

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 19 OF 22

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Electronically Filed
Jul 23 2021 06:01 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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DIRECT EXAMINATION

BY MR. VITTO:

Q. Please state your name for the record spelling your last name.

A. David Boruchowitz, B-o-r-u-c-h-o-w-i-t-z.

Q. And what is your occupation, sir?

A. I'm a captain with the Nye County Sheriff's Office.

Q. And how long have you been employed by the Nye County Sheriff's Office?

A. Since February of 2006.

Q. And how long have you been in law enforcement?

A. Since February of 2003.

Q. So you've been in law enforcement or roughly 17 years?

A. Yes, sir, approximately.

Q. How were you employed July 16, 2017?

A. I believe I was the operations sergeant at that point.

Q. Now, I want to direct your attention to July 15 and 16 of 2017. Do you recall having contact with Cole Duane Engelson?

A. I do.

Q. Do you see him in the courtroom today?

1 A. I do.

2 Q. Can you describe an article of clothing
3 he's wearing.

4 A. Yes. He's wearing a white shirt with a red
5 plaid tie.

6 MR. VITTO: Your Honor, may the record
7 reflect that this witness has made an in-court
8 identification of the defendant?

9 THE COURT: Yes, sir.

10 MR. VITTO: Thank you.

11 Q. (By Mr. Vitto) What was the purpose of
12 your contact, your personal contact with the
13 defendant?

14 A. It was during the course of the
15 investigation. I was a watch commander for that call
16 for sheriff.

17 Q. All right. Let me show you State's
18 Proposed Exhibit 62A. Go ahead and familiarize
19 yourself with that. Look up when you've had that
20 opportunity. I will ask you some questions.

21 A. (The witness complies.) I'm ready.

22 Q. Do you recognize that?

23 A. Yes.

24 Q. What is that?

25 A. This appears to be a copy of the transcript

1 of an interview between myself and Mr. Engelson.

2 Q. Is it accurate?

3 A. I didn't read through it word by word, but
4 it appears to be consistent with the transcript.

5 MR. VITTO: Your Honor, I request that
6 State's Proposed Exhibit 62A be admitted into
7 evidence.

8 MR. MARTINEZ: Can I voir dire the witness?

9 THE COURT: Yes.

10 VOIR DIRE EXAMINATION

11 BY MR. MARTINEZ:

12 Q. Captain, have you seen that transcript
13 before today?

14 A. Several times.

15 Q. Have you had the opportunity to read
16 through it word for word?

17 A. Yes, I have.

18 Q. That interview was also recorded; correct?

19 A. Correct.

20 Q. Have you compared the recording to the
21 transcript?

22 A. I have.

23 Q. And all of it seems to be accurate?

24 A. Yes. I found no discrepancies during the
25 review.

1 MR. MARTINEZ: Thank you.

2 No objection, Your Honor.

3 THE COURT: It's admitted.

4 (Whereupon State's Exhibit No. 62A is
5 admitted into evidence.)

6 MR. VITTO: Court's indulgence just a
7 moment.

8 Your Honor, I'm going to entertain a line
9 of questioning that precipitates your reading this
10 instruction.

11 THE COURT: NRS 48.045, subsection (2):
12 "Evidence of other crimes, wrongs, or acts is not
13 admissible to prove the character of a person in order
14 to show that he acted in conformity therewith. It may
15 however be admissible for other purposes such as proof
16 of motive, opportunity, intent, preparation, plan,
17 knowledge, identity, or absence of mistake or
18 accident."

19 MR. VITTO: Thank you, Your Honor.

20 THE COURT: Thank you.

21 DIRECT EXAMINATION (RESUMES)

22 BY MR. VITTO:

23 Q. Captain, do you recall what the defendant
24 said about disciplining Yessenia at all?

25 A. Yes.

1 Q. What was it that he said?

2 A. There are a couple of different things. He
3 had identified specifically that he virtually did not
4 do the physical discipline for anymore.

5 Q. And was there a reason for that?

6 A. Yes. He said that the last time, in
7 essence, that he had tagged her pretty good, and that
8 he didn't do it any longer because of that.

9 Q. All right. Let me show you State's
10 Exhibit 62, I believe -- I believe it's 62C. Let me
11 see if we have that. Do we have that?

12 THE CLERK: No.

13 MR. VITTO: Is that something that I have?
14 The actual CD itself?

15 Q. (By Mr. Vitto) Let me show you 62D
16 through H.

17 MR. VITTO: Counsel.

18 (Showing the exhibit to Defense Counsel.)

19 Q. (By Mr. Vitto) Do you recognize that?

20 A. Yes, I do.

21 Q. How is it that you recognize that?

22 A. It's a CD that I provided excerpts to the
23 DA's Office of my interview, and they burned it to a
24 CD, and I ultimately initialed and dated it.

25 Q. You listened to all of them?

1 A. Yes.

2 Q. They were accurate?

3 A. Yes.

4 Q. They're excerpts and aspects of the
5 transcript that's been admitted into evidence?

6 A. Yes.

7 MR. VITTO: Your Honor, I would ask that
8 62D through H be admitted into evidence. I would like
9 to publish 62D to the jury at this time.

10 MR. MARTINEZ: No objection, Your Honor.

11 THE COURT: Admitted.

12 (Whereupon State's Exhibit Nos. 62D
13 through 62H are admitted into evidence.)

14 MR. VITTO: I've also prepared a mini
15 transcript for the jurors so that they can follow
16 along. If it please the Court, I would like to pass
17 those out.

18 THE COURT: Thank you, sir.

19 Q. (By Mr. Vitto) Directing your attention --

20 MR. VITTO: Your Honor, do you have a copy?

21 THE COURT: I do.

22 Q. (By Mr. Vitto) Let me direct your
23 attention to page 49.

24 You can go ahead.

25 (An excerpt is played for the jurors.)

1 Q. (By Mr. Vitto) Now, do you recall the
2 defendant over the course of your interview, do you
3 recall him using the phrase "midget kick"?

4 A. Yes.

5 Q. What was that in reference to?

6 A. He was describing how Yessenia was trying
7 to get out of the shower, and he had done a kick to
8 keep her in the shower. And he kind of demonstrated
9 like -- I forget the exact phrase, but something to do
10 with a midget kick, kicked her with the toe of his --
11 or front of his toe, and he kind of demonstrated that
12 kick.

13 Q. So he actually demonstrated the kick for
14 you?

15 A. Correct.

16 Q. A kick used to keep Yessenia in the shower?

17 A. Yes.

18 Q. What do you recall about his recollection
19 of Yessenia screaming and trying to get out of the
20 shower and away from him?

21 A. He described it a couple of different times
22 as how you would expect a cat to react when being put
23 in the bath.

