

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 3 OF 4

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Clerk of Supreme Court

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FEB 12 2021

Case No.: CR20-0092

Dept. No.: 1

Nye County Clerk
Brittani Smith Deputy

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

THE STATE OF NEVADA,

Plaintiff,

vs.

MARCO ANTONIO TORRES,

Defendant.

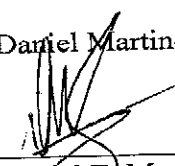
**DEFENDANT'S SUPPLEMENTAL
BRIEF IN SUPPORT OF MOTION TO
SUPPRESS**

COMES NOW, the Defendant, Marco Antonio Torres, by and through his Public Defender, Daniel E. Martinez, Esq., of Daniel Martinez Law, LLC, and files this supplemental brief in support of his motion to suppress.

This motion is made and based on all the papers and pleadings on file herein, the Points and Authorities submitted herewith, the exhibits attached hereto, and any further evidence and argument as may be adduced at the hearing of this matter.

DATED this 12th day of February, 2021.

Daniel Martinez Law, LLC


Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

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POINTS AND AUTHORITIES
PROCEDURAL BACKGROUND

On January 27, 2021, a hearing was held for the Court to hear oral argument on the Defendant's Motion to Dismiss. The Court pointed out that it should have been filed as a Motion to Suppress, and also noted a different issue that had not been briefed. The Court ordered the parties to brief the issue of whether an exigent circumstance can expire, and if that happened in this case. The Court also asked the Defendant to include, specifically, what he is moving the Court to suppress.

EXPIRATION OF EXIGENT CIRCUMSTANCES

No law enforcement interactions can last longer than is necessary under the circumstances. A traffic stop can violate the Fourth Amendment if it is prolonged beyond the time "reasonably required to complete the mission of issuing a warning ticket." *Rodriguez v. United States*, 575 U.S. 348, 354 (2015). An arrest warrant does not justify law enforcement's prolonged occupation of a suspect's home. *Chimel v. California*, 395 US. 752, 762-763 (1969). By itself, an arrest warrant does not authorize law enforcement officers to carry out a broader search of the arrestee's dwelling for evidence; nor does it authorize them to remain inside the dwelling, or enter it, after they have removed the arrestee from it. *Id.* A search or seizure based on exigent circumstances ends when the emergency passes. *People v. Duncan*, 42 Cal. 3d. 91, 720 P.2d 2 (Cal. 1986).

An instructive case comes from the Delaware Superior Court. The Defendant there was a suspect in two different indecent exposure incidents. *State v. Foreman*, 2019 Del. Super. LEXIS 416, 2019 WL 4125596. Police attempted to perform an investigatory traffic stop on him, but the Defendant fled on foot. *Id.* Police surrounded the house he fled to, and attempted to make contact with the residents, but no one responded to the efforts. *Id.* Without obtaining a warrant, the Special Operations Response Team unit entered the house and found the Defendant barricaded in the attic with his girlfriend. *Id.* The Defendant's motion to suppress was granted because the "hot pursuit" ended when the officers surrounded the residence, suspecting that the Defendant had entered it, and it did not appear that the

1 was a great sense of urgency involved in apprehending him. *Id.* It appeared that the police could have
 2 waited for a warrant because the risk that the suspect could have escaped the residence was not
 3 significant since the residence was surrounded by police and, given the time it took for the Special
 4 Operations Response Team unit to arrive (over one hour), the officers could have obtained a search
 5 warrant. *Id.*

6 Similarly, in the case before the Court, any exigent circumstance that may have existed upon
 7 Deputies' arrival to the property ended when the deputies with the Nye County Sheriff's Office
 8 surrounded the house on Linda Street, and they promptly and immediately did nothing. Like law
 9 enforcement in *Foreman*, there was no sense of urgency. This is apparent from the very beginning of
 10 the body worn camera footage, in which Deputy Gideon is casually walking towards the first house on
 11 the property to make contact with the occupants. After the individual in the first residence directed
 12 Deputy Gideon to the back residence, Deputy Gideon causally strolled to the back residence. Deputies
 13 then waited for backup, then a supervisor, and finally a locksmith before making entry into the house an
 14 hour and a half after their arrival.

15 The State is relying on the emergency aid exception to the warrant requirement under the Fourth
 16 Amendment to justify Deputies' warrantless entrance into the house. The only piece of evidence present
 17 that possibly signals that someone may have been injured is the disconnected 911 call. However, any
 18 emergency aid exception or exigent circumstance from the disconnected 911 call was lost when Deputies
 19 arrived on scene and did not take immediate action. They heard no commotion, and heard no sounds of
 20 any possible altercation. They did not observe an altercation taking place, and they saw no signs that
 21 anyone inside the house suffered even a minor injury. Deputies' eventual warrantless entry into the
 22 house was unlawful, and necessitates suppression.

ITEMS TO BE SUPPRESSED

23 The Fourth Amendment requires the exclusion of all evidence obtained as a result of warrantless
 24 non-emergency home searches. *Edwards v. State*, 107 Nev. 150, 154, 808 P.2d 528, 530 (1991). The

Supreme Court has explained that this rule is designed to protect the physical integrity of the home and not grant criminal suspects protection from statements made outside their premises where police have probable cause for arresting the suspect for committing a crime. *New York v. Harris*, 495 U.S. 14 (1990). In that case, police had probable cause to arrest the Defendant for murder. *Id.* After a warrantless arrest at his house, the Defendant made inculpatory statements in subsequent interviews with the police. *Id.*

In the current case, there was no probable cause for the Nye County Sheriff's Office to arrest Marco Torres without their unlawful entry into his home. So, any and all evidence and information that was obtained after the Sheriff's Office made their unlawful entrance into the house must be suppressed.

