

IN THE SUPREME COURT OF THE STATE OF NEVADA

COLE DUANE ENGELSON

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 82691

Appeal From A Judgment of Conviction (Jury Trial)
Fifth Judicial District Court
The Honorable Robert Lane, District Judge
Court No. CR9226

APPELLANT'S APPENDIX VOLUME 13 OF 22

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1 Q. What about cardiac rhythm?

2 A. Asystole.

3 Q. And we have discussed about the two minutes
4 of work and ten seconds of -- ten seconds during every
5 two minutes was dedicated to checking?

6 A. Checking.

7 Q. Were there checks for her pulse?

8 A. Yes. Along with checking for electrical
9 activity in the heart, we also checked for a pulse at
10 the same time.

11 Q. Was a pulse ever detected?

12 A. No, there wasn't.

13 Q. Just to go back to epinephrine for a
14 moment, what's a typical dose and how do you determine
15 the dosage?

16 A. For pediatrics, the typical dose is .01
17 milligrams per kilogram. I mentioned the Broselow
18 chart earlier. It actually gives us our dosage per
19 the weight of the patient. Our patient weighed
20 17 kilograms per the Broselow chart. That correlates
21 to roughly 35, 36 pounds. So Broselow chart makes our
22 job easy. A 17 kilogram patient, according to the
23 dosage, would be .17 milligrams of epinephrine.

24 Q. I meant to move forward a few minutes. Did
25 you eventually arrive at Desert View Hospital?

1 A. We did.

2 Q. At that time what was done with respect to
3 the patient?

4 A. The patient was brought out of the
5 ambulance, continuing compressions, brought into the
6 hospital and placed into a hospital bed with care
7 continued from us and given to Desert View Hospital
8 staff.

9 Q. You had testified earlier that you were in
10 charge of the ambulance when it was you and
11 Firefighter Snow; you were sort of the senior person?

12 A. Yes, sir.

13 Q. Would it be fair to say that you were in
14 charge of her treatment from the time that you got to
15 that scene until the time you got to the hospital?

16 A. Yes, sir.

17 Q. And as part of what you were saying about
18 you brought her to the hospital now, you hand off
19 authority to the hospital?

20 A. Yes, sir.

21 Q. To the ER doctor?

22 A. ER doctor.

23 Q. During this whole process, the transition,
24 did compressions ever stop?

25 A. They did not.

1 Q. I'm sorry, compressions on the chest of the
2 patient?

3 A. Only for the ten seconds of pulse check,
4 rhythm checks.

5 Q. During your time and the entirety of your
6 involvement with the treatment of this parent, did you
7 ever observe any signs of life?

8 A. I did not.

9 Q. Could any of the measures that you took or
10 saw taken with regard to patient's care cause the kind
11 of bruising and injuries to the child that you
12 observed?

13 A. No, sir.

14 Q. All right. Did you prepare a report
15 regarding this --

16 A. I did.

17 Q. -- incident?

18 MR. ARABIA: Okay. Your Honor, if I may,
19 I'm going to show State's Proposed 54 to Defense
20 Counsel and then approach the witness.

21 THE COURT: Thank you.

22 (Whereupon State's Proposed Exhibit
23 No. 54 was marked at some time previous
24 on this day.)

25 Q. (By Mr. Arabia) Do you recognize that

1 document?

2 A. I do.

3 Q. And what is that document?

4 A. This is my PCR, Patient Care Report.

5 Q. All right. Have you reviewed that copy of
6 the report?

7 A. I have.

8 Q. All right. And is it an accurate copy of
9 the report that you prepared back after this incident
10 happened?

11 A. Yes, sir.

12 Q. Okay. Just out of curiosity, when did you
13 prepare that report?

14 A. It was three years ago, approximately ten
15 minutes after we ran the call is when I started the
16 report.

17 Q. Okay. Thank you.

18 MR. ARABIA: Your Honor, we would move to
19 admit.

20 MS. BOSKOVICH: No objection.

21 THE COURT: Admitted.

22 (Whereupon State's Exhibit No. 54 was
23 admitted into evidence.)

24 MR. ARABIA: Thank you. I have nothing
25 further at this time, Your Honor.

1 THE COURT: Counsel?

2 MS. BOSKOVICH: Thank you, Your Honor.
3 Just a few questions on cross.

4 CROSS-EXAMINATION

5 BY MS. BOSKOVICH:

6 Q. You said you prepared your report about ten
7 minutes or so after the incident?

8 A. Yes, ma'am.

9 Q. Would that have been when you were still at
10 Desert View Hospital or when you got back to the
11 station?

12 A. Started to fill it out at
13 Desert View Hospital, yes, ma'am.

14 Q. And on your -- on the drive from the scene
15 to Desert View Hospital, are you constantly inputting
16 information into a computer system?

17 A. No, ma'am. I did not touch my computer
18 from the scene to Desert View Hospital.

19 Q. Was anyone inputting information into a
20 computer?

21 A. No, ma'am.

22 Q. How do you -- for example, the report talks
23 about specific times when epinephrine was
24 administered. How do you determine those specific
25 times?

1 A. On our cardiac monitor, we have what's
2 called a code marker. So if we press a button, a list
3 will come up with medications and procedures. So if
4 we administer epinephrine, we would hit the code
5 marker, a tab will pop up epinephrine, and that will
6 timestamp it.

7 Q. Okay. And at some point you take that
8 information from the cardiac monitor, and you use that
9 to compose your report?

10 A. Yes, ma'am, as a reference.

11 Q. And then as part of your report, do you
12 prepare a narrative?

13 A. Yes, ma'am.

14 Q. Are you the one that prepared this
15 narrative in this case?

16 A. Yes, ma'am.

17 Q. And in your narrative, you indicated that
18 when you arrived to the residence, there was a male
19 pointing you guys down a dirt driveway; is that
20 correct?

21 A. Yes, ma'am.

22 Q. And Firefighter Snow entered the residence
23 and found a female performing chest compressions on
24 the patient?

25 A. Yes, ma'am.

1 Q. And eventually Firefighter Snow came out
2 with the patient?

3 A. Yes, ma'am.

4 Q. And you placed her on the gurney?

5 A. Yes, ma'am.

6 Q. You continued -- you continued doing chest
7 compressions throughout that time?

8 A. Yes, ma'am.

9 Q. You noticed that there were multiple
10 bruises and contusions different areas of the
11 patient's body; correct?

12 A. Yes, ma'am.

13 Q. You also noted that those bruises appeared
14 to be in different stages of healing; correct?

15 A. Yes, ma'am.

16 Q. Meaning that some of them were older than
17 others?

18 A. Appeared to be.

19 Q. When the -- what's the difference
20 between -- let me back up. What's the "issued on"
21 date on the report? What does that mean? On the top,
22 right corner of each report -- or of each page of your
23 report, there's a little box that says "issued on" and
24 then a date and time reference.

25 A. I'd have to look at it, ma'am. It could be

1 billing, or it could be our date. I couldn't tell you
2 for sure the "issued on" date.

3 Q. So it's not necessarily when you prepared
4 the report?

5 A. I would have to look at the date, ma'am.

6 Q. Do you have the report in front of you?

7 A. I do not.

8 (The bailiff retrieves the report from
9 the clerk.)

10 Q. (By Ms. Boskovich) So on the top, right
11 corner of each page of your report, there's a date and
12 timestamp for "issued on"; correct?

13 A. Correct.

14 Q. What is that date and time signify?

15 A. I do not know, ma'am.

16 Q. Could it be when you prepared the report?

17 A. I specifically remember preparing the
18 report directly after the call.

19 Q. Okay.

20 A. So if I were to guess, I would guess it was
21 billing. I don't recall that "issued on" date coming
22 up in our reports as we write it. There are stuff
23 that comes up on the billing side, and that's after we
24 prepare the report.

25 Q. Okay. Before you finalize a report though,

1 do you review it for its accuracy?

2 A. Yes, ma'am.

3 Q. And then eventually you sign off on the
4 report?

5 A. Sign off, and then we send it to Cloud to
6 where billing is able to get it on future dates.

7 MS. BOSKOVICH: Okay. We'll pass the
8 witness, Your Honor. Thank you.

9 THE COURT: Counsel?

10 MR. ARABIA: Nothing else, Your Honor.

11 THE COURT: Subject to recall?

12 MR. ARABIA: Yes, please.

13 THE COURT: We're going to ask you to step
14 down. Don't talk about the case with anyone but the
15 attorneys. If we need you again, we'll give you call.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: Thank you.

18 (A new witness for the State is called.)

19 THE COURT: Good morning.

20 THE WITNESS: Good morning, Judge.

21 THE COURT: Before you sit down, I'll have
22 you raise your right hand and be sworn.

23 / / /

24 / / /

25 / / /

1 Whereupon,

2 SCOTT LEWIS,

3 called as a witness on behalf of the State, was sworn
4 and testified as follows:

5 THE WITNESS: I do.

6 THE COURT: Thank you, sir. We like the
7 jury to see your face and hear your words. But if
8 you're nervous about Covid, you can leave your mask
9 on.