24 Q. And he was describing to you her efforts to
25 escape the shower?

1 A. Correct.

2 Q. Let me play -- hold on one second. Let me
3 find the -- it looks like we're talking about the
4 first page, page 29.

5 (An excerpt is played for the jurors.)

6 Q. (By Mr. Vitto) So it would be fair to say
7 that he was describing her as very active and animated
8 in the shower; is that correct?

9 A. It appeared to be, yes.

10 Q. So the defendant was, with detail, able to
11 describe his interaction with Yessenia while she was
12 in the shower; is that correct?

13 A. Yes.

14 Q. And did he specifically characterize
15 himself in any particular way as it comes to himself
16 as a disciplinarian?

17 A. To the best of my recollection, I believe
18 he used the word heavy-handed.

19 Q. Now, did he describe for you Yessenia's
20 reaction when her mother was leaving?

21 A. Yes.

22 Q. What did he say?

23 A. He said she was screaming.

24 Q. She didn't want to be left alone with the
25 defendant?

1 MR. MARTINEZ: Objection, Your Honor;
2 speculation.

3 MR. VITTO: That's fine. I will withdraw
4 the question.

5 Q. (By Mr. Vitto) Did the defendant say
6 anything to you about how Yessenia died?

7 A. Is your question did he specifically tell
8 me anything about how she died?"

9 Q. Yes. But perhaps that's too broad in
10 general; I will try to hone it in.

11 A. Okay.

12 Q. Was there a point in time when the
13 defendant told you, "I don't know what happened"?

14 A. Yes.

15 Q. Did he say that more than once?

16 A. Yes, several times.

17 Q. Did he -- having said, "I don't know what
18 happened," did he then provide some alternative
19 answers?

20 A. So he -- he provided a lot of explanation,
21 some of which we've already talked about, about her
22 bouncing around in the shower, him kicking her in
23 there and stuff. And when it came to actually
24 identifying what specifically caused her death, he
25 always came back to he didn't remember beyond those

1 things that we've talked about.

2 Q. Do you happen to recall him using the
3 phrase that "Yessenia and I were going at it"?

4 A. Yeah. That was in reference to that whole
5 shower encounter.

6 Q. All right. Was there a point in time when
7 he took ownership, if you will, of her death?

8 A. Yes.

9 Q. How did he do that?

10 A. It was during -- I had brought Yessenia's
11 mother into the room with him. And during that
12 conversation, he had, for lack of a better term,
13 apologized to Yessenia's mother for taking her
14 daughter from her.

15 Q. And was it basically things along the line
16 of "I was the only one there. I was responsible"?

17 A. Yeah, I mean, and he specifically said in
18 an apology to her that he was sorry for taking her
19 from her.

20 MR. VITTO: Go ahead and play that one.

21 THE COURT: Can we make a record what we're
22 playing right now?

23 MR. VITTO: This is State's Exhibit 62F.

24 MR. MARTINEZ: What page, Mr. Vitto?

25 MR. VITTO: You know what, I don't see it

1 here. Let me look real quick.

2 THE COURT: That's okay. It's helpful to
3 read along, not required.

4 MR. VITTO: Let me -- hold on one second.

5 Counsel, if you'll look at Exhibit 62B.

6 Q. (By Mr. Vitto) Let me show you what has
7 been preliminarily marked as State's Proposed
8 Exhibit 62B, specifically directing your attention to
9 page 9.

10 A. I'm ready.

11 Q. First of all, does that transcript appear
12 to be accurate?

13 A. It does.

14 Q. You've had opportunity to review it in the
15 past?

16 A. I have.

17 Q. And the quote that I've directed your
18 attention to, or the transcript that I've directed
19 your attention to, specifically page 9, is that what
20 you were just referencing?

21 A. It is.

22 Q. All right.

23 MR. VITTO: Your Honor, I would request
24 that this exhibit be admitted into evidence also.

25 MR. MARTINEZ: No objection, Your Honor.

1 THE COURT: Admitted.

2 (Whereupon State's Exhibit No. 62B is
3 admitted into evidence.)

4 MR. VITTO: And for the jury's edification,
5 if they want to take a note, I will be referencing
6 with this next entry page 9 of this interview
7 transcript which is marked and admitted into evidence
8 as State's Exhibit 62B. Thank you very much.

9 (The excerpt is played for the jurors.)

10 Q. (By Mr. Vitto) So there's a reference
11 there to -- he's talking to Victoria; is that correct?

12 A. Correct.

13 Q. And you're present the whole time?

14 A. Correct. I --

15 Q. I'm sorry?

16 A. I believe I was present the entire time.

17 Q. And he tells Victoria, "I don't know what
18 happened"?

19 A. Correct.

20 Q. But he was able to give you some detail
21 about what occurred in the shower; is that correct?

22 A. Correct.

23 Q. Now, in that transcript, let me direct your
24 attention to page 11 of 62B?

25 A. Okay. I'm ready.

1 Q. You had testified previously that the
2 defendant said that he and Yessenia were, quote, going
3 at it, unquote?

4 A. Correct.

5 Q. Is that referenced there on page 11?

6 A. That quote's not referenced here; however,
7 the same context of the conversation just different
8 verbiage is used.

9 Q. All right. Can I see your 62B or 62B.
10 Okay. So let me direct your attention to 62B, page
11 11, lines 14 and 15.

12 A. I apologize. Yes. I stopped reading too
13 soon. It is referenced in that.

14 Q. So he tells Victoria, "We were going at
15 it"?

16 A. She asked if she was fighting with her, and
17 he said, "Yes. We were, you know, going at it."

18 Q. And I believe that you testified earlier
19 that he testified that he threw Yessenia in the
20 shower?

21 A. Yes. He used those words.

22 Q. Do you recall at one point during this
23 interview, that he made the reference that he wasn't
24 even touching her at first?

25 A. Yes. I don't remember the context of that,

1 but I do remember that phrase.

2 Q. Why don't you look at 62A, page 35, see if
3 that refreshes your recollection at all?

4 A. Page 35 is completely redacted on my
5 reading.

6 Q. Do you recall that at one point the
7 defendant referencing an escalation?

8 A. Yes.

9 Q. Is it the point -- is it at the point that
10 things begin to escalate that his memory breaks down?

11 A. I wouldn't characterize it that way, no.

12 Q. How would you characterize it?

13 A. I believe it was at the point that he would
14 have to acknowledge that her death was caused by his
15 actions is when his memory broke down. He would
16 remember events that occurred in detail during this
17 fight, for lack of a better word, between him and
18 Yessenia. And then when it got to the point where I
19 insisted that I needed more information as to how it
20 ended, his memory appeared to fade at that point.

21 Q. All right. So when it got to the point of
22 how is Yessenia dead, it became, "I don't know"?

23 A. Yeah. He didn't recall how the fight
24 ended. He was able to tell me about the altercation
25 in the shower, and then it just kind of had no

1 resolution.

