

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 2 OF 4

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COPY

1 **Case No. CR20-0092**

FILED
FIFTH JUDICIAL DISTRICT

2 **Department 1**

NOV 20 2020

3 *The undersigned affirms that*
4 *this document does not contain*
5 *the social security number of*
6 *any person.*

Nye County Clerk
Judy Ayotte Deputy

7 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF NYE**

9 **MARCO ANTONIO TORRES,**

10 **Petitioner,**

11 **vs.**

RESPONSE TO PETITIONER'S
PETITION FOR WRIT OF HABEAS CORPUS

12 **SHERIFF OF NYE COUNTY,**

13 **Respondent.** /

14 **COMES NOW**, Respondent, THE STATE OF NEVADA, by and through its
15 attorney, CHRIS ARABIA, Nye County District Attorney, through counsel, MICHAEL
16 ALLMON, Deputy District Attorney.

17 **I. FACTS**

18 **List of Exhibits**

19	20	21	22	23	24
Resp. to Writ Exh. #	PH Exh. #	Description			
1	N/A	Preliminary Hearing Transcript			
2	12	Picture of scissors from tussle			
3	20	Marijuana spilled on the floor			
4	21	Marijuana spilled on the floor			
5	22	Cracked door			
6	23	Cracked door frame			
7	24	Cracked door frame			
8	19	Victim-decedent's face with linear bruising			
9	11	Lone nunchaku in the living room			
10	13	Other nunchaku in the bedroom			

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1 **a. Johnathan Piper Calls for Help**

2 On April 4, 2020, at approximately 3:00 a.m., the Nye County Sheriff's Office
3 received a 911 call disconnect. Prelim. Hrg. Tr. ("PHT") 91:6-25, 101:14-25 (attached
4 here as Exhibit 1). The dispatcher, Stephanie Rucker, could hear two male voices and
5 one of those two voices was asking for help. PHT, 91:25-92:2.

6 At 3:01 a.m., Deputy Xavier Gideon of the Nye County Sheriff's Office was
7 dispatched to 835 South Linda to investigate this 911 disconnect. PHT, 101:14-25,
8 102:12-14. He arrived within five minutes of the call. PHT, 124:21-125:3. The deputies
9 attempted to contact the occupants inside—nobody answered but they could hear
10 footsteps. PHT, 103:10-14, 112:3-113-5.

11 Deputy Gideon eventually contacted the Defendant at this residence. PHT, 103:
12 7-104:2. The Defendant opened a window but refused to let the deputies inside. PHT,
13 102:15-103:2, 103:12-14, 111:18-21. He also refused to identify himself, stating only
14 that he was "Bozo the Clown." PHT, 103:7-9. When deputies finally were able to get
15 inside the residence, they found Johnathan Piper deceased. PHT 103:25-104:2.
16 Deputy Gideon made the first declaration that Johnathan Piper was now deceased at
17 4:36 a.m. PHT, 108:8-14.

18 **b. The Defendant Admits to Killing Johnathan Piper**

19 Detective Wesley Fancher interviewed the Defendant. PHT, 169:2-7. The
20 Defendant admitted to Det. Fancher that he was responsible for Johnathan Piper's
21 death. PHT, 170:2-9. The Defendant told Det. Fancher that he did it because he was
22 upset over a spilled bag of marijuana. PHT 170:17-20.

23 The Defendant told Fancher that there was a "tussle" and as a result of this
24 tussle, the victim, Johnathan Piper, fell to the ground. PHT, 173-174, 205:22-206:1.

1 The victim then got up, ran to his room, and locked the door. PHT, 173-174. The
2 Defendant followed the victim to his room and finding the door locked, kicked in the
3 door. *Id.* After kicking in the door, the Defendant found the victim on the phone. *Id.* He
4 grabbed the victim from behind in a chokehold and squeezed him. PHT, 186. He heard
5 Johnathan Piper gasping or gurgling as Johnathan Piper continued to try to reach for
6 his phone. *Id.* He continued with the chokehold until he felt Mr. Piper go limp. *Id.*

7 **c. The Crime Scene and Physical Evidence Confirms the Admission and**
8 **Provides More**

9 Det. Fancher observed the crime scene and found physical evidence that
10 confirmed the Defendant's confession. PHT 171:23-172:1. He found marijuana on the
11 floor and evidence of a struggle. PHT, 141:19-142:3, 171:11-25; see, State's PH Exh.
12 12, 20-21 (attached here as Exhs. 2-4). He also found the door to the victim's bedroom
13 locked but kicked in with damage to the door and the door frame. PHT, 156:22-157:2,
14 174-175; see, State's PH Exhs. 22-24 (attached here as Exhs. 5-7).

15 Det. Fancher made additional observations. He noticed bruising in linear lines
16 on the victim's face. PHT, 150, 164; see, State's PH Exh. 19 (attached here as Exh.
17 8). Det. Fancher secured several nunchakus in executing his search warrant. 167:11-
18 17. Some were in the room but one pair was in the living room. PHT, 153, 157; see,
19 State's PH Exhs. 11, 13 (attached here as Exhs. 9-10). Although other sources for the
20 injury could not necessarily be ruled out, the linear mark was consistent with the
21 nunchaku. 164:17-165:15.

22 ///
23 ///
24 ///

1 **II. LAW AND ARGUMENT**

2 The charge of Home Invasion (Room) must proceed to trial because it stands
3 up to legal scrutiny. The State presented evidence by probable cause at preliminary
4 hearing that the Defendant committed the crime of Home Invasion (Room), NRS
5 205.067, because the Nevada statute applicable at the time prohibited invading a
6 room. The quantum of proof to reach probable cause on this charge is not at issue;
7 defense only attacks the legal applicability of the charge. Still, this attack fails because
8 Defense erroneously cites laws that took effect after the Defendant committed his
9 crime.

10 Similarly, the charge of Possession of a Dangerous Weapon must proceed to
11 trial because it stands up to factual scrutiny. The State presented evidence by
12 probable cause that the Defendant committed the crime of Possession of a Dangerous
13 Weapon, NRS 202.350, because of the presence of nunchaku in the house, the
14 location of that nunchaku, and the linear mark on the victim's face in totality creates a
15 reasonable inference that the Defendant possessed nunchaku with the intent to inflict
16 harm on another person. In other words, the State at least presented slight or marginal
17 evidence to support the charge.

18 **A. The Standard of Proof at Preliminary Hearing is Probable Cause**

19 The probable cause determination at preliminary hearing only requires that the
20 State admit "slight, even marginal evidence" that the accused committed the crime.
21 NRS 171.206; *Sheriff, Washoe County v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178
22 (1980); *Sheriff, Clark County v. Badillo*, 95 Nev. 593, 594, 600 P.2d 221 (1979). Where
23 the State admits even the slightest legal evidence, the courts cannot inquire into the
24 sufficiency of the evidence. *Franklin v. State*, 89 Nev. 382, 388, 513 P.2d 1252 (1973).

1 The preliminary hearing "is not a mini-trial." *Parsons v. State*, 116 Nev. 928, 936, 10
2 P.3d 836 (2000). "The purpose of the preliminary hearing is to weed out groundless or
3 unsupported charges..." *State v. Von Brincken*, 86 Nev. 769, 772, 476 P.2d 733
4 (1970).

5 At a preliminary hearing, the State has only the responsibility of establishing a
6 "reasonable inference" that the defendant committed the crime or "evidence which
7 inclines the mind to believe, though there may be room for doubt." *Id.* Probable cause
8 is shown by evidence that "would lead a man of ordinary caution and prudence to
9 believe and conscientiously entertain a strong suspicion" that the defendant committed
10 the crime alleged. *Id.*

11 The State presented—at a minimum—slight or marginal evidence for the crime
12 of Invasion of the Home (Room), in violation of NRS 205.067. The Defendant invaded
13 Johnathan Piper's room, which in Nevada, is the inhabited dwelling of another. The
14 quantum of proof on this charge is not at issue.

15 The State similarly presented—at a minimum—slight or marginal evidence that
16 Defendant possessed nunchaku with an intent to inflict harm upon Johnathan Piper for
17 the crime of Possession of a Dangerous Weapon, in violation of NRS 202.350. The
18 presence of nunchaku in the house, the location of that nunchaku, and the linear mark
19 on the victim's face creates a reasonable inference that the Defendant possessed
20 nunchaku with the intent to inflict harm on another person. The application of this issue
21 is analyzed in further detail below at Sec. C.

22 **B. The Defendant Invaded Johnathan Piper's Room, an Inhabited Dwelling**

23 **1. The Defendant Must Answer for his Crimes Under the Law**
24 **Applicable at the Time, Not Some Future Laws**

1 The statute in effect at the time of offense is controlling. *Runion v. State*, 116
2 Nev. 1041, 1049, 13 P.3d 52, 58, (2000); see also (*Bailey v. State*, 120 Nev. 406, 407,
3 91 P.3d 596, 597 (2004)) (applying to statute of limitations); also (*State v. Second*
4 *Judicial Dist. Court of Nev. (Pullin)*, 124 Nev. 564, 567, 188 P.3d 1079, 1081 (2008))
5 (applying to punishment). On April 4, 2020, many of the statutes that Defense cites
6 were not in effect, as their effective date is July 1, 2020. See, 2019 Nev. AB 236, Sec.
7 137(2), 2019, ch. 633 § 137(2). The Burglary statute in effect at the time did not define
8 "dwelling" the way that Defense does in its motion. See, NRS 205.060 (Effective
9 through June 30, 2020) (provided in entirety below).¹ The definition that Defense uses
10 comes from the Burglary statute that took effect nearly three months after the
11
12
13

14 ¹ **NRS 205.060 Burglary: Definition; penalties; venue; exception. (Effective through June 30, 2020).**

15 1. Except as otherwise provided in subsection 5, a person who, by day or night, enters any house,
16 room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent,
17 vessel, vehicle, vehicle trailer, semitrailer or house trailer, airplane, glider, boat or railroad car, with the
18 intent to commit grand or petit larceny, assault or battery on any person or any felony, or to obtain
19 money or property by false pretenses, is guilty of burglary.

20 2. Except as otherwise provided in this section, a person convicted of burglary is guilty of a
21 category B felony and shall be punished by imprisonment in the state prison for a minimum term of not
22 less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine
23 of not more than \$10,000. A person who is convicted of burglary and who has previously been
24 convicted of burglary or another crime involving the forcible entry or invasion of a dwelling must not be
released on probation or granted a suspension of sentence.

3. Whenever a burglary is committed on a vessel, vehicle, vehicle trailer, semitrailer, house trailer,
airplane, glider, boat or railroad car, in motion or in rest, in this State, and it cannot with reasonable
certainty be ascertained in what county the crime was committed, the offender may be arrested and
tried in any county through which the vessel, vehicle, vehicle trailer, semitrailer, house trailer, airplane,
glider, boat or railroad car traveled during the time the burglary was committed.

4. A person convicted of burglary who has in his or her possession or gains possession of any
firearm or deadly weapon at any time during the commission of the crime, at any time before leaving the
structure or upon leaving the structure, is guilty of a category B felony and shall be punished by
imprisonment in the state prison for a minimum term of not less than 2 years and a maximum term of
not more than 15 years, and may be further punished by a fine of not more than \$10,000.

5. The crime of burglary does not include the act of entering a commercial establishment during
business hours with the intent to commit petit larceny unless the person has previously been convicted:

- (a) Two or more times for committing petit larceny within the immediately preceding 7 years; or
- (b) Of a felony.

1 Defendant committed his crime. See, NRS 205.060(6)(b) (Effective July 1, 2020)
2 (provided in pertinent part below).²

3 In contrast, the appropriate term for "inhabited dwelling" must come from the
4 Home Invasion statute applicable at the time which defined an "inhabited dwelling" as
5 "any structure, building, house, room, apartment, tenement, tent, conveyance, vessel,
6 boat, vehicle, house trailer, travel trailer, motor home or railroad car in which the owner
7 or other lawful occupant resides." NRS 205.067(5)(b) (Effective through June 30,
8 2020) (emphasis added) (provided in relevant part below).³ "[S]eparately occupied
9 unit" was not part of the applicable statutes on April 4, 2020. See generally, NRS
10 Chapter 205 (omitting the phrase "separately occupied unit" for any law applicable on
11 April 4, 2020).

12 Defense erroneously cites the new statute which took effect July 1, 2020.
13 Compare (Def. Pet. for Writ of Habeas Corpus, 8:5-8) with NRS 205.060(6)(b)
14 (Effective July 1, 2020)⁴ and contrast it with NRS 205.067(5)(b) (Effective through
15 June 30, 2020). As such, Defense's entire argument of statutory interpretation, see
16
17

18 ² NRS 205.060 Residential burglary, burglary of a business, burglary of a motor vehicle and
19 burglary of a structure: Definitions; penalties; venue. (Effective July 1, 2020). "Dwelling" means
20 any structure, building, house, room, apartment, tenement, tent, conveyance, vessel, boat, vehicle,
21 house trailer, travel trailer, motor home or railroad car, including, without limitation, any part thereof that
22 is divided into a separately occupied unit:..."

23 ³ NRS 205.067 Invasion of the home: Definition; penalties; venue. (Effective through June 30,
24 2020).

25 1. A person who, by day or night, forcibly enters an inhabited dwelling without permission of the
26 owner, resident or lawful occupant, whether or not a person is present at the time of the entry, is guilty
27 of invasion of the home.

28 5. As used in this section:

29 (a) "Forcibly enters" means the entry of an inhabited dwelling involving any act of physical force
30 resulting in damage to the structure.

31 (b) "Inhabited dwelling" means any structure, building, house, room, apartment, tenement, tent,
32 conveyance, vessel, boat, vehicle, house trailer, travel trailer, motor home or railroad car in which the
33 owner or other lawful occupant resides.

34 ⁴ Defense cited as NRS 205.060(b).

1 Def. Writ at 8:11-23,⁵ emphasizing the words "separately occupied unit," taken from
2 NRS 205.060(6)(b) (Effective July 1, 2020), is a complete non sequitur. It was not the
3 law at the time of the offense and is therefore irrelevant to Defendant's case.

4 **2. In Nevada, a Defendant Can be Held to Answer for Invading a Room**

5 The analysis of *People v. Bush*, 315 Mich. App. 237 in Michigan is not
6 applicable to the Home Invasion statute in Nevada. In Defense Sec. A—arguing that it
7 was legally impossible for him to commit home invasion at that residence—Defense
8 cites case law that has no persuasive value. After scouring all of the case law,
9 Defense cites a lower court of appeals⁶ case from a midwestern state as its paramount
10 case.⁷ Putting aside the minimal persuasive value of such a case standing as the best
11 example, the statute there (Michigan) is inapplicable to the statute here (Nevada) as
12 the two are apples and oranges.

