. Okay.
7 Q. Do you recognize what's depicted in this
8 photograph?
9 A. Um-hmm.
10 Q. What is that?
11 A. That's my car, then that's my trailer.
12 Q. Okay. And so when the fight first started,
13 could you point in the photograph where it took place at?
14 A. It's all right in here behind my car.
15 Q. Okay. At which point in time did Bert come
16 down the stairs on to the ground?
17 A. I'm not sure.
18 Q. Do you recall how this fight fared -- too
19 many F's I apologize.
20 THE COURT: It happens.
21 Q. Do you remember how the fight started? There
22 we go, got it right that time. What I mean by that is, do
23 you recall who initiated physical contact in the fight?
24 A. I believe Sean hit -- threw the first punch,
25 because I remember Duff standing there, and they were still

17

1 talking crap, and then -- then Duff was just, like, you
2 know, and Sean punched him and then they got into it.
3 Q. And at that point in time, when that happened,
4 where were you in relation to Sean and Duff?
5 A. I believe I was -- I believe I was still
6 like -- I'm not sure where I was actually. We were
7 standing. I was close by them. Because I was yelling for
8 them to stop.
9 I am not sure if I was like -- like, right
10 there behind my car, but more towards on the side or -- or
11 what. I'm not exactly sure.
12 Q. So after Sean threw that first punch, and then
13 did Bert retaliate?
14 A. Yes.
15 Q. Then they were fighting at that point?
16 A. Yes.
17 Q. And could you just elaborate on that a little
18 bit and describe how they were fighting? In other words,
19 you know, were they pushing? Were they throwing punches?
20 Were they grabbing?
21 A. They were throwing punches.
22 Q. And what happened then?
23 A. I -- I really don't know much of the fight.
24 All -- I mean, all I know is I ended up -- we all three
25 ended up being on the ground. And I remember I kept

18

1 yelling and kept yelling, "Stop, stop."
2 And then -- so I ended up getting on the
3 ground with them. My right leg was on the ground, and I
4 had Sean in between my legs. My left leg was wrapped over
5 him. And then I had my right arm around his neck, like in
6 a choke hold, and like that. (indicating)
7 Q. And at that point in time when you were doing
8 what you just described, were the -- were you guys on the
9 ground or standing up?
10 A. We were on the ground.
11 Q. So you were doing that to Sean. And where
12 was -- was Bert when that was happening?
13 A. In front of Sean, facing Sean. And they both
14 just had ahold of each other's shirt and they were both
15 saying "let go" to each other. And then they finally let
16 go.
17 And then Duff got up. And then I let -- I let
18 go of Sean. Sean got up, but he stumbled -- I was still
19 laying on the ground. He stumbled back and I thought he
20 was going to fall on me, so I put my hand up like this,
21 (indicating), just in case he did fall back and -- to,
22 like, keep him from falling on me but -- because he was
23 stumbling back. But then he caught his balance. So then I
24 got up. And then --
25 Q. What happened after that?

19

1 A. And then Sean had started walking away, like
2 walking back down my drive. And then I told Duff, "All
3 right. Come on. It's over. Let's just go in the house."
4 And I just turned around and started walking back up to the
5 house.
6 And then I noticed that he wasn't with me,
7 Duff was still standing there when I had turned around.
8 And then I -- I think some words -- more words were
9 exchanged, but I don't remember what they were.
10 And then Sean ran back up to him and punched
11 him again in the face. And then --
12 Q. Let me ask you about this. How far away had
13 the defendant walked before he turned around and came back?
14 A. Oh, I'm not sure. I'm not sure. I don't
15 know. Maybe from -- yeah, I don't know.
16 Q. Okay. That's fine. So --
17 A. It wasn't that far, I mean, but.
18 Q. So he comes back and punches Duff in the face.
19 What happened after that?
20 A. And then he pulled out something from his back
21 pocket and --
22 Q. When you say "he" pulled something out?
23 A. Sean pulled something out of his back pocket.
24 And at first -- at first I thought it was a cell phone
25 because I thought I -- I thought it had been glowing.

20

1 Q. I'm sorry, I didn't catch that last part?

2 A. I thought it had been glowing. I thought I

3 seen something glowing in his hand, but I don't know. And

4 then he was -- he was doing like this motion (indicating)

5 to Duff.

6 Q. Could you stand up so the jury can see that

7 better? What kind of motion was he making?

8 A. Like this. (indicating) A motion like that.

9 Q. Just to clarify, you used your right hand in

10 making that motion, correct?

11 A. Yes.

12 Q. So was Sean also using his right hand?

13 A. Yes, I believe so.

14 Q. And he was holding something in that right

15 hand?

16 A. Um-hmm.

17 Q. You say whatever it was, it appeared to be

18 glowing to you?

19 A. Yeah, like right when he pulled it out, I

20 thought it was glowing.

21 Q. All right. What was Duff doing while -- I

22 guess which part of Duff's -- let me back up and ask this.

23 Those blows that you just described for the

24 jury to Duff, were any of those blows actually landing and

25 striking Duff?

21

1 A. Yeah.

2 Q. Which part of his body?

3 A. On his side.

4 Q. What was Duff doing as he was being -- as

5 those blows were landing on him?

6 A. He was -- he was punching him back.

7 Q. What did you do when you saw this happening?

8 A. I ended up running back over there again and

9 then yelling "stop," whatever. And then he hit me, he hit

10 me in the chest. And I didn't realize until later on that

11 I was stabbed, too.

12 Q. Where on your chest did he hit you? If you

13 could show the jury?

14 A. Above my heart. Right here, above my heart.

15 Q. What did that feel like when he hit you?

16 A. Just like somebody just hitting me. I didn't

17 know I was stabbed. I just thought he punched me in my

18 chest.

19 Q. And did he hit you with the same hand that he

20 was using, throwing those punches at Duff?

21 A. Yes.

22 Q. So what happened at that point?

23 A. I remember saying -- I remember saying, "Ow,

24 you freaking hit me." I said -- he was -- I said, "Ow, you

25 hit me," you know. And I couldn't believe it. I was

22

1 shocked at that.

2 But then after -- after I said that, then

3 there was like two more times or three more times that

4 he -- two or three, whatever, that he did that again.

5 Q. That he did what again?

6 A. Then he turned around and left.

7 Q. I'm sorry, that he did what again?

8 A. There was like two more motions, like this,

9 (indicating) to Duff. And then -- then he left. It was

10 either two or three, I can't remember exactly.

11 Q. How did he leave?

12 A. Just walked off, walked -- walked down the

13 driveway.

14 Q. What did you do then?

15 A. After that, I turned around and I walked over

16 and I sat down on my porch. And Duff started walking

17 towards me. I remember -- as he got into the light, I

18 remember thinking that that was an awful lot of blood.

19 They were hitting each other in the face and I couldn't see

20 any marks or anything on his face.

21 Q. What blood are you talking about?

22 A. Blood on his shirt and stuff.

23 Q. Okay.

24 A. And then he -- he just kept walking closer.

25 And then that's when I felt, like, a trickle down. And I

23

1 looked down. That's when I realized that I was stabbed.

2 And I told Duff, I said, "Dude, I got

3 stabbed." And then he -- and then he lifted up his shirt a

4 little bit, and I said, "Yeah, you got stabbed, too. I

5 think we need to go to the hospital."

6 Q. What did you see when he lifted up his shirt?

7 A. Cuts and stuff and, you know, just wounds and

8 blood trickling down.

9 Q. And so what did the two of you do then?

10 A. Well, right after -- right after I said that,

11 I got up and I went into my house and I grabbed a jacket

12 and then came back out.

13 And then -- then I remember Joe, Joseph

14 Schenk, I remember him saying, "Identify yourself," or --

15 and I imagine -- oh, somebody had told me sit down, and it

16 might have been him, I don't know. But I remember somebody

17 saying "sit down."

18 And I was -- backing up a little bit. But

19 then I guess it was an officer that was walking back up my

20 driveway, and he identified himself. And -- and then the

21 ambulance came and I heard sirens and the ambulance came,

22 so.

23 Q. Did you receive medical treatment?

24 A. Yeah.

25 Q. Did you end up going to the hospital?

24

1 A. Yes.
2 Q. Okay.
3 A. Both of us did.
4 Q. What kind of treatment did you receive for the
5 cut on -- above your heart as you mentioned?
6 A. Chest x-ray. They give me -- I'm not sure,
7 I'm not sure if they gave me an I.V. or not. I can't
8 remember. I just --
9 Q. Did they stitch it up or staple it?
10 A. Well, yeah.
11 Q. Do anything like that -- like that to you?
12 A. They stitched it up. They wanted to x-ray to
13 see if -- how far it went in.
14 Q. Do you have a scar as a result of that -- that
15 laceration to your chest?
16 A. Yes.
17 Q. If it would not be too embarrassing, if you
18 are willing to do it, would you mind showing that to the
19 jury, pointing it out for them.
20 A. (witness complies)
21 Q. At any point in time during the fight that you
22 just described, were you aware of either Joseph or Brittany
23 around?
24 A. Umm, when -- when I first -- when it first
25 started, I had been screaming and screaming. And then I do

25

1 remember hearing Brittany's voice, she was screaming, "my
2 dad," or -- I think something like to that effect.
3 And she was the one out there. And she had
4 the phone and I imagine it was her that called the cops, of
5 course. It was the other neighbors that came out. And
6 but -- and then I didn't know -- I didn't know that Joe --
7 Joseph was out there the whole -- I guess he was out there
8 the whole time.
9 But that night that he had -- that's when I
10 had realized he was there, when he said identify -- or told
11 me to sit down and "identify yourself" or something to the
12 cops that was coming up the driveway.
13 Q. Is that when you first became aware that
14 Joseph was around?
15 A. Yeah.
16 Q. When he said those things?
17 A. Right.
18 Q. While the fight was going on, where was your
19 attention focused?
20 A. My attention?
21 Q. Yeah. What were you looking at, paying
22 attention to?
23 A. On Duff.
24 Q. Does your trailer have a porch light?
25 A. Yes.

26

1 Q. Was it on that evening?
2 A. Yes.
3 Q. So what kind of lighting was there in the
4 vicinity of where this fight was happening?
5 A. I don't know now, because I got another light
6 out there because my switches don't work, stopped working.
7 But I believe it just went to like the end of the trailer.
8 Q. Was it, I guess, lighting up the -- did it
9 provide any light to the -- I guess the bottom of the porch
10 near your vehicle where the fight took place?
11 A. Yes.
12 Q. When you went outside that night to talk to
13 Sean when he showed up at your door, did you have a knife
14 in your hand?
15 A. No.
16 Q. Did you have a knife in your possession at
17 all, like in a pocket or anything?
18 A. No.
19 Q. Did you have any kind of weapon?
20 A. No.
21 Q. At any point in time, did you see a knife in
22 Duff's hand?
23 A. No.
24 Q. Or any kind of weapon in his hand?
25 A. No.

27

1 MR. MILLS: Thank you, Ms. Minter. That's all
2 the questions I have for now. I'll pass the witness.
3 THE COURT: Cross-examination?
4 MR. MILLS: Your Honor, I believe the witness
5 has --
6 THE WITNESS: Can I take -- can I take a break or
7 anything?
8 THE COURT: For what? Cross-examination. We
9 have got to continue on with this trial. If you need a
10 bathroom break or something, I suppose we could do that.
11 THE WITNESS: Yeah, I just need to go.
12 THE COURT: This will just be five minutes,
13 though, Ms. Minter. We have got to keep this trial moving.
14 Please do not converse amongst
15 yourselves or with anyone else on any subject connected
16 with the trial. Do not read, watch or listen to any report
17 or commentary on the trial or any person connected with the
18 trial by any medium of information, including, without
19 limitation, newspapers, television, radio or the Internet.
20 And do not form or express any opinion on any
21 subject connected with the trial until the cause is finally
22 submitted to you.
23 You may not use any electronic device or media,
24 such as the telephone, a cell phone, smartphone, iPhone,
25 BlackBerry or computer, the internet, any internet service,

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1 any text or instant messaging service, any internet chat
2 room, blog, or website such as Facebook, MySpace,
3 LinkinDn, YouTube or Twitter, to communicate to anyone any
4 information about this case until I accept your verdict.

5 In other words, you cannot talk to anyone on the
6 phone, correspond with anyone, or electronically
7 communicate with anyone about this case.

8 This is going to be a very brief recess so she
9 can take her restroom break, and we'll get right back to
10 it.

11 (WHEREUPON, a short recess was taken)

12 THE COURT: Be back on the record for Case
13 CR-FP-2015-1508. State versus Dean.

14 Mr. Dean is back in court with counsel Gary
15 Woodbury. And Deputy District Attorney Mills is here to
16 represent the State.

17 We have got Ms. Minter on the witness stand. I
18 remind her she is under oath. She is going to
19 cross-examination.

20 Will counsel stipulate to the presence of the
21 jury and the alternates?

22 MR. MILLS: Yes, Your Honor.

23 MR. WOODBURY: So stipulated.

24 THE COURT: Thank you. All right. Mr. Woodbury.

25 MR. WOODBURY: Thank you, Your Honor.

29

1 if you had exchanged text messages with Mr. Dean?

2 A. On the 7th? No, I don't remember that.

3 Q. I didn't say on the 7th.

4 A. Okay.

5 Q. Do you remember denying that you had exchanged
6 text messages?

7 A. No.

8 Q. Do you remember --

9 A. Text messages? No.

10 Q. Do you remember denying --

11 A. No.

12 Q. Do you remember denying that you had that, in
13 fact, not had a telephone conversation with Mr. Dean?

14 A. Say that again, please.

15 Q. Excuse me?

16 A. Say that again, please.

17 Q. Do you remember denying to Detective Nielson
18 that you had not had a telephone conversation with Mr.
19 Dean?

20 A. I don't remember that either.

21 Q. Okay. Is it fair to assume that on December
22 8, the day that this happened, that you got off work at two
23 or three o'clock that afternoon?

24 A. Probably, yes.

25 Q. Okay. Why only probably?

31

1 CROSS-EXAMINATION

2 BY MR. WOODBURY:

3 Q. Ms. Minter, in preparation for today's
4 testimony, did you have an opportunity to read your
5 testimony at the preliminary hearing?

6 A. Yeah, a little bit of it.

7 Q. Why just a little bit?

8 A. I didn't get to read all the -- completely
9 all of -- because I was having panic attacks and stuff like
10 that and anxiety, and I couldn't retain anything that I was
11 reading because I was so upset.

12 Q. All right. So you are not really familiar
13 with what you testified to at the preliminary hearing?

14 A. Somewhat.

15 Q. Okay. And did you have an opportunity to
16 listen to your interview with Detective Nielson?

17 A. I'm sorry?

18 Q. Did you have an opportunity to relisten to
19 your interview with Detective Nielson?

20 A. No, I didn't listen to it.

21 Q. On December -- do you remember Detective
22 Nielson asking you if on December 7 you had engaged in any
23 text message exchanges with Mr. Dean?

24 A. On December 7?

25 Q. Do you remember Detective Nielson asking you

30

1 A. Because I don't know if I -- I would have to
2 go back and look at the schedule.

3 Q. But you don't exchange text messages with
4 people while you are at work, do you?

5 A. I am not sure if I was off that day or what.

6 Q. Okay. So you just have no recollection of
7 that?

8 A. And they do let us -- they do let us on our
9 phone at work.

10 Q. You can text back and forth?

11 A. Yeah. At work, yeah. If our work is done, we
12 don't have any customers, yeah. Lot of people do that.

13 Q. Okay. So you don't have any recollection of
14 being home between -- being at your residence at number 12
15 between two or three o'clock that afternoon and eight
16 o'clock that evening?

17 A. Ask that again?

18 Q. Are you saying that you have no recollection
19 of having been at your residence at number 12 between
20 three -- two or three o'clock --

21 A. No.

22 Q. -- in the afternoon and eight o'clock that
23 evening?

24 A. I don't know.

25 Q. Excuse me?

32

1 A. I don't know if I was there then at that time.
2 Q. You and Mr. Minter were having kind of a rough
3 time, would that be fair to say?
4 A. What's that?
5 Q. Were you and Mr. Minter having kind of a rough
6 time on December 8?
7 A. Somebody just coughed or whatever. Say that
8 again, please?
9 Q. Do you recall whether you and Mr. Minter were
10 having kind of a rough time between each other on December
11 8?
12 A. What do you mean by rough time?
13 Q. Well, wasn't he accusing of using rent money
14 to gamble with?
15 A. On December 8?
16 Q. Yeah.
17 A. No.
18 Q. Were you using rent money to gamble with?
19 A. Yeah. For, like, the business?
20 Q. Excuse me?
21 A. The profits? Are you talking about for the
22 business?
23 Q. I'm talking about rent money that he received
24 or you received on his behalf for trailer rentals.
25 A. Right. For the trailers?

33

1 Q. Yeah.
2 A. Yes, some of it.
3 Q. Yeah. And weren't you and he quarreling about
4 that?
5 A. I'm sorry?
6 Q. Were you and he quarreling about that?
7 A. I don't think on December 8, no.
8 Q. Why not?
9 A. I don't know why not. I don't believe it
10 was --
11 Q. Well, you were losing businesses, right? You
12 couldn't even pay for them? You were losing the trailers,
13 right?
14 A. Yeah, because -- that's not because of me
15 gambling. Because I do side jobs, I picked up side jobs
16 and stuff like that.
17 Q. What side jobs did you pick up?
18 A. From a friend of my mine, Joanie, in Osino.
19 Q. Doing what?
20 A. Just helping her, like, stain decks and things
21 like that. She works on houses.
22 Q. Were you spending in the nature of \$3,000 a
23 month gambling?
24 A. I don't think I spent that much.
25 Q. Do you know why Mr. Minter would think you

34

1 were spending that much?
2 A. And I would win -- I would win a couple
3 hundred, too, and that's probably how it got circulated
4 back in. But I don't -- I don't -- I don't know.
5 Because when he lost his job at Coach, I had
6 to take on everything. So -- but I got bills paid and
7 stuff. It's just that I work at a gas station and I
8 couldn't handle -- my bills were like 6,000 a month.
9 And I believe -- I believe I kept the business
10 going for at least seven months after he had his strokes.
11 He had two strokes back to back then lost his driving --
12 Q. And then --
13 A. --at Coach.
14 Q. -- he lost everything, right?
15 A. Over time.
16 Q. Yeah. That was continuing on up until
17 December?
18 A. I'm sorry?
19 Q. That continued on up until December that you
20 were losing things?
21 A. I'm not sure.
22 Q. It was pretty rough on ol' Duff, right? He
23 was getting pretty angry?
24 A. Yeah, we talked about that before. But yeah,
25 disappointing.

35

1 Q. Just disappointed, not angry?
2 A. We got in an argument over it.
3 Q. Excuse me?
4 A. We had got in an argument over it.
5 Q. How many arguments?
6 A. Huh?
7 Q. How many arguments?
8 A. I am not sure.
9 Q. Lots of them?
10 A. I'm not sure.
11 Q. Okay. It was also the case that you had been
12 deceptive with Mr. Minter with your continuing relationship
13 with Mr. Dean; isn't that true?
14 A. We had -- no. I mean, we had broken up and
15 then -- it was like an off-and-on thing.
16 Q. So my question was whether you were being
17 deceptive towards Mr. Minter --
18 A. No.
19 Q. Let me finish the question. You were being
20 deceptive towards Mr. Minter about your continuing
21 on-and-off relationship with Mr. Dean, right?
22 A. No, I had told him about when -- I had told
23 him that when it was off for -- I don't know exactly
24 how that played a part in -- I mean, he knew everything.
25 He is my best friend.

36

1 Q. He is your best friend, but you told him you
2 weren't seeing Mr. Dean anymore?
3 A. At the time I wasn't. And I would tell him.
4 Q. You told him that everything was finished,
5 right?
6 A. Everything was what?
7 Q. Before December 8, Mr. Minter was under the
8 impression that everything was finished between you and Mr.
9 Dean, right?
10 A. On December 8?
11 Q. Before December 8.
12 A. Maybe a couple days before.
13 Q. But that wasn't true, was it? You and Mr.
14 Dean were still talking?
15 A. When he -- I can't remember when it was that
16 he got in my face and he told me he was going to kick my
17 ass. I don't remember how long before that to December 8.
18 But that's when I had -- that's when I had
19 ended it. I am not doing this. I have been in abusive
20 relationships before and I'm not going to do that.
21 Q. Okay. You may notice that I didn't ask you
22 what caused the breakup. My point was, you were telling
23 Mr. Minter that it was off between you and Mr. Dean
24 totally. And that wasn't true, was it?
25 A. Yeah, I told him that it was off. Yeah, it

37

1 was true.
2 Q. Then what about these text messages on
3 December 7 and December 8 where you're telling him that you
4 love him?
5 A. Yeah, I was explaining that, yeah, I love him,
6 how could he do that to me, how could he jump in my face
7 like that and hurt me.
8 Q. And when he asked you to come see him --
9 A. And I --
10 Q. Wait. Let me finish the question. When he
11 asked to come see you or asked you to come see him, didn't
12 you tell him in your text messages, "I can't" -- "I can't
13 face you. I can't get face-to-face with you. I can't
14 breathe or I can't swallow."
15 A. Right. Yeah.
16 Q. And weren't you, in fact, telling Mr. Dean
17 that there was a chance that this was all going to resume?
18 A. I was frustrated.
19 Q. I don't care whether you were frustrated. I
20 am asking you, did you not intend to tell Mr. Dean that it
21 was not all through?
22 A. Yeah, I was scared. I remember scared.
23 Q. I am not asking you if you were scared. I
24 asked the question of whether or not you intended to tell
25 Mr. Dean in these text messages --

38

1 A. That I intended to tell him?
2 Q. -- that it was not all through, that there
3 could be a reestablishment of the personal romantic
4 relationship?
5 A. No, I didn't. No, I didn't think it was -- I
6 thought I was being clear in a lot of my text messages that
7 I didn't want to --
8 Q. All right.
9 A. -- to be with him. Last one, the very last
10 text message, I do remember saying, "okay, fine," because I
11 was giving in, "just let me get" -- "let me go to bed now
12 because I'm exhausted, then I'll come see you tomorrow."
13 I do remember saying that in the text message.
14 That was the last -- one of the last ones.
15 Q. All right. So would you say that the ongoing
16 relationship between you and Mr. Dean was also upsetting
17 Mr. Minter?
18 A. No.
19 Q. He was trying to reestablish a romantic
20 relationship with you, wasn't he?
21 A. Who?
22 Q. Mr. Minter?
23 A. No.
24 Q. Why would he say that he was, that it was an
25 on-and-off thing?

39

1 A. We had on-and-off things after the divorce
2 years ago. It was never -- it never worked out.
3 Q. Yeah. But --
4 A. That was years ago, though.
5 Q. He was still pitching it on December 7 and
6 December 8, wasn't he?
7 A. What?
8 Q. He was still pitching it on the December 7 and
9 December --
10 A. Duff?
11 Q. Yeah.
12 A. No. Trying to get with me on -- no.
13 Q. Trying to talk you back into a romantic
14 relationship? No?
15 A. Who? Me or him?
16 Q. Was he trying to talk you --
17 A. No, he was not.
18 Q. Was he angry when you told him it was Mr. Dean
19 at the door?
20 A. He was concerned about me, if I was all right
21 or not, or if I was going to be all right or not.
22 Q. Was he --
23 A. He wasn't angry.
24 Q. Was he angry? Did he express anger?
25 A. No.

40

1 Q. So if he testified that he asked you, "what
2 the fuck is he doing here," you don't recall him saying
3 that?
4 A. No, I don't.
5 Q. Would you say that the expression of that --
6 using that kind of expletive and that kind of language
7 would indicate that Mr. Minter was very angry about Sean
8 Dean being at the door?
9 A. Say that again. If he was --
10 Q. If Mr. Minter used those words that I just
11 quoted with the expletive, would you not say that was clear
12 evidence that Mr. Minter was angry about Sean Dean being at
13 the door?
14 A. No, it's not. Because I know how Duff talks.
15 Q. What did you answer, or did you answer, when
16 he asked you what Dean was doing at the door?
17 A. I -- like, if we were inside the house or
18 something? Is that what you mean?
19 Q. When he asked you, Mr. Minter, if he asked
20 you, what is he doing here, what is Sean Dean doing here,
21 did you answer?
22 A. I had said that he wants to talk.
23 Q. How did you know what Mr. Dean wanted to do?
24 A. Because he had been saying that earlier in the
25 text messages, he wanted me to talk to him.

41

1 Q. Mr. Dean called you two times right before he
2 came up, didn't he?
3 A. I guess so.
4 Q. Did you talk to him?
5 A. No, I didn't answer the phone.
6 Q. Why would the records show that you did?
7 A. I don't know then.
8 Q. Did you say he could come up?
9 A. No. I told him I wanted to go to bed, I was
10 exhausted through fighting and I just wanted to go to bed.
11 Q. So, naturally, after that last text message
12 when you told him you just wanted to go to bed, you went to
13 the couch?
14 A. Yes.
15 Q. Is that where you sleep?
16 A. Yeah.
17 Q. Okay. You don't have a bedroom of your own?
18 A. Yes.
19 Q. Why would you sleep on the couch?
20 A. Because, for one, I feel more comfortable.
21 For two, I let Duff have my bed because he was -- just had
22 surgery and -- and --
23 Q. This is a one-bedroom house?
24 A. No, it's two bedrooms.
25 Q. Who else was staying with you?

42

1 A. Nobody.
2 Q. Why can't Duff have one bedroom and you have
3 another?
4 A. Because the little room I use pretty much for
5 a closet.
6 Q. For what?
7 A. Like a closet, put all my stuff in it.
8 Q. Got a bed in it?
9 A. No.
10 Q. What kind of cell phone did you have on
11 December 8?
12 A. What kind of sofa?
13 Q. Yeah?
14 A. A regular sofa.
15 Q. You don't know the model or make?
16 A. No, I don't know.
17 Q. Were you on Facebook?
18 A. On Facebook?
19 Q. Yeah.
20 A. Was I on Facebook?
21 Q. That was the question.
22 A. I get on Facebook all the time. Are you
23 talking about --
24 Q. Excuse me?
25 A. Are you -- a certain time or --

43

1 Q. Did you have access to Facebook on your cell
2 phone?
3 A. Yeah.
4 Q. And the text that you sent to Mr. Dean, did
5 you send it on Facebook or some other way?
6 A. It was through regular text messaging.
7 Q. Okay. Do you remember talking to Detective
8 Nielson and he asked you if after the hospitalization of
9 Duff was complete and you didn't need your cell phone so
10 bad anymore if you would bring it down and let him extract
11 the text messages?
12 A. Yeah, I remember one of the detectives, I
13 don't know if it was Nielson, I remember one of the
14 detectives asking for it.
15 Q. Did you take it to him?
16 A. I'm sorry?
17 Q. Did you take it to him?
18 A. No, because Duff was in the hospital.
19 Q. Didn't he tell you after -- that he understood
20 that while Duff was in the hospital you might need the cell
21 phone, but after --
22 A. Yeah.
23 Q. -- he got out and you didn't need it, would
24 you bring it in so he could extract the text messages?
25 A. He said he didn't need it?

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1 Q. When did he --
2 A. That I didn't need it?
3 Q. He told you, did he not, in the interview,
4 bring your cell phone to me after Duff gets out of the
5 hospital and you don't need your cell phone anymore so I
6 can extract the e-mails?
7 A. Oh, yeah. Sorry, I misunderstood.
8 Q. You didn't provide it to him ever, right?
9 A. Yeah, I got busy with stuff, taking care of
10 him and it -- it slipped my mind to go.
11 Q. Who else were you texting that night?
12 A. I still have it on my phone, I have all them
13 on my phone still.
14 Q. All the texts?
15 A. All the texts, yeah. There is -- on the other
16 phone. I don't know -- I thought it was in this one box, I
17 was actually trying to look for it.
18 Q. And did you communicate with Duff on the
19 Facebook during the December 7, December 8?
20 A. I don't recall if I did or not.
21 Q. You had the capability of doing that, right?
22 A. What is that?
23 Q. You had the capability of doing that?
24 A. Yeah.
25 Q. Okay. Did you and Duff have a discussion

45

1 about what you needed to do with respect to Sean Dean?
2 A. As far as needed to do what?
3 Q. Getting rid of him? Getting him out of the
4 picture?
5 A. I don't recall that.
6 Q. Does that mean it might have happened and you
7 just don't remember?
8 A. I don't know.
9 Q. Didn't have a discussion about getting Sean
10 Dean up and putting him in a position where he would be
11 taken to jail and get him out of your life so you wouldn't
12 be exhausted and scared?
13 A. Oh God, no. No.
14 Q. Oh God, no?
15 A. No.
16 Q. Okay. So that means you had gone to
17 extraordinary lengths to keep Sean Dean from getting in a
18 position where he was going to be out of your life, taken
19 to jail?
20 A. Are you saying that I went to extremes?
21 Q. You would, wouldn't you? You didn't want him
22 to go to jail?
23 A. That I went to extremes to get Sean out of my
24 life?
25 Q. Yeah.

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1 A. No. Why would I -- no.
2 Q. But then you must have gone to extremes to
3 keep him in your life?
4 A. No, I was just afraid -- it was just a
5 breakup.
6 Q. But it wasn't a breakup. You were telling him
7 that you loved him, you were -- you told him that you were
8 going to come see him the next day?
9 A. Yeah, because I gave in. That was at the end
10 of the text messages. I was so frustrated and I wanted to
11 stop arguing with him, I wanted him to stop arguing with
12 me.
13 Q. Why didn't you stop texting him back and
14 forth?
15 A. I did the last three -- three text messages,
16 or something like that. I just didn't bother answering. I
17 wanted to go bed. I had told him that. That I wanted to
18 go to bed, that I was tired, I was exhausted from arguing
19 with him.
20 Q. Did you talk with Duff about how frustrated
21 and angry you were about that?
22 A. I -- I don't think so. That night, no, I
23 don't think so.
24 Q. Duff tell you, "Get him up here and I'll kick
25 him around for you"?

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1 A. Oh my God, no.
2 Q. No?
3 A. No.
4 Q. Sean is a little guy, isn't he?
5 A. Huh?
6 Q. Sean is a little guy, isn't he?
7 A. Wait, what?
8 Q. Sean is a little guy, isn't he?
9 A. No. I don't think he is little.
10 Q. Well, you were able, during the fight, to get
11 him in a head lock, for Heaven's sake, and hold him away
12 from Duff, right? You could do it?
13 A. He worked out, he is really healthy, he is
14 strong. I don't think -- yeah, that --
15 Q. Okay. Duff is quite a big guy?
16 A. Yeah, he's a big guy.
17 Q. And Duff is a pretty tough guy?
18 A. Like, what do you mean by that?
19 Q. Well, you have known him for eleven years?
20 A. Yes.
21 Q. I assume he has been in a scrap or two, no?
22 A. He doesn't -- he doesn't go around boxing
23 people, if that's what you are referring to.
24 Q. But he has been in fights during that 11-year
25 period, right?

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1 A. He -- he'll separate somebody or whatever, but
 2 he is not going to attack anybody.
 3 Q. So assuming what you are saying is the way it
 4 is, you knew that Duff did not want Sean Dean at the
 5 residence, your house, when this knock came on the door?
 6 A. What?
 7 Q. When the knock came on the door, you knew Duff
 8 was going to be angry and didn't want Sean Dean there?
 9 A. I did not know that, no.
 10 Q. Okay. Did you tell Mr. Dean, "You are going
 11 to have to get out of here, bud, my ex-husband is here and
 12 he's angry"?
 13 A. I probably could have said no, go away, or
 14 whatever. But then I thought that that was going to make
 15 it worse, because with all the arguing through the text
 16 messages and him threatening me, saying -- saying, "Do you
 17 want to find out" -- then at one point in time he said,
 18 "You're just making me your enemy," stuff, I was kind of --
 19 I wanted to kind of, like, just smooth things over.
 20 So when he knocked, I was like, "okay, let me
 21 go get my shoes on." I figured I would go out and talk to
 22 him, come back in, and everything would be all right. That
 23 was my thoughts, but.
 24 Q. The text messages are full, are they not, of
 25 questions from Mr. Dean to you about who was coming and

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1 going in your house, correct?
 2 A. Yeah, he had asked.
 3 Q. Is that correct?
 4 A. He had asked.
 5 Q. How many times?
 6 A. Not exactly sure how many times.
 7 Q. Did you ever once tell him "my former husband
 8 has moved back in my house"?
 9 A. I was stuck on trying to figure out who he was
 10 talking about. He wouldn't give me a time frame. He
 11 wouldn't describe the person that he seen. And I was
 12 racking my brain, trying to figure out who the hell he was
 13 talking about at that time.
 14 It wasn't until later on I kind of figured out
 15 he must have been talking about Brittany because she has a
 16 silver Chrysler van type thing and -- but at that moment,
 17 because I kept asking him, "okay, tell me. Tell me what
 18 you saw. Tell me, describe the person for me."
 19 I was trying to help him figure it out and to
 20 help me figure it out and he wouldn't. And so -- and I was
 21 so distraught with all the -- with all the arguing and
 22 stuff, and so I didn't know who he was talking about at
 23 first.
 24 But I don't know how many times he had asked.
 25 I know he was getting pissed.

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1 Then we switched with -- to a different -- on
 2 to a different subject or whatever. And then, I don't
 3 know, I was so frustrated at the end of that, that -- like
 4 I said, all I wanted to do was go to bed. I even told him,
 5 the very last text I said, "Let me go to bed and I will
 6 come see you tomorrow," you know. I was giving in. But he
 7 wouldn't -- and I --
 8 Q. The fact remains there was exactly one person
 9 living in your house besides you, right?
 10 A. No.
 11 Q. Who else was living there?
 12 A. Nobody else was living there. But Brandy had a
 13 key. Brandy had a key to my place.
 14 Q. Are you saying that Duff wasn't living there?
 15 A. Huh?
 16 Q. Duff wasn't living there on December 8?
 17 A. Yeah. Well, just a couple days, I believe.
 18 Q. He thinks he was there for a lot longer than
 19 that. Is he wrong about that?
 20 A. Yeah.
 21 Q. So Duff came on December 7?
 22 A. December 7, no.
 23 Q. When did he come?
 24 A. He was in the nursing home at that time.
 25 Q. On December 7?

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1 A. Um-hmm.
 2 Q. So he came on December 8?
 3 A. Oh, wait, no. December 7 he was -- no,
 4 November 7 -- no, November 17 is when I believe he got out
 5 of the nursing home.
 6 Q. When did he move into your house?
 7 A. I am not sure. I am not sure when it was,
 8 but -- I don't remember the date or anything. I don't
 9 remember -- I just -- it was a couple days he had been
 10 staying at my place.
 11 Because he was in the hospital for awhile. I
 12 don't even know. I don't remember. I don't remember.
 13 Q. But you do remember he was living there on
 14 December 7 and December 8?
 15 A. I remember the 8th he was there. I am not
 16 sure about even the 7th. I don't even know.
 17 Q. So let me ask you again, why didn't you just
 18 tell Mr. Dean, "My ex-husband is living here with me," on
 19 December 8?
 20 A. What was that?
 21 Q. Why didn't you just tell Mr. Dean in a text,
 22 my ex-husband Duff or Bert is living here with me?
 23 A. Because we were arguing about all kinds of
 24 other stuff, and it just didn't -- when he -- when he is
 25 arguing with me, or fighting, I ended up just shutting

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1 down, not saying anything. I just to try to avoid the
2 fight.
3 And yeah, I don't -- we were talking about
4 other things. I -- he gets me so -- can -- can I have
5 another break?
6 MR. WOODBURY: Excuse me?
7 THE WITNESS: Can I have another break, Your
8 Honor?
9 THE COURT: No. We have got to continue, ma'am.
10 A. Yeah. I don't know. I don't know. What was
11 the question again?
12 Q. I forgot.
13 A. Yeah, me too.
14 Q. You didn't want Mr. Dean there when he knocked
15 on the door and you saw who it was?
16 A. What was that question again?
17 Q. You did not want Mr. Dean there when he
18 knocked on the door and you saw who it was?
19 A. No, I didn't want him there. I told him I
20 wanted to go to bed. I was tired, I was frustrated. I was
21 tired from arguing with him and I just wanted to go to bed.
22 Q. Why didn't you tell him to go away?
23 A. Because I figured that if I go out there then
24 there wouldn't be any problems.
25 Q. Any problems of what sort?

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1 A. But I -- I don't know. I don't know.
2 Q. You were scared of him?
3 A. Yeah.
4 Q. And you thought there was going to be a
5 physical problem with him, he was going to beat you up or
6 something?
7 A. Yeah, a little part of me did.
8 Q. Excuse me?
9 A. I said a little part of me did. Especially
10 through the text messages when he was threatening me. But
11 then I thought that it could smooth over, I was trying to
12 make peace.
13 Q. Up to that point in your relationship, he had
14 never touched you, right?
15 A. What?
16 Q. He had never beat you up or anything like
17 that?
18 A. No, but he got into my face. And the way he
19 looked and everything and he pumped up and he got in my
20 face and said, "I'll eff you up, too."
21 Q. So you could have said, "Sean, go away."
22 A. Oh yeah, I'm going to do that when he is in my
23 face and --
24 Q. Well --
25 A. Yeah, I was scared.

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1 Q. When you saw who it was --
2 A. And that was the last straw for me.
3 Q. When you saw who it was through the little
4 curtain in your window, you closed the door and went and
5 got your shoes?
6 A. Um-hmm.
7 Q. Right?
8 A. Right.
9 Q. Okay. Why didn't you pick up the phone and
10 call 911? "There's a guy at my front door. I don't want
11 him here."
12 A. Because that's not me to do. I don't do that.
13 Q. Did you tell Duff to do it?
14 A. No. Like I said, I just thought maybe if I go
15 out there, talk to him for a minute, it would smooth things
16 over. And then I -- that's what -- that was -- that's what
17 was my intentions.
18 Q. You had been talking about roughly the same
19 sorts of things, about him wanting to know how things were
20 going to work out and when they were going to work out, who
21 was living in your house, for six or seven hours that day,
22 December 8, on the text messages, right?
23 A. He didn't say who was living in my house, he
24 said who had went into my house. Because he said --
25 because I remember saying something about how creepy that

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1 was, "why are you watching my house?"
2 Then he said he had gotten out of the car with
3 Mocha, which is Lindsey Steele, and he said that he glanced
4 over and seen somebody in a gray SUV pull up and somebody
5 got out.
6 And the whole thing was, like, I was trying to
7 find out -- you know, I said, "Describe them." You know,
8 who -- and he couldn't and he wouldn't actually let me know
9 who -- so I could -- I said, "I can't help you if I don't
10 know."
11 And I was just really frustrated. And I
12 didn't think about Brandy at the time with her silver
13 Chrysler. It wasn't until, I don't know, a couple days
14 later, that's when I thought about it might have been
15 Brandy.
16 But at that time, I didn't know who he was
17 talking about because he wouldn't describe it -- describe
18 the person to me.
19 Q. So I assume if at sometime in your previous
20 relationship with Mr. Dean he had got in your face and he
21 was all pumped up and you thought he was going to be
22 physically violent with you, you told Duff that, right?
23 "This guy may be physically violent with me?"
24 A. I may have when he was in the nursing home.
25 Q. All right. You may have at some other time

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1 that -- in just incidental conversation with Mr. Minter?
2 A. I believe I did mention it in the nursing
3 home. Because I was scared, I was freaked out.
4 Q. So Duff would have had good reason to think
5 that maybe he better arm himself to go out that front door
6 and confront Mr. Dean when --
7 A. No, because Duff wasn't wanting to go fight,
8 he was -- he just wanted to check on me when he opened the
9 door.
10 Q. How do you know that?
11 A. Because, like you said, I have known him for
12 11 years, I know how he operates. He was just making sure
13 I was okay.
14 Q. Okay. And when he came out the door, you were
15 okay?
16 A. Yeah, at that moment.
17 Q. Something going to pieces that hasn't been
18 mentioned here before that suggests you weren't going to be
19 okay?
20 A. What? Something going to pieces?
21 Q. You said at that moment --
22 A. Yeah.
23 Q. -- you were okay. All right. Was --
24 A. Yeah, when he opened the door.
25 Q. Now listen. Was something happening that

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1 hasn't been mentioned here before that suggested you
2 weren't going to be okay?
3 A. At the very moment, no.
4 Q. So I guess Sean was all sweaty and shaky?
5 A. I don't know why he would be sweaty and shaky.
6 Q. You didn't see that?
7 A. I am just saying -- I just said that I don't
8 know why he was, if he was.
9 Q. Did you see it?
10 A. No.
11 Q. Okay. So if Mr. Schenk says he was all sweaty
12 and shaky --
13 A. Oh --
14 Q. You never saw that, right?
15 A. I didn't.
16 Q. Okay. You were the guy that was standing
17 face-to-face with him, right?
18 A. Face-to-face with who?
19 Q. Sean Dean.
20 A. The time you're talking about was the -- when
21 the time we were at the porch. The time with Joe, you're
22 talking about with Joe, that was after the fight and
23 everything had occurred.
24 Q. Okay. So Duff came out the door and said
25 what?

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1 A. He said, "What's up?"
2 Q. And what did you say?
3 A. I said -- I believe I said something along,
4 "I'm okay." Then I said, "You can just go back in the
5 house, we're just talking. We're just going to talk."
6 Because I was being loud initially. That's
7 why he came out to check and see if I was all right.
8 Q. Why were you being loud?
9 A. Because I was upset that he was drinking,
10 because I -- he got -- he was in my face, I smelled all
11 that alcohol on him. So I was like, "You have been
12 drinking." And so, yeah, my voice probably carried in
13 there, too. I mean, I think I was loud.
14 He wasn't -- I don't think he was being all
15 that loud or anything. But I do recall I was, because I
16 was upset that he was drinking.
17 Q. All right.
18 A. I mean, a lot. I mean, because you -- you can
19 smell --
20 Q. He was really lit up, right?
21 A. -- old alcohol. And, you know, you could
22 smell the alcohol bad.
23 Q. Yeah. Did it surprise you that the officers,
24 10 or 15 minutes later, couldn't smell or see any effects
25 of alcohol on Mr. Dean?

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1 A. I don't know.
2 Q. Are you trying to prejudice the jury against
3 Mr. Dean by saying he was drunk and you could smell old
4 alcohol?
5 A. I mean, I could smell the alcohol. It was
6 very potent.
7 Q. Okay. When you said to Mr. Minter, "I'm all
8 right, nothing is going to happen," or words to that
9 effect, "go back in the house," what happened?
10 A. Well, like I said, him and Sean -- Sean's eyes
11 locked on to him and then -- then they started talking crap
12 to each other. And then I was trying to lead -- I led Sean
13 off the steps, trying to separate them.
14 And -- and then they just ended up -- I don't
15 know -- next thing I knew, they were fighting.
16 Q. But the one thing that Mr. Minter didn't do
17 was go back in the house like you told him to, right?
18 A. Correct. Because they were fighting outside.
19 Q. And you have a great deal of affection for Mr.
20 Minter, right?
21 A. Yeah. I have known him for eleven years. He
22 is my best friend, yeah, we used to be married.
23 Q. And divorced?
24 A. And divorced, yes.
25 Q. And how long has this best friend stuff been

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1 going on?
2 A. How long has it what?
3 Q. How long has this best friend stuff been going
4 on, where you decided you were best friends?
5 A. Awhile. Years.
6 Q. Mr. Dean had some rough -- or Mr. Minter had
7 some terrible medical problems, right?
8 A. Who?
9 Q. Mr. Minter.
10 A. Yes, he had two strokes.
11 Q. And some other stuff?
12 A. And some other -- he had surgery -- he had
13 surgery on his knees before, I don't know when. Surgery on
14 his shoulders. The rotary cuffs were torn, both of them.
15 And then stuff like that.
16 Q. He was on all kinds of medications, right?
17 A. Yeah. For the strokes. And he has got blood
18 thinner -- I don't know the names of them, but the blood
19 thinners. Takes some for, I think, bronchitis or -- he
20 takes a lot of meds, but I don't know for -- I don't know
21 the names of them or anything.
22 Q. The medications had to do -- some of them had
23 to do with depression and anxiety?
24 A. He does take some of those.
25 Q. Yeah. How many, do you suppose?

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1 A. I am not sure actually.
2 Q. Alter the way that Duff behaves?
3 A. What's that?
4 Q. Does that change the way that Duff behaves,
5 when he takes those medications?
6 A. When he takes the medication, he's fine. I
7 mean.
8 Q. Some of them are for anxiety?
9 A. I'm sorry?
10 Q. Some of the medications are for anxiety?
11 A. Yes, I believe so.
12 Q. What he is anxious about, do you know?
13 A. I don't know. He takes -- I don't know,
14 doctors prescribed them for him.
15 Q. In any event, the one thing you do know
16 that -- is that on December 8, when he was at that front
17 door, you didn't want him in no fist fight, right?
18 A. Well, yeah. I don't like altercations like
19 that.
20 Q. Excuse me?
21 A. I don't -- I don't like altercations. I just
22 didn't want nothing to happen. That's why I was leading
23 them off the -- off the porch. Sean -- when I was leading
24 Sean off the porch.
25 Q. Why didn't you turn around and shove Duff back

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1 in that house?
2 A. I did what?
3 Q. Why didn't you shove Duff back in the house,
4 tell him, "Get out of here. I'm going to talk to this guy?"
5 A. I don't know why.
6 Q. You said that there -- that he had and Mr.
7 Dean had locked eyes?
8 A. Yeah. So, therefore, that's why I figured -- I
9 walked off -- off of the porch, off away from the house.
10 Q. And you have a lot more control over Mr.
11 Minter than you do over Mr. Dean, right?
12 A. Control, no.
13 Q. You can't make Mr. Minter do about what you
14 want him to do?
15 A. No.
16 Q. Did I understand you to say that you got
17 pretty loud out on the porch?
18 A. Yeah, my -- yeah, I was loud. I wasn't
19 screaming, but I was loud. At least I think I was, you
20 know.
21 Q. Is there some doubt?
22 A. What's that?
23 Q. Is there some doubt?
24 A. Huh?
25 Q. Is there some doubt about you being loud?

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1 A. Is there some what about me being?
2 Q. Doubt.
3 A. Out?
4 Q. Doubt.
5 A. Doubt? No, I was probably loud.
6 Q. Did you get loud -- well, let me ask you this,
7 you know Mr. Schenk?
8 A. Yeah, I know Mr. Schenk.
9 Q. And you know Brittney Tice?
10 A. Yes.
11 Q. How close do they live to you?
12 A. If you look on that -- that map, you can see
13 in the picture, you can see -- because her place is right
14 here, then my place is right here.
15 Q. How far is that?
16 A. I don't know because I don't know -- like, I
17 don't know how far that is.
18 Q. But you knew if you got loud Mr. Schenk and
19 Ms. Tice would be able to hear you being loud, right?
20 A. No, I don't believe they heard me. It wasn't
21 until when I was screaming for them to stop fighting, I
22 believe that's when she had came out.
23 Q. Not when they came out, when they heard you.
24 A. When they heard me, yeah, screaming.
25 Q. Heard you yelling at Mr. Dean?

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1 A. Oh, I don't know if they came out -- actually,
2 I don't even know if they came out. I wasn't yelling at
3 him, I was talking loud at first.

4 Q. You knew if you talked loud, it was going to
5 trip Mr. Minter -- I don't want to put it that way. You
6 knew if you talked loud, Mr. Minter was going to become
7 concerned about you, right?

8 A. No, that was not on my mind, if I was going to
9 talk loud and somebody was going to come out. That was not
10 on my mind or anything like that.

11 Q. But looking back, you know very well that if
12 you talk loud, Mr. Minter was going to come out of that
13 house, right?

14 A. No.

15 Q. Mr. Minter showed up at the door and --

16 A. What's that?

17 Q. Mr. Minter came up to the door and came out.
18 And he didn't have a cane with him?

19 A. No, he didn't have his cane.

20 Q. Didn't have any oxygen, right?

21 A. Right.

22 Q. And didn't have anything else to medically
23 assist him in getting to that front door?

24 A. I don't know if he was walking with the cane
25 to the front door. I don't recall that. He didn't come

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1 was locked on him, and his -- Sean's eyes was locked on
2 Duff's eyes and they were talking crap, and I was trying to
3 go -- trying to get them separated, trying to get -- trying
4 to get them away from -- yeah, just --

5 Q. What words were being used in this
6 conversation between Mr. Dean and Mr. Minter?

7 A. I'm sorry?

8 Q. What words were being used in this --

9 A. I don't know.

10 Q. Well, let me --

11 A. I told you I don't know.

12 Q. -- state the question. You don't know what
13 words were being used between Mr. Dean and Mr. Minter while
14 they were talking smack or crap or whatever we're talking
15 about?

16 A. No, I don't.

17 Q. Okay.

18 A. I don't know exactly what words they were
19 saying to each other.

20 Q. Just saying?

21 A. Just the one that when -- when Sean had --
22 Sean had asked him if you want some, then Duff is like no.
23 He didn't want to fight or anything.

24 Q. The word "fight" occurred in there?

25 A. Huh?

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1 out with anything outside, though.

2 Q. Mr. Minter lost his job, correct?

3 A. Um-hmm.

4 Q. And was waiting for his disability income to
5 start, right?

6 A. Umm, at that time -- I actually don't know
7 when it came. I actually don't know if he had already
8 gotten it or what. I don't -- I don't know.

9 Q. So in order to avoid the fight, you pushed Mr.
10 Dean back off the porch?

11 A. Did what now?

12 Q. You pushed Mr. Dean off the porch and down to
13 the ground?

14 A. No.

15 Q. How did you get off the porch?

16 A. I started walking off the porch, and he was --
17 we were just -- I was just leading him down. We just both
18 walked down, I didn't push him off the porch.

19 Q. You didn't force him with your hand?

20 A. No.

21 Q. To get him away from Mr. Minter?

22 A. No.

23 Q. Okay. All right. And then what happened?

24 A. I don't know. They were talking smack to each
25 other the whole time, as we were walking down. His eyes

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1 Q. Did the word "fight" occur, come out of Mr.
2 Dean's mouth?

3 A. No, he said, "You want some?"

4 Q. And what did that mean?

5 A. That means do you want to get down, do you
6 want to box, or whatever.

7 Q. How do you know that?

8 A. Because that's slang, I know that.

9 Q. Okay. And Mr. Minter, did he know that, too?

10 A. I'm pretty sure he got that idea.

11 Q. So now you have got Mr. Dean down on the
12 ground and you're still face-to-face with Mr. Dean?

13 A. More like -- actually, I don't know. I don't
14 know. I don't know.

15 Q. So here comes Mr. Minter off the steps. No
16 cane, no oxygen, just walking down the steps, right?

17 A. I guess so.

18 Q. What happened to his disability?

19 A. Huh?

20 Q. What was happening to his disability? How was
21 he able to do that?

22 A. I don't know. What was happening to his -- I
23 don't know what was happening to his -- are you talking
24 about the papers that --

25 Q. No. He doesn't have a cane? Doesn't have

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1 oxygen?

2 A. Oh, I imagine he was holding on to the
3 railing.

4 Q. You imagine he did?

5 A. I don't know. You're asking me. I don't
6 know.

7 Q. Okay. Now, they are both on the ground --

8 THE WITNESS: Your Honor, is it okay to take a
9 break? My because my -- I'm starting to get -- I need
10 a break.

11 THE COURT: Do you have another witness you can
12 call?

13 MR. MILLS: Yes.

14 THE COURT: Do you have any objection to taking
15 witnesses out of order?

16 MR. WOODBURY: No.

17 THE COURT: All right. Do you have a short one?

18 MR. MILLS: Yeah, I could put on a short one.

19 THE COURT: All right. We'll give you a break
20 for about 10 minutes. But you got to stay out here, okay?

21 THE WITNESS: Okay.

22 THE COURT: Now, the rule of exclusion is
23 invoked. So don't discuss this case or your testimony with
24 anyone. The trial is not going to be over until Tuesday.
25 You can talk about it after Tuesday.

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1 But you can talk about it, though, with Mr. Mills
2 and his assistant there or, you know, Mr. Woodbury. But
3 that's, it okay.

4 Give you 10 minutes to compose yourself.

5 MR. WOODBURY: Your Honor, Mr. Dean has indicated
6 he has got to go to the restroom. And, I'm sorry, it -- I
7 don't know what else to say.

8 THE COURT: Please do not converse amongst
9 yourselves or with anyone else on any subject connected
10 with the trial. Do not read, watch or listen to any report
11 or commentary on the trial or any person connected with the
12 trial by any medium of information, including, without
13 limitation, newspapers, television, radio or the Internet.

14 And do not form or express any opinion on any
15 subject connected with the trial until the cause is finally
16 submitted to you.

17 I suppose 10 minutes -- well, I know 10 minutes
18 we'll be back in here and Ms. Minter can come back in then.
19 But have another witness ready. If she keeps saying she
20 needs breaks, I want to fill it in with other witnesses.

21 Court's in recess.

22 (WHEREUPON, a short recess was taken)

23 THE COURT: We're back on the record for Case
24 CR-FP-2015-1508. Again, State versus Dean.

25 Mr. Dean is back in court with counsel Gary

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1 Woodbury.

2 Again, Elko County deputy district attorney Mark
3 Mills is for the State.

4 We have Ms. Minter on the witness stand. I
5 remind her she is under oath on continued cross-examination
6 with Mr. Woodbury.

7 Counsel stipulate to the presence of the jury and
8 the alternates?

9 MR. WOODBURY: So stipulated.

10 MR. MILLS: Yes, Your Honor.

11 THE COURT: Thank you. Mr. Woodbury.

12 MR. WOODBURY: Thank you, Your Honor.

13 Q. (By Mr. Woodbury) Ms. Minter, do you have any
14 recollection or any way to judge how long the discussion,
15 the talk between Mr. Minter and Mr. Dean went on before Mr.
16 Dean threw the first punch?

17 A. I do not.

18 Q. They -- while the conversation between the two
19 of them was taking place, were you saying things, as well?

20 A. Was I what?

21 Q. Were you saying things, as well?

22 A. I don't remember.

23 Q. Do you recall how long it was when Mr. Minter
24 came down off the porch on to the ground and Mr. Dean and
25 he were talking back and forth once again? Do you have any

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1 idea how long that took?

2 A. No, but it started -- started right when he
3 had opened the door.

4 Q. Yeah?

5 A. And then Sean locked on to him and -- his
6 eyes, and that's when they started. And then -- but I
7 don't know -- I don't know how long that lasted or --
8 because we was going down the steps at the same time that
9 that was happening.

10 And as we were going down the steps, then, you
11 know, Sean wasn't even looking at me, he just kept staring
12 at Duff up there. I do recall that.

13 But other than that, I don't know. I don't
14 know what was said or anything. I don't know what time or
15 the distance or anything.

16 Q. Okay.

17 A. I don't know.

18 Q. And just before the first punch was thrown,
19 Mr. Dean was further away from the porch than Mr. Minter?

20 A. I believe so, yes.

21 Q. And you're located -- Mr. Minter was just at
22 the bottom of the porch?

23 A. No, when I -- as I remember it -- as I
24 remember, they were at the back of the car.

25 Q. So Mr. Dean had backed up quite a ways from

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1 the porch?

2 A. From what I remember, yes.

3 Q. And Mr. Dean --

4 A. I just remember the time -- I guess I blanked

5 out during the one little part, or whatever, I don't know.

6 But I just remember the fight was at the back of the car.

7 Q. Okay.

8 A. I don't remember -- I don't remember any of

9 the other distances or anything else. I just remember that

10 the fight was at the back of the car.

11 Q. And the first punch was thrown while Mr. Dean

12 was at the back of your car, right?

13 A. I remember them fighting at the back of the

14 car. Whether or not -- I -- I can't remember if it was the

15 first punch, second punch, third punch, I don't remember.

16 I just remember them being in the back of the car fighting.

17 Q. Okay. And now I'm talking about before the

18 first punch was thrown?

19 A. I don't know.

20 Q. Okay. Where were you?

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

22 where I was standing. I don't remember.

23 Q. All right. And then were you -- do you have

24 the impression you were standing between them?

25 A. Between them? No, I wasn't between them.

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1 Q. Were you trying to prevent them from having a

2 fight, right?

3 A. I was screaming and I was yelling for them

4 both to stop. And I don't even -- I don't even know how I

5 ended up getting underneath him, underneath Sean. I don't

6 even recall that.

7 I tried to think about that, and yeah, I can't

8 even recall that.

9 Q. But you do remember screaming just after the

10 fight started?

11 A. I do remember screaming. I don't know -- I

12 remember screaming. I don't know about -- after the fight

13 started, I don't know, I just was screaming "stop." So

14 obviously it was probably after it started.

15 Q. Okay. Were Mr. Minter and Mr. Dean talking

16 loudly, yelling, or anything like that?

17 A. I don't recall.

18 Q. Okay.

19 A. I don't know.

20 Q. So do you have any idea of whether there was

21 just one punch when Mr. Dean hit Mr. Minter, and that was

22 the end of the punches?

23 A. No. They were -- they were throwing punches

24 back and forth.

25 Q. Okay. And from what you could see, was --

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1 they were hitting each other?

2 A. From what I could see, yeah, they were making

3 contact with each other.

4 Q. Was there ever any explanation of why Mr.

5 Minter never had any marks or bruises on his face, or

6 anything like that?

7 A. I don't know. Because when we were at the

8 hospital, they allowed me to -- after they were finished

9 with me, they allowed me to go outside.

10 And I don't know, there was a lady in the next

11 room where they were examining Sean, and she had made a

12 comment --

13 Q. I don't want to hear the lady's comment.

14 A. That there was no marks on him or anything.

15 So I have no idea. I don't know how that -- but I -- they

16 were hitting each other in the face.

17 Q. Okay. And then there came a time when they

18 stopped throwing punches back and forth at each other?

19 A. Yes. After we all ended up getting back up

20 off the ground.

21 Q. Well, there came a time when they stopped

22 throwing punches and grabbed ahold of each other's clothes

23 or bodies and fell to the ground?

24 A. That's when we were all on the ground.

25 Q. How did that happen?

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1 A. I -- I don't know. We were all laying on the

2 ground. They had ahold of each other.

3 Q. Did there come a time when Mr. Dean was on top

4 of Mr. Minter?

5 A. I don't remember.

6 Q. It could have happened, you just simply don't

7 remember?

8 A. I don't remember. I don't know if it happened

9 or not. I don't remember.

10 Q. Okay. After the first part ended and you all

11 got back up?

12 A. Yeah.

13 Q. How did that second part start?

14 A. I don't know. I -- I remember telling Duff,

15 "okay, it's over," because I seen that Sean started walking

16 away, walking down the driveway.

17 And then I said, "come on, it's over." And I

18 just turned around to walk back into the house. And then

19 before -- way before I even got to the bottom step, I

20 turned around and looked because I knew Duff wasn't with

21 me, walking with me or anything, and -- and then he was

22 still standing there.

23 And then -- and Sean was running up, and Sean

24 hit him again. Then that's when he pulled out the knife,

25 which I thought was a cell phone, and I have already said

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1 that. But then --
2 Q. And during that --
3 A. Started stabbing him.
4 Q. During that part of the fight, nobody got on
5 the ground, right? Laying on the ground?
6 A. Correct.
7 Q. Okay. When do you think you start -- started
8 yelling, "Quit stabbing me, Sean," "Sean's stabbing me," or
9 words to that effect?
10 A. Wait, wait. I'm sorry, say that again?
11 Q. When did you start screaming, "Sean, stop
12 stabbing me"?
13 A. I didn't scream --
14 Q. Or "he's stabbing me"?
15 A. I did not scream, "Sean, stop --" I thought he
16 hit me. That's what I said. I said, "Ow, you hit me." I
17 did not say "stop stabbing."
18 Q. So if there is an eye witness that says that
19 that screaming was going on when she could see up and one
20 person was on top of another person laying on the ground
21 and that's when this "stop stabbing me" conversation
22 occurred, how do you explain that?
23 A. I don't know. I can't -- I can't explain
24 that. I don't know about that.
25 Q. You didn't even know that you were stabbed --

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1 A. Exactly, I didn't --
2 Q. -- until -- wait, wait a minute.
3 A. -- until after and I was sitting down on the
4 porch.
5 Q. Hold it a minute. You didn't even know you had
6 been stabbed until after the fight was over, Mr. Dean was
7 gone, and you went and sat on the porch?
8 A. Right.
9 Q. All right. So there is no way that you could
10 have been yelling, "Sean, stop stabbing me," because you
11 didn't even know you had been stabbed, right?
12 A. Right.
13 Q. And you are sure you never said any such
14 thing?
15 A. I'm sorry?
16 Q. You're sure you never said any such thing as
17 "Sean, stop stabbing me," and said it repeatedly?
18 A. No, because I didn't even know until I was
19 sitting down and everything was over.
20 Q. Okay. Going back now to the first part of the
21 fight, do you remember how -- how it was that Mr. Dean and
22 Mr. Minter got to be laying on the ground?
23 A. I don't. I don't recall. Maybe they fell. I
24 don't know. I don't recall. I don't even know how -- like
25 I said, I don't even know how I ended up getting underneath

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1 him.
2 Q. Underneath who?
3 A. Sean.
4 Q. You were trying -- you were intervening in the
5 fight, trying to get it stopped?
6 A. Well, yeah. But I can't tell you -- I
7 can't -- I -- I don't know. I just ended up -- I was just
8 there. I don't know how I even got in there, kind of
9 traumatizing. And I --
10 Q. But you do remember getting Sean in a
11 headlock?
12 A. Yeah. I do.
13 Q. How did --
14 A. Not a headlock. It was a choke hold, I guess
15 you call it.
16 Q. How did --
17 A. But I had my leg on the ground, and then this
18 one over him, over his legs. I don't know.
19 Q. Why didn't you put Duff in a headlock?
20 A. Well, I don't know. Maybe because it was Sean
21 and then Duff, and I just reacted. I don't know. I didn't
22 think about -- I didn't think about that. I just wanted
23 them to stop. And I don't know.
24 Q. It was because Sean was winning the fight,
25 right?

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1 A. I don't think anybody was winning.
2 Q. So after you got Mr. Dean in a headlock, what
3 happened then?
4 A. I thought I answered that. They finally let
5 go of each other.
6 Q. Did they talk back and forth quite awhile?
7 A. I don't -- I don't know.
8 Q. "Let go," "You let go"?
9 A. "Let go, let go, let go." That is all I
10 remember them saying. "Let go, let go." And then they let
11 go of each other. And then Duff got up. And then --
12 Q. You watched Duff get up?
13 A. I seen that he was getting up. He was getting
14 up and I --
15 Q. How was he accomplishing that?
16 A. How?
17 Q. Yeah.
18 A. He got on his -- got on to his knees and then
19 pushed up. He -- with his other hand.
20 Q. Okay. You watched him do that?
21 A. Yeah, I seen -- I seen him get up.
22 Q. So if Mr. Schenk would have been there, you
23 would have seen that for sure, helping him up?
24 A. I don't remember actually.
25 Q. You were looking right there?

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1 A. Yeah, I was looking right there.
 2 Q. Didn't see Mr. Schenk?
 3 A. But there was so many bits and pieces that
 4 I -- bits and pieces that my mind is completely blank
 5 on and I don't -- I was focused on -- on Sean and Duff
 6 and -- and that's it.
 7 I just didn't want -- I just didn't want
 8 nobody hurt. I just -- you know, and I -- so I -- Duff got
 9 up. I don't even know -- I don't even remember if Joe was
 10 out there until -- like I said, until the very end, and
 11 he -- I believe it was him telling me to sit down. And
 12 then -- and then I don't -- I don't know. I can't.
 13 Q. But my point is, Ms. Minter, that if Joe had
 14 actually been helping Mr. Minter get up off the ground, you
 15 would have seen it because you were right there looking at
 16 it?
 17 A. I probably -- I don't know. In my state of
 18 mind right there, I was scared, and like I said, I was only
 19 focused on that. I wasn't looking around, I wasn't --
 20 Q. Okay.
 21 A. I don't know.
 22 Q. Now, Mr. Minter is up and Mr. Dean has -- he
 23 let go of him?
 24 A. He -- well, yeah. He got up, too.
 25 Q. Excuse me?

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1 A. He got up, too.
 2 Q. Because he fell backwards, stumbled backwards?
 3 A. He stumbled back and I was still on the
 4 ground, and I put my hand up because I didn't want him to
 5 fall on me. If he was going to fall, I didn't want him to
 6 fall completely on me. But he kept -- he got his balance.
 7 And then he walked -- he walked forward.
 8 Q. Where was Duff at when Mr. Dean walked
 9 forward?
 10 A. I don't know. I don't recall where he was
 11 standing or what -- or what.
 12 Q. Mr. Dean turned his back to you and walked
 13 away?
 14 A. Yeah, he turned -- turned his back, took a
 15 couple steps, then what's when I got up.
 16 Q. Now, did he just take a couple steps, or did
 17 he walk away further than a couple steps?
 18 A. I -- I am not sure.
 19 Q. And you don't know where Mr. Minter was at?
 20 A. Right, I don't know.
 21 Q. When is the next time that you knew where Mr.
 22 Minter was at?
 23 A. When I turned around and he was standing
 24 there -- standing there behind my car. I don't know what
 25 was said or whatever.

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1 Q. I am not asking you what was said?
 2 A. Okay. Behind my car.
 3 Q. I am asking you when is the next time you knew
 4 where Mr. Minter was at?
 5 A. I believe it was behind my car.
 6 Q. And at the time you saw Mr. Minter behind the
 7 car, you told him to come with you, it's over?
 8 A. Say that again?
 9 Q. Did you tell him, "Come with me, it's over,
 10 let's go back in the house," or words to that effect?
 11 A. Yeah. After he got up -- after he got up and
 12 I seen Sean, he -- it appeared as he was going to keep
 13 going, going -- walking down the driveway.
 14 And then I had turned and I did say that to
 15 Duff. I said, "Come on, let's go inside, it's over with."
 16 Then I proceeded to go up to the door.
 17 Q. How far did you get?
 18 A. I'm not sure if I even -- was able to get on
 19 the first step. I don't -- I don't think I -- I was even
 20 able to get on the first step.
 21 Q. All right.
 22 A. I started walking. Then I -- I knew -- you
 23 know, I felt that he wasn't standing there. So I stopped,
 24 turned around. That's when Sean came back up, running back
 25 up to him, and -- and punched him in the face and then

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1 reached into his back pocket.
 2 Q. Just punched him once in the face?
 3 A. Yeah. It was just once, I believe.
 4 Q. And Duff didn't punch him back?
 5 A. Umm, I don't -- I don't recall if he did or
 6 not actually.
 7 Q. Could have been two or three punches thrown,
 8 right?
 9 A. I don't know.
 10 Q. And then Sean reached in his back pocket, back
 11 right-hand pocket?
 12 A. Yeah.
 13 Q. And pulled something out that flashed?
 14 A. I'm sorry?
 15 Q. And he pulled something out that glowed or --
 16 A. Yeah, it looked like it glowed to me. I don't
 17 know if it was a reflection from whatever. I don't know.
 18 But I -- at that very moment, I thought it was a phone, a
 19 cell phone. Because I remember thinking, "that's an odd
 20 way to hit somebody, holding a phone." That flashed in my
 21 mind.
 22 Q. And when he pulled it out of his pocket, what
 23 did he do?
 24 A. He started doing that motion.
 25 Q. That roundhouse motion, right?

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1 A. Yeah.
2 Q. There was no break between him pulling it out
3 of his pocket and beginning the roundhouse motion?
4 A. There was no what?
5 Q. No break while -- nothing was going on?
6 A. Like what? Nothing was what?
7 Q. Between the time Mr. Dean pulled this thing
8 out of his back pocket until the time he started the
9 roundhouse motion, there is no break between those two,
10 right?
11 A. I don't know.
12 Q. You don't remember one?
13 A. I don't know if there was one or not. I just
14 remember him taking it out and then doing a stabbing
15 motion. That's all I know. That's all I remember on that.
16 Q. And you didn't see Mr. Schenk there?
17 A. I didn't see Joseph. I didn't even know he
18 was there at all until after -- after we got stabbed and he
19 was walking down the driveway.
20 Q. So if he was standing immediately to the left
21 of Mr. Minter, you would have seen him if he was there,
22 right?
23 A. Possibly. But I was -- I believe I was -- no,
24 at the time I wasn't -- at one point in time I was behind
25 the car. Because my car was facing this way, my car was

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1 facing this way and the trailer faces this way, and there
2 was a big gap between the house and the car, I believe.
3 But I don't -- I don't know. I didn't -- I --
4 personally, I didn't see Joseph out there until -- until
5 later on.
6 Q. So if Mr. Schenk says that Mr. Dean pulled a
7 knife out of his right-hand front pocket, you didn't see
8 that?
9 A. That's correct. Because I seen him pull it
10 out of the back, the back one.
11 Q. And if Mr. Schenk says he watched while Mr.
12 Dean took both hands and opened up a knife, you didn't see
13 that happen?
14 A. No, I didn't.
15 Q. And that you think that it couldn't have
16 happened because your recollection is he pulled it out of
17 his hind pocket and started that roundhouse motion
18 immediately, right?
19 A. That's correct. That's what I remember.
20 Q. And you didn't have a clue in the world if
21 anybody was getting stabbed, you thought he had a cell
22 phone in his hand?
23 A. Right. But I did think it was odd that he was
24 doing this (indicating). But it wasn't until afterwards,
25 after he stopped, walked down there, and he hit me in my

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1 breast, that I realized I was stabbed.
2 Q. Okay. So now, Mr. Dean is involved in these
3 roundhouse motions. What did you do?
4 A. I ended up being right there again, and that's
5 how he had hit me.
6 Q. When you say you ended up being right there
7 again, that meant you had to walk from the steps back into
8 the -- between Mr. Dean and Mr. Minter?
9 A. I wasn't at the steps, I didn't make it to the
10 steps.
11 Q. Okay.
12 A. But yeah, I was right there again.
13 Q. Okay.
14 A. Just how -- I don't recall how I ended up
15 getting underneath them.
16 Q. Why were you there again?
17 A. How was I there again?
18 Q. Why? What were you doing?
19 A. To try to break them apart again.
20 Q. So to break them apart again, you have to get
21 between them, right?
22 A. Yeah. But I never ended up getting between
23 them, because when he hit me in my chest, I was shocked and
24 I couldn't believe that he had hit me in my chest.
25 And so -- and that was it. And then he

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1 stopped right after that. So then he started walking down
2 the drive -- driveway.
3 Q. When you were hit in the chest, were you
4 facing Mr. Dean?
5 A. Umm, I don't know. I don't know, actually.
6 Q. You don't know --
7 A. All I know is he hit me in my chest and I was
8 shocked. And I was like, "I can't believe you hit me in my
9 chest." And I was -- I was -- "I can't believe you hit me
10 in my chest."
11 Then I remember standing there. And then he
12 did a couple more motions, like that, (indicating) to Duff.
13 And then he started walking off.
14 Q. So as far as you know, Mr. Dean hitting you in
15 the chest was inadvertent, right?
16 A. I don't know.
17 Q. You have no clue whether he intended to hit
18 you in the chest or not?
19 A. He may have. He may have. But why come to my
20 house and bring a knife anyways.
21 Q. That's a fair question. Why did Mr. Dean
22 bring a knife to your house?
23 A. Exactly. That's what I am saying. I don't
24 know.
25 Q. He didn't know Duff was living there?

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1 A. There was no reason for him to bring a knife
2 other than being pissed off at me through text messages and
3 may have been wanting to hurt me. I don't know.

4 Q. Maybe he didn't bring a knife?

5 A. Why would he have a knife on him? Taking it
6 to my house? Because it's not like -- he didn't go home or
7 over there to Clarence's and then come back.

8 Q. As far as you know, all he brought was a cell
9 phone?

10 A. Right. After thinking about it, when I -- you
11 know, knowing I got stabbed, I'm like, why would he -- you
12 know -- but then he always -- he -- I know he'd carry a
13 knife or weapon or whatever before. Different occasions.
14 And everything. No big deal.

15 Q. Maybe Duff had the knife?

16 A. Don't think Duff had a knife on him.

17 Q. Excuse me?

18 A. Duff doesn't carry knives on him. He
19 doesn't --

20 Q. Not in normal circumstances. But in a
21 circumstance like this he might, mightn't he?

22 A. Okay. As big as he is, do you think that he
23 would really need to have a weapon? I don't think so. He
24 doesn't carry knives. He doesn't.

25 Q. He is medically disabled, isn't he?

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1 because you like to keep an eye on her to him, he would be
2 wrong about that?

3 A. Okay. Say that -- say that again.

4 Q. Did you go to a court proceeding April 4 of
5 2016 at the Elko County Jail?

6 A. Oh, when Angel was -- Angel had court? I
7 don't know exactly when that was, but.

8 Q. That's his fiancée, Duff's?

9 A. Yeah, I was there.

10 Q. And if Mr. Minter said that you did that
11 because you like to, quote, keep an eye on him, he would be
12 wrong about that?

13 A. To keep an eye on him?

14 Q. Yeah.

15 A. To -- no. I am not --

16 Q. Why did you go? Why did you go to his
17 fiancée's arraignment?

18 A. Well, a friend of mine, Joanie, her son was
19 being -- he had court that today, too. He was first one
20 up. So she actually met me there.

21 Q. On direct examination you mentioned that you
22 saw blood on Duff's shirt while you were sitting on that
23 porch. Do you recall what color that shirt was?

24 A. Pants. It was his pants, I'm sorry. Because
25 he had on light khakis. And he had on -- yeah, it was his

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1 A. Huh?

2 Q. He is medically disabled, isn't he?

3 A. Yeah, but he still has that -- I don't know.
4 Yeah, he is -- and he's on oxygen, he did have two strokes.
5 But I know him, he doesn't carry knives, he doesn't use
6 weapons.

7 Q. Did you hear any words between -- after the
8 first part of the fight ended and the second part of the
9 fight began, did you hear any words that Mr. Minter said?

10 A. No, I didn't. And I didn't hear anything that
11 Dean said either, if he said anything.

12 Q. You are pretty careful to take care of Mr.
13 Minter?

14 A. What's that?

15 Q. You are a pretty careful person to take care
16 of Mr. Minter now?

17 A. Wait, say that again. I'm sorry.

18 Q. You take care of Mr. Minter now?

19 A. No.

20 Q. All right. Do you worry about him quite a
21 lot?

22 A. No.

23 Q. And if Mr. Minter testified that on April 4,
24 2016, you accompanied -- you accompanied him with Ms.
25 Syddall -- to her arraignment in a court down at the jail

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1 pants. He had on, like, khaki on his pants. I mean, the
2 blood was on his pants on the side. I'm sorry, it was his
3 pants.

4 Q. At the conclusion of the fight, at the
5 conclusion of Mr. Dean stabbing Mr. Minter, what did Mr.
6 Dean do?

7 A. I'm sorry, what was that again?

8 Q. After Mr. Dean stopped stabbing Mr. Minter,
9 what did Mr. Dean do?

10 A. He walked -- started walking down the
11 driveway.

12 Q. And the word you're using is "walking," not
13 running, right?

14 A. What's that?

15 Q. You're using "walking" because he walked. He
16 was not running; is that correct?

17 A. I don't know. He took off. It's dark right
18 there. He started -- after -- after he -- okay. I
19 remember after he hit me in the chest, then he -- two more
20 motions or three, or something like that, two more, and
21 then he just took off and he just started walking down the
22 driveway.

23 It's really dark. It's really dark all the
24 way. Because the way -- I don't know the distance or
25 anything, but it's a nice little -- my driveway is -- I

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1 don't know the distance or anything. But if you look on
2 that -- that photo, he just was -- he just left and he --
3 Q. So if the question I asked was, was he walking
4 as opposed to running, you would say?

5 A. I don't know if he was walking or running. He
6 took a couple steps. And it's dark right there.

7 Q. After --

8 A. So maybe.

9 Q. After the fight was over, after Mr. Dean
10 finished stabbing Mr. Minter, Mr. Dean, you said, walked
11 away, correct?

12 A. Yeah. He just took off, yeah.

13 Q. Not took off, walked?

14 A. Okay. Walked away.

15 Q. All right.

16 A. He could have been running after -- after the
17 light where it was all dark, I don't know.

18 Q. Did there come a time when you recognized that
19 Mr. Dean had been injured in this altercation?

20 A. No. They said that. It wasn't until after
21 the hospital -- when we were at the hospital that somebody,
22 I don't know who, said he had some stitches in his finger,
23 or something like that. I don't know.

24 MR. WOODBURY: That's all the questions I have.

25 THE COURT: Redirect?

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1 cross-examination that he walked away; is that correct?

2 A. Um-hmm.

3 THE COURT: Is that yes?

4 THE WITNESS: Yes, sir.

5 THE COURT: Thank you.

6 Q. And you also testified, quote, he just left
7 and that he took off. Is that also correct?

8 A. Yes.

9 Q. And you also just testified that you don't
10 know if he was walking or running?

11 A. Yes.

12 Q. Okay. So I am just wondering if you can
13 clarify that for the jury, just explain which of those
14 answers, I guess, more accurately represents what you
15 remember?

16 A. I believe -- okay. I believe right after,
17 when he stopped stabbing him, that he just took a couple
18 steps and walked away. And then it was dark. Then it was
19 like pitch black right there.

20 So I am not sure if he was -- if he started
21 running after that or not. But from what I saw, right
22 after he got done, he just, like, took a couple steps, and
23 then it's all dark right there. So I -- I don't know if he
24 started running or what. I couldn't see.

25 Q. At the point in time when -- when the

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1 REDIRECT EXAMINATION

2 BY MR. MILLS:

3 Q. Do you know how he got that injury to his
4 finger?

5 A. I don't.

6 Q. Did you cut him with anything?

7 A. No.

8 Q. Did you see Bert cut him with anything?

9 A. No.

10 Q. I just wanted to clarify about the walking
11 versus running. At one point you said he walked away.

12 MR. WOODBURY: I object. That is a
13 mischaracterization. She said it at least four times.

14 MR. MILLS: I'm confused by the objection. I
15 think she said that he walked away was one of the ways that
16 she phrased it. I think that's accurate.

17 THE COURT: All right. Well, Court will sustain
18 the objection. Why don't you rephrase. I think she
19 testified that he walked away.

20 THE WITNESS: Yeah, that's what I said.

21 THE COURT: Okay.

22 MR. MILLS: There was an objection to that, but I
23 think that's what she said.

24 THE COURT: Why don't you restart the question.

25 Q. (By Mr. Mills) Okay. You testified on

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1 defendant stabbed you, where was -- where was Duff at that
2 time?

3 A. I don't know.

4 Q. Mr. Woodbury was initially asking you about
5 the -- the respective statures and the health of the
6 defendant and Mr. Minter, Duff.

7 A. Um-hmm.

8 Q. And you mentioned that Dean is a pretty
9 healthy guy who works out?

10 A. (Nods head)

11 Q. Could you tell us about that, based on your
12 relationship with him?

13 A. Umm, well, he's -- he's really cut, got --
14 he's real muscular. I know he worked out in -- I don't
15 know if I can --

16 Q. How would he work out?

17 A. Umm, he would do push-ups a lot. I
18 remember -- I remember him doing push-ups over there at
19 Clarence's.

20 Q. Did he ever go to a gym or anything like that?

21 A. I'm sorry?

22 Q. Would he go to a gym?

23 A. I don't know. I don't -- I am not sure if he
24 ever went to a gym or not. But they used to do push-ups
25 all the time over at the house, at Clarence's house.

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1 Q. And you saw him do that?
2 A. Yes.
3 Q. And after Duff got out of the nursing home and
4 came to stay with you, what was Duff's physical condition
5 like?
6 A. He was in -- he was in bad shape, because they
7 had to cut him up his -- did a cut to make sure there was
8 no internal -- internal injuries or -- or if it hit any
9 organs or vital organs or anything like that, so he was
10 stapled up the stomach. That was hard for him to move
11 around after that.
12 Q. When he did move around, what kind of
13 assistance would he need?
14 A. After what?
15 Q. When he did move around, did he require any
16 kind of assistance?
17 A. Yes. He used a cane a lot. They had -- they
18 had got him one of those -- I don't know what they are
19 called -- they are things like -- and you can fold them in.
20 A walker.
21 Q. Okay.
22 A. And then -- then that's all the equipment -- I
23 believe that's all the equipment he used, except for, like,
24 you know, walls, and -- and he would fall over a lot, lose
25 his balance and fall over.

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1 Q. Did he have an oxygen tank?
2 A. Yes.
3 Q. And was he using that at the time that he was
4 living with you?
5 A. At the time that what?
6 Q. At the time that he came to stay with you
7 after getting out of the --
8 A. Yeah, 24/7 he was on that.
9 MR. MILLS: Thank you. That's all the questions
10 I have.
11 THE COURT: Any recross?
12 MR. WOODBURY: No.
13 THE COURT: Any jury questions for Ms. Minter?
14 All right. Take your time. Remember, please put
15 your juror number on the question and one question per
16 page, please.
17 (WHEREUPON, the following proceedings were held at the
18 bench)
19 THE COURT: All right. Side bar. So far we have
20 two jury questions.
21 Juror Number 5 asks, "How did he hit you in the
22 chest? He roundhouse punched Bert, so how did he hit you?
23 And with which hand?"
24 MR. MILLS: That's fine, no objection.
25 THE COURT: Mr. Woodbury, any objection?

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1 MR. WOODBURY: I think she's already testified
2 that she doesn't know.
3 MR. MILLS: I am not sure we got into the
4 specifics of how he had hit her. I think we can go ahead
5 and ask her that.
6 THE COURT: Apparently this juror has missed it
7 if that happened. So any objection?
8 MR. WOODBURY: Yes.
9 THE COURT: Asked and answered?
10 MR. WOODBURY: Yes.
11 THE COURT: All right. Overruled. I am just
12 going to ask, "How did he hit you in the chest?" and "with
13 which hand?" I will ask after that.
14 Juror 10 asks, "After the altercation had settled
15 for the first time and the defendant began walking away,
16 was there any apparent reason that Mr. Dean changed
17 direction and began walking back towards Bert?"
18 MR. MILLS: No objection.
19 MR. WOODBURY: That's fine.
20 THE COURT: All right.
21 Juror Number 9 asks, "Was Duff in the Manor
22 because he had exploratory surgery? Was he in the Manor
23 before the fight?"
24 MR. WOODBURY: Jesus.
25 THE COURT: I know. Juror Number 9 was missing a

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1 couple things.
2 MR. WOODBURY: I guess I have no objection.
3 MR. MILLS: No objection.
4 THE COURT: All right. Okay. Thank you.
5 (WHEREUPON, the bench conference was concluded)
6 THE COURT: All right. Couple jury questions for
7 you.
8 Q. Was Duff in the Manor before the fight on
9 December 8, 2015?
10 A. Yes, he was still in the Manor before that.
11 Q. Okay. Why was he in the Manor?
12 A. Because he needed assisted living. He was
13 trying to get assisted living, but you have to go to the
14 Manor first.
15 Q. Had he had exploratory surgery before that?
16 A. The surgery was after, it was due to the
17 stabbings.
18 Q. Okay. After the altercation stopped for the
19 first time, the defendant began walking away, was there any
20 apparent reason that Mr. Dean changed direction and began
21 walking back towards Bert, if that's what happened?
22 A. I don't know. I mean, I don't know if -- if
23 there was anything said or -- or what. But I just had
24 turned around and Duff was still standing there, and
25 then -- I don't know what was said or -- or -- then I just

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1 seen Sean running back up to him, punched again him again
2 in the face.
3 Q. How did Mr. Dean hit you in the chest?
4 A. Because I was right there, I ended up going
5 back over there.
6 Q. The question is, how did he hit you in the
7 chest?
8 A. How?
9 Q. That's the question.
10 A. I -- he -- he just hit me. I don't know,
11 like, how exactly.
12 Q. Do you know with which hand Mr. Dean --
13 A. No, I don't.
14 Q. --hit you?
15 THE COURT: Any follow up for the State?
16 REDIRECT EXAMINATION
17 BY MR. MILLS:
18 Q. Just with regards to how he hit you, you
19 described the punches to Bert as kind of like sideways?
20 A. Um-hmm.
21 Q. Hits like that? (indicating) How would you
22 characterize the swing or punch to you?
23 A. I -- yeah, I -- I drew a blank. When I got
24 back over there, I drew a blank as to -- I don't know. I
25 just -- just to my recollection, recall, as soon as I got
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1 over there, that's when I got punched.
2 And -- and after that -- I mean, that's all.
3 I just -- I couldn't -- I was shocked, I just couldn't
4 believe that he had hit me. And so that was it. That
5 was -- that's all I remember on that -- on that
6 particular -- I don't know.
7 MR. MILLS: Nothing further.
8 THE COURT: Mr. Woodbury, any follow up?
9 MR. WOODBURY: No.
10 THE COURT: All right. Do you want Ms. Minter
11 held subject to recall.
12 MR. MILLS: Yes, Your Honor.
13 MR. WOODBURY: Yes.
14 THE COURT: You have a phone number where you can
15 reach her?
16 MR. MILLS: Yes.
17 THE COURT: Ms. Minter, remember the rule of
18 exclusion. You can't discuss this case or your testimony
19 with anyone until the trial is over. It won't be over
20 until after Tuesday night, just figure that.
21 THE WITNESS: Okay.
22 THE COURT: There is an exception. You can talk
23 to Mr. Mills or Mr. Woodbury.
24 Anyway, I think for today you're done.
25 Is that right, Mr. Mills?
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1 MR. MILLS: That's correct.
2 THE COURT: All right. But be available by
3 phone.
4 Thank you very much. Have a nice day. Watch
5 you're step.
6 You have got a short witness, Mr. Mills?
7 MR. MILLS: I believe so.
8 THE COURT: Okay. Please call a witness.
9 MR. MILLS: State calls Brittney Tice.
10 (WHEREUPON, the witness was sworn)
11 THE COURT: Mr. Mills.
12 BRITTNEY TICE
13 called as a witness in said case, having been first
14 duly sworn, testified as follows:
15 DIRECT EXAMINATION
16 MR. MILLS:
17 MR. MILLS:
18 Q. Could you please state an spell your last name
19 for the record?
20 A. Brittney Tice. It's B-r-i-t-t-n-e-y, T-i-c-e.
21 Q. And where do you live?
22 A. In Elko. Do you want my full address?
23 Q. Yes, please.
24 A. 764 S. Fifth Street, Space 10, in Elko,
25 Nevada.
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1 Q. And who lives there with you?
2 A. My fiance, my four children, and my
3 mother-in-law.
4 Q. Who is your fiance?
5 A. Joseph Schenk.
6 Q. Who was living there back on December 8, 2015?
7 A. Everyone that I just said.
8 Q. Okay. Do you know a person by the name of
9 Bert Minter?
10 A. Yes.
11 Q. How do you know that person?
12 A. He is my father.
13 Q. Where was he living at that time?
14 A. He was living in the same address, but space
15 12, across from mine.
16 Q. Who was he living with?
17 A. Denise Minter.
18 Q. Okay. I want to direct your attention back to
19 the evening of December 8, 2015, at about eight o'clock in
20 the evening.
21 What happened at that time?
22 A. We were laying down, trying to get -- me and
23 Joseph Schenk was laying down, trying to get the -- two of
24 our babies to sleep, and we heard the dogs bark outside.
25 And we thought it was weird because of how they were
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1 barking is not like how they would normally bark, sounded
2 like something was wrong. Then we heard screaming.
3 Q. Let me just interrupt you there. I don't mean
4 to interrupt you. Let me cut in and ask you a couple
5 clarifying questions.

6 Those dogs that you mentioned, do you know
7 whose dogs they were?

8 A. Denise's dogs. And our dog was in our house,
9 and he was kind of growling too because they were barking,
10 so.

11 Q. What are the ages of your kids? How old were
12 they at that time?

13 A. Two and one. And then I also -- my other two
14 were in laying down in their room, and they are nine and
15 eight.

16 Q. You said your mother-in-law was living with
17 you, as well?

18 A. Yes. She was at working at that time, she
19 works nights.

20 Q. Okay. All right. So you and Joseph -- you
21 heard some dogs barking, and take it from there, describe
22 what happened next?

23 A. So then we heard Denise -- well, we heard a
24 scream and she was saying, "Duff." So we assumed it was
25 Denise yelling "Duff." And so we got up out of the bed to

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1 try and look out the window but it was pretty dark so we
2 couldn't really see what was going on.

3 And then we opened the door and we saw my dad
4 and Denise on the ground. And he had been having some
5 health problems, so we thought he was, like, having a heart
6 attack or something.

7 And, like I said, it was pretty dark, so we
8 really didn't see everything. But she was just screaming,
9 "Duff," and they were on the ground.

10 So Joe ran over there, and I was kind of
11 staying on the porch. I was holding my youngest, I was
12 holding my one-year-old, and I didn't want to, like, run
13 out in the driveway with him. And I was on the stairs
14 and --

15 Q. Did you see anyone else?

16 A. Umm, right after he got over to them, I saw
17 Sean. Then they started all -- he helped my dad up, Joe
18 helped my dad up. Then I saw Sean, like, over them. He
19 was kind of -- they were all kind of crouched down still
20 when they were getting up.

21 And I saw him, and then I saw him reach this
22 way, and I couldn't tell what he was grabbing or anything.

23 Q. The "him" you are referring to --

24 A. Sean.

25 Q. -- when you say you saw him. Okay.

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1 A. And then Joe told me to go inside and call
2 911. Because at first we don't know anyone else was out
3 there, we just thought it was my dad and Denise. And then
4 when we saw him, he told me to go inside and call 911
5 because he noticed that they were, like, fighting or
6 whatever.

7 And I was kind of back farther by -- like I
8 said, by my porch, like, on the stairs.

9 Q. Okay.

10 A. Holding the baby.

11 Q. You started describing Sean reaching for
12 something, and then you went away from that. Could you go
13 back to that and describe what you saw and did?

14 A. I just saw something kind of shiny. It was
15 dark, and I was, like, across -- I was still by my trailer
16 and they were over past -- by their trailer. So I just saw
17 something kind of shiny in his hand, but I couldn't see
18 specifically what it was because I didn't -- I wasn't up
19 close, like, looking.

20 Q. With your right arm you are kind of motioning
21 towards your right side. Did you see which -- which pocket
22 or which part of his body he was reaching towards?

23 A. I think it was his right.

24 Q. Like front or back?

25 A. I don't know.

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1 Q. Just generally on the right side?

2 A. Yeah.

3 Q. Then --

4 A. And they were all kind of in a bunch together
5 right there, so I couldn't see, like --

6 Q. You saw something shiny in his hand at that
7 point?

8 A. Yeah. And then I ran inside to grab the phone
9 because I didn't have my phone on me.

10 Q. What did you do when you ran inside?

11 A. I grabbed the phone, and I was -- I mean, I
12 was kind of freaking out just because I was scared. And
13 then he told me, "Call 911." Joe told me, "Call 911." So
14 I called -- started trying to call, and it wouldn't go
15 through for some reason. And I had to call, like, four or
16 five times for it to go through to the dispatch people.

17 And then he ran inside and told me that my dad
18 has been stabbed and I needed to tell them to send an
19 ambulance.

20 And I was kind -- I -- I was freaking out
21 pretty bad, and just, like, telling them to please hurry.
22 Because I wasn't out there, so I didn't see all of that
23 happen, so I was assuming the worse, like, that my dad was
24 dying on the ground. So I was freaking out.

25 Q. Telling them "who"? Had you made it through

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1 to dispatch?

2 A. Dispatch, yes. And they said there was people
3 on the way and to -- she was kind of talking to me, trying
4 to calm me down, to get my right address and everything.

5 And then he -- he -- he went back out, Joe,
6 he -- we had a firearm. He came inside to get it because
7 he was -- he said that they had been stabbed. So he went
8 out with that.

9 And he said Denise had also been stabbed, he
10 yelled it at me, so I told them two people has been
11 stabbed.

12 Then that's when the police started coming
13 down the driveway, and I told her they were there, so I got
14 off the phone with them and --

15 Q. Was this --

16 A. Joe said --

17 Q. Was this entire conversation that you were
18 having, you know, with Joe, with dispatch, did this take
19 place inside trailer?

20 A. I was, like, at the front door. Like, between
21 the porch and my house. But the door was open all the way
22 and I was, like, on the porch or right inside.

23 Q. Could you see outside to what was going on?

24 A. Not very much. Just because I was too scared
25 trying to focus on getting them to come. After the point

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1 where I went inside, I didn't see very much after that,
2 just him running in the house and grabbing the gun and
3 going back out.

4 Q. So --

5 A. Because then my son, my nine-year-old, kind of
6 had come out of the bedroom at that point, too, because he
7 heard me crying and stuff on the phone. So I was trying to
8 calm him down, and my two-year-old and one-year-old.

9 And they were all freaking out because they
10 heard what I was saying. So pretty much I was just trying
11 to calm everyone down and get the police and ambulance
12 there so that nothing happened to my dad and Denise.

13 Q. And at that point, were you inside the trailer
14 when your kids were coming up?

15 A. Yeah, I was like at the front door.

16 Q. Okay.

17 A. With it open. I wanted to go outside but I
18 didn't want to leave them inside freaking out by
19 themselves. So I didn't know what to do, I guess.

20 Q. Did you ever go, like, all the way outside
21 after it -- make contact with Duff or Denise or anyone?

22 A. Yes.

23 Q. When did you do that?

24 A. After the police had came, they came up to the
25 door, and the police wanted to talk to us and everything

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1 like that. And then I went over -- after they asked me

2 what happened and what I saw, I went over to my dad and

3 I -- because I wanted to make sure that he was going to go
4 and get everything checked out.

5 Q. Where was your dad at at that point?

6 A. He was standing up by the porch of number 12.

7 Q. Where was Denise?

8 A. She was inside the house, I think. Her house,
9 not mine.

10 MR. MILLS: Thank you, Ms. Tice. That's all the
11 questions I have. I'll pass the witness.

12 THE COURT: Cross-examination.

13 MR. WOODBURY: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. WOODBURY:

16 Q. You wrote a report, right, Ms. Tice?

17 A. (Nods head)

18 Q. About this incident?

19 A. Um-hmm.

20 Q. Have you had an opportunity to read it before
21 you came to court today?

22 A. Yes.

23 Q. And when did you receive it?

24 A. Probably like five days ago in the mail.

25 Q. Okay. Does it coincide with what you have

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1 testified to here today?

2 A. Yes. There is a few other details that I
3 probably didn't write down on it because I was so in shock
4 of what had happened. I have never gone through anything
5 like this before, so I was really scared and I was just
6 trying to write it so that I can give it to the cops. And
7 I was just freaking out when I -- at that point.

8 Q. When did you give it to the cops?

9 A. I -- I believe they came at, like, four
10 o'clock in the morning, somewhere around there, later.

11 But I had gone to bed and my fiancée waited
12 for them to come. Tried to go to bed, but I had to get the
13 babies to sleep and stuff, so I was trying to do that and
14 focus on that --

15 Q. Okay. When you first heard Denise Minter
16 screaming, what was she screaming?

17 A. All I could hear her say was "Duff."

18 Q. You think she was saying --

19 A. She was yelling, "Duff, Duff, Duff." So I had
20 thought something medically wrong had gone on with him
21 and -- because they were laying on the ground -- not
22 laying -- he was on the ground and she was on the ground by
23 him.

24 Q. All right. Let me ask you to just stick to
25 the answer without adding a bunch of other things to the

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1 answer, okay.
2 what did you hear her screaming?
3 A. "Duff."
4 Q. And she said it repeatedly?
5 A. Yes.
6 Q. Okay. How many times?
7 A. I have no idea.
8 Q. You were in bed at the time?
9 A. We were laying down, yes. We were not
10 sleeping. I was trying to get the babies to sleep, so we
11 were laying down.
12 Q. Okay. You also heard the dogs barking?
13 A. Yes.
14 Q. Okay. And your reaction to the words "Duff,
15 Duff, Duff," required you or made it seem proper for you to
16 get up out of bed to begin looking over toward their
17 residence?
18 A. Yes. Because it wasn't like a -- a saying it,
19 she was yelling it like something was wrong.
20 Q. Did you get up first or did your husband get
21 up first?
22 A. We both got up at the same time.
23 Q. He isn't your husband, fiance?
24 A. Fiance, yeah.
25 Q. And where did you go?

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1 A. First we went -- I went to the window and then
2 we -- he went outside.
3 Q. All right. The window of what? To the
4 bedroom?
5 A. No, the living room.
6 Q. Then you went outside on the porch?
7 A. Yes.
8 Q. How far away from number 12 are you?
9 A. I can't, like, say specifically. I am not
10 good with measurements. But it's not very far.
11 Q. Okay. Further than it is from me to you?
12 A. A little bit. Enough for a car to drive
13 around, but that's it.
14 Q. And you looked out. And what did you see?
15 A. I saw my dad and Denise on the ground.
16 Q. Okay.
17 A. At first that's all I saw. It was dark.
18 Q. It was dark?
19 A. Yes.
20 Q. All right. And the lighting -- there is a
21 porch light on Denise's house?
22 A. Um-hmm.
23 Q. But that was not helping you much?
24 A. No.
25 Q. And there is a streetlight down the street a

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1 ways?
2 A. The streetlight does not shine anywhere near
3 our house.
4 Q. I'm sorry?
5 A. The streetlight doesn't shine by our house.
6 Q. Okay. By Denise's house?
7 A. No.
8 Q. It's quite a ways away?
9 A. Yeah, it's quite away from the street.
10 Q. Yeah. Where was your father laying?
11 A. They had their SUV parked on the side of the
12 house and they were, like, right at the back of the SUV.
13 Q. All right. And could you tell at that time it
14 was your dad?
15 A. I knew it was my dad.
16 Q. How did you know that?
17 A. Because I know what my dad looks like.
18 Q. It was pretty dark?
19 A. Yeah, but it was -- I mean, I knew what he was
20 wearing that day, I had seen him earlier that day, I saw
21 his bald head, I heard her saying "Duff," so.
22 Q. All things considered, you figured it was him?
23 A. Yes.
24 Q. Okay. Which direction was he facing?
25 A. He was on his back, I believe. But his head

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1 was towards us, like towards us.
2 Q. All right. Just laying there?
3 A. He was trying to get up, I believe, but I
4 couldn't say, like, what exactly he was doing. I'm sure he
5 was moving around, he wasn't going to just lay passed out
6 or anything.
7 Q. Trying to get up?
8 A. Yeah.
9 Q. Successfully?
10 A. That's all I could see. Like, I didn't go up
11 to them, so.
12 Q. Then you took account of Denise?
13 A. Yes. Denise was right next to him on -- she
14 was down, too.
15 Q. And she was what?
16 A. She was down on the ground, too.
17 Q. Laying flat?
18 A. No.
19 Q. What was she doing?
20 A. She was more, like, in a crouched -- like,
21 kind of on her -- I don't know without showing you, but she
22 was kind of, like, bending down, like, probably on her
23 knees or something.
24 Q. Okay. What was she doing besides that?
25 A. I don't know.

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1 Q. Couldn't see or?
2 A. I don't remember if she was doing anything.
3 Q. Okay. So after you saw that, where was your
4 husband at while you were looking --
5 A. He had ran over to them because we thought he
6 had fallen.
7 Q. Excuse me?
8 A. We thought he had fallen or something, so he
9 ran over to them and I stayed on the porch with the baby.
10 Q. And the question of how you knew what your
11 husband thought, how did you know all that?
12 A. Well, we both had said something happened,
13 like a heart attack or something. I even had said that,
14 like he's having a heart attack or something.
15 Q. And you continued then to watch?
16 A. Yes, to make sure. To make your sure.
17 Q. You continued to watch Denise and Duff while
18 your husband went and got his shoes on?
19 A. Yes. I think he got his shoes or slippers to
20 go out, because there is gravel and glass and stuff
21 outside.
22 Q. Excuse me?
23 A. There is gravel and glass outside on the
24 ground, like.
25 Q. Yeah?

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1 A. We live in a trailer park, so it's kind of.
2 Q. He got his glasses, as well?
3 A. Yeah, so he could see.
4 Q. So you then continued to watch Duff and Denise
5 while he did that?
6 A. Yeah.
7 Q. Went and got his shoes?
8 A. Couple seconds, yeah.
9 Q. What were Duff and Denise doing during that
10 time?
11 A. All I saw was them on the ground at that time.
12 Q. They just continued to lay there?
13 A. I don't know if they were trying to get up or
14 not, I don't know.
15 Q. All right. And then you saw somebody over the
16 top of Duff?
17 A. Once he ran over there and they started all
18 getting up, I could see another person getting up, also.
19 Q. Okay. I am not understanding you. I asked
20 you the question, whether you saw Sean Dean standing
21 over --
22 A. Yes.
23 Q. -- crouching over Duff.
24 A. He was, yes, on the other side of them, like,
25 bent down, yes.

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1 Q. Over the top of him?
2 A. Yes.
3 Q. And where was Mr. Dean with respect to Ms.
4 Minter? Denise?
5 A. The same. Because they were, like, together,
6 and he was right there over them when I saw it.
7 Q. Okay. And you said in your statement he was,
8 quote, crouching over the top of him. By him, "him" being
9 Duff?
10 A. Yes. Because he was still down when he was --
11 and he was helping him up. And then he was, like, bent
12 over still, Sean was bent over still.
13 Q. Okay. I have to clarify that. When you wrote
14 "crouching over the top of him and her with something
15 shiny"?
16 A. Yeah, he -- I saw something, him grab
17 something shiny. I am not -- I probably didn't write
18 specific details enough because I was freaking out, so.
19 Q. All right. I am only asking you if that's
20 what you wrote?
21 A. I can't see it, so I don't know.
22 Q. So there came a time when you saw something
23 shiny in Mr. Dean's hand?
24 A. Yes.
25 Q. It was at the same time that your father was

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1 still laying on the ground?
2 A. He was in the process of getting up.
3 Q. He was the process getting up. How was that
4 happening?
5 A. Joe was helping him up.
6 Q. By that time Mr. Dean had something shiny in
7 his hand?
8 A. Yes.
9 Q. Could you tell me how your husband -- fiance
10 was helping your father up?
11 A. I don't know exactly what you mean.
12 Q. Did he grab him under the arms or --
13 A. I am not sure. I was not paying attention to
14 that part.
15 Q. Were you concerned about your father?
16 A. Yes.
17 Q. But you were not watching?
18 A. I don't remember how he grabbed him to help
19 him up. But I was watching, I just don't remember, like,
20 specifically how he grabbed him, no.
21 Q. All right. Where did Mr. Dean go when your
22 father finally got stood up?
23 A. I was inside.
24 Q. Oh, you went back inside?
25 A. To grab the phone and call 911, yeah.

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1 Q. Okay. How did -- and your fiance told you to
2 call 911?
3 A. He said to run inside and call 911.
4 Q. When did he tell you that?
5 A. When we -- I was on the porch and we saw him,
6 and then he noticed the altercation, noticed that there was
7 something else happening besides that, and he told me to
8 call.
9 Q. He yelled it while he was over around closer
10 to --
11 A. Yes.
12 Q. -- your father?
13 A. He yelled to go inside and call 911, he yelled
14 that to me.
15 Q. Did he yell anything else about what you would
16 call 911 about?
17 A. No.
18 Q. Okay. And then what happened?
19 A. Then I was trying to call 911 and it wouldn't
20 go through for some -- I don't know why it wouldn't. I had
21 to call it, like, five different times to get through to
22 dispatch.
23 By the time I had gotten through, Joe was
24 running inside to grab the firearm and told me that he had
25 been -- my dad had been stabbed.

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1 Q. Well, he also said Denise had been stabbed,
2 right?
3 A. Yes. But that was after he went back outside
4 with the firearm and then yelled at me Denise got stopped,
5 too, so I told them.
6 Q. That was quite awhile after?
7 A. Not that long after, probably like 30 seconds.
8 I don't know how long it took him to go back outside.
9 Q. I'm sorry?
10 A. I don't know how long it took him to go back
11 outside, but it wasn't a long time.
12 Q. He was in getting the firearm, took him three
13 or four minutes?
14 A. I don't know how -- specifically how many
15 minutes it took.
16 Q. Excuse me?
17 A. I don't know specifically how long it took.
18 Q. Did it seem like it was taking an
19 extraordinarily long time?
20 A. No. Not like an extraordinarily long time,
21 couple minutes. I am not really sure. I wasn't timing it.
22 I was on the phone with the 911.
23 Q. So while you are on this 911 call you are not
24 watching anything, right?
25 A. I was standing by the door, just talking to

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1 them. But I was not like looking out there or anything,
2 watching them, no.
3 MR. WOODBURY: Okay. I have no further questions
4 of the witness.
5 THE COURT: Redirect.
6 REDIRECT EXAMINATION
7 BY MR. MILLS:
8 Q. Ms. Tice, when Mr. Woodbury was asking you
9 about your statement, you mentioned that there were a few
10 other details that you forgot to write down?
11 A. Yeah.
12 Q. Can you remember what some of those details
13 are?
14 A. Just that, like, I didn't write it
15 specifically in good sentences and stuff, like, to where I
16 saw him grab it from his pocket and it was -- from his side
17 somewhere and it was shiny. I just said he had something
18 shiny.
19 But I was really distraught after it happened
20 when I was trying to write it, so --
21 Q. Okay.
22 A. -- it was kind of emotional, so I couldn't
23 really --
24 Q. Any other details that you wanted to add that
25 you forgot?

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1 A. Um, no.
2 Q. Okay. You testified that Denise's porch light
3 was on; is that correct?
4 A. I believe so yes.
5 Q. Was your porch light on?
6 A. Yes.
7 Q. Would it help you to see a map to describe
8 some of the stuff that you were just testifying about?
9 A. Probably.
10 THE COURT: We're getting close to 10 minutes
11 after, so we'll have to break, and then get back on
12 schedule.
13 Now, the rule of exclusion is invoked, Ms. Tice.
14 So that means you cannot discuss this case or your
15 testimony with anybody until the trial is over.
16 It's not going to be over until Tuesday evening,
17 figure, so keep that in mind.
18 You can discuss it with Mr. Mills or Mr. Woodbury
19 however.
20 THE WITNESS: Okay.
21 THE COURT: You will to be back here at 20
22 minutes after one.
23 THE WITNESS: Okay.
24 THE COURT: And we'll finish you up.
25 Ladies and gentlemen, please do not converse

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1 amongst yourselves or with anyone else on any subject
2 connected with the trial. Do not read, watch or listen to
3 any report or commentary on the trial or any person
4 connected with the trial by any medium of information,
5 including, without limitation, newspapers, television,
6 radio or the Internet.

7 And do not form or express any opinion on any
8 subject connected with the trial until the cause is finally
9 submitted to you.

10 You may not use any electronic device or media,
11 such as the telephone, a cell phone, smartphone, iPhone,
12 BlackBerry or computer, the internet, any internet service,
13 any text or instant messaging service, any internet chat
14 room, blog, or website such as Facebook, MySpace,
15 LinkinDin, YouTube or Twitter, to communicate to anyone any
16 information about this case until I accept your verdict.

17 In other words, you cannot talk to anyone on the
18 phone, correspond with anyone, or electronically
19 communicate with anyone about this case.

20 Please be back in the jury room at 1:20.

21 (WHEREUPON, the noon recess was taken)

22 THE COURT: All right. We're back on the record
23 for Case CR-FP-2015-1508. Again, State versus Dean.

24 Mr. Dean is present in court with his attorney
25 Gary Woodbury.

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1 little bit. It happens after lunch sometimes.

2 A. So just the whole --

3 Q. If you could go ahead and circle the trailer
4 that you and Joe were living in at the time of the
5 incident.

6 Then, with the red colored marker, if you can
7 circle the trailer where Denise and Bert were living at the
8 time of the incident?

9 Q. And why don't you still hold on to that for a
10 second.

11 And if you could tell us where the entrance to
12 your trailer is. In other words, when you came to the door
13 and looked out, just maybe write an X where you were in the
14 general vicinity of where your door is.

15 All right. And then could you draw -- there's
16 kind of a small rectangle in the area generally where the
17 vehicle was, the SUV parked in front of the Minters
18 residence.

19 Okay. Then maybe with green to distinguish if
20 you could just kind of put an X in the general vicinity of
21 where you saw the people when you looked out the door.

22 Thank you.

23 MR. MILLS: That's all I have. Actually, I'm
24 going to offer State's 45-D into evidence.

25 THE COURT: Any objection to 45-D?

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1 And again Mr. Mills, Elko County deputy district
2 attorney, is back to represent the State.

3 And, let's see, we have Brittney Tice on the
4 witness stand. I remind her she is under oath and on
5 redirect examination.

6 But will counsel stipulate to the presence of the
7 jury and the alternates?

8 MR. WOODBURY: So stipulated.

9 MR. MILLS: Yes, Your Honor.

10 THE COURT: Thank you. Mr. Mills.

11 REDIRECT EXAMINATION (Cont.)

12 BY MR. MILLS:

13 Q. Ms. Tice, I'm going to show you a map. I
14 believe it's State's 45-D. I want you tell me if you can
15 orient yourself here on this map. This is Fifth Street
16 here.

17 A. Okay. Yeah.

18 Q. So why don't you take this green marker and
19 circle the trailer where you and Joe were living at the
20 time of the incident?

21 MR. WOODBURY: Your Honor, could you ask Mr.
22 Mills to speak up. I can't hear him.

23 THE COURT: I think you just did, Mr. Woodbury.

24 MR. WOODBURY: Thank you.

25 THE COURT: I will direct him to speak up a

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1 MR. WOODBURY: May I look at it for a moment?

2 THE COURT: Of course.

3 MR. WOODBURY: We don't have any objection to it.

4 THE COURT: 45-D is admitted.

5 (WHEREUPON, State's Exhibit 45-D was admitted into
6 evidence)

7 THE COURT: Any recross, Mr. Woodbury.

8 RECROSS-EXAMINATION

9 BY MR. WOODBURY:

10 Q. Ms. Tice, you indicated in your report that
11 Mr. Dean ran away at some point?

12 A. Yes.

13 Q. Did you watch him?

14 A. No.

15 MR. WOODBURY: Thank you. I have nothing.

16 THE COURT: Jury questions for Ms. Tice?

17 All right. It appears not.

18 Is she held subject to recall?

19 MR. MILLS: Yes, Your Honor. But she can go
20 about her business. If we need her here, we'll give her a
21 call.

22 THE COURT: Remember the rule of exclusion that I
23 told you about before we broke last time.

24 Have a nice day. Watch your step there.

25 Next witness, please.

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1 MR. MILLS: State calls Joel Fairfield.
2 Corporal Fairfield, please raise your right
3 hand. The clerk will swear you in.
4 (WHEREUPON, the witness was sworn)
5 THE COURT: Mr. Mills.
6 JOEL FAIRFIELD
7 called as a witness in said case, having been first
8 duly sworn, testified as follows:
9 DIRECT EXAMINATION
10 BY MR. MILLS:
11 Q. Could you please state and spell your first
12 and last names for the record?
13 A. Joel Fairfield. J-o-e-l, F-a-i-r-f-i-e-l-d.
14 Q. What is your occupation?
15 A. I am a police officer with the City of Elko.
16 Q. How long have you worked for the City of Elko
17 as a police officer?
18 A. Just about ten years.
19 Q. And what is your current rank and position?
20 A. I'm currently a corporal in the patrol
21 division.
22 Q. Corporal, were you on duty back on December 8,
23 2015?
24 A. Yes.
25 Q. Is that in the evening?

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1 A. Correct.
2 Q. Around eight o'clock, or a little bit
3 thereafter, were you called out to respond to -- to a
4 situation?
5 A. Yes.
6 Q. Where did you respond to?
7 A. I responded to Fifth Street from the 800 block
8 of South Fifth.
9 Q. What did you observe going on when you arrived
10 there?
11 A. When I arrived there, there was already
12 officers ahead of me that had arrived before me. So I
13 parked my police car across the road to block traffic so
14 there wouldn't be cars moving in or around the area.
15 Q. What did you do next?
16 A. Stood by there for a few minutes, met with a
17 couple people who were in the area that I asked, you know,
18 if they had seen or heard anything. And they said that
19 they might have some information so I had given them some
20 written statements to fill out at my police car. So they
21 were filling out these written statements.
22 I grabbed my camera out of my police car and
23 went up and talked to the officers that were already on
24 scene, Officer Catalano and Sergeant Pepper, and asked them
25 what assistance I could provide for their investigation.

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1 Q. And where did you meet with Sergeant Pepper
2 and Officer Catalano?
3 A. I initially met them -- there was an ambulance
4 that had arrived on scene. And I met with them sort of
5 halfway between where the ambulance was, which was about
6 the 600 block of Fifth Street and my police which was about
7 the 800 block of Fifth Street, so kind of mid-block there.
8 Q. And where had you met with those witnesses?
9 A. They were at my police car at the 800 block of
10 South Fifth Street.
11 Q. And do you happen to remember who those
12 witnesses were?
13 A. I don't.
14 Q. Were they male or female?
15 A. Two females.
16 Q. What did you do next?
17 A. I went with Sergeant Pepper up to the trailer
18 at the Palacio Trailer Park and kind of walked the scene
19 with him to see -- again, just kind of asking, is there
20 anything I need to do to help.
21 And about that point it was sort of determined
22 I would just go to the hospital and take some photographs
23 of Mr. Minter and take some photographs at the back of the
24 ambulance and then went up to the hospital.
25 Q. When you say you went to the trailer, which

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1 trailer are you talking about?
2 A. I don't know the trailer number, but there is
3 a -- the trailer where this incident took place is inside
4 the Palacio Trailer Park, sort of on the northwest part of
5 the trailer park.
6 Q. Just to distinguish, I guess what I am getting
7 at is, so there was a trailer where the incident occurred
8 as far as the alleged stabbing, then there is another
9 trailer where the defendant was found.
10 A. Correct.
11 Q. So which of the two trailers are you referring
12 to?
13 A. The trailer where the alleged stabbing took
14 place.
15 Q. Okay. So at that point in time it was
16 determined that you would go to the hospital?
17 A. Correct.
18 Q. Did you do that?
19 A. I did.
20 Q. Okay. What did you do when you arrived there?
21 A. I met with Mr. Minter who was in one of the
22 treatment rooms in the emergency department at the
23 hospital.
24 I took some photographs of his injuries,
25 talked to him briefly, made an audio recording of my

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1 conversation with him, and collected some of the clothing
2 that had been removed by someone, I believe, who -- I don't
3 know who. Just his clothing was on the floor in the
4 treatment room.

5 Q. And you mentioned earlier about taking some
6 photos of something in the ambulance or something like
7 that?

8 A. Correct.

9 Q. What was that all about?

10 A. At the ambulance that was still at the
11 scene -- or at the scene of the -- on Fifth Street, the
12 defendant was in the back of the ambulance. So I had my
13 camera, so I took some photos.

14 Q. What did you take photos of?

15 A. Just general photos of the defendant.

16 Q. Corporal, I'm showing you first what has been
17 marked as State's Exhibit Number 32. Do you recognize
18 that?

19 A. Yes.

20 Q. What is that a picture of?

21 A. This is a picture of the defendant in the back
22 of the ambulance that was on Fifth Street.

23 Q. And does that fairly and accurately represent
24 how he looked to you at that time?

25 A. Yes.

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1 Q. Do those exhibits, 21 through 25, fairly and
2 accurately depict Bert Minter as you saw him on that
3 occasion?

4 A. Yes, sir.

5 MR. MILLS: Offer State's 21 through 25 into
6 evidence.

7 MR. WOODBURY: We have no objection.

8 THE COURT: Exhibits 21 through 25 are admitted.
9 (WHEREUPON, Exhibits 21 through 25 were admitted into
10 evidence)

11 MR. MILLS: Permission to show these to the jury,
12 Your Honor?

13 THE COURT: Of course.

14 Q. Corporal Fairfield, you collected some of Bert
15 Minter's clothing, as well?

16 A. Correct.

17 Q. And what did you do with that?

18 A. Gave that to Officer Catalano.

19 MR. MILLS: Thank you, Corporal. That's all the
20 questions I have. I will pass the witness.

21 THE COURT: Cross-examination.

22 MR. WOODBURY: May I wait until the jury has seen
23 the published photographs?

24 THE COURT: Of course, yeah. No problem.

25 CROSS-EXAMINATION

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1 MR. MILLS: I'm going to offer State's 32 into
2 evidence.

3 THE COURT: Any objection?

4 MR. WOODBURY: No.

5 THE COURT: Thirty-two is admitted.

6 (WHEREUPON, Exhibit 32 was admitted into evidence)

7 Q. I'm going to show you State's 21 through 25.
8 If you could just look at those one at a time and reference
9 them by exhibit number and tell the jury what each exhibit
10 depicts?