2 Q. All right. So he was able to describe the
3 fight, just not how the fight ended?

4 A. Right.

5 Q. And a fight, this is a fight; they were
6 going at it. Did the defendant tell you how much he
7 weighed?

8 A. I believe he said 350 pounds.

9 Q. And Yessenia was three years old?

10 A. Correct.

11 Q. Do you recall the defendant describing
12 perhaps how this had all started as far as some kind
13 of discipline without warning or advanced notice?
14 Does that cause you to recall anything in particular?

15 A. Yes. I remember that conversation.

16 Q. How did that conversation go?

17 A. So I was trying to ascertain from him why
18 she would react the way she did in the shower, and he
19 indicated a couple of things: No. 1 that he had
20 previously used cold water as a means of punishment
21 for Yessenia, and that this time she had had no
22 warning that it was coming. And so he was attributing
23 to me that he believed her reaction was sparked by the
24 fact that he had failed to warn her, unlike the prior
25 occasion.

1 Q. So on the prior occasion, he had given her
2 a warning?

3 A. That was how it came across.

4 Q. And how did she react when properly warned?

5 A. I don't recall his exact wording, but I
6 believe that it was just that she cried basically,
7 that she was upset about it. But this time she
8 reacted differently because there was no warning.

9 Q. And is there any doubt that at some point
10 during your interview, the defendant was clearly
11 attributing his lack of recollection to the use of
12 alcohol?

13 A. He definitely used that as an excuse
14 several times.

15 Q. And at one point besides going at it, the
16 kick you described to keep her in the shower, despite
17 her little best efforts, he specifically told you he
18 doesn't remember a single strike?

19 A. Yes. He said that while telling me the
20 story about several of these instances.

21 Q. Okay. So while saying he didn't remember a
22 single strike, he was actually describing the struggle
23 that was going on?

24 A. Correct.

25 Q. Let's talk a little bit about some timing

1 aspect in this; okay. Did he provide you with when
2 the time that he thought Victoria and Nickole had left
3 to get their nails done?

4 A. To the best of my recollection, I believe
5 it was around one o'clock.

6 Q. All right. And with that as a point of
7 reference, when or how soon thereafter was the shower?

8 A. I believe his reference was a half-hour, to
9 the best of my recollection, that she had left and
10 that Yessenia had gotten dirty and that's when he put
11 her in the shower.

12 Q. All right. Let's go ahead and make sure.
13 Let's look at page 38 of your interview with the
14 defendant by himself.

15 A. Where is that, page 38?

16 Q. Boy, I sure hope so. Yeah. That's the
17 page that I got. All right, let me show you -- let me
18 show you -- what do you got 62A?

19 A. A and B.

20 Q. And B.

21 MR. VITTO: Let's mark this as 62C.

22 (Whereupon State's Proposed Exhibit
23 No. 62C is marked for identification.)

24 MR. VITTO: Let's call this one -- let's
25 just call it 101.

1 MR. MARTINEZ: Your Honor, may I approach
2 the clerk with Mr. Vitto?

3 THE COURT: Thank you, sir.

4 THE CLERK: 101?

5 MR. VITTO: Yeah.

6 (Whereupon State's Proposed Exhibit
7 No. 101 is marked for identification.)

8 Q. (By Mr. Vitto) Captain, showing you what
9 has been marked for purposes of identification only as
10 101, let me refer you to page 38 specifically, lines 6
11 through 9. When you've had an opportunity, let me ask
12 you some questions.

13 A. What were the numbers you wanted me to
14 look, 6 through 9?

15 Q. Sure.

16 A. (The witness complies.) Okay. I'm ready.

17 Q. Now, does that confirm your recollection of
18 when he said Victoria left?

19 A. Yes. It was one o'clock.

20 Q. And when he said the shower occurred after
21 that?

22 A. Yes, approximately half an hour.

23 Q. All right. So he put the shower at roughly
24 1:30?

25 A. Approximately, yes.

1 Q. So he provided information that Victoria
2 left at about one o'clock. He provided information
3 that he was outside with Yessenia. Do you happen to
4 recall how long he said that they were outside?

5 A. I don't recall him differentiating anything
6 between when they came in and when they took a shower.
7 I don't recall him specifying a different time.

8 Q. If he said whether or not they were -- for
9 how long they were outside, he didn't say?

10 A. The impression I got, or at least as far as
11 I recall, was that she was outside, she got dirty,
12 they came in and took a shower. It seemed to be
13 continuous in that 30 minutes.

14 Q. All right. Look at page 40?

15 A. On that one you just gave me?

16 Q. Yes.

17 A. I don't think that's the page.

18 Q. Then look at Exhibit 62A, page 40?

19 A. I'm ready.

20 Q. Okay. Did he happen to explain to you in
21 your interview with him about how long they were
22 outside?

23 A. Yes.

24 Q. And what did he say?

25 A. He says maybe ten minutes and then

1 references going right inside and then references the
2 30 minutes between that and the shower.

3 Q. Do you recall him making a statement, "It
4 wasn't that bad, but it got amped up; do you remember
5 that?

6 A. Yes.

7 Q. And getting "amped up" was a phrase that he
8 used?

9 A. I believe those were his words.

10 Q. And that she had screamed the whole time?

11 A. Yes.

12 Q. And that she wanted to get out of it?

13 A. Yes. He described that she was desperately
14 trying to get out.

15 Q. He also described her going down a few
16 times; do you remember that?

17 A. Yes.

18 Q. How did he -- can you elaborate in regard
19 to what he described with that happening?

20 A. Sure. One of the times, he described her
21 as, I believe it was falling face first on the -- I
22 forget the word he used, but the portion of the shower
23 that prevents the water from coming into the room, so
24 the front of that shower. In the other instance, he
25 described her falling into the back of the shower

1 stall.

2 Q. And how did he -- and I'm sorry, what did
3 you say about the back of the shower stall?

4 A. He described that she had fallen into the
5 back of the shower and had kind of bounced back and
6 forth.

7 Q. Bounced back and forth?

8 A. I don't know that those were his words, but
9 that was the message that he conveyed.

10 Q. Like reverberated?

11 A. I don't think that was his word, but that
12 was description.

13 Q. That's not the word he used, but that's
14 what he was characterizing?

15 A. Correct.

16 Q. But he doesn't know how this child got
17 hurt; is that what he told you?

18 A. Right. I mean amidst all of that, he kept
19 saying he didn't know how she had died.

20 Q. So during this whole process, she's trying
21 to get out, he's trying to keep her in. She's hitting
22 the shower, this, that, the other thing. He described
23 the kick, and you testified about that; correct?

24 A. Correct.

25 Q. He also described a push and her head; do

1 you recall that?