Those items are:

- All pictures taken inside the house, including, but not limited to:
 - pictures of Jonathan Piper,
 - pictures of Marco Torres,
 - pictures of damage to the bedroom door,
 - pictures of marijuana,
 - pictures of nunchaku,
 - pictures of the kitchen,
 - pictures of the living room,
 - pictures of the bedrooms, and
 - pictures of any cell phones
- All testimony about the observations of any member of law enforcement after making entry into the house.
- All items seized from inside the house, including but not limited to:
 - Steak knife found in Jonathan Piper's room,
 - Cell phone case found in Jonathan Piper's room,

- Cell phone found in Jonathan Piper's room,
- Suspected marijuana found in the living room,
- Samsung Galaxy cell phone found in the living room,
- Three pairs of Nunchaku found in the living room,
- Four pairs of Nunchaku found in Marco Torres' bedroom,
- Top of the zip lock bag found in the living room,
- Suspected marijuana and torn zip lock bag found in the kitchen,
- Black tablet found in Marco Torres' bedroom,
- Bag of prescription pills found in Jonathan Piper's bedroom, and
- Metal gray broom found in Jonathan Piper's bedroom.
- Jonathan Piper's body
- The autopsy report of Jonathan Piper, including, but not limited to,
 - All pictures taken at the autopsy of Jonathan Piper,
 - All toxicology reports of Jonathan Piper,
 - The written report by the medical examiner, and
 - X-rays of Jonathan Piper
- All testimony about the autopsy from any person that performed or observed the autopsy of Jonathan Piper.
- All body worn camera footage from any member of law enforcement that made entry into the house.
- Information found on any cellular phone seized during the search of the house.
- Any and all statements made by Marco Torres after Deputies made entry into the house, including all of his recorded interviews with members of the Sheriff's Office the following day

DANIEL MARTINEZ LAW

DATED this 12th day of February, 2021.

Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

CERTIFICATE OF SERVICE

I, Daniel E. Martinez, Esq., Nye County Public Defender and counsel for the Defendant,
MARCO ANTONIO TORRES, do hereby certify that I have served the following:
Defendant's Supplemental Brief is Support of Motion to Suppress in
Case No. CR20-0092
State v. Marco Antonio Torres

upon said Plaintiff by delivering a true and correct copy thereof on February 12, 2020, to the
following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE


Daniel E. Martinez, Esq.

FILED
FIFTH JUDICIAL DISTRICT
FEB 26 2021
Terri Pemberton
County Clerk
Deputy

Case No.: CR20-0092

Dept. No.: 1

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

THE STATE OF NEVADA,

Plaintiff,

vs.

MARCO ANTONIO TORRES,

Defendant.

MOTION TO SUPPRESS
DEFENDANT'S STATEMENTS AND
REQUEST FOR JACKSON V. DENNO
HEARING

COMES NOW, the Defendant, Marco Antonio Torres, by and through his Public Defender, Daniel E. Martinez, Esq., of Daniel Martinez Law, LLC, and hereby moves this Court for an order limiting testimony regarding statements allegedly made by the Defendant to law enforcement officers, and request for an evidentiary hearing pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964).

This motion is made and based on all the papers and pleadings on file herein, the Points and Authorities submitted herewith, the exhibits attached hereto, and any further evidence and argument as may be adduced at the hearing of this matter.

DATED this 18th day of February, 2021.

Daniel Martinez Law, LLC


Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

1
2 **NOTICE OF MOTION**

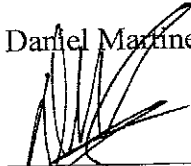
3 TO: Nye County, Plaintiff; and

4 TO: District Attorney, its Attorneys;

5 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion to Dismiss on
6 Calendar for hearing in Department 1 of the above-entitled Court on the 25 day of March, 2021,
7 at 1:30pm a.m. or as soon thereafter as counsel may be heard.

8 DATED this 18th day of February, 2021.

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10 Daniel Martinez Law, LLC

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13 Daniel E. Martinez, Esq.
14 Nevada Bar No.: 12035
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POINTS AND AUTHORITIES
FACTUAL BACKGROUND

Just after 3:00am on April 4, 2020, the Nye County Sheriff's Office (hereinafter "NCSO") received a 911 call. The line was soon disconnected, and NCSO deputies were dispatched to the location at 835 South Linda Street in Pahrump, Nevada. At about 4:30am, deputies finally made entry into the house, with the assistance of a locksmith. They located Jonathan Piper, who was deceased, and the Defendant, Marco Torres. Torres was arrested and transported to the Nye County Detention Center.

Around 10:00am, Detectives Fancher and Fischer, and later Captain Boruchowitz, interviewed Torres at the Nye County Sheriff's Office. Torres was already dressed in the jail attire and was moved to a small interview room, where he was instructed to sit against the wall, opposite the only door. Detective Fancher read Torres his *Miranda* rights, and Torres said he waived them and agreed to speak. However, about an hour and fifteen minutes into the interview, Detectives mention that Torres waived his rights, and Torres responded by saying "When you lose your *Miranda* rights, what do you mean?" The interview then continued, totaling more than three hours in length.

During the interview, Torres mentions his history of mental health issues, but the Detectives are never concerned with that, and do not ask any more about it. Torres also discusses some of his history with substance use and abuse, but again, Detectives were not concerned with those issues, or how they could affect the interview. Had Detectives dug further, they would have learned a lot.

Torres is 58-years-old, and has been seeing doctors for mental health issues since he was seven-years-old. He was hyperactive, unruly, and was sexually abused at a young age. He was diagnosed as bipolar, and has been admitted to psychiatric hospitals about a dozen different times, beginning in 1987. Sometimes those hospitalizations were voluntary, and other times they were involuntary. Torres had been prescribed a litany of medications over the years to help him with his mental health issues, but in 2009 he stopped taking any psychiatric medications as he felt he was like a zombie.