13 In *People v. Bush*—the paramount case upon which Defense relies—the
14 Michigan Court of Appeals analyzed its statute and broke it down as follows: "the
15 elements of first-degree home invasion in Michigan are: (1) the defendant either
16 breaks and enters a dwelling or enters a dwelling without permission; (2) the
17 defendant either intends when entering to commit a felony, larceny, or assault in the
18 dwelling or at any time while entering, present in, or exiting the dwelling actually
19 commits a felony, larceny, or assault; and (3) while the defendant is entering, present
20 in, or exiting the dwelling, either (a) the defendant is armed with a dangerous weapon,

21 _____
22 ⁵ Defense's drive-by citation of *Truesdell v. State*, 129 Nev. 194, 202 (2013) is addressed below at Sec.
B.3.

23 ⁶ See the structure of Michigan courts here: <https://courts.michigan.gov/education/learning-center/Pages/hidden/Michigan's-Current-Court-System.aspx#:~:text=Michigan%20Court%20of%20Appeals,-The%20Court%20of&text=in%20most%20cases%2C%20the%20person,the%20outcome%20of%20the%20appeal>

24 ⁷ Defense calls it "persuasive authority that is impossible to ignore." Def. Writ at 8:24-25.

1 or (b) another person is lawfully present in the dwelling.” 315 Mich. App. 237, 244, 890
2 N.W.2d 370, 374 (2016).

3 The foreign court continued in its analysis to the crux of the issue, the definition
4 of a “dwelling.” The Michigan statute, MCL 750.110a(1)(a) defined “dwelling’ to mean
5 ‘a structure or shelter that is used permanently or temporarily as a place of abode,
6 including an appurtenant structure attached to that structure or shelter.” *Id.* at 246.

7 The Michigan court elaborated that in interpreting its statute it found that:

8 “the term ‘dwelling’ as defined by MCL 750.110a(1)(a) refers to the whole of a
9 structure or shelter used as a place of residence. Importantly, MCL
10 750.110a(1)(a) does not specifically indicate that a ‘dwelling’ also includes the
11 dwelling’s inner parts.” *Id.*

12 In Nevada, under the laws effective through June 30, 2020, invasion of the
13 home is committed when “[a] person who, by day or night, forcibly enters an inhabited
14 dwelling without permission of the owner, resident or lawful occupant, whether or not a
15 person is present at the time of the entry.” NRS 205.067(1). Within the statute itself,
16 the Legislature defines the operative phrases:

17 “‘Forcibly enters’ means the entry of an inhabited dwelling involving any act of
18 physical force resulting in damage to the structure.” NRS 205.067(5)(a).

19 “‘Inhabited dwelling’ means any structure, building, house, room, apartment,
20 tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel trailer,
21 motor home or railroad car in which the owner or other lawful occupant resides.”

22 NRS 205.067(5)(b) (emphasis added).

23 A comparison of the elements between the Michigan statute and the Nevada
24 statute—applicable at the time—reveals which like elements that the State of Nevada

1 must prove (and those which it must not): (1) the Defendant forcibly entered, meaning
2 he entered an inhabited dwelling (a room) by an "act of physical force resulting in
3 damage to the structure," see NRS 205.067(5)(a), without permission; (2) the State
4 here is not required to prove the second element because Nevada differentiates
5 between Burglary and Home Invasion, *compare* NRS 205.060, *with* NRS 205.067; (3)
6 the State here is not required to prove the third element because (a) Defendant is not
7 charged with the firearm or deadly weapon enhancement of NRS 205.067(4), or (b)
8 "inhabited dwelling" under NRS 205.067(b) does not require that another person be
9 present, only that another person resides there.

10 So, while the Michigan statute that the Michigan Court of Appeals interpreted
11 had three elements to consider (following that court's structure of analysis), two of
12 those three elements do not need to be proven in Nevada. Thus, with Michigan's
13 elements two and three completely inapplicable, that only leaves a comparison of the
14 first element to see whether this foreign court of appeals case has any persuasive
15 value.

16 Already weakened in the comparison, it is here that the last remaining holdout
17 of Defense's argument must relinquish its position, as a comparison of the statutes
18 reveals a complete divergence. Michigan defined "'dwelling' to mean 'a structure or
19 shelter that is used permanently or temporarily as a place of abode, including an
20 appurtenant structure attached to that structure or shelter.'" *Bush*, 315 Mich. App. at
21 246. In Nevada, we do not need to look to other jurisdictions for the meaning of an
22 "inhabited dwelling" because the Legislature has explicitly defined it. In Nevada, for
23 crimes committed on April 4, 2020, it is "any structure, building, house, room,
24 apartment, tenement, tent, conveyance, vessel, boat, vehicle, house trailer, travel

1 trailer, motor home or railroad car in which the owner or other lawful occupant
2 resides.” NRS 205.067(5)(b) (Effective through June 30, 2020) (emphasis added).

3 Not only are the statutes very different in entirety, they are different in
4 specificity: Nevada specifically identifies a room as an inhabited dwelling. The foreign
5 statute that was being interpreted in *Bush*, MCL 750.110a(1)(a), had its own very
6 specific meaning, and Nevada’s NRS 205.067, had its own very specific meaning, with
7 little to nothing to make one applicable to the other. In Michigan, the statute refers to
8 ~~the whole of a structure; in Nevada it does not refer only to the whole of a structure.~~
9 “MCL 750.110a(1)(a) does not specifically indicate that a ‘dwelling’ also includes the
10 dwelling’s inner parts[;]” NRS 205.057 does specifically indicate that a dwelling also
11 includes the dwellings inner parts—it explicitly states a **room** can be a dwelling.
12 Michigan did not intend the statute analyzed in *Bush* to include the inner parts; Nevada
13 did. In Michigan, the state may not charge a defendant with breaking and entering a
14 room; in Nevada, the State may appropriately charge this Defendant with breaking and
15 entering Mr. Piper’s room on April 4, 2020.

16 **3. The Defendant Committed Home Invasion by Forcibly Entering Mr.**
17 **Piper’s Room**

18 The plain language of NRS 205.067 means that a person can commit home
19 invasion by forcibly entering the room of another. When a statute’s plain language is
20 unambiguous, the statute’s plain language is applied. *Leven v. Frey*, 123 Nev. 399,
21 403 (2007). The plain language of the home invasion statute means that “a person
22 cannot commit the crime of home invasion by forcibly entering his or her **own home** if
23 that person is a lawful occupant or resident of the home[;]” they must have invaded a
24 home where they are not a lawful occupant or resident. *Truesdell v. State*, 129 Nev.

1 194, 201-02, 304 P.3d 396, 401 (2013) (emphasis added). By the reasoning of
2 *Truesdell*, if the “inhabited dwelling” at issue is a room instead of a home, a defendant
3 cannot commit the crime of home invasion by forcibly entering his or her **own room**;
4 they must invade a **room** where they are not a lawful occupant or resident.

5 What is important in the statutory analysis is first determining which inhabited
6 dwelling the Defendant is accused of invading. Although the Defendant could not have
7 been charged with invading the inhabited dwelling of his home because he was a
8 resident or lawful occupant of the home (or for that matter, *his* room in the shared
9 home), the plain language makes clear that he can be charged with invading a
10 different inhabited dwelling, namely Mr. Piper’s room, because he was no longer a
11 resident or lawful occupant of that room.

12 A defendant can burglarize his own home in the areas that he lacks an
13 *absolute, unconditional right* to enter. *State v. White*, 130 Nev. 533, 539, 330 P.3d
14 482, 486 (2014). A defendant lacks an absolute right to an inhabited dwelling if they
15 can be ejected from that that inhabited dwelling after entry. *Id.* at 538. Even if a victim
16 previously granted consent to an inhabited dwelling, that victim can revoke consent.
17 *Truesdell* 129 Nev. at 197, 201-02. It is the danger that arises from the unauthorized
18 entry that the law is meant to protect. *White*, 130 Nev. at 538.

19 In *Truesdell*, the Nevada Supreme Court held that the Defendant’s conviction
20 on the charge of home invasion, under NRS 205.067(1) was valid. 129 Nev. at 201.
21 There, the Defendant kicked in the locked door of his ex-girlfriend after he was served
22 with a temporary protective order (TPO). *Id.* at 197. Although he was not on the lease,
23 he did live in the apartment with his victim-girlfriend and her two children. *Id.* On
24 appeal, he attacked the home invasion statute, NRS 205.067, as constitutionally

1 vague because, as he asserted, it lacked an intent requirement and failed to state that
2 a person must enter the home of another. *Id.* at 201-02. The Court rejected these
3 arguments and instead held that he could be guilty for invading a home to which his
4 girlfriend revoked access. *See, id.* at 202. The Court explained that “a person cannot
5 commit the crime of home invasion by forcibly entering his or her own home if that
6 person is a lawful occupant or resident of the home[.]” but nevertheless upheld his
7 conviction. *Id.* For his conviction to be valid, the Court must have found that, although
8 he once was a lawful occupant of that particular inhabited dwelling, his access could
9 be revoked by his girlfriend. Thus, *Truesdell* proves the State’s position because a
10 once lawful occupant can commit home invasion if their access to that particular
11 inhabited dwelling is revoked.

12 Here, the Defendant kicked in the locked door of his roommate’s room after the
13 victim retreated to his room and locked the door to protect himself. Despite the
14 defendant in *Truesdell* living in the home, the victim there revoked consent, like the
15 victim, Mr. Piper, did here.⁸ We know by his actions that he either revoked his consent
16 or never consented to it in the first place.⁹ The evidence showed that the victim locked
17 the door because the Defendant had to kick in the door to the bedroom to gain access
18 and the Defendant admitted to the same.

19 It is not in dispute that Defendant was a lawful occupant or resident of the home
20 and remained so until he was arrested. But the Defendant was no longer a lawful
21 occupant or resident of **Mr. Piper’s room** because at the time of the offense, the

22 _____
23 ⁸ Defense will likely try to distinguish this, but his effort should fail. The fact that that the Defendant was
on the lease is not a significant distinction. Being on the lease does not entitle the defendant to his
roommate’s room, as an *absolute right* any more than residing at an apartment with no other place to go
does—which is the situation defendant in *Truesdell* found himself.

24 ⁹ If a defendant’s actions are sufficient to find their intent beyond a reasonable, *see Moore v. State*, 122
Nev. 27, then it stands to reason that they may similarly be applied to a victim’s intent.

1 victim revoked consent to his room by locking the Defendant out. As such, nobody is
2 disputing that the Defendant could not be held to answer for the crime of invading the
3 parts of the structure that excluded the victim's room. The Defendant here is not being
4 charged with forcibly entering his or her own **home** or even forcibly entering **his own**
5 **room**; he is being charged with forcibly entering the room of another, the "inhabited
6 dwelling" of another. The defendant in *Truesdell* was no longer a lawful occupant or
7 resident of his victim's home—the victim revoked defendant's access—so the
8 defendant could be charged with invading that inhabited dwelling. Similarly, the
9 Defendant here was no longer a "lawful occupant or resident of" **Mr. Piper's room**—
10 Mr. Piper revoked Defendant's access—so the Defendant can be charged with
11 invading that inhabited dwelling.

12 4. Conclusion (Home Invasion)

13 The Michigan case, *Bush*, is the right facts, but the wrong law for Defendant.
14 The Nevada case, *Truesdell*, is the right law, but the wrong facts for Defendant. As
15 such, *Bush* is inapplicable and the reasoning of *Truesdell* supports the State's
16 position: a once lawful occupant can commit home invasion if their lawful occupancy to
17 the "inhabited dwelling" is revoked by the victim as the Defendant lacks an absolute
18 right to enter.

19 When Johnathan Piper, weak and frail, retreated to his room, his last refuge—
20 the one place in the home that he, and he alone, had an absolute right over—and
21 locked the door, revoking consent, the Defendant ignored Johnathan Piper's attempt
22 to assert his property right and instead violently kicked in his door, cracking the hinges
23 in the process, entered the room, and strangled Johnathan Piper to death. Because of
24 this, the Defendant must answer for the crime of Home Invasion in this Court.

1 **C. Probable Cause Exists that the Defendant Possessed Nunchaku with**
2 **Intent to Inflict Harm on Another Person**

3 NRS 202.350(1)(c), makes it a gross misdemeanor to, "possess or use a
4 nunchaku or trefoil," "[w]ith the intent to inflict harm" on another person.¹⁰ The State
5 presented probable cause at the preliminary hearing that the Defendant possessed
6 nunchaku with the intent to inflict harm on Johnathan Piper because it presented
7 evidence that: the victim had a linear mark on his face consistent with a nunchaku, and
8 nunchaku were found in the house with several pairs in the Defendant's room but
9 importantly one pair was found in the living room near where the tussle took place.
10 separate from the other nunchaku.

11 Evidence of the injury demonstrates that the Defendant possessed the
12 Nunchaku with the intent to inflict harm. *See, Moore v. State*, 122 Nev. 27, 36, 126
13 P.3d 508 (2006). "Intention is manifested by the circumstances connected with the
14 perpetration of the offense" and "the intent need not be proved by positive or direct
15 evidence, but may be inferred from the conduct of the parties and the other facts and
16 circumstances disclosed by the evidence." *Id.* In *Moore*, the Court found that the
17 defendant's intent upon entering a Wal-Mart could properly be found beyond a
18 reasonable doubt when he selected items without reason and then presented a stolen
19 credit card to purchase those items. *Id.* Therefore, the evidence of the completed
20 felony, fraudulent credit card use, was properly used to infer his intent upon entry, an
21 intent to commit fraudulent credit card use when he entered Wal-Mart. *Id.*

22
23
24 ¹⁰ The relevant portions in entirety and in the original form state: "1. Except as otherwise provided in this section and NRS 202.3653 to 202.369, inclusive, a person within this State shall not: (c) With the intent to inflict harm upon the person of another, possess or use a nunchaku or trefoil[.]"

1 Similarly here, and under the much lower burden of proof of probable cause,
2 there is a reasonable inference that the Defendant attacked the victim with nunchaku:
3 there was a violent confrontation over spilled marijuana, the victim had a long linear
4 mark consistent with the nunchaku, and a pair of nunchaku were dropped near the site
5 of the tussle.

6 What may have started out as non-criminal possession of the nunchaku
7 became criminal when Defendant went after Johnathan Piper with nunchaku and if
8 that was not enough, when he swung the nunchaku. Defense presented many
9 alternative theories that would best be a fact determination for the jury to decide.
10 Throwing out alternative theories does not demonstrate that the State's theory must be
11 impossible so as to negate the probable cause finding of the Justice Court. Thus, the
12 evidence at preliminary hearing was sufficient for probable cause to believe that the
13 Defendant possessed nunchaku with the intent to inflict harm on Johnathan Piper, as
14 evidenced by the actual injury Johnathan Piper suffered, a mark that is consistent with
15 nunchaku, a violent confrontation that occurred between the Defendant and the victim,
16 and the scene which shows that one nunchaku was taken from the room and dropped
17 near the scene of the tussle.

18 Because of the linear mark, consistent with nunchaku and the location of the
19 lone pair of nunchaku on the ground, near the tussle, probable cause existed at
20 preliminary hearing to believe that the Defendant possessed nunchaku with intent to
21 inflict harm on Johnathan Piper.

