

IN THE SUPREME COURT OF THE STATE OF NEVADA

MARCO ANTONIO TORRES

Appellant,

vs.

THE STATE OF NEVADA

Respondent.

Docket No. 83216

Appeal From A Judgment of Conviction (Guilty Plea)
Fifth Judicial District Court
The Honorable Kimberly Wanker, District Judge
District Court No. CR20-0092

APPELLANT'S APPENDIX VOLUME 1 OF 4

Daniel Martinez
State Bar #12035
330 S. Third St.
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(702) 455-0212
Attorney for Marco Antonio Torres

Electronically Filed
Oct 14 2021 11:24 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

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ORIGINAL

PAHRUMP JUSTICE COURT

Case No. 20CR01098

BY A. Malone

Department B

2020 APR -8 P 12:44

LEA Case No(s). 20NY-1112

RECEIVED AND FILED

ARR: _____

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP

COUNTY OF NYE, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

v.

CRIMINAL COMPLAINT

MARCO ANTONIO TORRES,

Defendant. /

The undersigned, Chris Arabia, District Attorney, County of Nye, State of Nevada, by and through his deputy, Kirk D. Vitto, complains and charges the above named defendant, MARCO ANTONIO TORRES, with having committed the following offenses within said County of Nye, State of Nevada:

COUNT I

FIRST DEGREE MURDER OF VULNERABLE PERSON, in violation of **NRS 200.010/NRS 200.030, A CATEGORY 'A' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant, without authority of law, did willfully, unlawfully, with malice aforethought kill and murder **JONATHAN A. PIPER**, a human being, by beating and/or strangling the victim who was diagnosed to be in stage four treatment for cancer at the time he was murdered at Unit 103, 835 South Linda Street;

///

///

COUNT II

OPEN MURDER, in violation of **NRS 200.010/NRS 200.030, A CATEGORY 'A' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant, without authority of law, did willfully, unlawfully, with malice aforethought, express or implied, or otherwise in a willful, deliberate, premeditated manner kill and murder **JONATHAN A. PIPER**, a human being, by beating and/or strangling the victim at Unit 103, 835 South Linda Street;

COUNT III

INVASION OF THE HOME (ROOM), in violation of **NRS 205.067, A CATEGORY 'B' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, the Defendant did whether by day or night, forcibly enter the inhabited dwelling (room) of **JONATHAN A. PIPER** without permission, by kicking open the door to **PIPER's** room at Unit 103, 835 South Linda Street;

COUNT IV

BATTERY BY STRANGULATION, in violation of **NRS 200.481(2)(b), A CATEGORY 'C' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, the Defendant did willfully use an unlawful application of force or violence upon **JONATHAN A. PIPER** by "Strangulation", intentionally impeding the normal breathing or circulation of the blood by an application of pressure on the throat or neck, or by blocking the nose or mouth of **PIPER**, in a manner that creates a risk of death or substantial bodily harm within Unit 103, 835 South Linda Street;

COUNT V

ABUSE OF A VULNERABLE PERSON, in violation of **NRS 200.5099(1)(a), A CATEGORY 'C' FELONY, or GROSS MISDEMEANOR**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, the Defendant did willfully inflict pain or injury upon a "vulnerable person" by striking or otherwise hitting **JONATHAN A. PIPER** on an occasion other than the act or acts referenced in Counts I, II, and/or IV, or by doing those act(s) alleged in Count VII within Unit 103, 835 South Linda Street;

COUNT VI

INTERCEPTION, INTERRUPTION OR DELAY OF MESSAGE SENT OVER TELEPHONE LINE, in violation of **NRS 707.900, A GROSS MISDEMEANOR**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant did willfully and unlawfully interrupt or delay the sending of a message over the telephone line by, after observing **JONATHAN A. PIPER** on the phone with law enforcement, became upset, and suspicious that **PIPER** was "ratting him out", took the phone **PIPER** was using to make the call to "dispatch", telling dispatch it was a "false alarm", and then smashing the phone on the floor before doing those acts alleged in Count I and incorporated herein by reference;

COUNT VII

INJURY TO OTHER PROPERTY, in violation of **NRS 206.310, A GROSS MISDEMEANOR**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant did willfully or maliciously destroy or injure any real or personal property of another, by smashing the blue Samsung cellular phone belonging to **JONATHAN A. PIPER**, having a value greater than \$250.00 at Unit 103, 835 South Linda Street;

COUNT VIII

HABITUAL CRIMINAL, in violation of **NRS 207.010(1)(b), A CATEGORY 'A' FELONY**, committed in the following manner, to wit: Having been convicted of at least two or three predicate felony offenses, thereby subjecting the defendant to a potential sentence of life in prison without the possibility of parole in that the defendant has proven himself to be a recidivist offender against whom society has the right to request he be removed "from its ranks for a longer time [because the defendant has demonstrated himself to be] a recidivist who by repeated violations has shown his refusal to conform to a lawful mode of living", *Tanksley v. State*, 113 Nev. 997 at 1004, 946 P.2d 148 (1997), the prior offenses to be submitted before the Fifth Judicial District Court as certified copies, constitutionally valid, and legitimate, and all prior offenses setting forth facts sufficient to conclude that the defendant is an Habitual Criminal, *State v. Bardmess*, 54 Nev. 84, 7 P.2d 817 (1932), and that he should be sentenced accordingly should the court adjudicate him so after finding him eligible, and thereafter exercising discretion to determine whether imposition of the Habitual Criminal application is appropriate, *Hughes v. State*, 116 Nev. 327 at 333, 996 P.2d 890 (2000), in the event the defendant is convicted of one or more of the underlying felony offenses referenced *supra*;

1 All of which is contrary to the form, force and effect of the statutes in such
2 cases made and provided, and against the peace and dignity of the State of
3 Nevada. Said complainant makes this declaration under penalty of perjury.

4 DATED this 8 day of April, 2020.

5 CHRIS ARABIA
6 NYE COUNTY DISTRICT ATTORNEY

7
8 By


KIRK D. VITTO

Chief Deputy District Attorney

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

PAHRUMP JUSTICE COURT

J. Robnett

BY _____

2020 AUG -6 PM 2:53

RECEIVED & FILED

1 Case No. 20CR01098

2 Department B

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4
5
6 IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
7 COUNTY OF NYE, STATE OF NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

10 v.

AMENDED CRIMINAL COMPLAINT

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12 Defendant. _____/

13 The undersigned, Chris Arabia, District Attorney, County of Nye, State of
14 Nevada, by and through his deputy, Kirk D. Vitto, complains and charges the above
15 named defendant, MARCO ANTONIO TORRES, with having committed the
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20 committed in the following manner, to wit: That ON OR ABOUT
21 APRIL 4, 2020, in Pahrump Township, Nye County, Nevada, said
22 Defendant, without authority of law, did willfully, unlawfully, with malice
aforethought kill and murder JONATHAN A. PIPER, a human being,
by beating and/or strangling the victim, causing asphyxia, who was
diagnosed to be in stage four treatment for cancer at the time he was
murdered at Unit 103, 835 South Linda Street;

23 ///

24 ///

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COUNT V

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1 All of which is contrary to the form, force and effect of the statutes in such
2 cases made and provided, and against the peace and dignity of the State of
3 Nevada. Said complainant makes this declaration under penalty of perjury.

4 DATED this 4 day of August, 2020.

5 CHRIS ARABIA
6 NYE COUNTY DISTRICT ATTORNEY

7 By 
8 KIRK D. VITTO
9 Chief Deputy District Attorney

CERTIFICATE OF SERVICE

I, Kasondra K. Ward, Executive Legal Secretary, of the Nye County District Attorney's Office, do hereby certify that I have served the following:

**Amended Criminal Complaint
Case No. 20CR01098
STATE v. MARCO ANTONIO TORRES**

upon said Defendant(s) herein by delivering a true and correct copy thereof on

8/4/20 to the following:

DANIEL E MARTINEZ ESQ.

Via hand deliver at the Nye county District Attorney's Office in Pahrump Nevada.


Kasondra K. Ward

Justice Court Case No. 20 CR 01098

Department B

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP

COUNTY OF NYE, STATE OF NEVADA

THE STATE OF NEVADA,)

Plaintiff,)

vs.) TRANSCRIPT OF PROCEEDINGS

MARCO ANTONIO TORRES,) PRELIMINARY HEARING

Defendant.)

_____)

BEFORE KENT JASPERSON, JUSTICE OF THE PEACE

1520 EAST BASIN AVENUE, PAHRUMP, NEVADA 89060

THURSDAY, AUGUST 6, 2020, 9:27 A.M.

APPEARANCES:

For the State: Kirk Vitto, Esq.

Michael Allmon, Esq.

Deputies District Attorney

For the Defendant: Daniel Martinez, Esq.

Ronni Boskovich, Esq.

Public Defenders

Reported by:

I N D E X

WITNESSES	DIRECT	CROSS	REDIRECT	RE-CROSS
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By the State:

CHRISTOPHER PIPER	9	28	37, 41, 43	40, 43
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DENNIS LA DUE	47	77	88	
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STEPHANIE RUCKER	90	98		
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XAVIER GIDEON	100	109	124, 127	126
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CHRISTOPHER PIPER	135			
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WESLEY FANCHER	139	192	210, 217	215
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BRITAIN HOFFMAN	223	227		
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JOSEPH MARSHALL	228	234	234	
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E X H I B I T S

STATE'S EXHIBITS

RECEIVED

1	1	Photo	12
2			
3	1A	Photo	75
4	2	Photo	14
5	2A	Photo	46
6	3	MEDS	7
7	3A	Abridged MEDS	7
8	4	911 call	7
9	4A	CAD report	95
10	5	Autopsy report	7
11	6	Photo	144
12	7	Photo	146
13	8	Photo	147
14	9	Photo	148
15	10	Photo	148
16	11	Photo	245
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20	15	Photo	160
21	16	Photo	161
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1	<u>STATE'S EXHIBITS</u>		<u>RECEIVED</u>
2	18	Photo	163
3	19	Photo	166
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5	21	Photo	172
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7	23	Photo	175
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9	25	Samsung phone	185
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14	30, 31, 32, 34	Prior offenses	238
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17	<u>DEFENSE EXHIBITS</u>		
18	1	Diagram	82
19	2	Diagram	113
20			
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22			
23			
24			
25			

1 THURSDAY, AUGUST 6, 2020, 9:27 A.M.

2

3 THE COURT: All right. Marco Torres, case
4 number 20 CR 01098.

5 MR. MARTINEZ: Judge, he's present and in
6 custody.

7 THE COURT: All right. Is the State ready to
8 proceed in this matter?

9 MR. VITTO: Judge, we are ready. I have a
10 preliminary request.

11 THE COURT: Okay. Is the defense ready to
12 proceed?

13 MR. MARTINEZ: We are, Judge.

14 THE COURT: Okay.

15 MR. VITTO: Now my preliminary request.

16 THE COURT: Any pretrial motions or matters
17 that we need to address before we begin?

18 MR. MARTINEZ: I would invoke the exclusionary
19 rule, Judge.

20 THE COURT: All right. The exclusionary rule
21 can be invoked. I instruct anyone that's subpoenaed to
22 testify in this matter to wait in the outside hallway
23 until they are called to testify, and not discuss their
24 testimony with anyone else.

25 What is your matter, Mr. Vitto?

1 MR. VITTO: Thanks, Judge.

2 Judge, there's a gentleman, he's a childhood
3 friend of my first witness, Christopher Piper. He's a
4 childhood friend of Mr. Torres and he's a childhood
5 friend of the decedent. He's traveled from California
6 with the victim. He is not a witness. He's asked if he
7 could watch the proceedings, implored me to ask if he
8 could watch the proceedings, and I told him I will ask,
9 and that's all I can do.

10 THE COURT: I would have to deny the request.
11 I even turned down a media request this morning based on
12 the Covid-19 situation that we're currently involved in,
13 and the order that was done by the Court is basically
14 saying that the only people that would be allowed in the
15 courtroom for any cases that are heard are people that
16 are pertinent to the case: the attorneys, the defendant,
17 witnesses for the State, witnesses for the defense, court
18 reporter, stuff like that. We would have no spectators
19 because we don't want to take a chance on having a
20 gathering of people, number one, that could potentially
21 violate the governor's order of more than 10 people,
22 because I think we're pretty close to 10 people in here
23 right now. And number two, additional people that could
24 spread the Covid virus that we don't know what their
25 status is.

1 MR. VITTO: No problem, Judge. I'll let him
2 know and I'll let him know your reasons, and I'll get my
3 first witness.

4 THE COURT: Sure.

5 MR. MARTINEZ: Sounds good.

6 THE COURT: Any pretrial matters we need to
7 talk about? No.

8 MR. MARTINEZ: Well, I was going to say I
9 don't know. I know there is a -- some exhibits that
10 we're going to admit through stipulation. I don't know
11 if the State wants to do that now or just do it as it
12 comes up with testimony. I'll leave it up to the State.

13 THE COURT: Okay.

14 MR. VITTO: I don't have a problem with that.
15 We stipulated to the admission of 3 and 3A. Those are
16 medical records. We have stipulated to the autopsy
17 report; that will be 5. And we have stipulated to the
18 911 call, which will be 4.

19 THE COURT: Okay.

20
21 (State's Exhibits 3, 3A, 4 and
22 5 were received into evidence.)
23

24 MR. VITTO: Just for purposes of the
25 preliminary hearing.

1 MR. MARTINEZ: Yes.

2 MR. VITTO: All his objections will be
3 maintained throughout the course of the proceedings from
4 this point forward.

5 MR. MARTINEZ: That is correct, Judge.

6 THE COURT: The other thing is that I have had
7 a request for clarification. For the court reporter to
8 be able to make sure and take down everything accurately,
9 that when the witnesses are here on the stand testifying
10 we will have them pull their mask down below their mouth
11 so that they can be heard clearly.

12 Anybody have any objection to that?

13 MR. VITTO: No. And I would ask that the same
14 rule be applicable to Counsel and I for the edification
15 of our court reporter.

16 THE COURT: Okay.

17 MR. MARTINEZ: Sounds great, Judge.

18 THE COURT: All right. With that, I guess you
19 can get your first witness.

20 MR. VITTO: Thanks, Judge.

21 Follow the bailiff right here to the witness
22 chair. Be sworn and we'll begin.

23 THE BAILIFF: Face the clerk and raise your
24 right hand.

25 (No Omissions.)

1 CHRISTOPHER JAMES PIPER,
2 having been first duly sworn to tell the truth, testified
3 as follows:

4 THE CLERK: You may be seated.

5 THE BAILIFF: Speak clearly into the
6 microphone.

7 THE COURT: That's fine. You can pull your
8 mask down so you can be heard.

9 If you could, please, state and spell your
10 name for the record.

11 MR. MARTINEZ: Christopher James Piper. The
12 whole name?

13 THE COURT: At least the last name. Spell it
14 for us, please.

15 THE WITNESS: P-i-p-e-r.

16 THE COURT: Okay. Mr. Vitto.

17 MR. VITTO: Thank you, Your Honor.

18

19 DIRECT EXAMINATION

20 BY MR. VITTO:

21 Q What is your occupation, sir?

22 A I'm a deeper-than-deep-tissue body worker.

23 Q And where do you currently reside?

24 A La Crescenta.

25 Q California?

1 A Yes.

2 Q You drove here yesterday?

3 A Yes.

4 Q Mr. Piper, are you related to
5 Jonathan A. Piper?

6 A Yes. I'm his only sibling.

7 Q And who was the older brother?

8 A Jonathan.

9 Q Okay. So Jonathan was your older brother?

10 A Yes.

11 Q Do you recall his birthdate?

12 A 4/29/62.

13 Q April 29, 1962. Is that correct?

14 A Yes.

15 Q Are you familiar with Marco Antonio Torres?

16 A Yes. He's from the old neighborhood. We grew
17 up together.

18 Q All right. Is that upon what your familiarity
19 is based? You grew up with him?

20 A Yes. Jonathan and Marco met in third grade.

21 Q All right. Do you see Marco Antonio Torres in
22 the courtroom today?

23 A Yes.

24 Q Can you identify an article of clothing he's
25 wearing?

1 A A striped shirt. A white and pink --

2 MR. MARTINEZ: We'll stipulate to the
3 identification of the defendant, Your Honor.

4 THE COURT: All right. The record will
5 reflect the in-court identification of the defendant.

6 BY MR. VITTO:

7 Q Now, Mr. Piper, let me show you State's
8 proposed Exhibit 1. Do you recognize that photograph?

9 A Yes. I took it.

10 Q You took that photograph. Did you provide
11 that photograph to me?

12 A Yes, I did.

13 Q And do you recognize the person depicted
14 there?

15 A That is my brother.

16 Q Do you recall when and where that photograph
17 was taken?

18 A Well, I could look it up exactly if you want
19 me to. I would have to turn on my phone. It was pretty
20 recent. It was 2019. It was in the previous residence
21 before he moved -- before he moved into the one where he
22 was murdered, yeah.

23 Q That photograph was taken at a residence
24 previous to the one -- his last residence --

25 A Yes.

1 Q -- in Pahrump?

2 A Uh-huh.

3 Q All right. And it was sometime -- you believe
4 it was sometime in 2019?

5 A Yeah. Do you need the specific day?

6 Q Not right now.

7 A Okay.

8 Q That's fine. Now, I see in there it's a
9 photograph of him sitting on a bed. What can you tell me
10 about the bed and the bedding?

11 A I went up to buy that all for him.

12 Q Okay. You made those purchases?

13 A Yes.

14 MR. VITTO: All right. Your Honor, I would
15 ask that State's proposed 1 be admitted into evidence.

16 MR. MARTINEZ: No objection for purposes of
17 preliminary hearing, Judge.

18 THE COURT: All right. Exhibit 1 is admitted.

19

20 (State's Exhibit No. 1
21 was received into evidence.)

22

23 MR. VITTO: Thank you, Your Honor.

24 BY MR. VITTO:

25 Q Now, I would like to show you what has been

1 preliminarily marked as State's proposed Exhibit 2.

2 Mr. Piper, do you recognize the person depicted in that
3 photograph?

4 A Yeah. That's my brother.

5 Q That's your brother, Jonathan?

6 A Yeah.

7 Q So the person depicted in State's proposed
8 Exhibit 1 and State's proposed Exhibit 2 are the same
9 person?

10 A Yes.

11 MR. VITTO: Now, Your Honor, I would move for
12 admission of State's proposed Exhibit 2.

13 MR. MARTINEZ: I would oppose at this point,
14 Your Honor. I would ask for more foundation as to who
15 took the picture, when the picture was taken, more
16 details along those lines, which I don't believe this
17 witness can testify about.

18 MR. VITTO: My response would be that all the
19 witness needs to do is testify that the photograph
20 accurately depicts his brother. That's all I'm using it
21 for at this point. He's simply identifying his older
22 brother. "That's my older brother in that picture."

23 MR. MARTINEZ: Judge, my only response to that
24 would be -- and I'm not making any accusations. It is
25 2020. It's easy to photocopy pictures, to superimpose

1 things into pictures. I know the State will be able to
2 lay the foundation with a witness that is called later on
3 today. I'm asking the Court to wait until that
4 foundation is laid to admit the picture.

5 MR. VITTO: You know what? To specifically
6 address that, can I ask a couple of questions?

7 THE COURT: Sure.

8 BY MR. VITTO:

9 Q Mr. Piper, look at Exhibit 1, the photograph
10 of your brother alive. Do you see the bedding in that
11 photograph?

12 A Yes.

13 Q Look at State's proposed Exhibit 2. Do you
14 see the same exact bedding?

15 A Yes.

16 Q The bedding that you purchased?

17 A Yes, and the mattress. All of it, yeah.

18 MR. VITTO: Again, I would move this exhibit
19 into evidence.

20 THE COURT: I will allow it to be admitted.

21
22 (State's Exhibit No. 2
23 was received into evidence.)
24

25 MR. VITTO: Thank you, Your Honor.

1 MR. MARTINEZ: Thank you, Judge.

2 BY MR. VITTO:

3 Q You also have another photograph with you; is
4 that correct?

5 A Yeah, this one.

6 MR. VITTO: Let me see that. Thank you.

7 This is 1A.

8 BY MR. VITTO:

9 Q Showing you State's proposed Exhibit 1A. How
10 did that come into your possession?

11 A From a trip a couple years ago to Lake Tahoe
12 I took with Jonathan.

13 Q So you recognize what is depicted in that
14 photograph?

15 A Yeah.

16 Q That's you and your brother?

17 A Yes.

18 Q How did you get that? That case that says
19 "waterproof", it's in orange. It has a black thing at
20 the top, let the record reflect. How was that provided
21 to you?

22 A Well, the waterproof thing comes from another
23 trip we took to Zion. This is to put your phone in when
24 you go up the narrows, and then he put the picture in
25 that.

1 Q You live in California?

2 A Yeah.

3 Q Did you bring that with you from California?

4 A This? No. This was my brother's. He kept it
5 as a memento.

6 Q How did you get that into your hands today?

7 A Dennis kept it for me, the manager of the
8 place where Jonathan was.

9 Q And he gave that to you this morning?

10 A Yeah.

11 Q All right. Now, do you know where your
12 brother was residing on the day he died?

13 A 835 South Linda.

14 Q And what type of structure was he living in?

15 A A trailer house.

16 Q Okay. And is that in Pahrump Township, Nye
17 County, Nevada?

18 A Yes.

19 Q Is there a particular reason that you know the
20 address 835 South Linda Street?

21 A Yeah. When my brother moved in there he told
22 me.

23 Q Had you ever been to that residence?

24 A Once, when I moved -- I moved Marco in there
25 to take care of my brother.

1 Q Okay. So you moved Marco into the last
2 residence that your brother was living?

3 A Yes.

4 Q All right. How did that come about?

5 A Well, Marco and a mutual friend of his,
6 Paul Wilkins, got together to reminisce about the past
7 and try to locate old friends, and my brother was one of
8 them. And Marco found him and they got talking. My
9 brother talked about his illness, and Marco had the idea
10 of coming over -- up here to take care of him.

11 MR. MARTINEZ: Judge, I object at this point
12 as to foundation and possibly hearsay.

13 MR. VITTO: Okay.

14 THE COURT: Sustained.

15 BY MR. VITTO:

16 Q How did you know about this conversation?

17 A Both Marco and both Paul told me.

18 Q Okay. Marco told you?

19 A And his friend Paul.

20 Q Okay. That he was -- that he wanted to be
21 your brother's caretaker?

22 A Yeah, right.

23 Q And so you drove him here to be your brother's
24 caretaker?

25 A Yes, I did.

1 Q All right. Now, why did your brother need a
2 caretaker?

3 A He was in stage-four cancer, and he could
4 still walk, but very slowly. He could barely talk. It
5 was hard to understand him. I wanted somebody to be
6 around, and we all thought it was a wonderful idea
7 because they were old childhood friends.

8 Q All right. Now, when was the last time you
9 saw your brother prior to the date of his death, April 4,
10 2020?

11 A February 2nd, when I moved Marco up.

12 Q Okay. February 2nd of this year?

13 A Yeah.

14 Q And I'm not trying to lock you into anything.
15 Are you certain that it was February 2nd or was it around
16 February 2nd?

17 A There was a picture I took of them. Let's
18 see. It could be the 3rd. I'm trying to remember when I
19 left. If it's not the 2nd, it's the 3rd.

20 Q Would it be fair to say it was early February
21 of this year?

22 A Yes.

23 Q All right. So you mentioned a picture. Let
24 me show you State's proposed Exhibit 2A.

25 A And that was taken on February 2nd.

1 Q And you showed me that photograph yesterday?

2 A Yes, I did.

3 Q All right. And that photograph was taken
4 February 2nd?

5 A Yes.

6 Q And is that the trip where you brought Marco
7 to live with your brother as his caretaker?

8 A Yes.

9 Q All right. Do you remember where that
10 photograph was taken?

11 A Oh, in some little -- we didn't go to the
12 hotel but just to eat. I don't remember exactly.

13 Q Some restaurant here in Pahrump?

14 A Yes, right.

15 Q Okay. Now, let me direct your attention to
16 April 4, 2020. When was the last time you spoke to your
17 brother prior to that date?

18 A About a week before that.

19 Q Okay. Was it just a general casual
20 conversation?

21 A Yeah. We would talk to each other regularly.

22 Q Do you know when -- when was the last time
23 your brother called your phone?

24 A On the day of the murder.

25 MR. MARTINEZ: I object there, Your Honor.

1 That calls for a legal conclusion, states a legal
2 conclusion.

3 MR. VITTO: Well, the objection is to the word
4 "murder"?

5 MR. MARTINEZ: Yes.

6 BY MR. VITTO:

7 Q So it would be your testimony that your
8 brother called you the night that he died?

9 A Yes.

10 Q Is that fair?

11 A That's fair.

12 Q All right. Do you happen to know what time
13 that call came into your phone?

14 A Yeah. It was like late -- 2:00 or 3:00 in the
15 morning, yeah.

16 Q Okay. And when did you discover that that
17 call had come in?

18 A I'm trying to remember.

19 Q It's okay to say, "I don't remember," if you
20 don't remember, but we would like your best recollection.

21 A As I recall, actually, when it came in I was
22 so drowsy I looked at it and I just went back to sleep.
23 I didn't think it was anything serious, yeah.

24 Q Okay.

25 A Yeah. As I remember -- actually, I looked at

1 my phone, but I was really tired, and so, you know.

2 Q So the phone call came in at 2:00 or 3:00 in
3 the morning. You saw it was ringing, but you didn't
4 answer it?

5 A Right.

6 Q Okay. Did your brother leave a message?

7 A Yeah. He said it was kind of crazy around
8 there.

9 MR. MARTINEZ: I object here, Your Honor.

10 MR. VITTO: That's fine.

11 BY MR. VITTO:

12 Q Don't tell me what your brother said.

13 A Yeah.

14 Q Just -- but he did leave a message?

15 A Yes.

16 Q Do you still have that?

17 A No. No, I don't.

18 Q You would have erased it?

19 A Yeah, because -- I erased it the next day.
20 I didn't think anything of it.

21 Q So you erased it before finding out that your
22 brother had been killed?

23 A Yes.

24 Q All right.

25 MR. MARTINEZ: Again, just for the record

1 there, Your Honor --

2 MR. VITTO: I said "killed".

3 MR. MARTINEZ: I know. I'm still objecting.

4 BY MR. VITTO:

5 Q All right. Who is your carrier?

6 A T-Mobile.

7 Q And what number would that be under?

8 A (818)294-9995.

9 Q Got it. Thank you.

10 Now, let's talk about your brother's physical
11 condition for a little bit. What can you tell me
12 about -- or how would you describe his health?

13 A He was pretty weak. He had lost a lot of
14 weight. Very low muscle mass. He could still walk. By
15 the time of his death he was using a walker a little bit.
16 He could walk without it, but he would use it for safety
17 purposes, and his voice was really hoarse. I couldn't
18 understand a lot of what he was saying. His upper body
19 strength was minimal.

20 Q Are you aware of his eating habits at the
21 time?

22 A Yes.

23 Q What can you tell us about that?

24 A He was eating like a bird.

25 MR. MARTINEZ: Object as to foundation here,

1 Judge.

2 BY MR. VITTO:

3 Q You were at a restaurant with him in February.
4 Did you see him eat?

5 A Yeah.

6 Q Was he eating then?

7 A A little more, because he was happy, yeah.

8 Q Okay. But his eating habits were
9 deteriorating?

10 A Yeah. One of the reasons I wanted Marco there
11 was to try to get him to eat more, yeah, because he would
12 be happier, yeah.

13 Q All right. It's my understanding he had a
14 feeding tube?

15 A Yes.

16 Q And what was that used for?

17 A To get protein drinks directly into his
18 stomach because he had been radiated right here and it
19 was hard for him to swallow.

20 Q Okay.

21 MR. MARTINEZ: I'm sorry, Judge. I just want
22 to clarify, if I may. You say "right here". We have the
23 court reporter taking down everybody's words, but
24 unfortunately we can't take down actions. So can you
25 describe where you were pointing to on yourself?

1 THE WITNESS: Oh, underneath his chin was a
2 lymph node that was cancerous, and they radiated it.

3 MR. MARTINEZ: Thank you.

4 BY MR. VITTO:

5 Q Could your brother run?

6 A Absolutely not.

7 Q Could he yell loudly for help?

8 A No.

9 Q Would you characterize him in the general
10 sense -- not as a legal conclusion, but in the general
11 sense as being vulnerable?

12 A Yes.

13 MR. MARTINEZ: I'm gonna object, Your Honor.
14 I know he said not a legal conclusion, but it's still a
15 legal conclusion, so I still object.

16 THE COURT: Sustained.

17 MR. VITTO: Sustained? Thank you, Your Honor.

18 THE COURT: Yes.

19 MR. VITTO: I just didn't hear.

20 THE COURT: That's fine.

21 BY MR. VITTO:

22 Q So you were aware of your brother's medical
23 diagnosis?

24 A Yes.

25 Q And you were aware of treatment he had

1 undergone?

2 A Yes. He was being shuttled from Pahrump to
3 Las Vegas, back and forth, yeah, for treatment.

4 Q All right. Was he able to drive?

5 A No.

6 Q Okay. Mr. Piper, are you familiar at all with
7 a martial arts style weapon known as nunchaku?

8 A Yes.

9 MR. MARTINEZ: I'm going to object as to
10 relevance, Judge.

11 MR. VITTO: Your Honor, as an offer of proof,
12 we know that Jonathan A. Piper is dead. We know that he
13 has a degree of injury on the left side of his face and
14 head. We know that the altercation or the tussle began
15 in the living room and moved to the decedent's bedroom,
16 and we know that nunchaku was found in the living room.
17 So that's why I'm asking this witness at this time if
18 he's familiar with certain aspects of the defendant and
19 his proclivity to use or play with or have nunchaku.

20 MR. MARTINEZ: We don't know any of that yet,
21 Judge. This is the first witness that we've heard from
22 today. Foundation, I know, will be laid for much of that
23 later on, and if Mr. Vitto wants to recall this witness
24 later to ask these questions, that would be the more
25 appropriate time. Right now we do not have foundation

1 for any of that, so at this point it's certainly
2 irrelevant and there's been no foundation laid for it.

3 MR. VITTO: And that's why I presented it to
4 the Court as an offer of proof. Everything that I have
5 said is going to come from that witness stand. Mr. Piper
6 can wait around for the next two or three hours, or I can
7 ask him a couple more questions that are certainly
8 admissible and not objectionable at this point.

9 MR. MARTINEZ: Judge, when certain questions
10 do get asked later, certain exhibits are presented later,
11 I'll be making objections on those at that time, again
12 for many of the same reasons I am now, based on relevance
13 and speculation and foundation. So all those included in
14 his -- in the State's offer of proof, for all those
15 reasons, I'm still objecting to this question.

16 THE COURT: At this time the State has only
17 merely asked the witness if he is aware of that type of
18 weapon, his own personal knowledge. He hasn't asked if
19 he's aware of it being used or being part of the crime or
20 having anything to do with the crime or being related to
21 the crime. So I'm going to overrule your objection to
22 that at this time. He's merely asking him if he's aware
23 of it or has ever known of it or has ever heard of it.

24 So I will allow the question.

25 MR. MARTINEZ: Thank you, Judge.

1 MR. VITTO: Thank you, Your Honor. And I
2 don't believe the witness answered the question.

3 MR. MARTINEZ: Can you ask the question one
4 more time?

5 MR. VITTO: Yeah.

6 BY MR. VITTO:

7 Q Are you at all familiar with a martial arts-
8 type weapon known as nunchaku?

9 A Yes.

10 Q Having moved the defendant,
11 Marco Antonio Torres, to your brother's residence in
12 Pahrump, do you know anything about his having a weapon
13 of that type or claiming any proficiency with their use?

14 A Yes.

15 MR. MARTINEZ: Judge, again I'm going to
16 object for all the foundational and relevance issues
17 before. Especially when I look at the criminal
18 complaint, how it is charged now, there is no allegations
19 that this weapon was used at all. Everything here --
20 he's charged with battery by strangulation, murder
21 resulting from that battery by strangulation, abuse of a
22 vulnerable person because of that battery by
23 strangulation. There's been no allegations whatsoever of
24 any weapon, period, being used in this case, so this is
25 not relevant to what's been charged in the complaint.

1 MR. VITTO: Your Honor, when I had -- that's
2 fine. We can call Mr. Piper back, but I think that when
3 the Court sees State's proposed Exhibit 19 and some of
4 the other exhibits, and when some of this evidence rolls
5 out, you'll see the basis for my seeking an answer to
6 that question. But I can call Mr. Piper back. I'm sure
7 he will be here most of the day, anyway, awaiting the
8 outcome. Or he can answer it now.

9 THE COURT: Well, without foundation I would
10 say we probably would have to wait and have him come
11 back.

12 MR. VITTO: That's fine, Judge.

13 Judge, I have no more questions of this
14 witness at this time.

15 THE COURT: Defense.

16 MR. MARTINEZ: Thank you.

17

18 CROSS-EXAMINATION

19 BY MR. MARTINEZ:

20 Q Good morning.

21 A Hi.

22 Q Do you prefer Chris or Christopher?

23 A Christopher is fine.

24 Q Okay. So Christopher, you have known Marco
25 for quite some time?

1 A Yes.

2 Q Decades?

3 A Yes, since I was little.

4 Q And now was it sometime in January when he
5 reconnected with Jonathan?

6 A Yeah, that's -- sometime in January, yeah, I
7 would imagine.

8 Q When was the last time you had any contact
9 with Marco prior to that?

10 A Let me think. Early '90s or late '80s? I'm
11 trying to pinpoint it. Yeah. Well, actually, it would
12 have been mid '90s.

13 Q So quite some time?

14 A Yes.

15 Q Do you know when the last time Jonathan had
16 any contact with Marco was?

17 A It was the same with him.

18 Q Okay.

19 A Yeah. As far as I know, yeah.

20 Q You said Jonathan had cancer?

21 A Yes.

22 Q Was it throat cancer that he had?

23 A He never told me exactly. Because they took
24 out a lymph node there, I would assume it's lymphoma.

25 Q Do you know when he was diagnosed with cancer?

1 A About a year before, yeah. I mean, in 2019,
2 yeah.

3 Q So he was diagnosed in 2019. And I'm not
4 trying to nail you down to a hard time frame. If you
5 believe it was early 2019 --

6 A It might have been, actually, later 2018.

7 Q Okay.

8 A Yeah.

9 Q Was he living in Pahrump at the time that he
10 was diagnosed with cancer?

11 A Yes.

12 Q How long had he been living in Pahrump for?

13 A Oh, about a year, yeah.

14 Q So is it safe to say he was diagnosed with
15 cancer pretty soon after moving to Pahrump?

16 A Yes.

17 Q And he didn't always live at the Linda Street
18 address in Pahrump; right?

19 A No.

20 Q Where did he live prior to that?

21 A I could look it up for you. I don't have it
22 in my --

23 Q If you don't remember, that's fine. You can
24 just say, "I don't remember."

25 A What's the name of the street? Off of -- oh,

1 Laurence. Okay. That's the name of the street.

2 Q Okay.

3 A Yeah.

4 Q Did he live by himself at that address?

5 A No. He lived with this retired teacher.

6 Q Okay. Now, at that time prior to his
7 diagnosis when he first moved here to Pahrump was
8 Jonathan still driving?

9 A No.

10 Q So he stopped driving even prior to being
11 diagnosed?

12 A Yeah, many years ago.

13 Q When you say many years, five years, ten years
14 ago?

15 A Over 20 years ago.

16 Q Okay.

17 A Yeah. I did the driving when we were
18 together.

19 Q You said in early February you drove Marco out
20 to --

21 A Yes.

22 Q -- Pahrump?

23 And that was from California that you drove
24 him?

25 A Yeah.

1 Q From the time when you drove him out here
2 until when Jonathan passed away, did you ever make any
3 other trips to Pahrump?

4 A No. I was going to, but Covid hit, and so --

5 Q Okay. You said you spoke with your brother
6 regularly on the phone?

7 A Uh-huh, yes.

8 Q What's regularly? Once a week, once a day?

9 A At least once a week. Sometimes two or three
10 times a week, yeah.

11 Q Now, did Jonathan own the house on Linda
12 Street?

13 A No.

14 Q Did he rent from someone?

15 A We rented it for him.

16 Q You say "we"?

17 A My father and I, yeah.

18 Q Okay.

19 A I -- I paid for it, yeah.

20 Q Was it you and your father who were on the
21 lease?

22 A I was.

23 Q You were on the lease. Okay. Did you pay the
24 rent?

25 A Yes, I did.

1 Q Did Marco contribute anything to the rent?

2 A He would help out with food. My brother would
3 use his food card. Yeah, Marco would contribute.

4 Q He would contribute to the bills in the house?

5 A Well, to the food, yeah.

6 Q Okay.

7 A Yeah.

8 Q All right. We'll say to the expenses of the
9 house?

10 A Yeah.

11 Q So you said, just to reiterate, you never made
12 it back out there to see them once they moved into the
13 Linda Street address; right?

14 A No, because of Covid. Yeah.

15 Q So you never got to see kind of their daily
16 routines; right?

17 A No.

18 Q You didn't know where in the house they spent
19 their time usually? Well, at least you didn't see it
20 with your own eyes; right?

21 A No.

22 Q So you don't know if that was in a bedroom?

23 A What was in the bedroom?

24 Q That they spent their time in a bedroom?

25 A Oh. Well, I know there was a chair my brother

1 liked to sit in, so I think that's where he spent most of
2 his time.

3 Q Where was that chair?

4 A In the living room.

5 Q Okay. Now, the retired teacher you mentioned,
6 did that teacher assist Jonathan with his daily living
7 when they were living together?

8 A No, not really. The reason they lived
9 together was because he would go on trips to visit his
10 mother -- his sick mother in Miami, and my brother would
11 take care of his dogs.

12 Q So your brother would dogsit for him?

13 A Yes.

14 Q But your brother was able to cook for himself?

15 A Yes.

16 Q Your brother was able to shower himself?

17 A Yes.

18 Q Change his own clothes?

19 A Yes.

20 Q He didn't drive, so how did he get food?

21 A He could ride his bicycle.

22 Q He rode a bicycle?

23 A Yeah, but by the time --

24 Q This was -- we're talking previously --

25 A Right.

1 Q -- before he was living at the Linda Street
2 address. He had a bike that he would ride?

3 A When he had a little more strength, yeah.

4 Q Okay. And now, you said when you saw him in
5 February he had lost a lot of weight; right?

6 A Yes.

7 Q Lost a lot of muscle mass?

8 A And his hair. I mean, yeah.

9 Q Is that from the chemotherapy?

10 A Yeah.

11 Q In the two months or so do you know if he
12 gained any weight?

13 A All the way from February until April?

14 Q Till April?

15 A I heard that he had, yeah.

16 Q You heard that he had? Did Jonathan drink?

17 A Yes.

18 Q Regularly?

19 A Yeah. He did.

20 Q How much did he drink?

21 A He would drink as much as he could. He had a
22 really bad drinking problem.

23 Q Even when he got sick he would continue to
24 drink?

25 A Yeah. It was a cause of major concern for us,

1 yeah.

2 Q Did he smoke?

3 A Yes.

4 Q How often did he smoke?

5 A Every day, yeah. He would roll his own.

6 Q Did he do any drugs?

7 A In the past, but his main substance abuse was
8 alcohol.

9 Q How often did you talk to Marco after you
10 reconnected with him?

11 A Maybe about once a week. Sometimes I would
12 talk to them together on speaker, yeah.

13 Q Okay. Did they ever argue with each other
14 while they were on the phone with you?

15 A No. When -- well, I mean, friendly arguments.

16 Q Call it more disagreement than an argument?

17 A Yeah. Yeah.

18 Q Okay. Now, when you -- was it a family
19 decision to have Marco move out to Pahrump?

20 A Yes. I spoke to my father.

21 Q Did you or anyone in your family have any
22 concerns about Marco moving out to Pahrump?

23 A My father did, yeah, but then he became sold
24 on the idea because he was a childhood friend and --
25 yeah, so --

1 Q What about you personally? Were you worried
2 about it at all?

3 A No.

4 Q Okay. Not worried about Jonathan's safety;
5 right?

6 A No.

7 Q Not worried about Marco's safety; right?

8 A No, because old childhood friends, it's almost
9 like a brother. I want my brother's last days to be
10 good, as good as possible.

11 Q With the diagnosis do you know how much longer
12 Jonathan was given to live?

13 A At that time they were saying maybe a year.

14 Q Okay.

15 A It wasn't much longer.

16 MR. MARTINEZ: Court's indulgence for one
17 moment, Your Honor.

18 Pass the witness, Your Honor.

19 THE COURT: Redirect by the State.

20 MR. VITTO: Thank you, Your Honor.

21

22 REDIRECT EXAMINATION

23 BY MR. VITTO:

24 Q Now, Mr. Piper, your brother, he didn't drive.
25 It sounds like he didn't work; is that correct?

1 A Well, he was taking care of the -- this guy's
2 dogs, so you might consider that work, earning his keep,
3 but it wasn't for money. He got to stay there and he
4 could take care of that guy's dogs.

5 Q So at the Linda address, his last abode --

6 A Yeah.

7 Q -- was he working at that?

8 A No.

9 Q And I think you testified that the defendant
10 paid for some food?

11 A Well --

12 Q He would pitch in?

13 A Yeah. He would pitch in, yeah.

14 Q Did he pay any rent?

15 A No.

16 Q Did he pay any utilities?

17 A No.

18 Q Did he pay anything else?

19 A No.

20 Q Now, you talked about your brother having a
21 chair that he liked to sit in in the living room. Can
22 you describe that chair?

23 A I think it was white. Yeah. He would read.

24 Q I'm sorry?

25 A He would do his reading in that chair.

1 Q Gotcha.

2 A And the sudoku.

3 Q Let me show you State's proposed Exhibits 7
4 and 8.

5 MR. MARTINEZ: Okay.

6 BY MR. VITTO:

7 Q You mentioned that your brother liked to sit
8 in a white chair in the living room while he was doing
9 his sudoku?

10 A Uh-huh.

11 Q Okay. Let me show you State's proposed
12 Exhibits 7 and 8. Is that the chair you're referencing?

13 A Yes. When I saw it outside like that, I
14 thought it was --

15 MR. MARTINEZ: I object here, Your Honor.
16 There's been no question posed.

17 MR. VITTO: Okay.

18 THE WITNESS: Oh.

19 BY MR. VITTO:

20 Q How did you feel when you saw it outside like
21 that?

22 A I thought it was bizarre.

23 Q Because that was his favorite chair?

24 A Yeah.

25 Q Are they the same chair?

1 A Yes.

2 Q So they were matching chairs in the living
3 room?

4 A Yes.

5 Q No idea how his favorite chair got thrown
6 outside?

7 A No.

8 MR. VITTO: I have no more questions of this
9 witness.

10 MR. MARTINEZ: Briefly, Judge.

11

12 RECROSS-EXAMINATION

13 BY MR. MARTINEZ:

14 Q You mentioned they were matching chairs?

15 A Yes.

16 Q So was there more than one white chair?

17 A Yes.

18 Q Okay. Were there just two white chairs or
19 more than two?

20 A Just two.

21 Q Now, as the person whose name was actually on
22 the lease on the house, did you have any restrictions for
23 Marco or Jonathan while they were living there?

24 A No.

25 Q So there wasn't any area of the house where

1 you said, "You can't go there"?

2 A No.

3 MR. MARTINEZ: All right. Nothing further,
4 Judge.

5 MR. VITTO: Nothing further.

6 THE COURT: All right. This witness can be
7 excused for now, but subject to recall?

8 MR. VITTO: Correct, Judge. Thank you very
9 much.

10 THE WITNESS: You want to see me later?

11 MR. VITTO: Yeah. Just hang around.

12 THE COURT: If you could wait outside and not
13 discuss your testimony with anyone else, because there is
14 a chance you could be recalled.