2 A. Yes. Yes. I don't recall his act
3 verbiage, but there were a couple of references where
4 I believe he talked about having pushed her back in,
5 and then I believe the head reference was having
6 fallen into the back of the shower. But I would have
7 to look at the transcript to refresh my memory on the
8 exact words.

9 Q. I think we will probably get to that in a
10 bit. So, Captain, what time did law enforcement
11 become involved with this matter?

12 A. I believe it was right around 7:00 p.m.
13 that day.

14 Q. Did the defendant describe for you --
15 although, he doesn't know how it ended, did he
16 describe for you what happened after the shower?

17 A. Don't know that he gave much description.
18 I believe he told me that he had put Yessenia down for
19 a nap, I think.

20 Q. Okay. Do you recall him telling you how
21 long the shower lasted?

22 A. I don't recall that.

23 Q. All right. So the shower takes place at
24 1:30; correct --

25 A. Approximately, yes.

1 Q. -- according to the defendant. Law
2 enforcement gets involved at what time, did you say?

3 A. Right around 7:00 p.m., I believe.

4 Q. So between the shower and the arrival of
5 law enforcement, we're talking about five hours --

6 A. Approximately.

7 Q. -- right? Did you ever ask him why he
8 didn't just let her out of the shower?

9 A. Yes.

10 Q. What did he say?

11 A. I believe his answer was that she was still
12 dirty.

13 Q. So he told you that he had been drinking or
14 he blamed the event on alcohol. Do you recall his
15 telling you that it just went too far?

16 A. Yes. He used that word.

17 Q. And did you and he discuss pictures of the
18 injuries to Yessenia?

19 A. Yeah,

20 Q. Did you show him pictures?

21 A. I did.

22 Q. Do you happen to recall his comment upon
23 seeing the pictures?

24 A. I believe his initial comment was something
25 about -- I don't remember his exact words. I think he

1 said something like, "That's bad," or indicating the
2 gravity of the pictures, I believe.

3 Q. All right. Let me direct your attention to
4 page 47 --

5 THE COURT: Can you hear okay in the back?
6 (The jurors nod.)

7 Q. (By Mr. Vitto) -- 47, of 62A. I would
8 like you to go ahead and read that page, look up when
9 you're done. I want to ask you a question about it.

10 MR. MARTINEZ: I'm sorry, Mr. Vitto. What
11 page is that?

12 MR. VITTO: 47 of 62A.

13 THE WITNESS: Okay. I've reviewed it.

14 Q. (By Mr. Vitto) Is there a reference on
15 that page to pushing her head back?

16 A. Confirming on page 47?

17 Q. Right. And I could have the page wrong.
18 So when I ask you, I'm literally asking you is it on
19 that page?

20 A. No. This page is all reference Victoria
21 coming in to talk to him.

22 Q. All right. Check on page 30.

23 A. Yes. There's a reference on there.

24 Q. Okay. What was he saying about pushing her
25 head?

1 A. Like I had previously testified, he had
2 said that he pushed her head back to keep her in the
3 shower.

4 Q. All right. Now, in reference to his
5 comments upon seeing the pictures, can you review page
6 50 of your transcript?

7 A. (The witness complies.) I'm ready.

8 Q. Does that refresh your recollection in
9 regard to what he said upon having opportunity to look
10 at the photographs of the injury to Yessenia?

11 A. So I believe this is a separate
12 conversation, not separate but it's a later part of
13 the conversation. So he's referencing back to that
14 when he had seen the pictures.

15 Q. I understand.

16 A. And in this part, he says, "I couldn't have
17 done that to her sober," basically. "I couldn't have
18 been that upset." And he's referencing when he saw
19 those pictures.

20 Q. I understand. And he volunteered that
21 perhaps the booze made him angry?

22 A. Yes. He indicated that sometimes he's a
23 happy social drunk, and that in this instance,
24 obviously he was an angry drunk.

25 Q. Now, let me show you State's Exhibit 7A

1 through M. Let me show you what has been admitted
2 into evidence as 72A through L. 72? I'm sorry 7A
3 through L.

4 Take your time. Let me know when you've
5 had that opportunity.

6 A. I've reviewed them.

7 Q. You recognize those?

8 A. I do.

9 Q. Are those representative of the photographs
10 that the defendant was referencing when he made the
11 comments he did?

12 A. They are representative of that, yes.

13 Q. And some of those photographs, at least
14 some of them, maybe all of them were photographs that
15 you actually showed him?

16 A. Yes. They were in the batch.

17 MR. VITTO: Court's indulgence just a
18 minute.

19 Q. (By Mr. Vitto) I would direct the jury's
20 attention and the Court's attention to page 45. Let's
21 go ahead and play the next excerpt.

22 (The excerpt is played for the jurors.)

23 Q. (By Mr. Vitto) We have gone over that
24 earlier. That's when he talked about her not getting
25 warning?

1 A. Correct.

2 Q. And the next one, let me refer Court,
3 Counsel, and the jury to page 51. Go ahead.

4 (An excerpt is played for the jurors.)

5 Q. (By Mr. Vitto) And that's when we talked
6 about his use of the phrase "midget kick" to keep her
7 in the shower?

8 A. Correct.

9 Q. Captain, how many suspect interviews have
10 you conducted in your law enforcement career?

11 A. Thousands.

12 Q. Training, classes, seminars involving
13 interview technique?

14 A. I've been to several.

15 Q. Over the course of your years in law
16 enforcement, thousands of interviews, training,
17 classes, et cetera, have you learned about suspects
18 minimizing their involvement?

19 A. Yes.

20 Q. What can you tell me about that?

21 A. Traditionally, in a suspect interview, the
22 suspect that you're interviewing wants to tell you
23 portions of what occurred, just as human nature when
24 you're being asked questions about an event to provide
25 an answer. When the events are substantial and have

1 substantial consequences, the suspects traditionally
2 will minimize their role. For instance, they'll admit
3 to being at the location of a crime; however, when it
4 comes to the actual act of taking something, they
5 would deny that portion or minimize their portion of
6 that.

7 Q. With the interviews that you've conducted,
8 have you seen that concept play out?

9 A. In almost every interview.

10 Q. So directing your attention specifically to
11 your interview with the defendant, with the house and
12 specifically the shower area and bedroom, the master
13 if you will, being a crime scene, the defendant put
14 himself at the crime scene; is that correct?

15 A. That's correct.

16 Q. As the only living person at the crime
17 scene at the time?

18 A. Correct.

19 Q. And he describes a struggle; is that
20 correct?

21 A. That is correct?

22 Q. With detail?

23 A. Very good detail.

24 Q. He remembers things leading up to the
25 event; correct?

1 A. Yes.

2 Q. And he remembered things after the event?

3 A. Yeah.

4 Q. He simply forgot how Yessenia died?

5 A. Yes.

6 Q. So based upon your testimony, your
7 experience, your interviews with the defendant,
8 everything he told you, seeing Yessenia, did you
9 conclude that the defendant was trying to minimize his
10 involvement with the death of a little baby girl?