10 THE WITNESS: Thank you, Judge.

11 DIRECT EXAMINATION

12 BY MR. ARABIA:

13 Q. Good morning, Chief?

14 A. Good morning.

15 Q. Would you please be so kind as to state
16 your name and spell your last name for the record,
17 please?

18 A. My name is Scott Lewis, L-e-w-i-s.

19 Q. What is your current employment; what do
20 you do?

21 A. I do several things, sir. I'm the fire
22 chief for the Town of Pahrump. I'm the director of
23 Emergency Management for Nye County, and I'm also the
24 interim health officer for Nye County.

25 Q. How many years have you worked for Fire

1 Rescue?

2 A. Since September of 2002.

3 Q. And can you just give us, please, a general
4 overview on your background, your training, duties,
5 qualifications, experience, that sort of thing, just
6 in general?

7 A. Yes, sir. I've been in the fire service
8 since 1980. I have served as a chief officer since
9 1992. I served as a fire chief since 2002. I have a
10 master of science degree in public safety and
11 emergency management, and also a master certificate
12 for both fire and EMS and also emergency management.
13 I'm in charge of suppression, technical rescue --

14 THE BAILIFF: They need you to speak up so
15 that lady in the back can hear you.

16 THE WITNESS: I'm sorry. Thank you.

17 -- technical rescue, HAZMAT as far as,
18 like, technical responsibilities. I'm also an
19 advanced EMT on the medical side. I'm a master
20 instructor, and I'm also an instructor for emergency
21 medical.

22 Q. (By Mr. Arabia) Thank you. Turning your I
23 attention to Saturday, July 15th, 2017, during the
24 seven o'clock hour, a little after seven o'clock, did
25 you monitor or otherwise become aware of a situation?

1 A. Yes, I did.

2 Q. Can you please describe the call?

3 A. I was on Highway 160 away from the area of
4 the incident, but I received a message over the radio
5 that our crews were being dispatched for the report of
6 a three-year-old child in respiratory arrest with CPR
7 in progress. I was monitoring the call with the
8 responding units.

9 At some point, the crews came back over the
10 radio; indicated they required immediate assistance,
11 that they were not Code 4, which in essence means that
12 they're not okay -- I wasn't sure exactly what the
13 situation was -- and that, from an internal policy, as
14 internal resources or additional resources within the
15 agency, as well as their request for sheriff's
16 department.

17 Q. All right. As part of your response, once
18 you heard that things were not Code 4, did you go to
19 5320 Manse?

20 A. I did. I responded directly from my
21 location, which was approximately five minutes away at
22 that point in time. I arrived on location at the
23 front of the residence on the street.

24 Q. All right. And did you see anyone from
25 Pahrum Valley Fire & Rescue in the driveway?

1 A. Yes. As I arrived at the scene, the two
2 medic units who had responded to the initial
3 assignment were pulling out of the driveway. They
4 were making a right-hand turn onto Manse Road. The
5 second ambulance, briefly met with the operator at the
6 window of the vehicle. That was AEMT Justin Snow --
7 his first name is actually William, but he goes by
8 Justin -- and he indicated -- and I asked him what was
9 going on for the not Code 4. He indicated to me
10 that -- and he said specifically that they're trying
11 to kill each other. And with that, he then proceeded
12 to take off.

13 Q. Did you offer him any instructions or ask
14 him to do anything for you?

15 A. Not specifically, that I recall.

16 Q. Did you speak to him at some point. It
17 might not have been then, but did you speak to him at
18 any point during this and ask him to take photographs?

19 A. At one point he indicated that the patient
20 did not -- the patient did not survive, and I think he
21 offered a photo for the investigators that were on
22 scene at the incident.

23 Q. Okay. Was the scene eventually returned to
24 a status of Code 4?

25 A. No, sir. As the ambulances pulled away

1 from the scene, a white sedan was following them.
2 There were two white females occupying that vehicle.
3 The female driver who was crying stated to me that "He
4 killed her" was the quote, and she pointed toward the
5 house. She also indicated she was the mother, and
6 that she was going to take off. But before she did
7 so, she indicated to me to be careful, he was a large
8 man.

9 I asked if there was any weapons that she
10 was aware of, and she stated not that she was aware
11 of. So then again, she proceeded to follow the
12 ambulances to the hospital from the scene.

13 I then returned to my vehicle, established
14 a safe area, radioed the Sheriff's Office to continue
15 in at their Level 1 response, as the scene, to my
16 knowledge, may not have been secure.

17 MR. ARABIA: All right. Your Honor, if I
18 may, I would like to show a couple of things to
19 Defense Counsel, and then approach the clerk and have
20 them marked.

21 THE COURT: Yes, sir.

22 MR. ARABIA: Thank you.

23 (Whereupon State's Proposed Exhibit
24 Nos. 67A and 67B were marked for
25 identification.)

1 Q. (By Mr. Arabia) Chief, I've just handed
2 you two documents that have been marked State's
3 Proposed Exhibits 67A and 67B.

4 The one 67A, the longer of the two, do you
5 recognize that document?

6 A. Yes, I do.

7 Q. Okay. What is it?

8 A. It is the fire report for that particular
9 incident.

10 Q. All right. Did you prepare that?

11 A. Yes, sir, I did.

12 Q. All right. And have you had a chance to
13 review that particular copy?

14 A. Yes.

15 Q. Is it an accurate rendering of your report?

16 A. Yes, it is.

17 MR. ARABIA: All right. Your Honor, I
18 would move to have that admitted.

19 MS. BOSKOVICH: No objection.

20 THE COURT: It's admitted.

21 (Whereupon State's Exhibit No. 67A is
22 admitted into evidence.)

23 Q. (By Mr. Arabia) And then the other
24 document 67B, do you recognize that?

25 A. Yes, I do.

1 Q. And what is it?

2 A. It is a handwritten statement that was
3 signed by me -- prepared and signed by me for the
4 Sheriff's Office.

5 Q. Okay. And is that version there an
6 accurate rendering of the statement, the written
7 statement that you provided?

8 A. Yes, it is.

9 MR. ARABIA: Okay. We'd move to admit.

10 MS. BOSKOVICH: No objection.

11 THE COURT: It's admitted.

12 (Whereupon State's Exhibit No. 67B is
13 admitted into evidence.)

14 MR. ARABIA: Oh, I'm sorry. May I
15 approach?

16 THE COURT: Yes.

17 MR. ARABIA: And go to the clerk?

18 THE COURT: Yes.

19 MR. ARABIA: Thank you.

20 THE COURT: The rules require that
21 attorneys have to ask to approach me because they all
22 want to kill me.

23 MR. ARABIA: Thank you, Chief.

24 Nothing further, Your Honor.

25 THE COURT: All right.

1 Counsel?

2 MS. BOSKOVICH: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. BOSKOVICH:

5 Q. Good morning, Fire Chief. How are you?

6 A. Fine. Thank you.

7 Q. So on July 15, 2017, were you on duty
8 around 7:00 p.m.?

9 A. I was off duty, but I'm technically never
10 off duty. As a fire chief, I am expected to work
11 24 hours.

12 Q. And generally, if there's emergent calls,
13 you respond to those?

14 A. Yes.

15 Q. So you arrived to 5320 Manse around
16 7:20 p.m.?

17 A. Approximately 7:20 p.m. that I recall, yes.

18 Q. And when you arrived there, were already
19 other Pahrump Valley Fire & Rescue personnel on the
20 scene?

21 A. They were actually exiting the scene.

22 Q. And that was Medics 3 and 5?

23 A. Yes, as I recall, yes.

24 Q. And I believe on direct, you testified that
25 they had radioed that the scene was not Code 4?

1 A. Yes. They required immediate assistance,
2 that "they were not Code 4" I think was the quote.

3 Q. And were you already on your way to the
4 scene at that point, or is that what prompted you to
5 go to the scene?

6 A. That was what prompted me to go to the
7 scene. Our technical response is two resources, which
8 were already there. But I was monitoring that call
9 very closely and kind of migrating in the direction if
10 they required additional assistance other than what we
11 just talked about.

12 Q. And at one point an engine was dispatched
13 as well; correct?

14 A. The engine itself dispatched based on the
15 non-Code 4; that would not be out of the ordinary.

16 Q. Okay. And jumping forward a little bit to
17 when the white sedan was leaving with the two females
18 in it, on direct you indicated that the driver told
19 you that her boyfriend had killed her; that was the
20 quote?

21 A. It wasn't stated in that particular order,
22 but it was to that essence.

23 Q. And she told you to be careful because he
24 was a large man?

25 A. Yes.

1 Q. At that point you had never seen the man
2 that she was talking to; correct?

3 A. Not at that point.

4 Q. And because of the potential for danger,
5 you waited at the street?

6 A. That's correct.

7 Q. And you radioed Nye County
8 Sheriff's Office; correct?

9 A. Yes.

10 Q. And requested that they continue to send
11 immediate response?

12 A. Yes.

13 Q. At some point, did you approach the
14 residence?

15 A. No.

16 Q. Did you ever see the man that she was
17 referring to?

18 A. I saw a male pacing back and forth at the
19 front of the house, but I did not have a clear view.

20 Q. You said he was just pacing?

21 A. Yes. I saw him going from right to left
22 back and then left to right.

23 Q. He wasn't fighting with anybody at the
24 time?

25 A. Not that I could see.

1 Q. He wasn't yelling?

2 A. Not that I could hear.

3 Q. And you never entered the residence;
4 correct?

5 A. No.

6 Q. At some point, Detective Fernandes from
7 Nye County Sheriff's Office arrived on scene?

8 A. Yes.

9 Q. And you gave her a brief rundown of the
10 situation?

11 A. I did.

12 Q. And as you were on scene, did you get
13 continuous updates from Medic 5 about the status of
14 the patient?

15 A. Not continuous.

16 Q. When did you receive updates?

17 A. I can't recall the exact time, but at some
18 point I received a message from Justin that the
19 patient did not survive.