15 MR. VITTO: Oh, you know what? I did have
16 some follow-up that I forgot to ask.

17 MR. MARTINEZ: Too late. Just joking.

18

19 REDIRECT EXAMINATION

20 BY MR. VITTO:

21 Q You mentioned during cross-examination that
22 your brother rode a bike?

23 A Yeah.

24 Q And if I understand your testimony correctly,
25 that was when he was at the address previous to Linda?

1 A Yes.

2 Q Okay. He didn't ride a bike when he lived at
3 Linda?

4 A He may have tried, but he couldn't -- he
5 didn't have much energy left by then.

6 MR. MARTINEZ: I object as to speculation too,
7 Your Honor.

8 MR. VITTO: I will ask the question
9 differently.

10 BY MR. VITTO:

11 Q Do you know whether he would ride a bike at
12 Linda or at -- yeah, at the Linda address?

13 A I'm just trying to recall. I think he did try
14 a couple of times, yes.

15 Q But he was unable to?

16 A Well, he was able, but, I mean, barely.

17 Q Okay. It was difficult?

18 A Especially since it's windy. I mean, he was
19 worried about -- yeah.

20 Q Would it be fair to say it was difficult for
21 him to ride a bike?

22 A Yes, by then.

23 Q But he used to ride a bike without a problem
24 at his previous residence?

25 A Yes.

1 Q So his health was deteriorating?

2 A Yes.

3 MR. VITTO: Nothing further.

4 THE COURT: Mr. Martinez.

5

6 RECROSS-EXAMINATION

7 BY MR. MARTINEZ:

8 Q When was the last time he tried to ride a bike
9 that you know of?

10 A Probably in January.

11 MR. MARTINEZ: Okay. Nothing further, Judge.

12 MR. VITTO: One, yes.

13

14 REDIRECT EXAMINATION

15 BY MR. VITTO:

16 Q Did you see a bike at Linda?

17 A No. I don't remember where he put it, to be
18 honest with you.

19 Q Okay. So did you see a bike at Linda?

20 A No.

21 MR. VITTO: Nothing further.

22 THE WITNESS: I wanted to ask you about my
23 brother's body so I can --

24 MR. MARTINEZ: I object to that, Your Honor.

25 MR. VITTO: That's fine. If I may, after I

1 speak with Counsel, I'll talk to you before you leave
2 today. Is that fair? About that?

3 THE WITNESS: Okay.

4 MR. VITTO: Okay? Thanks.

5 MR. MARTINEZ: I do not have any further
6 questions, Judge.

7 THE COURT: All right. So you can be excused
8 to wait in the outside lobby. You're subject to recall,
9 so don't discuss your testimony with anyone else. Okay?

10 THE WITNESS: Okay.

11 THE COURT: All right. Thank you.

12 MR. VITTO: Thanks, Judge.

13 THE COURT: Kirk, when we were talking about
14 pretrial motions and stuff at the beginning of this, I
15 had overlooked it. I wanted to put on the record there
16 was an amended criminal complaint that was filed on
17 August the 4th.

18 Did defense receive a copy of that?

19 MR. MARTINEZ: I do have a copy of that,
20 Judge. For the record, I will waive a formal reading.
21 There are just some minor details that are changed in the
22 complaint, and I think the State is going to be amending
23 further throughout the course of the preliminary hearing
24 this morning as well.

25 THE COURT: I just wanted to make sure defense

1 had a copy of the amended complaint and there were no
2 issues with that.

3 1A was not admitted and 2A was not admitted.
4 It was not even requested to be admitted. They were
5 merely discussed on the record.

6 MR. VITTO: That's fine, Judge. I would ask
7 that 1, 1A, 2, and 2A be admitted into evidence. And we
8 have admitted 3 and 3A by stipulation, so I can bring
9 those up.

10 MR. MARTINEZ: Judge, 2A I have no objection
11 to. 1A --

12 THE COURT: This is the one -- 1A is the one
13 in the waterproof --

14 MR. VITTO: Actually, I was going to admit
15 that with the next witness.

16 MR. MARTINEZ: Oh. You beat me to it, so I
17 will wait.

18 THE COURT: Do you want this?

19 MR. VITTO: Sure. So 1, 2, 2A, 3 and 3A are
20 in?

21 MR. MARTINEZ: Yes. I'm sorry. Those are by
22 stipulation.

23 MR. VITTO: Yes.

24 THE COURT: So 1 was admitted. 2 was
25 admitted. Any objection to 2A being admitted?

1 MR. VITTO: That's them having dinner.

2 MR. MARTINEZ: Yes. I have no objection to
3 2A.

4 (State's Exhibit No. 2A
5 was received into evidence.)
6

7 THE COURT: 3 was the medical record. That's
8 been admitted by stipulation.

9 MR. VITTO: And 3A is abridged medical records
10 by stipulation.

11 THE COURT: That was admitted also.

12 MR. VITTO: Thanks, Judge.

13 THE COURT: Okay. So the only one in question
14 was 1A. That has not been admitted yet.

15 MR. VITTO: Yes.

16 THE COURT: All right.

17 MR. VITTO: Thank you, Your Honor.

18 THE BAILIFF: Face the clerk and raise your
19 right hand.
20

21 DENNIS ARTHUR LA DUE,
22 having been first duly sworn to tell the truth, testified
23 as follows:

24 THE CLERK: You may be seated.

25 THE BAILIFF: Speak into the microphone.

1 THE WITNESS: Oh, microphone?

2 THE COURT: If you could, please, pull your
3 mask down below your mouth so that we will all be able to
4 understand you correctly.

5 THE WITNESS: Yes. Thank you.

6 THE COURT: Please begin by stating and then
7 spelling your name for the record.

8 THE WITNESS: Dennis Arthur La Due, L-a space
9 capital D-u-e.

10 THE COURT: All right. Mr. Vitto.

11 MR. VITTO: Thank you, Your Honor.

12

13 DIRECT EXAMINATION

14 BY MR. VITTO:

15 Q What is your occupation, sir?

16 A Independent contractor, I guess.

17 Q All right.

18 A That's what the government has me down for.

19 Q You'd know better than anybody. Where do you
20 currently reside?

21 A 835 South Linda, unit 9.

22 Q All right. And 835 South Linda. Which unit
23 was it?

24 A Unit 9. It's a little travel trailer --

25 Q Okay.

1 A -- I was staying in while I was fixing up the
2 place.

3 Q Okay. Okay. Do you know Jonathan Piper?

4 A Yes.

5 Q How --

6 A I did.

7 Q Thank you. How did you know him?

8 A He moved into unit 4.

9 Q Now, when you say unit 4, let me show you
10 State's proposed Exhibit 6.

11 A Well, the trailer --

12 MR. MARTINEZ: Hang on. Objection, Your
13 Honor. No question asked.

14 BY MR. VITTO:

15 Q So let me show you State's proposed Exhibit 6.
16 Do you recognize what's depicted in that photograph?

17 A That's where Jonathan lived.

18 Q And who did Jonathan live with?

19 A Shortly after he moved in, Marco Torres moved
20 in to be his caretaker.

21 Q All right.

22 MR. MARTINEZ: Objection as to foundation.

23 MR. VITTO: It doesn't matter to me, Judge.
24 Whatever. That's fine.

25 (No Omissions.)

1 BY MR. VITTO:

2 Q Marco moved in?

3 A Yes.

4 Q All right. And you know Marco?

5 A From that.

6 Q Do you see him in the courtroom today?

7 A Yes, I do.

8 Q Can you describe an article of clothing he's
9 wearing?

10 A Orangish/pink and white.

11 MR. VITTO: Your Honor, may the record reflect
12 that this witness has made an in-court identification of
13 the defendant, Marco Antonio Torres? Are we good?

14 MR. MARTINEZ: I'll stipulate to the
15 identification of the defendant, Your Honor.

16 THE COURT: The record --

17 MR. MARTINEZ: That is certainly orange and
18 white, not pink and white, but --

19 MR. VITTO: That's our second pink and white.
20 Did you notice that?

21 THE WITNESS: It's pinkish to me.

22 THE COURT: It's very faded, extremely faded.

23 MR. VITTO: It's a melting creamsicle, is what
24 it is.

25 THE WITNESS: There you go, melting

1 creamsicle.

2 THE COURT: The record will reflect the
3 in-court identification of the defendant.

4 MR. VITTO: Thank you, Your Honor.

5 BY MR. VITTO:

6 Q Mr. La Due, I noticed that on that trailer
7 there are numbers 103.

8 A Yes.

9 Q But you had identified the unit that Jonathan
10 and Marco lived in as unit 4?

11 A Yes.

12 Q Why is that?

13 A Well, because the first two -- or actually,
14 there's three units out front of the property. One is a
15 block building. The other two are double-wide trailers.
16 I reconditioned number 2 and 3, and that's how we started
17 doing number 4. So in my shed -- the garage I store all
18 my supplies in has unit number 8 on it, because I had
19 police officers there before looking for unit 8, and
20 there is no unit 8 yet.

21 Q So the numbers 103 on there, what significance
22 do they have?

23 A I have no clue. I never -- that's one of the
24 buildings I haven't painted yet. Never got to it.

25 Q Now, how long had you known Jonathan Piper

1 before he died?

2 A Only a couple -- a few months.

3 Q All right.

4 A Two to three months, right there.

5 Q Do you happen to know what month he moved in?

6 A Oh, God. Had to be like -- I want to say
7 April.

8 Q Well, I think, if I'm not mistaken, he died in
9 April.

10 A Then had to be March, February. Wow. You're
11 right. It was April when he died. I've been trying to
12 forget this whole thing.

13 Q So it was a couple months before April?

14 A Yes.

15 Q Is that fair?

16 A He was only there a couple of months.

17 Q How long was Marco there?

18 A Maybe a month and a half. He came in about
19 two weeks after Jonathan moved in.

20 Q All right.

21 A Approximately.

22 Q That's fine. And what do you know about their
23 relationship?

24 A They suppose -- I guess grew up together.

25 They've known each other since kids. Children, anyway.

1 MR. MARTINEZ: Objection to foundation.

2 MR. VITTO: I'll ask a different question.

3 BY MR. VITTO:

4 Q Did the defendant tell you about their
5 relationship?

6 A Yes.

7 Q What did he tell you?

8 A He told me that they had known each other --
9 they grew up together. They were best friends through
10 school and knew each other throughout their lifetime.

11 Q Did Marco tell you why he was living with
12 Jonathan?

13 A To take care of him, because he was seriously
14 ill.

15 Q Okay. Now, how close do you live to the
16 trailer that says 103 on it?

17 A Oh, where is that picture? If you look at the
18 picture, to the left of it is a pink building. I live
19 just on the other side. The back end of this building
20 (indicating).

21 MR. MARTINEZ: Your Honor, object as
22 nonresponsive at this time. I believe the question was,
23 "How close do you live?"

24 BY MR. VITTO:

25 Q How close do you live to that trailer?

1 A Just on the other side of that building, a
2 hundred fifty feet.

3 Q Okay. So less than half a football field?

4 A Yes.

5 Q A hundred fifty feet?

6 A Like I say, just on the other side of that
7 pink trailer.

8 Q Now, let me direct your attention to April 4,
9 2020, at approximately two o'clock in the morning. Do
10 you recall anything unusual at that early hour in the
11 morning?

12 A I woke up to yelling and screaming, so I --
13 when I got up, I walked outside to listen and couldn't
14 hear nothing again. Went back and laid down. And within
15 a half hour or so after that, more screaming and yelling.
16 I noticed it was Marco's voice. I said, "I'll just deal
17 with him first thing in the morning. This has got to
18 stop."

19 Q Okay. So you recognized Marco's voice?

20 A Yes. It's definitely distinct.

21 Q All right. Did you hear another voice?

22 A No.

23 Q All right. Had you had occasion to speak with
24 Jonathan that day?

25 A As a matter of fact, that was the first time I

1 talked to him in a month and a half.

2 Q Okay.

3 A We sat down, had a beer together, BS'd. And
4 then when Marco came in and took over the control of the
5 conversation, that's when I left.

6 Q Let me ask you this. So you had a
7 conversation with Jonathan --

8 A Yeah.

9 Q -- and the defendant the day that --

10 A Yes.

11 Q -- Jonathan died; is that correct?

12 A Yes, sir.

13 Q How would you describe Jonathan's voice?

14 A Low tone. He's very laid back, easygoing.
15 Very mild-mannered gentleman.

16 Q I think you said low tone?

17 A Yeah.

18 Q All right. Now, I had directed your attention
19 to about two o'clock in the morning, and that's when you
20 talked about this disturbance that you heard. You heard
21 the defendant's definitely distinctive voice. You
22 recognized it. In relation to that, did you receive any
23 phone calls that morning?

24 A Well, I finally got a phone call, according to
25 my -- it didn't pop up until I walked outside to go

1 complain. And when I saw all the tape and the front
2 porch destroyed, I went back and grabbed my phone to call
3 the police department, find out what was going on, and
4 all of a sudden there was two messages. I went to listen
5 to my messages. It was Jon's voice.

6 MR. MARTINEZ: Objection.

7 THE WITNESS: Well, it was definitely --

8 MR. MARTINEZ: I know we're going to get
9 hearsay here.

10 MR. VITTO: Is the objection hearsay?

11 MR. MARTINEZ: Yes, or best evidence based on
12 what's on the record.

13 THE WITNESS: And they all of a sudden hung
14 up.

15 MR. VITTO: Hold on a second. I'll deal with
16 that.

17 BY MR. VITTO:

18 Q So you got -- your phone indicated that you
19 had received two phone calls that morning?

20 A Within, like, 15 minutes of each other.

21 Q All right. And do you happen to remember what
22 time those phone calls came in?

23 A It was right -- 2:15-ish. Well, no. They
24 didn't come in until 6:00 in the morning, but
25 according --

1 Q You didn't see them until 6:00 in the morning?

2 A Right. It just said that I got messages then,
3 which is impossible when he was dead. I've had trouble
4 with Verizon since I've been in this town, so -- as a
5 matter of fact, I just received a call from May 24th from
6 the Nye County Coalition saying they might have a job for
7 me, but I didn't get it until just -- I think it was
8 yesterday.

9 Q All right. So the calls that came in, you
10 recognized the phone number or you recognized the voice?

11 A The voice.

12 Q All right. Who did you recognize the voice
13 as?

14 A Jonathan.

15 Q Okay. So Jonathan had called after two
16 o'clock in the morning and before you saw your phone at
17 six o'clock in the morning; is that correct?

18 A Yep.

19 Q All right.

20 A I wish I would have went over.

21 Q And your provider was Verizon?

22 A Yes, sir.

23 Q And because we're going to try to get those
24 phone calls, your phone number was (702)861-7841?

25 A 7841, yes, sir.

1 Q Got it. All right.

2 A It hasn't changed since I moved back to
3 Nevada.

4 Q You listened to both messages?

5 A Yes.

6 Q All right.

7 A I thought I saved them, but I had to get a new
8 phone because my other phone fritzed out on me, so it's
9 not on here.

10 Q Okay.

11 A Because I went looking for that when I found
12 out about the message from --

13 MR. MARTINEZ: Objection at this point, Your
14 Honor. There's no question.

15 THE COURT: Sustained.

16 MR. VITTO: And that's fine, Judge.

17 BY MR. VITTO:

18 Q So let's talk about the first phone call.
19 What was the message?

20 A It was, "Help. Help. Help."

21 MR. MARTINEZ: Judge --

22 A Three helps.

23 MR. MARTINEZ: Judge --

24 MR. VITTO: Hold on a second. There's an
25 objection, so we're going to deal with that.

1 MR. MARTINEZ: Yes.

2 MR. VITTO: What's the objection?

3 MR. MARTINEZ: Hearsay, Your Honor. It would
4 also be the best evidence rule. If this call came from a
5 recorded message, the best evidence here is not the
6 witness's recollection of it, but the message itself.

7 MR. VITTO: So the objection is -- let's deal
8 with hearsay. Obviously the declarant is unavailable to
9 us, and I don't know that it's even possible to have a
10 better example of an excited utterance than for someone
11 to call someone and say, "Help, help, help." So I'm
12 asking that the statement be admitted because the
13 declarant is unavailable to me and it is an excited
14 utterance.

15 MR. MARTINEZ: I do not believe the State has
16 laid nearly enough foundation for it to be an excited
17 utterance based on just the word "help". To be calling
18 saying, "Help", he could be calling needing help with my
19 garbage disposal, and the other person on the other end
20 of the line may not be very excited.

21 I also don't believe they have laid enough
22 foundation to specifically say that this was the
23 declarant's voice. Had we had any testimony about the
24 phone number that it came from, connecting that to the
25 declarant and identifying it as his phone, I think we

1 would be in a much better corroborating evidence
2 situation to say that, but we don't have that.

3 MR. VITTO: What we do have, Your Honor, is an
4 argument, an argument that has gotten the attention of
5 this witness. He has clearly identified the defendant's
6 voice. He described his voice as definitely distinctive.
7 So he heard an argument. It involved the defendant. At
8 the same time or contemporaneously to that time he gets a
9 phone call from Jonathan, whose voice he recognizes,
10 saying, "Help. Help. Help."

11 I think we've laid all the foundation
12 necessary at a probable cause determination to admit that
13 statement.

14 THE COURT: Did you have an NRS you wanted to
15 refer to?

16 MR. VITTO: 51.095, excited utterance.
17 Insofar as the witness being unavailable, 51.055.
18 Obviously he is --

19 THE COURT: All right. I'm going to overrule
20 the objection and allow it to be admitted.

21 MR. VITTO: Thank you, Your Honor.

22 MR. MARTINEZ: Thank you, Judge.

23 BY MR. VITTO:

24 Q There was a second phone call. Did you listen
25 to that one as well?

1 A Yeah. All it was was, "Dennis," and it
2 started like he was trying to say help, but it was just,
3 "Dennis," and then it ended. It was a distressful voice.

4 Q You could tell he was stressed?

5 A Yes, on both calls. And by the way --

6 MR. MARTINEZ: Objection.

7 A -- they were from his phone number.

8 MR. MARTINEZ: There is no question posed.

9 BY MR. VITTO:

10 Q Your phone had captured the phone number?

11 A Yes. I called up Chris and asked him, "Is
12 this your brother's number?" because I didn't have
13 Jonathan's name on there. And he goes, "Yes, that's his
14 number."

15 MR. MARTINEZ: Objection to hearsay.

16 MR. VITTO: I'm not using it for the truth of
17 the matter asserted, Judge.

18 MR. MARTINEZ: Isn't the matter asserted that
19 it was Jonathan's phone number?

20 MR. VITTO: The phone number, yeah. He
21 recognized Jonathan's voice, so I have that.

22 MR. MARTINEZ: Okay.

23 BY MR. VITTO:

24 Q After the second phone call, I believe you
25 testified that the phone went dead?

1 A Well, there was nothing on the -- no more.

2 Q The phone call stopped?

3 A Yeah, the phone call stopped.

4 Q I gotcha. Now -- so if I understand, just to
5 confirm, you had asked Chris whether the number on your
6 phone was Jonathan's?

7 A Yes, because it was a California number.

8 Q All right. You don't happen to remember that
9 number offhand?

10 A It's on my old phone, believe it or not, and I
11 don't have it with me.

12 Q All right. Now -- so you heard a disturbance
13 at about two o'clock in the morning. You found out later
14 about these phone calls. Was there a time when
15 everything became quiet again?

16 A Well, it was right around 3:00-ish, is the
17 last time I heard anything, is right around 3:00, between
18 2:30 and 3:00, and then that's when I said -- when I
19 realized it was an argument going on, I'll just deal with
20 them in the morning.

21 Q So the last argument -- the last arguing that
22 you heard was around -- I don't want to put words in your
23 mouth.

24 A 2:30-ish, because I went back to bed to sleep
25 about 3:00.

1 Q About 3:00 you didn't hear anything more?

2 A No.

3 Q And were you there when law enforcement
4 arrived?

5 A Never knew they were even there.

6 Q When you woke up they were already there?

7 A They were already gone.

8 Q They were already gone?

9 A That's what I'm saying. I went over to make
10 my statement to them, saying the noise has got to stop,
11 and when I walked around the corner, what the hell went
12 on? That's why I grabbed the phone and called to find
13 out what happened.

14 Q All right. Now, let me direct your attention
15 to the wooden porch depicted in State's proposed Exhibit
16 7. Do you recognize that porch at all?

17 A Oh, yeah. I finished building it only two
18 months before.

19 Q All right. You built that porch?

20 A Yes.

21 Q Now, your testimony is that you spoke with the
22 defendant and Jonathan the night -- technically, I guess,
23 the night before he was killed. Let's clear that up
24 first. You said that you spoke with the defendant and
25 Jonathan. What time was that?

1 A I want to say 6:30-ish.

2 Q So that's the evening before?

3 A Yeah, p.m.

4 Q Okay.

5 A Because I hadn't talked to him in a month and
6 a half. And I always waved when I went by, and I'd say,
7 "Hey, how are you doing? What's going on?" I went in
8 and started B.S.ing, had a beer.

9 Q So were you able to see the porch when you had
10 that conversation with the two of them?

11 A Yeah.

12 Q All right. Was it in the condition you see it
13 in in that photograph?

14 A No.

15 Q It was fine?

16 A Yes.

17 Q It wasn't destroyed at all?

18 A No. Just like that heater not being -- that
19 wasn't outside either. That was inside the house.

20 Q You're talking about the --

21 A That oscillating heater his brother bought
22 him.

23 Q How about this white chair?

24 A That was inside also.

25 Q All right.

1 A It's similar to the one he always sat in.

2 MR. MARTINEZ: Objection, Your Honor. No
3 question posed.

4 THE COURT: Sustained.

5 BY MR. VITTO:

6 Q Do you recognize that white chair?

7 A Yes.

8 Q And --

9 A I gave it to him.

10 Q Okay.

11 A Two identical ones, actually.

12 Q Okay. So there were two identical white
13 chairs that you gave him; is that correct?

14 A Yes. He had no furniture when he first moved
15 in.

16 Q All right. And was that white chair a
17 particular favorite of the defendant's (sic)?

18 A He always sat in it.

19 Q All right.

20 MR. MARTINEZ: I object to foundation there,
21 Your Honor. We have previous testimony about how he
22 hadn't spoken with the decedent in a month and a half.

23 THE WITNESS: Until that day.

24 BY MR. VITTO:

25 Q How do you know he always sat in that chair?

1 A Because any time before I went in, he was
2 always sitting in that chair right next to a lamp,
3 because he did a lot of reading. And the next time I see
4 him, he's still sitting in that same chair, so I
5 guarantee you it was his favorite spot to sit. As I
6 said, he did a lot of reading.

7 Q Now, let me direct your attention to that
8 conversation again, the conversation that the three of
9 you had together, the defendant, Jonathan and you, the
10 evening --

11 A Well, there was no conversation with the three
12 of us. It was only me and Jonathan discussing
13 originally.

14 Q Okay. But then the defendant became involved?

15 A He came in, and that's about the time I left,
16 when he took control of the conversation and it was all
17 about him.

18 Q Did he tell you about his criminal history at
19 that time?

20 A No. It wasn't until we walked outside. I
21 said, "I'm probably going to go buy a shotgun just for
22 protection around the property." And he says, "I need to
23 get a gun." I said, "Well, as long as you're not a
24 felon, you can." That's when he informed me he was a
25 two-time felon. I said, "What was it?" He said one was

1 for beating up --

2 MR. MARTINEZ: I object, Your Honor, as to the
3 relevance.

4 MR. VITTO: Well, the relevance is he's
5 charged with notice, anyway, as an habitual criminal.

6 MR. MARTINEZ: Okay.

7 MR. VITTO: And it helps that he's
8 volunteering information about his criminal history.

9 THE COURT: Overruled.

10 MR. MARTINEZ: Thank you, Your Honor.

11 BY MR. VITTO:

12 Q So he told you that he was a two-time
13 convicted felon and then he explained one of the --

14 A Well, I asked one. I asked about -- "Well,
15 give me an example." And that's when he told me he had
16 an argument with somebody at a skateboard park and beat
17 him with a skateboard.

18 MR. MARTINEZ: I'll definitely object to
19 relevance there, Your Honor. In the certified
20 convictions the State will admit later, that information
21 is not in there. Nothing along those lines is in there.

22 MR. VITTO: We don't have anything like that,
23 but we don't have everything yet.

24 MR. MARTINEZ: Okay. We don't have everything
25 yet, so for purposes of today that is not relevant.

1 MR. VITTO: That's fine.

2 THE WITNESS: I believe that was in Hawaii.

3 THE COURT: Okay.

4 MR. VITTO: I have no objection to it being
5 stricken.

6 BY MR. VITTO:

7 Q Now, from your perspective with what you've
8 been able to observe, did it appear to you like the
9 defendant was there to help Jonathan?

10 A Personally, no.

11 Q What makes you say that?

12 MR. MARTINEZ: I object as to speculation
13 here, Judge.

14 MR. VITTO: Well, if the objection is
15 speculation, I asked this witness, based on what he was
16 able to observe and based upon his interaction with these
17 two individuals, if he had an opinion. He says he has an
18 opinion.

19 And then my next question was, "What makes you
20 say that?" or, "What is the basis for your opinion?"

21 MR. MARTINEZ: Then what's the relevance of
22 his opinion as to the reason why Mr. Torres was living
23 with Mr. Piper?

24 MR. VITTO: Is that an objection?

25 MR. MARTINEZ: Yes. Relevance.

1 MR. VITTO: So the objection is relevance.

2 MR. MARTINEZ: Yes. An additional objection,
3 yes.

4 MR. VITTO: Your Honor, the defendant is
5 charged with first-degree murder of a vulnerable person;
6 open murder, which requires a malice element; invasion of
7 the home; battery by strangulation; abuse of a vulnerable
8 person; interception, interruption or delay of message
9 sent over a telephone line; injury to other property.
10 He's also put on notice that the State is prosecuting him
11 with an habitual criminal enhancement in mind. I think
12 the question a fair one, and I think it's relevant for
13 that purpose. We have a malice element that is an aspect
14 of this prosecution.

15 THE COURT: The question was if he believed
16 that he was there to help.

17 BY MR. VITTO:

18 Q The question was: Based on your observations
19 and your interaction with the three of them -- what you
20 were able to observe with your own eyes and your own
21 ears -- did it seem like the defendant was there to help
22 Jonathan? That's the question.

23 A No.

24 MR. MARTINEZ: Relevance means something tends
25 to prove or disprove any single fact in a case. What

1 he's asking doesn't tend to prove or disprove any single
2 fact in this case, Judge. It's not relevant.

3 MR. VITTO: And here's my response to that.
4 If he's there as a philanthropic benefactor, that's one
5 thing, but if he there's for any other purpose or
6 ulterior motive, that starts to weigh in on malice and
7 whether he cares two whits about this guy that he choked
8 out. Because second-degree murder is an abandoned and
9 malignant heart, which he's also charged with.

10 MR. MARTINEZ: This is going to be an argument
11 in my closing here, Your Honor. And depending on what
12 the Court decides today, it's an argument that I've had
13 in the District Court before in front of Judge Wanker,
14 about whether or not the State can legally charge an
15 underlying offense if they can double up on the charges
16 like they've done here where he's charged with
17 first-degree murder and open murder and other charges as
18 well that I'm going to be asking the Court to dismiss
19 today because they are underlying, they are duplicative,
20 they are double jeopardy issues under the *Blockburger*
21 case, and -- which I'm going to be asking the Court
22 dismiss a bunch of these charges because they are a
23 single event that happened that the State is trying to
24 double up and prosecute and punish more than once for,
25 and that's where we're coming from.

1 He is charged with first-degree murder as he
2 is, and this isn't relevant. If the State wants to
3 charge just open murder and dismiss the first-degree
4 murder, they can do that too, and then perhaps that is
5 relevant. And if that's the stance the State is going to
6 take today, I'm going to move to dismiss the first-degree
7 murder charge right now.

8 MR. VITTO: Judge, we're going to be
9 addressing this at some point in the future, which is
10 fine, because it won't be the distant future. The
11 defense is absolutely one hundred percent accurate when
12 it says that he can't be punished multiple times for the
13 same offense. But if the defense is saying that the
14 prosecution can't prosecute him in the alternative for
15 offenses that involve the same fact pattern, he's
16 absolutely one hundred percent dead wrong. We can charge
17 in the alternative; we can prosecute in the alternative.
18 He can't be punished for the same acts. We would lose
19 that. It's not what we want. It's not what we're going
20 to do.

21 But we have the absolute right to charge in
22 the alternative and to bring these cases forward. This
23 is dealt with in jury instructions at the closing
24 argument in a jury trial. If you find him guilty of
25 this, don't find him guilty of this. And I'll be all

1 over that. I'll write that jury instruction. I'll tell
2 the jury that same exact thing. But he could be
3 prosecuted -- he could be charged and prosecuted for
4 every single one of these offenses. What happens later
5 is a different story, not for today.

6 THE COURT: Then with regards to the relevance
7 issue, I'm going to overrule that objection and allow him
8 to ask the question.

9 BY MR. VITTO:

10 Q Mr. La Due, based on what you were able to see
11 and hear with your own eyes and ears, your experience
12 with these two men, being around them, listening to them
13 talk, watching them interact, did it seem to you like the
14 defendant was there to help Jonathan?

15 A No.

16 Q Why do you say that?

17 A Because any time I was there, he would always
18 want to control the conversation. It was always all
19 about him. And I never heard -- the only time I ever
20 heard him say, "I'm here to help him," but then it was
21 never about him. It was always about me, me, me, me, me.
22 That's why I left after the conversation that day when we
23 were having a conversation. He came in and jumped in and
24 right away he got interrupted, and all of a sudden it was
25 all about him.

1 Q Did you ever see him -- see the defendant in a
2 caretaking function?

3 A Cooking.

4 Q Okay. So he would cook?

5 A And clean.

6 Q He did cook and clean?

7 A (Nods head up and down).

8 Q That would be caretaking?

9 A I guess so.

10 Q Did you ever see him drive him anywhere?

11 A No.

12 Q Did they have a vehicle?

13 A No.

14 Q All right.

15 A I took him originally myself in my vehicle.

16 Q So you did see him cook and clean. Did you
17 ever see him bring him medication?

18 A No.

19 Q Did you ever see him bring him food?

20 A Yeah.

21 Q Okay.

22 A Once.

23 Q Okay. Did you ever see him help him walk?

24 A No.

25 Q Did he need help walking? Jon?

1 A Not really. I mean, he moved slow.

2 Q Okay.

3 A But --

4 Q He moved slow. Was he unsteady?

5 A I guess you could -- I guess his age. I'm not
6 sure about that. He just moved slower than most people
7 do.

8 Q Do you have any idea how old he was?

9 A In his 60s, I believe.

10 Q Okay. Did you ever see Jonathan ride a bike?

11 A Yes.

12 Q Okay. Did he have a bike there?

13 A Yes.

14 Q All right. And how often would you see him
15 ride the bike?

16 A Only when he rode up to the store.

17 Q Okay. How far was that?

18 A He went to the one up around the corner,
19 probably a mile.

20 Q Okay. So he was able to ride the bike without
21 a problem?

22 A Right.

23 Q All right. Now, let me show you State's
24 proposed Exhibit 1A. What can you tell me about that?

25 A It's a picture that we found when we were

1 cleaning the place out. It's a picture of Chris and
2 Jonathan. Jonathan is on the left. I guess Thanksgiving
3 of 2018 up in Tahoe.

4 MR. MARTINEZ: Objection. Foundation.

5 BY MR. VITTO:

6 Q As far as you know, it was a picture that you
7 found in --

8 A Jonathan's room.

9 Q All right. And did you bring that with you
10 today?

11 A Yes.

12 Q And what did you do with it today?

13 A I gave it to his brother like I told him I
14 would.

15 MR. VITTO: Your Honor, I ask State's proposed
16 Exhibit 1A be admitted into evidence.

17 MR. MARTINEZ: What's the relevance, Judge, or
18 State? That would be my objection as to the relevance of
19 the picture.

20 MR. VITTO: Well, we had a photograph of the
21 decedent. We have a photograph of the decedent and the
22 defendant. This is a photograph of the decedent and his
23 brother, who paid the bills.

24 MR. MARTINEZ: My objection would be
25 relevance, Your Honor. That's it.

1 THE COURT: I will allow it to be admitted.

2

3 (State's Exhibit No. 1A
4 was received into evidence.)

5

6 MR. VITTO: Thank you, Your Honor.

7 MR. MARTINEZ: Thank you, Judge.

8 BY MR. VITTO:

9 Q Just a couple more questions. Mr. La Due, do
10 you recall seeing any injury on Jonathan's face when you
11 spoke with him last?

12 A No.

13 Q Let me show you State's proposed Exhibit 19.
14 And I believe it's your testimony that you saw him about
15 6:30 in the evening --

16 A Yes.

17 Q -- prior to his death?

18 A Yes.

19 Q And is that the time you got there or is that
20 the time you left?

21 A Give or take, because I was only there maybe
22 15 minutes or so.

23 Q So it was around that time?

24 A Yes.

25 Q And you testified that he had no injury when

1 you saw him last?

2 A Not that I -- yeah. I would notice something
3 on his face.

4 Q Let me show you State's proposed Exhibit 19.
5 Do you recognize the person in that photograph?

6 A No. I've never seen -- I never looked at him
7 that way. It kind of looks like Jonathan, but --

8 Q Okay.

9 A -- wow.

10 Q Did Jonathan's -- did Jonathan's -- whether
11 that's Jonathan or not, did Jonathan's head and face --

12 A No.

13 Q -- have those marks on it when you saw it
14 last?

15 A No. Not at all. Whenever I had ever seen him
16 he was wearing a baseball cap. But the face, I would
17 have saw that.

18 Q Okay. And it wasn't there?

19 A Because I was sitting on that side of him when
20 he was sitting in his chair --

21 Q Okay.

22 A -- on the couch that was right there.

23 Q So you saw the left side of his face?

24 A Yes. Yeah, left side. You're right.

25 MR. VITTO: I have no more questions of this

1 witness at this time.

2 THE COURT: Mr. Martinez, cross-examination.

3 MR. MARTINEZ: Thank you, Judge.

4

5 CROSS-EXAMINATION

6 BY MR. MARTINEZ:

7 Q Dennis, when did you move into the Linda
8 address?

9 A Oh, God. It's been a year and four months
10 ago, nearly. I'm the second-longest tenant there.

11 Q So you were there before Jonathan; right?

12 A Yes.

13 Q And you were there before Marco?

14 A Oh, yeah. I just finished --

15 Q Did you know either of them before they moved
16 in?

17 A No.

18 Q Okay. And now, you're employed as a property
19 manager?

20 A I don't know what you want to call me because
21 I'm not really sure. I did all the rehabbing of these
22 places because that's what I do. I'm a construction
23 worker. But I was collecting rent for them, so I guess
24 so. Any time there was an issue, I would go over,
25 confronted it and --

1 Q So you interacted with all the residents
2 there?

3 A Yes.

4 Q And that included Marco and Jonathan; right?

5 A Uh-huh.

6 Q Did you see Marco and Jonathan regularly?

7 A Like I said, only when I drove by.

8 Q Okay.

9 A I would just wave and -- just when it was
10 Jonathan, anyway.

11 Q Would you wave to Marco?

12 A I would nod at him. That's about it.

13 Q Okay. So you didn't interact with them on a
14 regular basis?

15 A Not after I said no more.

16 Q So you didn't go inside their house on a
17 regular basis?

18 A No.

19 Q So you didn't see their daily routine; right?

20 A Like I said, about two and a half weeks I went
21 over there on a regular basis, and then I stopped.

22 Q How many total units did you say are at the
23 property?

24 A Total of five now. Well, total of five.

25 There was a sixth one I was working on, but I got let go.

1 Q So at the time --

2 A 1, 2, 3, 4, and then the one I live in if you
3 want to call it a residence.

4 Q So we'll say five total; right? Okay. You
5 said where you live, your travel trailer is about a
6 hundred fifty feet from unit 4 where John and Marco
7 lived; right?

8 A Yeah.

9 Q How spaced out are the rest of the houses on
10 the property?

11 A They're all pretty close.

12 Q Would you say they're all within about a
13 hundred fifty feet of one another?

14 A Or closer, a lot closer. Actually, all the
15 units are there within a hundred fifty feet of each
16 other, actually. All four of them are.

17 Q Do you know the names of the other residents
18 that were there at the beginning of April? You don't
19 have to tell me the names on the record. I'm just
20 curious if you do remember the names.

21 A No, I don't. I don't associate with any of
22 them.

23 Q I just want to make sure the record is clear.
24 I understand you don't associate with them, but do you
25 recall their name?

1 A No. The only one I remember would be the one
2 who moved out, Jackie, which works down the street, and I
3 can't remember her last name right now. I got it in my
4 other phone.

5 Q Now, on April 3rd you said it was around 6:30
6 or so --

7 A Yes.

8 Q -- you went inside Jonathan's house; right?

9 A Yes.

10 Q Now --

11 A He was outside smoking a cigarette.

12 Q Hang on. Okay. He was outside smoking a
13 cigarette?

14 A So I waved to him like I always do when I saw
15 him outside. And then he said stop and talk to him.

16 Q Did he invite you into the house?

17 A Yes. I wanted to see how he was doing.

18 Q Did you guys sit down inside the house?

19 A When him and I sat down, Marco wasn't in there
20 yet. He wasn't inside the room. He was in his own room
21 or in the bathroom or something. He was way in the back.

22 Q You said you had a beer; right?

23 A I was enjoying a beer with him, yes.

24 Q What kind of beer were you drinking?

25 A It was a Natural. I want to say a Natural

1 Light or something like that. Cheap beer.

2 Q You said Marco was in the house, but not in
3 the living room with you?

4 A Right.

5 Q You said you were only there for about 15
6 minutes?

7 A Yeah.

8 Q When you left the house did you still kind of
9 have eyesight on the house from where you were?

10 A No.

11 Q Let me ask the question another way. I'm
12 sorry.

13 A No. You can't see the house from where I am.

14 Q When you left the house did you go directly
15 back to your trailer?

16 A Yeah. I got in my car and drove around to my
17 trailer, right.

18 Q Did you remain in your house for the rest of
19 the night?

20 A Yes.

21 Q And you didn't hear any -- so you don't know
22 if anybody else went over to the house that night; right?

23 A No.

24 Q And you didn't hear anything until about 2:00
25 a.m.?

1 A 2:00 a.m.

2 Q You testified earlier that you woke up because
3 you heard yelling and screaming?

4 A Yes. All one-sided, too.

5 Q You did speak with police the next morning;
6 right?

7 A Yeah. Well, to find out what happened, and
8 they told me it was sealed.

9 Q Do you recall making a written statement in
10 this case?

11 A Actually, I told them to make the statement,
12 write it down.

13 Q Do you recall making a written statement?

14 A Yes.

15 MR. MARTINEZ: All right. If I could approach
16 the clerk to have this marked, Judge.

17 THE COURT: Sure.

18 MR. VITTO: No objection to its admission.

19 MR. MARTINEZ: Then we will admit it by
20 stipulation, Judge.

21 MR. VITTO: Yeah.

22

23 (Defense Exhibit A
24 was received into evidence.)
25

1 THE COURT: What is it?

2 MR. MARTINEZ: Defense Exhibit A, Your Honor.

3 If I may approach the witness.

4 THE COURT: Sure.

5 BY MR. MARTINEZ:

6 Q Dennis, this has just been stipulated into
7 admission as Defense Exhibit A. Do you recognize that?

8 A Yep.

9 Q Is that the written statement that you made?

10 A Yes.

11 Q Did you read through this written statement?

12 A Yeah.

13 Q Do you see on there how you said you were
14 awoken by a loud bass?

15 A Yeah. I had forgot about the bass.

16 Q Was that bass like the bass from music?

17 A From his amp.

18 Q From his guitar?

19 A I guess. That's -- he's done that before too,
20 played loud music in the middle of the night.

21 Q So did loud music wake you up?

22 A I'm not sure.

23 Q And then you heard this argument?

24 A All I know is I got woke up by something, and
25 then all I heard was arguing, so I went outside and then

1 it stopped. And I went back out again the second time,
2 and that's when I said I'll deal with them in the
3 morning.

4 Q In your written statement you also said that
5 you went to investigate; right?

6 A Yeah. I walked around to listen and see where
7 it was coming from.

8 Q When you say you walked around, did you leave
9 your house?

10 A Yes. I walked out.

11 Q How close did you get to unit 4?

12 A The back side of that pink building, just to
13 look and see where the noise was coming from, because it
14 could have also been unit 3, because they were known for
15 arguing.

16 Q So how close is it from the back side of that
17 pink building to unit 4?

18 A Maybe a hundred feet, 75 feet.

19 Q All right. You heard the arguing?

20 A Well, it stopped, but that's what I'm saying.
21 I walked around, and nothing. There was nothing to be
22 heard.

23 Q So by the time you got around, there was no
24 more argument to be heard?

25 A Nothing at that moment.

1 Q Did you go back in your house?

2 A Yep. Laid back down.

3 Q But you heard some more arguing later on;
4 right?

5 A Well, shortly after that, yeah, all of a
6 sudden, because I wasn't asleep yet.

7 Q Did you get up to go investigate again?

8 A I walked back to the same spot.

9 Q By the time you got back to the same spot --

10 A Nothing again.

11 Q You could still hear nothing. You decided you
12 would deal with it in the morning, you said?

13 A Because I knew where it was coming from.

14 Q So you didn't call 911; right?

15 A No, not for --

16 Q You didn't go knock on the door; right?

17 A I should have.

18 Q But you didn't?

19 A No.

20 Q All right. Now, you said by about 3:00 a.m.
21 it was all quiet again and you went back to sleep; right?

22 A (Nods head up and down).

23 MR. VITTO: Is that a "yes"?

24 A Yes.

25 (No Omissions.)

1 BY MR. MARTINEZ:

2 Q Okay. So you didn't wake up when the police
3 arrived?

4 A Never heard them.

5 Q Never saw any sirens?

6 A Well, I turned my TV up a little louder so I
7 didn't hear no more BS so I could go to sleep.

8 Q You turned the TV up a little louder?

9 A Yeah, so I didn't hear anything. That's why
10 when I woke up to see everything the way it was, I'm
11 going, Wow, what just happened? Crime scene tape
12 everywhere and my front porch destroyed. Or not mine,
13 but the residence, and sealed doors.

14 Q When you did wake up -- and you spoke to
15 police, obviously, because you made a written statement;
16 right?

17 A Yeah. I called them up to find out what was
18 going on.

19 Q Do you remember the name of the officer that
20 you spoke to?

21 A No, I don't.

22 Q Now, you said Jonathan would ride his bike up
23 to the corner store; right?

24 A I only seen him, I think, twice ride it there,
25 yeah.

1 Q So you saw him a couple of times?

2 A Yes.

3 Q Was that couple of times closer to when they
4 moved in or closer to April 3rd?

5 A In the middle.

6 Q In the middle? All right.

7 A I just happened to see him when I was driving
8 home, and I saw him on a bicycle. I mean, wow. The
9 first time it was a wow.

10 Q From when you first saw Jonathan when he moved
11 in until the last time you saw him, did Jonathan look as
12 though he gained any weight to you?

13 A No. Still as skinny as a rail.

14 Q Did he look any different?

15 A A little healthier.

16 Q How did he look healthier? Can you describe
17 that for me?

18 A He seemed perkier. He seemed more -- I mean,
19 it was a great conversation. It lasted 15 minutes. He
20 said, "I just had my last chemo," because I remember
21 seeing him getting in the vehicle to go do his chemo once
22 a week.

23 Q You said he seemed perkier. Is it fair to
24 describe him as feeling happier?

25 A Yeah.

1 Q Okay.

2 A I think he was more happy that he didn't have
3 to do any more chemo. I think that's actually what it
4 was, because that wore him out.

5 MR. MARTINEZ: Pass the witness, Judge.

6 THE COURT: Redirect by the State.

7 MR. VITTO: Just briefly, Judge. Kind of one
8 question-ish.

9

10 REDIRECT EXAMINATION

11 BY MR. VITTO:

12 Q You just testified that when you saw him
13 riding the bike -- what you testified was you saw him and
14 you said to yourself, Wow. What surprised you about
15 seeing Jonathan?