11 A. Yes.

12 Q. Now, if I understand the interview
13 correctly, the reason Yessenia needed a shower between
14 1:00 and 2:00 in the afternoon, after having been
15 tucked in for a nap so that he could get some sleep
16 before work, was because she fell in the dirt and got
17 dirty; right?

18 A. Yes. His reason for the shower was she had
19 gotten dirty when she was outside.

20 Q. But he described no injury to the child?

21 A. Prior to that, yeah.

22 Q. Prior to the shower?

23 A. Correct.

24 Q. No injury?

25 A. No.

1 Q. She wasn't hurt?

2 A. Correct.

3 Q. In fact, she even kept playing for a while
4 after falling into the dirt?

5 A. Yes.

6 Q. Now, let me direct your attention to
7 Desert View Hospital on July 15, 2017. Do you recall
8 personally seeing Yessenia at the hospital?

9 A. I do.

10 Q. Would it be fair to say that most body
11 parts of the decedent's body had some form of either
12 injury, bruise, cut, scrape, or disfigurement?

13 A. Yes. It was extensive.

14 Q. In fact, that might be a loose quote from
15 your report; does that sound familiar?

16 A. I don't believe it's very loose. I think
17 it's exactly what I put.

18 Q. Okay. More particularly, do you recall
19 indicating in your report an injury to the back of the
20 head?

21 A. I do.

22 Q. With some skull disfigurement?

23 A. Yes, sir.

24 MR. MARTINEZ: I'm going to object, Judge,
25 as to foundation there. I think that's outside the

1 scope of this witness's testimony.

2 MR. VITTO: That's fine. I can lay some
3 foundation.

4 Q. (By Mr. Vitto) Were you -- did you have
5 opportunity to look closely at Yessenia's head?

6 A. I did.

7 Q. And were you able to feel her head?

8 A. I did.

9 Q. Could you sense at that point that there
10 was injury, even disfigurement?

11 A. Yes. I felt what appeared to be
12 disfigurement.

13 Q. Now, with regard to that, do you recall
14 what the defendant said happened immediately after the
15 shower?

16 A. No. I'd have to refresh my memory from my
17 report.

18 Q. Why don't you read page 32 of your
19 interview with the defendant.

20 A. Is it okay if I go back a page for some
21 context?

22 Q. Sure, please.

23 A. So these pages are referencing when he
24 allegedly discovered her in the bed.

25 Q. All right. Let's look at -- I might have

1 the wrong transcript. Look at 101, page 32.

2 A. I don't think that's it either.

3 MR. VITTO: All right. Your Honor, this is
4 important and I want to get it right. I have no
5 problem, if Defense has no objection, to breaking for
6 lunch.

7 THE COURT: Are you good with that lunch
8 now? I was going to ask before you began cross if you
9 wanted to do that.

10 MR. VITTO: And I'm at the very, very end.
11 So when we reconvene, it will be basically time for
12 cross.

13 THE COURT: Ladies and gentlemen of the
14 jury, you are admonished not to converse among
15 yourselves or with anyone else on any subject
16 connected with this trial; or to read, watch, or
17 listen to any report of or commentary of the trial,
18 including without limitation, newspapers, television,
19 radio, and Internet.

20 You're not to form or express an opinion on
21 any matter until you are sent to deliberate.

22 It's 12:20, so 12:50? I'm just kidding.
23 1:15 we'll meet back here. Thank you.

24 THE BAILIFF: All rise.

25 (A lunch break is taken.)

1 THE BAILIFF: All rise.

2 THE COURT: Thank you. Please be seated.

3 MR. VITTO: Thank you, Your Honor.

4 THE COURT: Thank you.

5 All right. We're back in the presence of
6 our 15 jurors. We will continue direct examination of
7 Mr. Boruchowitz.

8 MR. VITTO: Thank you, Your Honor.

9 DIRECT EXAMINATION (RESUMES)

10 BY MR. VITTO:

11 Q. Captain, do you recall the defendant making
12 reference to one eye being open and Yessenia being
13 limp?

14 A. Yes.

15 Q. What was the context for that?

16 A. He was describing his discovery of her
17 body. And he's kind of describing that he picked her
18 up and that she was limp and she had only one eye
19 open.

20 MR. VITTO: Your Honor, I need to have the
21 Court read this instruction prior to my next few
22 questions.

23 THE COURT: Yes, sir.

24 Nevada Revised Statute 48.045, subsection
25 (2): "Evidence of other crimes, wrongs, or acts is

1 not admissible to prove the character of a person in
2 order to show that he acted in conformity therewith.
3 It may, however, be admissible for other purposes,
4 such as proof of motive, opportunity, intent,
5 preparation, plan, knowledge, identity, or absence of
6 mistake or accident."

7 MR. VITTO: Thank you, sir.

8 Q. (By Mr. Vitto) Captain, did you make a
9 report contemporaneous to this incident involving
10 Yessenia?

11 A. I did.

12 Q. So contemporaneous to the events
13 three-and-a-half years ago, you made a report of what
14 you did at or near the time that it happened; is that
15 correct?

16 A. Yes, sir.

17 Q. Did you have conversation with Victoria
18 about a previous incident when Yessenia had hurt --
19 busted open her chin?

20 A. Yes, sir.

21 Q. And is that documented in the police report
22 that you made?

23 A. Yes. I believe it is.

24 Q. Were the two incidents similar?

25 A. Yes.

1 Q. What was similar about the two incidents?

2 A. In both incidences, the defendant was
3 babysitting Yessenia. He had been drinking in both
4 incidences and she was injured in both instances and
5 she had been given a shower in both instances.

6 Q. And this is in your police report?

7 A. Yes, sir.

8 Q. So -- and to wrap this up, your direct
9 examination anyway -- so after describing in detail
10 everything that he did, you were there when the
11 defendant told Victoria he didn't know what happened?