11 A. Exhibit 21 is a picture of Mr. Minter that I
12 took at the hospital in the treatment room. The focus of
13 this photo is an injury to his left forearm.

14 Exhibit 22 is a photograph that I took at the
15 hospital of Mr. Minter's left forearm, close up with --
16 there is a dime on there to show scale.

17 Number 23 is a photograph of Mr. Minter's left
18 side, showing some injuries to his chest and abdomen area
19 and some blood.

20 Number -- Exhibit Number 24 is another
21 photograph that I took at the hospital emergency room.
22 Shows two injuries to the left side of his body.

23 Exhibit Number 25 is a photograph that I took
24 of Mr. Minter's left side of his body, showing his buttocks
25 and the lower portion of his back, showing some injuries.

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1 BY MR. WOODBURY:

2 Q. Corporal Fairfield, you were previously a
3 detective with the Nevada Division of Investigation?

4 A. Yes, sir.

5 Q. What is the significance of the photograph of
6 Mr. Dean?

7 A. Just to show any injuries present or not
8 present, and to help with identification at maybe a later
9 date.

10 Q. Any injuries on the face?

11 A. Not that I recall.

12 Q. And the photographs you took of Mr. Minter,
13 Exhibit 21, that has a -- shows a portion of Mr. Minter's
14 face, right?

15 A. Yes, sir.

16 Q. Any injuries to his face or head?

17 A. Not that I recall.

18 Q. You have seen stab wounds before?

19 A. Yes, sir.

20 Q. Any indication of slashing, a knife having --
21 or the tool having penetrated and slashed inside or been
22 twisted or anything like that, in the injuries?

23 A. No indication of a slashing type wound, but I
24 don't --

25 Q. I'm --

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1 A. I wouldn't feel comfortable saying a twisting
2 type motion. I wouldn't know.
3 Q. Well, you would know if you saw evidence of
4 it, though?
5 A. Not necessarily. I haven't seen that kind of
6 wound before.
7 Q. I assume that there came a time that you
8 became aware that there was a knife -- location of a knife
9 at issue in this case?
10 A. Yes, sir.
11 Q. When was that?
12 A. Are you asking me what time did I become aware
13 there was a knife involved?
14 Q. At what point in the evening did you become
15 aware a knife had been involved?
16 A. Almost immediately we knew that there was a --
17 the mechanism of wounding was by a knife.
18 Q. Okay. And your position with at the time was
19 a corporal, patrol corporal. Did you have some obligation
20 to develop evidence, or anything like that, as a part of
21 your job? To find evidence?
22 A. I did what I was asked to do, which was to go
23 to the scene and take photographs.
24 Q. Okay. And who was kind of running that scene?
25 A. Sergeant Pepper was overall scene commander.

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1 and the right side of the walkway?
2 A. I don't know.
3 Q. Would that have been appropriate if the knife
4 was involved?
5 A. Yes, sir.
6 Q. Are you aware in this case whether or not a
7 knife other than the knife found at the residence of
8 Clarence Thompson has been found in the case?
9 A. I am not aware.
10 Q. Okay. Would you be aware if such a thing had
11 happened?
12 A. Not necessarily.
13 MR. WOODBURY: Thank you. I have nothing
14 further.
15 THE COURT: Redirect?
16 REDIRECT EXAMINATION
17 BY MR. MILLS:
18 Q. Corporal Fairfield, Mr. Woodbury was asking
19 you about the wounds on Bert and different kinds of stabs
20 and lacerations and whatnot?
21 A. Yes, sir.
22 Q. How many years have you been a police officer?
23 A. Twenty-three.
24 Q. So prior to working for the Elko Police
25 Department, you were also employed in law enforcement?

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1 Q. Okay. After Sergeant Pepper took you around,
2 I guess, or you went around with him up there at the scene
3 of this crime, you became fully aware that -- that that
4 knife ought to be found, right?
5 A. Correct.
6 Q. So I take it that you learned from Sergeant
7 Pepper what direction the defendant had left the scene in?
8 A. Yes.
9 Q. Okay. And was care taken to take your
10 flashlights and look around the scene to see if there was
11 evidence of a knife thrown, or anything like that?
12 A. The areas that I walked, I did look, yes.
13 Q. And where all did you walk?
14 A. From Fifth Street up sort of the driveway to
15 the trailer, around that area, then back down.
16 Q. Both sides of the roadway?
17 A. No.
18 Q. Which side?
19 A. The -- essentially the middle area where I was
20 walking to make sure I didn't step on anything I shouldn't
21 step on.
22 Q. You had your flashlight on?
23 A. For part of it, yes, sir.
24 Q. And was there some kind of care taken then to
25 have another officer look on the left side of the walkway

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1 A. Yes.
2 Q. Over the course of those 23 years, have you
3 seen stab wounds?
4 A. Yes, sir.
5 Q. Wounds caused by knives?
6 A. Yes, sir.
7 Q. Were the wounds you saw on Bert Minter that
8 evening, were they consistent with stab wounds?
9 A. Yes, sir.
10 MR. MILLS: Thank you. That's all I have.
11 Nothing further.
12 THE COURT: Any recross?
13 MR. WOODBURY: No, sir.
14 THE COURT: All right. Any jury questions for
15 Corporal Fairfield?
16 (WHEREUPON, the following proceedings were held at the
17 bench)
18 THE COURT: Okay. Juror 10 has two questions.
19 We're at side bar.
20 "At approximately what time did you arrive on
21 scene?"
22 MR. MILLS: That's fine.
23 MR. WOODBURY: No objection.
24 THE COURT: "Did you at any time notice a
25 presence of alcohol about Mr. Dean?"

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1 MR. WOODBURY: I don't think he saw Mr. Dean, but
2 I don't have any objection.
3 MR. MILLS: That's fine.
4 THE COURT: Okay.
5 (WHEREUPON, the bench conference was concluded)
6 THE COURT: Couple questions for you corporal.
7 Q. At approximately what time did you arrive on
8 scene on December 8, 2015?
9 A. About five minutes after the first call.
10 Q. And did you have any personal contact with Mr.
11 Dean that evening?
12 A. Other than the photographs at the back of the
13 ambulance, no.
14 Q. Okay. Well, did you notice whether there was
15 any alcohol, he ingested any alcohol, any indicia of Mr.
16 Dean ingesting alcohol or use of?
17 A. I didn't.
18 THE COURT: Mr. Mills, any follow up?
19 REDIRECT EXAMINATION
20 BY MR. MILLS:
21 Q. When you say about five minutes after the
22 first call, what time was the first call approximately?
23 A. I honestly don't know.
24 Q. How close to Mr. Dean were you when you took
25 that photograph?

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1 A. Four feet.
2 Q. And in your training and experience and as an
3 officer, you've dealt with people who have been consuming
4 alcohol, correct?
5 A. Yes, sir.
6 Q. As -- from that distance -- I guess, let me
7 ask you this. From that distance, were you able to detect
8 one way or the other any presence of alcohol?
9 A. No, sir.
10 MR. MILLS: Thank you. That's all I have.
11 THE COURT: Mr. Woodbury, any follow up?
12 MR. WOODBURY: No.
13 THE COURT: May Corporal Fairfield be excused?
14 MR. MILLS: I would like him retained subject to
15 recall, but he can go about his business today. If we need
16 him, we can call him.
17 THE COURT: Corporal, the rule of exclusion has
18 been invoked. Don't discuss the case or your testimony
19 with anybody until the trial is over, which won't be until
20 Tuesday evening. You of course can talk to the lawyers
21 about it, if they want to talk to you.
22 THE WITNESS: Thanks, Judge.
23 THE COURT: All right. Have a good day.
24 Next witness?
25 MR. MILLS: State calls Officer Ballesteros.

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1 (WHEREUPON, the witness was sworn)
2 THE COURT: All right. Officer, please have a
3 seat at the witness stand. Door comes out to you. Watch
4 your step.
5 And, Mr. Mills, please proceed.
6 CHRISTOPHER BALLESTEROS
7 called as a witness in said case, having been first
8 duly sworn, testified as follows:
9 DIRECT EXAMINATION
10 BY MR. MILLS:
11 Q. Officer, could you please state your full name
12 and spell your first and last name?
13 A. It's Christopher Ballesteros.
14 C-h-r-i-s-t-o-p-h-e-r. Last name Ballesteros,
15 B-a-l-l-e-s-t-e-r-o-s.
16 Q. And what is your occupation?
17 A. I am a patrol officer with Elko Police
18 Department.
19 Q. How long have you worked for the Elko Police
20 Department?
21 A. For about a year and a half.
22 Q. Were you on duty back on December 8, 2016?
23 A. Yes, I was.
24 Q. I want to direct your attention to about eight
25 o'clock that evening. Did you have occasion to become

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1 involved in an investigation involving a subject by the
2 name of Sean Dean that evening?
3 A. Yes, sir.
4 Q. And what was your involvement in that case?
5 what did you do?
6 A. Well, after the officers went inside and
7 apprehended him and took him out of the trailer, I went
8 inside and took photographs with them.
9 And also I went across the street and I also
10 took photographs of the other trailer.
11 Q. So when you first showed up, where did you
12 respond to?
13 A. I first showed up at the South Fifth Street
14 trailer. I don't know exactly the number, but it was at
15 Palacio trailers, South Fifth, I think 701.
16 Q. And who else was there when you arrived there?
17 A. Initially, when I first got there, I seen
18 multiple officers already inside the trailer. I recall
19 seeing Officer Fairfield, Officer Lowry, Sergeant Pepper.
20 And that's what I can recall at this point.
21 Q. The officers were already inside the trailer
22 at that point?
23 A. Yes, sir.
24 Q. At some point in time did you see Mr. Dean?
25 A. Yes, sir.

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1 Q. When was that?

2 A. He was inside of the trailer. That's when the

3 officers apprehended him.

4 Q. Was he taken out of the trailer at some point?

5 A. Yes, sir.

6 Q. And what you did do at that point?

7 A. After they took him out of the trailer, I went

8 inside, and then I started taking photographs within.

9 Q. In particular, what was noteworthy inside the

10 trailer that you were taking photographs of?

11 A. Well, first, once I walked inside, I looked at

12 the ground and there was blood dots in the trailer within

13 the kitchen area. And then I continued on, walked towards

14 the bathroom, noticed there was blood in there also, as

15 well as occurring outside of the bathroom. That's what I

16 can recall at this point.

17 Q. After taking photographs of the blood that you

18 just described, what did you do next?

19 A. After taking photographs within that trailer,

20 I went to the other trailer which is across from the

21 trailer where I was at. Then I also took photographs of, I

22 believe, a broken cell phone and -- which was underneath

23 another vehicle. So I was at the other trailer with

24 Officer Catalano.

25 Q. Now, the other trailer, when you say "across,"

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1 across what?

2 A. It was across from the trailer where Mr. Dean

3 was found. It was another set of trailers.

4 Q. But across which street?

5 A. Across South Fifth Street.

6 Q. All right. Officer, I'm going to show you

7 what has been marked as State's Exhibits 11 through 14.

8 would you look at those and tell the jury what

9 they are. Maybe go through them one at a time, state the

10 exhibit number, describe what you are talking about.

11 A. Okay. So this is Exhibit Number 11. This is

12 an overall picture within the kitchen. That's when I first

13 walked in, I noticed blood dots on the ground.

14 Exhibit Number 12, that's a closer photograph

15 I took with the blots spots in the kitchen.

16 Exhibit 13, this is when I also noticed blood

17 spots within the bathroom.

18 And Exhibit 14, this is a closer of the

19 bathroom with the blood spots found within.

20 Q. Showing you 15 through 18 now. Could you do

21 the same with those?

22 A. Exhibit 15, this is after I went -- I left the

23 trailer and I met with Officer Catalano. I took an overall

24 photograph of the area where he told me where the incident

25 occurred.

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1 Exhibit 16, this is a closer photograph. This

2 is where we noticed that there was cell phones underneath a

3 vehicle.

4 Exhibit Number 17, this is just an up-close

5 photograph of the cell phones that we located.

6 Exhibit Number 18. This is just another

7 overall photograph of, I believe, where the incident

8 occurred near the vehicle.

9 Q. Showing you 59 through 61.

10 A. Exhibit Number 59, this is just an overall

11 photograph of the cell phone that was located outside the

12 trailer.

13 Exhibit Number 60, this is what I believe to

14 be the cover of the cell phone that I believe that fell

15 off.

16 Exhibit Number 61, this is just a cell phone

17 we also located.

18 Q. Do all of these photographs fairly and

19 accurately depict the things that you described as you saw

20 them on that occasion?

21 A. Yes, sir.

22 MR. MILLS: Your Honor, I'm going to offer

23 State's 11 through 18 and 59 through 61 into evidence.

24 MR. WOODBURY: May I see them?

25 THE COURT: That's 11 through 19 and then 61?

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1 MR. MILLS: 11 through 18 and 59 through 61.

2 THE COURT: 59 through 61.

3 MR. WOODBURY: We have no objection.

4 THE COURT: Those exhibits are admitted. Again,

5 that's 11 through 18 and 59 through 61.

6 They are admitted.

7 (WHEREUPON, Exhibits 11 through 18 and 59 through 61

8 were admitted into evidence)

9 MR. MILLS: I have no further questions. Thank

10 you.

11 THE COURT: Cross-examination.

12 MR. WOODBURY: I don't think we have any.

13 THE COURT: Jury questions?

14 (WHEREUPON, the following proceedings were held at the

15 bench)

16 THE COURT: All right. We're at side bar.

17 Juror 12 asks, "was there any pictures taken of

18 blood at Denise Minter's trailer of" -- I can't make -- "if

19 so, where were they taken?"

20 MR. WOODBURY: Whereabouts?

21 MR. MILLS: "If so, whereabouts were they taken?"

22 THE COURT: "If so, whereabouts were they taken,"

23 correct.

24 MR. WOODBURY: I think the answer is no, but I

25 don't have any objection to asking it.

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1 MR. MILLS: I don't either.
2 THE COURT: I would just ask it, were there --
3 "Do you know if there were any pictures taken at Denise
4 Minter's trailer?"
5 MR. WOODBURY: Of the blood, I guess.
6 MR. MILLS: Yeah, of the blood.
7 THE COURT: All right.
8 Five asks, "Did you see blood anywhere else
9 besides in the trailer?"
10 MR. MILLS: Sort of redundant, but I have no
11 objection.
12 MR. WOODBURY: That's all right.
13 THE COURT: All right. All right.
14 MR. MILLS: It's different enough.
15 THE COURT: All right.
16 (WHEREUPON, the bench conference was concluded)
17 THE COURT: Couple questions.
18 BY THE COURT:
19 Q. Did you see any blood anywhere else besides in
20 the trailer?
21 A. From what I recall, just the spots, what I
22 recall, was the kitchen, bathroom, curtains. That's all I
23 can remember at this point.
24 Q. Were there pictures taken of any blood in
25 Denise Minter's trailer?

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1 A. I did not go inside Denise Minter's trailer.
2 I didn't take any photographs within it.
3 THE COURT: Thank you. Any follow up, Mr. Mills?
4 REDIRECT EXAMINATION
5 BY MR. MILLS:
6 Q. What about outside the trailer at the crime
7 scene on the ground, did you see any blood?
8 A. I did not, from what I recall.
9 MR. MILLS: That's all I have.
10 MR. WOODBURY: Nothing.
11 THE COURT: All right. May this officer be
12 excused?
13 MR. MILLS: I would like him held subject to
14 recall. He can go about his business, we'll call him back
15 if we need to.
16 THE COURT: Rule of exclusion is invoked, so
17 don't discuss this case or your testimony with anyone. It's
18 not scheduled to be done until Tuesday evening. So keep
19 that in mind.
20 You can discuss it with Mr. Mills or
21 Mr. Woodbury. Those are the exceptions.
22 Thank you. Have a nice day. Next witness?
23 MR. MILLS: State calls Jacob Eisinger.
24 THE COURT: Please raise your right hand. Clerk
25 will swear you in.

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1 (WHEREUPON, the witness was sworn)
2 JACOB EISINGER
3 called as a witness in said case, having been first
4 duly sworn, testified as follows:
5 DIRECT EXAMINATION
6 BY MR. MILLS:
7 Q. Could you please state your full name and
8 spell your first and last name for the record.
9 A. Jacob Eisinger. J-a-c-o-b, E-i-s-i-n-g-e-r.
10 Q. What is your occupation?
11 A. I'm a police officer for the City of Elko.
12 Q. How long have you had that job?
13 A. Just over four years.
14 Q. Were you on duty back on December 8, 2015?
15 A. I was.
16 Q. I want to direct your attention to
17 approximately eight o'clock in the evening. Did you have
18 occasion to respond to a call?
19 A. I did.
20 Q. And what call were you called out on?
21 A. I responded to a report of -- I believe it was
22 initially a medical call. I don't remember the exact --
23 how it came out, but it ended up being a stabbing.
24 Q. Where did you respond to?
25 A. I responded to the area of 701 South Fifth

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1 Street.
2 Q. What you did observe when you arrived there?
3 A. When I arrived there, there was some
4 individuals standing out on the edge of the street. And
5 then there was a couple more officers responding to the
6 area.
7 Q. Do you know who those individuals were that
8 you saw?
9 A. I have no idea who they were.
10 Q. Okay. What did you do when you responded?
11 A. I spoke with Officer Catalano and he advised
12 me that the suspect was possibly in a residence in that
13 area.
14 Q. And did you respond to the residence where the
15 suspect was suspected to be?
16 A. I did.
17 Q. And what -- where did you respond to? What
18 was the residence?
19 A. I respond to do 701 South Fifth Street, Number
20 5.
21 Q. What did you see going on there when you
22 arrived?
23 A. When I arrived at that residence, I took up a
24 position behind the residence in case the individual tried
25 to climb out of the window.

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1 Q. What were the officers doing?
2 A. The other officers went around to the front of
3 the residence.
4 Q. What happened then?
5 A. Some individuals came out of the residence and
6 were confronted by the officers.
7 Q. Who were those individuals who came out?
8 A. I believe, if I remember correctly, it was
9 Lindsey Steele and a Clarence Thompson.
10 Q. At some point in time did Mr. Dean make an
11 appearance, or did you become aware of his presence?
12 A. I became aware of Mr. Dean's presence when he
13 was being escorted to a patrol car by Officer Catalano.
14 Q. What did you do at that point?
15 A. At that point I went around to the front of
16 the -- around to the front of the residence.
17 Q. What was going on there when you got to the
18 front part of the residence?
19 A. Ms. Steele and Mr. Thompson was speaking with
20 some officers out front, and I talked to them for a few
21 minutes.
22 Q. When you say "talked to them," you mean the
23 officers or Steele and Thompson?
24 A. Both.
25 Q. Okay. What happened then?

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1 A. I went into the residence with Ms. Steele and
2 Mr. Thompson. While inside the residence, Ms. Steele
3 picked up a knife off of the ground and handed it to me.
4 Q. And you saw her do that?
5 A. Excuse me?
6 Q. She did that in your presence?
7 A. Yes.
8 Q. You saw her do that?
9 A. Yes.
10 Q. What kind of knife was it?
11 A. It was some type of multi-tool knife, I
12 believe. I believe it was a Gerber.
13 Q. Were you wearing gloves at that time?
14 A. I was, yes.
15 Q. Do you recall if she was?
16 A. I don't believe she did.
17 Q. What was the manner in which she handed it to
18 you? How was she handling it and how did you take hold of
19 it?
20 A. She bent down, picked it up, and held it up
21 and said, "I found this under my couch."
22 Q. And describe for the jury, you know, how you
23 were holding it. Was she holding it by the handle?
24 A. I believe she was, yes.
25 Q. Then how did she hand it off to you?

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1 A. She handed it to me in a normal fashion and I
2 took it from her by the handle.
3 Q. What did you do next in the course of the
4 investigation?
5 A. I interviewed Ms. Steele and Mr. Thompson, and
6 I collected a few blood samples of blood droplets that were
7 in two places in his house.
8 Q. Do you recall generally where those -- where
9 the blood samples were on the house -- inside the house?
10 A. One sample I took was inside the bathroom of
11 the residence and the other was in a bedroom or a back room
12 that was being used as, like, an office at the time.
13 Q. Just explain for the jury how you do that.
14 How do you take a sample of suspected blood?
15 A. You get, basically, a Q tip essentially, and
16 depending on whether the blood is wet or dry, in this case
17 it was -- by the time I had done it, it was a little dry.
18 You get distilled water and wet the Q-tip, then rub the
19 Q-tip over the blood area. You put in the packaging, mark
20 it, so it can be sent off to the lab.
21 Q. And did you gather samples of the suspected
22 blood in the way you just described?
23 A. Yes, I did.
24 Q. Is that consistent with your training as a
25 police officer?

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1 A. Yes, it is.
2 Q. So after you took the samples, did you put
3 them in a container or something like that?
4 A. Yes. They were packaged in the -- like a
5 cardboard packaging that fits the Q-tip in there. And then
6 when you package it for evidence, I put it in a manila
7 envelope and sealed it with evidence tape.
8 Q. What did you end up doing with the -- did you
9 maintain possession of that knife that you recovered?
10 A. I did, yes.
11 Q. What did you end up doing with that and the
12 swabs?
13 A. I packaged the knife into an evidence
14 container and logged that and the swabs both into the
15 evidence system.
16 Q. After that, did you have any other involvement
17 in this case?
18 A. I did not, no.
19 Q. If you saw that knife again, would you
20 recognize it?
21 A. I would.
22 Q. I'm showing you what has been marked as
23 State's Exhibit Number 48. If you want to take a couple
24 seconds and examine that. Do you recognize that?
25 A. I do.

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1 Q. What is it?
2 A. This is the container and the evidence log
3 slip which I packaged the knife and filled out to be logged
4 into evidence.
5 Q. And what is there on any of that that
6 indicates that you are, in fact, the one that kind of
7 packaged that and logged it into evidence?
8 A. The tag that's on the actual container, scan
9 in the bar code and the evidence system will show that it
10 was my log-in that logged it.
11 Then our chain of custody reflects that I was
12 initial officer maintaining custody of it.
13 Q. Is that your signature on there?
14 A. This is my signature, yes.
15 Q. Okay. Would you mind opening that up for us
16 and showing the jury what is inside of it?
17 A. Sure.
18 Q. If you would like to use some gloves, here you
19 go. What would be the best way of assisting you in opening
20 that? Would you like some scissors or something like that?
21 A. I have to see what the tape looks like here.
22 Yeah, do you have scissors?
23 MR. MILLS: Your Honor, can I borrow a pair of
24 scissors from you?
25 THE COURT: You may.

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1 MR. MILLS: Thank you.
2 Q. Here you go, Officer.
3 Okay. Can you -- when Lindsey picked that up
4 and handed it to you, was the knife blade out on it?
5 A. I don't believe it was.
6 Q. Okay.
7 A. I believe it was just in the condition it is
8 now.
9 Q. Okay. Is that the knife that she bent over
10 and picked up and handed to you on that occasion?
11 A. Yes, this is.
12 Q. Okay.
13 MR. MILLS: I'm going to offer State's 48 into
14 evidence.
15 MR. WOODBURY: I am wondering if maybe I could
16 see it. Put it back in that bucket there, Officer.
17 THE WITNESS: Do you want it wrapped up back up
18 like it was?
19 MR. WOODBURY: No, I just don't want to touch it.
20 THE WITNESS: Okay.
21 MR. WOODBURY: We have no objection, Judge.
22 THE COURT: Forty-eight is admitted.
23 (WHEREUPON, Exhibit 48 was admitted into evidence)
24 MR. MILLS: Do you want to wrap that back up the
25 way that it was.

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1 Thank you, Officer.
2 That's all the questions I have. I will pass the
3 witness.
4 THE COURT: Cross.
5 MR. WOODBURY: Thank you, Your Honor.
6 CROSS-EXAMINATION
7 BY MR. WOODBURY:
8 Q. Officer, did you come into close contact with
9 Mr. Dean that evening?
10 A. No, I do not.
11 Q. Okay. You were aware that he had a cut
12 finger?
13 A. I believe I learned that sometime during the
14 process, yes.
15 Q. And was that before you started taking the
16 blood samples out of the Thompson/Steele trailer?
17 A. That I am not sure, if it was before or after.
18 Q. Somehow or another you knew that the blood
19 drops in the kitchen or the back bedroom would be or could
20 be, theoretically, of consequence?
21 A. Yes.
22 Q. Okay. And what consequence did you think they
23 would be? Or what were you considering why you were taking
24 that evidence?
25 A. The assumption that I had was that it was

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1 possible it was Mr. Dean's blood.
2 Q. It was whose blood?
3 A. Mr. Dean's blood.
4 Q. And perhaps it was Mr. Minter's blood?
5 A. Could have been. Could have been anybody's.
6 Q. All right. I take it that while you were
7 taking -- how did you get assigned to do the blood samples?
8 A. I was the lucky guy, I guess.
9 Q. Somebody assigned you to do it?
10 A. That's right.
11 Q. Okay. And were other officers in the house at
12 the time you were taking these samples?
13 A. Yes.
14 Q. What were they doing?
15 A. They were talking with Ms. Steele and Mr.
16 Thompson.
17 Q. And was a relatively -- or some kind of search
18 conducted throughout the house by the other officers?
19 A. Could have been, I don't recall. I'm assuming
20 so, yes.
21 Q. I'm sorry?
22 A. I have to assume yes.
23 Q. Yeah. And you kind of were not keeping your
24 eyes closed or focused just on the blood; you were looking
25 around, too?

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1 A. Yes.
2 Q. And you didn't see any other knives?
3 A. I didn't see what?
4 Q. Any other knives?
5 A. I believe there was another knife in the
6 kitchen in the kitchen sink.
7 Q. And what -- can you describe it?
8 A. It was a long butcher knife.
9 Q. It was not seized?
10 A. No, it was not.
11 Q. And did you talk with Ms. Steele about it or
12 Mr. Thompson?
13 A. I believe I asked Ms. Steele about it or
14 another officer did. I don't remember if I directly talked
15 to them or not.
16 Q. But it would be very common procedure for that
17 to have happened?
18 A. For somebody to, yes.
19 MR. WOODBURY: Okay. I don't have any further
20 questions.
21 THE COURT: Redirect?
22 REDIRECT EXAMINATION
23 BY MR. MILLS:
24 Q. Mr. Woodbury just asked you about, I think it
25 was, a butcher knife in the sink?

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1 (WHEREUPON, the following proceedings were held at the
2 bench)
3 THE COURT: Ten asks, "At the time, December 8,
4 2015, the knife was collected from Ms. Steele, was there
5 any blood or any indication that would suggest it was
6 indeed the alleged weapon used to stab Mr. Minter?"
7 MR. WOODBURY: I don't have any objection.
8 MR. MILLS: No objection.
9 THE COURT: Seven asks, "Was there blood on the
10 knife from Lindsey Steele?"
11 MR. WOODBURY: I don't think he knows the answer
12 to that, but.
13 MR. MILLS: Lacks personal knowledge.
14 MR. WOODBURY: Maybe Mr. Mills can inform them
15 there is a person from the Washoe County crime lab who
16 examined the knife and can report on it more precisely than
17 this witness.
18 THE COURT: Is that acceptable, Mr. Mills?
19 MR. MILLS: That's fine.
20 THE COURT: Okay. Thank you.
21 (WHEREUPON, the bench conference was concluded)
22 THE COURT: We're back on the record. There was
23 a question about whether there was blood on the knife.
24 And that question would be addressed by another
25 witness; is that correct, Mr. Mills?

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1 A. Yes.
2 Q. Was that determined to have anything to do
3 with this incident?
4 A. It was determined that it did not have
5 anything to do with the incident.
6 Q. Is that why it was not seized?
7 A. Correct.
8 MR. MILLS: Thank you. I have nothing further.
9 THE COURT: Anything based on that?
10 MR. WOODBURY: Yes, Your Honor.
11 RECROSS-EXAMINATION
12 BY MR. WOODBURY:
13 Q. Who made that determination?
14 A. What I remember them telling us is that they
15 had used that knife in the sink to cut some meat up earlier
16 in the day.
17 Q. That would be Mr. Thompson or Ms. Steele?
18 A. Correct.
19 Q. And how did that preclude that knife from
20 becoming used at a later time to stab Mr. Minter?
21 A. I don't know. I don't have the answer to
22 that. I'm sorry.
23 MR. WOODBURY: I have nothing further.
24 THE COURT: Okay. Any jury questions for Officer
25 Eisinger?

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1 MR. MILLS: That's correct, Your Honor.
2 THE COURT: Is that your understanding,
3 Mr. Woodbury.
4 MR. WOODBURY: Yes, sir.
5 THE COURT: Then there is another question.
6 Q. At the time, that is December 8, 2015, the
7 knife was collected from Ms. Steele, was there any blood or
8 indication that would suggest it was indeed used to stab
9 Mr. Minter?
10 A. There was a substance on the blade of the
11 knife that was seized. At the time I didn't know exactly
12 what it was. It may have been blood, it may not have.
13 That's why we had sent it off to the lab for
14 analysis.
15 THE COURT: Follow up, Mr. Mills?
16 REDIRECT EXAMINATION
17 BY MR. MILLS:
18 Q. Officer, were you generally aware of the
19 alleged stabbing that had taken place, as far as the
20 details?
21 A. The exact details, no. I knew that someone or
22 possibly two people had been stabbed.
23 Q. Were you aware of the description of the knife
24 that had been -- was alleged to have been used in the
25 stabbing?

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1 A. No.
2 Q. Were you aware of who the alleged suspect was?
3 A. When I arrived on scene, yes, I learned that
4 the possible suspect was Mr. Dean.
5 Q. Mr. Dean was in that residence that you have
6 been talking about?
7 A. Yes.
8 MR. MILLS: Thank you. Nothing further.
9 THE COURT: Mr. Woodbury.
10 MR. WOODBURY: Nothing.
11 THE COURT: All right. May the officer be
12 excused?
13 MR. WOODBURY: He may.
14 MR. MILLS: We would like him retained subject to
15 recall. He can go about his business. If we need him,
16 we'll give him a call.
17 THE COURT: The rule of exclusion is invoked,
18 Officer. Just remember, don't discuss this case or your
19 testimony with anyone until trial is over. It's not over
20 until Tuesday, you may figure that.
21 Keep in mind you can talk to Mr. Mills or
22 Mr. Woodbury about this, that's the exception.
23 Thank you. We'll have you step down.
24 THE WITNESS: Thank you.
25 THE COURT: Next witness, please.

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1 2015?
2 A. I was a detective.
3 Q. And at some point in time did you become aware
4 of an investigation of an alleged stabbing involving Sean
5 Dean?
6 A. Yes, I did.
7 Q. How did you become involved in that
8 investigation?
9 A. I was informed by Officer Catalano the morning
10 of December 9, 2015, and he informed me about the case and
11 that he had a cell phone that he needed to be looked at.
12 Q. Did he make arrangements for you to look at
13 that cell phone?
14 A. Yes, he did.
15 Q. How did he do that?
16 A. So I obtained the cell phone, I read through
17 both his report and the other officers' reports, and wrote
18 up a search warrant, took it to the judge to be signed.
19 Q. Did you get a search warrant to search the
20 phone?
21 A. I did.
22 Q. How did you come into possession of the phone?
23 In other words, how did that happen that the phone went
24 from Catalano to you?
25 A. Well, it usually goes to the -- Officer

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1 MR. MILLS: State calls Zach Hessing.
2 THE COURT: Please come up here, raise your right
3 hand, we'll have you sworn in, sir.
4 (WHEREUPON, the witness was sworn)
5 ZACHARY HESSING
6 called as a witness in said case, having been first
7 duly sworn, testified as follows:
8 DIRECT EXAMINATION
9 BY MR. MILLS:
10 Q. Could you please state and spell your first
11 and last name for the record.
12 A. Zachary Hessing. Z-a-c-h-a-r-y,
13 H-e-s-s-i-n-g.
14 Q. What is your occupation?
15 A. I am currently a deputy for Ada County
16 Sheriff's Office.
17 Q. Ada County, where is that located at?
18 A. In Idaho.
19 Q. Prior to that, how were you employed?
20 A. I was employed for the City of Elko as a
21 detective for the police department.
22 Q. And what was the time frame that you worked
23 for the City of Elko either as an officer or a detective?
24 A. From May 2009 until March of 2016, sir.
25 Q. What was your position back on December 8,

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1 Catalano will go to the -- put it into the evidence vault,
2 then I will obtain it from the evidence vault.
3 Q. Is that what happened in this case?
4 A. You know, I don't recall if that's the way
5 that happened with this case, or if he brought it to me
6 that morning. I am not a hundred percent sure.
7 Q. One way or the other, you came into possession
8 of that cell phone?
9 A. Yes.
10 Q. Was the search warrant granted?
11 A. Yes, it was.
12 Q. And did you search the cell phone?
13 A. Yes, I did.
14 Q. And why don't you just back up a little and
15 tell the jury about your training as far as what a cell
16 phone forensic extraction is and how that works?
17 A. So I obtained a course through Cellebrite,
18 which is a forensic cell phone company, who taught me how
19 to go through cell phones, use the Cellebrite software to
20 obtain information that has been deleted from a cell phone
21 or that is still currently on the phone.
22 Through that I was taught about three
23 different downloads that occur while you download a phone.
24 One is a physical download, one's a logical download,
25 another one is a file system download.

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1 So I obtained a certificate from them saying I
2 could -- I am certified to do forensic downloads of phones
3 and I used their software, the Cellebrite software, to do
4 so.

5 Q. And what kind of information does that process
6 yield?

7 A. Well, each of the three downloads collects
8 information in a different way. It will collect all the
9 text messages on the phone, all the e-mails on the phone,
10 phone calls that were placed, any information that is still
11 currently on phone or hasn't been deleted from the phone, I
12 can obtain.

13 The stuff that if you personally delete
14 something from the phone, that information is still there
15 unless the phone is filled to capacity, then that's when
16 phone starts deleting some information from the phone. But
17 even deleted items you can usually still recover.

18 Q. In this case, what kind of information were
19 you able to recover from the phone?

20 A. So I recovered information that had do with
21 the text messages that Sean had placed to Denise and also
22 phone calls that were placed.

23 Q. And let's talk about the text messages first.
24 Did you -- were you able to generate a report detailing
25 what those text messages were?

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1 is created by the UFED physical analyzer, which is software
2 that helps Cellebrite extract all this information. It
3 creates this report.

4 So you have the different columns. The green
5 arrow coming -- that's pointing towards the phone number,
6 that's the message coming into -- it's -- that's being sent
7 from Sean's phone to Denise.

8 The blue arrow going out is from -- that's
9 text messages that are coming from Denise to Sean.

10 And then just kind of go through and it will
11 tell you on the side that's sent or inbox all the way
12 through.

13 Right here is the date and time when they were
14 sent.

15 And also here is the actual -- the narrative
16 of what the text messages actually states, all in there.

17 Q. Thank you, Deputy, now is your title, right?

18 A. Yep.

19 Q. Thank you, Deputy. You mentioned earlier that
20 some software would indicate to you whether information --
21 I'm assuming -- does that include text messages, whether
22 they had been deleted or not?

23 A. Yes. Yes, it does.

24 Q. Did you find any evidence of deleted text
25 messages?

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1 A. Yes, I did.

2 Q. Detective, I am showing you what has been
3 marked as State's Exhibit Number 34. Just briefly look
4 through that and familiarize yourself with it.

5 What is that?

6 A. It's an extraction report of all the text
7 messages from December 7 to the night of December 8.

8 Q. Okay. And who does -- if that's Sean Dean's
9 phone, who does he appear to be communicating with? What
10 is the name associated with the recipient or sender of
11 those text messages?

12 A. Denise.

13 MR. MILLS: I'm going to offer State's 34 into
14 evidence.

15 MR. WOODBURY: No objection.

16 THE COURT: Thirty-four is admitted.

17 (WHEREUPON, Exhibit 34 was admitted into evidence)

18 Q. Go ahead and hold on to that. I'm going to
19 ask you a couple more questions about it.

20 If you could just explain to the jury so that
21 when they get a chance to look at this they can understand
22 how it works.

23 Just tell me what the different columns are
24 and the arrows and colors and all that kind of stuff.

25 A. Okay. So this is the extraction report that

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1 A. I didn't, not that I can recall on this. It
2 wasn't mentioned in my report, no.

3 Q. If there were deleted text messages, how would
4 they show up on one of these reports? What would it look
5 like?

6 A. It would show up at -- it would actually have
7 a -- a section, a column section, that would say "deleted,"
8 it was actually deleted. So you could see it right on the
9 report. If they were deleted, they would say "deleted" on
10 it.

11 Q. Officer, did you check the phone log on the
12 phone as well?

13 A. Yes, I did.

14 Q. What can you tell us about any phone calls
15 that you saw going back and forth between Sean and Denise?

16 A. The only two phones calls that I recall seeing
17 on there was phone calls that were from Sean to Denise.
18 They were less than a minute long, and there was two of
19 them, they were a couple minutes apart and -- which showed
20 me that -- that it was probably Sean calling Denise, Denise
21 not answering the phone.

22 Q. Do you recall the exact times of those two
23 phone calls?

24 A. I want to say it's -- it's 1946 and 1948,
25 somewhere around -- approximately around those times.

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1 Q. Did you document the exact time in your
2 report?
3 A. I did, yes.
4 Q. Would it refresh your recollection to review
5 your report?
6 A. Yes.
7 Q. I'm showing you what has been marked as
8 State's Exhibit Number 35. If I could direct your
9 attention to this sentence right here. If you want to read
10 that silently to yourself, then I will reask the question.
11 A. Okay.
12 Q. Does that refresh your recollection?
13 A. Yes, it does.
14 Q. What were the respective times for the two
15 phone calls that Sean Dean made to Denise that evening?
16 A. At 7:45 p.m. or 1945 hours and 1946 hours,
17 7:46 p.m.
18 Q. It's 7:45 and 7:46 p.m.?
19 A. Yes.
20 Q. Each of them was less than a minute apiece?
21 A. Correct.
22 Q. Is there anything in the report that would
23 indicate whether the phone call was answered or whether it
24 was just ringing and then -- or either way?
25 A. Not in this report, no.

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1 A. Correct.
2 Q. Then there is a telephone number?
3 A. Yes.
4 Q. Would you tell the jury, please, what that
5 telephone number is?
6 A. 775-340-5103.
7 Q. And are there parenthesis involved in the 775?
8 A. Yes, 775 has parenthesis around them.
9 Q. Okay. And there is a dash between the --
10 340 and 5103.
11 Q. Yeah. And that is very common?
12 A. Yes.
13 Q. And you can go to the bank on that?
14 A. The?
15 Q. That is to say, if that text is -- well, that
16 text particularly was sent by who to who, number one?
17 A. It was sent -- this text was sent from Sean's
18 phone to Denise, according to the phone number.
19 Q. Okay. So if it comes from -- with a
20 configuration of a parenthesis around the 775 and a dash
21 between the 340 and the four-digit number, we know that is
22 sent from Sean Dean?
23 A. Right. I mean, it depends. I mean, the
24 folder next to it will say if it's sent or wasn't sent,
25 unsent. This one was sent, yes.

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1 MR. MILLS: Thank you, Deputy. That's all the
2 questions I have. I will pass the witness.
3 THE COURT: Cross-examination?
4 MR. WOODBURY: Thank you, Your Honor.
5 CROSS-EXAMINATION
6 BY MR. WOODBURY:
7 Q. This -- I forgot what -- what Exhibit Number
8 this is.
9 MR. MILLS: It's 34. He has got it.
10 Q. This report is generated in its entirety by
11 the company. You didn't prepare any part of it?
12 A. It's a software program that you enter into
13 the date and time of the text message you want to a certain
14 date and time, then it gives you the report.
15 Q. Okay. So the report is entirely generated by
16 the software, not you?
17 A. Correct.
18 Q. You didn't sit down and type this or have
19 anybody at the Elko police department do that?
20 A. No.
21 Q. And it's very standard sized?
22 A. Yes.
23 Q. Okay. So if we look at, for example, number
24 one, a text apparently sent on 12/7 at 2015, it's called
25 "sent," and there is -- in red there is the word "Denise"?

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1 Q. If we go down one or two, say, to number 7,
2 was that text message sent from Sean to Denise or from
3 Denise to Sean? Number seven?
4 A. So that text message was from -- was sent from
5 Denise to Sean.
6 Q. Okay. And are the -- is the telephone number
7 depicted differently in that?
8 A. Yes, it is.
9 Q. Why -- how is that depicted in that?
10 A. It doesn't have the parenthesis or the bar on
11 it or the hyphenation on it.
12 Q. The fact is, if we go through that report,
13 start to finish, every time Sean sends a text messages to
14 Denise, there is going to be parenthesis and a dash?
15 A. It should be. I mean, it -- you know,
16 technology is -- can make a mistake. But it should be,
17 yes.
18 Q. And every time that Denise sends one to Sean,
19 that parenthesis and that dash ought to be missing, right?
20 A. Usually. I mean, it kind of depends on the
21 software, how it does it. But I can't say a hundred
22 percent if that is -- I can't testify to that. But that's
23 what it looks like here.
24 Q. Well, if you need to go through there and see
25 that happens in each individual case, I would appreciate

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1 it.
2 A. Okay.
3 Yes, that is the case in this report, yes.
4 Q. Go to the last one, number 85. Does the
5 telephone number on that one indicate that it is a text
6 message from Denise to Sean?
7 A. It says -- it doesn't have the parenthesis in
8 it -- on the column, it doesn't have the parenthesis in it
9 or the bar code, but it's saying it's calling from Sean's
10 phone to Denise.
11 Q. Which one is right?
12 A. I don't -- that is what the report is saying.
13 I don't know.
14 Q. If in every case there is a text from Sean to
15 Denise -- in every case in that report, when Sean sends a
16 text message to Denise, there is a parenthesis and a dash
17 in the telephone number, except in that very last one that
18 says, "Call me, please." That shows, from the telephone
19 number, it's a text from Denise to Sean. But it says
20 "sent," indicating that Sean did the sending.
21 Why is that?
22 A. I couldn't tell you why that is.
23 Q. So, in truth, you can't say whether that last
24 text message is from Sean to Denise or Denise to Sean?
25 A. Well, I mean, I can -- it has the phone number

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1 by it, but, I mean, it -- it is different from the other
2 ones, yes. But the phone number is the same. The fact
3 that it has the --
4 Q. It's different from every other one in there,
5 right?
6 A. Right, yes.
7 Q. Yeah. So how are we to know?
8 A. I guess you would have to get somebody else to
9 testify how that software creates that.
10 Q. Either that, or we might have to get Denise's
11 phone to see, right?
12 A. Right.
13 Q. So now that text message came or was something
14 at 7:47, right?
15 I guess I can't ask you without showing it to
16 you.
17 A. Right. Yes. 7:47 p.m.
18 Q. That time comes from who? The cell phone?
19 A. Yes.
20 Q. You said there were cell phone calls from
21 Sean's phone at 7:45 and 7:46, right?
22 A. Correct.
23 Q. Do those cell phones ever have a difference in
24 time where -- the time is determined by the sender or the
25 receiver, if the cell phone time is different?

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1 A. So the cell phones, they operate -- operate
2 off the U.T.C., which I'm trying to remember -- Universal
3 Time -- trying to remember what the "C" stands for.
4 But each time zone is different throughout
5 world. So if they are in that time zone, that's what the
6 cell phone is transmitting is that time zone. So they are
7 going to be approximately the same time.
8 Q. All right. What about the -- this call was --
9 or text was sent at 7:47:33, right?
10 A. Correct.
11 Q. So now, when you go onto the -- Mr. Dean's
12 cell phone and you start to look at the telephone calls, is
13 that the same -- is a report identical to this created?
14 A. It's going to be in the -- I did a full
15 extraction on a phone. I don't know if I printed out the
16 report that has the phone calls on it, but it would be in
17 that -- the CD that I made of the full extraction, it would
18 be in there that we could see the actual calls.
19 Q. You don't happen to have that with you?
20 A. I don't.
21 Q. All right. So what that extraction shows is
22 there were two phone calls from Mr. Dean's phone?
23 A. Correct.
24 Q. To Denise's number?
25 A. Correct.

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1 Q. And that is different than a text? They are
2 calls?
3 A. Yes. Correct, yes.
4 Q. And what you did does not allow you to
5 determine whether the calls were completed or not?
6 A. The printout report? I don't have a printout
7 report whether calls were completed.
8 Q. Excuse me?
9 A. You mean if they are answered on the other
10 line?
11 Q. Yeah.
12 A. No, I -- the report, the full extraction, if I
13 looked at it, it might actually say if it was unanswered or
14 answered. Some of them do, some of them don't. Depending
15 on which phone, which model and type of phone it is. Each
16 phone is built a little different softwarewise. But I would
17 have to reexamine the actual report to see.
18 Q. Well, you put out a report of your very own,
19 right? I'm assuming that you put -- you examined that
20 question that they were not answered before you wrote the
21 report?
22 A. Right. And I put -- I put in my narrative
23 that they were less than a minute long, but I never put in
24 there about whether they were answered or unanswered. I am
25 guessing it wasn't there, but I would have to double check

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1 to see.
 2 Q. All right. Well, you looked at it. But for the
 3 time being, you're saying that if they were unanswered, you
 4 would have written that because it was a big issue in the
 5 case, right?
 6 A. I would imagine I would.
 7 Q. Well, you wrote -- you read the report of
 8 Officer Catalano?
 9 A. Correct.
 10 Q. And I assume Detective Nielson?
 11 A. Correct.
 12 Q. And you knew that Mr. Dean was claiming that
 13 she and he had a telephone call and that's why he went up
 14 there, and you knew that would be a big issue in the case,
 15 right?
 16 A. Yeah. I guess so. I -- yeah.
 17 MR. WOODBURY: I have no further questions of
 18 this witness.
 19 THE COURT: Any redirect?
 20 MR. MILLS: No, Your Honor.
 21 THE COURT: Any jury questions?
 22 Okay. Appears not.
 23 May Detective Hessing be excused?
 24 MR. MILLS: I would like him retained subject to
 25 recall.

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1 THE COURT: Okay. You don't get to go to Idaho
 2 yet.
 3 Remember the rule of exclusion. Don't talk about
 4 the case or your testimony. And we are not going to be
 5 done until at least, we are thinking, maybe Tuesday
 6 evening.
 7 But you can talk to either of the lawyers about
 8 it.
 9 THE WITNESS: Okay.
 10 THE COURT: Okay. Next witness.
 11 MR. MILLS: State calls Pete Nielson, Detective
 12 Nielson.
 13 (WHEREUPON, the witness was sworn)
 14 THE COURT: Have a seat at the stand.
 15 Mr. Mills, please proceed.
 16 PETER NIELSON
 17 called as a witness in said case, having been first
 18 duly sworn, testified as follows:
 19 DIRECT EXAMINATION
 20 BY MR. MILLS:
 21 Q. Would you please state and spell your first
 22 and last name for the court?
 23 A. Peter Nielson, P-e-t-e-r. Nielson is
 24 N-i-e-l-s-o-n.
 25 Q. What is your occupation?

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1 A. City of Elko police department, currently in
 2 the detective division.
 3 Q. How long have you worked for the Elko Police
 4 Department?
 5 A. 2006 is when I began there.
 6 Q. How long have you been a detective?
 7 A. About three years, almost four.
 8 Q. I want to direct your attention back to
 9 December 9 of 2015. Did you have occasion to become
 10 involved in an investigation of alleged stabbing involving
 11 Sean Dean?
 12 A. Yes.
 13 Q. And what did you do in the course of your
 14 investigation?
 15 A. I was told to go to the jail and interview
 16 the -- Mr. Dean. So that's what I did that morning.
 17 Q. That was the morning of December 9?
 18 A. Correct.
 19 Q. Was it just you that responded to the jail, or
 20 did you have any other officers with you?
 21 A. It was just me.
 22 Q. Did you, in fact, have an opportunity to
 23 interview Mr. Dean?
 24 A. Yes.
 25 Q. Where did that interview take place?

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1 A. In the back of the jail near the sally port,
 2 back by booking. They have a little room towards the back
 3 there that we use.
 4 Q. Did you read him his Miranda rights at that
 5 time?
 6 A. Yes.
 7 Q. Did he agree to talk to you?
 8 A. Yes.
 9 Q. Did you, in fact, then proceed to conduct the
 10 interview with him?
 11 A. I did.
 12 Q. Did you record the interview?
 13 A. Yes.
 14 Q. Have you had a chance to listen to that
 15 interview before coming into court today?
 16 A. Yes.
 17 Q. Was it, in fact, the interview that you
 18 conducted with him?
 19 A. It was.
 20 MR. MILLS: Your Honor, I'm going to offer into
 21 evidence State's 46, which is a recorded copy of the
 22 interview that Detective Nielson conducted with Mr. Dean.
 23 THE COURT: Is there any objection to 46?
 24 MR. WOODBURY: There is not.
 25 THE COURT: Exhibit 46 is admitted.

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1 (WHEREUPON, Exhibit 46 was admitted into evidence)
2 THE COURT: Would you like to play that thing?
3 MR. MILLS: Yes, Your Honor.
4 THE COURT: How long is it?
5 MR. MILLS: About an hour.
6 THE COURT: That's why I asked. We're up to our
7 little break time here, so we'll do that. We'll take a
8 10-minute to 15-minute recess. We have been hard at it.
9 Remember the rule of exclusion, please,
10 Detective. Don't discuss the case or your testimony. The
11 only exception is the lawyers. That rule applies through
12 Tuesday evening. We think the trial will be over not until
13 Tuesday.
14 Ladies and gentlemen, please do not converse
15 amongst yourselves or with anyone else on any subject
16 connected with the trial. Do not read, watch or listen to
17 any report or commentary on the trial or any person
18 connected with the trial by any medium of information,
19 including, without limitation, newspapers, television,
20 radio or the Internet.
21 And do not form or express any opinion on any
22 subject connected with the trial until the cause is finally
23 submitted to you.
24 You may not use any electronic device or media,
25 such as the telephone, a cell phone, smartphone, iPhone,

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1 BlackBerry or computer, the internet, any internet service,
2 any text or instant messaging service, any internet chat
3 room, blog, or website such as Facebook, MySpace,
4 LinkedIn, YouTube or Twitter, to communicate to anyone any
5 information about this case until I accept your verdict.
6 In other words, you cannot talk to anyone on the
7 phone, correspond with anyone, or electronically
8 communicate with anyone about this case.
9 We're in recess.
10 (WHEREUPON, a short recess was taken)
11 THE COURT: We're back on the record for Case
12 CR-FP-2015-1508.
13 Again, State versus Dean.
14 Mr. Dean is back in court with his attorney Gary
15 Woodbury.
16 Mark Mills, Elko County deputy district attorney,
17 is here for the State.
18 We again have the full presence of the jury and
19 the alternates, correct?
20 MR. MILLS: Yes, Your Honor.
21 MR. WOODBURY: So stipulated.
22 THE COURT: Good enough.
23 We have Detective Nielson on the witness stand.
24 And you were going to play this recording, Mr. Mills?
25 MR. MILLS: That's correct, Your Honor.

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1 THE COURT: All right. That's Exhibit 46, was
2 it?
3 MR. MILLS: That's correct.
4 THE COURT: Please proceed.
5 Of course, the court reporter won't be taking
6 down the contents of the audio. It will speak for itself.
7 (Recording played)
8 Q. Detective, what is going on initially here in
9 the interview?
10 A. I'm just waiting for Mr. Dean to be brought
11 back to the area I'm at. I start my recorder before they
12 show up.
13 (Recording played)
14 THE COURT: Is that as loud as it goes?
15 MR. MILLS: I can turn it up louder.
16 (Recording played)
17 THE WITNESS: That seems slow.
18 THE COURT: You said it seems to be slow to you?
19 THE WITNESS: Yes.
20 (Recording played)
21 THE COURT: Can you speed it up or not, Mr.
22 Mills?
23 MR. MILLS: Appears to be some sort of technology
24 glitch here with the play back. I'm not sure what is
25 causing that.

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1 THE COURT: It seems the defense table agrees
2 with that as well, right?
3 Lot of different things happen in trials. I
4 think you've seen that here.
5 MR. MILLS: I don't -- I'm not a technology guy.
6 I don't know if we need to bring in an IT guy to look at
7 it.
8 THE COURT: Had you played this prior to coming
9 in?
10 MR. MILLS: I -- yeah, I listened to -- I have
11 listened to the whole thing, and I have listened to
12 portions of it to make sure it was okay.
13 THE COURT: Do you know anything about this that
14 could help, Detective?
15 THE WITNESS: I listened to it a little bit ago.
16 It didn't put me to sleep. If it's burned to a CD, it
17 should just be the player that has control of that.
18 MR. MILLS: Let me see if I can bring it up in a
19 different media player, see if that works.
20 THE COURT: Thank you.
21 (recording played)
22 MR. MILLS: Sounds promising.
23 THE COURT: Sound more like your voice?
24 THE WITNESS: Yeah.
25 THE COURT: I think so, too. Go ahead.

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1 MR. MILLS: Let me skip over that silent place at
2 the beginning.

3 (Recording played)

4 MR. MILLS: Detective just because we can't hear
5 what -- what motions he might be making, when he says "he
6 clipped me right here," do you recall where he was
7 indicating that he was clipped when he said that?

8 A. I believe it's the right side of his face.
9 That's why he was able to say it was his left hand.

10 (Recording played)

11 Q. Did the defendant make any motions or kind of,
12 you know, physical gestures, or did he just verbally
13 describe it?

14 A. No. He said he had his hand up to protect
15 himself when Bert was coming down to cut him.

16 Q. Okay. Could you show the jury again how you
17 remembered his hand was raised?

18 A. It was up like this (indicating) to try to
19 block the knife that was coming in.

20 (Recording played)

21 Q. When the defendant starts asking here, "They
22 found a knife?" And starts talking there. What was his
23 demeanor like at that point?

24 A. Seemed like it changed to me. His volume got
25 a little bit lower and just changed demeanor, his body

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1 language, moving around, just the way he was talking to me.

2 (Recording played)

3 Q. Could you explain to the jury what you are
4 doing here with the Q-tips?

5 A. Yes, they are two long sterile Q-tips, that's
6 how I explain it, about this long. (indicating) They are
7 in sterilized packaging. I just open it up, he pulls one
8 out of the packaging, rubs it on his -- the inside of one
9 side of his cheek, puts it into a drying box. Then takes
10 the other -- another Q-tip, rubs it on the inside of his
11 cheek, inner mouth, puts that in the box, drying box.

12 Q. And what was the purpose in having him do
13 that?

14 A. Buccal swab for DNA comparison for the knife.
15 (Recording played)

16 Q. What are you talking about there when you ask
17 him, do you want me to take this back or do you want me to
18 just put it in your property?

19 A. Copies of his -- copies of the search warrant
20 for the buccal swab.

21 Q. Is that standard proceed to provide a copy of
22 that to the person you're serving a search warrant on?

23 A. Yes.

24 (Recording played)

25 THE COURT: Is that it?

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1 MR. MILLS: That is, Your Honor.

2 THE COURT: Okay. Continued direct.

3 Q. So, Detective, just to summarize a couple key
4 points here, did you ask the defendant how he got the
5 injury to his finger?

6 A. He was claiming that it was from Bert -- or
7 Duff they call him.

8 Q. Basically, who was he claiming had the knives
9 in this case?

10 A. Bert and Denise.

11 Q. Did he ever admit to having a knife?

12 A. No.

13 Q. What did he have to say when you asked him --
14 when you informed him that Bert and Denise had suffered
15 some stab wounds?

16 A. He claimed it must have been from themselves
17 trying to get at him, they stabbed each other.

18 Q. Detective Nielson, do you have any particular
19 interviewing techniques that you have developed over the
20 years that you use when interviewing people?

21 A. I have been to classes and stuff like that. I
22 just, like, talk to people. If I am an arrogant person,
23 that just shuts them down. So I try to be personable, just
24 so they will talk.

25 Q. Is that what you are trying to do in this

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1 case?

2 A. That's what I try to do in every case.

3 Q. Does that include saying things to them to
4 kind of build rapport and act like you're on their side?

5 A. Yes, that's part of the -- part of the
6 procedure. If they are not talking, I am not getting
7 anything from them.

8 Q. Did you employ any of those strategies in this
9 particular interview?

10 A. Sure.

11 Q. For example, "I think she is playing you, I
12 would be upset, too," why did you tell him things like
13 that?

14 A. Keep him talking.

15 Q. What about this line about "women are crazy,"
16 why would you tell him something like that?

17 A. Just try to keep the rapport going, keep him
18 talking.

19 Q. So you collected a buccal swab from Mr. Dean
20 in order to get a sample of his DNA; is that correct?

21 A. Yes.

22 Q. Who else did you get samples from?

23 A. I got one from Bert, one from Denise, and one
24 from Lindsey. That's who he refers to as Mocha.

25 Q. There was some discussion in here about trying

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1 to track down Denise to interview her. Were you able to do
2 that?

3 A. Yes.

4 Q. And when did that interview take place?

5 A. That was the following day, I believe it was
6 the 10th.

7 Q. And did you get a DNA sample from her, as
8 well?

9 A. Yes.

10 Q. Using the same method that you previously
11 described of using the Q-tip?

12 A. Correct.

13 Q. Where did that interview with her take place?

14 A. At her residence where the incident took
15 place.

16 Q. Did you interview Bert?

17 A. Yes, I did.

18 Q. Where did that interview take place?

19 A. At the hospital.

20 Q. Did you get a DNA sample from him?

21 A. Yes.

22 Q. Did you interview Lindsey Steele, or Mocha?

23 A. Yes.

24 Q. And did you get a sample from her as well?

25 A. Yes, I did.

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1 kind of multi-tool knife?

2 A. I think it had some other tools on it. Not a
3 whole lot, not like a leatherman or something. Just a
4 folding knife.

5 Q. Detective, I'm showing you what has been
6 marked as State's Exhibit 19 and 20.

7 Do you recognize those photographs?

8 A. Yes.

9 Q. What are they?

10 A. Pictures of the knife.

11 Q. You took those photographs?

12 A. Yes.

13 MR. MILLS: I'm going to offer State's 19 and 20
14 into evidence.

15 MR. WOODBURY: We have no objection.

16 THE COURT: Exhibits 19 and 20 are admitted.

17 (WHEREUPON, Exhibits 19 and 20 were admitted into
18 evidence)

19 MR. MILLS: Permission to show those to the jury,
20 Your Honor.

21 THE COURT: Please.

22 Q. So you guys had a knife in connection with the
23 investigation and you got some reference sample DNA swabs
24 as well, sounds like; is that correct?

25 A. Yes.

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1 Q. At some point in time during this time frame,
2 basically December 10, did you take a look at the -- at the
3 knife that was alleged to have been used in this case?

4 A. Yes.

5 Q. What did you do with that knife?

6 A. I received it from the evidence vault. I
7 removed it from the packaging to photograph it. The
8 initial officers didn't have photographs of the length or
9 the width of the blade, showing its size.

10 Q. When you received it from the evidence
11 technician -- first of all, generally, what kind of knife
12 was it?

13 A. It was a folding knife.

14 Q. So when you received it, was it folded or was
15 the blade out?

16 A. It was folded inside the packaging.

17 Q. So the blade was folded down into the handle?

18 A. Correct.

19 Q. In order to take photographs of the knife with
20 the blade, did you take the blade out?

21 A. Yes, I did.

22 Q. And you took photographs of the knife in that
23 condition, with the blade extended?

24 A. Yes.

25 Q. Was this just a pocket knife, or was it some

194

1 Q. Did there come a time that you sent those off
2 to the Washoe County crime lab for examination?

3 A. Yes.

4 Q. And just tell the jury everything that you
5 sent to the crime lab for analysis?

6 A. I sent the knife, the buccal swabs from Dean,
7 Bert, Denise, Lindsey, and then a blood spatter that the
8 officers on scene collected.

9 Q. Were there any items of clothing that were
10 sent as well?

11 A. I believe I sent his jeans, Dean's jeans.

12 Q. I'm showing you what has been marked as
13 State's Exhibit Number 57. If you could just look through
14 those briefly, then I will ask you some questions about
15 them.

16 Okay. Do you recognize those?

17 A. Yes.

18 Q. What are they?

19 A. Examination request forms to the crime lab.

20 Q. And is your typical practice to fill one out
21 for every discrete item of evidence that you are sending
22 into the lab?

23 A. Yes.

24 Q. And what information did you put on those
25 examination request forms to identify the items?

196

1 A. Just the items themselves that lists what they
2 are.
3 Q. So you put a description of the item?
4 A. Yes.
5 Q. And is there some kind of what is called a
6 control number or a W number in the upper right-hand corner
7 of those forms?
8 A. Yes.
9 Q. And what's the purpose of that number?
10 A. That's for the crime lab. They are
11 pre-printed on the forms, they are triplicate forms. We
12 just pull them out, fill them out.
13 Q. The forms come with that pre-filled out on the
14 form?
15 A. Yes.
16 Q. And that's for the crime lab's purposes?
17 A. Yes.
18 Q. Now, is there an agency item number associated
19 with each item?
20 A. There should be, yes.
21 Q. And could you tell the jury what an agency
22 item number is, what that is, why you put it on this form?
23 A. When we enter something into the evidence
24 system at the police department, it prints out a little bar
25 code with the description that we put into the computer and

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1 it assigns a number to each piece of evidence.
2 The evidence technician puts that bar code on
3 the evidence, so when we pull it back from the vault to
4 ship it off or examine it, it already has that attached to
5 the packaging.
6 Q. Are those examination request forms the same
7 ones that you filled out and sent into the lab in this
8 case?
9 A. Yes.
10 MR. MILLS: I'm going to offer State's 57 into
11 evidence.
12 MR. WOODBURY: We have no objection.
13 THE COURT: Exhibit 57 is admitted.
14 (WHEREUPON, Exhibit 57 was admitted into evidence)
15 MR. MILLS: Thank you, detective. That's all the
16 questions I have. I will pass the witness.
17 THE COURT: Cross-examination.
18 MR. WOODBURY: Thank you, Your Honor.
19 CROSS-EXAMINATION
20 BY MR. WOODBURY:
21 Q. Detective Nielson, when did you become the --
22 or did you become the detective in this case, the lead
23 detective, or something like that?
24 A. Are you asking when I was --
25 Q. Yes.

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1 A. -- assigned? The morning of the 9th.
2 Q. All right. So was your regular time to come
3 into work when you learned of the case?
4 A. Yes.
5 Q. And did you have -- who is your boss who tells
6 you what to do, or is there anybody like that?
7 A. I have several bosses, sir.
8 Q. Did anybody tell you how to start
9 investigation, what you have to do?
10 A. Sergeant Palhegyi is the one that told me that
11 I was going to get this case, wanted me to follow up.
12 Q. Okay. There is some -- was the follow up
13 described for you, or did you -- that was left to your
14 discretion?
15 A. He told me to go down to the jail and
16 interview Mr. Dean, then just do what was needed. He
17 didn't give me a whole of direction. He usually doesn't,
18 though, unless I ask him.
19 Q. And in any event, this is all part of your
20 training when you are -- you can't -- you know about what
21 you are supposed to do in a case like this, right?
22 A. Generally.
23 Q. Yeah. And you follow -- based on what strange
24 occurrences or just occurrences happen, you make
25 adjustments to be an investigation?

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1 A. I try my best, yes.
2 Q. And in order to prepare yourself for all of
3 this, you must have read some stuff first?
4 A. Read some stuff as far as the investigation
5 goes, or?
6 Q. Reports, what the officers, street officers
7 were saying happened?
8 A. Yeah. I reviewed the reports prior to going
9 to jail, yes.
10 Q. Okay. And so the first thing you did was read
11 the reports, and the second thing you did is --
12 essentially, was to go to talk to Mr. Dean in the jail?
13 A. No.
14 Q. Was there a lot of other stuff in between?
15 A. Um-hmm.
16 Q. What?
17 A. I reviewed reports, tried to determine what
18 was done to the best that I could because it was still a
19 fresh case. A lot of officers still hadn't completed their
20 reports, or complete their portion of it. I tried to
21 figure out where the case was at and what still needed to
22 be done, what had already been done. Just trying to figure
23 out where to go. I ended up going to the jail and
24 collecting clothing prior to talking to him.
25 Q. Okay. All right. In your role as a

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1 detective, I -- let me ask it this way, the street officers
2 had already made a determination of just who exactly was
3 guilty of what, right? By the time you got involved in the
4 case?

5 A. They made an arrest.

6 Q. Well, are you saying that making an arrest is
7 something different than their making a determination of
8 who is guilty of what?

9 A. That's their determination, what they have
10 determined. I don't know, sir, that's up to them.

11 Q. Well, you have to have probable cause to
12 arrest Mr. Dean, right?

13 A. Yes.

14 Q. And they arrested him for an attempted murder,
15 right?

16 A. That's what they did, yeah.

17 Q. Yeah. So you don't have to think too much
18 about what was going on internally in their minds; they
19 told you by their direct actions, right?

20 A. They told me that he had probable cause to
21 arrest him.

22 Q. Yeah. But your role as detective is to be
23 careful about making those assumptions, right?

24 A. Yes.

25 Q. Yeah. You are supposed to take after it with

201

1 a fresh mind sort of?

2 A. Yes.

3 Q. And even though you read their reports and
4 what their conclusions are, you -- you don't reject them,
5 but you don't necessarily swallow them whole either, right?

6 A. They don't put their conclusions and opinions
7 in their report, they just put down what they observed.

8 Q. Really?

9 A. They are supposed to.

10 Q. That was true in this case, was it?

11 A. I didn't see anybody voice their opinion in
12 their reports saying that Mr. Dean was guilty.

13 Q. Really? They must have arrested them without
14 reaching that conclusion?

15 A. Probable cause and guilty is different in my
16 opinion, sir.

17 Q. Ah, okay. So when you went and talked to Mr.
18 Dean, based on -- I guess you have substantial training in
19 interview techniques?

20 A. What do you consider substantial?

21 Q. You tell me. I don't know how much training
22 you have got in it.

23 A. I have been in detectives for approximately
24 four years. I don't think I could call that substantial.

25 Q. Okay. And but you have been to classes on it?

202

1 A. Yes.

2 Q. How many?

3 A. For interviewing, one.

4 Q. How many?

5 A. One.

6 Q. What was that?

7 A. Reid.

8 Q. Reid?

9 A. Um-hmm.

10 Q. That's a very standardized technique in the
11 police world, is it not? Reid is considered to be at the
12 top of the heap for interviewing techniques?

13 A. It took me six years to get the class, so I
14 don't know how -- how that goes.

15 Q. One of the things you do is you ask open-ended
16 questions, right?

17 A. Yeah.

18 Q. And that's to keep them talking?

19 A. That's one of the areas, yes.

20 Q. And that's what you testified to earlier, is
21 keep these guys talking, just yapping, right?

22 A. Yeah.

23 Q. The Reid technique tells you if you can make
24 them talk long enough about a subject, if they are -- if
25 they have got some problems, if they are guilty of

203

1 something, or if they have done something bad, that the
2 chances of them either saying it straight out or saying
3 something that is contradictory that indicates that is
4 pretty good, right?

5 A. That is all up to the person.

6 Q. Yeah. But that's -- presumably, because Reid
7 teaches you to do that, that's what you are looking for,
8 right?

9 A. It's plausible that could happen.

10 Q. So after you finished having this conversation
11 with Mr. Dean, I take it, then you went and caused a search
12 warrant to issue for the Minter household to look for the
13 two knives Mr. Dean told you they had?

14 A. No.

15 Q. Why not?

16 A. Because I was still investigating the case. I
17 talked to him and him only.

18 Q. You didn't mind having a search warrant and
19 going and getting a search warrant and taking his DNA and
20 that. But you are still investigating, you don't believe
21 what he's told you, right?

22 Otherwise, you would have had a search warrant
23 and gone to look for those knives, true?

24 A. I can't get search warrant for the whole town
25 or the whole section of town.

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1 Q. Not asking you to get a search warrant for the
2 whole town, I am asking you to get a search warrant saying
3 "a guy has just told me two people stabbed him or were in a
4 fight with him, and he alleged they had knives and I need
5 to a search warrant for their house?"

6 A. Are you asking me a question?

7 Q. Yeah. Why didn't you go get it? Why didn't
8 you try?

9 A. Didn't feel it was needed.

10 Q. Ah. You didn't believe him?

11 A. I was still trying to gather information.

12 Q. So I guess if you didn't think you had enough
13 to get a search warrant, for the judge to sign a search
14 warrant for the house, what you did think is "I better go
15 to Denise and Duff Minter and ask if I can look in their
16 house?"

17 A. No.

18 Q. Did you?

19 A. Ask them to look in their house?

20 Q. Yeah.

21 A. No.

22 Q. So, in truth, you didn't ask Mr. Dean what
23 those -- well, you didn't believe Mr. Dean about those two
24 knives, about each of them having a knife?

25 A. Not completely, because he is the only person

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1 off. It would be useful, even the next day, presuming
2 somebody hadn't picked it up, but you at least got to look,
3 don't you?

4 A. Yeah.

5 Q. So Mr. Dean told you in that interview, did he
6 not, that Denise was going to be a hard lady to get to
7 interview, right?

8 A. He was implying that, yes.

9 Q. Excuse me?

10 A. He was implying that she would be hard to
11 locate, to talk to.

12 Q. He didn't imply it, he said it straight out,
13 didn't he?

14 A. Yeah, pretty much.

15 Q. Turned out to be right, didn't he?

16 A. No, not entirely.

17 Q. You went and knocked on her door. No answer?

18 A. Um-hmm.

19 Q. Came back later, knocked on her door. No
20 answer?

21 A. Correct.

22 Q. Then her daughter, you happened to see her
23 daughter, and her daughter said, well, she is in there.
24 And so through her daughter, you got -- it's not her
25 daughter, it's her stepdaughter, I guess?

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1 I had talked to.

2 Q. Okay. Why not? What makes him less credible
3 than Mr. and Mrs. Minter?

4 A. Nothing.

5 Q. Okay. So if Mr. Dean told you he didn't have
6 a knife, and I think he told you that in that interview,
7 right?

8 A. Yes.

9 Q. You thought you had the knife down at -- found
10 down at Clarence Thompson's?

11 A. I didn't know where the knife was located.

12 Q. You didn't. So, may I assume that it would be
13 important to check along the path that Mr. Dean traveled
14 from the Minter residence down to Clarence Thompson, it
15 would be useful for a detective to have officers look along
16 the road to see if somebody had thrown a knife, or anything
17 like that?

18 A. Sure.

19 Q. Did it get done?

20 A. I don't know if it did or not.

21 Q. Would it be up to you to have it done?

22 A. No. Because that occurred on the night shift
23 when I was home asleep; I didn't know about it until the
24 next morning.

25 Q. Well, a knife isn't going to pick up and walk

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1 A. It's Bert's daughter.

2 Q. Yeah. Finally got her to come out?

3 A. Yeah, the daughter did.

4 Q. Yeah. So turned out that Mr. Dean was wrong
5 about her unwillingness to talk to police officers?

6 A. Yeah. In my opinion, yes.

7 Q. One of the things you asked her around the end
8 of the interview with her was could you see her cell phone,
9 would she bring it to you.

10 Do you remember doing that?

11 A. I told her it was important to have her phone
12 brought in so the text messages could get downloaded. But
13 I understood that she needed it because Bert was still in
14 the hospital and had to have communication.

15 Q. And so you very nicely informed her it would
16 be nice if after Bert got out of the hospital and she had
17 less need for a phone, less emergency need for it, she
18 would bring it down to you guys?

19 A. Yes.

20 Q. Did she ever do that?

21 A. I am not aware.

22 Q. You would know, right? You are the guy that
23 asked her and you are the guy that was the detective in the
24 case?

25 A. But I am not one that was doing the phones at

208

1 that time. I don't know if she brought it in or not.
2 Q. Question ever come up in the Elko Police
3 Department whether you ought to get a search warrant for
4 that phone?

5 A. For Denise's phone?

6 Q. Yeah.

7 A. Not to my knowledge.

8 Q. Did you ever review Mr. Hessing's report?

9 A. No.

10 Q. Still haven't?

11 A. I concentrate on my stuff, sir.

12 Q. And your stuff isn't the Sean Dean case
13 anymore?

14 A. It's a part of it.

15 Q. Okay. The -- during the course of the
16 interview, Mr. Dean told you when his finger got cut,
17 right?

18 A. The approximate time was during the fight.

19 Q. Yeah. And it was at a time when they were
20 both down or both up? Or did they get down later together
21 and get in physical contact with each other? Do you know?

22 A. When it was described by Dean, he was on the
23 ground when he had his hand in front of him trying to block
24 the blow.

25 Q. And that finger, you could see, was bleeding?

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1 A. It was bandaged up, but there was blood coming
2 through the bandage.

3 Q. So I assume that in order to ascertain whether
4 Dean was telling you the truth about where and when -- or
5 where that physical injury had occurred to him, you did a
6 careful check of the ground and swabbed it for any blood
7 samples there and that at the scene?

8 A. At the scene the next morning I did look in
9 the area for any signs of a struggle, any evidence that
10 might be left behind.

11 That time of year, it was wintertime, it was
12 muddy, icy, slushy, like described in the interview. It
13 was --

14 Q. How can it possibly be muddy when Officer
15 Catalano says it wasn't, it was just dirt?

16 A. Different times of the day, I suppose.

17 Q. How can you, as a police detective, contradict
18 an officer about whether it was muddy or not?

19 A. I don't know when the officer observed the
20 scene, but when I observed it, it was muddy.

21 Q. The description Dean gave you of when his
22 finger got cut would clearly suggest, would it not, that a
23 DNA analysis or a blood analysis that somehow would relate
24 what blood was where on Mr. Minter's clothing would have
25 been useful, wouldn't it?

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1 A. On Minter's clothing?

2 Q. Dean says he is on the ground, he gets -- he's
3 got his right hand up and it gets cut and they are
4 wrestling around on the ground. You would expect some of
5 Dean's blood to be on Minter's clothing, would you not?

6 A. It's a possibility, yes.

7 Q. Then why didn't Minter's clothing get sent
8 down to the Washoe County crime lab?

9 A. I don't know.

10 Q. Who the heck is supposed to know?

11 A. I didn't collect his clothing, I never seen
12 his clothing.

13 Q. But you are the detective who is --

14 A. One of them.

15 Q. Who is supposed to be looking at stuff that's
16 important to resolve the issues in this case, right?

17 A. One of them, yes.

18 Q. All right. You said during the course of this
19 interview where -- when the prosecutor stopped the tape
20 that when you mentioned the knife, his demeanor changed,
21 Mr. Dean's demeanor changed, and he went from being one way
22 to being another; is that correct?

23 A. Yes.

24 Q. And you withheld from him where the knife was
25 found, right?

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1 A. I didn't know where the knife was found.

2 Q. So you couldn't possibly tell him?

3 A. Correct.

4 Q. And he asked you, "where was the knife found,
5 inside or outside"?

6 A. Yes.

7 Q. And you couldn't answer him?

8 A. I ultimately said I don't know.

9 Q. And what you told him was -- or at least
10 implied -- there was a single knife at issue, right?

11 A. There was a knife found.

12 Q. The knife found. Not knives, knife?

13 A. Um-hmm, yes.

14 Q. All right. What is Mr. Dean supposed to
15 conclude from you saying that and not being willing to
16 answer whether it was found inside or outside?

17 A. I don't know.

18 Q. Well, suppose that he thinks that the knife
19 was found down by Clarence's and it was planted there by
20 Denise or Duff or Joe Schenk or Brittney Tice. Did you ask
21 him that?

22 A. No, I never asked him what he was thinking.

23 Q. Well, you got to -- if you are going to come
24 into court and you are going to testify to those folks that
25 his demeanor changed because somehow you found some really

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1 big, hot, piece or item of evidence, don't you have to try
2 to at least understand what's behind that, this demeanor
3 change?

4 A. His demeanor change to me is his sitting in
5 the chair, his voice volume, his head. That's his demeanor
6 to me. What is going on inside his head, I have no idea.

7 Q. So why -- why are you answering questions
8 about his demeanor change, implying that somehow when he
9 heard about the knife he felt guilty, he thought you had
10 figured him out?

11 A. To me, his demeanor changed when that was
12 brought up.

13 Q. You have no clue whether it means anything or
14 not?

15 A. To me it means something.

16 Q. What?

17 A. His demeanor changed.

18 Q. That's it?

19 A. That's what it means.

20 Q. That's the end of it. All right.

21 That should have doubled your resolve, I
22 guess, to make sure that that area got searched between
23 where he walked away from the Minter household to the
24 Thompson household; because if this guy is scared to death
25 of you guys finding a knife, you ought to exhaust every

213

1 she didn't like speaking with the police, right?

2 A. Yes.

3 Q. And she might be staying in a hotel someplace?

4 A. Yes.

5 Q. And he told you about an incident previously
6 in which she had done exactly that?

7 A. Yes.

8 Q. Okay. Then you reported that "Sean told me
9 that he had gotten home from college that Monday with
10 Lindsey Steele who had" -- Lindsey Steele had seen someone
11 going in her home, correct?

12 A. Yes.

13 Q. Did you check and see if he was enrolled in
14 college?

15 A. No.

16 Q. All right. He told you that she wouldn't
17 answer the question directly about who was up at her house,
18 right?

19 A. To him, yes.

20 Q. And you read the texts and you know that was
21 true or not?

22 A. I read the text messages. I don't know.

23 Q. You didn't draw any conclusions about that?

24 A. No.

25 Q. He told you that they had been together since

215

1 effort you got to find the knife, right?

2 A. I'm not sure what you are asking.

3 Q. What I am asking is, you know enough about
4 this case to know there ain't nothing on that knife that
5 has been sent to the Washoe County Crime Lab, don't you?

6 A. I don't know. That's for the crime lab people
7 to speak about.

8 Q. You never looked at the reports?

9 A. The ones coming back from the crime lab?

10 Q. Yes.

11 A. I look at them sometimes. I type up a report.
12 Sometimes they go right to the D.A.'s office.

13 Q. You looked at them in this case?

14 A. In this one, yes.

15 Q. And so you already know what the result is
16 going to be?

17 A. Not really, no.

18 Q. Really? You can't read what she wrote?

19 A. I just sent it back down a couple weeks ago.
20 I don't know what the results are on that one, I haven't
21 received them.

22 Q. All right. You started out by asking -- you
23 didn't start out, but at least at some point during the
24 questioning, that Sean was telling you that Denise was
25 probably aware you were going to come to her house and that

214

1 October 7, right?

2 A. Yes.

3 Q. Does the fact that a male can remember the
4 exact date when he and his lady friend got together have
5 any meaning to you?

6 A. It's kind of strange.

7 Q. Strange?

8 A. For me. I don't remember my anniversary or
9 anything.

10 Q. But the fact is, you -- you know it's strange
11 enough to recognize that there is a pretty significant
12 feeling on the part of Mr. Dean for Ms. Minter?

13 A. Yes.

14 Q. Mr. Dean told you specifically, did he not, if
15 the lady had simply told him it was Duff in the house,
16 there would have been no problem, he wouldn't have been
17 asking her the question?

18 A. Yes.

19 Q. Do you have any reason to doubt he was being
20 truthful about that?

21 A. Not really, no.

22 Q. He told you Duff had been living there when he
23 and Denise first started up and that he understood that
24 Duff had serious medical problems and if he came back to
25 live with her that would be okay with him, right?

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1 A. Yeah.
2 Q. Dean told you he had received a phone call
3 from Denise she asked him to come by. Did you check that
4 out?
5 A. I believe I did.
6 Q. And what did you find out?
7 A. He called her several times. I don't know if
8 he actually connected or not, but there were several
9 attempts.
10 Q. Okay. When you asked Denise the question of
11 whether or not -- when you finally got to interview her,
12 you asked her the question of whether or not she had texted
13 and called Mr. Dean, she started off by telling you an
14 absolute "no," did she not?
15 A. She said that they would text and call but
16 that was earlier in the day, not just prior to, yeah.
17 Q. No, sir. When you first started talking to
18 her, didn't she say "no," and then start changing it? "I
19 didn't text him" and "I didn't talk to him," then she
20 changed; isn't that true?
21 A. I don't recall that specifically, no.
22 Q. Maybe if you get an opportunity over the
23 night, you have an opportunity to listen to that interview
24 again so you could answer the question tomorrow, would that
25 be possible?

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1 A. For you, sir, sure.
2 Q. Mr. Dean told you he thought this was a setup,
3 right?
4 A. Yes.
5 Q. And did he tell you why he thought it was a
6 setup?
7 A. Because when he got there, it was pure
8 aggression from Dean and -- or Denise and Bert.
9 Q. Well, he started off by telling you that she
10 had called him to come up there and she walked out the door
11 and was all of a sudden instantaneously aggressive toward
12 him?
13 A. Yes.
14 Q. Did you have any reason to disbelieve that she
15 had done that?
16 A. I don't have anything else that would say she
17 didn't at that time.
18 Q. Okay. So you must have asked Mr. Dean, "Why
19 don't you explain what do you mean by a setup? Why would
20 anybody set you up?"
21 You didn't ask that of him, did you?
22 A. Not specifically, no.
23 Q. You knew that there was a dispute between
24 whether Mr. Minter had swung at Sean Dean first or whether
25 Mr. Dean had swung at Mr. Minter first?

218

1 A. Eventually yes.
2 Q. You did not at the time of the interview?
3 A. He was the first person I had spoken to, so
4 no, not at that time.
5 Q. Well, yeah, but you had been reading reports
6 by some of the street officers, right?
7 A. Ones that were completed, yes.
8 Q. And you knew that who swung at who first might
9 become a important question?
10 A. Figure out who started it? I don't know where
11 you are going with this.
12 Q. Doesn't that sometimes matter who started it
13 all?
14 A. Sometimes. I guess it could play the role of
15 who the aggressor is.
16 Q. He told you that she was -- Denise was
17 screaming throughout that fight, right?
18 A. Not throughout the whole fight. At one point
19 she was screaming at the top of her lungs, yeah, for him to
20 stop.
21 Q. And I guess that you must have read about what
22 Christina Hodges reported in her statement about what she
23 had overheard, right?
24 A. Not when I had spoken to Mr. Dean, no.
25 Q. No, but later. You have reviewed Ms. Hodges'

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1 report?
2 A. I believe so, yeah.
3 Q. And Denise told you in her interview with you
4 that she didn't even know she was stabbed right, until she
5 went over and sat down on the porch?
6 A. Correct, until after the fact.
7 Q. So Ms. Hodges' statement that Denise was
8 screaming, "Sean, stop stabbing me, Sean, stop stabbing me"
9 during the time that the fight was still in progress, maybe
10 at the time that they were still wrestling, did that strike
11 you as something you needed to investigate further?
12 A. I don't recall the statements.
13 Q. Oh, okay. You knew that the Minters and Mr.
14 Schenk and -- the Minters and Mr. Schenk had broken this
15 fight into two separate parts, right?
16 There had been an original wrestling match of
17 a sort, and then that had ended, and then the knife fight
18 began, right?
19 A. Yes.
20 Q. Mr. Dean didn't agree that it worked out that
21 way, right?
22 A. Correct. He said it didn't happen.
23 Q. There was simply a single fight, and during
24 the course of that fight, he saw -- his finger got injured
25 and that he saw at one point Denise with a knife?

220

1 A. Yes.

2 Q. And that Denise had involved herself in the

3 dispute a couple of different ways, right?

4 A. A choke hold and trying to separate them

5 and -- yeah, according to Mr. Dean.

6 Q. It wasn't so much that Mr. Dean was implying

7 to you that Mr. Minter got cut, that they had done that

8 deliberately, he was kind of implying that, with both of

9 them with knives, it was like one of them was going to get

10 cut or stabbed, right?

11 A. Denise and Bert were going to stab themselves?

12 He said they might have done it to themselves, to each

13 other.

14 Q. Right. But he didn't imply that they had done

15 it deliberately; he implied, did he not, that it was during

16 the course of the fight, when they both appeared to have

17 knives, that that might have happened during that time?

18 A. Yes.

19 MR. WOODBURY: Okay. I have no further questions

20 at this time, Judge, because I -- but I do want to --

21 THE COURT: You want him to listen to the

22 recording of the interview with Denise Minter and then

23 further cross-examination. Yeah, that's fine. We'll wrap

24 it up then, Mr. Woodbury.

25 Yeah, it's five o'clock. I didn't think we would

221

1 get this -- I thought the recording, cross-examination, and

2 direct, we would maybe finish with the witness. Appears

3 not.

4 So remember the rule of exclusion, Detective.

5 Don't discuss this case or your testimony with anybody

6 until the trial is over. We don't think it will be over

7 until Tuesday. So figure Tuesday evening.

8 You can talk to Mr. Mills or Mr. Woodbury, of

9 course.

10 Anyway, please do not converse amongst yourselves

11 or with anyone else on any subject connected with the

12 trial. Do not read, watch or listen to any report or

13 commentary on the trial or any person connected with the

14 trial by any medium of information, including, without

15 limitation, newspapers, television, radio or the Internet.

16 And do not form or express any opinion on any

17 subject connected with the trial until the cause is finally

18 submitted to you.

19 You may not use any electronic device or media,

20 such as the telephone, a cell phone, smartphone, iPhone,

21 BlackBerry or computer, the internet, any internet service,

22 any text or instant messaging service, any internet chat

23 room, blog, or website such as Facebook, MySpace,

24 LinkedIn, YouTube or Twitter, to communicate to anyone any

25 information about this case until I accept your verdict.

222

1 In other words, you cannot talk to anyone on the

2 phone, correspond with anyone, or electronically

3 communicate with anyone about this case.

4 Please be in the jury room again tomorrow, right

5 at around 8:30. We'll get going hopefully at 8:45.

6 If counsel could remain with Mr. Dean. Court's

7 in recess. We'll let the jury go out.

8 (WHEREUPON, the jury left the courtroom)

9 THE COURT: We're outside the presence of the

10 jury and the alternates.

11 we'll just have Detective Nielson first thing

12 tomorrow, continued cross. Can he be excused for the

13 evening?

14 MR. MILLS: Yes.

15 THE COURT: Okay. We'll see you tomorrow

16 morning. We'll get going around 8:45, Detective. Thank

17 you.

18 THE WITNESS: Yep.

19 THE COURT: All right. Then the State was saying

20 you've got one more witness after Detective Nielson.

21 That's --

22 MR. MILLS: I might recall a couple of witnesses,

23 but if I do, it will be really brief, just coming back in

24 and asking a question or two. And then we'll -- I have got

25 the lab expert as my final witness right after that.

223

1 THE COURT: That is whom?

2 MR. MILLS: Monica Siewertsen.

3 THE COURT: Okay. All right. Then so the

4 defense will be ready with witnesses for the case tomorrow?

5 MR. WOODBURY: I am having a kind of difficulty,

6 Judge. I need an hour and a half and some place I can talk

7 with the defendant in confidence.

8 I don't know -- talking through that glass at the

9 jail is mind boggling. I need a place where I can have a

10 table to sit down and he can sit down at it, too.

11 And I don't have anything particularly in mind.

12 They have a -- something you can do like that at the jail.

13 But sometimes tomorrow I have got to have an hour and a

14 half with him.

15 THE COURT: Okay.

16 MR. WOODBURY: And I can do it over the lunch

17 hour, whatever you want me to do, but I got to have it.

18 THE COURT: Okay. Well, we have until Tuesday.

19 I am just trying to get an idea where we are in this case.

20 As far as the defense case going on, you know, do

21 we have to reargue this motion in limine?

22 MR. WOODBURY: I guess we do.

23 THE COURT: Okay. I guess everything is in that

24 you wanted in for me to consider whether --

25 MR. WOODBURY: It is.

224

1 THE COURT: -- this motion in limine?
2 MR. WOODBURY: Yes, sir.
3 THE COURT: We'll have to do that, too. I mean,
4 it's obviously a very important case. If he is convicted
5 of something, any of these felonies certainly, I think any
6 conviction of any of them puts him up for habitual offender
7 consideration.
8 MR. WOODBURY: Clearly.
9 THE COURT: Yeah. I would give you the hour and
10 a half.
11 I think they have a room -- I mean, it's been a
12 long time for me going back to talk to a defendant. But
13 back when I did it, they had a room and I could talk to my
14 client.
15 MR. WOODBURY: I will get ahold --
16 THE COURT: Don't they have a room like that?
17 MR. WOODBURY: They do. It used to be a library,
18 but I'm -- I am not sure it still is. I'm sure that I can
19 talk --
20 THE COURT: Haven't been down there since the
21 renovation.
22 We got something like that right, Deputy?
23 THE DEPUTY: Face to face?
24 THE COURT: Yeah. Between counsel and his
25 client.

225

1 THE DEPUTY: I would -- that would be something
2 that would have to be approved by the lieutenant.
3 THE COURT: Could that be checked on tonight?
4 THE DEPUTY: I don't think it will be a problem.
5 But it has to be approved by the lieutenant.
6 THE COURT: Thank you, Deputy.
7 So he will check on that. The deputy will check
8 on that tonight. And we'll figure on an hour and a half.
9 And if it has to be before lunch, that's fine. Or around
10 lunch. I'll do my usual canvass on right to testify and
11 also right to be silent.
12 Do you have an idea of how long the defense case
13 might be, Mr. Woodbury?
14 MR. WOODBURY: In part, it depends upon the
15 decision of the Court on the motion in limine.
16 THE COURT: Okay. All right. Good enough.
17 I will reread it, look at it tonight, chew on it
18 some more.
19 Have a nice evening. Court's in recess.
20 (WHEREUPON, the trial adjourned for the day at 5:04
21 p.m.)
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226

1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4
5 I, Lisa M. Mahley, Official Reporter for the Fourth
6 Judicial District Court, Dept. II, of the State of Nevada,
7 in and for the County of Elko, was present in the
8 above-entitled court on June 23, 2016;
9 The foregoing transcript is an uncertified rough draft
10 transcription of my stenotype notes of said proceedings.
11 This transcript has not been edited, proofread, finalized,
12 indexed or certified.
13
14 DATED: At Elko, Nevada, this 18th day of
15 November, 2016.
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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4

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6 Judicial District Court, Dept. II, of the State of Nevada,
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14 DATED: At Elko, Nevada, this 18th day of
15 November, 2016.

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1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 SEAN MAURICE DEAN,

4 Appellant,

5 vs.

No. 81209

6 AITOR NARVAIZA,

7 ELKO COUNTY SHERIFF,

8 Respondent.

9
10 APPELLANT'S APPENDIX - VOLUME 2 of 2

11 APPEAL FROM AN ORDER DENYING

12 PETITION FOR WRIT OF HABEAS CORPUS

13 FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

14 IN AND FOR THE COUNTY OF ELKO

15 DAVID B. LOCKIE

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19 Attorneys for Appellant

Attorneys for Respondent

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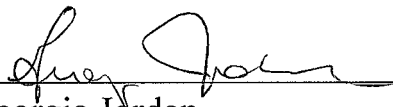
Nevada Attorney General

David B. Lockie

Elko County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid to the following address(es):

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Indian Springs NV 89070-0208



Georgia Jordan

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ELKO CO DISTRICT COURT

CLERK _____ DEPUTY llm

Case No. CR-FP-2015-1508

Dept. 2

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF ELKO

00000

THE STATE OF NEVADA

:

Plaintiff,

:

v.

:

JURY TRIAL - VOL. 4

SEAN MAURICE DEAN,

:

Defendant.

:

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter
came on for hearing on June 24, 2016, at the hour of 8:48
a.m. of said day, before the HONORABLE ALVIN R. KACIN,
District Judge.

Reported by Lisa M. Manley, CCR #271

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3 ***** WARNING *****
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8 BECAUSE THE ROUGH DRAFT HAS NOT BEEN EDITED, PROOFREAD,
9 FINALIZED, INDEXED OR CERTIFIED. THERE WILL ALSO BE SOME
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11 ROUGH DRAFT AND THE EDITED, FINALIZED AND CERTIFIED FINAL
12 VERSION.
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15 PUBLIC OR THE MEDIA.
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17 PLEASE CONTACT THE COURT REPORTER FOR FURTHER ASSISTANCE.
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1 Case No. CR-FP-2015-1508

2 Dept. 2

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 00000

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : JURY TRIAL - VOL. 4

12 SEAN MAURICE DEAN, :

13 Defendant. :

14 _____/

15

16 TRANSCRIPT OF PROCEEDINGS

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19 a.m. of said day, before the HONORABLE ALVIN R. KACIN,
20 District Judge.

21

22

23

24

25 Reported by Lisa M. Manley, CCR #271

1

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2

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3 ***** WARNING *****

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17 PLEASE CONTACT THE COURT REPORTER FOR FURTHER ASSISTANCE.

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PROCEEDINGS

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THE COURT: All right. We're back on the record
in Case CR-FP-2015-1508. Again, State versus Dean.

Mr. Dean is back in court with his counsel Gary
Woodbury.

Mark Mills, Elko County deputy district attorney,
is back to represent the State.

Will counsel stipulate to the presence of the
jury and the alternates?

MR. MILLS: Yes, Your Honor.

MR. WOODBURY: So stipulated.

THE COURT: All right. They are all here. And
fourth day of trial. We are finishing up the State's case
today. Have we got Nielson?

MR. MILLS: Yes. Nielson was on cross, that's
correct.

THE COURT: Detective Nielson is on
cross-examination with Mr. Woodbury.

Detective Nielson, come on up, resume the witness
stand, please.

And I will remind you, you are under oath.

Continued cross, Mr. Woodbury.

MR. WOODBURY: Thank you, Your Honor.

CROSS-EXAMINATION (Cont.)

BY MR. WOODBURY:

4

1 Q. Detective Nielson, did you have an opportunity
2 to review your taped interview of Ms. Minter?

3 A. Yes.

4 Q. And did you find where she had told you that
5 you had looked at -- when you told her had looked at Sean's
6 phone and it showed he had called her prior to coming up to
7 her home, and Denise stated that he called and texted a
8 bunch of times but she did not answer.

9 Did you find that?

10 A. Yes.

11 Q. And was that actually what was said by Ms.
12 Minter?

13 A. Yes.

14 Q. Thank you. Then subsequently she came to
15 acknowledge that she had, in fact, had telephone calls
16 with him, right?

17 A. She said that she had. Like I said yesterday,
18 she had received text messages and phone calls from him
19 prior in the day. And then she just told him that she was
20 going to go to bed, or she ignored him. And then I asked
21 if she had talked to him just prior to and she said no.

22 Q. But the fact was that she had initially
23 started out by telling you that wasn't so?

24 A. That is not correct. I think you are --

25 Q. I am reading it. It says, "I told Denise on
5

1 residence either through a consent to search or getting a
2 warrant.

3 You stated, quote, "I didn't feel it was
4 needed."

5 A. Correct.

6 Q. Why didn't you feel it was needed?

7 A. The incident took place outside of the home.

8 All the evidence was showing that it took place outside of
9 the home. I felt I had what I needed to progress the case
10 forward. I didn't think it was needed to search the
11 interior of the Minters' residence.

12 Q. Mr. Woodbury was also asking you about, I
13 guess, the condition of the ground when you went to examine
14 the crime scene.

15 I believe you said it was muddy; is that
16 correct?

17 A. Yes.

18 Q. What time of day did you go?

19 A. I went several times, but it was during day
20 hours, midday, afternoon.

21 Q. You never went at night?

22 A. No, I work eight to six.

23 Q. At that time of year, would it have been
24 colder at night than it would have been during the day?

25 A. Sure. It was actually raining during the day;
7

1 Sean's phone it showed where he called her prior to coming
2 up to her home. Denise stated that he called and texted her
3 a bunch of times, but she did not answer them."

4 That's what your statement says.

5 A. Yeah. As I explained, she said that he had
6 texted and called earlier in the day and she didn't answer,
7 she pretty much ignored him.

8 Q. And that was not true according to Mr. Dean's
9 telephone record? His text records?

10 A. When I listened to the tape, when I initially
11 asked her about the messages, that's when she tells me,
12 yeah, I was talking to him earlier in the day, we were text
13 messaging back and forth.

14 Later on in the conversation I asked her if
15 Mr. Dean had phoned her or called her or contacted her
16 while she was in -- while he was in jail, and she said no.

17 So I don't know if that's where the confusion
18 is coming in, or what's happening there. But it's the same
19 as it was yesterday.

20 MR. WOODBURY: I have nothing further.

21 THE COURT: All right. Redirect?

22 REDIRECT EXAMINATION

23 BY MR. MILLS:

24 Q. Detective Nielson, yesterday Mr. Woodbury was
25 asking you, you know, why didn't you search the Minters'

6

1 rain, snow during the day.

2 MR. MILLS: Thank you that's all I have.

3 THE COURT: Anything based on that? Recross?

4 MR. WOODBURY: Yes, Your Honor.

5 RECROSS-EXAMINATION

6 BY MR. WOODBURY:

7 Q. Photographs show there was snow on the ground
8 that night, don't they?

9 A. I wasn't there during the night.

10 Q. Sir?

11 A. I was not there during the night, sir. I was
12 there during the day.

13 Q. But you saw the photographs, right?

14 A. Yes.

15 Q. Showed snow on the ground, right?

16 A. Snow and ice.

17 Q. Excuse me?

18 A. Snow and ice.

19 Q. Yeah.

20 A. As I recall.

21 Q. And even though Mr. Dean had told that you Ms.
22 Minter and Mr. Minter both had had knives during this
23 incident, you did not feel it was necessary to go in the
24 house and have a look?

25 A. NO.

8

1 MR. WOODBURY: Thank you. I have nothing
2 further.
3 THE COURT: Any jury questions for the detective?
4 Appears not.
5 May Detective Nielson be excused?
6 MR. MILLS: I would like him held subject to
7 recall. He can go about his business. We'll give him a
8 call if we need him back.
9 THE COURT: Please step down. Remember the rule
10 of exclusion. Thank you very much, Detective.
11 Next witness, please.
12 MR. MILLS: The State recalls Jeremy Catalano.
13 THE COURT: All right.
14 Officer, I will remind you, you are still under
15 oath. You are being recalled as a witness in the State's
16 case.
17 Go ahead and resume the witness stand, please.
18 Mr. Mills, please proceed.
19 JEREMY CATALANO
20 called as a witness in said case, having been first
21 duly sworn, testified as follows:
22 DIRECT EXAMINATION
23 BY MR. MILLS:
24 Q. Good morning, Officer.
25 A. Good morning.

9

1 Q. I believe you testified the other day that you
2 were the first officer on scene?
3 A. Yes.
4 Q. That you kind of became the lead officer; is
5 that correct?
6 A. Correct.
7 Q. Now, as you walked the scene -- I guess I'm
8 going to show you a map here.
9 All right. So if you could just remind the
10 jury where the Minters' residence was where the crime --
11 alleged crime happened.
12 A. Their residence is this trailer right here,
13 Number 12, for the Palacio Trailer Park.
14 Q. And where did you meet up with Christina
15 Hodges?
16 A. With Christina Hodges was -- I think it was
17 one, two, three, the seventh trailer right here, right in
18 front of her residence.
19 Q. So this road that is perpendicular to Fifth
20 Street, kind of leads to the Minters' trailer, do you know
21 what that road is called?
22 A. This doesn't have a road name in particular,
23 just part of the trailer park, but it was 764 South Fifth
24 Street.
25 Q. So whatever that road is called, about how

10

1 many times did you walk back and forth along that road
2 during the course of your investigation that evening?
3 A. Multiple times throughout. I don't have an
4 exact number. But when I ran up there initially, going
5 back, when I came up to meet with -- while they were in the
6 ambulance, when I spoke with Joseph and Brittney. I
7 believe I had at least walked back to meet with Officer
8 Ballesteros and came back up again. So numerous time.
9 Q. You were informed pretty early on there was a
10 knife involved, correct? There was some sort of alleged
11 stabbing that took place?
12 A. I believe it was during sometime when I made
13 my way back up to the residence, while I was speaking with
14 Brittney and during my investigation, that I had been
15 notified at some point that there was a knife recovered.
16 Q. So you were notified at some point that a
17 knife was recovered?
18 A. I think it might have been Officer Ballesteros
19 that said there might have been a knife recovered.
20 Q. At any point -- let me ask you this, did you
21 have a flashlight out as you were walking that road?
22 A. Yes.
23 Q. At any point in time did you shine the
24 flashlight around looking for a knife?
25 A. Looking for a knife, looking for anything,

11

1 just since there was a knife involved. I know when Officer
2 Ballesteros was in the area taking pictures, I directed him
3 to take pictures. And we looked on our way coming up, at
4 least with my flashlight, just looking around to see if
5 there was anything else left behind.
6 Q. Did you find anything that was noteworthy as
7 you were looking around with the flashlight?
8 A. No.
9 MR. MILLS: Thank you. That's all the questions
10 I have. I'll pass the witness.
11 THE COURT: Cross-examination, this round?
12 MR. WOODBURY: Thank you, Your Honor.
13 CROSS-EXAMINATION
14 BY MR. WOODBURY:
15 Q. You not only didn't find any knife walking up
16 and down the street, nobody has ever turned a knife in to
17 you since that time, right?
18 A. No, not to me personally.
19 Q. Or to the Elko Police Department?
20 A. I believe Jacob Eisinger entered a knife,
21 Officer Jacob Eisinger.
22 Q. Yeah.
23 A. To my knowledge, he entered a knife.
24 Q. Yeah. But you didn't have anybody, any
25 private citizen, give you a knife they found on the street

12

1 at Number 12?

2 A. No, not to me.

3 Q. Well, to the Elko Police Department?

4 A. Not to my knowledge.

5 MR. WOODBURY: Thank you. I have nothing further.

6 THE COURT: Redirect?

7 MR. MILLS: Nothing on redirect, Your Honor.

8 THE COURT: Any jury questions this round for
9 Officer Catalano?

10 All right. It appears not.

11 May he be excused?

12 MR. MILLS: I would like him held subject to
13 recall.

14 THE COURT: All right. Remember the rule of
15 exclusion, sir.

16 THE WITNESS: Yes, sir.

17 THE COURT: Next witness.

18 MR. MILLS: Monica Siewertsen.

19 THE COURT: Please raise your right hand, be
20 sworn.

21 (WHEREUPON, the witness was sworn)

22 THE COURT: Please have a seat at the stand.
23 Door comes out to you. Watch your step.

24 Mr. Mills.

25 MONICA SIEWERTSEN

13

1 let's talk about your education.

2 What -- what is your education that led you to
3 that career that you just described?

4 A. I have an Honors Bachelor of Science at the
5 University of Waterloo in Waterloo, Canada. My courses
6 included biology, biochemistry, statistics, population,
7 genetics.

8 I have approximately six years of research
9 experience; three at the Hospital for Sick Children in
10 Toronto, Canada, and three with the King Faisal Specialist
11 Hospital and Research Centre in Riyadh, Saudi Arabia.

12 That research utilized molecular biology,
13 which is using DNA analysis to help answer specific
14 research questions. A number of techniques that I used
15 during that research are the same as the techniques that
16 are currently used in the forensic biology.

17 Q. Thank you. And in those some of those
18 different positions as a criminalist, for example, with the
19 City of Mesa and Washoe County -- and I think there was one
20 other one?

21 A. San Bernardino County Sheriff's Office.

22 Q. Would you do essentially the same thing for
23 those three agencies?

24 A. Yes. I was -- for all four agencies, I was
25 employed in what is known as the forensic biology unit.

15

1 called as a witness in said case, having been first
2 duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. MILLS:

5 Q. Ms. Siewertsen, could you please state and
6 spell your first and last name for the court?

7 A. Monica Siewertsen. M-o-n-i-c-a,
8 S-i-e-w-e-r-t-s-e-n.

9 Q. What is your current occupation?

10 A. I'm currently employed as a Criminalist II
11 with the Washoe County Sheriff's Office in the Forensic
12 Biology Unit in Reno, Nevada.

13 Q. How long have you worked there?

14 A. I have been employed there since January of
15 2009.

16 Q. And prior to working there, were -- did you
17 have any other experience working as a crime lab analyst?

18 A. Yes. I have approximately 20 years of
19 forensic experience. I have worked for the Royal Canadian
20 Mounted Police in Edmonton, Alberta, Canada; Mesa Police
21 Department in Mesa, Arizona; the San Bernardino County
22 Sheriff's Office in San Bernardino, California; and Washoe
23 County Sheriff's Office in Reno, Nevada. All in the
24 forensic biology unit.

25 Q. Thank you. Backing up a little bit more,

14

1 The forensic biology unit is the unit that deals with
2 biological material that is left behind potentially or
3 associated with particular criminal investigations.

4 Biological material is something that
5 originates from your body, so the most common would be
6 blood. But we also look at potentially saliva, tissue,
7 skin cells, semen in sexual assault situations.

8 So the forensic biology unit uses items of
9 evidence. We look for biological material that is
10 particular for an investigation. And then once we have
11 located a potential material, we then attempt to determine
12 the possible origin of that material, who it came from, by
13 doing DNA typing analysis.

14 We obtain a DNA profile from question samples
15 or unknown samples in a case and we compare it to the DNA
16 profiles we obtain from known samples or reference samples
17 from particular individuals to see whether a person either
18 could be included as being a possible source of that
19 material or be completely excluded as being a possible
20 source.

21 Q. Have you been qualified as an expert to
22 testify about what you just described before?

23 A. Yes.

24 Q. About how many times?

25 A. More than 75.

16

1 Q. Have you been qualified in this, the Fourth
2 Judicial District Court?

3 A. I have.

4 MR. MILLS: Your Honor, at this time the State is
5 going to offer Ms. Siewertsen as an expert witness in the
6 field of forensic biology.

7 THE COURT: Any voir dire on qualifications?

8 MR. WOODBURY: No, Your Honor.

9 THE COURT: Ms. Siewertsen may give her opinion
10 in that area.

11 Please proceed.

12 Q. (By Mr. Mills) Ms. Siewertsen, could you -- in
13 lay terms, for all of us, could you describe how that
14 process works?

15 Let me be a little more specific. Let's say,
16 for example, an item of evidence is sent in to the Washoe
17 County Crime Lab and then there are reference samples sent
18 in as well, and you're looking for DNA on a particular item
19 of evidence for the purposes of comparing it to somebody's
20 reference sample.

21 Could you just tell us generally how that
22 process works, what's the procedure for doing that, and how
23 do you do your analysis?

24 A. Sure. So I mentioned briefly just a few
25 minutes ago sort of the general procedure.

17

1 additional piece of information that's helps us to believe
2 that that particular material is blood and I may want to
3 analyze it further in a particular investigation.

4 If I obtain a negative result, it lets me know
5 that that material is not blood and I would not pursue it
6 further.

7 So once the primary examination is done, we
8 preserve or we take a portion of the stains or the material
9 that we think is important, and that would be forwarded on
10 to DNA analysis.

11 We would also retrieve items that are the
12 reference samples from individuals potentially involved.
13 We take a small portion of those reference samples and
14 we're going to perform the same analysis both on the
15 questioned or unknown biological material and the reference
16 samples.

17 Once it goes to the DNA unit -- DNA is located
18 in all of our cells except for red blood cells. We are
19 able to obtain DNA from blood because we have white blood
20 cells in our blood.

21 So what we want to do for each of the samples
22 that we have is break open the cells, release the DNA, and
23 get rid of the other cellular material that we are not
24 interested in.

25 We do that separately for each one of the

19

1 But an item, when I'm assigned a particular
2 case or an individual in our unit is assigned a particular
3 case, there will be items that we are requested to examine
4 considered important in that particular investigation.

5 Those items are checked into our evidence
6 section under a unique identifier so that we are able to
7 retrieve those items specifically, do our analysis.

8 The individual assigned to do the primary
9 examination, which is the looking for the actual biological
10 material, would retrieve the items of evidence, sign the
11 chain of custody, bring them back to the laboratory, then
12 do their testing.

13 The testing involves visually examining the
14 item and describing it and then looking for whatever type
15 of biological material. In, for example, blood, we would
16 be looking for red-brown staining on whatever items it is
17 to look at.

18 We then do what are called presumptive tests.
19 And a presumptive test is something that is very sensitive
20 for a biological material, but is not absolutely specific.

21 So in the case of blood, what it does, if I
22 identify a red-brown stain that I believe might be blood,
23 then I would test it using that presumptive test. And it's
24 a quick and easy test and it gives me a color reaction.

25 If I obtain a positive result, that's one

18

1 samples, both questioned and reference, that we are going
2 to be work with.

3 Once we have done that, we then want to
4 determine how much DNA do we actually have present, how
5 much human DNA do we have present.

6 DNA analysis is similar to following a recipe
7 for a cake. For the number of ingredients or things you
8 need to perform your reactions, we need to have a certain
9 amount of each material.

10 So we want to know how much DNA we have in
11 each sample so we know how much of each sample to add to
12 our reactions.

13 If we don't have the optimum amount, and we
14 have only consumed a portion of the original sample, then
15 we would stop our analysis at that point and request
16 permission to consume a second half.

17 This consumption issue, what we attempt to do
18 is use up to 50 percent of a sample where we feel we need
19 that amount in order to enhance the chances of obtaining a
20 good DNA typing result.

21 If we need to consume the whole amount of the
22 sample, then we need permission from everybody involved to
23 consume that amount of the sample.

24 So once we have either determined that we need
25 additional sample or we have sufficient and can carry on,

20

1 the next step is to target the particular areas along the
2 DNA molecule that we task when we do forensic analysis and
3 to make a large number of copies of those areas so it's
4 easier for us to be able to visualize the results.

5 So approximately 99 percent of the DNA
6 molecule is the same in everybody. Everybody has arms and
7 legs. We all have hair. We all have -- or don't -- but
8 our body functions are the same on a daily basis.

9 But approximately one percent of our DNA is
10 different. Some of that one percent are different
11 characteristics: Blue eyes, brown eyes, blonde hair, tall,
12 short.

13 But some areas along the DNA molecule differ
14 from person to person, but they currently have no known
15 function; so those are some of the areas that we target.
16 The areas have no specific function right now, that we know
17 of, but they differ from person to person.

18 So by looking at those areas, we are able to
19 distinguish one person from the other in the final result.

20 So once we've targeted those areas, made a
21 large number of copies so we are able to visualize it, we
22 then separate each of the areas so that we can come up with
23 a complete DNA typing profile.

24 So a DNA typing profile is just a series of
25 numbers that we are able to record; and in the final

21

1 comparison, what we're doing is comparing the results from
2 each questioned sample to the results from each reference
3 sample.

4 And as I mentioned, if the results are the
5 same at each of the areas that we look, then an individual
6 cannot be excluded. So they are included as a possible
7 source of that particular material.

8 If they are different at even one area, but
9 generally they will be different at a number of areas, then
10 that individual will be absolutely excluded as being the
11 possible contributor or source of that biological material.

12 The final step in our DNA analysis is if I
13 have question sample and I have a reference sample and I
14 say they match, the final step is to provide some kind of
15 weight or significance to what that match means.

16 If I have only a partial DNA profile, so
17 results at only a few areas, the strength of that match is
18 going to be less than if I have results that match at all
19 of the areas that I have obtained results from, or I have
20 obtained results at all the areas and all areas match.

21 So what I mean by that is, the results at each
22 area have a particular frequency that they occur in the
23 population. So each area has a limited number of results
24 and everybody in the world has to have two of those
25 results.

22

1 We have two because half of our DNA we inherit
2 from our mother and half of our DNA we inherit from our
3 father.

4 So if the frequency of a result at one area is
5 approximately 1 in 10 in the population, that gives me a
6 piece of information, I can exclude a large number of
7 people; but there are going to be a large number of people
8 that coincidentally match at that one area.

9 So that number tells me a piece of
10 information.

11 If I have two areas that I have obtained
12 results from, the frequency of occurrence of those two
13 areas might be one in a hundred in the population. So now
14 I have a little bit more information where I'm able to
15 exclude more people, but there is still going to be a lot
16 of people that coincidentally match.

17 If I have three areas that I have results for,
18 then maybe the frequency in the population is one in a
19 thousand. So now I have more information; I am able to
20 exclude a lot more people. There are still people who are
21 going to coincidentally have the same result.

22 So the more areas we have results for, the
23 more informative or less likely that somebody is going to
24 coincidentally match.

25 So that statistic attached to the match gives

23

1 you a piece of information. If I say I have a match and
2 the frequency of occurrence is one in 50,000, that's a good
3 piece of information, but it's not as good as if I tell you
4 I have a match and the frequency of occurrence is less than
5 1 in a trillion individuals

6 So that's why we need to attach that
7 statistical significance, so an individual knows the
8 importance or the amount of information I was able to
9 obtain in order to get a match.

10 Then I would write a report. That report
11 would be the whole file and the report would be technically
12 reviewed by a qualified individual to make sure that each
13 of the steps were performed correctly and that the report
14 reflects the results that I actually obtained in the case.

15 The report is then administratively reviewed
16 for grammar correctness and punctuation, and then that if
17 given to the investigating agency.

18 Q. Thank you for that explanation, Ms.
19 Siwertsen.

20 Was the Washoe County Crime Lab sent a
21 submission on a Sean Dean that was assigned L number
22 642-16.

23 A. 064 -- 0642-16, yes.

24 Q. That's correct.

25 A. Yes.

24

1 MR. MILLS: Permission to approach, Your Honor?
2 THE COURT: Yes.
3 MR. MILLS: I'm going to offer State's 38 which
4 is by stipulation of the parties.
5 MR. WOODBURY: That's correct.
6 THE COURT: Thirty-eight is admitted.
7 (WHEREUPON, Exhibit 38 was admitted into evidence)
8 Q. Let's start with the primary exam, Ms.
9 Siwertsen. I'm going to ask you some questions about
10 that.
11 So in this particular case involving Sean
12 Dean, who conducted the primary exam?
13 A. The primary examination was performed by Kate
14 O'Driscoll.
15 Q. Now, are you familiar with the procedures --
16 based on all of the experience that you have described that
17 you have in your past and education, are you familiar with
18 how these primary exams are conducted at the Washoe County
19 crime lab?
20 A. Yes. I also am a qualified primary examiner,
21 I just did not perform the examination at this time. And
22 the sheriff's office has written protocols and procedures
23 on how to perform primary examination.
24 All the individuals are trained using those
25 methods, and we all use them during the examination.

25

1 Q. And you are familiar with those procedures?
2 A. Yes.
3 Q. And they are uniform?
4 A. Yes.
5 Q. And you can speak knowledgeably about the
6 procedures that are described in Ms. O'Driscoll's report?
7 A. Yes.
8 Q. So her report indicates that she received a
9 submission from Detective Nielson, she received it from the
10 Washoe County Sheriff's Office's evidence section on April
11 5, 2016; is that correct?
12 A. Yes.
13 Q. Now, could you describe for the jury what the
14 items were that were received by the Washoe County crime
15 lab from Detective Nielson?
16 A. Yes. So as I mentioned at the very beginning,
17 the items of evidence would be sent to the evidence section
18 and given a unique identifier, and then these items would
19 be retrieved from our evidence section by the individual
20 doing the analysis, in this particular case, Kate
21 O'Driscoll, using that unique identifier.
22 The first unique identifier is w273556. And
23 that item was one pair of dark blue denim Levi jeans.
24 The second item was w273557. And that was a
25 Gerber Crucial folding knife multi-tool with a brown and

26

1 green metal handle.
2 The third item was w273558. And these were
3 swabs of red-brown stain collected from an entry way, a
4 bathroom, and a back room inside 701 South Fifth Street,
5 Number 5.
6 And then there were four reference samples
7 submitted and retrieved in this particular case:
8 w273559 was a reference sample from Sean Dean.
9 w273560 was a reference sample from Bert
10 Minter.
11 w273561 was a reference sample from Denise
12 Minter.
13 And w273562 was a reference sample from
14 Lindsey Steele.
15 Q. Thank you. I want to ask you a couple
16 questions about that unique identifier is how you put it,
17 the W numbers. Where do those come from?
18 A. For each item of evidence we have what is
19 called Request for Examination. It's a form that the
20 investigating agency or the investigating detective would
21 fill out to tell the lab what the item is and what they
22 would like to have done with that particular item, what
23 examination they would like to be performed.
24 On the top right-hand corner of that item is a
25 W number. And so that is what we use in the laboratory to

27

1 attach the request to that particular item.
2 Q. In other words, when Detective Nielson, you
3 know, fills out an examination or request form for a
4 particular item of property, say, the knife, on that form
5 there is a number in the right-hand corner?
6 A. Correct.
7 Q. And that's the number that shows up in the
8 report next to the item?
9 A. Correct.
10 Q. Now, there is another number next to those
11 items as well under the description column. Could you tell
12 the jury what those numbers are next to each item?
13 A. Yes. These would be the investigating
14 agency's items. We attempt to include them if we can, so
15 that there is some kind of connection between what the
16 police agency has designated as an item number and what we
17 have designated as an item number.
18 Q. All right. So those were all the items that
19 were sent into the lab. Could you describe for the jury
20 what the results of the primary examinations were on those
21 items?
22 A. Yes. For the pair of denim jeans, there were
23 numerous red-brown stains that were located on the exterior
24 of the jeans.
25 They were on the front left and front right

28

1 upper legs. There was staining just above the right knee,
2 the back of the right upper leg, the back of the left and
3 right lower legs. And there was a stain on the interior
4 lining of the left front pocket.