20 Q. And that was the only update per se from
21 Firefighter Snow that you received?

22 A. Yes.

23 Q. And at one point, you informed
24 Detective Fernandes that the patient did not survive;
25 correct?

1 A. Yes.

2 MS. BOSKOVICH: I'll pass the witness,
3 Your Honor. Thank you.

4 THE COURT: Counsel?

5 MR. ARABIA: Nothing else, Your Honor.
6 Thank you.

7 THE COURT: Subject to recall?

8 MR. ARABIA: Yeah.

9 THE COURT: Don't talk about the case with
10 anyone but the attorneys. And if we need you again,
11 we'll call you.

12 THE WITNESS: Yes, sir. Thank you.

13 MR. ARABIA: Your Honor, it's 12:05. So I
14 would humbly propose that we break for lunch. And we
15 had asked our next witness to come at 1:30.

16 THE COURT: Ladies and gentlemen, we're
17 going to take a lunch recess. It's your duty not to
18 converse among yourselves or with anyone else on any
19 subject connected with the trial; or to read, watch,
20 or listen to any report of or commentary of the trial
21 by any person connected with the case or by any medium
22 of information, including newspapers, television,
23 radio, and Internet.

24 Don't form or express an opinion on any
25 subject connected with this case until it is finally

1 submitted to you. 1:15?

2 He said 1:30, but the witness will be
3 early. Anything else? Court's adjourned -- or we're
4 in recess, not adjourned.

5 (A lunch recess is taken from 12:05 p.m.
6 to 1:30, and proceedings resume outside the
7 presence.)

8 THE BAILIFF: All rise.

9 THE COURT: Thank you. Please be seated.
10 We're outside the presence of the jury.
11 Who would like to brief the record for me?

12 MR. ARABIA: Your Honor, before we get to
13 the actual main point, I have one housekeeping-type
14 item. We had -- I sent an email to Human Resources
15 regarding Percival citing that I was putting him on
16 administrative leave. About a week later, they wrote
17 back and said you can't do that; so I've just had him
18 at home. He's not in the office. He's not in the
19 courthouse. He doesn't have access to any of the like
20 JustWare or anything like that, but I just figured in
21 the interest of complete candor, that I should let the
22 Court know that. I don't think it changes -- it
23 certainly doesn't change his relationship to this
24 case, which is to say that he has none.

25 But technically it's not considered an

1 administrative leave because I guess the conditions
2 for that weren't met because he didn't do anything
3 wrong or hasn't been accused of anything. So I just
4 wanted to make sure you knew that.

5 THE COURT: Thank you for making a record.
6 Anything else?

7 MR. VITTO: Your Honor, we have two live
8 witnesses scheduled for today, Nye County
9 Sheriff's Officers Gibbs and Fancher. Right now
10 Fancher we're in the process of preparing some of his
11 evidence. Gibbs is going to be very short. So
12 Counsel and I discussed whether it wasn't best to
13 address the issue in regard to Pullen outside the
14 presence of the jury so that if Fancher's not ready,
15 we could go Gibbs, who is going to be very short, and
16 then Pullen, if this Court admits it; and then finish
17 up the day with Fancher.

18 So the argument with Christopher Pullen is
19 pretty short, pretty to the point. I'm looking -- it
20 was the latest case that I found, Chambers v. State,
21 unpublished opinion July 24, 2019, but that opinion
22 references what is obviously the current state of the
23 law in that regard.

24 So Mr. Pullen is unavailable to the State.
25 The State has done everything we could. He was served

1 while he was here and testified. He told the Court
2 that he would appear. He was made aware of the court
3 date. Those court dates in August were subsequently
4 vacated, new court dates given that he wasn't at that
5 point in time aware of. He was contacted by -- and I
6 would ask the Court to take judicial notice of the
7 Material Witness Arrest Warrant information, was
8 provided to the Court that is a part of this case's
9 record, where he provided -- he was contacted by
10 Todd Arms -- he provided an oral promise to appear
11 which is binding for purposes like this. When the
12 State has to make these kinds of motions, we can rely
13 upon that.

14 Mr. Arms then sent a subpoena to the prison
15 system. He was aware of the date. He promised to
16 appear. He was released from prison. He hasn't
17 appeared. He was served a subpoena in this case for
18 which he has not appeared under. We've done
19 everything we could to try to locate him. There's
20 currently an active warrant for his arrest. We've
21 simply exhausted our resources to try to assure his
22 appearance for this matter.

23 Looking at the court decisions whether a
24 defendant's Confrontation Clause rights were violated
25 is a question of law subject to de novo review. The

1 Confrontation Clause prohibits, quote, admission of
2 testimonial statements of a witness who did not appear
3 at trial, unless he was unavailable to testify and the
4 defendant had a prior opportunity for
5 cross-examination. That's Crawford v. Washington.

6 The case goes on for testimony from a
7 preliminary hearing and for these purposes, what we're
8 talking about can't be legally distinguished from a
9 preliminary hearing. To be admitted at trial, the
10 defendant (1) must have been represented by counsel,
11 and clearly at Mr. Pullen's deposition, which was done
12 expressly and obviously for this exact purpose, the
13 defendant was represented during that process; (2)
14 must have had the opportunity to cross-examine the
15 witness. Clearly, unequivocally, undeniably, without
16 question, the defendant had a full and unfettered
17 opportunity to cross-examine Mr. Pullen; and in fact,
18 that cross-examination was conducted. It was lengthy.
19 It was unfettered. He was able to go into every
20 single aspect he could possibly or potentially go
21 into; and (3) the witness must be unavailable for the
22 trial. Obviously, he's unavailable for this trial.
23 He was served. He's refused to appear. And we've
24 exhausted our resources in an effort to try to locate
25 him and make him available for this trial.

1 The State is asking that I -- I wouldn't
2 have had a problem simply admitting the transcript and
3 having the transcript read or roles played as we've
4 done in the past with a person sitting in the witness
5 chair, a prosecutor asking the questions, the person
6 sitting in the witness chair giving the answers. But
7 Counsel suggested, and I believe it's a much fairer
8 way to present this to the jury, is to allow the jury
9 to see it, to see Mr. Pullen. Not an investigator
10 from the State or a lay witness or anybody else, but
11 to actually see Mr. Pullen there in his jail garb or
12 prison garb or whatever it was sitting there
13 testifying. I agreed with the Defense.

14 So if in fact this Court were to admit the
15 testimony, we would be asking that the jury be allowed
16 to watch the entire process, neither side wants to
17 redact it. The Defense is very satisfied with their
18 cross-examination in that regard to be admitted,
19 because they were able to go into a lot of areas that
20 we agreed were subject to redaction.

21 The Defense was allowed to ask questions,
22 and I was allowed to ask questions, and we agreed that
23 there might be some redaction going forward. But the
24 Defense is satisfied. Them being satisfied, I'm not
25 going to say anything. Just let it roll. There were

1 things I could take out if you were going to admit it.
2 There were things I think you would agree should be
3 taken out. Let it roll. Let the chips fall where
4 they may. Let the jury see Mr. Pullen with all of his
5 warts. I'm fine with that.

6 The only thing I would ask is that the
7 jury, if it's going to be admitted, be allowed to,
8 each one of them, have a copy of the transcript. I
9 believe the video is subtitled. The video is
10 subtitled, but I would prefer that they actually have
11 a copy of the transcript in their hands that they can
12 follow along with. And one of those copies would be
13 marked as an exhibit to go along with the marked
14 exhibit, the video of the examination. Thank you
15 Your Honor.

16 THE COURT: Thank you.

17 MR. MARTINEZ: Thanks, Judge.

18 First, Judge, I agree with most of what the
19 State says about their assessment of the law, but one
20 thing that they left out that I disagree with, I
21 believe that Mr. Pullen is not unavailable as a matter
22 of law. What constitutes an unavailable as a witness
23 is spelled out in NRS 51.055.

24 "A declarant is unavailable as a witness if
25 the declarant is (a) exempted by ruling of the judge

1 on the ground of privilege from testifying concerning
2 the subject matter of the declarant's statement."
3 That doesn't apply here. "(B) persistent in refusing
4 to testify despite an order of the judge to do so." I
5 don't believe that that applies either, Judge. "(C)
6 unable to be present or to testify at a hearing
7 because of death or then existing physical or mental
8 illness or infirmity." That definitely doesn't apply.
9 Or "(d) absent from the hearing and beyond the
10 jurisdiction of the court to compel appearance, and
11 the proponents of the declarant's statement has
12 exercised reasonable diligence but has been unable to
13 procure the declarant's attendance or to make the
14 declarant's deposition."