16 A Like I said, I never seen him out on a bicycle
17 or doing any activity outside of the house other than
18 sitting on the porch smoking a cigarette and drinking a
19 beer.

20 Q So it was unusual for you to see him --

21 A On the bicycle.

22 MR. VITTO: Okay. No more questions, Judge.

23 THE COURT: Re-cross.

24 MR. MARTINEZ: Nothing further, Your Honor.

25 THE COURT: So this witness can be excused?

1 MR. VITTO: Yes.

2 THE COURT: Is he subject to recall?

3 MR. VITTO: I don't need him. Actually, let's
4 keep him around. Let's keep him on.

5 THE COURT: Okay.

6 THE WITNESS: So I gotta stay?

7 MR. VITTO: You don't have to stay right here,
8 but if you need to go somewhere, come back in an hour.
9 Is that fair?

10 THE WITNESS: No, I'll stay. I'm not going
11 anywhere.

12 MR. VITTO: All right. Good man.

13 THE COURT: Don't discuss your testimony with
14 anyone else.

15 THE WITNESS: Yes, sir. Yes, sir.

16 THE COURT: Who is your next witness?

17 MR. VITTO: Stephanie Rucker.

18 Oh, Judge, we need a five-minute recess if
19 that's okay.

20 THE COURT: Who needs a five-minute recess?

21 MR. VITTO: We both do, Judge.

22 THE COURT: All right.

23 MR. VITTO: Thanks, Judge.

24

25 (No Omissions.)

1 (Recess taken from
2 11:08 a.m. until 11:15 a.m.)

3
4 THE COURT: Okay. Now we're back on the
5 record. You said your next witness was --

6 MR. VITTO: Stephanie Rucker.

7 THE COURT: Stephanie Rucker. Okay.

8 THE BAILIFF: Face the clerk and raise your
9 right hand.

10

11 STEPHANIE RUCKER,

12 having been first duly sworn to tell the truth, testified
13 as follows:

14 THE CLERK: You may be seated.

15 THE BAILIFF: Speak clearly into the
16 microphone.

17 THE COURT: If you could, pull your mask down
18 below your mouth just while you're testifying so the
19 court reporter can hear you clearly and the other people
20 in the courtroom.

21 THE WITNESS: Okay.

22 THE COURT: If you could begin by stating and
23 spelling your name for the record.

24 THE WITNESS: Stephanie, S-t-e-p-h-a-n-i-e,
25 Rucker, R-u-c-k-e-r.

1 THE COURT: Mr. Vitto.

2 MR. VITTO: Thank you, Your Honor.

3

4 DIRECT EXAMINATION

5 BY MR. VITTO:

6 Q Stephanie, what is your occupation?

7 A I'm a dispatcher for the Nye County Sheriff's
8 Office.

9 Q And how long have you been so employed?

10 A About eight and a half years.

11 Q What are your job duties?

12 A We answer 9-1-1 administrative lines, we
13 create calls for service, and we dispatch law
14 enforcement, fire and ambulance.

15 Q Okay. Is that something you do every day all
16 day at work?

17 A Yes.

18 Q I want to direct your attention to April 4,
19 2020, just after three o'clock that morning. Do you
20 remember getting a 9-1-1 disconnected call?

21 A Yes, sir.

22 Q Do you remember the exact time that the call
23 came in?

24 A I believe it was a little after 3:00.

25 Q Okay. And what do you recall of that call?

1 A It was -- I could tell that there was two male
2 voices. One stated that they needed help; however, the
3 call was very staticky and then no one was answering me.
4 I do remember a lot of distortion and not being answered.

5 Q And what happened next?

6 A When the line disconnected we have protocols
7 where we -- every 9-1-1 call, GPS coordinates will show
8 up. We can use those. And then we also have a program
9 called Rapid SOS where we can input the number the call
10 came in from and try to pinpoint the location since we
11 were never given the location.

12 Q And what was the number -- do you happen to
13 remember the number of the call?

14 A I don't remember the number of it, but I have
15 it on my notes in my purse.

16 Q Is that part of the CAD?

17 A Yes, sir.

18 Q It came in -- so the number that called is
19 part of the CAD report?

20 A Yes, sir. It should be in there, the phone
21 number. I believe it started with a 760 area code.

22 MR. VITTO: Daniel, do you have it handy?

23 I'm sorry, Judge. No matter how you try to
24 get prepared, there's always something.

25 THE WITNESS: I have a copy with me in my

1 purse if I'm allowed to get it.

2 MR. VITTO: Counsel, do you mind if she
3 retrieves the CAD call? I just can't find it in my
4 discovery.

5 Okay. I'm looking at a CAD call.

6 MR. MARTINEZ: Kirk.

7 MR. VITTO: Yeah.

8 MR. MARTINEZ: I think it starts at 1:42.

9 MR. VITTO: 1:42?

10 MR. MARTINEZ: Yeah.

11 MR. VITTO: Thanks, man.

12 BY MR. VITTO:

13 Q And so on a copy of the CAD call that you
14 have, it has the incoming phone number?

15 A Yes, sir.

16 Q All right. And you have brought that with you
17 today?

18 A Yes, sir.

19 Q Did you bring it to work?

20 A Yes, sir. I went and printed it out prior to
21 coming over here.

22 MR. VITTO: Great.

23 Your Honor, with your permission, I'm going
24 to ask this witness to retrieve that. She has it with
25 her.

1 BY MR. VITTO:

2 Q And it's in your purse?

3 A Yes.

4 MR. VITTO: Do you mind, Judge?

5 THE COURT: I don't have a problem.

6 THE BAILIFF: I'll get it.

7 THE WITNESS: Okay. Thank you.

8 MR. VITTO: Thank you, Mr. Bailiff.

9 MR. MARTINEZ: Let us know if it's ticking.

10 THE WITNESS: It is not.

11 Thank you.

12 THE BAILIFF: You're welcome.

13 BY MR. VITTO:

14 Q Okay. You also brought the actual -- a disc
15 with the actual call on it; is that correct?

16 A Yes, sir.

17 MR. VITTO: All right. Let's go ahead and
18 mark both of those. Okay? All right. I think we
19 prearranged to have the disc marked as 4, and let's mark
20 the CAD as 4A.

21 MR. MARTINEZ: Judge, we would stipulate to
22 admission of State's 4A, the CAD call.

23 MR. VITTO: And 4 as well?

24 MR. MARTINEZ: 4 was previously stipulated to,
25 I believe.

1 MR. VITTO: Gotcha.

2 MR. MARTINEZ: If not, then we will do that.

3 THE COURT: So 4 is admitted, and 4A, the CAD
4 call, is admitted.

5 MR. MARTINEZ: Yes, Judge.

6

7 (State's Exhibit 4A
8 was received into evidence.)

9

10 BY MR. VITTO:

11 Q Now, Stephanie, let me show you State's
12 Exhibit 4A. And that's a document that reflects the
13 phone number that made the 9-1-1 call; is that correct?

14 A Yes, sir.

15 Q What phone number is that?

16 A (760)412-0024.

17 Q Got it. Okay. And now, let me show you
18 State's Exhibit 4. Do you recognize that?

19 A Yes.

20 Q How do you recognize it?

21 A I put my initials on the disc itself and the
22 case.

23 Q Okay. You actually retrieved that this
24 morning?

25 A Yes.

1 Q What is that?

2 A This is our recording of the original 9-1-1
3 call and the call-back attempts to try to call back the
4 number.

5 MR. VITTO: Okay. Judge, with the Court's
6 permission, they are admitted into evidence. I would
7 like to play that, give the Court the opportunity to hear
8 what it is that's been testified regarding the 9-1-1
9 call.

10 THE COURT: Okay.

11 MR. MARTINEZ: It's admitted, Judge. He can
12 publish it.

13 THE COURT: Okay. Do you know how to do it?

14 MR. ALLMON: I'll take care of it.

15 MR. VITTO: Thank you, sir.

16

17 (State's Exhibit 4 was played in open court).

18

19 BY MR. VITTO:

20 Q So -- and so what happens after that? What's
21 protocol?

22 A Basically any time a 9-1-1 comes in on a 9-1-1
23 line, we get coordinates. Sometimes, depending on the
24 carrier, they're very accurate coordinates, which are
25 phase two, and sometimes they're phase one, which are not

1 very accurate. In this instance I believe we had phase
2 two coordinates, and our Rapid SOS program pinged it over
3 the same location as our 9-1-1 call. So it gave us the
4 address of 835 South Linda.

5 Q Okay.

6 A We also tried to call back multiple times to
7 get someone to answer, but in this instance no one
8 answered the phone.

9 Q Did you call back?

10 A Yes, sir.

11 Q Nobody answered?

12 A No, sir.

13 Q So were you the one that dispatched law
14 enforcement to that --

15 A I believe so.

16 Q -- to that address, the address that --

17 A That we got from the coordinates on the Rapid
18 SOS program.

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

21 THE COURT: Cross-examination.

22 MR. MARTINEZ: Just briefly, Judge.

23

24

25 (No Omissions.)

CROSS-EXAMINATION

BY MR. MARTINEZ:

Q The Rapid SOS program --

A Yes, sir.

Q -- is that something you have to manually put coordinates into?

A No.

Q Tell me more about how that works.

A Okay. For that program, it's a program we recently started using. Basically we can input the phone number that called 9-1-1 into that program and it will give us coordinates through whatever system that they use. They're a program that I believe a lot of 9-1-1 centers are using now.

Q I understand. So it's something you had manually put the phone number in?

A Correct.

Q Did you receive training on that?

A We did get training on that recently. They showed us how to log in and basically what to do. And there might have been a policy, I believe, that we signed on to, if I remember correctly.

Q I assume that training was done prior to April 4, 2020?

A I could not answer that question because I'm

1 not certain.

2 Q Now, you said when there's a 9-1-1 ping for a
3 location -- well, when someone calls?

4 A Yeah. Any time a 9-1-1 call comes on we have
5 a screen that shows up that gives us the number, the
6 coordinates, whether it's phase one or phase two, and
7 meters and accuracy.

8 Q So that's something that happens
9 automatically?

10 A Automatically when a call goes into 9-1-1.

11 MR. MARTINEZ: Nothing further, Judge.

12 THE COURT: This witness can be excused, then?

13 MR. VITTO: Your Honor -- yes, Your Honor.

14 THE COURT: Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Who is your next witness?

17 MR. VITTO: Xavier Gideon. And the witness
18 after that will be Wes Fancher. He will be my longest
19 witness by far. I have a total of three witnesses
20 scheduled after Xavier, so I would request that if it
21 please the Court, that -- so that I can let everybody
22 who's been waiting all morning go, if we could call
23 Xavier, break for lunch, and pick up with the last three.
24 Is that okay? We don't have to. We can forge on. I
25 don't have any problem with that. Everybody is here as

1 far as I know.

2 THE COURT: Okay. Let's see how this goes and
3 we'll address that.

4 MR. VITTO: Thanks, Judge.

5 THE COURT: Okay.

6 THE BAILIFF: Face the clerk and raise your
7 right hand.

8

9 XAVIER GIDEON,

10 having been first duly sworn to tell the truth, testified
11 as follows:

12 THE CLERK: You may be seated.

13 THE BAILIFF: Speak clearly in the microphone.

14 MR. MARTINEZ: I'm sorry, Your Honor. Before
15 we get started, can you help us? Can we just slide the
16 cart?

17 THE BAILIFF: Are we done with it?

18 THE COURT: You don't want to have to dance
19 around it. Is that what the deal is?

20 MR. MARTINEZ: I can jump on top of it.

21 THE COURT: I don't want to see that.

22 And that's been admitted?

23 MR. VITTO: Yes, by stipulation.

24 THE COURT: All right. First of all,

25 everybody else that has been testifying, we have had them

1 pull the mask down below their mouth so the court
2 reporter can hear them clearly and understand their
3 testimony. Also, if you could begin by stating and
4 spelling your name for the record.

5 THE WITNESS: Xavier Gideon. X-a-v-i-e-r.
6 Gideon is spelled G-i-d-e-o-n.

7
8 DIRECT EXAMINATION

9 BY MR. VITTO:

10 Q What is your occupation, sir?

11 A Patrol deputy.

12 Q How long have you been so employed?

13 A Two years.

14 Q Let me direct your attention to April 4, 2020,
15 at a location at 835 South Linda Street. Did you respond
16 to that location?

17 A Yes.

18 Q Do you recall what time you responded to that
19 location?

20 A I believe 0301 hours.

21 Q All right. 0301?

22 A Yes.

23 Q And do you recall for what purpose you were
24 dispatched to that location?

25 A It was a 9-1-1 cell disconnect.

1 Q What did you observe upon arrival?

2 A I observed two -- what appeared maybe like
3 trailer-like -- two trailer-like residences, and I
4 remember seeing one of them in the back. It was trashed.
5 That was about it.

6 Q What did you do upon arrival?

7 A I made contact with the male in the first
8 residence, who -- he told me something to the extent of,
9 "It's not me. It's the people behind me." And that's
10 when I went to make contact with the trailer behind the
11 original residence that appeared trashed.

12 Q What duties were you tasked with on scene?

13 A To make contact with whoever was inside that
14 trailer, investigate why they called 9-1-1.

15 Q All right. Did you have any interaction with
16 a person identified as Marco Torres at that time and
17 location?

18 A I did.

19 Q Do you see him in the courtroom today?

20 A I do.

21 Q Can you describe an article of clothing he's
22 wearing?

23 A He's wearing an orange striped jumpsuit.

24 MR. VITTO: May the record reflect the
25 in-court identification of the defendant?

1 THE COURT: The record will reflect the
2 identification of the defendant.

3 MR. MARTINEZ: See, it's orange.

4 THE COURT: Well, it's faded orange.

5 MR. VITTO: It's faded.

6 BY MR. VITTO:

7 Q Now, how did the defendant initially identify
8 himself to law enforcement?

9 A He identified himself as Bozo the Clown.

10 Q And at what point did that identification take
11 place?

12 A About maybe 45 minutes into attempting to make
13 contact at the front door is when the male opened a
14 window and began speaking to law enforcement.

15 Q Okay. So you're dispatched at 0301, and about
16 45 -- it takes about 45 minutes before any communication
17 is had with the people inside the trailer?

18 A Correct.

19 Q Or with anybody inside the trailer?

20 A Correct.

21 Q All right. And his initial communication was,
22 when asked to identify himself, he identified himself as
23 Bozo the Clown?

24 A Yes.

25 Q Did you have opportunity to observe the body

1 of the decedent?

2 A I did, once inside.

3 Q Well, let's talk about ingress. How was
4 ingress made into the residence?

5 A Via locksmith.

6 Q Okay. Can you tell me what happened?

7 A The locksmith opened the door, and then a
8 male -- we were met by the same male who was at the
9 window and continued to refuse to let us inside, telling
10 us to leave still.

11 Q And at that point he was merely Mr. Clown?

12 A Correct.

13 Q You didn't know his name?

14 A Correct.

15 Q And that's the same person -- that's the
16 defendant in the courtroom today?

17 A Yes.

18 Q All right. And what happened when contact was
19 made initially with the defendant? Can you describe
20 that?

21 A He was argumentative, and I believe began to
22 fight with deputies, the first two deputies who made
23 entry into that residence.

24 Q Now, when you say he began to fight, do you
25 mean there was a physical confrontation or there were

1 blows being exchanged?

2 A It was a verbal confrontation.

3 Q A verbal confrontation?

4 A Correct.

5 Q All right. And you did ultimately -- you were
6 able to make contact with the decedent; is that correct?

7 A Correct.

8 Q Let me show you State's Exhibit 2. Showing
9 State's Exhibit 2. Having made contact with the
10 decedent, is that what you recall?

11 A Yes.

12 Q All right. Is that how you initially observed
13 him?

14 A Yes.

15 Q Now, what action, if any, did you take as it
16 pertains to the person depicted in that photograph?

17 A I attempted to check the welfare of him and to
18 check his welfare.

19 Q All right. What were you able to determine?

20 A That he was deceased.

21 Q All right. How would you describe agonal
22 breathing?

23 A I would describe it as someone who's gasping
24 for air or having difficulty.

25 MR. MARTINEZ: I would object to foundation

1 here, Judge.

2 MR. VITTO: Sure. We have time.

3 THE COURT: I'll sustain that.

4 MR. VITTO: That's fine.

5 BY MR. VITTO:

6 Q Do you understand what the phrase agonal
7 breathing means?

8 A Yes.

9 Q And how did you come to understand what agonal
10 breathing means?

11 A Through my training and experiences.

12 Q Perfect. So you have had training and
13 experience in regard to what agonal breathing is?

14 A Yes.

15 Q So you can recognize it when you hear it?

16 A Yes.

17 Q What is agonal breathing?

18 A Someone who has difficulty breathing.

19 Q And were you able to hear any agonal breathing
20 as it pertained to the person you see in State's Exhibit
21 2?

22 A Yes.

23 Q Can you describe what you heard?

24 A I can describe it as gasps for -- trying to
25 breathe, but not able to, maybe like as if air is being

1 released from the body.

2 Q As if air is being released from the body?

3 A Correct.

4 Q All right. How long did it happen?

5 A Approximately a minute.

6 Q All right. A full 60 seconds? Now, if we sat
7 here for 60 seconds, it's going to seem like a long time.

8 A Correct.

9 Q So do you believe that you heard that for a
10 full 60 seconds?

11 A Approximately.

12 Q And then it stopped?

13 A Yes.

14 Q Now, prior to that had you undertaken any
15 method of determining whether he was deceased?

16 A Correct.

17 Q What had you done?

18 A I had checked for a pulse, and he did not have
19 one. And I took my flashlight and I shined it in his
20 eye, and I didn't see any reaction to any pupil.

21 Q So his eye was -- the pupil was fixed?

22 A Correct.

23 Q Was it dilated?

24 A It was not dilated.

25 Q Okay. So it was pinpoint?

1 A Correct.

2 Q Okay. It didn't react to the light?

3 A It did not.

4 Q And he had no pulse?

5 A Correct.

6 Q Did you take any action at that point?

7 A No.

8 Q At some point was he officially pronounced
9 deceased at the scene?

10 A Yes.

11 Q And who did that?

12 A I originally did it; however, I believe
13 dispatch typed it in incorrectly. But I believe they did
14 it at 4:36 a.m.

15 Q And you were the person that did that?

16 A Correct.

17 Q At 0436?

18 A I'm the one who called it on my radio,
19 correct.

20 Q All right. So you're dispatched at 0301.
21 It's not until 45 minutes later that you have any
22 contact, verbal communication with anybody in the
23 trailer; is that correct?

24 A Correct.

25 Q So that's 3:46. And then within 45 minutes of

1 that -- 15 minutes of that you had pronounced the
2 decedent dead?

3 A Correct.

4 Q All right. And is that the extent of your
5 involvement with this matter?

6 A Yes.

7 MR. VITTO: I have no more questions of this
8 witness at this time, Your Honor.

9 THE COURT: Mr. Martinez.

10 MR. MARTINEZ: Thank you, Judge.

11

12 CROSS-EXAMINATION

13 BY MR. MARTINEZ:

14 Q Good morning again, Deputy.

15 A Hello.

16 Q Deputy, when you -- I want to start here.

17 When you made entrance into the house, were you able to
18 walk throughout the entire house?

19 A Yes.

20 Q Okay. So do you recall the layout of the
21 entire house?

22 A Somewhat of it.

23 MR. MARTINEZ: Okay. If I may approach the
24 witness, Judge, I'm going to have him draw me the layout
25 of the house. This way I can get a better understanding

1 about where he was positioned as well as other deputies
2 as well when they arrived.

3 MR. VITTO: I think that would be special.
4 You've got markers and everything, man.

5 BY MR. MARTINEZ:

6 Q Deputy, would you agree that if you were
7 looking at the house from a bird's-eye view, it would be
8 a rectangle?

9 A Yes.

10 Q All right. I will draw a rectangle. It's not
11 going to be a perfect rectangle, but it will be a
12 rectangle. Do you agree that I have drawn a rectangle?

13 A Yes.

14 Q All right. We're going to have our arrows
15 here. At the top of the page it's going to be north.

16 A Okay.

17 Q Okay? So if you could fill in that rectangle
18 with the layout of the rest of the house for me.

19 MR. VITTO: Counsel, do you mind if I -- Your
20 Honor, do you mind? Come on up, Ronni. We'll have a
21 party. Do you mind if I stand behind your right
22 shoulder?

23 THE WITNESS: No.

24 BY MR. MARTINEZ:

25 Q Okay. Now, when you made entrance, was it

1 through -- you've marked the front door and a back patio
2 here. When you -- is there a door by the back patio?

3 A Yes.

4 Q When you made entrance, was it through the
5 front door?

6 A No. It was to the back.

7 Q It was through the back patio?

8 A Correct.

9 Q Okay. You have written down two rooms here?

10 A Correct.

11 Q I'm going to give you a different color
12 marker, a red marker. Can you mark an "X" the room where
13 you found the decedent?

14 A (Indicating).

15 Q So the room furthest from where you made
16 entry?

17 A Correct.

18 Q When you first made contact, verbal contact
19 with the defendant, with Mr. Torres, he poked his head
20 out of a window; right?

21 A Correct.

22 Q Once you went inside, did that appear to be
23 the window of a bedroom?

24 A Could have been the bedroom or the bathroom.

25 Q Okay. So the bedroom or the bathroom, but not

1 the room where the decedent was found?

2 A Correct.

3 Q When you first arrived on scene, where did you
4 position yourself? Take the red marker and write your
5 initials on it.

6 A (Indicating).

7 Q Now, were you the first deputy to arrive on
8 scene?

9 A I was one of two, correct.

10 Q Who was the other?

11 A Deputy Williams.

12 Q Where did Deputy Williams --

13 A Where did he --

14 Q Where did he position himself? Do you
15 remember?

16 A (Indicating).

17 Q Okay. You wrote his initials where he
18 positioned himself?

19 A Yes.

20 Q That would be the northeast corner of the
21 house?

22 A Correct.

23 Q And you positioned yourself on the southeast
24 corner of the house?

25 A Correct.

1 Q When you arrived did you hear any sounds at
2 all coming from the inside of the house?

3 A Yes.

4 Q What did you hear?

5 A Sounds of someone walking.

6 Q Okay. So not a big commotion?

7 A No.

8 Q You didn't hear any argument?

9 A No.

10 Q Didn't hear anything being smashed or broken?

11 A No.

12 Q And you say walking. Was it clearly walking
13 and not someone running?

14 A Yeah. It was not someone running.

15 MR. MARTINEZ: Judge, at this time I would ask
16 to approach the clerk and have her mark this and move to
17 admit it as Defense Exhibit B.

18 MR. VITTO: Thumbs up, man.

19 THE COURT: That's fine.

20

21 (Defense Exhibit B
22 was received into evidence.)

23

24 BY MR. MARTINEZ:

25 Q Now, Deputy, you said that when you first

1 arrived you heard someone walking inside the house?

2 A Yes.

3 Q Were you able to see in through any of the
4 windows?

5 A No.

6 Q So you don't know who was walking inside the
7 house?

8 A Correct.

9 Q How long did that walking last for?

10 A Maybe two seconds. It was just a few noises.

11 Q And you arrived at the house about 3:15 a.m.?

12 A I believe so.

13 Q Okay. And so you heard that as soon as you
14 arrived?

15 A Correct.

16 Q Okay. And then once you heard the walking
17 stop, you didn't hear any sounds coming from the house at
18 all until the defendant made verbal contact with you;
19 right?

20 A Correct.

21 Q And that wasn't until about 3:46 a.m.?

22 A Approximately.

23 Q Okay. So about a half an hour later?

24 A Approximately, correct.

25 Q All right. Now, did you wait until after --

1 well, let me ask -- back up.

2 A locksmith was called?

3 A Correct.

4 Q You testified to that. Were you the one who
5 called the locksmith?

6 A No.

7 Q Do you know what company the locksmith worked
8 for?

9 A No.

10 Q Do you recall the name of the locksmith?

11 A No.

12 Q Did you know if the locksmith was called
13 before or after you made verbal contact with Mr. Torres?

14 A I believe it was after.

15 Q Okay. You made verbal contact with
16 Mr. Torres?

17 A Not personally, no.

18 Q The sheriff's office made contact with
19 Mr. Torres?

20 A Yes.

21 Q Actually, while we're on that -- because I
22 actually think it was an oversight by the State. You are
23 employed by the Nye County Sheriff's Office; right?

24 A Yes.

25 Q Okay. Mr. Torres identified himself as Bozo

1 the Clown?

2 A Yes.

3 Q He also told you that he didn't need any help?

4 A Correct.

5 Q He told you everybody was fine; right?

6 A Correct.

7 Q He asked you guys to leave?

8 A Correct.

9 Q Now, you were dispatched for a 9-1-1
10 disconnect; right?

11 A Correct.

12 Q And when you arrived, it essentially became a
13 welfare check; right?

14 A Correct.

15 Q And do you have a certain policy or procedure
16 that you're supposed to follow when it comes to welfare
17 checks?

18 A Yes.

19 Q What's that policy or procedure?

20 A To attempt to ascertain the status of the
21 person we're doing the welfare check on, make sure they
22 are okay.

23 Q Okay. And now -- you said you attempted to
24 ascertain --

25 A Correct.

1 Q -- the person --

2 A Yes.

3 Q -- that the welfare check is on.

4 In a situation like this, you just know it's a
5 residence; right?

6 A Correct.

7 Q Had you ever been to that residence before?

8 A No.

9 Q Ever -- ultimately there were two people
10 involved; right?

11 A Correct.

12 Q Ever met either of them before?

13 A No.

14 Q Okay. So when you first showed up, you didn't
15 know who lived in the house; right?

16 A Correct.

17 Q You didn't know how many people?

18 A Correct.

19 Q Okay. You didn't have the name of an
20 individual that you were there for a welfare check on;
21 right?

22 A Correct.

23 Q So when the welfare check is on a residence
24 itself, what does policy dictate you're supposed to do?

25 A To check the occupants inside of the

1 residence.

2 Q Okay. You did make verbal contact with one
3 occupant; right?

4 A Correct.

5 Q Now, at that point had you been notified that
6 there was more than one occupant?

7 A By the male in the first residence, yes.

8 Q Okay. Did you take down the name of the male
9 in the first residence at all?

10 A I did.

11 Q You did?

12 A Yes.

13 Q Do you recall it off the top of your head?

14 A I do not.

15 Q Now, with your welfare check policy, are you
16 trained that at a certain point you're supposed to make
17 forcible entry into a house?

18 A Yes. When there is exigent circumstances,
19 yes.

20 Q Okay. You characterized the house as being
21 trashed. Can you explain that a little bit more for me.
22 What did you mean by that?

23 A I remember seeing one of the patios. It
24 looked like the wood was broken. Just a bunch of -- just
25 trash around the property, cans, old things that -- that

1 don't seem to be in use, just there.

2 Q All right. Do you remember what time the
3 locksmith arrived?

4 A No.

5 Q About how long did it take for the locksmith
6 to arrive after he was called?

7 A Approximately 30 minutes.

8 Q Okay. So we're talking about -- we're about
9 4:15 a.m. at this point; right?

10 A About.

11 Q Okay. The locksmith opened the door. Were
12 you the first deputy inside?

13 A No.

14 Q Who was the first deputy to go inside, or
15 deputies?

16 A I believe it was going to be Deputy Stone and
17 Deputy Waitland.

18 Q Okay. So was Mr. Torres immediately detained?

19 A I believe so, yes.

20 Q But you didn't do the detaining; right?

21 A I did not.

22 Q So do you know if he was read his *Miranda*
23 rights immediately?

24 A I do not.

25 Q After those first two deputies, were you the

1 next one in the stack?

2 A I was one of the next ones, correct.

3 Q And where did you go first when you went in
4 the house?

5 A I went down a hallway of the residence.

6 Q Eventually you came to the bedroom --

7 A Yes.

8 Q -- at the end of a hallway?

9 A Yes.

10 Q And that's where the decedent was?

11 A Yes.

12 Q Did you identify the decedent?

13 A I did not.

14 Q Now, when you first saw the decedent, he was
15 on the bed, on the mattress; right?

16 A Yes.

17 Q Is that when you saw -- I'm sorry. What was
18 the word that you used to describe his breathing that the
19 State was asking you about?

20 A Agonal.

21 Q Agonal. Did you hear the agonal breathing
22 while he was on the mattress?

23 A No.

24 Q When did you hear the agonal -- well, let me
25 back up. The sheriff's office moved him from the

1 mattress to the floor; right?

2 A Yes.

3 Q And performed some attempted life-saving
4 procedures; right?

5 A Correct.

6 Q Did CPR?

7 A Correct.

8 Q Mouth to mouth, or attempted to; right?

9 A Correct.

10 Q When did you hear the agonal breathing?

11 A When he was moved from the mattress to the
12 floor.

13 Q So you didn't hear it while he was on the
14 mattress?

15 A I did not.

16 Q Did you hear it once he was on the floor?

17 A Yes.

18 Q Okay. You said it lasted for about a minute?

19 A About a minute.

20 Q Was that while the life-saving measures were
21 being performed?

22 A Correct.

23 Q And you said you're the one who called
24 dispatch to pronounce the victim deceased; right?

25 A Yes.

1 Q And that was at about -- a little bit after
2 4:30 a.m.?

3 A Approximately.

4 Q How much longer did you stay at the house once
5 that happened?

6 A I want to say at most an hour.

7 Q Now, at some point Mr. Torres was arrested;
8 right?

9 A Yes.

10 Q He was taken to the detention center?

11 A Correct.

12 Q Do you know when that was that he was
13 transported to the detention center?

14 A No.

15 Q Could you give me an estimate as to when that
16 happened? If you're not able to, I understand. I'm sure
17 you were busy doing other things, because somebody else
18 transported him to the detention center; right?

19 A I know I clocked off at 7:00 a.m., and I
20 believe they were still there. I'm not sure.

21 Q Including Mr. Torres?

22 A I believe so.

23 Q Okay. Do you know -- did they have Mr. Torres
24 seated somewhere while he was still at the house?

25 A I don't know.

1 Q Did they give him anything to eat?

2 A I don't know.

3 Q Anything to drink?

4 A I don't know.

5 Q Do you know if they let him sleep, take a nap?

6 A I don't know.

7 Q Now, as part of your training with the Nye
8 County Sheriff's Office, you do -- you work in the
9 detention center; right?

10 A I have worked, correct.

11 Q Are you familiar with the booking procedure
12 there?

13 A No.

14 Q You're not?

15 A Not too much.

16 Q In what capacity did you work in the detention
17 center?

18 A As a jail deputy.

19 Q Okay.

20 A However, I know they have changed the way they
21 do things.

22 Q I understand. Did you have any personal
23 contact with Mr. Torres?

24 A I don't think so.

25 Q Okay. So you never spoke to him?

1 A I don't think so.

2 Q Never questioned him at all?

3 A I don't think so.

4 Q Now, while you were waiting outside, I know
5 you called the locksmith, but before the locksmith, no
6 one ever called a judge; right?

7 A Correct. I don't believe so.

8 Q No one sought a search warrant for the house;
9 right?

10 A I don't believe so.

11 MR. MARTINEZ: Pass the witness, Judge.

12 THE COURT: Redirect by the State.

13 MR. VITTO: A little bit, Judge.

14

15 REDIRECT EXAMINATION

16 BY MR. VITTO:

17 Q So I may have made a mistake, Deputy, at least
18 insofar as my understanding. So you were dispatched at
19 0301?

20 A I believe so.

21 Q What time do you think you arrived?

22 A Just -- I know just shortly after. I was in
23 the area already.

24 Q So it didn't take long?

25 A No.

1 Q Not more than five minutes, not more than 10
2 minutes?

3 A I would say not more than five.

4 Q All right. And we know that the defendant at
5 the time began to communicate with you verbally about 45
6 minutes later on.

7 A Approximately.

8 Q And the locksmith was after that?

9 A It was maybe during the same time. When --
10 maybe when the locksmith was on the way there is when we
11 made contact with him. I'm not sure exactly when and who
12 called the locksmith.

13 Q I understand. Now, did you hear the defendant
14 identify himself by name?

15 A As Bozo the Clown.

16 Q No, as Marco Antonio Torres?

17 A No.

18 Q Okay. But -- and defense counsel asked you
19 this on cross-examination. What were some of the other
20 things that the defendant said from the residence?

21 A For us to go away, that everyone was okay
22 inside. And that's when we knew that someone else was in
23 the residence.

24 Q Okay. So until he said, "Everybody here is
25 fine," you didn't know there was somebody else inside the

1 residence?

2 A Correct.

3 Q And just so I understand, the agonal breathing
4 that you described, that was the air inside his body
5 leaving his body while he was being moved to the floor?

6 A I believe so, correct.

7 Q That's what you recall?

8 A Yes.

9 Q All right. And then while CPR was being
10 performed?

11 A Correct.

12 MR. VITTO: I have no more questions of this
13 witness at this time, Judge.

14 THE COURT: Mr. Martinez?

15 MR. MARTINEZ: I just want to be crystal
16 clear.

17

18 REXCROSS-EXAMINATION

19 BY MR. MARTINEZ:

20 Q So you're not sure whether the locksmith was
21 called first or you made verbal contact with Mr. Torres
22 first; right?

23 A Correct. I believe it was around the same
24 time, possibly.

25 Q Okay. But the locksmith definitely arrived

1 after you made verbal contact with Mr. Torres?

2 A Oh, yes. Oh, yes, definitely. Definitely,
3 yes.

4 MR. MARTINEZ: Okay. That's all. Nothing
5 further, Judge. Just wanted to make that point.

6 MR. VITTO: That's fine.

7 THE COURT: I have a question. You asked him
8 about the agonal breathing, and he went into quite a bit
9 of detail as to what his understanding was. And then you
10 asked him how he knew about it, and he said training and
11 experience, but what training and experience?

12 MR. VITTO: Do you want me to ask him?

13 THE COURT: If you want a foundation for how
14 he can recognize agonal breathing and how he learned
15 about it and how he knows what it is and how he can
16 testify to it.

17 MR. VITTO: I guess I'm not that worked up
18 about it, but I mean --

19

20 REDIRECT EXAMINATION

21 BY MR. VITTO:

22 Q So you had training with understanding what
23 that is?

24 A Correct.

25 Q And where was that training?

1 A It was in the academy as well as my
2 experiences -- I have been on calls where I've been told
3 by senior deputies this is -- that's what agonal
4 breathing is.

5 Q Okay. So what did your training teach you
6 about agonal breathing?

7 A It taught me -- basically someone who's
8 gasping -- having difficulty breathing, gasping for air.

9 Q Difficulty breathing or checking out?

10 A From what I understand, difficulty breathing.

11 Q All right. And what about your experience in
12 the field?

13 A I have been on, you know, several house calls
14 for service for someone having difficulty breathing, and
15 I was advised that is what agonal breathing is.

16 Q Okay. Do you know the definition of agonal
17 breathing?

18 A I believe I know a little bit of it.

19 Q Okay. What would be your working definition
20 of agonal breathing?

21 A Someone who's having difficulty breathing.

22 MR. VITTO: Okay. And the reason we bring it
23 up is it's included in one of the police reports that you
24 had made that point.

25 I have nothing else, Judge.

1 THE COURT: Okay. Anything else at this time?

2 MR. MARTINEZ: No, Judge.

3 THE COURT: Okay. So he can be excused?

4 MR. VITTO: Yes, Judge.

5 THE COURT: Thank you.

6 THE WITNESS: Thank you.

7 MR. VITTO: Can I have the Court's indulgence
8 just a moment, please?

9 THE COURT: Sure.

10 MR. VITTO: I have three witnesses left,
11 Judge. I'm going to ask you to take judicial notice of
12 the definition of agonal breathing. Agonal breathing is
13 defined as the last reflexes of the dying brain. They
14 are viewed as a sign of death and can happen when the
15 heart has stopped beating, which is consistent with what
16 the deputy testified. He checked for a pulse; he found
17 none. He saw no reflexes when he shined the light in
18 Mr. Piper's eye.

19 It's readily available. Anybody can look it
20 up on the internet. It's consistent with what the
21 deputy's testified.

22 MR. MARTINEZ: I do not believe a medical
23 definition is something the Court should be taking
24 judicial -- is something the Court has the authority to
25 take judicial notice of, Judge. I would oppose the Court

1 doing that at this time. That's something that an expert
2 will certainly be able to testify to. I know the State's
3 going to introduce the coroner's report, and I'll be
4 honest. I'm not making cause of death an issue, at least
5 not today.

6 But again, I do not believe that definition --
7 especially since we're bringing it up on the internet, I
8 do not know the website the State pulled up there. I'm
9 sure the State is going to tell us, but my skepticism
10 about the internet will always be there, not coming from
11 someone -- any sort of medical publication that we do
12 have available to say what agonal breathing is. So for
13 all those reasons, I would oppose the Court taking
14 judicial notice of that.

15 MR. VITTO: Under NRS 47.130, matters of fact,
16 "Facts are subject to judicial notice. The facts subject
17 to judicial notice are facts in issue or facts from which
18 they may be inferred. A judicially noticed fact must be,
19 A, generally known within the territorial jurisdiction of
20 the trial court, or capable of accurate and ready
21 determination by resort to sources whose accuracy cannot
22 reasonably be questioned so that the fact is not subject
23 to reasonable dispute."

24 I don't think that the definition of agonal
25 breathing is a fact that is subject to reasonable

1 dispute, what the definition of it is. Whether what
2 happened was agonal breathing is different than the
3 definition of agonal breathing, which is what I'm asking
4 this Court to take judicial notice of.

5 MR. MARTINEZ: There are multiple versions of
6 dictionaries, regular dictionaries. I know there are
7 multiple versions of legal dictionaries and medical
8 dictionaries that may have different definitions for
9 terms and procedures and illnesses and everything else.
10 Again, I don't know the definition of agonal breathing.
11 It doesn't sound like the Court does. I don't believe
12 the State did off the top of their head. They had to
13 look it up.

14 Again, I don't know the source he looked it up
15 from to say this is readily available to everybody, that
16 the accuracy of it cannot be questioned. Again, if it is
17 coming simply off the internet, I'm questioning it. Had
18 the State pulled out a medical dictionary and said, Based
19 on this dictionary, this is the definition of it, I would
20 be in a different position, but that's not where we are,
21 Judge.

22 MR. VITTO: The medical dictionary defines --
23 that anybody can access online -- "Agonal breathing, as
24 relating to the process of dying or the moment of death,
25 so called because of the notion that dying is a painful

1 process or a struggle with death." And that is Medical-
2 Dictionary.freedictionary.com.

3 THE COURT: Okay. A couple of things. I'm
4 not going to take judicial notice of agonal breathing
5 because until today, I've never heard of it, number one.

6 Number two, in all the years I worked as a
7 deputy sheriff and all the training and experience that I
8 had in attending academy classes, teaching academy
9 classes, going to coroner's inquests and investigations,
10 being involved in coroner's autopsies and everything
11 else, I've never heard of agonal breathing until today.

12 And if it's a medical terminology that is used
13 to describe something, when you had him describe his
14 training and experience here on the stand he never once
15 listed any type of training that he received in any
16 medical field that would give him any reason to be able
17 to articulate what agonal breathing is.

18 MR. VITTO: That's fine, Judge.

19 THE COURT: Okay.

20 MR. VITTO: I have three witnesses left. Did
21 you want to take a break?

22 THE COURT: I would just as soon go forward if
23 everybody is all right with that.

24 MR. MARTINEZ: Court's pleasure.

25 MR. VITTO: Yeah.

1 MR. MARTINEZ: I do know we probably have
2 still a few hours left of testimony, would be my guess.

3 THE COURT: Unless anybody has any objection,
4 if anybody needs to do anything, go to the restroom,
5 anything like that, then I would say we could take a
6 short recess for something like that, but I don't think I
7 want to stop for lunch.

8 MR. VITTO: That's fine.

9 THE COURT: I don't want to take the chance on
10 this dragging on to the point where we don't get all the
11 testimony in and we have to pick it up another day.

12 MR. VITTO: That's fair, Judge.

13 MR. MARTINEZ: Understood, Judge.

14 THE COURT: Okay.

15 MR. VITTO: 12:20? 12:15?

16 THE COURT: Do you want to take a 15-minute
17 break?

18 MR. MARTINEZ: That's fine. Sounds good,
19 Judge.

20 MR. VITTO: Thanks, Judge.

21 THE BAILIFF: All rise.

22

23 (Recess taken from
24 12:08 p.m. to 12:24 p.m.)

25 (No Omissions.)

1 MR. VITTO: Judge, we have no objection to
2 Deputy Gideon being released so he didn't have to hang
3 around.

4 THE COURT: He's your witness.

5 MR. VITTO: I just didn't know if you said
6 stick around.

7 THE COURT: The only one I actually told to
8 stick around was the brother you said you wanted to
9 recall, so --

10 MR. VITTO: Yes. Perfect. Just double
11 checking. Okay. All right. We're ready to go with
12 Mr. Fancher.

13 THE BAILIFF: Wes isn't back yet.

14 MR. VITTO: Oh, of course. Well, we can do --
15 Christopher's here. He'll be brief.

16 THE COURT: Call whoever you want to call.
17 This is your show.

18 MR. VITTO: Let's recall Mr. Piper to the
19 stand.

20 THE COURT: Mr. Piper, you can have a seat.
21 Let me remind you that you're still under oath --

22 THE WITNESS: Okay.

23 THE COURT: -- to tell the truth, so --

24 THE WITNESS: Let me turn my phone off.
25 Sorry.

1 THE COURT: But I guess the district attorney
2 has some more questions he wanted to ask you regarding
3 this matter.

4 MR. VITTO: A couple questions, yeah. Your
5 Honor, did you remind the witness that he was still under
6 oath?

7 THE COURT: Yes, sir.

8 MR. VITTO: I'm sorry. Sorry about that.

9

10 CHRISTOPHER PIPER,

11 having been previously duly sworn to tell the truth,
12 continued to testify as follows:

13 DIRECT EXAMINATION

14 BY MR. VITTO:

15 Q Okay. Mr. Piper, you're familiar with
16 Dennis La Due; is that correct?

17 A Yes.

18 Q So I'm just asking for your best recollection.
19 Do you happen to remember Dennis asking you any questions
20 about whether this was Jon's phone number or something
21 about that?

22 A Yes.

23 Q Do you have a recollection of that?

24 A Yeah. It's not entirely clear when, but yeah.

25 Q All right. Now, we have in evidence the

1 number that called 9-1-1. Can you tell us your brother's
2 phone number?

3 A (760) 412-0024.

4 Q Okay.

5 A And I pay for it. I paid for both that number
6 and this one.

7 Q I understand.

8 A It no longer exists anymore. I canceled it,
9 but --

10 Q Oh, that's interesting. That could be
11 helpful, actually. So who is your carrier?

12 A T-Mobile.

13 Q That's right. You had told us that earlier.
14 So your brother's phone number -- any records associated
15 with your brother's phone are going to be on T-Mobile and
16 under your name?

17 A Yes.

18 Q Perfect. And one last thing I wanted to show
19 you. I hesitated earlier, but I want to show it to you
20 now. And it's State's proposed Exhibit 19. Do you
21 recognize the person depicted there?

22 A Yes.

23 Q Who is that?

24 A My brother.

25 Q All right. Jonathan A. Piper. And what was

1 the middle initial A? What did that stand for?

2 A Andrew.

3 MR. VITTO: All right. May I have the Court's
4 indulgence just a moment, Your Honor?

5 THE COURT: Sure.

6

7 (Off-the-record discussion.)

8

9 MR. VITTO: Judge, I have no more questions
10 of this witness at this time. I know he wants to stick
11 around until it's over, and we may get into something
12 later. We'll see how the testimony goes with
13 Mr. Fancher.