5 Each of those areas of staining were tested
6 with that presumptive test for the presence of blood that I
7 mentioned, and each of them gave a positive result.

8 At that point Ms. O'Driscoll selected three of
9 those stainings to collect a portion of and forward for DNA
10 analysis.

11 Those three stains that were removed were from
12 the front right upper leg, and that was designated as A-1
13 jeans; a small red-brown stain located just above the right
14 knee, that was designated as A-2 jeans; and a small
15 red-brown stain located on the back left lower leg, and
16 that was less designate add A-3 jeans.

17 Q. And with regard to item W273557, which was the
18 Gerber folding knife multi-tool, what were the presumptive
19 results on that one?

20 A. Yes. There was a small area of red-brown
21 staining noted on the tip on both sides of the knife. That
22 was tested and negative results for the presumptive
23 presence of blood were obtained from that stain.

24 Ms. O'Driscoll then -- she also noted, on both
25 sides of the blade, concentrated closest to the handle

29

1 area, a possible tissue.

2 So at that point she swabbed completely the
3 both sides of the knife blade for possible residual DNA.
4 And when I say residual DNA, that would be cells left
5 behind that were not obviously of particular biological or
6 particular stains. So not necessarily red-brown, but just
7 cells that might have been left behind as tissue or
8 something like that. And that was designated as B-1 knife.

9 And then the complete handle area of the
10 folding knife multi-tool was swabbed for possible handler
11 DNA as B-2 knife.

12 And a portion of each of those swabs was
13 forwarded for DNA analysis.

14 Q. Okay. Could you describe for the jury how
15 those -- what is the procedures for how those swabs are
16 conducted? Which portion of the blade or the handle would
17 be swabbed?

18 A. Okay. So in this particular instance, the
19 red-brown staining on the blade gave a negative result for
20 the presumptive presence of blood. Most likely explanation
21 is that that material was rust, so it was actually on the
22 blade and in the blade and not coming off.

23 So there was no visible red-brown staining, so
24 Ms. O'Driscoll would use a wet and a dry swab. When I say
25 wet, it has been wetted with water to help remove any

30

1 dried-on material. And the complete blade portion on both
2 sides would be swabbed for any possible cells that were
3 left behind.

4 Q. Okay.

5 A. And then she would have also used one wet and
6 one dry swab to swab the complete handle area on both sides
7 for any cells left behind by someone who may have handled
8 the knife itself.

9 Q. Thank you. With regards to W273558, which
10 were the swabs from the front entry, bathroom, and back
11 room inside 701 South Fifth Street, Number 5, what were the
12 results of that primary examination?

13 A. She obtained a positive result for the
14 presumptive presence of blood from each one of those swabs
15 from all three locations.

16 So a portion of each one of those was
17 forwarded to the DNA section for DNA analysis.

18 Q. So after this primary examination was done,
19 what happened next with this case?

20 A. So Ms. O'Driscoll would then have written her
21 report. It would go through a technical review and admin
22 review. And once everything was completed, the actual
23 samples, or portions of the samples, were placed into
24 a tube, each a separate tube, which would be passed on to a
25 DNA analyst and DNA analysis would be performed.

31

1 Also, each -- a portion of each of the
2 reference samples would have been collected separately to
3 forward for DNA analysis.

4 Q. And were you the DNA analyst in this
5 particular case?

6 A. I was.

7 Q. So all the stuff you just described were
8 forwarded on to you to conduct the DNA analysis?

9 A. Correct.

10 Q. I am showing you what's been marked now as
11 State's 39. If you could just review that momentarily tell
12 me if you recognize it?

13 A. Yes, I do. This is a three-page report that
14 bears my signature and a date and has the same laboratory
15 case number as the previous report, L0642-16.

16 Q. Okay. And that's the report you generated in
17 connection with this case based on your analysis of the
18 items that were forwarded to you from Ms. O'Driscoll?

19 A. Yes.

20 MR. MILLS: I'm going to offer State's 39 into
21 evidence.

22 MR. WOODBURY: We have no objection.

23 THE COURT: Thirty-nine is admitted.

24 (WHEREUPON, Exhibit 39 was admitted into evidence)

25 Q. (By Mr. Mills) So just going through this

32

1 report, which items were in fact were received from Ms.
2 O'Driscoll for DNA testing?

3 A. So each of the items that I have previously
4 mentioned were received. So -- and each was located in its
5 own individual tubes, so the sample is completely separate
6 from any other sample.

7 A portion of the A1 jeans cutting, a portion
8 of the A2 jeans cutting, a portion of the A3 jeans cutting.
9 Each of those, if you recall, were portions of red-brown
10 staining that tested presumptively positive for the
11 presence of blood.

12 A portion of the B1 knife swabs and a portion
13 of the B2 knife swabs. A portion of each of the three
14 red-brown stain swabs that were collected from the
15 residence: Front entry swabs, bathroom swabs, and back
16 room swabs.

17 And then a portion of each of the reference
18 samples that were available: The reference sample from
19 Sean Dean, the reference sample from Bert Minter, the
20 reference sample from Denise Minter, and the reference
21 sample from Lindsey Steele.

22 I also received, subsequent to the initial
23 portion of my analysis, the knife, or the control number
24 that contained the knife.

25 And the reason for that is upon my initial

33

1 analysis, the two swabs that were collected from the knife,
2 the B1 knife, which was the blade, and the B2 knife, that
3 was the handle, each of those did not give me sufficient
4 DNA to complete my DNA analysis. So I requested those --
5 the knife and the remaining swabs to come back to the
6 laboratory, and I consumed the second half of those swabs.

7 The second half would be combined with the
8 first half in hopes to give me more DNA and obtain a DNA
9 typing profile from each of them.

10 Q. So, Ms. Stewertsen, in conducting your DNA
11 analysis, did you use the, I guess, scientific process that
12 you had earlier described as far as how these analyses are
13 conducted?

14 A. I utilized all of the validated procedures
15 that are in place at the Washoe County Sheriff's Office,
16 yes.

17 Q. And those are scientifically accepted
18 standards of conducting DNA analysis in your field?

19 A. Yes.

20 Q. And in conducting your analysis, did you --
21 were you able to compare the reference samples from Sean
22 Dean, Bert Minter, Denise Minter and Lindsey Steele with
23 A1, 2 and 3, which are from the jeans, as well as B1 and 2
24 from the knife?

25 A. Yes.

34

1 Q. Let's talk about the jeans first. What were
2 your conclusions in comparing the DNA reference samples
3 from those four individuals with A1, A2 and A3, which were
4 the jeans?

5 A. So each of the DNA typing profiles that I
6 obtained from the A1 jeans, A2 jeans and A3 jeans were from
7 a single male individual. And that DNA typing profile
8 matched the DNA typing profile from Sean Dean.

9 The estimated frequency of that matching
10 profile is approximately one in 71.68 nonillion, which is a
11 ten with 30 zeros behind it. A billion is a ten with -- a
12 trillion is a ten with 12 zeros behind it. So it is much
13 more rare than one in a trillion.

14 Based upon those results, it is reasonable to
15 conclude that Sean Dean is the source of the DNA typing
16 profile from the presumptively positive blood for each of
17 those stains.

18 Q. With regards to the front entry swabs, the
19 bathroom swabs and the back room swabs, what were your
20 conclusions?

21 A. The DNA typing profiles that I obtained from
22 the front entry swabs, the bathroom swabs and the back room
23 swabs each are from a single male individual, and the DNA
24 typing profile matched the DNA typing profile obtained from
25 Sean Dean.

35

1 Again, the estimated frequency of that
2 matching profile is approximately one in 71.68 nonillion
3 individuals.

4 So based upon that result, it is reasonable to
5 conclude that Sean Dean is the source of the red-brown
6 stain on each of those swabs.

7 Q. With regards to B1, the knife blade, what were
8 your conclusions?

9 A. The DNA typing results that I obtained from
10 the B1 knife swabs indicates contributions from at least
11 four individuals, okay, including at least one female and
12 one male.

13 Due to the low level of DNA that was present
14 and the large number of contributors, I was not able to
15 make any conclusions as to the possible source of the
16 contributing individuals.

17 Q. Okay. And by individuals, are we talking
18 about human DNA here?

19 A. Yes. All of our analysis is human specific,
20 or higher primate specific.

21 Q. Okay. So there is no person that could be
22 excluded?

23 A. I can't make any conclusions. Basically, for
24 analysis, there is just not enough information there for me
25 to make a positive inclusion or exclusion.

36

1 Q. With regards to the B2 knife swabs from the
2 handle, what were your conclusions?

3 A. The DNA typing results obtained from the B2
4 knife swabs indicate contributions from at least three
5 individuals.

6 I was able to obtain an unknown male dominant
7 partial DNA profile from that mixture. So there was an
8 individual that contributed enough DNA that was more than
9 the contribution by the other two individuals, so I was
10 able to pull out that individual's results at a number of
11 the areas that we test, okay.

12 That profile was from an unknown male
13 individual.

14 Denise Minter, Bert Minter, Lindsey Steele and
15 Sean Dean are all excluded as being a possible source of
16 that unknown male dominant partial DNA profile.

17 And due to the low level of DNA from the minor
18 or trace components, I was not able to make any additional
19 conclusions as to the possible source of those other two
20 contributors.

21 Q. I think you may have covered this, but --
22 trying to remember -- but back with the B1 blade knife
23 swab, what was the reason that you couldn't offer any
24 additional conclusions?

25 A. Again, the amount of DNA or the number of

37

1 contributors, there were not complete results at all the
2 areas for the number of people that were present. The
3 amount of DNA was relatively low and it was split amongst
4 at least four individuals.

5 So just not enough information for me say for
6 sure that an individual is excluded or included.

7 Q. In your report you said just the number of
8 contributors and, quote, the nature of this mixture.

9 A. Yes.

10 Q. What do you mean by the nature of the mixture?
11 What about the nature of the mixture made it so that you
12 weren't able to draw these conclusions?

13 A. This is going to be a little confusing, so
14 bear with me.

15 So, as mentioned earlier, the results at any
16 one area for a single individual, we would expect to see
17 two results: One from our mother, one from our father.

18 So if I have two people in a mixture at one
19 location, I would expect to see four results, or
20 potentially three, if they coincidentally share one of the
21 particular results.

22 For three people, if they share nothing, then
23 I would expect to see six results at that area. If I see
24 four people, and they don't share any results, I would
25 expect to see eight results at that location.

38

1 When the DNA is relatively low, I may only
2 have three or four results at an area.

3 Does that mean that the individuals who are
4 contributing to that sample share similar results and I am
5 just -- I'm seeing everything, but they share; or am I only
6 seeing part of the information, and the other part I just
7 did not detect because the amount of DNA is so small.

8 So because of that, I -- I just don't have
9 enough complete information, and so that does not allow me
10 to make the conclusions.

11 Q. Ms. Siewertsen, is it possible for somebody to
12 touch something or even hold something and then for you to
13 conduct an analysis and then not be able to obtain a DNA
14 profile that -- that matches to a particular person?

15 A. Yes.

16 Q. Why?

17 A. Each individual sheds cells in a different
18 manner. So an example that I would like to use, if you
19 were to attend a party and each individual were given a
20 glass when they first walked in and they used that glass
21 all night long, they handled it, they carried it around,
22 then you collected them when each individual left.

23 Some glasses would appear very clear and you
24 wouldn't even see that the person had handled it, and other
25 glasses are going to have fingerprints that are visible all

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1 over it, it's going to be very oily, that type of thing.

2 So some people will leave oil and fingerprints
3 and DNA behind and some people won't on a particular
4 case -- or a particular situation.

5 It also depends on whether an individual has
6 recently washed their hands, whether an individual has not
7 washed their hands in a long time.

8 The surface that the individual has touched. If
9 it's a very smooth surface, then it's -- your cells are not
10 being sloughed off because of the roughness of the surface.
11 If the surface is rough, then maybe cells are being
12 sloughed off a little bit easier.

13 So there is absolutely no way to predict whether
14 an individual will leave cells behind or not. And also,
15 they may leave cells behind but they may be so few that
16 it's just below the level of detection of our particular
17 analysis.

18 Q. And you have been doing this for how many
19 years, did you say?

20 A. Twenty. About twenty, a little over twenty.

21 Q. So in the little over twenty years you have
22 been doing this, based on your experience, how common is it
23 to get results like this, where you, basically, based on
24 the number of contributors, the nature of the mixture, the
25 low level of DNA, that you can basically offer no

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1 conclusions?

2 A. It's not unusual. Again, there is no --
3 unfortunately for DNA, there is no absolute one way or
4 another. I have given you a number of different
5 variabilities; there is lots of other ones.

6 My experience tells me that I -- I don't
7 expect anything when I analyze something. I have a sample,
8 I perform the analysis, and I interpret the results that I
9 obtain.

10 I cannot necessarily explain why something
11 gives me good results and something doesn't. But it's not
12 unexpected to get mixtures when you are dealing with touch
13 DNA. It's also not unexpected to get a single result from
14 an individual, maybe somebody shed a large number of cells.
15 It's also not unexpected to get no results at all.

16 So I have encountered all of those
17 possibilities.

18 Q. When there is a mixture, in other words,
19 multiple contributors, does that make it hard to attain a
20 DNA profile?

21 A. It depends on the contribution of the
22 individuals involved. This is an example. Where one of
23 the swabs, basically all of the individuals contributed an
24 approximately equal amount, so I can't differentiate who
25 contributed what.

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1 I have one of the samples where I have three
2 people, but one person contributed a large amount of DNA.
3 So during our interpretation, I am able to pull out the
4 particular profile from the person that contributed the
5 large amount.

6 So the interpretation depends on the
7 contribution of each of the individuals.

8 MR. MILLS: Thank you, Ms. Siewertsen. That's
9 all the questions I have for you. I'll pass the witness.

10 THE COURT: Cross-examination.

11 MR. WOODBURY: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. WOODBURY:

14 Q. Ms. Siewertsen, if I understand correctly, Ms.
15 O'Driscoll reported that there was negative results for the
16 presumptive presence of blood on the red-brown staining on
17 the knife?

18 A. Correct.

19 Q. That means, period, it was not human blood, or
20 not human blood there?

21 A. That means that the red-brown staining on the
22 knife blade was not human blood, correct.

23 Q. An animal hair was found?

24 A. Yes.

25 Q. What does that mean?

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1 A. It just means that there was an animal hair
2 that was located on the actual knife blade.

3 Q. On the knife blade, there were possible tissue
4 observed on both sides of the knife blade, right?

5 A. There was what Ms. O'Driscoll has categorized
6 as possible tissue, yes.

7 Q. And what does that mean?

8 A. So in this particular instance, the knife
9 blade had a -- a shiny, sort of greasy-like material, very
10 small amount, close to where the blade attaches to the
11 handle of the knife.

12 In our experience as primary examiners, that
13 potentially can be tissue material that's just not a solid
14 chunk, but is actually sort of a greasy-liquid-type
15 material. That's what she observed.

16 Q. And what did that turn out to be, that tissue?
17 Or possible tissue?

18 A. It's possible tissue. And I do not know what
19 it turned out to be. The particular results from that
20 swab, when I did my DNA analysis, indicate contributions
21 from four individuals.

22 So I do not know the source of the DNA of each
23 of those contributors.

24 Q. Tissue is, I guess, different than blood in
25 what -- the way you're talking?

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1 A. In the description that I am giving, tissue is
2 actually a small piece of material, okay. It would be made
3 up of a large number of cells compacted together.

4 So if there were a piece of tissue, human
5 tissue present, I would expect to obtain a large amount of
6 DNA from that compacted material, whereas blood is
7 individual cells.

8 There may be blood located inside the tissue,
9 but when we're talking about it in our analysis or our
10 report, tissue would actually be a -- a physical piece of
11 material as opposed to just red-brown staining.

12 Q. So as far as you know, there was no tissue
13 mixed with blood of the -- near the handle of the knife?

14 A. In my opinion, there was not human tissue
15 present on the blade of the knife, because the amount of
16 DNA that I obtained was not a large amount of DNA.

17 If there had been actual tissue present, I
18 would have expected -- human tissue -- I would have
19 expected to obtain a large amount of human DNA.

20 Q. So it would be technically true that you did
21 not have to ever look at the knife, right? Mostly what you
22 did was just take the swabs Ms. O'Driscoll provided you?

23 A. The only -- I actually did not physically look
24 at the knife. The only reason I asked for the knife back
25 is because the remainder of the swabs that Ms. O'Driscoll

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1 had taken were located in the same evidence packaging. So
2 I personally did not look at the knife.

3 Q. So I want to be sure that there -- your
4 opinion is that there was no human tissue on that knife
5 blade?

6 A. My opinion is that there was no human tissue
7 on the swabs that Ms. O'Driscoll collected from the blade
8 of the knife. I did not personally look at the knife.

9 Ms. O'Driscoll described possible tissue
10 located near the joining of the blade and the handle, and
11 her description is that she swabbed the complete blade on
12 both sides.

13 Q. And you don't have any reason to doubt that
14 she did that?

15 A. No reason to doubt that, no.

16 Q. Then the handle of the knife, as I understand
17 it, that would -- you would expect and what you were
18 looking for was some kind of contribution from a person's
19 hand or something like that that could be analyzed?

20 A. In general, I would be looking for cells that
21 were deposited on the handle of the knife. Generally,
22 individuals handle knives by the handle. So that's what I
23 would be looking for, yes.

24 Q. Generally put it in their hand, right?

25 A. (Nods head)

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1 A. It's possible. It's also possible that it
2 wouldn't. It would depend on how thorough the wiping job
3 was. We, as primary examiners, need to visually see
4 red-brown staining before we would test an area for
5 presumptively positive results for blood.

6 So if you spill tomato juice on a counter and
7 you take a rag and you wipe it off, you may wipe it and see
8 absolutely no traces of tomato juice or you might wipe it
9 and have very faint traces of the tomato juice.

10 So that is sort of analogous to what you have
11 asked. I can't say for sure. It would depend on the
12 thoroughness of the wiping. But it would be possible to
13 wipe the blade and have no visual red-brown staining left.

14 Q. And even though you might wipe the blade to a
15 point at which the red-brown staining isn't visible, it
16 would then be more difficult to get the residual stuff
17 without -- all off of it?

18 That is to say, she swabbed both sides of the
19 knife blade, even if she couldn't -- and I assume she did
20 that, because it's theoretically possible that there is
21 some material left on there that isn't visible to her?

22 A. It is theoretically possible that something is
23 left; however, our swabbing technique is an attempt to
24 remove all possible DNA cells.

25 So we use one wet swab which should moisten

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1 Q. And that would be where it would be from if it
2 was there at all?

3 A. I'm sorry?

4 Q. That typically would be where the -- where the
5 stuff comes from that you analyze on a knife would be from
6 the human hand?

7 A. I -- I don't know the source of the cells. So
8 as I mentioned, most individuals will handle a knife by the
9 handle.

10 But it would be possible to have DNA cells
11 from an individual on the handle if the handle of the knife
12 was laid on their leg, or laid on their arm, or it sat
13 beside their bare leg, because it was partially enclosed in
14 a holster, something like that.

15 But they -- so I can't say for sure that the
16 cells are from somebody's hand; I can only say that the
17 cells are from four individuals. Pardon me, three
18 individuals.

19 Q. I don't know that you would have the answer to
20 this, but if, for example, some blood got on a knife
21 handle -- not a knife handle, a knife blade, would wiping
22 it on your clothes, wiping it off on your clothes take it
23 down to a level that you couldn't detect?

24 A. Couldn't detect blood or couldn't detect DNA?

25 Q. Couldn't detect blood.

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1 any dried-on material, followed by one dry swab which would
2 help to collect any material that didn't come off with the
3 wet swab.

4 And this is not a light swabbing, where we are
5 just going over the surface. We -- our purpose is to
6 remove any cells that may be present. So it would be --
7 can I say that she absolutely removed everything, no. But
8 her intent would have been to remove everything that was
9 present in this case.

10 Q. Then I assume there are crevices into which
11 the various tools on the knife -- let me go back and do
12 something else first.

13 When you examined the jeans -- I don't know
14 that you did?

15 A. I did not.

16 Q. Okay. But it would be typical for the -- that
17 examination to include looking for stains on the jeans that
18 would resemble wiping a knife clean, right?

19 A. She would have looked at the jeans for all
20 red-brown staining, and through her training and
21 experience, if there -- she selected only three of the
22 stains to proceed with.

23 But if there were -- she would be selecting
24 stains which she thought were from different locations,
25 potentially from different individuals who may have been

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1 bleeding at the time.

2 If she were to have seen something that looked
3 like a wipe mark, that would be something that she most
4 likely would have sampled. Because that would be something
5 that may have come off either another individual, if they
6 were wiped against, or a weapon or an object that may have
7 been bloodied at the time.

8 So if she encountered that, I would have
9 expected that to be one she would have sampled.

10 Q. And that examination, you're qualified to do
11 that examination, as well?

12 A. I am.

13 Q. Does that examination take place, holding
14 stuff out and just looking at it, or do you do other
15 things?

16 A. It's quite thorough. We would -- we have
17 tables, examination tables. The item would be laid out on
18 a piece of butcher paper on an examination table. A
19 description of the item: The color, the size, the
20 condition.

21 And then we would visually look for whatever
22 material it is that is being examined for. We also use
23 magnified light, and we can also use different wave lengths
24 of light called alternate light source.

25 These different wave lengths of light help to

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1 make stains more visible or contrast on different types of
2 material.

3 So, for example, if you had a pair of -- a
4 black shirt, blood stains might be difficult to visualize
5 on a black shirt.

6 So we use what is called infrared light that
7 sometimes can help to differentiate between stains that are
8 present and the material itself.

9 So Ms. O'Driscoll would have used any of those
10 particular techniques that she felt were necessary to
11 visualize what she was looking for.

12 Q. Okay. So it would be fair to assume that if
13 there would have been some indication of something having
14 been wiped on the leaves that would be reported by Ms.
15 O'Driscoll it would be unusual for her to miss that?

16 A. She would not have reported it, because we
17 don't -- we are not trained to determine how a stain is
18 placed on a garment. Whether it's dripped on, whether it's
19 flung on, whether it's from contact with a bloody object,
20 whether it's from wiping, that is not part of our analysis,
21 not part of our training.

22 I had stated that if there was something odd
23 about a particular stain that Ms. O'Driscoll felt was
24 important, that she most likely would have sampled that
25 particular stain.

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1 However, I can't say for sure that if --
2 depends what the stain looked like.

3 Q. All right. Now, on this knife, I guess that
4 you saw it, there are crevices in which the tools fold down
5 to make it more --

6 A. A folding knife, a multi-tool knife.

7 Q. Yes. And I'm assuming that those, too, would
8 have been examined, those crevices?

9 A. Yes. According to Ms. O'Driscoll's notes, she
10 opened each one of the multi-tools and examined those as
11 well.

12 Q. Okay. And examined the tools and the crevices
13 into which they fold?

14 A. Yes.

15 Q. If there had been -- how would she look at
16 that?

17 A. Using a magnified light. She would -- a
18 stereo microscope or just a magnifying lens that has a
19 light attached to it is excellent for looking into
20 crevices.

21 Q. And she did not report any findings of any
22 consequence in those crevices or on the tools?

23 A. Correct. If she had located red-brown
24 staining, she would have tested it and it absolutely would
25 have been included in her report.

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1 Q. Now, the handle of the knife, I guess, is kind
2 of rough?

3 A. I have only seen pictures of the knife, so I
4 am personally not familiar with it. I believe there are
5 some rough areas, but I do not know for sure.

6 Q. I'm going to show you what has been marked as
7 Plaintiff's Exhibit Number 48. What I'm inclined to do is
8 just put it there on the table. You probably get nervous
9 if you touch it?

10 A. I will not touch it. I also would need a
11 knife or something to open it, a pair of scissors.

12 Q. I just want you to look at the handle.

13 A. Is it inside? Has it already been opened?

14 Q. Yes.

15 THE COURT: I don't think you will need the
16 scissors, this has been.

17 THE WITNESS: If it has been opened, that's fine.
18 I just know I sealed it.

19 THE COURT: Yes.

20 A. This is it here. So actually there are no --
21 there is just three small grooves, but there are no grip
22 ridges. So it's a relatively smooth metal surface.

23 Q. Okay. And is there anything about the surface
24 that makes it somehow uncommonly difficult to swab it or
25 see stains in it?

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1 A. To swab it, no. In fact, it would be easy to
2 swab because it is smooth.

3 Q. So we can be fairly assured that Ms.
4 O'Driscoll got everything on there that was -- she swabbed
5 everything on there that might contain anything, right?

6 A. As I mentioned earlier, she would have swabbed
7 the whole surface and her intent would have been to remove
8 any cells that might have been present.

9 Can I absolutely say that for certain that
10 there is nothing left on the knife, on the handle or the
11 blade? I cannot.

12 But her purpose was to swab vigorously for all
13 the material that may have been on the handle.

14 Q. Okay. And if a person had held that knife and
15 had a bad cut on his finger and it was bleeding, there a
16 lot of little crevices for that blood to fall into, isn't
17 there?

18 A. Yes.

19 Q. It would be take more than a pretty
20 substantial wipe on your leg, or any place else, to get
21 that blood off it, I would assume?

22 A. And there is so many variables on that
23 particular question. It would depend on where the cut was,
24 how long the individual held it, which way the blood was
25 going when they held it.

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1 If they held it and the blood was dripping off
2 the knife, maybe it didn't get on the knife at all. If
3 they held it and it was dripping on the knife, then I would
4 expect that there would be residual DNA there.

5 But, again, there is so many variables that
6 it's impossible to say for sure one way or another.

7 Q. Okay. But if a person's hand was bleeding and
8 that person had his hand on the knife and the knife -- it
9 wasn't just dripping off, it would be difficult to keep it
10 out of those crevices?

11 A. I would say that that is true, yes.

12 Q. What I understand -- I will just ask you.
13 There is -- there are human -- there is human DNA on that
14 handle?

15 A. Absolutely, yes.

16 Q. And when you talk about needing a -- about
17 sample sizes and big and little, how big a sample do you
18 need to get DNA? Is it a lot? A big one?

19 A. So it depends on the type of material. Again,
20 I mention that tissue is very tightly compacted cells, so I
21 would need a very tiny amount.

22 With the analysis that we perform right now, I
23 would need a very small number of cells in order to expect
24 to potentially obtain DNA typing results.

25 Q. They can almost be microscopic?

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1 A. The cells themselves are microscopic. So
2 unless you have -- a single cell, you would not be able to
3 see with the naked eye. If you had a chunk of tissue, of
4 course, you can see that.

5 But -- and blood, you could see red-brown
6 staining, but that's a collection of thousands of millions
7 of cells together before you would be able to visually see
8 it.

9 Q. Okay. So on the handle at various places,
10 depending on -- you found human DNA from four separate
11 sources?

12 A. On the handle I found DNA from at least three
13 individuals.

14 Q. Three. I'm sorry.

15 A. Yes.

16 Q. And you're saying the words "at least"
17 because?

18 A. As I briefly described the -- I would expect
19 potentially two results from each individual. So the more
20 people there are, the more results I would expect at each
21 area, taking into account that there are a limited number
22 of possibilities, so two individuals can share certain
23 results.

24 So based on that information, the totality of
25 the results that I obtained, it looked like three

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1 individuals are present on that knife.

2 The "at least" covers the fact that there may
3 be individuals who are related and share a large amount of
4 their DNA can potentially be masked in that.

5 But, in my opinion, the results indicated
6 three individuals.

7 Q. Okay. Two of the individuals you can't say
8 much more about, but one, you had enough DNA to say it is
9 not Sean Dean's?

10 A. Correct, yes.

11 Q. And the other two, you can say how much?

12 A. I can say nothing. So in this particular
13 instance, I have such a limited amount of information,
14 either very low levels, so I am not confident that I have
15 all results at each of the areas, and so I can make no
16 conclusions, either inclusion or exclusion.

17 Q. Okay. You did not receive any -- a pair of
18 khaki pants in connection with this case?

19 A. I did not do the primary examination, so I am
20 not familiar with what items of evidence were actually
21 submitted in the case.

22 I only know that those are the ones that Kate
23 O'Driscoll removed for examination.

24 Q. Okay. So you can't say that there was a black
25 wind breaker submitted?

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1 A. I'm sorry, I have no personal knowledge of the
2 actual items that were submitted in the case.

3 Q. And you can't say that a black t-shirt was
4 submitted?

5 A. Again, I have no knowledge of the items that
6 were originally submitted or not submitted for examination.

7 Q. But you know that you received no report of
8 any of those?

9 A. I'm sorry, I received?

10 Q. You received no report from Ms. O'Driscoll on
11 any -- on those items?

12 A. So I do not receive the report initially, it's
13 written to the investigators of the case. I did not
14 receive any samples from any of the items that you have
15 mentioned.

16 Q. Okay. And with respect to any pair of khaki
17 pants, the same answer would apply, I assume?

18 A. Correct. I have no personal knowledge of
19 what -- what was either collect or submitted for the
20 particular investigation.

21 Q. You indicated, I think, that in Ms.
22 O'Driscoll's report, she found a -- a red-brown stain on
23 the inside of the left pocket?

24 A. Yes.

25 MR. WOODBURY: Okay. I have nothing further.

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1 the trial or any person connected with the trial by any
2 medium of information, including, without limitation,
3 newspapers, television, radio or the Internet.

4 And do not form or express any opinion on any
5 subject connected with the trial until the cause is finally
6 submitted to you.

7 You may not use any electronic device or media,
8 such as the telephone, a cell phone, smartphone, iPhone,
9 BlackBerry or computer, the internet, any internet service,
10 any text or instant messaging service, any internet chat
11 room, blog, or website such as Facebook, MySpace,
12 LinkedIn, YouTube or Twitter, to communicate to anyone any
13 information about this case until I accept your verdict.

14 In other words, you cannot talk to anyone on the
15 phone, correspond with anyone, or electronically
16 communicate with anyone about this case.

17 Court's in recess. We'll have the jury go back
18 to the jury room, thank you.

19 Counsel, Mr. Dean, please remain.

20 (WHEREUPON, the jury left the courtroom)

21 THE COURT: We are outside the presence of the
22 jury and the alternates now.

23 And I guess this depends on how many -- how I
24 rule on this motion in limine, but how long is the defense
25 case, do you think, to put on?

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1 THE COURT: Redirect.

2 MR. MILLS: Nothing on redirect.

3 THE COURT: Jury questions?

4 All right. It appears not.

5 May Ms. Siewertsen be excused?

6 MR. MILLS: She may.

7 MR. WOODBURY: Yes.

8 THE COURT: All right. Thank you very much.

9 Go ahead and hand that down to the clerk when you
10 go off the stand, please. And have a good day.

11 All right. Anything further for the State?

12 MR. MILLS: No, Your Honor. State rests its case
13 in chief.

14 THE COURT: All right. Now, the State having
15 rested its case, typically in these cases the Court has
16 some legal issues to deal with outside the presence of the
17 jury.

18 It's ten o'clock, so we're going to give you a
19 break early today. Instead of 10:30, we'll break at ten
20 o'clock.

21 What I'm going to do is go for a 30-minute recess
22 here for the jury.

23 Please do not converse amongst yourselves or with
24 anyone else on any subject connected with the trial. Do
25 not read, watch or listen to any report or commentary on

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1 MR. WOODBURY: I guess it depends in part, if the
2 Court rules against us, there would only be potentially two
3 witnesses. That would take at a maximum a couple hours.

4 THE COURT: Okay.

5 MR. WOODBURY: If the Court rules for us, I would
6 have to reevaluate whether I actually want to put the
7 evidence on or not.

8 THE COURT: Well, I guess that includes having
9 the defendant testify or not. That's -- does that have
10 some bearing on the Court's ruling -- or does the Court's
11 ruling have some bearing on that?

12 MR. WOODBURY: On the defendant testifying?

13 THE COURT: Yeah.

14 MR. WOODBURY: No.

15 THE COURT: Then maybe what I can do is get that
16 out of the way. I will canvass Mr. Dean on his right to
17 testify, and then we can go into this motion in limine
18 argument. All right.

19 We customarily do this in the Fourth Judicial
20 District Court, Mr. Dean.

21 Okay. All right. Of course you have the right
22 to testify in this case. You also have the right to remain
23 silent.

24 And you're nodding your head. I take it that you
25 understand what those things are?

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1 DEFENDANT DEAN: Yes, Your Honor.
2 THE COURT: And you have -- I certainly don't
3 want to know about confidential communications with your
4 attorney; those are just between you and your attorney.
5 But I think I can ask generally, you have
6 discussed testifying or not testifying with your attorney,
7 right?
8 DEFENDANT DEAN: Yes.
9 THE COURT: All right. Have you had enough time
10 to do that?
11 DEFENDANT DEAN: Yes.
12 THE COURT: Okay. This case has involved a lot
13 of work, I think, for everybody, as far as I can tell.
14 So Mr. Woodbury spent a lot of time with you for
15 this case, right?
16 DEFENDANT DEAN: Yes, sir.
17 THE COURT: All right. Well, I just want to
18 remind you that you can certainly consider your attorney's
19 advice, and should consider your attorney's advice, about
20 whether you testify or not.
21 But ultimately the decision is up to you. We
22 actually have a rule that deals with this in Nevada that
23 says that Mr. Woodbury doesn't get to make the decision
24 about whether you testify or not, you get to make the
25 decision with about whether you testify or not.

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1 DEFENDANT DEAN: Understood.
2 THE COURT: Of course, I cannot make the decision
3 for you. I don't mean to be condescending, but obviously
4 the prosecutor doesn't make the decision for you. If the
5 President of the United States was back there, he couldn't
6 make the decision for you.
7 In our system of trial by jury, it's your
8 decision about whether you testify or not. I just want to
9 emphasize that.
10 Of course there are benefits and drawbacks to
11 just about any decision in life. This one would be no
12 different, I think.
13 If you do testify, you are subject to
14 cross-examination by the prosecutor. If there is any
15 redirect examination, you are subject to
16 recross-examination by the prosecutor.
17 And then, of course, you have seen the jury gets
18 to ask questions of the witnesses, and I would invite them
19 to ask questions of you if you were to, in fact, testify.
20 Then, of course, there could be follow up by your
21 attorney and then the State after any jury questions.
22 Then what you need to remember is, if you did
23 testify in this case, what you do say under oath becomes
24 part of the evidence in the case, and it's subject to fair
25 comment by both Mr. Woodbury and the prosecutor in closing

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1 argument.
2 And I'm sure you have gone over what closing
3 argument is, how that works, with Mr. Woodbury.
4 So do you understand all those aspects of
5 testifying?
6 DEFENDANT DEAN: Yes.
7 THE COURT: All right. If you were to remain
8 silent and you don't testify, that's your choice. If you
9 do testify, that is your choice.
10 Remember, Mr. Mills cannot and would not -- on my
11 order he would make no comment about that in closing
12 argument, use that against you
13 And, in fact, if you do remain silent, at your
14 attorney's request, and your request, if you want an
15 instruction to cover that topic, I would give that
16 instruction to the jury.
17 That's how it works in Nevada law, you've got to
18 ask for the instruction.
19 Anyway, the instruction reads: "It is the
20 constitutional right of the defendant in a criminal trial
21 that he may not be compelled to testify. Thus, the
22 decision as to whether he should testify is left to the
23 defendant, acting on the advice and assistance of his
24 attorney.
25 "You may not draw any inference or any conclusion

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1 from the fact that he does not testify, nor should this
2 fact be discussed by you or enter into your deliberations
3 in any way."
4 That's how the instruction is worded that I
5 always read to the jury when a defendant does not testify,
6 if his attorney and him want the instruction.
7 So do you understand all that? Those aspects of
8 not testifying?
9 DEFENDANT DEAN: Yes.
10 THE COURT: All right. All right. And, again,
11 it seems that you discussed the pros and cons of testifying
12 or not testifying with Mr. Woodbury.
13 DEFENDANT DEAN: Yes.
14 THE COURT: All right. And whatever decision you
15 have made there, you are comfortable with the decision, you
16 think?
17 DEFENDANT DEAN: Yes.
18 THE COURT: Okay. All right. Well, of course,
19 ultimately, again, it's your decision and you can -- you
20 will have more time if you need it to discuss it further
21 with Mr. Woodbury.
22 Anything else you want me to canvass on?
23 MR. MILLS: No, Your Honor.
24 THE COURT: Thank you.
25 MR. WOODBURY: (Shakes head)

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1 THE COURT: Thank you, Mr. Woodbury, Mr. Dean.
2 We have covered that part of it.
3 I have re-reviewed the motion in limine.
4 Mr. Woodbury, any further argument on that?
5 MR. WOODBURY: No, Your Honor.
6 THE COURT: Okay. Well, I have a couple of
7 questions on it.
8 I just want to make sure I'm understanding this
9 the right way.
10 I guess the bottom line of this motion is on page
11 5, lines 13 through 16. "Defendant therefore requests that
12 he be given a full and fair opportunity at trial to inquire
13 of Ms. Minter regarding the events of September 3, 2015, as
14 well as a full and fair opportunity to inquire of Ms.
15 Minter about providing" -- excuse me -- "Mr. Minter about
16 providing controlled substances to Ms. Syddall on or about
17 April 4, 2016."
18 What I take that to mean is you don't want to get
19 into this evidence about what happened on -- purportedly
20 what happened on November 12, 2015, where the defendant was
21 reportedly involved in a dispute with Christina Hodges.
22 MR. WOODBURY: That's correct.
23 THE COURT: Because I don't know exactly what
24 happened there, obviously, but if this city police
25 department, as you write in here, was trying to locate Mr.

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1 Dean and perhaps interview him or arrest him, that -- that
2 couldn't be good for Mr. Dean.
3 MR. WOODBURY: No.
4 THE COURT: The defense wouldn't want to be.
5 A. Putting that on in front of the jury; is that
6 correct?
7 MR. WOODBURY: Yes, that's correct.
8 THE COURT: And I understand, I guess, the theory
9 here, "defendant does not know when it started, but it is
10 clear that the Minters relied on income derived from
11 selling controlled substances to sustain themselves at
12 least by the summer of 2015, although they may have been
13 doing so well before that time."
14 That was page 3, lines 17 through 19.
15 And that -- I guess the idea is that Ms. Minter,
16 after the November 12 incident, was not truthful about --
17 and this is the theory anyway. Although, again, I haven't
18 heard any evidence on this. The defense does not want to
19 put on any evidence about the November 12 incident. We just
20 established that.
21 I guess the theory is she "was not truthful in
22 what she told officers about the nature of the relationship
23 with Dean, actually informing the officers that Dean had
24 spent only a single night at her residence."
25 That's page 4, lines 5 through 7.

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1 Then I guess the further idea is that she -- the
2 Minters get together and they decided we don't want Mr.
3 Dean around because the cops are now watching for him at
4 this residence where the alleged stabbing occurred.
5 Here they were watching this residence between
6 November 12 and December 8.
7 That's the way I understand this motion in limine
8 And I guess the further idea is that the --
9 according to the defendant, the State's laying off
10 prosecution, and that Ms. Minter ought to be cross-examined
11 about this incident that resulted in a prosecution of her
12 where she was with Angela Cederstrom, allegedly went to
13 Syddall's residence, Syddall being the fiancée of Mr.
14 Minter at the time, and then these two women purportedly
15 attacking Syddall to evict her from this residence that Ms.
16 Syddall, I guess, was renting from Mr. Minter. And Ms.
17 Cederstrom hit Syddall with a baseball bat.
18 And I don't think it says in here, but she was
19 being prosecuted for trespassing but never anything else.
20 And then Mr. Lowe from the D.A.'s office made a
21 deal with Ms. Minter, I guess, through her counsel, whoever
22 that was, that there would be a deferred prosecution in the
23 case.
24 MR. MILLS: That's correct, Your Honor. Ms.
25 Cederstrom was the one who was charged with battery.

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1 Ms. Minter was charged with --
2 THE COURT: Simple battery?
3 MR. MILLS: Simple battery, yes.
4 THE COURT: Misdemeanor battery.
5 MR. MILLS: That's correct. And Ms. Minter was
6 prosecuted for trespassing.
7 And obviously at the time that occurred, on
8 September 5, this case hadn't arisen yet obviously at that
9 time.
10 But Ms. Minter --
11 THE COURT: But the deal was given shortly after?
12 MR. MILLS: The deal was given on December 22.
13 This case had arisen by the time her case came up for trial
14 and Rob Lowe entered into that deferred prosecution
15 agreement.
16 THE COURT: Okay.
17 MR. MILLS: However, as stated in my Opposition,
18 I have got an unsworn declaration in there indicating that
19 Mr. Lowe would testify that he was unaware of the Sean Dean
20 prosecution, that he was unaware of Denise Minter's status.
21 THE COURT: Okay.
22 MR. MILLS: As victim/witness in the Dean
23 prosecution. Further, that his decision to give her
24 deferred prosecution agreement was not influenced or
25 informed in any way, shape or form by the Sean Dean case.

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1 So it's the State's position -- I still am really
2 struggling to see the relevancy of a trespassing charge
3 from September.

4 THE COURT: Okay. I just wanted to establish at
5 this point this was a deferred prosecution, which to me
6 means that she could be prosecuted again, right?

7 MR. MILLS: She --

8 THE COURT: If she screws up, you could take her
9 back and prosecute her presumably for trespassing or
10 anything else the State feels is appropriate?

11 MR. MILLS: I can give you an update on that.
12 That's a fair point, Your Honor.

13 And so December 22, if you fast-forward six
14 months into the future, that takes us to June 22, which is
15 this week. She complied with the terms of the deferred
16 prosecution and her case was dismissed pursuant to that
17 agreement

18 THE COURT: When was it dismissed?

19 MR. MILLS: I think on -- around the 22nd of this
20 week.

21 THE COURT: Isn't that a coincidence.

22 MR. MILLS: Just a coincidence, yeah, but that's
23 when the six months of the deferred were up.

24 THE COURT: When did she -- when did we start
25 this trial?

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1 appointment in Reno.

2 I don't know if that was on stipulation; that's
3 usually how those come to me.

4 Mr. Minter is the person who the defense says
5 transported her to Reno, and lo and behold, when she comes
6 back, Deputy Lespade thinks she is under the influence of a
7 controlled substance.

8 Anyway -- I think I have got all this right. But
9 anyway, that's what the defense is trying to do now is just
10 cross-examine Minter -- and I realize it would be direct
11 examination if they called him, but effectively it's a
12 cross-examination.

13 These are witnesses aligned with the State. So
14 if they are called in the defense case, it's really
15 essentially a cross-examination for all intents and
16 purposes.

17 And so I wanted to make clear that that is what
18 the defense wants to get into and all they want to get
19 into.

20 And -- but I -- it seems that the defense wanted
21 this to come in for a couple of different purposes. One was
22 bias on the part of Ms. Minter, that she would shade her
23 testimony toward the State to remain in the good graces of
24 the State while she was under deferred prosecution.

25 That's why I asked, is this still a deferred

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1 MR. MILLS: The 21st.

2 THE COURT: When did she testify?

3 MR. MILLS: The 23rd, I think.

4 THE COURT: She testified yesterday for the first
5 time?

6 MR. MILLS: Yesterday, yeah.

7 THE COURT: I can't remember. Is that correct
8 Mr. Woodbury?

9 MR. MILLS: It was yesterday morning, that's
10 correct.

11 THE COURT: I've been doing this, working on
12 other stuff.

13 MR. WOODBURY: It was yesterday morning, Your
14 Honor.

15 THE COURT: Thanks for reminding me. Well, I
16 guess that brings me to my question.

17 I mean, first of all -- well, do you think --
18 well, also, I guess I will say, also, we have got that
19 April 7, 2016, incident that the defense wants to cover.

20 They talk about it on page 2, line 21, that it
21 happened April 7. On page 5 of line 15 they say April 4.
22 I will just call it the April incident. Where Ms. Syddall
23 is on furlough from the jail, apparently she is
24 incarcerated on charges related to controlled substances --
25 I guess that's in my court -- to attend a doctor's

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1 prosecution. I guess by the time she testified, it wasn't
2 anymore.

3 Was she made aware of that?

4 MR. MILLS: Aware of what?

5 THE COURT: That she was no longer under a
6 deferred prosecution.

7 MR. MILLS: I have no clue. That's up to her and
8 her defense attorney. Her attorney may have informed her,
9 I don't know.

10 THE COURT: I agree. But do you see what I am
11 getting at? It goes to her state of mind.

12 I mean, who cares whether Lowe -- why he gave her
13 a deal or not.

14 The issue is her state of mind as she testified.
15 I realize she wasn't given a deal for her testimony, but
16 the jury might reasonably draw an inference that a person
17 who has been given this deferred prosecution by the State
18 might want to testify sort of in favor of the State or skew
19 testimony in favor of the State to remain in the good
20 graces of the State. Even if she did screw up on the
21 deferred prosecution, maybe she is given a break.

22 It goes to her state of mind, I think. That's
23 why I'm asking, do you know whether she was advised that
24 she was no longer at risk for being convicted of anything
25 in that case when she did take the stand on the 23rd?

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1 I think it's an important question.
2 MR. MILLS: I don't know what her defense
3 attorney told her.
4 THE COURT: Okay. Then it seems to me we need to
5 get Ms. Minter in here and have an offer of proof hearing
6 on this.
7 I want to do that before I decide what to do.
8 Because I think arguably this can come in for bias.
9 So anyway -- I am skeptical, however, that this
10 would come in for the other purpose named by the defense,
11 which is, "In substance, if Ms. Minter conspired with a
12 friend to evict her former husband's fiancée from a
13 residence through the use of physical violence, common
14 sense suggests setting up the defendant is well within her
15 capacity."
16 That's page 5, lines 7 through 9.
17 That's a long way of saying it comes in -- it's
18 propensity evidence. It comes in to show, you know, that
19 because she is physically violent, she would be willing to
20 set up the defendant, as he claimed in his interview with
21 Nielson.
22 As we all know, "relevant evidence means evidence
23 having any tendency to make the existence of any fact of
24 consequence to the determination of the action more or less
25 probable than it would be without the evidence."

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1 That's logical relevance.
2 "All relevant evidence is admissible except as
3 limited by the Constitution of the United States or the
4 State of Nevada."
5 I think she would -- if I did let it in for bias,
6 she would not be permitted -- I don't think I would allow
7 cross-examination about the actual events, assuming she was
8 still at risk for being prosecuted.
9 But what I am hearing now is she is no longer at
10 risk for being prosecuted.
11 Because the issue to me then is her state of
12 mind. She would be able to answer questions about, you
13 know, what did you know they were alleging about you? What
14 did you think you were at risk of here? Didn't you have a
15 concern about this when you were testifying?
16 I realize it's not a plea bargain for testimony,
17 but that could be cleaned up by the prosecutor in further
18 questioning of the witness herself.
19 I think it again goes to state of mind, the bias
20 issue.
21 Now, I am having a real hard time getting my head
22 around the latter proposition, though, that this would come
23 in for propensity.
24 So I think I probably would give a limiting
25 instruction on it. You can consider it only for the bias

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1 of the witness.
2 Because I haven't heard anything in this trial so
3 far that leads me to believe that -- that makes me conclude
4 that these people were selling controlled substances. I
5 just haven't heard it.
6 I have been listening to the evidence pretty
7 carefully. I have been making notes on my phone and on my
8 pad here, kind of puzzling through this. And I just don't
9 get it.
10 I disagree with the proposition on page 3 of this
11 motion in limine, "it is clear that the Minters relied on
12 income derived from selling controlled substances to
13 sustain themselves at least by the summer of 2015."
14 I haven't seen that.
15 And I don't think you get to have your cake and
16 eat it, too, from the defense side. In other words, you
17 don't get to question them about -- you don't get to have
18 the September 3 and the April 4 incident come in if the
19 November 12 stuff doesn't come in. To me, that's a
20 predicate of this theory of the defense, to get the
21 November 12 stuff in.
22 If you don't want that evidence in, and I
23 understand why you don't, because it sounds like Mr. Dean
24 is alleged to have done something really bad to Ms. Hodges.
25 It's not written in here, so I don't know what it is that

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1 he's alleged to have done.
2 I think I read something in the paper about him,
3 when this trial started, that had to do with something
4 going on in Judge Porter's court. And maybe that's what
5 it's about, I don't know
6 But anyway, I don't see any relevance as to the
7 April 7, 2016, incident at this point.
8 I assume if the -- if the Minters come in here,
9 and they are asked, "Are you selling controlled
10 substances," they are going to say, "no, we are not selling
11 controlled substances."
12 But there is no extrinsic evidence that I can see
13 to support that they were.
14 So to say that it's clear that they were -- I
15 understand they have a motive to do that because the idea
16 is, well, Bert got hurt and he was screwed up and he had
17 strokes and he went to the manor and lost all his
18 properties and Denise was gambling the money away and she
19 was only a clerk at the Sinclair making probably minimum
20 wage, how did she get the money to do all that? Well, it
21 had to be selling controlled substances.
22 There just isn't enough evidence still with that
23 to support that for me and permit this April 7 testimony to
24 come in.
25 I think it's irrelevant. I think it would be --

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1 it's not logically relevant. I don't think it's legally
2 relevant either.

3 In other words, I think it -- under NRS 48.035,
4 it would be confusing to the jury. You know, it should not
5 come in.

6 The probative value would be substantially
7 outweighed by the danger of unfair prejudice to the State.
8 The State is still a party. Rule still applies to them, to
9 that entity

10 So noodling through this, that is what I have
11 been thinking about.

12 And I think it's really relevant whether Ms. --
13 what Ms. Minter's state of mind was when she got up here
14 and testified about whether she was liable still for
15 prosecution for what allegedly happened in September of
16 2015.

17 So she needs to be made available, we need to
18 have a hearing on that outside the presence of the jury.

19 Mr. Woodbury wanted to talk to Mr. Dean anyway
20 for an hour and a half. I assume that still goes.

21 MR. WOODBURY: Yes.

22 THE COURT: I will give that time. It's an
23 important thing for Mr. Dean to talk to his lawyer. I will
24 give him that time in fairness. We have set this through
25 Tuesday.

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1 So when can Ms. Minter be made available?

2 MR. MILLS: Your Honor, I have rested my case in
3 chief, and technically it's his witness at this point. But
4 as a courtesy, I will try to contact her and see if we can
5 produce her.

6 THE COURT: Well, I'm going to order you to do
7 that, because this is my courtroom and I am controlling it
8 and I want that witness back here.

9 MR. MILLS: I understand that, Your Honor. We
10 have had access to her and that's why I will do that.

11 THE COURT: You have held her subject to recall.

12 MR. MILLS: I have. She understands that, that
13 she's held subject to recall. As far as -- I can represent
14 to the Court -- I mean, you might have gotten a sense of
15 this, I know Mr. Woodbury has -- that she has been having
16 some emotional distress this week.

17 And which has made her -- I mean, I had to send
18 an officer to go try to track her down at one point because
19 she fled the courthouse with an anxiety attack.

20 So, yes, I will make every effort that I can to
21 track her down. That could be -- I am just forewarning
22 everybody that that may not be as simple as it sounds. But
23 I will do my best to find her.

24 THE COURT: All right. Well I guess the hour and
25 a half can start now. That takes us through the noon hour.

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1 Did the jail look at the issue of Mr. Woodbury
2 being in the library with his client as opposed to a glass
3 separating them, do you know?

4 DEPUTY CORTES: Yes.

5 THE COURT: We've got Deputy Cortes here. Did
6 the LT approve that?

7 DEPUTY CORTES: Yes. Lieutenant Silva approved the
8 interview room at the jail.

9 THE COURT: Super. All right. Mr. Dean can go
10 back there. The State can try to locate this witness and
11 have her here at 1:20.

12 We'll have Mr. Dean brought over at 1:30. I'll
13 have the jury come back at 1:20, I guess.

14 Does that sound all okay?

15 MR. MILLS: That's fine, Your Honor.

16 THE COURT: So the jury will be here before Mr.
17 Dean is here, they won't see him brought in.

18 In fact, we'll ensure that the jurors are all in
19 the jury room before we call over for Mr. Dean, Mr. Conner.

20 Okay. Then we'll have a hearing. I hope it's
21 not going to take too long, and we'll be able to finish the
22 case, have the jury fire it up around maybe two o'clock and
23 get it going.

24 MR. MILLS: Your Honor, couple -- while we're on
25 the record -- a couple housekeeping matters.

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1 THE COURT: Okay.

2 MR. MILLS: One, based on Mr. Woodbury's
3 cross-examination of Ms. Minter yesterday, it occurred to
4 me that I ought to offer a transferred intent instruction.
5 So I have a couple of suggestions for that. I mean that's
6 a bedrock principle of criminal law that's pretty
7 straightforward.

8 Another concern that I have is that one of the
9 stated witnesses in this case is Darrell Palmer, one of the
10 defense witnesses.

11 And based on the report from that other case that
12 Your Honor referenced that's where Mr. Palmer comes up, and
13 he comes up again in connection with controlled substances
14 and Denise Minter and looking through Denise Minter's phone
15 and that sort of thing.

16 That raises a couple of concerns for me. One,
17 that if he is called, again, I am not sure what he is going
18 to say, but it is certainly possible he is going to get
19 into this business of selling controlled substances.

20 And two, there is a Fifth Amendment concern that
21 I have that I'm not sure whether he ought to be appointed
22 counsel or not if he starts talking about buying or
23 selling drugs from or to Denise Minter, or whatever it was
24 that was on that phone involving controlled substances.

25 THE COURT: My understanding of it was that we

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1 had all the evidence that we need in order support of this
2 offer of proof at this time. Is that not true?

3 MR. MILLS: I sure hope it's true. I just --
4 it's --

5 THE COURT: That's why the lawyers -- my thought
6 and my understanding when this case was -- when this motion
7 was brought to me, Mr. Woodbury said, well, we are not --
8 we are hiding the ball right now, we are not talking about
9 what we can show, I guess, at that point, that it would
10 come out during the case.

11 I didn't hear any evidence come out during the
12 case about selling controlled substances, like I already
13 recited.

14 Was there anything else?

15 MR. WOODBURY: Of course. We have been talking
16 about the State's case, not our case.

17 We have witnesses that she does sell dope and we
18 just haven't put them on yet. The only thing people I
19 could have talked to about it would have been Denise Minter
20 and Duff Minter.

21 We have had no opportunity to put our own case
22 on. That would be fairly easy to establish that she does
23 sell dope, but that's --

24 THE COURT: And how would that be established?

25 MR. WOODBURY: Put Mr. Dean on to say that he

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1 keep my big mouth shut with respect to the controlled
2 substances stuff and with respect to Mr. Minter and Ms.
3 Minter.

4 THE COURT: I guess you said that. I didn't.

5 How is this -- let's say you could show if she
6 was selling controlled substances.

7 Does it -- is it still relevant what happened
8 with Bert on -- well, the September 2015 incident regarding
9 Syddall has nothing to do with selling controlled
10 substances that I can see there

11 MR. WOODBURY: The April 2?

12 THE COURT: No, the September 3rd.

13 MR. WOODBURY: Oh, no. Ms. Syddall, no.

14 THE COURT: Yeah.

15 MR. WOODBURY: Other than she's a victim.

16 THE COURT: I know, like a lot of people, she has
17 got a drug problem, I guess. But that doesn't fit in with
18 the theory of "they are setting him up," other than, as I
19 said, you wrote it.

20 In other words --

21 MR. WOODBURY: The thing that -- in a larger
22 sense, Judge, what happens when you get people who are
23 typically -- again, I'm being disparaging -- people who are
24 typically criminal defendants, and it is exactly what is
25 happening in Clark County, there is -- the District

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1 watched her do it.

2 THE COURT: I thought he wasn't going to testify.

3 MR. WOODBURY: I don't think you got that right.

4 THE COURT: Okay.

5 MR. WOODBURY: We are going to have a
6 conversation about it.

7 THE COURT: Okay. He watched her do it then?

8 MR. WOODBURY: That's for one. I mean, this
9 Palmer guy was the guy that was involved in the -- when
10 she -- after the incident with Christina Hodges, the cops
11 got to looking at her house pretty close, and she got Mr.
12 Palmer to get a room out at the Red Lion.

13 And one of the police officers, for a variety of
14 reasons, went and talked to Mr. Palmer. And in looking at
15 Mr. Palmer he saw on Ms. Minter's cell phone and Mr.
16 Palmer's cell phone a text message discussion between the
17 two of them about buying and selling dope.

18 There are other possibilities as well.

19 THE COURT: Okay. Well, are you going to call --
20 would you call Mr. Palmer then?

21 This a new twist to me. My understanding in
22 coming into this was we're going to hear it in the State's
23 case about whether the factual predicate that they were
24 selling controlled substances happened.

25 MR. WOODBURY: My understanding was, I was to

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1 Attorney's office is paying certain moneys out or
2 apparently paying certain moneys out, doing certain favors
3 for people.

4 And the defense bar down there is seeking and
5 getting instructions to juries that because the prosecution
6 is doing them favors, they -- they are less credible
7 people.

8 And in this case, I think that -- I have no idea,
9 but if I were Denise Minter, I would look at the
10 proposition that I got a deferred prosecution based on what
11 happened in September 3 with Ms. Syddall as something in
12 the nature of a helping hand from the state.

13 THE COURT: So it doesn't matter whether the
14 deferment period is over or not based on that?

15 MR. WOODBURY: Well, one way or the other,
16 probably not. Probably not.

17 I mean, nothing is ever straightforward with
18 these folks to begin with.

19 THE COURT: Really.

20 MR. WOODBURY: In any event, that's kind of our
21 point of view.

22 THE COURT: All right. I think a lot of stuff I
23 said was earlier was premised on the idea that this was all
24 we were going to get regarding the sale of controlled
25 substances.

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1 I guess the biggest misconception with the
2 communications, like they say, is that it occurred at all.
3 MR. WOODBURY: Your Honor, if -- if Mr. Mills can
4 locate Ms. Minter and I can have my conversation with Mr.
5 Dean, we may be able to resolve this.
6 THE COURT: Okay. All right. Well, if I allowed
7 this evidence to come in in any form, who are the witnesses
8 going to be for the defense? Can you tell me that?
9 MR. WOODBURY: well, it could be Mr. Palmer. One
10 is officer Shelley. One would potentially be Mr. Dean.
11 THE COURT: Okay. Then --
12 MR. MILLS: Is Mr. Brannon here?
13 MR. WOODBURY: Mr. Brannon -- he is here, but he
14 is not part of this.
15 MR. MILLS: He is not part --
16 MR. WOODBURY: He is not part of the question is
17 before the Court.
18 MR. MILLS: Yeah, I thought he was asking --
19 THE COURT: Any other witnesses that are not part
20 of the question?
21 MR. WOODBURY: Yeah. Mr. Brannon.
22 THE COURT: And Mr. Dean?
23 MR. WOODBURY: Yes.
24 THE COURT: So the max we would have is Palmer,
25 Shelley, Brannon and Dean.

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1 MR. WOODBURY: Yes.
2 THE COURT: Thank you. Well, you heard the
3 State's concern about Palmer.
4 What about his right to remain silent? He is in
5 jeopardy of making incriminating statements about selling
6 controlled substances. I think he does have the Fifth
7 Amendment privilege to remain silent.
8 MR. WOODBURY: He has the Fifth Amendment
9 privilege to remain silent about the case pending against
10 him.
11 I don't think we ever would imply that he was
12 selling substances to Ms. Minter, he was buying them from
13 her. And my understanding is that --
14 THE COURT: That's still a --
15 MR. MILLS: Still a crime.
16 MR. WOODBURY: It's also a corpus delicti
17 problem, Judge. There is no chance they could prosecute.
18 THE COURT: Well, if they can corroborate it with
19 other evidence, that can be used against him. Who cares
20 about corpus delicti?
21 It's still -- you put me up there and ask me
22 that, I would say, "Go pound it, I'm not talking to you at
23 all."
24 MR. WOODBURY: Until the Court told you to do so.
25 THE COURT: I don't think I would.

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1 MR. WOODBURY: Then you would have to give the
2 theory of prosecution that puts a single admission --
3 THE COURT: I don't know about that. I don't
4 know about that. I don't have to go out and figure out
5 whether he can actually be prosecuted or not.
6 It's still -- it's still a Fifth Amendment
7 problem, I think.
8 MR. WOODBURY: Then I will take that as an order
9 that I can't call Mr. Palmer.
10 MR. MILLS: You can appoint him counsel, I think.
11 I don't know if that can be done that expeditiously.
12 I looked at his other case, and unfortunately he
13 has not yet been appointed counsel in the case that he's
14 being prosecuted for. Because that would be a simple fix is
15 just to provide him the same attorney that is already
16 representing him.
17 THE COURT: Who represents him? Is he --
18 MR. MILLS: He hasn't been appointed counsel yet.
19 I think his first appearance on a -- yeah, his first
20 appearance in the felony case has yet to happen. So he has
21 not yet been appointed counsel. But the charges have been
22 filed.
23 MR. WOODBURY: Still --
24 THE COURT: Well, you know what, you have the
25 right to remain silent under the Fifth Amendment. The

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1 Fifth Amendment doesn't say only if you might be
2 prosecuted; it just says if it can potentially incriminate
3 you, what you say.
4 All right. Although I don't know, there may be
5 some case law out there that deals with possible
6 prosecution, but I don't think it's up to the trial judge
7 to then go off into the stratosphere and figure out
8 whether, "well, would he actually be subject to
9 prosecution?"
10 It seems to me if you are talking about a
11 near-in-time event that could still be investigated and
12 other evidence found, then yes, he is at risk, sounds like
13 to me.
14 And I think I have a duty to probably appoint him
15 counsel so that he can get advice on this.
16 His rights need to be protected just like this
17 defendant's rights or any other -- he's a potential
18 defendant, just like any other defendant.
19 Is he being prosecuted already in connection with
20 what Mr. Woodbury wants to ask him about, if you know?
21 MR. MILLS: Not to my knowledge.
22 THE COURT: What is he being prosecuted for?
23 MR. MILLS: Selling methamphetamine in a separate
24 incident, separate case.
25 THE COURT: Then this side of the room wants to

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1 ask him about buying methamphetamine -- is it
2 methamphetamine --
3 MR. WOODBURY: Yes.
4 THE COURT: -- or heroin? Methamphetamine from
5 Ms. Minter.
6 When was he alleged to have committed the offense
7 that is being prosecuted by your office now?
8 MR. MILLS: February 23 of this year, I think,
9 around about.
10 THE COURT: Okay. So fresh case.
11 MR. MILLS: It's a fresh case, yeah.
12 THE COURT: And then obviously this case happened
13 before then?
14 MR. MILLS: That's correct.
15 THE COURT: So what is the time period you want
16 to ask him about?
17 MR. WOODBURY: February -- excuse me, November
18 15, 16, 2015.
19 THE COURT: I think that definitely could be used
20 against him in that prosecution, you better darn tooting.
21 If you can show that he is buying controlled
22 substances from somebody else through his admission in this
23 trial, that's extremely relevant and highly probative in a
24 sale of a controlled substance case.
25 Seems pretty obvious to me.

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1 said.
2 MR. MILLS: What time would you like her for that
3 offer of proof?
4 THE COURT: I am thinking -- well, again,
5 Mr. Woodbury needs an hour and a half. We're cutting into
6 that big time.
7 Also, there is a lunch, I would like Mr. Dean to
8 get lunch, you to get lunch.
9 MR. MILLS: Should we have her here at two as
10 well?
11 THE COURT: Why don't we have her here at 1:20.
12 Then Mr. Palmer as well. And then the Court will look
13 at -- again at getting counsel for him and -- figuring
14 that, you know, I don't know if this is going to be
15 resolved.
16 MR. MILLS: You want us here at 1:20 as well?
17 THE COURT: Please.
18 MR. MILLS: Okay.
19 THE COURT: That will give counsel plenty of time
20 to talk to his client, you to locate Ms. Minter and Mr.
21 Palmer to be brought up here as well. We might as well
22 have him brought up at 1:20 as well.
23 Anything else?
24 MR. MILLS: No, Your Honor.
25 MR. WOODBURY: No, Your Honor.

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1 When is Mr. Palmer supposed to be here?
2 MR. WOODBURY: I think --
3 MR. MILLS: You are talking about for this case,
4 right?
5 THE COURT: Yes, sir.
6 MR. MILLS: It's his witness.
7 THE COURT: Yeah, you didn't subpoena.
8 Mr. Woodbury?
9 MR. WOODBURY: I think he was here yesterday. I
10 assume he came and left. I think I was a day off. So I
11 would have to have him recontacted.
12 But I -- again, I tell the Court if you give me
13 that hour and a half with Mr. Dean, I might be able to
14 resolve all this.
15 THE COURT: Okay. I'm just trying to figure out
16 what to do with the jury, too.
17 Because if we are going to appoint counsel, have
18 some kind of an offer of proof hearing, do all the rest of
19 it, heck, we might as well start working on jury
20 instructions and have the jury come back Monday, put on
21 your case, get it argued and do it that way, you know.
22 So anyway, you know what, I will have them come
23 back at two o'clock.
24 That will give time for everybody to -- that will
25 give time for the State to get Ms. Minter back here, as I

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1 THE COURT: Any other suggestions? I mean, I am
2 making this up as I go.
3 MR. WOODBURY: I don't have any.
4 THE COURT: Thank you.
5 We need to bring the jury back and tell them what
6 we're doing.
7 (WHEREUPON, the jury was brought into the courtroom)
8 THE COURT: All right. Ladies and gentlemen,
9 we'll be back on the record for Case CR-FP-2015-1508.
10 Again, State versus Dean.
11 We have Mr. Dean back in court with counsel
12 Mr. Woodbury.
13 Mark Mills again, Elko County deputy district
14 attorney, to represent the State.
15 And I have had the jury and the alternate brought
16 back in.
17 Counsel stipulate to the presence of the jury and
18 the alternate?
19 MR. MILLS: Yes, Your Honor.
20 MR. WOODBURY: So stipulated.
21 THE COURT: Ladies and gentlemen, at this point
22 there are some more legal issues that have to be dealt with
23 outside the presence of the jury.
24 I think we're still on track to get this case
25 wrapped up on schedule, to get it wrapped up when we said

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1 we would, which is Tuesday.
2 So what I'm going to do, though, is I think we're
3 going to try to get some more evidence put on today, get
4 it -- get at least that part of it done, so then the Court
5 can work on some jury instructions, okay, which as I told
6 you at the beginning I settle outside your presence
7 prior -- or it has to be after the evidence is admitted.
8 That is by law. After all the evidence in the case has
9 come in, then before the argument of the parties.

10 So with that, I am not going to keep you around
11 here right now and waiting back there while we deal with
12 other business.

13 We are going to be working through the lunch hour
14 to keep pace.

15 You are going to be excused through two o'clock,
16 have you come back then. All right. Please be back in the
17 jury room then.

18 So I'm going to go ahead and read the
19 admonishment to you.

20 Please do not converse amongst yourselves or with
21 anyone else on any subject connected with the trial. Do
22 not read, watch or listen to any report or commentary on
23 the trial or any person connected with the trial by any
24 medium of information, including, without limitation,
25 newspapers, television, radio or the Internet.

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1 you know, of course, an issue if he does testify, I just
2 want to remind him if he does testify the State would be
3 able to -- he would be subject to the evidence coming in
4 that he has been convicted of other offenses, other
5 felonies, that he has been convicted of a felony. Which I
6 assume is the only place this would go.

7 But Mr. Dean, do you understand that?

8 DEFENDANT DEAN: Yes.

9 THE COURT: Okay. You have talked to
10 Mr. Woodbury about that. Because ostensibly that's a
11 drawback of you testifying. It would come out that you
12 have been convicted of a felony.

13 Do you understand that?

14 DEFENDANT DEAN: Yes.

15 THE COURT: Okay. Usually the way it works is
16 the lawyer asking the questions, the defense lawyer
17 actually asks, "Have you been convicted of a felony?" And
18 if his client agrees, then that's all the farther it goes.

19 The State doesn't ask you about it, there is no
20 judgment of conviction that comes in. We call that
21 extrinsic evidence. That doesn't come in.

22 That's how it would go here, I assume. Is that
23 correct, counsel?

24 MR. MILLS: I don't know if he is intending to
25 take that strategy. But if he doesn't ask that, then I

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1 And do not form or express any opinion on any
2 subject connected with the trial until the cause is finally
3 submitted to you.

4 You may not use any electronic device or media,
5 such as the telephone, a cell phone, smartphone, iPhone,
6 BlackBerry or computer, the internet, any internet service,
7 any text or instant messaging service, any internet chat
8 room, blog, or website such as Facebook, MySpace,
9 LinkedIn, YouTube or Twitter, to communicate to anyone any
10 information about this case until I accept your verdict.

11 In other words, you cannot talk to anyone on the
12 phone, correspond with anyone, or electronically
13 communicate with anyone about this case.

14 Court's in recess.

15 (WHEREUPON, the noon recess was taken)

16 THE COURT: All right. We'll go back on the
17 record for Case CR-FP-2015-1508.

18 Again, State versus Dean.

19 Mr. Dean is back in court with counsel Gary
20 Woodbury.

21 And Mark Mills, Elko County deputy district
22 attorney, for the State.

23 We are outside the presence of the jury and
24 alternates.

25 One thing I forgot to do is advise Mr. Dean of,

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1 will on cross.

2 THE COURT: Right. Do you understand all that,
3 Mr. Dean?

4 DEFENDANT DEAN: Yes.

5 THE COURT: All right. You -- and you still,
6 whatever decision you made about testifying or not, you are
7 comfortable with that?

8 DEFENDANT DEAN: Yes.

9 THE COURT: Good enough.

10 Where are we with the rest of it?

11 We got Darrell Palmer here. I have counsel ready
12 for him.

13 MR. WOODBURY: I received a phone call over the
14 lunch hour from a lady who says she's a lawyer representing
15 Mr. Palmer. And my assumption is -- I did not call her
16 back. My assumption is Mr. Palmer would invoke, therefore,
17 we will not call him.

18 THE COURT: Well, I can certainly have a hearing
19 on that issue. I mean, I am not ready to assume anything.
20 I think the Court has to handle this outside the presence
21 of the jury under our case law.

22 MR. WOODBURY: I believe that's correct.

23 THE COURT: Right, Mr. Mills? It is
24 imperative --

25 MR. MILLS: I agree.

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1 THE COURT: It's imperative that I deal with
2 this. I wanted to have counsel ready to go if he wants
3 counsel. My intent was to bring Mr. Palmer in -- he is
4 incarcerated then, I guess?
5 MR. WOODBURY: He is not.
6 THE COURT: He's not?
7 MR. MILLS: He is not.
8 THE COURT: Is he here?
9 MR. WOODBURY: He is not here. He came
10 yesterday, as I indicated to the judge. He also called my
11 office today and left a message wondering whether he would
12 get paid.
13 So I assume that it -- he has theoretically
14 misinterpreted the subpoena, and that once he is here, he
15 does not get excused until he gets excused.
16 In any event, we are not going to call him
17 because I believe that he would invoke.
18 THE COURT: Okay. Well, my law clerk had assumed
19 that a person who is here in belly chains was Mr. Palmer.
20 MR. MILLS: I believe that was Mr. Brannon.
21 THE COURT: Okay. All right. We don't know who
22 these people are. We thought it was Mr. Palmer.
23 Well, if Mr. Palmer shows up, and you still wish
24 to call him, I have counsel available to give advice on his
25 rights.

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1 As I said at the last hearing, my concern is -- I
2 checked this over the lunch hour. He is charged in Case
3 16-CR 526, I guess it is, in the Elko Justice Court.
4 Darrell Keith Palmer is charged in a complaint
5 filed May 18 this year. He has got a first appearance
6 coming up on July 11, I believe. Yeah. He is O.R.'d.
7 signed this thing saying he will show up July 11, 2016, at
8 8:15 for a first appearance.
9 He is charged there with Counts 1 and 2, sale of
10 a controlled substance, a Category B felony; Count 3,
11 possession of a controlled substance for the purpose of
12 sale, a Category D felony; Count 4, possession of a
13 controlled substance, a Category E felony; Count 5,
14 conspiracy to violate the Uniform Controlled Substances
15 Act, a Category C felony; Count 6, sale of a controlled
16 substance, again a Category B felony; Count 7, possession
17 of a controlled substance for the purpose of sale, again a
18 Category D felony; and Count 8, possession of a controlled
19 substance, a Category E felony.
20 I guess there is some alternative charge in this
21 but this is a bunch of charges. He is alleged to have sold
22 methamphetamine, heroin, conspired with David Thompson to
23 violate the Uniform Controlled Substances Act.
24 So it looks like a methamphetamine and heroin
25 case.

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1 My understanding is the defense, they intended at
2 first to call him to testify that back in November or in
3 the fall of 2015, he was buying controlled substances from
4 Denise Minter.
5 And I think I would be duty bound, if he does
6 show up, to bring him in here, tell him, "you know, you are
7 charged down there with this, it could be that any answer
8 you give could incriminate you, I am appointing counsel if
9 you want counsel to advise you on this issue."
10 And if he wanted counsel -- and I have a form
11 ready for him to fill out, an application for appointment
12 of attorney, I think he is indigent qualified, I would
13 appoint counsel for him.
14 What I did was I -- for the record, I had my law
15 clerk contact the Cavanaugh-Bill Law Office -- well, we
16 started with Lockie & Macfarlan, they are on a fishing
17 trip, I think. They always take it in June.
18 We contacted Diana Hillewaert, she's gone. We
19 contacted Michael Shurtz, he is gone.
20 We contacted Julie Cavanaugh-Bill, she is gone;
21 but her new associate is Ashley Biehl.
22 That is who called you, Mr. Woodbury?
23 MR. WOODBURY: Yes.
24 THE COURT: We actually met her, Judge Porter and
25 I, when we interviewed her as a law clerk. She wasn't

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1 successful. We liked her. But she ended up sticking
2 around. She was a paralegal for that firm. Ultimately she
3 passed the February bar and she is a new lawyer.
4 Anyway, I instructed my law clerk just to say we
5 need you in court, here's what for, I heard him say it.
6 Then we -- she said, "Yes, I can be there after a meeting
7 with Division of Child and Family Services people."
8 She is out there now is my understanding?
9 Kepa says yes. My law clerk says yes.
10 But apparently Mr. Palmer is not here.
11 And what I told her was to -- I told Kepa to tell
12 her to contact Mr. Woodbury and Mr. Mills and they can fill
13 you in on what is going on in this case.
14 I don't know if she talked to you, Mr. Mills?
15 MR. MILLS: Your Honor, for the record, she did
16 contact me and I provided her with a copy of the complaint
17 as well as a copy of the police report that has the
18 discovery that implicates Darrell Palmer in some controlled
19 substances activity with Denise Minter.
20 THE COURT: I asked my law clerk to copy the
21 file -- I think he did -- that file in Justice Court. And
22 then I think he has now provided a declaration of
23 probable -- copy of declaration of probable cause, the copy
24 of the complaint as well, and then the release sheet of Mr.
25 Palmer.

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1 Has that been provided to Ms. Bieh?

2 THE LAW CLERK: Yes.

3 THE COURT: Thank you, Kepa.

4 THE LAW CLERK: Judge, she also informed me that

5 she -- the D.A.'s office was going to be sending her some

6 documents, but she did not receive them yet.

7 I am not sure if she has those, Mr. Mills.

8 THE COURT: At any rate, if Mr. Palmer is here, I

9 am more than willing, if you just tell me he is here, and

10 the defense wants to call him, you know, we'll deal with it

11 outside the presence of the jury.

12 If the defendant wants to go on with his trial

13 without calling Mr. Palmer, that's up to the defense.

14 MR. WOODBURY: I am informed he is not out there,

15 Your Honor.

16 THE COURT: Did you want to proceed without him?

17 I mean, if he is disobeying a subpoena, I can get him back

18 in here.

19 MR. WOODBURY: No, we'll proceed with Ms. Minter.

20 MR. MILLS: Your Honor, I don't want to

21 overcomplicate things, but there are a couple of matters

22 related to Ms. Minter's testimony I would like to take up

23 with the Court before bringing her in here for this offer

24 of proof hearing.

25 THE COURT: Go ahead.

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1 She gave a statement to him.

2 After she gave those statements concerning the

3 events in this case, she was offered a deferred

4 prosecution.

5 The timing is important under this hearsay

6 statute that I am getting around to talking about.

7 So after she made those statements, this bias

8 arose, this motive to fabricate or shade her testimony in

9 favor of the State arose.

10 So if evidence of that is put in front of the

11 jury, then the State under NRS 51.035 would be able to

12 present her prior consistent statements that she gave at

13 the time of the incident.

14 The declarant -- so a statement is not hearsay if

15 the declarant testifies at trial or hearing, is subject to

16 cross-examination concerning the statement, and the

17 statement is consistent with the declarant's testimony and

18 offered to rebut an express or implied charge against the

19 declarant of recent fabrication or improper influence or

20 motive.

21 And the case law talks about how that improper

22 influence or motive or -- the motive to fabricate or the

23 bias or whatever has to have arisen after the initial

24 statements were made.

25 So this is a classic application of prior

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1 MR. MILLS: So if -- if this evidence is

2 presented to the jury -- and I'm not sure at this point

3 whether it's going to be or not, but I am just thinking

4 through hypotheticals and what my response and my rebuttal

5 case might be.

6 In the event that the evidence is put in front of

7 the jury that she was prosecuted for trespassing, was given

8 a deferred prosecution, and that her case was dismissed

9 pursuant to that deferred prosecution this week, just

10 coincidentally the same week as he happens to be in trial

11 in this case, if that evidence is presented to the jury and

12 the clear purpose for presenting that to the jury by the

13 defense, or eliciting that, is to create a suggestion of

14 bias or as a hearsay statute -- and this is where I'm going

15 with this -- an express or implied charge of recent

16 fabrication or improper influence or motive.

17 So the consequence --

18 THE COURT: How would that be hearsay as far

19 as --

20 MR. MILLS: I'll tell you where I'm going with

21 this. So at the time of the attempted murder incident that

22 we're in court on, she was interviewed at least twice. She

23 was interviewed by Officer Catalano at the time. She gave

24 a statement.

25 She was interviewed later by Detective Nielson.

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1 consistent statement is what I am getting at.

2 And I just wanted defense counsel to be aware

3 that if this information is presented to the jury, I intend

4 on calling Officer Catalano --

5 THE COURT: That's if I allow that.

6 MR. MILLS: What was that?

7 THE COURT: I said, that's if I allow it, believe

8 that your analysis is correct.

9 MR. MILLS: Okay. That's what I intend to do.

10 The Court can rule on it.

11 But it's my -- this seems pretty clear. This is

12 the classic application of prior consistent statement.

13 Because I have got to be able to argue to the

14 jury, hey, they are suggesting that she is shading her

15 testimony because of these benefits that were not even

16 given.

17 But it will be argued that she received a

18 benefit. It's going to be argued that she's shading her

19 testimony because of that.

20 That's the whole purpose of the statute is the

21 State coming back and saying, hey, look, she was consistent

22 all along. She told the same story the night of, before

23 she was offered the deferred prosecution.

24 THE COURT: All right.

25 MR. MILLS: Anyway, I just want the defense

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1 attorney to be aware that if the Court agrees with my
2 analysis, I will be putting Officer Catalano back on,
3 basically have him read verbatim the statement she gave
4 him.

5 Anyway, that's one issue.

6 There was a second one. I don't know if you want
7 to take that up, or if you want to think about this one for
8 a second

9 THE COURT: What is the second issue?

10 MR. MILLS: Okay. The second one is I have been
11 informed by Mr. Woodbury that he intends to ask Denise
12 Minter about -- let me back up a little bit.

13 So the other case that happened in November
14 involving Christina Hodges involved the search for Mr.
15 Dean.

16 And it was during the course of that search that
17 they ended up with that cell phone that had the
18 communications with Mr. Palmer and all that kind of
19 information that we've already kind of been talking about.

20 But during that -- during the course of that
21 search for Mr. Dean, they went to the Minters' residence,
22 Denise Minter's residence, where at that time she had been
23 residing with the defendant.

24 They searched that --

25 THE COURT: When was that?

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1 MR. MILLS: This was sometime in May, a day or
2 two after the incident with Christina Hodges. I can't
3 remember the exact date. I think it was -- November 12 was
4 the incident with Hodges, I think, so it would have been
5 like the 13th or 14th.

6 So they -- they went to Denise Minter's
7 residence, knowing that Sean Dean was her boyfriend,
8 saying, Hey, do you know where he is? We're looking for
9 him. Can we search your residence?

10 They searched her residence. And this wasn't in
11 the police report, and I just barely found out about this
12 at nine o'clock last night from Officer Morrell, from
13 talking to him and with the possibility of having him
14 testify potentially in this case.

15 And he informed me that when they searched that
16 residence looking for Mr. Dean they found a really small
17 quantity of methamphetamine in Denise Minter's residence.

18 So I communicated that to Mr. Woodbury. I am not
19 sure exactly what the relevance of that would be. But
20 erring on the side of caution, I communicated that to him.
21 And he has informed me that he -- there is a possibility he
22 may be asking Denise about possessing methamphetamine in
23 this offer of proof we're going to do.

24 So that now raises another potentially
25 incriminating situation where she is concerned about

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1 incriminating herself by admitting to possessing
2 methamphetamine.

3 So I am not quite -- I mean, this is new ground
4 for me. I am not sure how to handle this and I wanted to
5 bring it to the Court's attention. She is going to be
6 concerned about criminal liability in answering.

7 THE COURT: We got a lawyer out there who can
8 represent her, right?

9 MR. MILLS: I am open to suggestions. Could the
10 same counsel, I guess, represent two different witnesses?
11 I don't -- off the top of my head -- again, this is new
12 ground for me. I have to think through these issues.

13 THE COURT: I don't see why not. Their interests
14 are not adverse.

15 MR. MILLS: Then that could work. I know Ms.
16 Minter is concerned about that, about incriminating
17 herself.

18 THE COURT: You just learned about this last
19 night?

20 MR. MILLS: Last night at nine o'clock.

21 THE COURT: That's why I don't like 4-day trials.
22 Well, interesting.

23 So if Palmer does not testify, it's going to be
24 probably Mr. Dean. It's going to be, if the defense has
25 its way, Denise Minter. I guess Mr. Minter. Jeremy

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1 Shelley. Anybody else?

2 MR. WOODBURY: Mr. Brannon.

3 THE COURT: Brannon. But Brannon does not have
4 anything to do with this drug issue. What's Brannon got to
5 do with the dang thing? Do you know?

6 MR. MILLS: I have got an idea because
7 Mr. Woodbury has told me.

8 THE COURT: Okay.

9 MR. WOODBURY: Mr. Brannon was present for a
10 telephone conversation between Mr. Dean and someone on the
11 phone on the -- at eight o'clock on December 8. And after
12 that, Mr. Dean told him he was going up to see his
13 girlfriend.

14 THE COURT: Corroborating Mr. Dean's version of
15 events that way.

16 MR. WOODBURY: Yes.

17 THE COURT: At least we can get him in here and
18 out today.

19 What about Shelley?

20 MR. WOODBURY: I have got him by cell phone when
21 I want him.

22 THE COURT: Okay. What is he going to testify
23 to?

24 MR. WOODBURY: Officer Shelley will testify that
25 there came a time when the division of narcotics and the

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1 Elko Police Department were busy watching the residence of
2 Ms. Minter looking for Mr. Dean. And as a consequence of
3 that, that raised consciousness of the Elko Police
4 Department about Ms. Minter's potential role in stuff.

5 THE COURT: Well, of course, if that evidence
6 comes in, then the Court has to, I guess, consider whether
7 the testimony of Mr. Minter -- I guess you would -- your
8 desire to cross -- is effectively cross-examine -- I know
9 you are calling this direct, but effectively cross-examine
10 Mr. Minter about this trip where he took his drug-addled
11 girlfriend over there, brought her back high?

12 MR. WOODBURY: Yes.

13 THE COURT: Well, I think -- I hate it when
14 judges say, "well, let's see how it goes," I generally
15 don't like that very much.

16 But, you know, it seems to me that if Brannon --
17 if we can get him done today, that's right in line with his
18 theory of the case, the State is probably not objecting to
19 Brannon anyway.

20 MR. MILLS: No, Your Honor.

21 THE COURT: Shelley, I think, is also in line
22 with the defendant's theory of the case.

23 And the Court, assuming there is, I guess, some
24 statement from -- Palmer is not going to be called if he
25 doesn't show up. If he does show up, maybe he doesn't

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1 brought in and you can advise us on the record what this is
2 about.

3 MR. MILLS: What is about?

4 THE COURT: This thing with Morrell you just
5 learned about.

6 MR. MILLS: Okay. Didn't I just explain that on
7 the record? Do you want me to --

8 THE COURT: With Ashley Biehl.

9 MR. MILLS: The attorney. I got you.

10 THE COURT: Both of them. Might as well bring
11 that Ms. Minter in, too, Mr. Bailiff.

12 THE BAILIFF: Who do you want?

13 THE COURT: Both. Minter and Biehl.

14 Ms. Minter, have a seat in the back. All right.

15 Ms. Biehl, thank you for coming in.

16 MS. BIEHL: Absolutely, Your Honor.

17 THE COURT: All right. I have made a record
18 earlier and told the lawyers up here how it came to be that
19 you got brought over here or called over here.

20 Anyway, I am not going to go through what is
21 going on with some of this stuff, but wanted to ask Mr.
22 Mills about an issue we have got with a witness and her
23 Fifth Amendment -- and a Fifth Amendment issue regarding
24 her privilege against self-incrimination.

25 Mr. Mills, what do we got going on?

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1 testify anyway.

2 So I am assuming -- I don't want to ever tell
3 anybody how to run your case, but I guess I would feel --
4 essentially wouldn't the table have to be set by somebody,
5 I guess Mr. Dean, to --

6 MR. WOODBURY: Could be.

7 THE COURT: -- suggest that there -- that she was
8 doing that before Shelley comes in and testifies.

9 MR. WOODBURY: Could be set that way, yes.

10 THE COURT: All right. I think we can do that
11 much.

12 And then as far as Ms. Minter is concerned, we
13 can have her fill out an application for appointment of
14 counsel on this.

15 Because it sounds like you've broached this
16 subject with her, right?

17 MR. MILLS: I gave her a heads-up of what some of
18 the possible topics were that could -- you know, based on
19 my conversation with Mr. Woodbury it became clear to me
20 that he might raise that issue with her.

21 I did give her a heads-up of what the possible
22 topics could be as far as the trespassing case, how that
23 was adjudicated, then this issue with the methamphetamine.
24 She did some concern to me about incriminating herself.

25 THE COURT: All right. Why don't we have her

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1 MR. MILLS: Your Honor and Ms. Biehl, I guess
2 this is for you, for your information as to why we're here
3 and what we're doing, why you are here, what your role in
4 this is.

5 The defendant in this trial is about to present
6 its case in chief. One of those witnesses might be a
7 witness by the name of Denise Minter, who is sitting right
8 here.

9 One of the topics that potentially could come up
10 in defense counsel's questioning of Ms. Minter concerns a
11 search that was conducted at Ms. Minter's residence back
12 on -- on or about November 13, 2015.

13 Have you seen the police report on this yet?

14 MS. BIEHL: I had a one-page report from the
15 sheriff's office. I don't believe it was that.

16 MR. MILLS: My office was faxing that over to
17 you.

18 MS. BIEHL: I didn't receive it by the time I
19 came here.

20 THE COURT: If you have a copy and Ms. Biehl ends
21 up representing Ms. Minter, we can provide -- get a copy
22 for her right away.

23 Anyway, fill her in.

24 MR. MILLS: So anyway, in that report, it talks
25 about how on November 12 and 13 the Elko City Police

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1 Department were looking for Mr. Sean Dean who was at that
2 time in a dating relationship with Ms. Minter.
3 They were -- had been residing together at 764
4 South Fifth Street, apartment number 12 -- or trailer
5 number 12.

6 At one point in time the officers show up to that
7 trailer to speak to Ms. Minter about the whereabouts of Mr.
8 Dean.

9 And in the course of that contact with her, they
10 ended up searching the trailer.

11 This was not in the police report, but in talking
12 to one of the officers involved in that case last night, I
13 learned from him that they had found a small quantity of a
14 controlled substance, I believe he told me it was
15 methamphetamine, in the trailer that was being occupied at
16 that time by Denise Minter and Sean Dean.

17 And it's my understanding that it's possible that
18 defense counsel may intend to ask Ms. Minter about that
19 methamphetamine during the course of this jury trial that
20 we're in.

21 Obviously, questions regarding the possession or
22 any other questions regarding what she was doing with
23 methamphetamine could potentially be criminally
24 incriminating.

25 Which is why we're having this hearing. The

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1 okay.

2 Fill this out. If you are qualified, I will
3 appoint counsel to represent you, okay.

4 MS. DENISE MINTER: Okay.

5 THE COURT: In the meantime, I guess we can go
6 forward with the rest of this, have other witnesses called.
7 All right.

8 MS. DENISE MINTER: Go ahead and fill this out?

9 THE COURT: Yeah. We'll get you access to that
10 other jury room, okay, so you have got some privacy with --
11 if this lawyer is appointed to represent you.

12 MS. DENISE MINTER: Okay.

13 THE COURT: Okay. But you got to stick around
14 the courthouse now for the rest of the day. That's the
15 order of the Court. I don't want you leaving.

16 MS. DENISE MINTER: Okay.

17 THE COURT: What about the rest of this,
18 Mr. Woodbury?

19 I mean, the State's now saying "we get to put in
20 prior consistent statements."

21 What is your view on that? If I let the
22 testimony about the deferred prosecution come in.

23 MR. WOODBURY: Believe me, if it happens, Judge,
24 I would like to see those prior consistent statements come
25 in.

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1 Court is contemplating appointing counsel to represent her,
2 to advise her along those lines as far as answering those
3 kinds of questions.

4 Does that explain what is going on, Your Honor?

5 THE COURT: I think it does.

6 All right. Anyway, Ms. Minter was here for this
7 as well.

8 Ms. Minter, did you -- they are going to be
9 questions, I guess, about you being involved in the
10 methamphetamine or other drug trade.

11 So did you want to have counsel appointed to
12 represent you, to advise you on your Fifth Amendment right
13 to not incriminate yourself?

14 MS. DENISE MINTER: Yes.

15 THE COURT: Okay. I have an application for
16 appointment of attorney up here. If you are indigent, that
17 you don't have any money basically, no assets to hire your
18 own counsel, I can appoint counsel to represent you.

19 MS. DENISE MINTER: Yes.

20 THE COURT: I would have you fill this out. I
21 will have my law clerk come up and give this to you.

22 You know what, at this point I'm going to order
23 you to stick around the courthouse. I'm going to order
24 that Judge Porter's jury room be made available to Ms.
25 Biehl and Ms. Minter so they can talk about this stuff,

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1 THE COURT: Well, here is my ruling on that.

2 Yeah, I recognize this wasn't a deal for testimony, at
3 least it appears to be the case.

4 If Mr. Lowe comes in here and says that wasn't
5 the case, then that -- if he came in here right now and
6 testified under oath, said that the Court made that
7 finding, seems like the defense doesn't disagree with that
8 proposition.

9 I think the argument still is, this colors her
10 testimony, she has been given favorable treatment by the
11 State, and we ought to be able to cross-examine about that,
12 Judge, that she feels some gratitude to the State for that.

13 I think its probative value would not be
14 outweighed by the danger of unfair prejudice. I think it
15 goes to the issue of bias, the state of mind of that
16 witness testifying. And I would permit that part of it to
17 come in, that testimony about what -- the disposition of
18 that case.

19 But I don't know how far you want to get into it.

20 Did you want to get into what she is alleged to
21 have done?

22 Maybe this is something else we should tell her
23 counsel here about, too, if Ms. Biehl is appointed to
24 represent her.

25 Because I don't know exactly what criminal

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1 liability she is facing now that this deferred prosecution
2 happened.

3 Is your understanding that the whole thing is
4 done, it's over? She couldn't be prosecuted for battery
5 with a deadly weapon, principal to battery with a deadly
6 weapon? Any more serious stuff? Is it all over? I don't
7 know.

8 MR. MILLS: That's a very good question, Your
9 Honor. It hadn't occurred to me to ask Mr. Lowe if as part
10 of his plea agreement he had communicated to Ms. Minter and
11 her attorney that the State would file no further charges
12 arising out of the facts of this case.

13 I was under the impression that that case was
14 done, it was dismissed this week pursuant to that deferred
15 prosecution agreement, and it was done and wouldn't --
16 double jeopardy would prevent any kind of Fifth Amendment
17 issue with regards to the trespassing charge.

18 But that's a fair point about the battery with a
19 deadly.

20 The typical arrangement is to just resolve all
21 criminal liability arising out of the facts of a particular
22 incident.

23 THE COURT: Right.

24 MR. MILLS: But I don't know that for sure
25 without speaking to Mr. Lowe. I am sure I could clear it

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1 was doing that and that was part of her justification,
2 which from the defense perspective this entire thing is,
3 quote, a set-up, that's what we have said.

4 We originally started out and wrote in a motion
5 about how Syddall -- I'm probably not pronouncing that
6 right -- one of the things Mr. Minter was doing was that he
7 was using the dope, too, for Ms. Syddall, to keep her
8 around as a mistress.

9 That provided, we thought, in the motion when I
10 wrote it, that Mr. and Mrs. Minter would be hard pressed to
11 deny that Sean Dean was in the way that way.

12 That's one part of the motion.

13 That's all I really wanted to do.

14 I guess that what I wanted to do originally was
15 think about putting Mr. Dean on the stand to say that Ms.
16 Minter sold dope. And that at least part of the problem
17 she expressed in the -- what do you call it -- the text
18 messages, where she had these humongous problems, part of
19 it was that.

20 That, in fact, Palmer would testify that on
21 November 12, when they -- when the cops were looking for
22 Mr. Dean, they stuck a cop on the hill up there watching
23 her house, and she got Mr. Palmer to rent her a room down
24 there at the Red Lion so she could actually sell her dope
25 that night without the cops seeing her. She left home.

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1 up within a matter of minutes.

2 THE COURT: Who was her lawyer in that case?

3 MR. MILLS: I believe it was Brian Green.

4 THE COURT: Of course, contract principles govern
5 what is encompassed within that agreement as well. We all
6 know typically what is involved in those agreements, yeah,
7 that case is over, we are not going to charge in connection
8 with anything in this case.

9 Which to me would -- well, I don't know how far
10 the defense wanted to get into that part. Just that there
11 was a prosecution, she was trespassing, and she was given a
12 deferred? I mean, what --

13 MR. WOODBURY: As I understood what I wrote, what
14 I intended to write, there were two separate things I was
15 trying to communicate to the Court, I guess.

16 One of the things was that Denise Minter sells
17 dope. And that the problem that Mr. Dean created was that
18 the cops were looking too closely at her house, and she
19 couldn't do that, she got jammed up with her supplier out
20 there in Ryndon.

21 One of the things I assume would happen is that
22 somewhere, somehow, a cop would have that communicated to
23 him, that this is really going on here and you really ought
24 to look a little closer at Ms. Minter, and that if they did
25 that, they would find the evidence that suggested that she

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1 That was part of that motion.

2 The other part was, what I kind of did not get
3 indicated to you this morning -- and I tell you that --
4 that the Morrell story doesn't strike me at all weird.

5 They are perpetually doing that without -- I
6 realize -- and I don't mean to insult Mr. Mills -- they do
7 not live in isolation in the Elko County District
8 Attorney's office.

9 They are the State of Nevada, as are the Elko
10 Police Department, as is NDI.

11 They go in her house, they find methamphetamine,
12 and the consequences are endless as to what that means.

13 They are an inch away from charging her with
14 possession of a controlled substance any time they choose
15 to.

16 As I told you before, in 1997, Ms. Minter was
17 convicted in California of sale of a controlled substance;
18 she ultimately had her probation revoked

19 They have got her by the short hairs any time
20 they want her.

21 Now, I don't know whether Mark Mills knows that,
22 or Josh Morrell knows that, but it's true. And she knows
23 it.

24 And when they -- when they make these little
25 two-bit deals -- I mean, that -- that November 15 or 14 or

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1 13 find of methamphetamine in her house is good for three
2 years to hold over her head.

3 That's all right as long as she is not a witness.

4 But they, the State of Nevada, have got to
5 resolve it.

6 I don't want to question her about that. At
7 least I wanted to have -- in front of the jury. I don't
8 care about that.

9 All I care about is, in the end of the motion I
10 said, give us an instruction that said, the State has
11 provided benefits to both Mr. Minter and Mrs. Minter and
12 you should find them less credible. Or I -- and I danced
13 around the word a little bit, I wanted to prepare the Court
14 for the jury instruction that said these folks aren't as
15 credible as other witnesses.

16 So that was those two things that I was looking
17 to do.

18 THE COURT: How does the defense intend to
19 establish that the cops were -- that Mr. Dean presented a
20 problem in the minds of the Minters? His presence around
21 there?

22 MR. WOODBURY: That is part of what we had
23 conversations between Mr. Dean and I.

24 THE COURT: Okay.

25 MR. WOODBURY: All right. The --

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1 THE COURT: Okay. All right.

2 When would the intent be to call Brannon? What
3 else can we do?

4 MR. WOODBURY: Call Brannon, call Mr. Dean.

5 THE COURT: All right. Let's get them in here.

6 Do you need a break before we do that?

7 DEFENDANT DEAN: Yes.

8 THE COURT: Your client needs a bathroom break.

9 That's the way I understood it. Is that right, Mr. Dean?

10 DEFENDANT DEAN: Yes, sir.

11 THE COURT: I need one, too. We'll go on --
12 we'll take a 10-minute recess.

13 (WHEREUPON, a short recess was taken)

14 THE COURT: All right. We'll be back on the
15 record for Case CR-FP-2015-1508.

16 Again, State versus Dean.

17 Mr. Dean is back in court with counsel Gary
18 Woodbury.

19 We have Deputy District Attorney Mark Mills to
20 represent the State.

21 Will counsel stipulate to the presence of the
22 jury and the alternates?

23 MR. WOODBURY: So stipulated.

24 MR. MILLS: Yes, Your Honor.

25 THE COURT: All right. Then we can continue on

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1 THE COURT: All right. Well, okay. Mr. Brannon
2 can come in and testify.

3 I guess Mr. Dean is going to testify. That's his
4 decision ultimately. Whether he changes his mind, as we
5 covered, is up to him. He understands all that.

6 Shelley will then testify.

7 And we'll continue on, see what defense wants to
8 question Ms. Minter about in an offer of proof, you know,
9 and then I can make a determination about that, what the
10 jury gets to hear.

11 If Palmer shows up, we deal with that.

12 And hopefully we finish up, get this case in a
13 position where we can get it argued and the jury instructed
14 on Monday.

15 Okay. Well, we got Shelley ready, got Brannon
16 ready.

17 MR. WOODBURY: We have Brannon.

18 THE COURT: Do you want to call Mr. Shelley up?

19 MR. WOODBURY: We would call Mr. Brannon.

20 THE COURT: Did you want to call Shelley to be
21 available to come in?

22 MR. WOODBURY: I'm going to have to wait for a
23 few minutes on that. That makes it very -- there is no
24 sense in putting Shelley on if we are not going to get the
25 rest of it on.

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1 with the case.

2 The State's rested its case?

3 MR. MILLS: That's correct, Your Honor.

4 THE COURT: We go over to the defense.

5 Mr. Woodbury.

6 MR. WOODBURY: Call Carl Brannon, please.

7 THE COURT: Carl Brannon.

8 All right. Mr. Brannon, come on up here. Why
9 don't we have you take him up to the stand. Jim will help
10 you out here a little bit. Watch your step, sir.

11 Please raise your right hand as best you can
12 there.

13 (WHEREUPON, the witness was sworn)

14 THE COURT: Mr. Woodbury.

15 MR. WOODBURY: Thank you, Your Honor.

16 CARL WAYNE BRANNON

17 called as a witness in said case, having been first
18 duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WOODBURY:

21 Q. Would you please state your name?

22 A. Carl Wayne Brannon.

23 Q. Spell -- what is the middle name?

24 A. Wayne?

25 Q. Wayne.

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1 A. Wayne.
2 Q. Better spell all three names.
3 A. C-a-r-l, W-a-y-n-e, B-r-a-n-n-o-n.
4 Q. Are you presently incarcerated, Mr. Brannon?
5 A. Yes, sir.
6 Q. Where at?
7 A. Stewart Conservation Camp.
8 Q. Have you ever been convicted of a felony in
9 the last ten years?
10 A. Yes, sir.
11 Q. Do you know this guy that's sitting to my
12 immediate left?
13 A. Yes.
14 Q. How do you know him?
15 A. Through a friend.
16 Q. Okay. And when did you meet him?
17 A. I met him years ago once, and then recently,
18 for the second time, a couple -- you know, four or five or
19 six months, something like that.
20 Q. What's his name, as far as you know?
21 A. I knew him as S.D. Apparently his name is
22 Sean Dean.
23 Q. You know him as S.D?
24 A. Correct.
25 Q. All right. Did you reside in Elko on December

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1 8, 2015?
2 A. Yes, sir.
3 Q. And did you see Mr. Dean on that day, December
4 8, 2015?
5 A. Yes, sir.
6 Q. Where did you see him at?
7 A. Over at a friend's house.
8 Q. Okay. And who is the friend?
9 A. Clarence Thompson.
10 Q. All right. And did someone live with Mr.
11 Thompson over there?
12 A. I later, you know, became aware that S.D. was
13 staying with him. Sean Dean was staying with him.
14 Q. Did Mr. Thompson also have a lady friend?
15 A. Yes, his girlfriend, I believe.
16 Q. Excuse me?
17 A. His girlfriend?
18 Q. Yes.
19 A. Yes.
20 Q. What was her name?
21 A. I know her as Mocha.
22 Q. Mocha?
23 A. Mocha.
24 Q. M-o-c --
25 A. H-a.

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1 Q. All right. At approximately eight o'clock in
2 the evening, a little before eight o'clock in the evening
3 of December 8, were you at Mr. Thompson's residence?
4 A. Yes, sir.
5 Q. And who was there with you?
6 A. Sean Dean, Clarence, and his girlfriend.
7 Q. Did there come a time when Clarence and his
8 girlfriend left you?
9 A. Yes.
10 Q. All right. What were you doing at the
11 residence?
12 A. I just came over to visit, and they were going
13 to go pizza or something. I can't remember exactly what it
14 was.
15 Q. And did you and Mr. Dean engage in
16 conversation?
17 A. Yeah, you know, he was on the phone most of
18 the time, though.
19 Q. He was on the phone texting or talking?
20 A. Talking, I believe.
21 Q. Okay. And did there come a time when you left
22 the residence with Mr. Dean?
23 A. Yes, sir.
24 Q. And where did you go?
25 A. Across the street.

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1 Q. And across what street, if you know?
2 A. Fifth Street.
3 Q. And after you crossed Fifth Street, where did
4 you go?
5 A. To a trailer that I was unaware of whose
6 trailer it was.
7 Q. When you got there, did you stay there?
8 A. I didn't, no.
9 Q. Why not?
10 A. It was brought up that maybe she wouldn't
11 appreciate him bringing somebody over, or something to the
12 effect of that. So I turned around, went back across the
13 street.
14 Q. Okay. And was that particular visit -- I
15 guess I want to make sure that I understand. It was you
16 and Mr. Dean that walked across Fifth Street from
17 Clarence's house?
18 A. Yes. He wasn't -- he didn't like the idea, I
19 guess, of me staying in the house by myself or something,
20 you know what I mean. So he asked me to come along.
21 Q. And was that visit preceded by a telephone
22 call?
23 A. I believe. He was on the phone, you know,
24 most of the time that I was there, I believe, as far as I
25 remember.

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1 Q. All right. And with the same person or
2 another person?
3 A. I am assuming so.
4 Q. All right. But you don't know?
5 A. I do not know exactly who he was speaking to.
6 Q. Okay. When you left to go across the street,
7 was there a conversation between you and Mr. Dean?
8 A. No, not that I was aware of. He just simply
9 went across the street.
10 Q. He didn't tell you where he was going?
11 A. He said that he was -- that he was going to go
12 to his girlfriend's house.
13 Q. Okay.
14 A. That's where he had mentioned the house prior
15 to us leaving.
16 MR. WOODBURY: Thank you. I have no further
17 questions.
18 THE COURT: Cross-examination.
19 CROSS-EXAMINATION
20 BY MR. MILLS:
21 Q. Good afternoon, Mr. Brannon.
22 A. Good afternoon.
23 Q. So you indicated that you know the defendant
24 through a friend; is that correct?
25 A. Correct.

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1 Q. Is that friend Clarence Thompson?
2 A. Yes.
3 Q. How long have you known Clarence Thompson?
4 A. I have known Clarence for a while, probably
5 between six and eight years, maybe around that time, amount
6 of time.
7 Q. Are you from around here, from Elko?
8 A. Yeah, I have been here since 2005.
9 Q. Do you know if Mr. Thompson is a -- and the
10 defendant are friends?
11 A. I always heard that they were related, but I'm
12 assuming they are not. Their last names aren't the same.
13 So, you know, they were friends as far as I knew.
14 Q. I'm sorry?
15 A. They were friends as far as I know.
16 Q. So on December 8, Sean Dean was living with
17 Clarence Thompson?
18 A. I am assuming. Honestly, I don't know what he
19 -- I didn't see his bags around, you know what I mean. I
20 rarely even see -- I don't know Sean that well, and I
21 didn't know the situation, their living situation.
22 Q. What led to the assumption that he was living
23 there?
24 A. The day afterwards, Clarence was talking to me
25 about him staying with him.

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1 Q. You indicated you met the defendant several
2 years ago; is that correct?
3 A. Correct.
4 Q. And did you develop any kind of relationship
5 with him?
6 A. No, sir.
7 Q. Hung out with him?
8 A. No, sir.
9 Q. Became friends?
10 A. No, sir.
11 Q. Nothing like that?
12 A. No, sir.
13 Q. Then several years passed and then you became
14 reacquainted with him more recently?
15 A. I literally bumped into him over at
16 Clarence's.
17 Q. What was that?
18 A. I literally just bumped into him. I hadn't
19 seen him in a long time, and he just happened to be there
20 when I came over.
21 Q. How many times did you bump into him over at
22 Clarence's?
23 A. That I believe was the only time that I
24 recall. You know, a few years anyway. So I -- I haven't
25 seen him since their brother was around -- or his brother,

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1 Clarence's brother was around.
2 Q. Who is Clarence's brother?
3 A. Laquan Thompson.
4 Q. So you bumped into Sean again on December 8 is
5 what it sounds like?
6 A. Correct.
7 Q. What time of day did you go over to the
8 Clarence Thompson's residence?
9 A. Evening. It was evening.
10 Q. About what time?
11 A. I'm assuming between six and eight, six at
12 night, something like that. It was dark, I know that.
13 Q. When you arrived there, who was there at
14 Clarence's place?
15 A. Clarence, his girlfriend, Sean. And I just
16 showed up. So us four.
17 Q. I believe you testified that Sean was on the
18 phone a lot; is that correct?
19 A. Correct.
20 Q. And this time frame we're talking about was, I
21 believe you said, around 6:00 or 6:30 or --
22 A. I don't know the exact time. I wasn't there
23 but maybe a total of 30 minutes. And the time that I was
24 there, he was on his phone.
25 Q. Okay. And what I was asking is, you testified

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1 that you got there around 6:00 or 6:30; is that correct?
2 A. No, sir. I got there between six and eight.
3 I am not quite sure exactly what time it was.
4 Q. Sometime between six and eight?
5 A. Yes.
6 Q. Then Sean left at about eight o'clock?
7 A. Yeah. I am assuming, yes. I wasn't looking
8 at -- I didn't know the exact time.
9 Q. Okay. So the time frame that you were there
10 was not more than a couple of hours. Would that be
11 accurate?
12 A. No, I wasn't even there that. I was there
13 maybe 30 minutes tops total through the whole --
14 Q. So 30 minutes tops?
15 A. Yeah, you know, 30.
16 Q. And Sean was talking on the phone?
17 A. I believe so.
18 Q. Do you have a specific recollection of him
19 talking on the phone?
20 A. No. I know he was on the phone, I don't know
21 who he was talking to or anything like that. I didn't
22 notice anything, you know, out of character. He was
23 talking normal. It wasn't no yelling, anything like that.
24 So, you know, I really wasn't paying attention honestly.
25 Q. So he was talking on the phone as opposed to

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1 when Clarence and Mocha arrived from -- coming back from
2 getting the pizza, or whatever they were getting.
3 It happened in, you know, like, 30, 45
4 seconds, and they were already back.
5 Q. You heard a noise. What noise did you hear?
6 A. I thought I heard someone screaming.
7 Q. A male or female?
8 A. Female.
9 Q. Do you remember what she was screaming?
10 A. No. I just heard a screaming, I went in the
11 house. I -- yeah.
12 Q. So you were in the house when Lindsey and
13 Clarence got back?
14 A. I just walked in their door, they were coming
15 up on the steps, correct.
16 Q. Did you ever see Sean again that night?
17 A. Few minutes after that he came in the door and
18 I was already leaving.
19 Q. He came in the door as you were leaving?
20 A. Yes, sir. I was getting ready to walk out.
21 Q. So you were still in the house when he came
22 in?
23 A. Correct.
24 Q. What was -- what was the defendant's condition
25 when you saw?

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1 texting?
2 A. He may have been doing both. Like I said, I
3 wasn't just focused on him, sir.
4 Q. And you can't recall any of the conversations
5 that he had with whoever he was talking to?
6 A. No, honestly, I wasn't listening in on it.
7 Q. You have no idea what the person on the other
8 end told him, if anything?
9 A. No, sir. None whatsoever.
10 Q. How far did you walk with the defendant before
11 you decided to -- that you weren't going to go all the way
12 to the trailer he was going to?
13 A. I walked all the way to the trailer, and then
14 that's when he mentioned to me that she might not
15 appreciate him bringing me over, or something to that
16 effect. So then I turned around and walked back across the
17 street.
18 Q. Where did you go?
19 A. From where we had just came, Clarence's.
20 Q. Okay. Did you go back inside Clarence's
21 trailer?
22 A. I sat on the stairs, sir.
23 Q. What happened then?
24 A. Then I had heard a noise. And after I heard
25 the noise, you know, I went into the trailer. And that's

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1 A. Honestly, I did not even look at him. I
2 was -- I figured -- I had a warrant at that time, I heard
3 sirens, and I was not trying to be around. I was trying to
4 get away from the sirens.
5 So I honestly didn't even look at Mr. Dean.
6 Q. Could you hear sirens at that point?
7 A. Yeah, I heard sirens.
8 Q. You had an understanding that something was
9 going on?
10 A. I had no clue what was going on. I heard
11 sirens and I was gone.
12 Q. Okay. So you took off at that point?
13 A. Yes.
14 Q. Where did you go?
15 A. Actually, I was -- as I was crossing the
16 street, there was cops already on the street and they seen
17 me and told me to get down and took a picture of me and
18 showed it to whoever and then released me.
19 Q. You testified on direct examination that there
20 was a phone call, that Sean was on the phone with somebody
21 right before you guys went over to that trailer. Is that
22 correct?
23 A. Yes. I am assuming, yes.
24 Q. Was Sean actually talking to somebody, or was
25 he dialing a number and just --

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1 A. I honestly --
2 Q. -- had the phone up to his ear?
3 A. I honestly can't remember. I wasn't paying
4 attention if he was talking or not. I know he had the
5 phone in his hand. Whether he was texting or whether he was
6 actually talking to somebody, I was not paying attention.
7 Q. Did you ever hear his phone ring or anything
8 like that around that time?
9 A. I am not sure. There might have been -- I
10 don't know if he was receiving texts for -- or if it was a
11 call or not, no.
12 MR. MILLS: Thank you, Mr. Brannon. That's all
13 the questions I have.
14 THE COURT: Any redirect?
15 MR. WOODBURY: No.
16 THE COURT: Any jury questions for Mr. Brannon?
17 It appears not.
18 May Mr. Brannon be excused?
19 MR. MILLS: He may for the State's purposes.
20 MR. WOODBURY: Yes.
21 THE COURT: He may. All right.
22 Mr. Brannon, watch your step there. Why don't we
23 have him helped out of here, Jim.
24 THE BAILIFF: Okay.
25 THE COURT: Okay. Next witness.

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1 A. March of 2012.
2 Q. Been convicted of a felony?
3 A. Yes.
4 Q. Mr. Dean, did you know the lady who testified
5 here who identified herself as Denise Minter?
6 A. Yes.
7 Q. How did you know her?
8 A. She was my girlfriend.
9 Q. How did you meet her?
10 A. She came up to the house one day and said hi,
11 and I said hi, and.
12 Q. What house would that be?
13 A. Clarence's.
14 Q. Okay. And Clarence is Clarence Thompson?
15 A. Yes, sir.
16 Q. Okay. About when was that?
17 A. Sometime late August, early September.
18 Q. Were you working at the time?
19 A. Yes, I was.
20 Q. Where?
21 A. I had a security job at G spot bar and slash
22 club in Elko on Commercial Street.
23 Q. What do you mean by security job?
24 A. I was a bouncer there.
25 Q. Was that your first job as a bouncer?

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1 MR. WOODBURY: Sean Dean.
2 THE COURT: All right.
3 (WHEREUPON, the witness was sworn)
4 THE COURT: Mr. Dean, again, watch your step
5 there.
6 Mr. Woodbury.
7 SEAN MAURICE DEAN
8 called as a witness in said case, having been first
9 duly sworn, testified as follows:
10 DIRECT EXAMINATION
11 BY MR. MILLS:
12 Q. State your name, please, and spell your last
13 name for the record?
14 A. Sean Maurice Dean, D-e-a-n.
15 Q. Are you the defendant in this case, Mr. Dean?
16 A. Yes, I am.
17 Q. How old are you?
18 A. Forty-nine.
19 Q. Where were you born and raised?
20 A. I was born in Oakland and I was raised in
21 Sacramento, California.
22 Q. Upper class neighborhood were you raised in?
23 A. No, I was born -- I was raised in a rough
24 neighborhood.
25 Q. When did you come to Elko?

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1 A. Yes, that was my first job.
2 Q. Excuse me?
3 A. Yes.
4 Q. You hadn't been a bouncer anywhere else?
5 A. Yes. Sacramento, California.
6 Q. When was that?
7 A. Between the years of 1989 and '95, when I made
8 the decision to move to Nevada.
9 Q. All right. And did you have another bouncer
10 job in Elko before the G spot?
11 A. Yes.
12 Q. Where was that?
13 A. At the Horseshoe Club before it closed, and my
14 most recent job at G spot.
15 THE COURT: Feel free to use the microphone.
16 Kind up pull it up to you there.
17 Mr. Woodbury.
18 Q. Mr. Dean, while you were being raised in
19 Sacramento, California, did you have -- did you have
20 friends or associates or people that you knew that got in
21 knife fights?
22 A. Yes.
23 Q. Did you ever get in one?
24 A. A few.
25 Q. All right. Were you the person with the

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1 knife?
2 A. No, sir. Knives been pulled on me.
3 Q. Excuse me?
4 A. They were pulled on me.
5 Q. Ah. Based on that kind of knowledge, did you
6 learn if you were going to hurt somebody real bad with a
7 knife, maybe kill them, how you would go about doing that?
8 A. From my experience, it's you trying to dig the
9 knife up in as far as you can go and you going to try to
10 rip something with it; going to pull, tug, going to do
11 something to cause some damage.
12 Q. We are going to have to do something about
13 your voice. We're having trouble hearing you.
14 A. I'm sorry.
15 Q. If you were trying to kill somebody with a
16 knife, what would be the right way to do that?
17 A. Try to puncture them and twist it and rip it,
18 just try to -- try to rip, try to rip something.
19 Q. Okay. Is that something you have ever done?
20 A. No, sir.
21 Q. How do you know that's how you are supposed to
22 do it?
23 A. That's how it has been done ever since I known
24 people that get into knife fights.
25 Q. Okay.