22 ///

23 ///

24 ///

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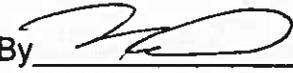
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CONCLUSION

Because in Nevada, a Defendant can commit Home Invasion by entering the "inhabited dwelling" of a roommate's room, and because the actual injury inflicted, in addition to the other evidence, was sufficient evidence to believe by probable cause that the Defendant harbored an intent to inflict harm while he possessed nunchaku, the Defendant must answer for these crimes committed against Johnathan Piper.

DATED this 20 day of November, 2020.

**CHRIS ARABIA
NYE COUNTY DISTRICT ATTORNEY**

By 

MICHAEL D. ALLMON
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EXHIBIT 1

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Justice Court Case No. 20 CR 01098
Department B

BY C. Dumbars
2020 SEP -1 AM 8:50

RECEIVED & FILED

IN THE JUSTICE COURT OF PAHRUMP TOWNSHIP

COUNTY OF NYE, STATE OF NEVADA

FILED
FIFTH JUDICIAL DISTRICT

SEP 01 2020

THE STATE OF NEVADA,)
Plaintiff,)
vs.)
MARCO ANTONIO TORRES,)
Defendant.)
_____)

ORIGINAL
Nye County Clerk
Deputy

TRANSCRIPT OF PROCEEDINGS
PRELIMINARY HEARING

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:

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WITNESSES	DIRECT	CROSS	REDIRECT	RE-CROSS
By the State:				
CHRISTOPHER PIPER	9	28	37, 41, 43	40, 43
DENNIS LA DUE	47	77	88	
STEPHANIE RUCKER	90	98		
XAVIER GIDEON	100	109	124, 127	126
CHRISTOPHER PIPER	135			
WESLEY FANCHER	139	192	210, 217	215
BRITAIN HOFFMAN	223	227		
JOSEPH MARSHALL	228	234	234	

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3A	Abridged MEDS	7
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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 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 RE-CROSS-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:

23

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 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

1

2 BY MR. MARTINEZ:

2

3

Q The Rapid SOS program --

4

A Yes, sir.

5

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

6

7

A No.

8

Q Tell me more about how that works.

9

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

15

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

17

A Correct.

18

Q Did you receive training on that?

19

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

23

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

25

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:

11

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 RE-CROSS-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

14 DIRECT EXAMINATION

15 BY MR. VITTO:

16 Q Okay. Mr. Piper, you're familiar with
17 Dennis La Due; is that correct?

18 A Yes.

19 Q So I'm just asking for your best recollection.
20 Do you happen to remember Dennis asking you any questions
21 about whether this was Jon's phone number or something
22 about that?

23 A Yes.

24 Q Do you have a recollection of that?

25 A Yeah. It's not entirely clear when, but yeah.

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.)

1

WESLEY FANCHER,

2

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

3

4

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.

7

THE WITNESS: Absolutely.

8

THE COURT: And then if you could please state
and spell your name for the record.

9

10

THE WITNESS: My name is Wesley Fancher.

11

That's W-e-s-l-e-y. Fancher is F-a-n-c-h-e-r.

12

THE COURT: Mr. Vitto.

13

MR. VITTO: Thank you, Your Honor.

14

15

DIRECT EXAMINATION

16

BY MR. VITTO:

17

Q What's your occupation, sir?

18

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

19

20

Q And how long have you been so employed?

21

A Ten years.

22

Q Let me direct your attention -- ten years as a
detective?

23

24

A Oh, I'm sorry. Five years as a detective.

25

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 like the kitchen floor where there is what looks like marijuana, a joint, other miscellaneous debris, trash that had been -- well, trash, empty beer cans and a dinosaur toy.

7

8

MR. VITTO: The State would move for admission.

9

10

MR. MARTINEZ: No objection.

11

THE COURT: 10 will be admitted.

12

13

(State's Exhibit No. 10

14

was received into evidence.)

15

16

THE WITNESS: That is a photograph of nunchucks or --

17

18

BY MR. VITTO:

19

Q Nunchaku?

20

A Nunchaku to scale. I took a photograph to scale, and the empty beer can, a Natty Daddy beer can.

21

22

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

8

9

Q All right. So what did you immediately do
upon arrival to the scene at 835 South Linda Street at
your first arrival?

10

11

12

A I got a briefing of what the patrol had -- the
information that they had obtained, and immediately
secured the crime scene.

13

14

Q All right. And what duties were you initially
tasked with on the scene?

15

16

17

A Initially I was the stand-by until supervisors
showed up, Captain Boruchowitz and Sergeant Fowels. Then
I applied for a search warrant for the residence.

18

19

Q Okay. And did you get permission?

A Yes, sir.

20

21

Q All right. Now, did you have opportunity to
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 gasping?

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 gasping. 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 lunched.
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

1

2 BY MR. VITTO:

3

Q What is your occupation, sir?

4

A Deputy with the Nye County Sheriff's Office.

5

Q How long have you been so employed?

6

A Almost eight years.

7

Q What's your detail?

8

A Traffic.

9

Q Let me direct your attention to April 4, 2020,

10 835 South Linda Lane. Did you respond to that location
11 on that date?

12

A I did.

13

Q What time?

14

A I got there approximately 7:10 in the morning.

15

Q Okay. And for what purpose?

16

A To relieve the deputies -- the patrol deputy

17

that's on scene.

18

Q Who was the patrol deputy on scene that you

19

relieved?

20

A Deputy Christen.

21

Q What did you observe upon arrival?

22

A When I arrived there I observed obviously

23

Deputy Christen on scene, detective vehicles, a few

24

detectives, and the operations captain and yellow crime

25

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

1
2 BY MR. MARTINEZ:

3 Q Detective, you didn't notice any bruises on
4 Mr. Piper's neck; right?

5 A I did not.

6 Q You didn't notice any bruises on his chest?

7 A No, I did not.

8 Q And no scratches in either of those locations
9 either; right?

10 A I did not.

11 Q No injuries at all to the neck or chest did
12 you observe?

13 A Not that -- no, not that I would have known
14 what I was looking at.

15 MR. MARTINEZ: No further questions, Judge.

REDIRECT EXAMINATION

16
17
18 BY MR. VITTO:

19 Q As you were attending the autopsy, did you
20 hear it documented and recorded, injury to the neck or
21 throat?

22 A Yes.

23 Q And what do you recall hearing at that
24 autopsy?

25 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

9

I have no more witnesses, Judge. We do have
10 to argue admissibility of 11 through 14. I'm ready when
11 you are.

12

THE COURT: Does the defense have any
13 witnesses that they're going to call at this time?

14

15

MR. MARTINEZ: No, Judge. I have spoken with
16 Mr. Torres about his right to testify as well as his
17 right to remain silent at today's hearing. On advice of
18 counsel, he's going to make the correct move and invoke
19 his Fifth Amendment -- is that right? -- and remain
20 silent today and not testify.

21

THE COURT: Okay.

22

MR. MARTINEZ: With that, the defense would
23 rest as well.

24

THE COURT: All right. With regards, then, to
25 11, 12, 13 and 14, Mr. Vitto, if you want to go ahead.

26

MR. VITTO: Just briefly, Your Honor. I don't
27 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

10 MR. VITTO: We will get a conforming second
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.

11

12 (Proceedings recessed at 3:20 p.m.)

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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
LAURIE COOPER, CCR No. 848

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EXHIBIT 2



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EXHIBIT 3



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EXHIBIT 4



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EXHIBIT 5



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EXHIBIT 6



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EXHIBIT 7



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EXHIBIT 8



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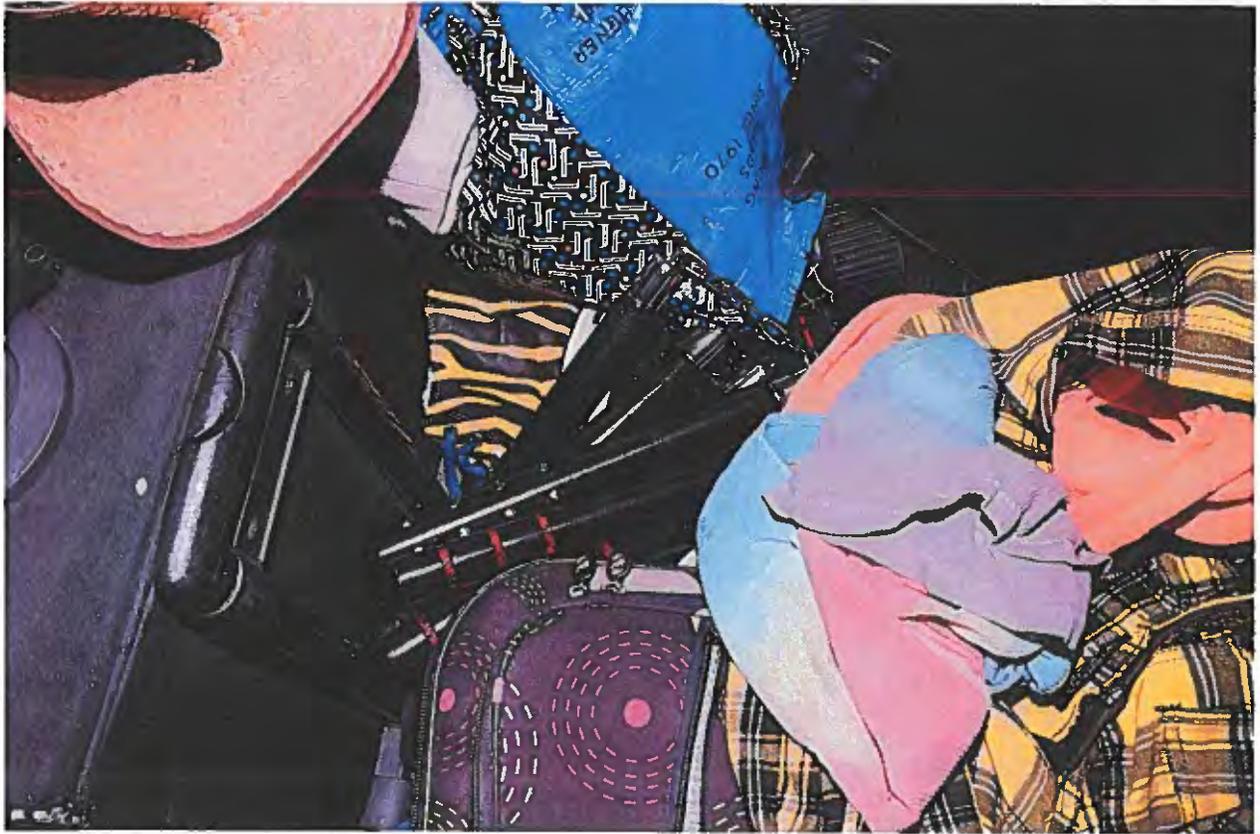
EXHIBIT 9



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EXHIBIT 10



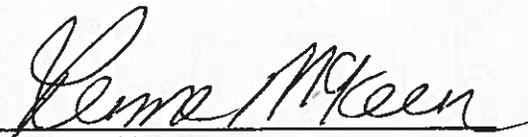
CERTIFICATE OF SERVICE

I, Renne McKeen, Executive Legal Secretary, Office of the Nye County District Attorney, Post Office Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

RESPONSE TO PETITIONER'S PETITION FOR WRIT OF HABEAS CORPUS in 5TH JDC Case No. CR20-0092 MARCO ANTONIO TORRES V. THE STATE OF NEVADA

by emailing a true and correct copy thereof, on 11/20/2020 to the following:

DANIEL MARTINEZ


Renne McKeen

NYE COUNTY DISTRICT ATTORNEY
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Case No. CR20-0092

Dept. No. 1

The undersigned affirms that this document does not contain the social security number of any person.

FILED
FIFTH JUDICIAL DISTRICT

DEC - 1 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

THE STATE OF NEVADA,

Plaintiff,

v.

MARCO ANTONIO TORRES,

Defendant.

RESPONSE TO DEFENDANT'S
MOTION TO CONTINUE TRIAL DATE

COMES NOW, THE STATE OF NEVADA ("Plaintiff"), by CHRIS ARABIA, Nye County District Attorney, through KIRK VITTO and MICHAEL D. ALLMON, and hereby opposes in part Defendant's request to continue the trial date.

POINTS AND AUTHORITIES

For an indigent defendant to receive funds for an expert witness, the defendant has the burden of persuading the court that it is "proper and necessary." *State v. Second Judicial Dist. Court*, 85 Nev. 241, 245, 453 P.2d 421, 423 (1969); *see also, e.g., Hover v. State*, 2016 Nev. Unpub. LEXIS 468, Slip Op. at 5, 132 Nev. 982 (unpublished disposition, filed February 19, 2016, Docket No. 63888). "The guarantees of due process do not include a right to conduct a fishing expedition." *Hover*, at 6. (internal punctuation omitted). It is proper and within the court's discretion to require a defendant to provide "some basis for the request." *Id.*

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
PAHRUMP, NEVADA 89041
(775) 751-7085

1 If the Defendant provides some basis for the request, the State does not
2 oppose the request for an expert and a continuance commutant thereto. If an expert is
3 not "proper and necessary" for the defense, then it follows that a continuance would be
4 unnecessary. The Motion before the Court provides no basis for the request,
5 providing only a vague and conclusory statement that, "In preliminary conversations
6 between counsel and the expert, [there has arisen] the potential for an independent
7 autopsy, depending on the expert's opinion after review of all of the discovery." See,
8 Def. Mot. to Continue Trial Date, 3:13-18. Thus, the State does not oppose the
9 continuance, as long as the Defendant provides some basis for why it is "proper and
10 necessary" to spend what is sure to be a considerable amount of taxpayer dollars
11 when the autopsy conclusions extant mirror the Defendant's admissions.

12 DATED this 1st day of December, 2020.

13 **CHRIS ARABIA**
14 **NYE COUNTY DISTRICT ATTORNEY**

15
16 By 
17 **MICHAEL D. ALLMON**
Deputy District Attorney
Nev. Bar 15169

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NYE COUNTY DISTRICT ATTORNEY
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CERTIFICATE OF SERVICE

I, Renne McKeen, Executive Legal Secretary, Office of the Nye County District Attorney, Post Office Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**RESPONSE TO DEFENDANT'S MOTION
TO CONTINUE TRIAL DATE** in
5TH JDC Case No. CR20-0092
MARCO ANTONIO TORRES V. THE STATE OF NEVADA

by emailing a true and correct copy thereof, on 12/1/2020 to the following:

DANIEL MARTINEZ


Renne McKeen

DEC 03 2020

Nye County Clerk
Tori Pemberton Deputy

1 Case No. CR20-0092
2 Dept. 1P

3 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
4 THE STATE OF NEVADA, IN AND FOR THE COUNTY OF NYE

5 THE STATE OF NEVADA,

6 Plaintiff,

7 -v-

AMENDED
ORDER SETTING JURY TRIAL

8 MARCO ANTONIO TORRES,

9 Defendant,

10 _____/

11
12 **IT IS SO ORDERED** that the above-captioned case is hereby set for trial before a jury in
13 **Pahrump, Nevada**, commencing at **9:00 A.M.** on **Monday, the 15th of March, 2021**. **Ten (10)** days,
14 March 15-26, 2021 have been set aside for the trial. The services of the District Court Reporter are
15 required. Stock Instructions will be provided by the Court, any special instructions are to be submitted
16 to the Court no later than two (2) days before trial is to begin.