1 Instead, Torres self-medicated, like he had been doing for quite some time. Torres began using
2 substances when he was nine-years-old, the age he had his first sip of alcohol. By the time he turned
3 12, his marijuana use became daily. He experimented with just about every known drug during the
4 course of his adult life, even becoming addicted to crack cocaine for more than a decade. Drug use and
5 addiction led to homelessness and legal troubles. Torres' marijuana and alcohol use have continued for
6 the entirety of his life. He used both multiple times a week, if not daily, until April 4, 2020, the date of
7 his arrest.
8

9 On the evening before he was arrested, Torres' behavior was like any other day. He smoked
10 marijuana. He consumed more than nine 12-ounce beers, and drank a half a bottle of honey whiskey.
11 He was so intoxicated, that he was not even hungover when he spoke to Detectives the next day at
12 10:00am; he was still drunk. NCSO deputies entered the house at about 4:30am. Torres was booked
13 into the detention center at about 7:15am. Detectives then began their interview with him right around
14 10:00am. This left Torres with no time to sleep or sober up.
15

16 But despite all of these circumstances, Detectives plowed ahead with the interview. Only being
17 concerned with getting as much information from Torres as possible, and not at all concerned about
18 Torres' constitutional rights. Even after Torres made clear that he didn't understand that he waived his
19 rights, still Detectives persisted.
20

21 Over the course of three hours, Detectives asked Torres to recount the events over and over and
22 over again. At one point, after Torres had given his version of events, Captain Boruchowitz entered the
23 room, and told Torres that he was mitigating what happened. Captain Boruchowitz told Torres to stop
24 mitigating, and recounted the same events with his own interpretation. Torres would then repeat that
25 version almost verbatim to Detectives Fancher and Fischer when they returned to the interview room.
26

27 With the combination of his mental health issues, lifetime of substance abuse, and sleep
28 deprivation, there is no way Torres could have understood his *Miranda* rights, much less given a
knowing, voluntary, and intelligent waiver of those rights, or any voluntary statement to Detectives.

LEGAL ARGUMENT

A valid waiver of rights under *Miranda* must be voluntary, knowing, and intelligent. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). "A waiver is voluntary if, under the totality of the circumstances, the confession was the product of a free and deliberate choice rather than coercion or improper inducement." *U.S. v. Doe*, 155 F.3d 1070, 1074 (9th Cir. 1998) (citing *United States v. Pinion*, 800 F.2d 976, 980 (9th Cir. 1986)). A written or oral statement of waiver of the right to remain silent is not invariably necessary. *North Carolina v. Butler*, 441 U.S. 369, 373 (1979). Rather, a waiver may be inferred from the actions and words of the person interrogated. *Id.*

The issue of whether a defendant's statements to authorities are voluntarily made is a separate inquiry from the issue of whether proper *Miranda* warnings were given, and waived. An involuntary statement made by an accused is inadmissible for any purpose at trial, irrespective of whether *Miranda* warnings were given. *Mincey v. Arizona*, 437 U.S. 385, 398 (1978). Nevada follows the Massachusetts rule when the voluntariness of a defendant's statement is put in issue. *Carlson v. State*, 84 Nev. 534, 445 P.2d 157 (1968). Under this rule, the trial judge receives evidence on the voluntariness of a statement and then determines whether the statement was voluntary. A defendant, therefore, is entitled to a pretrial hearing to challenge the voluntariness of a statement to police. *Jackson v. Denno*, 378 U.S. 368 (1964). At this hearing, the defendant may take the stand in order to testify regarding the voluntariness of his statements, and the waiver of *Miranda*. The defendant, however, may not be cross-examined regarding any other issue in the case, and his testimony at this hearing is not admissible against him at trial. NRS 47.090.

The test for voluntariness is whether, under the totality of the circumstances surrounding the statement, "...the government obtained the statement by physical or psychological coercion or by improper inducement so that the suspect's will was overborne." *United States v. Harrison*, 34 F.3d 886, 890 (9th Cir. 1994), quoting *United States v. Leon Guerrero*, 847 F.2d 1363, 1366 (9th Cir. 1988). After the voluntariness of a statement has been challenged, the government bears the burden of showing

1 voluntariness by a preponderance of the evidence. *Lego v. Twomey*, 404 U.S. 477, 489 (1972). The law
2 draws no distinction between confessions extracted by physical threats and those extracted by
3 psychological tactics. A confession is involuntary whether coerced by physical intimidation or
4 psychological pressure. *Townsend v. Sain*, 372 U.S. 293, 307 (1963); *Passama v. State*, 103 Nev. 212,
5 735 P.2d 321 (1987).

6 The Nevada Supreme Court has held that intoxication raises an issue of voluntariness. *Tucker*
7 *v. State*, 92 Nev. 486, 553 P.2d 951 (1976). The standard applied when determining whether or not to
8 exclude incriminating statements is that the defendant be, "so intoxicated that he was unable to
9 understand the meaning of his statements." *Stewart v. State*, 92 Nev. 168, 171, 547 P.2d. 320, 321
10 (1976).