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1 A. Most effective way to hurt somebody.
2 Q. Did there come a time when you and Ms. Minter
3 did more than just say hi?
4 A. Yes.
5 Q. Tell the jury how that came to happen?
6 A. She came over -- she used to come over
7 periodically, not all the time, just every once in a while.
8 She had some free time, she would come over, spend some
9 time with me.
10 And we would sit on the couch and we would
11 talk, and talk about things that we had in common, music,
12 where we from, both from California, just things we had an
13 interest in.
14 Q. And did you ultimately -- where did she work,
15 do you know?
16 A. She worked at Sinclair. But at that time we
17 first met, I didn't know where she worked at.
18 Q. Did you ultimately work at Sinclair?
19 A. Yes.
20 Q. Did you get that job through Denise?
21 A. No. Actually Mocha mentioned to me -- I had
22 an appointment up at DMV and she mentioned to me -- she
23 drove me up there -- that Sinclair was hiring for a
24 maintenance guy.
25 And on the way up there, she stopped off and I

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1 got an application, proceeded to go to the DMV. Filled it
2 out while I was waiting at the DMV to call me in for my
3 business.
4 And when I returned back, I handed it in. Was
5 told I was going to be contacted.
6 Q. Okay. And so Mocha worked at Sinclair as
7 well?
8 A. Yes.
9 Q. Okay. And were Mocha and Lindsey -- Mocha is
10 Lindsey Steele, right?
11 A. Correct. Called Mocha.
12 Q. Lindsey Steele and Denise were friends?
13 A. Yes, they were friends.
14 Q. Okay. Did there come a time when the
15 relationship of you and Denise -- let me ask you this, did
16 you do any gambling with Denise?
17 A. Once I started working at Sinclair, we would
18 leave -- she would come pick me up and we would leave and
19 sometimes she would have free play. I had players cards at
20 various casinos around in Elko, we would go play our free
21 play, so yes.
22 Q. And did you know Bert Minter?
23 A. When me and Denise first met, no. I seen him
24 twice. When I started working at Sinclair, he came up
25 there twice.

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1 Q. Okay. And had you exchanged words with him?
2 A. No. I was a kind of quiet guy. So he came
3 in -- first time I saw him, I was walking around, picking
4 up trash, and I seen him coming out the store. And we kind
5 of looked at each other, gave each other a head hi,
6 (indicating) what's up, that's what that means, and he went
7 on about his business and left.
8 Second time I saw him --
9 Q. Let me stop you. What is a head hug?
10 A. Just looking at somebody, "hey, what's up,"
11 you know what I'm saying, just your head nods, just
12 acknowledging them.
13 Q. It's not hug. It's a nod?
14 A. It's a nod.
15 Q. You knew or did you know the former
16 relationship between Denise and Bert Minter?
17 A. No, that didn't occur to me until after the
18 second time I saw -- I saw Bert. Like I said, I was out
19 front washing windows, and he drove up and went into the
20 store, bought whatever he was going to buy. I can't
21 remember what he bought. Came out the store, went back to
22 his truck.
23 And a few seconds later, Denise came out the
24 store and went over to the truck. They chatted up for
25 about a minute or two. And I recall when I was washing

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1 windows, she said, "okay, Hon. I'll see you later," you
2 know. And I didn't know if anything -- what was up. She
3 went back in the store.

4 And when I got home, I asked Mocha who -- "who
5 was that?" She told me, "That was Bert, that's Denise's
6 ex-husband."

7 Q. Excuse me?

8 A. She informed me that was Bert, Denise's
9 ex-husband.

10 Q. Okay. So did there come a time when the
11 relationship -- your relationship with Denise became
12 romantic?

13 A. Yes.

14 Q. Do you remember about when that was?

15 A. October 7.

16 Q. What year?

17 A. 2015.

18 Q. And did there come a time when you moved in
19 with Denise?

20 A. Yes.

21 Q. When was that?

22 A. Shortly after. It wasn't a week, couple days
23 after that, I moved in with her.

24 Q. And the relationship lasted until when. Let
25 me ask you, how long did you live there?

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1 the economic situation Denise was in?

2 A. Yes.

3 Q. What did you understand it -- first of all,
4 where did you get that information from?

5 A. Got it from Denise.

6 Q. What did you understand it to be?

7 A. Her and her business was failing. It if
8 hadn't failed at the time she told me, it was down the
9 tubes.

10 Q. And did you know that whether or not she was
11 in business alone or with someone else?

12 A. No, she was in business with -- with Bert
13 Minter.

14 Q. With who?

15 A. Bert Minter.

16 Q. Did you talk with Denise about the
17 relationship between she and Mr. Minter with respect to
18 those economic -- that economic circumstance?

19 A. I am not sure I understand the question.

20 Q. Okay. Did you talk with Ms. Minter, Denise,
21 about the economic problems?

22 A. Yes, I talked to her.

23 Q. And did she talk to you about the relationship
24 between she and Mr. Minter and those economic problems?

25 A. No, that didn't -- it was strained, they

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1 A. With her?

2 Q. Yeah.

3 A. About a month and a half.

4 Q. So it would be from October 9 or 10 until
5 November 15, 20?

6 A. Around about that, correct.

7 Q. Did you have a falling out?

8 A. Yes, we had an argument.

9 Q. Okay. And did you then leave?

10 A. She asked me to leave.

11 Q. Okay. And where did you go?

12 A. Back to Clarence's.

13 Q. Um-hmm. What were your feelings towards
14 Denise before you were asked to leave?

15 A. I loved her, she was my girlfriend.

16 Q. And did that same emotion continue after you
17 left?

18 A. Yes.

19 Q. Was the breakup, or apparent breakup, was that
20 final as far as you knew?

21 A. No. It wasn't final.

22 Q. Was there a conversation back and forth
23 between you and she about what should be happening?

24 A. Yes.

25 Q. As far as you know, did you have any idea of

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1 were -- she would go to the nursing home and they would
2 talk about the business, and he was quite upset about the
3 fact that the business was failing.

4 Q. Did she talk to you about any accusations Mr.
5 Minter might be making that she was wasting money somehow?

6 A. Yes, she -- she mentioned she was spending a
7 lot of money gambling, that he was not happy about that.

8 Q. Okay. Did Ms. Minter -- well, was -- what
9 were you trying to accomplish, say, through the e-mails on
10 December 8?

11 A. My main mission, what I was trying to
12 accomplish with e-mails, is to try to engage Denise in a
13 conversation about the status of our relationship,
14 basically.

15 THE COURT: You're talking about the text
16 messages, Mr. Woodbury?

17 MR. WOODBURY: Did I say e-mail?

18 THE COURT: Yeah.

19 MR. WOODBURY: I'm going to try again.

20 THE COURT: I just noted that, wondered. I
21 didn't think I missed too much. Thank you.

22 Q. If I say e-mails, I mean text messages. Okay?

23 A. (Nods)

24 Q. You've looked at the text messages you
25 exchanged with Ms. Minter on December 8?

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1 A. Some of them.
 2 Q. Looked at copies of the pictures of them?
 3 A. Yes, some of them.
 4 Q. All right. Do they establish -- or do they
 5 represent what you think was being said back and forth
 6 between the two of you?
 7 A. Sure.
 8 Q. Was Denise responding in some way to these
 9 e-mails for why -- I guess, a personal conversation with
 10 you was not what she wanted?
 11 A. No. When she asked me to leave her home, she
 12 stated she just wanted space, she needed some space and
 13 some time away from me and to get some perspective on the
 14 things that was going on in her life; not only between her
 15 and I, but the business that was failing and various other
 16 things that was going on in her life that she was unhappy
 17 about.
 18 Q. She was not a happy lady, is that your
 19 understanding?
 20 A. No, she was not a happy lady.
 21 Q. Okay. And did you keep pressing her to talk
 22 with you personally?
 23 A. Yeah, I was quite persistent, texting her all
 24 the time, trying to engage her in conversation, yeah.
 25 Q. Did there come a time on December 8 when you

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1 actually spoke on the -- spoke on the telephone with Ms.
 2 Minter?
 3 A. Um-hmm.
 4 Q. Could you tell the jury about that, please?
 5 A. She gave me a text, asked me to call her, I
 6 called her.
 7 Q. How long did the telephone conversation last?
 8 A. Not long.
 9 Q. What was it about?
 10 A. I asked her, "can I come over," I need to
 11 speak to her.
 12 Q. But that wasn't the first time you had asked
 13 her that day to talk to her?
 14 A. Oh, no. I was -- I was asking to talk to her
 15 ever since she asked me to leave her home.
 16 Q. And did that make you happy that she had asked
 17 you to come over?
 18 A. Sure.
 19 Q. Okay. At the time that -- of this December 8
 20 text messages -- well, did you ask some questions about
 21 some person that was in the house on December 7 and
 22 December 8?
 23 A. Yes.
 24 Q. Could you explain to the jury what that was
 25 about, please?

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1 A. I had -- I am not sure, but I think it was the
 2 7th, I had an appointment at Great Basin College. And I
 3 had went up there to take my assessment test, file the
 4 paperwork to go and study diesel technology.
 5 And Mocha came and picked me up after I
 6 finished my test and drove me back to the house. And we
 7 was parked in the front on Fifth Street, a little ways down
 8 going towards Idaho Street, which I guess that's north, and
 9 we got out the car, and Mocha, she -- I guess she looked
 10 over and saw somebody at Denise's house and said -- asked
 11 me, who was that.
 12 And I took a look up there and I said, "I
 13 don't know who that is." Just like, "oh, well", like that.
 14 And that was the end of that
 15 She was -- came around the car, was getting
 16 the baby out. I was assisting her. And after we got the
 17 baby out the car, we were -- started to walk up to the
 18 house, and I took another look and the person that was
 19 standing at her door had his hand extended, walked in the
 20 house.
 21 Q. Did you know that was Duff?
 22 A. No, I didn't know who it was. It was an
 23 individual standing at -- only thing I could discern from
 24 that was the individual was tall and that there was a gray
 25 SUV or mini van parked out front.

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1 Q. Had you previously known that Mr. Minter went
 2 into the manor for some rehabilitation?
 3 A. Yes, I was made aware of that.
 4 Q. How were you made aware of that?
 5 A. Through Denise.
 6 Q. Okay. Did it concern you that a male was
 7 going in her house that you didn't know?
 8 A. I really didn't know who it was, male or
 9 female. All I know it was an individual at the door. Gray
 10 SUV is what had me concerned because I have never seen that
 11 car approach the house before.
 12 Q. Were you concerned that she was seeing another
 13 male?
 14 A. At the time, it really didn't occur to me.
 15 Q. But it did later through the text messages?
 16 A. Yes, it became aware -- evident that she was
 17 hiding something.
 18 Q. Okay. Now, on the night, the evening, on
 19 December 8, after you talked to her on the phone for a
 20 short period of time, what did do?
 21 A. I closed the phone up, put it in my back
 22 pocket, stood up, told Carl, "Got to go across the street,
 23 talk to my girl."
 24 Q. Carl is who?
 25 A. Carl Brannon.

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1 Q. And what happened then?
2 A. Then we -- I got up, grabbed my sweater, put
3 it on, we walked out the house.
4 Q. You didn't call it a sweater, did you?
5 A. Excuse me?
6 Q. You didn't call it sweater, did you?
7 A. It was a hoodie. Zip in front, got a hood on
8 the back.
9 Q. Did Mr. Brannon accompany you?
10 A. Yes.
11 Q. And you heard his testimony here this
12 afternoon?
13 A. Yes.
14 Q. So far as you know, did he accompany you all
15 the way to Ms. Minter's house?
16 A. All the way.
17 Q. And then what happened after that?
18 A. Once I got to the steps, I started to go up
19 the steps, and he -- I looked over, he was right there on
20 the right-hand side. And I told him, I said, "Hey, this is
21 a personal conversation between me and my girlfriend," you
22 know.
23 I didn't even know he was behind me, to tell
24 you the truth. It was so much traffic on Fifth Street, I
25 was walking up, I don't know he was matching steps with me

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1 or not.
2 But he was right there when I turned around.
3 I said, "Hey, this is a private conversation," like that,
4 so he turned around and left.
5 Q. And when what did you do? Did he leave, I
6 guess?
7 A. He left.
8 Q. Then what did you do?
9 A. Went upstairs, knocked on the door.
10 Q. Did you pound on the door?
11 A. No, I knocked.
12 Q. What happened?
13 A. Heard steps. About 10 seconds later, heard
14 steps, heard foot steps. A flap that was on the window
15 opened up, curtain, whatever it was that she had there.
16 Opened it up, she looked out, told me, "wait a minute. Let
17 me put some shoes on."
18 Q. Then what happened?
19 A. She stepped outside, she opened the door. She
20 opened the door, and I took it as a invitation that I could
21 come in. She just took a step out. And I took a step
22 forward and she bumped into me, and I said, "I can't come
23 in? It's cold out here," like that. She said, "No, no."
24 She took a step back, she fully came out of
25 the door, and closed the door.

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1 Q. Did you then begin a conversation?
2 A. Yeah. Yeah, she was made the comment, "okay.
3 well, you're here. What we going to talk about?"
4 And I said, "Why you acting the way you
5 acting," you know, seemed all funny and stuff.
6 And she was like, "You been drinking," you
7 know, just real loud.
8 And I was like, "Yeah, I had a couple beers."
9 Q. Are you using that couple beers to say exactly
10 that you had two beers, or did you have twenty beers and
11 call it a couple beers?
12 A. No, I had two beers. Two.
13 Q. Had you consumed alcohol with Ms. Minter
14 before?
15 A. Yes.
16 Q. Couple beers?
17 A. Not really. We didn't drink beer, we drank
18 vodka.
19 Q. And did you know that she didn't want you to
20 have any alcohol?
21 A. No, she never expressed that.
22 Q. But she was expressing it that night?
23 A. On the front porch.
24 Q. Was he expressing it in a soft voice?
25 A. No, she was expressing it in a loud voice.

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1 Q. So how did you respond?
2 A. Respond to what?
3 Q. To what she was saying, you had been drinking
4 alcohol?
5 A. I don't think I responded at all, I just
6 looked at her.
7 Q. So then what happened?
8 A. Umm, the door opened and Bert poked his head
9 out and asked Denise if she was all right.
10 Q. Um-hmm. Were you talking louder?
11 A. No, there was no reason to.
12 Q. Well, whether there was a reason to or not
13 depends on whether you were angry with her for expressing
14 her distaste for your consuming alcohol?
15 A. No, no. I didn't raise my voice at her.
16 Q. Excuse me?
17 A. No.
18 Q. And Bert stuck his head out the door?
19 A. Yes.
20 Q. Did you recognize him then?
21 A. Yeah, because he had been to the store.
22 Q. Excuse me?
23 A. Because he had been to the store, yes, I
24 recognized him as Bert.
25 Q. Okay. And where were you and Denise at the

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1 time that he stuck his head out the door?
 2 A. On the porch.
 3 Q. All right. Would you kind of describe -- I
 4 guess I seen the picture. How big is that front porch?
 5 A. Not very big. I don't know. I am not very
 6 good a measurements. I don't know. About two or three
 7 steps apiece of going either way.
 8 Q. Did Mr. Minter say anything?
 9 A. Yeah, he asked her if she was okay.
 10 Q. What did she reply?
 11 A. She said, "Yes, I'm fine. Go back in the
 12 house. We going to talk."
 13 Q. Did she say it in a loud voice?
 14 A. No.
 15 Q. So then what happened?
 16 A. Then she turned back to me and he was still
 17 looking out the door. I want be private conversation with
 18 my girlfriend, so I told her, "Let's step off the porch."
 19 So we started -- I started back pedaling, she was following
 20 me down the stairs.
 21 Q. Was Mr. Minter saying anything?
 22 A. Just looking out at that time right there, he
 23 was just looking out the door.
 24 Q. So did you finally make it off the steps?
 25 A. We was back pedaling, and I think I took maybe

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1 one or two steps down the stairs going backwards, and the
 2 door just flung wide open.
 3 Q. And how did that happen?
 4 A. Bert opened it.
 5 Q. Then what happened?
 6 A. Then I looked up at him, and he caught my
 7 attention because the door was -- he just flung the door
 8 open just real quick. And I looked up at him and he was
 9 looking at me, and I said, "What's up?"
 10 Q. What did he say?
 11 A. He said, "What the fuck you mean what's up."
 12 I said, "Whoa, man. I'm here to talk to my
 13 girlfriend, you know, we got some things to talk about,
 14 man."
 15 He was -- I don't know. He was upset.
 16 Q. And did he respond when you told him that you
 17 just wanted to talk to your girlfriend?
 18 A. Yeah, told me, "What the fuck you doing here.
 19 You ain't supposed to be here."
 20 Q. What did you say to that?
 21 A. I just looked at him like he was crazy.
 22 Q. Um-hmm. How do you remember all this stuff
 23 very specifically, Mr. Dean? It was, after all, six months
 24 ago?
 25 A. Umm, just little things just pop back up.

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1 Sometimes, you know, I guess, you remember some things and
 2 some things you don't remember. Give a little time, things
 3 start to come back to you.
 4 Q. So when he told you you weren't supposed to be
 5 there, what did you say?
 6 A. I told Denise, "Let's just go down," you know,
 7 "get off the porch." And so we just started backing up,
 8 getting off the porch.
 9 Q. Who did?
 10 A. Me and Denise.
 11 Q. All right. When you got down to the ground,
 12 what happened?
 13 A. Then he started to follow us.
 14 Q. He started to follow?
 15 A. Yes, Bert.
 16 Q. All right. And follow you down the stairs?
 17 A. Followed us down the stairs.
 18 Q. Were you and he in a heated conversation by
 19 this time? Talking smack?
 20 A. Yeah, he was -- he was talking smack. Most of
 21 what he was saying was -- I couldn't really even
 22 understand. He had his head bent down, his arms was
 23 waving, and Denise was standing backing up and just looking
 24 at him.
 25 I couldn't really discern what he was talking

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1 about. A few words. A few words was understandable. Most
 2 of them it was -- he was just mumbling. Seemed to me he
 3 was just talking to himself.
 4 Q. Did Ms. Minter say anything to him during this
 5 time?
 6 A. Yeah, she asked him to go back in the house.
 7 Q. All right. Did she ask him more than once?
 8 A. She asked him two more times once we got on
 9 the ground level.
 10 Q. And did he respond to her?
 11 A. He didn't respond to her at all.
 12 Q. Did you ask him to go back in the house?
 13 A. I didn't ask him nothing.
 14 Q. Did you tell him to go back in the house?
 15 A. I didn't tell him nothing.
 16 Q. Then what happened?
 17 A. He got up close to Denise while I was --
 18 estimate, I think he was maybe three or four feet, maybe
 19 five feet away from her, still waving his hands around and
 20 still mumbling.
 21 Every few words I catch him saying, "fuck he
 22 doing here." Just was really weird. I didn't really
 23 understand anything he was really saying.
 24 Q. Were you frightened?
 25 A. No, I wasn't frightened.

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1 Q. He's a big guy?
2 A. Yeah, he's a big guy.
3 Q. He was angry?
4 A. Yes, he was angry.
5 Q. Did you think maybe he was going to get in a
6 fight of some sort with you?
7 A. At the time, no, it was just -- he was just
8 talking trash, so I really did not discern anything from it
9 other than maybe he was just having a bad day and just
10 talking a bunch of trash.
11 Q. Did there come a time when you said some
12 things to him you thought that would maybe promote a fight?
13 A. I'm not sure I understand what you mean.
14 Q. Well, I guess what you are saying is that
15 you're kind of listening to him but you are not saying
16 anything?
17 A. Um-hmm.
18 Q. Yes?
19 A. Yes.
20 Q. And then did there come a time when you did
21 say some things?
22 A. Yes, he was -- like I said, he was mumbling
23 and stuff. And once he -- he got up behind Denise, he kind
24 of lifted his head, looked at me, and he said, "what the
25 fuck you doing here," like that. And I said, "whoa, man."

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1 Q. That wasn't the first time he had said it,
2 though?
3 A. No, it wasn't the first time.
4 Q. Okay. And you said whoa?
5 A. I said -- Yeah, I said, "whoa, man," like
6 that.
7 Q. What happened?
8 A. He -- after that, after that comment right
9 there, he was like, "You ain't supposed to fucking be here.
10 I ought to beat your fucking ass," like that.
11 I said, "Man, you ain't gonna do nothing to
12 me, man." Comment I made to him.
13 Q. Did you have an idea of how many medical
14 problems he had as a result of his illnesses that summer,
15 or the previous summer?
16 A. I was made aware of that.
17 Q. Did you notice whether or not he looked like
18 he was physically fit?
19 A. He wasn't walking like anybody didn't have any
20 disabilities. Was evident something was wrong with him.
21 Q. Did he have his cane with him?
22 A. No.
23 Q. Have his oxygen with him?
24 A. No.
25 Q. Watch him come down the stairs?

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1 A. For the most part, yes, I watched him.
2 Q. Did you notice disabilities, some kind of
3 disability when he did that?
4 A. No, I didn't notice any disabilities.
5 Q. So, now, when you made your response, it's
6 kind of an angry response?
7 A. Yeah, it was angry.
8 Q. Then what happened?
9 A. He swung at me.
10 Q. And describe to the jury how that happened?
11 A. He just swung, he swung his right hand and he
12 missed.
13 Q. All right.
14 A. I swung back.
15 Q. Where was Denise when he swung?
16 A. Denise was right between us.
17 Q. How did he get around her?
18 A. He knocked her out of the way with the blow.
19 Q. Did he hit her with his fist, or did he hit
20 her with a part of his arm or something?
21 A. He came around roundhouse blow aiming --
22 trying to aim for me, but she was right -- Denise is my
23 height, and she was right in the way of that blow.
24 So when he came, he knocked her out the way,
25 and he skimmed right above my head.

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1 Q. Okay. Then what happened?
2 A. And threw some blows and it quickly turned
3 into and a wrestling match.
4 Q. How many blows do you think you exchanged?
5 A. I don't know. We exchanged maybe one or two
6 blows. Maybe more, I don't know. About three blows. It
7 wasn't no more than that before it turned into a wrestling
8 match.
9 Q. And how did it turn into a wrestling match?
10 A. He grabbed me and I grabbed him.
11 Q. Was there some strategy involved in that on
12 your part?
13 A. Yeah, being a bouncer and having to extract
14 people out of the clubs and bars, I had -- yeah, it came
15 into play.
16 Q. What were you trying to accomplish by grabbing
17 him?
18 A. Just trying to immobilize him, try to keep him
19 down. He was a big man. So as far as my experience is
20 concerned that was what I had experience to do, just to
21 subdue him, hold him down.
22 Q. To do what?
23 A. Subdue the person and restrain them on the
24 ground.
25 Q. You heard described yesterday your efforts to

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1 keep physically fit by Ms. Minter?
 2 A. Yes.
 3 Q. Was she accurate in describing your activities
 4 to be fit?
 5 A. Yes, she is correct.
 6 Q. Okay. Can you tell the jury what that is,
 7 what exercises you do?
 8 A. I work out with weights and I do pushups, do
 9 pullups and variety of exercises.
 10 Q. In this wrestling match with Mr. Minter could
 11 you tell whether or not you were going to be successful in
 12 subduing him because you were stronger than he was?
 13 A. No. Never be able to tell that. It all
 14 depends on the individual in trying to subdue. Some people
 15 are exceptionally strong. So I didn't know which way it
 16 was going to go.
 17 Q. So you grabbed him. And now what is your plan
 18 or -- if there was a plan?
 19 A. Plan is to subdue him, make sure that he -- he
 20 got no further attacking me.
 21 Q. All right. Does that include putting him on
 22 the ground?
 23 A. If need be.
 24 Q. Excuse me?
 25 A. If need be.

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1 Q. Well, in this case is what I am talking about?
 2 A. Well, we hit the ground and we rolled. And my
 3 first instinct was to grab him, get back on my feet. So I
 4 did that very quickly.
 5 Q. And when he hit the ground, what was his
 6 position?
 7 A. He was -- if I remember right, he was laying
 8 on his stomach.
 9 Q. Up to this point, did you see any weapons?
 10 A. Yes, when he came down the stairs and was
 11 waving his hands and gestures he was making, stuff, yeah, I
 12 caught the flash of the blade in his hand.
 13 Q. Where was this blade?
 14 A. In his right hand.
 15 Q. Excuse me?
 16 A. In his right hand.
 17 Q. What did it look like?
 18 A. It was just shiny, just saw a blade.
 19 Q. Did that worry you?
 20 A. At first, no.
 21 Q. Why not?
 22 A. Because I have had knives pulled on me before,
 23 so it wasn't no worry.
 24 Q. Well, I would assume each time a knife was
 25 pulled on you, you get pretty excited?

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1 A. Yeah, you get apprehensive, a little anxiety.
 2 But as far as being scared, no, I wasn't scared. But I was
 3 cautious.
 4 Q. And when he swung at you, where was the knife?
 5 A. That I couldn't tell you. Because like I
 6 said, Denise was in front of me. And the only reason I saw
 7 the knife is it was gesturing with his hands. When he
 8 swung at me, the knife -- I don't know if he put it back in
 9 the pocket or -- or what. That is I'm assuming he put it
 10 back in his pocket.
 11 Q. But you actually don't know?
 12 A. Denise was in front of me, so, no, I don't.
 13 Q. But in any event, you know it wasn't in his
 14 hand when he hit you, or swung at you?
 15 A. Correct.
 16 Q. And then you -- you exchanged a couple blows
 17 with him after that?
 18 A. Yes. He swung on me and I swung on him.
 19 Q. Did you hit him?
 20 A. Yes, I hit.
 21 Q. Did he hit you?
 22 A. Yes, he hit me.
 23 Q. Where?
 24 A. Mostly in my shoulder. He clipped me --
 25 initial blow clipped me on the top of my head. He got me

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1 in my neck one time. And that was about it before it
 2 turned into a wrestling match.
 3 Q. When it turned into a wrestling match, he was
 4 on the ground face down?
 5 A. Yes. When I gained my feet, got my feet back
 6 under me, he was prone. He was laying on his stomach.
 7 Q. And you got up, you said?
 8 A. Yes, I quickly got up.
 9 Q. Then what?
 10 A. Then my -- got my feet up under me. He was
 11 still trying to get up. And I put my hand on his back
 12 trying to keep him down.
 13 Q. Did that work?
 14 A. He's a big man. No, didn't work.
 15 Q. Then what happened?
 16 A. It got -- he got his feet up -- he got to his
 17 knees. Then I was still holding him at bay, just standing
 18 over, holding him at bay.
 19 And he got his -- his right leg up under him,
 20 his foot. And he slowly got the left one up. And he was
 21 bent over and I was still holding him at bay, still keeping
 22 him away from me. And he started to lift up, and I got
 23 snatched back. That's when Denise grabbed me behind me --
 24 grabbed me in the choke hold.
 25 Q. Ah. During the time -- was it a long time or

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1 a short between the time when you got him down on the
2 face -- in a prone position and then the time you are now
3 talking about when Denise grabbed you?

4 Do you have some sense of how long that took?

5 A. No, it was a short -- it was a very short
6 time. Once he got -- got his feet back under him, he was
7 almost standing up to his full height. He is six-four,
8 six-five. And before he even raised to his full height, I
9 got snatched from behind from Denise. That happened quick.

10 Q. And then what happened?

11 A. She bent me back and he raised up. He went to
12 grab me. He got ahold of my jacket, my hoodie, whatever.
13 He got ahold of me and I got ahold of him. And Denise was
14 bending me back, so when I -- I was in an arch. And she
15 had me bent back, like that. And he tried to rush me and
16 we all hit the ground.

17 Q. Again?

18 A. Excuse me?

19 Q. You all hit the ground again?

20 A. Yes.

21 Q. All right. Then --

22 A. That was all three of us did at that time.

23 Q. Then what happened?

24 A. I was on top of her. She had me around my
25 neck. And she took her left leg and wrapped it around my

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1 left leg. Like I said, she was behind me, had me in a
2 choke hold. I'm between her legs. She wrapped her leg
3 around my left leg. And he landed -- most of his weight
4 landed on my right leg.

5 Q. So go ahead and tell us what happened then?

6 A. We were jockeying for position, trying to grab
7 ahold. He had his left hand, grabbed ahold of my hoodie
8 right here by my abdomen.

9 And I had him, you know, around the shoulder
10 area with my forearm, trying to push him up, get him up off
11 me.

12 And he was yelling, "let me go, let me go,"
13 like that, back and forth. Denise was yelling for me to
14 stop, for him to stop.

15 And it wasn't too long after we hit the
16 ground, starting yelling, that he swung. And it was a
17 looping right hand, started coming over, and I saw it
18 coming because he is slow, and I just put my hand up to
19 block my face, and he made contact with my hand. That's
20 where I felt -- I felt he had a blade back in his hand,
21 that's why I got sliced.

22 Q. So then what happened?

23 A. I just grabbed ahold of him, I just had ahold
24 of his hand, was just holding him, like that, and I was
25 like, "Man, let me go," like that.

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1 And he was like, "You let me go."

2 And I was like, "No, no, no, man. Let me the
3 fuck go," like that. I was angry right there.

4 So Denise was yelling, "Everybody, just let
5 go. You let go, Duff. Sean, you let go." She was
6 screaming real loud. "Everybody, just let go."

7 He was -- you know, I don't know, he was on
8 the ground. It was chaotic.

9 Q. And throughout this activity, was Denise being
10 quiet?

11 A. No, she was yelling. She was screaming for me
12 to let go and for Duff to let go.

13 Q. Was she screaming other things?

14 A. I -- that's mostly what I remember her
15 screaming, for us to all -- everybody to just let go. This
16 is just -- "let go, it's over," you know.

17 Q. If she was screaming anything else, you didn't
18 hear her or you don't remember?

19 A. I don't remember if she was screaming
20 something else. She was just mainly concerning everybody
21 just letting go and it was over. That's the only thing I
22 can -- I could remember from that.

23 Q. So after the exchange of "let me goes," what
24 happened?

25 A. She released her grip around my neck and --

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1 Q. Had you and Mr. Minter reached some kind of
2 accord about quitting?

3 A. Yeah. We just looked at each other, I guess,
4 and, I don't know, through mutual consent, we just started
5 releasing grips. I wasn't letting that hand go, so I held
6 on to that hand because he was still trying to push that
7 blade into my face.

8 And I let my left hand go because I was -- I
9 just had -- you know, was trying to push him up off me.
10 And Denise let me go around my neck, and everything like
11 that, and we started to get up.

12 Q. Was Mr. Minter able to get up by himself?

13 A. Yes.

14 Q. Did he get up before you got up?

15 A. He had to, he was laying on me.

16 Q. You found yourself in kind of a dangerous
17 position there?

18 A. Yeah, I was in a dangerous position with me
19 getting choked out and I got stabbed. Yeah, it was -- it
20 was dangerous position.

21 Q. Okay. And after you got -- Denise let you go,
22 where did she go?

23 A. She was still laying on the ground. And he
24 got up on all fours and that enabled me to scoot out from
25 under him. So I got out from under him and, you know, kind

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1 of propped myself up, got my feet up under me.
 2 Denise was still up under me. I almost
 3 tripped on her foot or her leg, I hit something that
 4 knocked me off balance, so I took a step back.
 5 Q. Then what?
 6 A. Then I had my -- I reached in my pocket
 7 because I had my cell phone in my pocket. So I reached in
 8 my pocket and grabbed my cell phone. My cell phone, it's
 9 not a newer model, so you can virtually touch any button,
 10 it will light up the screen. I just checked it, put it
 11 back in my pocket.
 12 Q. You indicated you did that with your
 13 left hand?
 14 A. Yes.
 15 Q. How come?
 16 A. Because that's where my phone was.
 17 Q. Was your right hand injured?
 18 A. Yeah, it was bleeding.
 19 Q. Bad?
 20 A. Yeah, it was leaking bad.
 21 Q. Then what happened after you checked your
 22 phone?
 23 A. I checked my phone. And once I did that, he
 24 was already up on his feet. He was still -- still talking
 25 trash. I turned around and I was like, "Man, it's a wrap,"

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1 man," like that.
 2 He was like, "It ain't fucking over, man."
 3 I was like, "Man, what you talking about, man?
 4 I don't know what you fucking talking about, man."
 5 And he was like, "what the fuck you talking
 6 about?"
 7 I go, "Fuck you, man. Let's get it."
 8 Q. Then what happened?
 9 A. We got back into it.
 10 Q. The fight?
 11 A. The fight.
 12 Q. Was Mr. Schenk there?
 13 A. No. There was nobody there. Just me, Denise
 14 and Bert.
 15 Q. And what was Denise doing while you were
 16 back --
 17 A. She -- she standing by Bert. And me and Bert
 18 started swinging on each other. She started to get in the
 19 action, too. She started swinging also.
 20 Q. Was she yelling?
 21 A. Yes, she was doing a lot of yelling.
 22 Q. Do you know what?
 23 A. Hmm?
 24 Q. Do you know what she was saying?
 25 A. Yeah, she -- she was talking about, "Sean,

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1 stop, stop." Just, "Sean, stop." She was just telling me
 2 to stop.
 3 Q. Is that all she said?
 4 A. No. She -- she said that she -- she had been
 5 stabbed. She said, "Stop stabbing." She was just, "Stop
 6 stabbing me." She was just going nuts.
 7 Q. Had you stabbed her?
 8 A. No, I didn't have anything in my hands.
 9 Q. Did Mr. Minter still have the knife?
 10 A. It appeared that he did, yes.
 11 Q. Do you know that?
 12 A. Yes, because he still had the blade in his
 13 hand.
 14 Q. Do you remember talking to Detective Nielson?
 15 A. Um-hmm.
 16 Q. Yes?
 17 A. Yes.
 18 Q. And did you remember telling Detective Nielson
 19 that Denise may have had a knife?
 20 A. Yes. That's what I remember telling him.
 21 Q. Would you tell the jury what you saw that led
 22 you to that belief?
 23 A. Yeah, she was -- the same manner he was
 24 swinging at me, she was swinging. She was swinging at me
 25 in the same manner, sweeping manner, as if she had

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1 something in her hands trying to stab me also. She was
 2 right next to him doing the same thing he was doing.
 3 Q. Well, Ms. Minter has now gone from inviting
 4 you up to have a reconciliation talk to now stabbing at
 5 you. How did that happen?
 6 A. I have no idea. I have no idea. I don't
 7 know.
 8 Q. Did you ever stab her?
 9 A. No.
 10 Q. Did you ever stab Duff?
 11 A. No.
 12 Q. Do you know how Duff came to be stabbed?
 13 A. Only explanation I can give is Denise did it.
 14 Q. During the time that you were on the ground,
 15 just before and just after he cut your finger, was he
 16 swinging the knife down while he was lying on the ground?
 17 A. Was he swinging the knife?
 18 Q. Yeah.
 19 A. When we hit the ground the first time?
 20 Q. Yeah. When -- just before there came a time,
 21 you said, when he cut your finger?
 22 A. Yes. That's when we was laying on the ground.
 23 Q. Yeah. Now, just before or just after he cut
 24 your finger, was he swinging the knife or using the knife
 25 in any way?

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1 A. No, actually, he swung and made contact with
2 my hand. I was just holding his hand and we decided we was
3 going to let go and we all let go and --

4 Q. What happened to the knife while you had his
5 hand?

6 A. I guess he still had it in his possession.

7 Q. But not in his hand?

8 A. All I know is I started get up. I have no
9 idea. All I know is he was swinging -- swinging the knife,
10 also. So whether he placed it on the ground and then got
11 up and grabbed it, you know what I am saying, it's hard to
12 tell. It happened so fast.

13 Q. Then how did it all end?

14 A. It was swinging. I'm mainly trying to stay
15 out of -- out of harm's way. He really wasn't swinging his
16 left hand, so I was trying to maneuver myself to get me
17 some blows in on -- that arm wasn't moving and trying to
18 keep out of Denise's way because she was swinging at me,
19 also.

20 And we just started -- you know, just squared
21 up with somebody, hands up in the air. We just kind of
22 like stopping swinging at each other.

23 Q. Then what?

24 A. Then, here is Joe.

25 Q. Excuse me?

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1 A. Then Joe appeared on the scene. I was so
2 focused on him, he just -- like he just materialized out of
3 nowhere.

4 Q. Do you remember, you listened to Joe testify
5 that you took the knife from your pocket and took both
6 hands and unfolded it, yesterday?

7 A. That is not true. That's not true.

8 Q. So how did the fight end?

9 A. Joe came down. He had walked down next to
10 Duff, looked at me, and he said, "Oh, you messing with my
11 family, huh?" Turned around, headed back in the direction
12 of his trailer.

13 And I looked at him, like, you know what, man,
14 I'm done with this shit, started going back down to my --
15 where I live. It ended. That was the end of it.

16 Q. Did Mr. Minter say anything to you as you
17 walked away?

18 A. Yeah, he -- I walked down to -- down Fifth
19 Street. There was cars coming, so kind of hurried across
20 the street, get out of the way of the cars. No sooner did
21 I get on the other side of the street, I hear, "You fucking
22 nigger," like that.

23 And I turned around and I was like, "Really?"
24 I just turned around, man, whatever, man, just kept walking
25 to the trailer.

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1 Q. You heard, I think, Ms. Hodges say that you
2 might have been running?

3 A. No.

4 Q. And when you got to the trailer, were Clarence
5 and Mocha there?

6 A. No. I was walking down the driveway, they had
7 just pulled up.

8 Q. How long did all this take, Mr. Dean?

9 A. Excuse me?

10 Q. How long did this thing from starting at the
11 trailer door until the time you went back to the trailer
12 take?

13 A. The whole incident?

14 Q. Yeah.

15 A. Is that what you are asking? That's a tall
16 order right there. I don't know, if I had to give a guess,
17 I would say no more than about, you know, seven minutes,
18 eight minutes or so. It wasn't long.

19 Q. Okay. You heard Detective Nielson testify
20 that your demeanor changed when he told you he had found --
21 the police officers had found a knife.

22 A. Um-hmm.

23 Q. Did your demeanor change?

24 A. No, I don't think so.

25 Q. What did you do in response to him telling you

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1 that?

2 A. I just looked at him and asked him, "where did
3 they find it, inside or out?"

4 Q. Excuse me?

5 A. I just looked at him and -- because -- because
6 the accusation that he was making surprised me. And I just
7 asked him, "where did they find it, inside or out?"

8 Q. And by that, what did you mean?

9 A. Inside her house or outside.

10 Q. Did it occur to you that there was a knife in
11 the trailer of Clarence and Mocha?

12 A. No. Only knives we got is kitchen knives that
13 I know.

14 Q. Well, the police officers said they found a
15 folding knife down there?

16 A. If they did, it didn't belong to any of us.

17 Q. You don't know where it came from?

18 A. I have no idea.

19 Q. Did you have friends in the trailer park
20 where -- on either side of the road of the trailer park?

21 A. On our side or Palacio?

22 Q. Across Fifth Street in the Palacio.

23 A. Did I have friends?

24 Q. Yeah.

25 A. No. Not sure I understand. Only people I

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1 knew up there was Joe, Brittney, and Denise. That was it.
2 MR. WOODBURY: I don't think we have any further
3 questions.

4 THE COURT: All right. Cross-examination.

5 CROSS-EXAMINATION

6 BY MR. MILLS:

7 Q. Mr. Dean, good afternoon.

8 A. Good afternoon.

9 Q. Sounds like you came to Elko in 2012; is that
10 correct?

11 A. March, correct.

12 Q. March of 2012?

13 A. Um-hmm.

14 Q. What was it brought you here to Elko?

15 A. What brought me?

16 Q. Was it work?

17 A. Yeah.

18 Q. Friends? Family?

19 A. The mines.

20 Q. Okay.

21 A. The mines.

22 Q. At some point in time did you become
23 acquainted with Clarence Thompson when you came here to
24 Elko?

25 A. Yes.

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1 Q. When did you meet him?

2 A. 2012.

3 Q. Were you friends with him ever since?

4 A. Yes. We were friends in Sacramento, we both
5 from the same neighborhood.

6 Q. He is from Sacramento, too?

7 A. Yes, he is from my neighborhood. I know his
8 father. I was there when he was born.

9 Q. Did you guys come over together or was he
10 over --

11 A. No, we came separately. I came up here first.

12 THE WITNESS: May I have some water, please?

13 THE COURT: Mr. Woodbury, your client needs a
14 little water.

15 Q. Did you and Mr. Thompson live together at that
16 trailer at 701 South Fifth Street?

17 A. Yes.

18 Q. When did you start living together there?

19 A. In August of 2015.

20 Q. You have worked here at Elko at the G spot and
21 the Horseshoe Club as a bouncer. Did I understand that
22 correctly?

23 A. That's correct.

24 Q. And what was the time frame for your
25 employment at those places?

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1 A. In 2012 to 2013, and then that was the
2 Horseshoe Club before it closed up.

3 Then I started at the G spot in 2015.

4 Q. Mr. Woodbury asked you if you had known people
5 who had been in knife fights before, and you have. Is that
6 correct?

7 A. That's correct.

8 Q. In fact, I believe you testified you have been
9 in knife fights before?

10 A. Not me as a aggressor, but I have had knives
11 pulled on me.

12 Q. You have had knives pulled on --

13 A. Yes, I have had knives pulled on me.

14 Q. I believe you testified that you know the --
15 based on your experience with knife fights and people who
16 were -- had been involved in knife fights, you know how --
17 the right way to kill somebody with a knife?

18 A. Yes. To inflict the most damage and to
19 achieve the outcome you want, yes. Yes, I'm aware of that.

20 Q. I believe the phrase that you used was punch,
21 twist and rip? Is that correct?

22 A. Yes, that's correct.

23 Q. And what did you mean by that? What does it
24 mean to punch, twist and rip with a knife?

25 A. To puncture with the knife, twisting it, then

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1 rip. So you basically trying to penetrate the individual,
2 you trying to twist it, and then rip. Most effective way
3 to try to accomplish whatever you trying to accomplish.

4 Q. So puncture, twist, then rip it back out?

5 A. Just rip -- you trying to tear the skin,
6 trying to tear whatever internal organ you trying to hit.

7 Q. And that would be the way to inflict the most
8 damage with the knife stab?

9 A. Correct.

10 Q. Any particular parts of the body that you
11 would aim for?

12 A. Mid-section, chest. You would -- I don't
13 know. I don't know, just -- I guess -- those areas right
14 there, I guess.

15 Q. Okay. So if you are trying to kill somebody,
16 you wouldn't stab them in the arm or the leg or something
17 like that, you would -- as you say, you would stab them in
18 the mid-section, the chest area. Is that correct?

19 A. Well, basically, wherever you -- you hit them.
20 I mean, if you hit somebody in the arm, or something like
21 that, yeah, I mean. But if you -- I don't know, just --
22 that's just the way it goes.

23 Q. Basically in the area where Bert was stabbed;
24 is that correct?

25 A. If -- if you hit somebody right like that,

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1 yeah, you -- you would want to.
 2 Q. You've seen the photographs of Bert Minter's
 3 stab wounds, correct?
 4 A. Yeah, I saw them.
 5 Q. You know he's got stab wounds along the left
 6 side of his body?
 7 A. That's my understanding.
 8 Q. You heard Dr. Ward's testimony about that,
 9 right?
 10 A. That's my understanding, yeah.
 11 Q. Do you recall Dr. Ward testifying that the
 12 vital organs in the neighborhood of those stab wounds, that
 13 if they were lacerated, it could be deadly?
 14 A. Yes, that's what I gather.
 15 Q. The kidney, lungs, were a couple of them that
 16 he mentioned specifically?
 17 A. Yes.
 18 Q. So last summer of 2015, you were -- you
 19 started living with Clarence in August, I believe you said?
 20 Is that correct?
 21 A. Correct.
 22 Q. You first met Denise at Clarence's or at the
 23 Sinclair?
 24 A. At Clarence's.
 25 Q. You said she came over to the house, right?

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1 You are referring to Clarence's trailer at that point?
 2 A. Yes.
 3 Q. Was she already working at the Sinclair at
 4 that time?
 5 A. At the time she came -- she came over, I
 6 didn't know that. I achieved that information when I
 7 started working there. When I started working at the
 8 Sinclair, that's when I knew she was working there. That's
 9 when I saw her the first day of work.
 10 Q. So when you applied for the job there, you
 11 weren't aware that Denise was already working there?
 12 A. No, I didn't see her.
 13 Q. So it was just a coincidence that the person
 14 you met at Clarence's house happened to turn out to be a
 15 future co-worker there at the Sinclair when you got the
 16 job?
 17 A. Just a coincidence. I didn't see her -- when
 18 I went to get the application, I didn't see her. If she
 19 was there, I didn't see her.
 20 Q. I'm just trying to get the timing here. So
 21 you met her first at Clarence's house and then you started
 22 working at the Sinclair, it sounds like?
 23 A. Yes.
 24 Q. And so when you became co-workers with her,
 25 did you recognize her from the time she came over to

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1 Clarence's house?
 2 A. We both recognized each other. When I came --
 3 started working there, you know, and I turned the
 4 application in, I didn't see her at that time.
 5 But I got a call a couple days later and asked
 6 to come in. When I came in, she was at the cash register.
 7 Both looked at each other, said, "Oh, how you doing," like
 8 that.
 9 That's how I knew she was working there.
 10 Q. When did you start work there at the Sinclair?
 11 A. Sometime in September.
 12 Q. You started in September. And on how many
 13 occasions did you see Bert or Duff come into the Sinclair?
 14 A. Two.
 15 Q. And at those points in time that he came in
 16 there, at that point did you know that he was the
 17 ex-husband of Denise?
 18 A. No, I found that out later.
 19 Q. You what?
 20 A. I found that out later.
 21 Q. Okay. So it was on August 7 that your
 22 relationship progressed from co-workers to, I guess, dating
 23 relationship?
 24 A. That's when we established -- that's when I
 25 asked her to be my girl, October 7.

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1 Q. And within a few days you moved in with her?
 2 MR. WOODBURY: Your Honor, I would like to make a
 3 correction. Mr. Mills said August 7 and Mr. Dean has said
 4 October 7.
 5 MR. MILLS: I must have misspoke.
 6 THE COURT: I think that sounds correct. It
 7 assumes facts not in evidence.
 8 It's October 7, is that correct?
 9 THE WITNESS: That's correct.
 10 THE COURT: There we go.
 11 MR. MILLS: That is correct, Your Honor. Thank
 12 you for that correction.
 13 THE COURT: Thank you, Mr. Woodbury.
 14 Q. (By Mr. Mills) I had just said August a few
 15 minutes ago with regards to -- I think that's something
 16 else.
 17 So October 7 is when you started your dating
 18 relationship with Denise Minter, correct?
 19 A. Correct.
 20 Q. And within a few days of that you moved into
 21 the trailer with her?
 22 A. Correct.
 23 Q. That was the 764 South Fifth Street, Number
 24 12?
 25 A. Yes.

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1 Q. Was there anyone else there staying with you
2 at that time?
3 A. No, just her and I.
4 Q. And from that point in time until you broke
5 up, did you live with her continuously?
6 A. Yes.
7 Q. Wasn't like off and on again, or "I will stay
8 there some nights but not others"?
9 A. No, it was no off and on until I moved. Until
10 she asked me to leave, I stayed there continuously.
11 Q. So within that general time frame, what was --
12 at which point in time did you become aware of the fact
13 that Duff was her ex-husband?
14 A. After I saw him that second time, when I got
15 back home, Mocha was at home, and I had asked Mocha who he
16 was and she told me.
17 Q. Come again? You said what to Mocha?
18 A. The second time I saw him come to the store,
19 when I got back home after work, I asked Mocha who he was
20 and she told me.
21 Q. So Mocha was over at you and Denise's trailer?
22 A. Excuse me?
23 Q. Or this was when you were still living with
24 Clarence, I gather?
25 A. Yeah, that was when I was still living at

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1 Clarence's.
2 Q. Just trying to sort out the timing here. So
3 after she asked you to leave, you went back to Clarence's;
4 is that correct?
5 A. Correct.
6 Q. Mr. Woodbury asked you whether that breakup
7 was final?
8 A. No, it wasn't final.
9 Q. You didn't tell Detective Nielson that it was?
10 A. I don't believe I did.
11 Q. You didn't tell him that that's over now?
12 MR. WOODBURY: I'm going to object, Your Honor.
13 He is misleading the witness. Detective Nielson was told
14 it was over in connection with the events after December 8,
15 not the time he is talking about.
16 THE COURT: Any response?
17 MR. MILLS: We can ask the witness what he meant
18 by that statement to the detective, have him clarify.
19 THE COURT: Question is withdrawn then. He will
20 ask another question is what it sounds like. Thank you.
21 Q. (By Mr. Mills) when you told Detective Nielson
22 that your relationship with Denise is over now, what did
23 you mean by that?
24 A. Well, in light of events, it was the only one
25 conclusion I could come up with, that it was over.

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1 Q. So on December 7th and 8th you and Denise were
2 texting back and forth quite a bit; is that correct?
3 A. Yes.
4 Q. And you seen those text messages?
5 A. Some of them.
6 Q. And you were wanting to get back into a
7 relationship with her; isn't that correct?
8 A. No, I wanted to engage her in a conversation
9 to get us back to where we was before she kicked me out.
10 Q. How is that different than wanting to get back
11 into a relationship with her?
12 A. She only wanted separation from me. I don't
13 mean separate, that we broken up. Separate in the sense
14 that she wanted space from me.
15 Q. And you saw this person show up at the
16 residence, right?
17 A. Right.
18 Q. Unknown person in a gray SUV, sounds like?
19 A. Right.
20 Q. You weren't happy about that, were you?
21 A. I was curious about that.
22 Q. Were you jealous about it?
23 A. I was curious.
24 Q. Weren't you jealous that she was seeing
25 someone else?

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1 A. I was curious, period.
2 Q. Did you tell her, "Are you with someone else,
3 Denise, because I just saw someone walk into your house?"
4 A. After I started texting her and asking her
5 questions and she was being very evasive in her answers,
6 yeah, it became apparent that she was hiding something she
7 didn't want to tell me.
8 Q. And that text would have been on December 7 at
9 about 2:37 p.m.?
10 A. Could have very well been.
11 Q. Then later that evening, December 7, at 8:08
12 p.m., "who the hell was that I saw walking in the house?"
13 Did you text her that?
14 A. Yeah, she was being very evasive. And, yes, I
15 texted her that.
16 Q. The following day on December 8 at 12:45 p.m.,
17 "I can't get my mind off you. I want to know who that was
18 I saw walking in the house?"
19 A. Yes, I wanted to know.
20 THE COURT: Is this Exhibit 33?
21 MR. MILLS: That sounds right, Your Honor. It is
22 not. Actually this is 23.
23 THE COURT: Which has been admitted?
24 MR. MILLS: It has.
25 Q. And about that time in the afternoon on

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1 December 8 you were getting pretty upset, weren't you?
2 A. I was frustrated.
3 Q. More than frustrated, right?
4 A. Depends on who is interpreting it.
5 Q. Did you tell her at 3:26 p.m., "I am extremely
6 pissed off right now"?
7 A. Probably said that.
8 Q. And 3:32, "Just tell me who the F it was"?
9 A. Yeah.
10 Q. So this is the next day and you are still
11 wanting to know who that person was that walked into the
12 house, correct?
13 A. She was being very evasive. I knew she was
14 lying and I didn't appreciate being lied to. You live
15 there, you should know who the hell is going up in your
16 house.
17 Q. You thought she was playing games with you?
18 A. Of course, by what she was doing, being
19 evasive in her answers, wouldn't give me a straightforward
20 answer. Of course. There was only one way to think about
21 that.
22 Q. And at 4:05 p.m. did you tell her, "What I
23 want is for my girl to stop playing games before I do
24 something stupid"?
25 A. Um-hmm, I told her that.

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1 Q. Then seven minutes later, "Do you really want
2 to find out, Denise?"
3 A. Yeah, she asked me, "What do you plan on doing
4 stupid?"
5 Q. What did you mean by that?
6 A. Nothing. Probably going out, getting drunk,
7 doing something dumb, getting arrested for being
8 intoxicated.
9 Q. When you were having these text messages
10 conversations with Denise, where were you when you were
11 doing that?
12 A. At home.
13 Q. At Clarence and Mocha's place?
14 A. Correct.
15 Q. Was Mocha around?
16 A. Sometimes.
17 Q. And you were drinking that day, sounds like?
18 A. Yeah, early in the afternoon -- evening
19 rather.
20 Q. And you heard Mocha's testimony that you were
21 drinking, that you were upset and angry, and talking and
22 texting on the phone. Do you remember that?
23 A. Yeah. Denise wasn't the only person I was
24 talking to on the phone.
25 Q. Was that accurate what Mocha was saying about

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1 that?
2 A. That was her interpretation.
3 Q. I believe it was your testimony that she
4 invited you over to her place that evening around eight
5 o'clock?
6 A. True.
7 Q. How did she extend that invitation?
8 A. How did she extend it?
9 Q. Let me rephrase that. Was it a phone call or
10 a text message or --
11 A. Text. She asked me to call her, so I called
12 her.
13 Q. If there aren't any text messages in either
14 the photographs of the text messages or the extraction
15 report taken by Detective Hensing of your phone showing her
16 inviting you over to your house, why would that be?
17 A. I am not sure I understand the question.
18 Q. If the phone that has all the text messages on
19 it, your phone that you told the officer to look at, does
20 not show that she invited you over to her house, why would
21 that be, if you are now saying that she did?
22 A. Through all the text messages we was making to
23 each other, I made an honest mistake.
24 Because I know she -- when I made a phone call
25 to her later that night, closer to between 7:30, 8:00,

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1 probably close to eight o'clock, I called her and she said,
2 "If you hurry up and get up over here, I'll talk to you."
3 Q. So now you're saying that it was in a phone
4 call that she told you to come over?
5 A. She asked me to call her.
6 Q. Do you remember telling Officer Catalano that
7 if he looked at the text messages that's what would show
8 him that she invited you over?
9 A. At that time I was highly upset when I was in
10 the car with that man. I was doing all kinds of yelling
11 about me being arrested and everything like that.
12 And so we had been texting each other so much,
13 it was kind of hard to pin down who called who and who
14 texted who.
15 Q. So you called her right before you went over
16 is what it sounds like?
17 A. Yes.
18 Q. How long did that conversation last?
19 A. Not long.
20 Q. About how long?
21 A. I don't know. It was a short while. Maybe a
22 minute or two, I guess.
23 Q. Carl was there for that?
24 A. Yes.
25 Q. Then he walked with you over to the Winters'

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1 trailer?

2 A. Yes.

3 Q. You testified that you didn't know he was
4 there with you walking over to the Minters' trailer?

5 A. No, I didn't hear no foot steps behind me.
6 There was a lot of traffic on Fifth Street, so I didn't
7 hear him behind me.

8 Q. And you heard his testimony, right, about how
9 you wanted him to go with him because you were concerned
10 about him staying at the Thompson trailer by himself?

11 A. No, I asked him to leave out of the trailer
12 because I couldn't leave him in there by himself.

13 Q. Okay. Then you show up and knocked on the
14 door, right?

15 A. Right.

16 Q. And Denise came out first?

17 A. Correct.

18 Q. The two of you were talking?

19 A. Yes, she accused me of drinking.

20 Q. You said she was using a loud voice; is that
21 correct?

22 A. She was talking loudly.

23 Q. And you were not?

24 A. No.

25 Q. Bert came out and she told him to go back

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1 A. I guess so.

2 Q. wouldn't have been directing that to Denise?

3 A. I suppose so.

4 Q. I believe you used the term he was "talking
5 trash" or whatnot. Now, were you talking trash back to him
6 or saying anything back to him?

7 A. I don't believe I was saying too much. I was
8 just observing him really. I couldn't understand what he
9 was really saying, I wasn't -- I don't know -- I wasn't
10 speaking to him, no. I was looking at him.

11 Q. So he is cursing at you, "What the F are you
12 doing here," and statements along those lines?

13 A. Um-hmm.

14 Q. "You are not supposed to be here," "What the F
15 are you doing here," and you are not responding back to
16 that?

17 A. No. I knew what I was doing there. I wasn't
18 responding to that.

19 Q. It's your testimony that Bert swung the first
20 punch?

21 A. Correct.

22 Q. It kind of skimmed you, I think you described?

23 A. Top of my head, correct.

24 Q. Did he have the knife in his hand at that
25 point?

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1 inside. Is that your testimony?

2 A. That's correct.

3 Q. The door flung wide open?

4 A. After he poked his head out, yep, the door
5 flung wide open.

6 Q. So he poked his head out first and then the
7 door flung wide open?

8 A. Poked his head out, asked Denise if she was
9 all right. She stated that she was fine, we was getting
10 ready to talk, asked him to go back in.

11 Q. At some point he came down the stairs mumbling
12 to himself, as you said?

13 A. That is what it appeared to me to be. He
14 wasn't looking, his head was down, he was waving his arms,
15 gesturing, whatnot. I didn't really know what to make of
16 him.

17 But I didn't feel he was talking directly to
18 me, just making reference that he wasn't happy I was
19 there.

20 Q. Sounds like he was talking to you?

21 A. Well, bits and pieces that I would catch, he
22 was, "fuck he doing here." He got to mumbling incoherent
23 words, I couldn't understand.

24 Q. So, "What the F are you doing here," that
25 would have been directed to you, correct?

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1 A. At that particular point, if he skimmed my
2 head, I don't believe so. I saw the knife briefly when he
3 was waving his hands around. But when he swung at me, how
4 the blow came about, I think I would have been cut on top
5 of my head.

6 Q. So you said just now that you saw the knife
7 when he was waving his hands around initially, right?

8 A. Um-hmm.

9 Q. When he was waving his hands, mumbling, coming
10 down the stairs, on direct examination, you stated -- and I
11 quote -- you caught the flash of the blade in his hand when
12 he was coming down; is that correct?

13 A. Yeah, he was waving his hands, making gestures
14 with his hands, and I caught the -- caught the shine. He
15 was -- the light was right there, so it flashed. I knew he
16 had a blade in his hand.

17 Q. Do you recall telling Detective Nielson that
18 you didn't know Duff had a knife while you were fighting
19 and when Denise got -- and when Denise got off you?

20 A. Excuse me?

21 Q. Do you recall telling Detective Nielson that
22 you didn't even know Duff had a knife while you were
23 fighting?

24 A. While?

25 Q. It wasn't until later that you realized?

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1 A. When we was tussling on the ground and stuff,
2 up until the point he swung that overhand right trying to
3 hit me in my face that I realized he had a blade in his
4 hand because he cut my finger.

5 Q. Didn't you just say, though, that you saw the
6 blade in his hand earlier when he was coming down the
7 stairs?

8 A. When he was coming down the stairs, he had the
9 blade in his hand. But when he swung at me, apparently he
10 put it in his pocket. Denise was blocking me, so -- she was
11 right in front of me.

12 Q. So after he hit you, then I guess the fight
13 was kind of on, you guys were exchanging blows, I
14 understand?

15 A. Um-hmm, yes.

16 Q. At some point you ended up on the ground kind
17 in a wrestling match?

18 A. Yeah, we grabbed on to each other and hit the
19 ground.

20 Q. At which point in time did Denise get on your
21 back and kind of get you in that choke hold?

22 A. We hit the ground, got my feet back under me.
23 Like I said, he was laying prone on his stomach, trying to
24 get up. I got my feet up under me.

25 And while he was making the effort to get back
201

1 on his feet -- and he did, because I couldn't subdue him, I
2 was only holding him with one hand -- and before he got up
3 to his full height, she grabbed me from behind.

4 Q. At that point in time had you -- had he cut
5 your finger yet?

6 A. Had he cut my finger yet?

7 Q. Yeah. Had your finger been cut yet?

8 A. No, no.

9 Q. So after the wrestling match on the ground,
10 you get back up. She is on your back. He is getting up.
11 When did you get your finger cut?

12 A. We all hit the ground, she grabbed me from
13 behind, around my neck. We both latched on to each other.
14 And she was bending me backwards. We all hit the ground.
15 And that's when I saw him swing with his right hand, and I
16 raised my hand to block my face. That is when I got cut.

17 Q. Were you on the ground or standing up when
18 that happened?

19 A. No, we was on the ground.

20 Q. So he swung at you with the knife while all
21 three of you were on the ground?

22 A. All three of us were on the ground.

23 Q. And Denise was behind you?

24 A. She had me in a choke hold and had her left
25 leg wrapped around my left leg.
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1 Q. And he was in front of you?

2 A. And he was in front of me. Most of his weight
3 was on my right leg.

4 Q. And you described it as a looping right
5 hand --

6 A. Yeah.

7 Q. -- jab?

8 A. Just looping. Because he was just -- it
9 wasn't straightforward, because he was laying on me. So he
10 came over the top, trying to dig that knife in my face.
11 And I seen the blow coming and put my hand up to block the
12 blow and got my hand cut.

13 Q. Just describe in a little more detail how you
14 were positioned and he was positioned when he threw that
15 looping right hand?

16 A. He was laying on my right leg. He was on top
17 of me and had me with his left hand gripped around my -- my
18 mid.

19 And Denise had me in a choke hold. I was
20 behind her, in between her legs, and she had her leg
21 wrapped around me.

22 Q. Which side of your body was on the ground?
23 Were you lying on one of your sides? Were you lying on your
24 stomach?

25 A. I was laying flat on top of Denise. She had
203

1 me in a choke hold. So only place -- only position I can
2 be in, on my back looking up.

3 Q. So you were lying on your back. Denise was
4 underneath you?

5 A. On my back looking up. She had me in a choke
6 hold.

7 Q. So she was pinned between you and the ground,
8 sounds like?

9 A. Between me and the ground. She was on the
10 ground, I was on top of her, Bert was on top of me.

11 Q. Was he standing or was he lying on top of you?

12 A. He was lying down on my leg, he was on the
13 ground with us.

14 Q. So if he was on the ground, was he to the side
15 of you? To one side of you?

16 A. He was laying on my leg.

17 Q. How was he laying on your leg?

18 A. Laying on. Just laying there. Laying on the
19 ground. He was laying right on my leg. His face was up in
20 this part, right close to mine, and I am trying to push him
21 up off me.

22 He was laying on the ground. I don't
23 understand what you mean. He was all -- we was all on the
24 ground.

25 Q. What I am asking is, was he -- so you're lying
204

1 on your back with Denise pinned underneath you?
2 A. Um-hmm.
3 Q. Was he directly lying on top of you? Was he
4 to the side?
5 A. No, he was to the side of me. Most of his --
6 like I said, most of his weight was on my right leg. So
7 I -- I guess, to look at it, some of his body was on the
8 ground, too, with the -- majority of his weight was on my
9 right leg. And my right leg was pinned to the ground, I
10 couldn't move.
11 Q. So the majority of his weight was on your
12 right leg?
13 A. Um-hmm.
14 Q. Which side of your body was he -- was he to?
15 A. He was on my right side. He was on -- majority
16 of his body was on my right leg, so he was on my right
17 side.
18 Q. After he threw that looping right jab that cut
19 your finger -- could you show the jury how you were holding
20 your hand when your finger got cut?
21 A. Like I said, he had his left hand up around my
22 mid. I had him up -- up on the shoulder, coat, whatever he
23 had on.
24 I was trying to push his face up and away from
25 mine, so he was -- he was basically in this position, right
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1 here, him laying on top of me.
2 Q. What did you do with your right hand when it
3 got cut?
4 A. Right hand was loose and enabled me to block
5 the blow that was coming at my face.
6 Q. But what I am asking is, how did you block the
7 blow?
8 A. Put my hand up to shield my face.
9 Q. After that, did he swing at you anymore with
10 the knife?
11 A. I had a grip of his hand. I was not going to
12 let him press that knife in my face, so I held on to that
13 hand. He was trying to press that knife into my face.
14 Q. So you grabbed the hand --
15 A. Yeah.
16 Q. -- that was holding the knife?
17 A. I seen it. That's what I saw coming at me and
18 that is when I -- when he hit my hand. I latched on to it
19 and wouldn't let it go.
20 Q. Is that the only swing with the knife that he
21 took at you?
22 A. That wasn't the only swing. We stood up and
23 he was swinging, too.
24 Q. So at some point in time you must have let go
25 of his hand?
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1 A. We all let go of each other, we got up off the
2 ground.
3 Q. Denise was screaming throughout all this --
4 this fight that you are talking about?
5 A. Yes.
6 Q. So after you got up, you are saying that he
7 was swinging at you still with the knife?
8 A. We got up. And like I said, I stumbled back
9 because I almost tripped over Denise.
10 So I got my balance, I reached in my back
11 pocket to see if my phone was in my back pocket, I wanted
12 to make sure -- it was my only phone, I wanted to make sure
13 it was all right. I pulled it out, it was on, put it back
14 in my pocket.
15 He was still talking shit, so we -- so I
16 started talking shit back to him.
17 Q. Okay. Let me ask you about that cell phone.
18 A. Um-hmm.
19 Q. So you are in the middle of a fight and
20 just -- somebody is swinging a knife at you, and you just
21 got cut on your finger in a defensive posture, and you
22 stand back up. And the first thing you do is check your
23 phone?
24 A. That was the first thing I did, check my
25 phone. I had a lot of people pull knives on me before,
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1 been in fist fights before. So it was no big deal to me.
2 Q. What were you checking your phone for?
3 A. Make sure it wasn't broke.
4 Q. Oh, okay. You weren't checking a basketball
5 score or anything like that? Or missed calls? Checking
6 Facebook or anything like that?
7 A. Making sure my phone wasn't broke.
8 Q. So that's why you were checking the phone, to
9 make sure it wasn't broke?
10 A. It wasn't broke.
11 Q. Again, you got a guy swinging at you, and your
12 first impulse is to make sure your phone is not broken?
13 A. Look, it was in my back pocket and we hit the
14 ground, we hit the ground hard.
15 Q. Okay.
16 A. So I was making sure my phone wasn't broke.
17 Q. So the two of you get back up, you're talking
18 smack to each other, sounds like. At this point you are
19 saying you were talking smack back to him; is that correct?
20 A. We was talking smack back to each other, we
21 engaged back -- got back to fighting.
22 Q. Did he still have the knife in his hand at
23 that point?
24 A. Yeah, he was swinging.
25 Q. Did you say he put the knife down and picked
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1 it back up at one point in time?

2 A. He used his right hand to get up, so
3 apparently he -- I don't know, he still had the knife in
4 his hand. I don't know if he placed it on the ground,
5 grabbed it in his hand, pushed up, like that. All I know
6 is he got up on all fours, got to his feet.

7 Q. You never mentioned that in the interview to
8 Detective Nielson, did you, that he put the knife down on
9 the ground at one point?

10 A. He didn't ask me anything specific about that,
11 so I didn't mention it.

12 Q. So he puts the knife down, picks it back up.
13 And when you guys start scrapping again after you get back
14 up off the ground?

15 A. Um-hmm.

16 Q. Did he still have the knife in his hand at
17 that point?

18 A. Yes, he still had the knife in his hand.

19 Q. How was he swinging at you?

20 A. Like he was trying to cut me again.

21 Q. Okay. Had Denise picked herself up off the
22 ground at that point?

23 A. Yeah, she was off the ground. At some point
24 in time she got up off the ground. But I was paying more
25 attention to -- to Bert until she came to into my view.

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1 That's when I knew she was -- she was involved with the
2 fight, too, because she was swinging in the same manner he
3 was swinging.

4 Q. When did she come into your view?

5 A. Just shortly after we engaged, we got -- we
6 started going back at it, here she comes; she entered the
7 picture, too, and she got into the fight, too.

8 Q. And that's the first time that you saw her
9 swinging anything?

10 A. Yes, other than her grabbing me. She didn't
11 swing at me when she grabbed me. Yeah, she started
12 swinging at me at that time.

13 Q. Prior to that, there hadn't been any other
14 swings from her?

15 A. Not that I recall. She just grabbed me behind
16 my -- grabbed me in a choke hold.

17 Q. Did you actually see a knife in her hand?

18 A. It was my assumption that she had a knife in
19 her hand. It was -- it was -- things was happening so
20 fast. The way she was swinging it would indicate that she
21 had a knife in her hand, too. Because she was swinging in
22 the same manner you would have a knife in your hand.

23 Q. So when you told Detective Nielson you saw a
24 knife in her hand, were you mistaken about that?

25 A. No, I don't think so. The way she was

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1 swinging, it was quite possible I saw a knife in her hand.

2 Q. How was she swinging, if you could describe
3 that for the jury?

4 A. Just trying to -- just trying to, you know,
5 like how you would swing a knife sideways, trying to stab
6 me.

7 Q. And if -- you mentioned she came back into
8 your vision and she was swinging at that point?

9 A. Um-hmm.

10 Q. It stands to reason that she was somewhere in
11 front of you so that you could see her; is that correct?

12 A. She was off to the side of me. She -- me and
13 Bert was engaged, so she wasn't really trying to get close
14 to me. She would jump in, jump out, and she would fade in.
15 And I was looking at him, catching the side of
16 her, catching her, you know, in my side view. She was
17 trying to stay close to Bert, trying to -- trying to stick
18 me with that knife, jabbing me.

19 Q. So you were engaged with Bert when she was
20 swinging at you?

21 A. Yeah, me and him was engaged.

22 Q. She never landed a blow with this knife on
23 you; is that correct?

24 A. Not on me.

25 Q. When you say you were engaged with Bert, what

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1 exactly was going on with you and Bert when she was
2 swinging these knife blows at you?

3 A. He was swinging and I was swinging. He was
4 swinging with the object he had in his hand, with the
5 knife, and I was trying to hit him. And she was swinging,
6 also.

7 Q. And he never cut you again with that knife?

8 A. I wouldn't allow him to. I'm dodging the
9 blows and trying to get my own in at the same time. I'm
10 trying to miss both of them.

11 Q. And apparently you succeeded, right? They
12 were both swinging away, and you didn't get cut again after
13 that initial cut to your finger; is that correct?

14 A. Excuse me?

15 Q. You never got cut again by either of the
16 knives after you got your finger initially cut; is that
17 right?

18 A. No.

19 Q. That was the only cut you suffered?

20 A. That was the only cut I suffered.

21 Q. About how many swings did they each take at
22 you with knives after they got up from the ground?

23 A. I can't give you a definite how many swings
24 they gave. I can't give you a definite.

25 Q. You're aware of evidence in this case

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1 indicating that Bert suffered a number of stab wounds; is
2 that correct?
3 A. To my knowledge, that's correct, that's what
4 happened.
5 Q. You have heard the testimony and you have seen
6 the photographs?
7 A. Yes, I have heard testimony, seen the
8 photographs.
9 Q. So you know that he has four stab wounds along
10 the left side of his body, correct?
11 A. That's what I get from it.
12 Q. And another three on his arm for a total of
13 seven?
14 A. That's what I gleaned from it.
15 Q. And it's your testimony that you did not have
16 a knife; is that correct?
17 A. I did not have a knife.
18 Q. And you did not stab him?
19 A. I did not stab him.
20 Q. And it's your testimony that if he was
21 stabbed, it was Denise that did it?
22 A. That's my testimony.
23 Q. Can you explain to the jury how that's
24 possible for her stab him seven times inadvertently without
25 even realizing it?

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1 A. Missing me.
2 Q. Missing you and stabbing another human being
3 and not realizing it?
4 A. By missing me.
5 Q. Stabbing the person again, stabbing seven
6 times without even realizing it?
7 A. Missing me.
8 Q. Her best friend she called him?
9 A. That's what she called him.
10 Q. He called her his best friend?
11 A. That's what they called each other, that's
12 true.
13 Q. You've seen the photograph of the stab wound
14 to Denise?
15 A. Excuse me?
16 Q. You have seen the photograph of the stab wound
17 to Denise?
18 A. That's true.
19 Q. Do you have any idea how that happened?
20 A. Missing me.
21 Q. You are referring to Duff?
22 A. Yes.
23 Q. So at the same time she is stabbing her best
24 friend seven times without even realizing it, he is
25 stabbing his best friend and not realizing it either?

214

1 A. I don't know what they realized. All I know
2 is they ain't stabbing me because I was trying to get the
3 hell up out the way.
4 MR. MILLS: That is all I have. I will pass the
5 witness.
6 THE COURT: Redirect.
7 MR. WOODBURY: Nothing.
8 THE COURT: Jury questions?
9 (WHEREUPON, the following proceedings were held at the
10 bench) you
11 THE COURT: We're at side bar.
12 Juror Number 1 has a question. Juror Number 7
13 asks all the others.
14 "Have you had any kind of contact with Denise
15 Minter since December 8, 2015?"
16 MR. MILLS: No objection.
17 MR. WOODBURY: No objection.
18 THE COURT: What do you think the answer is?
19 MR. WOODBURY: No.
20 MR. MILLS: I don't know.
21 THE COURT: Obviously he has --
22 MR. MILLS: We've seen the jail records, I don't
23 think they have communicated.
24 THE COURT: Okay. He has been incarcerated since
25 December 8, right?

215

1 MR. MILLS: That's correct.
2 THE COURT: Juror No. 7. "You say Denise had a
3 knife and she was behind you, she put you in a choke hold.
4 If she wanted to injure you, wouldn't it stand to reason
5 she could have?"
6 MR. WOODBURY: That's fine.
7 MR. MILLS: No objection.
8 THE COURT: Seven again. "Did you see Bert enter
9 Denise's residence on 12/8?"
10 MR. WOODBURY: No objection.
11 MR. MILLS: No objection.
12 THE COURT: Seven. "If you are attacked by a
13 right-handed individual with a knife, how would you defend
14 yourself? Show us."
15 MR. WOODBURY: No objection.
16 MR. MILLS: No objection.
17 THE COURT: Seven. "You said in Nielson's
18 interview that Denise had a knife. When and where you did
19 see it?"
20 MR. WOODBURY: Question was asked and answered.
21 MR. MILLS: That is probably true. I think it
22 was.
23 THE COURT: Court will sustain the objection,
24 Mr. Woodbury. I will set that aside, so I don't screw up
25 and ask it.

216

1 Seven. "Where is the knife wound on your finger?
2 Which side?"
3 MR. WOODBURY: No objection.
4 MR. MILLS: No objection.
5 THE COURT: All right.
6 (WHEREUPON, the bench conference was concluded)
7 THE COURT: Mr. Dean, some questions for you.
8 BY THE COURT:
9 Q. Have you had any kind of contact with Denise
10 Minter since December 8, 2015?
11 A. No.
12 Q. Where is the knife wound on your finger; that
13 is, which side?
14 A. Right on that side.
15 Q. I'm sorry, your answer again?
16 A. Right -- right on the outside of my index
17 finger.
18 Q. Thank you. If you were attacked by a
19 right-handed individual with a knife, how would you defend
20 yourself? Show us.
21 Let me repeat that. If you are attacked by a
22 right-handed individual with a knife, how would you defend
23 yourself? And you can demonstrate it.
24 A. I can demonstrate it?
25 Q. If you want to, yes.

217

1 A. By moving to your right. You wouldn't move to
2 your left if somebody got a knife in their right hand, you
3 would move to your left, path of least resistance. You
4 wouldn't want to move into the knife, you would want to
5 move away from the knife.
6 Q. Okay. Did you see Bert enter Denise's
7 residence on December 8, 2015?
8 A. I did not know who that was. All I saw was an
9 individual at the door, hand extended like they was messing
10 with the lock. I couldn't discern whether it was a female
11 or a male.
12 Q. And you said Denise had a knife and she was
13 behind you; is that correct?
14 A. She was behind me at first, and then after
15 being -- me and Duff engaged again, she was along side of
16 me.
17 Q. Okay. And she put you in a choke hold?
18 A. Excuse me?
19 Q. And she put you in a choke hold?
20 A. Well, that was after the choke hold.
21 Q. I see. If she wanted to injure you, would it
22 stand to reason that she could have?
23 A. At what time? What particular time? I don't
24 know who asked that question. If she wanted to injure me?
25 THE COURT: Okay. That was the question. Maybe

218

1 we can have follow-up. Mr. Mills.

2 RECROSS-EXAMINATION

3 BY MR. MILLS:
4 Q. So she was behind you at one point in a choke
5 hold, correct?
6 A. Right.
7 Q. And if she was behind you and she had a
8 knife --
9 THE COURT: I guess I messed up. We should be
10 asking Mr. Woodbury.
11 MR. WOODBURY: He's already got started. We
12 don't mind.
13 THE COURT: Typically we go to the person, the
14 lawyer who called the witness. I apologize to
15 Mr. Woodbury.
16 But if you don't mind, Mr. Mills, go ahead.
17 Q. (By Mr. Mills) She was behind you initially,
18 correct?
19 A. When she had me in the choke hold, yeah. I
20 got up off the ground, she wasn't in my line of vision, so
21 yeah, she was behind me.
22 Q. Presumably she had a knife, correct?
23 A. I didn't ascertain that until after she
24 appeared in my vision.
25 Q. If she had a knife she easily could have

219

1 injured you because she was behind you at that point,
2 correct?
3 A. It's possible she could have injured me.
4 MR. MILLS: That is all I have.
5 THE COURT: Mr. Woodbury, follow up?
6 REDIRECT EXAMINATION
7 BY MR. WOODBURY:
8 Q. The jury question was, Mr. Dean, whether or
9 not you saw Mr. Minter enter the house on December 8, not
10 December 7.
11 A. On December 7 or December 8?
12 Q. December 8.
13 A. No, I didn't see him enter -- enter December
14 8.
15 Q. And the time you talked about was on December
16 7?
17 A. Right, that was correct.
18 Q. Okay.
19 MR. WOODBURY: I have nothing further.
20 THE COURT: All right. Mr. Dean, thank you.
21 Please have a seat next to your counsel, sir.
22 I should say there was one question that the
23 Court didn't ask, and that is because under the rules of
24 evidence, I decided again not to ask it. So there was one
25 other question.

220

1 Almost every one -- every question but that one
2 from the jury was asked of Mr. Dean.
3 Okay. Anyway, I think we've reached the point
4 where we can finish up for today. I think we're still on
5 schedule, ladies and gentlemen. Sorry for the long delay
6 today, but sometimes matters need to be taken up outside
7 your presence, and we were working on those matters and
8 didn't want you keep you around too long. I think I
9 underestimated the time I needed to deal with them, but I
10 think we're on pace.

11 We'll have you come back on Tuesday morning at
12 8:30 a.m. We'll get going again.

13 Now, it's going to be a long -- not a long
14 weekend. But it sort of is for the jury because I know you
15 are not coming back on Monday.

16 I have a drug court that I run on Mondays, and I
17 handle other matters that I just have to get done. So
18 that's how we do it in Elko County, we start our trials on
19 Tuesday, then dark on Monday, if we have to go more than
20 four days.

21 So I do apologize for that. But other judges
22 have done that, that's what I continue to do.

23 So we'll have you come back Tuesday, like we said
24 before.

25 Please do not converse amongst yourselves or with
221

1 With that, court's in recess for the jury.

2 (WHEREUPON, the jury left the courtroom)

3 THE COURT: We're outside the presence of the
4 jury and the alternates.

5 I got a message from my law clerk during this
6 thing -- maybe it was from Jim -- that Ms. Minter was
7 having an anxiety attack and maybe had to go to the
8 hospital, there was an ambulance coming.

9 THE BAILIFF: She stayed. They came, checked her
10 out, she stayed.

11 THE COURT: Apparently she is here with Ms.
12 Biehl. I didn't realize that Ms. Biehl is apparently going
13 to Hawaii Monday for the State Bar Convention.

14 So if it's going to happen, it will happen in
15 this case, seems like.

16 Probably what I'm going to do is appoint other
17 counsel for her on Monday so we can get this case wrapped
18 up.

19 Anyway, is there anything else we can accomplish
20 today with -- that you can see with offers of proof
21 hearings or --

22 MR. MILLS: I don't believe so, Your Honor.

23 MR. WOODBURY: No, Your Honor.

24 MR. MILLS: Do you want us to -- the State to be
25 responsible for taking -- keeping tabs on Ms. Minter and
223

1 anyone else on any subject connected with the trial. Do
2 not read, watch or listen to any report or commentary on
3 the trial or any person connected with the trial by any
4 medium of information, including, without limitation,
5 newspapers, television, radio or the Internet.

6 I think there may be newspaper articles about
7 this case, so you've got to pay extra special attention,
8 you know, if you have that favored on your internet, don't
9 look at that, the Free Press or any other newspapers. I
10 want to highlight that. Same thing for any possible
11 television or radio coverage, okay. Just pay attention to
12 that

13 And do not form or express any opinion on any
14 subject connected with the trial until the cause is finally
15 submitted to you.

16 You may not use any electronic device or media,
17 such as the telephone, a cell phone, smartphone, iPhone,
18 BlackBerry or computer, the internet, any internet service,
19 any text or instant messaging service, any internet chat
20 room, blog, or website such as Facebook, MySpace,
21 LinkedIn, YouTube or Twitter, to communicate to anyone any
22 information about this case until I accept your verdict.

23 In other words, you cannot talk to anyone on the
24 phone, correspond with anyone, or electronically
25 communicate with anyone about this case.
222

1 having her back here on Tuesday morning?

2 THE COURT: Well, yeah. I mean, we got to finish
3 up the trial..

4 MR. MILLS: That's fine. What time would you
5 like us to have her be here?

6 THE COURT: Defense is going to call her. I
7 don't know what -- what the defendant wanted to question
8 her on now.

9 MR. WOODBURY: I don't know what we are allowed
10 to question her on.

11 THE COURT: I don't understand what's happening
12 with this defense, I have to tell you. My understanding
13 was he was going to implicate them in selling controlled
14 substances. He didn't do that.

15 MR. WOODBURY: I know that. Because I can't tell
16 yet from the Court's ruling whether I can do that or not.

17 THE COURT: I -- I specifically said that's not a
18 problem. I mean, it's his case. He can testify to that.

19 MR. WOODBURY: We'll put him on on Monday.

20 THE COURT: I asked how the table was going to
21 set with this so I could know whether this evidence was
22 relevant.

23 He can be put on on Monday to testify about that
24 if he wants to. I am not going to deny him his right to
25 put on his theory of the case.
224

1 But there has got some relevance to this other
2 witness testimony. Do we know if Mr. Palmer has been
3 located? We got the judicial assistant -- I guess
4 assistants from the D.A.'s office, we got assistants from
5 Mr. Woodbury's office.
6 Do we know if he is around anywhere?
7 MR. WOODBURY: He did not show up today, Judge.
8 And I haven't talked to the lady from Cavanaugh-Bill's law
9 office. I don't know where he is at.
10 THE COURT: She hasn't even been appointed to
11 represent him because he never showed up today.
12 MR. WOODBURY: I will try to have it straightened
13 out by Tuesday, Your Honor. And I will ask Mr. Mills if we
14 can have conversations with the court law clerk to make
15 sure you're straight on what we have accomplished and what
16 we haven't accomplished by Monday.
17 THE COURT: All right. Why don't we talk jury
18 instructions on Monday then.
19 MR. WOODBURY: That would be find if you got
20 time.
21 THE COURT: How about four o'clock?
22 MR. MILLS: That's fine, Your Honor.
23 THE COURT: We'll give you a copy of some
24 instructions the Court has got before you leave today.
25 MR. WOODBURY: That's fine.

225

1 MR. MILLS: Yes.
2 THE COURT: Yeah, I mean, Mr. Dean, if he wants
3 to testify, he can testify about how I sell drugs, I guess.
4 I still don't understand if there is going to be
5 testimony about what happened on November 12, why they
6 would not want him around as to why they -- why the police
7 were looking at -- I don't understand how that is coming in
8 or how the defense proposes to bring that.
9 MR. WOODBURY: I know. I will straighten it out
10 for you on Monday. To the extent I can.
11 THE COURT: You mean Tuesday or Monday?
12 MR. WOODBURY: I will have a conversation with
13 Mr. Mills on Monday and get it figured out. I'm -- I have
14 been at this a long time, Judge. I am not sure that I am
15 not too tired to figure it out tonight.
16 THE COURT: Okay. I can understand that. It's
17 been a long week for everybody.
18 All right. We'll see you Monday at 4:00. We'll
19 go over some jury instructions.
20 Court's in recess.
21 (WHEREUPON, court adjourned at 5:00 p.m.)
22
23
24
25

226

1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4

5 I, Lisa M. Manley, Official Reporter for the Fourth
6 Judicial District Court, Dept. II, of the State of Nevada,
7 in and for the County of Elko, was present in the
8 above-entitled court on June 24, 2016;

9 The foregoing transcript is an uncertified rough draft
10 transcription of my stenotype notes of said proceedings.
11 This transcript has not been edited, proofread, finalized,
12 indexed or certified.

13
14 DATED: At Elko, Nevada, this 18th day of
15 November, 2016.
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15 November, 2016.
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FILED

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ELKO CO DISTRICT COURT

CLERK _____ DEPUTY uu

1 Case No. CR-FP-2015-1508

2 Dept. 2

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

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9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : JURY TRIAL - VOL. 5

12 SEAN MAURICE DEAN, :

13 Defendant. :

14 _____/

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16 TRANSCRIPT OF PROCEEDINGS

17 BE IT REMEMBERED that the above-entitled matter
18 came on for hearing on June 28, 2016, at the hour of 8:59
19 a.m. of said day, before the HONORABLE ALVIN R. KACIN,
20 District Judge.

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25 Reported by Lisa M. Manley, CCR #271

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1 Case No. CR-FP-2015-1508

2 Dept. 2

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF

7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 00000

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : JURY TRIAL - VOL. 5

12 SEAN MAURICE DEAN, :

13 Defendant. :

14 _____/

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21

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25 Reported by Lisa M. Manley, CCR #271

1

1 A P P E A R A N C E S

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3

4 For the Plaintiff:

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(775) 738-3101

5

6

7 For the Defendant:

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(775) 738-8006

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15 PUBLIC OR THE MEDIA.

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17 PLEASE CONTACT THE COURT REPORTER FOR FURTHER ASSISTANCE.

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1 P R O C E E D I N G S

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4 THE COURT: We'll be back on the record for Case

5 CR-FP-2015-1508. State of Nevada, plaintiff. Sean Maurice

6 Dean is defendant.

7

8 Mr. Dean is here with his counsel Gary Woodbury.

9 And Mark Mills, Elko County deputy district

10 attorney, is back to represent the State.

11 And also I would note that Mr. Shurtz is here in

12 case we need representation for any of these witnesses that

13 the Court has a concern may have self-incrimination issues;

14 specifically, Darrell Palmer, Bert Minter, and Denise

15 Minter.

16 As far as the Denise Minter issue is concerned,

17 apparently her other counsel, Ms. Biehl, was set to go to

18 Hawaii. She is off at the State Bar meeting in Hawaii.

19 So I wish to thank Mr. Shurtz for that. We did an

20 order substituting counsel.

21 I don't think the issue will come up with Mr.

22 Palmer.

23 The Court went ahead and issued an order on the

24 motion in limine because I feel like I haven't been

25 expressing myself very well.

Anyway, there was some confusion on this motion

in limine, so the Court did that in case Mr. Dean is

convicted, then you got a real clear record about how I

4

1 reviewed this.

2 So I wanted to do that for the parties. And, of

3 course, you know, you saw my ruling, I don't want -- I

4 don't think Mr. Palmer can testify and I don't think Duff

5 can testify about the events of April 7, 2016.

6 And I don't want examinations regarding

7 controlled substances here because I think it's irrelevant

8 if the defendant is unwilling to have evidence that the

9 police were searching him out at the Minter residence, the

10 residence Mr. Dean formerly shared as well with Ms. Minter,

11 as a result of the Hodges altercation back in November 15.

12 So I think it's irrelevant. That's why I don't

13 think Mr. Palmer and Mr. Minter would be testifying.

14 So I don't think we need to get into the issue of

15 counsel for them.

16 So now we got to talk about Denise Minter. Where

17 else are we going with this case?

18 MR. WOODBURY: It's not my intent to ask Ms.

19 Minter about her controlled substance.

20 THE COURT: Did you still want to call her to

21 about the prosecution?

22 MR. WOODBURY: I do not.

23 THE COURT: So is the defense going to rest or --

24 MR. WOODBURY: We do rest.

25 THE COURT: Okay. Then this case can be argued.

5

1 We can settle jury instructions then. And we'll have you

2 rest in front of the jury, of course.

3 MR. MILLS: There is the matter of a possible

4 rebuttal case, Your Honor.

5 THE COURT: There is, that's right. Okay.

6 What's going on with that?

7 MR. MILLS: It will be short, Your Honor.

8 I'm going to recall Denise Minter and Bert Minter

9 to ask them a few questions in response to Mr. Dean's

10 testimony in rebuttal.

11 THE COURT: Are they ready to go, Mr. Mills?

12 MR. MILLS: They are.

13 THE COURT: What I would do is ask Mr. Shurtz to

14 go ahead and remain. This is going to be a short rebuttal,

15 I think.

16 All right. Can we bring in the jury then?

17 MR. MILLS: Yes, Your Honor.

18 (WHEREUPON, the jury was brought into the courtroom)

19 THE COURT: Hope you had a nice weekend, extended

20 weekend at least where the jury is concerned.

21 Will counsel stipulate to the presence of the

22 jury and the alternates?

23 MR. MILLS: Yes, Your Honor.

24 MR. WOODBURY: So stipulated.

25 THE COURT: Thank you. All right.

6

1 Let's see, next witness for the defense case,

2 Mr. Woodbury.

3 MR. WOODBURY: Defense rests, Your Honor.

4 THE COURT: Defense having rested its case now,

5 ladies and gentlemen.

6 Any rebuttal for the State?

7 MR. MILLS: Yes, Your Honor. State calls Denise

8 Minter.

9 THE COURT: All right.

10 Of course, we have had her sworn for the whole

11 proceeding. Any reason to have her resworn as far as you

12 can tell?

13 MR. MILLS: No, Your Honor.

14 MR. WOODBURY: (Shakes head)

15 THE COURT: I will remind her she is under oath.

16 Ms. Minter, you are being called as a witness in

17 this proceeding in time by the State in its rebuttal case.

18 Please resume the witness stand.

19 And I am remind you, you are under oath.

20 THE WITNESS: Yes.

21 THE COURT: Thank you. Mr. Mills.

22 DENISE MARIE MINTER

23 called as a witness in said case, having been first

24 duly sworn, testified as follows:

25 DIRECT EXAMINATION

7

1 BY MR. MILLS:

2 Q. Good morning, Ms. Minter.

3 A. Good morning.

4 Q. I have just a couple of additional questions

5 for you about the evening of December 8.

6 A. Okay.

7 Q. That evening, during the altercation that has

8 already been discussed in court, did you ever stab Bert?

9 A. No.

10 Q. Did he ever stab you?

11 A. No.

12 Q. How did you get that stab wound on your chest

13 that you testified about earlier?

14 A. Because when -- when they -- when he ran back

15 up to him and --

16 THE COURT: She is using pronouns, so -- you know

17 what, you can use this microphone, too. Pull that down

18 about here. That might help you. Okay.

19 THE WITNESS: Like this?

20 THE COURT: Sure.

21 A. When -- when Sean ran back up after the first

22 fight and hit him, and then he pulled out what -- the knife

23 out of his back pocket, which I thought it was a phone.

24 But anyways, he was doing a stabbing motion.

25 And I had run back up and got into it again.

8

1 I don't remember what positions I was standing or anything
2 like that. He was the only one that had a knife on him.
3 He came with a knife.
4 Q. And did he ever stab or punch or make contact
5 with your chest in any way?
6 A. Yeah. I thought he just punched me at first.
7 Q. Where did he punch you?
8 A. Right here. (indicating)
9 Q. And prior to him punching you there, had there
10 been a puncture in your chest or any bleeding or anything
11 like that?
12 A. Yeah.
13 Q. What was --
14 A. It wasn't until after, when he left, started
15 walking back down the driveway, I heard -- I believe it was
16 Joe who told me, "Sit down." I sat down on the steps on my
17 porch, and then -- then I seen Duff walking up.
18 When he got to the light, I seen the blood on
19 his pants. And then I felt -- then that's when I felt the
20 trickle go down my chest.
21 Q. And when you looked down at your chest, what
22 did you see?
23 A. Just a trickle of blood.
24 Q. Okay. And was there a wound on your chest?
25 A. Yes.

9

1 Q. Was that wound on your chest before Sean
2 punched you in the chest?
3 A. No, it was after.
4 Q. At any point in time did you have a knife in
5 your hand during that fight?
6 A. No.
7 Q. Did you ever see Bert with a knife in his
8 hand?
9 A. No.
10 MR. MILLS: That's all I have. I'll pass the
11 witness.
12 THE COURT: Cross-examination.
13 MR. WOODBURY: Thank you, Your Honor.
14 CROSS-EXAMINATION
15 BY MR. WOODBURY:
16 Q. Ms. Minter, do you recall your previous
17 testimony about getting hurt in your chest?
18 A. Yes.
19 Q. Do you recall saying you didn't know how it
20 happened, you didn't see it happen, you only felt it?
21 A. I felt it, yeah.
22 Q. Yeah. And you never saw Sean Dean stab you
23 with anything, did you?
24 A. Actually I don't even remember.
25 Q. Okay.

10

1 MR. WOODBURY: Thank you. I have no further
2 questions.
3 THE COURT: Anything based on that?
4 REDIRECT EXAMINATION
5 BY MR. MILLS:
6 Q. What did you feel?
7 A. Like a punch, like somebody socking you.
8 Q. Okay. And just to clarify, did you actually
9 see him, like, swing a fist and punch you?
10 A. I remember -- I guess I blanked out. I guess
11 I don't -- I don't -- I don't remember. I don't remember.
12 Q. Okay.
13 MR. MILLS: That's all I have.
14 THE COURT: Any recross?
15 MR. WOODBURY: No.
16 THE COURT: Any jury questions this time, on
17 these subjects here that were brought up?
18 Okay, appears not.
19 May Denise be excused now?
20 MR. MILLS: She may.
21 THE COURT: Denise Minter may be excused, Mr.
22 Woodbury?
23 MR. WOODBURY: Yes.
24 THE COURT: Okay. You're excused from the
25 proceeding. Thank you.

11

1 Any other witnesses?
2 MR. MILLS: Yes, Your Honor. The state calls
3 Bert Minter.
4 THE COURT: All right.
5 Mr. Minter, you're being called as a witness in
6 this proceeding. This time in the State's rebuttal case.
7 Please have a seat at the stand.
8 And Mr. Minter, I remind you, you are under oath
9 still.
10 THE WITNESS: Yes, sir.
11 THE COURT: Mr. Mills, please proceed.
12 BERT MACK DUFF MINTER
13 recalled as a witness in said case, having been first
14 duly sworn, testified as follows:
15 DIRECT EXAMINATION
16 BY MR. MILLS:
17 Q. Good morning, Mr. Minter.
18 A. Good morning.
19 Q. I have a couple of additional questions for
20 you about the evening of December 8.
21 During the fight that has already been
22 discussed in court, did you ever stab Denise?
23 A. No.
24 Q. Did she ever stab you?
25 A. No.

12

1 Q. Was she -- did you ever see her punching or
2 making stabbing motions at Sean?
3 A. Not at all.
4 Q. Based on the circumstances that you have
5 already described, is it possible that she could have --
6 could have stabbed you even accidentally?
7 A. No, no possible way.
8 Q. Did you stab yourself?
9 A. No.
10 Q. Did you ever stab or try to cut the defendant?
11 A. No.
12 Q. Did you have a knife in your hand at any point
13 in time?
14 A. No, I had no weapon at all on my person.
15 MR. MILLS: Thank you. That's all the questions
16 I have.
17 THE COURT: Cross-examination?
18 MR. WOODBURY: No questions.
19 THE COURT: All right. Any jury questions for
20 Mr. Minter this time?
21 (WHEREUPON, the following proceedings were held at the
22 bench)
23 THE COURT: Side bar.
24 Eleven asks, "With all Mr. Minter's medical
25 problems, how were you able to keep fighting?"

13

1 MR. MILLS: No objection.
2 MR. WOODBURY: That's fine.
3 THE COURT: Okay.
4 (WHEREUPON, the bench conference was concluded)
5 THE COURT: Mr. Minter, one jury question for
6 you.
7 THE WITNESS: Yes.
8 BY THE COURT:
9 Q. With all of your medical problems, how were
10 you able to keep fighting with Mr. Dean?
11 A. Adrenaline.
12 THE COURT: Thank you. Any follow-up, Mr. Mills?
13 MR. MILLS: No, Your Honor.
14 THE COURT: Mr. Woodbury?
15 MR. WOODBURY: No.
16 THE COURT: Okay. May Mr. Minter now be excused?
17 MR. MILLS: He may.
18 MR. WOODBURY: He may.
19 THE COURT: Okay. Mr. Minter, you are excused as
20 a witness.
21 THE WITNESS: Thank you, sir.
22 THE COURT: Thank you. Watch your step there.
23 THE WITNESS: Thank you.
24 THE COURT: Any other witnesses for the State?
25 MR. MILLS: No, Your Honor. The State rests its

14

1 rebuttal case.
2 THE COURT: Any surrebuttal?
3 MR. WOODBURY: No.
4 THE COURT: All right.
5 Ladies and gentlemen, this matter, the evidence
6 portion of this trial is now over, okay.
7 So like I told you at the beginning of the trial,
8 what we got to do is settle jury instructions. And a lot
9 of that work is sifting through them, anticipating what the
10 evidence would be.
11 That's been done. So I don't think it's going to
12 take us long to finish that up. The law requires we do
13 that outside your presence, of course, because these are
14 legal issues.
15 You are here to decide the factual issues, listen
16 to the jury instructions at the end, at that time take them
17 back with you and then deliberate this case after hearing
18 argument from the attorneys, okay.
19 So we do that outside your presence, where we
20 figure out what the final jury instructions are.
21 I don't think it's going to take very long, so
22 what I would ask is that you remain in the jury room during
23 this recess. I don't think it's going to be any more than
24 30 minutes.
25 So remember the admonishment, though. I got to

15

1 read it every time.
2 I know you have heard it. But during the recess,
3 please do not converse amongst yourselves or with anyone
4 else on any subject connected with the trial. Do not read,
5 watch or listen to any report or commentary on the trial or
6 any person connected with the trial by any medium of
7 information, including, without limitation, newspapers,
8 television, radio or the Internet and do not form or
9 express any opinion on any subject connected with the trial
10 until the cause is finally submitted to you.
11 You may not use any electronic device or media,
12 such as the telephone, a cell phone, smartphone, iPhone,
13 BlackBerry or computer, the internet, any internet service,
14 any text or instant messaging service, any internet chat
15 room, blog, or website such as Facebook, MySpace,
16 LinkedIn, YouTube or Twitter, to communicate to anyone any
17 information about this case until I accept your verdict.
18 In other words, you cannot talk to anyone on the
19 phone, correspond with anyone, or electronically
20 communicate with anyone about this case.
21 So remember, when you are back in there, that
22 means you can't start deliberation. There is no talking
23 about the case, even amongst yourselves.
24 We are going to get there later here today, okay.
25 Later this morning.

16

1 Court's in recess.
2 (WHEREUPON, the jury left the courtroom)
3 THE COURT: Back on the record for Case
4 CR-FP-2015-1508. Again, State versus Dean.
5 Mr. Dean is back in court with his counsel Gary
6 Woodbury.
7 Elko County deputy district attorney Mark Mills
8 back to represent the State.
9 We're outside the presence jury and the
10 alternates to settle the jury instructions and forms of
11 verdict.
12 The Court actually has given a packet of
13 instructions -- you know, I neglected to number them.
14 Which is my mistake. I have been dealing with so many
15 other issues already this morning, I didn't do that.
16 I think we gave each of you a packet, though; is
17 that right?
18 MR. MILLS: That's correct, Your Honor.
19 MR. WOODBURY: Yes, Your Honor.
20 THE COURT: Okay. What I will do is I will go
21 ahead and I'm going to have to organize these in a way that
22 makes sense. I will number them and then I will give you
23 my packet with the numbers on it, then you both will have
24 them numbered according to my numbering. See what I mean,
25 just compare and renumber.

17

1 Either that or we could just do two copies. Why
2 don't we do that. Sorry, I don't know where my mind was on
3 that. I will go ahead and get them numbered real quick,
4 then come back on the record. That's my fault.
5 (WHEREUPON, a short recess was taken)
6 THE COURT: Okay. We're back on the record for
7 Case CR-FP-2015-1508. State of Nevada, plaintiff, versus
8 Sean Maurice Dean, defendant.
9 Mr. Dean is back in court with counsel Gary
10 Woodbury.
11 Mark Mills, Elko County deputy district attorney,
12 is here to represent the State.
13 Court is here to settle jury instructions now
14 that I have numbered them. There are numbered instructions
15 1 through 35. We have also got three forms of verdict.
16 Mr. Mills, you have got copies?
17 MR. MILLS: I do, Your Honor.
18 THE COURT: Mr. Woodbury, you have got copies?
19 MR. WOODBURY: Yes.
20 THE COURT: All right. Any objections to any of
21 the instructions 1 through 35 for the State?
22 MR. MILLS: No, Your Honor.
23 THE COURT: Any objections to 1 through 35 for
24 the defense?
25 MR. WOODBURY: No.

18

1 THE COURT: Any forms of -- any instructions that
2 the -- well, any objection to the forms of verdict for the
3 State?
4 MR. MILLS: No, Your Honor.
5 THE COURT: Any objections for the defense?
6 MR. WOODBURY: No.
7 THE COURT: No objections to the forms of
8 verdict, okay.
9 Any instructions that the State wishes to offer?
10 You got your flight instruction.
11 MR. MILLS: I do, Your Honor.
12 THE COURT: Okay. Any others, other than that?
13 MR. MILLS: Just the one on transferred intent.
14 THE COURT: Okay.
15 MR. MILLS: Those are marked and State's 1 and 2.
16 All right. Could you bring them up, please.
17 We got copies to Mr. Woodbury?
18 Mr. Woodbury, did you get copies of these?
19 MR. WOODBURY: I must have.
20 THE COURT: All right. I have an additional copy
21 of the flight instruction the State was going to offer. I
22 anticipated that, along with the transfer of intent
23 instruction.
24 So I will hand those down to Mr. Woodbury.
25 All right. Did you want to make an argument on

19

1 why we ought to give these instructions for the record?
2 MR. MILLS: Yes, Your Honor.
3 By the way, I am looking through these
4 instructions. Did you decide whether to include the flight
5 instruction or not?
6 THE COURT: I did not include the flight
7 instruction. But I am willing to hear argument.
8 MR. MILLS: Your Honor, for the record, the
9 State's argument is that we have at least two witnesses
10 that indicate evidence of flight. Bert Minter stated after
11 the stabbing the defendant ran away.
12 That is consistent with Christina Hodges'
13 testimony. She saw him -- after this melee, she saw this
14 dark figure running down the road, and that's perpendicular
15 to Fifth Street, then run across Fifth Street. So there is
16 that evidence.
17 As far as this business about, well, Joseph
18 Schenk was going to into the house to get a gun, I don't
19 recall any evidence that that information was communicated
20 to the defendant.
21 I don't think Joseph Schenk went up and told him,
22 "hey, I'm going to go inside and get a gun." I think that
23 was Joseph Schenk's internal thought process, "I went
24 inside the house to get a gun."
25 The defendant wouldn't have known what his

20

1 intention was, wouldn't have known a gun potentially was in
2 play.

3 So in light of all that evidence, it seems to the
4 State there is clear evidence of flight that the State
5 could argue.

6 THE COURT: Thank you, Mr. Mills. Mr. Woodbury.

7 Oh, did you want -- you can address the --

8 MR. MILLS: Should we address both instructions
9 at once?

10 THE COURT: Yes.

11 MR. MILLS: With regards to the transferred
12 intent instruction, I think I understand the Court's point
13 from yesterday, that -- that the way the elements of a
14 battery work, it doesn't preclude me from arguing that if
15 the defendant -- or if -- yeah, the defendant intended to
16 stab, for example, Bert Minter, and one of these stabs
17 missed and inadvertently hit Denise, I think that's right
18 that the way the battery instruction elements read, that
19 the defendant willfully and unlawfully used force or
20 violence upon another person, I could still argue that.

21 But just for clarity sake -- and I did a little
22 bit of additional research on this and read up on
23 transferred intention in my go-to source here Wayne LaFave.

24 And it seems to apply broadly to general intent
25 as well as specific intent crimes. And, in fact, some of

21

1 In this case the defendant ran away from a group
2 of people that were intent, presumably -- I mean, no matter
3 whether you believe Minter's version or Dean's version --
4 intent on doing harm to him.

5 And it would be preposterous for him to have
6 stayed in the area any closer than he did.

7 There just is no absolutely nothing to suggest
8 that the flight makes any sense in terms of legality. It's
9 a specific instruction going to people who try to avoid
10 prosecution.

11 With respect to the transferred intent
12 instruction, this transferred intent instruction -- Perkins
13 on Criminal Law knows what he's talking about -- is by no
14 means settled law. There -- in his estimation it's kind of
15 preposterous.

16 THE COURT: Whose estimation?

17 MR. WOODBURY: Perkins on Criminal Law.

18 THE COURT: Perkins?

19 MR. WOODBURY: Yes. There is a significant
20 notation in his book about that.

21 The fact is that the transferred intent works for
22 specific intent crimes.

23 For general intent crimes, like battery, it is a
24 battery regardless of whether or not you -- if you stab
25 somebody willfully and unlawfully, you have committed a

23

1 the cases that he cites -- he talks about, for example,
2 quote, "So too where A aims at B with the intent to injure
3 B, but missing B, hits and injures C, A is guilty of a
4 battery on C."

5 And battery is one of the examples he gives. He
6 cites to a couple cases, one of them a battery with a
7 deadly weapon with intent to commit bodily harm upon the
8 person of another.

9 And then another is a knife fight. "A struck at
10 B with a knife which landed instead in C's chest. C calmly
11 told A, Madam, you cut the wrong man." That's from a
12 California case from 1945.

13 I think it would -- for clarity's sake, it would
14 just make that clear to the jury and eliminate any doubt
15 about that the principle of law and about the State's
16 ability to argue that it doesn't matter who he intended to
17 stab; if he intended to stab somebody and he ended up
18 stabbing somebody, regardless of which of the two it was,
19 he is liable for the battery.

20 THE COURT: Thank you, Mr. Mills.

21 Mr. Woodbury, argument against.

22 MR. WOODBURY: Thank you, Your Honor. With
23 respect to the flight instruction, a flight obviously means
24 that you have done something to avoid getting caught by
25 authorities or something along that line.

22

1 battery.

2 The only way you can get out of it is to do it
3 accidentally. And in this case, if he stabbed someone
4 willfully and the intention -- whatever the other word
5 is -- then the fact is that he's guilty of the battery.

6 To change that has -- from Perkins' point of
7 view, substantially broadens this notion of transferred
8 intent to where it -- and it leads to absurd results in the
9 end.

10 So our view is that neither of the State's
11 offered instructions are appropriate.

12 THE COURT: All right. The Court is going to
13 refuse Instructions 1 and 2.

14 I am refusing Instruction 1 recognizing what the
15 evidence is in this case.

16 The jury can still -- in my view, the parties can
17 still argue this issue of flight based on other
18 instructions that are in here.

19 And I will just refer to a couple. Instruction
20 Number 19, it deals with direct evidence, circumstantial
21 evidence.

22 Instruction Number 16, intent proven by
23 circumstantial evidence. State can be talking about what
24 it believes the evidence shows the defendant's state of
25 mind was in departing that area, and that he did leave to

24

1 avoid arrest or prosecution.

2 I mean, there are arguments that can be made
3 here. But I think this is covered, frankly, with other
4 instructions. And to highlight that this -- essentially
5 the instruction suggests, in the Court's view, this is
6 flight, or may be flight, and I don't think it's
7 appropriate and I don't think it's fair to the defense.

8 So for all these reasons, I am not going to read
9 Instruction -- State's Proposed Instruction 1. Not giving
10 that one.

11 As to instruction Number 2, yeah, when we were
12 talking about this amongst us lawyers, the Court felt that
13 transferred intent was a concept that applied to specific
14 intent crimes, such as attempted murder; not general intent
15 crimes, such as battery.

16 I would note that we have an instruction in here
17 on Instruction Number 10 that defines the word willful as
18 the Supreme Court of Nevada has fleshed it out.

19 And, you know, very easily the argument could be
20 made, you know, "once you commit a willful act, that is, an
21 act done intentionally, deliberately or designedly, as
22 distinguished from one done accidentally, inadvertently or
23 innocently, once that act is committed and there is some
24 contact, that is, force or violence upon Denise's person,
25 then it doesn't matter who he intended to batter, the point
25

1 the court clerk?

2 THE COURT: That would be great. Thanks. I will
3 take them, Mr. Woodbury, thank you.

4 Okay. Can I ask what is the -- can I ask what is
5 the -- are you relying on NRS 175.381 for the directed
6 verdict instruction?

7 MR. WOODBURY: I can't tell you that, Your Honor.
8 I know there are -- advisory verdicts are proper and I
9 don't --

10 THE COURT: Okay.

11 MR. WOODBURY: But I don't know, I can't give you
12 specific cites.

13 THE COURT: Any other argument for your
14 instruction, sir? Proposed instructions?

15 MR. WOODBURY: No. Those are the only two, Your
16 Honor.

17 THE COURT: Okay. Thank you.

18 Argument for the defense -- the State?

19 MR. MILLS: Yes, Your Honor. State opposes both
20 of the defense's proposed instructions, Defense A and
21 Defense B.

22 With regards to Defense A, first of all, the
23 evidence in question that would, in the mind of the defense
24 counsel, tend to be construed as a benefit to the Minters
25 as far as failure on the part of the State to prosecute for
27

1 is there was a willful act, this is why, I'm citing the
2 evidence, and that it was unlawful contact with her
3 person."

4 So the Court is going to refuse Instruction 2, as
5 well. I marked "refused" on it. We'll file it.

6 Instructions for the defense?

7 MR. WOODBURY: Yes, Your Honor. We have two
8 proposed instructions. Defense A, and I have labeled it
9 Defense A, "You are instructed that the prosecution in this
10 case has provided benefits to Denise Minter and to Bert
11 Minter in matters that may tend to make the testimony of
12 Denise Minter and Bert Minter less credible than that of
13 other witnesses.

14 "You may take that lack of credibility into
15 account during your deliberations."

16 With respect to Defense B, this is the advisory
17 verdict instruction. "With respect to the charge of
18 battery with a deadly weapon alleged in Count 5 of the
19 Information, you are instructed that the Court deems the
20 evidence to be insufficient to warrant a conviction of that
21 charge. The Court therefore advises you to find the
22 defendant not guilty of Count 5.

23 "You are further instructed that you are not
24 bound to Accept the advice of the Court as above stated."

25 And I have -- did you want me to provide that to
26

1 certain things or giving them plea deals, that sort of
2 thing, that stuff never came into evidence.

3 So number one, that evidence was never introduced
4 at trial.

5 Number two, even if it had been, this -- this
6 instruction is hugely objectionable for invading the
7 province of the jury.

8 I have never seen anything like this that tells
9 the jury, "you must find these witnesses not credible."

10 The credibility of a witness -- again, even
11 assuming that information had come in, that -- that we
12 didn't prosecute Bert for giving Syddall a ride to the Reno
13 place and then when she returned she was under the
14 influence, and we gave Denise Minter a deferred
15 prosecution, even if that evidence had come in, it's up to
16 the jury to weigh the impact of any of that on the
17 credibility of those witnesses.

18 That's exclusively the province of the jury to
19 make findings of credibility. It's not the Court's role to
20 instruct them, these witnesses are or are not credible.

21 So for all of these reasons, the State opposes
22 Defense A.

23 With regards to Defense B, an advisory verdict is
24 not warranted in this case. There has been plenty of
25 evidence to draw reasonable inferences beyond a reasonable
28

1 doubt that Ms. Minter was, in fact, stabbed by Sean Dean.
2 The most recent evidence we heard was from her
3 today, combined with the previous testimony from Bert and
4 from her and from Joseph Schenk and other witnesses, that
5 Sean Dean reached into his pocket, you know, the inference
6 that you can draw from that, all of that testimony, pulled
7 out a knife and started stabbing the left side of Bert's
8 body, and Denise, again trying to break up the fight,
9 interjects herself in there.

10 And I guess initially it was unclear whether she
11 saw him throw the punch that landed on her chest, but she
12 clarified today that she -- sounds like she felt that
13 punch, and afterwards realized that she had a stab wound
14 there and saw the blood.

15 If you look at the photograph of that wound and
16 compare it to the photographs of Bert Minter's wounds, the
17 wounds are identical in nature.

18 So it's obvious -- it's an obvious inference that
19 you can draw, that they came from the same weapon.

20 So in light of all of that testimony, that we got
21 an eye witness that has a knife in his hand, stabbing Bert
22 Minter, Denise interjects herself in there, regardless
23 whether she saw the punch or jab or whatever, she felt it,
24 and then afterwards there was a wound with blood coming out
25 of it, this doesn't warrant an advisory verdict.

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1 This is a determination the jury needs to make on
2 their own based on that evidence. And the State opposes
3 Defense B for that reason.

4 THE COURT: Thank you. Court adopts the line of
5 thinking the State has on proposed Instruction A.

6 I agree. I don't think there is evidence in
7 front of the jury that Denise and Bert Minter -- provided
8 benefits to them, I am not going to instruct them on that
9 out of whole cloth.

10 And I think I am invading the province of the
11 jury if I instruct they are not credible or lack
12 credibility, or have less credibility than other witnesses.

13 The jury is instructed on how to go about
14 assessing credibility. There are instructions. They are
15 sufficient in this case in my view.

16 Defense A is refused. Mark that on here. Dated
17 it, initialed it.

18 Defense B. In my view there is enough evidence to
19 go to the jury without this advisory verdict, without
20 advising the jury that it ought to acquit.

21 The Court just went through the transferred
22 intent instruction that the State wanted me to read, give
23 the jury.

24 And I remind everyone that, again, once there is
25 a willful act by the defendant, he struck Denise, did so

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1 unlawfully, then, guess what, with a knife, that's battery.
2 Whether it's battery with a deadly weapon or with
3 substantial bodily harm as well or just simple battery,
4 that's up to the jury to decide.

5 I thought under NRS 175.381 you needed to do this
6 at the close of the evidence on either side.

7 But certainly the jury is not bound by the
8 advice. I know that's laid out in the instruction. But I
9 don't think this is for me to instruct to advise to acquit.

10 I think there is enough evidence to get this to
11 the jury without an advisory -- without advising the jury
12 that it ought to acquit on Count 5.

13 So that's refused.

14 I have marked those. Again, those will be filed,
15 will be preserved for Mr. Dean and the State's record.

16 Okay. Are there any other forms of verdict to
17 offer for the State?

18 MR. MILLS: No, Your Honor.

19 THE COURT: For the defense?

20 MR. WOODBURY: No.

21 THE COURT: All right. We got it done.

22 Kepa is back there making up seven copies of jury
23 instructions so that pairs of jurors can share the
24 instructions.

25 And I think that's about it. Are we ready for

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1 argument then?

2 MR. MILLS: Yes, Your Honor.

3 MR. WOODBURY: Yes.

4 THE COURT: Okay. Well, this will take about 10
5 minutes. If you want to take a break, do that, then we'll
6 get them in here.

7 (WHEREUPON, a short recess was taken)

8 (WHEREUPON, court reconvened, jury instructions were
9 read to the jury, followed by closing arguments by both
10 counsel)

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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4

5 I, Lisa M. Manley, Official Reporter for the Fourth
6 Judicial District Court, Dept. II, of the State of Nevada,
7 in and for the County of Elko, was present in the
8 above-entitled court on June 28, 2016;

9 The foregoing transcript is an uncertified rough draft
10 transcription of my stenotype notes of said proceedings.
11 This transcript has not been edited, proofread, finalized,
12 indexed or certified.

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14 DATED: At Elko, Nevada, this 18th day of
15 November, 2016.
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15 November, 2016.
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FILED

2017 OCT 26 PM 3: 27

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY B

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

vs.

JUDGMENT OF CONVICTION

SEAN MAURICE DEAN,

Defendant.

On the 28th day of June 2016, a jury found Defendant SEAN MAURICE DEAN (date of birth: 09/29/1966 {age: 51}, place of birth: OAKLAND, CA) guilty of the crime(s) of **COUNT 1, ATTEMPTED MURDER WITH THE USE OF A DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS 193.165, NRS 193.330, 200.010, 200.020 AND 200.030; COUNT 2, BATTERY WITH THE USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM, A CATEGORY B FELONY AS DEFINED BY NRS 200.481(2)(e)(2); and COUNT 5, BATTERY WITH A DEADLY WEAPON, A CATEGORY B FELONY AS DEFINED BY NRS 200.481(2)(e)(1),** which crimes occurred on December 8, 2015. Therefore, the Court on October 12, 2017, sentences Defendant as follows:

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///

1 IT IS ORDERED that Defendant shall pay a genetic administrative
2 assessment of \$3.00.

3 For Count 1, Defendant shall be imprisoned in the state prison for a
4 minimum term of 72 months and a maximum term of 180 months.
5 Defendant shall receive credit for 675 days served as of October 12,
6 2017.