17 **IT IS FURTHER ORDERED** that a calendar call is set for the **12th day of February, 2021**,
18 at the hour of **9:00 a.m.** Counsel and the Defendant must appear for the calendar call.

19 **IT IS FURTHER ORDERED** that the jury draw is set on the **27th day of January, 2021**,
20 whereas the Nye County Jury Commissioner will draw a regular panel of 180 jurors at **4:30 p.m.** in the
21 presence of all those who wish to attend.

22 **IT IS FURTHER ORDERED** that any pre-trial motions are to be heard on the **27th day of**
23 **January, 2021**, at the hour of **1:30 p.m.**, with courtesy copies to the court by **January 20, 2021**, at the
24 hour of **4:00 p.m.**

25 DATED this 3rd day of December 2020.

26
27 
28 KIMBERLY A. WANKER
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 3rd day of December 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)

RONNI BOSKOVICH, ESQ.
PAHRUMP, NEVADA
(HAND DELIVERED)

Melissa Mevis
MELISSA MEVIS, Secretary to
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



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1 Case No.: CR20-0092

2 Dept. No.: 1

FIFTH JUDICIAL DISTRICT

4818213

Nye County Clerk

Sarah Westfall Deputy

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5 **IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**

6 **IN AND FOR THE COUNTY OF NYE**

7 THE STATE OF NEVADA,

8 Plaintiff,

9 vs.

MOTION TO CONTINUE TRIAL DATE

10 MARCO ANTONIO TORRES,

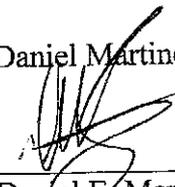
11 Defendant.

12
13
14 COMES NOW, the Defendant, Marco Antonio Torres, by and through is Public Defender,
15 Daniel E. Martinez, Esq., hereby moves this Court to for an order vacating the trial dates set to
16 commence on March 15, 2021, and requests a new trial setting on a date convenient to the Court.

17 This Motion is made and based upon the papers and pleadings on file herein, and any
18 arguments of counsel entertained by the Court at the hearing of said Motion.

19 DATED this 19th day of January, 2020.

20
21 Daniel Martinez Law, LLC

22
23 
24 Daniel E. Martinez, Esq.
25 Nevada Bar No.: 12035

DANIEL MARTINEZ LAW

1
2 **NOTICE OF MOTION**

3 TO: Nye County, Plaintiff; and
4 TO: District Attorney, its Attorneys;

5 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Continue
6 Trial Date on Calendar for hearing in Department 1 of the above-entitled Court on the 17th day of
7 Jan., 2021, at 1:30 P.m. or as soon thereafter as counsel may be heard.

8
9 DATED this 19th day of January, 2020.

10 Daniel Martinez Law, LLC

11
12 
13 Daniel E. Martinez, Esq.
14 Nevada Bar No.: 12035
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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. On December 3, 2020, a hearing was held on multiple defense motions, including a motion to continue to the trial. That motion was granted, and new dates were set to commence on March 15, 2021.
4. The reason for the motion to continue was because the Defense's expert was still in the process of reviewing all the discovery in this matter so that he could offer his opinion, and recommend additional work to be performed, including the possibility of an independent autopsy.
5. Shortly after the December 3, 2020 hearing, Counsel was informed that there was a medical emergency, and the expert was out of the office, with hopes of returning by mid-January. He recently began work again, and informed Counsel that his opinion will be ready in early February.
6. Calendar Call in this case is currently set for February 12, 2021, and the deadline for pretrial motions is January 19, 2021.
7. If the Defense expert recommends that additional work be performed on this case, said work would not be completed in time to be for trial, and the Defense would not be ready. As such, I am requesting a continuance of the jury trial in this case.
8. This is the second trial setting in this matter.

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9. This motion is made in good faith not for the purpose of delay.

10. I declare under penalty of perjury that the foregoing is true and correct. (NRS 53.045)

EXECUTED this 19th day of January, 2020.



DANIEL E. MARTINEZ, ESQ.

DANIEL MARTINEZ LAW

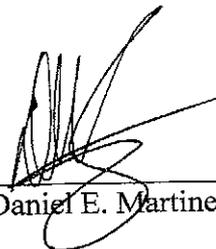
CERTIFICATE OF SERVICE

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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 January 19, 2021, to the following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE



Daniel E. Martinez, Esq.

DANIEL MARTINEZ LAW

1 SUPREME COURT CASE NO. 83216

CASE NO. CR20-0092

2 DEPARTMENT I

3 FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

4 IN AND FOR THE COUNTY OF NYE

5 BEFORE THE HONORABLE DISTRICT COURT JUDGE

6 KIMBERLY WANKER

7 -oOo-

8 THE STATE OF NEVADA,

9 PLAINTIFF,

10 -VS-

11 MARCO ANTONIO TORRES,

12 DEFENDANT.

13 _____/

14
15 TRANSCRIPT OF PROCEEDINGS

16 MOTION TO DISMISS/WRIT OF HABEAS CORPUS

17 JANUARY 27, 2021

18 COURTHOUSE

19 PAHRUMP, NEVADA

20
21
22 REPORTED BY:

SUZANNE KUES ROWE

23 Nevada CCR #127

24

1 APPEARANCES

2
3
4
5 FOR THE STATE OF NEVADA: MICHAEL ALLMON
6 DEPUTY DISTRICT ATTORNEY
7 1520 EAST BASIN AVE #107
8 PAHRUMP, NEVADA 89049
9

10
11
12 FOR THE DEFENSE: DANIEL MARTINEZ
13 ATTORNEY AT LAW
14 PAHRUMP, NEVADA 89049
15

16
17 FOR THE DEPARTMENT OF NOT PRESENT
18 PAROLE AND PROBATION:
19
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1 THURSDAY, JANUARY 27, 2021, PAHRUMP, NEVADA, 1:55 P.M.

2 -oOo-

3 THE COURT: I think the jail is trying to get
4 Mr. Torres connected. That's my understanding.

5 MR. MARTINEZ: Okay.

6 THE COURT: So, is the DA's office getting back to
7 having people come to work? I'm curious. I know they were out
8 for quarantine, but I thought people would have returned to work.

9 MR. ALLMON: We're on a skeleton crew. Maybe three or
10 four of us at a time.

11 THE COURT: Sure. Probably when you talk, we may make
12 you to take your mask off.

13 I will tell you this, that my new fandangled battery
14 powered thousand dollar disinfectant, the machine is supposed to
15 be here Friday, and Monday my disinfectant is supposed to be
16 here, and if it's good, I'm getting another one. And I'm taking
17 it to the courthouse in Goldfield, and in Tonopah, and using it
18 here.

19 The drug court bought this one, because we are the ones
20 who really need it. But, I'm going to see how it works, so that
21 any time anybody gets up, it looks like a Wagner power painter.

22 We had court in here this morning. I have had so much
23 court this week, and Zona was disinfecting the seats out there
24 and everything, you know, from yesterday. And we can't believe

1 how dirty the seats are.

2 You know, the cleaning crew isn't hired to clean, they
3 are hired to empty the trash, in all fairness.

4 So, we have just sort of taken it upon ourselves to be
5 sure that we keep everything clean.

6 All right. Just so you know, Suzy, the Deputy District
7 Attorney that's present is Mike Allmon, A L L M O N, and on
8 behalf of the defense is Ronni Boskovich and Daniel Martinez.

9 And we are still waiting. And our clerk today is
10 Juanita Torres. I was going to call you Caldwell. Now we're
11 just waiting, I guess, for the defendant to link in.

12 Good afternoon, Mr. Torres. How are you?

13 THE DEFENDANT: Good afternoon, Your Honor. I'm okay.
14 Thank you.

15 THE COURT: We are here on Case Number CR20-0092, State
16 of Nevada versus Marco Antonio Torres.

17 Mr. Torres, is present. In the courtroom, I have
18 Deputy District Attorney Michael Allmon on behalf of the state,
19 and I have your attorneys, attorney Ronni Boskovich and attorney
20 Daniel Martinez. They're sitting at defense counsel table in my
21 courtroom, and the other folks in my courtroom are my court
22 staff.

23 So, I just kind of wanted to let you know who was here.
24 Now, if at any time you need to speak with your

1 attorneys, you need to let me know. Because if you need to talk
2 to them privately, the rest of us will leave, and we will shut
3 off the recording equipment so that you can have a private
4 conversation with your attorneys.

5 THE DEFENDANT: Okay.

6 THE COURT: The other thing for Counsel, because our
7 court reporter is gracious enough to cover this for us and is,
8 obviously, not in the courtroom, two things are important:

9 One, you can sit while making your argument, and move
10 the microphone close. The other thing is, don't rustle your
11 papers, because that's what she hears through the microphone.
12 And don't speak too quickly, because there's a little delay for
13 her to get the transmission.

14 So, with that, I was going to say, we are here on two
15 different things today. One is a Motion to Dismiss. The second
16 is a Writ of Habeas Corpus.

17 I have looked at the Motion to Dismiss, the Response to
18 the Motion to Dismiss, and I believe there was a, I don't know if
19 there was a reply or not.

20 I've also looked at the Writ of Habeas Corpus and the
21 response to the Writ of Habeas Corpus. And just so that I was up
22 to speed, I reread the transcript of the entire preliminary
23 hearing this morning. I got up at 4:30 to be fresh to make sure
24 I had read that.

1 So, with that, this is the defense's motion. So,
2 defense, I'm going to let you take the lead.

3 MR. MARTINEZ: Natural reaction to stand, Judge. But,
4 I will stay sitting to make sure I am talking into the
5 microphone.

6 Your Honor, I know the Court always prepares, as Your
7 Honor did today, you read all the pleadings. I did file a reply
8 to the state's opposition, that I'm sure Your Honor did read.

9 I know Your Honor also always pulls all the cases to
10 review those cases, so I'm not going to belabor or repeat what's
11 in all my pleadings, because I don't think that's necessary.

12 Essentially, where we're at here, Judge, there's no
13 doubt that entry was made into the Industry address in this case
14 without a warrant.

15 So, that needs to fall into a certain exception. The
16 only exception that may apply in this case that I don't believe
17 any exception applies, but the only one that the state is arguing
18 applies, is an exigency circumstance to provide aid to someone
19 who may be injured on the inside.

20 In all of the cases that I cited, Your Honor, when the
21 courts have found that warrantless entry was reasonable, law
22 enforcement, the state has been able to point to specific facts
23 in every single case to be able to say this is why we knew
24 somebody was injured, someone needed assistance, and we needed to

1 take immediate and swift action to go into the house, that we
2 didn't have time to wait around and assess the situation, because
3 somebody may have gotten shot or died.

4 In the Brigham City case, the police actually saw the
5 fight happen. In the Alanyon case, police received a report that
6 a man had stabbed himself. In the Dixon case, the police
7 responded to a domestic dispute, and they noticed signs of
8 forcible entry, and there was blood splattered on the floor.

9 There is no specific facts like that in this case. The
10 testimony that we have on the record, the facts that we have on
11 the record, the police responded to a 911 disconnect.

12 From what we have thus far, that's all they knew. What
13 Deputy Gideon testified to at the preliminary hearing is that
14 when they appeared, they responded to the address to the 911
15 disconnect, and at that point it became a welfare check. They
16 had no indication that anybody was hurt or in need of any sort of
17 assistance on the inside. The only sound they heard when they
18 arrived was the footsteps of somebody walking.

19 They didn't hear screaming, they didn't hear fighting,
20 they didn't hear commotion, and they certainly didn't see any of
21 those things.

22 The standard that we are working with here, Your Honor,
23 is one of a reasonable person. If a reasonable person believed
24 that it was necessary for law enforcement to make immediate entry

1 into the house, in order to render assistance.

2 And there's no reasonably objective basis for that in
3 this case, Judge. The arguments that I have made in my pleadings
4 is that we hold law enforcement to a more than reasonable
5 standard, I would say. A reasonable person, I have always
6 interpreted to be the common people walking around the street,
7 every day and a layperson. What would they think if they were in
8 a similar situation, or how would they react? And we hold law
9 enforcement to a higher standard.

10 We can look at law enforcement's action in this case,
11 that the exigency did not exist, and they did not need to take
12 immediate action, because they were able to wait around.

13 The first two deputies who appeared on the scene, they
14 didn't immediately go in and say, we need to help somebody right
15 now. They called for backup. They waited for a supervisor, they
16 called for a locksmith. They waited an hour-and-a-half before
17 they finally made entry into the home.

18 If they believed somebody was in need of assistance,
19 they would have gone into the home. They would have broken a
20 window, would have kicked a door down as has happened in other
21 cases, Judge, that would have made a forcible entry, (inaudible)
22 to go in and to help them out.

23 We also noted there were two other neighbors that heard
24 commotion prior to the police arriving. Two other reasonable

1 people. They heard the commotion and neither of them were
2 worried enough, to say somebody, let's call 911 and let's call
3 the police. They didn't call the police at all. The only
4 contact they had with the police was after the police arrived on
5 the scene.

6 The state, in their opposition, mentioned that
7 essentially inevitable discovery is what they argue at one point.
8 And I don't think that that applies at all here.

9 The inevitable discovery that the state cites to in all
10 of their cases are situations where police had legally obtained
11 evidence, and then made warrantless entry into the house.

12 So, outside of the warrantless entry, they had enough
13 evidence for probable cause to get a search warrant. So, they
14 were going to be able to get into the house no matter what. That
15 doesn't apply here. Everything that is in Detective Fancher's
16 search warrant, he attained all of that information after the
17 illegal entry.

18 So, my argument is that all of the information in his
19 affidavit and support of search warrant is illegal evidence. It
20 was unlawfully obtained, because they violated Mr. Torres's
21 Fourth Amendment rights when the police made entry into the
22 house.

23 At the very least, Judge, I believe what the Court
24 needs is to order an evidentiary hearing so we can get more of

1 the deputies here, get more of the law enforcement here, so they
2 can testify as to what they knew when they were at the house, the
3 state spent a lot of time saying we know Jonathan Piper called
4 911.

5 We know that he said he needed help on that 911 call.
6 Ultimately, we know that he was deceased. The law enforcement
7 deputies who arrived on the scene did not know any of that. The
8 testimony we had is just, they knew there was a 911 disconnect
9 that turned into a welfare check. That is it. They did not know
10 how many people were on the cellphone, they don't know what was
11 said on the 911 call. They know none of that, so that shouldn't
12 be taken into account when we are trying to determine whether or
13 not they made lawful entry into the house.

14 The state's essentially arguing here for an end
15 justifies the means law, where so long as the police go in and
16 they find evidence of a crime, or they find that somebody was
17 hurt, or somebody was deceased, that's all you need is that the
18 end justifies the means. Somebody was hurt, somebody was
19 deceased, so that necessarily means that there was exigent
20 circumstances.