14 THE COURT: All right. Mr. Martinez,
15 cross-examination?

16 MR. MARTINEZ: No, Judge. I don't have any
17 additional questions.

18 THE COURT: All right. So this witness can be
19 excused to remain outside in the hallway?

20 MR. VITTO: Yes.

21 THE COURT: All right.

22 MR. VITTO: Thanks, Judge.

23 THE COURT: Thank you.

24 THE WITNESS: May I get lunch, or I have to
25 stay around?

1 MR. VITTO: He has an easy hour that --

2 THE COURT: You could probably go and get
3 lunch if you want to do that. We're not going to stop
4 for lunch, but if you want to go get something to eat,
5 you're more than welcome to.

6 THE WITNESS: Okay. Thank you.

7 MR. VITTO: Thank you, Mr. Piper. Wes is
8 next.

9 Your Honor, can you take judicial notice of
10 the fact that the phone number that our last witness gave
11 as the number for his brother is the exact same phone
12 number that is listed as the number calling 9-1-1 on the
13 CAD call, which is State's Exhibit 4A?

14 MR. MARTINEZ: Did he just ask the Court take
15 judicial notice of what's in testimony?

16 MR. VITTO: Yeah. Well, of the fact that
17 they're the same, the fact that they're the same number.
18 It's in evidence.

19 MR. MARTINEZ: Okay.

20 THE COURT: I can recognize that he made the
21 statement that that phone number was the same phone
22 number that was on the CAD.

23 MR. VITTO: Hey, man. Just pointing it out.

24

25 (No Omissions.)

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WESLEY FANCHER,

having been first duly sworn to tell the truth, testified
as follows:

THE COURT: All right. Mr. Fancher, if you
wouldn't mind pulling your mask down below your mouth so
that the court reporter can hear you clearly.

THE WITNESS: Absolutely.

THE COURT: And then if you could please state
and spell your name for the record.

THE WITNESS: My name is Wesley Fancher.
That's W-e-s-l-e-y. Fancher is F-a-n-c-h-e-r.

THE COURT: Mr. Vitto.

MR. VITTO: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. VITTO:

Q What's your occupation, sir?

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

Q And how long have you been so employed?

A Ten years.

Q Let me direct your attention -- ten years as a
detective?

A Oh, I'm sorry. Five years as a detective.

Q Okay.

1 THE COURT: You said, "How long have you been
2 employed?"

3 MR. VITTO: Yes.

4 BY MR. VITTO:

5 Q So it's ten years total, five years as a
6 detective?

7 A Yes.

8 Q Gotcha. Now, I want to direct your attention
9 to April 4, 2020, 835 South Linda Street at a trailer or
10 a residence with the numbers 103 on it. Did you respond
11 to that location at all that day?

12 A I did.

13 Q What time?

14 A About 0600.

15 Q And is that location in Pahrump Township, Nye
16 County, Nevada?

17 A It is.

18 Q For what purpose did you respond to that
19 location?

20 A For a homicide investigation.

21 Q All right. What did you observe upon arrival?

22 A When I had arrived I observed patrol deputies
23 there. I observed the trailer 103 had broken -- there
24 was like a wooden porch that was broke. There was an
25 electric fan that was out in the dirt in front. There

1 was a turned-over chair and crime scene tape.

2 Q All right. And at some point you made contact
3 with the decedent?

4 A Yes, sir.

5 Q All right. So describing the overall scene
6 that you observed, did you make any -- did it make any
7 impression upon your mind as you're getting ready to
8 conduct a homicide investigation -- what did the scene
9 look like to you?

10 A From the outside or --

11 Q From the outside.

12 A From the outside it looks like that someone
13 had thrown the electric fan -- the fan, like it really
14 wasn't dusty, so it didn't look like it had just been
15 sitting out there. It looked like something had broke
16 through the wooden porch leading into the front door as
17 if someone was to start throwing stuff from the inside of
18 the house out. That's what it appeared to be.

19 Q Okay. Once you got inside, what was your
20 overall impression of what you observed?

21 A There was debris everywhere. There was
22 destruction. There was things that -- like pictures and
23 stuff like that. It looked like a struggle had ensued in
24 the living room. There was a zip-lock baggie that was
25 torn, lying on the floor. There was what looked like

1 marijuana scattered around that area. That was directly
2 in the living room and the kitchen area right as you
3 enter the house.

4 Q All right. So let me show you -- we have a
5 pretty good diagram too that the defense made I want to
6 go over with you later.

7 MR. MARTINEZ: The defense didn't make that.

8 MR. VITTO: Fair. It's a defense exhibit.

9 BY MR. VITTO:

10 Q But let me show you State's proposed Exhibits
11 6 through 18.

12 Did you want to look at these first, Daniel?

13 MR. MARTINEZ: Sure.

14 MR. VITTO: Thank you, Judge.

15 BY MR. VITTO:

16 Q Okay. Showing you these photographs, what I
17 want you to do is I want you to take your time. Go
18 through them. When you've had the opportunity to do that
19 and review those photographs, look up and I'll ask you
20 some questions about them. Okay?

21 A Yes, sir.

22 I have reviewed them.

23 MR. VITTO: Thank you very much. Hold one
24 second.

25 THE COURT: One.

1 MR. VITTO: Wow. Court's indulgence just a
2 moment, please. Thank you.

3 BY MR. VITTO:

4 Q All right. Do you recognize those
5 photographs?

6 A Yes, I do.

7 Q Did you take those photographs?

8 A Yes, I did.

9 Q And if I'm not mistaken, you've recently been
10 to a class to help you understand how to take better
11 photographs at a crime scene; is that correct?

12 A Yes. I went through Las Vegas Metro's crime
13 scene investigation photography class or training, yes.

14 Q Now, are they accurate?

15 A The photographs are accurate, yes.

16 MR. VITTO: Your Honor, I request that State's
17 propped Exhibits 6 through 18 be admitted into evidence.

18 MR. MARTINEZ: I'm going to be opposing some
19 of them based on relevance, Your Honor, so we need to go
20 through them picture by picture.

21 MR. VITTO: That's fair.

22 BY MR. VITTO:

23 Q All right. Well, you start. Pick up the
24 first photograph there. It should be number 6.

25 A Number 6.

1 Q You took that photograph?

2 A Yes, sir.

3 Q It's accurate?

4 A Yes, sir.

5 Q What does it depict?

6 A It depicts the side of the trailer. To be
7 specific, the north side of the trailer with the 103
8 written on the side, and it captures some of the broken
9 wooden porch.

10 Q Okay. And it is within that trailer that the
11 decedent was located?

12 A Yes, sir.

13 MR. VITTO: All right. Any objection,
14 Counsel?

15 MR. MARTINEZ: No, not to that one.

16 MR. VITTO: All right. Let's try the next
17 one.

18 THE COURT: So 6 can be admitted?

19 MR. MARTINEZ: (Nods head up and down).

20 THE COURT: Okay.

21

22 (State's Exhibit No. 6
23 was received into evidence.)

24

25 (No Omissions.)

1 BY MR. VITTO:

2 Q Number 7?

3 A Number 7 is the viewpoint of the same trailer
4 from the northeast side. It captures more clearly the
5 broken front wooden porch, and it's got the tipped-over
6 chair. It's got some wood debris and it's got an
7 electric fan.

8 Q And I believe those are some of the items that
9 you referenced earlier when you said approaching from the
10 outside it looked as if people were just throwing things
11 out of --

12 A Yes, sir. The fan is clean on the top end.

13 MR. VITTO: Any objection to number 7,
14 Counsel?

15 MR. MARTINEZ: No objection to number 7.

16 BY MR. VITTO:

17 Q Number 8?

18 A This is a photograph --

19 MR. MARTINEZ: I'm sorry to interrupt. Do you
20 want to wait for the official ruling from the court
21 saying it will be admitted?

22 MR. VITTO: It could be by picture or at the
23 end. It makes no difference to me. Whatever the Court
24 finds.

25 THE COURT: Okay. Well, pretty much unless

1 the defense is going to raise an objection, we will use a
2 standing order that if he is not going to object, it will
3 be admitted.

4 MR. VITTO: That's fair, Judge.

5 MR. MARTINEZ: Thanks, Judge.

6
7 (State's Exhibit No. 7
8 was received into evidence.)

9
10 THE WITNESS: So this photograph is of the
11 southwest corner. It captures the rear of that same
12 residence where there is another chair similar to the one
13 in the front that's been tipped over.

14 BY MR. VITTO:

15 Q Okay. And so that's the back porch?

16 A Yes, sir.

17 Q You entered the dwelling; is that correct?

18 A Yes, sir.

19 Q Did you enter through the front or the back?

20 A The front.

21 MR. VITTO: Okay. I would move -- is that 8?

22 THE WITNESS: This is 8, yes, sir.

23 MR. VITTO: The State would move 8.

24 MR. MARTINEZ: No objection on 8, Judge.

25 THE COURT: All right. It can be admitted.

1 (State's Exhibit No. 8
2 was received into evidence.)

3
4 BY MR. VITTO:

5 Q Number 9?

6 A Number 9. This is the interior of the
7 residence from the kitchen capturing some empty beer
8 cans, miscellaneous debris, looks like a picture frame,
9 possibly two picture frames. One of them might not be a
10 picture, but just miscellaneous debris, and then the
11 hallway leading into the room at the end, which was
12 Jonathan's room.

13 Q And the point of taking that photograph?

14 A It was to capture the debris leading into the
15 hallway inevitably. It doesn't capture Jonathan's door,
16 but almost does in this photograph.

17 Q Okay. So just a state of disarray, is what
18 you're trying to capture?

19 A Yes, sir, just the overall condition of the
20 house.

21 MR. VITTO: The State would move for
22 admission.

23 THE COURT: All right. It will be admitted.
24 That was 9.

25 MR. MARTINEZ: No objection.

1 (State's Exhibit No. 9
2 was received into evidence.)

3
4 BY MR. VITTO:

5 Q 10?

6 A This is a photograph of -- I believe it looks
7 like the kitchen floor where there is what looks like
8 marijuana, a joint, other miscellaneous debris, trash
9 that had been -- well, trash, empty beer cans and a
10 dinosaur toy.

11 MR. VITTO: The State would move for
12 admission.

13 MR. MARTINEZ: No objection.

14 THE COURT: 10 will be admitted.

15
16 (State's Exhibit No. 10
17 was received into evidence.)

18
19 THE WITNESS: That is a photograph of
20 nunchucks or --

21 BY MR. VITTO:

22 Q Nunchaku?

23 A Nunchaku to scale. I took a photograph to
24 scale, and the empty beer can, a Natty Daddy beer can.

25 MR. VITTO: Are we going to fight about this?

1 MR. MARTINEZ: We are.

2 THE COURT: I'm waiting for the objection
3 already.

4 MR. MARTINEZ: This one I'm opposed to for
5 relevance, Judge.

6 MR. VITTO: I guess at this point -- and I
7 appreciate Counsel's -- look, Daniel Martinez is a very
8 good defense attorney. He spots issues, he fights his
9 issues, and, frankly, I appreciate it. That's when the
10 system works best. He's looked at the charging document.
11 He's looking at this. What's going on? Why do we have
12 this? I would ask that this Court withhold its ruling.
13 I want to show the pictures -- I want to admit some other
14 photographs in contemplation of our -- at the close of
15 evidence -- moving to admit the charging document to
16 include a count of 202.350, possession of a dangerous
17 weapon. That's why we're seeking to admit, amongst other
18 things, photographs that include the photographs of the
19 nunchaku.

20 So I'm just asking you to withhold your ruling
21 until we're done.

22 MR. MARTINEZ: What was the statute again?

23 MR. VITTO: I'm sorry?

24 THE COURT: 202.350.

25 MR. VITTO: 202.350. Judge, I think it's fair

1 that you withhold your ruling at this point and not rule
2 on that until more of the evidence comes in or all of the
3 evidence comes in.

4 THE COURT: Did you ask what the point of this
5 picture was? You asked all the other ones what the point
6 of the picture was, but did you ask him?

7 MR. VITTO: I was just about to. Not really,
8 but thanks for reminding me.

9 BY MR. VITTO:

10 Q What was the point of taking that picture?

11 A So there was some abrasions, bruising. There
12 was some injuries to the face of the decedent, and we
13 took scaled photographs for the purposes of -- in the
14 event this was used in the commission of the crime.

15 MR. MARTINEZ: Can I just clarify a little bit
16 on voir dire --

17 THE COURT: Sure.

18 MR. MARTINEZ: -- Judge?

19

20 VOIR DIRE EXAMINATION

21 BY MR. MARTINEZ:

22 Q So, Detective, it's fair to say when you first
23 arrived on the scene and you began taking pictures, you
24 didn't know what happened; right?

25 A Yes, sir. That's correct.

1 Q So you're kind of taking pictures of
2 everything so as you figure out what happened you have
3 what you need later?

4 A Yes.

5 MR. MARTINEZ: Okay. Nothing further.

6 MR. VITTO: Okay. What's the next number?

7 THE COURT: 12.

8 MR. VITTO: Actually, you know what? So the
9 ones in dispute -- that first one in dispute is number
10 11.

11 THE COURT: 11. So 11 is questionable. All
12 the other ones prior have been admitted.

13 BY MR. VITTO:

14 Q All right. So let's move on to 12.

15 A 12 is a photograph of the hallway floor where
16 there is a pair of scissors just lying -- just lying on
17 the floor.

18 Q Okay. And the purpose of that, to paraphrase
19 defense counsel who did it so well, is you don't know
20 what happened and you're taking pictures of everything?

21 A Correct.

22 MR. VITTO: All right. Move for admission.

23 MR. MARTINEZ: I would object as to relevance
24 of the scissors, Judge.

25 MR. VITTO: My point with most of these

1 photographs -- and I don't think it necessarily includes
2 the nunchaku -- is that the house is in a state of
3 disarray, and you're going to hear that there was a
4 tussle, and I believe that the state of the house, being
5 in disarray, is exemplary of what was happening inside
6 the house.

7 We've got a pair of scissors willy-nilly or
8 pell mell or whatever other word you want to use -- or
9 phrase, just laying in the hallway. That's odd.
10 Obviously it got there somehow, and my point is that the
11 condition of this house is the result of the struggle or
12 tussle that ensued prior to the death of the decedent.

13 THE COURT: You mean everybody doesn't keep
14 their scissors on the hallway floor?

15 MR. VITTO: Daniel might.

16 MR. MARTINEZ: Judge, I certainly get that
17 with the State, which is why the previous pictures of the
18 exterior and interior of the house I haven't had any
19 objection to. This one specifically, though, it's more
20 specific, just of the scissors, not necessarily the
21 disarray of the house. So I don't think it depicts what
22 the State is intending to use it for in argument, and
23 that's why I don't think it's relevant and I would
24 object.

25 MR. VITTO: I'm simply using it to demonstrate

1 or manifest the disarray.

2 THE COURT: Okay. We will put number 12 down
3 with number 11, and then I will withhold my ruling on
4 that one also.

5 MR. VITTO: Thanks, Judge.

6 BY MR. VITTO:

7 Q 13.

8 A This is a photograph of more nunchaku --
9 nunchucks, other miscellaneous clothing. This was taken
10 in the defendant's room.

11 MR. MARTINEZ: Judge, I'm going to object as
12 to foundation, and I probably should have done this
13 earlier. Detective Fancher has testified as to whose
14 room belonged to who, where he found items, but we don't
15 have any foundation as to how we knew it was their room,
16 and that's why I would object too here as well, Judge, as
17 to foundation as to how we know who that room belonged
18 to.

19 BY MR. VITTO:

20 Q How many bedrooms were in this house? Perhaps
21 we should get the diagram. Let me show you State's --
22 excuse me -- defense's --

23 THE COURT: Defense.

24 MR. VITTO: -- art work.

25 THE COURT: Scaled diagram.

1 BY MR. VITTO:

2 Q Scaled diagram. Defense Exhibit B. Now, this
3 has been admitted as Defense Exhibit B, and this was
4 drawn by Deputy Sheriff Xavier Gideon. Did I say that
5 correctly? Xavier Gideon. He drew this diagram. XG is
6 where he parked when he arrived. CW is where Colton --

7 THE COURT: Williams.

8 Q -- Williams parked when he arrived. The red X
9 in the interior is where he believed the decedent was
10 found. Is that consistent with your understanding as to
11 where the decedent was found?

12 A It's fairly consistent, excluding I would move
13 this X over a little bit, but that's --

14 Q I don't believe that the red X indicating
15 where the decedent was found was exactly where he was
16 laying.

17 A No, just the room where he was found.

18 Q This is the room where the decedent was found?

19 A Yes, sir.

20 Q You will see that there is a room, a bathroom,
21 and then there's a room. Would that be the defendant's
22 room?

23 A Yes, sir.

24 Q Okay. Have you identified the defendant yet?

25 A No, I have not.

1 Q Do you see Marco Antonio Torres in this
2 courtroom?

3 A Yes, I do.

4 Q Could you describe an article of clothing he's
5 wearing?

6 A Yes. He's wearing the Nye County Detention
7 Center clothing with a black mask.

8 Q What colors would you say those were?

9 A Oh, orange and white.

10 Q Orange and white.

11 Your Honor, may the record reflect that this
12 witness has made an in-court identification of the
13 defendant himself?

14 THE COURT: The record will reflect the
15 in-court identification of the defendant.

16 MR. VITTO: Thank you, Judge.

17 BY MR. VITTO:

18 Q So where would the defendant's room be in this
19 diagram?

20 A Oh, right here.

21 MR. VITTO: Okay. Do you want a circle
22 perhaps of where this witness identified?

23 MR. MARTINEZ: Whatever you would like.

24 BY MR. VITTO:

25 Q Let's put a circle where the defendant's

1 bedroom was.

2 A (Indicating).

3 Q Okay. All right. So --

4 THE COURT: Go ahead.

5 MR. VITTO: Okay. Thanks, Judge.

6 BY MR. VITTO:

7 Q So how were you able to determine that where
8 the X is is the decedent's bedroom?

9 A I believe it was through -- we did an
10 interview with him, and the story was Jon -- the
11 defendant (sic) ran to his room and locked the door, and
12 being there was only one other bedroom, that would be the
13 defendant's bedroom, along with -- I believe we found
14 some items there. I think there was a tablet that was
15 also the defendant's.

16 Q Okay. So you found the defendant's tablet in
17 what you have identified as the defendant's room?

18 A Yes, sir.

19 Q Okay. And you did an interview where the
20 defendant told you something about the decedent?

21 A Yes.

22 Q Okay. And the decedent ran to his room and
23 locked the door?

24 A Yes.

25 Q Was the decedent's room -- was the door to the

1 decedent's room locked when you found it?

2 A Yes, sir.

3 Q How about the defendant's door? Was it
4 locked?

5 A No.

6 Q All right. So where were we? Number 13?

7 THE COURT: Number 13.

8 BY MR. VITTO:

9 Q 13 with the nunchaku. So what do we have a
10 picture of? The picture is the nunchaku in the
11 defendant's bedroom; correct?

12 A Yes, sir.

13 Q How many pairs of nunchaku were found in
14 the -- outside of his bedroom?

15 A Oh, I want to say there was three -- no. One
16 pair I think was out in the living room, and there was
17 two inside his bedroom. I believe there was three total.

18 Q Okay. So you think there was only one outside
19 the bedroom and there was more than one in his bedroom?

20 A Yes, sir.

21 Q All right. And so what we have depicted in 13
22 is his bedroom with more than one pair?

23 A Yes, sir.

24 MR. VITTO: All right. We have the same
25 objections. We can put 13 in the pile of not yet --

1 THE COURT: Questionable, yeah.

2 BY MR. VITTO:

3 Q All right. What's 14?

4 A 14 is a photograph of one of the nunchakus
5 being held up inside the defendant's room.

6 Q Okay. So that's one of the pair. So the pair
7 that's being held up in 14 is one of the pair that is in
8 13?

9 A Yes, sir. There was also some skateboards in
10 the background. We don't believe it belonged to the
11 defendant (sic) because through the interview it comes
12 from California.

13 Q In the interview with the defendant did he
14 talk at some length about his skateboarding and music
15 playing?

16 A Music playing and the -- yes, the California
17 life, like talking about California and music playing and
18 stuff like that.

19 Q Now, in the picture that we have in your hand
20 as 14, do you see any skateboards in that picture?

21 A Yes, sir.

22 Q Okay. How many?

23 A One, two, three, four, five. It looks like
24 five, possibly four depending on the paint on one of
25 them. But it looks -- actually, five. It looks like

1 five.

2 Q Okay. Now, I want to understand some of your
3 testimony from earlier. You know that you were
4 dispatched to a homicide. You haven't interviewed the
5 defendant yet; is that correct?

6 A Correct.

7 Q On your first arrival?

8 A Correct.

9 Q When you're taking these pictures you have yet
10 to interview the defendant?

11 A I began taking -- I got a search warrant.
12 I took some overall preliminary photographs of the scene,
13 and then I was told by my captain, my sergeant, to go
14 interview the defendant, at which point me and
15 Detective Fisher went and conducted an interview, and we
16 returned to the scene where we processed the residence
17 more thoroughly.

18 Q So if I understand your testimony earlier, you
19 started talking about scale and injuries. Were you
20 looking at the potential for the nunchaku to have been
21 responsible for the injury observed?

22 A Yes, sir.

23 Q Okay. And you took some measurements along
24 those lines?

25 A Yes, sir.

1 Q And what were your findings?

2 A The findings -- I did measurements to the
3 nunchucks and also did some to-scale photographs of the
4 injuries to the left side of the decedent's head, face,
5 and I couldn't comment as far as if they were consistent
6 with the nunchucks or --

7 Q Okay. All right. So 14 is contested. Let's
8 move on to 15.

9 A 15 is a photograph -- this is the living room.
10 There is a couch. There is a skateboard. There's books.
11 There's a guitar, other miscellaneous debris. There is a
12 broken heater. It looks like the bottom part of an
13 electric heater had been broken. A green shoe. Yeah.

14 Q Disarray?

15 A Yes, sir.

16 MR. VITTO: Your Honor, the State would move
17 15.

18 MR. MARTINEZ: No objection, Judge.

19 THE COURT: There is no nunchaku in 15?

20 MR. MARTINEZ: Didn't seem to be.

21 THE COURT: 15 can be admitted.

22

23 (State's Exhibit No. 15
24 was received into evidence.)
25

1 THE WITNESS: This photograph is of the
2 decedent's room, where there is a box spring mattress
3 that's been tipped over leaning up against the room.
4 There's blankets in the background. The bed's tipped
5 completely over on its side, and a plant.

6 Q Again, disarray?

7 A Yes, sir.

8 MR. VITTO: The State would move 16.

9 THE COURT: Admitted.

10

11 (State's Exhibit No. 16
12 was received into evidence.)

13

14 BY MR. VITTO:

15 Q 17?

16 A That is a photograph of the black Samsung cell
17 phone that was actually underneath the mattress, the box
18 spring, and it -- yeah, it's the back side of the phone.

19 MR. VITTO: Okay. The State would move that
20 Samsung phone -- or that photo of the Samsung phone into
21 evidence.

22 MR. MARTINEZ: What's the relevance of the
23 phone?

24 MR. VITTO: The relevance of the phone?

25 Does the next picture show the broken phone?

1 THE WITNESS: Yes, sir.

2 MR. VITTO: All right. The relevance of the
3 photo is that the phone is broken.

4 MR. MARTINEZ: Is it the same phone?

5 MR. VITTO: Yeah.

6 MR. MARTINEZ: Just front and back? Let's do
7 the next one, and then I will probably have no objection
8 either.

9 BY MR. VITTO:

10 Q So 17 shows the phone as initially observed;
11 is that correct?

12 A Yes, sir.

13 Q All right. And then the next photograph that
14 you have, is that 18?

15 A Yes, that is 18, the last photograph.

16 Q So 18 is when somebody picks up the phone and
17 notices that it's cracked, broken --

18 A Yes.

19 Q -- is that correct?

20 A It is completely destroyed. I believe there
21 is a wire hanging out of it.

22 MR. VITTO: Okay. The State would request
23 that 17 and 18 be admitted into evidence.

24 MR. MARTINEZ: No objection.

25 THE COURT: All right. 17 and 18 will be

1 admitted.

2

3 (State's Exhibits 17 and 18
4 were received into evidence.)

5

6 BY MR. VITTO:

7 Q All right. So what did you immediately do
8 upon arrival to the scene at 835 South Linda Street at
9 your first arrival?

10 A I got a briefing of what the patrol had -- the
11 information that they had obtained, and immediately
12 secured the crime scene.

13 Q All right. And what duties were you initially
14 tasked with on the scene?

15 A Initially I was the stand-by until supervisors
16 showed up, Captain Boruchowitz and Sergeant Fowels. Then
17 I applied for a search warrant for the residence.

18 Q Okay. And did you get permission?

19 A Yes, sir.

20 Q All right. Now, did you have opportunity to
21 observe the body of Jonathan A. Piper?

22 A I did.

23 Q Did you see any indication of injury?

24 A Yes, sir.

25 Q And how would you describe the injury you were

1 able to observe?

2 A The injuries -- there were linear lines, like
3 bruising to the left side of his head and his face.
4 There was bruising on the inside of his mouth and --
5 yeah, that's essentially the general description of the
6 injuries.

7 Q All right. Let me show you State's proposed
8 Exhibit 19. Do you recognize that photograph?

9 A Yes, sir, I do.

10 Q Did you take that photograph?

11 A Yes, sir, I did.

12 Q Does it accurately depict what it portrays?

13 A Yes.

14 Q And is that the injury that you just
15 referenced that you can see in that photograph?

16 A Yes.

17 Q So there's bruising or injury, red mark,
18 whatever you want to refer to it as, along the left side
19 of his head and face?

20 A Yes, sir.

21 Q Including the eye?

22 A Yes, sir.

23 Q All right. What did you see first, the
24 nunchaku or the injury to the decedent?

25 A The injuries to the decedent I saw first, and

1 then I -- that's when I exited the residence, made sure
2 the scene was secure, and then went forward with the
3 search warrant and interview.

4 Q Okay. So you saw the injury to the decedent,
5 you got the search warrant, then you're searching to
6 collect evidence. And your attention was drawn after
7 seeing the injury to the nunchaku?

8 A Yes.

9 Q And you did what you could to try to see if
10 there was any way to match it up?

11 A Yes, sir. There was also the possibility
12 of -- because of the linear lines, whether it was a
13 heater, one of them heaters -- the electric heaters that
14 might have been a point of contact like a blunt force
15 trauma type stuff.

16 Q That's why we have pictures of the measuring
17 of the heater?

18 A Yes, sir.

19 Q I understand. Do you know whether the
20 defendant is right- or left-handed?

21 A I believe -- I usually ask that question
22 during an interview. I may or may not have. I would
23 have to review the interview.

24 Q You don't have any recollection one way or the
25 other?

1 A No, I don't.

2 MR. VITTO: Okay. Your Honor, I request that
3 19 be admitted into evidence.

4 MR. MARTINEZ: No objection.

5 THE COURT: Okay. Put it down in the
6 questionable stack. Did you say objection?

7 MR. MARTINEZ: I said no objection, Your
8 Honor.

9 THE COURT: Okay. Then it will be admitted.
10 I thought you said objection.

11
12 (State's Exhibit No. 19
13 was received into evidence.)

14
15 MR. MARTINEZ: First time with the mask that I
16 didn't get that out. Sorry.

17 THE COURT: Okay. So 19 will be admitted.

18 MR. VITTO: Now, let me show you State's
19 Exhibit 2.

20 THE COURT: State's 2? It's right here, I
21 believe.

22 MR. VITTO: Yes, sir. Thank you very much.

23 BY MR. VITTO:

24 Q Showing you State's Exhibit 2, do you
25 recognize that photograph?

1 A I do.

2 Q Did you take that photograph?

3 A I did.

4 Q And who was depicted in that photograph?

5 A Jonathan Piper.

6 Q And is that how you initially observed him?

7 A Yes.

8 Q And does that photograph depict a feeding
9 tube?

10 A Yes, sir, it does.

11 Q All right. And that is already in evidence.

12 Now, pursuant to the signed search warrant you
13 received, what items did you recover? Do you recall?

14 A Yes. There were the nunchucks, two cell
15 phones, a tablet, a ripped zip-lock baggie, I believe
16 suspected marijuana, a bent broom. I think that's -- to
17 the best of my memory, that's what we collected.

18 Q Okay. And let me show you State's proposed
19 Exhibit 26. Showing you State's proposed Exhibit 26, do
20 you recognize that?

21 A Yes, I do.

22 Q How do you recognize that?

23 A It's our return of services that we do during
24 search warrants.

25 Q Okay. And that specifically includes all of

1 the items that were recovered from the residence pursuant
2 to that search warrant?

3 A Yes, sir.

4 Q And you went through a litany of things just a
5 moment ago. Looking at that list now, is there anything
6 that you forgot?

7 A I mean, it looks like the amount of hours
8 wasn't filled in.

9 Q I just mean the items.

10 A Oh. No, everything looks good.

11 Q Okay. That's accurate?

12 A Yes, sir.

13 Q Those are all the things that were taken from
14 the house?

15 A Yes, sir.

16 MR. VITTO: Judge, I would ask that 26 be
17 admitted into evidence.

18 MR. MARTINEZ: No objection.

19 THE COURT: 26 can be admitted.

20

21 (State's Exhibit No. 26
22 was received into evidence.)

23

24 MR. VITTO: Thank you, Your Honor.

25 (No Omissions.)

1 BY MR. VITTO:

2 Q Now, did you have opportunity to interact with
3 Marco Antonio Torres?

4 A Yes, sir.

5 Q And in fact, you interviewed him; is that
6 correct?

7 A Yes, sir.

8 Q Where did that interview take place?

9 A At the Nye County Sheriff's Office in one of
10 our interview rooms.

11 Q And did he identify himself to you?

12 A Yes, sir.

13 Q Was he *Mirandized* prior to him being
14 interviewed?

15 A Yes, sir.

16 Q Did he agree to speak with you?

17 A Yes, he did.

18 Q Was that interview recorded?

19 A Yes, sir.

20 Q Was anyone else present?

21 A Detective Fisher was.

22 Q All right. Now, initially did he ultimately
23 take responsibility for what occurred?

24 A Yes, he did.

25 Q What was his initial reaction when he was

1 asked questions about what happened?

2 A He initially stated that he had found him,
3 found the decedent in that condition. But as the
4 interview progressed, he -- you know, at one point we
5 went back into the interview room, and that was when he
6 said that he was going to be honest and that he was
7 responsible for his death.

8 Q He was responsible for Jonathan Piper's death?

9 A Yes, sir.

10 Q All right. And in fact, he admitted lying to
11 you previously?

12 A He did, yes.

13 Q All right. Now, after that did he explain
14 what happened?

15 A Yes.

16 Q What did he say?

17 A He stated that at a point in the night earlier
18 he got upset at Jonathan for ripping open a bag of
19 marijuana. I guess when the bag was ripped open the
20 marijuana went flying everywhere.

21 Q All right. Let me stop you right there. So
22 let me show you what has been preliminarily marked as
23 State's proposed Exhibits 20 and 21.

24 MR. MARTINEZ: What number?

25 MR. VITTO: 20 and 21.

1 MR. MARTINEZ: Okay.

2 MR. VITTO: Yeah.

3 BY MR. VITTO:

4 Q All right. Do you recognize those
5 photographs?

6 A I do.

7 Q Are they accurate?

8 A Yes, sir, they are.

9 Q Thank you. Did you take them?

10 A I did.

11 Q And what were you photographing in those
12 exhibits as depicted in those exhibits?

13 A The torn zip-lock baggie with what looks like
14 to be pieces of marijuana inside, around it, green leafy
15 substance. And then in that same photograph is a trash
16 can in the background where there's a -- it looks like a
17 larger ball or clump of marijuana, which is the closer
18 photograph in the second --

19 Q Wouldn't that be a bud?

20 A It may be a bud, yeah.

21 Q I don't know.

22 A Next to the potting mix.

23 Q And so you found actual physical evidence of
24 exactly what the defendant told you had started this
25 argument; is that correct?

1 A Yes, sir.

2 Q And you seized the -- what is suspected to be
3 marijuana and the torn baggie as evidence?

4 A Yes, sir.

5 Q All right. And that's photographic evidence
6 of what it is that you found and recovered; is that
7 correct?

8 A Yes, sir.

9 Q And those items, the baggie and the marijuana,
10 is exactly where it was initially observed?

11 A Yes.

12 MR. VITTO: Your Honor, I would ask that
13 State's proposed Exhibits 20 and 21 be admitted into
14 evidence.

15 MR. MARTINEZ: No objection, Judge.

16 THE COURT: All right. 20 and 21 shall be
17 admitted.

18

19 (State's Exhibits 20 and 21
20 were received into evidence.)

21

22 BY MR. VITTO:

23 Q And the baggie and the suspected marijuana are
24 currently in the custody of the Nye County Sheriff's
25 Office?

1 A Yes, sir.

2 Q All right. So the defendant told you how the
3 tussle started. What did the defendant say happened
4 after that?

5 A He said during the tussle at one point
6 Jonathan fell or went to the ground, and he got up and
7 ran to his room, where he slammed the door. Marcos then
8 stated that he -- that agitated him, because he slammed
9 the door, and so he went to the door, found it locked,
10 and then that's when he kicked the door open and then he
11 saw Jonathan on the phone.

12 Q All right. Let me stop you there. So if I
13 understand correctly, the defendant told you they had
14 began to tussle. Jonathan Piper fell to the floor, went
15 to his bedroom, slammed the door. According to the
16 defendant he locked the door, and the pictures that we
17 have admitted into evidence, with the exception of 11,
18 12, 13 and 14, are evidence or a manifestation of a
19 tussle through the house?

20 A Yes, sir.

21 Q That's why you took the photographs?

22 A Yes, sir.

23 Q All right. So the defendant -- or excuse me.
24 The decedent, Jonathan Piper, is now locked within his
25 bedroom door, according to the defendant himself, and the

1 slamming of the door agitated him. What did he say
2 happened after that?

3 A He went to the door. He ran to the -- to
4 Jonathan's door, and that's where he found it locked, and
5 then kicked it open.

6 Q All right. So let me show you State's
7 proposed Exhibits 22, 23 and 24. Take your time. Go
8 through those. Look up when you've had that opportunity
9 and I'll ask you some questions.

10 A Okay.

11 Q Do you recognize those photographs?

12 A I do.

13 Q Did you take them?

14 A I did.

15 Q Are they accurate?

16 A Yes, sir.

17 Q By number, starting with 22, what do we see
18 depicted there?

19 A This is a photograph of the -- of Jonathan's
20 door with damage to that door looking at it from the
21 hallway.

22 Q Okay. It looks like there's a crack?

23 A Yes, sir.

24 Q All right. And how about 23?

25 A 23 is a photograph standing from the opposite

1 side facing the door frame that's got substantial damage
2 to the door frame where the door closes.

3 Q And can you see the wall in that photograph?

4 A Yes.

5 Q And was there anything in the wall that you
6 were seeking to capture?

7 A Yes. There's a large hole into the drywall.

8 Q And what about 24?

9 A 24 is a more close-up photograph of the door
10 frame showing the amount of damage that was done to the
11 door frame.

12 Q Okay. As if the door was kicked open?

13 A The door was definitely kicked open.

14 Q Just like the defendant said?

15 A Yes, sir.

16 MR. VITTO: Okay. I would ask that 23 -- 22
17 through 24 be admitted.

18 MR. MARTINEZ: No objection, Judge.

19 THE COURT: All right. They shall be
20 admitted.

21

22 (State's Exhibits 22, 23, 24
23 were received into evidence.)

24

25 (No Omissions.)

1 BY MR. VITTO:

2 Q Okay. So the defendant said he kicked the
3 door open. You found evidence consistent with what he
4 said, corroborating exactly what he said. What did he
5 say happened after that?

6 A He said that Jonathan was on the phone on his
7 bed, and he grabbed the phone -- he took the phone from
8 Jonathan -- oh. He -- first he said that -- during the
9 interview he said that he took the phone from Jonathan,
10 and that he told -- he told -- he knew he was on the
11 phone with the cops, is what he said, and then that upset
12 him because he called -- he said he was ratting him out.
13 And then at that point he threw the phone down on the
14 ground.

15 Q Who threw the phone on the ground?

16 A I'm sorry. Marco threw the phone on the
17 ground.

18 Q The defendant --

19 A The defendant.

20 Q -- threw Jonathan Piper's phone on the ground?

21 A Yes, sir.

22 Q All right. He knew he was calling the police.
23 It upset him. He thought he was being ratted out?

24 A Yes, sir.

25 Q That's what he told you?

1 A Yes.

2 Q All right. Did he say anything about
3 overhearing any of the conversation?

4 A Yes. He -- when he heard who was on the
5 phone, he knew that he had called the cops. And that he
6 had spoken to the dispatcher on the phone, telling them
7 that it was a false alarm.

8 Q And those were his words? He said that he
9 told dispatch, "False alarm"?

10 A That -- I've listened to the recording, so as
11 far as in the interview, I don't know if I want to quote
12 him with that exact statement --

13 Q Okay.

14 A -- but he did know -- he did tell me in the
15 interview he knew he was on the phone with the cops.

16 Q Okay. "False alarm" is what you heard on the
17 call itself?

18 A Yes, sir.

19 Q I understand. We will get to that in a
20 minute. And did he use any adjectives to describe
21 Jonathan Piper's phone and the floor?

22 A I think he smashed -- smashed it.

23 Q So we found evidence to corroborate the
24 defendant in regard to how the fight started?

25 A Yes, sir.

1 Q We have evidence corroborating the tussle that
2 occurred in the living room or throughout the house down
3 to the decedent's room; right?

4 A Yes, sir.

5 Q You photographed that. We have evidence
6 corroborating kicking down the door, right, or kicking
7 the door open?

8 A Yes, sir.

9 Q And then did you find -- is how you found
10 Jonathan Piper's phone consistent with what the defendant
11 told you he did with the phone?

12 A Yes.

13 Q All right. So let me show you -- let me ask
14 you this. Did you bring anything with you today?

15 A I did.

16 Q And what did you bring with you?

17 A The -- that specific phone.

18 Q Jonathan Piper's smashed phone?

19 A Yes, sir.

20 Q The phone recovered from his bedroom?

21 A Yes, sir.

22 Q All right. Or where he was found deceased,
23 anyway. Do you have that with you?

24 A I do.

25 MR. VITTO: Let me collect that. Okay.

1 Your Honor, may the record reflect that
2 Detective Fancher has handed me a sealed envelope. The
3 description of evidence says cell phone. I do not know
4 what that word is.

5 MR. MARTINEZ: Broke.

6 MR. VITTO: Broke. Thank you. Broke cell
7 phone.

8 BY MR. VITTO:

9 Q And Detective, it is your testimony that
10 within this sealed evidence bag is the phone you
11 testified regarding?

12 A Yes, sir.

13 MR. VITTO: All right. Your Honor, I would
14 ask to have this marked as State's proposed Exhibit 25.

15 THE COURT: Okay. And you believe there's a
16 phone in there?

17 MR. VITTO: Well, you know, what? Perry Mason
18 moment. We're going to ask Mr. Fancher -- Detective
19 Fancher to break the seal and retrieve the contents of
20 this envelope if we have a utensil capable of doing same.

21 THE COURT: We have some scissors.

22 MR. VITTO: Scissors have worked in the past
23 historically as well.

24 THE COURT: Just so you know, for the record,
25 we don't keep those on the hallway floor.

1 MR. VITTO: Thank you very much, Judge. I
2 appreciate that.

3 THE COURT: Did you have an opportunity to
4 examine the chain of custody that was listed on the front
5 of that? Did you have any questions on that?

6 MR. MARTINEZ: The State is keeping it a
7 secret, Judge. I haven't had the opportunity to do that.
8 He --

9 THE WITNESS: I can touch this?

10 MR. VITTO: Would you like gloves?

11 MR. MARTINEZ: That's a good idea.

12 MR. VITTO: Just to be on the safe side.

13 THE COURT: Do we have gloves?

14 THE CLERK: Department A does.

15 THE COURT: I do at my house. I didn't know I
16 needed to bring them today, but --

17 THE BAILIFF: Try these. I don't know if
18 they're going to be any better.

19 THE WITNESS: Those were bad.

20 THE BAILIFF: These are small. I don't know
21 whose they are.

22 THE WITNESS: For children?

23 THE COURT: Those were in Department A?

24 THE BAILIFF: Yeah, I think they were. I
25 think they were --

1 THE WITNESS: This is what I can do here.
2 I've got an idea.

3 BY MR. VITTO:

4 Q What do we got there?

5 A A completely destroyed phone.

6 Q Okay. And does it look as if it's been
7 smashed?

8 A Yes, sir.

9 Q And that's the phone you recovered from the
10 decedent's room?

11 A It is.

12 Q All right. And that's consistent with what
13 the defendant himself told you he did?

14 A Yes, sir.

15 MR. VITTO: Your Honor, I would ask that
16 State's proposed Exhibit 25 be admitted into evidence.

17 MR. MARTINEZ: I just -- can we lay some more
18 foundation as to chain of custody?

19 MR. VITTO: Okay.

20 BY MR. VITTO:

21 Q So you picked it up at the house?

22 A Yes, sir.

23 Q It's included on the impound inventory, which
24 has been admitted into evidence as State's Exhibit 26; is
25 that correct?

1 A Yes, sir.

2 Q And what did you do with it after you picked
3 it up off the floor?

4 A Well, first photographed. I picked it up off
5 the floor, placed it in an evidence bag.

6 Q That evidence bag?

7 A Yes, sir.

8 Q Then what happened?

9 A And then took it to the office where we booked
10 it in for evidence.

11 Q Okay. So that was booked into evidence?

12 A Yes, sir.

13 Q While in an evidence bag?

14 A Yes, sir.

15 Q And then you retrieved it this morning?

16 A I did.

17 Q From where?

18 A From evidence.

19 Q Who gave it to you?

20 A The evidence tech. I don't know his name.

21 Q Okay. So it was checked out to you this
22 morning?

23 A It was.

24 Q Remaining in your sole care, custody and
25 control at all times up to and including right now?

1 A Yes, at 0858 hours this morning.

2 Q You picked it up and brought it here?

3 A Yes, sir.

4 MR. VITTO: All right. I think we're good.

5

6 VOIR DIRE EXAMINATION

7 BY MR. MARTINEZ:

8 Q Detective Fancher, did you put any sort of
9 tape on the envelope?

10 A Yes, sir. I am the one that applied the
11 evidence tape.

12 Q Okay. Did you put any other markings on the
13 envelope?

14 A Yes, sir. I put my initials on the evidence
15 tape to confirm that it was me for integrity purposes,
16 and then I'm the one that filled out the evidence sticker
17 with all the information.

18 Q What information goes on that evidence
19 sticker?

20 A A case number, a property number or a spillman
21 number for evidence, so it's the assigned property
22 number. What kind of offense it is. The description of
23 it. Then the suspect name, victim name, the date and
24 time of recovery, and then the location of recovery, and
25 then recovered by, and then received from me to evidence,

1 and then from evidence to me and the date and time.

2 Q And the case number that it says on there, is
3 that the sheriff's office case number?

4 A Yes, sir. It's been smudged.

5 Q Is it legible?

6 A It is, because it's my handwriting.

7 Q Read that for me.

8 A It's 20NY-1012.

9 Q Okay. And now, when you picked up that
10 envelope from the evidence vault this morning, did there
11 appear to be any changes from when you dropped it off
12 initially?

13 A Yes.

14 Q What were the changes?

15 A The -- the evidence has a -- like a --
16 MR. VITTO: Bar code.

17 A -- bar code, yeah.

18 BY MR. MARTINEZ:

19 Q So you did not put the bar code on there?

20 A No, sir.

21 Q Was the evidence tape tampered with in any
22 way?

23 A No, sir.

24 Q Not until you just cut it off?

25 A Not until I just cut it.

1 MR. MARTINEZ: Okay. All right. Nothing
2 further, Judge. No objection to its admission.

3 THE COURT: It will be admitted into evidence.

4
5 (State's Exhibit No. 25
6 was received into evidence.)