7 For the deadly weapon enhancement for count 1, Defendant shall be
8 imprisoned in the state prison for a minimum term of 48 months and
9 a maximum term of 120 months. This sentence shall be consecutive
10 to the sentence imposed for Count 1.

11 For Count 2, Defendant shall be imprisoned in the state prison for a
12 minimum term of 48 months and a maximum term of 120 months.
13 This sentence shall be concurrent with the sentences imposed for
14 Count 1 and the deadly weapon enhancement for Count 1.

15 For Count 5, Defendant shall be imprisoned in the state prison for a
16 minimum term of 24 months and a maximum term of 72 months.
17 This sentence shall be consecutive to the sentences imposed for
18 Count 1, the deadly weapon enhancement for Count 1, and Count 2.

19 IT IS FURTHER ORDERED that the minimum aggregate term of
20 imprisonment is 144 months, and the maximum aggregate term of
21 imprisonment is 372 months.

22 IT IS FURTHER ORDERED that all sentences shall be consecutive to
23 any other sentence imposed in any other existing judgment of
24 conviction.

25 IT IS FURTHER ORDERED that Defendant shall forthwith pay to the Elko
26 County Clerk the administrative assessment of \$25.00.

27 During the jury trial, Defendant was represented by Gary D. Woodbury Esq. At the
28 time Defendant was sentenced, he was represented by David B. Lockie, Esq.

///

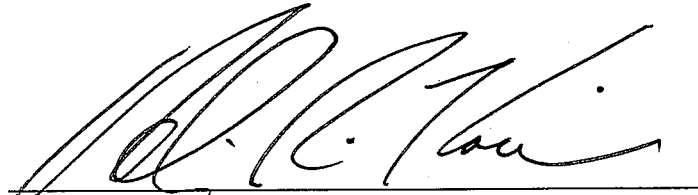
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1 THEREFORE, the Clerk of the Court is directed to enter this Judgment of Conviction
2 as part of the record in the matter.

3 DATED this 26 day of October, 2017.

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8 ALVIN R. KACIN
9 District Court Judge
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District
3 Court, Department 2, and that on this 26th day of October, 2017, I served by hand delivery
4 by placing a copy of said document in the agency box located in the Elko County Clerk's
5 Office, a true copy of the foregoing document to:

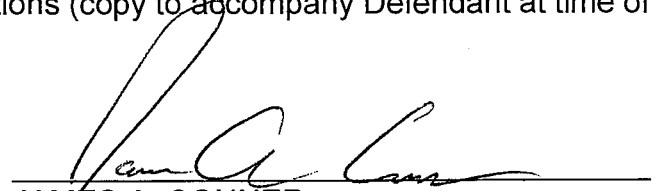
6 Elko County District Attorney

7 David B. Lockie, Esq.

8 State of Nevada, Division of Parole & Probation

9 Elko County Sheriff


10 Director, Nevada Department of Corrections (copy to accompany Defendant at time of
11 transport)

12 
13 JAMES A. CONNER
14

15 **CERTIFICATE OF SERVICE**

16 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District
17 Court, Department 2, and that on this 26th day of October, 2017, I served by regular
18 U.S. Mail, a true copy of the foregoing document to:

19 Nevada Department of Corrections
20 Offender Management Division,
21 Sentence Management
22 PO Box 7011
23 Carson City, NV 89702

24 
25 JAMES A. CONNER
26
27
28

1 Case No. CR-FP-2015-1508
2 Dept. 2

FILED
2017 DEC 15 PM 1:05
ELKO CO DISTRICT COURT
CLERK — DEPUTY

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 ooOoo
9 THE STATE OF NEVADA :
10 Plaintiff, :
11 v. : JURY TRIAL
12 SEAN MAURICE DEAN, : CLOSING ARGUMENTS BY
13 Defendant. : PLAINTIFF
14 _____/

15
16 TRANSCRIPT OF PROCEEDINGS

17
18 BE IT REMEMBERED that the above-entitled matter
19 came on for hearing on June 28, 2016, at the hour of 9:00
20 a.m. of said day, before the HONORABLE ALVIN R. KACIN,
21 District Judge.

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25 Reported by Lisa M. Manley, CCR #271

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***** WARNING *****

THIS ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS IS PRODUCED IN
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PUBLIC OR THE MEDIA.

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--000--

1 Case No. CR-FP-2015-1508

2 Dept. 2

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 00000

9 THE STATE OF NEVADA :

10 Plaintiff, :

11 v. : JURY TRIAL

12 SEAN MAURICE DEAN, : CLOSING ARGUMENTS BY

13 Defendant. : PLAINTIFF

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16 TRANSCRIPT OF PROCEEDINGS

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20 a.m. of said day, before the HONORABLE ALVIN R. KACIN,
21 District Judge.

22

23

24

25 Reported by Lisa M. Manley, CCR #271

1

1 APPEARANCES

1

2

3 For the Plaintiff:

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Elko, Nevada 89801
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3 ***** WARNING *****

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6 INSTANT FORM. THERE WILL BE DISCREPANCIES BETWEEN THE
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15 PUBLIC OR THE MEDIA.

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17 PLEASE CONTACT THE COURT REPORTER FOR FURTHER ASSISTANCE.

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2

1 PROCEEDINGS

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3 THE COURT: Instructions 1 through 35 given by
4 the Court. That will be this 28th day of June, 2016,
5 signed Al Kacin, District Judge, Fourth Judicial District
6 Court, Department 2

6

And with that, we'll go to argument.

7

Mr. Mills, would you like to deliver the argument
8 for the State?

8

9

MR. MILLS: Thank you.

10

Your Honor, counsel, ladies and gentlemen of the
11 jury, good morning.

11

12

Thank you for your patience over the last week.

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December 8 at eight o'clock.

4

UNCERTIFIED ROUGH DRAFT TRANSCRIPT

Appellant's Appendix, Vol. 2, page 79

1 You are going to see the text messages that
2 Denise and the defendant were texting back and forth on
3 December 7 and December 8. And they are going to paint a
4 picture of somebody, the defendant I'm referring to, who is
5 angry, he is upset, he is frustrated that their
6 relationship has fallen apart. He wants to see her, he
7 wants her to come over and see him, but she doesn't want
8 to. And he's upset by that.

9 You see a picture painted of somebody who is
10 angry and jealous. In these text messages you are going to
11 see evidence of that jealousy.

12 Ladies and gentlemen of the jury, there are two
13 sets of text messages that you have in evidence. There is
14 Exhibit No. 34, which is the extraction report that was
15 done by Detective Hessing. There is also Exhibit 33, which
16 are the photographs of the text messages that were taken by
17 Officer Catalano from the defendant's phone.

18 And if you compare those text messages, you will
19 see that they are identical; they are the same text
20 messages.

21 And if you review those text messages -- and as
22 you do, I recommend that you take a look at Detective
23 Hessing's extraction report. It's much more readable. It
24 has got the text messages listed by date and time, and they
25 are numbered.

5

1 And if you read through those, you are going to
2 see a picture painted of a very jealous and angry man. You
3 see Mr. Dean on December 7 at 2:37 say, "I need to know
4 what's up with us. Is there an us? Are you with someone
5 else, Denise, because I just saw someone walk into your
6 house."

7 And then a little bit later in the day, "You
8 already know I trip when I don't know what's going on."

9 And, "Who the hell was that I saw walk in the
10 house."

11 "I can't get my mind off you."

12 "I want to know who that was walking into the
13 house."

14 And text no. 23. This is the following day now
15 on December 8 at 3:26 p.m. "I'm extremely pissed off right
16 now," he tells her. At 3:32 p.m., "Just tell me who the F
17 it was."

18 "You know I don't F'ing play games."

19 "I know what I saw."

20 "What I want is for my girl to stop playing games
21 before I do something stupid," he says to her at 4:05 p.m.,
22 just under four hours away from showing up at the house
23 that evening.

24 "What I want is for my girl to stop playing games
25 before I do something stupid."

6

1 "Do you really want to find out, Denise."

2 "You just made me your enemy," he says at 5:18.

3 And if you keep reading, there is a lot of back
4 and forth about relationship stuff.

5 And then at 7:47, 15 minutes before he goes over
6 there -- or 7:41. "Can I come see you? Call me, please."

7 And he goes to see her. And you heard this, that
8 he showed up there at about eight o'clock. And the
9 testimony is all pretty consistent that that's the time he
10 showed up there.

11 That was his frame of mind when he showed up, as
12 I read to you those text messages, that he was jealous, he
13 was angry. He says he was upset by his own admission in
14 those messages.

15 So he shows up there that evening -- uninvited,
16 by the way. You know, Denise says that she never invited
17 him over that evening.

18 He told Officer Catalano, you know, after he was
19 arrested and was being taken to jail, he says, "She invited
20 me over there" that evening. "Look at the text messages.
21 They'll show you."

22 And I would invite you, look at those text
23 messages. You are not going to find her inviting him over
24 there in those text messages.

25 But he shows up anyway. And she is upset,

7

1 frustrated that he is there. She tells him, you see in the
2 text messages, "I'm exhausted," "I'm tired," "I'm going to
3 bed."

4 He shows up anyway, uninvited. She is
5 frustrated, she was getting ready for bed, she goes out
6 there to talk to him.

7 Bert is there. He comes out of the bathroom,
8 says, "Who is it?" She says, "It's Sean." And you heard
9 his testimony. He wasn't very happy about that, "What the
10 F if he doing here?"

11 She goes outside and talks to the defendant out
12 on the porch.

13 And you guys heard from there what happened, how
14 things kind of went south from there.

15 And you heard testimony from Bert. From inside
16 the house he says he could hear yelling, both of them
17 yelling at each other. He peeks his head out to see what's
18 going on, sees Sean there. Denise said the two of them
19 locked eyes when Bert comes out.

20 And then they start talking crap to each other is
21 I think the way she initially put it.

22 And Bert corroborates that. He says that they
23 kind of start jawing back and forth with each other.

24 He says the defendant asks him, you know, "Do you
25 want something?"

8

1 "No, I don't want anything."
2 "Do you want something?"
3 "No."
4 "Well, I'll give you something," Dean says to
5 him.
6 Bert says, "I just want you to get out of here."
7 He is like, "Why don't you come on down here and
8 I'll give you something."
9 So Bert comes on down the steps. They all come
10 down, out onto the ground. Then the testimony is that Dean
11 punched him. The defendant punched him. Then the fight was
12 on. There is an initial fight there.
13 So they are hitting each other back and forth.
14 They end up on the ground at one point. Denise is trying
15 to break it up. She's screaming and yelling, telling them
16 to stop. She gets on the back of the defendant at one
17 point, kind of grabs him from behind, and puts him in a bit
18 of a chokehold to try and break up the fight.
19 But it's pretty clear that all of them ended up
20 on the ground at one point during the course of that fight.
21 And eventually they start telling each other,
22 Bert and the defendant, "Let go." "No, you let go." "No,
23 you let go." "Okay, we're cool." Then they let go.
24 And then they all start kind of standing up at
25 that point. Everybody gets up. There's kind of a bit of a

9

1 break in the action.
2 And Denise says that the defendant started to --
3 kind of walking away at that point. So she tells Bert,
4 "Hey, let's go inside, go inside the house." And she starts
5 walking back towards the house and realizes that Bert isn't
6 there beside her anymore and turns around to see what's
7 going on in time to see the defendant run back to Bert and
8 punch him, and then the fight continues.
9 And Bert testified as well that there was a break
10 in the action and then the fight continued as well, that
11 Dean punched him and the fight continued.
12 And then shortly after the fight continues, at
13 that point is when the witnesses testify that the knife was
14 taken out.
15 So Bert said that -- he said that shortly after
16 that second fight started, he heard Dean say, "Eff this,
17 mother eff," and he reaches into his pocket, pulls
18 something out. And tellingly Bert said that he saw Dean's
19 left hand come over, like this, which as you can imagine,
20 you know, it was -- Joseph Schenk described the knife as a
21 flip-style knife, it would require a second hand to come
22 over and take the blade out.
23 Denise also says she saw him reach into his
24 pocket and pull something out. She said it looked like a
25 cell phone, or she thought it was a cell phone initially

10

1 because it was glowing, she said.
2 There was a porch light on. We had testimony to
3 that. You could think about a knife blade and how the
4 porch light might reflect off a knife blade. It's
5 understandable that a witness might see a flash of light
6 and not quite understand what the person had in his hand.
7 They are both consistent that at that point in
8 time he pulled something out of his pocket and then starts
9 jabbing Bert Minter repeatedly on the left side of his
10 body.
11 And Bert testified that he thought he was being
12 punched initially. He didn't realize at that time that he
13 was being stabbed.
14 Denise again was trying to break up the fight,
15 kind of jumps back into the melee. And at one point in
16 time she says she feels a punch right here on her chest.
17 And she assumed based on what she felt that Dean had
18 punched her. She saw him throwing what she thought were
19 jabs to Bert.
20 Then shortly after that the fight stopped. And
21 Denise is still yelling and screaming at them to stop. So
22 the fight stops and then the defendant leaves.
23 And Bert Minter testified that he took off
24 running down the road. And that's consistent with what
25 Christina Hodges said, that when she heard some screaming

11

1 and yelling, "Stop hurting me, Sean," "Stop," you know,
2 "you're stabbing me," that kind of screaming, she sees a
3 man running down the road perpendicular to Fifth Street,
4 then run across Fifth Street right into the trailer park,
5 right near the trailer where the defendant was found a few
6 minutes later by the police.
7 So after the defendant takes off, you heard
8 testimony that the Minters started to realize these were
9 more than just punches that the defendant was throwing.
10 This clearly is some kind of stabbing motion that he had
11 been making, based on the puncture wounds that they saw on
12 their bodies.
13 State's 23 and 24. This is at the hospital. The
14 puncture wounds to Bert Minter.
15 This could not, ladies and gentlemen, have been
16 caused by a punch. The doctor, Dr. Ward, when he was
17 asked, "well, what could have caused something like this?
18 Are those consistent with knife stabs?" He says,
19 "Absolutely."
20 On cross-examination he was asked to think of --
21 to consider other possibilities, and he had a hard time
22 coming up with any other possibility. He said, "off the
23 top of my head, I can't really think of anything else that
24 could have caused stab wounds like that."
25 so they start to realize pretty quickly after the

12

1 fight is over that these were not punches, we have been
2 stabbed.

3 And that's consistent with their testimony that
4 they saw the defendant reach into his pocket and pull
5 something out. And then the type of jabs to the left side
6 of Bert's body are totally consistent with stab jabs.

7 You combine that with the eye witness testimony
8 of the other witnesses who were there and saw what was
9 happening. And I am referring to Joseph Schenk. That he
10 comes out -- he hears some screaming, comes outside.

11 And what does he see? He sees the defendant
12 reach in his pocket and pull out a knife. Not something
13 that looked like a knife or something that glowed, but it
14 was a knife. It was a flip-style knife, a flip-style
15 colored knife that exactly -- not exactly, but is extremely
16 consistent with the knife that was found in the trailer
17 where Dean was located by the police a few minutes later.

18 Joseph Schenk was right there. He was asked, "How
19 far away were you from this when it happened?"

20 He says, "I was right there, just a foot or two
21 away. I saw him reach into his pocket, pull out a knife,
22 open it, and start stabbing Bert Minter with it. That's
23 when I ran into the house to get my gun and tell Brittany
24 to call 911."

25 Think about that for a minute. Joseph Schenk was
13

1 right there. He saw what happened. Totally consistent
2 with what Bert and what Denise were testifying to.

3 Why would Joseph make this up? You heard his
4 testimony. He was like, I thought the defendant -- I met
5 him a couple of times, I thought he was a respectful guy, I
6 didn't have any issues with this guy. We had a barbecue
7 together, watched some football.

8 What motive would Joseph Schenk have to make this
9 up? He was right there, a foot or two away.

10 It was a knife he pulled out and started
11 stabbing.

12 Brittany Tice as well. She didn't get quite as
13 good a look as Joseph did. She was back in the door of her
14 trailer. But she saw enough. She saw him pull something
15 out that was kind of shiny and saw him crouching over Bert.

16 Four witnesses that corroborate the proposition
17 that Sean Dean pulled out a knife and started stabbing
18 people with it; namely, Bert Minter and Denise Minter.

19 So start with what you know. What you know is
20 that these people got stabbed. You have got the
21 photographs. You have seen the injuries. You have heard
22 testimony about the injuries. They were stabbed.

23 There were three people involved in that
24 altercation. It was the defendant, it was Bert, and it was
25 Denise.
14

1 So by process of elimination, who is it that
2 stabbed them?

3 There is two stories you have heard. You have
4 the story that was told by Bert and Denise and Joseph and
5 Brittany. Four witnesses, possibly even Christina Hodges
6 if you want to throw her in there, that corroborate their
7 version of what happened.

8 Then you have got a -- a -- I guess the only
9 other possibility, given the fact that these were the only
10 people involved in this altercation, it couldn't have been
11 anyone else that caused those stab wounds.

12 Then you have got the other version, which is the
13 defendant's version, which you heard in Detective Nielson's
14 interview and you heard him testify about on the stand.

15 "I didn't have a knife. They are the ones that
16 had the knives. They had knives," he says. "I saw a knife
17 in Bert's hand when he came down the stairs," he said in
18 his testimony.

19 That's not what he told Detective Nielson. He
20 told Detective Nielson, "He had a knife, but I didn't know
21 about that until later on in the fight."

22 You need to think about the plausibility of the
23 two different versions. Think about in particular the
24 plausibility of the defendant's version of what happened.

25 Is it plausible that it was really Bert and
15

1 Denise with knives? There has been no other evidence, no
2 other evidence to suggest that that was true that they even
3 had knives or were trying to stab anybody.

4 But he says they are the ones that had the
5 knives. Well, if they had knives, how did Bert end up
6 getting stabbed seven times? How did she get -- end up
7 getting stabbed once?

8 "Well, they must have stabbed each other."

9 So think about the plausibility of that
10 proposition. That Denise is going to try and stab Bert --
11 or the defendant and miss and inadvertently stab her best
12 friend, not once, not twice, not three times, but seven
13 times. That she would inadvertently do that and not even
14 realize what she is doing?

15 Or even more implausible, she is doing it on
16 purpose for some reason?

17 Is that plausible?

18 Then add to that the idea that while she is doing
19 that, that Bert also is missing with his swings with his
20 knife and ends up stabbing his best friend in the chest.

21 How is that plausible?

22 Let's take a step back. And I want to go over
23 some of these jury instructions with you.

24 Start with Instruction Number 6. This is the
25 instruction for attempted murder with the use of a deadly
16

1 weapon.

2 So in any criminal prosecution these crimes that
3 somebody is charged with are broken down into elements.
4 And what elements are is they are subparts that the State
5 has to prove each of those subparts beyond a reasonable
6 doubt in order to convict a defendant.

7 So Instruction Number 6 states the elements for
8 Count 1, which is attempted murder with the use of a deadly
9 weapon.

10 So to prove this charge, the State has to show
11 that the defendant, with express malice, performed an act
12 or acts which tended to but failed to kill a human being
13 with the use of a deadly weapon.

14 So express malice is defined by Instruction No.
15 9. I will just read that to you. Express malice is the
16 deliberate intention unlawfully to kill.

17 So we have to show that the defendant basically
18 tried to kill Bert but failed to do so.

19 In a nutshell, that's what that count -- and did
20 so with a deadly weapon.

21 Now what evidence is there of that intent to
22 kill?

23 There is plenty of evidence.

24 It wasn't just a single stab. It was multiple
25 stabs, repeated stabs. Seven. At least four to the torso

17

1 It's in evidence for your consideration.

2 Bert Minter was wearing a jacket and he was
3 wearing a shirt. So think for a moment about the amount of
4 force that it would take if you are jabbing somebody to
5 pierce through a jacket and a shirt and into the body.

6 That's a lot of force that is being applied to
7 those jabs and those stabs.

8 The doctor said that one of the stabs, it
9 appeared to him that it was several inches deep. Didn't
10 quite pierce the peritoneum. I hope I pronounced that
11 correctly. That's a tricky word. But the knife went in
12 there a significant ways.

13 So think about the amount of force. And you can
14 infer intent from that, the amount of force that somebody
15 is using to pierce two layers of clothing and go into
16 somebody's body several inches.

17 Seven times he stabbed Bert. Then another one on
18 Denise. So that's at least eight different jabs.

19 So you can infer from those facts and
20 circumstances that intent to kill, that express malice.

21 Now, with regard to Instruction No. 7 -- if you
22 want to turn the page -- Count 2 is battery with a deadly
23 weapon resulting in substantial bodily harm. And Counts 2,
24 3 and 4 pertain to Bert Minter.

25 Count 2 is battery with deadly result and

19

1 and then a few stabs along his left arm were defensive in
2 nature.

3 You heard the testimony. He couldn't quite raise
4 his arm up all the way and so his arm was in the way as
5 those stabs were being inflicted on the left side of his
6 body. And so he had several stabs on his arm as well.

7 So seven stabs aimed at which part of his body?
8 At his torso, the left side of his body.

9 You can infer intent from the circumstances of
10 the case. And the circumstances of this case show that he
11 intended to kill the person he was stabbing based on the
12 number of stabs on the left side of Bert's body.

13 You heard Dr. Ward's testimony, that those stab
14 wounds were in the neighborhood of vital organs. And this
15 appeals to common sense as well. You all know this. That
16 there are vital organs right in that area.

17 The doctor specifically referred to the kidney
18 and the lower part of the lungs.

19 And if any -- he testified if those organs had
20 been nicked or lacerated with the knife, it could be
21 lethal, it could be deadly.

22 Think about the clothing that Bert Minter was
23 wearing that night. And you seen the clothing, you have
24 it, you can take a look at it, you can put on some gloves
25 if you want and handle that, that clothing, and examine it.

18

1 substantial bodily harm. And to prove this charge the State
2 has to show that the defendant willfully and unlawfully
3 used force or violence upon another person with the use of
4 a deadly weapon resulting in substantial bodily harm to
5 another person.

6 Again going through these elements. These
7 elements have all been proven beyond a reasonable doubt by
8 the evidence that you have heard over the past week.

9 One, that it was defendant. Again, four eye
10 witnesses that corroborate that it was Dean that had the
11 knife and that he was the one doing the stabbing.

12 It was the defendant.

13 That he willfully. Well, if you read that
14 instruction on willfully, that just is talking about how
15 something is -- an action or act is done deliberately or
16 intentionally as opposed to accidentally.

17 You don't swing a knife into somebody's body
18 seven times accidentally. That was willfully.

19 So the defendant willfully used force or violence
20 upon another person. The force or violence element, that
21 goes without saying. Stabbing someone, that's force or
22 violence.

23 With the use of a deadly weapon. And I will just
24 refer you briefly to the definition of a deadly weapon.
25 This is No. 11. Where a deadly weapon is defined as any

20

1 instrument which, if used in the ordinary manner
2 contemplated by its design or construction, will or is
3 likely to cause substantial bodily harm or death, or any
4 weapon, device, instrument, material or substance which
5 under the circumstances in which it is used, attempted to
6 be used, or threatened to be used, is readily capable of
7 causing substantial bodily harm or death.

8 So is a knife readily capable, and in particular
9 the knife in this case, readily capable of causing
10 substantial bodily harm or death? You better believe it
11 is.

12 You look at the next instruction. Substantial
13 bodily harm. Substantial bodily harm is bodily injury
14 which creates a substantial risk of death, or which causes
15 serious permanent disfigurement or protracted loss or
16 impairment of bodily function or organ or prolonged
17 physical pain.

18 Now, you saw the scars on Bert Minter's body.
19 Permanent disfigurement. That's substantial bodily harm.

20 And if this knife caused substantial bodily harm,
21 the knife becomes per se a deadly weapon pursuant to these
22 jury instructions.

23 So there is no real question about elements 4 and
24 5, was this battery with the use of a deadly weapon on Bert
25 Minter and -- and was there substantial bodily harm.

21

1 You saw the scars. He's got a series of scars
2 down his body from the knife, from the knife blows. And
3 then the scar right there on his belly where they did
4 exploratory surgery.

5 He also testified to prolonged pain, that even --
6 he said that he still feels pain from those injuries.

7 So those elements are met.

8 Now, Count 2, just going down, battery with a
9 deadly weapon resulting in substantial bodily -- so after
10 considering the battery with a deadly weapon resulting in
11 substantial bodily harm, if you are unable agree on that
12 one, then you go on to the next one, which is battery with
13 a deadly weapon.

14 So that's the same thing as the other one, just
15 take away the substantial bodily harm.

16 So if for some reason you determine that, no,
17 that's not substantial bodily harm but we think a deadly
18 weapon was used, then that would be the appropriate charge.

19 Then going down from that, if you are unable to
20 agree on that or feel that that hasn't been shown beyond a
21 reasonable doubt, then you go on to the next one.

22 The next option is battery with a deadly
23 weapon -- or battery with substantial bodily harm.

24 So on this one, Count 4, this -- you would
25 convict on this one only if you found that the battery was

22

1 committed but no deadly weapon was used, but it did result
2 in substantial bodily harm. So that's Count 4.

3 Then the final option on the battery related to
4 Bert Minter is just a simple battery. This is on the last
5 page of that instruction. That the defendant willfully and
6 unlawfully used force or violence upon another person.

7 So if you find that the defendant battered Bert
8 Minter but did not use a deadly weapon and did not cause
9 substantial bodily harm, then that would be the appropriate
10 charge.

11 So that's kind of how those -- those are kind of
12 descending charges with four different options. Battery
13 with a deadly weapon resulting in substantial on Bert
14 Minter, battery with a deadly, battery with substantial, or
15 simple battery.

16 You go from top to bottom. You can consider them
17 in that order.

18 And the State would suggest to you that the
19 evidence has overwhelmingly shown that the top option,
20 battery with a deadly weapon resulting in substantial
21 bodily harm on Bert Minter, is the charge that has been
22 proven beyond a reasonable doubt based on the eye witness
23 testimony and based on the -- the sheer implausibility of
24 the defendant's account of how this happened.

25 Finally, Count 5, that's the battery with a

23

1 deadly weapon pertaining to Denise Minter.

2 So the State's alleging that the defendant used
3 that knife and stabbed her with it. Used a -- willfully
4 and unlawfully used force or violence upon another person
5 with a deadly weapon.

6 And the evidence has overwhelmingly shown that as
7 well.

8 She says that, you know, Bert -- Bert -- or the
9 defendant pulled something out of his pocket and started
10 jabbing Bert with it. Joseph Schenk again says, It was a
11 knife, it was a flip-knife. I saw it. It was a knife he
12 was stabbing him with.

13 She gets herself back into the middle of that
14 thing and she says she felt what felt like a punch to her
15 chest. Later on she looks down, and you will see the
16 photograph, there is a stab wound right there.

17 Compare that stab wound to Bert Minter's stab
18 wounds and you will see that they're extremely consistent.
19 You can draw an inference and conclusion that those stab
20 wounds on Denise and on Bert were caused by the same
21 weapon.

22 She says, "I felt like I got punched," she said,
23 this morning. But then later she realized, you know, she
24 saw a stab wound in her chest and felt the blood trickling
25 down and saw the blood.

24

1 So you can draw an easy inference that that is
2 what caused that, that the defendant stabbed her as well in
3 the course of this. There is no other explanation for that
4 stab wound on Denise Minter's chest. The only rational
5 explanation is that the defendant was responsible for that.

6 So ladies and gentlemen of the jury, focus on the
7 big picture here, focus on what you do know. Start with
8 that. What you do know is what is in these photographs.
9 You know this happened.

10 This happened. Bert Minter was stabbed multiple
11 times in the left side of his body. Denise Minter was
12 stabbed once in her chest.

13 That happened.

14 There were only three people there involved in
15 that fight. How else could this have happened? The
16 defendant's story is not plausible whatsoever.

17 What about that cut to his hand, you might say?
18 Think about the mechanics of this. Consider a knife,
19 either this one or one similar to it. One that -- you
20 know, a knife kind of like the one that Joseph Schenk
21 described.

22 And think about this. Look at the fact that
23 there is not a hilt on that knife to prevent the hand from
24 sliding up. There is no hilt.

25 If somebody is stabbing another person with a
25

1 and gentlemen.

2 Mr. Mills, please proceed.

3 MR. MILLS: Thank you, Your Honor.

4 Thank you for your patience. I understand it's
5 been a long morning. You're probably sick and tired of
6 hearing us attorneys talk and you are probably hungry.

7 I appreciate your time and your patience. I just
8 am going to take a few minutes to respond in a rebuttal
9 argument to some of the arguments that were just made.

10 First and foremost, this insinuation that there
11 was some kind of a setup. And defense counsel is correct,
12 that's the first thing that Sean Dean said is, "It felt
13 like a setup," he told Detective Nielson. The quasi plan
14 Mr. Woodbury referred to it. He keeps talking about this
15 setup and some sort of motive to get Sean Dean out of the
16 picture.

17 So there is this suggestion that is out there and
18 has been presented, but there is no evidence to support
19 that.

20 Bert Minter and Denise Minter set him up? They
21 had a motive to get Sean Dean out of the picture, so they
22 did what exactly? They conspired to have him come over
23 there and then stabbed themselves or somehow figured out a
24 way to get him arrested to get him out of the picture? Or
25 that they had knives and that they were going to attack and
27

1 knife like that, with that kind of force that we talked
2 about earlier, think about how easy it would be for --
3 especially if you are punching through two layers of
4 clothing and into somebody's body that that would kind of
5 stop the knife and cause your hand to slip up on it.

6 Think about how intuitive that is, that your hand
7 is going to slip up onto the blade of the knife.

8 And think about where the cut would be if that
9 happened, if you were stabbing somebody or something, and
10 the knife came to a stop and your hand slipped up on the
11 blade of the knife.

12 Think about where that cut would be. It would be
13 right there (indicating) on your index finger as your hand
14 slipped up onto the blade.

15 Where was the cut on Mr. Dean's finger? Right
16 there. (indicating)

17 It makes perfect intuitive sense. You can draw an
18 inference that that's the clear explanation for how he
19 suffered that wound.

20 In light of all of that evidence, ladies and
21 gentlemen of the jury, the State is requesting that you
22 find the defendant guilty of the charges.

23 Thank you.

24 (Closing argument given by the defense)

25 THE COURT: This is the State's rebuttal, ladies
26

1 kill him?

2 This was a setup? There is no evidence
3 whatsoever to support any of that suggestion.

4 The question was raised, why would the defendant
5 want to kill Bert? What was the motive?

6 Look at the text messages. You will see that the
7 defendant was angry when he went over there. He was angry
8 when he showed up. He was angry to begin with. And he was
9 frustrated about the relationship. That's obvious from the
10 text messages.

11 Then if you look at the context of the fight.
12 They are in the middle of a fist fight. Probably not a
13 very good one. You've seen photographs and heard evidence
14 that neither one of these fellows was really winning the
15 fight. You got some clear photographs of the defendant.
16 And again, you have heard evidence that there weren't a lot
17 of injuries, if any, on the faces of either of these
18 parties.

19 But be that as it may, they are in the middle of
20 this fight. And at a certain point in time, the defendant
21 pulls out the knife and says, "Eff this, motherfucker."

22 Isn't that motive enough, in the middle of a fist
23 fight, and just out of anger that maybe he is not winning
24 the fight the way he wanted to, just angry that somebody is
25 hitting him in the midst of a fist fight, he is angry at
28

1 the circumstances. And then there is that overall anger
2 and frustration about the relationship with Denise.
3 He just lost it. He lost his temper in the
4 moment. And the facts and circumstances support that, that
5 that was the motive. It's not complicated. He was angry.
6 He was in the middle of a fight. "Eff this, motherfucker."
7 Pulls out the knife and starts jabbing with it.

8 Why didn't Bert Minter arm himself? Or why
9 wouldn't he arm himself or call the police? You heard from
10 his mouth. Bert Minter said, "I heard them yelling. I was
11 concerned for Denise so I went out to see what was going
12 on."

13 "Well, why didn't you call the police?"

14 Well, did Bert Minter have reason to believe that
15 Sean Dean was packing a knife at that point?

16 He didn't have reason to believe that until the
17 knife was pulled out and he started getting stabbed with
18 it. That would have been the opportune time to call the
19 police. And, in fact, the police were called after the
20 knife was produced.

21 Why would Denise pick Bert to help? You know,
22 she was -- she got on Sean's back and had him around the
23 neck.

24 Well, that might be evidence corroborating the
25 story that we've heard, that Sean Dean was the aggressor,

29

1 that he threw that first punch. Wouldn't it stand to
2 reason she would hop on the back of the person who is
3 primary aggressor?

4 Bert and Denise didn't see the knife. And this is
5 true. They both testified that they didn't actually see a
6 knife.

7 But if this were a setup and if they were just
8 making all this up, don't you think that they would have
9 said that? There was -- yeah, we saw a knife. He had a
10 big knife in his hand and he was coming after us.

11 They didn't say that. They said he reached in
12 his pocket and he grabbed something.

13 Denise says, "it was dark, the porch light was
14 on, but I saw something glowing in his hand."

15 Bert says, "he grabbed something out of his
16 pocket and started jabbing me with it."

17 Entirely consistent with what Joseph Schenk says.
18 "He reached into his pocket, pulled out a flip-knife."

19 The testimony is consistent. People are seeing
20 things from different angles, different lighting, it's --
21 but they are all consistent in the sense that they saw him
22 reach into his pocket and pull something out of it.

23 Even if Bert and Denise didn't specifically see a
24 knife in his hand, they saw him grab something out of his
25 pocket.

30

1 So Bert is kind of winged with his left arm, he
2 presented his left side to him. Why would -- you know,
3 why -- why would he get stabbed on his left side? Why
4 would he present his left side to him?

5 Think about if you are facing somebody. If the
6 defendant is in front of him and is right-handed and is
7 coming at him with his right hand, regardless of whether
8 Bert is pointing his left arm to him or just facing him
9 straight on, which part of Bert's body is going to get
10 struck with that knife if Dean is coming at him with the
11 right hand?

12 No matter which way he is positioned, it's going
13 to be the left side of the body that is struck.

14 So it's not as if necessarily Bert was, you know,
15 just presenting his left side to him, although he may have
16 been. In defense, I think he testified, he was trying to
17 raise his arm to deflect some of his blows.

18 But either way, those blows are coming at him
19 from the defendant's right arm, which is going to strike
20 the left side of the body.

21 Wasn't Sean Dean that stabbed him. Because if
22 Sean Dean had stabbed him, he knows how to stab. You poke,
23 twist, and pull. And because these weren't those kinds of
24 wounds, it couldn't have been the defendant.

25 Well, guess what, people were stabbed here.

31

1 Don't lose sight of that fact.

2 Seven stab wounds on Bert, one on her. Somebody
3 got stabbed. And there is only one plausible explanation
4 for how that happened. And that's that the defendant did
5 it.

6 And the knife sliding forward. Again, I invite
7 you to kind of envision the knife and re-enact that. It's
8 extremely intuitive and credible that if you're striking
9 somebody and your hand slips, that it's going to cut your
10 index finger.

11 Why the index finger and maybe not necessarily
12 the other ones? Well, because that's the finger that's
13 right on top close to the blade. That's the finger that is
14 going to get cut.

15 The knife. So there was a knife found in the
16 trailer, in Clarence Thompson and Lindsey Steele's trailer.

17 A knife that matched the description of the one
18 that Joseph Schenk described.

19 A knife that Lindsey Steele said she had never
20 seen before. She went to get pizza. It wasn't there when
21 she left. When she got back, there was a knife on the
22 ground.

23 Sean Dean walked into the trailer with Clarence
24 Thompson right before Lindsey Steele did. And then, poof,
25 there is a knife there that she had not seen before. It

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1 wasn't hers, it wasn't Clarence's. You can draw an
2 inference from all of that that was, in fact, the knife
3 used in the fight.

4 And if you recall, in jury selection I invited
5 you to think about, you know, CSI shows and DNA analysis
6 and stuff like that.

7 And the reason for that is, you heard the
8 testimony from Monica Siewertsen, the DNA analyst. And she
9 says it's common that somebody could handle something, even
10 hold it, and for them to not be able to get a DNA profile
11 from it.

12 It's a case-by-case basis. Sometimes you get
13 some results, sometimes you don't.

14 In this case what she was able to find is that
15 there was human DNA, at least four contributors on the
16 blade of the knife. Human DNA, at least three contributors
17 on the handle.

18 She can't draw any conclusions from that. And
19 what that means is Sean Dean can't be ruled out, but
20 neither can anyone else. She just can't draw any
21 conclusions one way or another.

22 So it's not terribly helpful one way or the
23 other, as far as that goes.

24 But I want you to think about this broader point.

25 That whether that was the knife that was used in

33

1 There is a lot of moving parts and pieces, moving bodies.
2 People are seeing things from different angles and vantage
3 points. They are testifying about these events six months
4 later.

5 Are there going to be some discrepancies? Stands
6 to reason.

7 You just heard this jury instruction. Failure of
8 recollection is not uncommon. It's a fact that two people
9 witnessing the same incident will often see or hear it
10 differently.

11 And it's your job to determine what the --
12 whether something is a fact of importance or a trivial
13 detail.

14 That's what the State means when I suggest to
15 you, don't lose -- don't miss the forest for the trees.
16 Don't get caught up on the details so much that you lose
17 sight of the bigger picture, the big details, the important
18 details, these details.

19 Discrepancies among those witnesses doesn't
20 change the fact that these people got stabbed and that Sean
21 Dean is the only person who plausibly could have done it.

22 To believe him would be to believe the idea and
23 the proposition that Denise and Bert both had knives and
24 were swinging them around and were stabbing each other
25 without even realizing it.

35

1 this incident or not -- and again, the evidence points to
2 the fact that it probably was. But even if it wasn't,
3 okay, so let's say it wasn't the knife: Does that mean
4 that this did not happen? If that's not the knife, does
5 that mean that this didn't happen?

6 So use this as your starting point and don't lose
7 sight of that.

8 The fact that one person got stabbed seven times
9 and another person got stabbed once, don't miss the forest
10 for the trees.

11 Let me grab some jury instructions.

12 Just to close here, I'm going to read you a
13 couple jury instructions.

14 Instruction 23. "Discrepancies in the testimony
15 of a witness or between his or her testimony and that of
16 others, if there are any, do not necessarily mean that the
17 witness should be discredited."

18 Think about this next part.

19 "Failure of recollection is not uncommon. It is
20 also a fact that two persons witnessing an incident or
21 transaction will often see or hear it differently. Whether
22 a discrepancy pertains to a fact of importance or only to a
23 trivial detail should be considered in weighing its
24 significance."

25 Think about all that is going on that night.

34

1 Is that plausible?

2 If they had wanted to do harm to Sean Dean -- one
3 of you asked a question that -- well, something along the
4 lines of, well, wasn't Denise behind him? Couldn't she have
5 harmed him if she wanted to?

6 Think about that. By all accounts, even the
7 defendant's is my recollection, they -- she was behind him
8 for a large portion of the scuffle. She was on his back,
9 had him in a chokehold.

10 If she had a knife, and if she wanted to stab him
11 with it, don't you think she could have? Could have either
12 stabbed him from behind, slit his throat. She could have
13 done anything she wanted to him with that knife.

14 If both of them are wildly swinging knives at Mr.
15 Dean, don't you think that he would have come out of this
16 thing with more than just a cut right here on his index
17 finger?

18 Think about the plausibility of that. You have
19 got two versions of how this could have happened. There is
20 no other way. These stab wounds are there. They happened.
21 There is only three people involved: Denise, Bert and
22 Sean.

23 You have heard two versions. You've got four eye
24 witnesses saying it happened one way. You have got the
25 defendant on the other hand saying they stabbed each other.

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1 Based on that evidence, the State is requesting
2 that you convict on the charges.
3 Thank you for your time.
4 oo0oo

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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4

5 I, Lisa M. Manley, Official Reporter for the Fourth
6 Judicial District Court, Dept. II, of the State of Nevada,
7 in and for the County of Elko, was present in the
8 above-entitled court on June 28, 2016.

9 The foregoing transcript is an uncertified rough draft
10 transcription of my stenotype notes of said proceedings.
11 This transcript has not been edited, proofread, finalized,
12 indexed or certified.

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14 DATED: At Elko, Nevada, this 12th day of
15 December, 2017.

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Case No. CV-HC-17-711

Dept. No. 2

FILED

2019 APR 16 PM 2:30

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY _____

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

SEAN MAURICE DEAN,

Petitioner,

vs.

AITOR NARVAIZA, ELKO COUNTY SHERIFF,

Respondent.

VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS
(NRS 34.370)

COMES NOW, Petitioner, SEAN MAURICE DEAN, for a Petition for
Writ of Habeas Corpus, alleges as follows:

1. That petitioner is imprisoned or restrained of his
liberty by Aitor Narvaiza, the Elko County Sheriff, in the Elko
County Jail.

2. Name and location of court which entered the judgment of
conviction under attack: Fourth Judicial District Court, County of
Elko, State of Nevada.

3. Date of Judgment of Conviction: October 16, 2017.

4. Case Number: CR-FP-15-1508.

5. Length of Sentence: Minimum aggregate term of
imprisonment is 144 months and the maximum aggregate term is 372
months in prison. (Count 1: 72-180 months in prison, plus 48-120

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Attorneys at Law
919 Idaho Street
Elko, Nevada 89801

1 months for a deadly weapon enhancement; Count 2: 48-120 months in
2 prison, concurrent to Count 1; Count 5: 24-72 months in prison,
3 consecutive to sentences in Count 1 and 2.)

4 6. Are you presently serving a sentence for a conviction
5 other than the conviction under attack in this motion? No.

6 7. Nature of Offense involved in conviction being
7 challenged:

8 Count I: Attempted Murder With the Use of a Deadly Weapon,
9 NRS 193.165, 193.330, 200.010, 200.020 and 200.030.

10 Count II: Battery With the Use of a Deadly Weapon Resulting
11 in Substantial Bodily Harm, NRS 200.481 (2)(e)(2).

12 Count V: Battery With the Use of a Deadly Weapon, NRS
13 200.481(2)(e)(1).

14 8. What was your plea? Not Guilty.

15 9. If you entered a plea of guilty or guilty but mentally
16 ill to one count of an indictment or information, and a plea of not
17 guilty to another count of an indictment or information, or if a
18 plea of guilty or guilty but mentally ill was negotiated, give
19 details: N/A

20 10. I was found guilty by: Jury.

21 11. Did you testify at trial: Yes.

22 12. Did you appeal from the judgment of conviction: Yes.

23 13. If you did appeal, answer the following:

24 (a) Name of court: Nevada Court of Appeals.

25 (b) Case number or citation: 74602

26 (c) Result: Order of Affirmance

27 (d) Date of Result: January 25, 2019.

28 14. If you did not appeal, explain briefly why not: N/A

1 15. Other than a direct appeal from the judgment of
2 conviction and sentence, have you previously filed any petitions,
3 applications or motions with respect to this judgment in any court,
4 state or federal? No.

5 16. If your answer to no. 15 was yes, give the following
6 information: N/A.

7 17. Has any ground being raised in this petition been
8 previously presented to this or any other court by way of a
9 petition for habeas corpus, motion, application or any other post
10 conviction proceeding? No.

11 18. N/A

12 19. Are you filing this petition more than 1 year following
13 the filing of the judgment of conviction or the filing of a
14 decision on direct appeal? No.

15 20. Do you have any petition or appeal now pending in any
16 court, either state or federal, as to the judgment under attack?
17 No.

18 21. Give the name of each attorney who represented you in the
19 proceeding resulting in your conviction and on direct appeal: Gary
20 D. Woodbury through trial; and Lockie & Macfarlan, Ltd., post
21 trial, sentencing and Appeal.

22 22. Do you have any future sentences to serve after you
23 complete the sentence imposed by the judgment under attack? No.

24 23. State concisely every ground on which you claim that you
25 are being held unlawfully. Summarize briefly the facts supporting
26 each ground.

27 A. GROUND ONE: Petitioner was denied Effective Assistance
28 of Counsel under the Sixth Amendment due to racial bias on the

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1 part of his defense counsel.

2 Factual basis: During the course of the trial, Petitioner
3 observed that his trial counsel Gary Woodbury, had written the word
4 "nigger" on a yellow legal pad on or about June 23, 2016. After
5 Petitioner brought this matter to trial counsel's attention, Mr.
6 Woodbury hand delivered a letter to Petitioner wherein he admitted
7 calling Petitioner and the State's witness, Joseph Schenk a
8 slanderous and racial slur ("nigger"). Both Petitioner and Mr.
9 Schenk are African-Americans.

10 Petitioner asserts that he was deprived of effective
11 assistance of counsel at trial due to racial bias exhibited by his
12 trial counsel, which included, but was not limited to,
13 inappropriate questioning of the jury venire during voir dire
14 regarding the matter of race, that resulted in the jury being
15 contaminated by issues of racial bias, which had no legitimate
16 place in the proceedings.

17 Petitioner further asserts that trial counsel's apparent
18 racial bias adversely affected his defense, because of the manner
19 that he questioned Petitioner when he testified in his own defense.
20 With little or no preparation, defense counsel called Petitioner to
21 testify, and began asking him about his background and upbringing
22 in a high crime area near Sacramento, California, that included the
23 use of knives. The ostensible value to the case, would be that if
24 Petitioner were to be viewed as competent with interpersonal fights
25 with knives, then he would have killed the alleged victim, and the
26 charge of merely Attempted Murder would not stand. However, this
27 theory was untenable, and motivated by racially biased perceptions
28 of African-Americans in general, and their perceived violent

1 nature, which includes knife fighting. Petitioner was at a loss to
2 answer the questions, and the net result was to needlessly bring
3 issues of race into the proceedings by presenting Petitioner who,
4 as an African-American, would have such street knife fighting
5 matters in his background.

6 B. GROUND TWO: Petitioner was denied Effective Assistance
7 of Counsel at trial under the Sixth Amendment where trial
8 counsel failed to obtain Petitioner's medical records.

9 Factual basis: Petitioner received medical attention at
10 Northern Nevada Regional Hospital shortly after the incident that
11 gave rise to the prosecution. The State advanced a theory at trial
12 that Petitioner had used a knife to stab the alleged victim. The
13 State's theory that Petitioner had used the knife was ostensibly
14 supported by an injury to his finger area that the State argued was
15 consistent with his hand sliding up the knife handle and onto the
16 blade. However, Petitioner had other injuries to the back of his
17 hand area that would have been defensive in nature, and defeated
18 the State's theory of the alleged manner and means of the commission
19 of the crime. This error was not harmless, because the State's
20 entire theory rested upon the inferences derived from the wound on
21 Petitioner's finger. The lab analysis of the knife that Petitioner
22 allegedly used during the crime did not reveal DNA, fingerprints,
23 or other evidence connecting the weapon in any way to the
24 Petitioner.

25 The medical records would also be invaluable with regards to
26 negating the State's theory at trial the Petitioner was intoxicated
27 at the time of the alleged offense. Petitioner denies that he was
28 intoxicated, and asserts that his medical records from the hospital

1 would support his position regarding alleged intoxication in this
2 case.

3 The discovery in his case reveals that Petitioner signed a
4 medical release in favor of a police detective in this case, the
5 purpose of which was to obtain his medical records. According to
6 the detective's report, he submitted the release to the District
7 Attorney. Presumably, the authorities followed up on the release
8 and obtained exculpatory information that was not disclosed to the
9 defense and/or Petitioner's trial counsel failed to obtain said
10 records, thereby denying Petitioner's right to Effective Assistance
11 of Counsel.

12 C. GROUND THREE: Petitioner was denied Effective Assistance
13 of Counsel under the Sixth Amendment and Due Process due to
14 trial counsel's failure to obtain exculpatory evidence in the
15 form of a police observations by Sergeant Pepper of the Elko
16 Police Department.

17 Factual basis: Sergeant Pepper was on the scene of the alleged
18 incident, and contacted Petitioner. Sergeant Pepper observed the
19 injuries to Petitioner, and documented (or should have documented
20 them). From the discovery in the case, it appears that Pepper
21 conducted interviews of the defendant, Brittany Tice and Joseph
22 Schenk, the report of Detective Catalano indicates that Sergeant
23 Pepper had a body camera which would have shown that Petitioner was
24 not intoxicated (in a "drunken rage"). Further, from the recorded
25 interview, if Tice and/or Schenk may have contained exculpatory
26 evidence. However, that report was not produced in discovery, and
27 trial counsel failed to obtain said report that would have been
28 crucial in the effort towards negating the State's theory that it

1 was Petitioner who used a knife during the alleged commission of
2 the crime.

3 Furthermore, a report from another detective reveals that
4 Sergeant Pepper spoke to witnesses at the scene, and that he had a
5 body camera. These recordings were logged into evidence.
6 Petitioner was never provided with these recordings, which
7 potentially would contain exculpatory evidence.

8 D. GROUND FOUR: Petitioner was denied Effective Assistance
9 of Counsel under the Sixth Amendment, as well as his right of
10 Due Process to a fair trial due to failure to obtain or
11 produce booking records at the Elko County Jail which would
12 have revealed that Petitioner was not intoxicated shortly
13 after the alleged crime.

14 Petitioner asserts that the booking procedures at the Elko
15 County Jail contain information regarding observations of
16 intoxication. At trial, the State advanced a theory that
17 Petitioner was in a "drunken rage" at the time he allegedly
18 committed the offenses. Petitioner alleges that the records of his
19 booking contain observations by jail personnel that would negate
20 the theory that Petitioner was intoxicated. Petitioner was
21 deprived of Effective Assistance of Counsel and Right to a Fair
22 Trial due to trial counsel's failure to obtain said records, and
23 also denied his right to a fair trial, as said records were in
24 possession of the State, and its representatives, but not disclosed
25 or provided to Petitioner prior to trial.

26 E. GROUND FIVE: Petitioner was denied Effective Assistance
27 of Counsel, and his right to Due Process due to trial
28 counsel's failure to provide the jury with expert testimony

1 regarding the effects of various medications that the alleged
2 victim was taking at the time of the alleged crime.

3 Petitioner asserts that prior to trial, his trial counsel
4 reviewed a list of the alleged victim's medications with him, which
5 were highly relevant to the alleged victim's state of mind during
6 the alleged incident that gave rise to the criminal charges. Trial
7 counsel failed to present the jury with the expert testimony
8 regarding those medications at trial.

9 Furthermore, the alleged victims in this case refused the
10 police request to allow the police to search the residence (the
11 alleged crime took place just outside that residence). The fact
12 that these people refused a search leads to an inference that there
13 may have been controlled substances, or a weapon located therein
14 that was used by the victim, which would have corroborated the
15 defendant's testimony at trial. Petitioner was denied a right to
16 a fair trial because this evidence was not produced for the jury.

17 F. GROUND SIX: Petitioner was denied effective assistance
18 of counsel under the Sixth Amendment, and a Right to a Fair
19 Trial due to counsel's failure to present the jury with
20 evidence that the victims clothing was not appropriately
21 collected, preserved or tested for the presence of blood.

22 The presence of the defendant's blood on the victim's clothing
23 would have corroborated the defendant's testimony regarding the
24 events that transpired giving rise to the charges against him.

25 Further, counsel failed to adequately inform the trier of fact
26 that the holes in Burt Minter's clothing did not match his
27 description of the alleged attack.

28 G. GROUND SEVEN: Trial Counsel failed to object to the

1 introduction of the knife that was allegedly used in the
2 stabbing on grounds that the probative value of said evidence
3 was substantially outweighed by danger of unfair prejudice.

4 That prejudice is apparent do to:

- 5 1. That the knife had no evidence of Petitioner's blood,
6 DNA, fingerprints or other identifying characteristics
7 attributed to Petitioner.
- 8 2. The knife does not remotely resemble a cell phone (as
9 described by the victim).
- 10 3. The knife blade is only 2 ½ inches long, whereas, the
11 life threatening wound on Mr. Minter was 3 - 4 inches
12 deep.
- 13 4. No forensic evidence of the presence of the victim's DNA
14 or blood.
- 15 5. No evidence was adduced showing any association of the
16 knife with Petitioner.

17 H. GROUND EIGHT: Regardless of the matter of admissibility,
18 Petitioner was denied effective assistance of counsel due to
19 trial counsel's failure to present evidence of a photograph of
20 the knife that the State theorized Petitioner used to commit
21 the Battery.

22 The medical evidence adduced at trial was that Mr. Minter's
23 wound was 3-4 inches deep. The photograph in discovery shows the
24 knife with a ruler next to it, which demonstrates that the length
25 of the knife blade was just 2 ½ inches long, which would have
26 negated the State's theory of the manner and means of the offense.

27 DATED this _____ day of April, 2019.

28 Under penalties of perjury, the undersigned declares that he

LOCKIE & MACFARLAN, LTD.
Attorneys at Law
919 Idaho Street
Elko, Nevada 89801


1 is the Petitioner named in the foregoing Petition for Writ of
2 Habeas Corpus, and knows the contents thereof, that the pleading is
3 true of his own knowledge, except as to those matters therein
4 stated on information and belief, and as to those matters, he
5 believes the same to be true.

6 DATED this 10th day of April, 2019.


SEAN MAURICE DEAN

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Elko County District Attorney
540 Court Street, 2nd Floor
Elko, Nevada 89801

for  Danielle Leyva

11

1 CASE NO.: CV-HC-17-0711

2 DEPT. NO.: 2

FILED

2019 APR 22 AM 10:08

ELKO COUNTY DISTRICT COURT

CLERK DEPUTY

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5 IN THE FOURTH JUDICIAL DISTRICT COURT
6 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

7
8 SEAN MAURICE DEAN,

9 Petitioner,

OPPOSITION TO PETITION

10 vs.

FOR WRIT OF

11 AITOR NARVAIZA,

HABEAS CORPUS

12 ELKO COUNTY SHERIFF,

13 Respondent.
14

15 COMES NOW, Respondent, by and through the Elko County District Attorney's Office
16 and MARK S. MILLS Deputy District Attorney, and opposes Petitioner's Petition For Writ Of
17 Habeas Corpus. This Opposition is made and based upon the following Points and
18 Authorities in support hereof, as well as the documents, pleadings and exhibits already on file
19 with this Honorable Court.
20

21 Dated this 19 day of April, 2019.

22 TYLER J. INGRAM
23 Elko County District Attorney's Office

24 By:

25
26 MARK S. MILLS
27 Deputy District Attorney
28 State Bar Number: 11660

RECEIVED

APR 25 2019

Affirmation Pursuant to NRS 239B.030

SSN Does Appear

SSN Does Not Appear

Page 1 of 22

Appellant's Appendix, Vol. 2, page 100

POINTS AND AUTHORITIES

I. Background and Procedural History

On January 14, 2016, the State filed a criminal information charging Petitioner with COUNT 1: Attempted Murder With the Use of a Deadly Weapon; COUNT 2: Battery With a Deadly Weapon Resulting in Substantial Bodily Harm; COUNT 3: Battery With a Deadly Weapon (in the alternative to COUNT 2); COUNT 4: Battery Resulting in Substantial Bodily Harm (in the alternative to COUNT 2 and COUNT 3); and COUNT 5: Battery With a Deadly Weapon; and COUNT 6: habitual criminal.

On June 28, 2016, a jury convicted Petitioner of COUNT 1: Attempted Murder With the Use of a Deadly Weapon, COUNT 2: Battery With a Deadly Weapon Resulting in Substantial Bodily Harm, and COUNT 5: Battery With a Deadly Weapon.

Petitioner was originally scheduled to be sentenced on September 29, 2016, but he had a falling out with his trial attorney, Gary Woodbury, prior to the sentencing hearing. The day of the sentencing hearing, Mr. Woodbury filed a pleading entitled "Petition for Advice and Instruction," essentially informing the court that the relationship between Woodbury and Dean was strained to the point that Woodbury should be relieved from representation of Dean at sentencing and on appeal. Woodbury further stated that the basis of Dean's dissatisfaction was Dean's belief that Woodbury was racist and that Woodbury had not competently and reasonably represented Dean at trial.

At the time of the sentencing hearing, Dean essentially confirmed the factual allegations from Woodbury's pleading, alleging that Woodbury was racist, and that his racism had hindered his representation of Dean. Based on the breakdown in the relationship

1 between Woodbury and Dean, the court allowed Woodbury to withdraw as attorney.

2 Eventually, the law firm of Lockie & MacFarlan was appointed to represent Dean for
3 sentencing and on appeal.

4
5 Petitioner's sentencing took place on October 12, 2017. Petitioner was sentenced to
6 72-180 months on COUNT 1, with a consecutive term of 48-120 for the deadly weapon
7 enhancement; 48-120 on COUNT 2, to be served concurrently to COUNT 1; and 24-72 on
8 COUNT 5, to be served consecutively to COUNT 1 and COUNT 2.

9
10 On November 9, 2017, Petitioner filed a VERIFIED PETITION FOR A WRIT OF
11 HABEAS CORPUS. On January 11, 2018, the court ordered the State to file a response to
12 Petitioner's petition. The State hereby opposes Petitioner's petition.

13
14 II. **Facts**

15
16 At trial, Bert Minter testified that on December 8, 2015, Minter was residing with his
17 ex-wife, Denise Minter, at a trailer located at 764 S. 5th St. in Elko, NV. (RDT, vol. 1, p. 147-
18 150). On the evening of December 8th, Denise's ex-boyfriend, Petitioner Sean Dean, showed
19 up at the trailer, pounding on the door. (RDT, vol. 1, p. 151). Denise went outside to talk to
20 Dean, while Bert remained inside watching TV. (RDT, vol. 1, p. 151). Bert could hear Denise
21 and Dean talking to each other outside, but couldn't hear what they were saying. (RDT, vol.
22 1, p. 152). Denise and Bert started yelling at each other, so Bert walked to the door to open it
23 to see what was going on. (RDT, vol. 1, p. 152). When Bert opened the door, he observed
24 that Denise and Dean were on the porch outside the door yelling at each other, at which
25 point Dean looked at Bert and said, "You want something?" (RDT, vol. 1, p. 152). Bert and
26 Dean had a back-and-forth verbal exchange, arguing with each other, during the course of
27
28

1 which Dean, Bert, and Denise all walked down from the porch to the ground. (RDT, vol. 1, p.
2 153).

3
4 Dean then punched Bert in the face with his left hand, at which point Bert hit Dean
5 back, and they started fighting, hitting each other, and eventually ended up on the ground.
6 (RDT, vol. 1, p. 154). There was a brief break in the fight, where they let go of each other and
7 got up. (RDT, vol. 1, p. 155). Dean started walking away, then turned around and started
8 saying things to Bert again. (RDT, vol. 1, p. 155). Dean then ran at Bert and hit him, and then
9 they started fighting again. (RDT, vol. 1, p. 155).
10

11 Then Dean said, "Fuck this, motherfucker!" and reached into his pocket with his right
12 hand, reached his left hand over to his right hand,¹ and then started giving Bert what Bert
13 initially thought was a series of roundhouse punches to Bert's side. (RDT, vol. 1, p. 155-156).
14 Bert later realized that he had been stabbed multiple times by Dean. Bert was stabbed once
15 in the butt, three times in his left side, and three times on his arm. (RDT, vol. 1, p. 156).
16
17

18 After Dean stabbed Bert seven times, Dean ran away down the driveway. (RDT, vol.
19 1, p. 156). After Dean ran away, Bert realized that Denise had been stabbed too, when he
20 heard Denise exclaim, "Oh my God, I got stabbed too!" (RDT, vol. 1, p. 157). Bert observed
21 that there was a stab wound above Denise's left breast. (RDT, vol. 1, p. 158).
22

23 At trial, Denise's testimony was largely consistent with Bert's. Denise testified that her
24 ex-boyfriend, Petitioner, showed up at her trailer on the evening of December 8, 2015. (RDT,
25 vol. 3, p. 12). Before arriving at her residence, she and Dean had been texting back and forth
26
27

28 ¹ The reasonable inference that can be drawn from this fact is that Dean used his left hand to open the blade of the folding knife that was used to stab Bert.

1 about their relationship. (RDT, vol. 3, pp. 8-9). Dean asked her about someone in a gray SUV
2 coming to her residence. (RDT, vol. 3, p. 9). He also asked her to come see him, but she
3 declined, and he threatened her because she would not come. (RDT, vol. 3, pp. 10-11). She
4 eventually got tired and wanted to go to bed, so she ended the phone call. (RDT, vol. 3, p.
5 11). Dean then showed up knocking at her door. (RDT, vol. 3, pp. 11-12).
6

7 Denise left the trailer to go outside to talk to Dean, where she became upset when
8 she realized that Dean had been drinking. (RDT, vol. 3, p. 12). Bert then came out, and Bert
9 and Dean began "talking crap" to each other. (RDT, vol. 3, p. 14). The next thing Denise
10 knew, Bert and Dean were in a fight. (RDT, vol. 3, p. 16). Denise testified that she believed
11 that Dean threw the first punch, and then they started fighting. (RDT, vol. 3, p. 17). All three
12 of them, including Denise, ended up on the ground. (RDT, vol. 3, p. 18). Bert and Dean
13 eventually let go of each other and got up. (RDT, vol. 3, p. 19). Dean initially started walking
14 away, but then "more words were exchanged," and then Dean ran back up to Bert and
15 punched him in the face. (RDT, vol. 3, p. 20).
16
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18
19 Dean then pulled something from his back pocket and started hitting Bert on the side
20 of his body. (RDT, vol. 3, pp. 20-22). Dean also struck Denise on the chest above the heart.
21 (RDT, vol. 3, p. 22). Dean then turned around and walked off down the driveway. (RDT, vol.
22 3, p. 23).
23

24 Denise then realized that she and Bert had both been stabbed by Dean. (RDT, vol. 3,
25 pp. 23-24). She and Bert ended up going to the hospital for medical treatment. (RDT, vol. 3,
26 pp. 24-25).
27

28 Joseph Schenk also testified at trial. At the time of the crimes in this case, Schenk was

1 engaged to be married to Bert Minter's daughter, Brittany Tice. Schenk and Tice lived in a
2 trailer next door to Denise's trailer, outside of which the stabbings occurred.

3
4 Schenk testified that on the evening of December 8, 2015, he was inside his residence
5 with his fiancé when he heard a female screaming. (RDT, vol. 2, p. 82). Schenk then ran
6 outside and saw Bert Minter lying on his left side on the ground. (RDT, vol. 2, p. 83). Schenk
7 initially thought that Bert was having a medical issue, so he went back inside, put on some
8 glasses and shoes, and then went back outside. (RDT, vol. 2, p. 83).

9
10 Schenk ran back outside, helped Bert back up off the ground, and then noticed
11 Denise and Dean to the left of him. (RDT, vol. 2, p. 83). It seemed to Schenk that everyone
12 was angry and out of breath, and looked like they had been fighting. (RDT, vol. 2, p. 83).

13
14 Dean then said, "Eff this, mothereffe²," and then pulled out a knife and started
15 stabbing Bert. (RDT, vol. 2, p. 84-85). Dean had a fold-out knife in his right hand and was
16 stabbing Bert's waist. (RDT, vol. 2, p. 84-85). Schenk ran back into the house, told his fiancé
17 to call 911, and grabbed a gun. (RDT, vol. 2, p. 85). When Schenk came back outside a few
18 minutes later, Dean was gone, and Schenk observed that Denise also had a stab wound on
19 her chest. (RDT, vol. 2, p. 87).

20
21
22 At trial, Christina Hodges, who lived across the street from the trailer park where the
23 stabbing occurred, testified that on the evening of December 8, 2015, she was in her
24 residence getting ready for work, when she heard a woman screaming. (RDT, vol. 2, p. 138).
25 Hodges went outside her residence and heard the woman screaming something to the effect
26

27
28 ² It's clear from the trial transcript that Schenk used the phrase "Eff this, mothereffe" as a euphemism for what
Dean really said, which was "Fuck this, motherfucker!"

1 of "Sean, stop stabbing me!" (RDT, vol. 2, p. 138). Hodges walked down off her front porch,
2 ~~walked over to her neighbor's parking spot, and looked across the street to where she had~~
3 heard the screaming coming from. (RDT, vol. 2, pp. 138, 151). Hodges could see some
4 wrestling and moving across the street in the trailer park where the stabbing occurred. (RDT,
5 vol. 2, p. 138-139).
6

7 After calling 911, Hodges saw a man running toward her from the trailer park toward
8 5th St., where Hodges was located. (RDT, vol. 2, p. 143). The man crossed 5th St. and ran
9 into the trailer park on other side of 5th St. (the side of 5th St. where Hodge's residence was
10 located). (RDT, vol. 2, p. 144). The man ran between the trailers and then Hodges heard a
11 door slam. (RDT, vol. 2, p. 144). The trailer park that Hodges saw the man run into was the
12 same one where Dean was eventually located a little while later, where he was found in the
13 trailer of a person by the name of Lindsey Steele, who testified at trial.
14
15

16 On December 8, 2015, Lindsey Steele lived at a trailer with her boyfriend Clarence
17 Thompson, at 701 S. 5th St., just across 5th St. from where the stabbing occurred. (RDT, vol.
18 2, p. 162). That evening, she was returning from Pizza Hut when she observed Dean walking
19 across 5th St. back towards Lindsey's trailer. (RDT, vol. 2, p. 163). She knew who Dean was
20 because he was friends with her boyfriend, Clarence Thompson. (RDT, vol. 2, p. 164).
21
22

23 Thompson and Dean walked into the trailer while Lindsey was getting her son out of
24 the car. (RDT, vol. 2, p. 165). Lindsey had a "bad feeling something happened" because
25 Dean had been drinking and had been upset throughout the day. (RDT, vol. 2, p. 165). When
26 Lindsey entered the trailer, she observed a knife on the floor in the living room next to the
27 couch. (RDT, vol. 2, p. 167). The knife was not hers, she had not seen it before, and it had
28

1 not been there when she and Clarence had left to go to Pizza Hut a while earlier. (RDT, vol.
2 2, p. 168).

3 The police arrived a short while later and took Dean into custody. (RDT, vol. 2, p.
4 167). Steele picked up the knife and handed it to a police officer. (RDT, vol. 2, p. 169).

6 Dr. Christopher Ward, a general surgeon at the Elko Hospital who performed surgery
7 on Bert Minter after the stabbing, testified that Bert had four wounds in a line on his torso, the
8 deepest of which was three or four inches deep. (RDT, vol. 2, p. 250).

10 After Dean was taken into custody, he was interviewed by Detective Pete Nielson of
11 the Elko Police Department, during the course of which Dean admitted to being in the
12 altercation with Bert and Denise, but denied stabbing them. (RDT, vol. 2, p. 191). When
13 asked about the stab wounds suffered by Bert and Denise, Dean claimed that Bert and
14 Denise were the ones wielding knives, and that they must have accidentally stabbed each
15 other. (RDT, vol. 2, p. 191).

18 **III. Argument**

20 In his petition, Petitioner puts forth a number of ineffective assistance of counsel
21 (hereinafter "IAC") claims. Before directly responding to those claims, the State will first
22 provide an overview of the law governing IAC claims.

24 **a. Legal Standard for an Ineffective Assistance of Counsel Claim**

26 Of course, the landmark case dealing with IAC claims in habeas corpus petitions is
27 *Strickland v. Washington*, 466 U.S. 668 (1984), in which the U.S. Supreme Court set forth the
28 legal standard for assessing IAC claims. In that case, the Court held that in order to prevail in

1 an IAC claim, a Petitioner must make two showings. First, the petitioner "must show that
2 counsel's performance was deficient," which requires that the petitioner demonstrate that his
3 trial counsel "made errors so serious that counsel was not functioning as the 'counsel'
4 guaranteed the defendant by the Sixth Amendment." *Strickland v. Washington*, 466 U.S. 668,
5 687 (1984). Additionally, a petitioner must "show that counsel's representation fell below an
6 objective standard of reasonableness." *Strickland v. Washington*, 466 U.S. 668, 687-688
7 (1984).
8

9
10 In deciding IAC claims, "Judicial scrutiny of counsel's performance must be highly
11 deferential," and "counsel is strongly presumed to have rendered adequate assistance and
12 made all significant decisions in the exercise of reasonable professional judgment."
13 *Strickland v. Washington*, 466 U.S. 668, 689-690 (1984). As the Court explained:
14

15 A fair assessment of attorney performance requires that every effort be made to
16 eliminate the distorting effects of hindsight, to reconstruct the circumstances of
17 counsel's challenged conduct, and to evaluate the conduct from counsel's
18 perspective at the time. Because of the difficulties inherent in making the
19 evaluation, a court must indulge a strong presumption that counsel's conduct falls
20 within the wide range of reasonable professional assistance; that is, the
21 defendant must overcome the presumption that, under the circumstances, the
22 challenged action might be considered sound trial strategy. There are countless
23 ways to provide effective assistance in any given case. Even the best criminal
24 defense attorneys would not defend a particular client in the same way.

25 *Strickland v. Washington*, 466 U.S. 668, 689 (2014) (citations and quotes omitted).
26

27 Basically, in assessing a trial counsel's performance, there is a strong presumption
28 that trial counsel's decisions could be considered "sound trial strategy." If a petitioner is not
able to overcome this strong presumption, then he cannot succeed in showing that his trial
counsel's performance was deficient, i.e., falling below an objective standard of
reasonableness.

1 Second, in addition to showing that trial counsel's performance was deficient, a
2 ~~petitioner must also show that the deficient performance prejudiced the petitioner's case.~~

3 *Strickland v. Washington*, 466 U.S. 668, 687 (1984).

4
5 The Court explained that not every error made by a trial attorney warrants reversal;
6 rather, only those trial errors which actually prejudiced a petitioner's case entitle a petitioner
7 to relief:

8
9 Attorney errors come in an infinite variety and are as likely to be utterly harmless
10 in a particular case as they are to be prejudicial. They cannot be classified
11 according to likelihood of causing prejudice. Nor can they be defined with
12 sufficient precision to inform defense attorneys correctly just what conduct to
13 avoid. Representation is an art, and an act or omission that is unprofessional in
14 one case may be sound or even brilliant in another. Even if a defendant shows
15 that particular errors of counsel were unreasonable, therefore, the defendant
16 must show that they actually had an adverse effect on the defense.

17 It is not enough for the defendant to show that the errors had some conceivable
18 effect on the outcome of the proceeding. Virtually every act or omission of
19 counsel would meet that test, and not every error that conceivably could have
20 influenced the outcome undermines the reliability of the result of the proceeding.

21 *Strickland v. Washington*, 466 U.S. 668, 693 (1984).

22 In order to make a showing of prejudice, the petitioner must show "that counsel's
23 errors were so serious as to deprive the defendant of a fair trial, a trial whose result is
24 reliable." *Id.* In discussing the prejudice requirement, the Court further explained that in order
25 to make a showing of prejudice, a petitioner "must show that there is a reasonable probability
26 that, but for counsel's unprofessional errors, the result of the proceeding would have been
27 different. A reasonable probability is a probability sufficient to undermine confidence in the
28 outcome." *Strickland v. Washington*, 466 U.S. 668, 694 (1984) (citations omitted).

The Court emphasized that a petitioner must make both showings: "Unless a

1 defendant makes both showings, it cannot be said that the conviction...resulted from a
2 ~~breakdown in the adversary process that renders the result unreliable."~~ *Strickland v.*
3 *Washington*, 466 U.S. 668, 687 (1984).
4

5 The Court also emphasized that a district court reviewing an IAC claim may address
6 the prejudice prong and the deficiency prong in any order; in other words, if a district court
7 concludes that a petitioner has suffered no prejudice, the court can dispose of a habeas
8 petition without ever even addressing the deficiency prong. The Court explained:
9

10 Although we have discussed the performance component of an ineffectiveness
11 claim prior to the prejudice component, there is no reason for a court deciding an
12 ineffective assistance claim to approach the inquiry in the same order or even to
13 address both components of the inquiry if the defendant makes an insufficient
14 showing on one. In particular, a court need not determine whether counsel's
15 performance was deficient before examining the prejudice suffered by the
16 defendant as a result of the alleged deficiencies. The object of an ineffectiveness
17 claim is not to grade counsel's performance. If it is easier to dispose of an
18 ineffectiveness claim on the ground of lack of sufficient prejudice, which we
19 expect will often be so, that course should be followed. Courts should strive to
20 ensure that ineffectiveness claims not become so burdensome to defense
21 counsel that the entire criminal justice system suffers as a result.

18 *Strickland v. Washington*, 466 U.S. 668, 697 (1984).
19

20 Finally, it is important to remember that it is the petitioner who bears the burden
21 of proving both prongs (i.e., the deficiency prong and the prejudice prong) in a habeas
22 petition alleging an IAC claim. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); see
23 also *Means v. State*, 120 Nev. 1001, 1011 (2004). Furthermore, the petitioner has the
24 burden of proving the facts underlying an IAC claim by a preponderance of the
25 evidence. *Means v. State*, 120 Nev. 1001, 1012 (2004) ("[W]e now hold that a habeas
26 corpus petitioner must prove the disputed factual allegations underlying his ineffective-
27
28

1 assistance claim by a preponderance of the evidence”).

2 **b. With respect to each of the eight grounds of ineffective assistance**
3 **alleged by Petitioner, Petitioner has failed to demonstrate both (1) that**
4 **trial counsel’s performance was deficient, and (2) that the deficient**
5 **performance prejudiced Petitioner.**

6 In his petition, Petitioner argues that his trial counsel, Gary Woodbury, rendered
7 ineffective assistance of counsel. In all, Petitioner has alleged eight separate grounds of
8 ineffective assistance of counsel. For the following reasons, Petitioner has not made the
9 required showing either (1) that trial counsel’s performance was deficient, or (2) that trial’s
10 counsel’s performance prejudiced Petitioner’s case. Both showings must be met in order for
11 Petitioner to prevail, and he hasn’t met either of them.

12
13 **i. Ground One**

14 In Ground One of his Petition, Petitioner alleges that he was denied effective
15 assistance of counsel due to racial bias on the part of his trial counsel. Petitioner points to a
16 couple of pieces of evidence in support of this allegation.

17
18 First, Petitioner highlights the fact that Mr. Woodbury had apparently used the word
19 “nigger” to describe Joseph Schenk, one of the State’s witnesses at trial. Apparently, Mr.
20 Woodbury had written this word on a legal pad, which Petitioner observed at some point in
21 trial. That fact was never communicated to the jury, and has little, if any, relevance to
22 Petitioner’s instant petition.

23
24
25 Petitioner alleges that Woodbury’s use of the word “nigger” suggests a racial bias on
26 the part of Woodbury that manifested itself in the way Woodbury defended the case. For
27 example, during voir dire, Woodbury raised the issue of racial stereotypes. (RDT, vol 1., pp.
28

120-124). However, bringing up the issue of racial stereotypes during voir dire was a savvy strategic decision on the part of trial counsel, as he was able to ensure that jurors would go out of their way not to be racist, and prove that they could be fair to an African American defendant. This trial strategy worked to Petitioner's benefit. There is no evidence that it prejudiced his case.

Additionally, Petitioner argues that Woodbury's questioning of Defendant regarding his knowledge of knife-fighting played into racial stereotypes. This was purely a strategic decision on the part of trial counsel and Petitioner intended to undermine the intent to kill element of the attempted murder charge.

Finally, even if trial counsel's performance did fall below an objective standard of reasonableness, Petitioner was not prejudiced by trial counsel's lapses in judgment. The evidence against Petitioner in this case was overwhelming, and he would have been convicted of the charges regardless of whether Woodbury had made those tactical decisions.

ii. Ground Two

In his Second Ground, Petitioner argues that Woodbury rendered ineffective assistance by failing to obtain Petitioner's medical records. Petitioner claims that his medical records would reveal that he had "other injuries to the back of his hand area that would have been defensive in nature." However, this claim is entirely speculative. Petitioner has failed to proffer his medical records in order to substantiate this claim. Furthermore, this claim is to some extent belied by the record, which includes an admitted photograph of Petitioner's hand. (See State's Exhibit 31).

1 He also claims the records would have shown that he was not intoxicated at the time
2 of the incident. This is also sheer speculation, as Petitioner has not proffered any medical
3 records to substantiate this claim. *Means v. State*, 120 Nev. 1001, 1012 (2004) (Petitioner
4 has the burden of proving facts in support of an IAC claim by a preponderance of the
5 evidence). Furthermore, even assuming that the records confirmed Petitioner's claim that he
6 wasn't intoxicated at the time of the incident, the State is at a loss as to how this would have
7 helped Petitioner's case. Arguably, it would not have helped the Petitioner's case at trial if it
8 could have been shown that he was actually sober, rather than drunk, at the time he stabbed
9 a man seven times.
10

11
12 Thus, Dean has neither met the deficiency prong nor the prejudice prong with respect
13 to this allegation.
14

15 **iii. Ground Three**

16
17 In his third ground for relief, Petitioner argues that trial counsel was ineffective for
18 failing to utilize Sgt. Jason Pepper as a witness. Petitioner alleges that Sgt. Pepper observed
19 the injuries to Petitioner, and that he interviewed witnesses. Petitioner argues that Pepper's
20 bodycam and report would have shown that Petitioner was not intoxicated and would have
21 been crucial in negating the State's theory that it was Petitioner who used a knife during the
22 alleged commission of the crime. In addition, Petitioner speculates about the possibility of
23 Sgt. Pepper's bodycam "potentially" containing exculpatory evidence. This is all speculation,
24 and these facts have not been proven by a preponderance of the evidence. *Means v. State*,
25 120 Nev. 1001, 1012 (2004) (Petitioner has the burden of proving facts in support of an IAC
26 claim by a preponderance of the evidence).
27
28

iv. Ground Four

In Ground Four, Petitioner argues that trial counsel was ineffective for failing to obtain booking records from the jail, which he claims would have shown that he was not intoxicated. Petitioner's trial counsel was not ineffective for failing to obtain the booking records. There is no evidence indicating that the records would have helped Petitioner's case. Petitioner asserts that the records would contain information suggesting that Petitioner was not intoxicated. This appears to be sheer speculation at this point, as neither party has seen the booking records mentioned by Petitioner. *Means v. State*, 120 Nev. 1001, 1012 (2004) (Petitioner has the burden of proving facts in support of an IAC claim by a preponderance of the evidence). But even if it were true that the records suggested—or even conclusively established—that Petitioner was not intoxicated, that fact would not help his case. Indeed, as the State argued above, that fact might actually have harmed Petitioner's case. In a case like this one, Petitioner's level of intoxication could actually constitute a defense to the charge of Attempted Murder, which is a specific intent crime to which the defense of voluntary intoxication is applicable to negate the specific intent of the crime. Demonstrating that Petitioner was sober, rather than drunk, at the time he committed these crimes, actually takes away that defense and makes Petitioner more culpable. Thus, Petitioner suffered absolutely no prejudice from trial counsel's failure to obtain the booking records. Even assuming that the factual allegation raised by Petitioner is true, Petitioner would not be entitled to relief. See *Hargrove v. State*, 100 Nev. 498, 502 (1984) (A petitioner is not entitled to an evidentiary hearing if his petition is based on "bare" or "naked" claims for relief, unsupported by any specific factual allegations that would, if true, have entitled him to withdrawal of his plea").

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1 belied by the record, and Petitioner is therefore not entitled to relief. *Id.* (Holding that a
2 ~~petitioner is not entitled to an evidentiary hearing if his claim is belied by the record~~).

3
4 Contrary to Petitioner's claim, his trial counsel effectively cross-examined Detective
5 Pete Nielson about whether Petitioner's blood might have been on Mr. Minter's clothing, and
6 about the failure to send Minter's clothing to the crime lab for testing, pointedly asking
7 Nielson, "Then why didn't Minter's clothing get sent down to the Washoe County crime lab?"
8 (RDT, vol. 3, p. 210-211). Additionally, Mr. Woodbury asked the crime lab expert whether a
9 pair of khaki pants or a black windbreaker (i.e., Minter's clothing) was submitted for testing.
10 (RDT, vol. 4, pp. 56-57). Because this claim is belied by the record, Petitioner is not entitled
11 to relief.
12

13
14 **vii. Ground Seven**

15 In Ground Seven, Petitioner argues that trial counsel was ineffective by failing to
16 object to the introduction of the knife that was allegedly used in the stabbing on the ground
17 that the probative value of the knife was substantially outweighed by the danger of unfair
18 prejudice. The State disagrees. Compelling evidence was presented at trial strongly
19 suggesting that the knife that was admitted into evidence was in fact the knife that was used
20 in the stabbing. The knife that was located in the trailer of Clarence Thompson and Lindsey
21 Steele was a fold-out knife—exactly the kind of knife that was described by witnesses as the
22 one Dean used to stab Bert and Denise Minter. Furthermore, the knife was located in
23 Steele's trailer near the couch in the living room, a short time after the stabbing occurred and
24 immediately after Dean had walked into the trailer. Steele testified that she had never seen
25 the knife before, and that it did not belong to either her or Clarence. The only logical
26
27
28

1 conclusion that can be drawn is that Dean had tossed the knife there upon entering the
2 trailer.

3
4 The fact that a male DNA profile matching Dean's DNA profile was not located on the
5 knife handle isn't particularly relevant. As Monica Siewertsen, the DNA expert, testified, it is
6 "not unusual" to not be able to obtain a DNA profile from an object that someone has
7 handled, for a variety of reasons. (RDT, vol. 4, pp. 39-41). In other words, the fact that
8 Dean's DNA wasn't found on the knife handle doesn't mean that he didn't hold the knife.
9

10 The knife was properly admitted into evidence, and trial counsel was not ineffective for
11 failing to object to its admission.
12

13 Furthermore, even if the knife had never been admitted, Petitioner still would have
14 been convicted. Let's assume that Dean had done a better job of disposing of the knife, and
15 that the knife—or any knife—had never been found at all. That wouldn't have changed the
16 fact that Dean stabbed Bert and Denise. The physical evidence is indisputable: there's no
17 changing the fact that Bert and Denise were stabbed during the altercation with Dean. And
18 eye-witnesses say Dean stabbed them with a fold-out knife. Thus, whether the actual knife
19 that was used to stab them was ever recovered or not does not change the fact that Dean did
20 in fact stab them. As a result, Petitioner suffered no prejudice from trial counsel's failure to
21 object to the admission of the knife.
22
23

24 **viii. Ground Eight**
25

26 In Ground Eight, Petitioner argues that trial counsel was ineffective for failing to
27 introduce into evidence a photograph of the knife with a ruler next to it. It is unclear to the
28

1 State how this photograph would have been appreciably different than the knife itself, which
2 was introduced into evidence.

3
4 Furthermore, contrary to Petitioner's contention, the fact that the knife's blade was 2 ½
5 inches long, and Dr. Ward testified that Bert Minter's deepest stab wound was approximately
6 3-4 inches deep, does not in any way negate the State's theory of the manner and means of
7 the offense. Common sense dictates that the fatty tissue of a person's torso would compress
8 when stabbed, and then expand back out again after the knife is removed, thus resulting in a
9 stab wound deeper than the length of the blade.⁴
10

11 **IV. Conclusion**

12
13 The U.S. Supreme Court has held that "[t]he benchmark for judging any claim of
14 ineffectiveness must be whether counsel's conduct so undermined the proper functioning of
15 the adversarial process that the trial cannot be relied on as having produced a just result."
16
17 *Strickland v. Washington*, 466 U.S. 668, 686 (1984).
18

19 The trial in this case cannot be said to have produced an unjust result. In this case,
20 the record reflects that Mr. Woodbury offered effective representation of Dean. Woodbury
21 effectively and thoroughly cross-examined the State's witnesses. In determining whether trial
22 counsel's rendered ineffective assistance, there is a strong presumption that trial counsel's
23 performance was not deficient. In this case, Dean has not overcome that presumption.
24

25 Furthermore, even if it could be shown that Mr. Woodbury's performance fell below an
26 objective standard of reasonableness, any deficient performance on his part caused no
27

28 ⁴ Imagine stabbing a four-inch sponge with a two-inch blade. Because the sponge is soft, and would contract as pressure is applied to it, it would be easy to make a 3-4 inch puncture in the sponge with a two-inch blade.

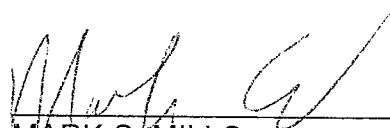
1 prejudice to Dean.

2 Dean's interview with Detective Nielson placed Mr. Woodbury at a distinct
3 disadvantage at trial. By telling Nielson an implausible story about Bert and Denise stabbing
4 each other, rather than simply claiming self-defense, Dean locked his defense attorney into
5 an untenable, implausible defense. Additionally, the physical evidence (e.g., the stab wounds
6 to the victims) and the eye-witness testimony, when combined with Dean's interview with
7 Detective Nielson, overwhelmingly prove that Dean committed the crimes he was convicted
8 of. In the face of that evidence against Dean, the alleged errors in judgment made by trial
9 counsel (if this court even concludes that errors were made), had no bearing on the outcome
10 of the case. Petitioner suffered no prejudice. Accordingly, his petition should be denied.
11
12

13
14 Dated this 19 day of April, 2019.

15 TYLER J. INGRAM
16 Elko County District Attorney's Office
17

18
19 By:

20 
21 MARK S. MILLS
22 Deputy District Attorney
23 State Bar Number: 11660
24
25
26
27
28

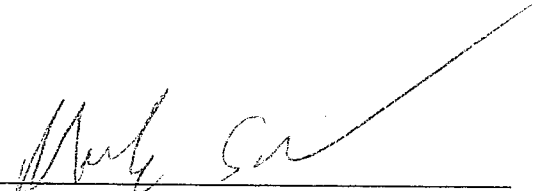
1
2 **Unsworn Declaration In Support Of Motion**

3 ***Pursuant to NRS 53.045***

4 Comes now MARK S. MILLS, who declares the following to the above-
5 entitled Court:

- 6
7 1. That the Declarant is presently serving as a Deputy District Attorney of the Elko
8 County District Attorney's Office.
9 2. That I have read the assertions of fact set forth in this pleading and incorporate
10 them into this Declaration.
11 3. This Motion is made in good faith, and not merely for the purposes of delay.
12 4. I declare under penalty of perjury that the foregoing is true and correct.

13 Dated this 19 day of April, 2019.

14
15 
16 MARK S. MILLS
17 Deputy District Attorney
18 State Bar Number: 11660
19
20
21
22
23
24
25
26
27
28

1 CERTIFICATE OF SERVICE

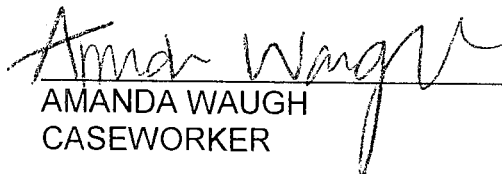
2 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the
3 Elko County District Attorney's Office, and that on the 22nd day of April, 2018, I served the
4 foregoing OPPOSITION TO WRIT OF HABEAS CORPUS, by delivering or mailing or
5 causing to be delivered or mailed, a copy of said document, to the following:
6

7 By delivery to:

8 THE HONORABLE ALVIN R. KACIN
9 FOURTH JUDICIAL DISTRICT COURT
10 ELKO COUNTY COURTHOUSE
11 ELKO, NV 89801

12 By mailing to:

13 LOCKIE & MACFARLAN
14 ATTORNEY AT LAW
15 919 IDAHO STREET
16 ELKO, NV 89801

17 
18 AMANDA WAUGH
19 CASEWORKER
20
21
22
23
24
25

26 DA# HC-17-03475
27
28

FILED

1 Case No. CV-HC-17-711

2 Dept. II

2020 APR 23 PM 3:37

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY Dr

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5
6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 00000

9 SEAN MAURICE DEAN, :

10 Petitioner, :

11 v. :

HEARING ON PETITION

12 AITOR NARVAIZA, :
13 Elko County Sheriff, :

FOR WRIT OF HABEAS

14 :

CORPUS

15 Respondent. : VOL. 1

16 _____/

17 TRANSCRIPT OF PROCEEDINGS

18
19 BE IT REMEMBERED that the above-entitled matter
20 came on for hearing on November 20, 2019, at the hour of
21 9:14 a.m. of said day, in Elko, Nevada, before the
22 HONORABLE ALVIN R. KACIN, District Judge.

23

24

25

Reported by Lisa M. Manley, CCR No. 271

RECEIVED

APR 24 2020

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2 Dept. II
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23
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Reported by Lisa M. Manley, CCR No. 271

1

1 A P P E A R A N C E S

2
3 For the Petitioner: DAVID B. LOCKIE ESQ.
4 SHERBURNE MACFARLAN, ESQ.
5 LOCKIE & MACFARLAN
6 919 Idaho Street
7 Elko, Nevada 89801
8
9 For the Respondent: MARK S. MILLS, ESQ.
10 Elko County Deputy District
11 Attorney
12 540 Court Street
13 2nd Floor
14 Elko, Nevada 89801
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2

1 I N D E X

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6	Redirect Examination by Mr. Macfarlan	19
7	JACOB EISINGER	
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25		

3

1 P R O C E E D I N G S

2 THE COURT: All right. We'll be on the record
3 for Case CV-HC-2017-0711.
4 This is Sean Maurice Dean, petitioner, versus
5 Aitor Narvaiza, the Elko County Sheriff.
6 We have Mr. Dean here with his counsel David
7 Lockie and Sherb Macfarlan from Lockie & Macfarlan.
8 We have Elko County deputy district attorney Mark
9 Mills here to represent the respondent.
10 And this is the date and time we have set for a
11 hearing on the petition for writ of habeas corpus.
12 My understanding was that it was an evidentiary
13 hearing.
14 Parties ready for that?
15 MR. MILLS: Yes, Your Honor.
16 MR. MACFARLAN: We are, Judge.
17 THE COURT: Did you want to name witnesses now or
18 are there any preliminary matters to deal with?
19 MR. MACFARLAN: Let me go ahead and name the
20 witnesses, Judge. We do have a stipulation with Mr. Mills
21 that we can put on the record.
22 Just in terms of the order, we have potentially
23 six members from law enforcement testifying.
24 It's our intent to put the officers on first
25 because they are going to be the fastest. Then really the

4

1 two primary witnesses in terms of length of time will be
2 Mr. Woodbury and Sean Dean.
3 Jason Pepper, potentially Jeremy Catalano, Jacob
4 Eisinger, Brenda Cortez, Pete Nielson, Josh Morrell, Gary
5 Woodbury, and then Mr. Dean.
6 THE COURT: All right. Any witnesses to name for
7 the respondent?
8 MR. MILLS: None other than those named by the
9 petitioner, Your Honor.
10 THE COURT: All right. Are all the witnesses in
11 the courtroom then?
12 MR. MACFARLAN: They are, other than Mr.
13 Catalano.
14 THE COURT: All right. And that appears to be
15 the case. I am familiar with all of these named witnesses.
16 So the rule of exclusion, I assume parties want
17 that invoked?
18 MR. MILLS: Yes, Your Honor.
19 MR. MACFARLAN: That would be fine, Judge.
20 THE COURT: Court will invoke the rule of
21 exclusion. Of course what it means for the witnesses is
22 you cannot be in the courtroom while other witnesses are
23 testifying.
24 This is actually set for two days for a hearing.
25 So please don't discuss -- it will be today and tomorrow.

5

1 (WHEREUPON, Petitioner's Exhibits 1, 2, 3, 4, 5, 6, 8,
2 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22 and
3 23 were admitted into evidence)
4 THE COURT: Clerk will mark those as admitted.
5 And then I guess what I meant was Mr. Dean is
6 going to present his evidence first today.
7 MR. MACFARLAN: Correct. The first -- do we have
8 any other preliminary matters?
9 MR. MILLS: No.
10 MR. MACFARLAN: The first witness we are going to
11 call is Jason Pepper.
12 THE COURT: All right.
13 (WHEREUPON, the witness was sworn)
14 THE COURT: Watch your step. Did you want the
15 desk folded out there for the witnesses today?
16 MR. MACFARLAN: Probably not necessary, Judge.
17 THE COURT: Okay. Very good. Please proceed.
18 JASON PEPPER
19 called as a witness in said case, having been first
20 duly sworn, testified as follows:
21 DIRECT EXAMINATION
22 BY MR. MACFARLAN:
23 Q. Would you please state your name and spell
24 your last name for the record?
25 A. Jason Pepper, P-e-p-p-e-r.

7

1 So please don't discuss this case or your testimony amongst
2 yourselves or with any other person while the hearing is
3 going on. I'm sure the lawyers will tell you when the
4 hearing is over.
5 So you can discuss the matter with the lawyers,
6 of course, during the breaks.
7 All right. So I assume Mr. Dean is going first
8 today? You had a stipulation?
9 MR. MACFARLAN: We have got a stipulation.
10 Judge, we actually have 23 exhibits that have
11 been marked 1 through 23. We actually don't have an
12 Exhibit 7. We actually have 22 exhibits.
13 And I had spoken with Mr. Mills yesterday, and
14 then we confirmed it today, and Mr. Mills is being kind
15 enough to stipulate to the authenticity and the
16 admissibility of the marked exhibits.
17 THE COURT: Is that correct, Mr. Mills?
18 MR. MILLS: Yes, it is, Your Honor.
19 THE COURT: Thank you for your stipulation.
20 Hopefully that will shorten things up.
21 Exhibits 1 through 23 with the exception of 7 --
22 I guess there is no 7?
23 MR. MACFARLAN: Correct.
24 THE COURT: Those are marked. Those exhibits are
25 admitted. Those are Exhibits 1 through 23, no 7.

6

1 Q. What is your occupation, Mr. Pepper?
2 A. I am a lieutenant for the Elko Police
3 Department.
4 Q. And how long have you been employed by the
5 Elko Police Department?
6 A. Since 2003.
7 Q. Do you recall what your rank was back in
8 December of 2015?
9 A. Sergeant.
10 Q. And do you recall whether you were actually on
11 duty on December 8 of 2015?
12 A. Yes.
13 Q. And do you recall which shift you were working
14 at that date?
15 A. Graveyard.
16 Q. And what are the hours of graveyard shift, at
17 least back then?
18 A. 7:00 at night to 7:00 in the morning.
19 Q. And at some point during your shift on
20 December 8, 2015, were you called out to a stabbing
21 situation here in the city limits of Elko?
22 A. Yes.
23 Q. And what was the general location where this
24 stabbing apparently had occurred?
25 A. South Fifth Street, I believe.

8

1 Q. Okay. And is that basically the location of
2 what is known as Palacio Trailer Court?
3 A. That's correct.
4 Q. And when you responded to the scene, were you
5 the first officer on scene? Or do you recall?
6 A. I don't recall. I don't think I was the first
7 there, though.
8 Q. Okay. And ultimately, after you arrived on
9 the scene, did it come to your attention that the suspect
10 in terms of the stabbing was a gentleman by the name of
11 Sean Dean?
12 A. Yes.
13 Q. And did you ultimately have contact with Mr.
14 Dean back on that date?
15 A. Yes, we did.
16 Q. Is Mr. Dean present in court today?
17 A. Yes, he is.
18 Q. He is the gentleman sitting to my far left
19 wearing the red jumpsuit?
20 A. Yes, he is.
21 MR. MACFARLAN: If the record could reflect the
22 identification, Your Honor.
23 THE COURT: The record will reflect the
24 identification of the petitioner now, Mr. Dean.
25 Q. At some point in time, do you recall having at

9

1 least a brief conversation with Officer Catalano?
2 A. Several times during the incident I did.
3 Q. And for your state of mind, at one point in
4 time when you were having a conversation with Officer
5 Catalano, did he inform you that Mr. Dean only wanted to
6 speak with a detective or a sergeant?
7 A. Yes, he did.
8 Q. And did you actually have a personal contact
9 with Mr. Dean at the Palacio Trailer Court?
10 A. Briefly, yes.
11 Q. And was that just out in the street area, or
12 do you recall?
13 A. I don't remember if it was in the street or he
14 was in the car, but we did have a brief conversation.
15 Q. And basically, in terms of your brief
16 conversation with Mr. Dean at the scene, did he -- do you
17 recall him indicating to you that he would be willing to
18 speak with you?
19 A. Yes.
20 Q. Okay. And ultimately Mr. Dean was transported
21 by ambulance to the hospital here in Elko, was he not?
22 A. Yes, he was.
23 Q. Did you ultimately meet with Mr. Dean at the
24 hospital?
25 A. I did.

10

1 Q. And was at least part of your purpose in
2 meeting with Mr. Dean at the hospital, was that to actually
3 conduct an interview of him?
4 A. To get his statement, yes.
5 Q. Okay. And do you recall -- not the specific
6 room, but when you actually interviewed Mr. Dean or
7 received a statement from Mr. Dean at the hospital, was he
8 in an E.R. room by himself in terms of being the only
9 patient in there?
10 A. He was the only patient, but there was people
11 in and out the whole time.
12 Q. Sure. But in terms of actual patients, he was
13 the only patient in the E.R. room?
14 A. Yes, he was the only patient in that room.
15 Q. In terms of your interview with Mr. Dean at
16 the hospital, was that interview recorded in any fashion?
17 A. Yes.
18 Q. And how was it recorded?
19 A. On Officer Lowry's body camera.
20 Q. Which officer?
21 A. I believe it was Lowry's body camera. That
22 was before we were issued, so that was his personal camera.
23 Q. Okay. And ultimately, to the best of your
24 knowledge, was that body cam video and audio logged into
25 evidence?

11

1 A. Yes, I believe it was.
2 Q. Have you ever actually listened to that body
3 cam?
4 A. I have, but it's been years since I have.
5 Q. Basically probably from 2015, or somewhere
6 along those lines?
7 A. Right, right.
8 Q. And I recognize that we are talking a long
9 time ago, almost four years at this point in time, but --
10 well, let me back up.
11 You have obviously been involved in law
12 enforcement for a good number of years at this point in
13 time?
14 A. Yes.
15 Q. And I presume that at least when you were not
16 in the administration, but when you were either a sergeant
17 or a patrol officer, you probably had almost daily contact
18 on your job with people who were under the influence of
19 some type of substance?
20 A. Correct.
21 Q. That could be either alcohol or some type of a
22 controlled substance?
23 A. Yes.
24 Q. Based on -- do you have any sense of how long
25 your interview of Mr. Dean lasted at the hospital back on

12

1 December 8?

2 A. I don't. And I apologize. I wasn't sure what
3 this hearing was about so I didn't review any body cam
4 footage whatsoever.

5 Q. Not a problem. Just -- let me just ask you
6 this. Based on your contact with Mr. Dean briefly at the
7 scene and then at the hospital, did you form an opinion as
8 to whether he appeared to be under the influence of any
9 type of substance?

10 A. I don't remember.

11 Q. Okay. When you are interviewing an
12 individual, if that person appears to be under the
13 influence of a substance, is that something that you would
14 normally note in your report?

15 A. If it was some kind of gross intoxication, it
16 probably would have been noted, yes.

17 Q. And -- but as you sit here today -- is it fair
18 to say, as you sit here today, you don't have any
19 recollection of whether Mr. Dean appeared to be under the
20 influence or not?

21 A. No, I do not.

22 MR. MACFARLAN: Judge, at this point in time we
23 would like to play Exhibit 12, which is a copy of the body
24 cam.

25 THE COURT: Of course. How long is it?

13

1 MR. MACFARLAN: It's not all that long, Judge. I
2 can't remember. I was getting it mixed up with Mr. Dean's
3 interview down at the jail, which is longer, so...

4 THE COURT: Did you want us to turn the lights
5 off during the --

6 MR. MACFARLAN: Sure. We could dim them a little
7 bit.

8 THE COURT: Okay.

9 (Recording played)

10 Q. Lieutenant, is that -- Lieutenant, was that
11 your voice we just heard on the body cam a minute ago?

12 A. Yes.

13 (Recording played)

14 Q. Lieutenant, there was an officer in the
15 background holding, it looks like, an orange plastic
16 evidence bag.

17 A. Yes.

18 Q. Which officer was that?

19 A. Lowry.

20 Q. Lowry. And recognizing that your memory at
21 this point in time is it was Lowry's body cam that was
22 actually recording this?

23 A. I believe it was Lowry's body cam.

24 Q. Okay.

25 (Recording played)

14

1 MR. MACFARLAN: I think that's all.

2 THE COURT: There were three different videos on
3 this exhibit.

4 MR. MACFARLAN: Correct. Three clips.

5 THE COURT: I think we watched all three in
6 sequence.

7 MR. MACFARLAN: We did.

8 THE COURT: Thank you.

9 Q. Lieutenant, other than yourself and Officer
10 Lowry, do you recall any other officers being in the room
11 with you and Mr. Dean while you were interviewing him or
12 questioning him?

13 A. I don't remember.

14 Q. But there was definitely Officer Lowry who was
15 present with you?

16 A. Yes. In fact, the first video was his video.
17 I wasn't wearing a body camera in the first video.

18 Q. And that's, I guess, what my question was, is
19 ultimately did Officer Lowry give you his body cam to wear?

20 A. Yes, because this was obviously way before we
21 were issued body cameras.

22 Q. So the first clip that we watched, that's when
23 the body cam was actually on Officer Lowry?

24 A. Yes.

25 Q. And then clip number 2 and clip number 3, you

15

1 had actually placed Officer Lowry's body cam on your
2 person?

3 A. Yes.

4 Q. Okay.

5 MR. MACFARLAN: I think that is all we have got,
6 Judge.

7 THE COURT: All right. Give me a moment, please.
8 Any cross-examination?

9 MR. MILLS: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. MILLS:

12 Q. Good morning, Lieutenant.

13 A. Good morning.

14 Q. It's now lieutenant, not sergeant, correct?

15 A. Yes, sir.

16 Q. So have the Beatles jokes gone away to some
17 degree?

18 A. The older I get, the less they are.

19 Q. So Mr. Macfarlan asked you about Mr. Dean's
20 state of intoxication on the -- I guess the evening of
21 December 8, 2015.

22 That's almost four years ago at this point; is
23 that correct?

24 A. Yes.

25 Q. And you have no independent recollection of

16

1 whether -- whether he was under the influence of alcohol on
2 that evening?

3 A. No.

4 Q. Okay. And in looking at the video, can you
5 make any determinations along those lines from observing
6 his demeanor?

7 A. It's difficult to tell from a video based on
8 someone's tolerance, but it doesn't -- he doesn't seem to
9 be grossly intoxicated.

10 Q. And, of course, through the video you are not
11 in a position to smell the odor of alcohol, or anything
12 like that, sitting in the courtroom today, correct?

13 A. Correct.

14 Q. Do you recall smelling an odor of alcohol at
15 the time you spoke to him?

16 A. I don't.

17 MR. MILLS: Your Honor, there is a question I
18 would like to ask that I think might be slightly outside
19 the scope of cross. I can wait, you know, keep him
20 retained and ask him when I present my case. Or if it's
21 okay with counsel, I would request permission to go outside
22 the scope of cross.

23 MR. MACFARLAN: We have no objection to that,
24 Judge.

25 Q. So, Lieutenant, do you recall any injuries on
17

1 Mr. Dean that evening?

2 A. Other than I could tell you a hand injury,
3 that's the only thing I remember.

4 Q. Okay. Do you recall where that injury was on
5 his hand?

6 A. I do not.

7 (Recording played)

8 Q. For the record, I am playing the first of the
9 three video clips, and just I'm going to pause it at about
10 10 seconds into the clip.

11 (Recording played)

12 Q. I apologize. It's not pausing when I'm trying
13 to pause.

14 (Recording played)

15 Q. It's not pausing at the right place.

16 (Recording played)

17 Q. So I've got it paused about 10 seconds into
18 the first of the three video clips. Where is the bandage
19 on the hand at this point?

20 A. His right hand.

21 Q. Which part of his hand?

22 A. On his fingers.

23 Q. Do you observe any injuries on any other part
24 of his hand, like the back side of the hand that is visibly
25 shown in the video?

18

1 A. I don't remember. And I can't see anything
2 from the video.

3 Q. Okay.

4 MR. MILLS: That's all I have. I will pass the
5 witness.

6 THE COURT: All right. Give me a moment.
7 Any redirect?

8 MR. MACFARLAN: One moment, Judge.

9 THE COURT: Sure.

10 REDIRECT EXAMINATION

11 BY MR. MACFARLAN:

12 Q. I think you may have already answered this,
13 Lieutenant, but other than Officer Lowry, do you recall any
14 other officers being present during your interview of Mr.
15 Dean at the hospital?

16 A. I do not remember.

17 MR. MACFARLAN: That is all we have got, Judge.

18 THE COURT: May Lieutenant Pepper be excused?

19 MR. MACFARLAN: We would ask him to -- certainly
20 he may leave the courthouse, Judge. We do have his cell
21 phone. I do not think we would need to call him, but if we
22 do, we can track him down.

23 THE COURT: Okay. Please remember the rule of
24 exclusion. You are still held as a witness, but you can
25 leave today. If they need you back, they will give you a
19

1 call.

2 Next witness, please.

3 MR. MACFARLAN: Jacob Eisinger.

4 THE COURT: Please raise your right hand, be
5 sworn, sir.

6 (WHEREUPON, the witness was sworn)

7 THE COURT: Witness stand is over there. Please
8 watch your step. Door comes out to you.

9 Mr. Macfarlan.

10 JACOB EISINGER

11 called as a witness in said case, having been first
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MACFARLAN:

15 Q. Could you please state your name, spell your
16 last name for the record.

17 A. Jacob Eisinger. Last name is E-i-s-i-n-g-e-r.

18 Q. And how are you employed, sir?

19 A. I'm a police officer for the City of Elko.

20 Q. How long have you been employed in that
21 capacity?

22 A. Since February of 2012.

23 Q. And are you currently working as a patrol
24 officer, or what is your position?

25 A. I am a narcotics detective.

20

1 Q. Are you working with the narcotics task force
2 or are you still just assigned solely to the police
3 department?

4 A. No, I am assigned to the Elko Combined
5 Narcotics Unit.

6 Q. How long have you been working for the
7 combined narcotics unit?

8 A. A little over two years.

9 Q. Drawing your attention back to December of
10 2015, what was your position with the police department at
11 that point in time?

12 A. So I was assigned to patrol, but I would work
13 with ECU part-time every other month.

14 Q. And ECU is?

15 A. The Elko Combined Narcotics Unit.

16 Q. And drawing your attention specifically to
17 December 8 of 2015, do you recall whether you were working
18 on that particular date?

19 A. Yes, I was.

20 Q. And do you recall which shift you were working
21 on that date?

22 A. I was working a swing shift with the Elko
23 Combined Narcotics Unit.

24 Q. And at some point in time, did you respond to
25 the area of 701 South Fifth Street on that date?

21

1 A. Yes, I did.

2 Q. And what was the reason that you responded to
3 that location?

4 A. There was a report of an individual stabbed, I
5 believe.

6 Q. And when you -- after you arrived on the
7 scene, at some point in time did you learn that the suspect
8 in terms of the stabbing was an individual by the name of
9 Sean Dean?

10 A. Yes, sir.

11 Q. Did you have any personal knowledge of Mr.
12 Dean prior to the date in question?

13 A. Only just seeing him downtown at a place of
14 employment and in passing.

15 Q. And is Mr. Dean the gentleman sitting to my
16 far left?

17 A. Yes, he is.

18 MR. MACFARLAN: May the record reflect that
19 identification?

20 THE COURT: Record will reflect the
21 identification of the petitioner Sean Dean.

22 Q. At some point in time after you arrived at the
23 scene, were you and the other officers who were present
24 informed that Mr. Dean was in a residence located at 701
25 South Fifth Street, number 5?

22

1 A. Yes, sir.

2 Q. And what did you and the other officers do at
3 that point in time?

4 A. So if memory serves me correctly, we
5 established a perimeter around the residence. I was in the
6 rear of the residence by a -- near a tree.

7 As far as the other officers, their
8 positioning and what they did, I don't have -- I have no
9 idea.

10 Q. Ultimately, is it your recollection that at
11 least some of the officers entered that specific residence
12 trying to locate Mr. Dean?

13 A. Yes.

14 Q. Was Mr. Dean located ultimately and taken into
15 custody?

16 A. Yes, he was.

17 Q. Do you recall the name of the owners of that
18 particular residence that we're talking about?

19 A. I know that the -- the female was named
20 Lindsey Steele. The male's name, I -- I believe the first
21 name is Clarence. I don't recall the last name.

22 Q. Did you ever participate in the search of that
23 residence in any fashion?

24 A. Yes, I did.

25 Q. And what was the purpose of that search?

23

1 A. To look for any potential evidence.

2 Q. Would that include potentially the knife that
3 may have been used in the stabbing?

4 A. Yes.

5 Q. Ultimately did you, in fact, come into
6 possession of some physical evidence at that scene?

7 A. Yes, I did.

8 Q. And what was the evidence that came into your
9 possession?

10 A. There was a -- a knife, a folding knife or a
11 multi-tool type thing. And then, if memory serves
12 correctly, I took some swabs of some blood droplets in the
13 residence.

14 Q. How did that knife/multi tool come into your
15 possession?

16 A. Ms. Steele provided that to me.

17 Q. When she provided this knife or multi tool to
18 you, had you and other officers actually conducted the
19 search inside that residence at that point in time looking
20 for evidence, or do you recall?

21 A. I believe it was when we -- during our --
22 inside the residence doing the search is when it was handed
23 over, if I remember correctly.

24 Q. And you indicated that the knife was actually
25 handed to you by Ms. Steele?

24

1 A. Yes.
2 Q. One of the occupants of the residence?
3 A. Correct.
4 Q. Were you informed or did you see where that
5 knife had actually been located in the residence?
6 A. I was informed. I did not see.
7 Q. Just in your -- what information did you
8 receive in terms of where that knife supposedly was
9 located?
10 A. Ms. Steele advised the knife was located near
11 the couch in the residence.
12 Q. Did she indicate it was on the floor, or was
13 that your understanding?
14 A. Yes, on the floor.
15 Q. Okay. I presume ultimately the knife that was
16 provided to you by Ms. Steele, you ultimately logged that
17 into evidence at the Elko Police Department?
18 A. Yes, I did.
19 Q. To your understanding, ultimately, was that
20 knife sent off to Washoe County Crime Lab for testing?
21 A. I believe it was, yes.
22 MR. MACFARLAN: May I approach, Your Honor?
23 THE COURT: You may. Thank you.
24 Q. Showing you what has been marked as
25 Petitioner's Exhibit 23?

25

1 A. Okay.
2 Q. Do you recognize what that is a diagram of?
3 A. Looks to be a diagram of a residence.
4 Q. Can you -- from that diagram, can you identify
5 that as being the residence of Ms. Steele?
6 A. It very well could be. If memory serves me
7 correctly, I -- looking at how the layout is, it indicates
8 two couches. I only remember there being one couch in
9 the -- but it was sometime ago.
10 Q. And in terms of the one couch that you recall
11 being in the residence, where was that couch located?
12 A. It was located on this -- this back wall here.
13 Q. And did Ms. Steele indicate the specific
14 position near that couch where she had located the knife?
15 A. I don't believe she did.
16 Q. Just lying on the floor next to the couch --
17 A. Yes.
18 Q. -- basically?
19 A. Um-hmm.
20 THE COURT: May I see that one, Mr. Macfarlan?
21 MR. MACFARLAN: Sure.
22 Q. Mr. Eisinger, in terms of the knife that had
23 been provided to you or the multi tool that had been
24 provided to you by Ms. Steele, do you recall what that
25 knife looked like?

26

1 A. Yes, sir.
2 Q. And what is your recollection?
3 A. It was like a black -- not black, excuse me.
4 It was a brown or greenish. Had the -- had the knife
5 folded in. I want to say there was some other items on
6 there. That is why I referred to it as a knife/multi tool.
7 Q. Okay. Showing you what has been marked as
8 Petitioner's Exhibit 17.
9 Does that appear -- and I recognize you can't
10 see the whole knife or multi tool in that picture. But
11 does that appear to be a picture of at least a portion of
12 the knife/multi tool that Ms. Steele provided to you back
13 on the date in question?
14 A. Yes.
15 Q. Showing you what has been marked as
16 Petitioner's Exhibit 24.
17 Does that appear to be a photograph that was
18 taken inside the Steele residence, or can you tell?
19 A. It very well could be. I'm sure it is.
20 Q. Well, I'm not asking you to speculate.
21 A. Yes.
22 Q. Okay.
23 MR. MACFARLAN: Do you have any objection to the
24 admission of this?
25 MR. MILLS: No objection, Your Honor.

27

1 MR. MACFARLAN: Move for the admission of 24,
2 Judge.
3 THE COURT: Exhibit Number 24 for identification
4 is now admitted.
5 (WHEREUPON, Petitioner's Exhibit 24 was admitted into
6 evidence)
7 MR. MACFARLAN: That is all we have got at this
8 point in time, Judge.
9 THE COURT: Cross-examination?
10 MR. MILLS: I don't have any questions, Your
11 Honor.
12 THE COURT: May Detective Eisinger be excused?
13 MR. MACFARLAN: Again, we would ask him to be
14 retained. He can certainly leave the courthouse.
15 THE COURT: Please remember the rule of
16 exclusion. You are excused for now. It's my understanding
17 the lawyers would have your phone number if they have to
18 call you back in.
19 Thank you.
20 Next witness.
21 MR. MACFARLAN: We would call Brenda Cortez.
22 THE COURT: Please come on up here. Raise your
23 right hand. Take the oath.
24 (WHEREUPON, the witness was sworn)
25 THE COURT: Please have a seat at the stand.

28

1 Door comes out to you. Watch your step.
2 Mr. Macfarlan.
3 BRENDA CORTEZ
4 called as a witness in said case, having been first
5 duly sworn, testified as follows:
6 DIRECT EXAMINATION
7 BY MR. MACFARLAN:
8 Q. Could you please state your name, spell your
9 last name for the record?
10 A. Brenda Cortez. C-o-r-t-e-z.
11 Q. And how are you employed, Ms. Cortez?
12 A. I work for the Elko County Sheriff's Office.
13 Q. And in what capacity at this point in time?
14 A. Deputy.
15 Q. Okay. Are you -- and you just finished up
16 POST, did you not?
17 A. I did.
18 Q. And are you going to be training as a patrol
19 officer in the near future?
20 A. I will.
21 Q. Okay. Prior to you going to POST, what was
22 your position with the sheriff's department?
23 A. I was a jail deputy.
24 Q. Okay. And I should have asked you this
25 previously, but do you recall approximately when you began

29

1 working for the sheriff's department here in Elko?
2 A. Approximately in March 2015.
3 Q. March of 2015?
4 A. I believe so.
5 Q. I know we are talking a long time ago. Do you
6 recall whether you were actually working at the jail as a
7 jail deputy back on December 8 of 2015?
8 A. I do.
9 Q. Okay. And do you recall which shift you were
10 working on that particular date?
11 A. Night shift probably.
12 Q. And when you say night shift, what do you
13 recall the hours being? At least back then?
14 A. Six p.m. to six a.m.
15 Q. Six in the evening to six in the morning?
16 A. Yes, sir.
17 Q. Twelve-hour shift?
18 A. Yes, sir.
19 Q. Do you recall whether during your shift on
20 December 8 of 2015, whether you had any contact with a
21 gentleman by the name of Sean Dean?
22 A. I do.
23 Q. And did -- do you know Mr. Dean, either from
24 back on that date in question or just since he has been
25 incarcerated in the Elko County Jail?

30

1 A. Since he has been incarcerated.
2 Q. And is Mr. Dean, or the person you know as Mr.
3 Dean, is he the gentleman sitting to my far left against
4 the wall?
5 A. He is.
6 MR. MACFARLAN: If the record could reflect the
7 identification, Your Honor.
8 THE COURT: The record will reflect the
9 identification of the petitioner, Sean Dean.
10 Q. Do you recall whether you were actually the,
11 quote, booking officer for Mr. Dean when he was brought
12 into your facility back on December 8 of 2015?
13 A. I was the booking officer.
14 Q. Okay. And what are the documents that are
15 generated by the officer when a person is brought in and
16 incarcerated in the Elko County Jail?
17 A. So the booking, we do the charges, the bail
18 amount, the property, medical screening, and then -- I
19 think I am missing a couple, but that's what's included.
20 Q. So there is a number of pieces of
21 documentation that are generated during the course of the
22 booking process?
23 A. There is.
24 Q. Okay. Showing you what has been marked as
25 State's 21.

31

1 MR. MACFARLAN: Just for the record, this is the
2 certified booking records of Mr. Dean.
3 THE COURT: Thank you.
4 Q. Showing you what has been marked as
5 Petitioner's Exhibit Number 21.
6 If you will take a look at the bottom
7 right-hand corner of those pages, you can see that they are
8 Bates stamped. Namely, they are numbered?
9 A. Yes, they are.
10 Q. Okay. If you could go to page 30. And what
11 is that a photocopy of?
12 A. That is the booking sheet.
13 Q. Okay. And does that, in fact, list you as the
14 booking officer?
15 A. Yes, it does.
16 Q. In terms of the booking sheet, does it list
17 both the date as well as the time when the individual was
18 apparently booked into the jail?
19 A. It does.
20 Q. And what was the date and time -- and just so
21 it's clear, that booking sheet pertains to Mr. Dean; does
22 it not?
23 A. Yes, it does.
24 Q. What does that document indicate in terms of
25 when and on what date Mr. Dean was booked into the Elko

32

1 County Jail?

2 A. So booking date was 12/08 of 2015. Booking

3 time is 8:13.