15 Judge, that's the one that applies, the
16 first half of that sentence in (d), "absent from the
17 hearing and beyond the jurisdiction of the court to
18 compel his appearance." Based on everything that we
19 know, Mr. Pullen is not outside the jurisdiction of
20 this Court to compel his appearance, as evidenced by
21 the fact that the State asked for and was given a
22 Material Witness Warrant. So starting there as a
23 matter of law, Your Honor, I don't believe that
24 Mr. Pullen is unavailable as a witness from a legal
25 standpoint.

1 Second of all, I think the State's motion
2 is a bit premature, because there is an outstanding
3 Material Witness Bench Warrant. And I will ask the
4 State and perhaps they can tell me what, if any,
5 efforts have made to serve that warrant and take
6 Mr. Pullen into custody. But what if Your Honor
7 grants the motion today, we play the entire
8 deposition, and in the middle of playing that
9 deposition, he's arrested somewhere in Clark County on
10 a Material Witness Warrant and is transported out
11 here. I'd say we still have to put him on the stand
12 at that point, but we've already kind of spilled the
13 beans with the deposition.

14 So I think that it is a little bit
15 premature at this point, Judge; that ultimately if
16 he's is going to be available, he's not going to get
17 arrested on that warrant, it might be the last thing
18 that the State does in their case in chief.

19 THE COURT: Thank you.

20 Mr. Vitto?

21 MR. VITTO: Your Honor, clearly we've met
22 the criteria. He's refused to be here. You ordered
23 him to be here. He promised to be here. He's not
24 here. He's refused to be here. Case law is exactly
25 on point in how this is interpreted insofar as a

1 person being served and promising to appear and then
2 thereafter refusing to appear. He's unavailable.

3 Insofar as the other point is concerned,
4 obviously we can't serve an arrest warrant if we don't
5 know where he is. We don't know where he is. We've
6 done so far everything we could to exhaust all
7 information that we have. We've done some follow-up
8 information. We've looked in Eli. We've checked with
9 Catholic Charities. We contacted his girlfriend. We
10 had a lead in North Las Vegas that didn't pan out. I
11 actually had an officer that I'm very familiar with
12 who I know would go and get him if I had an address in
13 North Las Vegas to go to. I'm sure you remember
14 Robert Sullivan who is now in North Las Vegas, but I
15 don't have any information to give the guy.
16 Mr. Pullen is unavailable.

17 THE COURT: Any prejudice to the case to
18 wait until the end of your case in chief to do it.

19 MR. VITTO: There isn't.

20 THE COURT: None.

21 MR. VITTO: We were simply looking at a
22 hole in the day and thought let's keep things moving.
23 I don't have any problem with giving it a day or two
24 to see if by some miracle he gets arrested.

25 THE COURT: Is that what you think you have

1 left, a couple of days?

2 MR. VITTO: Frankly, Judge, we have
3 tomorrow. I don't know how much spillover there will
4 be, but we've got room for spillover. We have
5 tomorrow. No court Wednesday. We have two witnesses
6 scheduled for -- two expert witnesses scheduled on
7 Thursday and two expert witnesses scheduled on Friday.
8 And we did it that way because there's flying involved
9 and transportation involved and lengthy testimony
10 involved. So the answer is we anticipate closing our
11 case by Friday. And we can put Pullen, more than
12 likely, on any one of those days, Thursday or Friday.

13 THE COURT: Okay. I'm amenable, since
14 there's no prejudice to their case, to waiting to the
15 end of their case in chief. The only thing is -- and
16 I don't care -- is if you said, "Let's take a risk and
17 do it today since we have an opening." Or "Yeah. Or
18 let's do it Thursday morning if his witness didn't
19 show up," or whatever. But if you say, "Wait until
20 the end of the case," I'm fine with it.

21 MR. MARTINEZ: I'd prefer to wait until the
22 end of the case, to be on the safe side, Judge. I
23 think that's in the best interest of my client.

24 THE COURT: Although, it is funny to watch
25 fate in action, and read it today so that he will be

1 picked up tomorrow. If we don't read it today, he
2 won't be picked up tomorrow.

3 All right. Anything else we need to do?

4 MR. VITTO: We're ready to go.

5 THE COURT: Your motion is granted. You
6 can read -- you can play the video. If you two change
7 your mind and you want to redact something before
8 Friday, feel free. But otherwise, we'll play the
9 whole video. Anything else?

10 MR. VITTO: We're ready. We have one
11 witness. I'm going to right now step out and see if I
12 have witnesses scheduled tomorrow that I can pull in
13 this afternoon.

14 THE COURT: Thank you, sir.

15 (A short pause in the proceedings, and
16 the jurors are returned to the courtroom.)

17 THE COURT: Thank you. Please be seated.
18 I thought I told you guys to be here at 1:15. The
19 DA's gone to get his next witness. He'll be here in a
20 couple of seconds and get started.

21 MR. ARABIA: Your Honor, I think we can
22 call Detective Gibbs right now.

23 THE COURT: As you wish.

24 Good afternoon. Can you raise your right
25 hand and be sworn.

1 Whereupon,

2 LOGAN GIBBS,

3 called as a witness on behalf of the State, was sworn
4 and testified as follows:

5 THE WITNESS: I do.

6 THE COURT: We'd like the jury to see your
7 face and hear your words, but if you're nervous about
8 Covid, you can keep it on.

9 THE WITNESS: Thank you, Your Honor.

10 THE COURT: The young lady in the far back
11 corner is who has to hear you because she's on the
12 jury.

13 THE WITNESS: Okay.

14 THE COURT: So speak so she can hear you.
15 Thank you, sir.

16 MR. ARABIA: Thank you.

17 DIRECT EXAMINATION

18 BY MR. ARABIA:

19 Q. Good afternoon, Detective. Would you be so
20 kind, please, as to state your name and spell your
21 last name for the record?

22 A. Logan Gibbs, G-i-b-b-s.

23 Q. All right. And can you tell us a little
24 bit about your career, what kind of work you do, how
25 long you've been with Nye County, et cetera?

1 A. I've been with Nye County for a little over
2 11 years, assigned to the Street Crimes, Narcotics and
3 Gang Unit. Been there about nine years now.

4 Q. You're in that unit, but are there times
5 when you help out with other cases?

6 A. Yes, yes. I've assisted the General
7 Assignment Detectives Division several times over the
8 years.

9 Q. Back on July 15th of 2017, were you in the
10 same employment capacity --

11 A. Yes.

12 Q. -- that you are now? All right. On that
13 evening, did you respond to 5320 Manse in Pahrump?

14 A. Yes.

15 Q. What was the reason for your responding to
16 that address?

17 A. I was called out to it. I was advised that
18 a little girl had been beaten to death and to assist
19 detectives with their investigation.

20 Q. What, if anything, did you actually do at
21 that scene?

22 A. I took photographs, and that's pretty much
23 it. I pretty much took photographs at the scene and
24 assisted wherever they needed me.

25 Q. After you left that area, where did you go?

1 A. I went to the Nye County Sheriff's Office
2 and assisted in the interview with the suspect.

3 Q. Do you see that suspect here in the
4 courtroom?

5 A. Yes, I do.

6 Q. All right. Can you point him out and just
7 describe something he's wearing?

8 A. He's sitting off to my right wearing a blue
9 shirt.

10 MR. ARABIA: Your Honor, please let the
11 record reflect the in-court ID.

12 THE COURT: Yes, it will.

13 MR. ARABIA: Thank you.

14 Q. (By Mr. Arabia) When would this have been
15 that you were participating in that interview?

16 A. Around 0530 in the morning. I believe
17 that's when it started, roughly.

18 Q. During your time in this process, did you
19 ask the defendant any questions?

20 A. Yes.

21 Q. Did you happen to observe the defendant's
22 hands?

23 A. Yes, at the end of the interview.

24 Q. Did you photograph his hands?

25 A. Yes.

1 Q. Why would you photograph someone's hands?

2 A. Standard procedure. Anytime we respond to
3 any type of a call involving violence or any type of
4 physical activity, the hands are usually a key
5 indicator of some sort of physical altercation. So I
6 always try to look at them and take photographs.

7 Q. What, if anything, do you recall about the
8 defendant's hands?

9 A. I remember on his right hand, the two
10 knuckles here (indicating) and the top right knuckle
11 here on the pinkie had like what appeared to be scrape
12 marks.

13 MR. ARABIA: All right. Your Honor, I
14 would like to show something to Defense Counsel and
15 then approach the witness if I could?

16 THE COURT: Yes, sir.

17 MR. ARABIA: Thank you.

18 Q. (By Mr. Arabia) All right. Detective,
19 I've handed you a photograph that's been marked as
20 State's Proposed Exhibit 64.

21 (Whereupon State's Proposed Exhibit
22 No. 64 was marked at some time prior in
23 the proceedings.)

24 Q. (By Mr. Arabia) Can you describe that
25 photograph, please?

1 A. Yes. It's a picture of a right fist with a
2 scale under it, and it shows the marks right here on
3 the knuckles.

4 Q. Do you recognize that photo?

5 A. Yes. I took it.

6 Q. Does the photo accurately reflect what it
7 was that you were photographing?

8 A. Yes.

9 Q. Okay. And what were you photographing when
10 you took that picture?

11 A. His whole fist, but mainly the marks that
12 you can see clearly on these two knuckles.

13 Q. When you say "his," who are you referring
14 to?

15 A. The defendant, Mr. Engelson.

16 MR. ARABIA: All right. Your Honor, I
17 would move to admit and publish.

18 MR. MARTINEZ: No objection, Judge.

19 THE COURT: It's admitted. Yes, you can
20 publish it.

21 (Whereupon State's Exhibit No. 64 is
22 admitted and published to the jury.)