7

8 MR. VITTO: Thank you, Your Honor.

9 THE COURT: However, for purposes of the
10 hearing, it will be retained by the sheriff's office in
11 their evidence locker. We won't secure it in our
12 evidence locker.

13 MR. VITTO: Judge, I'm fine with that. I
14 actually prefer that. I think Counsel and I are going to
15 want to do a lot of work with phones and getting them
16 examined, and should we move to the next level at the
17 close of these proceedings, there is a lot of work to be
18 done. So I think we appreciate that.

19 THE COURT: So it will be retained by the
20 sheriff's office. We won't secure it here for court.

21 MR. VITTO: Thank you very much, Your Honor.

22 MR. MARTINEZ: Detective, make sure you take
23 good notes and good observations when you retape that.

24 THE WITNESS: I didn't catch the last part of
25 that.

1 MR. MARTINEZ: When you retape it, make
2 sure you take good notes and make good observations.

3 THE WITNESS: Yes, sir.

4 MR. VITTO: You might want to even photograph
5 before and after. Okay?

6 THE WITNESS: Definitely.

7 MR. VITTO: Okay? Just to document.

8 BY MR. VITTO:

9 Q All right. So we are up to the point where
10 the defendant -- he tells you he smashed Jonathan Piper's
11 phone on the floor. What did he tell you had happened
12 next?

13 A That he grabbed him from behind in a
14 chokehold-type fashion where he squeezed him. At one
15 point he heard Jon -- the decedent gasping, making a
16 gurgling or gasping sound. He described the defendant as
17 reaching for his phone, trying to grab his phone during
18 the struggle, and then at one point he described the
19 defendant (sic) as going limp. So he used his
20 chokehold-style fashion until he felt the defendant --
21 the decedent's body go limp, and at that point he felt
22 that he was dead.

23 Q All right. And did you just -- did you
24 mention something about gasping?

25 A Yes, sir.

1 Q What did he say about hearing the decedent
2 gaspings?

3 A He said when he was -- when he was squeezing
4 him from behind or this chokehold-type fashion, that he
5 made -- at one point he made a gurgling noise. I think
6 it was gurgling or gasping, some type of gurgling or
7 gaspings. I'm not sure which one it is verbatim.

8 Q All right. And he felt the victim's body go
9 limp. He believed the victim to be dead?

10 A Yes, sir.

11 Q Did he tell you that?

12 A Yes, sir.

13 Q All right. Did he say anything about what he
14 had done, this being a friend or anything in that regard?

15 A That he thinks he killed his friend.

16 Q All right. And what did he say happened after
17 that?

18 A It was -- after that, the cops basically
19 arrived, and he knew that they were there. At that point
20 he was trying to resuscitate the decedent, and obviously
21 was not able to. You know, it wasn't effective, but --
22 and the cops continued trying to get Marco to come to the
23 door.

24 Q Okay. So he knew sheriff's deputies were
25 arriving, and so he tried to bring the victim back to

1 life?

2 A Yes.

3 Q But he was unsuccessful?

4 A Yes.

5 Q All right. What happened after that?

6 A He ignored -- he -- when asked why he didn't
7 answer the door for the cops, he stated that he was
8 scared. And then eventually the cops made entry, the
9 deputies made entry, and that's when he was, I guess,
10 detained.

11 Q All right. So was the mattress on the floor
12 like he said?

13 A There was a mattress on the floor, yes.

14 Q Is that how he described it?

15 A I believe -- yeah. He was on the floor, and
16 he described the decedent as lying on his side on the
17 mattress, and that he grabbed him from behind and he
18 squeezed him until his body went limp.

19 Q All right. Now, have you had opportunity to
20 listen to the 9-1-1 call to dispatch?

21 A Yes, I did.

22 Q What did you hear?

23 A I heard a male's voice that sounds like the
24 defendant say, "Get off the phone or I'm going to break
25 your hand," or something -- "I'm going to break your hand

1 if you don't get off the phone." But you can kind of
2 hear -- initially you can kind of hear the decedent
3 saying, "Help" in kind of like a low tone. I'm not sure
4 if, you know, he was trying to speak low so anybody could
5 hear him. I don't know if you can hear him say, "Help."
6 I kind of told that information backwards.

7 Q That's okay. You heard the decedent ask for
8 help, and you heard the defendant say, "Get off the phone
9 or" -- maybe something like "I'm going to break your
10 hand"?

11 A Yes. And then it sounds like there is some
12 scuffle or something. You know, on the phone something's
13 going on. And then eventually it was disconnected, or
14 when he smashed the phone they lost the connection.

15 Q All right. I'm almost done. Let me show you
16 State's proposed Exhibit 27. Showing you State's
17 proposed Exhibit 27, three pages, is that something you
18 recognize in the ordinary course of business?

19 A Yes, sir.

20 Q What is that?

21 A It's our Nye County Sheriff's Office death
22 investigation report.

23 Q And I know that, for instance, with the
24 impound inventory -- and you correct me if I'm wrong,
25 because I'm not an expert in Nye County Sheriff's Office

1 protocol or policies, et cetera, et cetera -- but as I
2 understand that protocol, someone photographs it, someone
3 picks it up, someone -- and then there's a scribe. Is
4 that correct?

5 A So are you referring to the --

6 Q The impound inventory right now. Not what's
7 in front of you.

8 A Okay. Okay. Yes, sir.

9 Q That's how it works?

10 A Yes.

11 Q Because if I'm not mistaken, the scribe for
12 the impound inventory was Cory Fowels?

13 A Yes, sir.

14 Q So who is giving Cory the information?

15 A Me and Detective Fisher were giving
16 Cory Fowels the information.

17 Q So he's writing down what you're giving him or
18 telling him?

19 A Yes, sir.

20 Q Is the same protocol in place for what you
21 have in front of you, the death investigation report?

22 A No. This would be the patrol officer's
23 coroner investigation, their coroner's report. The
24 patrol officer was not involved in the processing of this
25 report.

1 Q Exactly. So the patrol officer is documenting
2 that information; correct?

3 A Yes, sir.

4 Q From where does he get that information?

5 A It's usually -- it's the initial information
6 involving the death of any -- just like any other
7 coroner's -- this is the information that they log that's
8 sent to the coroner's office as well.

9 Q Okay. So that's provided with the body to the
10 Clark County coroner?

11 A Yes, sir.

12 Q And it becomes a part of their autopsy
13 protocol?

14 A Yes, sir.

15 Q As far as you know, anyway?

16 A As far as I know.

17 MR. VITTO: All right. Your Honor, I'm
18 getting awfully wiggly. I have no further questions of
19 this witness, but I just need five minutes before we
20 start cross.

21 MR. MARTINEZ: Restroom.

22 MR. VITTO: Just run down the hall real quick?
23 Would that be okay? I'm awfully wiggly, Judge. I'll be
24 very uncomfortable if I have to sit here through cross.

25 THE COURT: All right. Go ahead.

1 MR. VITTO: Thanks, Judge.

2 THE COURT: If you're not back in five minutes
3 we'll start without you.

4

5 (Recess taken from
6 1:34 p.m. until 1:38 p.m.)

7

8 MR. VITTO: Well, Your Honor, I have no
9 further questions of this witness at this time.

10 THE COURT: All right. Mr. Martinez.

11 MR. MARTINEZ: Thank you, Judge.

12

13 CROSS-EXAMINATION

14 BY MR. MARTINEZ:

15 Q Good afternoon, Detective, officially.

16 A Good afternoon.

17 Q So you said you arrived on scene about six
18 o'clock in the morning; right?

19 A Yes, sir.

20 Q And that was on April 4th, 2020?

21 A Yes.

22 Q Now, when you arrived on scene, was Mr. Torres
23 still present at the house?

24 A He was.

25 Q Where in the house was he?

1 A In the living room.

2 Q At some point he was transported to the
3 detention center; right?

4 A Yes, sir.

5 Q How much longer was he at the house for before
6 he was transported to the detention center?

7 A It's a good question. I would say 10, 15
8 minutes maybe.

9 Q Okay. So it was pretty quick --

10 A I think so.

11 Q -- from the time you got there?

12 A Yes.

13 Q All right. Do you remember who officially
14 placed him under arrest and transported him to the
15 detention center?

16 A I want to say Deputy Williams, but I could be
17 wrong.

18 Q Do you know if he was read *Miranda* at that
19 point?

20 A I do not.

21 Q Now, you said when you first arrived you were
22 on a standby; right?

23 A When I first arrived, yes, sir.

24 Q What does that mean?

25 A So when I first arrived I secured the scene.

1 I secured the scene and was holding -- making --
2 preserving everything so -- impending the application for
3 search warrant and for our supervisors to show up.

4 Q Okay. Now, did you speak with the other
5 members of the sheriff's office who were there while you
6 were on standby?

7 A There was some brief discussion with them.

8 Q At some point you did get briefed as to what
9 occurred and what the sheriff's office had already done
10 prior to your arrival?

11 A Yes, sir.

12 Q Did they tell you about altering the scene in
13 any way prior to your arrival?

14 A Not to my recollection, no.

15 Q I will give a specific example.

16 A Okay.

17 Q Mr. Piper's body. When you arrived, it was on
18 the floor --

19 A Right.

20 Q -- correct?

21 A Yes.

22 Q However, we have previous testimony that when
23 the sheriff's office arrives, it was not on the floor.

24 A Right. Yes, I know what you're talking about.

25 Q Is that something that they would have told

1 you, "We moved him" --

2 A Yes.

3 Q -- "to the floor"? Okay.

4 Was there anything else specific that you
5 learned that had been altered or removed from the scene?

6 A So I know that there was -- that -- I think it
7 was Sergeant Fernandez had pulled him -- pulled the
8 decedent off the bed and onto the floor, which is
9 customary for doing CPR. The crime scene tape was too
10 close for my comfort. I wanted to expand it, so we did
11 that. I had a bigger perimeter.

12 I don't remember anything else. I'm trying to
13 think if there was anything else that was moved. I don't
14 think so.

15 Q Okay. Now, you did get a search warrant?

16 A Yes, sir.

17 Q Did you do that telephonically?

18 A Yes, sir.

19 Q And did you do that before you took any
20 pictures?

21 A Yes, sir.

22 Q Were you the only one taking pictures?

23 A I believe so.

24 Q Here's a question that probably doesn't
25 matter. What kind of camera do you use?

1 A It's a Sony 35-millimeter --

2 Q Okay.

3 A -- camera.

4 Q You took pictures of the exterior of the
5 house?

6 A Yes, sir.

7 Q Of the interior of the house?

8 A Yes, sir.

9 Q You took pictures of Mr. Torres?

10 A I believe I did.

11 Q Okay.

12 A I may not have. Maybe that was at the jail
13 afterwards. I don't recall taking photographs of him on
14 scene --

15 Q Okay.

16 A -- so --

17 Q You took pictures of Mr. Piper?

18 A Yes, sir.

19 Q You mentioned you had just gone to a crime
20 scene photography training course; correct?

21 A Yes, sir.

22 Q Had you had previous training on taking
23 pictures of a crime scene before that?

24 A Yes, sir. It was academy-level crime scene
25 photos.

1 Q Okay. So at least some basic training on what
2 to do?

3 A Yes, sir.

4 Q In a situation such as this, you would
5 obviously want to make sure you photograph any sort of
6 markings that you would find on the decedent --

7 A Yes, sir.

8 Q -- or on the suspect?

9 A Yes, sir.

10 Q We have one of the State's admitted -- one of
11 their exhibits admitted into evidence that shows markings
12 on Mr. Piper's face, so obviously you noticed those;
13 right?

14 A I did.

15 Q You didn't notice any markings or bruising on
16 Mr. Piper's neck; right?

17 A I did not.

18 Q You didn't notice any on his chest; right?

19 A I did not.

20 Q You did notice some cuts on the inside of his
21 mouth, you said?

22 A Yes, sir.

23 Q Do you know who owns the property there on
24 Linda?

25 A I don't. There was a guy they talked to,

1 Larry Draper. I think he might have just been another
2 resident. I do not know.

3 Q Is that something you would typically
4 investigate, as to who owns the property?

5 A Maybe should, but typically like -- it might
6 be something we should do, but usually it's just the
7 residence there.

8 Q You said at some point your superior told you
9 to go interview Mr. Torres; right?

10 A Yes, sir.

11 Q You did interview him?

12 A I did.

13 Q Along with Detective Fisher?

14 A Yes, sir.

15 Q And that started -- that interview started
16 about 10:00 in the morning?

17 A About, yes, sir.

18 Q So that was probably a few hours after
19 Mr. Torres was booked into custody; right?

20 A Yes, that would be fair.

21 Q At one point in that interview you and
22 Detective Fisher left the room; right? Well, at a few
23 points you left the room, right, but at one point when
24 you left the room Captain Boruchowitz came in to speak to
25 Mr. Torres as well; right?

1 A That is correct.

2 Q Now, prior to you beginning the interview did
3 you do any sort of background check on Mr. Torres?

4 A We did, yes, me and Detective Fisher.

5 Q What sort of background check did you do?

6 A So we generally try to find out who we're
7 dealing with, you know. We try to line out what kind of
8 questions.

9 Q Do you search the criminal history?

10 A Yes, sir.

11 Q So you did that for Mr. Torres?

12 A I did.

13 Q In searching that history, did any sort of
14 notation about any sort of psychological or mental health
15 issues in the past come up on the criminal history?

16 A Maybe. I don't remember. I've looked at too
17 many criminal histories since then.

18 Q Is that something that would normally come up
19 on a criminal history?

20 A I -- in my personal experience, I haven't seen
21 any type of psychological issues on a criminal history.

22 Q Okay. Well, let me ask specifically. What is
23 a Legal 2,000?

24 A I know what you're talking about there.

25 Q Okay.

1 A A Legal 2,000 would be someone who's a danger
2 to themself or to the public due to some mental status.

3 Q So they get -- are they involuntarily
4 committed to a psych hospital?

5 A Yes.

6 Q Is that something that would show up on
7 someone's background?

8 A I don't believe so. I have never seen that.

9 Q So it's nothing you observed with Mr. Torres;
10 correct?

11 A Correct.

12 Q Do you know when the last time Mr. Torres had
13 any sleep prior to your interview with him?

14 A I don't, no, sir.

15 Q Do you know when the last time he had anything
16 to eat?

17 A I do not.

18 Q You did give him some water and soda during
19 the interview; right?

20 A I believe so, yes.

21 Q Did you smell any sort of odor of alcohol on
22 him when you interviewed him?

23 A I did not, no.

24 Q How about marijuana?

25 A No.

1 Q Any -- was he slurring his speech at all?

2 A No, I don't believe he was.

3 Q Did he have glassy or bloodshot eyes?

4 A Not that I can recall, no.

5 Q And now, you did read him his *Miranda* rights;
6 right?

7 A Yes, sir.

8 Q At the very beginning of the interview? It's
9 one of the first things you did; right?

10 A Very first thing.

11 Q And he waived them and agreed to speak with
12 you; correct?

13 A He did, yes.

14 Q So the State already asked you this. At first
15 he was not very honest with you?

16 A Correct.

17 Q He told you a story about someone named Rich?

18 A Something about that, yes.

19 Q I guess I'll back up real quick. In total,
20 Mr. Torres was interviewed for close to three hours;
21 right?

22 A That's correct.

23 Q And you testified you spent time talking about
24 skateboarding and time about playing guitar and a lot of
25 things, so there is a lot of details?

1 A Yes, sir.

2 Q Like you said, at one point you and
3 Detective Fisher stepped out of the room for about ten
4 minutes?

5 A Correct.

6 Q When you came back in, that's when Mr. Torres
7 kind of came clean?

8 A Yes, sir.

9 Q And he kind of started that by saying he just
10 wanted to break down and cry; right?

11 A Yes, sir.

12 Q You said, "Why?" And that's when he decided
13 to be honest with you?

14 A Yeah. I'm just -- I'm really going off of
15 memory, but --

16 Q Okay.

17 A -- yeah, of that night.

18 Q Have you ever watched a video of the
19 interview?

20 A Immediately afterwards.

21 Q Okay.

22 A But I've not reviewed the -- it's a pretty
23 long interview, so I want to be careful with --

24 Q You know, in that interview Mr. Torres went
25 through his history with Mr. Piper; right?

1 A Yes, sir.

2 Q He told you how long they had known each
3 other?

4 A Yes, sir.

5 Q Told you why he came out to Pahrump?

6 A Yes, sir.

7 Q He at one point even went through what they
8 spent their income on every month?

9 A Yes, sir.

10 Q How much was allocated to food and to alcohol
11 and to tobacco; right?

12 A Yes, sir.

13 Q Marco told you he was concerned about
14 Jonathan's drinking?

15 A He may have. I don't remember.

16 Q He told you one of the reasons he was there
17 was to try and get Jonathan to eat more because Jonathan
18 had lost a lot of weight?

19 A Yes, sir. Kind of like he was almost taking
20 on a caretaker-type role.

21 Q Marco told you, you know, the night this
22 happened, that both he and Jonathan had been drinking;
23 right?

24 A I believe so, yes.

25 Q Marco told you that he blacked out a little

1 bit?

2 A He initially stated that he -- in fact, if I
3 remember correctly, I think he initially stated he
4 blacked out. As the interview progressed and the details
5 disclosed, black out, yeah. He did say that, yes.

6 Q He says multiple times in the interview,
7 "Everything is kind of foggy"?

8 A Yes.

9 Q Now, he talked to you a little bit about the
10 routine with Jonathan kind of throughout the day; right?

11 A Yes, sir.

12 Q He said Jonathan liked to listen to a lot of
13 talk radio?

14 A I recall something about that, yes.

15 Q Oftentimes Marco wanted him to watch a movie
16 with him or generally turn off the talk radio and to be
17 present, spend some quality time, is what it sounded
18 like?

19 A Something like that, yeah, but -- I don't
20 really recall the specifics, but that sounds --

21 Q Okay.

22 A -- about right.

23 Q And that's something else that sparked the
24 argument that night; right? The night of August -- or
25 April 3rd going into April 4?

1 A Yes. Now I'm recalling the radio
2 conversation. I know what you're talking about.

3 Q And what Marco told you, not that it was just
4 over a bag of pot getting ripped open, but it was these
5 other issues they had in their relationship as well?

6 A He did talk about some other issues that they
7 were having in the relationship.

8 Q All right. That's what began the argument.
9 Marco told you he had a meltdown; right?

10 A Yes, sir.

11 Q That he was -- he told you he tore the living
12 room up?

13 A Yes.

14 Q That he threw things out in the front yard?

15 A Yes.

16 Q He told you he kicked the porch, broke that?

17 A I don't remember him telling me he kicked the
18 porch, but he did start throwing -- as you described, the
19 general --

20 Q He was breaking things in the living room?

21 A Uh-huh, yes, sir.

22 Q And a tussle happened with him and Jonathan?

23 A What? Like -- I didn't hear your last --

24 Q A tussle happened between him and Jonathan?

25 A I believe he said tussle. It's actually

1 exactly what he said, was tussle.

2 Q Now, he told you that he brought Jonathan to
3 his bedroom; right?

4 A I don't remember that.

5 Q Okay. And on the way to the bedroom, they
6 fell down a couple times?

7 A Okay. So yes, there was -- at one point in
8 the interview he did -- there was a different kind of
9 narrative, and that was that they fell down in the
10 hallway.

11 Q Would you agree that his narrative changed a
12 little bit after he spoke with Captain Boruchowitz?

13 A I do not know -- I'm trying to recall exactly
14 when Captain Boruchowitz interviewed him. I'm not sure
15 if his narrative changed afterwards. Yeah, I can't
16 comment on that because I don't remember exactly.

17 Q Okay. Marco said he heard the door slam?

18 A Yes, sir.

19 Q And that angered him?

20 A Yes.

21 Q He went to try and open the door, and it was
22 locked; right?

23 A Yes.

24 Q He said it angered him. That that was unusual
25 because they didn't lock doors in the house; right?

1 A I don't remember he said that they didn't lock
2 the doors in the house, but he may have. I don't
3 remember him commenting that they don't lock doors in the
4 house, to be honest.

5 Q Do you remember Marco telling you that at
6 night -- in the middle of the night sometimes he would go
7 check on Jonathan?

8 A I believe -- that sounds right, because he did
9 have that caretaker-type --

10 Q That's one of the reasons why they didn't lock
11 the doors in the house?

12 A Could be. I don't recall that, though.

13 Q Marco said he kicked the door open?

14 A Yes, sir.

15 Q Now, I know you described it as a chokehold on
16 direct examination.

17 A Yes, sir.

18 Q Marco called it a bear hug; right?

19 A Yes.

20 Q He said initially he was more down around his
21 waist; right?

22 A It was more -- initially it was more down
23 around his waist, and as I recall, the best memory, it
24 started working its way up, and at one point it was
25 around the neck and then another point it was around his

1 chest.

2 Q And one of the reasons it worked its way up is
3 Marco said Mr. Piper said, "Ow, you're hurting my tube,"
4 because he had a feeding tube; right?

5 A I don't recall that, sir.

6 Q All right. But you did say Marco told you he
7 was squeezing him around the chest?

8 A It was around the chest and -- at that one
9 point it was around the chest.

10 Q He admitted to you that he squeezed too hard?

11 A Yes.

12 Q He heard Jonathan gasp?

13 A Yes.

14 Q And at some point he went limp?

15 A Yes.

16 Q Marco told you he first tried to tap him or
17 shake him to wake him up?

18 A Yes, sir, something like that.

19 Q When he didn't, Marco attempted CPR?

20 A He said he started to resuscitate him. He may
21 have said CPR, but yes.

22 Q He said at one point while he was attempting
23 to resuscitate him, he kept using the word lurched;
24 right? That Jonathan lurched and -- almost as if he took
25 a big inhale, a big breath? Do you remember Marco

1 describing that?

2 A I don't remember Marco describing lurched.
3 I think I remember him talking about taking a deep breath
4 or a large, like, gasp of air or whatever. Yeah, I do
5 recall that.

6 Q He said at that point he had hoped that maybe
7 it brought him back to life?

8 A As he was resuscitating him?

9 Q Yeah.

10 A I believe I remember that, yes. That sounds
11 right, yeah.

12 Q Now, do you remember in the interview having
13 to explain the *Miranda* rights to Marco a second time?

14 A I think when -- I may have read him the rights
15 twice, coming back and reminding him of his rights. I
16 believe that to be accurate.

17 Q Do you recall Marco saying something along the
18 lines of, "I gave up my *Miranda* rights? What does that
19 mean?"

20 A I don't remember that.

21 Q Okay. Now, prior to the interview with Marco,
22 you listened to the 9-1-1 call; right?

23 A I think it was at one point during the
24 interview. That's when the captain had us listen to it.
25 It could have been before, but it was early.

1 Q So possibly when you stepped out for 10
2 minutes with Detective Fisher?

3 A Yes, sir.

4 Q The pictures of the nunchucks, did you take
5 those prior to your interview with Mr. Torres?

6 A I don't believe I did. I think those were
7 after.

8 Q Okay. Do you remember Mr. Torres mentioning
9 the nunchucks at all in your interview with him?

10 A No, sir.

11 MR. MARTINEZ: Pass the witness, Judge.

12 THE COURT: Redirect by the State.

13 MR. VITTO: Thank you, Your Honor. Can I have
14 the Court's indulgence a moment?

15 THE COURT: Sure.

16 MR. VITTO: Thanks, Judge.

17 Thanks, Judge.

18

19 REDIRECT EXAMINATION

20 BY MR. VITTO:

21 Q So let me understand exactly what happened
22 here with the defendant's resuscitation effort. It was
23 my understanding that he told you -- the defendant being
24 the "he" -- the defendant told you that his effort to
25 resuscitate came after he observed the arrival of law

1 enforcement?

2 A Yes.

3 Q Okay. So he didn't try to revive
4 Jonathan Piper, his dead friend, until after law
5 enforcement arrived. Is that what he told you?

6 A Correct. When they arrived, it was at that
7 point that he had began resuscitating him. I believe so.
8 Or maybe at the same time, but I believe that's accurate.

9 Q All right. Now, about the interview itself,
10 correct me if I'm wrong. During cross-examination you
11 saw no indication -- nothing to make you think that there
12 was any alcohol or marijuana impairing the defendant's
13 ability to reason or hear questions and answer questions;
14 is that correct?

15 A Correct.

16 Q He was *Mirandized*?

17 A Yes, sir.

18 Q He agreed to talk?

19 A Yes.

20 Q Yes?

21 A Yes, sir.

22 Q Any reason to suspect or believe that your
23 questioning was in any way involuntary?

24 A No, sir.

25 Q Did he at any point during this interview say,

1 "Man, I love talking to you guys, but I'm just so sleepy,
2 can I get some sleep?"

3 A No, sir.

4 Q So if I understand correctly, the defendant --
5 well, you tell me. At what point in your interview did
6 the defendant volunteer the black-out defense?

7 A I think the black out --

8 MR. MARTINEZ: I object to the
9 characterization there, Your Honor, blacking out being a
10 defense to anything.

11 MR. VITTO: I would take "defense" out.

12 BY MR. VITTO:

13 Q So at what point did the -- at what point in
14 the interview did the defendant say he blacked out?

15 A Well, I'm not -- he -- more like it's snapped.
16 I think the term may be blacked out or snapped, kind of
17 like an abrupt -- it wasn't more of a blacked out -- from
18 my perception it was not intoxication, but more of a --
19 an anger.

20 Q Okay. All right. So -- all right. That's
21 good. Let me understand that, then. So he wasn't
22 saying, I blacked out and don't remember. This is more
23 along the lines of a red rage?

24 A Yes, sir. That's --

25 Q Okay. Because he clearly remembered

1 everything that he did?

2 A Yes, sir.

3 Q And in fact, everything that he told you he
4 did, you were able to independently corroborate with
5 physical evidence that you photographed and collected?

6 A Yes, sir.

7 Q And I remember defense counsel asking you
8 about photographs of the defendant, which I'm trying to
9 retrieve. So you did photograph the defendant?

10 A I believe I did. I usually photograph hands
11 and, you know, during these types of -- I want to say
12 yes, but I don't remember specifically taking
13 photographs.

14 Q Maybe if I show them to you, they'll spark
15 that recollection.

16 A Okay.

17 Q So that's what I'm trying to get. So let me
18 ask you this. Did you see any injury of any kind at all
19 whatsoever to the defendant?

20 A No, sir, I didn't.

21 Q And you said that you usually photograph the
22 hands?

23 A Usually, yes.

24 Q Do you recall any injury at all whatsoever to
25 the defendant's hands?

1 A I don't recall any, no, sir.

2 Q All right. But we know that the decedent had
3 injury to the left side of his face and head --

4 A Yes.

5 Q -- correct?

6 A Yes, sir.

7 Q And we know that the defendant takes
8 responsibility for the death of Jonathan A. Piper;
9 correct?

10 A Correct.

11 Q Is that any indication to you that perhaps an
12 object was used to cause the injury you observed to the
13 decedent? He's got no -- the defendant has no injury on
14 his hands?

15 A Right.

16 Q Is that an indication that he didn't strike
17 the decedent with his hands?

18 A It might be, yes.

19 MR. VITTO: We're getting back to the
20 nunchaku. So Judge, that's all I have for redirect,
21 except that I want to show this witness those
22 photographs, and we can wait a few minutes to get it or
23 we can call another witness. It's the Court's pleasure.

24 MR. MARTINEZ: I have a few more questions to
25 ask if you want to do that in the meantime.

1 MR. VITTO: Sure. Absolutely.

2 THE COURT: Mr. Martinez will help you buy
3 some time.

4 MR. VITTO: Excellent.

5

6 RE CROSS-EXAMINATION

7 BY MR. MARTINEZ:

8 Q Detective, do you remember in the interview,
9 Marco -- him telling you multiple times, "I remember
10 now," or something to that effect?

11 A I don't remember him -- I don't remember him
12 going, "Oh, I remember now." From what I can remember --
13 I can recollect, it was more of a -- this is what
14 happened, but --

15 Q You said you've been a detective for five
16 years; right?

17 A Yes, sir.

18 Q You have interviewed a lot of people; right?

19 A Yes, sir.

20 Q Would you agree that as you talk to people
21 about an event, oftentimes it jogs their memory?

22 A Absolutely.

23 Q So they remember details?

24 A Yes.

25 Q And that's happened to you on the stand today

1 with some of my questions?

2 A Yes.

3 Q Okay. Do you think it's possible to believe
4 that happened with Marco during his interview with you?

5 A Absolutely.

6 Q All right. Mr. Vitto asked you some questions
7 that have made it seem as though the reason Mr. Torres
8 attempted to resuscitate Mr. Piper is because the police
9 showed up. Is that the impression you got from your
10 interview?

11 A I don't recall if that was my perception of
12 it. It was a time line thing, so whether --

13 Q So him doing resuscitation and the sheriff's
14 office arriving happened very close in time?

15 A Very close in time, yes, sir.

16 Q When we talk about Mr. Torres' intoxication,
17 did he tell you at any point in the interview that this
18 isn't -- he wouldn't have acted this way if he hadn't
19 been drinking?

20 A I believe he did say that.

21 Q Okay.

22 A Yes. I specifically remember.

23 MR. MARTINEZ: Nothing further, Judge.

24 THE COURT: Okay. Anything else from the
25 State?

1 MR. VITTO: Yeah. A little bit of redirect.

2 THE COURT: You already had redirect.

3 MR. VITTO: Re-re.

4 THE COURT: Re-re?

5 MR. VITTO: Re-re.

6

7 REDIRECT EXAMINATION

8 BY MR. VITTO:

9 Q So what did the defendant tell you he did when
10 law enforcement arrived?

11 A Began to resuscitate -- try to resuscitate his
12 friend.

13 Q Did he tell you that when law enforcement
14 arrived, he threw open the door and said, "Help, help, my
15 friend needs help"?

16 A No, sir.

17 Q What did he say?

18 A That he actually, at one point, went and tried
19 to fall asleep in the other room. And then we asked him,
20 you know, "Well, why didn't you open the door?" And he
21 said that he was scared.

22 MR. VITTO: Okay. Judge, I have nothing else
23 except those photographs. I can call another witness or
24 we can wait. I don't know how much longer it's going to
25 take. I can go check. However you want is fine with me.

1 THE COURT: Well, have Mr. Fancher wait
2 outside and call another witness --

3 THE WITNESS: I got no place to be.

4 THE COURT: -- and if you find the photographs
5 you're looking for, we can always call him back. He
6 doesn't have anything else to do, anyway.

7 THE WITNESS: No. I've got no life.

8 THE COURT: He's going to retain possession of
9 the phone.

10 MR. VITTO: Does he have it?

11 THE BAILIFF: Your photos are here.

12 MR. VITTO: Of course.

13 MR. MARTINEZ: Welcome back, Detective.

14 THE WITNESS: Thank you.

15 THE COURT: Let me remind you you're still
16 under oath.

17 MR. VITTO: Okay. Next will be State's
18 proposed Exhibits -- we did 35?

19 THE CLERK: We ended on 34.

20 MR. VITTO: Okay. So I need 35, 36, 37 and
21 38.

22 THE COURT: Okay. I see what you're saying.
23 The last one you marked was 34.

24 THE CLERK: Yes.

25 THE COURT: 34 hasn't been admitted.

1 THE CLERK: No.

2 MR. VITTO: No. We haven't got there yet.

3 All right. May I proceed, Judge?

4 THE COURT: You may.

5 MR. VITTO: Thank you very much.

6

7 REDIRECT EXAMINATION

8 BY MR. VITTO:

9 Q So showing you State's proposed Exhibits 35,
10 36 and 37. Okay. Go ahead and look at those
11 photographs. We've got one more coming.

12 Oh, that's my shadow. I kept thinking that
13 was Daniel. That was my shadow in the window. Or not
14 Daniel. Michael. I'm sorry.

15 Do you recognize those photographs?

16 A Yes.

17 Q It's okay if you don't.

18 A It's just my fashion. I always take pictures
19 of hands. And I just want to say that I did; that's
20 usually what I do. I just -- yeah. I mean, I don't --

21 Q Let me ask you this. Do they appear accurate?

22 A Yes.

23 Q All right. So what do we have there, by
24 number? Just generically speaking, what do we have?

25 A A photograph of his hands, the outside of his

1 hands, and his back.

2 Q Okay. And can you tell us from those
3 photographs where those photographs were taken?

4 A Looks like inside the living room.

5 Q Inside?

6 A Inside the living room.

7 Q At the house. That was up to 37? You've got
8 35, 36, 37?

9 A Yes, sir.

10 MR. VITTO: Here comes 38. Hot off the press.
11 Perry Mason moment.

12 MR. MARTINEZ: You can't have two of them.

13 MR. VITTO: Okay. Actually, I have two more.

14 THE CLERK: 38 and 39.

15 MR. VITTO: Yeah.

16 BY MR. VITTO:

17 Q Detective, I'm going to show you a couple
18 more. 38 and 39, I believe.

19 A Uh-huh.

20 Q Specifically let's just talk about his hands
21 for a second because you've got a photograph of the
22 outside of the right hand, a photograph of the outside of
23 the left hand, and then a photograph of the right and
24 left hand, the inside; correct?

25 A Correct.

1 Q Do you see any indication of an injury at all
2 whatsoever to the defendant's hands?

3 A No, sir.

4 Q And which photograph -- what number is the
5 photograph depicting the defendant's back?

6 A That would be photograph 35.

7 Q And which photograph depicts the front of the
8 defendant?

9 A That would be 39.

10 Q All right. On either of those photographs do
11 you see any indication at all whatsoever of any injury of
12 any kind?

13 A No, sir.

14 Q Now, to be fair, defense counsel has told me
15 that there was a photograph of the defendant's leg that
16 has a scratch on it. You can't see it in the
17 photographs, but do you recall that at all?

18 A Yes, I do, actually.

19 Q Okay. You recall that he had a scratch on his
20 leg?

21 A Yes.

22 Q Do you recall which leg?

23 A I do not recall which leg, but I do remember
24 there being a scratch to the leg.

25 Q All right. Is there -- is that the only

1 indication of any injury that you recall?

2 A That is the only one that I recall, yes.

3 Q All right. But there is no injury to his
4 face, like he got hit in the face, is there?

5 A No.

6 Q No injury to the back of his head, like he got
7 hit in the back of his head?

8 A No.

9 Q And no injury to his hands, like he hit
10 anything?

11 A No.

12 MR. VITTO: Your Honor, I would ask these
13 photographs be admitted into evidence.

14 MR. MARTINEZ: No objection.

15 THE COURT: Okay. Then they will be admitted.

16

17 (State's Exhibits 35 through 39
18 were received into evidence.)

19

20 MR. VITTO: That was 35 through 39?

21 THE CLERK: Yes.

22 MR. VITTO: Got it.

23 THE WITNESS: Yes. Wait. Yes.

24 MR. VITTO: I have no more questions of this
25 witness at this time.

1 MR. MARTINEZ: Nothing further, Judge.

2 THE COURT: No more witnesses or no more
3 questions?

4 MR. MARTINEZ: No more questions.

5 THE COURT: Okay.

6 MR. VITTO: Thanks. Britain Hoffman.

7

8 BRITAIN HOFFMAN,

9 having been first duly sworn to tell the truth, testified
10 as follows:

11 THE CLERK: You may be seated.

12 THE WITNESS: I have a copy of my report, just
13 for notes.

14 MR. VITTO: Do you want me to take it,
15 Counsel, for now?

16 MR. MARTINEZ: Your call.

17 MR. VITTO: Turn it upside down on the desk,
18 but don't look at it.

19 THE COURT: If you want, you can pull your
20 mask down below your mouth so everyone can hear your
21 testimony and it's not muffled or garbled. And if you
22 can start by stating and spelling your name for the
23 record.

24 THE WITNESS: Deputy Britain Hoffman,
25 H-o-f-f-m-a-n.

DIRECT EXAMINATION

BY MR. VITTO:

Q What is your occupation, sir?

A Deputy with the Nye County Sheriff's Office.

Q How long have you been so employed?

A Almost eight years.

Q What's your detail?

A Traffic.

Q Let me direct your attention to April 4, 2020,
835 South Linda Lane. Did you respond to that location
on that date?

A I did.

Q What time?

A I got there approximately 7:10 in the morning.

Q Okay. And for what purpose?

A To relieve the deputies -- the patrol deputy
that's on scene.

Q Who was the patrol deputy on scene that you
relieved?

A Deputy Christen.

Q What did you observe upon arrival?

A When I arrived there I observed obviously
Deputy Christen on scene, detective vehicles, a few
detectives, and the operations captain and yellow crime
scene tape.

1 Q What did you do upon arrival?

2 A I went to Deputy Christen, and at that point
3 she turned the crime scene log over to me.

4 Q All right. And with what duties were you
5 tasked on scene?

6 A Crime scene log and scene security.

7 Q All right. Now, you've provided a report.
8 It's actually, frankly, perhaps the best synopsis of a
9 scene -- of the events that I've seen. I commend you for
10 that. So obviously someone briefed you; is that correct?
11 You were given some information about the scene and what
12 had transpired?

13 A Afterwards.

14 Q Yes?

15 A Yes.

16 Q All right. Let me show you State's proposed
17 Exhibit 27.

18 Is that still at the desk or did it find its
19 way back?

20 THE COURT: Probably over here.

21 MR. VITTO: All right. 27 is the death
22 investigation report. Aha. Thank you.

23 BY MR. VITTO:

24 Q Showing you State's proposed Exhibit 27. Does
25 that look at all familiar to you?

1 A Can I flip through it?

2 Q Yes, please.

3 A Yes, it does. It looks like the copy that I
4 brought with me.

5 Q Which is laying face down on the desk in front
6 of you?

7 A Yes.

8 Q Okay. What is that?

9 A This is what we send to the coroner.

10 Q Okay.

11 A It's just basically a brief -- real brief of
12 who the person is, when the last time they were seen
13 alive, time and date of when they were pronounced
14 deceased, and then the last person to see them alive.

15 Q And were you the one that created that
16 document?

17 A Yes.

18 Q All right. And that was based on information
19 provided to you?

20 A Yes.

21 MR. VITTO: Your Honor, I would ask that
22 State's proposed Exhibit 27 be admitted into evidence.

23 THE COURT: I think it already has been.

24 MR. VITTO: It's already in?

25 MR. MARTINEZ: I didn't think it was either,

1 but no objection.

2 THE COURT: I have it admitted. I wrote it
3 down.

4 (State's Exhibit No. 27
5 was received into evidence.)

6

7 BY MR. VITTO:

8 Q Is that the extent of your involvement with
9 this matter?

10 A As well as just scene security and writing the
11 names of the individuals that entered the scene.

12 Q The crime scene log?

13 A Yes.

14 MR. VITTO: Okay. I have no more questions of
15 this witness.

16 THE COURT: Mr. Martinez.

17 MR. MARTINEZ: Briefly.

18

19 CROSS-EXAMINATION

20 BY MR. MARTINEZ:

21 Q Deputy, when you take into inventory the
22 property or personal effects for that death investigation
23 report, does that include the clothing that the decedent
24 is wearing?

25 A Normally.

1 Q Okay. Was the decedent in this case naked?

2 A I never saw the decedent.

3 Q You didn't?

4 A No.

5 Q Okay. So I understand --

6 A I never went inside the scene. I based all my
7 information off information given to me by detectives.

8 Q Okay. So on page 2 of that death
9 investigation report where -- on the inventory of
10 property, it lists jacket, shirt, trousers, belt, shoes.
11 All of those are left blank. Is that because you just
12 didn't have the information?

13 A I didn't have the information, correct.

14 MR. MARTINEZ: Nothing further, Judge.

15 THE COURT: Okay.

16 MR. VITTO: Nothing further, Your Honor.

17 THE COURT: All right. You may be excused.

18 MR. VITTO: Joseph Marshall.

19 THE COURT: Are you gonna keep that?

20 MR. VITTO: I'm not gonna keep it; I'm just
21 looking at it.

22

23 JOSEPH MARSHALL,

24 having been first duly sworn to tell the truth, testified
25 as follows:

1 THE CLERK: You may be seated.

2

3 DIRECT EXAMINATION

4 BY MR. VITTO:

5 Q What is your occupation, sir?

6 THE COURT: Please begin by stating and
7 spelling your name.

8 MR. VITTO: Little long in the tooth, Judge.

9 THE COURT: Can you state and spell your name
10 for the record?

11 THE WITNESS: Yes. Joseph Marshall,
12 M-a-r-s-h-a-l-l.

13 THE COURT: All right. Mr. Vitto.

14 MR. VITTO: Thank you, Your Honor. That's
15 always been tough for me.

16 THE COURT: What is, spelling your name?

17 MR. VITTO: Yeah. It's -- no. Because at the
18 District Court level I'm the one that asks them to state
19 their name and spell their name for the record, and so I
20 just flow into my thing.

21 THE COURT: I've just got into the habit of it
22 because sometimes, depending on the deputy district
23 attorneys that are going through here, they don't always
24 do it.

25 MR. VITTO: Thanks, Judge.

1 BY MR. VITTO:

2 Q All right. What is your occupation?

3 A I'm a detective with the Nye County Sheriff's
4 Office.

5 Q And how long have you been so employed?

6 A Since February of 2009.

7 Q Since February of 2009 as an employee of the
8 Nye County Sheriff's Office?

9 A Yes.

10 Q How long as a detective?

11 A One year. June of last year.

12 Q Let me direct your attention to April 6th of
13 this year at approximately 1150 hours, just before noon
14 on April 6th. Do you recall where you were?

15 A Yes.

16 Q Where was that?

17 A Clark County Coroner's Office.

18 Q For what purpose?

19 A To attend an autopsy.

20 Q And the autopsy of who?

21 A I believe it was Jordan Piper.

22 Q Jordan Piper? Let me show you -- did you make
23 out a report in this case?

24 A Yes, sir. I have it here, face down.

25 Q You have it?

1 A Yes.

2 Q Well, without objection, I'm going to ask you
3 to review the report and see if it refreshes your
4 recollection at all.

5 Counsel, do you have any objection?

6 MR. MARTINEZ: No.

7 A Oh. Yes.

8 BY MR. VITTO:

9 Q What autopsy did you attend?

10 A Jonathan Piper.

11 Q All right. Now, in the attendance of that
12 autopsy did you observe any injury to the decedent?

13 A Yes.

14 Q Can you describe that?

15 A There was a mark, a reddish mark, above his
16 left ear on his head.

17 Q Okay. Let me show you State's Exhibit 19.

18 Thank you, sir. Showing you State's Exhibit 19, do you
19 recognize the person depicted there?

20 A Yes.

21 Q Who is that person?

22 A Jonathan Piper.

23 Q That's the person whose autopsy you attended
24 April 6th; is that correct?

25 A Yes.

1 Q All right. And you see injury to the
2 individual in that photograph?

3 A Yes.

4 Q Is that the injury you observed at the
5 autopsy?

6 A Yes.

7 Q All right. And you were present for the
8 entire autopsy?

9 A Yes.

10 Q What was the cause of death?

11 A I believe it was asphyxiation.

12 Q And the manner of death?

13 A Homicide?

14 Q Well, now, I don't know. Is that a question
15 to me? Let me show you State's -- did we stipulate to 5
16 yet?

17 MR. MARTINEZ: We stipulated at the beginning
18 of the --

19 MR. VITTO: We stipulated to the admission of
20 the autopsy report. That's State's Exhibit 5.

21 BY MR. VITTO:

22 Q Let me show you State's Exhibit 5. I want you
23 to take your time. Go through State's Exhibit 5, and
24 when you've had the opportunity to review that, look up
25 and I'll ask you some questions about it.