4 Q. That would be 8:13?

5 A. At night.

6 Q. At night.

7 A. 2013 hours.

8 Q. And as you indicated, as the booking officer,

9 apparently you do, in essence, screen the new inmate in

10 terms of medical conditions and that type of a deal?

11 A. Yes, sir.

12 Q. And is one of the things that -- as a booking

13 officer that you are checking on in terms of a new inmate

14 is whether that person is under the influence of any type

15 of substance?

16 A. Yes, sir.

17 Q. And if you can go to page 48 of that exhibit.

18 Can you describe what that document is to the

19 Court, please?

20 A. So this is the medical screening questionnaire

21 that we do at the jail.

22 Q. And if you flip, I think, to page 49. Are

23 there actually some initials on the next page?

24 A. Yes, there are.

25 Q. Do you recognize those initials?

33

1 A. I do. Those are my initials.

2 Q. Is page 49, in essence, a continuation of page

3 48 in terms of the medical screening document?

4 A. Yes, it is.

5 Q. If you will go back to page 48. One of the

6 questions that is asked of the individual, or what you are

7 trying to determine, is whether the person is under the

8 influence of either alcohol or a controlled substance?

9 A. Correct.

10 Q. And what did you indicate in terms of whether

11 Mr. Dean appeared to be under the influence of either

12 alcohol or controlled substance?

13 A. "No."

14 Q. And is there another question in terms of

15 whether the individual, namely, Mr. Dean, seemed to be

16 coming down or withdrawing from either alcohol or

17 controlled substances?

18 A. There is.

19 Q. And what did you mark in terms of an answer to

20 that question?

21 A. "No."

22 MR. MACFARLAN: That's all the questions we have,

23 Judge.

24 THE COURT: Anything on cross-examination?

25 MR. MILLS: Yes, Your Honor.

34

CROSS-EXAMINATION

1 BY MR. MILLS:

2 Q. Good morning, Deputy.

3 A. Good morning.

4 Q. So this booking of Mr. Dean occurred almost --

5 at this point almost four years ago; is that correct?

6 A. Yes, sir.

7 Q. Do you have an independent recollection of

8 interacting with him and booking him on that occasion?

9 MR. MACFARLAN: Judge, I apologize for

10 interrupting. Mr. Dean really needs to use the bathroom.

11 THE COURT: Okay. Well, we have been at it

12 awhile. That's fine. All right. We'll go ahead, take a

13 break.

14 Please remember the rule of exclusion. We'll

15 have you come back for cross-examination.

16 (WHEREUPON, a short recess was taken)

17 THE COURT: Back on the record for Case

18 CV-HC-17-711. Again, Sean Dean versus Aitor Narvaiza, Elko

19 County Sheriff.

20 We are back on the record. Mr. Dean is back in

21 court with his counsel, Lockie & Macfarlan.

22 Then we have Mark Mills, Elko County deputy

23 district attorney, for the respondent.

24 We have Deputy Cortez on the witness stand. She

25

35

1 is still under oath and on cross-examination now.

2 Mr. Mills.

3 MR. MILLS: Thank you.

4 Q. (By Mr. Mills) So, Deputy Cortez, I believe

5 the question that I was asking you before the recess was --

6 was whether you have kind of an independent recollection,

7 as you sit on the stand today, of Mr. Dean and your

8 interactions with him on the evening of December 8, 2015?

9 A. I'm sorry. Can you rephrase the question?

10 What do you mean by independent?

11 Q. Do you remember booking him?

12 A. Yes.

13 Q. Okay. And how -- how detailed is your

14 recollection of your interactions with him that evening?

15 A. It's not very detailed.

16 Q. This was four years ago, correct, almost?

17 A. Correct.

18 Q. Stand to reason that maybe your memory is a

19 little fuzzy as far as the specifics and particulars of

20 your interactions with him?

21 A. Yes.

22 Q. Now, with regards to this screening, these

23 screening questions that you ask people who are booked. So

24 you indicated that the inmate did not appear to be under

25 the influence of alcohol or drugs; is that correct?

36

1 A. Correct.
2 Q. Now, just I want to ask you about the process
3 that the booking deputies use to reach that determination.
4 What things do you consider and take into account when you
5 check yes or no on that box?
6 A. Physical appearance and how they are acting.
7 If their eyes are bloodshot, red. Slurred speech. Just
8 how they are acting, that is how I summarize it.
9 Q. Do you recall if you detected an odor of
10 alcohol coming from his mouth when he spoke to you?
11 A. I did not detect an odor of alcohol.
12 Q. I guess my question was, do you recall -- do
13 you -- sorry to split hairs here. But so you -- you do
14 remember that he did not emit an odor of alcohol?
15 A. Correct.
16 Q. Okay. And you have that recollection?
17 A. Yes, sir.
18 Q. Okay. Now, did you -- you didn't conduct
19 field sobriety tests or anything like that, correct?
20 A. Correct.
21 Q. You don't look for nystagmus or lack of smooth
22 pursuit, any of the HGN you would look at somebody's eyes
23 for?
24 A. Correct.
25 Q. Okay. And, likewise, you didn't do a

37

1 walk-and-turn or one-leg stand or anything like that?
2 A. Correct.
3 Q. Is it possible that -- that he may have
4 consumed alcohol earlier that day and you just weren't
5 aware of it?
6 MR. MACFARLAN: Judge, we would object. Calls
7 for speculation.
8 MR. MILLS: That's fine, Your Honor. I will
9 withdraw the question.
10 Q. You weren't with Mr. Dean earlier that day,
11 were you?
12 A. No, sir.
13 Q. Okay.
14 MR. MILLS: All right. That's all I have, Your
15 Honor.
16 THE COURT: All right. Anything based on that?
17 MR. MACFARLAN: Nothing based on that.
18 And the deputy may be excused in terms of leaving
19 the courthouse. We also have her phone number if we need
20 to recall her, Judge.
21 THE COURT: You are held subject to recall, but
22 you can leave the courthouse. They will call you back if
23 they need you. Remember the rule of exclusion.
24 Thank you.
25 THE WITNESS: Thank you, Judge.

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1 THE COURT: All right. Next.
2 MR. MACFARLAN: We would call Josh Morrell. And
3 Mr. Lockie will be questioning Mr. Morrell.
4 THE COURT: Thank you.
5 Please raise your right hand, be sworn, sir.
6 (WHEREUPON, the witness was sworn)
7 THE COURT: Door comes out to you. Watch your
8 step there.
9 And, Mr. Lockie, please proceed.
10 JOSHUA MORRELL
11 called as a witness in said case, having been first
12 duly sworn, testified as follows:
13 DIRECT EXAMINATION
14 BY MR. LOCKIE:
15 Q. Could you please state your name?
16 A. Joshua Morrell.
17 Q. How are you employed?
18 A. With the City of Elko Police Department.
19 Q. How long have you been so employed?
20 A. Just over 17 years.
21 Q. Were you -- obviously then you were employed
22 November, December, 2015?
23 A. Yes, sir.
24 Q. All right. And so the incident, just to set
25 the time frame here, that we're talking about was one

39

1 wherein the Elko Police Department responded to a report of
2 a stabbing on December 8 of 2015. Just trying to get some
3 dates --
4 A. Yes, sir.
5 Q. -- to be on your mind there.
6 First of all, do you -- are you familiar with
7 the gentleman to my left in any way?
8 A. Yes, sir.
9 Q. And who is he?
10 A. Sean Dean.
11 Q. And you recognize him to be him?
12 A. Yes, sir.
13 MR. LOCKIE: All right. May the record reflect
14 the identification of Mr. Dean.
15 THE COURT: Record does reflect the
16 identification of the petitioner now, Mr. Dean.
17 Q. At some point in time, two or three weeks
18 prior to December 8 of 2015, did you have occasion to be
19 looking for Mr. Dean?
20 A. Yes, sir.
21 Q. Okay. And you were, along with -- I don't
22 know if it was Corporal Drake at that point in time?
23 A. Yes, sir, Corporal Drake.
24 Q. And in connection with looking for him, did
25 you have occasion to go to a trailer located in the Palacio

40

1 Trailer Court, if you want to call it that?
2 A. Yes.
3 Q. On Fifth Street?
4 A. Yes, sir.
5 Q. All right. And did you go to a residence
6 there wherein there was a person by the name of Denise
7 Minter?
8 A. I believe it was Denise. I don't recall the
9 lady's name.
10 Q. Would it have been a residence that you
11 associated with Mr. Dean in some fashion?
12 A. Yes, sir.
13 Q. All right. And the female subject there was
14 somehow a girlfriend of Mr. Dean?
15 A. I believe so.
16 Q. All right. And what happened when you went
17 into that residence, if you remember?
18 A. We spoke to the female that was there. I
19 believe -- if it helps, I believe it was a female that
20 worked at the Sinclair on Idaho Street. And we got
21 permission to search for Mr. Dean.
22 Q. All right. And during the course of that
23 search, did you happen to locate anything associated with
24 any narcotics?
25 A. Yes, sir.

41

1 Q. Okay. What did you find?
2 A. I believe it was a small amount of
3 methamphetamine -- suspected methamphetamine.
4 Q. Maybe some paraphernalia or something?
5 A. Some paraphernalia.
6 Q. Okay. That wasn't of interest to you at that
7 particular point in time?
8 A. No, sir.
9 Q. All right. And Mr. Dean was clearly not
10 present at the trailer at that time?
11 A. He was not there.
12 Q. All right. What happened or became of those
13 narcotics?
14 A. I don't recall. I believe we disposed of them
15 or -- took them and disposed of them in some fashion.
16 Q. The point is, you didn't arrest Denise Minter
17 for those narcotics?
18 A. We did not arrest.
19 Q. That was because you had other fish to fry, or
20 you weren't interested in that at that point?
21 A. She was cooperative with us at that time, and
22 that's common for us to do.
23 MR. LOCKIE: Thank you. I have no further
24 questions, Your Honor.
25 THE COURT: Thank you. Cross-examination.

42

CROSS-EXAMINATION

1
2 BY MR. MILLS:
3 Q. I understand this was quite sometime ago. Do
4 you recall -- but do you recall approximately the time
5 frame as far as -- let me ask you this:
6 Are you aware of the fact that Mr. Dean was
7 arrested on the evening of December 8, 2015?
8 A. Is -- I believe -- is that in regards to a
9 stabbing?
10 Q. Yes.
11 A. Yes.
12 Q. Okay. So how -- what was the time frame as
13 far as when you went and had that contact with Ms. Minter
14 at that trailer?
15 How many -- how many days before the date of
16 the stabbing would that have been approximately?
17 A. I don't recall. It was sometime before, I
18 believe. I don't recall. It was -- it was a while ago.
19 Q. All right.
20 MR. MILLS: That's all I have, Your Honor.
21 THE COURT: Any redirect?
22 REDIRECT EXAMINATION
23 BY MR. LOCKIE:
24 Q. Showing you what has been marked as --
25 actually admitted into evidence as Exhibit 16.

43

1 There is a female subject there. Does that
2 resemble the person that you saw?
3 A. I believe that is the female that was in the
4 residence.
5 MR. LOCKIE: For the record, Your Honor, that's
6 admitted into evidence as Denise Minter.
7 No further questions.
8 THE COURT: Thank you.
9 Anything based on that, Mr. Mills?
10 MR. MILLS: No, Your Honor.
11 THE COURT: No recross. I assume then that
12 the -- the witness will be held subject to recall. And you
13 can leave.
14 MR. MACFARLAN: That would be fine, Judge.
15 THE COURT: They may want to call you back. If
16 they do that, they will call you. The rule of exclusion is
17 invoked. Please remember that. You are excused for now.
18 THE WITNESS: Yes, sir.
19 THE COURT: Next witness, please.
20 (WHEREUPON, the witness was sworn)
21 /
22 /
23 /
24 /
25 /

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1 PETER RICHARD NIELSON
2 called as a witness in said case, having been first
3 duly sworn, testified as follows:
4 DIRECT EXAMINATION
5 BY MR. MACFARLAN:
6 Q. Could you please state your name, spell your
7 last name for the record?
8 A. Peter Richard Nielson. N-i-e-l-s-o-n.
9 Q. And how are you employed?
10 A. City of Elko Police Department.
11 Q. How long have you been working for the Elko
12 City P.D.?
13 A. A little over 13 years.
14 Q. And what is your current rank at the P.D.?
15 A. Corporal.
16 Q. And obviously you were employed by the Elko
17 Police Department back in December of 2015?
18 A. Correct.
19 Q. And what was your position with the department
20 at that point in time?
21 A. Detective.
22 Q. At some point in time in December of 2015, did
23 you become at least somewhat involved in an allegation of a
24 stabbing that had taken place at the Palacio Trailer Park
25 here in Elko?

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1 A. Correct.
2 Q. As part of your involvement in the
3 investigation, did you, in fact, interview a gentleman by
4 the name of Sean Dean?
5 A. Correct.
6 Q. And is the person that you interviewed,
7 namely, Sean Dean, is he the gentleman sitting to the far
8 left wearing a red jump suit?
9 A. He is.
10 MR. MACFARLAN: If the record can reflect the
11 identification, Judge.
12 THE COURT: Record will reflect then the
13 identification of petitioner Sean Dean.
14 Q. My understanding in taking a look at the
15 reports is the interview that you conducted with Mr. Dean
16 actually occurred on December 9 of 2015?
17 A. Correct.
18 Q. And that actually occurred down at the Elko
19 County Jail?
20 A. Yes.
21 Q. And Mr. Dean was in custody at that point in
22 time?
23 A. Yes, he was.
24 Q. And ultimately, when you met with Mr. Dean on
25 December 9 of 2015, he agreed to be -- to speak with you?

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1 A. He did.
2 Q. This was after you had actually Mirandized
3 him?
4 A. Correct.
5 Q. Even though he was aware of his rights, he was
6 still willing to speak with you?
7 A. Yes, he was.
8 Q. And in terms of the interview with Mr. Dean
9 back on December 9 of 2015, was that interview recorded in
10 any fashion?
11 A. It was.
12 Q. And how was it recorded?
13 A. By audio recording.
14 Q. So purely audio. No video?
15 A. Yes.
16 Q. And I know this has been a long time ago, did
17 you have an opportunity to listen to that recording
18 sometime subsequent to your actual interview of Mr. Dean?
19 A. Prior to the jury trial, yes.
20 Q. Okay. That recording is an accurate recording
21 of the interview with Mr. Dean back on December 9 of 2015?
22 A. Yes.
23 MR. MACFARLAN: Judge, at this point in time we
24 would like to play Exhibit 22.
25 THE COURT: Please proceed.

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1 MR. MACFARLAN: Judge, just for the record, there
2 is about two minutes before there is any -- actually any
3 conversation between the detective and Mr. Dean. We'll
4 just start it at the beginning.
5 (Recording played)
6 THE COURT: All right. Stopped at 45:21.
7 Do you want me to listen to the rest of all that
8 later?
9 MR. LOCKIE: No, it's just the collection of the
10 buccal swab.
11 MR. MACFARLAN: You're welcome to if you want,
12 Judge.
13 THE COURT: Okay.
14 MR. MACFARLAN: May I have one moment, Judge?
15 THE COURT: Yes.
16 Q. (By Mr. Macfarlan) Corporal now?
17 A. Yes.
18 Q. Okay. Corporal Nielson, ultimately, were you
19 in charge of submitting a knife to the Washoe County Crime
20 Lab that had -- was suspected had been used in this
21 stabbing incident?
22 A. I prepared the paperwork for it, and I am not
23 exactly sure -- I don't recall if I was the one that mailed
24 it or if it was delivered.
25 Q. And you were the one who, in essence,

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1 initiated this, at least initiated the sending of that item
2 off to the crime lab?
3 A. Yes.
4 Q. Okay.
5 MR. MACFARLAN: That's all we have got, Judge.
6 THE COURT: Cross-examination?
7 MR. MILLS: I don't have anything based on that.
8 THE COURT: All right. Held subject to recall, I
9 assume.
10 Please remember the rule of exclusion is invoked.
11 If the lawyers need you back, they will give you a call.
12 THE WITNESS: Thank you.
13 THE COURT: Next witness.
14 MR. MACFARLAN: Judge, I think the next two
15 witnesses are going to be Mr. Woodbury and Mr. Dean. I
16 suspect they are both going to be reasonably lengthy.
17 Maybe now is an appropriate time to take a break.
18 THE COURT: That's fine. Catalano?
19 MR. MACFARLAN: No.
20 MR. LOCKIE: No.
21 THE COURT: He is not being called?
22 MR. MACFARLAN: No.
23 THE COURT: So Mr. Woodbury will be the next
24 witness. Get back here about 1:15. Will that work?
25 MR. MACFARLAN: That would be fine, Judge.

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1 MR. MILLS: That's fine, Judge.
2 THE COURT: All right. Very good. Court's in
3 recess.
4 (WHEREUPON, the noon recess was taken at 11:39 a.m.)
5 THE COURT: We're back on the record for Case
6 CV-HC-17-711. This is Sean Maurice Dean, petitioner, again
7 versus Aitor Narvaiza, the Elko County Sheriff, respondent.
8 We have Mr. Dean back in court with his counsel,
9 Lockie & Macfarlan.
10 Then Elko County deputy district attorney Mark
11 Mills to represent the respondent.
12 So we are moving along with Mr. Dean's case on a
13 petition for writ of habeas corpus post-conviction.
14 Next witness is Mr. Woodbury?
15 Mr. Woodbury is the next witness?
16 MR. MACFARLAN: Yes.
17 THE COURT: Any preliminary matters?
18 MR. LOCKIE: No, Your Honor.
19 THE COURT: All right. We'll have Mr. Woodbury
20 sworn.
21 (WHEREUPON, the witness was sworn)
22 THE COURT: Mr. Lockie, is it?
23 MR. LOCKIE: Yes.
24 /
25 /

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1 GARY WOODBURY
2 called as a witness in said case, having been first
3 duly sworn, testified as follows:
4 DIRECT EXAMINATION
5 BY MR. LOCKIE:
6 Q. Would you please state your name?
7 A. My name?
8 Q. Yes, please.
9 A. It is Gary Woodbury.
10 Q. All right. And you are an attorney?
11 A. Yes.
12 Q. How long have you been licensed to practice
13 law?
14 A. Forty-three years.
15 Q. Practicing principally in the Elko area?
16 A. Yes.
17 Q. And you have done quite a number of jury
18 trials over all that time?
19 A. Yes.
20 Q. I am not going to ask you how many.
21 A. Yes.
22 Q. Do you recognize the gentleman seated to my
23 left?
24 A. I do.
25 Q. Who is he?

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1 A. Sean Dean.
2 MR. LOCKIE: Record reflect, Your Honor.
3 THE COURT: Record will reflect the
4 identification of Mr. Dean, the petitioner.
5 Q. Do you recall being appointed to represent him
6 in a case wherein he was charged with attempted murder and
7 related charges arising from an incident that occurred at
8 the trailer park where the victims were Denise Minter and
9 Bert Minter?
10 A. I do.
11 Q. Okay. And did you represent him during the
12 whole course of those proceedings?
13 A. I represented him until the time of
14 sentencing, when I was discharged.
15 Q. Okay. I'm sorry, I was coming at it from the
16 front side of it. So you started the case --
17 A. I did.
18 Q. -- with him?
19 A. I did.
20 Q. In other words, you didn't substitute in for
21 anybody?
22 A. No.
23 Q. Okay. And that went through a preliminary
24 hearing, arraignment, jury trial. Then you subsequently
25 left the case prior to the sentencing, as I understand it?

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1 A. That's correct.
2 Q. All right. The trial was in June of 2016?
3 A. Yes.
4 Q. Is that close? I believe it started on June
5 21, 2016, concluded -- went for five days, concluded on
6 Monday for closing arguments, and then it was given to the
7 jury?
8 A. Yes.
9 Q. Do you remember that?
10 A. Yes.
11 Q. Okay. Do you recall during the course of the
12 trial taking notes? Most lawyers do.
13 A. I -- I obviously took notes. I don't have a
14 specific recollection of taking notes.
15 Q. All right. Did you become aware at some point
16 in time prior to sentencing that Mr. Dean had become upset
17 with regards to a particular note that he had discovered
18 one way or another that you had taken?
19 A. Yes.
20 Q. All right. And how did he communicate to you
21 that he was upset about that?
22 A. I think Mr. Dean saw the note before the trial
23 concluded. I don't recall him saying anything to me until
24 after the trial concluded and the jury returned the guilty
25 verdicts.

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1 Q. Do you think he saw the note, though, during
2 the course of the trial?
3 A. I believe he did, yes.
4 Q. Okay. And did he say anything to you about
5 it?
6 A. I don't recall him saying anything about it,
7 but I don't want to deny that he did. I just don't recall
8 him doing it.
9 Q. Okay.
10 MR. LOCKIE: Approach, Your Honor?
11 THE COURT: Of course.
12 Q. I'm going to show you what has been admitted
13 as Exhibit 2. Ask you if you recognize that note?
14 A. Yes.
15 Q. All right. And is that, at least to your
16 understanding, the note that Mr. Dean became upset with?
17 A. Yes.
18 Q. All right. And that has reference specifically
19 to "Schenk is an 'N' too," correct?
20 A. Yes.
21 Q. And do you remember who Mr. Schenk was?
22 A. Mr. Schenk was an eye witness. He was the
23 putative son-in-law of Mr. Minter. That's essentially what
24 I recall.
25 Q. He was one of the key witnesses in the case,

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1 wasn't he?
2 A. Oh, yes.
3 Q. With regards to Mr. Schenk, did you perceive
4 him as being an African American?
5 A. I believe I did, yes.
6 Q. Right. I mean, the note seems to indicate
7 that?
8 A. Yes.
9 Q. But aside from -- it didn't just dawn on you
10 at the point in time you took the note, correct?
11 A. No.
12 Q. In other words, his features and so forth
13 were -- obviously, he was an African American?
14 A. Yes.
15 Q. All right. And you -- Mr. Schenk also
16 testified at the preliminary hearing, correct?
17 A. He did.
18 Q. All right. And the way that note is cast,
19 "Schenk is an 'N' too," presuming t-o-o means also, is the
20 reference of the other person Mr. Dean?
21 A. Yes.
22 Q. Okay. Do you recall when during the trial
23 that you took that note?
24 A. It was during the voir dire of the jury.
25 Beyond that, there was -- there were some preliminary

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1 questions. And as in most jury trials, in this court
2 anyway, the prosecution led off the voir dire and then we
3 started voir dire.
4 And it probably was at or near the beginning
5 of the voir dire -- no, it probably was a little ways into
6 the voir dire on the part of the defense that I wrote
7 that.
8 Q. Do you remember actually taking the note?
9 A. No.
10 Q. Obviously you -- you have had an opportunity
11 to reflect on the note?
12 A. Endlessly.
13 Q. Right. And do you have in your mind a reason
14 why you wrote that note?
15 A. Well, that gets a little peculiar. I take
16 notes a number of times on a number of subjects. And they
17 are sometimes because I want to remember something and
18 sometimes just because I am thinking about it and I want to
19 write it down.
20 I know why I took the note regarding Mr.
21 Schenk, if that's what you are asking.
22 Q. Okay. Why did you take the note with regards
23 to Mr. Schenk?
24 A. Well, I -- Mr. Dean was a black defendant.
25 And the jury panel that was out there was -- there were no

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1 black people on it. The -- I was concerned, as you
2 rationally have to be, whether or not the jury panel would
3 attribute racial characteristics to Mr. Dean.

4 And it was during the time of -- obviously,
5 the voir dire, as the voir dire went on, we started asking
6 questions of the panel about whether or not they would take
7 care not to take a view that because Mr. Dean was black he
8 would have certain characteristics.

9 And it was during that time, while I was --
10 probably around that time when I was asking the jury about
11 that, that it was also evident that Mr. Schenk could suffer
12 from the same kind of prejudices that a jury panel might
13 feel towards Mr. Dean.

14 And that wasn't the first time I had thought
15 of it, it just happened to be the time I wrote it down.

16 Q. And I guess the second part would be the
17 inclusion of the word "too," which would be including Mr.
18 Dean in the category of people in the note.

19 What would be the reason for "too" being
20 inclusive of Mr. Dean? In other words, identifying him by
21 that name.

22 A. Well, because we were -- I don't know this for
23 sure, but we were talking to the panel about black people
24 and prejudices that were inherent and them being black and
25 the jury not being black, and the characteristics that I

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1 wanted them to come to grips with about Mr. Dean, and the
2 overall problem of also providing some kind of defense for
3 Mr. Schenk as well.

4 And so I assume that's why the "too" was
5 there. I don't know.

6 Q. All right. I understand this is a
7 recapitulation later in hindsight. I understand that.

8 But, in any event, it's clear that overall the
9 note is written out of your concerns at trial that you have
10 an African American defendant with a white jury?

11 A. Yes.

12 Q. At some point in time before sentencing, did
13 you have occasion to receive some written correspondence
14 from Mr. Dean?

15 A. Sometime before when?

16 Q. Prior to leaving the case.

17 A. I did.

18 Q. Okay. I'm going to show you what has actually
19 been admitted into evidence as Exhibit 3.

20 Does that appear to be the correspondence that
21 you received from Mr. Dean?

22 A. I am assuming it is, Mr. Lockie. I haven't
23 looked at it or seen it for three and a half years. I am
24 assuming it is. I will accept your representation that
25 that is that exhibit. Then that appears to be.

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1 Q. I will represent that that's what we have from
2 the file.

3 A. Okay.

4 Q. And in response to that letter, do you recall
5 writing correspondence to -- back to Mr. Dean?

6 A. I do.

7 Q. I will show you what has been admitted into
8 evidence as Exhibit 4.

9 Do you recognize that?

10 A. Yes.

11 Q. Is that the letter that you wrote back to Mr.
12 Dean?

13 A. It is.

14 Q. All right. Looking at Exhibit 4, one of the
15 remarks in there that you make to him is that you called
16 him that and worse. Do you remember writing that?

17 A. Yes.

18 Q. And what would be the worse, if you remember?

19 A. I have no idea what would have been worse, but
20 Mr. Dean and I had a reasonably friendly attorney-client
21 relationship. And within that relationship, there was
22 teasing that went back and forth between he and I.

23 And I had on several occasions jokingly asked
24 him why it was he was hooked up with Denise Winter, given
25 her personal characteristics.

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1 Q. Okay. Why did you write that letter back to
2 Mr. Dean?

3 A. Well, I suppose in part just being a -- his
4 counsel, he probably deserved an answer.

5 I was extraordinarily upset and surprised by
6 the verdict. And I was aware that Mr. Dean was under the
7 impression that I was not only incompetent, I was a racist.
8 And I had -- I guess those are the reasons. There may be
9 others.

10 Q. But, in any event, thereafter, it -- it
11 obviously appears that you didn't perceive your
12 relationship with Mr. Dean to be viable any longer, right?

13 A. Correct. I did not.

14 Q. And I think you asked the Court for
15 instructions or something like that. So you left the case
16 prior to the sentencing?

17 A. Yes.

18 Q. So going back to this issue, which I think we
19 all understand, is you got a white jury, African American
20 defendant.

21 Did you ever discuss with Mr. Dean, as you
22 were doing trial prep, what, if anything, you might do or
23 not do to address that problem?

24 A. If I did, it would have been in a relatively
25 superficial way. It would not have been a straightforward

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1 "this is what I'm going to do and this is why I'm going to
2 do it" in detail.

3 But superficially, or at least in a general
4 way, I'm sure I did.

5 Q. All right. Do you recall anything specific
6 about that?

7 A. I do not.

8 Q. Did Mr. Dean ever express any concerns to you
9 that you can remember about that same concern that you had
10 as being an experienced trial practitioner?

11 A. Well, Mr. Dean, on at least one occasion, and
12 probably more, expressed the view that we ought to try to
13 change venue.

14 Q. Right. There wasn't an effort to change
15 venue, was there?

16 A. I'm sorry?

17 Q. There wasn't an effort to change venue? Or
18 was there?

19 A. No, the -- I don't know whether you want me to
20 defend myself about that.

21 Q. No, I don't. I am familiar with that problem.
22 You can go out of the frying pan and into the fire, among
23 other things.

24 A. Among other things, yes.

25 Q. So in terms of doing the -- the trial,

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1 did sort of present to the juror that they -- that's
2 probably what they have heard, or something like that.
3 We'll let the record speak for itself.

4 A. Yeah, that's fine.

5 Q. Was there a reason you used the terminology
6 "sneaky, violent," and the reference to liking watermelon?

7 A. Yes.

8 Q. What was that?

9 A. This could tend to be a kind of long-winded
10 explanation, Mr. Lockie, and I apologize for that.

11 Q. That's fine.

12 A. All of us human beings, including everybody in
13 this courtroom, has two characteristics that are part of
14 us.

15 One of the characteristics is that we make
16 first impressions; we look at first impressions.

17 One of the things we do with first impressions
18 is we look at a person and make certain decisions about
19 them. Most times those decisions are based on subconscious
20 point of views we have; and in the case of Mr. Dean, the
21 subconscious point of view about race.

22 Many times -- and then that -- that is only
23 part of it. Part of it, of course, is walking in as a
24 potential juror and looking down and seeing the guy sitting
25 at defense table. That's the defendant. A whole herd of

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1 starting with the voir dire, did you make any efforts to
2 address the issue of race with the jury?

3 A. Yes.

4 Q. Okay. And how did you go about doing that?

5 A. Well, we did a number of things. I think the
6 tactic, as I recall it -- and this is not something that I
7 have read recently -- was initially to ask the
8 straightforward questions of, "You recognize that you have
9 a black defendant and that you are not to take that into
10 account in any kind of deliberations. Can you set aside
11 the fact that Mr. Dean is a black defendant and not
12 consider it as part of the jury verdict."

13 We went some beyond that for -- which is, I
14 assume, what you are getting into.

15 Q. Right.

16 A. And I will be glad to discuss that with you.

17 Q. Okay. Do you remember asking the jurors if
18 they have ever heard about African Americans being sneaky,
19 violent, and that they like watermelon?

20 A. I remember asking a juror that.

21 Q. Okay. About those three areas? Sneaky,
22 violent, like watermelon?

23 A. I don't remember sneaky, violent. But I
24 remember the watermelon.

25 Q. Okay. I will just represent to you that you

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1 subconscious thoughts and actually first impressions come
2 in and they make decisions about defendants.

3 Now, I recognize that the law works its tail
4 off by making pronouncements about presumption of innocence
5 and that sort of thing to make that go away, but because
6 it's subconscious, and that's about 90 percent of things we
7 think about, it's hard to make it go away with a
8 pronouncement from the judge, a pronouncement from the
9 judge that a trial is going to take place and that is how
10 you determine all that stuff.

11 There is another part of that. And it is the
12 basis for racial bias in the first place. The basis for
13 racial bias -- and this is just me talking, based on
14 looking at it for a while -- the basis for racial bias
15 comes from thousands, hundreds of thousands of years ago,
16 when we used to -- food used to be pretty scarce.

17 And we got in a position where nature said to
18 us we needed to take very particular care to take care of
19 the members of our group and not take care and be somewhat
20 down on members of another group.

21 And as you can plainly see if you are a white
22 person living in Elko, Nevada, or even an Hispanic, that is
23 in your head from start to finish.

24 It doesn't get up above, up above here. As we
25 went through time, nature provided us with a prefrontal

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1 cortex. That's the little part of your brain that does the
2 logic and reasoning. And if you can get that prefrontal
3 cortex operating properly, people can rationally and
4 logically see that racial prejudice is kind of stupid. But
5 if it doesn't get going, it is those unconscious feelings
6 and -- are part of it.

7 And you have to take some effort to make that
8 go away.

9 One way, from my point of view, to make that
10 go away is to look at something as silly as black people
11 loving watermelon. Everybody knows, theoretically at
12 least, if you get your prefrontal cortex going, that's
13 stupid. Everybody likes watermelon as far as I know. I'm
14 sure there are a few people out there that don't, but most
15 everybody does.

16 I know if you -- that came from the idea that
17 blacks were working in the fields all day, picking cotton
18 or doing whatever the heck they were doing, and of course
19 they loved watermelon; it was -- it was cool and watery and
20 a whole bunch of things.

21 But it has nothing to do with the race; it
22 just has to do with their circumstances.

23 Q. So is what you're saying, that you wanted to
24 be exceptionally provocative in order to get their brains
25 working?

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1 A. I don't know that I would have used the term
2 "provocative," but it was my intent to get somebody on that
3 jury, at least one person, who would realize if somebody is
4 sitting at the deliberation table after the trial was over,
5 said, "there is a knife and a black guy, we don't need
6 anything more," that -- first of all, we try to prevent any
7 person at the table from saying that.

8 And, second of all, what I was trying to
9 accomplish was that if somebody did say that, somebody
10 would stand up on their hind legs and say, "we're here to
11 make a decision about Sean Dean, not about blacks and
12 knives."

13 Q. That actually happened, didn't it? A juror
14 was pretty outspoken in responding to you --

15 A. He was.

16 Q. -- about that? What does race have to do with
17 it, and so on and so forth, right?

18 A. Yes.

19 Q. Was that your intended result when you
20 mentioned someone would stand up on their hind legs?

21 A. I left him on the jury for exactly that
22 reason. Was I intending that as I was asking the
23 questions? I suppose it's more correct and reasonable to
24 say I was playing it by ear.

25 Q. Okay. And why did you leave him on the jury?

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1 A. For exactly that reason. I thought that the
2 best chance we had for somebody to say, "this is about Sean
3 Dean and this incident, not about blacks and knives," I did
4 not think that he would allow that to happen at the
5 deliberation table. At least there was a better
6 possibility that he would not allow it than anybody else I
7 saw on the jury.

8 Q. Did you talk with Mr. Dean about your -- about
9 the issue of Mr. Dean testifying or not testifying at
10 trial?

11 A. I did.

12 Q. Okay. And was there any decision made going
13 into trial as to whether he would testify or not?

14 A. I had made the decision well before trial.
15 And I am assuming -- I don't recall specifically doing it,
16 but I am assuming that I informed Mr. Dean that he had no
17 chance of being acquitted if he didn't testify.

18 Q. Okay. So it was your view that he would in
19 likelihood testify, subject of course to strategy, whatever
20 happens during the trial?

21 A. Yes.

22 Q. All right. In connection with that, did you
23 sit with Mr. Dean and prepare his trial testimony with him?

24 A. I talked to Mr. Dean. I had known Mr. Dean
25 since 2013 in another -- a couple of other cases.

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1 And it's hard to recall all of the
2 conversations that we had, but I am sure that -- I know the
3 day that he testified, an hour or two before, we had the
4 specific conversation in which I informed him that we were
5 going to be talking about him moving into the questions
6 regarding his bringing up in Oakland and Sacramento.

7 That he -- talking about it with him before
8 that about testifying, I'm sure we did.

9 We had -- you would have to look at the
10 billing -- I think ten or more conversations, Mr. Dean and
11 I, where I went to the jail and saw him. But we also had
12 other conversations. So he was -- he was well aware that
13 he would be testifying.

14 Q. All right. So just so I heard you right, you
15 said, like, it was on, like, the last day of trial that you
16 talked to him about him testifying?

17 A. Specifically I talked to him about testifying
18 about his bringing up in Oakland and Sacramento and about
19 the knife business.

20 Q. Oh, that -- that aspect of his testimony?

21 A. Yes.

22 Q. And that came up the last day of trial?
23 Friday?

24 A. I'm sorry, I am old and I can't hear you.

25 THE COURT: Doesn't help that we have the sirens

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1 out there. Do you want a readback or --
2 MR. LOCKIE: No, we can just proceed.
3 A. Ask me the question again, Mr. Lockie.
4 THE COURT: If you want to wait.
5 Q. (By Mr. Lockie) Let me go back, get to where
6 we were.
7 We were talking about Dean's testimony and one
8 aspect of it. And that would be some of his background and
9 exposure, experience, maybe with knives?
10 A. Yes.
11 Q. All right. So you are saying that that aspect
12 of his testimony was not discussed with Mr. Dean until the
13 last day?
14 A. I am not specifically saying that, Mr. Lockie.
15 It may be that I talked with him before. I specifically
16 remember talking to him that day.
17 Q. Show you what has been admitted into evidence
18 as Exhibit 19.
19 And they are just some of your trial notes.
20 And it appears to have a question in there.
21 First of all, do you remember those notes at
22 all?
23 A. I do not.
24 Q. But generally, during the course of a trial,
25 it's common for counsel and client to speak via note. In

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1 fact, we kind of encourage that?
2 A. Yes.
3 Q. So you can focus attention elsewhere, right?
4 Or where you should be or something like that. Bad
5 question. I will withdraw it.
6 Did that appear to be a back-and-forth note
7 that was taken and response during the course of the trial
8 at least at some point in time?
9 A. I just plain have no recollection of the
10 circumstances under which these notes were written either
11 by Mr. Dean or by myself.
12 Q. Does that look like your handwriting?
13 A. That is my handwriting, yes.
14 Q. If I were to represent to you that came from
15 your file?
16 A. Yeah.
17 Q. Are you willing to accept that?
18 A. Oh, sure.
19 Q. This note generally indicates, "My question is
20 whether you know in a knife fight whether you don't just
21 stab, you also slice while the blade is in the guy?"
22 A. Yeah.
23 Q. I know you don't remember this note. But do
24 you remember some communication between you and Mr. Dean
25 about his experience with knife fighting?

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1 A. Yes.
2 Q. All right. Can you explain further?
3 A. I knew that he had been associated with gangs
4 either in Oakland or Sacramento or both, but he was only on
5 the edges of it, that he had never had a knife fight.
6 Q. All right.
7 A. But he had seen them.
8 Q. I'm sorry?
9 A. But that he had seen them.
10 Q. Okay. Were you concerned that the
11 possibility, though, of potentially exposing the jury to
12 Mr. Dean and that environment, it might further amplify
13 notions of racial, cultural association of African-American
14 people with violence and knives?
15 A. Of course.
16 Q. Right. Did that cause you to have any concern
17 with regards to adducing that type of evidence from Mr.
18 Dean before the jury?
19 A. Of course.
20 Q. Okay. And I guess the best way to ask it is,
21 why were you interested then in presenting to the jury
22 evidence of Mr. Dean's background and experience with knife
23 fighting?
24 A. Well, this again could be an extraordinarily
25 long answer. But I will try to shorten it up.

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1 The most serious charge that Mr. Dean was
2 facing was the attempted murder of Duff Minter. The rest
3 of them were serious, but they weren't at that level.
4 I wanted to make very good and sure that the
5 juror understood, if Sean Dean wanted Duff Minter dead,
6 Duff Minter would be dead. Period. That was just a
7 balancing between the fact that Sean had something perfect
8 to say. I would -- that when you get in a knife fight and
9 you want to kill somebody, you stab them, you twist it, and
10 you slice them.
11 And I think that's what he testified to.
12 My view was that, in the end, that would go --
13 the very -- as far as we could go reasonably with him not
14 being guilty of attempted murder.
15 I was additionally under the impression, I
16 think properly so, that the battery with a deadly weapon on
17 Denise Minter was not supported by any evidence that he
18 willfully did that.
19 I remain to this day convinced that he didn't
20 intentionally do anything to Denise Minter along that line.
21 Period.
22 So I assumed that if I got him acquitted of
23 the attempted murder charge, that we stood a better chance
24 of getting him off of not only that charge, but the Denise
25 Minter charge.

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1 And I'll also inform you, and I know you
2 probably -- this goes way beyond it. We got a question
3 after the jury started deliberating. Do you remember? Did
4 you see that question?

5 Q. No. Or if I did, I don't remember.

6 A. Well, let me tell you something. That
7 question was written on the back of a verdict form. The
8 verdict form found Sean Dean not guilty of battering Denise
9 Minter and it was signed by the foreman. And it's still in
10 the court's file.

11 But they changed their mind after the question
12 was asked.

13 Startling, isn't it?

14 Q. Yes. Something came up during the trial
15 during the course of Dr. Ward's testimony. Do you remember
16 being surprised when he talked about the depth of one of
17 the stab wounds being between 3 and 4 inches and
18 potentially endangering the peritoneal -- if that's how you
19 pronounce it -- cavity?

20 A. Yes.

21 Q. And that did come as a surprise to you?

22 A. Yes.

23 Q. Did that in any way change your trial strategy
24 in terms of causing, you know, more concern about a
25 potential conviction for attempted murder?

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1 A. Yes.

2 Q. All right. I think it would.

3 A. You would think.

4 Q. Because there wasn't any report or anything
5 that explained the depth of that wound.

6 In what way did that -- if any way -- did that
7 change your trial strategy?

8 A. It didn't. Because we -- after we took Dr.
9 Ward on cross-examination, and I could be exaggerating a
10 little bit here because it might have been part of the
11 direct examination, it became clear that the alleged
12 three-and-a-half-inch deep wound could have been
13 substantially less than that.

14 Because the three and a half inches was
15 measured from Mr. Minter's fat to the inside. And fat can
16 be moved aside. Mr. Minter was a very heavy guy. And if
17 the fat had been moved aside, the penetration would have
18 been substantially less than the three and a half inches
19 that Dr. Ward said it was.

20 Q. The State's theory of the case was that Mr.
21 Dean committed these stabbings with a knife that they had
22 in court, right? It was admitted into evidence.

23 A. I would not presume to tell you what the
24 State's theory was about the knife. I don't know.

25 Q. Well, the State presented that theory?

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1 A. Yeah.

2 Q. All right. And were you aware that a knife
3 had been found or collected in the residence where Mr. Dean
4 had been staying across the street with Lindsey Steele and
5 Clarence Thomas? Not Thomas. Clarence Thompson.

6 A. Yes.

7 Q. All right. Were you aware of the circumstances
8 that that knife was discovered?

9 A. Yes.

10 Q. What were they?

11 A. Oh, Mr. Dean, after the incident was over, had
12 gone back to Clarence's house and had entered the house and
13 gone in the bathroom. And the officers arrived after
14 consulting with Christina Hodges and went in the house.
15 And Clarence Thomas's girlfriend -- Mucha?

16 Q. Lindsey Steele, I think.

17 A. Yeah, I don't remember what her name was, but
18 somehow or another I had Mucha on my mind.

19 Q. Yeah, she had a nickname. And I can't
20 remember, but I believe it -- Mocha. Mocha was
21 her nickname.

22 A. Mocha, okay. And she had said there was a
23 pocket knife on the floor of the front room to the right as
24 you go in the residence that hadn't been there before and
25 she hadn't seen it before.

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1 Q. All right. To your knowledge, was that knife
2 then subjected to any forensic testing?

3 A. Yes.

4 Q. And did the results of that forensic testing
5 come back with anything that would associate that knife
6 with Mr. Dean?

7 A. Absolutely not.

8 Q. No blood? No fingerprints? No DNA?

9 A. But there was something as good as that. And
10 that is that Mr. Dean's right finger was bleeding. And
11 they tracked the blood into the house and they didn't see
12 any sign in the world of Mr. Dean's blood being anywhere
13 near on the floor or on that knife.

14 And it was also the case, of course, that with
15 a bleeding knuckle, it would have been virtually impossible
16 for Mr. Dean to have cleaned that knife off and eliminated
17 any DNA or blood on it.

18 Q. Yeah, his hand was bleeding profusely from the
19 pictures that I saw.

20 A. Yes, sir.

21 Q. And the -- obviously, the inference is that
22 some of his blood, at least his blood, if not the victim's
23 blood, would have been on the knife?

24 A. Yes.

25 Q. All right. And very clearly there is no

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1 evidence that anyone else had ever seen Mr. Dean with that
2 knife?

3 A. Clearly.

4 Q. I mean --

5 A. That's true.

6 Q. Nothing was presented like that?

7 A. There was nothing like that.

8 Q. So other than the mere fact that its location
9 on the floor in a residence where Mr. Dean was found,
10 that's about it that connects the knife to Dean?

11 A. Yes.

12 Q. Did you consider filing a motion in limine to
13 exclude the admission of that knife based upon it not being
14 relevant?

15 A. I most certainly did not.

16 Q. Okay. Why not?

17 A. Because it would have been a stupid thing to
18 do.

19 The fact is that when you are trying a
20 criminal case -- you know this, of course, as well as I
21 do -- it is useful to make the cops look a little stupid.
22 And that was one of the things that I intended to do with
23 that.

24 They kept talking about stuff being on that
25 knife and kept talking about Mr. Dean being totally

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1 overwhelmed by their finding of the knife and so on like
2 that.

3 And that was specifically why I did not do
4 anything along that line.

5 Q. Yeah, I think there was an initial claim by a
6 police officer that he saw blood on the knife. That didn't
7 pan out?

8 A. Oh, yeah.

9 Q. Was that part of it, that the police kind of
10 do a rush to judgment, "Aha, we got the knife," and then
11 you can show that they are completely mistaken?

12 A. Exactly right.

13 Q. Making unreasonable assumptions?

14 A. Yes, sir.

15 Q. All those kinds of things.

16 I don't know if you can answer this, but do
17 you think that -- and I -- I understand what your strategy
18 was there, it's so far out of there that you can show that
19 they're unreasonably trying to sell you that this knife was
20 it, when it's clear not --

21 A. Yes.

22 Q. -- type thing. But if you can answer this:
23 Do you think that the attenuation between that knife and
24 Dean, in other words, the lack of connection, relevance,
25 would have been sufficient if you had made a different

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1 strategic decision to file a motion to exclude that knife
2 from evidence?

3 If you can answer it. Maybe it's --

4 A. I can't. I guess, Mr. Lockie, I -- the knife
5 was, for all practical purposes, irrelevant.

6 They -- we had another pot shot at the cops
7 for not searching along the route. We had another pot shot
8 at the cops for not going in the Minter residence after
9 Sean told them that he had got set up and that these people
10 were stabbing themselves.

11 So there is -- obviously, any decision can
12 have a downside to it. And I suppose there is a potential
13 downside to -- to that knife coming into evidence and being
14 associated with Mr. Dean.

15 But it seemed on balance to be weighted
16 heavily in favor of allowing the knife to come in.

17 Q. Well, cases -- criminal cases most certainly
18 can be prosecuted, perhaps successfully, without the actual
19 existence of a weapon to admit into evidence to show the
20 jury; can they not?

21 A. Yes.

22 Q. I mean it's legally possible?

23 A. Yes.

24 Q. And just in terms of potential downsides --
25 and I know it's a weighing proposition -- but in terms of

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1 potential downsides, isn't it more powerful for a
2 prosecutor to be able to have a weapon to wave around in
3 front of the jury to show the jury?

4 A. From my point of view, I would like them to be
5 waving the wrong knife around in front of the jury.

6 Q. Right.

7 A. So yeah, they -- I mean, they are -- I don't
8 know. That's too far into the --

9 Q. Too many case-by-case bases?

10 A. Well, it's too far into the jury's mind for me
11 to get there.

12 Q. Okay. Did you take into account part of the
13 prosecution's theory as to the existence of the wound on
14 Dean's finger would be that his hand slid up on that knife
15 and cut?

16 A. I did.

17 Q. Okay. What did you think of that?

18 A. To tell you the truth, my recollection is we
19 solved it. But I can't remember how we did it.

20 And it could have been as simple as Mr. Minter
21 had a knife and cut Sean with it.

22 But I -- it seems to me there was something
23 more, that there was something wrong with the wound and the
24 theory of how that wound got there, but I can't remember
25 what it was.

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1 Q. Did Mr. Dean ever show you the cuts that he
2 had on the back of his hand?
3 A. I saw pictures of them.
4 Q. On the back of his hand?
5 A. Yes. Well, cuts, no. I saw injuries in the
6 pictures to the back of his hands.
7 Q. Okay. Injuries to the back of his hand that
8 he associated with the incident with the Minters?
9 A. Yes.
10 Q. All right. Did you bring those to the
11 attention of the jury?
12 A. The injuries to the back of his hands?
13 Q. Right.
14 A. I don't think so. My -- I mean, we took some
15 time and went up and looked at the location where all of
16 this had happened and we went through the wrestling match
17 that Mr. Minter and Mrs. Minter were in. It was all taking
18 place on some rough gravel. And I guess I didn't see any
19 particular road we could travel that would make those
20 wounds say one thing or another.
21 Q. When you spoke with Mr. Dean, did you hear
22 from him a theory that the Minters may have been motivated
23 to get him out of the picture because they were selling
24 dope, something along those lines?
25 A. Well, I -- Mr. Dean and I discussed that a

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1 number of times of course, yes.
2 Q. So at least on the table for thought and
3 consideration would be whether or not to bring into the
4 trial evidence of the Minters' involvement with drugs,
5 right?
6 A. Yes.
7 Q. And, in fact, to that extent you filed a
8 motion in limine?
9 A. I did.
10 Q. Now I'm going to show you what has been
11 admitted as Exhibit 5. It's actually part of the file.
12 It's a motion in limine.
13 Do you remember filing a motion in limine?
14 A. I do.
15 Q. And the purpose of that was to -- were a
16 couple things, as I understood it. And one would be the
17 ability to potentially admit evidence of drug involvement
18 by the Minters.
19 Then the other was this business about Denise
20 Minter having accompanied a Ms. Syddall, if I pronounced
21 that correctly, whereby Ms. Syddall beats up someone with a
22 baseball bat?
23 A. Yes.
24 Q. And Denise Minter was somehow involved in that
25 transaction, right?

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1 A. Yes.
2 Q. Why did you file that motion in limine?
3 A. I'm sorry, Mr. Lockie, you are going to make
4 me confess some sins.
5 I filed that motion in limine on June 13,
6 which would have been 10 days before trial, as I recollect.
7 The -- it had at least one of the characteristics of, just
8 before trial, turning the prosecution's eye away from other
9 things that it might be considering.
10 I don't know that you do it, or I don't even
11 know if I should do it, but I periodically file pleadings
12 for this specific purpose of interrupting -- it's more than
13 that. I thought the motion had merit, but it also has the
14 tendency to interrupt the prosecution's eyeballs being on a
15 more major thing.
16 The -- and that was part of it.
17 The -- we must -- I don't recall it, but we
18 must have had a hearing on it. And the Court issued its
19 order on June 28. But that was -- I assume the Court must
20 have ruled on the merits of the motion from the bench. I
21 don't recall that.
22 Q. Well, if it might refresh your memory, during
23 the course of that motion hearing, you were pretty cagey.
24 In other words, you were quite -- that's my word, cagey --
25 but you were reluctant to disclose all of the underlying

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1 information, despite the Court urging you to do so, because
2 you said you didn't want to give away your theory or
3 something like that. I don't know if that's exactly right.
4 But, you know, lay a roadmap of where you are potentially
5 going.
6 A. Yes.
7 Q. I suppose that would make some sense when
8 you -- take-the-eye-off-the-ball type thing.
9 Quite frankly, I was having a hard time
10 following it myself. So I think you were maybe effective
11 in that. Without trying to testify for you.
12 But, in any event, as a result of that, I
13 mean, what we're talking about in terms of this motion in
14 limine and everything, would it be accurate to say that at
15 least a significant part of your purpose was to cause a
16 distraction, to divert attention?
17 In other words, it wasn't for the earnest
18 purpose of actually introducing the drug evidence in the
19 trial?
20 A. It could have been partly that, Mr. Lockie.
21 I -- we had -- we -- I had been going back and forth for
22 exactly the reasons I wrote in the letter to Sean about
23 putting drugs in this mix.
24 I was absolutely -- not absolutely -- I am
25 under the impression, of the opinion, that the second you

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1 put a criminal defendant in the meth world, you've moved
 2 him or her quite a ways toward a conviction.
 3 And, on the other hand, there was -- there was
 4 merit to the proposition that Ms. Minter and Mr. Minter had
 5 to sell drugs to make ends meet, and they weren't making
 6 ends meet very well, and that Sean was part of that problem
 7 because of the Christina Hodges case and the cops sitting
 8 by, looking down, and surveilling Ms. Minter's residence.
 9 Q. So, in other words, Sean was potentially a
 10 source of heat for the Minters and their drug involvement?
 11 A. Oh, he was absolutely a source of that, yes,
 12 sir.
 13 Q. All right. So that theory, I guess, in some
 14 sense would have, subject to weighing downsides and so
 15 forth, some potential merit as a motive for the Minters to
 16 either fabricate or do something that would cause Dean to
 17 be removed, for example, by residing in the Elko County
 18 Jail?
 19 A. Yes.
 20 Q. All right. Did you eventually present the
 21 theory of the drug involvement to the jury?
 22 A. I did not.
 23 Q. Why not?
 24 A. For that exact reason. The -- after I had --
 25 I'm sorry, this is another long one.

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1 Q. Sure.
 2 A. Denise Minter and Duff Minter could not have
 3 been worse witnesses. They are absolutely terrible
 4 witnesses.
 5 We had Mr. Schenk in a very contradictory way
 6 in describing the events that happened.
 7 I did not think it was of any particular --
 8 let me go back.
 9 We had the Minters in a position where they
 10 were financially disabled, at least in part, because Ms.
 11 Minter was spending three thousand bucks a month gambling.
 12 And as part of that, of course, was saying -- telling the
 13 jury she was getting it all back through casino winnings.
 14 The -- there just -- we had them in financial
 15 straits.
 16 We had Mr. Minter probably foreseeing Mr. Dean
 17 as having something to do with the gambling problem. And
 18 it just didn't seem like the dope evidence was going to add
 19 significantly to that, given that the proposition that Mr.
 20 Dean might then get involved in the drug world and get a
 21 guilty verdict.
 22 Q. Was one of the pieces, I guess, of drug
 23 evidence -- well, let me ask you this.
 24 Were you aware that when the police were
 25 looking for Mr. Dean on the Christina Hodges case that they

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1 went to Denise's trailer looking for him and found some
 2 dope there and basically flushed it?
 3 A. Yeah.
 4 Q. Did you know about that?
 5 A. Yeah.
 6 Q. Or the -- did you consider entering that
 7 evidence at trial to show some favorable treatment to
 8 Denise Minter or somehow connecting that further to the --
 9 to whatever drug theory or evidence you might have?
 10 A. I assume I considered it, Mr. Lockie. I don't
 11 know. I have no recollection.
 12 Q. Would you have not presented that evidence for
 13 the same "the drugs get on Minters, they get on Dean" type
 14 theory?
 15 A. Something like that, yes.
 16 Q. Okay. Were you aware that -- I think it was
 17 then sergeant, now lieutenant, if I am correct, Pepper had
 18 interviewed Mr. Dean at the hospital?
 19 There is a videotape of it.
 20 A. If there is a videotape, I was aware of it,
 21 yes. I -- I have no independent recollection of that.
 22 Q. Okay. Are you aware that Mr. Dean had given
 23 any statements to the police?
 24 A. Yes.
 25 Q. Okay. And I represent to you one of them

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1 was -- it's in evidence here -- was Pepper interviewing
 2 Dean on videotape at the hospital?
 3 A. Okay.
 4 Q. All right. Were you also aware that Detective
 5 Nielson had interviewed Dean at the jail, the Elko County
 6 Jail?
 7 A. I was.
 8 Q. That was just an audio interview?
 9 A. Yes.
 10 Q. And were you aware that Mr. Dean had told his
 11 story to both of those police officers?
 12 A. Yes.
 13 Q. Did you consider the prospect of playing that
 14 video and/or the audio tape or otherwise eliciting
 15 testimony regarding Dean's version of what occurred and
 16 presenting that to the jury?
 17 A. I -- I guess I -- I assume that I did consider
 18 it, yes, but I -- I don't have any actual recollection
 19 of -- that would be remarkable if I hadn't considered it,
 20 but I don't have any recollection of why I didn't.
 21 Q. Well, where I am going with this, and if it
 22 doesn't make any sense to you, fine, just let us know, but
 23 typically a defense lawyer is interested in potentially
 24 putting the defendant's story before the jury without him
 25 needing to testify sometimes, if you can do that, because

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1 they are not open for cross-examination, as a general
2 proposition.

3 A. As a general proposition, I assume that's
4 true, yes.

5 Q. None of these rule are hard and fast because
6 they are subject to whatever else is in this case?

7 A. Yes.

8 Q. And you are also aware that sometimes you
9 cannot do that because it's hearsay, so you can't just play
10 the tape of his interview?

11 A. Yes.

12 Q. But if a defendant or any other witness
13 testifies, then potentially there is a rule of evidence
14 that the prior statement can come in as a consistent
15 statement to rebut an inference that they are fabricating
16 their testimony, right?

17 A. Could, yes.

18 Q. I know I have gone into this subject. Did you
19 give any thought as to the potential of presenting Dean's
20 statement to Pepper and/or Nielson after his testimony as a
21 prior consistent statement to shore up his trial testimony?

22 A. I would say that I did not. The -- again,
23 this would be a slightly long answer.

24 But Sean had talked to, I think, officer
25 Catalano -- I'm not sure I have got that name right -- as

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1 he was being hauled down to the jail by the officer.

2 And from my point of view, Sean said the
3 smartest thing that he could possibly say. And that was,
4 "I am the one that is cut and I am the one that is going to
5 jail."

6 And the consequences of Sean saying that
7 and -- are two possibles. One, if he dreamed it up out of
8 whole cloth, that makes him the smartest guy in the world.
9 And I'm not sure Sean is dumb, but I'm not sure he's the
10 smartest guy in the world. And if he didn't, that
11 statement is absolutely airtight evidence that Sean Dean
12 was telling the truth that those people had set him up.
13 Period.

14 That's one.

15 Two, I was worried sick about Sean testifying
16 because he has a tendency to use the black jargon, is what
17 I call it. But we talked about that and the jargon came
18 out. And when he testified, he didn't -- when he testified
19 he didn't use it. And that did very well.

20 Sean did not get hurt on cross-examination.
21 As far as I recollect, there was nothing, no way that Mr.
22 Mills got to him on cross-examination.

23 There was no reason in my mind to expect that
24 the jury would find anything except that Sean was
25 believable. And I suspect that if all you do is double it

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1 up by having the interview with Pepper or someone else,
2 that would be one thing.

3 Too, Officer Nielson, Sergeant Nielson,
4 whatever he was, he was cross-examined extensively about
5 his -- about the discussion, as I recall it, with Mr. Dean.

6 Q. Moving on. I'm going back to some forensic
7 possibilities, I would suppose, as they would exist in this
8 case. Whenever you have got a lot of blood, defense
9 lawyers are interested in potentially where that blood may
10 exist, generally speaking, correct?

11 A. Yes.

12 Q. All right. Do you recall if there was any
13 evidence presented at trial that Dean's blood was anywhere?

14 A. I -- at trial, I think maybe down in
15 Clarence's trailer. But if you mean up at the scene --

16 Q. That's what I am talking about.

17 A. Yeah, I don't -- I don't recall that, no.

18 Q. Clearly both Denise Minter and Bert Minter
19 were clothed at the time of the incident, right? They had
20 clothes on?

21 A. God, I hope so.

22 I'm sorry.

23 Q. So the -- the fact that they were clothed
24 would potentially have -- there might potentially be blood
25 on that clothing?

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1 A. Potentially.

2 Q. All right. Were you aware of any clothing
3 that was seized from Denise or Bert?

4 A. My recollection is that it was seized, because
5 they went to the hospital. But I don't think there was any
6 testing done.

7 Q. Did you give any consideration to having any
8 forensic analysis done on any of that clothing?

9 A. I did not.

10 Q. Why not?

11 A. Well, one thing that I think both you and I
12 know, Mr. Lockie, is that sometimes it's better to keep
13 your mouth shut than to open it and get yourself in a
14 position where the forensics does an analysis and you get
15 results back you are not crazy about.

16 Q. Right.

17 A. I don't know what that result would be, and I
18 did not see where it would be of any particular advantage
19 to Mr. Dean to have it there.

20 And, too, it would be -- the configuration of
21 the blood would be startlingly difficult to sort out, and
22 it just did not seem to be a reasonable thing to do.

23 Q. Well, there wouldn't be really any way for you
24 to have that clothing tested and just have -- for defense's
25 own purposes without it being disclosed, would there?

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1 Pretty difficult?

2 A. Well, it would be -- Department 1 takes a

3 position that it is not capable of ordering the prosecution

4 to do forensic testing that they haven't done.

5 So the answer to your question is we

6 probably -- I don't know whether we could have done it or

7 not.

8 Q. Yeah, it's probably a little bit afield

9 anyway. It just wasn't done, as I understand it. It was

10 your decision that the fact that it's not brought forward

11 by the prosecution, let's leave well enough alone?

12 A. Yeah.

13 Q. Were you aware that Denise Minter -- we're

14 shifting gears again now -- when she testified Mr. Dean

15 came over to the Minter residence that she had smelled

16 alcohol on his breath?

17 A. Yes. I think she went way beyond smelling

18 alcohol on his breath, I think she said he was --

19 Q. That is where I am going next. But basically

20 that he was intoxicated?

21 A. Yes.

22 Q. All right. Did you give any thought to

23 looking into any evidence that might refute the fact that

24 he was intoxicated at that time?

25 A. I did.

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1 Q. So what did you do?

2 A. Nothing.

3 Q. Okay.

4 A. He had a conversation with Mr. Catalano down

5 there at the police station and it was -- his behavior was

6 normal, there was no hint whatever of him being under the

7 influence of alcohol to any -- any extent. I probably

8 ought to say any significant extent.

9 It seems reasonable to me that Denise Minter

10 would have exaggerated what -- the condition Sean was in

11 and nobody else could see it.

12 We could have gone on. He was -- had blood

13 drawn, I think, up at the hospital, and we could have

14 got --

15 Q. Did you ever look at any of the booking

16 records to see if there was anything that noted

17 intoxication one way or another?

18 A. If intoxication had been noted on booking

19 records, I would have seen it. And I don't recall seeing

20 it, so I --

21 Q. And I'll just represent to you that we've

22 shown in this -- through a prior witness, the person who

23 booked Mr. Dean, that she didn't smell any alcohol on his

24 breath and the booking records don't reflect anything about

25 him being intoxicated.

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1 Would that type of evidence have been valuable

2 to you if you would have had it, potentially at least, at

3 trial?

4 A. No. We were facing another portion of the

5 case. I assume that you have introduced, or at least the

6 trial has in its record, the back-and-forth between Mr.

7 Dean and Ms. Minter on the e-mails.

8 Q. Right.

9 A. The -- it would have not been a too bad thing

10 if Mr. Dean had had some alcohol during those exchanges,

11 because they were peculiar. And it was useful -- it could

12 potentially be useful that the jury saw a guy who testified

13 from the witness stand up here stone cold sober and saw

14 that he's a reasonable, logical, rational guy, and that he

15 involved himself in those e-mails where you might say that

16 he did not appear to be totally reasonable, rational and

17 logical.

18 Q. What -- if you recall, was it part of the way

19 that the State sort of presented the case to use the fact

20 that Dean was intoxicated and somehow that leads to a rage

21 type situation?

22 A. I don't recall.

23 Q. Okay. Moving on to another subject.

24 Were you aware that a witness had, in

25 describing potentially what Mr. Dean had in his hand or

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1 not, that it was identified as a cell phone at first?

2 A. Denise Minter.

3 Q. Was it Denise Minter? She said that he had a

4 cell phone?

5 A. Yes.

6 Q. In his hand?

7 A. Yes.

8 Q. All right. And were you aware that there was

9 a cell phone collected from the ground from the scene?

10 A. I'm sure I was aware of it. I am not -- I

11 don't recollect it now.

12 Q. The cell phone wasn't admitted into evidence.

13 The point I am getting at is, do you believe it would have

14 been valuable to introduce -- it was marked for

15 identification but not admitted.

16 Do you believe it would have been valuable for

17 Mr. Dean's defense to introduce that cell phone to show

18 that there was a cell phone there that would have

19 corroborated Denise's account of it being a cell phone in

20 his hand versus a knife?

21 A. That is a pretty long stretch, Mr. Lockie. I

22 don't know. I don't know whose cell phone it was. I know

23 that Mr. Dean did have a cell phone. And I suppose, as a

24 practical matter, by 2016 everybody had cell phones. So

25 I -- I just don't see -- it's a far stretch. It's possible

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1 maybe.
2 Q. Right. I mean, his phone was actually
3 collected.
4 A. Yes.
5 Q. At least that is what is identified as an
6 exhibit. You understand the linkage I am getting to?
7 A. That was his cell phone?
8 Q. It was.
9 A. Really.
10 Q. Yes.
11 A. I didn't know that. Or I don't know it now.
12 Q. But you see the potential that that --
13 A. Yes.
14 Q. -- cell phone being picked up on the ground
15 there would have been -- would have helped potentially with
16 Denise's account of having seen him with a cell phone
17 instead of a knife?
18 A. Yes.
19 MR. LOCKIE: Can I just have a moment, Your
20 Honor?
21 THE COURT: Of course.
22 MR. LOCKIE: I appreciate that.
23 Q. I need to correct something. I made an
24 assumption that was wrong.
25 That was Bert Minter's cell phone.

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1 A. Thank God. Because I was about to say that
2 Nielson got Sean's cell phone off him.
3 Q. He did.
4 MR. LOCKIE: So I just want to clarify that, Your
5 Honor, and withdraw any -- any inference that I made or
6 Mr. Woodbury's affirmance of that being laying on the
7 ground.
8 THE COURT: Okay. Do you have a question for
9 your attorney? We can wait.
10 (discussion off the record)
11 THE COURT: Well, seems like we're ready to keep
12 going. I was just going to go to about 3:00.
13 MR. LOCKIE: I think I am getting ready to rest
14 as far as our questions. I am just checking to see if Mr.
15 Macfarlan has anything.
16 THE COURT: Maybe we'll break -- when you are
17 done, we'll take a break. Then Mr. Mills can go on cross.
18 MR. LOCKIE: We have no further questions.
19 THE COURT: We will take the afternoon recess.
20 Rule of exclusion is invoked. Please remember that,
21 Mr. Woodbury.
22 We'll come back, I would say, 10 to 15 minutes.
23 Fire it up again.
24 (WHEREUPON, a short recess was taken)
25 THE COURT: Back on the record for Case

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1 CV-HC-17-711. Sean Maurice Dean, petitioner, versus Aitor
2 Narvaiza, Elko County Sheriff, respondent.
3 We have Mr. Dean back in court with counsel
4 Lockie & Macfarlan.
5 Elko County deputy district attorney Mark Mills
6 for the State.
7 We'll go to cross-examination questions for Gary
8 Woodbury, who is on the witness stand and is under oath.
9 Mr. Mills.

CROSS-EXAMINATION

11 BY MR. MILLS:
12 Q. Good afternoon, Mr. Woodbury.
13 A. Good afternoon.
14 Q. Mr. Woodbury, I'm going to kind of take the
15 topics of direct examination in order -- kind of in reverse
16 order from what he was talking about last, then kind of
17 back up from there.
18 So one of the last things that Mr. Lockie was
19 asking you about was the cell phone that was on the ground
20 and why you didn't introduce that into evidence and
21 whatnot.
22 Can you stab somebody with a cell phone?
23 A. I suppose you could. I don't think it would
24 hurt very bad.
25 Q. Cell phones, wouldn't you agree, are kind of

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1 blunt and not sharp?
2 A. Yes.
3 Q. Not capable of causing typically the sort of
4 puncture wounds that you saw on Bert Minter in this case?
5 A. I'm sure they are not.
6 Q. And do you recall that there were photos of
7 the cell phones, including the cell phone I believe that
8 Mr. Lockie was asking you about, that photographs of that
9 phone were introduced into evidence at trial?
10 A. I do not recall that, no.
11 Q. If I represented to you that State's Exhibit
12 16 and 17 depicted the cell phones on the ground, would you
13 have any reason to disagree with that?
14 A. I would not.
15 Q. Okay. Do you recall -- did you ever make or
16 consider making that kind of argument that Mr. Lockie was
17 asking about as far as, look, there is a cell phone on the
18 ground that is consistent with Denise thinking or believing
19 Mr. Dean may have had a cell phone in his hand?
20 A. Mr. Mills, the -- in cases of this sort, from
21 a defense counsel perspective, ten million things go
22 through your mind. And I can't say that -- I simply have
23 no recollection one way or the other.
24 It would surprise me if I didn't think of
25 that, but I don't recall that.

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1 Q. Okay. Just to clarify a little bit. I think
2 one of the things that Mr. Lockie stated in his question, I
3 think the way he phrased it was that Denise saw a cell
4 phone in his hand.

5 But do you recall that what she actually
6 testified to was that he pulled something out of his
7 pocket, at first I thought it was a cell phone because of a
8 kind of a glimmer that she saw, a shimmer I think is the
9 word she used. But she later realized it was a knife.

10 Do you recall that that was her testimony?

11 A. Yes.

12 Q. Okay. In fact, she never claimed that Dean or
13 anyone else had used a cell phone to stab anyone, correct?

14 A. She did not.

15 Q. So in light of that, wouldn't it be reasonable
16 to not make that kind of, I guess, a major theory of the
17 defense case that, oh, you know, he really had a cell phone
18 in his hand not a knife?

19 A. I think it probably would not have been much
20 of an argument. You could make that and rephrase it and
21 twist it around to make something out of it, but I'm not
22 sure how you do it.

23 Q. I want to talk about the drug stuff a little
24 bit.

25 Correct me if I'm wrong, but I believe that
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1 the -- the idea here was, as far as the thought of possibly
2 presenting drug evidence, was to show that Mr. Dean,
3 because he was being sought by the authorities for that
4 previous case, was hindering their activities of selling
5 narcotic; is that correct?

6 A. That is correct.

7 Q. So they had a reason to get him out of the
8 picture, correct?

9 A. Correct.

10 Q. Wouldn't it be extremely problematic to put
11 that kind of evidence on in front of a jury, because doing
12 so would require telling the jury or informing the jury in
13 some way that the police are looking for Mr. Dean, and
14 wouldn't that information be problematic for the jury to
15 hear?

16 A. Be problematic in two ways. Both because of
17 the drug involvement with Mr. Dean and because it might
18 open the door to get the Christina Hodges case before the
19 jury.

20 Q. Exactly. Which is exactly something you would
21 want the jury not to hear about, correct?

22 A. Absolutely.

23 Q. Then -- yeah, again I was going to ask about
24 this, but you mentioned it. The second reason that that
25 conspiracy defense, you know, maybe as tempting as it might
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1 have been to put that on in front of the jury, be fair to
2 say that you would not want to put evidence of a drug
3 culture or that the Minters were involved in that and by
4 association Mr. Dean.

5 You wouldn't want the jury to hear about that,
6 correct?

7 A. In the end, that was my decision.

8 Q. In fact, you explained that in your letter to
9 Mr. Dean; did you not?

10 A. I did.

11 Q. You said in the letter that you wrote to
12 him -- you kind of organized it according to different
13 topics, correct?

14 A. Yes.

15 Q. There is a heading called The Dope Question,
16 where you spent over a page discussing your -- I guess your
17 legal strategy for why you -- your rationale for not
18 putting on that drug evidence, correct?

19 A. I don't recall how long it was; I do know that
20 it was in there.

21 Q. I will quote from this letter where you wrote,
22 "I didn't have an unassailable way to keep you out of that
23 world if I brought her into it. If I made her a drug
24 seller or user, you were going to be in there too. The
25 question was whether the value we would get by putting her
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1 in that world would outweigh the cost of the jury figuring
2 you were in it too."

3 So, ultimately, what was the decision you made
4 about whether the value of putting on this conspiracy
5 theory outweighed the danger of letting the jury hear about
6 other stuff, including the drug stuff and the fact the
7 police may have been looking for Mr. Dean?

8 A. I made a decision that had been on my mind for
9 a considerable period of time as to whether to put it on or
10 not, recognizing the problems it could cause.

11 And I ultimately concluded that the evidence
12 in the case was sufficient that I didn't need to put it
13 on.

14 Q. With regards to the -- any injuries that might
15 have been on Mr. Dean's hand or hands, obviously, I think
16 it's an indisputable stipulated fact that he had a
17 laceration on his finger, correct?

18 A. That was --

19 Q. Nobody was disputing that?

20 A. That was evident.

21 Q. Now, what I want to ask you about is -- I
22 think Mr. Lockie was asking you about other kind of
23 injuries to his hand?

24 A. Yes.

25 Q. I would ask that you elaborate on that. What
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1 kind of injuries, other injuries, did he have to his hand
2 or hands?

3 A. I don't recall, Mr. Mills. I have looked -- I
4 have looked at the pictures but -- or looked at the
5 pictures many years ago and I don't recall what they were.
6 But I do not recall them being lacerations or bloody.

7 Q. Okay. So had -- had you made a motion in
8 limine to exclude the folding Gerber knife that was
9 introduced into evidence and I believe was argued as a
10 possible implement of the crimes in this case, if you had
11 successfully argued to keep that out of evidence and
12 succeeded in doing so, would there have been any advantage
13 to that that you can think of?

14 A. Not that I can think of. And I think in truth
15 there would have been a disadvantage.

16 Q. Now, with regards to the decision to have Mr.
17 Dean testify, you testified on direct examination that --
18 that it was your recommendation that he -- that he testify,
19 correct?

20 A. Yes.

21 Q. In fact, I believe the way you put it, you
22 didn't think there was a chance he would be acquitted
23 unless he testified?

24 A. Along that line.

25 Q. Ultimately, the -- I guess the professional
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1 A. Yes.

2 Q. And, in fact, when you presented that -- that
3 portion of his testimony, did you not take great care and
4 great measures to emphasize to the jury that his knowledge
5 of knife fighting was not based on personal experience but
6 rather personal observations of knife fights that other
7 people had been in?

8 A. We made that both clear in his testimony and
9 in closing argument.

10 Q. And I believe you testified -- well, I will
11 just ask you this. So what was the -- the strategic
12 advantage for the defense in putting on that -- on that
13 type of testimony about the knife fighting?

14 A. Well, I think that what I said in closing
15 argument essentially was that if Mr. Dean had wanted Mr.
16 Minter dead, which was the underlying charge, he would have
17 been dead if Mr. Dean was the person with the knife.

18 which meant that theoretically it could turn
19 that into a not guilty verdict or at least a verdict of
20 guilty to a lesser offense.

21 Q. Now, with regards to jury selection and, I
22 guess, the issue of race more largely. More broadly.

23 Did Mr. Dean and you have conversations about
24 his concern about getting a fair shake in front of a white
25 jury in Elko?
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1 rules of conduct for attorneys, you know, they dictate that
2 attorneys have -- defense attorneys have wide discretion to
3 make strategic decisions, but there is a couple things that
4 the client always has the ultimate say-so in. One of those
5 things is whether to testify or not, correct?

6 A. That's correct.

7 Q. So was Mr. Dean, based on your recommendation,
8 was he -- did he make the decision to testify?

9 A. Yes.

10 Q. Now, with regards to just that portion of his
11 testimony where he talked about his experience -- not
12 experience with but his knowledge of knife fighting, you
13 testified that you have a clear recollection that you did
14 have a conversation with him about that particular topic
15 the day of his testimony; is that correct?

16 A. I did testify to that.

17 Q. Okay. Now, did he know that you were -- then
18 that you were going to be asking him questions along those
19 lines?

20 A. I hesitate to tell you what he knew, but it
21 was certainly part of the conversation.

22 Q. You told him that you would be asking those
23 questions, correct?

24 A. I did.

25 Q. As part of your case strategy?
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1 A. We certainly discussed it, yes.

2 Q. Okay. Did he ever communicate to you his
3 belief that -- that he didn't think he could get a fair
4 trial in Elko because of issues of race?

5 A. Yes.

6 Q. Did you take measures to address that concern
7 during jury selection?

8 A. Yes.

9 Q. Including discussing the issue of common
10 offensive racial stereotypes regarding African Americans?

11 A. Yes.

12 Q. And what was your thought process in engaging
13 in that line of questioning with the jury? What was the
14 reason for that?

15 A. Well, I think, as I previously testified, I
16 was actually trying to accomplish two things. The -- we
17 have imposed upon ourselves social and moral rules that
18 says that we have to stay away from certain subjects and we
19 have to make claims about certain points of view that we
20 have.

21 One of the points of view these days is that
22 you cannot be racially biased against black people.

23 The fact is, as I had indicated on direct
24 examination testimony, because of the circumstances that
25 existed in the human race thousands and tens of thousands
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1 and hundreds of thousands of years ago, they weren't part
2 of the same group.

3 And those biases are in all of us, all of the
4 people who aren't black right at the moment, I guess

5 And as I indicated on direct examination, a
6 humongous part of these feelings are subconscious. We
7 don't have them up on top of our head and we don't always
8 recognize what our subconscious is telling us.

9 But as I indicated briefly, about 90 percent
10 of your behaviors -- and I hate tell to you that -- about
11 90 percent of your behaviors is based on subconscious
12 conclusions that you have reached. Very little is based on
13 other stuff.

14 So you -- in jury selection you have to move
15 that into the conscious mind. You just don't have any
16 choice. Because otherwise folks are sitting there with a
17 subconscious point of view that they will allow to control
18 their actions.

19 We did that.

20 And then, of course, the other part of it was
21 to make sure at least one guy, one person on the jury,
22 would pop up if somebody tried to pull that off and say,
23 no, you can't do that.

24 Q. In fact, that guy was pretty offended by the
25 notion that race would have anything to do with his

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1 that he is of the same race as my client as well?

2 A. I think, as I previously indicated, Mr. Mills,
3 I write words down and write notes down throughout an
4 entire day, sometimes at night, that I have no reason in
5 the planet to write down.

6 That I can think of at this point, I have no
7 clue in the world why I wrote it. But it was something
8 that certainly was on my mind and had been for a spell.
9 And so I just -- I don't know specifically why I did it.

10 It was not intended to be an insult; it was
11 simply something I wrote down. I would have proceeded at
12 the voir dire process the same whether I wrote the note or
13 not because it was already in my mind.

14 Q. Yep. I guess the underlying point that I
15 was -- that I am trying to make is that there was a
16 strategic reason for considering the race of that
17 particular witness, was there not?

18 A. Oh, two. Two specific reasons.

19 Q. What were those?

20 A. One, Mr. Schenk -- oh, lord, this is another
21 long-winded one and I'm sorry.

22 We had to get Mr. Schenk involved in a
23 conspiracy with Mr. Minter and Ms. Minter in order to
24 explain why he was saying what he was saying.

25 Part of that was accomplished by the

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1 deliberation, correct?

2 A. He was very angry with me.

3 Q. Yep. And so, as a defense attorney, you would
4 want a guy like that on the jury in order to set people
5 straight about issues of race on the jury, correct?

6 A. Yes, sir.

7 Q. Yep. And by raising these issues, these common
8 stereotypes, I mean, I suppose you would agree it's -- I
9 guess it's not outside the realm of possibility, but it's
10 maybe unlikely that somebody would outright admit to, you
11 know, not liking -- being racist or not liking black people
12 or whatnot.

13 But wouldn't you also agree that by raising
14 the issue, you get -- like you say, you move that issue
15 into the forefront of their thinking; it gets people
16 thinking about it and maybe taking measures to not be
17 racist or be perceived as racist?

18 A. That is exactly right.

19 Q. Okay. I want to ask you about this -- this
20 note that you made about Joseph Schenk.

21 The way I understand it, correct me if I'm
22 wrong, but what you meant by that note is that, you know,
23 Joseph Schenk, you know, like my client, is also black,
24 African American. You used the n-word to describe that.

25 But is that not what you were trying to say is

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1 contradictory nature of the observations that he testified
2 to during -- during the fight.

3 It was also a question of putting the jury in
4 a position of having -- if they were going to take Mr. Dean
5 down because of his race, they also had to take Schenk down
6 because of his race.

7 And I have to tell you that there are -- the
8 thought processes that were going through are probably ten
9 times more lengthy and specific than I -- than I could even
10 recall them at this time.

11 Q. Now, it's kind of a touchy subject, but I
12 think I am going to ask this question. It's kind of the
13 elephant in the room here.

14 You are aware of the fact that that word, that
15 n-word, is an extraordinarily offensive word, correct? Or
16 are you aware of that?

17 A. I think it's a mixed bag these days. I don't
18 know.

19 Q. Okay. Now, in your letter, you -- you
20 responded -- well, Mr. Dean was offended by your use of
21 that word; would that be fair to say?

22 A. He appeared to be offended by it, yes.

23 Q. Okay. Then you addressed that to some degree
24 in the letter that you wrote back to him, correct?

25 A. Yes.

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1 Q. So I wanted to ask you about the title to
2 the -- to that portion of your letter. Which is titled, I
3 am a Racist Bigot.

4 A. Yeah.

5 Q. Now, the way I read this, and you correct me
6 if I'm wrong, and I will pose this in a form of a question,
7 but is that not -- as opposed to a statement of fact, is
8 that not a sarcastic -- somewhat sarcastic characterization
9 of how you thought that he -- what he thought about you?

10 A. I hoped it was totally sarcastic.

11 Q. Okay. So you were not being dead serious with
12 a straight face, I am a race -- proclaiming "I am a racist
13 bigot"?

14 A. Yeah.

15 Q. You were saying it tongue-in-cheek,
16 sarcastically, characterizing the way he thought about you?

17 A. Yes.

18 Q. I just wanted that to be clear on the record.

19 Then you give an explanation. And then you
20 stated, "So I guess my point is that if you think me
21 writing the word" -- then the n-word -- "in my notes has
22 racial significance, so be it."

23 Did that have any particular significance to
24 you? You writing that word?

25 A. What you are calling the n-word?

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1 Q. Yes. Did your use of the n-word have any
2 particular significance to you?

3 A. No.

4 Q. Did it have any kind of influence or effect
5 on -- well, let me back up and rephrase this.

6 Do you have any particular animus or dislike
7 towards African Americans?

8 A. I do not.

9 Q. Would you represent them any less zealously
10 because of their race?

11 A. I not only wouldn't because it would be
12 immoral to do that, but also it would be a violation of the
13 rules of being a lawyer.

14 Q. So it would be immoral and in violation of the
15 rules of being a lawyer, correct?

16 A. Yes.

17 Q. And you would not do that?

18 A. I would avoid it.

19 Q. And you did not do that in this case, correct?

20 A. I absolutely did not.

21 Q. In fact, over your history, I guess, the
22 history of your life and your career as a lawyer, you've
23 interacted with and well with people of other races; is
24 that correct?

25 A. I have represented a number of African

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1 American clients and I have associated with a number of
2 people of different races for a variety of reasons.

3 Q. In fact, just to give one example, are you
4 familiar with a prosecutor by the name of Tiffany Hill that
5 worked for the District Attorney's office a number of years
6 back?

7 A. Yes.

8 Q. And were you the district attorney at that
9 time?

10 A. I was.

11 Q. So she worked for you?

12 A. Yes.

13 Q. Was she African American?

14 A. Yes.

15 Q. She was hired while you were district
16 attorney, correct?

17 A. She was.

18 MR. MILLS: That's all. I pass the witness.

19 THE COURT: Any redirect?

20 MR. LOCKIE: May I just have one moment, Your
21 Honor?

22 THE COURT: Of course.

23 MR. LOCKIE: We have no questions.

24 THE COURT: All right. May Mr. Woodbury be
25 excused then?

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1 MR. MACFARLAN: Subject to recall.

2 THE COURT: Okay. I'm sure they know where to
3 get ahold of Mr. Woodbury.

4 Thank you. Rule of exclusion is invoked still.
5 They may call you back.

6 Next witness?

7 MR. LOCKIE: Mr. Dean.

8 THE COURT: Mr. Dean.

9 (WHEREUPON, the witness was sworn)

10 THE COURT: Okay. Mr. Lockie.

11 SEAN MAURICE DEAN

12 called as a witness in said case, having been first
13 duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. LOCKIE:

16 Q. Good afternoon, Mr. Dean.

17 A. Good afternoon.

18 Q. Please state your name?

19 A. Sean Maurice Dean.

20 Q. Are you the petitioner in this case?

21 A. Yes, I am.

22 Q. Do you understand that in this proceeding and
23 all other proceedings you are under no obligation
24 whatsoever to testify?

25 A. Yes.

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1 Q. Do you understand that that wouldn't be used
2 against you?
3 A. Yes.
4 Q. Do you understand that by testifying you are
5 thereby open to cross-examination by Mr. Mills?
6 A. Yes.
7 Q. Understanding your rights in that regard, is
8 it your desire to proceed forward and testify today?
9 A. Yes.
10 Q. All right. Mr. Dean, are you an African
11 American?
12 A. Yes, I am.
13 Q. And do you perceive yourself as being visibly
14 so? In other words, readily identifiable as such? Do you
15 see? I am just making a record here is --
16 A. I would hope so, yes.
17 Q. All right. The -- just to talk about
18 something right away, have you ever been involved with any
19 gangs?
20 A. No, I have not.
21 Q. Have you ever been identified as such?
22 A. No.
23 Q. Do you have any tattoos or have you ever had
24 any tattoos that identify you as being a gang member?
25 A. No, I don't have no tattoos. There is no

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1 record in my PSI or the prisons I have been to that
2 identify me as a gang member.
3 Q. Did you ever communicate to Mr. Woodbury that
4 you had never been affiliated with any gangs?
5 A. Yes. When he made a reference to that he was
6 false.
7 Q. No, I asked if you have ever communicated,
8 have you ever told Mr. Woodbury that you were a member of
9 any gang?
10 A. No.
11 Q. Have you told Mr. Woodbury that?
12 A. No.
13 Q. All right.
14 MR. LOCKIE: Your Honor, I will ask the Court to
15 take judicial notice of Mr. Dean's PSI, presentence
16 investigation report.
17 THE COURT: For this criminal case --
18 MR. LOCKIE: For the criminal case.
19 THE COURT: -- involving the judgment under
20 attack. Any objection to that?
21 MR. MILLS: As far as the gang stuff and the
22 tattoos?
23 MR. LOCKIE: The purpose of that is, in my
24 experience, those PSIs have some information with regards
25 to that.

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1 THE COURT: Right. Well, I think they always
2 have a section that deals with that, yes. I can't remember
3 exactly what Mr. Dean's would have said.
4 MR. MILLS: Legally, I think the judicial notice
5 is to recognize, like, a specific fact that is easily --
6 easily and readily confirmed through legitimate resources,
7 you know, I'd like the Court to take judicial notice that
8 Carson City is the capital of Nevada, or something like
9 that.
10 So the PSI generally is pretty broad. I would
11 actually -- if it -- if it -- if he is asking the Court to
12 take judicial notice of that portion of the PSI that talks
13 about the tattoos and the gang affiliation, I would
14 actually like to take a second to review the PSI.
15 MR. LOCKIE: Maybe I can rephrase. Maybe I
16 shouldn't have used the technical term "judicial notice"
17 and just ask that the PSI be admitted in this case.
18 THE COURT: All right. I think if it is, it will
19 have to be under seal. There is a lot of personal
20 information in there.
21 MR. LOCKIE: We would ask it be under seal.
22 THE COURT: Including social security, I imagine.
23 A lot of other personal information.
24 Any objection to that?
25 MR. MILLS: No, Your Honor. That's fine.

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1 THE COURT: Do you have a copy to be marked?
2 MR. LOCKIE: I don't. That's why I'm asking the
3 Court to -- I probably do have a copy somewhere in a
4 different file, having represented Mr. Dean. I don't have
5 it with me in court.
6 THE COURT: I will ask my law clerk to go ask
7 the judicial assistant to get a copy made. Then she can
8 bring it in to counsel and counsel can review it. Just
9 remind me at the end.
10 Will that work?
11 MR. LOCKIE: It will.
12 Q. (By Mr. Lockie) Mr. Woodbury obviously
13 represented you throughout the course of the Minter case,
14 if you want to call it that, the one that we're here today
15 on?
16 A. Yes.
17 Q. Did he represent you from beginning to end on
18 it?
19 A. Up until sentencing, September 29.
20 Q. And he had represented you on a prior case as
21 well?
22 A. Yes, in 2013.
23 Q. All right. With regards to issues of race,
24 did you and Mr. Woodbury ever have any discussions during
25 the course of his representation of you in this Minter case

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1 as to what, if anything, to do in terms of concerns about
2 race and dealing with an Elko jury?

3 A. The only concerns we had was prior to pretrial
4 conference. On two occasions I asked Mr. Woodbury to
5 please ask Judge Kacin for a change of venue. The reason
6 being is that I was concerned about getting an all-white
7 jury, seeing that Elko was predominantly white.

8 I felt that my jury should be somewhat
9 diverse. So that was the reason why I asked him.

10 And both times that I asked him, I said, I
11 would like you to approach the issue with Judge Kacin, but
12 under no circumstances do I want you to make my trial about
13 race, because this trial isn't about race, it's about an
14 alleged assault that happened, and that's all I want you to
15 do is stick to those facts.

16 I didn't want race being brought up at all,
17 because I didn't want the jury thinking that me, I am
18 trying to play the race card.

19 Q. Okay. And in the context of not being brought
20 up at all, would that also include being brought up during
21 the jury selection process? Voir dire?

22 A. Absolutely.

23 Q. All right. So moving to voir dire. When that
24 started, did the issue of race come up?

25 A. Yes, it did.

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1 It was unnecessary because this trial was not
2 about race. And I know, I have been doing time for a very
3 long time, I haven't had too many juries, this is only my
4 second jury trial in that 30 years, but I know for a fact
5 how people take African Americans or any race of color or
6 even Caucasians bringing up race as an excuse for -- for
7 any kind of behavior. It's just -- it's just clouds the
8 issue.

9 Q. In terms of the race card -- I'm sorry, I
10 didn't mean to cut you off.

11 A. So after that, after those remarks that
12 Mr. Woodbury made, there was a collective disagreement
13 within the audience because of those remarks. And
14 subsequently Mr. Woodbury engaged in a conversation -- in
15 an argument with a juror about the remarks that he made.

16 And after Mr. Woodbury finished, which --
17 finished his statement which basically comprised of this
18 race issue that he brought up, we had a break.

19 During that break, Mr. Woodbury asked me were
20 there any jurors on the panel that I wish to exclude. I
21 said yes. There was a female that I wanted excused and I
22 told that him the guy that you were arguing with, I would
23 like him excused.

24 Okay. So after everything was said and done,
25 we had 12 jurors who was going to sit in my trial and two

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1 Q. How so?

2 A. So it was Mr. Woodbury's turn to address the
3 audience, potential jurors. And Mr. Woodbury started off
4 with an inappropriate remark that Mark Mills objected to
5 and Judge Kacin reprimanded him on. He made a reference to
6 the feeble evidence that the State had. And he reprimanded
7 him on doing that because Mark Mills objected to it, okay.

8 So after -- after that reprimand, Woodbury
9 asked the jury -- I mean asked the audience, the whole
10 audience, to please turn and take notice that I was the
11 only black guy in the commission room. Which is where we
12 had voir dire.

13 They did.

14 When he was satisfied that they had took
15 notice, he proceeded to -- and in an accusatory way -- to
16 point out that there were prejudices towards African
17 Americans that white people possess, as in that we're
18 sneaky, that we have a propensity for violence, and that we
19 like watermelon.

20 Q. Did that take you by surprise?

21 A. Yes, it took me by surprise.

22 Q. Why?

23 A. Because I specifically told Mr. Woodbury that
24 I didn't want race being brought into my trial, but he did
25 it anyway.

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1 alternates. That juror that Mr. Woodbury was arguing with
2 remained on my jury.

3 So I asked Mr. Woodbury plain and simple, "why
4 didn't you excuse that juror that you were arguing with?"
5 And he replied, "Because I liked him."

6 Q. Okay. So I -- I understand generally not
7 wanting to bring the race card in. Is there anything
8 particularized as to the use of "sneaky," "violence" and
9 "watermelon" that goes over the top in your mind, aside
10 from just not wanting the race card in in the trial?

11 A. I'm not sure.

12 Q. In other words, those particular terms, are
13 they particularly prominent to you? Do they have
14 particular meanings?

15 A. I'm not sure that I understand your reference,
16 but those are stereotypes. These are stereotypes that
17 could be used towards anyone, but they have -- they have
18 potential reference in this instance, I guess, towards
19 African Americans because that's how we are perceived.

20 Q. What I am asking, are there other ways, if you
21 decide you are going to try to screen a jury?

22 A. Um-hmm.

23 Q. For racial bias to go about that without using
24 the words "sneaky," "violence" and "watermelon"?

25 A. Absolutely. For instance, he could have asked

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1 the jurors, Have you in your employment or your social
2 activities, have you ever engaged with African Americans?
3 And if so, how do you feel about them?

4 Q. You were present and you heard Mr. Woodbury
5 speak about some of the -- the history of racism, right?

6 A. Yes.

7 Q. And, particularly, you heard him talk about
8 this liking watermelon. All right. Can you clarify that?

9 A. Yes. I really didn't understand where
10 Mr. Woodbury was going with the reference to watermelon.

11 But I guess -- I don't know, I really can't --
12 I really can't explain that explanation.

13 But being an African American, familiar with
14 the history of that reference, it started back with -- in
15 slavery. As we all know, African Americans, we picked
16 cotton and various fruits. And watermelon happened to be
17 one of those things.

18 It was born out of the fact that African
19 Americans was destitute and down and out and poor, and that
20 the only thing they had really to survive on was
21 watermelon.

22 So thus the stereotype and the reference
23 towards African Americans and watermelon. Simple at that.

24 Q. So it means something more than just something
25 cool and juicy to eat?

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1 A. Absolutely. And it's a reference back to days
2 we would rather forget and trying to, to this day, to
3 eradicate.

4 Q. How did it make you feel when you heard those
5 references to sneaky, violent, watermelon?

6 A. Felt insulted. I felt that Woodbury was
7 characterizing me in the wrong light. I felt insulted. I
8 felt he was not characterizing me in a very positive light.

9 Q. Do you believe that it was effective at all to
10 try to raise this perception of the jury or their
11 consciousness, as Woodbury said, by using that terminology?

12 A. No. I think it had the opposite effect.

13 Q. Why so?

14 A. It shined a bad light on me for, one, as an
15 African American. And, two, the references and the
16 characterization was -- was wrong on a personal level
17 towards me and African Americans and people of color.
18 Period.

19 Q. Did at some point in the trial it come to your
20 attention that Mr. Woodbury had written a note that caused
21 you concern?

22 A. Yes.

23 Q. And that note has been admitted, I believe, as
24 Exhibit 2. If I may approach Your Honor?

25 THE COURT: Of course.

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1 Q. I'm going to show you what has been admitted
2 as Exhibit 2. Do you remember seeing that document?

3 A. Yes, I do.

4 Q. When -- when and where did you first encounter
5 that document?

6 A. It was the third day of trial. I believe it
7 was on a Thursday, the 23rd.

8 The sheriff deputy usually got me here to the
9 courthouse at 8:30 in the morning. We started trial at
10 9:00, so he got me here pretty early because he didn't want
11 me to be seen by the potential jurors and whatnot. So they
12 got me here pretty early.

13 And Woodbury had a habit during the trial of
14 keeping our trial file here, along with the numerous legal
15 pads. One of these legal pads was mine that I was taking
16 notes in.

17 And so when I got here, sat down in the
18 defendant's table and -- and was leafing through the pages,
19 and noticed a green sheet of paper in there that I know
20 that I didn't put in there and wasn't taking notes with, so
21 I looked at it. And I know Mr. Woodbury's handwriting.
22 That's how I found it.

23 Q. All right. And the exhibit that you have
24 before you, Exhibit 2, is that a true copy of the document
25 that you saw?

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1 A. Yes, it is.

2 Q. What did you do after you saw the document, if
3 anything?

4 A. I recall looking at it. I looked at it for a
5 little while trying to process what I was reading, for one.
6 I was -- being perfect honest, if I recall, I was -- I was
7 shocked by the words that I was -- I was reading at the top
8 of there.

9 Q. What is shocking to you about it?

10 A. Well, it says, "Schenk is a 'N' too." And in
11 the context of the -- of the sentence that -- and in the
12 statement that he wrote, and knowing that there was only
13 two African Americans in -- engaged in this trial, that the
14 reference to Schenk is an "N" too refers to the fact that
15 this is how he thought of me also, that I am a "N" too.

16 Q. Well, in terms of the n-word, where does that
17 fall in the context of being an African American and having
18 that reference?

19 A. That -- as far as African Americans is
20 concerned, that is the worst word you can call us. To
21 elaborate, it is derogatory, it's demeaning, it's meant to
22 state that we are inferior to those that are calling us
23 that. And it brings back a reference to days past when we
24 were brought here to be slaves. Which is a very, very
25 sensitive area. That is a very sensitive topic for African

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1 Americans.

2 Q. Is it possible to make an observation that
3 someone may be in the same race without using that word?

4 A. I'm not sure I understand your question.

5 Q. Well, you don't have to use the n-word to
6 refer that another person is the same race as you are,
7 right?

8 You don't have to use the n-word for that?

9 A. No. We have -- we have other words. You can
10 say Schenk is black too, or Schenk is an African American
11 too, or -- you know.

12 Q. What I am getting at is, is there any
13 particular significance of the use of the n-word as opposed
14 to some other word?

15 A. Yes, it's a racial reference.

16 Q. What did you do after you discovered the note,
17 if anything?

18 A. Well, like I said, I was shocked. It took
19 me -- took me a minute to process what I was reading. I
20 think I went from shock to by the time Mr. Woodbury showed
21 up at probably quarter to nine, ten minutes to nine, that
22 shock went from straight anger.

23 Q. Did you ever bring it to Mr. Woodbury's
24 attention?

25 A. Yes, I did.

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1 Q. How so?

2 A. I showed him the note and asked him plain,
3 "What is this?"

4 He looked at it, said, "Oh, this is my notes,"
5 folded it up and put it in his pocket. And that was it.

6 Q. Did you ever have occasion to bring it to
7 Mr. Woodbury's attention again?

8 A. Yes, I did.

9 Q. And how did you go about doing that?

10 A. I wrote Mr. Woodbury a letter, I believe, on
11 the 23rd of September, 2016.

12 Q. I'm going to show you what has been admitted
13 into evidence as Exhibit Number 3.

14 Do you recognize that document?

15 A. Yes, I do. It's the letter I wrote to
16 Mr. Woodbury.

17 Q. All right. That's in your handwriting?

18 A. Yes, it is.

19 Q. Why did you send this letter to Mr. Woodbury?

20 A. I sent him that letter to, one, confront him
21 on the things that I felt should have been asked of the
22 witnesses during the jury trial in which Mr. Woodbury
23 completely blew me off.

24 None of the common sense questions that should
25 have been put forth to the jurors -- I mean, to the

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1 witnesses was ever asked.

2 And, two, to confront him on calling me the
3 n-word. I thought it was inappropriate, inexcusable and
4 demeaning.

5 Q. Other than bringing the note to Mr. Woodbury's
6 attention, you know, right after you saw it, why didn't you
7 do anything further right away at that point?

8 A. I didn't know. We were in the middle of a
9 trial and I am not familiar with a trial procedure. I
10 don't know what is -- what it is I can do or what I can't
11 do.

12 And -- and, you know, I know there is no
13 excuse for ignorance of the law, but there has got to be
14 some excuse for ignorance on that judicial procedure. I am
15 not a lawyer. So I didn't know, other than bringing it to
16 his attention, that I could do anything further.

17 Q. But you did bring it to his attention?

18 A. Yeah, I brought it to his attention. He knew
19 I knew.

20 Q. All right. Did Mr. Woodbury ever come down
21 and talk to you after the trial at the jail?

22 A. He tried.

23 Q. Okay. Let me ask you a better question.

24 After you brought the note to Mr. Woodbury's
25 attention on Thursday, when you saw it at trial?

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1 A. Right.

2 Q. Did Mr. Woodbury come down and talk to you
3 before the trial ended? You know, like Thursday? Friday?

4 A. I'm still not understanding.

5 Q. Did Mr. Woodbury come down and talk to you on
6 Thursday or Friday? You said this note was discovered on
7 Thursday of trial, right?

8 A. This note?

9 Q. No, no, the note.

10 A. Yes.

11 Q. I'm sorry. I am confusing you. I'm going back
12 to Exhibit 2, the note. I'm sorry about that.

13 What I am talking about is, after you found
14 the note and you talked to Mr. Woodbury about it during
15 trial, did Mr. Woodbury come down and talk to you at the
16 jail?

17 A. No.

18 Q. All right. Did Mr. Woodbury respond to you in
19 writing?

20 A. Yes, he did.

21 Q. Showing you what has been admitted as Exhibit
22 Number 4, do you recognize that document?

23 A. Yes, I do. This is Mr. Woodbury's reply to my
24 letter.

25 Q. All right. And is there anything in that

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1 reply that causes you concern?

2 A. Yes. The first thing that caught my attention
3 was that Mr. Woodbury made no attempt to apologize for the
4 remark he made whatsoever.

5 Instead, he wrote in his first statement, "I
6 don't recall exactly what was going on when I wrote that
7 Joseph Schenk was a 'N' too in my notes."

8 There was nothing in here of -- offer of a
9 reply, I didn't know, I didn't mean to write that. If I
10 did, I didn't mean for you to see it.

11 Nothing along those lines. It was his reply.

12 Q. In fact, he uses the full n-word in there,
13 doesn't he?

14 A. Yes, he does. Again, there was no reference
15 to -- he didn't say, like we are referring to, the n-word.
16 He -- he spelled it out just like he meant it.

17 The second thing that drew my attention was
18 his answer to my letter. In it he said, "So I guess my
19 point is that if you think me writing the word 'N' in my
20 notes has racial significance, so be it." I have called you
21 a lot worse names than that for getting hooked up and
22 staying with a five-foot-nine fat lady who sells dope and
23 gambles away everything she has got."

24 Q. Does that do anything to advance your interest
25 in the case?

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1 the -- of the incident that happened, who was where, and
2 all the rest of that good stuff.

3 And -- and this was -- these conversations
4 when he visited were just that. That's all they pertained
5 to. There was no trial prep.

6 Q. In terms of your testimony?

7 A. Exactly. As far as my testimony is concerned,
8 there was no -- there was no prepping me for cross, for Mr.
9 Mills. There was -- there was none of that.

10 Everything that he talked about was gathering
11 information for either his own use or to pass along to his
12 investigator that he hired for my case.

13 Q. Okay. So with regards to the testimony, the
14 questions that he started asking you about growing up in
15 California, having knowledge and been involved in knife
16 fights, was any of that brought up with you before you
17 began to testify in terms of the possibility you would be
18 testifying about it?

19 A. Once again I will reiterate that Mr. Woodbury
20 on his visits were on an information seeking mission.

21 The particular day that you are referring to
22 was like all the rest of the visits I had prior to that
23 visit in which Mr. Woodbury came seeking information
24 about -- about Denise Minter and Bert Minter and the
25 activities that they were involved in.

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1 A. No, it doesn't.

2 Q. And is the repeated use of the full n-word in
3 this letter something that causes you concern?

4 A. Yes. It's offensive and quite frankly
5 reinforces the fact -- that reinforces the fact that
6 Mr. Woodbury is prejudiced. Without a doubt. He is
7 prejudiced against African Americans.

8 And I can't speak to other peoples of color,
9 but I know the n-word is -- is used towards African
10 Americans probably more than any other race of color.

11 His continued use of it was -- it just
12 reinforces the fact that Mr. Woodbury is racist, point
13 blank.

14 Q. Did you testify at trial?

15 A. Yes, I did.

16 Q. All right. And did you talk to Mr. Woodbury
17 as your case was being prepared about the potential of you
18 testifying at trial, or not?

19 A. No, we had -- during the time that
20 Mr. Woodbury had my case -- and I can't recall the specific
21 day it was assigned to him -- but Mr. Woodbury came to the
22 jail multiple times to talk to me primarily about Denise
23 Minter's drug use, her gambling, the business they were
24 running.

25 He talked to me about the particulars of

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1 After he satisfied himself with the
2 information that I gave him, Mr. Woodbury persisted to ask
3 me had I ever been involved with a knife fight.

4 And obviously I said no. And the reason why I
5 said no is because it was my thinking that he was asking me
6 had I ever pulled a knife on somebody in a fight. And this
7 is the reason why I said no. And so that was my answer to
8 him, "No."

9 He proceeded to ask me did I have any friends
10 that had ever been involved in knife fights. And I said I
11 think I recall one guy on the street in Sacramento that was
12 involved in a knife fight. But the rest of the knife
13 fights that were ever talked about with me were when I was
14 in the penitentiary.

15 And he asked me had any of those people
16 that -- that brought knife fights to my attention ever
17 described how they -- if they engaged in a knife fight. In
18 other words, he asked me did -- have they ever described
19 stabbing someone.

20 And I said I think I recall one guy in prison
21 that -- that made reference to the fact that he -- he
22 stabbed a guy and it was up close and personal. I have to
23 admit that I have been in some high-powered penitentiaries
24 in California where stabbing is common.

25 And -- and he asked did the guy describe the

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1 method in which he used. And I said yes, he described it
2 in some detail. Jabbing it in him, twisting it, and so
3 forth. And I described all that to Mr. Woodbury.

4 Once again, let me reiterate that this
5 conversation and this -- this -- these examples that I was
6 giving Mr. Woodbury were again under the guise of him
7 seeking information.

8 And it was my impression that Mr. Woodbury was
9 just seeking this information for his own personal
10 knowledge. There was no talk about me potentially getting
11 up on the stand and talking about those experiences,
12 because I would have flat out refused to get up there and
13 talk about those kind of -- those kind of experiences,
14 being that I am sitting here on trial for stabbing
15 somebody.

16 I mean, what sense does that make?

17 Q. In your view, does the questioning and
18 association with violence and being around knife fights
19 also implicate itself culturally some way with regards to
20 being African American unfairly?

21 Do you understand my question?

22 A. No, I don't.

23 Q. Okay. Does this talk about being around knife
24 fights and everything, in your mind, feed into the idea
25 about being a member of a race?

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1 type of thing?

2 Generally speaking?

3 A. Well, yes, there were -- there were questions
4 that I wanted Mr. Woodbury to ask. And like I testified --

5 Q. Okay. I am just talking generally.

6 Generally, did you and Mr. Woodbury communicate --

7 A. Yes, yes. We passed notes back and forth.

8 Q. All right. Do you remember ever that note
9 going back and forth?

10 Why don't you just read the -- read the note.

11 A. My part or his part?

12 Q. Read the top.

13 A. This is Mr. Woodbury's part. He says, "The
14 biggest problem we're facing is Dr. Ward said one of the
15 stab wounds went in three and a half inches. That tends to
16 make you liable on" -- I guess -- "the alternative
17 charges." It's kind of blanked out right here, but I know
18 what he wrote.

19 "Makes you liable on the alternative charges."

20 The -- yeah, "the attempted murder charges.

21 "My question is whether you know in knife
22 fights whether you don't just stab, you also slice while
23 the blade is in the guy."

24 Okay. That's what he said.

25 Q. So obviously that came after Dr. Ward

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1 A. Yes, it's -- it's a bad characterization of
2 African Americans to be put in that light of having a
3 propensity for violence with -- with knife fights.

4 I don't know how else to answer that. It
5 just -- it's just a bad reference. It's one I didn't
6 understand. When Mr. Woodbury brought it up during trial,
7 I didn't understand why he -- why he would bring that up.

8 And that -- because that really showed me, not
9 just as an African American, but as a defendant, in a bad
10 light in having associations with people who involve
11 themselves in knife fights. It was just incomprehensible.

12 Q. In your view, does that feed into the
13 stereotype of African American violence?

14 A. Yeah, it feeds into it very much so.

15 Q. I'm going to show you what has been admitted
16 into evidence as Exhibit 19.

17 And there is two different handwritings on
18 that note. Do you recognize those? Just the handwriting?

19 A. Yes, the bottom -- bottom half of this page
20 is -- this is my handwriting.

21 Q. And the top, what does that look like?

22 A. The top part is Mr. Woodbury's.

23 Q. Was it common during trial for you and Mr.
24 Woodbury to exchange or to communicate in writing?

25 Like by passing notes back and forth, that

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1 testified, right?

2 A. Yes. I believe Dr. Ward testified before I --
3 before I did. I was the last person to testify.

4 Q. When did it come to your attention that it was
5 for sure that you were going to testify in this case?

6 A. Right before we -- right before we broke for
7 lunch. I remember specifically that Mr. Woodbury asked
8 Judge Kacin and the deputy that escorted me to the jail if
9 it was possible that the jail could afford us -- I guess he
10 asked for an hour and a half, I believe. And he -- to --
11 to confer with me about my testimony.

12 So to answer your question, it was right
13 before we went to lunch break that he informed me that I
14 was going to testify.

15 Q. Did you know for sure prior to that occasion
16 that you were going to be called to testify?

17 A. During -- during our visits, he said he will
18 make a determination according to the testimony and the
19 witnesses and the evidence whether or not he would like me
20 to testify.

21 It was my assumption, and I guess it's valid,
22 that if he really intended for me to testify, that we would
23 have engaged in trial prep.

24 So I guess to answer your question, I didn't
25 think I was going to testify because he never -- we never

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1 went through any trial prep.

2 Q. So then you had the break where it was -- he
3 asked permission to come down and talk to you?

4 A. Yes.

5 Q. All right. Did you do any trial prep then?

6 A. No. That visit, although he asked for -- he
7 asked for an hour and a half, we only spent 30 minutes in
8 that -- in that room at the jail assigned us.

9 And it was just like any other visit, asking
10 me the particulars about the case. And -- and where was
11 Denise, where was Bert, where was Joseph Schenk. And --
12 and it was the same line of questioning he has been asking
13 me for six and a half months leading up to the trial.

14 Q. Did he talk to you specifically at that point
15 in time that he intended to ask you questions about your
16 knowledge of potential involvement in knife fights?

17 A. No. And if he -- if he intended for me to get
18 up on the stand and talk about knife fights, I would have
19 flat out refused. If he still persisted on asking me
20 questions about knife fights, I would have told him I
21 wasn't going to testify, point blank.

22 Because I know that getting up and making
23 reference to the fact that you have direct or indirect
24 knowledge of knife fights is going to shine me in a bad
25 light.

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1 And why would I do that to myself?

2 Q. Were you surprised then when Mr. Woodbury
3 began asking you about that?

4 A. Very much so.

5 Q. Did you believe there was anything you could
6 do at that point?

7 A. I was like the deer caught in the headlights,
8 you know what I mean. I couldn't believe that, you know,
9 he -- he was starting asking me questions related to a
10 subject that I didn't think he was going to bring up.

11 There was no trial prep or no reference made
12 to me that he intended to ask me those questions.

13 Q. And do you think that they actually hurt you
14 at trial?

15 A. Yes, they did.

16 Q. How so?

17 A. It prejudiced me.

18 Q. How so?

19 A. The line of the questioning that Mr. Woodbury
20 engaged in and had me testify to was inadmissible as far as
21 I know. It's inadmissible testimony to have a defendant
22 testify to propensity to engage in a prior bad act.

23 Q. In other words, what you are saying is that if
24 the D.A. had tried to introduce that evidence against you,
25 they wouldn't have been able to do it?

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1 A. Well, the case as I read it and the language

2 that I read is -- is directed towards district attorneys.

3 It's -- it's beyond the scope of my reasoning and why a
4 defense attorney who should be putting his defendant in the
5 best possible light he can would want to, under these
6 circumstances, associate his defendant client in the light
7 in which he did. That's just beyond me.

8 Q. Does the existence of Mr. Woodbury's
9 particular questioning during voir dire, the note, and then
10 his letter back to you, lead you to form an opinion as to
11 whether Mr. Woodbury has an anti-racial point of view
12 towards African Americans? He's again -- you know, he's a
13 racist?

14 A. Yes, I definitely -- that is the only
15 conclusion I can draw.

16 I mean, if you were -- if you were to bring
17 ten African Americans, sit them up here in the jury pool
18 and ask them the same question, they going to tell you the
19 same thing I just told you. He's a racist.

20 Q. Do you draw any connection between Mr.
21 Woodbury's sort of surprise questioning of you with regards
22 to your knowledge and involvement potentially in knife
23 fights and that racism point of view?

24 Do you draw a connection between those two?

25 A. Well, yes. Mr. Woodbury during voir dire made

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1 a reference -- excuse me. He told the potential jurors,
2 the audience, that African Americans have a propensity for
3 violence.

4 He, in turn, turned around and started asking
5 me questions that only gave that -- that remark he made
6 during voir dire credibility.

7 When he started asking -- when he started
8 asking me those questions during trial, he -- he gave
9 the -- he gave the jury the -- the impression that I had a
10 propensity for violence, that I had intimate knowledge of
11 how to stab somebody.

12 Q. Did you discuss with Mr. Woodbury in terms of
13 a theory of the case the idea that Denise and Bert might
14 have some motive to get you out of the way due to their
15 involvement with drugs?

16 A. Yes.

17 Q. I am switching gears on you.

18 A. Okay.

19 Q. Let me ask you first: Were the Minters
20 involved in drugs?

21 A. Yes.

22 Q. Were they involved in selling drugs?

23 A. I can't -- I can't speak to Bert Minter, per
24 se, because I -- I never had no dealings with Bert Minter.
25 I got -- like I testified during trial, I only saw Bert

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1 Minter twice.
2 Q. Okay. Let's talk about Denise then.
3 A. Okay. Yes, Denise sold dope. She smoked it
4 and she sold it.
5 Q. Were you involved in using narcotics?
6 A. No, not at all.
7 Q. Do you believe that there would have been any
8 evidence that you were?
9 A. No.
10 Q. Do you think that if people who testified at
11 trial were to be called and asked those questions that they
12 would have testified that you had any involvement in drugs?
13 A. I think that if you didn't provide witnesses
14 to say otherwise, the potential was there that they could.
15 Q. They could what?
16 A. They could associate you with drugs, it's --
17 Q. No, what I am asking you is, do you think that
18 any of the witnesses who testified would have had any
19 knowledge about you using drugs?
20 A. Yes. Denise Minter and Mocha, Lindsey Steele.
21 Q. They would have testified you did do drugs or
22 did not?
23 A. I did not.
24 Q. Well, you heard the concern about presenting
25 drugs that Mr. Woodbury expressed. That maybe it would

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1 also get on you, right?
2 A. Right.
3 Q. And were you willing to take that risk?
4 A. Yes. During one of Mr. Woodbury's visits, we
5 explored bringing up that issue with -- with Denise
6 Minter's drug use and her -- her selling drugs, and he was
7 concerned about that.
8 But I told Mr. Woodbury that Lindsey Steele
9 and Denise Minter both use drugs. Lindsey didn't sell, but
10 Denise did. If he was to broach the question, if he wanted
11 to go down that line of questioning, he could very much ask
12 them did I sell dope, or did I use dope, and that would
13 have took care of that question of involving me with drugs.
14 That would have got that out of the way.
15 Because I lived with Lindsey and I have also
16 lived with Denise. And they both can attest to the fact
17 that I didn't sell dope and I didn't use.
18 I had three jobs on the street. There was no
19 way I can go around using dope and expect to hold down
20 three jobs.
21 Q. If asked to testify with regards to the drug
22 theory, okay, to testify that Denise was involved in drugs
23 in support of the theory that they wanted you out of the
24 way, would you have been able to testify that in fact they
25 did use those drugs, to support that theory?

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1 A. Yes. Like I said, I lived with both of them.
2 Q. Was that a theory of the case you were
3 interested in presenting?
4 A. Very much so. Because it supported my theory
5 of why -- why the hostility was so instant when I went and
6 visited Denise. There was -- in my mind, I couldn't -- I
7 couldn't come up with any other logical explanation as to
8 why they were so -- so hostile from the jump. It just
9 didn't make no sense.
10 Bert Minter knew that me and Denise used to be
11 together. And I knew that -- that -- that Bert Minter was
12 Denise's ex-husband. And I knew when I first met Denise
13 that Bert Minter used to stay there with her prior to him
14 going to the nursing home.
15 I don't know what else to say about that.
16 Q. I'm going to show you what has been introduced
17 into evidence as Petitioner's Exhibit 18.
18 A. Okay.
19 Q. And if you look down that note, do you see the
20 handwriting that says, "How did I do?"
21 Does that look like your handwriting?
22 A. Yes.
23 Q. Okay. And this looks like it was after you
24 testified, right? "How did I do?" Meaning how did -- how
25 did you do during testifying, right?

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1 A. Yes.
2 Q. Okay. And then what was Woodbury's response
3 to you?
4 A. "What's it to you?"
5 Q. Okay. And then what did you write next?
6 A. Why didn't you ask -- I said, "Why didn't you
7 ask me about her drug use, sales?"
8 Q. Okay.
9 A. And the reason -- okay.
10 Q. So does that infer to you that you expected to
11 be able to testify to drug use and sales?
12 A. It was --
13 Q. Is that why you wrote that?
14 A. Yes. It was -- we had -- we had spent six and
15 a half months prior to trial discussing, investigating,
16 reasoning, going over, however you want to put it, Denise
17 Minter's drug use and sales.
18 I was ready, more than ready to testify to
19 that. Because I had intimate knowledge about it. I used
20 to live with her. I know what she sold. I know she used,
21 how she used. I know every detail about that. How she
22 smoked, when she smoked, how she sold. I know every detail
23 about that.
24 I was prepared to testify to that. And he --
25 Q. Did you think you were going to testify to

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1 that?