23 THE COURT: Some attorneys don't mind going
24 on asking questions while they're looking. Others
25 prefer to wait until they're done. I'm good either

1 way.

2 MR. ARABIA: I have a few more I think, but
3 they're nothing too trying; so I will go ahead.

4 THE COURT: Thank you, sir.

5 Q. (By Mr. Arabia) Did you ask the defendant
6 whether or not he hit Yessenia with a closed fist?

7 A. Yes, I did.

8 Q. What was his response, if any?

9 A. Could not remember.

10 Q. Based on your observations over your decade
11 plus as a detective, were those marks consistent with
12 what might happen if someone were to throw a punch and
13 hit something, whether that be a person or an object?

14 A. Yes.

15 Q. Might that be consistent with hitting a
16 shower doorjamb?

17 A. Yes.

18 Q. Just a couple of more, Detective. The
19 defendant's demeanor, how did he seem to you when you
20 spoke to him?

21 A. Calm.

22 Q. Did he get into specifics in answering
23 questions?

24 A. Yes.

25 MR. ARABIA: Thank you, Detective. Nothing

1 further.

2 THE COURT: Counsel?

3 MR. MARTINEZ: Thank you, Judge.

4 CROSS-EXAMINATION

5 BY MR. MARTINEZ:

6 Q. Good afternoon, Detective.

7 A. Good afternoon.

8 Q. Now, the interview, you weren't there for
9 the entirety of the interview; right?

10 A. No.

11 Q. I believe it was Detective Cox who started
12 the interview?

13 A. Yes, sir.

14 Q. And you came in part way through?

15 A. Yes, sir.

16 Q. And then you left?

17 A. Yes, sir.

18 Q. And Detective Fancher finished it off;
19 right?

20 A. Yes, sir.

21 Q. Now, when you weren't in the interview,
22 were you watching it?

23 A. Yes. If I -- unless I had to go do
24 something else real quick. But yeah, I did watch
25 parts of it, yes.

1 Q. Okay. So is there a different room you can
2 go to and watch the interview?

3 A. Yeah. It's set up in the GA's office.
4 That's where you hit the record button and -- oh, no,
5 that's the old system. But the other system, that's
6 where you can turn it on.

7 Q. Okay. You said set up in the GA's office?

8 A. Yes.

9 Q. What is the GA's office?

10 A. That's the General Assignment Detectives
11 Division. So it would be set up in
12 Detective Fancher's office, and everybody else that's
13 in -- they shared one big office.

14 Q. I understand. Now, you said taking
15 pictures of someone's hands in a case like this is
16 standard operating procedure?

17 A. Yes.

18 Q. And you say "in a case like this." In a
19 case like what?

20 A. Any type of case where it's physical
21 altercation, whether it's something like this where,
22 like I was told the child had been beaten, or a bar
23 fight and we're talking two people, or a domestic
24 battery. Any type of call where it's believed or
25 reported that physical violence has taken place.

1 Q. So even if you don't notice any marks on
2 the hands, you would still take pictures?

3 A. Yes.

4 Q. And now, you stated you did notice some
5 marks on Mr. Engelson's hands; right?

6 A. Yes, sir.

7 Q. You asked him about those marks; right?

8 A. Yes, sir.

9 Q. He told you they were due to dry skin?

10 A. Dry skin and I believe popped a pimple.

11 Q. That was my next question. You beat me to
12 it, a popped pimple.

13 You said -- you stated on direct that you
14 asked Mr. Engelson if he hit Yessenia with his fist;
15 right?

16 A. Yes.

17 Q. And his response was he didn't remember;
18 right?

19 A. Correct.

20 Q. Did he further respond that he never hit a
21 child with his fist before?

22 A. If I remember correctly, he stated that he
23 would never hit a child with a closed fist and he's
24 more of an open-handed type person when he disciplines
25 kids.

1 Q. In the past, he'd always use an open hand?

2 A. Yes, sir.

3 Q. I believe you testified on direct as well
4 that your job, when you were initially dispatched to
5 the scene, was to take some pictures; right?

6 A. Yes, sir.

7 Q. And were you generally focused on the
8 exterior of the house?

9 A. Yes. And then I assisted some with on the
10 inside as well.

11 Q. Who did you assist with the pictures on the
12 interior?

13 A. Well, I had my camera, and if somebody
14 said, "Hey, I found something. Can you take a
15 picture?" I took a picture of it, kind of like that.
16 And I believe Detective Fancher's camera actually went
17 down; so my camera was primarily used.

18 Q. I understand.

19 MR. MARTINEZ: Pass the witness, Judge.

20 THE COURT: Counsel?

21 MR. ARABIA: Nothing else, Your Honor.

22 THE COURT: Subject to recall?

23 MR. ARABIA: Yes, please.

24 THE COURT: Don't talk about the case with
25 anyone but the two attorneys, and if we need you,

1 we'll give you a call to come back in.

2 THE WITNESS: Yes, sir. Thank you,
3 Your Honor. Have a good one.

4 MR. ARABIA: Your Honor, may I approach and
5 just bring the exhibit over?

6 THE COURT: Thank you, sir.

7 Did you have anybody else standing by, or
8 is Kirk getting them?

9 MR. ARABIA: Your Honor, I want to
10 apologize to you and the jury and the Defense. I need
11 to step out for a minute to check on that.

12 THE COURT: That's fine, sir.

13 MR. ARABIA: We're doing our best to keep
14 things tight but...

15 THE COURT: I haven't told my submarine
16 stories in weeks; so that will be fine.

17 MR. ARABIA: I know they want to hear them.
18 Thank you, Your Honor.

19 (Mr. Vitto returns to the courtroom.)

20 MR. VITTO: Judge, in a nutshell we
21 contacted everybody for tomorrow. We've had a motion
22 granted. We've had a motion granted. We could do
23 that in reference to what we spoke about earlier. The
24 only other witness that I could possibly call right
25 this moment is going to involve a spirited debate

1 between Counsel and I in regard to Crystal Barajas.

2 If Your Honor wanted to give us an hour to
3 see what we could put together, that's fine. And
4 we'll see what we can get together. But right now,
5 unless we went forward with the granted motion, we
6 don't have anything to present right now.

7 THE COURT: Understood. Take an hour and
8 go on with witnesses, present the evidence, or keep
9 holding off to the end of case in chief, which we
10 talked about?

11 MR. MARTINEZ: As far as that motion,
12 Judge, it would be my request to keep holding off.

13 THE COURT: All right. Now, I just told
14 you a story about my autistic son. So when Kirk says,
15 "Wait an hour and we'll have the next witness," what
16 do you think my answer is going to be? Go home, or
17 wait an hour? We could wait an hour; you bet. Don't
18 tell my wife that was my decision.

19 MR. VITTO: Thanks, Judge.

20 JUROR NO. 8: We have to wait an hour?

21 THE COURT: Well, let me think. Yes, I'm
22 afraid we do. We do have evidence we need to present,
23 but we're going to hold off until the end of their
24 case in chief to do that. And we have another two
25 witnesses today or one?

1 MR. VITTO: We're trying desperately to get
2 as many as we can in here today.

3 THE COURT: Today. You want to do the
4 Barajas legal argument right away; send the jury out,
5 and we'll do that legal argument?

6 MR. VITTO: We could do that legal
7 argument.

8 THE COURT: You want to?

9 Okay. Ladies and gentlemen of the jury,
10 we're going to take a short recess.

11 Don't form or express an opinion on any
12 subject until it's been submitted to you at the end.
13 Don't talk with anybody about the trial, and that
14 includes to each other. Don't talk until you go in to
15 deliberate. We'll bring you back in as quick as we
16 can get that witness up on the stand.

17 Kirk, should we say one hour so they can go
18 to Walmart if they want, or should we just --

19 MR. VITTO: To be safe, I would say 3:30.

20 THE COURT: 2:10 to 3:30, enjoy Walmart.
21 We'll see you at 3:30. Or Denny's, French bakery.

22 (The jurors are excused.)

23 THE COURT: Okay. We're outside the
24 presence of our 15 jurors.

25 THE BAILIFF: He just said

1 Captain Boruchowitz is here.

2 MR. VITTO: We just got word.

3 MS. WARD: I was just told. I'm sorry.

4 MR. VITTO: We could put David Boruchowitz
5 on.

6 THE COURT: Okay. Go call the jury back
7 then. Get the ones out there first.

8 MR. MARTINEZ: Well, Judge, I would just
9 think we need to tell them don't go anywhere yet. And
10 when Captain Boruchowitz gets here, we'll call them
11 back in.

12 THE COURT: You're going to have to move
13 fast, because they're heading to the doors.

14 MR. VITTO: All right. Let me go get ready
15 for David.

16 THE COURT: All right. Short recess.
17 We'll wait to hear from Boruchowitz.

18 THE CLERK: All rise.

19 (A recess is taken.)

20 (Whereupon State's Proposed Exhibits
21 57A through H are marked for identification.)