1 A Yeah.

2 Q Have you had an opportunity to review the --

3 A Yes. I reviewed it when it came in as well.

4 It appears to be the autopsy report sent from Clark
5 County.

6 Q Okay. Now, you see that the autopsy report
7 includes a cause of death; correct?

8 A Yes.

9 Q And what do they list as the cause of death?

10 A Asphyxia.

11 Q And the manner of death?

12 A Homicide.

13 Q All right. That's consistent with what you
14 observed at the autopsy --

15 A Yes.

16 Q -- that you were personally present for?

17 A Yes.

18 Q All right. And is that the extent of your
19 involvement with this matter?

20 A Yes.

21 MR. VITTO: I have no more questions of this
22 witness at this time, Your Honor.

23 THE COURT: Mr. Martinez?

24

25 (No Omissions.)

CROSS-EXAMINATION

BY MR. MARTINEZ:

Q Detective, you didn't notice any bruises on Mr. Piper's neck; right?

A I did not.

Q You didn't notice any bruises on his chest?

A No, I did not.

Q And no scratches in either of those locations either; right?

A I did not.

Q No injuries at all to the neck or chest did you observe?

A Not that -- no, not that I would have known what I was looking at.

MR. MARTINEZ: No further questions, Judge.

REDIRECT EXAMINATION

BY MR. VITTO:

Q As you were attending the autopsy, did you hear it documented and recorded, injury to the neck or throat?

A Yes.

Q And what do you recall hearing at that autopsy?

A He said that there was some kind of -- I don't

1 remember the term, but it was something about the
2 shoulders and the neck. They asked if he had cancer.
3 They were able to verify that. They mentioned -- they
4 drew attention to a hyoid bone, and that's kind of all I
5 remember, is mainly around the neck. The mark on the
6 head, they couldn't specify where that had come from.

7 MR. VITTO: I have no more questions of this
8 witness, Judge.

9 MR. MARTINEZ: Nothing further, Judge.

10 THE COURT: This witness can be excused, then?

11 MR. VITTO: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. VITTO: So, Judge, I have -- obviously we
14 need to argue admissibility of 11, 12, 13 and 14. Just
15 prior to that and before I close -- I don't have any more
16 witnesses to call. I would like this Court to receive
17 into evidence transcripts of hearings in front of this
18 Court on April 6th in this courtroom. I have the
19 transcript marked as State's proposed Exhibit 28, page
20 8 -- wait. April 6 is page 4, where the transcript
21 reflects that the defendant acknowledges that he was in
22 fact the decedent's caretaker. As I'm going to be
23 arguing that the decedent was a vulnerable person, I
24 think it important to note that from the defendant's own
25 mouth he acknowledges that the defendant needed a

1 caretaker.

2 I would also ask the Court to receive into
3 evidence a transcript of this Court's proceeding marked
4 preliminarily as State's proposed Exhibit 29, where, on
5 page 8, the defendant says, "What happened to my
6 second-degree murder charge? I was happy. This ain't
7 first-degree murder." I think it relevant and important
8 that out of his own mouth, in this courtroom in front of
9 this judge, the defendant says that he was happy with his
10 second-degree murder charge, and then Counsel went on to
11 explain to him that, well, it just isn't his call.

12 Additionally, Your Honor, for notice purposes,
13 the State has alleged that the State will be seeking --
14 should the defendant be convicted of any offense that's
15 alleged, the State will be seeking to have his sentence
16 enhanced as an habitual criminal.

17 In that regard and along those lines, Judge,
18 I would like marked and admitted what is preliminarily
19 marked currently as State's proposed Exhibits 30, 31, 32,
20 33, and 34, certified copies of criminal convictions from
21 California, all reflecting felony convictions, reflecting
22 that the defendant was represented by counsel, reflecting
23 that the defendant pled guilty to felony offenses. And I
24 believe that's all that's necessary for purposes of any
25 notice requirement incumbent upon the State to make

1 manifest at a preliminary hearing.

2 I would ask that those items be admitted into
3 evidence.

4 THE COURT: Mr. Martinez?

5 MR. MARTINEZ: Are you moving to admit them
6 through judicial notice, or how are you moving to admit
7 them?

8 MR. VITTO: Judicial notice on the
9 transcripts. We have certified copies of the judgments
10 of conviction, which is all that's necessary for -- to
11 manifest a prima facie case, especially when we have
12 evidence that the defendant, out of his own mouth,
13 acknowledged having two prior felony convictions. I'm
14 showing evidence of five.

15 We have alleged that should the defendant --
16 or we put the defendant on notice that should he be
17 convicted of any felony offense for which he's been
18 charged, we put him on notice that we would be seeking
19 the small or large, the A or B, felony enhancement to any
20 offense he's convicted of.

21 MR. MARTINEZ: Based on the judicial notice as
22 well as the certified records, Your Honor, I can object
23 all I want, but I don't think I'm on firm legal ground to
24 do that. I think they're getting in no matter what.

25 THE COURT: Well, you are correct. I believe

1 they are going to be admitted.

2

3 (State's Exhibits 28, 29, 30, 31,
4 32, 33, 34 were received into
5 evidence.)

6

7 MR. VITTO: Thank you, Your Honor.

8 I have no more witnesses, Judge. We do have
9 to argue admissibility of 11 through 14. I'm ready when
10 you are.

11 THE COURT: Does the defense have any
12 witnesses that they're going to call at this time?

13 MR. MARTINEZ: No, Judge. I have spoken with
14 Mr. Torres about his right to testify as well as his
15 right to remain silent at today's hearing. On advice of
16 counsel, he's going to make the correct move and invoke
17 his Fifth Amendment -- is that right? -- and remain
18 silent today and not testify.

19 THE COURT: Okay.

20 MR. MARTINEZ: With that, the defense would
21 rest as well.

22 THE COURT: All right. With regards, then, to
23 11, 12, 13 and 14, Mr. Vitto, if you want to go ahead.

24 MR. VITTO: Just briefly, Your Honor. I don't
25 have a lot to add since we have argued it probably to the

1 extent that we can at this level.

2 Specifically what we're talking about are
3 photographs that depict nunchaku. The only thing that I
4 would add to all of the argument that I previously set
5 forth is that there's obvious injury to the left side of
6 the decedent's head and face. There is no injury to the
7 defendant, to his hands, that would be any indication
8 that the injury to the decedent was caused by the
9 defendant hitting him with his hands. I think it beyond
10 cavil that the defendant caused the injury that we see.
11 If it wasn't with his hands, it was with an object. I
12 think that the nunchaku being found where it was -- there
13 was some in the bedroom and there was one in the living
14 room, which is the living room area, kitchen area, which
15 is where the tussle began. I don't think it untoward to
16 think that the defendant didn't use the nunchaku. Maybe
17 he did; maybe he didn't.

18 But the State is going to be asking this Court
19 to amend the criminal complaint before the Court in two
20 ways. The first one's the easy one. I'm asking the
21 Court to amend by interlineation the criminal complaint
22 before the Court insofar as it pertains to all five
23 counts.

24 I think it easy to understand why the State
25 alleged unit 103 at 835 South Linda Street. What we

1 heard today was that although the trailer says 103 on the
2 outside, it's actually unit 4, according to the property
3 manager. So I would ask that each count be amended to
4 say -- taking count one, for instance, at the time he was
5 murdered at -- I would ask that it say unit 4 or within a
6 residence marked 103 or unit 103, 835 South Linda Street,
7 and the same interlineation being made for each of the
8 seven counts before the Court.

9 I'm asking for that amendment to conform to
10 the evidence that we heard, Judge.

11 MR. MARTINEZ: No objection from the defense
12 as to that amendment, Judge.

13 MR. VITTO: And then the second amendment
14 would be to add a Count XIII to be an allegation of --
15 under 202.350, in this case I'm going to cut out some
16 of the surplusage, possession or use of dangerous weapon,
17 that dangerous weapon in this case being the nunchaku.
18 Under paragraph 3, that the defendant possessed the
19 nunchaku with the intent to inflict harm upon the person
20 of another, a gross misdemeanor. It's (1)(c), Judge. So
21 it would be 202.350(1)(c), possessing nunchaku with the
22 intent to inflict harm upon the person of another, a
23 gross misdemeanor.

24 THE COURT: So the habitual criminal will then
25 become Count IX?

1 MR. VITTO: That's correct, Judge.

2 THE COURT: Because Count VIII is now habitual
3 criminal enhancement.

4 MR. VITTO: That's correct, Judge. The
5 habitual criminal would become Count IX.

6 THE COURT: What I did on the first one, on
7 Count I of the one I have before me, I've crossed out
8 103. I drew a line through 103 and I wrote below it
9 "Unit 4 marked by numbers 103 at 835 South Linda Street."

10 MR. VITTO: That's perfect.

11 THE COURT: Okay.

12 MR. VITTO: I can't improve upon that.

13 THE COURT: Mr. Martinez?

14 MR. MARTINEZ: I'm kind of in a weird spot
15 procedurally here, Your Honor. The State has the right
16 to amend the complaint to a certain degree.

17 THE COURT: Correct.

18 MR. MARTINEZ: And this is something that I
19 know is being argued by some colleagues of mine in Clark
20 County, so I'm going to make the argument today that the
21 purpose of amending the complaint is to conform to the
22 testimony that we've heard today during the preliminary
23 hearing, as the State did with their first amendment.
24 They haven't charged any offenses; they haven't changed
25 any offenses. It's to change a date, an address number,

1 change a small detail that ultimately won't change the
2 big case, or to amend charges when the State is surprised
3 and there's new information that's brought to their
4 attention at the preliminary hearing.

5 It's not to be in a situation where the State
6 can use it in a negotiation tactic, which the State isn't
7 doing in this case, where other times other district
8 attorneys will say, Well, this is my offer to negotiate
9 the case, but if you don't at the preliminary hearing I'm
10 going to add all of these charges. That's not the
11 purpose; that's not why the State is allowed to amend the
12 charge.

13 There's been no new evidence presented today.
14 These pictures were available in the discovery and the
15 State gave them to me ahead of time. The marks on
16 Jonathan Piper's face, again, in pictures given to me
17 ahead of time, available in discovery ahead of time.
18 There was just an amended complaint filed August 4th, on
19 Tuesday, when all this information was available. We
20 didn't add it there.

21 So procedurally speaking, this is not based on
22 new information, so the State should not be allowed to
23 amend the complaint to add that additional crime and add
24 that additional charge. Whether or not there's probable
25 cause for that additional charge I will speak to later.

1 Everything kind of crosses over because the State -- I
2 will speak to that in my closing argument, because if the
3 Court allows the State to amend the complaint to add
4 that, then the pictures of the nunchucks are probably
5 relevant to this charge and they should probably be
6 admitted. But it's my stance that they should not be
7 allowed to amend the complaint because this is not new
8 information, and then once we take it a step further,
9 since they cannot add this charge, the pictures of the
10 nunchucks are not relevant to any of the charges in the
11 complaint and they should not be admitted.

12 MR. VITTO: Judge, there's nothing -- the
13 defense has no authority for the position that if it's
14 not new, you can't add it. There is no authority for
15 that position.

16 MR. MARTINEZ: There sure is.

17 MR. VITTO: The statute says prejudicial. The
18 statute says new or different, but that's talking about
19 amending up until the time of verdict. You can make
20 amendments up until the time of verdict. We're way below
21 that point. Nothing stands between the prosecution
22 filing a new gross misdemeanor charge this afternoon and
23 having a new preliminary hearing on the nunchaku charges,
24 and then seeking to join them if we were to get a
25 bindover at the District Court level prior to trial.

1 Nothing stops the prosecution from seeking to do that.

2 It doesn't mean we would be successful, but nothing stops
3 us from doing that.

4 So here we are at a probable cause
5 determination. I believe that amending the complaint
6 will conform to the evidence that's been presented, and I
7 can't think of -- because the State could file the charge
8 separately and independently, and it could march along on
9 a separate line, I don't think any argument about this
10 being somehow prejudicial to the defense or to the
11 defendant would be successful or could have merit.

12 That's my position, Judge.

13 MR. MARTINEZ: I'm just standing, Judge.

14 THE COURT: So you're just standing. You're
15 just tired of sitting?

16 MR. MARTINEZ: Little bit.

17 THE COURT: Okay. Well, with regards to the
18 amendment of the complaint in and of itself, I believe
19 the State does have the right to add or delete or
20 interdelineate anything to do with any charges that seems
21 fit based on any evidence that it may have at the time.
22 So if they want to add the charge of the possession of
23 the nunchucks for whatever reason, I believe the State
24 has the authority to do that. So I will allow that to
25 happen.

1 And then with that, obviously, 11, 12, 13 and
2 14 would be admitted as evidence.

3
4 (State's Exhibits 11 through 14
5 were received into evidence.)

6
7 THE COURT: I would request the State go ahead
8 and make those changes.

9 MR. VITTO: We will get a conforming second
10 amended criminal complaint.

11 THE COURT: And file that with us so it can
12 accompany whatever other paperwork we have in this case.

13 MR. VITTO: Certainly. Thank you, Judge. I'm
14 ready to close. Is the defense ready?

15 MR. MARTINEZ: Born ready.

16 MR. VITTO: Oh, boy. Are you ready, Judge?
17 All right. This isn't a Kirk Vitto closing. This is a
18 much abbreviated and probably a much appreciated version.
19 So, Judge, I'll try to hit some high points, I guess.

20 The defendant himself, out of his own mouth,
21 has provided all that's necessary to support his being
22 bound over as charged. The State has made abundantly
23 manifest the corpus delicti. You have before you all the
24 evidence you need to conclude that Jonathan A. Piper was
25 found dead, he died as a result of being strangled,

1 asphyxia, and his death was a homicide.

2 After hearing what the defendant himself said,
3 it is clear that this was a murder falling under the
4 category of an open murder, which is Count II. That
5 includes first degree, second degree, voluntary
6 manslaughter and involuntary manslaughter. With the
7 evidence you have at this level, for purposes of probable
8 cause you have enough evidence to hold the defendant to
9 answer for the first-degree murder, which is Count I, the
10 first-degree murder of a vulnerable person, and every
11 other charge that's been alleged.

12 And the prosecution is allowed to plead and
13 prosecute in the alternative. There's no way that the
14 State would allow the defendant to be convicted of
15 first-degree murder and open murder. As we brought up
16 earlier, there will be jury instructions instructing the
17 jury of their responsibility, their legal responsibility
18 based on their conclusions, so that *Blockburger* is not
19 violated.

20 Some interesting things in the trial, Judge.
21 As pointed out in the testimony, if you look at 1 and 2A,
22 we have a photograph in number 1 of the decedent alive,
23 taken by his brother, on the bed that the brother bought
24 him, with the bedding that the brother purchased. And if
25 you look at the photographs of the decedent lying dead,

1 you'll see that he is lying on the same exact bedding
2 that his little brother brought him, bedding upon which
3 he was slain by the defendant.

4 You have some interesting testimony about the
5 two white chairs. Mr. La Due -- Mr. La Due gave those
6 chairs to the decedent. There was some testimony that
7 that's where he sat. That's where he did his sudoku.
8 That's where he liked to sit. That's where he was always
9 seen sitting. And we see one of those white chairs
10 thrown out the front door and one of those white chairs
11 thrown out the back door.

12 A lot of this evidence ties together
13 exceedingly well before you even get to the statements
14 made by the defendant, and some reasonable inferences
15 along the way. Why would the defendant strangle the
16 decedent while he's gasping, while he's reaching for his
17 phone? After taking the phone away from him and smashing
18 the phone, listening to him gurgle and gasp and
19 ultimately go limp, why did he try to resuscitate the
20 victim? Because he was in trouble and he knew it.
21 Because as the Court can see from the parts of the
22 criminal history that's in evidence before this Court,
23 the defendant is no neophyte to the criminal justice
24 system. He was in trouble and he knew it.

25 Based on the testimony of Christopher Piper,

1 the decedent's brother, the decedent couldn't run away.
2 He couldn't fight. He had no muscle mass. He was weak,
3 subjected to chemotherapy, radiation, on quite a list of
4 medications. The evidence reflects that all he could do
5 is what he did. He tried to escape to his bedroom and he
6 locked the door. And that didn't work because the
7 defendant kicked the door open as the Court can plainly
8 see.

9 He tried to call the closest person he knew,
10 Mr. La Due. Called him twice. "Help. Help. Help.
11 Dennis, help." Unfortunately, because of the provider
12 Mr. La Due has, Mr. La Due didn't get those phone calls
13 until 6:00 or 7:00 that morning. He tried to call his
14 closest loved one, his little brother. His brother saw
15 the phone call come in at 2:00 or 3:00 in the morning.
16 He didn't pick it up.

17 He tried to call 9-1-1. So he obviously
18 called Mr. La Due twice before the defendant got in his
19 room, and he called his little brother once before the
20 defendant got in the room. He had no success calling
21 them.

22 He called 9-1-1. "Help." The defendant kicks
23 open the door, sees him on the phone. This agitates him
24 even further. You can hear the struggle. There's a
25 struggle for the phone. The defendant says he smashes

1 the phone on the ground. The decedent did what he could,
2 which wasn't much. He could mount no defense.

3 The defendant says he tried to resuscitate --
4 immediately tried to resuscitate the victim to no avail.
5 The N.C.S.O. tried to resuscitate the victim to no avail.
6 There's no injury on the defendant's hands. There's no
7 defensive wounds to the defendant. This was a completely
8 lopsided and one-sided battle. There was one aggressor
9 and one victim.

10 It's interesting that when law enforcement
11 arrives, the defendant didn't say, "Help, help. My
12 friend needs help. Come on in. Get the medics here."

13 "Identify yourself."

14 "Bozo the Clown. We're all fine here.
15 Nothing to see here. Keep moving. Nothing going on."

16 You can hear on the 9-1-1 call where he tells
17 the dispatcher, "False alarm." False alarm. It's very
18 clear what's happening here based on the great weight of
19 the evidence.

20 A vulnerable person. Has the prosecution
21 presented slight or marginal evidence that the decedent
22 was a vulnerable person? We have his medical records.
23 They reflect that due to degeneration, the decedent
24 experiences chronic back pain, malnutrition, neuropathy,
25 cancer in his neck, lymphoma. He underwent chemotherapy.

1 His brother mentioned radiation. He has a feeding tube.
2 He's taking hydrocodone every four hours to manage his
3 pain, and that doesn't work. Hand surgery, hip surgery,
4 knee surgery. Five-foot-ten, and he weighed 106 in
5 February, which is the last medical record I think that
6 this Court has.

7 The medical records reflect that he was very
8 thin and listless. He didn't work. His brother
9 testified he had no muscle mass. Basically he could move
10 about, but it's slow and it's difficult.

11 La Due said that all was quiet at about 3:00.
12 He was pronounced at 0436 hours, about 95 minutes after
13 the 9-1-1 call, which came in at about 0301. Reasonable
14 inference, he was dead within minutes of that call. And,
15 frankly, the time frames that we have are pretty exact.

16 I do want to look at the autopsy report real
17 quick, if I can, Judge. I think that that's number 5.
18 As we've gone through, the cause of death is asphyxia,
19 manner of death is homicide. Under heading 1 of the
20 autopsy findings, asphyxia, the Clark County coroner's
21 office found, as part of their autopsy findings, a
22 fracture of the left superior horn of thyroid cartilage.
23 The findings included abrasions and contusions of the
24 head and neck, torso and upper extremities. Left fifth
25 rib fracture. History of stage four head and neck

1 cancer. Status postchemotherapy and radiation. Status
2 post gastrostomy tube placement. He was underweight. He
3 had his medications in his system. He had marijuana in
4 his system, and he had a level of ethanol that I'm not --
5 I don't personally have the expertise to translate into
6 what I'm more familiar with, a blood alcohol level.

7 I don't know what 173 milligrams means, if
8 Counsel would help me. I better put my glasses on.

9
10 (Counsel spoke off the record.)

11
12 MR. VITTO: Thanks. The Clark County
13 coroner's office found his alcohol level at a .17. So he
14 had his prescribed hydrocodone in his system, a plethora
15 of other drugs, marijuana, and a one-seven alcohol level
16 which, frankly, makes him even more helpless to a
17 defendant that showed no indication -- certainly voiced
18 no indication that he was under the influence of alcohol
19 or marijuana, did not give voice to that and gave no
20 indication of being under the influence of anything.

21 That being said, Judge, we have Count I, the
22 first-degree murder of a vulnerable person. We've
23 established all of the elements necessary of being a
24 vulnerable person, certainly for the purposes of probable
25 cause and a preliminary hearing. The open murder, as I

1 said, includes first-degree murder, second-degree murder,
2 voluntary and involuntary manslaughter.

3 Count III, the invasion of the home, includes
4 invading a room. They were roommates. They had separate
5 rooms. The evidence is undeniable.

6 The door shows the indication of being kicked.
7 It's cracked. You see the door jamb where clearly the
8 door was forced open by the defendant, by his own
9 admission, to gain ingress.

10 The battery by strangulation is clearly
11 established again by the defendant's own statements. The
12 abuse of a vulnerable person, again, clearly established
13 by all of the evidence, the autopsy, all of the physical
14 evidence presented, the medical records, the photographs
15 depicting what occurred, the injury to the decedent, the
16 injury to his head.

17 And this count could easily survive a
18 *Blockburger* challenge if the injury causing death which
19 the State has alleged is the strangulation causing
20 asphyxia and the broken bone in the throat or neck area,
21 and the abuse of a vulnerable person being otherwise the
22 injury as observed, the broken rib and the injury to the
23 face and head other than the injury actually causing
24 death.

25 Count VI, interception, interruption or delay

1 of message sent over telephone line, we clearly have.
2 The decedent called asking for help. The defendant is
3 overheard -- there was a dispute about the phone. He
4 says, "False alarm," and smashes the decedent's phone on
5 the floor, as he admitted, before doing these acts
6 alleged in Count 1 incorporated herein by reference.
7 That's under Count VI.

8 The injury to other property is the damage to
9 the phone. Well, this was April 4th, before the new law.
10 So we have the injury to the property, a gross
11 misdemeanor.

12 And then we've added a Count VIII, the
13 nunchaku, three of them found, as the photos establish in
14 the defendants's bedroom, another pair found in the
15 living room where the fracas or tussle began after the
16 decedent ripped open the bag of marijuana, spilling the
17 contents to the floor.

18 And then the defendant is on notice with the
19 prior offenses before this Court in regard to the
20 habitual criminal.

21 Your Honor, the State would request that the
22 defendant be bound over as charged on each of the counts.
23 Thank you very much.

24 THE COURT: All right. Mr. Martinez?

25 MR. MARTINEZ: Thank you, Judge.

1 Your Honor, I'll start with what I told the
2 Court we'd be arguing about earlier, which is that many
3 of the charges in the complaint right now are underlying
4 offenses of other charges that, as the State has admitted
5 and been forthcoming with, he cannot be convicted of all
6 of them at trial. It will be one or the other when we
7 get there. And I have briefed this issue and I know even
8 if the Court binds him over on all of these charges and
9 does not dismiss them today and discharge him today, we
10 will be briefing them again when we go up to District
11 Court.

12 No, the State cannot charge it this way. The
13 way that this is handled is in a jury verdict form, that
14 ultimately whatever crime he would stand trial for, we
15 would get the underlying offenses on the jury verdict
16 form and tell the jury, If you do not find the State has
17 met their burden on this charge, you can however find
18 they met their burden of proof on these other charges on
19 the jury verdict form, not in the complaint itself. They
20 are not separate offenses. They are the same offenses,
21 and he cannot be tried for the same offenses in this
22 manner.

23 And to that, Your Honor, I will start here.
24 The battery by strangulation is necessarily an underlying
25 offense of the open murder charge. The first-degree

1 murder charge is necessarily an underlying offense of the
2 open murder charge. The abuse of a vulnerable person is
3 necessarily an underlying offense of the first-degree
4 murder charge. The only reason it's charged as
5 first-degree murder is because it's a vulnerable person
6 there. They have the same elements. It would not pass
7 the *Blockburger* test. And again, my argument would be
8 that some of these charges need to be dismissed so that
9 the underlying offenses are not charged.

10 To speak to the vulnerable person, Your Honor,
11 I will make an argument that Mr. Piper was not a
12 vulnerable person. I know that we heard a lot of
13 testimony about him being sick. We also heard testimony
14 about him about how he was personally capable of riding
15 his bike down to the corner store to go pick up what he
16 needed to. That he drank a lot. That it was worrisome
17 to his brother. He smoked. It's how he got cancer in
18 the first place. He continued to smoke. He was not
19 restricted in his daily activities, and that is the
20 definition of a vulnerable person under the Nevada
21 Revised Statutes and whether or not they have a medical
22 or physical illness or disability that restricts them in
23 carrying out the daily activities.

24 And I think seeing here -- he didn't need any
25 assistance in cooking when he did live by himself before

1 Mr. Torres went out and lived with him. He didn't need
2 assistance to take a shower. He did not need assistance
3 to change his own clothes. Again, he was able to ride
4 his bike and go down to the corner store. He was able to
5 drink; he was able to smoke. Even though he moved
6 slowly, I do not believe that the State has met that
7 burden to show that he is a vulnerable person.

8 And to that angle, Your Honor, I would ask
9 that Count V be discharged for that reason, as well as
10 Count I, which is the murder of a vulnerable person.
11 Again, the only reason it is first-degree murder is
12 because they have alleged that Mr. Piper was a vulnerable
13 person.

14 On Count III, invasion of the home, Judge, the
15 case law is clear that a person cannot commit the crime
16 of home invasion by forcibly entering his or her own home
17 if that person is a lawful occupant or resident of the
18 home. I know that it says in the statute that a home
19 invasion can be committed on a room and not necessarily a
20 residence or an exterior door -- as opposed to a
21 residence, an exterior door in an apartment or a house,
22 and what I would submit to the Court is that the
23 intention behind that is a hotel room or a dorm room,
24 something where you check in and you have a specific room
25 where you live and that other people do not have standing

1 permission to be there.

2 What we know here is that Mr. Piper and
3 Mr. Torres shared the house. They -- Mr. Torres
4 contributed to the bills, even though the house was in
5 Christopher Piper's name. Christopher Piper told him
6 that neither of them had any restrictions on the house on
7 anywhere that they can go.

8 Mr. Torres told Detective Fancher in the
9 interview that nobody locked the doors, because, I would
10 go into Mr. Piper's room in the middle of the night
11 sometimes to check on him to make sure everything was
12 okay. He had standing permission to go anywhere in the
13 room. He had the legal authority to every room in the
14 house, so legally he cannot commit home invasion in that
15 bedroom. So I would ask the Court to discharge Count
16 III.

17 On Count VII, Your Honor, this one is real
18 brief and straightforward. The State has to prove by
19 slight or marginal evidence that the property destroyed
20 had a valued greater than \$250. We didn't hear any
21 evidence as to the value of the cellular phone, Judge, so
22 they have not presented any evidence that that phone was
23 worth -- had a value of more than \$250. So I would ask
24 the Court to discharge that, because we don't assume it
25 has a value higher than \$250. We would assume the

1 opposite; that the value is less than \$250, Judge.

2 The count the State added is use or possession
3 of a dangerous weapon, specifically possessing it with
4 the intent to inflict harm. There is zero evidence at
5 all that was presented today that there was intent to
6 inflict harm with the nunchucks that were found in the
7 house. The State is wildly speculating that it possibly
8 maybe could have been used, but that could be -- the same
9 could be said for any number of items in the house, not
10 for the nunchucks. That is not slight or marginal
11 evidence that they were ever possessed with the intent to
12 harm anyone. They have not met their burden. They
13 haven't come close to meeting their burden on that count,
14 Judge, and on Count VIII, I would ask the Court to
15 discharge that as well.

16 We also heard evidence that in the scuffle,
17 whether Mr. Piper was running down the hall to his
18 bedroom or he was being -- forcibly being pushed down the
19 hall to his bedroom, he fell a couple times along the
20 way. Based on the testimony that we heard today, I'd say
21 it's much more likely that as he fell, he hit his head,
22 he hit his face while he was falling, or that's something
23 that happened in the scuffle, not that he was hit over
24 the head with a pair of nunchucks or any other item,
25 because we haven't heard any other testimony or any

1 testimony about that at all.

2 Mr. Torres, in his interview with
3 Detective Fancher, what we heard today is that at first
4 he was not very forthcoming. He was not very honest, but
5 then he was honest. He told all the details. He told
6 Detective Fancher and Detective Fisher what occurred.
7 Not once in that interview, Your Honor -- and I've
8 watched the entire interview. It's three hours. Not
9 once were nunchucks ever mentioned. The State has not
10 met its burden, and I ask the Court to discharge Count
11 VIII in the criminal complaint.

12 With habitual criminal, Your Honor, the
13 information we have, the legality of that, is a little
14 fluid right now. I know in the special session the State
15 just passed -- the legislature just passed another bill
16 giving more guidance as to what laws apply and when since
17 the new law went into effect on July 1st, so that's
18 something I'm sure we're going to be litigating as we go
19 up to the District Court level as to whether or not the
20 habitual criminal statute would still apply.

21 But for purposes of today's case, I would
22 submit on that and the remainder of the counts in the
23 complaint. Thank you, Judge.

24 MR. VITTO: Thank you, Your Honor.

25 Judge, insofar as the double jeopardy is

1 concerned, the double jeopardy clause protects against
2 three things. A second prosecution for the same offense
3 after acquittal. Double jeopardy says you can't do that.
4 It protects against a prosecution for the same offense
5 after conviction. The double jeopardy clause says you
6 can't do that. And importantly, it protects against
7 multiple punishments for the same offense. That's all
8 that double jeopardy clause does.

9 The double jeopardy clause does not and cannot
10 speak to the prosecutor's charging document. That's from
11 *Jackson v State*, 128 Nevada 598. It's a 2012 decision,
12 and it's frankly at this point in our jurisprudence in
13 Nevada a seminal decision on *Blockburger* and double
14 jeopardy. That's the Bible of double jeopardy right now
15 in the State of Nevada.

16 Nothing legally prohibits the prosecution from
17 charging this case in the alternative and bringing it
18 forward in the manner we have. The defendant can't be
19 punished for the same offense. If the jury were to
20 somehow convict him after getting jury instructions on
21 how to properly find -- reach a verdict in regard to
22 these charges or whatever charges it ultimately ends up
23 deliberating, the prosecution would step forward at that
24 time because the prosecution doesn't want to violate
25 *Blockburger* and double jeopardy and *Jackson v State* by

1 allowing the defendant to be punished for the same
2 offense. We're not going to do that.

3 If the defendant is convicted of first-degree
4 murder and open murder, we're going to dismiss open
5 murder. If he's convicted of first-degree murder, open
6 murder, and battery by strangulation, we're going to
7 dismiss open murder and battery by strangulation. We're
8 not going to allow -- it would be our obligation and
9 responsibility to not allow the defendant to face
10 multiple punishments for the same offense, and I would be
11 arguing in closing argument as I've stated earlier.
12 Don't do this. Follow the instructions on the law that
13 you've been given. That would be my argument to the
14 jury.

15 The defendant (sic) clearly undeniably has the
16 right to feel safe within his room in his home. They
17 always leave the doors unlocked. Well, not this time,
18 and there's a reason. He was doing all he could to
19 preserve himself, to preserve his own life, to be safe
20 from the defendant and what he knew was coming clearly
21 because he locked the door, which is something they don't
22 do. He sought refuge in his own bedroom, which he has a
23 right to do, which the defendant doesn't have a right to
24 violate. Clearly the statute sets forth that invasion of
25 the home can include invasion of a room.

1 There isn't zero evidence to support the
2 nunchaku allegation, and all the prosecution has to
3 establish is slight or marginal evidence. There were
4 sets of nunchaku in his bedroom. There was one set of
5 nunchaku in the living room where the tussle began, and
6 the victim has injury to the left side of his head and
7 face. Could that have been caused by falling against the
8 wall? Absolutely. It could have. But that is a fact
9 determination for the jury to decide. They alone are
10 trusted with the responsibility to determine contested
11 aspects of information and evidence so long as the State
12 has met their burden of slight and marginal evidence at
13 this level.

14 In regard of -- regard to the vulnerable
15 person and whether the defendant was a vulnerable person,
16 the defense gave short shrift to one word in what defines
17 a vulnerable person. Vulnerable person means a person,
18 18 years of age or older, who, under paragraph (b) -- so
19 this would be 200.509(8)(b) -- has one or more physical
20 or mental limitations that restrict the ability of the
21 person to perform the normal activities of daily living.
22 Not that he can't do them, but that they're limited,
23 they're restricted.

24 He doesn't function the way you do, Judge, or
25 the way I do or Mr. Martinez does or anybody else in this

1 courtroom does. He doesn't function that way. He
2 functions in a restricted way because of all that he's
3 had to endure in a relatively short period of time as his
4 body continued to deteriorate. He was given at best a
5 year to live. And you know what, Judge? He might not
6 have had a long life expectancy, but he didn't deserve to
7 go out this way. He deserved to go out with dignity and
8 he deserved to live his life to the fullest extent that
9 he possibly could without it being snuffed out by the
10 defendant strangling him.

11 The State requests the defendant be bound over
12 as charged.

13 THE COURT: Based on everything that we've
14 heard here today and all the evidence that has been
15 presented here today, I feel that the State has met its
16 burden of proof in this matter, and I'm going to bind the
17 defendant over to the District Court on all charges.

18 Do you have a date?

19 THE CLERK: August 28, 2020, at 9:00 a.m.,
20 Department One.

21 MR. VITTO: And we don't get the CR at this
22 level?

23 THE COURT: No. Because of the new case
24 management system they have down there, they assign the
25 number at a later date. They don't give us case numbers

1 anymore.

2 MR. VITTO: Thanks, Judge.

3 THE COURT: And you'll --

4 MR. VITTO: Get you that amended complaint
5 probably before the end of the day.

6 THE COURT: By 4:30?

7 MR. VITTO: Yes. I will go do it right now.

8 THE COURT: Okay.

9 MR. VITTO: Thank you, Your Honor.

10 THE COURT: Thank you.

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12 (Pceedings recessed at 3:20 p.m.)

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C E R T I F I C A T E

STATE OF NEVADA)

COUNTY OF NYE)

_____))

I, LAURIE COOPER, CCR No. 848, hereby
certify that the foregoing transcript, pages
1 to 265, comprises a full, true, and correct
transcription of my stenographic notes taken
in the above-entitled cause, to the best of
my ability.

Dated this 27th day of August, 2020.

S/S _____

LAURIE COOPER, CCR No. 848

<hr/> <p style="text-align: center;">\$</p> <hr/> <p>\$250 [4] 257:20, 257:23, 257:25, 258:1</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>01098 [2] 1:1, 5:4 0301 [6] 101:20, 101:21, 103:15, 108:20, 124:19, 250:13 0436 [2] 108:17, 250:12 0600 - 140:14 0858 - 183:1</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 [17] 3:4, 4:18, 11:8, 12:15, 12:18, 12:20, 13:8, 14:9, 45:7, 45:19, 45:24, 79:2, 246:21, 246:22, 250:19, 253:6, 265:10 1)(c - 240:20 10 [9] 3:17, 6:21, 6:22, 125:1, 148:5, 148:14, 148:16, 193:7, 210:1 100 - 2:8 103 [13] 50:7, 50:21, 52:16, 140:10, 140:23, 144:7, 239:25, 240:1, 240:6, 240:6, 241:8, 241:8, 241:9 106 - 250:4 109 - 2:8 10:00 - 198:16 11 [11] 3:18, 151:10, 151:11, 151:11, 153:3, 173:17, 235:14, 238:9, 238:23, 245:1, 245:4 113 - 4:19 1150 - 230:13 11:08 - 90:2 11:15 - 90:2 12 [10] 3:4, 3:19, 151:7, 151:14, 151:15, 153:2, 173:18, 235:14,</p>	<p>238:23, 245:1 124,127 - 2:8 126 - 2:8 128 - 260:11 12:08 - 133:24 12:15 - 133:15 12:20 - 133:15 12:24 - 133:24 13 [12] 3:20, 153:7, 157:6, 157:7, 157:9, 157:21, 157:25, 158:8, 173:18, 235:14, 238:23, 245:1 135 - 2:9 139 - 2:10 14 [13] 3:6, 3:21, 158:3, 158:4, 158:7, 158:20, 160:7, 173:18, 235:14, 238:9, 238:23, 245:2, 245:4 144 - 3:13 146 - 3:14 147 - 3:15 148 [2] 3:16, 3:17 15 [13] 3:22, 55:20, 75:22, 81:5, 87:19, 109:1, 160:8, 160:9, 160:17, 160:19, 160:21, 160:23, 193:7 15-minute - 133:16 1520 - 1:14 16 [3] 3:23, 161:8, 161:11 160 - 3:22 161 - 3:23 163 [2] 3:24, 4:2 166 - 4:3 168 - 4:10 17 [7] 3:24, 161:15, 162:10, 162:23, 162:25, 163:3, 251:13 172 [2] 4:4, 4:5 173 - 251:7 175 [3] 4:6, 4:7, 4:8 18 [10] 4:2, 142:11, 143:17, 162:14, 162:15, 162:16, 162:23, 162:25, 163:3, 262:18</p>	<p>185 - 4:9 19 [11] 4:3, 28:3, 75:13, 76:4, 136:20, 164:8, 166:3, 166:12, 166:17, 231:17, 231:18 192 - 2:10 1962 - 10:13 1:34 - 192:6 1:38 - 192:6 1:42 [2] 93:8, 93:9 1A [11] 3:5, 15:7, 15:9, 45:3, 45:7, 45:11, 45:12, 46:14, 73:24, 74:16, 75:3 1st - 259:17</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 [19] 3:6, 4:19, 13:1, 13:8, 13:12, 14:13, 14:22, 45:7, 45:19, 45:24, 50:16, 79:2, 105:8, 105:9, 106:21, 166:19, 166:20, 166:24, 228:8 2,000 [2] 199:23, 200:1 20 [9] 1:1, 4:4, 5:4, 31:15, 170:23, 170:25, 172:13, 172:16, 172:19 200.509(8)(b - 262:19 2009 [2] 230:6, 230:7 2012 - 260:11 2018 [2] 30:6, 74:3 2019 [5] 11:20, 12:4, 30:1, 30:3, 30:5 202.350 [4] 149:16, 149:24, 149:25, 240:15 202.350(1)(c - 240:21 2020 [14] 1:15, 5:1, 13:25, 18:10, 19:16, 53:9, 91:19, 98:24, 101:14, 140:9, 192:20, 224:9, 263:19,</p>	<p>265:15 20NY-1012 - 184:8 21 [6] 4:5, 170:23, 170:25, 172:13, 172:16, 172:19 210,217 - 2:10 215 - 2:10 22 [5] 4:6, 174:7, 174:17, 175:16, 175:22 222 - 4:15 223 - 2:11 227 [2] 2:11, 4:11 228 - 2:12 23 [6] 4:7, 174:7, 174:24, 174:25, 175:16, 175:22 234 [2] 2:12, 2:12 238 [3] 4:12, 4:13, 4:14 24 [6] 4:8, 174:7, 175:8, 175:9, 175:17, 175:22 245 [4] 3:18, 3:19, 3:20, 3:21 24th - 56:5 25 [4] 4:9, 179:14, 181:16, 185:5 26 [7] 4:10, 167:19, 167:19, 168:16, 168:19, 168:21, 181:24 265 - 265:10 27 [8] 4:11, 189:16, 189:17, 225:17, 225:21, 225:24, 226:22, 227:4 27th - 265:15 28 [5] 2:5, 4:12, 235:19, 238:3, 263:19 29 [4] 4:13, 10:13, 236:4, 238:3 2:00 [5] 20:14, 21:2, 81:24, 82:1, 248:15 2:15-ish - 55:23 2:30 - 61:18 2:30-ish - 61:24 2A [10] 3:7, 18:24, 45:3, 45:7, 45:10, 45:19, 45:25,</p>	<p>46:3, 46:4, 246:21 2nd [7] 18:11, 18:12, 18:15, 18:16, 18:19, 18:25, 19:4</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 [10] 3:8, 7:15, 7:21, 45:8, 45:19, 46:7, 50:16, 79:2, 84:14, 240:18 30 [4] 4:14, 119:7, 236:19, 238:3 31 [3] 4:14, 236:19, 238:3 32 [3] 4:14, 236:19, 238:4 33 [2] 236:20, 238:4 34 [6] 4:14, 218:19, 218:23, 218:25, 236:20, 238:4 35 [8] 4:15, 218:18, 218:20, 219:9, 220:8, 221:6, 222:17, 222:20 35-millimeter - 196:1 36 [4] 4:15, 218:20, 219:10, 220:8 37 [5] 4:15, 218:20, 219:10, 220:7, 220:8 37,41,43 - 2:5 38 [5] 4:15, 218:21, 220:10, 220:14, 220:18 39 [6] 4:15, 220:14, 220:18, 221:9, 222:17, 222:20 3:00 [10] 20:14, 21:2, 61:17, 61:18, 61:25, 62:1, 85:20, 91:24, 248:15, 250:11 3:00-ish - 61:16 3:15 - 114:11 3:20 - 264:12 3:46 [2] 108:25, 114:21 3A [6] 3:9, 7:15, 7:21, 45:8,</p>
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NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

PAHRUMP JUSTICE COURT
BY *J. Robnett*
2020 AUG -6 PM 4:13
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1 Case No. 20CR01098
2 Department B
3
4
5

6 IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
7 COUNTY OF NYE, STATE OF NEVADA

8 THE STATE OF NEVADA,

9 Plaintiff,

SECOND AMENDED

10 v.