2 A. Absolutely. I asked --

3 Q. Okay. So what was -- I'm sorry. What was Mr.

4 Woodbury's response to you when he asked -- when he asked

5 you -- I'm sorry.

6 What was Woodbury's response to you when you

7 asked him, "Why didn't you ask me about drug use and

8 sales"?

9 A. "It's complex. Kacin" -- Judge Kacin --

10 "hasn't decided the rest of it. I can always call you back

11 when he does."

12 Q. Let me ask you about the injuries that you

13 had. Did you have any injuries other than the cut on your

14 finger that was tended to at the hospital?

15 A. Yes, I did.

16 Q. Can you explain what those were?

17 A. Yes, I got a cut mark between my third and

18 fourth digit and a slice mark on the top of my right hand.

19 Q. And those are on your right --

20 A. Along with the cut on that finger.

21 Q. Do you still have some marks from that?

22 A. Yes, I do.

23 Q. Can you show those to the Court?

24 A. Yes, I will.

25 THE COURT: So I think he is showing me his right

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1 pinkie finger, down by the webbing there. There is a cut

2 between the webbing of his pinkie finger and the ring

3 finger, and then it looks like sort of below the knuckle on

4 the -- between the knuckles, ring finger and middle finger.

5 Q. Where did those injuries come from?

6 A. From Bert Minter.

7 Q. Do you believe that those injuries that appear

8 on the back of your hand have some bearing, some

9 significance to your case?

10 A. Yes.

11 Q. How so?

12 A. They are defensive wounds.

13 Q. Do you believe those should have been

14 presented to the jury?

15 A. Absolutely.

16 Q. Let me ask you some questions about clothing.

17 A. Um-hmm.

18 Q. With regards to Denise's clothing, what was

19 she wearing during the incident?

20 A. Denise had on some black corduroy jeans, a

21 white blouse with a black print, and a gray hoodie.

22 Q. I'm going to show you -- let me ask you this:

23 Was your finger bleeding a lot after -- you know, your cut

24 finger after that incident?

25 A. Yes.

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1 Q. Showing you what has been introduced into

2 evidence as Exhibit 14.

3 Does that show your hand?

4 A. Yes.

5 Q. Show it bleeding?

6 A. Yes, it's bleeding.

7 Q. That was -- that picture was taken of you

8 being arrested in connection with this incident?

9 A. Yes.

10 Q. The incident at issue in this trial?

11 A. Yes.

12 Q. Then showing you what has been admitted into

13 evidence as 16.

14 What does that picture depict?

15 A. This is Denise Minter in the hospital room

16 and, as you can clearly see, her gray hoodie that she had

17 been wearing that night.

18 Q. Okay. Were you interested in perhaps the

19 clothing that Denise Minter was wearing being collected and

20 tested somehow in evidence?

21 A. Yes, sir.

22 Q. Why so?

23 A. The State advanced a theory during trial that

24 in the course of me allegedly stabbing Bert Minter I

25 inadvertently cut my finger, and that during the process of

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1 me stabbing -- allegedly stabbing Bert Minter, Denise

2 Minter jumped in the middle trying to break us up and also

3 got stabbed.

4 The significance of her clothing would be that

5 for us, the defense, that if that theory was true and held

6 any kind of bearing, that there would be blood transfer in

7 the forms of drops from my hand onto her clothing.

8 And that's the significance of Denise's

9 clothing.

10 Q. Did that ever happen? Any testing of her

11 clothing or admission of that clothing into trial?

12 A. No. From the discovery that -- that we --

13 that we received, it was stated that Denise Minter was

14 allowed to go back in the house, change out of her shirt

15 into another shirt before she proceeded to go to the

16 hospital.

17 Q. How about Bert Minter's clothing? Was it ever

18 tested?

19 A. No.

20 Q. Would you have been interested in that

21 happening?

22 A. Absolutely.

23 Q. Why so?

24 A. Once again, the State's theory was that in the

25 course of me allegedly stabbing Bert Minter, my finger

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1 slipped on the blade and I cut myself. And as a result of
2 that, there would be, if I continued to stab him, have been
3 blood transfer.

4 Q. Onto Mr. Minter's clothes?

5 A. Yeah, that's a given.

6 Q. And again, was that clothing ever collected?
7 Tested?

8 A. No, it wasn't.

9 Q. Was any of Bert Minter's clothing actually
10 collected, to your knowledge?

11 A. His clothing was collected.

12 Q. So it would have been available for testing?

13 A. It would have been available.

14 Q. Let me just talk to you about the interviews
15 that you underwent with Pepper and Nielson.

16 A. Okay.

17 Q. All right. So you gave your statement
18 voluntarily in the hospital, right?

19 A. Yes.

20 Q. And you gave your statement voluntarily at the
21 jail with Nielson?

22 A. Yes.

23 Q. Would you have been interested in those
24 statements being introduced at trial?

25 A. Yes.

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1 Q. Why so?

2 A. Because they are prior consistent statement.

3 Q. Do you believe they would have supported your
4 testimony as to what happened?

5 A. Absolutely. Jeremy Catalano, in his
6 declaration of probable cause, stated that he was present
7 at the time that Sergeant Pepper -- sergeant at the time --
8 was interviewing me at the hospital, and that I was
9 flip-flopping back and forth as to reference to who had the
10 knife and who didn't.

11 As we can see, and as we saw today, Jeremy
12 Catalano was nowhere present in that video. Therefore,
13 that remark he made in a declaration of probable cause was
14 false.

15 Q. I'm going to show you what has been introduced
16 into evidence as Petitioner's Exhibit 9.

17 Do you recognize that document?

18 A. Yes. This is the declaration of the probable
19 cause.

20 Q. Is that the one done by Catalano?

21 A. Yes, it is.

22 Q. That is where he talked about that he was
23 there during the interview at the hospital?

24 A. Yes, it is.

25 Q. And you believe that to be false?

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1 A. It is false. The evidence shows that it's
2 false.

3 Q. Do you believe that should have been brought
4 out at trial?

5 A. Yes. For a number of reasons.

6 Q. What are those?

7 A. The first is that Jeremy Catalano -- first of
8 all, let me state for the record that Denise Minter and
9 Bert Minter never submitted individual statements to the
10 police.

11 Let's just get that out of the way, okay.

12 The second thing is the statement was false in
13 the fact that Jeremy Catalano was not there at the hospital
14 to listen in on the conversation that me and Sergeant
15 Pepper was conducting.

16 The video clearly states that.

17 The other concern I have is that Jeremy
18 Catalano's false statement that he made was blatant in the
19 fact that he said that to discredit me, to make me seem as
20 if I was lying about the events that happened that night.

21 And the video would have supported everything
22 that I said to Sergeant Pepper on the street when he
23 interviewed me, in the hospital, and as you heard from
24 Detective Nielson, that there was no flip-flopping back and
25 forth about who had who.

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1 I may not have seen it, you know what I'm
2 saying, certain things. But there was no flip-flopping.

3 Jeremy Catalano signed that form under penalty
4 of perjury.

5 The fact that Denise Minter and Bert Minter
6 never supplied written statements, individual statements,
7 brings into question of whether or not those statements
8 that Catalano wrote down in both his summary and again
9 subsequently transferred to the probable cause statement
10 were true.

11 There is nothing to corroborate that because
12 Denise Minter and Bert Minter, once again, never provided
13 individual statements.

14 It brings into question Catalano's
15 credibility. If you lied about being somewhere where you
16 wasn't when you were not, what else did you lie about.

17 You can only -- you can only draw that
18 inference. A reasonable person would have those concerns.
19 If you lied about that, what else did you lie about.

20 The only person he -- he interviewed was
21 Brittney Tice at the scene. That's on the record in the
22 discovery. And then, when he left Brittney Tice, he went
23 directly to the hospital, according to what he wrote down,
24 and interviewed Denise and Bert.

25 We don't have no corroboration to that

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1 because, once again, they never provided individual
2 statements.
3 So we don't know if what Denise Minter and
4 Bert Minter accounted both in their observations and what
5 they said to be true.

6 We have to question that because Catalano
7 clearly lied.

8 Q. Do you believe that should have been presented
9 to the jury?

10 A. Absolutely.

11 Q. All right. Let's clear up the issue regarding
12 cell phones that I -- I was inaccurate about a little bit
13 earlier.

14 So was there a phone that was actually
15 collected at the scene?

16 A. At the scene?

17 Q. Yeah, at the scene.

18 A. No, it wasn't collected.

19 Q. Did someone collect -- was there a cell phone
20 that someone found at the scene?

21 A. Yes. There was a cell phone that was
22 photographed at the scene.

23 Q. Okay. Whose cell phone was that?

24 A. That was Bert Minter's.

25 Q. Okay. Did you have a cell phone?

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1 A. Yes, I did.

2 Q. Was your cell phone collected at the scene?

3 A. Yes. My cell phone was collected at the jail,
4 not the scene.

5 Q. Okay. Did you have a cell phone with you when
6 you were arrested?

7 A. Let me back up on that. My cell phone was
8 collected at the house where Lindsey and Clarence was
9 staying.

10 Because Jeremy Catalano asked me could he go
11 to the house and get my cell phone because I left it there
12 when they came to arrest me. I want to clarify that for
13 the record.

14 Q. Did you have a cell phone with you at the time
15 when the -- when the confrontation occurred with the
16 Minters?

17 A. Yes.

18 Q. Where was that cell phone located?

19 A. In my back pocket.

20 Q. All right. Was that cell phone eventually
21 taken into evidence?

22 A. Yes.

23 Q. Do you believe that the fact that your cell
24 phone -- well, do you believe that your cell phone should
25 have been introduced into evidence to support the fact that

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1 Denise saw a cell phone?

2 A. Yes.

3 Q. Is there anything else you would like to tell
4 the judge right now?

5 A. I would like to note, and I guess I don't know
6 if it was ever brought up again, but Bert Minter's -- Bert
7 Minter's cell phone was photographed as evidence. It was
8 laying on the ground and it was part of the crime scene.
9 But the officers on scene gave Bert back his phone.

10 Denise Minter was asked to give up her phone,
11 but she didn't. They had no problem coming to get my
12 phone. When it came to Denise Minter's phone, she was
13 allowed to keep her phone in order to stay in contact with
14 Bert Minter. Which didn't really make sense to me, because
15 Denise Minter, where we were staying, was only, what, five
16 or six minutes away from the hospital. She got in the car,
17 she could have drove there to find out what was going on
18 with Bert Minter.

19 Her phone was part of the evidence. You
20 collected mine, you should have collected hers. She
21 shouldn't have been able to keep her phone. You came and
22 got mine, so why not go get hers.

23 So for that reason, yes, I feel that was --
24 that was a real blunder as far as collecting evidence is
25 concerned.

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1 The second thing is the fact that they allowed
2 Denise Minter to go in and change her clothes, knowing that
3 you got Catalano with -- and then -- and Sergeant Pepper,
4 two seasoned veterans on the police force, is beyond me,
5 you know what I'm saying, knowing that she was involved in
6 this incident and that her clothing is evidence.

7 You collected mine. You collected Bert
8 Minter's. Why did you allow her to go in and change her
9 shirt out? That's evidence. Evidence that -- that we will
10 never be able to test again. It's gone.

11 So we don't have the chance to test our -- our
12 theory that I would like to test. We ain't -- we are
13 never -- we are not going to have that opportunity. And
14 that opportunity should have been afforded to us.

15 MR. LOCKIE: No further questions, Your Honor.

16 THE COURT: Cross-examination, Mr. Mills.

17 MR. MILLS: Okay.

18 THE COURT: We'll get started. I think we'll go
19 to 5:00. It's been a long day. We can start, have the
20 rest of the hearing tomorrow. We had all day set.

21 MR. MILLS: Sure.

22 CROSS-EXAMINATION

23 BY MR. MILLS:

24 Q. Good afternoon, Mr. Dean.

25 A. Good afternoon, Mr. Mills.

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1 Q. So I guess I will just kind of work backwards
2 kind of the way I did with Mr. Woodbury's
3 cross-examination.

4 So these police blunders, as you put it, that
5 you were talking about as far as the police allowing Denise
6 to change her shirt again, giving her her phone back. It's
7 your opinion that that shirt and that phone would have been
8 relevant pieces of evidence to collect. Is that correct?

9 A. It's evidence. All evidence should be
10 collected.

11 Q. Okay.

12 A. I mean, as far as my mind is concerned. I
13 have been dealing with the police for 30 some years, and
14 it's -- if it's evidence, it should be collected.

15 Q. All right. Let's assume -- let's assume for
16 the -- okay, for the sake of argument, I will assume that
17 that's true, that they should have collected those things.

18 Here is my question for you. Is Gary
19 Woodbury, your former attorney, is he a police officer?
20 Was he conducting the investigation in this case?

21 A. No.

22 Q. No. The answer is obviously no, correct?

23 A. Of course.

24 Q. In other words, how is that his fault?
25 Again, assuming that was faulty police work to

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1 provide her with her clothes -- or let her change her
2 clothes, provide the phone back to her, assuming that that
3 is less than ideal police work, what does that have to do
4 with -- you would agree that -- that wasn't Gary's fault
5 that that happened, that that played out that way?

6 A. I never said that that was Gary's fault.

7 Q. But do you understand that the purpose of this
8 hearing is ineffective assistance of counsel? That is what
9 the focus is.

10 A. Do you want me to answer the question, or are
11 you going to keep on?

12 Q. Answer the question.

13 A. Okay. I never said that was Gary Woodbury's
14 fault. I said that that was the police's fault, okay.

15 But since you brought Gary Woodbury into it,
16 for the sake of this hearing right here, that Gary Woodbury
17 knew that Denise was involved in the incident.

18 Gary Woodbury has been a prosecutor and a
19 defense attorney for over 30 years. He knows that anyone
20 involved in an incident such as mine, their clothing is
21 evidence. He knows that. That's a given.

22 Q. So what could Gary have done to go back in
23 time and recover the shirt and cell phone from Denise? How
24 could he have produced that evidence?

25 A. I have no idea what he could have done. Maybe

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1 he could have asked you, How come Denise's clothing wasn't
2 collected at the time of the event? Why was she allowed to
3 go back in the house and change her clothes out?

4 It was -- I guess there was a whole number of
5 things he could have done. But the fact is, he didn't do
6 anything.

7 Q. Sounds like -- sounds to me like you
8 questioned officer Catalano's credibility?

9 A. Do I question it? Yeah, I question it. There
10 is no doubt about it that I question it.

11 Q. Sounds like you -- you called him a liar is
12 the word I --

13 A. I called him exactly what he is. He's a liar.

14 Q. Because he stated in his probable cause sheet
15 that he overheard portions of Sergeant Pepper's interview
16 with you; is that correct?

17 A. Let me ask you a question this way.

18 Q. I'm asking the questions.

19 A. Okay. Okay. My bad. My bad. My bad.

20 Q. So -- but that's why you think that he is a
21 liar, correct, is because he made that assertion in his
22 probable cause sheet that -- that he overheard portions of
23 Sergeant Pepper's interview with you?

24 And it's your claim that that could not have
25 happened because Catalano was not at the hospital, correct?

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1 Is that the basis for your believing that he
2 was a liar, in your words, or lacks credibility?

3 A. The information -- if I may?

4 Q. Sure.

5 A. I'm going to answer the question.

6 Q. Yeah.

7 A. The information gleaned in that probable cause
8 declaration was the catalyst that -- the basis for
9 Catalano, who was the lead officer, in determining whether
10 or not I be arrested and what for.

11 In that -- in that statement, his -- the
12 things that he wrote or write and declare in that
13 declaration should be accurate and true.

14 When an officer who is the first step in
15 bringing charges against a defendant deliberately falsifies
16 information in a declaration as he did, it throws into
17 question the whole process.

18 Because this is a working process, is it not?

19 Okay. And there are steps in that process.

20 And the first step is the officers on the scene.

21 If that -- if that process in any way is
22 disturbed by falsehood, then the whole process is faulty.
23 Get my reasoning?

24 So that's why I called Catalano a liar. I
25 didn't mean it out of disrespect. I mean, I am just

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1 calling it how it is. A spade is a spade. He lied.
2 Q. I understand your explanation but you are
3 still --
4 A. okay.
5 Q. -- not directly answering my question, which
6 is --
7 A. I answered it.
8 Q. Maybe I will rephrase it.
9 So the thing that you think that he is lying
10 about is having overheard that -- Pepper's conversation
11 with you; is that correct?
12 A. Mr. Mills, you cause --
13 Q. It's a yes or no question. Is that the thing
14 that you think that he's lying about?
15 A. That's the thing I know he lied about.
16 Q. Okay.
17 A. You seen the video just like I did. He wasn't
18 there.
19 Q. How do you know that?
20 A. The camera swept around and surveyed the whole
21 area which I was in. Did you see Catalano there?
22 Q. I did not.
23 A. Okay. So if you didn't see Catalano there, he
24 was not there.
25 Q. That camera is 360 -- it's a miracle camera

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1 that is 360 degrees and shows a vantage point in all
2 directions; is that correct?
3 A. Mr. Mills, you saw --
4 Q. Is that correct? Does it -- is it a camera
5 that shows 360 degrees in every direction?
6 A. From what I -- from what I can tell, Mr.
7 Mills, the camera focused in on a certain direction.
8 Q. That's correct. That's how cameras work,
9 right?
10 It can point in one direction at any given
11 time, correct?
12 A. But there was a time -- if you want to play
13 the video all over again we can do that again -- that --
14 that Lowry spanned the whole -- that camera turned around
15 and viewed the whole area which I was in, laying in a
16 hospital bed.
17 And at any time, like you just said, did you
18 see Catalano there? I am asking you a question. I know
19 you asked me questions, but I am asking you. Did you see
20 him there? Because I didn't.
21 Q. I didn't either.
22 A. Okay.
23 Q. And that was a split second in time, would you
24 not agree, of a pretty expansive interview.
25 At that point in time, I can see that the

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1 video did not show Catalano present there.
2 would you not also agree that there is -- that
3 that is a slice of the entire interview, and Catalano by
4 his own admission said he was -- he kind of overheard
5 portions of the interview, which suggests that maybe he
6 wasn't there the entire time, but was in and out, possibly
7 passing by.
8 would there not have been other opportunities
9 for him to have popped in or overheard parts of that
10 conversation, aside from that part -- that one specific
11 part that you are referencing where Lowry kind of turned
12 around a little bit?
13 A. If I recall, the question was posed to -- to
14 Lieutenant Pepper whether or not Catalano -- was there
15 anyone else in the room during the interview.
16 And if I recall right, the only person he made
17 a reference to was Lowry, okay. So I guess that's the best
18 answer I got for you.
19 Q. And this -- this was four years ago, right?
20 Approximately? That this interview happened?
21 A. Yes.
22 Q. Okay. And did he not also testify that he
23 didn't really necessarily recall who all was there, or
24 something to that effect?
25 A. I don't recall that.

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1 Q. Okay. Let me ask you this: So was Jared
2 Lowry, Officer Lowry, whose body cam it was, was he present
3 in the videos?
4 A. I saw him.
5 Q. He was, correct?
6 A. Yes.
7 Q. In the third video -- there is three different
8 videos. In the third one, finally, after 20, 30 minutes, I
9 don't know how many minutes of video, finally Pepper pans
10 around to the side and, poof, all of a sudden there was
11 another officer there holding a bag as they are putting
12 clothing into it.
13 So doesn't it raise the question, well, who
14 else may have been there?
15 I mean, Lowry was probably there the whole
16 time, but you don't even see him except for that one little
17 glimpse you catch of him.
18 A. That could have been Sergeant Pepper holding
19 the bag also. Or Lieutenant Pepper, excuse me.
20 Q. Now, you claim to have not seen Officer
21 Catalano, correct?
22 A. He wasn't there. I was facing in the
23 direction in which they were standing.
24 Q. Okay.
25 A. He was not there.

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1 Q. Yep. And were there curtains, walls, other
2 barriers, that sort of thing, where he could have been
3 present and overheard portions of the conversation without
4 you necessarily having been in a position to see him?

5 Isn't that plausible?

6 A. I guess it's plausible, but I don't see why he
7 would be hiding. He is part of the -- of the
8 investigation. Why would he be sneaking around in
9 curtains, all the rest of that? You know what I'm saying?

10 Q. Maybe he is behind a curtain talking to a
11 nurse and overhearing the conversation. Maybe he's out in
12 the hallway. Maybe --

13 A. His --

14 Q. -- he's within ear shot, but not eye shot.

15 A. His testimony was that he was in there
16 interviewing Denise and Bert. He was not. He did not
17 write in that probable cause that he was --

18 Q. Do you know where they were at in relation to
19 you, as far as where their rooms or their triage areas
20 were?

21 A. I know they were somewhere in the general
22 area, but no, I can't specifically know. I know it wasn't
23 close to me.

24 Q. So -- All right. Is it possible that Officer
25 Catalano could have viewed or listened to portions of the

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1 interview because it was recorded by the body cam? Maybe
2 that's what he was referring to when he said, I overheard
3 parts of the interview with -- Sergeant Pepper's interview
4 with Mr. Dean?

5 A. That -- that may very well be true, but we --
6 we all saw the video.

7 Q. Yep.

8 A. And I think we can all agree to the fact that
9 I wasn't flip-flopping and saying who had who and what, you
10 know. I was very precise in what happened.

11 Q. Yep. You are correct. We saw the video. The
12 video speaks for itself.

13 A. Of course.

14 Q. What the video shows at any given time is a
15 very limited window of the direction that Sergeant Pepper
16 happened to have been facing at that particular moment,
17 correct?

18 A. Correct.

19 Q. Everything else is outside the scope or the
20 view of the camera at that moment, correct?

21 A. Correct.

22 Q. Now, let me ask you this, did Officer Catalano
23 mischaracterize what he overheard in your interview in his
24 P.C. sheet?

25 Did he get it wrong?

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1 He was accurate, was he not?

2 I'll read it to you, what he wrote in his P.C.
3 sheet about what he overheard in the interview.

4 This is Exhibit 9, where he wrote, and I quote
5 from Officer Catalano's P.C. sheet. "Sergeant Pepper spoke
6 to Sean at the hospital and I was able to listen in on
7 different parts. Sean's story did not add up, and he
8 claimed that either Bert or Denise had a knife, or both of
9 them had a knife."

10 How is that a mischaracterization of what you
11 told Sergeant Pepper?

12 Isn't that accurate that you claimed that they
13 are the ones that had the knives and you didn't have a
14 knife?

15 A. Yes, I said that.

16 Q. He is not lying about what you told Sergeant
17 Pepper?

18 He is not shading this or making it sound
19 worse than it is, is he not?

20 Wasn't that an accurate representation of what
21 you told Sergeant Pepper?

22 A. He could have gleaned that information from
23 Sergeant Pepper. What I am referring to is -- is the
24 statement he made at the bottom of that probable cause that
25 when he listened in my conversation with Pepper that I was

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1 flip-flopping on who had knife and who didn't. That's a
2 false statement.

3 You saw the video. Everybody in here saw the
4 video. I was not flip-flopping on that. I was very
5 precise in what I said. That's -- that's a falsehood.

6 Q. Well, he didn't say that. This flip-flopping
7 thing that you are saying.

8 A. He was inconsistent in where he -- where he --
9 who had the knife and who didn't have the knife.
10 Flip-flopping, it's all -- it's the same thing.

11 Q. Maybe I am missing that, because I am not
12 seeing that in the P.C. sheet --

13 A. It's the last part.

14 Q. -- unless I am overlooking that?

15 A. Last part of the P.C.

16 Q. I'm going to show that to you and you can
17 point it out to me. I am not seeing the part where he is
18 saying flip-flopping on who had the knife.

19 I think this is Petitioner's Exhibit 9.

20 So there it is. There's the P.C. sheet. If
21 you could point that out for me, direct my attention to
22 what you are describing for me.

23 A. Okay. This is his -- this is the last part of
24 the P.C. It is line -- line 4 on the bottom paragraph of
25 the P.C. "Sean's story did not add up and he claimed that

172

1 either Bert or Denise had a knife or both of them had a
2 knife."
3 Q. Okay. Yeah, that's what I just read to you.
4 So what is inaccurate about that?
5 A. I was very specific in who had the knife -- in
6 who had the knives. That's what is inaccurate about that.
7 Q. Okay.
8 THE COURT: All right. We'll go ahead -- do you
9 want to finish your answer? Is there anything else?
10 THE WITNESS: No. We going to break for the day,
11 that's fine.
12 THE COURT: All right. It's time, I think.
13 So the Court will take the recess for the day and
14 we can pick up tomorrow. I think we had you coming in at
15 9:00.
16 Is that still good for the lawyers?
17 MR. MILLS: That's fine, Your Honor.
18 THE COURT: Okay. We'll see you then. All
19 right.
20 (WHEREUPON, the hearing adjourned at 4:57 p.m.)
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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4 I, LISA M. MANLEY, Official Court Reporter of the Fourth
5 Judicial District Court, Dept. II, of the State of Nevada,
6 in and for the County of Elko, do hereby certify that I was
7 present in court during all the proceedings had in the
8 matter of SEAN MAURICE DEAN, petitioner, versus
9 AITOR NARVAIZA, et al., respondent, heard at Elko, Nevada,
10 on November 20, 2019, and took verbatim stenotype notes
11 thereof; and that the foregoing 173 pages contain a full,
12 true and correct transcription of my stenotype notes so
13 taken, and a full, true and correct copy of all proceedings
14 had.

LISA M. MANLEY - CCR No. 271
OFFICIAL COURT REPORTER

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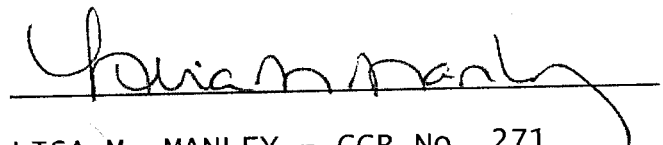
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LISA M. MANLEY - CCR No. 271

OFFICIAL COURT REPORTER

1 Case No. CV-HC-17-711

2 Dept. II

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ELKO CO DISTRICT COURT

CLERK _____ DEPUTY DA

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
NEVADA, IN AND FOR THE COUNTY OF ELKO

ooOoo

SEAN MAURICE DEAN,

:

Petitioner,

:

v.

:

HEARING ON PETITION

AITOR NARVAIZA
Elko County Sheriff,

:

FOR WRIT OF HABEAS

:

CORPUS

Respondent.

:

VOL. 2

/

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter
came on for hearing on November 21, 2019, at the hour of
9:14 a.m. of said day, in Elko, Nevada, before the
HONORABLE ALVIN R. KACIN, District Judge.

Reported by Lisa M. Manley, CCR No. 271

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APR 24 2020

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1 Case No. CV-HC-17-711

2 Dept. II

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6 IN THE FOURTH JUDICIAL DISTRICT COURT OF THE STATE OF
7 NEVADA, IN AND FOR THE COUNTY OF ELKO

8 00000

9 SEAN MAURICE DEAN, :

10 Petitioner, :

11 v. : HEARING ON PETITION

12 AITOR NARVAIZA : FOR WRIT OF HABEAS

13 Elko County Sheriff, : CORPUS

14 Respondent. : VOL. 2

15 _____/

16

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22 HONORABLE ALVIN R. KACIN, District Judge.

23

24

25 Reported by Lisa M. Manley, CCR No. 271

1

1 A P P E A R A N C E S

2

3 For the Petitioner: DAVID B. LOCKIE ESQ.
4 SHERBURNE MACFARLAN, ESQ.
5 LOCKIE & MACFARLAN
6 919 Idaho Street
7 Elko, Nevada 89801

8

9 For the Respondent: MARK S. MILLS, ESQ.
10 Elko County Deputy District
11 Attorney
12 540 Court Street
13 2nd Floor
14 Elko, Nevada 89801

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1 P R O C E E D I N G S

2

3 THE COURT: We're back on the record for Case No.
4 CV-HC-17-711. Again, that's Sean Maurice Dean, the
5 petitioner, versus Aitor Narvaiza, the Elko County Sheriff.

6

7 We have Mr. Dean back in court with his counsel

8

9 David Lockie and Sherb Macfarlan.

10

11 We also have Elko County deputy district attorney

12

13 Mark Mills to represent the State.

14

15 Then I think Mr. Mills is going to be -- was

16

17 asking cross-examination -- on cross-examination with Mr.

18

19 Dean.

20

21 So please resume the witness stand, sir.

22

23 Watch your step around there.

24

25 This is Mr. Dean. He is on cross-examination

1

2 with Mr. Mills, and of course he is still under oath.

3

4 MR. LOCKIE: Just while I think of it, I spoke

5

6 with Mr. Mills and we have now have a stipulation to

7

8 introduce the -- the PSI under seal.

9

10 THE COURT: Oh, right.

11

12 MR. LOCKIE: which has been marked for

13

14 identification, I believe, as 25.

15

16 THE COURT: Any objection to Exhibit 25?

17

18 MR. MILLS: No, Your Honor.

19

20 THE COURT: Exhibit 25 for identification is

21

22 admitted. That's Exhibit 25. Then that needs to be under

23

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4

1 seal because it has got personal information of Mr. Dean.
2 (WHEREUPON, Petitioner's Exhibit 25 was admitted into
3 evidence)

4 THE COURT: Mr. Mills, please proceed.

5 MR. MILLS: Thank you, Your Honor.

6 SEAN MAURICE DEAN

7 called as a witness in said case, having been first
8 duly sworn, testified as follows:

9 CROSS-EXAMINATION (Cont.)

10 BY MR. MILLS:

11 Q. So if you recall, yesterday afternoon we left
12 off talking about Officer Catalano, correct?

13 A. Correct.

14 Q. Okay. Now, do you dispute that Officer
15 Catalano was at the hospital at all that evening?

16 A. I didn't see him.

17 Q. You personally didn't see him?

18 A. No.

19 Q. Okay. Are you aware of the fact that he is
20 the one that took the photographs of your finger that
21 evening at the hospital?

22 A. No, I don't recall that.

23 Q. Okay. You don't recall him testifying to that
24 at the trial?

25 A. I don't recall him taking the pictures of my
5

1 -- I think what his testimony was is, I don't recall,
2 people were in and out.

3 And then let's assume that that discrepancy
4 had been presented to the jury in a way that possibly
5 undermined to some extent Officer Catalano's credibility.

6 With that assumption in mind, how would that
7 have -- let me ask you this. How important a witness was
8 Catalano in the overall scheme of things in this case?

9 A. Well, Catalano was the primary officer. He
10 was the officer that -- that arrested me.

11 Q. Yeah.

12 A. He was the officer that brought the charges
13 against me or -- well, that charged me.

14 Q. And what -- what did he actually do or see
15 that contributed to the conviction in your case, as far as
16 substantive, that was presented to the jury?

17 A. I'm not sure I understand your question.

18 Q. I will ask some more pointed questions then.
19 He interviewed witnesses, correct?

20 A. Who was that?

21 Q. For example, Officer Catalano interviewed Bert
22 Minter and Denise Minter, correct?

23 A. From what I recall, yes, at the hospital.

24 THE COURT REPORTER: Mr. Dean, can I get you to
25 keep your voice up, please?
7

1 finger.

2 Q. Okay. Or him testifying that he did so?

3 A. May have, but I don't recall that.

4 Q. Okay. And those photographs were introduced
5 into evidence at trial that he took of your finger at the
6 hospital; do you recall that?

7 A. I will take your word for it.

8 Q. Okay. In other words, isn't it possible he
9 might have been there but you just don't remember that he
10 was there?

11 A. Well, there was a curtain, I will concede that
12 point.

13 Q. Let me shift to another line of questioning
14 with regards to Officer Catalano.

15 So let's assume for the sake of argument, and
16 the State is not remotely conceding this, but let's assume
17 for the sake of argument that he had misrepresented that
18 line in his P.C. sheet about having overheard portions of
19 Sergeant Pepper's interview with you.

20 Let's assume for the sake of argument that Mr.
21 Woodbury had pointed out that discrepancy to the jury by
22 way of -- not sure how he would have done that, maybe
23 calling Sergeant Pepper and saying, Hey, do you remember if
24 Catalano was there?

25 Sergeant Pepper may have said something like
6

1 THE WITNESS: Yes, ma'am.

2 THE COURT: If you need to, you can always put
3 that mike at your chest level.

4 THE WITNESS: I just need to speak up.

5 THE COURT: Thank you, sir.

6 THE WITNESS: You're welcome.

7 Q. So I submit to you that a large part of what
8 he did was kind of responding on scene, talking to people,
9 interviewing people.

10 But if you'll recall, he did not testify to
11 what those people told him to a large degree because of the
12 rules of evidence.

13 Do you recall that he didn't regurgitate to
14 the jury, Here is everything that Denise Minter told me and
15 here is everything that Bert Minter told me?

16 He was not able to tell that to the jury.

17 And to put that in the form of a question, I
18 guess, is -- I guess, do you understand that the rules of
19 hearsay prevented him from communicating to the jury the
20 things that witnesses that he interviewed told him?

21 A. I understand it was hearsay, um-hmm.

22 Q. Okay. Furthermore, Bert and Denise Minter, do
23 you remember if they were interviewed by anyone else?

24 A. If they were, I don't recall.

25 Q. Okay. Do you recall that Detective Nielson
8

1 interviewed them and recorded the interviews with them?
2 A. I think that's what he testified to.
3 Q. Okay. So I guess my question for you is, if
4 Officer Catalano didn't really testify to anything terribly
5 substantive in this case, even if his credibility had been
6 undermined to a small degree by pointing out a supposed
7 discrepancy -- and, again, the State is not conceding that
8 discrepancy -- how would that have affected the case?

9 For Mr. Woodbury to have done that, how would
10 that have helped your case?

11 MR. LOCKIE: Your Honor, I'm going to object on
12 speculation at this point.

13 THE COURT: All right.

14 MR. MILLS: I think it's his opinion is what I am
15 asking for, which isn't -- he is the one, I guess, saying
16 that Officer Catalano is a liar and Mr. Woodbury was
17 ineffective by not pointing that out. I am trying to rebut
18 that.

19 THE COURT: I understand what you are trying to
20 do. These objections, especially in these proceedings,
21 tend to be long speaking ones.

22 But I don't know that it's speculation so much as
23 it -- really aren't you asking about prejudice? Isn't that
24 a legal question, I guess. And I think that's really what
25 we're driving at.

9

1 MR. MILLS: I think that's accurate, Your Honor.

2 THE COURT: For that reason I think its probative
3 value is not terribly important or --

4 MR. MILLS: So calls for a legal conclusion.

5 THE COURT: Yeah, one could argue it that way or
6 its probative value is not great. I understand what you
7 are trying to get at, but I will go ahead and sustain the
8 objection. I think I understand the point you are trying
9 to get to and it can be argued at the end.

10 MR. MILLS: Okay.

11 THE COURT: Anything else?

12 MR. MILLS: That's fair, Your Honor.

13 THE COURT: Okay.

14 Q. (By Mr. Mills) Let me switch gears to a
15 different topic, different line of questioning here, Mr.
16 Dean.

17 So I believe that you testified -- in fact, I
18 think you showed the judge that there was some injuries on
19 the -- it looked to me like you were showing him kind of
20 the top part of your hand; is that correct?

21 A. Yes.

22 Q. So could you describe those injuries for me?
23 And aside from -- I am not referring to the one that --
24 again, we all agree there was a slice to your finger right
25 here.

10

1 But the other injuries, what injuries were
2 those?

3 A. Yes. Cut mark on the top of my hand.

4 Q. Could I see those?

5 A. Of course. One between my finger.

6 Q. Okay. It was your testimony that those --
7 that those faint marks or scars on your -- those lines on
8 your fingers were caused as a result of the incident in
9 this case?

10 A. Yes.

11 Q. Now, at the time that those injuries occurred,
12 were they -- how would you describe those? Was it a
13 scratch or a laceration?

14 A. It was a laceration from the knife that Bert
15 Minter was swinging at me.

16 Q. Okay. So was there -- were those lacerations,
17 were they bleeding?

18 A. Yes, they were bleeding.

19 Q. So why didn't the hospital treat those
20 lacerations or do anything with them?

21 A. You would have to ask the hospital that.

22 Q. And why is there a video -- the body cam video
23 of Sergeant Pepper, 10 seconds into the first video, you
24 get a crystal clear look at the top of your hand, and there
25 is not any kind of laceration, cut, or mark on your hand?

11

1 MR. LOCKIE: Your Honor, I'm going to object to
2 the question. It's not crystal clear. The witness even
3 testified he couldn't discern from the video, it wasn't
4 sufficient quality.

5 THE COURT: Any response?

6 MR. MILLS: I will withdraw. I will rephrase the
7 question.

8 THE COURT: Rephrase, that's fine. Withdrawn.
9 Rephrase.

10 Q. (By Mr. Mills) Did you observe any lacerations
11 on your hand in the video at the point in time where the
12 top of your hand is visible?

13 A. I really couldn't see. I was looking at your
14 laptop, so I was too far away to --

15 Q. It's in evidence. We'll let the judge review
16 it, make his own determination on that point.

17 A. There you go.

18 Q. You would agree that there is -- have you
19 reviewed your medical records in this case?

20 A. I got them yesterday from my legal team, but I
21 haven't had a chance to review them.

22 Q. Okay. Would it surprise you to learn that the
23 medical records don't reference any of the other cuts that
24 you are talking about? Just the one laceration?

25 A. It wouldn't be no big surprise. People make

12

1 mistakes.
2 Q. Okay. Did you tell hospital staff, oh, by the
3 way, I have got other cuts on my hand that you need to
4 treat?
5 A. The hospital staff, I don't think I should
6 have to tell them anything. They seen the marks for
7 themselves.
8 Q. If a patient is in the hospital and you got
9 two cuts and they are treating one of them, you wouldn't
10 bring it to their attention that, hey, why don't you treat
11 the other one?
12 A. Talking four years ago, so maybe they -- maybe
13 they don't think these two cuts on my hand were really that
14 deep for them to -- to really pay any special attention to,
15 other than my finger which was really deep.
16 Q. Okay. Well, the -- we'll move on to another
17 topic. The medical records are in evidence and the video
18 is in evidence.
19 THE COURT: What exhibit is the -- are the --
20 MR. MILLS: The medical records are Petitioner's
21 Exhibit 20.
22 THE COURT: Thank you very much.
23 MR. MILLS: Yep.
24 Q. So I want to ask you some questions about --
25 about the evidence of drug use or sales by Denise Minter.

13

1 Now, I -- my understanding from your testimony
2 is that -- correct me if I'm wrong, but it was my
3 understanding that you wanted to put that evidence on in
4 front of the jury; is that correct?
5 A. I was prepared to testify to that, that
6 effect.
7 Q. Okay. And why did you -- why did you want to
8 inform the jury about Denise Minter's involvement in drugs
9 and narcotics and whatnot?
10 A. Well, as I testified to, we, meaning me and
11 Mr. Woodbury, had a theory. Our theory was that -- and it
12 was the only logical one we could come up with as for the
13 immediate aggression in the events that transpired when I
14 went over to Denise's house, the immediate aggression, Bert
15 Minter not going back in the house when -- when Denise told
16 him to, him coming down the stairs and he just got out of
17 the hospital with the -- out of the nursing home.
18 So we had a theory that the drug use was a
19 pertinent -- pertinent theory and drug use was viable.
20 Q. And I assume that you have reviewed a copy of
21 the letter that -- that Mr. Woodbury wrote to you in
22 response to your concerns about the drug evidence, correct?
23 A. Yes.
24 Q. There is a -- a subtopic here in the letter
25 entitled The Dope Question where he explained in quite some

14

1 detail about his reasons for not putting that evidence on.
2 And if you recall, he expressed some concern
3 about -- about the jury jumping to conclusions about you
4 being involved in the drug world if he introduced Denise
5 into that world, correct?
6 A. Correct.
7 Q. And you disagree with that decision he made
8 to -- to not put that evidence on in front of the jury?
9 A. Yes, I disagree.
10 Q. You were willing to take that risk that the
11 jury might associate you with the drug community?
12 A. Well, yes, because I had -- I asked
13 Mr. Woodbury to question when Denise Minter was on the
14 stand and when Lindsey Steele was on the stand, to question
15 them and ask them point blank, had they ever observed me
16 using dope or selling it.
17 Q. I assume you are aware of the fact that your
18 attorney filed a motion in limine bringing this drug issue
19 to the attention of Judge Kacin and requesting legal
20 guidance and permission to ask those kinds of questions.
21 Are you aware of the fact that he filed such a
22 motion?
23 A. I am aware of it.
24 Q. Do you know how the judge ruled on that?
25 A. I am unclear on that. It has been awhile.

15

1 Q. And to be fair, there were several issues that
2 were raised by Mr. Woodbury, separate legal issues raised
3 in that motion in limine.
4 But one of those issues was the issue of
5 whether and to what extent Mr. Woodbury would be permitted
6 to elicit that kind of information about the drug use and
7 sales potentially on the part of Ms. Minter.
8 So I'm going to show you -- I will just read
9 it to you -- this is Petitioner's Exhibit 6. Where the --
10 where the district court judge in this case ordered in
11 response to that motion in limine, "Dean shall not be
12 permitted" -- and by Dean he is referring to you through
13 your counsel, to Mr. Woodbury -- "shall not be permitted to
14 question Duff about his trip to Reno with Syddall, two,
15 question the Minters about whether they sold
16 methamphetamines during the latter half of 2015; three,
17 question Darrell Palmer about whether he bought
18 methamphetamine from Denise in the fall of 2015; and four,
19 question Officer Shelley about whether the Minters were
20 suspected of selling controlled substances."
21 Do you understand your defense attorney for
22 legal reasons was not even permitted to ask those
23 questions?
24 A. Okay.
25 THE COURT: I'm sorry, which exhibit is this now?

16

1 MR. MILLS: Petitioner's Exhibit Number 6. It's
2 a copy of this Court's order regarding motion in limine.
3 THE COURT: Thank you.
4 Q. There was a note, a written communication back
5 and forth between you and Mr. Woodbury, correct, about that
6 issue of, you know, why didn't you ask her about if she
7 sells drugs or uses drugs.
8 You asked him that question in a written note,
9 correct?
10 A. Correct.
11 Q. His response, if I recall, was something along
12 the lines of, The judge hasn't ruled on that yet but I can
13 call you as a witness if I need to pending the outcome of
14 his ruling.
15 Or something along those lines; is that
16 correct?
17 A. I believe so.
18 Q. So I think this is Petitioner's Exhibit 18.
19 So I will read this exchange to you, then I
20 will ask the question.
21 So you said to him -- or asked him in writing,
22 "why didn't you ask" -- "why didn't you ask me about her
23 drug use or sales?"
24 And then he responded, "It's complex. Kacin
25 hasn't decided the rest of it. I can always call you back
17

1 when he does."
2 Do you recall having that conversation with
3 him?
4 A. Take your word for it.
5 Q. Okay. Is that your handwriting and his
6 handwriting?
7 A. Yes, it is.
8 Q. Okay. So you don't dispute that that
9 conversation took place, correct?
10 A. No.
11 Q. Okay. Let me ask you kind of on a related
12 topic about the -- this -- it's my understanding that one
13 of the defense theories of the case was going to be that
14 Denise and Bert conspired to get you arrested in order to
15 get you out of the picture so that they could resume
16 selling narcotics; is that correct?
17 A. Correct.
18 Q. Now, was that a theory that was propounded --
19 or let me use a different word.
20 Was that a theory that was -- that was
21 advocated more by you or by Mr. Woodbury or both? Did you
22 guys kind of jointly want to put that theory on?
23 A. If I recall, I believe that theory manifested
24 through Mr. Woodbury. We searched for possible reasons for
25 the events that happened and that was the theory.
18

1 Q. And part of that theory was -- I guess, a
2 factual part of that theory is the idea that the police
3 were keeping an eye on the Minters' house because they were
4 looking for you. Is that correct?
5 A. I guess so.
6 Q. And that that surveillance of their house
7 would interfere with their drug activities?
8 A. I suppose so.
9 Q. Yep. And, therefore, that is why they wanted
10 to find a way to get you out of the picture; so that they
11 could resume with their drug activities. Correct?
12 A. Correct.
13 Q. Would you have been comfortable putting on
14 evidence, even kind of vague and general evidence, about
15 the Christina Hodges case from a couple weeks prior?
16 A. No, I don't think I would be.
17 Q. You wouldn't want the jury to --
18 A. Not even remotely concerned with that issue.
19 Q. Yeah.
20 A. No.
21 Q. Understandably. Neither you nor Mr. Woodbury
22 would want the jury to hear anything about that?
23 A. Of course.
24 Q. And the rules of evidence wouldn't permit it.
25 I would not introduce that evidence. That is an unrelated
19

1 case.
2 But isn't that the reason that the police were
3 keeping an eye on the Minters' house was because of that
4 case?
5 That's why they were looking for you, correct?
6 A. I don't know why they were looking for me. I
7 didn't even know at the time they were looking for me, to
8 tell you the truth.
9 Q. But I guess in order to advance that theory,
10 that conspiracy theory, you guys would have had to present
11 evidence that the police were, in fact, looking for you and
12 surveilling the Minters' house, correct?
13 A. I don't know if that question would have come
14 up. It's a possibility, but I -- but I cannot be sure of
15 that.
16 Q. And wouldn't that have presented possibly
17 harmful evidence to the jury about you if the jury were to
18 hear that the police were looking for?
19 A. It would have been prejudicial.
20 Q. Yeah. So, ultimately, was it Mr. Woodbury
21 that made the decision not to, I guess, put that -- that
22 evidence on? I guess in combination with the Court's
23 order, right?
24 A. I believe it was more the Court's order that
25 stopped it, if that's the case.
20

1 Q. Do you think he would have put that evidence
2 on had the Court ruled that it was permissible to ask that
3 line of questioning?

4 A. It's hard to say.

5 Q. I'm going to switch gears to another topic
6 here.

7 So I take it from your testimony that you had
8 disagreed with Mr. Woodbury's decision to ask you about
9 your knowledge of knife fighting; is that correct?

10 A. Come again? Would you please say that again?

11 Q. Yep. So you didn't agree with Mr. Woodbury's
12 decision to ask you about the knife fighting; is that
13 right?

14 A. No, I didn't agree with that.

15 Q. You didn't think that was a sound trial
16 strategy?

17 A. The testimony was prejudicial.

18 Q. Okay.

19 A. And inadmissible.

20 Q. You had conversations with him about that
21 topic, though, before testifying, correct?

22 A. I had a conversation with him.

23 Q. Okay. When did that conversation take place?

24 A. Hard to recall. Like I said, it was before
25 trial started.

21

1 first, then I will read your response to them. I'm going
2 to ask you some questions about them.

3 So Mr. Woodbury wrote to you: "The biggest
4 problem we're facing is that Dr. Ward said one of the stab
5 wounds went in three and a half inches. That tends to make
6 you liable on the attempted murder charge." And then to
7 the side, "alternatives." "My question is whether you know
8 in a knife fight whether you don't just stab, you also
9 slice while the blade is in the guy."

10 So you would agree that Mr. Woodbury wrote
11 that question to you during trial, correct?

12 A. I take your word for it.

13 Q. The first thing he says is "Dr. Ward said that
14 one of the stab wounds went in three and a half inches."

15 Dr. Ward didn't say that until he took the
16 stand in the trial, correct?

17 That's when that information came out about
18 the depth of the stab wound, correct?

19 A. I take your word for. It has been awhile.
20 That trial has been awhile.

21 Q. You wrote a whole letter to him about that
22 particular topic. I am a little surprised you don't
23 remember that?

24 A. I have been in jail for four years, Mr. Mills.
25 And I'm -- I'm 53 years old. I can't remember everything.

23

1 Q. Tell us what you remember about that
2 conversation?

3 A. Well, as I testified to, it was like any other
4 visit Mr. Woodbury had prior to that visit, and
5 Mr. Woodbury seeking information about various things that
6 happened on the night in question.

7 And after he finished and was satisfied with
8 the -- the questions and answers he received and gave, he
9 started in asking me about did I have any friends or had I
10 ever engaged in a knife fight.

11 Q. This was before trial?

12 A. Yes, this was during the normal visit we had.
13 And yes, before trial.

14 Q. Did you have any conversations with him about
15 the knife fighting topic during trial or, you know,
16 immediately before you testified?

17 A. I don't recall that.

18 Q. Okay. I would refer your attention to
19 Petitioner's Exhibit 19. I will just go ahead and read it
20 to you. This has been admitted into evidence.

21 Just to clarify, would you agree that the top
22 two paragraphs are Mr. Woodbury's handwriting and that
23 these bottom ones responding to those are your handwriting?

24 A. Yes.

25 Q. Okay. So I will read Mr. Woodbury's comments

22

1 Q. Fair enough. It was a while ago.

2 And your response to that was, "I have never
3 known anyone doing just one or the other. It depends on
4 the person, I guess, and how familiar they are with using a
5 knife. I have never been in a knife fight. If your intent
6 is to kill someone, slicing isn't going to get the job
7 done. You have to poke that person."

8 Again, you agree that that was your
9 handwriting responding to that, correct?

10 A. I agree.

11 Q. And would you agree that if this -- this note
12 here clearly would have -- this exchange in this note would
13 have taken place during trial after Dr. Ward testified, as
14 opposed to before trial, correct?

15 A. Like I said, I will take your word for it.

16 Q. Is there any way this note could have been
17 written before trial?

18 A. I have no recall of that.

19 Q. Did you guys communicate with each other in
20 your in-person visits, in your pretrial prep, did you
21 communicate this way?

22 A. We had no pretrial prep in a sense that you
23 are saying in trial prep. There was none of that in the
24 six and a half months Mr. Woodbury was --

25 Q. You guys -- you guys never met in person,

24

1 talked about the case?
2 A. Oh, yes, we met and talked about the case.
3 But you are talking about trial prep. There was none of
4 that.
5 Q. Isn't talking about the case in essence trial
6 prep?
7 A. No, I don't think so. He didn't prep me for
8 questions that's going to be asked. Potential
9 cross-examination questions that are going to be asked me
10 is, to my knowledge, the trial prep.
11 Q. But the long and short of it is that in those
12 pretrial meetings and conversations you had with him, you
13 guys didn't communicate like this? Like in writing, right?
14 A. I can't recall if we did or not.
15 Q. Would there be a need to if you are in person?
16 Why on earth would he write a question and then pass the
17 paper to you and have you write a response to it?
18 A. Like I said, I -- it has been awhile.
19 Q. And how would -- before trial, how would
20 Mr. Woodbury have a crystal ball to see in the future to
21 see what Dr. Ward testified to?
22 A. (No audible response).
23 Q. In other words, you had a conversation with
24 Mr. Woodbury about that very topic of knife fighting in
25 trial after Dr. Ward's testimony. Isn't that what that

25

1 suggests?
2 A. I can't recall that.
3 Q. Not just suggests, but that demonstrates
4 pretty conclusively that you guys had a conversation about
5 that?
6 A. I will take your word for it. Like I said, I
7 can't recall.
8 Q. Okay. Well, we'll let the exhibit speak for
9 itself.
10 Now, I believe your testimony yesterday was
11 that -- that -- trying to remember the words you used --
12 seems like you were surprised by the fact that he was
13 asking you these questions about knife fighting.
14 A. Yes.
15 Q. That you were uncomfortable with him asking
16 you those questions; is that fair to say?
17 A. I was shocked that he even started that line
18 of questioning.
19 Q. That you were shocked, okay. Have you had a
20 chance to review the transcript of that exchange between
21 you and him at trial?
22 A. It has been awhile. If I did, it has been
23 awhile.
24 Q. I understand it has been awhile. I will go
25 ahead and read this to you, then I'm going to ask you some

26

1 questions about it.
2 THE COURT: This is the trial transcript --
3 MR. MILLS: Yes, this would be --
4 THE COURT: -- of Mr. Dean's testimony?
5 MR. MILLS: That's correct. This is Petitioner's
6 Exhibit Number 11 for the record. To clarify further, this
7 is Volume 4 of the jury trial transcript, which
8 collectively has been marked as Petitioner's Exhibit 11.
9 MR. LOCKIE: Judge, I have a spare courtesy copy
10 if the Court is interested in it.
11 THE COURT: I just -- I'm trying to keep track in
12 my notes where we are, and I will follow along. Thank you,
13 though.
14 Q. Mr. Woodbury asked --
15 MR. MACFARLAN: Excuse me, Mr. Mills. What page?
16 MR. MILLS: This is page 140. Volume 4, page
17 140.
18 MR. LOCKIE: Might it be helpful for the witness
19 to have a copy to follow along? It's up to you.
20 THE COURT: We can hand one up to him, that's
21 fine.
22 Is that all right with you, Mr. Mills?
23 MR. MILLS: Yeah, that's fine. Do you have a
24 copy?
25 That's what I was looking for, to see if I had a

27

1 spare copy. If you have got one, absolutely.
2 MR. LOCKIE: Yes.
3 THE WITNESS: What was that, 140?
4 MR. MILLS: Yeah, so it's page 140.
5 Q. (By Mr. Mills) Okay. So starting at line 18.
6 Are you with me there, Mr. Dean? The question from
7 Woodbury starting, "Mr. Dean, while you were being raised?"
8 Do you see that part of the transcript?
9 A. Yes.
10 Q. Okay. So Mr. Woodbury asked, "Mr. Dean, while
11 you were being raised in Sacramento, California, did you
12 have" -- "did you have friends or associates or people that
13 you knew that got in knife fights?"
14 Your response: "Yes."
15 "Did you ever get in one?"
16 "A few."
17 "All right. Were you the person with the
18 knife?"
19 You responded: "No, sir. Knives been pulled
20 on me."
21 "Excuse me?"
22 "They were pulled on me."
23 Mr. Woodbury: "Ah. Based on that kind of
24 knowledge, did you learn if you were going to hurt somebody
25 real bad with a knife, maybe kill them, how you would go

28

1 about doing that?

2 Your response: "From my experience, it's you

3 trying to dig the knife up in as far as you can go, and you

4 going to try to rip something with it, going to pull, tug,

5 going to do something to cause some damage."

6 Question: "We are going to have to do

7 something about your voice. We're having trouble hearing

8 you."

9 Your response: "I'm sorry."

10 Question: "If you were trying to kill

11 somebody with a knife, what would be the right way to do

12 that?"

13 Answer: "Try to puncture them and twist it

14 and rip it. Just try to -- try to rip, try to rip

15 something."

16 Question: "Okay. Is that something you have

17 ever done?"

18 "No, sir."

19 "How do you know that is how you are supposed

20 to do it?"

21 "That's how it has been done ever since I

22 known people that get into knife fights."

23 "Okay."

24 Answer: "Most effective way to hurt

25 somebody."

29

1 So does that refresh your recollection of the

2 exchange that took place between you and Mr. Woodbury?

3 A. Yes.

4 Q. With regards to that topic?

5 A. Yes.

6 Q. You didn't seem at a loss for words when he

7 asked those questions, did you?

8 A. Well, what was I to do, Mr. Mills? He put me

9 on the spot. Was I supposed to say, "Time out," or

10 whatever? He started that line of questioning and I ran

11 with it how I answered him during the interview right

12 before trial.

13 To clarify, if you would like me to clarify, I

14 have never pulled a knife on anybody and sat there and had

15 a knife fight with somebody. They were pulled on me.

16 Q. Yep.

17 A. And my knowledge of that was described to me

18 by the associates I knew personally in Sacramento and those

19 inside the penitentiary, where it's common.

20 Q. And Mr. Woodbury made that clear to the jury,

21 correct? That you had -- you were not the one stabbing

22 people, correct?

23 A. Yes, I believe he did. It has been --

24 Q. Well, we just read it.

25 A. Okay. I will take your word for it.

30

1 Q. You understand that he never told the jury

2 that -- or suggested that you were the one stabbing people,

3 correct?

4 A. Yes.

5 Q. Now, do you -- you said something earlier. I

6 was going to ask you about this. You kind of brought it

7 up.

8 You made kind of a "T" sign with your hand,

9 indicating "time out," right?

10 So, I mean, that is a reasonable question.

11 Like, why didn't you -- if you were that surprised and

12 shocked and angry at this line of questioning, why didn't

13 you just ask for a quick recess to confer with your

14 attorney to discuss it, and bring it up with the judge?

15 A. Once again, court procedures, I am -- this

16 is -- I have been in and out of the court since '85, okay.

17 I had one trial in '85, and here we are 2016 and I am in

18 another one.

19 So court procedure I'm not familiar with. So

20 I didn't know whether I had that option to say, "Time out,

21 Judge, wait a minute." You know what I'm saying?

22 To say that this is wrong. You know what I

23 mean?

24 Q. Well, I mean, you have never seen a witness

25 or --

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1 A. No.

2 Q. -- a defendant --

3 A. No.

4 Q. -- or an attorney --

5 A. No.

6 Q. -- say, Hey --

7 A. No.

8 Q. -- can we have a quick recess?

9 A. I have seen attorneys do that, but I haven't

10 seen defendants do that.

11 Q. Did it occur to you to do that, to say, Hey,

12 wait, I don't want to answer this question? You know,

13 Maybe I need to talk to my attorney about this.

14 A. Look, once again, I am not familiar with court

15 procedure, especially during a trial. So I don't know -- I

16 didn't know at the time if I had that option to say, hey,

17 look, time out, you know, or whatever. I didn't know I had

18 that option.

19 So I continued to ask -- answer the questions

20 as I told him during the interview, plain and simple.

21 Q. I want to talk now a little bit about -- I

22 want to switch gears a little bit, talk about jury

23 selection.

24 You said something yesterday in your direct

25 examination testimony that kind of stuck out to me a little

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1 bit.
2 You claimed that Mr. Woodbury told the jury,
3 or the prospective jury, this was during jury selection,
4 that African Americans have a propensity for violence.
5 Is that what you -- correct me if I'm wrong,
6 did you not testify to something along those lines
7 yesterday?
8 A. Yes.
9 Q. Is that your recollection of what Mr. Woodbury
10 told the jury at jury selection?
11 A. That's my recollection.
12 Q. Do you have that -- this Volume 1 now of
13 Exhibit -- Exhibit 11.
14 So I don't know, do you want to follow along
15 on this one?
16 A. Yeah, go ahead.
17 Q. Should I just read?
18 A. Go ahead.
19 Q. Okay. So this is page 120 of Volume 1 of the
20 jury trial transcript -- it has been marked as Petitioner's
21 Exhibit 11.
22 Mr. Woodbury asked the jury, "Did you ever
23 think you would be sitting as a juror with a black guy
24 sitting in a defendant's box and you would be asked to be
25 fair about him?"

33

1 "Anybody that thinks they can't be fair?
2 "Are there any jurors sitting here who do not
3 have some kind of notion that black people have certain
4 attributes that are widely known, from your television or
5 things you have read or friends you have talked to?
6 "You don't?
7 "Is that right?
8 "They all like watermelon, don't they? Nobody
9 ever heard that before?
10 "Did you ever think about whether it's true or
11 not?
12 "Ladies and gentlemen, I have no means to know
13 all of the things that are out there that one might assume
14 about black people. I can't know all of the things.
15 "We know some of them. We know about the
16 watermelon. This case isn't about watermelon.
17 "If you have heard they have an attribute of
18 violence, that they are sneaky, all of those things.
19 Clearly some of you have heard things like that about black
20 people.
21 "Is there anybody that can raise their hand
22 and say they have never heard that?
23 "What we're trying to accomplish is Mr. Dean,
24 we are not asking you to fall in love with black people.
25 We are not deciding anything like that. We are not asking

34

1 you -- for you to be more than fair or to fall over
2 backward to pull Mr. Dean out of this.
3 "But what we are asking is that when you hear
4 evidence that triggers in your mind, just in your mind,
5 that there is an attribute that black guys have that --
6 that explains his conduct, we are asking you to do one
7 thing. Take one second and think about whether or not the
8 evidence justifies that conclusion, or whether you are just
9 putting an assumption that you have heard sometime before
10 in other circumstances and applying it to Mr. Dean."
11 So did Mr. Woodbury actually factually assert
12 to the jury that -- that African Americans have a
13 propensity for violence?
14 A. That's what it was implying.
15 Q. Or was he not just trying to find out if any
16 of the jurors believed those stereotypes or
17 mischaracterizations?
18 Isn't that what he was trying to get at?
19 A. I have no idea what he was actually trying to
20 get at. You would have to ask Mr. Woodbury that.
21 What I do know is that this case had
22 absolutely nothing to do with race. And I asked Mr.
23 Woodbury on several occasions not to bring race into my
24 trial, and he did anyway.
25 Q. You were concerned about race before trial,

35

1 were you not?
2 A. Only on a limited basis on the fact that I
3 realize that Elko County and the surrounding areas is
4 predominantly white.
5 My only concern, only concern, was that it was
6 a possibility that I may obtain an all-white jury. So
7 therefore I asked Woodbury on a number of occasions,
8 reiterating that under no circumstances are you to bring
9 race into my trial, this is only to ask for a change of
10 venue, because of the reasons I gave, okay.
11 Mr. Judge Kacin gave his ruling, and that was
12 a done deal as far as I was concerned.
13 Q. Gave what ruling?
14 A. That if it came up -- if I recall right, his
15 orders were if it came up during jury selection, we would
16 deal with it then. I believe those were his words.
17 Q. And did Mr. Woodbury explain to you that
18 that's kind of how the law works with regards to a request
19 for a change of venue?
20 A. Excuse me?
21 Q. Did Mr. Woodbury tell you that you weren't
22 going to get your change of venue you were asking for?
23 A. No. Mr. Woodbury, when I asked him, told me,
24 if I recall right, that that was a legitimate concern. I
25 believe those were his words.

36

1 Q. Did he tell you whether there was a legal
2 remedy for that concern as far as getting -- actually
3 getting a change of venue?

4 A. No, he didn't go into all those details. He
5 just said that was a legitimate concern and that he would
6 broach the subject with the judge. Which he did in an oral
7 manner.

8 Q. At your request, correct?

9 A. At my request.

10 Q. The fact of the matter is that you didn't
11 think you could get a fair trial in Elko County, correct?

12 A. I was concerned about getting an all-white
13 jury. In my mind, and it's what I believe, is that a jury
14 should be diverse. Some white, maybe some Mexican, some
15 Native American, some black. It should be diverse. It
16 shouldn't just be one ethnicity.

17 Q. Well, would that have helped you to have
18 Native Americans or Hispanics on the jury?

19 A. They share different views on issues.

20 Q. Do you remember --

21 MR. MILLS: Your Honor, at this time I'm going to
22 ask Mr. Dean about some of the statements he made at the
23 first sentencing hearing when Mr. Woodbury was discharged
24 as his attorney.

25 And I have this marked as State's Exhibit 4-H.

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1 I'm going to offer that into evidence at this
2 time.

3 MR. LOCKIE: No objection.

4 THE COURT: Exhibit 4-H for identification is
5 admitted.

6 (WHEREUPON, Respondent's Exhibit 4-H was admitted into
7 evidence)

8 Q. (By Mr. Mills) So, Mr. Woodbury, do you recall
9 that first sentencing hearing where you had --

10 A. I am not Mr. Woodbury.

11 Q. I'm sorry. I apologize. Didn't mean to
12 insult you.

13 A. No insult intended. No offense.

14 Q. Mr. Dean, do you remember at that first
15 sentencing hearing where -- where you kind of aired your
16 concerns to the judge about some of the stuff that had gone
17 on between you and Mr. Woodbury with regards to him writing
18 what he wrote on that note during trial and subsequently
19 the letters that you two wrote back and forth?

20 Do you recall that?

21 A. I do recall that I grabbed Judge Kacin's
22 attention and asked could I speak candidly with him. I was
23 quite upset that day. It has been awhile, so I can't
24 recall exactly what I said. But I was -- I was very upset.

25 Q. During that hearing you expressed some pretty

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1 strong feelings about -- about race; did you not?

2 A. I believe I did. Race is a very sensitive
3 subject to people, especially African Americans.

4 Q. And I understand that. And that's -- I
5 wouldn't disagree with that.

6 But specifically, didn't you express some
7 strong opinions about the racist tendencies of the citizens
8 of Elko County?

9 A. Now that you mention it, and if I did express
10 those concerns, it was only due to my experience since I
11 have been here in Elko. As I have -- as I have probably
12 related to the Court, there couldn't have been any day that
13 I stepped outside the house I was living in that I wasn't
14 called the n-word.

15 And when you -- you start hearing those racial
16 slurs and many more that I have been called, me and my
17 friends, since I have been here, you start -- you tend to
18 start thinking that this is the consensus.

19 You know, I would be over by Walmart, up by
20 DMV, in the tree streets, or in the Lamaille area, and you
21 just -- I mean, it's natural to start thinking, well, this
22 is the atmosphere here in Elko.

23 I mean, it's natural to feel that way when
24 this is all you hear every time you step out to go
25 somewhere.

39

1 Q. The bottom line is that you had a concern
2 about whether jurors in this case could be fair towards a
3 black person, correct?

4 A. When you have the experiences I have had out
5 on the streets of Elko, then, yes, quite naturally you are
6 concerned. That's natural.

7 Q. And you expressed that concern to Mr.
8 Woodbury, correct?

9 A. I don't recall expressing it to Woodbury. I
10 probably have, but I can't recall that.

11 Q. Okay. I'm going to again read portions of
12 your statement to the Court. Would you care to follow
13 along? I do have an extra copy.

14 A. No, I take your word for it.

15 Q. Okay. If petitioner's counsel wants to follow
16 along. For the record, this is the Respondent's Exhibit
17 4-H. It's page 8 of the transcript of the sentencing
18 hearing, the first sentencing hearing that occurred on
19 September 29, 2016.

20 So I will just -- there is a lot here. I will
21 just pick out -- this is on page 8, where you are
22 explaining to the judge.

23 "We all know there is very few African
24 Americans here in Elko. Very few. And I say very few
25 meaning there is very few citizens, actual citizens, that

40

1 live here in Elko."
2 Then, "It was my general consensus when we
3 went to go select a jury, the chances were that I was going
4 to get an all-white jury. And this is why I asked Woodbury
5 on two separate occasions, 'I want you to approach the
6 judge and tell him my apprehensions about having this --
7 having this trial here in Elko.'"

8 So based on that, wouldn't you agree that you
9 raised these concerns with Mr. Woodbury?

10 A. I take your word for it. I raised the issue.
11 It was -- it was my concern.

12 Q. All right. Then a little bit later on -- so
13 he did bring that to the court.

14 "And he did that. Now, what you said was, you
15 know, look, we are going through the jury selection
16 process, you know what I'm saying? If we notice that there
17 is people in the pool that's racist, I'm going to tell them
18 to get up out of here, you know what I'm saying? We'll go
19 from there.

20 "But in hindsight, how is that to be? I mean,
21 like the Court ask them, 'Are you racist?' They raise a
22 hand, 'Yeah, I'm racist.' Come on, that's not -- you know
23 what I'm saying.

24 "People here in Elko aren't used to living
25 around African Americans. They don't know how we interact

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1 with people, how we live, how we go about our daily
2 business. They don't know that.

3 "The only thing they know is what happens on
4 TV, how they depict African Americans on TV, radio, rap
5 music, what have you. So they got this stereotype of every
6 African American is violent, pimps, gangbangers, drug
7 dealers and what have you.

8 "So there is this stereotype in them that the
9 Court can't possibly give an instruction to say, Can you
10 look at this case based on the facts and judge this case
11 based on that.

12 "You know, they are still going to convict me
13 because of their beliefs".

14 So would you not agree here that you -- you
15 acknowledge, as Mr. Woodbury explained and as he explained
16 to the jury, that unfortunately some people do have these
17 biased, you know, unfair stereotypical beliefs about
18 African Americans being associated with violence.

19 You would -- I mean, you yourself acknowledge
20 that that belief is out there, correct? Fair or not.

21 I would agree with you that that is maybe a
22 pernicious belief or pernicious stereotype. It's not a
23 good thing, but you have to acknowledge reality, right?
24 Maybe some people might have that association.

25 A. I can go with that.

42

1 Q. You said it?

2 A. Okay.

3 Q. And Mr. Woodbury said it, correct?

4 A. Do you want me to answer?

5 Q. Yes.

6 A. Yes, he did. But you have to realize that me
7 explaining my feelings to Mr. Woodbury during our visits
8 and me actually wanting him to bring that out towards the
9 jury is two different things. Okay.

10 If I expressed it to Mr. Woodbury, I did that
11 only to let him know how I felt about this and the reasons
12 why I asked him to ask Judge Kacin for a change of venue.
13 Under no circumstances did I ever want him to broach the
14 subject of race at my trial because I did not want the jury
15 to think that I was playing the race card.

16 Mr. Woodbury is my attorney, so therefore, he
17 is speaking on my behalf. So if the jury is under the
18 impression that I put Mr. Woodbury up to play the race
19 card, they are not going to take it out on Mr. Woodbury,
20 they are going to take it out on me. Okay.

21 Q. So if you had this concern about -- about a
22 juror being fair to you on account of race, and if he had
23 that concern, how is he supposed to have addressed that
24 issue in jury selection?

25 A. He wasn't supposed to address that at all.

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1 Q. That was your position?

2 A. He was just supposed to leave it alone as my
3 feelings, and that was that.

4 No, like I just told you, those were just my
5 personal feelings about my experiences here in Elko since I
6 have been here, okay.

7 So totally different thing from wanting my
8 attorney to bring that up. Two different things, okay.

9 Q. And so it was your position, and you would
10 have been comfortable with him just not raising it at all?

11 A. I did not want him to raise it at all. Not in
12 the least.

13 Q. Even in spite of your belief that there --

14 A. I don't care what he was thinking about. I
15 don't -- I don't care. Don't raise the race issue.
16 Period. Okay. Period. Don't bring it up at all. This
17 case has nothing to do with race.

18 There was not one shred of evidence in this
19 case that had anything to do with race, so why
20 unnecessarily bring it up? Why inflame people's prejudice,
21 if they have them, unnecessarily? Okay. Why do that?
22 It's bad, okay.

23 And he did that intentionally after I told him
24 not to do it, okay. This is my trial, not his. Okay. So
25 if I ask my lawyer not to bring up a issue, he should have

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1 enough respect for me not to bring it up. He did it
2 anyway, okay.

3 Q. In fact, some of the jurors were somewhat
4 offended by -- by the idea of these stereotypes that Mr.
5 Woodbury was presenting to them; is that correct?

6 A. There was a collective disagreement in that --
7 in that chambers, in the chambers where we had voir dire,
8 when Mr. Woodbury broached the subject, because Mr.
9 Woodbury was implying, and anybody in here would have to
10 bring -- could recognize what he was implying, is that we
11 all hold these prejudices, and basically calling them
12 racist.

13 I would get offended too. I can read between
14 the lines, just like everybody else, okay. And in doing
15 that, he got them upset. That's why he started arguing
16 with that one juror, okay. The guy was pissed off, okay.
17 "How dare you bring this up." And like that, you know what
18 I'm saying?

19 "What are you calling me," you know what I'm
20 saying?

21 "I don't do that," you know what I'm saying?
22 Okay. I mean, the --

23 Q. Yeah, that --

24 A. It was a natural -- it was a natural
25 reaction. Don't anybody like being called a racist.

45

1 them -- why would I want them upset like that? Who they
2 going to take it out on? They not going to take it out on
3 him. He not going to go to prison. I am.

4 Q. I want you to answer my question. My question
5 is this: wouldn't you want people on the jury who are
6 offended by racial stereotypes about African Americans?

7 A. I understand your point, okay. And that if
8 they were offended, that wouldn't -- that wouldn't have
9 been an issue when they went back there and deliberated my
10 case, okay.

11 That's a two-edged sword, okay. You are --
12 your example is a two-edged sword. Maybe it can go that
13 way or they can be upset with the fact that Woodbury has
14 offended them, okay. So that is a two-edged sword.

15 So, once again, I told Mr. Woodbury point
16 blank not to bring it up, and he shouldn't have brought it
17 up.

18 Q. Mr. Dean, I want to ask you now about -- about
19 that note that Mr. Woodbury wrote about Mr. Schenk.

20 I believe you testified it was about the third
21 day of trial that you noticed that he had written that?

22 A. Yes.

23 Q. Is that accurate?

24 A. On the 23rd. It was the third day, I believe.

25 Q. So that would have been the third day of

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1 Q. You're right. There was a guy that -- that
2 was pretty upset at the thought of being called a racist?

3 A. There was two -- two guys as a matter of fact.
4 One guy took the -- took the microphone and blankly said,
5 you know what I'm saying, "If there is anybody in this
6 courtroom feel like that, then get up and get out."

7 Q. So wouldn't you agree that the people on that
8 jury panel were offended by the stereotypes? Like these
9 pernicious stereotypes that Mr. Woodbury articulated for
10 them?

11 A. They were -- they were upset at what he was
12 implying towards them. That's what they were upset about.

13 Q. Yeah. So you would agree that they were
14 collectively offended at the notion that they were racist
15 or that they bought into any of those stereotypes about
16 African Americans, correct?

17 A. Woodbury shouldn't have brought the subject
18 up.

19 Q. This doesn't answer my question. They were
20 offended at those stereotypes, correct?

21 A. Yes, they were offended.

22 Q. Wouldn't you want people on the jury who were
23 offended by those stereotypes?

24 A. Why would I want my jury offended by my
25 defense attorney calling them a racist? Why would I want

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1 trial?

2 A. Yeah, the 23rd.

3 Q. First of all, Mr. Dean, I don't disagree with
4 you that that word is extraordinarily offensive. I'm not
5 sure anyone in this courtroom would disagree with you about
6 that.

7 A. Let me -- let me -- I don't mean to cut you
8 off, but you --

9 Q. Go ahead.

10 A. You are -- you are touching on a very
11 sensitive subject --

12 Q. I understand.

13 A. -- in my case. I just want you to understand
14 that, okay.

15 Q. I fully understand that, Mr. Dean. I
16 understand the import of that word, the offensiveness of
17 it.

18 But do you think Mr. Woodbury understood that
19 when he wrote it?

20 A. No, I don't know what Mr. Woodbury understood.
21 I think you need to ask Mr. Woodbury that.

22 Q. Yep. And we did yesterday. I think I put
23 that question to him pretty directly.

24 Do you -- you flat out called Mr. Woodbury a
25 racist, that he was -- in clear and unequivocal terms

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1 yesterday you said he's a racist.
 2 Do you stand by that assertion?
 3 A. I said it and I stand by it.
 4 Q. And what is that based on?
 5 A. Based on what he called me and based on what
 6 his response was when I wrote him the letter.
 7 Q. Okay. Again, conceding one hundred -- one
 8 thousand percent the offensive and horrible connotation
 9 that goes along with that word. It's a complicated topic,
 10 I get it.
 11 I'm going to ask the question, do you think
 12 that anybody who happens to use that word in any
 13 circumstance is, per se, a racist simply because they chose
 14 to use that particular word?
 15 A. That particular word is associated with racial
 16 prejudice. There is no other way to accept that. There
 17 are -- what is the term -- politically correct ways of
 18 addressing people -- people's nationality. For instance,
 19 African Americans, Mexican Americans, Native Americans.
 20 Proper, unoffensive terms; terminology that you use towards
 21 people.
 22 Him being -- Mr. Woodbury selecting that word
 23 to use, it was unexcusable. It just shows his prejudice.
 24 And let me elaborate on that for the Court,
 25 okay. You're not born prejudiced, okay. You're not born

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1 prejudiced. You don't wake up one morning and say, "I'm
 2 prejudiced." It don't happen that way.
 3 Prejudice is a learned behavior, okay. It's
 4 passed down from one generation to the next generation,
 5 okay. One person to the next. It's learned, okay.
 6 So Mr. Woodbury harbored this prejudice
 7 towards people of color, and specifically African Americans
 8 in this instance, for a long time. That didn't just crop
 9 up on the 23rd of June.
 10 Q. Okay.
 11 A. Okay.
 12 Q. What is that prejudice exactly? Like what
 13 does he believe that is bad about African Americans,
 14 that's --
 15 A. You have to ask Mr. Woodbury that, okay.
 16 Q. Can you articulate one negative thing that he
 17 has said, one disparaging thing that he has said about
 18 African Americans?
 19 A. That -- that is all I have to. Let me --
 20 Q. Exactly. That's all you have is that he wrote
 21 an offensive word on a notepad.
 22 A. Let me -- let me explain it this way. Because
 23 this -- it's very hard, I found out, to explain prejudice
 24 to a Caucasian, mind you, that hasn't experienced what I
 25 have experienced in the 53 years I have been on this earth,

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1 okay.
 2 So let me put it like this to you. If
 3 prejudice is the tree --
 4 Q. If prejudice is what? Excuse me?
 5 A. Listen to what I am saying. If prejudice is
 6 the tree, okay?
 7 Q. A tree. Okay.
 8 A. And branches of that tree of prejudice is, for
 9 example, stereotyping, okay, racial profiling, racial
 10 slurs, okay, all tied into this one tree of prejudice,
 11 okay.
 12 And that's the only analogy I can give you to
 13 explain prejudice. It all stems from racial prejudice.
 14 Stereotyping, racial profiling, racial slurs, the whole
 15 nine. And there is probably some more that I haven't
 16 remembered but those are the most common, okay.
 17 Q. Okay. And did Mr. Woodbury ever say that he
 18 actually believed those stereotypes?
 19 A. I don't know what Mr. Woodbury believes.
 20 Q. He never did, did he? In fact, he said
 21 stereotypes are nonsense, I think is the word he used.
 22 A. I don't know what he believes. But if he --
 23 if he said that, and if that's what he believed, then why
 24 refer to me and Mr. Schenk as the n-word? Why not refer to
 25 us as black or African Americans?

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1 Q. I agree, he should have used a better choice
 2 of words. But I want you to answer my question.
 3 A. I did answer your question as best I could.
 4 Q. Wasn't what he was trying to do was find out
 5 whether the jury, any members of the jury, held those --
 6 those --
 7 A. I don't know.
 8 Q. -- pernicious and offensive stereotypes?
 9 A. I don't know what Mr. Woodbury was doing. All
 10 I know is what I told Mr. Woodbury not to do and he did it
 11 anyway.
 12 Q. Okay. Well, I'm going to circle back around
 13 and reask a question you didn't answer, which is this:
 14 Aside from his use of that one word in that one instance,
 15 and I suppose in the correspondence that came later, have
 16 you ever heard him make a disparaging remark about African
 17 Americans?
 18 A. To my knowledge, no.
 19 Q. Those -- those n-words are good for nothing,
 20 they are all guilty, they should be convicted?
 21 A. You know, I mean, Mr. Woodbury during this --
 22 this case came and visited me several times, whatnot, and
 23 we talked about the case, okay.
 24 And previous to that he was my lawyer in 2013,
 25 and he came and visited me a couple times before that case

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1 was settled also.

2 So I don't know how Mr. Woodbury interacts

3 when he is out there on the street, okay. I am not on the

4 street with Mr. Woodbury. I am not in Mr. Woodbury's

5 social circle, you know, and whatnot, you know, all the

6 rest of it, okay.

7 So I don't know how Mr. Woodbury speaks

8 amongst his peers when he is out of my presence. But I know

9 on that particular day on voir dire, he brought up a

10 subject I asked him not to, and in court I found that

11 letter in which he referred me and Mr. Schenk as the

12 n-word.

13 Q. Was that letter ever shown to the jury -- not

14 the letter. The note where he wrote "Mr. Schenk is an

15 n-word too," was that ever shown to the jury?

16 A. No. It was shown -- I found it.

17 Q. Yeah. Jury never saw that, correct?

18 A. No, the jury --

19 Q. They never heard about it?

20 A. No, they never heard it.

21 Q. They never heard anyone utter that highly

22 offensive word, correct?

23 A. True.

24 Q. So this is all stuff that happened behind the

25 scenes that the jury didn't even know about?

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1 A. Yes.

2 Q. Do you believe that Mr. Woodbury doesn't like

3 black people?

4 A. What he called me in the letter, I got --

5 yeah, that's the impression I got. He can sugarcoat it and

6 play it off, you know what I'm saying, as much as he want

7 to.

8 But like I said, you can line up ten African

9 Americans up there and they would feel -- I guarantee they

10 would feel the same way I do.

11 Q. Why would he represent you then?

12 A. You know, that's the hundred thousand dollar

13 question, okay. Why would you represent me if you feel

14 that way?

15 Let me elaborate on that a little bit, okay.

16 Because I have some feelings about that, you know. You

17 can't expect -- any reasonable person can't expect a person

18 that's harbored those type of prejudices to give any

19 defendant -- and he is my lawyer -- 100 percent, which I am

20 entitled to, of his experience.

21 Mr. Woodbury got 30-some-odd years of

22 experience, okay. It's illogical to think that I'm going

23 to get his total experience in dealing with my case when he

24 harbors those kind of prejudices.

25 Q. What kind of prejudices?

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1 A. Racial prejudices.

2 Q. What specifically -- what -- what offensive

3 racist beliefs does he hold?

4 A. He holds some, obviously, because --

5 Q. What are they?

6 A. -- he called me the n-word. You would have

7 to ask Mr. Woodbury that, okay.

8 All I know is what he called me, okay. And as

9 a matter of fact, he didn't only just call me the n-word,

10 which to any African American is the worst word you can

11 call, he even elaborated on it and said he called me worse

12 names than that.

13 So, in retrospect, that just goes to show you

14 his contempt for me. More than just racial prejudice, that

15 man just don't like me at all on any level, okay.

16 Q. Are you familiar with Mr. Woodbury's sense of

17 humor?

18 A. You know what, I am on trial fighting for my

19 life, okay. And please excuse me, Mr. Kacin, but I don't

20 give a damn about Mr. Woodbury's humor, okay.

21 Q. But doesn't it matter about his intent, what

22 his intent was?

23 A. I don't care what his intent is, okay. I know

24 what he did to me, okay.

25 And like I said, you are on a very, very

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1 sensitive area with me, okay, with this racial issue, okay.

2 I take that word very seriously, okay. I don't play with

3 nobody with that. And he shouldn't play with me with that

4 also, okay.

5 What he did was very disrespectful, very

6 demeaning, okay. That was a slanderous racial slur he

7 called me and Mr. Schenk, okay. And he should not have did

8 it, okay.

9 Q. I agree with you. I am not disputing that.

10 But don't you think --

11 A. Can we take a break, Mr. Kacin? I need a

12 break.

13 THE COURT: Yeah. It's 10:30. We were about to

14 do that anyway.

15 All right. Watch your step going down there with

16 those chains on. All right. We're in recess.

17 (WHEREUPON, a short recess was taken)

18 THE COURT: We are back on the record for Case

19 CV-HC-17-711. Again, Sean Maurice Dean, petitioner, versus

20 Aitor Narvaiza, Elko County Sheriff.

21 Mr. Dean is back on the witness stand. He is

22 still under oath.

23 He is on cross-examination with Mr. Mark Mills,

24 Elko County deputy district attorney, representing the

25 respondent.

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1 And Mr. Dean's attorneys, Lockie & Macfarlan, are
2 back in court.

3 So Mr. Mills, please proceed.

4 MR. MILLS: I will pass the witness, Your Honor.

5 THE COURT: All right. Any redirect?

6 MR. LOCKIE: Thank you, Your Honor.

7 I'm going to go outside of the scope of
8 cross-examination, but I have spoken about this with Mr.
9 Mills and he does not have a problem with it.

10 THE COURT: All right.

11 REDIRECT EXAMINATION

12 BY MR. LOCKIE:

13 Q. Mr. Dean, there is another issue that was
14 raised in the petition. And there is also an exhibit that
15 has been admitted into evidence which consists of Bert
16 Minter's medical records.

17 And for -- it's been admitted as Exhibit 13,
18 just for reference.

19 THE COURT: Thank you.

20 Q. What I'm going to ask you about is a potential
21 issue that deals with Bert Minter's medications.

22 A. Okay.

23 Q. All right. Were you interested in exploring
24 the nature and extent of Bert Minter's medications,
25 prescriptions that he had?

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1 A. Yes.

2 Q. Okay. Why so?

3 A. Before we had a pretrial hearing, Mr. Woodbury
4 approached me with a list of medications that Bert Minter
5 was taking at the time.

6 He wrote on a legal pad, because Mark Mills
7 was out in the rotunda area when he approached me, and said
8 that three of those medications that Bert Minter was taking
9 were opioids. And I asked him, again on a legal pad where
10 he wrote this down, was that -- was that significant. And
11 he said yes, that was significant.

12 I wanted him to broach the subject and explore
13 it through medical expertise because Bert Minter was taking
14 an exuberant amount of medications; and being that some of
15 those medications were anti-anxiety medications, pain
16 medications, including opioids, then that was a very
17 pertinent issue that needed to be explored as to Bert
18 Minter's mental state during the incident.

19 But Mr. Woodbury never called an expert
20 witness to trial, hired one for me to explore those
21 medications and the potential it would have on Bert
22 Minter's mental state.

23 Because there was a lot of questions about
24 why -- why Bert Minter would come out of the house after
25 suffering two strokes and come out and want to engage in a

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1 physical altercation with me.

2 Q. All right. You were asked by Mr. Mills, you
3 know, what it is that caused you to conclude that
4 Mr. Woodbury was a racist.

5 Can you state the basis of that opinion?

6 A. Voir dire, the note I found, his response, his
7 bringing up the fact that I lived in a rough neighborhood
8 in Sacramento, California, and my association or knowledge
9 with knife fights.

10 MR. LOCKIE: I have no further questions, Your
11 Honor.

12 THE COURT: Okay. Any recross?

13 MR. MILLS: Yes, Your Honor.

14 RECROSS-EXAMINATION

15 BY MR. MILLS:

16 Q. Mr. Dean, with regards to Minter's medical
17 records, did Mr. Woodbury -- well, you testified that he
18 said that that would be significant; is that correct?

19 A. Yes. When he approached me out in the rotunda
20 out here, outside the courtroom here, it was right
21 before -- I remember that, like, I remember that part. It
22 was -- it was right before we had a pretrial conference.

23 And because you were out there in the rotunda
24 doing whatever you were doing, he wrote on a legal pad that
25 Mr. Minter was -- was under the influence of a -- a lot of

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1 medications, I don't know, something like 12, 14
2 medications he was under the influence of.

3 And I asked him -- and he pointed out that
4 some of those medications were opioids. And I asked him
5 was that significant, and he said yes. And subsequently,
6 on another visit, I asked him what was the significance and
7 he explained to me.

8 But during the trial he -- during the
9 investigation, excuse me, of my case prior to trial, he
10 never hired an expert witness to explore what those -- the
11 effects of those medications would be on Bert Minter's
12 mental state or none of that.

13 So that was -- I don't believe -- I'm not sure
14 if I recall or not, he may have brought it up, but it was
15 never explored as far as what Bert Minter's mental state
16 was.

17 Q. Did he explain why it was significant?

18 A. Well, one of his concerns that he explained to
19 me was that he was trying to -- trying to rationalize after
20 it was testified to that Bert Minter came outside after --
21 after being in a nursing home after -- after suffering two
22 strokes, why would you even entertain the thought, you know
23 what I'm saying, of even coming down the stairs and -- and
24 you know the rest.

25 Q. You understand that Mr. Minter had some

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1 medical conditions, right?

2 A. Yeah, I learned that during my relationship
3 with Denise.

4 Q. In fact, he was in some kind of nursing home,
5 right?

6 A. That's what I testified to.

7 Q. Yeah. Was it your understanding that those
8 medications were to treat his -- his medical illnesses or
9 medical issues?

10 A. I don't know. I just know that what I just
11 testified to is how everything went as far as Woodbury
12 approaching me with that list of medications. I don't know
13 what they was for, what he was in the nursing home for, or
14 anything.

15 He just singled out, I think, three, to my
16 recollect, medications that were opioids. And I asked him
17 point blank was that significant. And he said yes and
18 walked off. And that was that for that day.

19 MR. MILLS: That's all I have, thanks.

20 THE COURT: All right. We can have Mr. Dean step
21 down then.

22 Any other evidence for Mr. Dean's side today? Or
23 does he need to talk with you?

24 MR. LOCKIE: We rest at this point.

25 THE COURT: Any evidence for the State to

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1 present?

2 MR. MILLS: Yes, Your Honor.

3 THE COURT: The respondent.

4 MR. MILLS: The State is going to briefly recall
5 Mr. Woodbury. I believe he is on his way over right now,
6 so he should be here shortly.

7 THE COURT: Well, we'll take another recess.

8 (WHEREUPON, a short recess was taken)

9 THE COURT: Back on the record for Case
10 CV-HC-17-711. Again, Sean Maurice Dean, petitioner, versus
11 Aitor Narvaiza, Elko County Sheriff, respondent.

12 Continuing on with the case.

13 We do have Mr. Dean back in court, represented by
14 his counsel, Lockie & Macfarlan.

15 Elko County deputy district attorney Mark Mills
16 for the respondent.

17 And he is calling Gary Woodbury in the
18 respondent's case?

19 MR. MILLS: That's correct, Your Honor.

20 THE COURT: Mr. Woodbury is back in court. He
21 has already been sworn in this matter. I will remind him
22 he is under oath.

23 Mr. Mills, please proceed.

24 /

25 /

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1 GARY WOODBURY

2 called as a witness in said case, having been first
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. MILLS:

6 Q. Good morning, Mr. Woodbury.

7 A. Good morning.

8 Q. Prior to the -- at some point in time prior to
9 the jury trial in this case, did you have any discussions
10 with Mr. Dean about Bert Minter's medical records and
11 possible medications that he was taking?

12 A. I was aware of the medications Mr. Minter was
13 taking. I am not -- I have no specific recollection of
14 telling Mr. Dean what those medications were, though it
15 seems likely I would have.

16 Q. You were aware that Mr. Minter was on some
17 medications at that time?

18 A. Yes.

19 Q. Okay. Did you take any efforts to inform the
20 jury of that?

21 A. The jury was informed, I'm sure. Whether I
22 did it or whether it was done on direct examination, but I
23 know that Mr. Minter clearly and obviously would have
24 related to the jury in some form or fashion the medications
25 he was taking.

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1 Q. And you didn't call some kind of doctor or
2 expert witness to elaborate on the medications, what they
3 were, what kind of effects they would have on someone, or
4 anything like that?

5 A. I did not.

6 Q. And why not?

7 A. Well, there were a lot of things about Mr.
8 Minter that the jury was capable of seeing directly.
9 For example, Mr. Minter came in and sat down.

10 And seconds after he sat down, and the jury saw him, he
11 then decided he needed his oxygen to be with him.

12 And it seemed self-evident both from that
13 behavior and from his other behavior on the witness stand
14 that he was, as I indicated yesterday, a very peculiar guy.

15 And it would have been self-evident to the
16 jury, and I didn't see any particular advantage in making
17 that peculiarity attributable to medications. So I -- I
18 did not go any further with that.

19 Q. Switching gears to another topic now.

20 Prior to trial, did Mr. Dean express any
21 concerns to you about -- about receiving a fair trial
22 because of his race?

23 A. He did.

24 Q. And did you and he discuss how to address
25 those concerns at jury selection?

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1 A. Yes. I -- I can't state with certainty the
2 explicit conversation we had. Mr. Dean was very concerned,
3 as probably I indicated yesterday, with getting a fair
4 trial in Elko County.

5 And we discussed why I wouldn't be filing a
6 motion to change venue based on the theory that if the
7 court can seat a jury, a motion to change venue gets
8 denied. And if the Court can't seat a jury, they have no
9 choice but to move the venue.

10 Q. Okay.

11 A. The -- I am sure that I informed Mr. Dean that
12 there were questions that would be allowed to be asked and
13 would be asked concerning the jury's feelings about -- and
14 their attitudes about trying him, as jurors.

15 Q. Do you recall if he ever specifically
16 instructed you not to bring up the issue of race during
17 jury selection?

18 A. I do not recall specifically, but that would
19 not have been a choice he was to make. That would be
20 something that counsel gets to decide, not the client.

21 MR. MILLS: Thank you. That is all the questions
22 I have.

23 THE COURT: Any cross-examination?

24 MR. LOCKIE: Nothing on that.

25 THE COURT: All right. Thank you, Mr. Woodbury.

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1 I think we're done.

2 MR. MILLS: State doesn't need him retained for
3 any purpose, Your Honor.

4 THE COURT: Any other evidence to present, Mr.
5 Mills?

6 MR. MILLS: No, Your Honor. State rests its case
7 in chief.

8 THE COURT: Respondent rests its case.

9 Anything else?

10 MR. LOCKIE: No surrebuttal, if that's what it
11 would be.

12 THE COURT: Oh, it would be?

13 MR. LOCKIE: I think so. When he called
14 Mr. Woodbury back, that would be rebuttal. No. I'm sorry.
15 Nothing further, Your Honor.

16 MR. MACFARLAN: Whatever it's called.

17 THE COURT: Well, the -- the defense attorneys
18 are used to having surrebuttal, not rebuttal.

19 Well, very good.

20 The point is, we're all done with the evidentiary
21 portion of case.

22 So you can argue the matter now. If you want to
23 do briefing, you can. My sense is maybe we got into some
24 issues that maybe weren't fleshed out in the initial
25 briefing, which I always read very carefully before the

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1 hearing.

2 What would you like to do?

3 MR. LOCKIE: I spoke with Mr. Mills and I think
4 that we both prefer just to do an oral argument on it
5 rather than extending it out further with briefing.

6 THE COURT: Okay.

7 MR. LOCKIE: But we were going to ask if we could
8 commence that at one o'clock today. I have an appointment
9 at noon I need to get to.

10 THE COURT: Yeah. Is that all right with you,
11 Mr. Mills? It's 11:30 now.

12 MR. MILLS: Yeah, that will work.

13 THE COURT: All right.

14 Well, we will see you back here at 1 p.m. then
15 for argument. Thank you very much.

16 (WHEREUPON, the noon recess was taken at 11:26 a.m.)

17 THE COURT: Okay. We're back on the record for
18 Case CV-HC-17-711. Sean Maurice Dean, petitioner, versus
19 Aitor Narvaiza, Elko County Sheriff, respondent.

20 Mr. Dean is back in court with counsel, now just
21 David Lockie.

22 Elko County deputy district attorney Mark Mills
23 to represent the State.

24 We are hearing argument on the post-conviction
25 petition writ of habeas corpus.

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1 Mr. Lockie.

2 MR. LOCKIE: Thank you, Your Honor.

3 I will address the race issue first, and
4 particularly the law, at least as far as I have been able
5 to find it. And I think that to a large extent, in terms
6 of the available law, that there is not going to be a lot
7 of disagreement between counsel because there is kind of a
8 dearth of law on the subject.

9 So initially I had this case that's called Ellis
10 versus Harrison, which is a Ninth Circuit case. But it was
11 recently -- it was a three-judge panel for publication, but
12 it was recently called back for en banc hearing. So it
13 doesn't have any precedent weight to be argued to the Court
14 now. I mean, we'll see.

15 It would be -- it would have a lot of good
16 information and guidance if it were worth the paper it's
17 written on at this point in time. But because it's called
18 back en banc, I am not doing that.

19 I don't know what the process would be for that
20 case to be reheard, but I am alerting the Court to it
21 because there is a lot of language and legal principles in
22 there that would be exceptionally helpful to guide the
23 Court if we had it.

24 So setting that aside, the case that at least
25 comes somewhere in the zone of addressing the types of

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1 issues that the Court has before it is called Buck versus
2 Davis.

3 And it's a -- it's not published on the U.S. site
4 yet, but it's 137 S.Ct. 759, 197 L.Ed. 2nd 1.

5 So under Buck versus State, the -- it was a death
6 penalty case. It was decided in 2017 by the way. And the
7 issue there had to do with evidence that was presented by
8 defense counsel during the penalty phase, and
9 specifically -- I forget the -- prediction of future
10 violence or probability that the person would be violent in
11 the future, which is one of the death penalty factors.

12 The defense presented an expert who, although the
13 expert concluded at the end of the day that the particular
14 defendant was not likely to commit future crimes, a study
15 relied on by that expert had a statistical analysis of
16 the -- that indicated that people of African American
17 descent were more dangerous and more likely to commit
18 crimes in the future.

19 So even though the expert concluded at the end of
20 the -- not this guy. But the issue was, is presenting as
21 part of this expert opinion this statistical study
22 purported to show that African American people have a
23 higher future prediction of violence.

24 So that kind of sets the stage. A whole lot of
25 the opinion has to do with procedural bar and that kind of
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1 judgment, inevitably entailing a degree of speculation. But
2 Buck's race was not subject to speculation, and according
3 to Dr. Quijano, that immutable characteristic carried with
4 it an increased probability of future violence.

5 "Dr. Quijano's testimony appealed to a powerful
6 racial stereotype and might well have been valued by jurors
7 as the opinion of a medical expert bearing the court's
8 imprimatur.

9 "For these reasons, the District Court's
10 conclusion any mention of race during the penalty phase was
11 de minimis is rejected. So is the State's argument that
12 Buck was not prejudiced by Dr. Quijano's testimony because
13 it was introduced by his own counsel, rather than
14 prosecution.

15 "Jurors understand that prosecution seek
16 convictions and may reasonably be expected to evaluate the
17 government's evidence in light of its motivations. When
18 damaging evidence is introduced by the defendant's own
19 lawyer, it is in the nature of an admission against
20 interest, more likely to be taken as face value."

21 So again, we are not talking about a situation
22 that is on all fours with Dean. But some of those
23 principles are -- can be fairly applied, at least in our
24 view, to the facts in this case.

25 So initially, what the evidence has shown here is
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1 thing, but this is the issue I am talking about now.

2 So just to -- not to be too pedantic here, but I
3 think it's helpful to lay some of this language out so that
4 we get the legal principles going first.

5 So the Court first indicates that it's analyzing
6 it under Strickland, which this Court is very familiar
7 with, I'm sure. But to satisfy Strickland, defendant must
8 first show that counsel performed deficiently.

9 The second test is whether there is a reasonable
10 probability of different outcome; in other words, prejudice
11 to the defendant. The so-called prejudice prong.

12 Of course, we know that the defendant doesn't
13 have to prove the prejudice prong even by a preponderance
14 of the evidence. It's articulated as something less than
15 that. However you apply these judicial standards.

16 But it's not -- the defendant does not have to
17 prove it by a preponderance of the evidence, just some -- a
18 reasonable probability, which is what the judge knows at
19 the end of the day, one way or the other.

20 So particularly applying it in this case, it
21 says, "It is reasonably probable that without Dr. Quijano's
22 testimony" -- this is that expert on race and violence --
23 at least one juror or would have harbored a reasonable
24 doubt on the question of Buck's future dangerousness.

25 "The issue required the jury to make a predictive
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1 that, for whatever reason, Mr. Woodbury, during the course
2 of voir dire, wrote this note that said "Schenk is an
3 n-word too." There is only two African Americans anywhere,
4 so the "too" refers to Mr. Dean.

5 Also, at the outset of the case, at least it's
6 Mr. Dean's testimony that he did not want race brought into
7 the case at all except for if it were used in some fashion
8 to try to seek a change of venue.

9 And we are not criticizing the failure or
10 alleging a failure on the part of defense counsel to seek a
11 change of venue.

12 But the issue of Mr. Dean's desire to not have
13 race brought in at all is corroborated, I think, from Mr.
14 Woodbury, who perceives it as his division of authority
15 regarding strategy to do that or not to do it.

16 So to some extent, everyone would concede that
17 there is quite a bit of leeway for counsel to engage in
18 strategic judgments at trial. It happens all the time.
19 And the best argument is being made often on the way home
20 from the courthouse or whatever. Sometimes it's a good
21 strategy; sometimes it's not so good.

22 But the lawyer has a right to be wrong and to
23 make the call, and even a call that on reflection wasn't a
24 good one.

25 So the issue here is that clearly Mr. Dean raised
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1 the concern that is there. Arguably, Mr. Woodbury has
2 strategic authority to make decisions.
3 So it -- that's not the end of the analysis,
4 because I have -- I was thinking of an example. So let's
5 say if Mr. Dean said in no uncertain terms, race has got
6 nothing to do with it, don't want race coming into this in
7 any way, shape or form. Then Mr. Woodbury, despite that,
8 says, you know, Juror Number 1, Ms. Smith, do you have any
9 African American friends? Questions along those lines,
10 that line, that is clearly calculated to elicit information
11 about potential racial bias on the part of the juror, but
12 isn't stated in the type of -- or the way that Mr. Woodbury
13 went about it.

14 And that -- that's the problem that we have here.
15 It wasn't, Do you have any African American friends? Have
16 you ever worked with African American people? Have you
17 ever had any negative experiences with people of African
18 American descent? And so on and so forth.

19 Because there is a line of questioning readily
20 available if one accepts the fact that Dean doesn't have
21 the final say in terms of that issue. Which he may or may
22 not.

23 But it -- it really can't come about saying, you
24 know, they are sneaky, they are violent, and they like
25 watermelon.

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1 Because what happens at that point is there is an
2 overt injection of a racial stereotype that comes in that
3 is not in any way necessary at all to engage in the
4 strategy of trying to ensure that the jury doesn't consist
5 of people who harbor racial bias.

6 So it seems that the -- you know, these racial
7 stereotypes based upon, in the words of the Supreme Court,
8 immutable characteristics, particularly ones that are
9 sneaky, and in a case like this violent, and watermelon. I
10 mean, seriously.

11 And I ---I understand the testimony where
12 Mr. Woodbury is trying to develop thinking from the
13 unconscious level up to the conscious level; in other
14 words, to make it -- make it crystal clear to the jury that
15 they need to actually pop it up in the top of their mind.

16 But just because something pops up into the top
17 of one's mind, it can be pejorative as heck. It may be
18 good and it may be bad. But what it did is it elicited a
19 fight from a -- from a jury member.

20 If the Court goes back and reviews this
21 transcript, the Court will see, "Wait a minute, Mr.
22 Woodbury. What in the world does race have to do with
23 this?"

24 So maybe -- and then another juror grabbed the
25 microphone, and said, "Yeah, why are you talking about this

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1 stuff? It doesn't have anything" -- you know, so at first
2 blush, the State might argue that Mr. Woodbury's tactic
3 there was sound because it got the jury thinking about it,
4 and, in fact, they are arguing with Mr. Woodbury about it,
5 saying, look, race doesn't have anything to do with it.

6 But the point is, and I believe Mr. Dean
7 testified to it best when he said, "They are not going to
8 take it out on Mr. Woodbury, they are going to take it out
9 on me. "

10 Because what that looks like front and center is
11 that Mr. Dean is playing a race card. That's exactly what
12 it looks like.

13 So this jury is very, very unhappy with
14 Mr. Woodbury, and it's clear from the record.

15 So you have a juror that is exceedingly unhappy
16 with Mr. Dean's counsel because it's clear that the juror
17 doesn't like that he is playing a race card. That's not
18 good.

19 I mean, who are they going to hold that against?
20 They are not going to understand that Mr. Dean didn't want
21 race mentioned. They know that Mr. Dean, as he appears in
22 the person of Mr. Woodbury, is up there trying to play this
23 race card, and doing so by very, very, very significant
24 racial stereotypes based on immutable characteristics.

25 You know, watermelon is really an offensive old

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1 one. Doesn't have anything to do with anything. But it
2 certainly gets people's attention.

3 But the one that's really harmful in a case like
4 this is that they are violent. Because this is an
5 attempted murder case. It involves a crime of violence.
6 You all heard that, ladies and gentlemen, they are violent.
7 And that's Dean's own lawyer.

8 Of course Mr. Woodbury goes on later and says,
9 you know, that's just nonsense. But -- but really what are
10 people hearing?

11 And it goes back to the direct insertion on an
12 overt basis of injecting these racial stereotypes. Again,
13 the mission, the strategy of getting a jury that is --
14 doesn't harbor racial bias, it's not a legitimate strategy
15 to go about it by injecting these racial stereotypes.

16 So that's an error, we would say, for the first
17 prong of Strickland, to engage in a strategy, going down
18 that stereotypical road, creating animus with the jury, and
19 leading that jury on. One or all of those parts
20 is objectively an error. It falls below an objectively
21 reasonable performance by counsel, that alone.

22 The -- the next tie-in that occurred actually at
23 trial that smacks of racial bias and involves, and, in
24 fact, even evokes improper racial stereotypes are the -- is
25 when Mr. Woodbury had Mr. Dean testify and starts asking

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1 him questions about -- and the Court will see it right off
2 the bat, it's his first question, "where did you grow up?"
3 So a rough neighborhood, right.

4 That's -- it goes right into that, you know, have
5 you -- have you been in knife fights? Do you have
6 experience with being in knife fights? Do you have friends
7 or associates that have been in knife fights?

8 What's that about? That smacks of a situation
9 where there is an assumption made there about Mr. Dean due
10 to his race. Particularly where the first question is,
11 "where did you grow up?" "where were you born?" "Oakland,
12 California." "Rough neighborhood." What is that saying?
13 It doesn't take long for that bridge to be gapped in terms
14 of evoking a racial stereotype in the case.

15 And we would submit that even -- even adducing
16 evidence that Mr. Dean has had knives pulled on him, that
17 he's had friends and associates that have been in knife
18 fights, and that as a result thereof he would know how to
19 kill someone by stabbing, twisting and ripping, and that he
20 would have that knowledge of how to use a knife in a
21 violent manner, is horribly prejudicial to him.

22 Stated from a different perspective, if one would
23 imagine -- and this ties into the Buck versus Davis, you
24 know, who-is-bringing-out-the-evidence type consideration.

25 But if we were to theorize that the State were to

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1 attempt to bring up evidence that Mr. Dean grew up in a
2 rough neighborhood, that he had friends and associates that
3 had been in knife fights, he had had knives pulled on him
4 before so he has the knowledge about how to use knives,
5 whether it's to kill somebody or just poke somebody, or
6 inflict degrees of force, depending on what the intent is,
7 just to kill or to hurt or whatever; if the State had
8 sought to adduce that kind of evidence it would be flat
9 inadmissible and reversible error. Prior bad acts would be
10 irrelevant.

11 I believe that any Court, if the State sought to
12 adduce that evidence, would very shortly find that there
13 is -- there is no clear and convincing evidence of it
14 probably, and most certainly that any probative value is
15 grossly outweighed by the danger of unfair prejudice to the
16 defendant.

17 So what it essentially boils down to at that
18 point is that the defense counsel -- and going back to Buck
19 versus Davis where they place a lot of significance on who
20 is bringing in the evidence, it's really, really bad when
21 this kind of bad evidence is brought in by the defense.
22 It's stronger. It's more powerful. It's more prejudicial.

23 So in this case it is the defense that is
24 presenting that kind of evidence.

25 So we can tell that not much, if any, trial prep

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1 was done with Mr. Dean regarding his prospective testimony,
2 which would give him a limited ability perhaps to object to
3 that kind of evidence.

4 Then we introduced an exhibit which is the trial
5 note which Mr. Woodbury is asking Mr. Dean in writing, "My
6 question to you is, do you know" -- and, you know, the
7 knives. Then it's Mr. Dean back, which -- you know, Mr.
8 Mills had a good line of questioning. We can't say exactly
9 did that occur, you know, at a prelim or where, but it
10 appears to be -- it definitely appears to be a trial note.

11 And I don't think it's a bridge too far to get
12 there when the Court looks at that exhibit and evaluates
13 it.

14 So that suggests that -- that this notion or idea
15 of evidence of Dean having familiarity with knives and
16 everything comes up not as some thoughtful strategic
17 process developed along the way, but it comes up in trial,
18 which is pretty last minute if one is contemplating that
19 their client is going to testify.

20 I will concede it is possible that evidence could
21 come up at a trial that would change the nature of the
22 questioning that one might engage in with his
23 defendant-client. But this is a pretty big deal. A
24 decision of whether to introduce the defendant's intimate
25 knowledge of knife fighting, of people being stabbed, ways

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1 you kill people with knives and so forth.

2 So that evidence, we contend, can be clearly
3 inferred to have arisen by virtue of racial stereotype. So
4 it's right there in the trial.

5 So we have two places in the trial where these
6 racial stereotypes, characteristics, so on and so forth,
7 appear: voir dire and at -- you know, they refer to
8 critical phases of the proceeding. And I'm not sure that
9 from a defendant's point of view there is any more critical
10 phase of that proceeding of -- you know, other than when
11 the defendant testifies.

12 Because the jury is going to be eyeballing the
13 guy very closely. This Court has lots of experience and
14 probably would conclude at least that it's close to the
15 top, from the defense standpoint.

16 So right there, it's our view that it was an
17 error to question Mr. Dean and present evidence that would
18 otherwise be grossly inadmissible if the prosecution -- and
19 prejudicial if the prosecution tried to introduce it.

20 So bringing it out to the jury from the
21 defendant's standpoint and exposing the jury to that is
22 apex prejudicial; particularly as to the count of attempted
23 murder, which was the highest charge in this case, with the
24 use of a deadly weapon in this case, namely, a knife.

25 The -- I will concede I -- it's probably

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1 legally -- it would be legally permissible for even a
2 person such as David Duke, if he were a lawyer, to defend a
3 person of African American descent.

4 What I am talking about is how he -- he -- and I
5 am just using that example for a no-doubt-about-it, you
6 know, overt racist. An attorney could probably legally get
7 by doing a jury trial as long as those didn't filter into
8 the trial anywhere.

9 Because, you know, we are getting into subjective
10 versus objective, and it's probably a slippery slope.

11 THE COURT: So it's not structural error. If --
12 for instance, if -- if a judge were racist or anti-semitic
13 and there was an African-American Jewish person in the
14 room, that would be structural error, right?

15 MR. LOCKIE: Right.

16 THE COURT: It would have to be.

17 MR. LOCKIE: I would love to -- yes, exactly.

18 THE COURT: But that was my question. If the
19 Court made a finding that an attorney was racist, had a
20 racial animus against an African-American person and
21 represented that person at a jury trial, the person's
22 convicted, is that some kind of structural error where you
23 automatically get a new trial? I mean --

24 MR. LOCKIE: No, as much as I would love to --

25 THE COURT: There is no case law that is --

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1 Schenk and Mr. Dean, and then the subsequent use of that
2 word in response to Mr. Dean's angry letter to him, I am
3 not suggesting that that is irrelevant. I am not.

4 It has evidentiary value when the Court is
5 looking at the -- at the trial lawyer's performance. It
6 clearly -- in my mind anyway, it has evidentiary value.

7 But if we didn't have the spots in the trial, the
8 voir dire, and at least from what we see the knife fighting
9 stuff, probably as long as the jury didn't see that note
10 and as long as the jury didn't read the letter, no harm-no
11 foul, I would suppose.

12 And I know that's probably not what Mr. Dean
13 wants to hear me argue here, or it may not be, but I think
14 that's the way it is.

15 So what we're -- what we are trying to do is
16 articulate the legal principles, get this case decided the
17 way it should be and in the proper legal context, rather
18 than -- I mean, if this Court feels impelled to establish a
19 legal principle that where you have an attorney expressing
20 overtly racist remarks results in structural error whereby
21 it's impossible for that defendant to receive a fair trial,
22 don't let us hold you back.

23 But really the Court is in the business of
24 following precedent and so forth. And I think that's --
25 that is the direction that this case should be decided.

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1 MR. LOCKIE: No, as much as I would love to tell
2 the Court that -- and from the reading I have done, I would
3 suggest as a matter of candor that it probably isn't.

4 THE COURT: David Duke, who we all know --

5 MR. LOCKIE: That's why --

6 THE COURT: -- is a racist, and who was a
7 politician in the 1980s, I think.

8 MR. LOCKIE: Yes.

9 THE COURT: He could represent a black person?

10 MR. LOCKIE: I think so. And, you know, that
11 might sound shocking, maybe even to Mr. Dean as he hears me
12 advertise -- not advertise, but advocate, you know, or
13 concede that point.

14 But if one really thinks about it, it's not that
15 unreasonable. Because it's a slippery slope. I mean, so
16 if we -- if the judge begins on drilling down on the
17 subjective attitudes that a defense lawyer has on an
18 incredible array of subjects that are -- that don't come
19 into the trial, how far is that really going to go?

20 And it becomes unmanageable in an instant, I
21 think.

22 So really the inquiry is whether or not the sort
23 of infection, if you want to call it that, comes into the
24 trial, so -- but I am not -- I'm not conceding that the
25 fact that the use of the n-word that overtly refers to Mr.

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1 THE COURT: Yeah, those are the kind of questions
2 generally left to the appellate courts, I would think.

3 MR. LOCKIE: Sometimes they have arisen in trial
4 courts and come up.

5 THE COURT: Well, this is the laboratory through
6 which it bubbles up to them.

7 MR. LOCKIE: It is, yeah. And then we get the old
8 bad facts make good law or good faith -- or whatever -- all
9 those things that trial judges struggle with all the time,
10 you know. Are you going to let, you know, particular facts
11 override legal principles and so forth. We could talk a
12 long time about all that and I am sure the Court has done
13 so.

14 So we -- those are all the essential points that
15 we have here with regards to the race issue.

16 Once again, I understand writing a trial note --
17 and, I mean, it's -- it's pretty intense. And a person
18 could very improvidently write something like that. I can
19 see that. I am not approving it. It probably shouldn't be
20 done. Well, definitely shouldn't be done. Strange stuff
21 can happen.

22 But really where that's really amplified and
23 magnified is that overt use of that term in a letter back
24 to him. That -- look, I mean, you just don't do that. I
25 understand, you know, clients get unhappy when they lose a

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1 case. And it is very common for your client to -- you turn
2 from being the hero to the goat, and in a big hurry.
3 And I'm not being critical of the defendant, but
4 the defense lawyer is pretty handy to blame. In fact, that
5 is where the wheel turns very frequently. Because you are
6 available. And probably you have made some mistakes, if
7 you are human, which we are, probably, and starts to -- you
8 know, to blame the lawyer for it.

9 But it not appropriate to respond. And Mr.
10 Woodbury's testimony is, "I owed him a response." He
11 didn't owe him a response calling him the n-word back. He
12 didn't owe him that at all. "Yeah, I have called you that,
13 and I have called" -- "I've called you worse."

14 You know, if the guy is feeling bad enough
15 already, and it's not your job to make him feel worse, it's
16 not your job to call him names. That is not your job at
17 all. It's to advise him as to where do we go from here and
18 to get ready for sentencing, you know, probably file an
19 appeal, those kinds of things. It's not a response to say,
20 "I have called you 'N' and worse."

21 That -- there is no legitimate client
22 representation purpose in that. It's an expression of
23 animus and frankly anger in response to an angry letter
24 that you got.

25 But late breaking news, you get angry letters

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1 not the right way to say it. A failure to introduce Dean's
2 two prior statements. One to Pepper, the videotape, one in
3 the hospital, and then the -- then I believe the next day,
4 or whenever it was, interview by Nielson at the jail,
5 wherein Mr. Dean told his side of the story to both of
6 those gentlemen and that there -- there was -- would
7 probably have been at least a legal angle of admissibility
8 after Mr. Dean testified as a prior consistent statement.

9 The next issue was that -- according to Mr.
10 Woodbury's testimony, and I think the trial transcript
11 bears it out, is that when Mr. Dean first comes over to the
12 Minter residence, she smells alcohol on him, and there is a
13 pretty clear inference that Mr. Dean is drunk and he is in
14 a rage that has something to do with intoxication.

15 And that it was clear from the booking records,
16 as well as the testimony from the booking officer in this
17 particular case, that he wasn't intoxicated and he had no
18 odor of alcohol about him.

19 So I -- I understand the -- Mr. Woodbury
20 testified about a strategic value potentially that there
21 was some nasty texting going on between Sean and Denise and
22 that maybe if a person has a little too much to drink, they
23 say something they shouldn't say and maybe got a little
24 carried away in texting. I understand that argument, but
25 that seems fairly thin.

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1 from your client a lot after you lose a case. It's not
2 uncommon. And you don't respond that way. It's a
3 knee-jerk reaction. You might write it, but you throw it
4 away. You don't send it.

5 So there is evidentiary value as we indicated to
6 those two incidents there.

7 So that's what I have to say about the race issue
8 in this case. And I will just very briefly talk about the
9 other issues, because I -- from our point of view, that's
10 the big deal here.

11 Just to review them again, we had Mr. Dean
12 testify to the fact that he had injuries on the back of his
13 hands that were arguably defensive injuries and he contends
14 that that evidence should have been presented to the jury.

15 We'll concede that his medical records, which
16 were introduced into evidence, don't reflect these
17 injuries. But we would also respectfully submit that that
18 is not conclusive as to their nonexistence; it's just that
19 they were really concerned by the super bad cut that he had
20 on his finger and it wasn't something that was
21 life-threatening or required surgical repair.