21 They need to show the exigent circumstances first
22 before the police can make entry in the house. They can't do
23 that in this case. That's why I'm asking the Court to dismiss
24 it.

1 THE COURT: Okay. I have this question for you.
2 Normally, it wouldn't come up as a Motion to Dismiss, it would
3 come as a Motion to Suppress evidence.

4 So, I understand your argument, I mean I understand
5 what you're saying is you're saying that this really isn't an
6 exigent circumstance, or it's not an emergency. I think that
7 there are probably about ten exceptions to the warrant
8 requirement, two of which, in my mind, came to the forefront
9 would be are there exigent circumstances, or is there an
10 emergency aid doctrine.

11 And one can argue that maybe those are subsumed in the
12 same type of thing, but I think they are a little different.

13 But, nonetheless, and the reason I wanted to go back
14 and read the preliminary hearing transcripts, I read it before,
15 but I couldn't remember what the, who the deputies were, and what
16 had happened between the time of the 911 call and the deputies
17 had arrived there.

18 But, I'm not sure that maybe it shouldn't be a motion
19 to suppress, and maybe there shouldn't be more detail about what
20 the Court should suppress, other than just the general Motion to
21 Dismiss.

22 MR. MARTINEZ: Well, Judge, my stance is with the
23 unlawful entry, all of the evidence should be suppressed, because
24 it's all fruit of the poisonous tree. So, if we suppress all the

1 evidence, the case gets dismissed.

2 So, if you want more specifics about what they found, I
3 can certainly brief that to Your Honor. But, my stance is, all
4 the evidence in this case happened after the unlawful entry. So,
5 all of it needs to be suppressed, save for maybe the 911 call.
6 So, if the state wants to proceed only on the 911 call at trial,
7 sure. They're free to do that.

8 THE COURT: What about the fact that they may have had
9 probable cause to detain Mr. Torres, and then read him his
10 Miranda Rights, and he essentially, allegedly, I will say that,
11 because obviously the facts are disputed now, that he allegedly
12 confessed to this crime?

13 MR. MARTINEZ: Well, I don't believe, prior to the
14 entry, Judge, I don't believe they had any probable cause to
15 detain Mr. Torres.

16 THE COURT: Well, he stuck his head out the window and
17 said, "I'm Bozo the Clown." That would seem to be odd after you
18 had a 911 hang-up. I'm just playing devil's advocate.

19 MR. MARTINEZ: I understand, Judge. My stance would
20 be, sticking your head out the window and saying, "I'm Bozo the
21 Clown," isn't probable cause for them to detain him at that
22 point. That's first of all.

23 Second of all, I understand Miranda was read to him.
24 He wasn't interviewed, and all of that didn't happen until much

1 later on in the morning.

2 And I will tell you what else is on calendar today, is
3 I filed another Motion to Continue, and I'm sure that we will
4 address that. One of my experts is working on a psychological
5 work-up of Mr. Torres, and there will be a Motion to Suppress
6 Mr. Torres's statements coming in as well.

7 I have listened to the entirety of that more than
8 three-hour interview multiple times. And one of the things that
9 Mr. Torres says in that interview at about the halfway mark, he
10 says, "What do you mean, I waived my rights? I didn't waive my
11 rights. I don't understand what you're talking about here."

12 Which was a major red flag for me.

13 Those are some of the issues I will be asking to
14 suppress that later on as well, Judge.

15 THE COURT: Okay. All right. Well, let me hear from
16 Mr. Allmon. Sit down, just don't move your papers, so that my
17 court reporter can hear.

18 MR. ALLMON: It's such habit.

19 All right. I got to move them to again. So, a few
20 things that are important here. It's important to look at the
21 totality of the circumstances always.

22 Fourth Amendment always considers the totality of the
23 circumstances. Where Mr. Martinez seemed to get a few zingers in
24 on his motion, it always fails to neglect the totality. You

1 know, they heard the rustling, and nothing more.

2 Well, no, that's not true, because the totality is they
3 heard a 911 call. The deputies talked to someone. The person
4 said, "We are all okay in here. My roommate and I are sleeping."
5 So, it's the totality always.

6 So, there's two issues here, two separate issues. The
7 first is the emergency aid exception. The emergency aid
8 exception is completely detached from probable cause.

9 There is no probable cause for an emergency exception.
10 A person cannot get, a law enforcement officer could not get a
11 warrant to execute an emergency aid exception entry.

12 It just does not exist. The two are completely
13 detached from each other.

14 So, law enforcement is left on its own to make a
15 determination in the field whether or not the emergency aid
16 exception applies.

17 And we have clear rules for a reason. I believe this
18 is that. This is Fisher, and then some.

19 So, that's the first part of this. The second thing
20 is, if you look at it and you find for some reason you find that
21 there is no emergency exception, which, again, I would argue that
22 there is, then you look at PC.

23 And in a probable cause determination, the Court is to
24 consider all that law enforcement knew at time, even if that's

1 not in their search warrant.

2 And that's Devenpeck v. Alford.

3 And so you would look at the totality, you would look
4 at the search warrant itself, you would strike out the
5 information, that was obtained post entry, if the Court finds
6 that it's not an emergency exception.

7 And then from there, you would also allow evidence that
8 the law enforcement knew at the time, but may not have cited.

9 And the reason for that is, sometimes when they assume
10 that evidence is going to be admissible, they state enough for
11 PC, and the judge grants it, that's enough. They might have more
12 evidence that didn't make it into the warrant, or perhaps the
13 prosecutor would look at it and say, well, that should have been
14 included in the warrant, and law enforcement knew that at the
15 time.

16 One thing, when we are determining whether or not
17 there's an objectively reasonable basis for entry, it's a need
18 for swift action. And this is -- defense and I go back and forth
19 about this in the motions. But in defense's response, or reply
20 to me or rebuttal, defense says if they wait for a SWAT team,
21 that is sufficient grounds. But, not a locksmith. And there's
22 distinguishing reason for that. If law enforcement could wait
23 for a SWAT team, and that still means that there's an emergency
24 aid, then it makes no sense that they got one extra person, a

1 locksmith, and that's different.

2 So, they can wait for a SWAT team, but they can't wait
3 for additional patrol officers and a locksmith. There's no
4 distinguishing marks for that. So, the defendant does not
5 benefit from successfully keeping law enforcement at bay, that's
6 an important thing to consider when we are looking at the need
7 for swift action.

8 The fact that they didn't make swift entry, even though
9 there was a need for swift entry. They didn't make swift entry
10 because the defendant kept them at bay, that's not grounds to
11 suppress.

12 And when we get to his argument, specifically, today,
13 the specific facts in every case, he says, they're not here.
14 Well, they are. There's a 911 call.

15 There's the neighbors saying two people there had an
16 argument.

17 There's the scene that we saw, which was stuff thrown
18 about, possibly the railing broke that night, and then the
19 defendant saying, my roommate and I are good.

20 Law enforcement knew there was a second person there.
21 Based on the 911 call alone, they know there's a second person
22 there. Based on the neighbors alone, they know that and based on
23 the defendant's statement alone, they know that. The totality
24 certainly says there's a second person there in need of help.

1 Mr. Martinez mentions Dixon. Dixon is not applicable
2 as mentioned in my brief. They were there for a welfare check.
3 Well, the welfare check is an emergency aid, is a form of a
4 welfare check.

5 Now, the defense starts complaining the reasonable
6 basis, the objectively reasonable basis for law enforcement is
7 not the reasonable person. Those standards should not be
8 confused. A reasonable person is someone that doesn't have the
9 experience, the training that law enforcement has. And the duty
10 to act that law enforcement has.

11 A reasonable civilian out in the world has no duty to
12 act.

13 A law enforcement officer has a duty to act to ensure
14 the safety of people. And so we may say that a reasonable person
15 didn't call 911. Well, if we're in a tort and this is about
16 negligence, then that's the standard. But, that's not the
17 standard for whether or not law enforcement had an objectively
18 reasonable basis. And so we know as far as that, there are
19 gunshots that are fired that people don't call 911 on. That's
20 not what we evaluate the officer on.

21 The defense said that my argument sums up to: The end
22 justifies the means. Law enforcement found the evidence. He was
23 dead, therefore it must have been the case. That's not my
24 argument. That's not what the Fourth Amendment says. I never

1 make such argument, and I would take issue with that as to what
2 the Fourth Amendment is.

3 And, Judge, I think you correctly pointed out, a Motion
4 to Dismiss is inappropriate. I noted that in my motion. A
5 Motion to Dismiss is not the correct procedure. I cited the
6 correct procedure, that should be mentioned.

7 It's up to me to decide whether or not, if the Court
8 decides to suppress evidence, do I still have a case? And that's
9 the appropriate remedy.

10 So, I think that Your Honor, when you look at this, the
11 emergency exception is there a hundred times over. If we look at
12 Fisher, Fisher was a person who had a cut hand, and yes, defense
13 correctly notes he was also throwing stuff. That's fine. The
14 Supreme Court says, the cut hand, him throwing stuff, either one
15 of those is a basis for the entry.

16 So, if you take the cut hand or simply throwing stuff
17 at a person, that the Supreme Court noted law enforcement never
18 saw, they could have just supposed that a second person was
19 there. Look at, that a cut hand, and a person saying go away,
20 then they make entry, and the person they are rendering aid to is
21 the person telling them to go away asserting what he believes is
22 his Fourth Amendment right. And the Court says there's no Fourth
23 Amendment violation here. So, if there's no Fourth Amendment
24 violation in Fisher, there's certainly no Fourth Amendment

1 violation here, where law enforcement had to enter to protect
2 someone other than the person that was objecting. The person
3 that was objecting was the person that killed him.

4 And, Your Honor, of course, I know you've read the
5 motions, and I'm not going to reiterate all those points, point
6 for point, but they are all there too. And I think that Your
7 Honor has read those and can rely on those.

8 Thank you.

9 THE COURT: Okay. Mr. Martinez?

10 MR. MARTINEZ: Thank you, Judge. Judge, I want to
11 start with that Fisher case, because the state kind of blew right
12 by the important parts of that case.

13 When the police arrived, yes, they noticed a small cut
14 on his hand. The state says, sure, Fisher was simply throwing
15 things around his house. That's not what Fisher says.

16 When the police arrived, Fisher was angry. He was
17 belligerent. He was violently throwing things in and out of the
18 house. And that's what the state cited in that case was their
19 reason for the emergency aid exception.

20 They were concerned if there was someone else in the
21 house, they could be harmed. They were concerned that the
22 projectiles could harm the police outside of the house; that's
23 why that emergency aid exception kicked in. Because they wanted
24 to make sure nobody was hurt and they needed to stop the violent

1 belligerent behavior of Fisher.

2 Those are not the facts here, Judge. There's not
3 anything of a minor injury that the Nye County Sheriffs deputies
4 knew in this case.

5 Again, the state's arguing a totality of the
6 circumstances. We don't know what the deputies knew in this case
7 when they arrived, Judge. The state's arguing on the 911 call,
8 there were two callers. No one said that they needed help. We
9 don't know that the sheriff's deputies knew that.

10 The sheriff's deputies, from what we have on the
11 record, didn't know there was another person inside that house
12 until Mr. Torres poked his head out and said, we're fine, we're
13 sleeping. Go away.

14 The state asked me to distinguish between a SWAT team
15 and a locksmith. No problem. SWAT gets called when there's a
16 barricade situation because there's somebody inside the house not
17 coming out, and threatening people either inside or outside.

18 We had that scenario here in Nye County fairly
19 recently, where the person inside the house was shooting at the
20 sheriff's office. I believe they fired more than 240 shots at
21 the sheriff's office in that case. They needed to call for
22 backup. They needed a SWAT team. They needed more guns so they
23 could go in and put a stop to the situation. That's the
24 difference between a SWAT team and a locksmith, Judge.

1 This is not a situation where the sheriff's office
2 showed up and said, wow, this person is barricading themselves,
3 they're threatening themselves, they're threatening others. We
4 need backup to make sure nobody is harmed. That's not what
5 happened, Judge.

6 They waited and waited. And they waited because there
7 was no emergency, because they had no information that there was
8 an emergency. They had no information that anybody was injured
9 on the inside. They had no information that they needed to
10 immediately make entry into the house to render aid.

11 Lastly, Judge, and this may not matter. But I'm going
12 to argue it. The state, on the Dixon case that I cited to, as
13 the state did note, they didn't really respond to that in their
14 brief, because they said it's not citable under the Nevada Rules
15 of Appellate Procedure. We are not in appellate court, Judge.
16 This is the trial court.

17 My stance is, it's certainly still persuasive
18 authority. It's a decision in this state that's higher than this
19 court that can make controlling authority over this court, and
20 the Court can certainly take it into consideration. It may not
21 be controllable authority, but it's certainly persuasive.

22 THE COURT: Okay. Anybody else want to say anything on
23 this issue?

24 MR. MARTINEZ: No, Judge.

1 THE COURT: Okay. I have a little bit to say.
2 Obviously, as we all know, that the general rule is that a
3 warrantless search is presumed unlawful. And the government has
4 the burden to establish that the warrantless search is
5 constitutional, and does not violate the Fourth Amendment.
6 That's just basic black letter law.

7 Exigent circumstances really have the Court looking at
8 two considerations:

9 One, there must be probable cause for a search or
10 seizure.

11 And two, there must be an exigent circumstance.
12 Probable cause is necessary, but it is not sufficient by itself.

13 So, both things. There must be probable cause and
14 there must be an exigent circumstance.

15 Really, the rationale behind an exigent circumstance is
16 that there is exigency.

17 "There must be a compelling need for police action.
18 There is no time to obtain a warrant."

19 That's the meaning of exigent circumstances. And
20 that's Michigan V Taylor, 436 U.S. 499, a 1978 U.S. Supreme Court
21 decision.

22 The emergency aid exception is a little different:

23 "The emergency aid exception is one type of exigency
24 that may make the need of law enforcement so compelling that the

1 warrantless search is objectively reasonable.

2 "The emergency aid exception is the need to assist
3 persons who are seriously injured, or threatened with such an
4 injury. Law enforcement may enter a home without a warrant to
5 render emergency assistance to an injured occupant or to protect
6 an occupant from imminent injury."

7 That's the Brigham City case, U.S. Supreme Court
8 decision.

9 Now, here's the issue that this Court has. And I have
10 the exhibits along, because they were admitted into evidence and
11 part of the preliminary hearing transcript. And there is one
12 thing. One of these exhibits that I found extremely interesting.

13 Let me see if I can find the number here. It is
14 Exhibit Number 4A. What it is, it is the Nye County Sheriff's
15 Office call detail record, and I looked at it, so based upon what
16 I could see from the record, that the call came in through 911 at
17 approximately 3:03. I think is the first call. 3:03:27 and
18 there's a 3:06:06. And then Deputy Gilbert, if I remember the
19 preliminary hearing than transcript correctly, he arrived on
20 scene at 3:12.