12 A. He did say that to her, yes.

13 Q. While also telling her that the two of them
14 were going at it?

15 A. Yes, sir.

16 Q. 350 pound Cole Engelson and three-year-old
17 little girl Yessenia Camp?

18 A. Yes, sir.

19 MR. VITTO: I have no more questions of
20 this witness.

21 THE COURT: Counsel?

22 MR. MARTINEZ: Thank you, Judge.

23 CROSS-EXAMINATION

24 BY MR. MARTINEZ:

25 Q. Good afternoon again.

1 A. Good afternoon, sir.

2 Q. Captain, in your current duties, are you
3 primarily in charge of the detention center?

4 A. No, not primarily.

5 Q. Okay. Are you partially in charge of the
6 detention center?

7 A. I am.

8 Q. Did you have that same responsibility at
9 the detention center in July of 2017?

10 A. Yes. I would have been in charge of
11 detention.

12 Q. When you interviewed Cole Engelson, you
13 were not the first member of law enforcement to
14 interview him?

15 A. I do not believe I was the first, no.

16 Q. You were aware that Detective Fernandes had
17 interviewed him the night before?

18 A. Yes, sir.

19 Q. And you were aware that earlier that
20 morning, Detectives Cox, Gibbs, and Fancher had
21 interviewed him?

22 A. I don't remember which ones, but yes, I'm
23 aware several of them had interviewed him.

24 Q. Prior to your interview, did you speak with
25 those detectives to go over what they spoke about with

1 Mr. Engelson?

2 A. I'm sure I did. I don't recall
3 specifically, though.

4 Q. You don't recall the specifics of the
5 conversation?

6 A. I don't recall the conversation, but it
7 would be normal that I would do so.

8 Q. Where did the interview take place with
9 Cole Engelson?

10 A. I would have to review several things in
11 order to give you a direct answer to that. My
12 recollection was that I interviewed him in the
13 interview room; however, I notice on the transcript it
14 notes that it was in the detention center. And I
15 would have to review the footage to determine which of
16 those two locations was the actual location.

17 Q. One of those two locations, though?

18 A. Yes.

19 Q. When Cole came for his interview, he was
20 wearing a green suicide smock; right?

21 A. I do believe he was in a suicide smock,
22 yes.

23 Q. What's the significance of the suicide
24 smock? Well, let me ask a different question. Why
25 are inmates put in a green suicide smock?

1 A. It's a piece of clothing that allows them
2 to be afforded normal human decency of being covered
3 up without having any risk of being able to hurt
4 themselves with the fabric of their clothes.

5 Q. Are inmates only put in that if you believe
6 there's a risk that they're going to hurt themselves?

7 A. No, not necessarily.

8 Q. When else would an inmate be put in that
9 smock?

10 A. Inmates are sometimes put in that smock
11 because of things they say. So sometimes we may not
12 believe they're a genuine risk to themselves, but if
13 they verbalize that they are, we take the precaution
14 to avoid any chances and they're placed in a smock.

15 Q. Okay. Prior to the interview with
16 Cole Engelson, you had been -- you had been to the
17 house on Manse Road; right?

18 A. Correct, I was.

19 Q. You were there during the process of the
20 search warrant?

21 A. Yes, sir.

22 Q. And you had been throughout the entire
23 house; right?

24 A. To the best of my recollection -- it's been
25 a long time -- I believe there was an upstairs, and I

1 don't believe I went upstairs. I could be wrong.

2 Q. Okay. When you began your interview with
3 Cole, you didn't read him his Miranda rights word for
4 word; right?

5 A. I would have to look at the transcript to
6 refresh my memory a hundred percent.

7 Q. You knew he had been read his Miranda
8 rights previously?

9 A. Correct.

10 Q. So you just reminded him they still apply;
11 right?

12 A. Again, I'm not a hundred percent sure, but
13 that would be customary that I would just reference
14 that he remembers that they had been read to him and
15 that they were still applicable.

16 Q. You started the interview by going over
17 some background information with him; right?

18 A. Yes. We talked about I believe when he'd
19 come to the area and about some of the personal
20 circumstances of his life.

21 Q. In your training and experience, that's
22 typical of interviews; right?

23 A. It is.

24 Q. You want to build a rapport with the person
25 that you're interviewing?

1 A. Yes, sir.

2 Q. You told Cole he was in a lot of trouble;
3 right?

4 A. I did tell him that.

5 Q. I believe your exact words were "he was in
6 a heap of shit"?

7 A. I believe that was my quote.

8 Q. Okay. You told him nothing he was going to
9 say was going to change that; right?

10 A. I did.

11 Q. But you told him if he came out and
12 confessed, it might make things not as bad in the long
13 run?

14 A. I don't know if I used those words, but --

15 Q. Something to that effect?

16 A. -- I told him it would be helpful if he
17 would tell the truth.

18 Q. You talked about his son?

19 A. We did.

20 Q. Wanting to make sure Cole was able to see
21 his son again?

22 A. Yes.

23 Q. Now, at one point during the interview, you
24 referenced what you call the critical moment; do you
25 remember that?

1 A. Yes, I remember that. I don't think I
2 could tell you the context of it, no.

3 Q. The critical moment as in when people
4 suffer trauma, it's a mechanism that their mind
5 doesn't want to remember the trauma; do you recall
6 that?

7 A. Yes. We had conversation regarding that.

8 Q. But you didn't actually believe that's what
9 happened in this case; right?

10 A. That is true. I did not believe that.

11 Q. You were using that as an interview tactic?

12 A. Not only an interview tactic, but an
13 opportunity to provide Mr. Engelson the opportunity to
14 tell the truth and understand that I understood why he
15 would have lied previously if his story was different.

16 Q. On direct examination, if I can refer you
17 to page 50 of your interview -- you have it in front
18 of you?

19 A. I do.

20 MR. MARTINEZ: All right. Your Honor, may
21 I approach the clerk?

22 THE COURT: Yes.

23 Q. (By Mr. Martinez) I'm showing you State's
24 Exhibit 62A, which is your exhibit with Cole -- your
25 interview with Cole Engelson. If you can turn to

1 page 50 and read through it for me.

2 A. (The witness complies.) Okay. I'm ready.

3 Q. On direct examination, you testified that
4 Cole told you on that dang question, he became angry
5 drunk; right?

6 A. I don't know if that fairly characterizes
7 my answer to Mr. Vitto.

8 Q. Okay. Does it say "angry drunk" anywhere
9 on page 50?

10 A. No. I don't believe so.

11 Q. After your interview with Cole Engelson,
12 did you ever go back to the house on Manse Road?

13 A. Not to the best of my recollection.

14 Q. So you didn't go to try and corroborate
15 anything that he told you?

16 A. No. I don't believe I personally did.

17 MR. MARTINEZ: Nothing further, Judge. I
18 will pass the witness.

19 THE COURT: Sir.

20 MR. VITTO: Just a little bit, Judge.

21 REDIRECT EXAMINATION

22 BY MR. VITTO:

23 Q. Captain, whose decision is it to have
24 someone placed in a suicide smock?

25 A. It was a variety of people.

1 Q. You could be one of those people?

2 A. I could be.

3 Q. And other people that work within the
4 detention center?

5 A. Yes.

6 Q. They'd have that liberty to make that call?

7 A. Yes. It's not --

8 THE COURT: Detective Boruchowitz, if
9 you're a big man, do they have uniforms that fit big
10 men?

11 THE WITNESS: Yes.

12 THE COURT: All right. So he wouldn't have
13 to wear a suicide smock because there wasn't a uniform
14 big enough for him?