22 Mr. Dean showed the -- the Court the scars here
23 on his hand.

24 The next issue that we've advanced is a failure
25 to obtain exculpatory evidence. Well, not really. That's

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1 And so looking at -- I mean, the evidence is
2 readily available. We have it. We presented it to the
3 Court. It's right there. It hasn't changed. And it was
4 available then.

5 And the jury could have heard that there wasn't
6 an odor of alcohol about Mr. Dean, which would have
7 contradicted Denise Minter's testimony, and most -- nor did
8 he appear to be intoxicated or under the influence of
9 anything, which we would respectfully admit -- submit would
10 have gone a long ways in his defense, and any -- any
11 strategic value, I suppose, of saying that's why he said --
12 I mean, the texts aren't like "I'm going to kill you," "I'm
13 going to hurt you," or anything like that. It's just
14 fighting between them, good-guy/bad-guy type thing.

15 The jury very much should have heard that Mr.
16 Dean was not under the influence, didn't reek of alcohol,
17 didn't smell like alcohol. And that evidence again was
18 readily available. And in highly credible form. This is
19 not just a lay witness, it's a booking officer.

20 And the jail records which we submitted into
21 evidence also support that. That's one of the things on
22 the checklist when a person is booked into jail. So no
23 intoxication from the memory of the booking officer, even
24 at this point, no -- no odor. Then the jail records.

25 So the -- the next issue that we presented to the

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1 Court was failure to present evidence, that Dean's clothes
2 were not collected or preserved.

3 Mr. Dean's point is, is that he had the big slice
4 on his finger. He was bleeding profusely. One of the
5 exhibits shows his finger, shows it was bleeding. Nobody
6 disagrees there was a lot of blood there.

7 And that if he had stabbed one or both of the
8 Minters with the knife, bleeding profusely, that there
9 should -- the proof of that would have been blood transfer
10 existing on the Minters' clothing.

11 So Mr. Dean contents that that evidence should
12 have been tested and collected because he is confident that
13 it would show no such thing.

14 I understand Mr. Woodbury's point of view. I
15 have been there, done that. Maybe you don't want to know
16 about -- because there is probably not a way to test that
17 clothing that the State is not going to know about the
18 results. So it could cure or kill, something like that.

19 But one might also presume if there was a
20 highly -- if there really was a super high chance that that
21 blood would be on their clothing, why didn't the State test
22 it?

23 They certainly could have introduced it at trial.
24 They took a buccal swab from Mr. Dean. And that would have
25 been some pretty powerful evidence.

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1 piece of evidence, saying, "This is it. That was in this
2 man's hand," than it is not having a weapon.

3 I believe that it's common for prosecutors to be
4 very interested in having a weapon to be able to tangibly
5 show a jury, and concern when they don't have that because
6 they have to think of ways to get around that.

7 So our point of view is that the knife should
8 have been excluded from evidence.

9 We have finally, I believe, the issue regarding
10 Mr. Minter's drugs that were -- that he was on. And it's a
11 long list of drugs. His medical records have been
12 submitted to the Court as an exhibit.

13 And the idea there would be Bert Minter was in
14 exceptionally poor health. At the time he had a couple
15 strokes or heart attacks, two pretty serious episodes.

16 That is why he moved back in with Denise was
17 because his health had gone way downhill. They were no
18 longer a couple like a married couple. Bert was living
19 there because, frankly, he needed someone to take care of
20 him.

21 Bert had several properties, quite a few
22 actually, rental properties going for him before he got
23 sick. But when he -- when he kind of went down for the
24 count, he gave Denise control over those properties.
25 And as Mr. Woodbury testified, she was gambling

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1 If you look at the -- the potential failure to
2 object when the State sought to admit the knife into
3 evidence, or to file a motion in limine instead of making a
4 trial objection. And so the competing parts of that are
5 that Mr. Woodbury's strategy where he thought it would be a
6 positive thing for Mr. Dean for the State to be so foolish,
7 if you will, presenting, waving around a weapon that
8 clearly isn't the weapon that wasn't involved by virtue of
9 the manner and means of its discovery, the complete and
10 total absence of any blood, human or otherwise, anywhere on
11 the knife. I think they took it apart and there was wasn't
12 any blood, much less any DNA evidence, any transfer of skin
13 cells, so forth, that yielded any of Mr. Dean's DNA. And,
14 of course, good old fingerprints were not there either.

15 And -- and we respectfully suggest that the
16 thinness or attenuation of that knife as to Mr. Dean would
17 have had a substantial probability of the Court being
18 willing to grant a motion in limine based upon relevancy;
19 and secondly, the thinness of connection to Mr. Dean
20 between that knife and its -- renders it having very little
21 probative value, and there is a great danger of unfair
22 prejudice.

23 And I know reasonable minds can differ on that,
24 but at least from our point of view, a prosecutor is way
25 better off having a weapon to show the jury, a tangible

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1 like crazy, losing at least \$3,000 a week. So she
2 basically gambled away all of Bert's property. He didn't
3 have a place to live. So that is why he came and lived
4 with Denise; because he needed to be cared for and she was
5 kind of the last one available for him.

6 So getting back, what that means is, what Mr.
7 Dean was testifying to is, if he is in that incredibly poor
8 of health and everything, you know, how would he be coming
9 out, you know -- because this fight all occurred outside
10 the trailer. Bert Minter came down the steps and
11 encountered Mr. Dean.

12 So how is a guy in that kind of health going to
13 be messing with Mr. Dean out there and be willing to, you
14 know, engage in a physical altercation with him.

15 And what Mr. Dean has suggested in his testimony
16 is that maybe he had some helpers there onboard, or some
17 effects of that medication would have affected his mental
18 status thereby.

19 So those are our points, Your Honor. Thank you.

20 THE COURT: All right. Thank you for your
21 argument, Mr. Lockie.

22 And we'll go to argument for the respondent.
23 Mr. Mills.

24 MR. MILLS: Thank you, Your Honor.

25 I agree with Mr. Lockie inasmuch as the first

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1 issue that he addressed, the issue of race, is probably the
2 weightiest issue in this whole matter.

3 So I'm actually going to take it in reverse and
4 address the other issues that the State feels pretty much
5 lack merit and are easily disposable -- or disposed of.

6 I'm going to address those first, take a couple
7 minutes on those. Then I will dive into the -- what the
8 State feels is probably the more important issue in this
9 case.

10 So just with regards to the medical records. I
11 didn't hear any testimony about -- it's still unclear to me
12 the relevance of -- of the fact that Bert Minter may have
13 been taking some medications at the time of this incident.

14 I guess Mr. Lockie articulated that rationale in
15 saying that it may have shown that he had some -- they were
16 maybe used as performance enhancing drugs, I guess, giving
17 the energy to engage in a fight.

18 But the fact of the matter is, we don't have any
19 testimony from any kind of medical expert as far as what
20 the drugs were or what the effects would have been on Mr.
21 Minter.

22 I think this is really a nonissue.

23 And Mr. Woodbury, furthermore, explained -- you
24 know, gave a pretty good explanation for why he didn't even
25 go down that road. I think that was a reasonable decision

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1 on his part.

2 The knife. I would submit that irrespective of
3 any objective -- objection on the part of Mr. Woodbury, had
4 he lodged one at trial, would not have been sustained.

5 The standard of evidence to make such a -- to
6 render something admissible as relevant to the case is not
7 beyond a reasonable doubt; it's just whether it's got --
8 more likely to make a fact more likely than not -- or
9 something like that, whatever that definition of relevance
10 is. But it's a very low standard.

11 And contrary to assertions that have been made
12 throughout this proceeding, and I think that were made by
13 Mr. Woodbury at trial, there is plenty of evidence linking
14 Mr. Dean to that knife.

15 And had that motion in limine been filed or had
16 an objection been lodged at trial, this is what I would
17 have argued, which is: Lindsey Steele testified that that
18 wasn't her knife and that it wasn't there earlier, and that
19 after Dean showed up, it was there.

20 We have eye witness testimony of the stabbing,
21 saying it was a flip-style knife exactly like the one that
22 was found in the trailer.

23 Now, was it the knife that was used in the
24 stabbing beyond a reasonable doubt? Maybe that's
25 debatable.

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1 Was that knife coming into evidence as far as it
2 being relevant? You bet it was.

3 And any doubts about whether it was, in fact, the
4 knife, that goes to the weight not the admissibility. That
5 knife was coming in. So to suggest that Mr. Woodbury erred
6 by not objecting to its admission, I think that that misses
7 the point, that that knife was probably coming into
8 evidence regardless.

9 Furthermore, the larger point is what
10 Mr. Woodbury explained, which is, "I don't think that was
11 the knife that was used in the stabbing. And for strategic
12 reasons, I wanted the State to get that knife into evidence
13 so that they would look silly waving around the wrong
14 weapon."

15 So he had sound strategic decisions for not
16 objecting to the knife. The State doesn't see any merit
17 whatsoever in that contention.

18 With the clothes, same thing. This is a
19 nonissue. It's an indisputable fact in this case that Bert
20 Minter got stabbed and was bleeding. It's an indisputable
21 fact that Mr. Dean had a cut on his finger and was
22 bleeding.

23 So what on Earth is, you know, sending Mr.
24 Minter's clothes in to the crime lab going to show?

25 It may -- it -- if it showed that Mr. Dean's

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1 blood was on those clothes, that wouldn't be surprising.
2 He is cut. Everyone acknowledges that.

3 If it showed that his blood wasn't on the
4 clothes, well, that's certainly possible as well, given how
5 the facts were playing out and how fast everything was
6 going. And we don't know which -- again, it's the State's
7 theory that he cut himself when he was stabbing Bert Minter
8 with such force that the blade of the knife slid onto his
9 index finger and gave him that cut right there.

10 Assuming the State's theory of the case is
11 correct, we don't know which jab of the multiple jabs into
12 Bert Minter is the one that resulted in the cut on Mr.
13 Dean's finger. If it was the last jab, then there wouldn't
14 be any blood on Mr. Minter's clothing.

15 The fact of the matter is, irrespective of what
16 the results may have been had those clothes been sent into
17 the lab, there would have been explanations either way to
18 account for that.

19 Either the blood would have been on there or it
20 wouldn't have been. Either way there is an explanation.

21 And furthermore, as Mr. Woodbury rightly pointed
22 out, and I think Mr. Lockie acknowledged to some degree,
23 anyone who has been a trial attorney has to acknowledge
24 this fact: It's a gamble when you send something into the
25 lab, because you don't know what you are going to get. And

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1 it may backfire on you if you send it in and you don't get
2 the result you want. And a lot of times that is a gamble
3 not worth taking.

4 There is no -- there is no issue there with --
5 with regards to the clothing.

6 Neither is there an issue there with the
7 intoxication. There is conflicting evidence on that. We
8 heard testimony from Lindsey Steele at trial, for example,
9 that Dean was drinking that day.

10 Denise Minter testified that he was, I think,
11 under the influence of alcohol. And maybe she was
12 exaggerating.

13 But I think the evidence is pretty clear he had
14 been drinking that day based on Lindsey Steele's testimony.
15 She had no reason --

16 THE COURT: Was there -- go ahead.

17 MR. MILLS: She had no reason to make that up.
18 She had no axe to grind.

19 THE COURT: I haven't reviewed the criminal file,
20 obviously, for a long time. Was there an intoxication
21 instruction?

22 MR. MILLS: No.

23 THE COURT: There was not?

24 MR. MILLS: I don't believe so.

25 THE COURT: Well, the record there would speak

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1 for itself --

2 MR. MILLS: Yeah.

3 THE COURT: -- obviously.

4 But I just wondered. Because it is a defense,
5 potentially. On --

6 MR. MILLS: It is.

7 THE COURT: -- the specific intent crime of
8 attempted murder, intoxication, even voluntary
9 intoxication, can be a defense. But not to the others,
10 right?

11 MR. MILLS: That's exactly correct, Your Honor.
12 I think I pointed that out in my opposition, that, if
13 anything, the existence of alcohol in this case could have
14 been beneficial to Mr. Dean not detrimental.

15 THE COURT: Yeah, in that sense.

16 MR. MILLS: Yeah.

17 THE COURT: I just wondered if there was even an
18 instruction that wasn't permitted, because I --

19 MR. MILLS: I don't --

20 THE COURT: I can't remember.

21 MR. MILLS: I don't believe Mr. Woodbury ever
22 requested a voluntary intoxication instruction.

23 THE COURT: Well, the --

24 MR. MILLS: I don't recall that.

25 THE COURT: -- evidence part of the hearing is

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1 over. I am not going to hear from him. I guess if I want
2 to know, I will look at the file. Which I think I can. I
3 think I can look at the other file. And I would intend to
4 review the transcript.

5 MR. LOCKIE: We'll so stipulate to whatever
6 extent that the Court wishes to do so or feels the need to
7 do so.

8 THE COURT: Right. Because I don't know how the
9 Court makes the prejudice decision unless it looks at the
10 rest of the evidence that was put in at trial.

11 MR. LOCKIE: We actually stipulated to have
12 admitted the trial transcript.

13 THE COURT: Whole thing?

14 MR. LOCKIE: Right.

15 THE COURT: Including voir dire?

16 MR. LOCKIE: Everything. We don't have any
17 objection if the -- whatever extent Court may wish to
18 revisit the other file in its -- in full. Jury
19 instructions, for example, like what the Court -- we don't
20 have those.

21 THE COURT: Yeah, I mean, I think that's one of
22 the reasons the judge who was the trial judge ideally is,
23 in the legislature's mind, the judge who is supposed to
24 preside here, is so that you can kind of remember what you
25 remember and then look at the file and trigger your memory

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1 on a bunch of other stuff.

2 Okay. Mr. Mills.

3 MR. MILLS: And that's accurate, Your Honor. The
4 transcript that we did stipulate to, it's voir dire, it's
5 the testimony of the witnesses, and I think it's argument
6 at the end.

7 But the State stipulates along with defense
8 counsel the Court can go beyond that to look at the
9 pleadings and jury instructions and whatever the Court
10 needs to look at from the criminal case.

11 So intoxication. I think the way I put it in my
12 opposition is the State fails to see how it would have
13 helped the defendant to show that he was sober as opposed
14 to intoxicated at the time that he stabbed someone seven
15 times.

16 But I just don't see that as a huge issue in this
17 case.

18 The Sergeant Pepper stuff, likewise, that's not a
19 big issue at all. The State disagrees, I think, slightly
20 on the analysis of prior consistent statement and the way
21 that would have played out.

22 It's the State's position that that likely would
23 have been inadmissible as far as Sergeant Pepper's
24 interview. The substance of the conversation that he had
25 with Mr. Dean would have been inadmissible hearsay.

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1 Mr. Lockie brought up the prior consistent
2 statement exception to the hearsay rule, and I'm not sure
3 that would have been applicable in this case.

4 If you look at the case law analyzing that
5 particular exception to the hearsay rule, it talks about
6 how there has to have been a motive to fabricate that arose
7 in between the consistent statements.

8 It's not -- it doesn't stand -- that statute
9 doesn't stand for the principle that every consistent
10 statement that any person ever made just comes in as a
11 consistent statement.

12 There has to be that motive to fabricate that
13 arose in between the consistent statements. That was not
14 in -- anyway, even if it had come in, it wouldn't have
15 changed anything, in the State's mind. It's just a
16 nonissue.

17 The injuries on the hand. That is just flatly
18 rebutted by the evidence. The medical records, that single
19 laceration. The video -- and again, the video speaks for
20 itself. But I would invite the Court, ask if it's inclined
21 to give any kind of serious consideration at all to this
22 argument, just look at the video.

23 The first video of the hospital interview with
24 Dean, 10 seconds in, you get a pretty clear look at the
25 back of his hands. There's no bandages on it. They're not

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1 treating it. There's no visible lacerations or injuries.

2 Mr. Dean testified he was bleeding from those
3 lacerations. There is clearly no lacerations in the area
4 where he showed you and me and everyone else in the
5 proceeding.

6 Those injuries just don't exist in that video.
7 They were not referenced in the medical records.

8 So let's -- I want to talk now about, I guess,
9 the issue of race. This is where it's a little unusual and
10 complicated.

11 As far as responding to the Court's question
12 about whether structural error would be injected into a
13 proceeding based on the, I guess, racist views of a defense
14 attorney or whatnot, I tend to agree with Mr. Lockie that,
15 based on the research I have done, I don't think so. I
16 think we are still just operating under Strickland v.
17 Washington. It's that standard.

18 THE COURT: Well, I thought about it along the
19 lines Mr. Lockie talked about too. If you go there, it's a
20 pretty slippery slope. I mean, you could think of a
21 thousand examples. You could think of someone who for
22 years opposed gay marriage representing a gay person
23 accused of a crime now. Or even back then.

24 MR. MILLS: Yep. They asked us to do this in law
25 school.

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1 THE COURT: They did?

2 MR. MILLS: In these moot court competitions.

3 THE COURT: That was a lot sooner -- I guess a
4 lot closer in time from now than when I went to law school.

5 MR. MILLS: I distinctly remember a moot court
6 competition where one of the issues was LGBT rights, and
7 whether they ought to be a protected class under, you know,
8 1983 actions or whatnot.

9 And I know that there were -- and the way they
10 did it is they had us argue both sides of the issue. I
11 know there were a lot of students who were uncomfortable
12 arguing particular positions on a controversial issue.

13 But anyway, that's the way the law works is
14 that -- in fact, you know, there is the -- this case that
15 Mr. Lockie and I were looking at, they point that out
16 that --

17 THE COURT: The Buck case?

18 MR. MILLS: No, this is that Ellis versus
19 Harrison. They talk about how -- I think it's right at the
20 end -- they talk about how attorneys ought to be able to
21 set aside their personal biases and beliefs and advocate
22 for their clients and for their position. I mean, that's
23 what lawyers do.

24 But I want to comment on this case, this Ellis v.
25 Harrison case.

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1 THE COURT: Well, this is addressing the rules of
2 professional conduct, too, isn't it? I mean, you --

3 MR. MILLS: Yeah, it goes --

4 THE COURT: -- can represent someone who you
5 think has -- well, I guess it's views that are repugnant.
6 We're not talking about immutable characteristics like the
7 color of a man's skin, but I don't know.

8 This was the primary question I had, and I was
9 wondering if the lawyers would be able to find any law on
10 it. It sounds like there is really just a dearth of case
11 law. I haven't had a chance to look at it.

12 MR. MILLS: I can tell you one line of research
13 and analysis that some courts have gone down to address
14 that particular issue.

15 So this Ellis v. Harrison case from 2018, it was
16 United States Court of Appeals for the Ninth Circuit. It
17 was a three-judge panel. Mr. Lockie and I both had a
18 chance to review this case. We have had discussions about
19 it.

20 And I was researching it today actually further
21 and found that -- anyway, let me tell you a little bit
22 about the case.

23 And in doing so --

24 MR. LOCKIE: Judge, is he going to cite this case
25 for precedent? Because it doesn't have any.

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1 MR. MILLS: I was about to --
2 MR. LOCKIE: We -- there is -- there is two --
3 there's language that is helpful for both people. I am not
4 trying to interrupt counsel's argument, but I am not sure
5 that we should be getting into citing this case to the
6 Court because it doesn't have any value at this point. It
7 was recalled for en banc hearing.

8 MR. MILLS: Can I respond? I actually foresaw
9 exactly what he was about to say and was about to explain
10 why I am getting into it.

11 THE COURT: Okay. Well, if it has no
12 precedential -- does it have precedential value, do you
13 think? Do you disagree with that assessment?

14 MR. MILLS: This is what I was about to explain.

15 THE COURT: All right.

16 MR. MILLS: When the en banc Ninth Circuit
17 decides this issue, that will have the same precedential
18 value that this has. Which is none.

19 In my view -- and you guys correct me if I'm
20 wrong -- but a Ninth -- this is a federal system we are
21 talking about. A Ninth Circuit Court of Appeals has no
22 binding authority over state courts.

23 The only thing that has binding authority over
24 this court is the Nevada -- I guess, the Nevada -- courts
25 within the Nevada appellate system, the Nevada Supreme

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1 Court and the U.S. Supreme Court.

2 But the Ninth Circuit, the stuff coming out of
3 there, that is persuasive authority. The same way that
4 Tenth Circuit or the Fifth Circuit or a state -- Ohio State
5 Court of Appeals case would be. It's all persuasive
6 authority, Your Honor.

7 That's why I think it doesn't matter that it's
8 kind of -- this has the same binding authority that when
9 the en banc Ninth Circuit --

10 THE COURT: Okay. So you are agreeing it has no
11 binding authority?

12 MR. MILLS: I agree with that.

13 THE COURT: Just like any other -- but --

14 MR. MILLS: This would be like if I was citing --

15 THE COURT: And you're arguing it because you
16 think it has persuasive value --

17 MR. MILLS: I think --

18 THE COURT: -- for you in certain areas?

19 MR. MILLS: I think it's helpful for us to look
20 at how other courts have addressed the issue we're dealing
21 with. It's persuasive authority; it's not binding.

22 THE COURT: Anything else on that, Mr. Lockie?

23 MR. LOCKIE: No. No, Your Honor. I don't think
24 it can be cited. I mean, that's probably true. At this
25 time it's recalled en banc. That is all right. I wanted to

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1 argue this case, to tell you truth.

2 THE COURT: Well, I am more than happy for the
3 parties to argue it if you want to.

4 Because it's -- if it can be used as persuasive
5 authority or some basis upon which to make a point to this
6 Court that was thought about and reasoned through by
7 another court, I'm fine with that. I think that's what you
8 should do.

9 Mr. Lockie can certainly have a reply argument on
10 it.

11 MR. MILLS: So yeah, my position on this case is
12 that -- and it's a wait-and-see position as far as, yeah,
13 let's wait and see what the en banc Ninth Circuit does with
14 it.

15 In the meantime, there is nothing inappropriate
16 about all of us looking at what they did, looking at the
17 cases they cited to, including U.S. Supreme Court cases, in
18 talking about what they did with this case. It gives us
19 maybe a helpful way of looking at the issue. Or not.

20 THE COURT: Have at it.

21 MR. MILLS: So in this case, this Ellis -- or
22 maybe not so helpful way of looking at it. I mean, Mr.
23 Lockie and I have talked about, you know, and we have some
24 questions about what they did in this case. And I'm
25 curious personally to see what the en banc --

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1 THE COURT: Well, this was a published opinion,
2 right?

3 MR. MILLS: It is a published opinion.

4 THE COURT: It's in the --

5 MR. MILLS: Yep.

6 THE COURT: -- third series of --

7 MR. LOCKIE: No, it's not in the hard books yet.

8 THE COURT: But it will be.

9 MR. LOCKIE: (Nods head)

10 MR. MILLS: Yes. For publication.

11 THE COURT: Okay.

12 MR. MILLS: So just to -- in this case, this
13 Ellis case, it's -- man, you read about the lawyer in this
14 case, and this is -- this is awful stuff. Really awful
15 stuff.

16 They had declarations from this defense
17 attorney's own daughters saying, quote, this defense
18 attorney harbored contempt for people of other races and
19 ethnic groups and, quote, especially ridiculed black people
20 referring to them with racial invectives, end quote.

21 The older daughter recalled in 1990 that Ames --
22 that's the racist attorney -- referred to his client,
23 Melvin Wade as, quote, the n-word who got what he deserved.

24 A fiscal clerk in San Bernardino, California
25 Supreme Court stated in a declaration that Ames employed

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1 racist terms to characterize court personnel, his employees
2 and his clients.

3 A legal secretary who worked for Ames from
4 September 1990 to 1991 heard Ames talking about a client,
5 because his client was black, Ames said, and he did not
6 trust him and did not care what happened to him.

7 And just on and on. Another secretary: Ames
8 consistently referred to his African-American clients as
9 the n-word and his African-American counsel as a big, black
10 n-word trying to be a white man.

11 I mean, it's horrible stuff. This guy was an
12 admitted racist. This is miles away from Mr. Woodbury, who
13 is not a racist by the way. He happened to use a horribly
14 offensive term and I am not going to defend his use of that
15 term.

16 It's -- the State concedes that that's offensive.
17 Probably the most offensive language in the English
18 language. I am not going to defend his use of that word.

19 But he didn't do this. Not even close. In fact
20 he testified, Mr. Woodbury did, I don't harbor any ill will
21 towards African Americans, I don't dislike them, I don't
22 hate them, I have represented them.

23 I asked him, would it be -- would you represent
24 an African American less zealously because of his race?
25 And he said no, absolutely not. "That would be not only

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1 And then the rest of the analysis is, have both
2 prongs of Strickland been met for at least one of the
3 grounds, right?

4 MR. MILLS: Yeah.

5 THE COURT: Is that basically what the case
6 stands for?

7 MR. MILLS: I think so. They do this -- and this
8 is where it might be helpful because this points in other
9 directions of stuff that is published and finalized and
10 whatnot.

11 So some of the case law that this case points to,
12 they cite to a U.S. Supreme Court case from 1980, Cuyler
13 versus Sullivan.

14 They cite to one of their -- actually the -- the
15 justice -- the three panel of justices in this case, one of
16 them wrote a concurring opinion saying, This is horrible
17 and I want to grant relief but I think I'm bound by a prior
18 Ninth Circuit -- Ninth Circuit precedent, this Mayfield
19 case. So that might be something to look at.

20 Again, this is -- I kind of agree with Mr.
21 Lockie. This is kind of a -- obviously we can't cite this
22 for even persuasive authority at this point because I think
23 it's under review.

24 THE COURT: Are those like the rules for the
25 feds? Or -- I mean, it's a published opinion.

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1 morally wrong but against the rules of professional
2 conduct," was Mr. Woodbury's response.

3 By the way, what the Court did with this -- I
4 suspect -- again, it's a wait and see, as Mr. Lockie and I
5 have talked about. The Court actually denied the habeas
6 relief because they said there was no connection, the --
7 because of language. Petitioner had not shown that counsel
8 had performed inadequately because of his racism.

9 So in this case I think it had been shown, yes,
10 racist defense attorney, maybe some ineffective assistance,
11 but there was not the link that he had performed
12 ineffectively because of that racism.

13 I kind of sort of suspect --

14 THE COURT: Was he found to have performed
15 ineffectively for some other reason?

16 MR. MILLS: I am trying to remember if he -- it's
17 just a vague declaration at the end of the case, Your
18 Honor, where -- where the petitioner fails to identify any
19 acts or omissions by Ames that fell below an objective
20 standard of reasonableness.

21 So they didn't -- I don't think they found -- the
22 petitioner wasn't able to put forward anything that fell
23 below that objective standard of reasonableness.

24 THE COURT: Okay. So a racist lawyer can
25 represent a client against whom he has racial animus.

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1 MR. MILLS: It is.

2 THE COURT: It is slated for publication.

3 MR. MILLS: There is a rule, Your Honor.

4 THE COURT: I mean, dissenting opinions are cited
5 for persuasive authority, you know what I mean. I do that
6 sometimes.

7 MR. MILLS: There was a brief order that the
8 Ninth Circuit en banc issued saying, hey, we have taken a
9 vote and we want to reconsider this case en banc. Then at
10 the end of that, they said, pursuant to some federal rule
11 of procedure, this case shall not be cited as authority, is
12 what they said.

13 THE COURT: That would be in the federal system.
14 Can't --

15 MR. MILLS: Probably --

16 THE COURT: -- tell us what to do.

17 MR. MILLS: Probably in the federal system, yeah.

18 So I agree with Mr. Lockie insofar as maybe we
19 ought to hold off on citing this until -- or let's wait and
20 see what the en banc thing does. But I think it's helpful
21 for us to at least look at what another court has done in a
22 similar context.

23 THE COURT: Well, I think you have already cited
24 it and you are in here talking about it.

25 MR. MILLS: I guess by citing, I mean -- maybe

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1 that's where the miscommunication is. When I am thinking
2 cite, I am thinking if you put it in writing.
3 THE COURT: My view, both lawyers can argue it
4 for its persuasive value, whatever that may be. As officers
5 of the court, you have already told me the problem with
6 citing it potentially. And I -- I think that suffices.

7 It's got no precedential value because it's not a
8 United States Supreme Court case.

9 MR. MILLS: Yeah, so I think you were right here.
10 So they worded this in a way that -- it says that "The
11 three-judge panel disposition in this case shall not be
12 cited as precedent by or to any court of the Ninth
13 Circuit."

14 THE COURT: Right.

15 MR. MILLS: So yeah.

16 THE COURT: I mean, law review articles are cited
17 for persuasive authority and they are not even courts --
18 well, usually law review articles aren't written by judges.
19 A lot of them aren't.

20 MR. MILLS: So I guess that -- I think what we're
21 really looking at here is just a straightforward
22 application of Strickland v. Washington.

23 There was a part in this Ellis v. Harrison case
24 where they suggested potentially another standard might
25 apply.

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1 But I have looked at the case they cited for
2 that, that Sullivan case from the U.S. Supreme Court, and I
3 am not persuaded that their reliance on that was sound.
4 And I wonder what the en banc court is going to do with
5 their analysis there.

6 But anyway, so I think we're -- we are talking
7 about a straightforward Strickland v. Washington standard.
8 And in applying that standard, I think that this -- any
9 issues raised on the grounds of race in this particular
10 case should be denied as well.

11 well, there is two -- this is complicated because
12 there is a number of different allegations and there is two
13 different prongs. So let me walk through the different
14 allegations and the prongs.

15 So the allegations of ineffective assistance, I
16 suppose there are two of them as far as what happened at
17 trial. One of those is the jury selection stuff and the
18 other thing is the evidence and testimony regarding the
19 knife fighting.

20 with regards to the jury selection stuff, the
21 State -- in the State's view, that's the much less
22 problematic thing that happened at trial.

23 very clearly, I think it's undisputed that Mr.
24 Dean had a concern about possible racist beliefs among a
25 white jury in Elko County. That's an indisputable fact in

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1 this case that he was concerned about that.

2 I think we heard testimony from Mr. Woodbury that
3 they had conversations about that prior to trial and prior
4 to jury selection, and that they were talking about a
5 change of venue and stuff, and Mr. Dean's concerns about
6 race.

7 And it just seems kind of crazy that they would
8 be so -- that Mr. Dean would be so concerned about having
9 racist jurors on the jury and yet would say, well, let's
10 not go into that in jury selection, let's leave it alone, I
11 am okay rolling the dice and running that risk of having
12 racist jurors, I don't even want to bring it up.

13 It's clearly a sound trial strategy. And I
14 think, as Mr. Woodbury rightly pointed out, that was his
15 call to make. Yeah, I need to address that.

16 And he used some offensive racial stereotypes.
17 But I think the thing that we shouldn't confuse
18 is we shouldn't jump to the conclusion or read into his
19 invocation of those racial stereotypes the idea that Mr.
20 Woodbury himself harbors these beliefs.

21 That is manifestly not what he was doing at jury
22 selection. You have the transcript and you can review it.
23 And you have the testimony.

24 That is not what he was doing. He was not
25 advocating in favor of those beliefs. He was not even

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1 suggesting that he himself held those beliefs that African
2 Americans like watermelon and they are violent and sneaky.
3 He wasn't suggesting any of those things.

4 what he was doing was asking the jury, Are you
5 aware that some people harbor those beliefs? And as Mr.
6 Dean rightly pointed out, the jury was -- and Mr. Lockie --
7 the jury was offended at the idea -- the very idea of some
8 of those beliefs and stereotypes.

9 Mission accomplished. Now you know you have got
10 a juror that rejects those racist stereotypes.

11 That was a sound trial strategy to ensure that
12 the members of that jury rejected pernicious racist
13 stereotypes. That's exactly what Mr. Woodbury accomplished
14 with that.

15 And that fellow argued with him. What was that
16 fellow arguing about? He was arguing about racial
17 equality. And he was saying, I -- I can give this guy a
18 fair shake, I am not racist, I am offended at any
19 insinuation that I might be racist.

20 Why wouldn't you want that person on your jury if
21 you are Mr. Dean?

22 So that line of questioning --

23 THE COURT: Wasn't his point, though, that the
24 insinuation was made by the defense lawyer that there are
25 racist people on this panel and that ultimately that could

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1 have been used against him?
2 Isn't that really what he is saying?
3 Like Mr. Lockie said, it's how he went about it,
4 one, not leaving it to the judge to ask the questions or
5 asking them sort of in a less provocative way, right?
6 Isn't that what Mr. Dean suggested?
7 MR. MILLS: I think so. I think the --
8 THE COURT: What about that, Mr. Mills? What
9 would your response be to that concern of Mr. Dean's?
10 MR. MILLS: Frankly, I think the way that Mr. --
11 the provocative -- the arguably provocative way that
12 Mr. Woodbury went about it, frankly, I think it had the --
13 in today's politically correct environment where people are
14 becoming more and more hypersensitive and attuned to the
15 issue of racial and racial inequality -- and they should
16 be. I think we have come a long way in society. We are not
17 in the 1950s or '40s or whatever anymore.
18 And people are more aware of these issues, and to
19 the point that people kind of go out of their way to not be
20 perceived as racist. And so what I saw when he did that
21 was a visceral reaction from that jury, where it was pretty
22 clear to me, that, oh, this jury is going to go out of
23 their way to be fair to Mr. Dean.
24 THE COURT: So bludgeon them with it?
25 MR. MILLS: Yeah.

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1 as, well, the jury -- some of them were offended. That is
2 an objective statement of fact as far as what happened.
3 And that's exactly the kind of jurors you would
4 want on the jury if you are Mr. Dean, is jurors who are
5 offended by the idea of racism, by the idea that they might
6 not give Mr. Dean a fair shake because of his race. They
7 were offended at that notion.
8 And that is a good thing for Mr. Dean. Is he
9 sitting here saying that he wanted jurors on there that
10 weren't offended by those stereotypes? That were okay with
11 those stereotypes? That believed that African Americans
12 are more violent?
13 It's sound trial strategy, Your Honor, and it was
14 within the discretion of Mr. Woodbury.
15 THE COURT: Well, what about the prejudice part
16 too? I mean, I --
17 MR. MILLS: I will bring this back around to
18 prejudice.
19 THE COURT: For that part of it. I mean, is
20 there any evidence to support the fact that there were
21 jurors who, in fact, were offended, beyond what maybe was
22 said during the voir dire? See what I mean?
23 I guess we don't have any jurors in here saying,
24 "yeah, Mr. Woodbury angered us," or "we didn't understand
25 what he was doing," that kind of thing.

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1 THE COURT: Because really that's the way one
2 could perceive that approach. It's more the use of a
3 cudgel rather than a fine blade.
4 MR. MILLS: Yeah. That's the effect that I saw
5 that it had is that they were -- they were offended by
6 those stereotypes.
7 MR. LOCKIE: Just we would object for the record
8 that Mr. Mills' perceptions of events are not fairly
9 considered here by the Court. Can't cross-examine Mr.
10 Mills about that.
11 MR. MILLS: I thought we interpreted -- in the
12 closing argument in the jury trial, we talk about a
13 person's demeanor --
14 MR. LOCKIE: Well, if he's saying what he saw and
15 how he perceived it, how he perceived the jury's reaction,
16 that's the -- that's a different matter.
17 If Mr. Mills wants to testify, he can go on up.
18 THE COURT: Okay.
19 MR. MILLS: I will submit it, Your Honor.
20 THE COURT: I guess I didn't understand that that
21 is what he was doing. Obviously he cannot give his own
22 perceptions of it.
23 So all right.
24 MR. MILLS: I can rephrase it. Instead of what I
25 saw, I can say the jury was -- they have characterized this

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1 I guess I have to rely on the record of what was
2 said during the voir dire, right?
3 MR. MILLS: I think you do. We can't get inside
4 their minds during trial or jury deliberations to figure
5 out whether what happened at jury selection --
6 THE COURT: Well, we can because we don't have
7 any evidence on that point, right? I mean, I have got to
8 look at the transcript, make a decision from there.
9 MR. MILLS: So I think that would be speculation,
10 Your Honor.
11 THE COURT: I mean, I suppose also one of the
12 reasons that the legislature wants the trial judge to be
13 the judge who decides these things is that judge might read
14 that transcript and kind of jog his or her memory about
15 what his perception or her perception was of events during
16 that voir dire.
17 I mean, I can rely on my own perception, I would
18 think. It would be crazy for that to be any other way.
19 But of course my memory is limited too. I don't know how
20 much my memory will be jogged by reading these -- to a
21 certain extent, it has been.
22 I do remember the gentleman you were talking
23 about --
24 MR. MILLS: Yeah.
25 THE COURT: -- being very adamant that he was not

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1 a racist and would give Mr. Dean a fair trial.
2 MR. MILLS: Yep. And that's -- that's the point.
3 That is why you want that guy on the jury if you are --
4 THE COURT: I understand that --
5 MR. MILLS: You want to discover those kind of
6 jurors and keep them on the jury.
7 THE COURT: I understand that argument.
8 I understand this one too.
9 It's just one I will have to resolve.
10 MR. MILLS: Now, I think what I will do is now
11 address a couple of the other alleged deficiencies in
12 performance, then I'll bring this back around and talk
13 about prejudice one time with regards to everything.
14 So the next thing -- so the jury selection,
15 again, in the minds -- in the State's view is not -- I -- I
16 don't see any huge issues there. I'm don't think that's as
17 problematic as potentially the next thing.
18 And I think that's -- in the State's mind, this
19 is what the case boils down to, is the knife fighting
20 stuff.
21 And ultimately -- and I see both sides of that
22 argument. That's dicey evidence to put on in front of a
23 jury. The State concedes that.
24 But you look at the position that they were in.
25 They very clearly had an exchange about this. When I say

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1 "they," I mean Mr. Dean and Mr. Woodbury. After the
2 evidence came out from Dr. Ward about the depth of the
3 wound, they were kind of in a pickle at that point.
4 And, as Mr. Woodbury testified to, the much more
5 serious charge that Mr. Dean was facing was the attempted
6 murder with the use of a deadly weapon charge.
7 That was the most assailable charge in this case
8 because the State had the requirement of proving not just
9 that Dean stabbed these people, but that he intended to
10 kill Bert Minter.
11 And so after that testimony came out from Dr.
12 Ward, Mr. Woodbury and Mr. Dean were in a position where
13 they had to figure out a way to rebut that intent to kill.
14 And for strategic trial strategy purposes, what
15 Mr. Woodbury came up with was that you look at the nature
16 of these wounds, and these are stabs, and if you really
17 wanted to kill someone, you wouldn't have gone about it
18 this way.
19 So there is a sound trial strategy for what he
20 did. And there is potentially a downside to putting that
21 information on. But this is what the defense attorneys do,
22 you know. They weigh and balance, you know, the benefit
23 you might gain from a particular kind of testimony to the
24 potential downside.
25 And at this point -- at that point in the trial,

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1 after Dr. Ward's testimony, they were in a position where
2 they had to do something to try to rebut that -- that
3 intent to kill.
4 And that was the -- a way that Mr. Woodbury went
5 about addressing that.
6 And the State would argue that that was a
7 reasonable trial strategy at that point.
8 Now, I want to finally comment on -- on I guess
9 what is the inflammatory smoking gun in this case. Which
10 is that note that Mr. Woodbury wrote about "Joseph Schenk
11 is an 'N' word too."
12 I would point out, we should not -- I mean, I
13 think it's fair for people to be offended by Mr. Woodbury's
14 use of that word. It's an offensive word.
15 But we shouldn't let the inflammatory nature of
16 that blind us or distract us from the fact that the jury
17 wasn't exposed to that.
18 That's not anything that was presented to the
19 jury. That is not anything that per se is performance of
20 the attorney that is put on in front of the jury.
21 They didn't see that note. They didn't hear
22 about the note. So what really is the relevance of that
23 note? I guess you would have to connect that note to other
24 stuff that Mr. Woodbury was doing in trial. And then that
25 gets us back around to the issue that we all started out

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1 with, which is, if you -- is -- and this gets complicated,
2 and this is where, you know, this Ellis case kind of gets
3 into this a little bit.
4 If you -- is whether a defense attorney is
5 racist, is that part of the analysis? Or can -- as Mr.
6 Lockie gave an example -- could David Duke, an avowed
7 racist, represent a client, an African-American client,
8 zealously without there being some kind of structural
9 problem with the proceedings and with a violation of Sixth
10 Amendment right to counsel and all that kind of stuff.
11 But I think we're a far ways away from even
12 getting into that sort of analysis, because that sort of
13 analysis assumes that the defense attorney is, in fact,
14 racist and harbors racist and offensive views about a
15 particular race.
16 I don't think we are anywhere in that
17 neighborhood, Your Honor. We heard from Mr. Woodbury. He
18 says, I have no problem working with African Americans,
19 representing them. I harbor no animus towards them. It
20 would be morally wrong and would violate the rules of
21 professional conduct for me not to do my very best job on
22 account of a person's race.
23 So I don't think we're even in that neighborhood.
24 But for the sake of argument, if we were in that
25 neighborhood of, oh, okay, so the defense attorney is

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1 racist, is that per se ineffective assistance of counsel? I
2 don't think that it is.

3 THE COURT: And I think that seems to be what
4 this case you are telling me about is -- I know it is just
5 for persuasion -- persuasive -- persuasive authority
6 perhaps. It seems to be suggesting that -- to me anyway --
7 that maybe this is just evidence that might go to the issue
8 of reasonableness, reasonableness of the litigation choices
9 that a defense attorney has made. Right? I mean --

10 MR. MILLS: Sort of, Your Honor.

11 THE COURT: In other words, I don't know how a --
12 it seems to me that that is where it would go to in the
13 first instance. That's why it would be relevant. You know,
14 he made this decision and it sure looks like a bad
15 decision, and, oh, guess what, he's a racist and maybe that
16 is why he made that bad decision, to tank his own client's
17 case.

18 Do you see what I mean?

19 MR. MILLS: Yep. And that's why I -- I
20 referenced the phrase "because of" earlier, because I think
21 they use that in here, that there is no evidence that this
22 attorney -- and again, the attorney in this case is just
23 off-the-charts offensively racist.

24 THE COURT: Right. Well, I mean, you know, you
25 can think of all the other language from the Strickland

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1 then I will sit down. And that's the prejudice, which is,
2 even if this Court found that either of those decisions,
3 the jury selection stuff or the eliciting of the knife
4 fighting testimony, fell below an objective standard of
5 reasonableness, there simply was no prejudice in this case.

6 The evidence was super strong. There -- there
7 was not a reasonable probability that the outcome in this
8 case would have been different had Mr. Woodbury dealt --
9 handled those two issues differently. There just simply was
10 too much evidence.

11 THE COURT: You're talking about the injuries
12 and --

13 MR. MILLS: Eye witness after eye witness after
14 eye witness that saw Mr. Dean stab Bert Minter multiple
15 times. Disinterested parties like Joseph Schenk that saw
16 Mr. Dean stab Bert Minter multiple times.

17 And the injuries on -- on Minter, including deep
18 puncture wounds, three and a half inches, according to Dr.
19 Ward

20 THE COURT: Was Schenk -- I can't remember,
21 that's why I got to read the trial transcript. I deal with
22 tons of cases and I don't have the luxury of reading this
23 transcript before this hearing.

24 But was Schenk damaged in any significant way by
25 cross-examination or other evidence?

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1 progeny, right? Sham representation. Farce, you know,
2 whatever else it is. It would go to that issue.

3 This is a sham because X, Y and Z, and by the
4 way, he's also racist, he wasn't interested in giving real
5 good representation.

6 MR. MILLS: And we're miles away from that in
7 this case.

8 THE COURT: Yeah, that would pass Sixth Amendment
9 effective assistance of counsel test -- or muster.

10 MR. MILLS: So I guess what I'm suggesting what
11 we probably do in this case is apply Strickland.

12 And in applying Strickland, what we're looking at
13 is what actually happened at trial, what the decisions were
14 as far as the jury selection and the decision to elicit the
15 testimony about the knife fighting. Those are the two
16 decisions we are talking about.

17 Because that note wasn't shown to the jury.

18 So were there trial strategies behind those
19 decisions? There absolutely were.

20 And so this is -- yeah, like you say, this is not
21 a sham of a case. It wasn't -- there wasn't anything here
22 that would render the results of this trial unreliable.
23 That's language straight from Strickland. We don't have an
24 unreliable outcome in this case.

25 And that leads me to, I guess, my final point and

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1 MR. MILLS: Not that the State recalls. He was
2 pretty unassailable. Mr. Woodbury acknowledged that in the
3 letter he wrote to Dean. He's like, "our biggest problem
4 is Joseph Schenk." He didn't -- I'm not sure how he put
5 it, but it was -- if it was he didn't have skin in this
6 game, he didn't have a dog -- he was unbiased.

7 THE COURT: And he is the guy that was married
8 to --

9 MR. MILLS: Brittney Tice.

10 THE COURT: Brittney Tice. Who was Denise's
11 daughter?

12 THE DEFENDANT: Bert's daughter.

13 THE COURT: Thank you.

14 MR. MILLS: In any event, the evidence is strong.
15 It's not just Bert and Denise. You've got Joseph Schenk.
16 I think Brittney Tice was out there at one point and saw
17 some of this going on.

18 But Joseph Schenk really is the -- is the
19 strongest linchpin of the State's case because he is -- he
20 was a pretty disinterested witness and he saw what he saw.

21 THE COURT: I guess he does have more of a
22 connection to his wife's mother than Mr. Dean, though,
23 right? There is that.

24 MR. MILLS: So he --

25 THE COURT: Because he is married to one of the

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1 alleged victim's --
2 MR. MILLS: Daughters.
3 THE COURT: -- daughters. The argument might be
4 made that marital harmony dictates that he stay on the side
5 of Ms. Minter.
6 MR. MILLS: Sure. But then you have got the
7 injuries.
8 Then the -- the thing that makes it really hard
9 for Mr. Dean, made it really hard for Mr. Woodbury as his
10 defense attorney, was the, I guess, implausible story that
11 Mr. Dean told about, well, they -- when asked by Detective
12 Nielson, "well, how did these guys get stabbed?"
13 "well, they must have stabbed themselves."
14 Which is pretty implausible. That is a tough
15 sell for any jury.
16 Nothing is going to change those core facts.
17 Trial after trial after trial in this case and you still
18 got multiple eye witnesses, you still got the same wounds,
19 you still got the same implausible story that he is locked
20 into to Detective Nielson. None of that is changing. The
21 evidence is strong.
22 And even if there was in any way, shape or form
23 any performance that fell below an objective standard of
24 reasonableness on the part of Mr. Woodbury, there simply is
25 no prejudice in the sense that any outcome would have been

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1 different or reasonable probability that any outcome would
2 have been different.
3 And that's the State's position. Thank you.
4 THE COURT: Thank you. Argument, Mr. Lockie?
5 Any reply?
6 MR. LOCKIE: Thank you, Your Honor. Do my best
7 not to reiterate.
8 But one thing that came up was the knife and the
9 DNA. It should be noted that the -- that Exhibit 15, which
10 is the lab report on the knife, shows that they did find
11 DNA from four different individuals on that knife; none of
12 which were Sean Dean or any of the other known people.
13 And so Lindsey Steele was actually excluded. She
14 was one of the residents in the house. So she was one.
15 The Minters were excluded. Lindsey Steele was excluded.
16 It wasn't Mr. Dean.
17 But, again, there is four other people. And at
18 the time there were two other people in the house.
19 Clarence Thompson and another guy named Carl were in the
20 house. And there was never any comparison made.
21 So it's not quite as clear as what Mr. Mills had
22 indicated, that it was for sure that Dean had that knife.
23 From our point of view, Mr. Schenk's testimony
24 was impeached significantly at trial. Particularly
25 Mr. Woodbury effectively brought out that his testimony was

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1 different than the Minters' account of the events.
2 So I didn't go into the Ellis case because I
3 didn't think I could. And I actually really wanted to.
4 THE COURT: Sure.
5 MR. LOCKIE: So what this case says is that, to
6 the extent that Frazer held -- that was Frazer, a prior
7 case -- held that the defense counsel's extreme animus
8 towards the person's -- towards persons of the defendant's
9 race violates the Sixth Amendment without the need to show
10 prejudice, Mayfield implicitly overruled that holding.
11 I think we're all on the same page there. That's
12 back to the structural problem. Like, in other words, so
13 you still have to show prejudice.
14 So looking at it in a different way that I was
15 thinking of was, you could have a defense attorney that is
16 pure as the driven snow and he could go into trial and
17 start using the n-word all over the place and everything
18 else. And it would -- it could easily commit reversible
19 error.
20 So, I mean, it -- it can come from either
21 direction. I mean, you could have a clean defense lawyer
22 who could come in there with the right language and so his
23 state of mind wouldn't make any difference for the State, I
24 guess, saying, oh, he was perfectly, you know, good-hearted
25 person, you know, just kind of put aside all that.

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1 But I think we are on the same page on that. I
2 don't mean to beat that to death anymore.
3 But the key line from this, and it's kind of -- I
4 will admit it's unusual, but it's the holding of the court.
5 So after the -- after the court says, "In order
6 to demonstrate that Ames' -- who was the defense lawyer --
7 racist views prejudiced him, Ellis" -- he is the petitioner
8 -- "must show either that he knew of these views during a
9 critical phase of the proceedings, leading to a complete
10 breakdown in communication, as in Frazer, or that Ames'
11 racism otherwise adversely affected his performance at
12 trial."
13 So maybe we are just back to the same things in
14 terms of the Ellis case. So we have to show -- but, you
15 know, this standard goes further than what we're just
16 talking about under a Strickland test, because this -- so
17 this adds in you could show that Ames' racism otherwise
18 affected his performance as counsel.
19 For what it's worth, I'll let the Court and the
20 court staff and whoever -- I mean, you know, it's research
21 and everything -- but will look at these citations and
22 these cases that we presented and apply its own wisdom to
23 the facts.
24 THE COURT: Thank you for your arguments,
25 counsel.

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1 All right. Well, I was looking forward to the
2 presentation. I appreciate it very much.
3 And of course I'm going to have to take this
4 under consideration. It's going to take awhile. We have a
5 lot of litigation coming up. But I fully intend to review
6 the criminal file and review the transcripts. It's just
7 really the only way, I think, to orient myself so that the
8 evidence that came in in this case can be placed in the
9 proper context by the Court.

10 And, you know, certainly, if any additional law
11 comes down before I get the thing decided, you are more
12 than welcome to go ahead get it to me. Sometimes that
13 happens with cases.

14 MR. LOCKIE: Your Honor, we need to stipulate.
15 One of the pieces of the transcript that we didn't include
16 is a -- is the State's closing argument.

17 THE COURT: Okay.

18 MR. LOCKIE: If that's all right, we can add it.

19 THE COURT: Sure.

20 MR. LOCKIE: That way the Court has the
21 complete -- because the defense closing argument is in
22 there.

23 THE COURT: So that's next in order.

24 MR. LOCKIE: Or we can add it by stipulation.

25 MR. MILLS: Exhibit 11.

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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
4 I, LISA M. MANLEY, Official Court Reporter of the Fourth
5 Judicial District Court, Dept. II, of the State of Nevada,
6 in and for the County of Elko, do hereby certify that I was
7 present in court during all the proceedings had in the
8 matter of SEAN MAURICE DEAN, petitioner, versus AITOR
9 NARVAIZA, et al., respondent, heard at Elko, Nevada, on
10 November 21, 2019, and took verbatim stenotype notes
11 thereof; and that the foregoing 134 pages contain a full,
12 true and correct transcription of my stenotype notes so
13 taken, and a full, true and correct copy of all proceedings
14 had.

LISA M. MANLEY - CCR No. 271
OFFICIAL COURT REPORTER

135

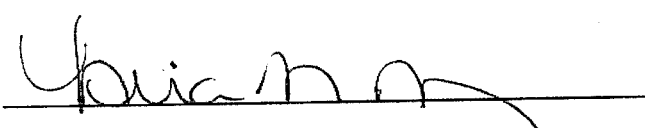
1 THE COURT: That's fine. You can add it to
2 Exhibit 11. Darla can do that. That will be it.
3 Thank you very much. Court's in recess.
4 (WHEREUPON, the hearing was concluded at 2:47 p.m.)

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1 STATE OF NEVADA)
2) SS.
3 COUNTY OF ELKO)
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5 Judicial District Court, Dept. II, of the State of Nevada,
6 in and for the County of Elko, do hereby certify that I was
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12 true and correct transcription of my stenotype notes so
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14 had.

15
16 
17

18 LISA M. MANLEY - CCR No. 271
19 OFFICIAL COURT REPORTER
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FILED

Case No. CV-HC-17-711

2020 APR 24 PM 3:06

Dept. No. 2

ELKO CO DISTRICT COURT

CLERK _____ DEPUTY ll

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

SEAN MAURICE DEAN,

Petitioner,

vs.

ORDER DENYING HABEAS RELIEF

AITOR NARVAIZA,
ELKO COUNTY SHERIFF,

Respondent.

On April 16, 2019, Petitioner Sean Maurice Dean filed a post-conviction petition for writ of habeas corpus. The Elko County District Attorney has opposed the petition.

Petitioner wants habeas relief from a judgment of conviction entered on October 26, 2017 in Case No. CR-FP-15-1508. *See* NRS 34.720(1); NRS 34.724(1). In that case, a jury found him guilty of attempted murder with the use of a deadly weapon, battery with the use of a deadly weapon resulting in substantial bodily harm, and battery with a deadly weapon for stabbing Bert "Duff" Minter and Denise Minter with a knife.¹ The Nevada Court of Appeals affirmed the judgment of conviction on January 25, 2019.

The prosecutor argued to the jury that on December 8, 2015 Petitioner confronted Denise at the Minter residence and ended up stabbing Duff and her. Among other things, the prosecutor presented evidence that: (1) Duff sustained seven stab wounds, one of which went 3 or 4 inches into his left side; (2) Denise was stabbed above her left breast; (3) Joseph Schenk witnessed Petitioner pull out a knife and stab Duff; and (4) Petitioner told Detective Peter Nielson that the Minters must have stabbed each other

¹ Duff is the named victim in the attempted murder with the use of a deadly weapon and battery with the use of a deadly weapon counts. Denise is the named victim in the battery with a deadly weapon count.

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1 while trying to stab him during a fight started by Duff. In line with his statement to Nielson, Petitioner
2 argued to the jury that each Minter accidentally stabbed the other while trying to stab him.

3 Petitioner is an African American man. Petitioner's trial attorney was a white man, Gary
4 Woodbury. Petitioner contends the judgment of conviction was obtained and remains in violation of the
5 Constitution of the United States and the Constitution and laws of the State of Nevada because
6 Woodbury rendered ineffective assistance of counsel. NRS 34.360; NRS 34.724(1).

7 At bottom, Petitioner argues that the post-conviction evidence shows Woodbury has racist views
8 of African Americans. Petitioner essentially contends that Woodbury's views led him to act and fail to
9 act in ways both objectively unreasonable and prejudicial to the defense at trial. The court disagrees with
10 this characterization of Woodbury's actions and failures to act. To the extent Woodbury even has racial
11 biases regarding African Americans, Petitioner has not demonstrated that the attorney's performance was
12 both deficient and prejudicial to the defense. For this reason, the court is denying habeas relief.

13 **1. FINDINGS OF FACT – AMENDED INFORMATION; DEFENSE VOIR DIRE**

14 Petitioner went to trial on an amended information filed March 24, 2016. The prosecutor
15 basically alleged in the amended information that Petitioner stabbed each Minter with a knife.

16 As noted above, Petitioner is an African American man and Woodbury is white. Before trial,
17 Petitioner asked Woodbury whether it would be possible to secure a change of venue. Petitioner told
18 Woodbury that he was concerned about getting a fair trial from what they figured would be a white Elko
19 County jury.

20 No member of the venire appeared to be an African American. During voir dire, Woodbury asked
21 the veniremembers whether they could be fair to an African American man. No veniremember
22 volunteered an answer. Woodbury then asked in so many words whether any veniremembers accepted
23 stereotypes about African Americans. Again, no veniremember volunteered an answer.

24 Woodbury proceeded to ask whether any veniremembers had heard a stereotype that all African
25 Americans like watermelon. When the question prompted no answers from the venire, Woodbury asked,
26 "Did you ever think about whether it's true or not?"

27 Receiving no answers from the venire, Woodbury explained the reasons for his questions as
28 follows.

1 Ladies and gentlemen, I have no means to know all of the things that are out there that one
2 might assume about black people. I can't know all of the things.

3 We know some of them. We know about the watermelon. This case isn't about watermelon.

4 If you have heard they have an attribute of violence, that they are sneaky, all of those things?
5 Clearly, some of you have heard things like that about black people. Is there anybody that can
6 raise their hand and say they have never heard that?

7 What we're trying to accomplish is Mr. Dean, we're not asking you to fall in love with black
8 people; we are not deciding anything like that. We are not asking for you to be more than fair
9 or fall over backward to pull Mr. Dean out of this.

10 But what we are asking is that when you hear evidence that triggers in your mind—just in
11 your mind—that there is an attribute that black guys have that explains his conduct, we're
12 asking you to do one thing: Take one second and think about whether or not the evidence
13 justifies that conclusion or whether you are just putting an assumption that you have heard
14 sometime before in other circumstances and applying it to Mr. Dean.

15 Woodbury followed up this explanation with other questions and statements about what
16 veniremembers might think about African Americans as follows.

17 Is there anybody that thinks they can't or wouldn't or shouldn't do something like that?

18 Does everybody see what I'm saying?

19 Is it clear?

20 That you have assumptions about black people. They are in your head. I can't take them out.
21 I don't know what all of them are.

22 Everybody agrees that those assumptions are in there in some form or another in every one
23 of you guys. Is that correct?

24 These questions and statements eventually prompted responses from primarily one
25 veniremember. The veniremember stated "we're all equal" and questioned the fairness of a person who
26 would make an assumption about someone based on skin color. The veniremember also opined, "All of
27 us don't do that." The veniremember, a white man, then elaborated as follows.

28 I don't have those assumptions about Hispanic, black. Don't matter where you come from,
we're all equal. We all bleed red.

Just all of our skin is a different color, and he's a person just like the rest of us.

When Woodbury questioned whether the man would still assign "characteristics" to Petitioner
just because he is an African American, the veniremember responded, "That's unfair to assume
somebody does something better or worse just because of their skin color." The veniremember then

1 disclaimed knowledge of a stereotype that African Americans have a propensity for violence, and stated
2 as follows.

3 I have seen folks from all walks of life get in trouble. [B]lack, white, Hispanic, it didn't
4 matter. It wasn't based on their skin color.

5 So I can't agree that I would have an assumption. And I – I can't assume anything based on
6 skin color. And I won't.

7 Woodbury responded to the veniremember by stating, "And you realize that that would be in
8 accordance with the Nevada justice system. Fundamental part of justice is everybody gets gauged on
9 their own personal state, not something like color?" Then the following exchange took place.

10 A. Yes, that's correct. I agree. It shouldn't be based on where you come from, what
11 color you are.

12 Q. Conversely, you also agree that not everybody can do that, talk about it in the same
13 way you are?

14 A. I wish that everybody could, but I agree that everybody can't.

15 Q. So then is it fair for us to ask that any assumptions that any juror makes regarding
16 Mr. Dean based on his skin color is unfair?

17 A. Yes.

18 Q. Is it then unfair for us to ask that if they hear something in the course of this trial
19 about something Mr. Dean did or is alleged to have done, that we ask them to take
20 a second to make sure that what they are doing is evaluating Mr. Dean as just another
21 guy, not a black guy?

22 A. I would hope they could judge him as another guy and not based on his skin color.
23 And if they can't then they need to speak up right now.

24 After that exchange Woodbury invited other members of the venire to do as the vocal
25 veniremember suggested. No other veniremembers responded. Woodbury then finished his voir dire.
26 The responsive veniremember ended up becoming a petit juror.

2. FINDINGS OF FACT – TRIAL EVIDENCE; PRETRIAL MOTION IN LIMINE

27 Duff is a tall white man. Duff was very fat at the time of the stabbings. Duff testified that the
28 Minters married in 2004. According to Duff, the Minters divorced in 2009 or 2010; however, they
remained "best friends" and were living together in Denise's trailer in Elko by early 2015.

Duff maintained that by late 2015 his health had declined so badly that he moved into a nursing
home. Duff testified that he was still in the nursing home when Denise, a tall, heavy white woman, told

1 him she had commenced a romantic relationship with Petitioner.

2 Duff maintained that: (1) by mid-November 2015, he left the nursing home and moved into
3 Denise's trailer again a few days later; and (2) on December 8, 2015 at approximately 8:00 PM
4 Petitioner came to the trailer and ended up arguing with Denise and starting a fight with him.

5 According to Duff, the fight started after Petitioner punched him in the face. In so many words,
6 Duff testified that: (1) Petitioner started to walk away after the fight was ostensibly over; (2) Petitioner
7 turned around and ran toward him and began fighting him again; and (3) during the second scuffle,
8 Petitioner exclaimed "Fuck this, motherfucker!" and pulled out and stabbed Denise and him with a
9 knife.

10 During the prosecutor's direct examination, Duff showed scars from stab wounds that he claimed
11 were inflicted by Petitioner. The court also admitted as Exhibit 52, Exhibit 53, and Exhibit 54, a
12 windbreaker, t-shirt and pants that Duff claimed he was wearing on the night of the stabbings. Duff
13 maintained that Petitioner stabbed him a total of seven times.

14 Woodbury knew his client had told Detective Pete Nielson of the Elko Police Department that
15 Denise and Duff must have stabbed each other during the scuffle. The attorney's cross-examination of
16 Duff and cross-examinations of other witnesses reflected this knowledge.

17 One obvious goal of cross-examining Duff was to show he had a motive to arm himself with a
18 knife before going outside because he was: (1) angry with Petitioner; and (2) not in fighting shape.
19 Another was to demonstrate that Petitioner was in good condition and winning the fight until Denise
20 intervened and grabbed him. On cross-examination, Duff agreed that he failed to call 9-1-1 and was: (1)
21 taking supplemental oxygen and 17 medications for pain, depression and anxiety on the date of the
22 stabbings; and (2) "not happy" when Petitioner came to the residence. Although he claimed to believe
23 Petitioner was a "badass" who had threatened Denise with bodily harm before December 8, 2015, Duff
24 denied arming himself before the fights or ever threatening Petitioner. Duff concurred that Denise pulled
25 Petitioner off him during the initial fight.

26 Schenk is also an African American man. Schenk testified that he was engaged to Duff's
27 daughter, Brittney Tice, as of December 8, 2015. Schenk maintained that he was discussing Christmas
28 with Brittney in their trailer when they heard a woman screaming. Schenk maintained that: (1) he looked

1 outside and saw Duff lying on the ground; (2) he ran outside and helped Duff off the ground; (3) he
2 noticed Denise was on the ground holding Petitioner down; and (4) at some point after Denise and
3 Petitioner stood up, Duff mumbled something and Petitioner exclaimed "Fuck this, motherfucker!" and
4 pulled out a knife.

5 Schenk explained in a little more detail how Petitioner produced and wielded the knife.
6 According to Schenk, Petitioner "reached his right hand into his right pocket, pulled out the knife with
7 two hands, [and] opened the knife . . . [a]nd that's when he continued to say "Eff this, motherfucker," then
8 started stabbing [Duff]." Schenk maintained that Petitioner wielded the knife in his right hand. Schenk
9 testified that Petitioner stabbed Duff's left side first. Schenk described the knife as a colored fold-out
10 knife that "looked four to six inches [long]."

11 Schenk testified that he ran to his residence to get a gun and have Brittney call 9-1-1 after
12 Petitioner "almost hit [him] on the second stab." Schenk maintained that he saw neither Duff nor Denise
13 handling a knife or other weapon. Schenk testified that by the time he loaded and returned with his
14 handgun, Petitioner was gone and Duff and Denise were walking around saying, "He stabbed me."

15 On cross-examination, Schenk essentially conceded that Duff might have mumbled to get a gun
16 before the stabbing occurred. During cross-examination, Woodbury also confronted Schenk with
17 inconsistent statements that the latter had made in a prior written account of the incident. Woodbury
18 further forced Schenk to concede that by leaving to get a gun rather than coming to Duff's defense, Duff
19 was placed in peril of being stabbed more by Petitioner. Schenk also agreed that: (1) Denise feared
20 Petitioner prior to the incident; (2) Duff thought Petitioner was violent and feared for Denise's safety
21 prior to the incident; and (3) Duff opined after the incident that Petitioner should remain in jail. Schenk
22 confirmed that Duff was trying to protect himself with his left arm, which was also stabbed. However,
23 Schenk denied hearing Denise exclaim that she was stabbed before the incident ended. He also
24 disclaimed testifying only to help the Minters.

25 Christina Hodges testified that on December 8, 2015 at about 8:00 PM she heard screaming as
26 she was getting ready for work. Hodges maintained that she went outside and heard a woman screaming
27 things such as "Stop. You're hurting me. Stop stabbing me. Sean, stop." Hodges acknowledged it was
28 dark and the lighting was poor. Nevertheless, she testified that when she walked to her neighbor's

1 parking space, she could see three or four people “wrestling around” in front of a residence. Hodges
2 testified that she called 9-1-1 and reported the incident and saw a man run across Fifth Street and into the
3 trailer park where she lived.

4 On cross-examination, Hodges agreed that she did not see “two people standing up, having a
5 fight.” Hodges also concurred that the man she saw was “sprinting.” Hodges agreed further that she did
6 not see the man throw anything as he ran.

7 Lindsey Steele testified that on December 8, 2015 she was living with her boyfriend, Clarence
8 Thompson, and her son in a trailer at 701 South Fifth Street. Steele testified that the family was returning
9 from Pizza Hut at approximately 8:00 PM when they saw Petitioner walking quickly across Fifth Street
10 to their trailer. Steele maintains she had a “bad feeling something happened” when she saw Petitioner
11 because he had been drinking and acting upset at her trailer earlier in the day. According to Steele: (1)
12 Petitioner and Thompson went into the trailer; (2) she eventually followed them into the trailer and
13 noticed a knife that she had never seen before in her living room; and (3) the police arrived a short time
14 later and escorted Petitioner from the trailer. Steele testified that she ended up giving the knife to the
15 police.²

16 Without objection, the knife was admitted as Exhibit 48. Prior to its admission, Steele identified
17 the knife as the unfamiliar one she found in her trailer. The knife has a green handle and a single sharp
18 edge that runs the length of the blade. Photographs of the knife alongside a ruler were also admitted
19 during the prosecution’s case without objection as Exhibit 19 and Exhibit 20.

20 On cross-examination, Steele acknowledged that she saw blood in the trailer after Petitioner left.
21 Steele also admitted that she did not know whether Petitioner was drinking a little bit or a lot that day.
22 Steele explained that Petitioner was upset over his relationship with Denise. Steele elaborated that
23 Petitioner was upset because Denise refused his requests to see him.

24 Officer Jeremy Catalano of the Elko Police Department testified that he was the first officer to
25 respond to the scene. Catalano explained that he handcuffed Petitioner in Steele’s trailer and noticed
26 Petitioner’s right hand was bleeding. Catalano maintained that Denise refused consent for the police to
27 search her trailer. Catalano also maintained that: (1) he ended up speaking to Denise at the hospital; (2)
28

² Officer Jacob Eisinger of the Elko Police Department testified that Steele indeed found and gave him the knife.

1 Denise informed him that she had sustained a stab wound above her left breast; and (3) he photographed
2 the wound. Catalano testified that he also saw Petitioner at the hospital, but observed no injuries on him
3 other than a cut on his right index finger. Catalano maintained that he collected the clothing worn by
4 Duff, Denise, and Petitioner before leaving the hospital. Catalano explained that he transported
5 Petitioner from the hospital to the jail. Catalano testified that: (1) during the trip, Petitioner claimed
6 Denise sent him a text message inviting him to her home earlier that evening; and (2) Petitioner asked
7 Catalano to retrieve his cell phone from Steele's trailer and search it for text messages from Denise.
8 Catalano explained that he went to Steele's trailer and picked up and searched the cell phone, but saw no
9 text messages inviting Petitioner to Denise's home.

10 On cross-examination, Catalano: (1) recognized the evidentiary value of checking the Minters'
11 clothing for the presence of Petitioner's blood; and (2) agreed he did not see any evidence corroborating
12 Denise's statement to him that Petitioner had been drinking alcoholic beverages. During a recall
13 examination, Catalano testified that he looked for but failed to locate other knives around the scene of
14 the stabbings.

15 Officer Christopher Ballesteros of the Elko Police Department testified that he took photographs
16 of blood on the floor of the kitchen and bathroom of Steele's trailer. One of those photographs was
17 admitted as Exhibit 11, and depicts blood droplets on a vinyl floor next to a bucket of water.

18 Dr. Christopher Ward testified that he examined Duff on December 9, 2015. Dr. Ward, a general
19 surgeon, maintained that: (1) Duff's left side had four, inch-long knife wounds in a straight line between
20 the lower chest and pelvic bone; and (2) the lowest of these wounds went into Duff's body three or four
21 inches. Dr. Ward testified that he was concerned the lowest wound may have penetrated the peritoneum
22 that lines the abdominal cavity; therefore, he decided to perform exploratory surgery to check for injuries
23 to the man's internal organs. Dr. Ward explained that: (1) he found no evidence of peritoneal penetration
24 or internal injury; and (2) any damage to the organs in the area of the wounds could have resulted "in
25 serious, even life-threatening injuries."

26 Denise testified that on or about December 8, 2015 Petitioner was threatening her because she
27 would not come and see him. Denise maintained that: (1) she eventually "gave in" and told Petitioner in
28 a text message that she would see him the next day; (2) Petitioner came to her residence a short time

1 later smelling of alcohol; (3) Petitioner and she spoke outside on her porch; (4) Duff came outside; (5)
2 Petitioner and Duff started talking "crap" and "smack" to each other; (6) as she led him down the porch
3 steps, Petitioner asked Duff if he wanted to fight; and (7) the next thing she knew, Petitioner punched
4 Duff and the men were in a fistfight. Denise further explained that: (1) she ended up putting Petitioner in
5 a choke hold on the ground as the men were grabbing each other; (2) each man eventually released his
6 hold on the other and stood up; (3) Petitioner started walking away; (4) the men exchanged more words;
7 (5) Petitioner ran up and punched Duff in the face; and (6) Petitioner stabbed Duff and her.

8 On cross-examination, Denise testified that by December 8, 2015: (1) she ended her relationship
9 with Petitioner because he had threatened to kick her ass; and (2) she told Duff that Petitioner and she
10 had broken up and she feared Petitioner. Denise disclaimed: (1) Duff was trying to reestablish a romantic
11 relationship with her; (2) she was trying to remove Petitioner from her life; (3) remembering what Duff
12 and Petitioner were saying to each other before the first punch was thrown; (4) ever screaming "Sean,
13 stop stabbing me!" during the scuffle; (5) seeing Schenk help Duff off the ground after the first fight; (6)
14 seeing Petitioner pull out a knife in the manner claimed by Duff and Schenk; and (7) she was "trying to
15 prejudice the jury against [Petitioner] by saying he was drunk and [she] could smell old alcohol" on him.
16 However, she agreed that: (1) she had professed to love Petitioner during their text messaging; (2) Duff
17 was ailing from recent surgeries and two strokes he had recently suffered; (3) Duff was concerned for
18 her safety when Petitioner arrived at her home; (4) she spoke loudly to Petitioner on the porch; and (5)
19 although the men were punching each other in the face, Duff suffered no facial injuries.

20 On redirect examination, Denise agreed that as of December 8, 2015 Petitioner was a muscular
21 man who did a lot of pushups. Denise also explained that Duff was using an oxygen tank throughout the
22 day of the stabbings.

23 Corporal Joel Fairfield of the Elko Police Department testified that he took photographs of both
24 Duff and Petitioner. Fairfield maintained that he observed no injuries to either man's face. On cross-
25 examination, Fairfield: (1) agreed that he saw no "slashing type wound" to Duff; but (2) could not opine
26 as to whether any wound was the result of a "twisting type motion." The cross-examination followed Dr.
27 Ward's testimony the previous day. The questioning suggests Woodbury was concerned as early as the
28 third day of trial that he had to lessen the impact of Dr. Ward's testimony. In response to a jury question,

1 Fairfield testified that he did not notice indications of alcohol consumption by Petitioner.

2 Detective Zachary Hessing testified that he conducted a forensic examination of Petitioner's cell
3 phone. Hessing maintained that he determined Petitioner called Denise at 7:45 PM and 7:46 PM on
4 December 8, 2015. Hessing also explained that he recovered a series of text messages between
5 Petitioner's and Denise's phones on that date and the preceding day. Paper copies of the texts were
6 admitted as Exhibit 33. A review of the exhibit reveals that on December 7, 2015 Petitioner: (1) was
7 concerned that Denise had someone else living with her; and (2) essentially asked Denise whether they
8 were still a couple. By the date of the stabbings, Petitioner: (1) expressed frustration that Denise was not
9 being honest with him about their relationship; (2) told Denise he wanted to be with her; and (3) told
10 Denise to "stop playing games before [he] did something stupid."

11 Nielson testified that he interviewed Petitioner after the stabbings. According to Nielsen,
12 Petitioner: (1) denied stabbing either Duff or Denise; (2) claimed that the pair must have stabbed
13 themselves and framed him; and (3) stated that Duff cut Petitioner's right index finger when he was
14 trying to protect himself from a knife attack by the Minters. Nielson maintained that he could not find
15 any blood at the scene of the stabbing the next day. During cross-examination, Nielson could not explain
16 why: (1) no effort was made to investigate the source of the blood on Duff's clothing; and (2) no other
17 attempt was made to locate a knife between the Minter and Steele trailers or in Denise's trailer.

18 The recording of Nielson's interview with Petitioner was admitted as Exhibit 46. During the
19 interview, Petitioner essentially stated that on December 8, 2015: (1) Denise asked him to come to her
20 trailer; (2) once he got to the trailer, she was immediately aggressive with him; (3) Duff came out and
21 also became hostile toward him; (4) the Minters followed him down the stairs; (5) Duff started punching
22 him; (6) Duff and he started "scrapping" on the ground; (7) Denise put Petitioner in a chokehold; (8)
23 Duff and Denise each ended up trying to stab Petitioner with a knife; (9) Schenk intervened; and (10)
24 Petitioner returned to Steele's trailer.

25 The prosecutor also presented evidence that: (1) Petitioner's DNA was found in swabs of blood
26 that Eisinger collected from Steele's trailer; (2) no blood or comparison-worthy "handler" DNA was
27 found on the knife that Steele found; and (3) the Minters, Steele and Petitioner were excluded as the
28 sources of an "unknown male dominant partial DNA profile" taken from the knife. A forensic biologist,

1 Monica Siewertsen, further testified that: (1) a person does not necessarily leave comparison-worthy
2 DNA on every object he or she touches; and (2) one of the swabs from the knife contained a mixture of
3 DNA from at least four individuals, at least one of whom is male.

4 Carl Wayne Brannon and Petitioner testified in the defense case-in-chief. Brannon maintained
5 that he was in Steele's trailer with Petitioner on December 8, 2015. Brannon indicated that Petitioner
6 was on the phone for most of the thirty minutes they were in the trailer together. Brannon testified that at
7 approximately 8:00 PM he left the trailer and walked across Fifth Street with Petitioner. Brannon
8 essentially claimed that he: (1) believed the men were going to the trailer in which Petitioner's girlfriend
9 lived; (2) returned to Steele's trailer immediately after arriving at this trailer; (3) heard a woman
10 screaming; and (4) left when Petitioner returned to Steele's trailer.

11 Petitioner testified that he was raised in a rough neighborhood in Sacramento, California.
12 Petitioner maintained that he: (1) moved to Elko in 2012; and (2) met Denise in August or early
13 September 2015. Under direct examination by Woodbury, Petitioner indicated that: (1) he knew people
14 who had been in knife fights; and (2) a few people had pulled knives on him.

15 Woodbury essentially asked Petitioner whether he knew how to kill someone with a knife.
16 Petitioner responded as follows.

17 From my experience, it's you trying to dig the knife up in as far as you can go and you going
18 to try to rip something with it; going to pull, tug, going to do something to cause some
19 damage.

20 The following exchange then occurred on direct examination.

21 Q. If you were trying to kill somebody with a knife, what would be the right way to do
22 that?

23 A. Try to puncture them and twist it and rip it, just try to—try to rip, try to rip something.

24 Q. Okay. Is that something you have ever done?

25 A. No, sir.

26 Q. How do you know that's how you are supposed to do it?

27 A. That's how it has been done ever since I known (sic) people that get into knife fights.

28 Q. Okay.

A. The most effective way to hurt somebody.

1 Petitioner also explained that: (1) after his relationship with Denise became romantic on October
2 7, 2015, he moved into her trailer; (2) the couple had an argument and he moved into Steele's trailer
3 about 1 ½ months later; and (3) he continued to love and talk with Denise after he moved out.

4 Petitioner agreed that on December 8, 2015, he: (1) was still pursuing a relationship with Denise;
5 (2) exchanged text messages with Denise; (3) asked Denise whether he could come see her; (4) saw an
6 unfamiliar person at her trailer; and (5) became concerned that Denise was seeing another man.

7 Petitioner maintained that on December 8, 2015: (1) he came to Denise's trailer with Brannon;
8 (2) he knocked on and Denise answered the door; (3) Denise and he spoke on a porch outside; (4) Denise
9 loudly accused him of drinking; (5) he admitted to drinking two beers; (6) Duff "poked his head out [the
10 door]" and asked Denise if she was alright; (7) Denise replied that she was fine and told Duff to stay
11 inside; (8) he asked Denise to step off the porch to talk; (9) the door flung open after he was one or two
12 steps down the porch stairs; (10) Duff followed Denise and him off the porch with a knife; (11) Duff
13 gestured with his hands and talked "smack" and mumbled to himself; (12) Duff threw a punch at and
14 then exchanged punches with him; (13) he attempted to subdue Duff; and (14) Duff and he ended up
15 wrestling on the ground.

16 Petitioner testified further that: (1) he was keeping Duff "at bay" when Denise grabbed him from
17 behind and put him in a chokehold; (2) all three went to the ground again; and (3) while he was lying
18 face-up on Denise, Duff sliced his right hand while trying to stab him in the face with the knife.

19 Petitioner maintained that the fight resumed after all three combatants regained their feet.
20 Petitioner testified it was then that both Duff and Denise were "swinging at [him] in . . . [a] sweeping
21 manner, as if she had something in her hands trying to stab me also." Petitioner claimed to have checked
22 his cell phone at that time. Petitioner disclaimed stabbing either Duff or Denise. When Woodbury asked
23 him whether he knew how Duff came to be stabbed, Petitioner testified that Denise must have done it.
24 Petitioner basically called Schenk a liar.

25 On cross-examination, Petitioner confirmed that he knew how to kill a person with a knife.
26 During cross-examination, the following exchange also occurred.

27 Q. So you are in the middle of a fight and just—somebody is swinging a knife at you,
28 and you just got cut on your finger in a defensive posture, and you stand back up.
And the first thing you do is check your phone?

1 A. That was the first thing I did, check my phone. I had a lot of people pull knives on
2 me before, been in fist fights before. So it was no big deal to me.

3 Petitioner also reiterated that Duff and Denise must have stabbed each other while trying to stab
4 him.

5 During his closing argument, the prosecutor argued that Petitioner stabbed the Minters with the
6 knife admitted as Exhibit 48. The prosecutor also argued that the jury could reasonably infer that the
7 sharp edge of the blade slid onto and sliced Petitioner's right index finger during the stabbing.

8 As noted above, Woodbury argued to the jury that the Minters stabbed themselves while
9 attempting to stab Petitioner. Woodbury suggested that Denise was "playing" both Duff and Petitioner.
10 The attorney also suggested that each Minter decided independently that it would be better if Petitioner
11 was not in their lives. Woodbury contended that: (1) Duff had to know Petitioner was communicating
12 with Denise on the day of the stabbings; (2) Denise lured Petitioner to her trailer with her text messages;
13 (3) perhaps concerned for her safety, Denise armed herself with a knife before meeting Petitioner; (4)
14 Denise lured Duff from the trailer once Petitioner arrived; (5) Duff was motivated by anger and
15 concerned enough for his safety to arm himself with a knife; and (6) once Petitioner was winning the
16 fight, Denise and Duff tried to stab him.

17 During his argument, Woodbury criticized the prosecutor for not seeking to test Duff's clothing
18 in an effort to find "objective" evidence that could corroborate the testimony of prosecution witnesses.
19 Woodbury also noted that police testimony tended to refute Denise's suggestion that Petitioner was
20 drunk when he came to her trailer. Woodbury suggested that Schenk simply lied to help his fiancé's
21 father rid himself of Petitioner. Likely recalling Catalano's testimony that Denise refused to let police
22 into her trailer after the stabbings, Woodbury also: (1) contended that it was absurd to think the knife
23 admitted as Exhibit 48 was used to stab the Minters; and (2) noted that the police did not search Denise's
24 trailer for bloody knives or find any knives with blood on them at or near the scene of the stabbings.
25 Woodbury suggested that Duff would be dead if Petitioner had really stabbed and intended to kill him.
26 Finally, Woodbury suggested that Petitioner had to be telling the truth; otherwise, he would simply have
27 told investigating officers that he defended himself from the Minters.

Prior to trial, Woodbury filed a somewhat-cryptic motion in limine. In the motion, Petitioner offered to prove (among other things) that the Minters began selling narcotics by the summer of 2015. During trial, Woodbury put flesh on the bones of the motion and basically offered to prove that officers were looking for Petitioner at Denise's trailer because they wanted to arrest him for being violent with Hodges on November 12, 2015. The question was whether the evidence was relevant to prove that Duff and Denise conspired to prompt Petitioner's arrest so law enforcement officers would stop placing the Minters under surveillance while they were trying to deal drugs from their trailer.

The trial evidence demonstrated that the Minters had a motive to sell narcotics because they had financial difficulties in the latter half of 2015. However, Woodbury was unwilling to present evidence that officers were searching for Petitioner because they believed he had been violent with Hodges in November 2015. For these and other reasons, the court prevented Woodbury from questioning various witnesses about the narcotics activities of the Minters.

3. FINDINGS OF FACT – POST-CONVICTION

During the jury selection process, Woodbury wrote notes to himself. A copy of those notes were admitted at the post-conviction evidentiary hearing as Petitioner's Exhibit 2. The notes read as follows.

- 1) Sherk (sic) is a nigger too.
- 2) Did anybody on the panel miss the fact Δ is black.
- 3) Is there anybody on the panel who hasn't heard or read black males have certain characteristics.
- 4) Is there anybody on the panel that (sic) thinks there is no truth to the existance (sic) of those characteristics?
- 5) All the defense is asking you to do is get your information from the witness stand—not from . . . what you might have heard from some undefined someone years ago.

During the trial, Woodbury opined in a note to Petitioner that Dr. Ward's testimony about the stab wounds tended to increase the likelihood of an attempted murder conviction. A copy of the series of notes in which the note appears was admitted at the post-conviction evidentiary hearing as Petitioner's Exhibit 19. A review of the exhibit reveals that the following exchange then occurred.

1 Woodbury. My question is whether you know, in a knife fight, whether you don't just
2 stab, you also slice while the blade is in the guy.

3 Petitioner. I've never known anyone doing just one or the other, it depends on the person
4 I guess, and how familiar they are with using a knife.

5 I've never been in a knife fight.

6 If your intent is to kill someone, slicing someone isn't going to get the job
7 done, you have to polk (sic) that person.

8 After he testified, Petitioner asked Woodbury only two written questions: "How did I do?" and
9 "Why didn't you ask me about [Denise's] drug use-sales?" A copy of these questions was admitted at
10 the post-conviction evidentiary hearing as Petitioner's Exhibit 18.

11 Before the date initially set for sentencing, Petitioner wrote Woodbury a letter. A copy of the
12 letter was admitted at the post-conviction evidentiary hearing as Petitioner's Exhibit 3. In the letter,
13 Petitioner alluded to Woodbury's note regarding Schenk and accused the attorney of being a racist and
14 other presumably-related shortcomings. The letter shows that it was written by an intelligent man with a
15 strong command of the English language. The letter is also a profanity-laced diatribe against: (1) the
16 prosecutor (punk-ass Mills, little skinny prick Mills); (2) a witness (punk-bitch Linsey); (3) the City of
17 Elko (racist-ass town); (4) the Elko defense bar (bigots); and (5) jail employees (punk-ass jail).

18 Woodbury responded to the letter with a letter of his own. A copy of this letter was admitted at
19 the post-conviction evidentiary hearing as Petitioner's Exhibit 4. In the letter, Woodbury essentially
20 explained his approach at trial and disputed the racial significance of the note. Woodbury also wrote,
21 "I've called you a lot worse names than that for getting hooked up and staying with a 5'9" fat lady who
22 sells dope and gambles away everything she's got."

23 Sergeant Jason Pepper of the Elko Police Department interviewed Schenk and Tice after the
24 stabbings. Pepper also interviewed Petitioner in the emergency room at the Northeastern Nevada
25 Regional Hospital shortly after his arrest. Pepper does not recall whether Petitioner was intoxicated
26 during the interview. Pepper does not recall whether Petitioner had any injuries other than a cut on a
27 finger on his right hand, either.

28 The latter interview was recorded with Officer Jared Lowry's body camera. During the post-
conviction hearing, the court admitted three recordings from this body camera as Petitioner's Exhibit 12.

1 A review of the recordings reveals that Petitioner: (1) had no discernible injuries other than the cut on
2 the index finger of his right hand; and (2) was sober enough to receive medical treatment and talk to
3 Pepper. On the recordings, Petitioner can be heard to confirm that he is right-handed. Petitioner can also
4 be heard to state that he was drinking beer before coming to see Denise. A comparison of the recordings
5 with the recording of Petitioner's interview with Nielson demonstrates that Petitioner gave Pepper and
6 Nielson the same basic account of the stabbings.

7 Deputy Brenda Cortez of the Elko County Sheriff's Office booked Petitioner into jail when he
8 arrived from the hospital. Cortez confirmed that she made records of the booking. During the post-
9 conviction evidentiary hearing, a copy of one of these records was admitted with copies of other
10 documents as Exhibit 21. A review of this document reveals that Cortez evaluated Petitioner to be sober
11 at the booking. Cortez confirmed that she "did not detect the odor of alcohol" on Petitioner when she
12 booked him.

13 *****

14 Woodbury was concerned about leaving the jury with the impression that Petitioner was involved
15 in Elko's narcotics trade. Therefore, he decided to abandon the theory that Duff and Denise conspired to
16 prompt Petitioner's arrest so law enforcement officers would stop placing the Minters under surveillance
17 while they were trying to deal drugs from their trailer. In an effort to distract the prosecutor, Woodbury
18 argued and litigated the motion in limine to a decision anyway.

19 Woodbury also made tactical decisions not to: (1) determine whether Petitioner's blood was not
20 on the clothing worn by Duff at the time of the stabbings; and (2) object to the admission the knife that
21 Steele maintained she found in her trailer. Woodbury believed the prosecutor looked silly arguing to the
22 jury that a knife without blood on it was used to stab the Minters.

23 **4. PETITIONER'S POST-CONVICTION TESTIMONY**

24 Petitioner confirmed that during a pretrial conference he asked Woodbury to seek a change of
25 venue. Petitioner conceded that he was "concerned about getting an all-white jury, seeing that Elko is
26 predominantly white." Nevertheless, Petitioner maintains that he told Woodbury "[he] didn't want race
27 being brought up at all" because did not want the jury to think he was "trying to play the race card."

28 Petitioner maintains that he "felt insulted" by Woodbury's voir dire. Petitioner also testified that

1 Woodbury refused his request to exercise a peremptory challenge against the vocal juror who agreed that
2 a criminal defendant's race should not be considered by petit jurors.

3 Petitioner explained that he: (1) saw Woodbury's note regarding Schenk just two days after the
4 jury was selected; (2) was "shocked" when he read the note; and (3) gathered from the note that
5 Woodbury had a racial bias against him. Petitioner maintains that he: (1) asked Woodbury about the note
6 after he read it and confirmed that he addressed it in his letter to the attorney; and (2) was further
7 insulted by Woodbury's written response.

8 Petitioner agrees that before trial he talked to Woodbury about his knowledge of knife fights.
9 However, Petitioner contends he never agreed to take the stand and answer questions about knife
10 fighting. In part, Petitioner maintains he would not have agreed to take the stand and answer such
11 questions because he thinks knife-fighting is associated with a stereotype that African Americans are
12 violent.

13 **5. CLAIMS FOR RELIEF - ANALYSIS; CONCLUSIONS OF LAW**

14 It is clear that a defendant has a Sixth Amendment right to effective assistance of counsel at trial.
15 "The key to evaluating an ineffectiveness claim is whether the proper functioning of the adversarial
16 process was so undermined by counsel's conduct that the reviewing court cannot trust that the trial
17 produced a just result." Foster v. State, 121 Nev. 165, 169 (2005) (citing Strickland v. Washington, 466
18 U.S. 668, 686 (1984)). Under the test established in Strickland, to prevail on a claim of ineffective
19 assistance of counsel, "a claimant must make two showings." Id. (citing Strickland, 466 U.S. at 687).

20 First, a claimant must show that counsel's performance was deficient. Id. In other words, a
21 claimant must show that counsel's representation fell "below an objective standard of reasonableness."
22 Id. (quoting Evans v. State, 117 Nev. 609, 622 (2001)). "The inquiry on review must be whether, in light
23 of all the circumstances, counsel's assistance was reasonable." Id. (citing Strickland, 466 U.S. at 688).

24 "Second, a claimant must show that counsel's 'deficient performance prejudiced the defense.'" Id.
25 (quoting Evans, 117 Nev. at 622). "Specifically, the claimant must show that there is a reasonable
26 probability that, but for counsel's unprofessional errors, the result of the proceeding would have been
27 different." Id. "A reasonable probability is a probability sufficient to undermine confidence in the
28 outcome." Id. (quoting Strickland, 466 U.S. at 694).

Petitioner has ostensibly argued eight claims for habeas relief. Most of these claims are fairly cryptic. Nevertheless, the court has addressed every issue that appears to be raised in these claims. The court has also addressed the additional complaints about which Petitioner wrote in his letter to Woodbury. In so doing, the court is mindful that a habeas corpus petitioner “must prove any disputed factual allegations underlying his ineffective assistance of counsel claims by a preponderance of the evidence.” *Id.* (citing *Means v. State*, 120 Nev. 1001, 1012 (2004)). The court is also mindful that the evidence of Petitioner’s guilt at trial was overwhelming. In the court’s opinion, Petitioner made this case especially difficult to defend to a jury once he suggested to Nielson that Duff and Denise must have stabbed each other.

First Claim for Relief

The first claim for relief has two parts. First, Petitioner claims that Woodbury rendered ineffective assistance of counsel during voir dire by questioning veniremembers about their views on African Americans. Second, Petitioner claims that Woodbury provided ineffective assistance of counsel by calling Petitioner to testify and questioning him about whether he knew how to kill a person with a knife.

An attorney’s actions during voir dire are considered matters of trial strategy. *See Garcia v. State*, 678 N.W.2d 568 (N.D. 2004) (citing *Miller v. Francis*, 269 F.3d 609, 615 (6th Cir. 2001)). And, it has been suggested that “[t]he possibility of racial prejudice against a black defendant charged with a violent crime against a white person is sufficiently real that the Fourteenth Amendment *requires* that inquiry be made into racial prejudice[.]” *Mu’Min v. Virginia*, 500 U.S. 415, 424 (1991) (emphasis added). Unfortunately, it is the undersigned judge’s experience that this concern is justified. On more than one occasion on the district court bench, the undersigned judge has seen a veniremember admit a disqualifying racial prejudice.

During oral argument, Petitioner put flesh on the bones of the first part of the claim and argued that Woodbury alienated the venire by asking provocative questions about African Americans. However, there is no evidence to support a finding that any member of the petit jury was in fact offended by Woodbury’s voir dire. *Means*, 120 Nev. at 1012. And, Woodbury made it clear that Petitioner was not asking veniremembers “to be more than fair or fall over backward” for the defense. There is no evidence

1 that any member of the petit jury nevertheless felt Petitioner was “playing the race card,” i.e. invoking
2 his race to ask for better treatment than the criminal law allows. On this record, the court will not accept
3 Petitioner’s invitation to infer otherwise—whether he was insulted by the voir dire or not.

4 The bottom line? The trial record demonstrates what the undersigned judge remembers about
5 voir dire: In a blunt way, Woodbury reasonably challenged veniremembers to critically evaluate their
6 capacity to disregard any and all racial stereotypes about African Americans. The trial record also shows
7 that Woodbury ostensibly secured every remaining veniremember’s promise not to consider pernicious
8 stereotypes if selected to decide the case. The court understands the ugliness of the epithet that
9 Woodbury wrote in his voir dire notes. The court also believes that Woodbury’s response to Petitioner’s
10 concern about this note was degrading and gratuitous. Given the lack of other evidence that Woodbury is
11 a racist and the context in which he wrote the epithet, one might infer the note was the product of the
12 attorney’s consideration of uncomfortable questions about racial animus. Given Woodbury’s failure to
13 explain the note along those or other reasonable lines, one might infer the attorney is a closet racist. But
14 the relevant legal question is whether Woodbury’s voir dire was either objectively unreasonable or
15 prejudicial to the defense. Under these circumstances, the court cannot find it to be so. Therefore, the
16 first part of the first claim for relief fails. Foster, 121 Nev. at 169.

17 The second part of the claim can be analyzed through the lens of Nevada’s Rules of Professional
18 Conduct for attorneys. In general, an attorney must abide by his client’s decision concerning the
19 objectives of representation. RPC 1.2(a). The lawyer must also “[r]easonably consult with the client
20 about the means by which the client’s objectives are to be accomplished[.]” RPC 1.4(a)(2). And, the
21 lawyer must “explain a matter to the extent reasonably necessary to permit the client to make informed
22 decisions regarding the representation.” RPC 1.4(b). In a criminal case, a defense attorney also has to
23 abide by his client’s decision, “after consultation with the lawyer, as to whether the client will testify.”
24 RPC 1.2(a).

25 In this case, Petitioner is not arguing that Woodbury failed to abide by Petitioner’s decision
26 concerning the apparent objectives of representation—full acquittal. Petitioner is not contending that
27 Woodbury failed to either consult with him about whether he would testify or abide by Petitioner’s
28 decision on the matter. Instead, Petitioner maintains Woodbury ineffectively blindsided him in violation

1 of Nevada's Rules of Professional Conduct by failing to consult Petitioner about the direction to take his
2 testimony. The court is not persuaded.

3 The court must be blunt. It questions Petitioner's version of events with regard to this claim. As
4 noted above, Petitioner is an intelligent man; however, he hamstrung Woodbury with the incredible story
5 he gave Nielson. The record reflects that Woodbury was nevertheless up for a vigorous defense. From
6 the time he cross-examined Duff, it was clear Woodbury was laying the groundwork to argue Duff and
7 Denise very well might have stabbed each other given evidence that: (1) Denise was afraid of Petitioner;
8 and (2) Duff was angry with Petitioner but lacked the physical capacity to fight him without a weapon.
9 Schenk's testimony and other evidence made this argument an especially hard sell, but even the best-laid
10 plans can go astray. The post-conviction evidence demonstrates Woodbury reasonably became
11 concerned that the medical testimony could support a guilty verdict on even the attempted murder charge
12 unless it was addressed in some form or fashion. Under these circumstances, it is unreasonable to
13 conclude that Woodbury and Petitioner did not talk about the likelihood that Petitioner would have to
14 testify about what it takes to kill a person with a knife. This is especially so given the documentary
15 evidence and Petitioner's admission that he indeed discussed the subject with Woodbury. The icing on
16 the cake is documentary evidence that Petitioner asked Woodbury only two written questions after his
17 testimony: "How did I do?" and "Why didn't you ask me about [Denise's] drug use-sales?"

18 The bottom line? The court concludes that (as required by his rules of professional conduct)
19 Woodbury discussed his approach on direct examination with Petitioner before calling him as a witness.
20 This approach had no racial aspect to it. And, Petitioner's testimony was presented to a jury that agreed
21 not to consider racial stereotypes in deciding the case. Under the circumstances, the court fails to see
22 how Woodbury's direct examination was objectively unreasonable or prejudiced the defense. Therefore,
23 the second part of the first claim for relief fails as well. Foster, 121 Nev. at 169.

24 *Second Claim for Relief*

25 As noted above, Petitioner was treated at the Northeastern Nevada Regional Hospital after the
26 stabbings. The second claim is that Woodbury was ineffective for failing to obtain and move for the
27 admission of the medical records of this treatment.
28

1 In his petition, Petitioner suggests the medical records constitute circumstantial evidence that he
2 was not drunk at the time of the stabbings and had injuries to the backs of his hands that one might fairly
3 characterize as defensive. In so many words, Petitioner contends the admission of such evidence would
4 have compelled different verdicts because it negates the prosecution's argument that he cut his right
5 index finger while stabbing the Minters in a "drunken rage."

6 The court has carefully reviewed the medical records. These records do not show that Petitioner
7 had injuries other than the one to his right index finger. The court cannot see how the failure to move for
8 the admission of the records to show additional injuries was either objectively unreasonable or
9 prejudiced the defense.

10 The records do not contain a written assessment that Petitioner was intoxicated, either.
11 Nevertheless, the court questions whether Petitioner suffered prejudice due to the failure to obtain and
12 move for admission of the records to demonstrate his sobriety. First, voluntary intoxication can be a
13 defense to the specific intent crime of attempted murder. NRS 193.220; Sharma v. State, 118 Nev. 648,
14 653 (2002) (attempt crime is one of specific intent). Second, the prosecutor did not suggest in either his
15 closing or rebuttal arguments that Petitioner stabbed the Minters in a "drunken rage." Third, there was
16 no trial evidence that Petitioner was drunk when the stabbings occurred. Fourth, admission of the records
17 would have done nothing to impeach Denise's testimony that Petitioner smelled of alcohol before the
18 stabbings. As noted above, Steele testified that Petitioner had been drinking in her trailer on December 8,
19 2015. As noted above, Petitioner also agreed that he drank beer in this trailer before coming to Denise's
20 residence. Under the circumstances, the court cannot see how the failure to move for the admission of
21 the records to show Petitioner was not drunk at the time of the stabbings was either objectively
22 unreasonable or prejudiced the defense.

23 For the foregoing reasons, this claim for relief also fails. Foster, 121 Nev. at 169.

24 *Third Claim for Relief*

25 As noted above, Pepper utilized a body camera to make an audio-visual recording of Petitioner's
26 first account of the stabbings. The third claim is that Woodbury was ineffective for failing to both
27 present Pepper's testimony about this statement and obtain and move for the admission of the body
28 camera recordings.

1 In his petition, Petitioner appears to suggest Pepper's testimony and the body camera recordings
2 also constitute circumstantial evidence that Petitioner was not drunk at the time of the stabbings and had
3 defensive injuries. In so many words, Petitioner contends the admission of such evidence would have
4 also compelled different verdicts because it negates the prosecution's argument that he cut his right
5 index finger while stabbing the Minters in a "drunken rage."

6 The court has carefully reviewed the body camera recordings as well. As noted above, a
7 comparison of the recordings with the recording of Petitioner's interview with Nielson demonstrates that
8 Petitioner gave Pepper and the detective the same basic statement about the stabbings. However, the
9 hearsay rule would have barred the admission of Pepper's testimony about the account Petitioner gave to
10 him had Woodbury called the witness to testify about it. *See* NRS 51.025 (defining "declarant" for
11 purpose of hearsay rule); NRS 51.035 (defining hearsay); NRS 51.045 (defining "statement" for purpose
12 of hearsay rule; NRS 51.065 (defining general rule making hearsay inadmissible). The same goes for the
13 body camera recordings. Under these circumstances, the court fails to see how it was objectively
14 unreasonable not to obtain and move for the admission of the body camera recordings in an effort to
15 present yet another version of Petitioner's story. Means, 120 Nev. at 1011.

16 Further, the recordings do not show that Petitioner had injuries other than the one to his right
17 index finger. And, as noted above, Pepper cannot recall whether Petitioner had injuries other than the cut
18 on this finger. Under the circumstances, the court cannot see how it was either objectively unreasonable
19 or prejudicial to the defense for Woodbury to refrain from presenting Pepper's testimony and moving for
20 admission of the body camera recordings to demonstrate that Petitioner had other injuries.³

21 Although animated, Petitioner did not appear to be intoxicated on these recordings. But, as noted
22 above, voluntary intoxication can be a defense to the specific intent crime of attempted murder. NRS
23 193.220; Sharma, 118 Nev. at 653. And, again, the prosecutor did not suggest in either his closing or
24 rebuttal arguments that Petitioner stabbed the Minters in a "drunken rage." Again, there was no trial
25 evidence that Petitioner was drunk when the stabbings occurred. Pepper's testimony and the admission
26 of the body camera recordings would have done nothing to impeach Denise's testimony that Petitioner
27

28 ³ Petitioner essentially claimed in his letter to Woodbury that the attorney was ineffective for failing to argue that his client had a
"defensive wound" in the form of a cut between the ring and pinkie fingers of his right hand. Again, the court is unpersuaded. Again, the
body camera recordings do not show that Petitioner had injuries other than the one to his right index finger.

1 smelled of alcohol before the stabbings, either. Under these circumstances, the court cannot see how the
2 failure to present Pepper's testimony and obtain and move for the admission of the body camera
3 recordings to show Petitioner was not drunk at the time of the stabbings prejudiced the defense. Means,
4 120 Nev. at 1011.

5 In his petition, Petitioner also suggests Pepper recorded post-stabbing interviews with Schenk,
6 Tice and other witnesses. It appears Petitioner is claiming Woodbury was ineffective for failing to
7 present exculpatory testimony that a review of these recordings might have suggested was available.
8 However, Petitioner has failed to identify helpful testimony that Schenk, Tice, or any other witness
9 might have given the defense based on a post-conviction review of the recordings. Under these
10 circumstances, the court cannot see how Petitioner was prejudiced by the failure to present any such
11 testimony. Id.

12 For the foregoing reasons, this claim for relief fails as well. Foster, 121 Nev. at 169.

13 *Fourth Claim for Relief*

14 As noted above, Petitioner was booked into the Elko County Jail after receiving medical
15 treatment at the hospital. The fourth claim is that Woodbury was ineffective for failing to obtain and
16 move for the admission of the records of this booking.

17 In his petition, Petitioner argues that these records constitute circumstantial evidence that he was
18 not drunk at the time of the stabbings. In so many words, Petitioner contends the admission of such
19 evidence would have also compelled different verdicts because it too negates the prosecution's argument
20 that he stabbed the Minters in a "drunken rage."

21 A review of these records reveals that no one evaluated Petitioner to be intoxicated when he was
22 booked. But, as twice noted above, voluntary intoxication can be a defense to the specific intent crime of
23 attempted murder. NRS 193.220; Sharma, 118 Nev. at 653. And, again, the prosecutor did not suggest in
24 either his closing or rebuttal arguments that Petitioner stabbed the Minters in a "drunken rage." Again,
25 there was no trial evidence that Petitioner was drunk when the stabbings occurred. These records also
26 would have also done nothing to impeach Denise's testimony that Petitioner smelled of alcohol before
27 the stabbings. Under these circumstances, the court cannot see how the failure to present these records to
28

1 show Petitioner was not drunk at the time of the stabbings prejudiced the defense. Means, 120 Nev. at
2 1011.

3 For the foregoing reasons, this claim for relief also fails. Foster, 121 Nev. at 169.

4 *Fifth Claim for Relief*

5 As noted above, Duff was taking a variety of medications at the time of the stabbings. The fifth
6 claim is that Woodbury was ineffective for failing to secure and present expert testimony on the effect of
7 these medications on Duff.

8 In his petition, Petitioner seems to suggest that an expert could have established that these
9 medications made Duff impulsive and violence-prone. In so many words, Petitioner contends the
10 admission of such evidence would have also compelled different verdicts because it supports his
11 testimony that Duff attacked him with a knife and accidentally stabbed Denise.

12 Petitioner has failed to demonstrate by a preponderance of the evidence that the medications
13 made Duff either impulsive or violent, however. Means, 120 Nev. at 1012. Under these circumstances,
14 the court cannot find that Woodbury's failure to secure and present such expert testimony was either
15 objectively unreasonable or prejudiced the defense.

16 In his petition, Petitioner also suggests that the Minters refused consent to search their residence
17 after the stabbings. It appears Petitioner is claiming Woodbury was ineffective for failing to cross-
18 examine either witness about this refusal.

19 In so many words, Petitioner is suggesting the refusal to consent constitutes circumstantial
20 evidence that either Denise or Duff, or both, hid edge weapons in their residence. However, Woodbury
21 questioned Catalano on this subject and confirmed that Denise refused his request for consent to search
22 the residence. Under these circumstances, the court cannot find that Woodbury was deficient or
23 prejudiced the defense by failing to cross-examine either Duff or Denise on the subject.

24 For the foregoing reasons, this claim for relief fails. Foster, 121 Nev. at 169.

25 *Sixth Claim for Relief*

26 As noted above, the windbreaker, t-shirt and pants that Duff wore during the stabbings were
27 admitted as Exhibit 52, Exhibit 53, and Exhibit 54, respectively. The sixth claim is mainly that
28 Woodbury was ineffective for failing to secure and present forensic evidence that this clothing did not

1 have Petitioner's blood on it.

2 It appears this claim rests on the proposition that blood from the cut on Petitioner's right index
3 finger would have transferred to the clothing had Petitioner stabbed Duff. In so many words, Petitioner
4 contends the admission of such evidence would have also compelled different verdicts because it also
5 negates the prosecution's argument that he stabbed the Minters.

6 Woodbury basically maintains that he made a reasonable tactical decision not to secure and
7 present this evidence. The court does not need to evaluate the reasonableness of that decision, however.
8 Petitioner has failed to demonstrate by a preponderance of the evidence that the clothing does not have
9 his blood on it. Means, 120 Nev. at 1012. Under these circumstances, the court cannot find that
10 Woodbury's failure to secure and present such expert testimony prejudiced the defense. Id. at 1011.

11 Between his letter to Woodbury and his petition, it appears Petitioner is also claiming that the
12 attorney ineffectively failed to argue to the jury that: (1) glass on the ground where Duff and Petitioner
13 wrestled caused the wounds sustained by Duff; (2) it would be unreasonable to find that Petitioner
14 stabbed Duff's midsection in a straight line; and (3) the location of stab holes in Duff's clothing could
15 lead it to conclude Duff was not stabbed in the way he claimed. However, Petitioner has failed to either
16 explain in any cogent way or demonstrate by a preponderance of the evidence that: (1) rolling on glass
17 could have caused the stab wounds about which Dr. Ward testified; and (2) the configuration of either
18 the stab wounds or holes constitute such circumstantial evidence. Id. at 1012. Under these
19 circumstances, the court cannot find that Woodbury's failure to make this argument was either
20 objectively unreasonable or prejudicial to the defense.

21 For the foregoing reasons, this claim for relief fails as well. Foster, 121 Nev. at 169.

22 *Seventh Claim for Relief*

23 As noted above, a folding knife with a green handle and a single sharp edge that runs the length
24 of the blade was admitted at trial as Exhibit 48. The seventh claim is that Woodbury was ineffective
25 because he did not object to the admission of this exhibit and, presumably, photographs of the knife
26 alongside a ruler that were admitted as Exhibit 19 and Exhibit 20.

27 As noted above: (1) the prosecutor argued that Petitioner used the knife to stab the Minters; and
28 (2) Woodbury believed the prosecutor looked silly arguing that a knife without blood on it was so used.

1 In his petition, Petitioner essentially suggests that the court would have sustained an objection to
2 the admission of the knife because its probative value was substantially outweighed by the danger of
3 unfair prejudice. NRS 48.035(1). In so many words, Petitioner contends the exclusion of this evidence
4 would have also compelled different verdicts.

5 Woodbury has essentially maintained that he made a reasonable tactical decision not to object to
6 the admission of the knife. Again, the court does not need to evaluate the reasonableness of that
7 decision. Any such objection would not have been sustained because the knife was relevant evidence
8 that was properly authenticated and carried probative value not substantially outweighed by the danger
9 of unfair prejudice.

10 Relevant evidence is "evidence having any tendency to make the existence of any fact that is of
11 consequence to the determination of the action more or less probable than it would be without the
12 evidence." NRS 48.015. "Only relevant evidence is admissible." Rodriguez v. State, 128 Nev. 155, 160
13 (2012) (citing NRS 48.025(2)). But even relevant evidence must be excluded if it is not authenticated.
14 See Sanders v. Sears-Page, 131 Nev. 500, 514 (Ct. App. 2015) ("Authentication is a basic prerequisite to
15 the admission of evidence.") (citing NRS 52.015). "The requirement of authentication or identification
16 as a condition precedent to admissibility is satisfied by evidence or other showing sufficient to support a
17 finding that the matter in question is what its proponent claims." NRS 52.015(1). Of course, relevant
18 evidence that is properly authenticated may still be excluded if its probative value is indeed substantially
19 outweighed by the danger of unfair prejudice. NRS 48.035(1).

20 As noted above, the prosecutor alleged in the amended information that Petitioner attempted to
21 kill Duff and battered the Minters with a knife. And, the court admitted trial testimony from which one
22 might find that: (1) Petitioner stabbed the Minters with a folding knife with a colored handle; (2)
23 Petitioner went directly to Steele's trailer after the stabbing; (3) Steele found such a knife on the living
24 room floor of her trailer after the police arrested Petitioner; and (4) the folding knife found by Steele was
25 the one marked for identification as Exhibit 48. Under these circumstances, the court fails to see how the
26 knife and the photographs of the knife were not both relevant and authenticated as required by NRS
27 52.015(1).
28

1 The court also fails to see how the probative value of the knife was substantially outweighed by
2 the danger of its unfairly prejudicing the jury against him. There was no evidence that Petitioner's name
3 or initials were inscribed on the knife. There was no evidence that Petitioner's fingerprints or DNA were
4 found on the knife. There was no evidence that blood or the DNA of either Duff or Denise was on the
5 knife. However, as noted above, a forensic biologist testified that: (1) a person does not necessarily leave
6 comparison-worthy DNA on every object he or she touches; and (2) one of the swabs from the knife
7 contained a mixture of DNA from at least four individuals, at least one of whom is male. There was also
8 trial evidence from which one might infer Petitioner had time to quickly wash the knife in Steele's
9 trailer. Under these circumstances, it was for the jury to decide whether circumstantial evidence
10 demonstrated that Exhibit 48 was the knife used to stab either Duff or Denise and, if not, whether there
11 was nevertheless enough evidence to find Petitioner stabbed one or the other, or both, beyond a
12 reasonable doubt.

13 The bottom line? Any objection to the admission of Exhibit 48, Exhibit 19 or Exhibit 20 would
14 have been overruled. Such a ruling would have been legally correct. Therefore, the court cannot find that
15 Woodbury's failure to object to the admission of the knife was either objectively unreasonable or
16 prejudicial to the defense.

17 It appears Petitioner also suggested in his letter (Post-Conviction Exhibit 3) that Woodbury was
18 ineffective for failing to argue to the jury that the knife could not have been used to stab either Minter
19 because it has no point on it. The court is not persuaded. The sharp edge of the knife's blade terminates
20 at a triangular point on the opposite end of the handle. Although the opposite side of the point is dull, the
21 court cannot see how Petitioner was prejudiced by the failure to make any such argument. Means, 120
22 Nev. at 1011.

23 For the foregoing reasons, this claim for relief also fails. Foster, 121 Nev. at 169.

24 *Eighth Claim for Relief*

25 Petitioner's eighth claim is that Woodbury was ineffective because he did not move for the
26 admission of a photograph of the knife alongside a ruler to demonstrate that the knife's blade is only 2 ½
27 inches long. The argument appears to be based on Dr. Ward's testimony that Duff sustained a stab
28

1 wound between 3 and 4 inches deep, and premised on the notion a person could not suffer such an injury
2 from being stabbed with a knife having a 2 ½ inch blade. The court is not persuaded.

3 As noted above, photographs of the knife alongside a ruler were admitted as Exhibit 19 and
4 Exhibit 20 during the state's case-in-chief. A review of the exhibits reveals that the knife's blade is
5 indeed 2 ½ inches in length. Again, it was for the jury to decide whether this evidence justified a finding
6 that the knife was used to stab either Duff or Denise and, if not, whether there was nevertheless enough
7 evidence to find Petitioner stabbed one or the other, or both, beyond a reasonable doubt. As essentially
8 argued by the prosecutor, one might reasonably find that a muscular man such as Petitioner could wield
9 a knife having a 2 ½ inch blade with enough force to leave a 4-inch-deep wound in a corpulent person's
10 midsection by stabbing the victim hard enough to compress his abdominal fat by 1 ½ inches. In any
11 event, because photographs of the knife alongside a ruler were admitted during the state's case, it was
12 not objectively unreasonable for Woodbury not to move for the admission of such evidence. Means, 120
13 Nev. at 1011. Therefore, this claim for relief fails. Foster, 121 Nev. at 169.

14 *Claim Woodbury Ineffective for Failing to Call/Question Witnesses Re: Narcotics*

15 As noted above, the court prevented Woodbury from calling and questioning Petitioner and other
16 witnesses about the narcotics activities of the Minters prior to the stabbings. In his letter (Post-
17 Conviction Exhibit 3), Petitioner essentially suggests Woodbury was ineffective for failing to do just
18 that. Again, the court is not persuaded. Woodbury reasonably decided not to present evidence supporting
19 the foundation for this approach – that police were searching for Petitioner because he was violent with
20 Hodges in November 2015. Woodbury's failure to call and question these witnesses in defiance of a
21 court order was neither objectively unreasonable nor prejudicial to the defense. Therefore, any such
22 claim for relief also fails. Id.

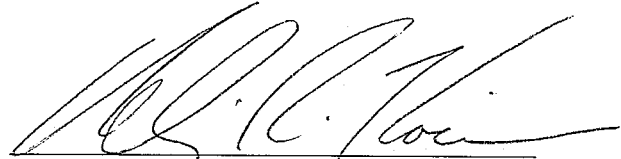
1 **6. ORDER**

2 "If it appears on the return of the writ of habeas corpus that the petitioner is in custody by virtue
3 of process from any court of this State, or judge or officer thereof, the petitioner may be discharged . . .
4 [w]here the court finds that there has been a specific denial of the petitioner's constitutional rights with
5 respect to the petitioner's conviction or sentence in a criminal case." NRS 34.500(9). The court has
6 concluded that there has been no such denial in Petitioner's criminal case.

7 Accordingly,

8 Habeas relief is DENIED.

9 DATED this 24 day of April, 2020.

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13 The Honorable Alvin R. Kacin
14 District Judge/Department 2
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CERTIFICATE OF SERVICE

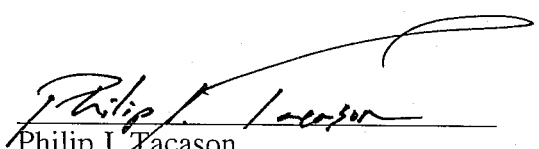
Pursuant to Nev. R. Civ. P. 5(b), I certify that I am an employee of Alvin R. Kacin, District Judge, Fourth Judicial District Court, Department 2, and that on this 24th day of April, 2020, served by the following method of service:

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| <input type="checkbox"/> Certified US Mail | <input type="checkbox"/> Overnight Federal Express |
| <input type="checkbox"/> Registered US Mail | <input type="checkbox"/> Fax to # _____ |
| <input type="checkbox"/> Overnight US Mail | <input type="checkbox"/> Hand Delivery |
| <input type="checkbox"/> Personal Service | <input checked="" type="checkbox"/> Box in Clerk's Office |

a true copy of the foregoing document addressed to:

Elko County District Attorney's Office
[Box in Clerk's Office]

Lockie and Macfarlan, Ltd.
[Box in Clerk's Office]


Philip J. Tacason

1 Case No. CV-HC-17-711

2 Dept. No. 2

FILED
2020 MAY 14 AM 9:40
ELKO CO DISTRICT COURT
CLERK _____ DEPUTY *[Signature]*

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5 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
6 IN AND FOR THE COUNTY OF ELKO, THE STATE OF NEVADA

7 _____
8 SEAN MAURICE DEAN,

Petitioner,

9 vs.

NOTICE OF APPEAL

10 AITOR NARVAIZA,
11 ELKO COUNTY SHERIFF,

Respondent.
12 _____ /

13 COMES NOW, Petitioner, by and through his attorneys, LOCKIE &
14 MACFARLAN, LTD., and appeals from the ORDER DENYING HABEAS RELIEF,
15 entered on April 29, 2020, in the Fourth Judicial District Court, Elko County, Nevada.

16 DATED this 13 day of May, 2020.

17 LOCKIE & MACFARLAN, LTD.

18 By

David B. Lockie

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