21 I think that's important to note. And if you look at
22 the log, there's a lot of communications back and forth between
23 the dispatcher, who my understanding was Savannah Rucker. Not
24 Savannah. It was Stephanie Rucker. And there are communications

1 with Ms. Rucker.

2 I don't see, Mr. Gilbert was 3:12 or Officer Gilbert
3 3:14, 3:17, 3:17 and then there's a series, a number of
4 communications that are logged by Stephanie Rucker, and then
5 Mr. Gilbert's or Officer Gilbert's back paged call at 4:30, and
6 then there's one en route to a call on 4:32 and then 4:33.

7 The reason I bring this up, and nobody has touched on
8 this. But, is it possible that there was an exigent circumstance
9 or a need to render emergency aid and it expired by lack of
10 action?

11 And I raise that because my understanding from reading
12 the preliminary hearing transcript is that when the officers got
13 there, there were a number of buildings, if you will. This call,
14 my understanding from looking at Stephanie Rucker's testimony,
15 was that the Nye County Sheriff's Office uses a particular
16 program, which at that time was relatively new.

17 So, what happens is, it checks the coordinates, if you
18 will. That's of the, of where the call's coming from, so they
19 get rough coordinates. Sometimes they are better than others.

20 So, they get the street address, but they get there and
21 there's more than one location. So, my understanding, I may be
22 wrong, from reading the preliminary hearing transcript and
23 looking at the documents, was that they stopped at, the first
24 place that the Nye County Sheriff's deputy stopped was the

1 location, and they were told, no, this isn't the location. It's
2 this other trailer, two people live there.

3 Okay? So, I don't know what was communicated between
4 Ms. Rucker, because the questioning doesn't give me that
5 information.

6 But, we do know what the 911 call was, and the 911
7 call, if I recall correctly, was something like, help, help,
8 help. And then it's like, false call, or something like that.
9 And the call goes dead, and then Ms. Rucker isn't able to reach
10 somebody back on the phone, and that's when she called for
11 deputies to go out.

12 And so if the deputy stopped at the first trailer and
13 was told two people live there, and then they get to that
14 location and they can't arouse anybody, but they hear walking
15 inside, why didn't they break the door down? They were just told
16 two people live there. They have been told -- why would you call
17 for a locksmith? Why wouldn't you have broken the door down?

18 You were just told at the first trailer, there are two
19 people that live there. You can't get anybody's attention. You
20 know there's been a 911 call that's been a hang-up, and that's
21 why you have been dispatched there, wouldn't that be a basis at
22 that point to just break the door down? Why would you have, and
23 I can't quite wrap my head around this.

24 Why would you have waited almost a half an hour, then

1 you called your supervisor, then you called a locksmith, then you
2 tried the door and the door was locked. So, you waited for the
3 locksmith.

4 If this is an exigent circumstance or this is an
5 emergency aid situation, wouldn't you have just broken down the
6 door immediately when you got there, knowing that information?

7 So, the question I have in my own mind is maybe the Nye
8 County Sheriff's Office got out there, and there were both
9 emergency aid exceptions and exigency circumstances, but they
10 didn't act on them. They waited. And at some point did they
11 lose the emergency aid, and did they lose exigency exception?

12 I think, when the call came in, they certainly had
13 those things. But, I'm not sure that that didn't get waived by
14 the conduct of the deputies that were out there. That I'm not
15 sure about. Nobody talked about that, nobody briefed that issue
16 for me.

17 But, I think it's an interesting one. Was there an
18 exigent circumstance, an emergency aid exception? And maybe the
19 truth is, that I don't know, because I really don't know too
20 much, based upon the preliminary hearing transcript about what
21 Ms. Rucker testified to.

22 But, I do know this. The deputy did say I stopped at
23 the first trailer, and I think he was pretty early in the
24 transcript. Let me see if I can find it here.

1 I'm looking. I'm trying to get past a bunch of
2 testimony.

3 MR. ALLMON: Your Honor, do you want us to direct you
4 to the --

5 THE COURT: No, I am finding it. Mr. Ledeaux testified
6 next. We have Ms. Rucker's testimony. And she says, she talks
7 about the 911 disconnect. She says she tried to call back
8 multiple times to get someone to answer, but, in this instance,
9 no one answered the phone.

10 Q. "Did you can call back?

11 A. "Yes, sir.

12 Q. "Nobody answered?

13 A. "No, sir.

14 Q. So, Are you the one that dispatched law enforcement to
15 that --

16 A. "I believe so.

17 Q. "To that address.

18 A. "The address that we got from the coordinates on the
19 Rapid SOS program."

20 Then the next person that testified was Xavier Gideon,
21 and he was the deputy. He says he responded at 3:01 hours, which
22 is consistent, pretty consistent with the log.

23 Q. "Do you recall what purpose you were dispatched to that
24 location?

1 A. "It was a 911 cell disconnect.

2 Q. "What did you observe upon arrival?

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

6 Q. "What did you do upon arrival?

7 A. "I made contact with the male in the first residence.
8 He told me something to the extent of, 'it's not me, it's the
9 people behind me.'"

10 He didn't say it's the person behind me, it's the
11 people behind me. "And that's when I went to make contact with
12 the trailer behind the original residence that appeared trashed."

13 So, what he was told was it's the people behind me. To
14 me, that would make me think that more than one person lived
15 there. And they had a 911 disconnect, so, and then if you go and
16 you look at that:

17 Q. "What did you do upon arrival?

18 A. "I made contact with the male in the first residence,"
19 I just talked about that.

20 Q. "Now, how did the defendant initially identify himself
21 to law enforcement?

22 A. "He identified himself as Bozo the Clown.

23 Q. "At what point did that identification take place?

24 A. "About maybe 45 minutes into attempting to make contact

1 at the front door is when the male opened a window and began
2 speaking to law enforcement."

3 And I actually should have noticed. I tagged that
4 page.

5 Q. "Okay. So when you're dispatched at 3:01, it takes
6 about 45 minutes before any communication is had with the people
7 inside the trailer?

8 A. "Correct.

9 Q. "Or anybody inside the trailer?

10 A. "Correct.

11 Q. "All right. And his initial communication was when
12 asked to identify himself, he identified himself as Bozo the
13 Clown?

14 A. "Yes."

15 So, what that tells me is for the first 45 minutes that
16 they were there, approximately 45 minutes, they were attempting
17 to make contact.

18 There was a 911 hang up.

19 There with was a stop at the first trailer who said,
20 it's not me it's the people who live behind me.

21 45 minutes. There was no attempt to break the door
22 down. There was no attempt to run in and administer any aid.

23 So, the question I have is, at that point, did you lose
24 the exigency? Did you lose the emergency aid exception? Because

1 you can have a situation, much like a traffic stop, if I were to
2 draw an analogy to it, if you have a traffic stop for drugs, you
3 have a short window.

4 You can't, the Nevada Supreme Court says you can't hold
5 a car that you have for no other reason than to wait for the car
6 with the drug dog to get there, to run it around the vehicle. If
7 you have no other reason to hold it, you got to let it go. And
8 holding it an additional 20 minutes can be a violation of their
9 Constitutional rights.

10 So, I don't know, because nobody briefed that issue for
11 me. But, I saw the issue a little differently than maybe both
12 sides did here on this. Because I think that you might be able
13 to argue that there were exigent circumstances, but did you lose
14 them?

15 And my question is, if you have time to call a
16 supervisor, if you have time to call a locksmith, why can't you
17 call a judge and get a warrant?

18 If we have time, and they waited. They waited for the
19 locksmith before they went into the property.

20 So, I think those may be some issues here that are
21 worthy of taking a look at. I really do, as I look at that
22 issue. So, I honestly think it's a Motion to Suppress, not a
23 Motion to Dismiss. And I need to know specifically what evidence
24 needs to be suppressed.

1 We've got a Motion to Continue the trial, but I think
2 we need to take a good, hard look at this. And that was never
3 addressed by anybody, either side, in this case.

4 To me that's the crux of the issue.

5 Now, so knowing that, I'm going to require briefing on
6 it. But, that was what came to my mind when I read the briefing
7 on it.

8 Well, yes, there's an exigent circumstance, no, there
9 isn't. Was there an exigent circumstance, and if there was, did
10 the state, did the Nye County Sheriff's Office lose that
11 exigency?

12 Could they have, when they first arrived, just broken
13 the door down and run in? But, did they lose that by their
14 actions? Was it reasonable to wait 45 minutes until you made
15 contact with the party? I don't know.

16 What was the communication between the dispatcher and
17 Nye County Sheriff's Deputy? Don't know that either at this
18 point.

19 But, anyway, since we are continuing the trial, I think
20 I'm going to just tell you that before I make a decision I want
21 some briefing on that very issue. And I do think it's more of a
22 Motion to Suppress the evidence, and I need to know specifically
23 what evidence needs to be suppressed, or alleged to be suppressed
24 I should say, so I think we need that.

1 Now, I want to talk about the Writ of Habeas Corpus on
2 a different issue. There are two things, two of the charges.
3 There's a number of, I think there are nine charges.

4 I will say this, that we are all going to pick up on
5 it. There is a habitual enhancement. Although, with the change
6 in the law, that's going to affect that because, remember, it
7 went from two prior felonies would be grounds for a small
8 habitual, three for large habitual.

9 Now I believe the statute is five and eight. And that
10 applies to any cases sentenced after July 1st of 2020.

11 That may be, I don't know if that will affect the
12 state's, how the state's going to charge this. I don't know that
13 much about the defendant's background, other than what I saw that
14 was attached as exhibits to the preliminary hearing.

15 However, there were two other issues involved, and one
16 was the charge of, of whether or not you can be charged with
17 Invasion of the Home. And the state argued, well, under the old
18 statute it could be Invasion of the Home, because that included a
19 room, that, I assume this is your argument, reading between the
20 lines. The door was locked, the decedent was trying to keep the
21 defendant out of the room.

22 The pictures from the preliminary hearing make it clear
23 that the defendant, or someone, broke the door down, clearly
24 there's a huge crack in the middle of the door and the doorjamb

1 is all destroyed. So, that's the basis for the state.

2 Defense is arguing, well, the problem is that it's not
3 just a room, Judge. It has to be the home. And even though the
4 decedent's brother rented the house, both parties had access to
5 all of the rooms in the house.

6 I believe that's the argument and therefore, Judge, by
7 its very nature we couldn't have an Invasion of the Home, am I
8 right? That's sort of the nutshell.

9 MR. MARTINEZ: Yes, Judge, I was framing it, can you
10 commit a home invasion on an interior bedroom?

11 THE COURT: Right. I'm curious. The argument from the
12 state is that under the old law, you could, you could have an
13 invasion of a room, and that's essentially what they are arguing.

14 The decedent went in, locked the door, obviously was
15 trying to bar the defendant from coming in the room, and the door
16 got broken down, and that's their basis.

17 With looking at the old law and the new law, and the
18 old law would be applicable at the time in question, do you still
19 take that position? Because you cite the new law.

20 MR. MARTINEZ: I did, Judge. The difference, my
21 understanding is, and when I read them, the difference between
22 the new law and the old law is that the new law specifically adds
23 the wording, of a separate occupied structure. To kind of give
24 it more, the assumption that the interior bedroom is not what

1 they were referring to.

2 And my stance, my argument is still the same, even
3 under the old law, that we are looking, unfortunately, like so
4 many issues in Nevada, there's not a lot of case law. There's
5 almost no case law on this.

6 They put the word, "room" in there not to refer to an
7 interior bedroom, but to refer to a hotel room. If I rent a
8 hotel room, that becomes my residence for a temporary period of
9 time. And if somebody forcibly enters the hotel room, that's
10 home invasion. Same with a dorm room. Same thing with a room in
11 an assisted living facility.

12 Those would be my arguments. That's what I think the
13 intent of the word "room" is in that statute. Judge what's not
14 in my brief, because it's not controlling law. But, it did
15 mention in Copper versus State 111 Nevada, 1409, in one of the
16 footnotes they state that the Information initially charged the
17 defendant there with the crime of forcible home invasion.

18 "Any person, who, by day or night, forcibly enters an
19 inhabited dwelling without the permission of the owner, resident,
20 or lawful occupant, whether or not a person is present in need at
21 the time of entry is guilty of Invasion of the Home."

22 The state dismissed those charges prior to the
23 commencement of trial, and it appears from the evidence that
24 Alford entered the home peacefully and properly, with permission.

1 In that case, Alford was invited into his ex-wife's
2 house, then entered her bedroom, where he found her in bed with
3 another man. His ex-wife testified the door came crashing down.
4 She entered the bedroom, and that there was forcible entry.

5 That was a situation with where it looks like he was
6 initially charged with home invasion for an interior bedroom.
7 The state dismissed the charge voluntarily, but the Court seemed
8 to agree that was the right way to go.

9 THE COURT: Was that 114 Nevada, 149? Did I get the
10 number right on that?

11 MR. MARTINEZ: 111 Nevada, 1409, footnote number two.

12 THE COURT: Mr. Allmon, what's your position with that?
13 Here's a question. Can you revoke your permission? Can you,
14 because essentially -- well, I, can you say, okay. You can go --
15 I guess there's a number of issues with this. It's my room, now
16 get out. I'm going to lock the door and barricade the door. And
17 if the door gets broken down, then there's no crime committed?
18 Or at least not that crime committed of invasion of a room or
19 Invasion of the Home?

20 MR. ALLMON: To me, Your Honor?

21 THE COURT: To whoever can answer that question.
22 Mr. Allmon, if you want, go ahead, I'm curious.

23 MR. ALLMON: The state's position is, yes, that you can
24 invoke consent to a room. And so while it may be true that the

1 defendant had access to the room, that the two roommates, as two
2 grown men living together, they could revoke access to each
3 other. And that is what happened. I'm trying to find it exactly
4 in my brief, where I mentioned that.

5 Right here on page 13, the bottom paragraph of my
6 response:

7 "It is in dispute that defendant was a lawful occupant
8 or resident of the home, and remained so until he was arrested.
9 The defendant was no longer a lawful occupant or resident of
10 Mr. Piper's room, because at the time of the offense the victim
11 revoked consent to his room by locking the defendant out.

12 "As such, nobody is disputing that the defendant could
13 not be held to answer for the crime of invading the parts of the
14 structure that excluded the victim's room.

15 The defendant here is not being charged with forcibly
16 entering his or her own home, or even forcibly entering his own
17 room. He is being charged with forcibly entering the room of
18 another. Inhabited dwelling of another.

19 The defendant in Truesdale was no longer a lawful
20 occupant or resident of his victim's home. That victim revoked
21 the defendant's access. So, the defendant could be charged with
22 invading that inhabited dwelling, which is what standard is.
23 Similar to the defendant here, the defendant was no longer a
24 lawful resident of Mr. Piper's room. Mr. Piper revoked

1 Defendant's access. The defendant can be charged with invading
2 that inhabited dwelling, which is the standard for home invasion.
3 Maybe we should just call it inhabited dwelling invasion and
4 clear up the whole issue, but that is the standard.