CRIMINAL COMPLAINT

11 MARCO ANTONIO TORRES,

12 Defendant. /

13 The undersigned, Chris Arabia, District Attorney, County of Nye, State of
14 Nevada, by and through his deputy, Kirk D. Vitto, complains and charges the above
15 named defendant, MARCO ANTONIO TORRES, with having committed the
16 following offenses within said County of Nye, State of Nevada:

17 COUNT I

18 FIRST DEGREE MURDER OF VULNERABLE PERSON, in violation
19 of NRS 200.010/NRS 200.030, A CATEGORY 'A' FELONY,
20 committed in the following manner, to wit: That ON OR ABOUT
21 APRIL 4, 2020, in Pahrump Township, Nye County, Nevada, said
22 Defendant, without authority of law, did willfully, unlawfully, with malice
aforethought kill and murder JONATHAN A. PIPER, a human being,
by beating and/or strangling the victim, causing asphyxia, who was
diagnosed to be in stage four treatment for cancer at the time he was
murdered at unit 4 marked by numbers 103, 835 South Linda Street;

23 ///

24 ///

COUNT II

OPEN MURDER, in violation of **NRS 200.010/NRS 200.030, A CATEGORY 'A' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant, without authority of law, did willfully, unlawfully, with malice aforethought, express or implied, or otherwise in a willful, deliberate, premeditated manner kill and murder **JONATHAN A. PIPER**, a human being, by beating and/or strangling the victim, causing asphyxia, at unit 4 marked by numbers 103, 835 South Linda Street;

COUNT III

INVASION OF THE HOME (ROOM), in violation of **NRS 205.067, A CATEGORY 'B' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, the Defendant did whether by day or night, forcibly enter the inhabited dwelling (room) of **JONATHAN A. PIPER** without permission, by kicking open the door to **PIPER's** room at unit 4 marked by numbers 103, 835 South Linda Street;

COUNT IV

BATTERY BY STRANGULATION, in violation of **NRS 200.481(2)(b), A CATEGORY 'C' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, the Defendant did willfully use an unlawful application of force or violence upon **JONATHAN A. PIPER** by "Strangulation", intentionally impeding the normal breathing or circulation of the blood by an application of pressure on the throat or neck, or by blocking the nose or mouth of **PIPER**, in a manner that creates a risk of death or substantial bodily harm within unit 4 marked by numbers 103, 835 South Linda Street;

COUNT V

ABUSE OF A VULNERABLE PERSON, in violation of **NRS 200.5092/NRS 200.5099(1) and/or (2), A CATEGORY 'B' FELONY**, or **GROSS MISDEMEANOR**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, the Defendant did willfully inflict pain or injury upon a "vulnerable person" by striking or otherwise hitting **JONATHAN A. PIPER** on an occasion other than the act or acts referenced in Counts I, II, and/or IV, or by doing those act(s) alleged in Counts III and VII within unit 4 marked by numbers 103, 835 South Linda Street;

COUNT VI

INTERCEPTION, INTERRUPTION OR DELAY OF MESSAGE SENT OVER TELEPHONE LINE, in violation of **NRS 707.900, A GROSS MISDEMEANOR**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant did willfully and unlawfully interrupt or delay the sending of a message over the telephone line by, after observing **JONATHAN A. PIPER** on the phone with law enforcement, became upset, and suspicious that **PIPER** was "ratting him out", took the phone **PIPER** was using to make the call to "dispatch", telling dispatch it was a "false alarm", and then smashing the phone on the floor before doing those acts alleged in Count I and incorporated herein by reference;

COUNT VII

INJURY TO OTHER PROPERTY, in violation of **NRS 206.310, A GROSS MISDEMEANOR**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant did willfully or maliciously destroy or injure any real or personal property of another, by smashing the blue Samsung cellular phone belonging to **JONATHAN A. PIPER**, having a value greater than \$250.00 at unit 4 marked by numbers 103, 835 South Linda Street;

COUNT VIII

POSSESSION OF DANGEROUS WEAPON, in violation of **NRS 202.350, A GROSS MISDEMEANOR**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant did willfully and unlawfully possess **NUNCHAKU** With the intent to inflict harm upon the person of another at unit 4 marked by numbers Unit 103, 835 South Linda Street by striking **JONATHAN A. PIPER** with the **NUNCHAKU**;

COUNT IX

HABITUAL CRIMINAL, in violation of **NRS 207.010(1)(a) and/or (b), A CATEGORY 'A' FELONY**, committed in the following manner, to wit: Having been convicted of at least two or three predicate felony offenses, thereby subjecting the defendant to a potential sentence of life in prison without the possibility of parole in that the defendant has proven himself to be a recidivist offender against whom society has the right to request he be removed "from its ranks for a longer time [because the defendant has demonstrated himself to be] a recidivist who by repeated violations has shown his refusal to conform to a

1 lawful mode of living", *Tanksley v. State*, 113 Nev. 997 at 1004, 946
2 P.2d 148 (1997), the prior offenses to be submitted before the Fifth
3 Judicial District Court as certified copies, constitutionally valid, and
4 legitimate, and all prior offenses setting forth facts sufficient to
5 conclude that the defendant is an Habitual Criminal, *State v.*
6 *Bardmess*, 54 Nev. 84, 7 P.2d 817 (1932), and that he should be
7 sentenced accordingly should the court adjudicate him so after finding
8 him eligible, and thereafter exercising discretion to determine whether
9 imposition of the Habitual Criminal application is appropriate, *Hughes*
10 *v. State*, 116 Nev. 327 at 333, 996 P.2d 890 (2000), in the event the
11 defendant is convicted of one or more of the underlying felony
12 offenses referenced *supra*;

13 All of which is contrary to the form, force and effect of the statutes in such
14 cases made and provided, and against the peace and dignity of the State of
15 Nevada. Said complainant makes this declaration under penalty of perjury.

16 **DATED** this 6 day of August, 2020.

17 **CHRIS ARABIA**
18 **NYE COUNTY DISTRICT ATTORNEY**

19 By 
20 **KIRK D. VITTO**
21 Chief Deputy District Attorney
22
23
24

CERTIFICATE OF SERVICE

I, Kasondra K. Ward, Executive Legal Secretary, of the Nye County District Attorney's Office, do hereby certify that I have served the following:

**Second Amended Criminal Complaint
Case No. 20CR01098
STATE v. MARCO ANTONIO TORRES**

upon said Defendant(s) herein by delivering a true and correct copy thereof on

8/6/20 to the following:

DANIEL E MARTINEZ ESQ.

Via hand deliver at the Nye county District Attorney's Office in Pahrump Nevada.


Kasondra K. Ward

CR 20-0092
1 PJC Case No.: 20CR01098
2 PJC Dept. B

PAHRUMP JUSTICE COURT

3 *J. Rebert*
4 AUG 10 AM 9:47

5 RECEIVED FILED

6 IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP
7 COUNTY OF NYE, STATE OF NEVADA
8 * * * * *
9 **FILED**
10 **FIFTH JUDICIAL DISTRICT**

11 AUG 10 2020

12 STATE OF NEVADA,

13 Plaintiff

14 vs

15 MARCO ANTONIO TORRES,

16 Defendant(s). /

17 *[Signature]*
18 Nye County Clerk
19 Deputy

20 BINDOVER ORDER

21 IT APPEARS to the court that a public offense, namely, **COUNT I: FIRST**
22 **DEGREE MURDER OF VULNERABLE PERSON**, in violation of NRS 200.010/NRS
23 **200.030, A CATEGORY 'A' FELONY; COUNT II: OPEN MURDER**, in violation of
24 **NRS 200.010/NRS 200.030, A CATEGORY 'A' FELONY; COUNT III: INVASION OF**
25 **THE HOME (ROOM), in violation of NRS 205.067, A CATEGORY 'B' FELONY;**
26 **COUNT IV: BATTERY BY STRANGULATION, in violation of NRS 200.481.2b, A**
27 **CATEGORY 'C' FELONY; COUNT V: ABUSE OF A VULNERABLE PERSON, in**
28 **violation of NRS 200.5092/NRS 200.5099(1) and/or (2), A CATEGORY 'B'**
FELONY, or GROSS MISDEMEANOR; COUNT VI: INTERCEPTION,
INTERRUPTION OR DELAY OF MESSAGE SENT OVER TELEPHONE LINE, in
violation of NRS 707.900, A GROSS MISDEMEANOR; COUNT VII: INJURY TO
OTHER PROPERTY, in violation of NRS 206.310, A GROSS MISDEMEANOR;
COUNT VIII: POSSESSION OF DANGEROUS WEAPON, in violation of NRS
202.350, A GROSS MISDEMEANOR; COUNT IX: HABITUAL CRIMINAL, in
violation of NRS 207.010(1)(a) and/or (b), A CATEGORY 'A' FELONY, has been


1 committed and it further appearing to the court the defendant above-named, **MARCO**
2 **ANTONIO TORRES**, has committed the same.

3
4 IT IS THEREFORE ORDERED that defendant, **MARCO ANTONIO TORRES**, be,
5 and is hereby bound over to the Fifth Judicial District Court, and there held to answer
6 to said charge(s).

7 IT IS FURTHER ORDERED that defendant, **MARCO ANTONIO TORRES**,
8 appear in the District Courtroom of the Nye County Government Complex, 1520 E.
9 Basin Road, Pahrump, Nevada for arraignment on said charge(s) on Friday, August
10 28, 2020 at 9:00 o'clock a.m.

11 IT IS FURTHER ORDERED that the Defendant be admitted to bail in the amount
12 of NO BAIL

13
14 DONE IN OPEN COURT this 6th day of August 2020.

15
16 
17 Kent Jasperson
18 Justice of the Peace
19
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28

Case No. CR20-0092

Department 1

The undersigned affirms that
this document does not contain
the social security number of
any person.

FILED
FIFTH JUDICIAL DISTRICT

AUG 17 2020

Judy Ayotte Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

INFORMATION

MARCO ANTONIO TORRES,

Defendant. /

CHRIS ARABIA, District Attorney within and for the County of Nye, State of
Nevada, informs the Court that **MARCO ANTONIO TORRES**, before the filing of this
Information, did then and there, in Nye County, Nevada, commit the following
offenses, to wit:

COUNT I

FIRST DEGREE MURDER OF VULNERABLE PERSON, in violation of
NRS 200.010/NRS 200.030, A CATEGORY 'A' FELONY, committed in
the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in
Pahrump Township, Nye County, Nevada, said Defendant, without
authority of law, did willfully, unlawfully, with malice aforethought kill and
murder **JONATHAN A. PIPER**, a human being, by beating and/or
strangling the victim, causing asphyxia, who was diagnosed to be in
stage four treatment for cancer at the time he was murdered at unit 4
marked by numbers 103, 835 South Linda Street;

///

COUNT II

OPEN MURDER, in violation of **NRS 200.010/NRS 200.030**, **A CATEGORY 'A' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant, without authority of law, did willfully, unlawfully, with malice aforethought, express or implied, or otherwise in a willful, deliberate, premeditated manner kill and murder **JONATHAN A. PIPER**, a human being, by beating and/or strangling the victim, causing asphyxia, at unit 4 marked by numbers 103, 835 South Linda Street;

COUNT III

INVASION OF THE HOME (ROOM), in violation of **NRS 205.067**, **A CATEGORY 'B' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, the Defendant did whether by day or night, forcibly enter the inhabited dwelling (room) of **JONATHAN A. PIPER** without permission, by kicking open the door to **PIPER's** room at unit 4 marked by numbers 103, 835 South Linda Street;

COUNT IV

BATTERY BY STRANGULATION, in violation of **NRS 200.481(2)(b)**, **A CATEGORY 'C' FELONY**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, the Defendant did willfully use an unlawful application of force or violence upon **JONATHAN A. PIPER** by "Strangulation", intentionally impeding the normal breathing or circulation of the blood by an application of pressure on the throat or neck, or by blocking the nose or mouth of **PIPER**, in a manner that creates a risk of death or substantial bodily harm within unit 4 marked by numbers 103, 835 South Linda Street;

COUNT V

ABUSE OF A VULNERABLE PERSON, in violation of **NRS 200.5092/NRS 200.5099(1) and/or (2)**, **A CATEGORY 'B' FELONY**, or **GROSS MISDEMEANOR**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, the Defendant did willfully inflict pain or injury upon a "vulnerable person" by striking or otherwise hitting **JONATHAN A. PIPER** on an occasion other than the act or acts referenced in Counts I, II, and/or IV, or by doing those act(s) alleged in Counts III and VII within unit 4 marked by numbers 103, 835 South Linda Street;

COUNT VI

INTERCEPTION, INTERRUPTION OR DELAY OF MESSAGE SENT OVER TELEPHONE LINE, in violation of **NRS 707.900, A GROSS MISDEMEANOR**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant did willfully and unlawfully interrupt or delay the sending of a message over the telephone line by, after observing **JONATHAN A. PIPER** on the phone with law enforcement, became upset, and suspicious that **PIPER** was "ratting him out", took the phone **PIPER** was using to make the call to "dispatch", telling dispatch it was a "false alarm", and then smashing the phone on the floor before doing those acts alleged in Count I and incorporated herein by reference;

COUNT VII

POSSESSION OF DANGEROUS WEAPON, in violation of **NRS 202.350, A GROSS MISDEMEANOR**, committed in the following manner, to wit: That **ON OR ABOUT APRIL 4, 2020**, in Pahrump Township, Nye County, Nevada, said Defendant did willfully and unlawfully possess **NUNCHAKU** with the intent to inflict harm upon the person of another at unit 4 marked by numbers Unit 103, 835 South Linda Street by striking **JONATHAN A. PIPER** with the **NUNCHAKU**;

COUNT VIII

HABITUAL CRIMINAL, in violation of **NRS 207.010(1)(a) and/or (b), A CATEGORY 'A' FELONY**, committed in the following manner, to wit: Having been convicted of at least two or three predicate felony offenses, thereby subjecting the defendant to a potential sentence of life in prison without the possibility of parole in that the defendant has proven himself to be a recidivist offender against whom society has the right to request he be removed "from its ranks for a longer time [because the defendant has demonstrated himself to be] a recidivist who by repeated violations has shown his refusal to conform to a lawful mode of living", *Tanksley v. State*, 113 Nev. 997 at 1004, 946 P.2d 148 (1997), the prior offenses to be submitted before the Fifth Judicial District Court as certified copies, constitutionally valid, and legitimate, and all prior offenses setting forth facts sufficient to conclude that the defendant is an Habitual Criminal, *State v. Bardmess*, 54 Nev. 84, 7 P.2d 817 (1932), and that he should be sentenced accordingly should the court adjudicate him so after finding him eligible, and thereafter exercising discretion to determine whether imposition of the Habitual Criminal application is appropriate, *Hughes v. State*, 116 Nev. 327 at 333, 996 P.2d 890 (2000), in the event the defendant is convicted of one or more of the underlying felony offenses referenced *supra*;

///

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

3 Witnesses and their addresses known to the District Attorney of Nye County,
4 State of Nevada, at the time of the filing of this Information:

5 CAPTAIN DAVID BORUCHOWITZ
6 NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA 89060

DEPUTY COLTON WILLIAMS
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA 89060

7 DETECTIVE ALEXANDRA
8 FERNANDES
9 NYE COUNTY SHERIFF'S OFFICE
10 PAHRUMP, NEVADA

DEPUTY CHAD WHELAN
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA

11 SERGEANT CORY FOWLES
12 NYE COUNTY SHERIFF'S OFFICE
13 PAHRUMP, NEVADA 89060

DEPUTY DAVID STONE
NYE COUNTY SHERIFF'S OFFICE
BEATTY, NEVADA

14 DETECTIVE JOE MARSHALL
15 NYE COUNTY SHERIFF'S OFFICE
16 PAHRUMP, NEVADA

DEPUTY DANIEL FISCHER
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA 89060

17 DEPUTY CODY MURPHY
18 NYE COUNTY SHERIFFS OFFICE
19 PAHRUMP, NEVADA

STEPHANIE RUCKER
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA 89060

20 LARRY HENDRIK DRAPER
21 980 AMARILLLO
22 PAHRUMP, NEVADA 89048

DEPUTY AMANDA JANE CHRISTEN
(HEAD)
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA

23 REFUGIO DE JESUS
24 PAHRUMP FAMILY MORTUARY 5441
VICKI ANN ROAD
PAHRUMP, NEVADA 89048

DEPUTY ALEC AUGUSTINE
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA 89048

DETECTIVE WES FANCHER
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA

DEPUTY XAVIER M. GIDEON
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA 89060

DEPUTY BRITTON MICHAEL
HOFFMANN
NYE COUNTY SHERIFF'S OFFICE
PAHRUMP, NEVADA

JAMES LOUIS MURZYN
PAHRUMP FAMILY MORTUARY 5441
VICKI ANN ROAD
PAHRUMP, NEVADA 89048

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

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JONATHAN A PIPER
3270 W LAURENCE
PAHRUMP, NEVADA 89061

CHRISTOPHER PIPER
6065 CANYONside ROAD
LA CRESCENTA, CALIFORNIA 91214

DENNIS A LA DUE
835 S LINDA ST UNIT 9
PAHRUMP, NEVADA 89048

KEVIN RILEY
4320 ELVIRA ST
PAHRUMP, NEVADA 89048

RICK MARTIN

JULIA A BUNDY
4320 ELVIRA ST
PAHRUMP, NEVADA 89048

DATED this 17 day of August, 2020.

CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY

By 
KIRK WITTO
Deputy District Attorney

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7080

CERTIFICATE OF SERVICE

I, Kasondra K. Ward, Executive Legal Secretary, of the Nye County District Attorney's Office, do hereby certify that I have served the following:

**INFORMATION in
5TH JDC Case No(s). CR20-0092
STATE v. MARCO ANTONIO TORRES**

upon said Defendant(s) herein by delivering a true and correct copy thereof on

8/17/20 to the following:

DANIEL E MARTINEZ ESQ.

Via hand deliver at the Nye county District Attorney's Office in Pahrump Nevada.


Kasondra K. Ward

SEP 04 2020

Nye County Clerk
Deputy

Terri Pemberton

Case No. CR20-0092
Dept. 1P

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF

THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

-v-

ORDER SETTING JURY TRIAL

MARCO ANTONIO TORRES,

Defendant,

IT IS SO ORDERED that the above-captioned case is hereby set for trial before a jury in **Pahrump, Nevada**, commencing at **9:00 A.M. on Wednesday, the 13th of January, 2021**. Six (6) days, January 13-14, 2021 and January 19-22, 2021 have been set aside for the trial. The services of the District Court Reporter are required. Stock Instructions will be provided by the Court, any special instructions are to be submitted to the Court no later than two (2) days before trial is to begin.

IT IS FURTHER ORDERED that a calendar call is set for the **4th day of December, 2020**, at the hour of **9:00 a.m.** Counsel and the Defendant must appear for the calendar call.

IT IS FURTHER ORDERED that the jury draw is set on the **4th day of December, 2020**, whereas the Nye County Jury Commissioner will draw a regular panel of 180 jurors at **4:30 p.m.** in the presence of all those who wish to attend.

IT IS FURTHER ORDERED that any pre-trial motions are to be heard on the **4th day of December, 2020**, at the hour of **9:00 a.m.**, with courtesy copies to the court by **November 27, 2020**, at the hour of **4:00 p.m.**

DATED this 4th day of September 2020.


KIMBERLY A. WANKER
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 4th day of September 2020, she mailed (or hand delivered) copies of the foregoing ORDER to the following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE
PAHRUMP, NV
(HAND DELIVERED)

DANIEL MARTINEZ, ESQ.
PAHRUMP, NEVADA
(HAND DELIVERED)

Melissa Mevis
MELISSA MEVIS, Secretary to
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



SEP 23 2020

Nye County Clerk
Brittani Smith Deputy

Case No.: CR20-0092

Dept. No.: 1

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

MOTION TO DISMISS

MARCO ANTONIO TORRES,

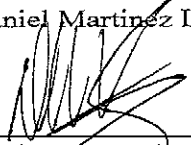
Defendant.

COMES NOW, the Defendant, Marco Antonio Torres, by and through his Public Defender, Daniel E. Martinez, Esq., of Daniel Martinez Law, LLC, and hereby moves the Court for an Order to Dismiss the case against him due to Fourth Amendment Violations.

This motion is made and based on all the papers and pleadings on file herein, the Points and Authorities submitted herewith, the exhibits attached hereto, and any further evidence and argument as may be adduced at the hearing of this matter.

DATED this 23rd day of September, 2020.

Daniel Martinez Law, LLC


Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

1 NOTICE OF MOTION

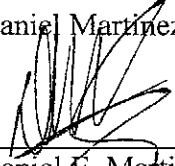
2 TO: Nye County, Plaintiff; and

3 TO: District Attorney, its Attorneys;

4 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Dismiss on
5 Calendar for hearing in Department 1 of the above-entitled Court on the 30th day of Nov., 2020,
6 at 11:00 a.m. or as soon thereafter as counsel may be heard.

7 DATED this 23rd day of September, 2020.

8
9 Daniel Martinez Law, LLC

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11 
12 Daniel E. Martinez, Esq.
13 Nevada Bar No.: 12035
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POINTS AND AUTHORITIES
FACTUAL BASKGROUND

Just after 3:00am on April 4, 2020, the Nye County Sheriff's Office (hereinafter "NCSO") received a 911 call. The 911 operator, Stephanie Rucker, could tell that there were two male voices, and one stated that they needed help. There was a lot of static and distortion in the call, making it hard to understand the caller. Soon, no one answered and the line was disconnected. Rucker then followed protocols, and was able to ascertain the address of the call. NSCO Deputies then responded to the location of the call: 835 South Linda Street in Pahrump, Nevada. They did not know the name of any of the individuals on the phone call, nor did they know how many people were present at the address.

Deputy Xavier Gideon was one of the first two deputies to arrive on scene, along with Deputy Colton Williams, at approximately 3:15am. He observed two trailer-like residences, one in front of the other. He made contact with the occupants of the front residence, who directed him to the rear residence. Deputy Gideon observed that residence to be trashed. The front wooden patio was broken and there was a bunch of trash around the property that did not seem to belong there, including a white lounge chair. Deputy Gideon positioned himself at the southeast corner of the house. From there, he could hear someone walking inside the house for about two seconds, but could not see who it was.

Additional Deputies arrived on scene, and then began knocking on the door to the house and announcing themselves as law enforcement. That continued for about half an hour with no response. Deputies then tried making entry; however, the doors were locked. The next step was to call a lock smith, which took 15-20 minutes to arrive on scene.

During these efforts, the brief sound of footsteps at first contact was the only noise that was heard; there was no arguing, no commotion, nothing being smashed or broken. No other noises were heard coming from the house until the Defendant, later identified as Marco Torres, made verbal contact with Deputies at about 4:15am, an hour after Deputies first arrived on scene. From a window, Torres

1 told the Deputies that everyone in the house was fine and they did not need any help. He said they were
2 trying to sleep and the Deputies were keeping them awake, and told the Deputies to leave.

3 The locksmith then unlocked the door, and Deputies made entry into the house. Torres
4 attempted to stop them, but the Deputies detained Torres and searched the house. They found Torres'
5 roommate, Jonathan Piper, unresponsive, and pronounced him deceased on the scene. Torres was
6 arrested, and later described the altercation that led to Piper's death.
7

8 LEGAL ARGUMENT

9 I. CONTROLLING LAW

10 Warrantless home entries, the chief evil against which the Fourth Amendment protects, *see*
11 *Payton v. New York*, 445 U.S. 573, 585, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980), are presumptively
12 unreasonable unless justified by a well-delineated exception, such as when exigent circumstances exist.
13 *See Camacho v. State*, 119 Nev. 395, 400, 75 P.3d 370, 374 (2003).
14

15 The Fourth Amendment protects individuals "against unreasonable searches and seizures."
16 *United States v. Struckman*, 603 F.3d 731, 737-38 (9th Cir. 2010) (quoting U.S. Const. amend. IV).
17 "Searches and seizures inside a home without a warrant are presumptively unreasonable." *Sheehan v.*
18 *City & Cty. of San Francisco*, 743 F.3d 1211, 1221 (9th Cir. 2014), *rev'd in part on other grounds, cert.*
19 *dismissed in part*, 135 S. Ct. 1765, 191 L. Ed. 2d 856 (2015). However, law enforcement officers may
20 enter a home without a warrant to render emergency assistance to an injured occupant or to protect an
21 occupant from imminent injury. *Brigham City v. Stuart*, 547 U.S. 398, 403, 126 S. Ct. 1943 (2006). The
22 emergency exception to the warrant requirement is applicable where an officer "had an objectively
23 reasonable basis to believe that there was an immediate need to protect the lives or safety of themselves
24 or others". *Hannon v. State*, 125 Nev. 142, 207 P.3d 344, 347 (2009). A law enforcement officers
25 subjective motivation is irrelevant. *Id.*
26

27 The emergency aid exception "applies when: '(1) considering the totality of the circumstances,
28 law enforcement had an objectively reasonable basis for concluding that there was an immediate need

1 to protect others or themselves from serious harm; and (2) the search's scope and manner were
2 reasonable to meet the need." *Id.* (quoting *United States v. Snipe*, 515 F.3d 947, 952 (9th Cir. 2008)).
3 The reasonableness of an emergency home entry depends on whether "the circumstances, viewed
4 objectively, justify the action," *Scott v. United States*, 436 U.S. 128, 138, 98 S. Ct. 1717, 56 L. Ed. 2d
5 168 (1978), in other words, whether law enforcement had an objectively reasonable basis to believe that
6 there was an immediate need to protect the lives or safety of themselves or others. *See Snipe*, 515 F.3d
7 at 952.

8
9 Since the exigency doctrine is an exception to the ordinary Fourth Amendment requirement of a
10 warrant for entry into a home, the burden of proof rests upon the Government to show that the
11 warrantless entry falls within the exception. *Mincey v. Arizona*, 437 U.S. 385, 98 S. Ct. 2408, 57 L. Ed.
12 2d 290 (1978); *United States v. Jeffers*, 342 U.S. 48, 51, 72 S. Ct. 93, 96 L. Ed. 59 (1951); *McDonald*
13 *v. United States*, 335 U.S. 451, 456, 69 S. Ct. 191, 93 L. Ed. 153 (1948). The existence of an emergency
14 which would justify a warrantless entry is a question of mixed law and fact. *United States v. Flickinger*,
15 573 F.2d 1349, 1357 (9th Cir. 1978). Warrantless entries for emergency reasons do not require probable
16 cause. *See U.S. v. Snipe*, 515 F.3d 947, 952 (9th Cir. 2008).

17
18 Pursuant to this exception, the government can overcome the presumption that a warrantless
19 entry is unreasonable if it proves that "the exigencies of the situation make the needs of law enforcement
20 so compelling that a warrantless search is objectively reasonable under the Fourth
21 Amendment." *Brigham City v. Stuart*, 547 U.S. 398, 403 (2006). The Supreme Court has articulated
22 four situations that may give rise to exigent circumstances: (1) hot pursuit of a fleeing felon, (2)
23 imminent destruction of evidence, (3) the need to prevent a suspect's escape, and (4) a risk of danger to
24 the police or others. *Id.* In order to satisfy the exigent-circumstances exception, the government must
25 show that there was a risk of serious injury posed to the officers or others that required swift
26 action. *United States v. Whren*, 517 U.S. 806, 813, 116 S. Ct. 1769 (1996).

1 II. EXIGENT CIRCUMSTANCES PRESENT

2 In *Brigham City*, four police officers responded to a call regarding a loud house party at about
3 3:00am. *Brigham City* at 400-401. When they arrived, the officers heard shouting coming from inside
4 the residence, so they proceeding down the driveway to investigate. *Id.* The officers entered the back
5 yard and observed, through a screen door and windows, an altercation in the kitchen of the house
6 between four adults and a juvenile. *Id.* Officers saw the juvenile punch one of the adults in the mouth,
7 and that adult then spit blood into the sink. *Id.* Officers entered the house, eventually arresting the adults
8 for contributing to the delinquency of a minor, disorderly conduct, and intoxication. *Id.* The Court held
9 that the officers' warrantless entry into the house was justified as they had an objectively reasonable
10 basis to believe the injured adult might need help, and that the violence was just beginning. *Id.* at 406.

11 In *Oien v. County of San Bernardino*, 680 F. App'x 530 (9th Cir. 2017), police responded to a
12 report that a man had stabbed himself multiple times in the chest with a steak knife and was under the
13 influence of drugs. Officers announced their presence, and identified themselves before entering the
14 home. *Id.* Oien only made faint, muffled noises in response to officers' questions. *Id.* When Officers
15 entered the home, Oien charged at them with knives in his hands, and officers shot and killed Oien. *Id.*
16 The Court held that the initial report alone was enough to establish that there was an urgent need to
17 protect Oien from harm, and that the faint, muffled noises Oien made did not dissipate the officers'
18 objectively reasonable conclusion that Oien needed immediate medical care. *Id.*

19 In Nevada, the denial of a motion to suppress was upheld when police discovered marijuana in
20 the Defendant's home after a warrantless search. *Dixon v. State*, 2015 Nev. Unpub. LEXIS 729, 131
21 Nev. 1273 (2015). Police responded to the house for a domestic dispute. *Id.* The officers saw movement
22 and light in the house before knocking on the front door. *Id.* The front door had been forced open, the
23 lock was broken, blood was spattered on the floor, and the Defendant's whereabouts were unknown.
24 *Id.* The Court found that the entry of the home fell into the emergency exception to the warrant
25 requirement, and that the search did not violate the Fourth Amendment. *Id.*

1 III. EXIGENT CIRCUMSTANCES NOT PRESENT

2 The Supreme Court found that there were no exigent circumstances when the Defendant told
3 officers he was coming out of the home. *United States v. Duggar*, 603 F.2d 97 (9th Cir. 1979). In that
4 case, police responded to a report of a fistfight at an apartment complex. *Id.* at 98. They arrived about
5 an hour after the fight had ended, and interviewed the alleged victim of the assault. *Id.* Police followed
6 a trail of blood from the victim to the Defendant's apartment. *Id.* Police rang the doorbell two or three
7 times, but got no response. *Id.* They then, uninvited, turned the key that was in the door and pushed the
8 door open. *Id.* Officers again called for the Defendant and identified themselves as police officers. *Id.*
9 This time, the Defendant responded that he was putting his shoes on and would be right out. *Id.* Instead,
10 the officers entered the apartment, where they found marijuana. *Id.* The Court held that any explanation
11 of an emergency dissipated when the Defendant responded that he would coming out of the apartment,
12 and, thus, the officers' entry was unlawful. *Id.* at 99.
13

14 In *Lastine v. State*, 429 P.3d 942 (Nev. 2018), the Nevada Highway Patrol and Washoe County
15 Sheriff's Office conducted an investigation of a hit-and-run accident that led them to the Defendant's
16 house. Air bags were not activated at the time of the collision, and the Defendant immediately drove
17 from the scene of the accident to his home. *Id.* Damage was observed to the exterior of his vehicle but
18 not to the interior. *Id.* There was no blood in or on his truck, and no blood was found in or on the home.
19 *Id.* Also, the deputies' actions were consistent with a criminal investigation and not the duty to protect
20 life. *Id.* The Deputy did not immediately enter the home or the bedroom to check on the welfare of the
21 Defendant. *Id.* Instead, he waited for backup to arrive and assist with the search. *Id.* The Court held that
22 when viewed objectively, those facts did not demonstrate a reasonable basis to believe the Defendant
23 was in imminent danger, and the warrantless search of his house was not justified. *Id.*
24

25 The State of Nevada has further held that exigent circumstances to enter a home did not exist
26 when the police responded to a report of a domestic dispute, and made contact with both occupants.
27 *Hannon v. State*, 207 P.3d 344 (Nev. 2009). Approximately 45 minutes after the call for service, officers
28

knocked on the suspect door and made contact with a female that was red-faced, crying, and breathing hard. *Id.* at 345. Police also observed the Defendant in the background, and he appeared to be flushed and angry. *Id.* The female stated she was not injured, that they had an argument earlier in the day, and that no one else was in the apartment. *Id.* Police insisted on making entry into the house, but they were denied permission by both the female and the Defendant. *Id.* Officers then pushed the door open and entered, eventually arresting the Defendant for marijuana related offenses. *Id.* The Court held that officers lacked an objectively reasonable basis to believe that there was an immediate need to protect the occupants of the apartment, and thus their entry and subsequent search were illegal. *Id.* at 348.

IV. EXIGENT CIRCUMSTANCES WERE NOT PRESENT IN THE CURRENT CASE

In those cases where the Courts have found that there was an objectively reasonable basis to believe that someone needed immediate assistance, the common theme is that law enforcement has been able to point to at least one fact to show that someone actually was injured. In *Brigham City*, the police themselves observed a fight, and saw someone spit blood into the sink. In *Oien*, there was a report that someone had stabbed themselves multiple times. And in *Dixon*, police observed a trail of blood after being called for a domestic dispute. There is no such fact in this case. NCSO never received any information that someone had been injured, or that there was an ongoing altercation. When they responded to the scene, Deputies did not observe or hear any dispute or altercation taking place, and there was no blood or other physical indication that anyone had been injured.

Rather, this case is similar to those cases where Courts have found that there was no objectively reasonable basis to believe anyone was in need of immediate assistance, necessitating entry into the house without a warrant. As with *Duggar* and *Hannon*, law enforcement in this case did make contact with an occupant of the house. Torres opened a window and spoke to police, telling them everyone was fine and that they did not need any help. Deputies had no objectively reasonable basis to believe otherwise. And just as in *Lastine*, there was no indication on the scene that anyone was in need of immediate assistance to protect them from harm or injury.

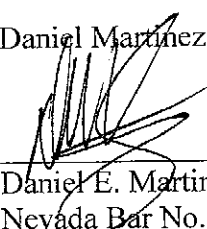
1 The controlling law also makes clear that an exigent circumstance is one that requires
2 *immediate, swift* action to prevent imminent harm. If law enforcement has time to call and wait for
3 backup, as they did in *Lastine*, then it is not an exigent circumstance that requires subjugation of the
4 Fourth Amendment. That is precisely what happened in this case. Deputies Gideon and Williams were
5 the first to arrive on scene, but they did not make immediate entry into the house. Instead, they had
6 time to wait for backup to arrive, and even more time to wait for a locksmith to arrive. The actions of
7 NCSO Deputies themselves tell the story that exigent circumstances were *not* present, and their entry
8 into the house was unlawful.
9

10 CONCLUSION

11 When Deputies with the Nye County Sheriff's Office entered the house at 835 South Linda
12 Street in Pahrump, Nevada, they did so without any objectively reasonable basis to believe there was
13 an immediate need to protect the lives or safety of themselves or others. As such, their entry was
14 unlawful and violated the Fourth Amendment rights of Marco Torres. Because all of the evidence
15 obtained in this case was the result of an unlawful search, the case against Marco Torres must be
16 dismissed in its entirety.
17

18 DATED this 23rd day of September, 2020.
19

20 Daniel Martinez Law, LLC

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23 Daniel E. Martinez, Esq.
24 Nevada Bar No.: 12035
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CERTIFICATE OF SERVICE

I, Daniel E. Martinez, Esq., Nye County Public Defender and counsel for the Defendant,
MARCO ANTONIO TORRES, do hereby certify that I have served the following:

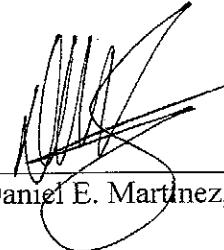
Defendant's Motion to Dismiss in

Case No. CR20-0092

State v. Marco Antonio Torres

upon said Plaintiff by delivering a true and correct copy thereof on September 23, 2020, to the
following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE



Daniel E. Martinez, Esq.

FILED
FIFTH JUDICIAL DISTRICT

SEP 23 2020

Nye County Clerk
Samani Smith Deputy

Case No.: CP20-0092

Dept. No.: 1

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

IN THE MATTER OF THE APPLICATION
OF

MARCO ANTONIO TORRES,

DEFENDANT MARCO ANTONIO
TORRES PETITION FOR WRIT OF
HABEAS CORPUS

FOR A WRIT OF HABEAS CORPUS

TO: THE HONORABLE KIMBERLY A. WANKER, DISTRICT COURT JUDGE,
DEPARTMENT 1, FIFTH JUDICIAL DISTRICT COURT, NYE COUNTY, NEVADA

MARCO ANTONIO TORRES, submits this PETITION FOR WRIT OF HABEAS CORPUS
by and through his attorney, DANIEL E. MARTINEZ, ESQ., who respectfully affirms and declares:

1. That this petition is timely made, and complies with NRS 34.700. Arraignment was held on September 4, 2020, in the Nye County District Court, Department 1.
2. That Petitioner does, in compliance with NRS 34.700(1)(b)(1), hereby waive the sixty-day rule set forth in NRS 178.556.
3. That Petitioner does, in compliance with NRS 34.700(1)(b)(2), consent that the Court may, without notice or hearing, continue the trial indefinitely or to a date designated by the Court if this petition is not decided within fifteen days before the date set for trial.

1 4. That counsel is a duly qualified, licensed, practicing attorney in the State of Nevada, and
2 has been retained to represent the Petitioner.

3 5. That counsel hereby makes application on behalf of the Petitioner for a Writ of Habeas
4 Corpus.

5 6. Petitioner is facing charges on Information filed on August 17, 2020, by Chris Arabia,
6 Esq., Nye County District Attorney, and Kirk Vitto, Esq., Nye County Deputy District Attorney, in
7 case number CR20-0092.

8 7. That Petitioner makes application for a Writ of Habeas Corpus, that the place where the
9 Petitioner is actually committed, detained, confined or restrained of his liberty in Nye County, Nevada,
10 and that the officer by whom he is committed, detained, confined or restrained of his liberty is Sharon
11 Wehrly, Sherriff.
12

13 8. That Petitioner personally authorized the undersigned counsel to commence this action.

14 9. That the grounds for this application is that, pursuant to NRS 34.500(7), Petitioner has
15 been committed, detained, confined or restrained of his liberty on criminal charges without reasonable
16 or probable cause because there was insufficient admissible evidence presented at the preliminary
17 hearing to bind the Petitioner over to District Court on the charges of: Count III: Invasion of the Home
18 (Room); and Count VII: Possession of Dangerous Weapon (Nunchaku).
19

20 10. That the undersigned counsel has read the following Petition, knows the contents
21 thereof, and that the same is true of his own knowledge except for those matters stated on information
22 and belief, and as to those matters, he believes them to be true.

23 11. I declare under penalty of perjury that the foregoing is true and correct.
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1 Petitioner prays that this Honorable Court issue an order directing the County of Nye to issue a
2 Writ of Habeas Corpus commanding Sharon Wehrly to bring the Petitioner before the Court and return
3 the cause of his committing, detaining, confining or restraining of his liberty.
4

5 EXECUTED this 23rd day of September, 2020.
6

7
8 **DANIEL MARTINEZ LAW**

9
10 By: 
11 **DANIEL E. MARTINEZ, ESQ.**
12 Nevada Bar No. 12035
13 Attorney for Defendant
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NOTICE OF HEARING


TO ALL PARTIES AND THEIR COUNSEL OF RECORD.

PLEASE TAKE NOTICE that the foregoing Petition for Writ of Habeas Corpus will be heard

on the _____ day of _____, 2020, at _____ m., in Department 1 of the Fifth Judicial District Court, 1520 E. Basin Avenue, Pahrump, Nevada.

DATED this 23rd day of September, 2020.

DANIEL MARTINEZ LAW

By: 
DANIEL E. MARTINEZ, ESQ.
Nevada Bar No. 12035
Attorney for Defendant

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **STATEMENT OF FACTS**

3 The events leading to the Information charging Petitioner Marco Antonio Torres with the crimes
4 of Invasion of the Home (Room) and Possession of Dangerous Weapon (Nunchaku) are stated on
5 information and belief from the contents of the Transcript of the Preliminary Hearing filed with this
6 Honorable Court on or about August 27, 2020.

7
8 The Preliminary Hearing in this matter was held August 6, 2020. The State called Christopher
9 Piper (hereinafter "Christopher"), Decedent Jonathan Piper's (hereinafter "Jonathan") brother, as its
10 first witness. (Preliminary Hearing Transcript [hereinafter "PHT"] 6:3). Christopher testified that he
11 and Jonathan grew up with Defendant Marco Antonio Torres (hereinafter "Marco") after Jonathan and
12 Marco met in third grade. (PHT 10:15-20). Jonathan was born in April 29, 1962, so Christopher and
13 Jonathan have known Marco for approximately fifty (50) years. (PHT 10:13; PHT 29:2-3).

14 Christopher was on the lease and paid the rent at 835 South Linda, Unit 4, Pahrump, Nevada
15 (hereinafter "the Home") where Jonathan and Marco lived. (PHT 32:15-25). In early February 2020,
16 Christopher personally moved Marco from California to Pahrump to live in the Home with Jonathan
17 and act as Jonathan's caretaker. (PHT 17-18). Jonathan was suffering from stage-four cancer, and
18 Christopher "wanted somebody to be around." (PHT 18:1-6). Christopher thought Marco would be able
19 to get Jonathan to "be happier" because they were "old childhood friends...almost like a brother." (PHT
20 23:12; 37:8-9).

21
22 Christopher did not visit the Home again between February 2020, and Jonathan's death in April.
23 (PHT 33:11-17). However, he did speak to Jonathan and Marco together on the phone at least weekly.
24 (PHT 36:9-12). While living at the Home, Marco contributed to household expenses. (PHT 33:1-10).
25 Christopher never sensed a problem or had a concern with Jonathan and Marco living together in the
26 Home. (PHT 37:1-10). Christopher never had any restrictions for Marco in the Home regarding where
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1 he could go. (PHT 40:21-24). There was not a single area in the Home Marco was told, "You can't go
2 there." (PHT 40-41:25-2).

3 The Home is one separately occupied unit of several manufactured homes on the property
4 located at 835 South Linda. (PHT 47-48:21-8; 50:13-24). Marco and Jonathan lived in Unit 4 across
5 from Unit 9, which is occupied by Dennis Arthur La Due (hereinafter "Dennis"). *Id.* Dennis was the
6 property manager at 835 South Linda. (PHT 77:18-25).

7
8 Dennis testified that Marco and Jonathan lived together in the Home for a couple of months
9 prior to Jonathan's death. (PHT 51:13-21). Jonathan moved in first, and Marco moved in shortly after
10 to be Jonathan's caretaker. (PHT 48:17-20; 51:17-19). While living in the Home, Dennis observed
11 Marco cooking, cleaning, and performing caretaking functions for Jonathan in the Home. (PHT 72:1-
12 20).

13 It is alleged that in the early hours of April 4, 2020, Jonathan Piper died in the Home from
14 asphyxiation after being a victim to battery by strangulation at the hands of Marco. Detective Wesley
15 Fancher of the Nye County Sheriff's office responded to the Home on April 4, 2020, at approximately
16 6:00 a.m. Detective Fancher took photographs of the general disarray of the Home. (PHT 140:8-14;
17 143:4-8). He photographed scissors. (PHT 151:15-17). He photographed beer cans. (PHT 148:23-24).
18 He photographed a dinosaur toy. (PHT 148:9-10). He took pictures of three (3) pairs of nunchakus.
19 (PHT 13-17). He photographed picture frames and debris. (PHT 147:9-11).

20
21 He later interviewed Marco at the Nye County Sheriff's Office about the death of Jonathan
22 Piper. (PHT 169:5-7). According to Detective Fancher, after initially acting evasive, Marco was
23 forthcoming and believable about the events leading to Jonathan's death. (PHT 170:6-7). Detective
24 Fancher testified that Marco indicated he got upset at Jonathan for ripping open a bag of marijuana.
25 (PHT 170:17-20). Jonathan and Marco had a "tussle" in the living room that eventually spilled into the
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hallway of the Home, and at some point, Jonathan fell to the ground. (PHT 173:5-7). He got up and went to his bedroom, slammed the door, and locked it. (PHT 173:14-16).

Marco followed Jonathan to the bedroom, and kicked the door open. (PHT 174:3-5). Marco allegedly threw Jonathan's phone and grabbed Jonathan from behind in a "chokehold-type fashion where he squeezed him." (PHT 186:10-14). Detective Fancher testified that Marco stated he squeezed until Jonathan went limp. (PHT 186:18-21). Marco allegedly stated he attempted resuscitation on Jonathan, but the police had already arrived at the Home. (PHT 187:18-21).

When Detective Fancher testified that after his death, Jonathan Piper had a "reddish mark" above his left ear on his head. (PHT 231:15-16). According to Detective Fancher, who considered Marco forthcoming and credible in his interview, Marco never mentioned interaction with any objects other than the marijuana and the cell phone, and specifically, Marco never mentioned nunchakus at any time during his interviews with police. (PHT 210:8-10). No evidence or testimony was procured that Marco ever struck, or stated an intent to strike or otherwise harm, Jonathan or anyone with nunchakus. (See generally: PHT).

ARGUMENT

For a magistrate to hold a criminal defendant for trial, the State must establish at a preliminary hearing probable cause to believe that a crime was committed and that the defendant committed that crime. See NRS 171.206; *Dominguez v. State*, 112 Nev. 683, 691, 917 P.2d 1364, 1370 (1996). The threshold for a preliminary hearing is "slight or marginal" evidence in support of those allegations. *Sheriff v. Hodes*, 96 Nev. 184, 186, 60 P.2d 178, 179 (1980). A writ of habeas corpus should issue if the petitioner can show that there was insufficient evidence to establish probable cause. *In re Rowland*, 74 Nev. 215, 218, 326 P.2d 1102, 1103 (1958)

A. MARCO ANTONIO TORRES WAS A LAWFUL OCCUPANT OF 835 SOUTH LINDA, UNIT 4, PAHRUMP, NEVADA, AND THEREFORE, IT IS IMPOSSIBLE FOR HIM TO COMMIT HOME INVASION AT THAT RESIDENCE

The Court should dismiss the charge of Home invasion based on the plain language of the statute. Home invasion occurs when a person forcibly enters a dwelling without permission. NRS 205.067. According to NRS 205.060(b), a “dwelling” means any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car, including...any part thereof that is divided into a **separately occupied unit**. As such, “[o]nce a defendant enters a [unit] with permission, he cannot unlawfully enter the same [unit] where he is already lawfully present.” *People v. Bush*, 315 Mich. App. 237, 249 (2016).