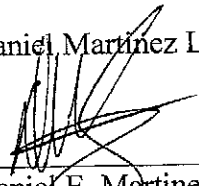
11 Here, Torres was under the influence of alcohol and marijuana, had been deprived of sleep, and
12 suffered from a history of mental health issues when he made his statements. He was not in a sound,
13 logical state of mind and did not comprehend the rights he was giving up by speaking to Detectives.
14 Furthermore, Torres made it clear that he did not understand his rights after being read Miranda.
15 Detectives never questioned Torres about his intoxication or mental health issues, or in any way ensured
16 that he understood the rights he was waiving and/or the statements he was making. This is especially
17 concerning because Torres admitted to officers that he had mental health issues, and had just recently
18 used alcohol and marijuana. Therefore, Torres' statements are not reliable, and based on the totality of
19 the circumstances, due to his intoxication and mental health issues, the statements are also not voluntary.
20 Torres is requesting a *Jackson v. Denno* hearing where the State will be required to prove by a
21 preponderance of the evidence that Torres' statements were voluntary in so much that he was not "so
22 intoxicated that he was unable to understand the meaning of his statements." *Stewart v. State*, 92 Nev.
23 at 171, 547 P.2d at 321.

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CONCLUSION

The Court should prohibit admission of the Defendant Marco Torres' statements to law enforcement because the statements were involuntary, and Torres did not knowingly, voluntarily, and intelligently waive his *Miranda* rights. Torres requests that the Court order an evidentiary hearing pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964)

DATED this 18th day of February, 2021.

Daniel Martinez Law, LLC

Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

DANIEL MARTINEZ LAW

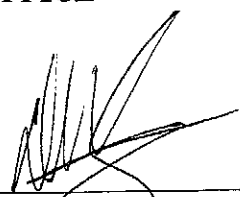
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CERTIFICATE OF SERVICE

I, Daniel E. Martinez, Esq., Nye County Public Defender and counsel for the Defendant,
MARCO ANTONIO TORRES, do hereby certify that I have served the following:
**Defendant's Motion to Suppress Defendant's Statements and Request for Jackson v.
Denno Hearing
Case No. CR20-0092
State v. Marco Antonio Torres**

upon said Plaintiff by delivering a true and correct copy thereof on February 18, 2021, to the
following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE



Daniel E. Martinez, Esq.

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

Case No. CR20-0092

Department 1

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

FILED
FIFTH JUDICIAL DISTRICT

MAR 03 2021

 Nye County Clerk
Deputy

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

THE STATE'S INSTANT RESPONSE TO
DEFENDANT'S SUPPLEMENTAL BRIEF IN
SUPPORT OF MOTION TO SUPPRESS

v.

MARCO ANTONIO TORRES,

Defendant. /

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

POINTS AND AUTHORITIES

I. PROCEDURAL BACKGROUND

The Defendant filed a Motion to Dismiss on Sep. 23, 2020, the State filed its
Response to Defendant's Motion to Dismiss on Oct. 6, 2020, and the Defendant filed
his Reply to State's Response to Motion to Dismiss on Oct. 12, 2020. The Court heard
oral arguments on the matter on Jan. 27, 2021 and asked for briefing on the issue of
whether the sheriffs let the exigent circumstance expire or otherwise lost it before
entry. The Defendant filed Defendant's Supplemental Brief in Support of Motion to
Suppress on Feb. 12, 2021 and the State now files this instant response reiterating all

1 points made in its Response to Defendant's Motion to Dismiss and further addressing
2 the issue raised by the Court.

3 **II. LEGAL ANALYSIS**

4 In addition to the arguments previously made by the State, the sheriffs acted in
5 accordance with the Fourth and Fourteenth Amendments because they had an
6 objectively reasonable basis to believe that someone inside the residence was in need
7 of medical assistance, or was in danger, based on the totality of the circumstances
8 surrounding the 911 call. This included a victim calling 911 and asking for help, a
9 second person saying "false alarm" and hanging up, return calls by the dispatcher
10 going unanswered, neighbors directing the sheriffs to the residence and indicating that
11 there was a an argument between the tenants, and the Defendant acknowledging that
12 someone else was inside with him, but refusing the sheriffs entry which caused a
13 delay. Finally, the sheriffs were acting in real time on the street, with limited
14 information, and the Defendant that was delaying them. Under such circumstances,
15 the sheriffs acted reasonably by making on the spot decisions to surround the mobile
16 home, consult with supervisors, and then make the tactical decision to enter with the
17 assistance of a locksmith instead of immediately kicking in the Defendant's door.

18 **A. The Nye County Sheriffs Had an Objectively Reasonable Basis for an**
19 **Emergency Entry**

20 **1. A 911 hang-up call falls squarely within the emergency aid exception**

21 When police enter a house after a 911 hang-up, that entry is best classified as
22 an entry pursuant to the emergency aid exception. *Johnson v. City of Memphis*, 617
23 F.3d 864, 870 (6th Cir. 2010). As the Sixth Circuit pointed out, "[t]he whole point of the
24 911 system is to provide people in need of emergency assistance an expeditious way

1 to request it." *Id.* at 870. Although the court in *Johnson* refused to find that it is always
2 objectively reasonable for the police to enter a house based upon a 911 hang-up, and
3 instead found it should be evaluated on a case by case basis, it did find that entry was
4 justified by an objectively reasonable basis in line with *Michigan v. Fisher*, 558 U.S. 45.
5 *Id.* at 868 & 871.

6 In *Johnson*, the Sixth Circuit found that the combination of a 911 call hang-up,
7 an unanswered return call, and an open door with no response from within the
8 residence, was sufficient to invoke the emergency aid exception. *Id.* at 869-70. Other
9 courts have similarly classified the entry. In *Hanson v. Dane County*, the Seventh
10 Circuit found a 911 hang-up call and unanswered call back constituted probable cause
11 and an exigency for entry. 608 F.3d 335, 337 (7th Cir. 2010). In *United States v. Najar*,
12 the Tenth Circuit found that a 911 hang-up call, combined with disconnected call
13 backs, and the defendant's lack of cooperation satisfied the emergency aid
14 requirement. 451 F.3d 710, 718-720 (10th Cir. 2006).