5 MR. MARTINEZ: Well, Judge I think the legislature
6 attempted to clear up the issue by calling it inhabited dwelling
7 invasion, by adding those words, "of a separate occupied
8 structure."

9 Now, I do think you can revoke consent to be in a
10 house, Judge, in any way. If I had somebody over to my house and
11 we got into an argument, and I said, get out, don't ever come
12 back, and I don't ever want to see you again, and they come and
13 kick down my front door, they have committed a home invasion,
14 even though they previously had consent to be inside my house.
15 And that is not the issue I am arguing here, Judge, is whether or
16 not that consent can be revoked because I believe legally it can.

17 I am just focused on whether or not you can commit that
18 home invasion on an interior bedroom of a house. And legally I
19 don't believe that you can.

20 THE COURT: It's an interesting issue. Anybody look at
21 the legislative history of why it was changed in 2019? Anybody
22 pull the legislative history to see why -- sometimes there is no
23 basis, they just do it. Sometimes there is, you're looking at
24 the committee, the testimony taken by the committees, they will

1 explain why they are changing.

2 Did anybody look at that?

3 MR. MARTINEZ: I did, Judge.

4 THE COURT: Okay.

5 MR. MARTINEZ: There is no basis that I found. And
6 that doesn't really surprise me. When this law was changed, it
7 was part of the massive bill that was passed, so it doesn't
8 surprise me at all that, you know, the adding of some words on to
9 this one statute wasn't specifically discussed in any of their
10 hearings, or the reasons why they were changing it all in the
11 grand totality of everything else that they were discussing with
12 that bill.

13 But, I did try to find it, and there was nothing there.

14 MR. ALLMON: Your Honor, I would just point out that
15 the legislative history of a separate legislature, which is what
16 it is. It is still Nevada legislature, but it still is a
17 separate legislature.

18 The legislative history post facto is, it should be the
19 most minimal of influential pieces of evidence that there is in
20 this. It should not be considered, in my opinion. It's a post
21 facto law, essentially. If we looked at that, I mean the whole
22 system of charges that existed before July 1st, 2020 would be
23 under attack.

24 Trafficking laws changed. There was an evaluation that

1 methamphetamine was being moved in larger amounts and being used
2 in larger amounts, or that it was just too harsh in general. And
3 so the legislature changed the amounts to a hundred grams.
4 That's not necessarily indicative of what the law was preceding
5 that.

6 THE COURT: Well, I understand that, but what it tells
7 you is why did they change it? Was there confusion, and that's
8 why, was it clarifying, or was it just, and I think it is very
9 useful, and the Nevada legislature, or the Nevada Supreme Court
10 will tell you, when things are vague and ambiguous, the first
11 place they go is to the legislative history. So, it is
12 absolutely critical and can play a very big, big role in that.

13 Now, I just pulled this case up, it's Alford v. State,
14 111 Nevada 1409 and you said it was what footnote?

15 MR. MARTINEZ: Footnote two, Judge.

16 MR. ALLMON: I am unfamiliar with this, so I don't know
17 what case we are talking about.

18 THE COURT: This is footnote two:

19 "The Information initially charged Alford with the
20 crime of forcible home invasion and then it's put in parentheses:
21 "(Any person who) by day or night, forcibly enters an inhabited
22 dwelling without permission of the owner, resident, or lawful
23 occupant, whether or not a person is present at the time of
24 entry, is guilty of Invasion of the Home." NRS 205.067(1).

1 "The state dismissed these charges prior to the
2 commencement of trial, and it appears from the evidence that
3 Alford entered the home peacefully, and probably with
4 permission."

5 So, I'm not sure that the, this was a case, factually
6 where he was convicted of First Degree Murder under the Felony
7 Murder Rule, and he appealed.

8 It was a First Degree Murder case where:

9 "The defendant was convicted of First Degree Murder
10 With Use of a Deadly Weapon. The state charged Alford," who is
11 the name of the party, "under an open charge of Murder, which is
12 to say the state charged only that Alford killed with malice
13 aforethought.

14 "There was no specific charge of First Degree Murder,
15 and there was no specific charge of Premeditation and
16 Deliberation, and no charge that Alford was guilty of a homicide
17 during the commission of a felony.

18 "The homicide in this case could have fallen under the
19 category First Degree Murder, premeditated and deliberated.
20 Murder, Second Degree Murder or Voluntary Manslaughter."

21 So, I'm not sure. The events of the morning of the
22 killing were as follows:

23 "Alford arrives at his former wife's trailer home early
24 in the morning, and engaged in a conversation with two

1 babysitters, who were in the living room. He asked the
2 babysitters if his wife was in the bedroom, and they told him
3 that she was.

4 "There was no evidence at that time he had illegally
5 entered the premises or that he was a trespasser.

6 "Upon being told where his wife was, Alford proceeded
7 to the bedroom. In the bedroom he found his former wife and the
8 boyfriend in bed together.

9 "There is conflicting evidence. One of the witnesses
10 stated that there was nothing unusual about Alford's entry into
11 the bedroom. However, his former wife testified that the door
12 came crashing down, intimating that Alford had forced his way
13 into the bedroom.

14 "Whether Alford forced his way into the bedroom or not,
15 there is no question that once in there, he stabbed the boyfriend
16 to death."

17 And then that cites to this footnote, and putting it in
18 that context then the footnote is:

19 "The Information originally charged Alford with the
20 crime of Forcible Home Invasion. The state dismissed these
21 charges prior to the commencement of trial, and it appears from
22 the evidence that Alford entered the home peacefully and probably
23 with permission."

24 So, I don't think it answers the question one way or

1 the other.

2 MR. MARTINEZ: And Your Honor, just the way that I read
3 that, was that the state dismissed it, the Court seemed to make a
4 note of it as though they were agreeing that was the right thing
5 to do, because they were discussing an interior bedroom.

6 Again, I know that's not part of the holding of the
7 case.

8 THE COURT: Right.

9 MR. MARTINEZ: Again, that's my interpretation of it,
10 and that's my argument.

11 THE COURT: Okay. Well, on the charge of Home Invasion
12 I'm going to let it stand. I may be wrong, but I do think that
13 that's an appropriate charge.

14 But, I do want to talk about the other charge. The
15 other charge is a gross misdemeanor, first and foremost. We have
16 nine charges. We have a gross misdemeanor about the -- I call it
17 the nunchaku.

18 THE COURT REPORTER: Judge, I'm sorry. What was the
19 word?

20 THE COURT: It is, let me see. N U N C H A K U.

21 All right. So, the issue on this one is kind of an
22 interesting one.

23 So, all of the charges, we have the charge of -- okay.
24 Count I, we have First Degree Murder of Vulnerable Person, a

1 Category A felony.

2 Count II, we have Open Murder, a Category A felony.

3 Count III, we have Invasion of the Home, in parentheses
4 (room), a Category B felony.

5 Count IV, we have Battery by Strangulation, a Category
6 C felony.

7 Count V, we have Abuse of a Vulnerable Person, which is
8 either a Category B felony or gross misdemeanor.

9 Count VI, we have Interception, Interruption or Delay
10 of Message Sent Over Telephone Lines, a gross misdemeanor.

11 Count VII is Possession of Dangerous Weapon, a gross
12 misdemeanor.

13 And this N U N C H A K U is the dangerous weapon that
14 we are concerned about.

15 Now, they said, in this charge it says:

16 "Defendant did willfully and unlawfully possess
17 N U N C H A K U with the intent to inflict harm upon the person
18 of another, at unit four, by striking Jonathan A. Piper with the
19 N U N C H A K U." Now, whatever. That is the basis for that
20 charge.

21 I went and I looked at everybody's testimony on that.
22 What I know is that there were one of these things in the living
23 room and two in the defendant's bedroom. I know there's a mark,
24 the pictures that were taken at the scene of the, at the trailer,

1 there's visible marks on the defendant's face and on the side of
2 his head.

3 I didn't hear one person testify that this was used on his face
4 or head, and I didn't see it anywhere in the autopsy report of
5 such a thing.

6 So, my question is this: You only need slight or
7 marginal evidence. And so I said to myself, what is slight or
8 marginal evidence? What is the legal definition of that?

9 And I couldn't find one. Here in Nevada it references
10 slight or marginal evidence, and then just generally what I found
11 was that it's meager evidence. Not much evidence, if you will.
12 Weak evidence.

13 Can you point somewhere to me, Mr. Allmon, where
14 there's weak evidence that the injuries on his face were caused
15 by this? Or that meets that element?

16 I was looking, and I have marked several places in the
17 transcript where we were kind of talking about it. But, I was
18 just trying to figure that out.

19 MR. ALLMON: Yes, Your Honor. I think that if the
20 Court looks, it's the state's reference to probable cause and the
21 standard that is slight, marginal, the slightest legal evidence.
22 The courts are not to inquire of the sufficiency. It's not a
23 mini trial.

24 THE COURT: I understand that. But, there's a

1 difference between slight and no. I'm trying to figure out where
2 there's slight evidence presented. So, I'm trying to figure out
3 how you get from, there was one of these in the living room, to
4 he had an intent.

5 MR. ALLMON: The reasonable inference is another
6 standard, Your Honor. And how you get to the intent is actual
7 actions. The slight or marginal evidence that we are looking at
8 that the nunchaku was used, is kind of where we need to start
9 with. So, if we start with slight or marginal evidence that the
10 nunchaku was used, that's there.

11 THE COURT: Well, how do you know that it was used?
12 The evidence is undisputed that there's a tussle that occurs
13 between the two of them. Things are thrown out. Chairs are
14 thrown out. The railing is broken on the trailer.

15 The pictures that are introduced into evidence show
16 that there's something that went on. There's stuff strewn all
17 about on the floor.

18 But, how do you get from, and clearly there's bruising
19 on his face, but how do you get to the slight bit?

20 Using that analogy, the chair outside, if you charged
21 him with the same thing, but it was the chair outside, that
22 should stick too, right? Because it would be slight or marginal
23 evidence of that. Or the scissors that were on the floor.

24 MR. ALLMON: If we are talking slight or marginal, then

1 yes, the state's theory that it presented, would be presenting
2 slight or marginal evidence, anything that would create a linear
3 mark would do that.

4 And so, yes. Any object, I think the low, low standard
5 of a reasonable inference, if that's the case, any linear object
6 could potentially have been the weapon.

7 And here's where we get into whether or not that slight
8 or marginal evidence, and defense's argument that it could have
9 been any of the linear things.

10 Yes. That's a fair argument to make at trial. And
11 that's what trial is for. Trial is the time to say, no, beyond a
12 reasonable doubt they did not show that it was specifically a
13 nunchaku, because we don't know that it's not the radiator, or
14 the chair, or something else.

15 When the state is putting on a preliminary hearing, it
16 is not required to call all of the witnesses that it would call
17 at a trial. It's not a mini trial, that's not the purpose.

18 So, while there may be evidence that the state is aware
19 of outside of what we admitted at the preliminary hearing, we are
20 not expected to bring all that in. We are just supposed to bring
21 the slight or marginal standard.

22 THE COURT: What if one of your witnesses testified to
23 just the opposite of that?

24 MR. ALLMON: The testified to the opposite?

1 THE COURT: Right. I want to read you some of the
2 testimony that I read from one of the detectives. Let me find
3 who it is here.

4 MR. ALLMON: I believe you are referencing Fancher.

5 THE COURT: Let me see if I can find it. It was one of
6 the detectives.

7 MR. ALLMON: Detective Fancher.

8 THE COURT: So, listen to this testimony.

9 This is on page 159 of the preliminary hearing
10 transcript.

11 And I will start at line 18:

12 Q. "So, if I understand your testimony earlier, you
13 started talking about the scale and injuries. Were you looking
14 at the potential for the nunchaku to have been responsible for
15 the injury observed?

16 A. "Yes, sir.

17 Q. "Okay. And you took some measurements along those
18 lines?

19 A. "Yes, sir.

20 Q. "And what were your findings?

21 A. "The findings, I did measurements to the nunchaku, and
22 also did some scale photographs of the injuries to the left side
23 of the decedent's head, face, and I couldn't comment as far as if
24 they were consistent with the nunchakus or -- "

1 Q. "Okay. All right. So, 14 is contested. Let's move on
2 to 15."

3 So, that was the detective who got the warrant, who
4 took the pictures, and he says, I can't say that that was done
5 like that. So, how is that slight or marginal evidence that the
6 injuries were caused that by that? It seems to suggest to me
7 that there's slight or marginal evidence that they weren't caused
8 by that.

9 MR. ALLMON: Well, Detective Fancher is saying that he
10 is not an expert, and not qualified to testify on that, is not
11 necessarily saying that it's not the case.

12 And so at trial will be the medical examiner that is
13 willing to say that that is consistent with a nunchaku mark.

14 THE COURT: Do you have that? Do you have anything
15 right now that you can pull out of your file and show me that the
16 medical examiner said that's consistent?

17 MR. ALLMON: No, Your Honor. It's based on an
18 interview that I did with the medical examiner. However, I
19 recognize that's not in the record, so that's not necessarily for
20 the Court to consider. I bring it up to point out, to illustrate
21 the point that the state doesn't present its whole case. It's
22 not a mini trial.

23 THE COURT: Sure, I understand that. But, just the
24 opposite happened when the detective got questioned about it.

1 Nobody asked the detective on redirect, well, so you're not an
2 expert in this, and couldn't it have been possible that that
3 happened. That never got asked. All that got asked is what I
4 read.

5 And then I looked, I looked several times in the record
6 to get the link for that charge. But, you still have to present
7 slight or marginal evidence. And just saying that there's a
8 picture of this in the living room and the person was attacked by
9 this, without anything more than that, I think that -- and
10 especially in light of the testimony of your own detective, I
11 think suggests otherwise.

12 But, I'm just, just, you know, like I said, when I
13 read, I go back to the Information. I'm trying to figure out
14 what we're doing and why we're doing it, because that's one I
15 wrestled with, I'll be honest with you on that.

16 MR. ALLMON: Do you want to hear from me, Your Honor?

17 THE COURT: I do. I'm just telling you, maybe you can
18 direct me someplace else in the record that would convince me
19 that slight or marginal evidence was presented at the preliminary
20 hearing.

21 MR. ALLMON: I think what you have is circumstantial
22 evidence of that, and that's important. Circumstantial evidence
23 doesn't need to be tied up into a nice little bow by the
24 testifying witness. That's what closing arguments are for.

1 That's the time to tie up the circumstantial evidence into a
2 little bow. And circumstantial evidence is sufficient for
3 conviction beyond a reasonable doubt. It's also sufficient for
4 probable cause, by the common sense understanding of probable
5 cause being a lower standard.

6 Another important thing to consider in a preliminary
7 hearing is defenses are not to be considered. A preliminary
8 hearing isn't necessarily a chance to, you know, the state puts
9 up its case, and the defense keeps trying to knock it back down.

10 The state, if it presents a sufficient standard, that's
11 what we are looking for. We are looking for a hurdle to get
12 over. And I think the detective being unwilling to say what that
13 is specifically, again, those are times for trial.