When a statute’s language is plain and unambiguous, the statute’s plain language is applied. *Leven v. Frey*, 123 Nev. 399, 403 (2007). As such, the Nevada Supreme Court in *Truesdell v. State*, 129 Nev. 194, 202 (2013) is explicit that the *plain language* of the Home Invasion statute means that, “a person cannot commit the crime of home invasion by forcibly entering his or her own home if that person is a lawful occupant or resident of the home.” *Id.*

The Court went on to emphasize that the home invasion statute avoids arbitrary enforcement due to its clear, plain language. *Id.* The plain language of NRS 205.060(b) requires a dwelling to be differentiated into **separately occupied units** to be entered in to in order to commit home invasion in a single structure. Therefore, an accused Defendant cannot commit home invasion in a single unit dwelling in which he lawfully resides or occupies, and to charge him with the same results in arbitrary enforcement contrary to the plain language of the law and the findings of the Nevada Supreme Court.

While *Bush* is not controlling on this Court, it is persuasive authority that is impossible to ignore. In that case, the Defendant used the home in question as his primary residence; he received mail and occasionally slept there. *People v. Bush*, 315 Mich. App. 237 (2016). He was also invited to the house by the victim’s adult son to fix a plumbing problem. *Id.* After receiving threatening text

1 messages from the Defendant, the victim barricaded herself in an upstairs bedroom using a dresser. *Id.*
2 The Defendant kicked the bedroom door open, moved the dresser, and assaulted the victim. *Id.* The
3 Court held that Michigan's home invasion statute did not cover a scenario where a person lawfully
4 enters a home, but then breaks and enters or enters without permission an interior room within the
5 home. *Id.* The same applies to this case, where we have very similar circumstances.

6 Here, Marco Torres was unquestionably a lawful occupant of the Home located at 835 South
7 Linda, Unit 4, Pahrump, Nevada consistently from February to April, 2020. Christopher Piper, the rent-
8 paying lessee, personally moved Marco from California to the Home to be caretaker and roommates
9 with his brother, Jonathan Piper, who was ill with cancer. There was no evidence or testimony that
10 Marco and Jonathan lived in separate "units" in the dwelling.

11 On the contrary, they shared an address containing a single unit identifier, Unit 4. They shared
12 an entryway to the dwelling. They shared kitchen, living, and bathroom areas. Christopher testified that
13 Marco was given no restrictions while living in the home, and Marco contributed to household tasks
14 and expenses in addition to caretaking for Jonathan.

15 The State may attempt to argue that Marco did not have Jonathan's permission to enter his
16 bedroom. However, no evidence or testimony has been provided to support this position. Quite the
17 reverse, multiple people testified that Marco was a caretaker for Jonathan. Jonathan's own brother
18 testified that Marco was a childhood friend, and like a brother to Jonathan. While it may seem obvious,
19 someone's caretaker would need unlimited access to their subject's room in order to provide care. Even
20 more obvious is the notion that the statute does not support a charge of Home Invasion against a
21 roommate in a single unit dwelling, especially when that roommate is like a brother. As such, the
22 evidence shows Marco had unrestricted access throughout the Home, a solitary unit, because he was a
23 lawful occupant of the unit, and the law is clear that a lawful occupant cannot be charged with Home
24 Invasion.

1 At the preliminary hearing, the State was required to present slight or marginal evidence that
2 Invasion of the Home occurred, and they were unable to do so because it is impossible for Marco to
3 commit Invasion of the Home as a legal occupant. Further, the State's position regarding Home
4 Invasion on an interior bedroom has no basis in law, contradicts the plain language of Nevada law, and
5 contradicts the express findings of the Nevada Supreme Court on this very issue. To charge Marco with
6 Invasion of the Home is arbitrary, incorrect, and wrongful enforcement of NRS 205.067 under
7 *Truesdell*. As such, Count III: Invasion of the Home must be dismissed.
8

9 **B. THE STATE PRESENTED NO EVIDENCE THAT MARCO POSSESSED**
10 **NUNCHAKUS WITH SPECIFIC INTENT TO INFLICT HARM**

11 Nevada law states that a person shall not *with the intent to inflict harm* upon the person of
12 another, possess a nunchaku (NRS 202.350(1)(c) emphasis added). As such, the statute requires the
13 State present probable cause of both the elements of (1) possession; **and** (2) the specific intent to inflict
14 harm. *Id.* To hold a defendant criminally liable for a specific intent crime, Nevada requires proof that
15 he possessed the state of mind required by the statutory definition of the crime. *Bolden v. State*, 121
16 Nev. 908, 923 (2005)(*rev'd on other grounds*). Therefore, Count VII requires the State present slight
17 or marginal evidence of Marco's specific intent to inflict harm by possessing a collection of nunchakus
18 at home. The State presented no evidence of Marco's intent at the preliminary hearing. Not slight
19 evidence, not marginal evidence, the State presented zero evidence, and the Defense now has the unfair
20 burden of attempting to show a complete evidentiary void to disprove an allegation.
21

22 At the preliminary hearing in this matter, the State did not argue that any evidence showed the
23 specific intent required to unlawfully possess nunchakus. In its response to Marco's request for
24 dismissal of the charge, the State only supported Count VII by noncommittally hinting at a connection
25 between the "reddish mark" (hereinafter "the mark") on Jonathan's face and the presence of nunchakus
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1 in the Home. The State did not argue one word in support of the intent element. The State did not
2 present one iota of evidence or testimony suggesting the nunchakus caused the mark.


3 Other items found in the home include a broken cell phone, scissors, beer cans, picture frames,
4 and a toy dinosaur. Each of these items is equally as likely to have caused the mark based on the
5 evidence presented. Further yet, the cell phone is the only item Marco is alleged to have thrown or even
6 touched during the "tussle." More likely is that Jonathan Piper bumped his face during said "tussle,"
7 or hit his face when he fell on the way to his bedroom, or he got the mark when Marco tried to
8 resuscitate him, or he hit his face sometime before any of these events because of the combination of
9 substances and alcohol in his blood. The Defense could speculate all day because that is all the State is
10 doing in furtherance of this charge. It is insufficient to meet the evidence standard required, which is
11 some, and the State presented none. They did not meet their minimal burden at the preliminary hearing
12 to show the specific intent to harm required by law, and Count VII must be dismissed.
13

14 CONCLUSION

15 The State has failed to meet its burden to provide slight or marginal evidence in support of the
16 charges of Home Invasion and Possession of Dangerous Weapon. There was no testimony or evidence
17 presented at the Preliminary Hearing to support these charges. Further, the charge of Home Invasion is
18 legally impossible under the circumstances. Accordingly, this Court should issue a writ of habeas corpus
19 and dismiss Counts III and VII in the Information against Marco Antonio Torres.
20

21 Dated this 23rd day of September, 2020.

22 **DANIEL MARTINEZ LAW**

23
24 By: 
25 **DANIEL E. MARTINEZ, ESQ.**
26 Nevada Bar No. 12035
27 Attorney for Defendant
28

CERTIFICATE OF SERVICE

I, Daniel E. Martinez, Esq., Nye County Public Defender and counsel for the Petitioner,
Marco Antonio Torres, do hereby certify that I have served the following:

**Defendant Marco Antonio Torres's Petitioner for Writ of Habeas Corpus in
Case No. CR20-0092**

In the Matter of the Application of Marco Antonio Torres

upon said Plaintiff by delivering a true and correct copy thereof on September 23, 2020, to the
following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE



Daniel E. Martinez, Esq.

DANIEL MARTINEZ LAW

COPY

FILED
FIFTH JUDICIAL DISTRICT

OCT 06 2020

Nye County Clerk
Terri Pemberton Deputy

1 Case No. CR20-0092

2 Department 1

3 *The undersigned affirms that*
4 *this document does not contain*
5 *the social security number of*
6 *any person.*

7 IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
8 IN AND FOR THE COUNTY OF NYE

9 THE STATE OF NEVADA,

10 Plaintiff,

11 vs.

RESPONSE TO
DEFENDANT'S MOTION TO DISMISS

12 MARCO ANTONIO TORRES,

13 Defendant. /

14 COMES NOW THE STATE OF NEVADA, by and through its attorney, CHRIS
15 ARABIA, NYE COUNTY DISTRICT ATTORNEY, through Deputy District Attorney
16 Michael D Allmon, and the Response to Defenses Motion to Dismiss brought by the
17 defense.

18 POINTS AND AUTHORITIES

19 I. FACTS

20 At 2:59 a.m. on April 4, 2020, the Nye County Sheriff's Office received a 911 call
21 disconnect. Preliminary Hearing Transcript (PHT) (Exhibit 1), 91:6-25, 101:14-25; 911
22 Recording (911 rec.) (Exhibit 3) 4:08, 0:00-0:12¹. The dispatcher, Stephanie Rucker,

23
24 ¹ Although in her testimony, Stephanie Rucker recalled the timing of it by noting, "I believe it was a little after 3:00[.]" Tr. 91:24, the time stamp on the 911 call indicates that it started at 2:59:25 and the initial call lasted over a minute. 911 Rec. 0:00-1:30.

1 could hear two male voices and one of those two voices was asking for help. PHT,
2 91:25-92:2; 911 Rec. 0:00-0:12. Nearly a minute after the first caller told the dispatcher,
3 "I need some help", 911 rec. 0:09-0:13, the second male voice picks up the phone and
4 says, "False alarm", 911 rec. 0:59-1:06. Dispatch called the phone back twice, but
5 nobody answered. PHT 96:2-4. 97:9-12; Computer Aided Dispatch ("CAD") 1-15, 8
6 (Exhibit 2)². The Sheriff's Office dispatch used a GPS location system and identified an
7 address of 835 South Linda Street, Pahrump, Nevada for the location of the caller asking
8 for help. PHT, 92:6-11, 97:1-4.

9 At 3:01 a.m., Deputy Xavier Gideon of the Nye County Sheriff's Office was
10 dispatched to 835 South Linda to investigate this 911 disconnect. PHT, 101:14-25,
11 102:12-14. He arrived within five minutes of the call. PHT, 124:21-125:3. Upon arriving,
12 a male in a nearby residence directed him to the unit that was making a disturbance and
13 stated there were two residents in that unit. PHT, 102:6-11, 118:5-7. The deputies
14 attempted to contact the occupants inside—nobody answered but they could hear
15 footsteps. PHT, 103:10-14, 112:3-113-5.

16 At 3:42, deputies attempted to enter the residence, but were unable to because
17 of the locked door. CAD, 8. Five minutes later, a locksmith was authorized. *Id.* The next
18 minute, dispatch called a locksmith. *Id.* Three minutes after that, one of the deputies
19 deployed a rifle as part of the standoff. *Id.* The locksmith arrived on scene at 4:12 a.m.
20 *Id.* at 9.

21 ///

22 ///

23

24 ² Admitted at Prelim. Hrg. as Exh. 4A. See PHT, 94:21-22.

1 At 4:20 a.m., with the locksmith now on scene, and after deputies had been
2 attempting to contact the occupants, the Defendant opened a window (not a door) to
3 speak with the deputy sheriffs. PHT, 102:15-103:2, 103:12-14, 111:18-21; CAD, 9.³ The
4 deputies asked him his name, but he refused to identify himself, stating only that he was
5 "Bozo the Clown." PHT, 103:7-9. The Defendant told deputies that they needed to go
6 away and that everyone inside was ok. PHT, 125:19-23. This statement by the
7 Defendant confirmed to Deputy Gideon what he already had a reasonable basis to
8 believe, that another person was inside the residence. PHT, 125:18-126:2. After the
9 Defendant refused to come outside, present the victim to the deputies, or otherwise
10 demonstrate that everyone inside was alive and doing well, the deputies made entry into
11 the house by using a locksmith. PHT, 104:3-5.

12 Immediately upon entry to check on the occupants of the residence, the
13 Defendant, the same male that identified himself as Bozo the Clown, was at the door
14 and argumentative in an attempt to prevent the deputies from entering the residence.
15 PHT, 104:7-10, 18-23.⁴ When Deputy Gideon was finally able to make his way to the
16 victim's room, he found the victim, Johnathan A. Piper, gasping, but with the air being
17 released from the body. PHT, 106:23-107:5. Deputies attempted CPR on Johnathan
18 Piper, but it had no effect. PHT, 120:3-121:25. Deputy Gideon also checked for a pulse
19 but could not detect one. PHT, 107:18-20. Deputies requested emergency medical
20 personnel but cancelled the call when it was determined that the victim was dead. See
21
22

23 ³ Deputy Gideon could not recall the exact timing of the locksmith compared to the Defendant answering through
the window, *see* Tr. 125:4-14, but based on the CAD, it appears that at 4:20 a.m., the Defendant only answered
through the window after the locksmith was on scene. CAD, 9.

24 ⁴ Despite having reason to believe that there were two residents of that unit, the deputies had still only seen one of
them.

1 CAD, 9. Deputy Gideon made the first declaration that Johnathan Piper was now
2 deceased at 4:36 a.m. PHT, 108:8-14.

3 Detective Wesley Fancher applied for the search warrant of the house after being
4 assigned to investigate the possible homicide. PHT, 140:8-20, 159:11, 195:15-16. The
5 Honorable Lisa Chamlee granted the warrant at 7:41 a.m. Search Warrant in 20NY-
6 1112, April 4, 2020 (Exhibit 4).

7 **II. LAW AND ARGUMENT**

8 **A. Defendant's Request is Not the Correct Procedure**

9 Before even addressing the substance of Defendant's request, his motion is an
10 improper procedural request. Dismissing a case is not an appropriate procedure for the
11 Court to even consider based on Defendant's request; if evidence is obtained in violation
12 of the Fourth Amendment, suppression of that evidence is the appropriate remedy to
13 protect this important constitutional right. *Mapp v. Ohio*, 367 U.S. 643, 648, 655, 81 S.
14 Ct. 1684, 6 L. Ed. 2d 1081 (1961). Thus, this is appropriately a motion to suppress
15 evidence under NRS 179.085, not a motion to dismiss.

16 **B. Evidence Obtained Under the Emergency Aid Exception is Admissible**

17 Officers responding to exigent circumstances is a compelling exception to the
18 warrant requirement of the Fourth Amendment and it is therefore reasonable under the
19 Fourth Amendment for officers to enter a home under exigent circumstances. *Michigan*
20 *v. Fisher*, 558 U.S. 45, 47, 130 S. Ct. 546, 175 L. Ed. 2d 410 (2009).⁵ The "emergency

21
22 ⁵ The Defendant cites *United States v. Dugger*, 603 F.2d 97 (9th Cir. 1979), to show that exigent circumstances
23 were not present. See Def. Mot. 7:1-14 (proclaiming incorrectly that the *Supreme Court* held in *Dugger*). Putting
24 aside that the 1979 ruling by the 9th Cir. is questionable given *Fisher*, which was decided in 2009, the State agrees
that exigent circumstances did not exist for a second person in *Dugger*: the victim was safe and had been
interviewed by the police and the defendant was actually coming out of the house. Here, those different facts
demonstrate that there was in fact an exigency: the deputies still had not seen the victim that asked for help, and

aid exception" is one such exigency. *Id.*, citing *Brigham City v. Stuart*, 547 U.S. 398, 404-405, 126 S. Ct. 1943, 164 L. Ed. 2d 650 (2006). "The 'emergency aid exception' does not depend on the officers' subjective intent or the seriousness of any crime they are investigating when the emergency arises. *Id.* at 47, citing *Brigham City*, *supra*, at 404-405. Thus, no matter how small the emergency, and regardless of whether the police had a subjective intent to gather evidence for trial, the officer need only have "an objectively reasonable basis for believing' that medical assistance was needed, or persons were in danger." *Id.* at 49, quoting *Brigham City*, *supra*, at 406. When there is evidence that there is a person inside a residence that may need help and police have been unable to contact that person, there is an objectively reasonable basis to believe that there is an immediate need to protect that person. *Hannon v. State*, 125 Nev. 142, 148, 207 P.3d 344 (2009). The person in need of medical assistance, or in danger, may even be the person that is telling the police to go away and stay out of his home. *Fisher*, 558 U.S. at 48.

A comparison of *Fisher* and this case demonstrates that, even more so than in *Fisher*, the evidence obtained while the police were acting under the exigent circumstance of the emergency aid exception here in this case is admissible. In *Fisher*, the officers were responding to a call of a disturbance. *Id.* at 45. Here, in Nye County, the deputy sheriffs were responding to a 911 disconnect where one of two people asked for help. In *Fisher*, the defendant refused to answer. *Id.* at 46. Similarly, the Defendant here in Nye County refused to answer. In *Fisher*, the officers asked the defendant *whether the defendant needed* medical attention after noticing a *small cut* on his hand

despite orders from the deputies, a locksmith picking the lock, and deputies making a forceful entry into the house, the Defendant still tried to block their access to the victim in need, Johnathan Piper.

1 and seeing him cause a disturbance by screaming and throwing things. *Id.*⁶ Here, the
2 deputies were concerned about a second person—one that Defendant was hiding from
3 them—needing medical attention or otherwise being in danger. There, the defendant
4 argued that he told police to go away and get a warrant. *Id.* Still, they entered to make
5 sure that he did not need medical help. *Id.* at 46, 49. Here, the Defendant told the
6 deputies that everyone was ok, but in addition to this, there was a second person that
7 said, “I need some help.” So, they entered to make sure that a second person did not
8 need medical help or was not otherwise in danger. In *Fisher*, they did not even end up
9 calling emergency medical personnel. *Id.* at 49. Here, they attempted CPR and called
10 emergency medical personnel, but ultimately cancelled the call because Johnathan
11 Piper was dead.

12 Ultimately in *Fisher*, the evidence that the defendant pointed a gun at the officer
13 in response to the officer entering the defendant’s home was admissible against him at
14 trial under the emergency aid exception because the officers had an objectively
15 reasonable basis for believing that medical assistance was needed, or persons were in
16 danger, even if that person was the defendant and even though they did not end up
17 calling for medical help. Here, even more so than in *Fisher*, the evidence that the
18 deputies obtained after the entry is admissible under the emergency aid exception for
19 the same reasons.

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24 ⁶ Similarly, miniscule when compared to the situation here, in *Brigham City*, the injury was a bloody lip. *Fisher*,
558 U.S. at 49. By comparison here, it was a 911 caller asking for help and a Defendant hiding him from the
police.

1 **1. The Threat of Injury to Mr. Piper is Sufficient for the Emergency Aid**
2 **Exception**

3 The emergency exception applies when there is a need to protect those injured
4 *or threatened* with such injury. *Fisher*, 558 U.S. at 47, *quoting Brigham City*, 547 U.S. at
5 403. The standard is an “objectively reasonable basis” to believe, it is not probable
6 cause, it is not even reasonable suspicion. See, *id.* at 47. Despite these familiar
7 standards being available to the Court, it chose a different standard in *Michigan v.*
8 *Fisher*, 558 U.S. 45, therefore, “objectively reasonable basis” must have its own
9 independent meaning. See, *Hill v. Walsh*, 884 F.3d 16, 23 (1st Cir., 2018). The Court
10 explained in *Fisher* that “[o]fficers do not need ironclad proof of a likely serious, life-
11 threatening injury to invoke the emergency aid exception.” *Id.* at 49 (internal quotations
12 omitted). In fact, as the Court in *Fisher* points out, the “role of a peace officer includes
13 preventing violence and restoring order, not simply rendering first aid to casualties.” *Id.*
14 at 49, *quoting Brigham City, supra* at 406. Furthermore, despite the use of “serious” or
15 “life-threatening” the Court does not require such a heightened injury. See, *id.* at 48-49.
16 In *Fisher*, the small cut to the hand was sufficient and the Court explained that the
17 defendant was not correctly applying the reasoning of *Brigham City*. *Id.* at 46, 48-49.
18 Therefore, while a reasonable basis to believe that someone is already injured is
19 sufficient, a reasonable basis to believe that they are threatened with such injury is also
20 sufficient.

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1 Thus, the threat of injury to Johnathan Piper, as evidenced by him asking for help,
2 a second person taking the phone and preventing the dispatcher from speaking to him,
3 the neighbor indicating that there were two people inside the house with the disturbance,
4 the Defendant acknowledging a second person inside and then the Defendant
5 preventing law enforcement from reaching that second person, is sufficient to justify the
6 emergency aid exception.

7 **2. A Need for Swift Action Existed**

8 The emergency aid exception "requires only an objectively reasonable basis for
9 believing that a person within the house is *in need* of immediate aid[.]" *Fisher*, 558 U.S.
10 at 47 (internal punctuation and citations omitted) (emphasis added). It is a "need for swift
11 aid" that must exist. *Hannon*, 125 Nev. at 147.

12 But that should not be conflated with actual swift and successful execution by law
13 enforcement. Otherwise, a defendant that is successful in delaying law enforcement's
14 entry into the house will claim that law enforcement did not swiftly enter the house. If a
15 defendant asserted that despite law enforcement demanding that a defendant allow
16 them entry to check on the occupants of a residence, and despite attempting to enter
17 through the doors, law enforcement was unable to enter because the defendant barred
18 their access, and law enforcement in turn had to wait for more resources before
19 ultimately making entry, it would be a bizarre outcome to find that because of the
20 defendant's obstruction, law enforcement did not make swift entry and any evidence
21 obtained would therefore be inadmissible. The Fourth Amendment's standard of

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1 reasonableness does not create such a requirement. Instead, such a claim conflates the
2 issue: it is the *need* for immediate action that the Fourth Amendment requires under the
3 emergency aid exception, not actual swift action in execution, particularly when the
4 Defendant is the reason for that delay.⁷

5 Thus, the evidence is admissible because the emergency aid exception requires
6 only that a person be in need of immediate action, which Johnathan Piper was here.

7 **3. The Fourth Amendment Does Not Consider the Subjective Motivations of the**
8 **Deputies**

9 If both subjective motivations for criminal investigation and an objectively
10 reasonable basis for believing someone was in need of help exist, the subjective
11 motivations for criminal investigation completely fade away from the courts'
12 consideration. *Fisher*, 558 U.S. at 49; *Hannon*, 125 Nev. at 146-147. Put another way,
13 if evidence exists to support an objectively reasonable basis to believe that a person is
14 in need of medical assistance or otherwise in danger, then it is improper to inquire into
15 the subjective motivations of officers; it is only when there is no evidence of the
16 objectively reasonable basis that the court may pile the subjective motivation on in its
17 analysis. *Compare* (*Lastine v. State*, 429 P.3d 942, 952 (Nev. App. 2018)) (the Nevada
18 Court of Appeals first acknowledging *Hannon*, but nevertheless piling on in its analysis
19 a subjective motivation evidenced by not calling emergency medical personnel to the
20 scene and waiting for backup because the court found an objectively reasonable basis
21 lacking) *with* (*Fisher*, 558 U.S. at 49) (the United States Supreme Court finding the fact
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24 ⁷ For reasons covered in B.3., whether law enforcement waits for backup before making entry is irrelevant because
it is not an appropriate to consider their subjective motivations, or at a minimum, it is but one factor to consider
and therefore is not an element to be overcome as Defense is asking the Court to treat it.

1 that emergency medical personnel were not called completely irrelevant to the inquiry
2 because *there was* an objectively reasonable basis), *and also with* (*Hannon* 125 Nev.
3 at 148) (the Nevada Supreme Court disavowing inquiries into the subjective motivations
4 of officers when acting under the emergency aid exception because it is irrelevant under
5 the Fourth Amendment).

6 The Nevada Court of Appeals held in *Lastine v. State*, that the police did not have
7 an objectively reasonable basis to believe that there was an immediate need to protect
8 the life or safety of the defendant when: as the sole occupant of a car, he committed a
9 hit and run, but the airbags were not activated in the defendant's car, there was no
10 damage to the interior of the car, and he drove his car to his home. 429 P.3d 942, 945,
11 951-952 (Nev. App. 2018).⁸

12 In contrast to the facts presented to the Nevada Court of Appeals there –facts
13 that were not established well in the district court because the state there did not present
14 the emergency doctrine as an argument below, *id.* at 951—the deputies here had reason
15 to believe that there was a second person, when: a 911 caller asked for help and a
16 second person told the dispatcher not to worry about it, the neighbor told the deputies
17 that the house with a disturbance had two people, and the Defendant implicitly
18 acknowledged that there was another person in the residence. Therefore, while there
19 may not have been an objectively reasonable basis to believe that anyone in *Lastine*
20 needed help, there was an objectively reasonable basis to believe that Johnathan Piper
21 needed help.

22
23 ⁸ Hypothetically, if it was appropriate to consider the subjective motivations, the facts addressing the subjective
24 intent of the deputies and troopers in *Lastine* are so different than the facts addressing the subjective intent of the
deputies here, that *Lastine* has no impact: here the deputies were continually trying to make contact with
Johnathan Piper and they did immediately check on the welfare of Johnathan Piper when they finally were able to
get in the house. *Compare with Lastine*, 429 P.3d at 952.

1 So although in *Lastine*, certain facts that demonstrated the officers had a
2 subjective motivation to conduct a criminal investigation (i.e., not immediately entering
3 the home or room to check on the person they asserted needed medical help, waiting
4 for backup to arrive, and not calling for medical personnel) may have added on to the
5 theory that they had no objectively reasonable basis, the State need not defend against
6 those same facts here because evidence exists to support the objectively reasonable
7 basis.⁹ Thus, even if these facts do exist here, those facts and the significance of these
8 facts noted in *Lastine*, are not relevant for the court to consider because under *Fisher*,
9 *Brigham City*, and *Hannon*, the 911 call, the neighbor, and the statements of the
10 Defendant here are all evidence presented to the court that precludes an inquiry into the
11 subjective motivations of the deputies: those facts must fade away from the Courts'
12 analysis.

13 **4. Not Having Contact with Mr. Piper is an Objectively Reasonable Basis to**
14 **Believe he Needed Medical Attention or was in Danger**

15 The emergency aid exception exists when the police have reason to believe that
16 one of the parties, they are talking to is in need of help, or an unidentified person is
17 present and in need of help. *Hannon*, 125 Nev. at 148. In *Hannon*, the Nevada Supreme
18 Court found that the state lacked an objectively reasonable basis because any basis
19 that may have existed, disappeared when the officer interviewed the two people present
20 at the door, and furthermore, the officer had *no indicia* that another person was inside
21 the residence. *Id.* Importantly there, the Court pointed out the facts that would have
22 established an exigency; facts which are present here.

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24 ⁹ At worst, they are factors to consider rather than elements to overcome.

1 Here, the evidence demonstrates what *Hannon* did not—an objectively
2 reasonable basis to believe that another person was present and in need of help. Here,
3 nobody came to the door, not even the Defendant. Therefore, in contrast to *Hannon*, the
4 deputies had not “made contact with both occupants.” See Def. Mot., 7:26-28.
5 Additionally, here, there is indicia of another person inside the residence: the person
6 that the neighbor said lived in the residence, the person that Defendant implicitly
7 acknowledged, and the same person that asked the dispatcher for help, Johnathan
8 Piper. Thus, the deputies here did have an objectively reasonable basis to believe there
9 was a person inside that needed help because in contrast to *Hannon*, both occupants
10 did not come to the door for an interview and the deputies did have indicia of another
11 person in need of help, either of which is sufficient to establish an objectively reasonable
12 basis to believe that someone was in need of help.¹⁰

13 **5. The Emergency Aid Exception is Even More Compelling Because Johnathan**
14 **Piper was Asking for Help**

15 Regardless of whether the occupants are asking for help, law enforcement may
16 enter if they have an objectively reasonable basis to believe someone is in need of help,
17 *Brigham City*, 547 U.S. at 407, and even over the refusal of that person. *Fisher*, 558
18 U.S. at 48. Here, Johnathan Piper told the dispatcher he needed help and the dispatched
19 could tell there was a second person preventing him from seeking the help he needed.
20 If law enforcement in *Brigham City* and *Fisher* acted in accordance with the Fourth
21 Amendment when they acted with an objectively reasonable basis to believe that
22

23 ¹⁰ The State is not addressing Defendant’s citation to an unpublished case before January 1, 2016 because it is not
24 precedent, *see* NRAP 36(c)(2), and may not be cited even for persuasive value. *See* NRAP 36(c)(3). Therefore,
despite *Dixon v. State*, 2015 Nev. Unpub. LEXIS 729, 131 Nev. 1273, 2015 WL 3766252, being favorable to the
State, it is not addressing Defendant’s attempt to distinguish.

1 somebody needed help, then even more so, the Nye County Deputy Sheriffs acted with
2 an objectively reasonable basis to believe that someone inside the Defendant's and
3 Johnathan Piper's residence needed help when he explicitly asked for their help.
4 Therefore, the evidence is admissible under the emergency aid exception.

5 **C. No Evidence Should be Suppressed**

6 First, no evidence should be suppressed because the deputies acted
7 appropriately under the emergency aid exception of the Fourth Amendment. Still, the
8 State argues in the alternative—to protect against all possible outcomes—that the
9 appropriate remedy is still not to suppress any of the evidence because exclusion of
10 evidence is not automatic. Here, any possible defects in the actions of the deputies can
11 be cured by the warrant and the independent source and inevitable discovery doctrine.

12 If evidence would have inevitably been discovered, then even with a Fourth
13 Amendment violation, the police should be placed in the same, not a worse position,
14 than they would have been without the violation. *Murray v. United States*, 487 U.S. 533,
15 537, 539, 108 S. Ct. 2529, 101 L. Ed. 2d 472 (1988). Under the exclusionary rule, even
16 if bad faith exists it is not a consideration for the court. *Nix v. Williams*, 467 U.S. 431,
17 445, 104 S. Ct. 2501, 81 L. Ed. 2d 377 (1984).

18 If police make an illegal entry, and then later obtain a warrant, evidence obtained
19 as a result of that warrant is admissible. *Segura v. United States*, 468 U.S. 796, 815,
20 104 S. Ct. 3380, 82 L. Ed. 2d 599 (1984). For evidence to be the fruit of the poisonous
21 tree, the illegality must be the but for cause of the "fruit." *Id.* at 813. Taking this a step
22 further, if police enter a building illegally, confirm that there is evidence present to make
23 it worth their time, then apply for a warrant, and probable cause exists based on the
24 legal evidence available, then that same evidence—previously viewed illegally—can be

1 admitted as a result of the warrant. *Murray*, 487 U.S. at 541. Furthermore, it is the facts
2 known to the officer at the time that the court is to consider, even if not previously
3 articulated to justify the search. *Devenpeck v. Alford*, 543 U.S. 146, 153-54, 125 S. Ct.
4 588, 594 (2004).

5 Here, Detective Fancher applied for a search warrant. Therefore, regardless of
6 whether a Fourth Amendment violation may have occurred—which for the reasons
7 above it did not—any evidence obtained post-warrant, even evidence that the deputies
8 saw during a supposed illegal entry, would be admissible because that same evidence
9 would have been seen after the warrant. Hypothetically, under *Murray*, the deputies here
10 could have checked to see if Johnathan Piper's body was inside—even without relying
11 on the emergency aid exception—then applied for a warrant with the evidence they had
12 before they made entry and from what they could see outside of the house. Then they
13 could have walked back in with the warrant and everything would be admissible. While
14 it is the State's position that the deputies acted under the emergency aid exception and
15 evidence obtained as part of that appropriately supported the warrant, the State argues
16 that in the alternative, the evidence would still be admissible because, even excluding
17 the evidence gained from the emergency entry, probable cause existed to support a
18 warrant and the police would have found the same evidence post-warrant.

19 Thus, under the exclusionary rule's inevitable discovery and independent source
20 doctrines, all evidence is admissible regardless of whether the Court finds a Fourth
21 Amendment violation because the warrant cured any defect that could possibly exist.

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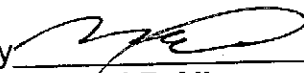
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CONCLUSION

Because an objectively reasonable basis for believing that a second person (or even the person they were talking to) was in need of medical assistance or was in danger based on the 911 dispatcher receiving a call from a victim saying, "I need some help," a second male taking the phone and saying, "False alarm," a neighbor informing the deputies that the house with the disturbance had two people in it, the Defendant refusing to answer the door, and when he did, merely opening a window, refusing to give his name, and saying *everyone* inside is ok—further confirming that a second person was inside the home—the deputies demanding entry into the house was an appropriate action under the Fourth Amendment, and any evidence obtained as a result of the deputies acting under this emergency aid exception is admissible.

DATED this 6th day of October, 2020.

CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY

By 
Michael D Allmon
Deputy District Attorney

OCT 12 2020

Nye County Clerk

Brittani Smith Deputy

Case No.: CR20-0092

Dept. No.: 1

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

MARCO ANTONIO TORRES,

Defendant.

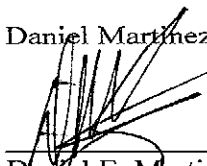
**REPLY TO STATE'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS**

COMES NOW, the Defendant, Marco Antonio Torres, by and through his Public Defender, Daniel E. Martinez, Esq., of Daniel Martinez Law, LLC, and hereby files his Reply to the State's Opposition to the Defendant's Motion to Dismiss.

This Reply is made and based on all the papers and pleadings on file herein, the Points and Authorities submitted herewith, the exhibits attached hereto, and any further evidence and argument as may be adduced at the hearing of this matter.

DATED this 12th day of October, 2020.

Daniel Martinez Law, LLC


Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

ARGUMENT

In its Response, the State bases much of its argument on facts that are nowhere on the record, and unknown at this point in time. In determining whether Deputies has a reasonable basis to believe someone inside the Linda Street address was in need of aid, it is important to determine what Deputies knew *at the time*. Certain facts became clear after the fact, such as the content of the 911 call, and the phone number it came from. It is unclear whether Deputies knew that information at the time, and the record now shows it is more likely they did not.

At the preliminary hearing, Deputy Gideon testified that he was dispatched for a 911 disconnect. Preliminary Hearing Transcript (hereinafter "PHT") 101:23-25. He was tasked to make contact with whoever was inside the trailer and investigate why they called 911. PHT 102:12-14. The call became a welfare check, and Deputy Gideon did not know who they were there to do a welfare check on. PHT 116:12-14; 117:19-22. At the time of their arrival, Deputies did not know the content of the 911 call. They did not know anyone said they needed help. They did not know there was more than one voice heard on the call, and they did not know the identity of anyone.

The State relies heavily on a comparison to *Fisher* to argue that there were exigent circumstances in this case, but of course the State leaves out crucially important details in the summation of the *Fisher* case. Specifically, in that case when police responded, they encountered a tumultuous situation in the house and found signs of a recent injury. *Michigan v. Fisher*, 558 U.S. 45, 48 (2009). The Officers could see violent behavior inside the house, as Fisher was screaming and throwing things. *Id.* The Court held that it would be objectively reasonable to believe that Fisher's projectiles might have a human target, or that Fisher would hurt himself in the course of his rage. *Id.* *Fisher* is easily distinguished from this case, where Deputies encountered nothing but the brief sound of footsteps inside the house.

The State again makes the fatal flaw of assuming what Deputies knew at the time, arguing that the contents and participants of the 911 call, as well as Jonathan Piper already being deceased inside

the house, justified the Deputies' warrantless entry. They argue that because the injury here was far greater than the injury in *Fisher*, it created the exigent circumstance necessary for entry. However, the Deputies knew none of that information at the time, only learning it after their unlawful entry into the house. That is in stark contrast to *Fisher*, where officers observed signs of recent injury, and even observed the actual injury through the house window.

In its Response, the State seems to create its own law. They state:

"When there is evidence that there is a person inside a residence that may need to help and police have been unable to contact that person, there is an objectively reasonable basis to believe that there is an immediate need to protect that person."

State's Response to Defendant's Motion to Dismiss, page 5, lines 8-12. The State cites to *Hannon v. State*, 125 Nev. 142, 148, 207 P.3d 344 (2009) as its authority, but *Hannon* made no such ruling. The Court simply considered the fact that officers in that case did make contact with both occupants of the apartment, and that there was no third party, in looking at the totality of the circumstances. *Hannon v. State*, 125 Nev. 142, 148, 207 P.3d 344 (2009). They make so sweeping law that there is always an exigent circumstance if law enforcement is unable to contact all occupants of a house.

Despite the legal gymnastics of the State, the actual actions of the Deputies are not only relevant, but an important factor to consider when reviewing the totality of the circumstances. The State's argument that "the need for swift action" does not mean actual swift action is one that defies logic. If a member of law enforcement, with all of their experience and training, concludes that there is time to wait for backup or additional resources, then it would follow that a reasonable person would conclude the same, and there was no exigent circumstance. This should not be confused with the *need* to wait for additional resources, such as the SWAT team in a barricade situation. Here, Deputies had time to wait for backup, and time to wait for a locksmith, because there was no objectively reasonable basis to believe anyone was in need of assistance inside the trailer; there was no exigent circumstance.

The last argument the State makes in its Response is inevitable discovery because Detective Fancher obtained a search warrant. That argument holds no weight because *all* the evidence and

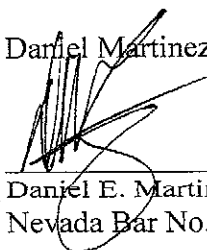
1 probable cause contained in Detective Fancher's affidavit in support of the search warrant was illegally
2 obtained due to the flagrant Fourth Amendment Violation. Both *Murray* and *Segura* that the State relies
3 on have one essential element in common: law enforcement had enough *legally* obtained evidence to
4 get a warrant, from other, independent parts of their investigations, so the contraband found during their
5 warrantless searches would have been inevitably discovered. *Murray v. United States*, 487 U.S. 533,
6 108 S. Ct. 2529 (1988); *Segura v. United States*, 468 U.S. 796, 104 S. Ct. 3380 (1984). That is not the
7 case here. All of the evidence contained in Detective Fancher's affidavit in support of his warrant was
8 obtained through the unlawful entry into the house. Without the illegal entry, there would not have been
9 sufficient evidence for the issuance of a search warrant.
10

11 CONCLUSION

12 When Deputies with the Nye County Sheriff's Office entered the house at 835 South Linda
13 Street in Pahrump, Nevada, they did so without any objectively reasonable basis to believe there was
14 an immediate need to protect the lives or safety of themselves or others. As such, their entry was
15 unlawful and violated the Fourth Amendment rights of Marco Torres. Because all of the evidence
16 obtained in this case was the result of an unlawful search, the case against Marco Torres must be
17 dismissed in its entirety.
18

19 DATED this 12th day of October, 2020.
20

21 Daniel Martinez Law, LLC

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23 _____
24 Daniel E. Martinez, Esq.
25 Nevada Bar No.: 12035
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CERTIFICATE OF SERVICE

I, Daniel E. Martinez, Esq., Nye County Public Defender and counsel for the Defendant,
MARCO ANTONIO TORRES, do hereby certify that I have served the following:

**Defendant's Reply to the State's Response to Defendant's Motion to Dismiss in
Case No. CR20-0092
State v. Marco Antonio Torres**

upon said Plaintiff by delivering a true and correct copy thereof on October 12, 2020, to the following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE


Daniel E. Martinez, Esq.



Case No. HC20-0092
Dept. 1

FILED
FIFTH JUDICIAL DISTRICT

OCT 16 2020

Nye County Clerk
Sarah Westfall Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

In the Matter of the Application of

MARCO ANTONIO TORRES,

ORDER TO ISSUE WRIT OF
HABEAS CORPUS

For Writ of Habeas Corpus

On this 23rd day of September 2020, MARCO ANTONIO TORRES presented a verified petition for Writ of Habeas Corpus, and on examination of the petition, the court believes such writ should be granted;

IT IS THEREFORE ORDERED that Sharon Wehrly, Sheriff of Nye produce the person of petitioner before the court in the courtroom in the Pahrump District Court located at 1520 E. Basin Ave, Pahrump Nevada on the 4th day of December, 2020 at 11:00 a.m., to show cause, if any is had, why such individual so holds petitioner in restraint of liberty. The respondent shall file a return and answer on or before the 23rd day of November 2020.

DATED this 16th day of October 2020.

KIMBERLY A. WANKER,
DISTRICT JUDGE

CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 16th day of October 2020 she sent via U.S. mail (or hand delivered) copies of the foregoing **ORDER TO ISSUE WRIT OF HABEAS CORPUS** Writ to the following:

Daniel Martinez, Esq.
Pahrump, NV
(Hand Delivered)

Nye County District Attorney
Pahrump, NV
(Hand Delivered)

Nye County Sheriff's Office
Pahrump, NV
(Hand Delivered)

Christel Raimondo

CHRISTEL RAIMONDO, Clerk to
DISTRICT JUDGE



NOV 20 2020

Case No.: CR20-0092

Dept. No.: 1

Nye County Clerk
Sarah Westfall Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

vs.

MARCO ANTONIO TORRES,

Defendant.

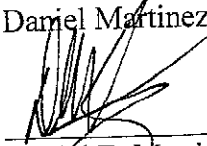
MOTION TO CONTINUE TRIAL DATE

COMES NOW, the Defendant, Marco Antonio Torres, by and through is Public Defender, Daniel E. Martinez, Esq., hereby moves this Court to for an order vacating the trial dates set to commence on January 13, 2021, and requests a new trial setting on a date convenient to the Court.

This Motion is made and based upon the papers and pleadings on file herein, and any arguments of counsel entertained by the Court at the hearing of said Motion.

DATED this 20th day of November, 2020.

Daniel Martinez Law, LLC


Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

DANIEL MARTINEZ LAW

NOTICE OF MOTION

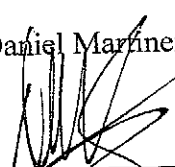
TO: Nye County, Plaintiff; and

TO: District Attorney, its Attorneys;

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Continue Trial Date on Calendar for hearing in Department 1 of the above-entitled Court on the 3rd day of Dec., 2020, at 1:30 p.m. or as soon thereafter as counsel may be heard.

DATED this 20th day of November, 2020.

Daniel Martinez Law, LLC


Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

DECLARATION OF COUNSEL

DANIEL E. MARTINEZ, ESQ. makes the following declaration:

1. I am an attorney duly licensed to practice law in the State of Nevada; I have been appointed to represent the Defendant in the instant matter, and I am familiar with the facts and circumstances of this case.
2. On September 4, 2020, Marco Antonio Torres appeared before this court for an Arraignment hearing, and the instant case was scheduled to proceed to trial beginning on January 13, 2021.
3. Defense counsel has retained a consulting expert in this case, and subpoenaed all the records pertaining to this matter from the Clark County Coroner's Office for the expert to review, along with the discovery. The expert has received all of that documentation and is still in the process of reviewing it so he can offer his opinion.
4. The Clark County Coroner's Office did not retain any histology slides in this matter. So, there are no such slides that could be sent to the Defense expert for review. In preliminary conversations between counsel and the expert, this raises the potential for an independent autopsy, depending on the expert's opinion after review of all the discovery. No independent autopsy has been scheduled to date.
5. In preparing the defense, Counsel has attempted to subpoena the Defendant's past medical records pertaining to psychological and psychiatric treatment. However, those records are not longer available due to their age.
6. The next step would be to seek permission from the Court to have the Defendant evaluated. This is necessary and material as it would pertain to pretrial motions, defense at trial, and mitigating circumstances at sentencing, should the Defendant be convicted of any offenses.
7. Calendar Call in this case is currently set for December 4, 2020, and the deadline for pretrial motions is November 27, 2020.

- 1 8. Defense counsel will need more time to consult and confer with currently and potentially
- 2 retained expert witnesses in order to effectively and zealously represent the Defendant in this
- 3 matter. As such, I am requesting a continuance of the jury trial in this case.
- 4 9. This is the first trial setting in this matter.
- 5 10. This motion is made in good faith not for the purpose of delay.
- 6 11. I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045)
- 7
- 8

9 EXECUTED this 20th day of November, 2020.

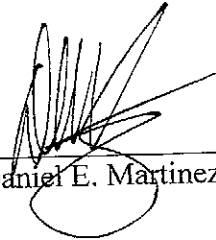
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11 _____
12 DANIEL E. MARTINEZ, ESQ.
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CERTIFICATE OF SERVICE

I, Daniel E. Martinez, Esq., Nye County Public Defender and counsel for the Defendant,
Marco Antonio Torres, do hereby certify that I have served the following:
Defendant's Motion to Continue Trial Date in
Case No. CR20-0092
State of Nevada v. Marco Antonio Torres

upon said Plaintiff by delivering a true and correct copy thereof on November 20, 2020, to the
following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE



Daniel E. Martinez, Esq.

DANIEL MARTINEZ LAW