15 Here, we have even more than what any of the courts had in *Johnson*, *Hanson*,
16 and *Najar* to justify the emergency aid exception for a 911 call hang-up. We have a
17 caller that actually asked for help before the hang-up, then the phone was taken from
18 him by the Defendant saying "false alarm" and then hanging up, call backs from the
19 sheriff's dispatcher going unanswered, neighbors pointing the police in the direction of
20 the Defendant and victim's (Mr. Piper's) shared residence indicating that a disturbance
21 happened in that house, a scene of disarray, and the Defendant refusing to cooperate.
22 Therefore, because the facts here exceed *Johnson*, *Hanson*, and *Najar* to invoke the
23 emergency aid exception, the totality of the circumstances surrounding the 911 call
24 hang-up demonstrates an objectively reasonable basis for entry under the emergency
aid exception.

1 **2. The police do not need to appear hurried or flustered for an emergency**
2 **to exist**

3 The "'emergency aid exception' does not depend on the officers' subjective
4 intent or the seriousness of any crime they are investigating when the emergency
5 arises." *Michigan v. Fisher*, 558 U.S. 45, 47, 130 S. Ct. 546, 548, 175 L. Ed. 2d 410
6 (2009) (internal punctuation and citations omitted). Instead, "[i]t requires only an
7 objectively reasonable basis for believing that a person within the house is in need of
8 immediate aid." *Id.* The individual officer's state of mind is not relevant under the
9 Fourth Amendment. *Brigham City v. Stuart*, 547 U.S. 398, 404, 126 S. Ct. 1943, 1948,
10 164 L. Ed. 2d 650 (2006).

11 If an individual deputy's state of mind is irrelevant, it follows then that the
12 deputy's external manifestation of their state of mind is equally irrelevant. To require
13 that they appeared hurried is requiring that they have an external manifestation of a
14 state of mind that they are not required to have. The Fourth Amendment does not
15 require that the officer's subjective intent is to respond to an emergency, therefore, it
16 similarly cannot require they have an external manifestation that they are responding
17 to an emergency. Thus, whether they "strolled" or took off in a hurried run is irrelevant
18 under the Fourth Amendment, so long as an objectively reasonable basis actually
19 existed.

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1 **3. Whether or not the police had time to obtain a warrant based on**
2 **probable cause is not relevant to whether the police had an objectively**
3 **reasonable basis to enter for an emergency**

4 Police entry into a house for under the emergency aid doctrine does not require
5 probable cause. Because warrants require probable cause, the police are unable to
6 receive a warrant based on the emergency aid exception even if they tried. Because
7 the sheriffs here could not have obtained a warrant to enter based on the emergency
8 aid exception, they cannot be penalized for not seeking a warrant and therefore,
9 whether they had time to get a warrant is an irrelevant factor here.

10 a. The emergency aid exception does not require probable cause

11 Although the general rule for an exigent circumstance is that it still requires
12 probable cause, emergency entries are a class of exceptions that do not require
13 probable cause. *Hannon v. State*, 125 Nev. 142, 145-146, 207 P.3d 344, 346 (2009);
14 see generally, *Michigan v. Fisher*, 558 U.S. 45 (2009) (making no reference to
15 “probable cause” in the opinion). For this reason, some scholars and courts have
16 classified the emergency aid exception as an exception that is separate and distinct
17 from a simple exigency. *Hannon*, 125 Nev. at 145-146. Regardless of the exact
18 classification, what is clear, is that “warrantless entries for emergency reasons do not
19 require probable cause.” *Id.* at 145.

20 b. There is no warrant for emergency aid because warrants require probable
21 cause

22 “The right of the people to be secure in their persons, houses, papers, and
23 effects, against unreasonable searches and seizures, shall not be violated, and no
24 Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and
 particularly describing the place to be searched, and the persons or things to be
 seized.” U.S. Const. Am. IV (emphasis added). There is no such thing as a warrant for

1 the police to render emergency aid. *Compare* NRS 179.045 (requiring probable cause
2 for a warrant to issue) *with generally* NRS 179 (omitting “emergency” and “exigent”
3 from the chapter).

4 c. The police cannot be expected to seek a warrant that does not exist

5 If no warrant exists for an emergency aid exception, then the basis for police
6 entry does not disappear because the police had time to get a warrant: the police
7 cannot be punished for not seeking a warrant that does not exist. Therefore, while it
8 may have been a factor in the Delaware state trial court’s decision to reject the
9 exigency of hot pursuit in *State v. Foreman*, 2019 Del. Super. LEXIS 416, 2019 WL
10 4125596, because once the house was surrounded, the police could have obtained a
11 warrant (see Def. Supp. Brief in Support of Mot. to Dismiss, 3:1-10), it is not a factor
12 here.

13 Assuming for the sake of argument that the Delaware state court’s analysis was
14 correct, the reasoning there does not apply to this case. In contrast to the Delaware
15 state trial court case, once the police here surrounded the Defendant’s home, they
16 could not have sought a warrant to render emergency aid to Jonathan Piper; the Nye
17 County Deputy Sheriffs had to decide whether to make a warrantless entry or just
18 abandon the victim inside that had called out for help. They chose to enter the house
19 and the Fourth Amendment of the United States Constitution permits and even
20 expects it. Therefore, it is irrelevant whether they had time to get a warrant because
21 even with all the time in the world, they had no ability or process to obtain a warrant
22 under the emergency aid exception.

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1 Thus, whether or not the police had time to obtain a warrant is not relevant to
2 whether or not the Fourth Amendment permits the police to enter based on an
3 objectively reasonable basis for believing that medical assistance was needed or
4 persons were in danger, because no such warrant exists.