14 They are not time for sufficiency of the evidence, and
15 what you do have is the picture, the fact that the nunchaku is
16 separate. That indicates it was taken from the room at some
17 point, and that shows based on recency of the closeness of the
18 nunchaku to the scuffle. It's more substantial evidence that
19 nunchaku was used that night specifically.

20 So, those are the two that you have. The location, the
21 timing of it, and the linear mark for probable cause.

22 THE COURT: Do you think you would have better slight
23 or marginal evidence if that had not been found in the living
24 room, but had been found in the decedent's bedroom?

1 MR. ALLMON: Always. I mean, I would have better
2 evidence too, if it was on video. I could wish for facts as they
3 aren't, but that's not what I have.

4 THE COURT: Okay. All right. I was just curious.
5 Defense, do you have anything you want to say about that?

6 MR. MARTINEZ: Judge, there's no circumstantial
7 evidence. There's no the direct evidence. There's no evidence
8 at all that the nunchakus were used at all. It's as simple as
9 that.

10 I don't know why the state picked a gross misdemeanor
11 charge, to throw spaghetti at the wall and hope something sticks.
12 But, that's what they did, as the court alluded to, as I argued,
13 based on their argument here, Judge, the state thinks they could
14 have picked out any object from the living room, charge
15 Possession of a Deadly Weapon, and say we're good to go. Let's
16 let the jury decide that's what he used.

17 There's also testimony in there that the decedent fell
18 on the way to the room. That's how the bruise could have
19 occurred.

20 There was testimony at the preliminary hearing from Mr.
21 Torres's interview with Detective Fancher, that those bruises
22 came from the way that he constantly fell asleep on his hand on
23 the couch. That's testimony that we have.

24 But, apparently that's a portion of the interview that

1 we are not supposed to believe Mr. Torres, what we are supposed
2 to believe is all his other portions of the interview.

3 I know that's a low threshold that the state has to
4 meet, Judge. But, simply saying someone has a bruise, we found
5 an object in the house, doesn't meet that burden.

6 It's not circumstantial evidence of anything. It's not
7 as though, like Your Honor said, they found nunchakus in the
8 bedroom with the decedent.

9 They didn't find any blood on the nunchakus to suggest
10 that he was hit with them. They weren't able to get an accurate
11 measurement of everything.

12 To say, well, the measurement from these nunchakus
13 match the measurements of the linear mark on the decedent's face.
14 There wasn't any DNA swabs done on the nunchakus. There was none
15 of that done. It simply being present in place is not sufficient
16 and it's as simple as that, Judge.

17 THE COURT: Anything further?

18 MR. ALLMON: No, Your Honor.

19 THE COURT: I'm going to find that there is not slight
20 or marginal evidence. I am going to dismiss that charge. I
21 agree with the defense on that.

22 Okay. So, I didn't see the Motion to Continue the
23 trial but you can tell me about it. Why do we need to continue
24 the trial in this case?

1 And, state, are you --

2 MR. ALLMON: I will let the defense make its motion,
3 and then I have some things for the record, Your Honor.

4 MR. MARTINEZ: Judge, my forensic pathologist, this
5 would be my second Motion to Continue. Shortly after my first
6 one, the previous calendar call we had was on December 4th. I
7 believe December 3rd is when we were in front of Your Honor.
8 About a week and half later, I followed up with my forensic
9 pathologist to find out when his initial opinion would be
10 available.

11 And his assistant got back to me that there was a
12 medical emergency and he was out of the office, and would not be
13 back until the middle of January. I did follow up again. He is
14 back in the office, he is working. I expect that initial
15 opinion. They told me it would be ready by the beginning of
16 February.

17 If that opinion comes back and there's no additional
18 work to be done, then sure, I would be ready for the trial in
19 March. But, if that opinion comes back and there is additional
20 work to be done, like I kind of suspect, there will be additional
21 work to be done, then I will not be ready.

22 Additionally, Your Honor, a different expert that I
23 have that is doing the psych workup of Mr. Torres, has done his
24 interviews, and is working on his report. Based on that report,

1 I am planning on filing a motion to suppress the statements, that
2 he didn't knowingly and voluntarily and intelligently waive
3 Miranda. So, they should be suppressed. It will also be
4 attached it as an exhibit, but I do not have it yet.

5 And I know we are running up close to the calendar call
6 date in this case. I am working diligently, but, unfortunately,
7 the wheels of justice turn slowly sometimes.

8 THE COURT: And I realize that with COVID it doesn't
9 help either. We are just going to have to be honest about it.
10 We do the best we can.

11 What's your position Mr. Allmon?

12 MR. ALLMON: Your Honor, the state wants to make sure
13 that under NRS 174.511, the state is not waiving its right to a
14 speedy trial. The state has not done so in this matter. The
15 state does have a right to a speedy trial, and that should be
16 considered too.

17 THE COURT: Okay.

18 MR. ALLMON: I'm not done. I have a couple more
19 things.

20 THE COURT: Sure.

21 MR. ALLMON: And it's important to remember that the
22 reason the state has a right to a speedy trial is it's actually
23 in the defense's benefit to delay trials generally. Witnesses
24 fade away. It makes it harder for the State to charge a case and

1 successfully prosecute it.

2 However, with noting that, and the circumstances as
3 they are presented, the state also recognizes that under NRS
4 174.511(1), the defendant is allowed time to prepare a defense,
5 and the state has no basis to say that that's not what he's
6 doing.

7 THE COURT: Okay. Mr. Martinez?

8 MR. MARTINEZ: Judge, I just want to point out I'm not
9 sure if the state is formally opposing my motion, or just making
10 a record.

11 MR. ALLMON: Not formally opposing; just not waiving
12 our right to a speedy trial.

13 MR. MARTINEZ: Understood. Judge, obviously this is
14 not for purpose of delay. I am not trying to intentionally delay
15 anything.

16 Second of all, this is a murder case. There are
17 multiple Category A felonies that Mr. Torres is charged with.

18 Your Honor has been on the bench, and practicing in the
19 legal field for a long time. I just went over about a decade
20 myself. I know Mr. Allmon has less, but I'm sure he knows this
21 as well.

22 In cases this serious, it is very common that it takes
23 them a while to get to trial. We are less than a year still
24 removed from when the incident occurred and when Mr. Torres was

1 arrested. So, I think we are still doing pretty well time-wise,
2 Judge. That's it.

3 THE COURT: Obviously I don't like having repeat
4 trials. I have done that once so far, and that's because I got a
5 hung jury.

6 But, Mr. Torres is entitled to present his case. And
7 I'm going to tell you, I still think there's an interesting issue
8 hanging out, and that is on the suppression. I think those need
9 to be fully briefed. I don't know the answer. I just raised
10 them. I never thought I would use this, but in 2014 I went to a
11 class at the Judicial College on the Fourth Amendment
12 comprehensive search and seizure for trial judges. So, when I
13 saw this Fourth Amendment issue, I thought, I better go back, the
14 course was pretty intense. But, the author of the book on the
15 Fourth Amendment himself was one of the instructors.

16 So, I went back and looked at all of that in getting
17 prepared for today. I wanted to kind of brush up. I even made a
18 comment to my staff, I wish, it's been seven years now. I need
19 to go back, because the law changes so much in these areas.

20 But, I think that, and I can appreciate the state's
21 position, and I don't want to continue this out for a year or
22 anything like that. I'm just asking, you know, the defendant
23 does have the opportunity to present the argument with regard to
24 his Miranda, et cetera. And to prepare for trial.

1 So, my questions for the state or the defense is how
2 much time do you think you're going need?

3 MR. MARTINEZ: Your Honor, I'm also thinking about -- I
4 am less concerned about that I can continue other cases that I
5 have set for trial.

6 THE COURT: Sure.

7 MR. MARTINEZ: All those other ones, to be honest,
8 Judge, are set by defendants that are out of custody, and they
9 have waived speedy as well. So, this case would take priority
10 over any of those.

11 Judge, does the Court have trial dates in early July?

12 THE COURT: Let me ask Ms. Clifford. I think she's on.

13 THE CLERK: So far she said May or June.

14 THE COURT: I think the longer that we are out, I'm
15 going to be honest with you. The longer, if we can get to the
16 summer months, I think more people will get vaccinated, and it
17 will probably be easier to get a jury. I'm kind of worried. You
18 guys got a jury, but that was before we got kind of a bigger wave
19 of COVID again.

20 MR. MARTINEZ: I was conferring with the state in the
21 same way, that I'm worried about my trial schedule I know
22 Mr. Allmon and Mr. Vitto are as well.

23 THE COURT: And they are down an attorney now too. I
24 had trials scheduled with Don.

1 So, I mean not only is it horrific, but then what
2 happened to Don, but then, you know, somebody has to get up to
3 speed. You can't just pick up a file and be ready tomorrow.

4 THE CLERK: The last two weeks of July.

5 THE COURT: The last two weeks of July. I will say
6 this. My family has a beach party the last weekend of July. And
7 my family members are 89 years old. So, that's the only, I'm
8 going that Friday. We can go, and I'll fly out on Thursday, but
9 I'm taking that Friday, Saturday, Sunday.

10 MR. MARTINEZ: Judge, I believe the last two weeks in
11 July that the state was not available. So, what were the dates
12 that the Court had in May?

13 THE COURT: Well, tell Gerie that -- no, it got moved.
14 I was going to say, the National Association of Drug Court
15 Professionals is so worried that we are not going to be able to
16 go to Washington D. C. in May. That we were set to go for the
17 conference in May and they moved it to August. So, they are
18 obviously worried too. Maybe now we will have some insurrection.
19 I don't know.

20 THE CLERK: Your Honor, May 10th through the 14th and
21 17th through the 21st.

22 THE COURT: May 10th through the 14 and 17th through
23 the 21st. Does that work for everybody or is that a problem?
24 I'll work with you guys as best I can.

1 MR. ALLMON: None at all for me, Judge. So, the 10th
2 through the 21 essentially?

3 THE COURT: Okay. In the mean time, today I haven't
4 really ruled, I haven't granted your Motion to Dismiss. Like I
5 said, I think it's a Motion to Suppress, and maybe bringing that
6 at time of your other suppression motion.

7 MR. MARTINEZ: Judge, what I was going to suggest since
8 we had a couple weeks blocked out in March already, is maybe we
9 go to that week of March 22nd through the 26th and we can pick a
10 date like we have for this one, you know, I'm hoping that I can
11 have that, my motion to suppress filed by the beginning of
12 February.

13 THE COURT: Okay.

14 MR. MARTINEZ: Within the next couple of weeks and if I
15 am able to do that the state can respond and hopefully we can
16 argue everything on the same day if we can pick one of those
17 dates.

18 MR. ALLMON: Do you think you will have your motion
19 filed?

20 MR. MARTINEZ: I hope to within a couple of weeks.

21 MR. ALLMON: That is how you want to do it, Your Honor,
22 is the defense files one, and then I file a response?

23 THE COURT: It would be, once again, I'm not granting
24 his Motion to Dismiss. So, he would be taking the lead if he's

1 going to file anything else to suppress.

2 MR. MARTINEZ: Judge, I will be filing a supplemental
3 brief, briefing the issue, as well as being specific about what
4 I'm asking the Court regarding issues of arrest.

5 THE COURT: Let me see. I'm trying to look, but I
6 can't quite tell. The trial maybe toward the end of March, that
7 would give everybody a -- yes.

8 THE CLERK: March 18 or 25th.

9 THE COURT: How about the 25th? That would give you
10 guys some more time to argue any motions. Do you want to do 1:30
11 again?

12 MR. MARTINEZ: Please, Judge.

13 THE COURT: That's great. Some weeks I have more prep
14 work than others, and I will tell you, I got up at 4:30. I was
15 just beat from work yesterday when I got home. And I still had
16 four hours of reading before I went to bed. So I got up to read
17 the preliminary hearing transcript again and think about the
18 issues. So, that's great. 1:30 will be fine on the 25th, March
19 25th.

20 MR. ALLMON: Okay. 1:30.

21 MR. MARTINEZ: Can we have a date for the calendar
22 call, Judge?

23 THE CLERK: That would be April 2nd.

24 THE COURT: One thing I do like to do is before a

1 trial, we've got motions. Stuff comes up at the trial,
2 obviously, that you have to rule on.

3 But, to the extent you don't have to spend time
4 prepping for something that gets dismissed, it makes it easier
5 for everybody, including the Court.

6 All right. Anything else we need to talk about?

7 MR. ALLMON: No, Judge.

8 THE COURT: Thank you.

9 THE DEFENDANT: Your Honor?

10 THE COURT: Yes, Mr. Torres?

11 MR. MARTINEZ: I had a question for Mr. Martinez to
12 consult for a moment. Do I still have that chance?

13 THE COURT: You do. If there's nothing else, I'm going
14 to have my court reporter log off, I'm going to leave the
15 courtroom. Give us a minute to shut the recording system off.
16 We'll leave, and you can have a private conversation with your
17 attorneys. How's that?

18 THE DEFENDANT: Thank you. That would be great.

19 THE COURT: Okay. All right. Everyone, thank you.
20 Very, very good briefs. Mr. Allmon, I thought your briefs were
21 very good.

22 I thought your briefs were very good. I appreciate it.
23 Good briefs are fun. When they're terrible, they give me
24 terrible gray hair. So, you guys did a good job on this.

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MR. MARTINEZ: Thank you, Your Honor.

THE COURT: All right. Thank you, Juanita. I'm going to give you the file back.

(Whereupon proceedings concluded at 3:54 p.m.)

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STATE OF NEVADA)
) Ss.
COUNTY OF DOUGLAS)

I, SUZANNE KUES ROWE, Certified Court Reporter,
licensed in the State of Nevada, License #127, and a Notary
Public in and for the State of Nevada, County of Douglas, do
hereby certify that the foregoing proceeding was reported by me
and was thereafter transcribed under my direction into
typewriting; that the foregoing is a full, complete and true
record of said proceedings.

I further certify that I am not of counsel or attorney
for either or any of the parties in the foregoing proceeding and
caption named, or in any way interested in the outcome of the
cause named in said caption.

Date: March 15, 2021

SUZANNE KUES ROWE, CCR #127

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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-

SECOND AMENDED
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 Monday, the 10th of May, 2021. Ten (10) days, May 10-14, 2021 and May 17-21,2021 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 2nd day of April, 2021, 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 2nd day of April, 2021, 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 25th day of March, 2021, at the hour of 1:30 p.m., with courtesy copies to the court by March 18, 2021, at the hour of 4:00 p.m.

DATED this 28th day of January 2021.


KIMBERLY A. WANKER
DISTRICT JUDGE

FIFTH JUDICIAL DISTRICT COURT
ESMERALDA AND NYE COUNTIES



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CERTIFICATION OF SERVICE

The undersigned hereby certifies that on the 28th day of January 2021, 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)

RONNI BOSKOVICH, ESQ.
PAHRUMP, NEVADA
(HAND DELIVERED)

Melissa Stepp
MELISSA STEPP, Secretary to
DISTRICT JUDGE

Fifth Judicial District Court
ESMERALDA AND NYE COUNTIES