22 THE BAILIFF: All rise.

23 THE COURT: Thank you. Please be seated.

24 All right. We're back in the presence of
25 our 15 jurors. The State can continue their case in

1 chief.

2 MR. ARABIA: Your Honor, the State calls
3 Detective Wes Fancher.

4 THE COURT: Thank you.

5 Good afternoon. Raise your hand and be
6 sworn, please.

7 Whereupon,

8 WESLEY FANCHER,
9 called as a witness on behalf of the State, was sworn
10 and testified as follows:

11 THE WITNESS: I do.

12 THE COURT: We like the jury to see your
13 face and hear you, but if you're nervous about
14 Covid --

15 THE WITNESS: No, I'm not. I will take it
16 off.

17 DIRECT EXAMINATION

18 BY MR. ARABIA:

19 Q. Good afternoon, Detective. Would you
20 kindly state your name and spell your last name for
21 the record, please?

22 A. Yes. My name is Wesley Fancher, and that's
23 F-a-n-c-h-e-r.

24 Q. What do you do for a living?

25 A. I'm an investigator for the Nye County

1 Sheriff's Office.

2 Q. Would it be proper to refer to you as a
3 detective?

4 A. Yes.

5 Q. How long have you been in that job?

6 A. As a detective, five years.

7 Q. Okay. How about law enforcement in
8 general?

9 A. About ten years.

10 Q. Okay. What did you do before you became a
11 detective in law enforcement?

12 A. I was assigned to the general -- or I'm
13 sorry, the Patrol Division.

14 Q. Can you just describe generally your
15 background as far as training and qualifications and
16 whatnot to have the job that you have?

17 A. Yes. Outside of the academy where they
18 give us crime scene investigations and a bunch of
19 other, you know, classes for law enforcement in
20 general, as a detective, I went through interview and
21 interrogation, several child abuse trainings, child
22 exploitation training, homicide trainings -- various
23 ones over the last five years as a detective.

24 Q. Thank you. I'd like to turn your attention
25 to the evening of Saturday, July 15, 2017. Were you

1 originally scheduled to be on that night?

2 A. I was not, no, sir.

3 Q. Did you go on duty that night?

4 A. I did.

5 Q. Can you please explain the circumstances
6 that caused you to go on duty that night?

7 A. Yes. I was actually at home standing in
8 any kitchen, and I received word that a child had
9 died, and my partner Detective Fernandes was on the
10 case. I checked up on her to see if she needed any
11 help, and then I checked with my lieutenant then, who
12 would be Lieutenant Williams, and asked him if there
13 was any assistance needed for me. And at that point
14 he called me on, and I responded to the address on
15 Manse.

16 Q. When you say address, are you referring to
17 5320 Manse?

18 A. I am, yes.

19 Q. About what time did you arrive there?

20 A. I want to say it was -- it had just gotten
21 dark -- I want to say probably around 7:00 p.m., maybe
22 8:00 p.m.

23 MR. ARABIA: Your Honor, can the Court take
24 judicial notice take sunset on that day was at
25 8:01 p.m.?

1 THE COURT: Without objection, you can.

2 MR. MARTINEZ: Sure, Judge.

3 Q. (By Mr. Arabia) Okay. And you said it was
4 dark?

5 A. It was, yes.

6 Q. What did you see when you arrived there?

7 A. I saw crime scene tape. I saw other
8 detectives that were there, my captain, Captain
9 Boruchowitz.

10 Q. You have referred to Detective Fernandes as
11 your partner; was she there?

12 A. She was not there, no, sir.

13 Q. As far as you know, where was she?

14 A. She was at Desert View Hospital.

15 Q. Was Captain Boruchowitz there?

16 A. At the scene on Manse, yes, sir.

17 Q. As far as you remember, was he the senior
18 NCSO person on the scene?

19 A. He was, yes, sir.

20 Q. Did the Sheriff's Office get a search
21 warrant for the premises?

22 A. Yes, sir.

23 Q. In conjunction with that search, what did
24 you do?

25 A. Once the search warrant was obtained, I

1 conducted preliminary video of the residence; and then
2 after that, preliminary photographs, still photographs
3 for conducting the search.

4 Q. Were these photos indoors? outdoors? or
5 both?

6 A. Both.

7 Q. And at one point, did you use
8 Detective Gibbs' camera?

9 A. Yes, sir.

10 Q. Why is that?

11 A. I had just gotten a new camera, and I had
12 an external flash at that point. So when we were
13 outside, I needed a camera with a flash. It was at
14 that point that I used Detective Gibbs'.

15 Q. When you're taking photos, are other
16 officers going through the place doing the search so
17 that you have to work around them, or how does that
18 work?

19 A. During preliminary photographs or video,
20 nobody is to touch anything or search anything.
21 Purposes for that is to capture, to lock in anything
22 prior to any searching of the residence.

23 Q. At that time did you see the defendant at
24 the 5320 Manse property?

25 A. I did not.

1 Q. Did any non-police or rescue person or
2 persons arrive while you were there?

3 A. The mother of the child did at some point,
4 yes.

5 Q. About how long was the search?

6 A. I would say it was about a few hours, two
7 or three hours maybe, at least.

8 Q. After the end of the search, did you
9 eventually go back to the Sheriff's Office?

10 A. I did.

11 Q. What, if anything else, did you do on this
12 case?

13 A. I conducted an interview with Mr. Engelson.

14 Q. Approximately when did that interview take
15 place?

16 A. It was in the middle of the night after the
17 search warrant was conducted.

18 Q. So that would have been July 16th?

19 A. Yes, sir.

20 Q. Were you the only one involved in an
21 interview with the defendant?

22 A. No, sir.

23 Q. Who else was involved?

24 A. Detective Gibbs was involved, and
25 Detective Cox was involved.

1 Q. At some point during the interview process,
2 did you have a chance to speak to the defendant one on
3 one where it was just the two of you?

4 A. Yes, sir.

5 Q. How would you say the defendant's demeanor
6 was?

7 A. Pretty calm and collected.

8 Q. Was he generally willing to talk to you or
9 standoffish?

10 A. No. He seemed pretty willing to talk to
11 me, actually.

12 Q. During your time speaking to him, whether
13 it was just you or there were third parties in the
14 room, how did the defendant refer to Yessenia Camp,
15 the child?

16 A. There was that child or that girl,
17 generally.

18 Q. All right. In your conversation with the
19 defendant, did he ever suggest that someone else or
20 something else had caused Yessenia's injuries?

21 A. No, sir.

22 MR. ARABIA: Your Honor, with your
23 permission I would like to approach the witness?

24 THE COURT: Thank you.

25 Q. (By Mr. Arabia) Detective, I would like to

1 start with what's been marked State's Proposed
2 Exhibit 57A, which is I believe the CD. Are you
3 familiar with that CD?

4 A. I assuming it's the CD, the redacted
5 version, yes, of the interview.

6 Q. Okay. Have you reviewed that redacted
7 version?

8 A. Yes.

9 Q. Is the contents of that CD an accurate
10 reflection of the section of the interview that's
11 represented?

12 A. Oh, the version I reviewed, I reviewed it,
13 it appears to be same.

14 Q. Okay. So it is accurate?

15 A. Yes.

16 MR. ARABIA: Okay. Your Honor, I would
17 move to admit.

18 MR. MARTINEZ: No objection, Judge.

19 THE COURT: Admitted.

20 (Whereupon State's Exhibit No. 57A
21 is admitted into evidence.)

22 Q. (By Mr. Arabia) Then, Detective, turning
23 your attention to what's been marked as State's
24 Proposed Exhibit 57H. Do you recognize that
25 transcript?

1 A. I do.

2 Q. Okay. What is it?

3 A. This would be the transcript of the
4 interview with Mr. Engelson.

5 Q. Have you had an opportunity to review that
6 transcript?

7 A. I have.

8 Q. Is it an accurate reflection?

9 A. Yes, sir.

10 MR. ARABIA: All right. We'd also move to
11 admit.

12 MR. MARTINEZ: Quick voir dire, Judge?

13 THE COURT: Yes.

14 VOIR DIRE EXAMINATION

15 BY MR. MARTINEZ:

16 Q. Detective, did you compare the transcript
17 word for word to what's on the CD there?

18 A. I did not on those redacted versions.

19 Q. Okay. Did you do it on a previous version?

20 A. Yes.

21 Q. Was everything correct on the previous
22 version?

23 A. Yes, sir.

24 MR. MARTINEZ: Thank you, Judge. No
25 objection.

1 THE COURT: Admitted.

2 (Whereupon State's Exhibit No. 57H
3 is admitted into evidence.)

4 MR. ARABIA: All right. At this point we
5 would move to publish 57A, the video, and then to
6 provide to the jury copies of 57H, which is the
7 transcript just for the ease of following along.

8 THE COURT: That will be fine.

9 MR. ARABIA: Thank you, Your Honor.

10 (A CD is played.)

11 MR. VITTO: A little housekeeping, Judge.
12 My copy, which was one of the copies that was handed
13 out to the jurors, is missing page 127. I don't know
14 what's been marked as an exhibit. So if page 127 is
15 missing in the exhibit, then page 127 needs to be
16 added to the exhibit.