5 **B. The Sheriffs did Not Forfeit the Emergency Exception**

6 The sheriffs were not required to immediately force their way in under the
7 Fourth Amendment. The Defendant raising this alternative method with the advantage
8 of *post hac* second guessing does not mean that the sheriffs acted unreasonably in
9 failing to recognize or pursue an alternative means of handling the emergency,
10 particularly when the delay was attributable to the Defendant.

11 **1. The Nye County Sheriffs Stayed within the Scope of the Detention and**
12 **Search because they Diligently Pursued their Investigation**

13 A detention under the Fourth Amendment is within the scope if police diligently
14 pursue their investigation, based on the demands of the particular situation. *United*
15 *States v. Sharpe*, 470 U.S. 675, 685-86, 105 S. Ct. 1568, 1575, 84 L. Ed. 2d 605
16 (1985). In *Sharpe*, a DEA agent observed a truck and a car driving in tandem. *Id.* at
17 677. Based on that and other factors, he radioed the state highway patrol in the area
18 to assist him in pulling over two vehicles on reasonable suspicion that they were
19 transporting marijuana in the truck. *Id.* at 677 & 682. When the police signaled for the
20 two vehicles to pull over, the driver of the truck took off. *Id.* at 678. The DEA agent
21 stayed with the car and the highway patrol trooper pursued the truck. *Id.* After enlisting
22 two other local patrol officers to supervise the driver of the car, the DEA agent left to
23 meet up with the trooper that was pursuing the truck. *Id.*

24 ///

1 While the DEA agent was trying to catch up to the trooper and the truck, the
2 trooper was able to get the driver of the truck to pull over. *Id.* The trooper detained the
3 driver of the truck and informed him that he was not free to leave until the DEA agent
4 released him. *Id.* The DEA agent arrived approximately 15 minutes after the trooper
5 pulled over the truck. *Id.* at 679. The police had detained the truck driver for
6 approximately 20 minutes. *Id.* at 677. The DEA agent found marijuana inside the truck.
7 *Id.* at 679. The court of appeals suppressed the evidence of the marijuana as the fruit
8 of the poisonous tree under a theory that detentions based on less than probable
9 cause have a brevity requirement. *Id.* at 680.

10 The United States Supreme Court reversed and held that the marijuana found
11 in the truck was admissible. *Id.* at 681. The Court held that the detention "clearly [met]
12 the Fourth Amendment's standard of reasonableness." *Id.* at 683. In assessing the
13 effect of the length of detention, courts must take into account "whether the police
14 diligently pursued a means of investigation that was likely to confirm or dispel their
15 suspicions quickly, during which time it was necessary to detain the defendant." *Id.* at
16 686. The Supreme Court cautioned against courts engaging in unrealistic second
17 guessing and *post hoc* evaluation of police decisions that are made on the street and
18 in real time. *Id.* at 686-87. if The Court elaborated: "The question is not simply whether
19 some other alternative was available, but whether the police acted unreasonably in
20 failing to recognize or to pursue it." *Id.*

21 In determining whether the police diligently pursued their investigation,
22 obstructive or evasive acts by a defendant or accomplices cannot be considered
23 against the police. *Id.* at 687-88. In *Sharpe*, the delay was attributable to the
24 defendant's accomplice—not the police—because the accomplice eluded the police,
which prolonged the detention. *Id.*

1 Here, the Nye County Sheriffs diligently pursued their investigation into the 911
2 disconnect. Once they determined which mobile home the call came from, they
3 maintained a perimeter around the house and continued to demand entry. They called
4 their supervisors for advice. The supervisor made the decision to call in a locksmith.
5 The police maintained their perimeter until the locksmith was able to open the door
6 and then they quickly made entry. This detention met the Fourth Amendment's
7 standard of reasonableness.

8 Any assertion that the sheriffs violated the Fourth Amendment by entering after
9 making the decision to enter by locksmith instead of kicking in the door immediately is
10 exactly the type of unrealistic second-guessing and *post hac* evaluation of an officer's
11 real time decision making that the Court in *Sharpe* cautioned against. Arguing that the
12 sheriffs should have kicked the door in, instead of calling a supervisor and waiting for a
13 locksmith, is nothing more than pointing out that an alternative was available without
14 explaining why the sheriffs were unreasonable, under the Fourth Amendment, for not
15 recognizing or pursuing the *post hac* alternative.

16 Furthermore, the delays were attributable to the defendant. In *Sharpe*, the Court
17 did not let the defendant blame the police for the delay caused by the accomplice
18 eluding. Similarly, this Court should not let this Defendant blame the police for the
19 delay caused by him refusing a legal entry under the emergency aid exception. If
20 delays caused by accomplices cannot be held against the police, then certainly the
21 Defendant here cannot be held against the sheriffs.

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1 **2. An Emergency Does Not Require Immediate Forceful Entry**

2 A delay in entry due to a reasonable investigation by the police does not negate
3 the existence of the emergency and the justifiable warrantless entry that follows. *Najar*,
4 451 F.3d at 719. In *Najar*, the Tenth Circuit Court of Appeals rejected the same
5 argument that Defendant puts forth here, based on nearly identical facts. There, the
6 police dispatcher received a 911 disconnect and dispatched police to investigate. *Id.*
7 at 715-16. The dispatcher then made several attempts to call back and each time,
8 someone picked up the phone and immediately hung up. *Id.* at 716. Officers arrived at
9 the location of the 911 disconnect and knocked on the door and announced
10 themselves as police. *Id.*

11 The police then heard movement inside. *Id.* Next, they saw someone moving
12 inside the mobile home. *Id.* They continued their efforts to make contact with the
13 occupants of the mobile home. *Id.* With no response, the officers called their
14 supervisor. *Id.* Eventually, after about thirty minutes, the defendant came to the door.
15 *Id.* at 716 & 719. "Fearing for someone within, the officers entered over [the
16 defendant's] objection." *Id.* at 712. Inside the mobile home, police found a shotgun
17 which was the basis for the defendant's charge of being a felon in possession of a
18 firearm. *Id.*

19 On appeal, the defendant argued that the thirty minute delay between the police
20 arriving and finally entering negated any claim of urgency to support the emergency
21 aid exception. *Id.* at 719. The Tenth Circuit rejected this argument. *Id.* The court there
22 did so because the police were attempting to make contact with the person they could
23 see inside. *Id.* The court even went on to commend the officers: "To their credit, they
24 did not simply batter down the door. We applaud their restraint and circumspection."
Id.