15 THE WITNESS: No.

16 Q. (By Mr. Vitto) Do you happen to recall
17 specifically who made the decision in regard to having
18 the defendant wear a suicide smock?

19 A. I have no independent recollection in this
20 specific defendant's case. I would have to look at
21 jail logs and review certain things to try to identify
22 that.

23 Q. Now, when you're talking about -- when
24 you're talking to the defendant about his son, about
25 his being in trouble, and to tell the truth, what's

1 the point of questions like that?

2 A. So especially in cases like this where the
3 gravity of the situation is significant, there are
4 very few people that are arrested for some sort of
5 killing of a child that don't know that that's a
6 serious case. So at the beginning of the interview,
7 the goal is to reassure the individual that although
8 they're in a lot of trouble, that being honest and
9 trying to do the right thing, in the end weighs in
10 their favor and reassures them that hopefully if
11 there's any hope for them in this ugly situation, that
12 they have the opportunity to help themselves out by
13 being honest.

14 Q. At any point in your interview with the
15 defendant, would you characterize him as being, from
16 your perspective, suicidal?

17 A. No. To the best of my recollection, I
18 don't recall anything off the top of my head.

19 Q. He didn't say anything like, "I'm going to
20 kill myself"?

21 A. No. He did not.

22 Q. Did he seem despondent?

23 A. No. The only time he -- I would
24 characterize that he showed any emotion in that way
25 was when he was face to face with Victoria and what I

1 would call, he put on a show of a little bit of
2 emotion at that point. But other than that, I
3 wouldn't characterize any of his interaction with me
4 that way.

5 Q. So when it was just you, he wasn't weepy?

6 A. No. I don't recall any instance of that.

7 Q. But when Victoria was a part of the
8 interview, there were a couple of times that he,
9 according to you, made a show of tears?

10 A. That was the impression.

11 Q. Do you happen to remember Victoria's
12 response to him when she saw that?

13 A. I don't remember the exact quote, but she
14 basically just told him to stop with it.

15 Q. Over the course of your interview with the
16 defendant, did he ever say, "I'm too hung over to
17 talk"?

18 A. Not that I recall.

19 Q. Did he ever say, "I don't want to talk"?

20 A. No. I don't recall he ever said that.

21 Q. Did he ever say, "I'm too hungry to talk"?

22 A. No. I don't recall that.

23 Q. How about, "I'm too sleepy to talk"?

24 A. I don't think he said that.

25 Q. He never said, "I'm too drunk to talk"?

1 A. No. I don't recall him saying that.

2 MR. VITTO: I have no more questions of
3 this witness, Judge.

4 THE COURT: Mr. Martinez?

5 RECROSS-EXAMINATION

6 BY MR. MARTINEZ:

7 Q. Captain, had you ever met Cole Engelson
8 prior to that interview?

9 A. I don't believe so.

10 Q. So you don't recall any previous
11 conversations with him; right?

12 A. Prior to my interview that day?

13 Q. Yes.

14 A. I don't recall any prior. I don't know if
15 he was on scene the night before, but I don't recall
16 any prior interviews.

17 Q. You never -- you don't remember ever
18 running into him at a bar; right?

19 A. No. I have zero recollection of ever
20 meeting him prior.

21 MR. MARTINEZ: Nothing further, Judge.

22 THE COURT: State?

23 MR. VITTO: Nope.

24 THE COURT: You're subject to recall.

25 Don't talk about the case with anybody but the two

1 attorneys. If we need you, we'll give you a call.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Thank you, sir.

4 MR. VITTO: Your Honor, the State's next
5 witness would be -- it would be by video and
6 transcript, Judge -- Christopher Pullen.

7 MR. MARTINEZ: Are you sure he's not here?

8 MR. VITTO: I will go out and -- you want
9 me to go out and call him.

10 THE BAILIFF: I will call him.

11 MR. VITTO: All right. Call him. See if
12 Christopher Pullen is here.

13 THE BAILIFF: No one is here, Judge.

14 THE COURT: All right. We'll call
15 Christopher Pullen.

16 MR. VITTO: Your Honor, we have Defense
17 Exhibit A that we'd like to play for the jury and have
18 them follow along, each one having a copy of State's
19 Proposed Exhibit 34B. I would request A, Defense A
20 and State's 34B be admitted into evidence, and that
21 the deposition video of Christopher Pullen be played
22 for the jury's consideration.

23 THE COURT: Any objection?

24 MR. MARTINEZ: Your Honor, only the
25 objections previously noted on the record. We had

1 argument about this without the witness being present.
2 Your Honor overruled me and ruled in favor with the
3 State.

4 So other than that, I would renew my
5 objection knowing that the Court is going to overrule
6 me, in which case no objection to everything being
7 played.

8 THE COURT: Thank you, sir. You need to
9 make a record. Thank you.

10 You can go ahead and play whichever one you
11 want first, 34A or B. They're admitted.

12 (Whereupon State's Exhibit No. 34B and
13 Defense Exhibit A is admitted into evidence,
14 having been marked at some time previous.)

15 MR. VITTO: 34B is the transcript itself.
16 Thank you, Judge. With your permission, I would ask
17 your bailiff to present those to each juror, and then
18 that would be it.

19 THE COURT: Now, pardon my obtuseness.
20 It's after lunch, and I should be napping right now.
21 You said 34A and B.

22 MR. VITTO: It's Defense A is the video.
23 34B is the transcript.

24 THE COURT: Defense A and 34B?

25 MR. VITTO: Yes.

1 THE COURT: Okay. Got it.

2 MR. VITTO: Play when ready.

3 (The deposition of Christopher Pullen
4 is started; however, it is stopped due to
5 audio problems.)

6 MR. VITTO: Is there any way to stop that?

7 (The video is started again.)

8 THE COURT: Ladies and gentlemen, we're
9 going to take a short recess. During this recess,
10 it's your duty not to converse among yourselves or
11 with anyone else. Don't form or express an opinion.
12 We'll bring you back in, in about five or ten minutes.

13 THE BAILIFF: All rise.

14 (Outside the presence.)

15 THE COURT: All right. We're outside the
16 presence of the 15 jurors. What's the game plan?

17 MR. VITTO: Fifteen minutes. I'd like to
18 check with the boss. We may be closing. We may be
19 resting our case in chief. I just want to check a
20 couple of details.

21 THE COURT: But if you rest right now, I'm
22 going to turn around to the Defense and ask them if
23 they have any witnesses; I don't know yet. I also
24 have to read him his constitutional rights regarding
25 testimony.

1 MR. VITTO: You want to read him that now?

2 THE COURT: I can. And then if they don't
3 have any witnesses, we can go in and do jury
4 instructions and invite them back Monday morning to
5 hear closing arguments.