17 MS. BOSKOVICH: Was it missing in my copy
18 as well?

19 MR. VITTO: I don't know. See if you've
20 got page 127.

21 MS. BOSKOVICH: We don't.

22 MR. VITTO: Yeah. Page 127 is missing,
23 Judge.

24 THE COURT: My staff looks at me, and I'm
25 like, "I don't have it."

1 So Kirk's going to have his staff make a
2 hundred copies, and he's going to put them all in
3 those. But we're going to gather them up from you
4 anyway.

5 MR. VITTO: The only one that needs to
6 be -- 127 needs to be added to is the one that's in
7 evidence.

8 THE COURT: When you go back to deliberate,
9 you'll have page 127.

10 MR. VITTO: Thank you, sir.

11 THE BAILIFF: You're welcome.

12 THE COURT: Chris, you're with Mr. Fancher,
13 I believe.

14 MR. ARABIA: Thank you, Your Honor.

15 Your Honor, may I, after showing this to
16 Defense Counsel, approach the witness?

17 THE COURT: Yes.

18 DIRECT EXAMINATION (RESUMES)

19 BY MR. ARABIA:

20 Q. Detective, with respect to the CD which has
21 been marked as State's Proposed 57B, do you recognize
22 that?

23 A. I do.

24 Q. What is it?

25 A. This was the interview excerpts that I

1 reviewed with my signature and the date reviewed and
2 the time reviewed.

3 Q. All right. And on your review of those,
4 were they an accurate reflection of sections of
5 transcript?

6 A. Yes.

7 Q. Parts of the interview?

8 A. Yes.

9 MR. ARABIA: Okay. Your Honor, we would
10 move to admit.

11 MR. MARTINEZ: No objection, Judge.

12 THE COURT: It's admitted.

13 MR. ARABIA: And actually, I'm sorry,
14 that's 57C through G, I think.

15 THE WITNESS: Correct.

16 THE COURT: Still no objection, it's
17 admitted.

18 (Whereupon State's Exhibit Nos. 57C
19 through G is admitted into evidence.)

20 Q. (By Mr. Arabia) And then the other, the
21 document which has been marked as State's Proposed 57B,
22 do you recognize that?

23 A. I do.

24 Q. And can you tell us what that is?

25 A. This is a section of the transcript from

1 the interview.

2 Q. What sections of the transcript?

3 A. It would have been the one -- I believe
4 it's in conjunction with the CD that I reviewed.

5 Q. Okay. And have you looked at those
6 transcript sections?

7 A. I have.

8 Q. All right. And is that an accurate
9 reflection of those?

10 A. It appears to be, yes.

11 MR. ARABIA: Okay. Your Honor, we would
12 move to admit 57B.

13 MR. MARTINEZ: No objection, Judge.

14 THE COURT: It's admitted.

15 (Whereupon State's Exhibit No. 57B
16 is admitted into evidence.)

17 MR. ARABIA: And, Your Honor, what I would
18 like to do is publish C through G. I want to ask the
19 detective a couple of follow-up questions. And then
20 there's five excerpts; they're all very short. I
21 think most of them are less than a minute, if I may.
22 So may Kassie approach to --

23 THE COURT: That will be fine.

24 Anybody need water or anything?

25 (Staff working on playing the excerpts.)

1 MR. ARABIA: Your Honor, I'm willing to
2 just start with the Detective until we get the
3 excerpts back and we can play them. The jury's
4 already heard the whole thing; if that's okay.

5 THE COURT: Thank you.

6 Q. (By Mr. Arabia) Detective, let's talk
7 about during your interview or your conversation with
8 the defendant. Do you recall discussing events in the
9 shower area of the bathroom?

10 A. I do.

11 Q. All right. And what was the general gist
12 of that? What was the defendant's general story about
13 what went on in the shower?

14 A. That she was flailing around. He describes
15 her body flailing around, why she was flailing around,
16 how she fell, where she fell, and then right after
17 that.

18 Q. Was there any reference made to her
19 slamming into the side of the shower?

20 A. Yes, sir.

21 Q. Was there any reference made to her trying
22 to get out and the defendant pushing her by her head
23 back in?

24 A. Yes.

25 Q. What about the use of a foot or toe to put

1 the child back in the shower?

2 A. Yes, sir, I remember that.

3 Q. All right. Was there reference to the
4 child going down by having her feet come out from
5 under her?

6 A. Yes.

7 MR. ARABIA: All right. Thank you.

8 Kassie, that will take care of the first
9 one.

10 MS. WARD: Okay.

11 Q. (By Mr. Arabia) What, if anything, do you
12 remember the defendant saying he did after the events
13 in the shower?

14 A. He at one point said, "Went to bed. Went
15 to sleep."

16 Q. What, if anything, did the defendant say
17 about where he later found Yessenia?

18 A. On the floor directly next to the bed.

19 Q. All right. And what, if anything, did the
20 defendant say he did when he found Yessenia injured
21 later?

22 A. That he picked her up and held her.

23 Q. All right. And then what?

24 A. And picked her up and held her until the
25 EMS arrived, help arrived.

1 Q. All right. Did you and the defendant
2 discuss anything about Yessenia getting upset when she
3 was unhappy about nap time?

4 A. Yes.

5 Q. Do you recall -- what do you recall from
6 that part of the discussion?

7 A. That he would -- she would get upset at nap
8 time and that he would discipline her.

9 Q. And did the defendant also say that in
10 addition to getting really upset, she, quote, doesn't
11 no more, quote-unquote?

12 A. Yes, sir. He said that, "She don't no
13 more," if I remember correctly, yes.

14 Q. All right. Did the defendant ever express
15 concern about the situation that he found himself in
16 during that interview?

17 A. Yes, sir.

18 Q. Did he ever say anything about concern over
19 what would happen to him?

20 A. Yes, sir.

21 Q. Did he in fact say, quote, I don't know
22 what's going to happen to me, unquote?

23 A. He did.

24 Q. All right. Did the defendant ever suggest
25 anything regarding whose hands Yessenia's injuries

1 were caused by?

2 A. Yes, he did.

3 Q. And what did he say?

4 A. He said that she was -- her cause of death
5 was from his hands, literally his hands.

6 Q. Okay. And the last one, did the defendant
7 ever tell you he did it?

8 A. Yes.

9 Q. Did he in fact say in quote, "I'm the one
10 who did this"?

11 A. He did.

12 MR. ARABIA: Your Honor, we're not going to
13 need to play the excerpts.

14 Kassie, thank you. Don't worry about it.
15 You're doing a great job.

16 And, Detective, thank you. Nothing
17 further.

18 THE COURT: Counsel?

19 MR. MARTINEZ: Thanks, Judge.

20 CROSS-EXAMINATION

21 BY MR. MARTINEZ:

22 Q. Good afternoon, Detective.

23 A. Good afternoon.

24 Q. Detective, you said you've been at the
25 Sheriff's Office for ten years?

1 A. Yes, sir.

2 Q. And about the last five as a detective?

3 A. Yes, sir.

4 Q. So that would have been -- at the time of
5 this incident, you would have been a detective for
6 about two years?

7 A. That's correct.

8 Q. You said you started with the Nye County
9 Sheriff's Office on general patrol; right?

10 A. Yes, sir.

11 Q. Was there some sort of additional training
12 required to become a detective?

13 A. There was some additional training that
14 came along with it, but at the time I became a
15 detective, no. Just experience just to get into the
16 division.

17 Q. I see. And now, when you first became a
18 detective, were you assigned a specialty?

19 A. No, sir.

20 Q. So you were a just general assignment
21 detective?

22 A. Yes, sir.

23 Q. And what are your duties as a general
24 assignment detective?

25 A. Primarily just major crimes, homicides,

1 just major crime stuff.

2 Q. Did you assist in other cases as well?

3 A. I did, yes.

4 Q. Perhaps sex assault cases?

5 A. Yes, sir.

6 Q. Drug trafficking cases?

7 A. Not so much that. We don't really deal
8 with narcotics stuff in our division.

9 Q. They have their own specialty that deals
10 with the narcotics?

11 A. Yes, sir.

12 Q. And prior to this instance, had you
13 investigated major crimes like this before?

14 A. Yes, sir.

15 Q. Homicide cases?

16 A. Yes, sir.

17 Q. And now, you said you weren't necessarily
18 dispatched to the scene; right?

19 A. Right.

20 Q. You had heard about it?

21 A. Yes, sir.

22 Q. Was it another member of the
23 Sheriff's Office who kind of told you, "Hey, this is
24 going on"?

25 A. I believe so, yes.

1 Q. And Detective Fernandes was your partner at
2 the time?

3 A. Yes, sir.

4 Q. So you reached out to her to see if she
5 needed any help?

6 A. Yes, sir.

7 Q. Then you said you reached out to your
8 lieutenant?

9 A. I did.

10 Q. And he told you to go to the scene?

11 A. He did.

12 Q. Now, when you arrived on scene,
13 Cole Engelson was not at the Manse Road address;
14 right?

15 A. Correct.

16 Q. And you said there was crime scene tape;
17 right?

18 A. Yes, sir.

19 Q. So you did not immediately make entry into
20 the house; right?

21 A. Right; correct.

22 Q. So what was the first thing you did when
23 you responded to the scene?

24 A. Just stood there and waited.

25 Q. And the Sheriff's Office did get a search

1 warrant; right?