1 Here, these nearly identical and commendable facts to *Najar* are what the
2 Defendant is trying to base his motion to suppress upon. The police received a 911
3 disconnect. But, even more ominous than the situation in *Najar*, the victim was able to
4 call out for help. The Defendant here then took the phone and said, "False alarm." As
5 in *Najar*, the police dispatcher attempted several call backs with no success.

6 Both in *Najar* and here it was clear that someone was obstructing the police
7 attempts to contact the 911 caller. Both here and there, the police arrived and
8 demanded that the occupant let police check on everyone. Both here and there, the
9 police could hear movement inside and eventually saw someone. Both here and there,
10 the police conferred with their supervisor instead of just kicking in the door. Both here
11 and there, the police did not personally observe a commotion, hear signs of an
12 altercation, or see a sign that anyone inside the house suffered even a minor injury.¹

13 It is here where the facts of the delay diverge to the detriment of Defendant's
14 argument. In *Najar*, the defendant decided to give up his obstruction after just thirty
15 minutes. In contrast here, the Defendant persisted. The police would have made entry
16 at thirty minutes and this would be exactly the same as *Najar*. Instead, the Defendant
17 here refused entry and the sheriffs here had to call in a locksmith. "To their credit, they
18 did not simply batter down the door." To their credit, they called a locksmith. "We
19 [should] applaud their restraint and circumspection[.]" not hold it against them,
20 particularly when the delay is attributable to the Defendant.

21 Furthermore, even prior to this divergence, there are facts that demonstrate that
22 even more so than in *Najar*, the police here had an objectively reasonable basis to
23 believe that someone was in trouble. Despite the police not directly seeing this
24 evidence with their own eyes in both *Najar* and here (a fact which Defense thinks is

¹ See, Def. Brief, 3:19:25 (arguing that these facts are significant for the Court's analysis).

1 important here, but which *Najar* makes clear it is not), the police did have knowledge
2 of an altercation. The deputy sheriffs here talked to neighbors that pointed the police to
3 the Defendant's and victim's mobile home and mentioned that is where the fighting
4 occurred. Additionally, as previously mentioned, the victim asked for help.

5 Thus, similar to the police in *Najar*, the Nye County Deputy Sheriffs that
6 responded to the 911 disconnect here did not lose the emergency aid exception by
7 showing commendable restraint in their entry. They maintained a perimeter and
8 continued to demand entry until they were finally successful in forcing entry with the
9 assistance of a locksmith. Such an action was a delay in entry due to a reasonable
10 investigation.

11 In conclusion, under the Fourth Amendment, the Nye County Sheriffs here
12 stayed within the scope of the detention and did not surrender the emergency aid
13 exception for entry because they were diligent in their investigation. The Defendant
14 simply raising an alternative does not explain how the choice that the sheriffs made
15 here in real time is supposedly unreasonable, and the delay in the police entry is not
16 the fault of the sheriffs, it is the fault of the Defendant.

17 **C. Defendant's Citation to a Delaware Trial Court Decision Shows the**
18 **Weakness of Defendant's Claim**

19 The best authority that the Defendant could find to support his position is an
20 opinion from a Delaware state trial court. See Def.'s Supp. Brief 2:20-3:25 and
21 <https://courts.delaware.gov/superior/> (explaining the Delaware court structure). The
22 fact that the Defendant has cited this authority for his only case to support his position
23 demonstrates that his argument has not been adopted by any binding or more
24 persuasive courts. Furthermore, the case law cited by that court and the issue that the
court analyzed are distinguishable from the law and facts applicable here. That the

Defendant relied upon a distinguishable case further demonstrates the Defendant's weak position on the issue.

1. The Delaware trial court applied criminal procedure law that is at odds with the Supreme Courts of Nevada and the United States

Citing *Guerri v. State*, 922 A.2d 403, 406, (Del. 2007), the Delaware trial court explained the emergency doctrine, as established in Delaware, as follows:

"Under the 'emergency doctrine' police may conduct a warrantless search if the State can demonstrate that: (1) an emergency exists and their assistance is required to protect life or property, (2) the search is not primarily motivated by intent to arrest or seize evidence, and (3) some articulable reason exists to connect the emergency and the area of search."

State v. Foreman, 2019 Del. Super. LEXIS 416, 2019 WL 4125596, slip op. at 11 (emphasis added).

The Delaware emergency doctrine cited in *Foreman*, which requires that "the search is not primarily motivated by intent to arrest or seize evidence" is in direct contradiction to the Fourth and Fourteenth Amendment as interpreted by the Nevada Supreme Court and the Fourth Amendment as interpreted by the United States Supreme Court. *Hannon v. State*, 125 Nev. 142, 146-147, 207 P.3d 344, 347 (2009) (abandoning the subjective prong to conform with the Fourth Amendment as outlined by the United States Supreme Court in *Brigham City v. Stuart*, 547 U.S. 398).