6 MR. VITTO: Sounds good to me, Judge.

7 THE COURT: Let me find it. All right.

8 Mr. Engelson, under the Constitution of the
9 United States and the under the Constitution of the
10 State of Nevada, you cannot be compelled to testify in
11 this case; do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You may at your own request
14 give up that right and take the witness stand and
15 testify. If you do, you will be subject to
16 cross-examination by the District Attorney, and
17 anything that you may say, be on it on direct or
18 cross-examination, can be the subject of fair comment
19 when the District Attorney speaks to the jury in his
20 final argument. Do you understand that?

21 THE DEFENDANT: I do, sir.

22 THE COURT: If you choose not to testify,
23 the Court will not permit the DA to make any comments
24 to the jury because you have not testified; do you
25 understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: If you elect not to testify,
3 the Court may instruct the jury -- if you and your
4 attorney want me to, there's a jury instruction we use
5 in all the trials that says, "The law does not compel
6 a defendant in a criminal case to take the stand and
7 testify, and no presumption may be raised and no
8 inference of any kind may be drawn from the failure of
9 a defendant to testify." And then it cites some
10 questions. Do you understand that?

11 THE DEFENDANT: I do.

12 THE COURT: I mean it cites some cases.

13 All right. Do you have any questions about
14 your right to testify and not to testify?

15 THE DEFENDANT: No, sir, I don't.

16 THE COURT: There's a section here about
17 the fact that if you do testify, any felony
18 convictions you've had in the last ten years can be
19 brought in by the State, and they can ask you if
20 you've been convicted of a felony, what the felony
21 was, and when it happened.

22 I think that's all the things I have to
23 read to him. Does anybody have anything more for his
24 constitutional rights?

25 MR. VITTO: There's a potential for -- I

1 suppose he should be aware that there's the potential
2 for Domestic Battery convictions, if they're extant.
3 Obviously, all kind of impeachment issues and witness
4 issues, but that's fine, Judge.

5 THE COURT: Now the State's going to go
6 talk to each other about whether or not they have any
7 more witnesses. They'll probably come back in and
8 rest their case. Then I'm going to ask the Defense if
9 they have any witnesses. And you three are going to
10 talk about whether or not you're testifying while
11 we're on this recess, and the Defense will either say,
12 "We don't have any witnesses," or "We have one," or
13 "We have ten"; I don't know.

14 And then if you don't have any witnesses,
15 both sides have rested their cases, me and the
16 attorneys will go in chambers, go over the jury
17 instructions, polish them up. And we'll send the jury
18 home before we do that, and then we'll tell the jury
19 to meet back here Monday morning, and we'll go into
20 closing arguments.

21 Anything else?

22 MR. MARTINEZ: That's it, Judge.

23 THE COURT: All right. We'll recess.

24 THE BAILIFF: All rise.

25 / / /

1 (A short recess is taken, and proceedings
2 resume outside the presence.)

3 THE COURT: All right. We're back on the
4 record outside the presence of the 15 jurors. The
5 State and Defense are going over the exhibits.

6 They just discussed Exhibit No. 24 was
7 going to be admitted by stipulation, because it had
8 been identified and authenticated; so 24 is admitted.

9 (Whereupon State's Exhibit No. 24 is
10 admitted into evidence.)

11 THE COURT: Off the record for a second.

12 (Discussion off the record.)

13 THE COURT: Okay. We're back on the
14 record. We're outside the presence of the 15 jurors.
15 The parties have finished going over the exhibit list.
16 I think there's one more that they want to stipulate
17 to being admitted, and I just need the number again.

18 MS. BOSKOVICH: 62C, as in Charlie,
19 Your Honor.

20 THE COURT: 62C. And what is it again?

21 MS. BOSKOVICH: It's the excerpts of the
22 Boruchowitz transcript to follow along with the audio
23 clips of excerpts.

24 THE COURT: Both sides stipulate to it
25 being admitted; correct?

1 MR. VITTO: Yes, Your Honor.

2 MR. MARTINEZ: Yes, Judge.

3 THE COURT: All right. We'll go ahead and
4 admit that document then.

5 (Whereupon State's Exhibit No. 62C is
6 admitted into evidence.)

7 THE COURT: Mr. Vitto, I'm going to call
8 the jury back in, and if you're resting your case,
9 we'll do it in front of them.

10 MR. VITTO: That's my plan.

11 THE COURT: And, Defense, any plans what
12 you're going to do?

13 MR. MARTINEZ: We'll be resting, Judge.

14 THE COURT: Okay. Let's bring the
15 defendant in, and then we'll bring the jury in. And
16 then we'll send them home for today.

17 Okay. We're back on the record. We're
18 outside the presence of our 15 jurors. That's right,
19 we already did that. I'm getting old.

20 Jamele, if you'll go bring the jury in,
21 then we'll get started with that.

22 (The jurors are returned to the
23 courtroom.)

24 THE COURT: We're back in the presence of
25 our 15 jurors. We left off with the State's case in

1 chief.

2 Mr. Vitto, you can call your next witness.

3 MR. VITTO: Your Honor, that's the State's
4 case in chief.

5 THE COURT: You're resting your case?

6 MR. VITTO: We're resting our case.

7 THE COURT: Defense?

8 MR. MARTINEZ: Judge, a quick point for the
9 record. I'm going back to the State's last witness.
10 I just wanted to make it a record that the State did
11 subpoena Mr. Pullen for the current trial dates, but
12 he still failed to appear for that.

13 THE COURT: Thank you, sir.

14 MR. MARTINEZ: And, Judge, with that, the
15 Defense rests as well.

16 THE COURT: Very good. Ladies and
17 gentlemen, you are admonished not to converse among
18 yourselves or with anyone else on any subject
19 connected with this trial; or read, watch, or listen
20 to any report of or commentary on the trial with any
21 person connected with this case or by any medium of
22 information, including without limitation, newspapers,
23 television, radio, and Internet.

24 And you're directed to return back to this
25 room at nine o'clock Monday morning. And we will hear

1 closing arguments from the sides, and then submit the
2 jury instructions to you, and you'll be able to go in
3 and deliberate.

4 Anything else that we need to prep the jury
5 for?

6 MR. ARABIA: No, Your Honor.

7 THE COURT: All right. We'll see you
8 Monday at nine o'clock. And when you're ready come on
9 in.

10 MR. VITTO: Judge, I would like a full
11 half-hour, if that's possible.

12 THE COURT: For the prep?

13 MR. VITTO: Please, four o'clock.

14 THE COURT: In my chambers, four o'clock.

15 MR. VITTO: Perfect. Thanks, Judge.

16 THE COURT: All right. See you then.

17 THE BAILIFF: All rise.

18 (The proceedings concluded at
19 3:30 p.m.)
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21
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