2 A. That's correct.

3 Q. But that didn't come until about a little
4 bit after midnight; right?

5 A. Most likely, yes. It was a while.

6 Q. And once they did get the search warrant,
7 you were the first one to make entry into the house;
8 right?

9 A. Right.

10 Q. And that's when you took video of the
11 house?

12 A. That's correct.

13 Q. So it had been undisturbed, so to speak --

14 A. Yes.

15 Q. -- until it had been cleared?

16 A. Yes.

17 Q. I believe you said you also took
18 preliminary pictures of the inside of the house as
19 well; right?

20 A. I did.

21 Q. And did you take all of those pictures
22 prior to anybody else going in the house?

23 A. Yes. Unless -- yeah, definitely.

24 Q. And prior to anybody beginning the search
25 of the house; right?

1 A. Yes.

2 Q. As the search of the house progressed, how
3 many members from the Sheriff's Office were assisting
4 with that search?

5 A. It would be myself, Detective Cox,
6 Detective Gibbs, and Captain Boruchowitz, yes.

7 Q. Now, in the interview that we just watched
8 with yourself and Mr. Engelson, Mr. Engelson mentioned
9 a glass that might be somewhere in the room; right?

10 A. Right.

11 Q. You didn't find any glass in the bedroom;
12 right?

13 A. I specifically remember a Dave and Buster's
14 glass. I don't know -- I don't recall from memory
15 exactly where it was located during the search.

16 Q. Is that the one you found on the coffee
17 table in the living room?

18 A. It may have been.

19 Q. Do you remember that glass being about
20 three-fourths full of clear liquid?

21 A. I don't, to be honest with you.

22 Q. Prior to making entry into the house, did
23 you generally discuss with the other members of the
24 Sheriff's Office what the situation was?

25 A. Yeah, kind of a general briefing before we

1 do anything like that, some information.

2 Q. Did you see any pictures of Yessenia before
3 you entered the house?

4 A. I did.

5 Q. Is it fair to say that when you entered the
6 house to do the search, you were kind of looking for
7 specific objects that could have caused the bruising
8 on Yessenia?

9 A. Yeah, anything that would explain the
10 injuries.

11 Q. And did you search both stories of the
12 house?

13 A. The entire house, yes, sir.

14 Q. And now, during the interview, you and
15 Mr. Engelson both mentioned a towel that had
16 bloodstains on it?

17 A. Yes, sir.

18 Q. Did you preserve that in evidence?

19 A. I didn't myself. That may have been from
20 someone else.

21 Q. And did you preserve anything into
22 evidence, or was that someone else's responsibility?

23 A. That was someone else's responsibility.

24 Q. Going back to the interview, you were not
25 the first person to interview Mr. Engelson; right?

1 A. Correct.

2 Q. Detective Fernandes did on the scene the
3 night before?

4 A. Yes.

5 Q. And Detective Cox started the interview the
6 same day you did; right?

7 A. Yes.

8 Q. Detective Gibbs also took part in that
9 interview?

10 A. He did, yes.

11 Q. When Detective Cox and Gibbs were entering
12 Mr. Engelson, were you watching the interview?

13 A. Correct. Yes, I was.

14 Q. Where were you watching from?

15 A. Our office, we have a video surveillance so
16 we can kind of monitor. We don't have, you know --
17 just get other eyes and kind of review it from an
18 outside point of view.

19 Q. So you heard all of the questions that
20 Detectives Cox and Gibbs asked Mr. Engelson; right?

21 A. I couldn't tell you if I heard everything.
22 It's been a while back, but generally, yes.

23 Q. When you walked in for your portion of the
24 interview, you had a general sense about what was
25 discussed and said before you got in there; right?

1 A. Correct.

2 Q. Is it fair to say that Mr. Engelson's story
3 changed a little bit while you were speaking with him?

4 A. It did, yes.

5 Q. He first said he -- that Yessenia, he found
6 her on the bed; right?

7 A. He initially stated that.

8 Q. And then he changed and said that he found
9 her on the floor?

10 A. Yes.

11 Q. And we just saw during the interview, he
12 said that when he found her, he held her in his arms;
13 right?

14 A. Yes.

15 Q. And he remained holding her in his arms
16 until the paramedics arrived; right?

17 A. Correct.

18 Q. You told Mr. Engelson that you were going
19 to go back to the house to swab the carpet; right?

20 A. I believe I mentioned that I would or the
21 possibility of it, yes.

22 Q. Did you ever go back to swab the carpet?

23 A. I did not.

24 Q. You also mentioned that you were going to
25 swab the bottom of the glass that you found, the

1 Dave and Buster's glass; right?

2 A. Maybe not me specifically, but they
3 definitely the swabbing, whether it be me or someone
4 else.

5 Q. Do you know if that took place?

6 A. I do not. The other detectives -- I know
7 there was some talk about that. I was more of the
8 assisting one, so it may have been done by somebody
9 else.

10 Q. Now, on direct and in the interview, you
11 said that during that interview, Mr. Engelson told you
12 he's the one who did it; right?

13 A. Correct.

14 Q. Did he also say he had to have been because
15 he was the only one home?

16 A. He did.

17 Q. During that interview, he never told you
18 specifically this is what happened and this is the
19 time that she died; right?

20 A. Not exactly, no.

21 Q. Never saw -- never observed any bruises on
22 Mr. Engelson's hands; right?

23 A. Correct, no.

24 Q. When you entered the house, it wasn't in
25 disarray; right?

1 A. No. It was pretty clean.

2 Q. It looked lived in; right?

3 A. Yes.

4 Q. But no sign that there was some sort of
5 major struggle that took place?

6 A. No.

7 Q. There wasn't broken glass?

8 A. No.

9 Q. There weren't things knocked off of
10 shelves?

11 A. No.

12 Q. There weren't tables flipped over?

13 A. No tables flipped over.

14 Q. There wasn't a pool of blood or anything
15 like that on the floor; right?

16 A. Correct.

17 MR. MARTINEZ: Pass the witness, Judge.

18 THE COURT: Thank you, sir.

19 MR. ARABIA: Court's indulgence for a
20 moment, Your Honor?

21 THE COURT: Say it again.

22 MR. ARABIA: Sorry. Court's indulgence for
23 a moment?

24 THE COURT: Sure.

25 MR. ARABIA: I have nothing further,

1 Your Honor.

2 THE COURT: You'll be subject to recall.
3 Don't talk about the case with anyone except the
4 attorneys. And if we need you again, we'll give you a
5 call back.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Thank you, sir.

8 MR. ARABIA: Your Honor, we don't have any
9 more witnesses for today.

10 THE COURT: All right. Do you have any
11 more CDs we can watch?

12 MR. ARABIA: I do, but I don't think
13 (inaudible).

14 THE COURT: All right. Ladies and
15 gentlemen -- 8:30 or 9:00 tomorrow?

16 MR. ARABIA: Your Honor, we have witnessed
17 coming in from Vegas, I think it is, and elsewhere. I
18 think they were told 9:00 so we would ask 9:00.

19 THE COURT: Very good.

20 MR. VITTO: I do have a witness I told to
21 be ready for 8:30 in case the Court did 8:30.

22 MR. ARABIA: 8:30 is good.

23 MR. VITTO: Whatever works for the Judge.

24 MR. ARABIA: Yeah. You're in charge.

25 THE COURT: You are admonished not to

1 converse among yourselves or with anyone else on he
2 any subject connected with the trial; or read or watch
3 or listen to any commentary of the trial, including
4 without limitation, newspapers, television, radio, and
5 the Internet.

6 You're not to form or express an opinion
7 until the matter is submitted to you for deliberation.

8 We will meet you back here in the morning
9 at 8:30. I'm going to stick around and talk to the
10 attorneys. You guys can head on out.

11 (The jurors are excused for the day.)

12 THE COURT: We're outside the presence of
13 the 15 jurors. Is there anything we need to talk
14 about or make a record of?

15 MR. VITTO: I'm good, Judge.

16 THE COURT: Okay. We'll meet at 8:30 in
17 the morning then.

18 MR. MARTINEZ: Thanks, Judge.

19 MR. ARABIA: Thank you, Your Honor.

20 THE CLERK: All rise.

21 (The proceedings concluded at 4:35 p.m.)
22
23
24
25

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
4 COUNTY OF NYE)

5 I, Cecilia D. Thomas, official reporter of
6 the Fifth Judicial District Court of the State of
7 Nevada, in and for the County of Nye, do hereby
8 certify:

9 That I reported the taking of the
10 proceedings at the time and place aforesaid;

11 That I thereafter transcribed my said
12 shorthand notes into typewriting, and that the
13 typewritten transcript of said proceedings is a
14 complete, true, and accurate record of statements
15 provided by the parties at said time, to the best of
16 my ability.

17 I further certify that I am not a relative,
18 employee, or independent contractor of counsel of any
19 of the parties involved in said action; nor a person
20 financially interested in the action; nor do I have
21 any other relationship with any of the parties or with
22 counsel of any of the parties involved in the action
23 that may reasonably cause my impartiality to be
24 questioned.

25 IN WITNESS WHEREOF, I have hereunto set my
hand in the County of Nye, State of Nevada, this 5th
day of February 2021.

Cecilia D. Thomas

Cecilia D. Thomas,
RPR, CCR No. 712