Thus, the Delaware court applied rules of criminal procedure in *Foreman* that do not apply in Nevada, making the case less persuasive here.

2. *Foreman* did not involve the emergency aid doctrine

In *Foreman*, the state did not even make an argument for the emergency aid doctrine to apply. Slip. op. at 11, n.52. Instead, the exigent circumstance at issue there was hot pursuit and preventing escape. *Id.* at 10. Therefore, much of the analysis determining the presence of exigent circumstances, which considered the fact that the

1 police had the house surrounded and the ability to apply for a warrant (see above for
2 further analysis of the irrelevance of the ability to apply for a warrant), does not apply
3 here.

4 Thus, the Defendant's only basis for his position is a case from an authority that
5 has minimal persuasive value, applies different law, and is based on facts that are not
6 relevant here.

7 CONCLUSION

8 Because the sheriffs had an objectively reasonable basis to believe that
9 someone inside the mobile home was in need of medical attention, or was otherwise in
10 danger, based on the totality of the 911 hang-up call that they responded to; and any
11 *post hac* second guessing demanding that they make immediate entry fails to
12 demonstrate how their actions were unreasonable, particularly in light of the delays
13 that were attributable to the Defendant, not the sheriffs; their ultimate entry was
14 reasonable under the Fourth Amendment's emergency aid doctrine.

15 DATED this 2nd day of March, 2021.

17 CHRIS ARABIA
18 NYE COUNTY DISTRICT ATTORNEY

19 By 
20 (For) MICHAEL D. ALLMON
21 District Attorney
22
23
24

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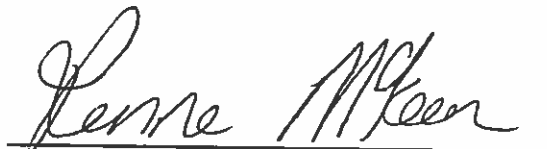
CERTIFICATE OF SERVICE BY MAIL

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

THE STATE'S INSTANT RESPONSE TO DEFENDANT'S SUPPLEMENTAL BRIEF IN SUPPORT OF MOTION TO SUPPRESS in Case No(s). CR20-0092, STATE v. MARCO ANTONIO TORRES,

upon said Defendant(s) herein by mailing a true and correct copy thereof, postage prepaid, on 03/03/21, to the following:

DANIEL E MARTINEZ ESQ.


Renne McKeen

COPY

Case No. CR20-0092

Department 1

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

FILED
FIFTH JUDICIAL DISTRICT

MAR 10 2021

Nye County Clerk
Deputy

Terri Pemberton

IN THE FIFTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF NYE

THE STATE OF NEVADA,

Plaintiff,

RESPONSE TO DEFENDANT'S
MOTION TO SUPPRESS
DEFENDANT'S STATEMENTS AND
REQUEST FOR JACKSON V.
DENNO HEARING

v.

MARCO ANTONIO TORRES,

Defendant. /

COMES NOW THE STATE OF NEVADA, by and through its attorney, CHRIS ARABIA, NYE COUNTY DISTRICT ATTORNEY, through Deputy District Attorney Michael D. Allmon. This response is based on all papers and pleadings herein, the attached Points and Authorities and any arguments adduced by counsel at the hearing of this matter. The State, although it does not oppose an evidentiary hearing if the Court finds it is necessary to assist it in making findings of fact, opposes the Defendant's Motion to Suppress Defendant's Statements and Request for Jackson v. Denno Hearing.

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NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
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POINTS AND AUTHORITIES

I. FACTS

The Victim Calls for Help and the Sheriffs Respond

At approximately 3:00 a.m. on April 4, 2020, the Nye County Sheriff's Office received a 911 call disconnect. (Preliminary Hearing Transcript (PHT) (Exh. 1) 91:6-25, 101:14-25). The dispatcher, Stephanie Rucker, could hear two male voices and one of those two voices was asking for help. (PHT, 91:25-92:2). The Defendant then told the dispatcher, "False alarm." (PHT, 177:4-18). Dispatch called the phone back twice, but nobody answered. (PHT 96:2-4, 97:9-12).

At 3:01 a.m., Deputy Xavier Gideon of the Nye County Sheriff's Office was dispatched to 835 South Linda to investigate this 911 disconnect. (PHT, 101:14-25, 102:12-14). He arrived within five minutes of the call. (PHT, 124:21-125:3). The deputies demanded entry to check on the 911 caller, but the Defendant refused and obstructed their efforts. (PHT 102-105, 108:20-109:3, 125). Due to this delay, the deputies were not able to enter the trailer until they gained access with the assistance of a locksmith. (PHT, 104:3-10).

When Deputy Gideon was finally able to make his way to the victim's room, he found the victim, Jonathan Piper, in the house. (PHT, 106:23-107:5). Deputies attempted CPR on Johnathan Piper, but it had no effect. (PHT, 120:3-121:25). Deputy Gideon also checked for a pulse but could not detect one. (PHT, 107:18-20). Deputy Gideon made the first declaration that Johnathan Piper was now deceased at 4:36 a.m. (PHT, 108:8-14). At 6:00 a.m., Detective Fancher was dispatched by the sheriff's office to conduct a homicide investigation. (PHT, 140:8-20).

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The First Hour of the Interview: The Defendant Tries to Mislead Detectives but Ultimately Admits

After the Defendant was taken to the Nye County Sheriff's Office substation by patrol deputies, the detectives started the interview at approximately 10:00 a.m. (PHT, 198:8-20). Before questioning, although the Defendant was still in jail garb, a patrol deputy removed the handcuffs of the Defendant. (Interview Recording ("IR") of Defendant, in Getac, to be made available at the Motion Hearing), 2:42:08, 05:45-06:06 (time of the recording, not real time, for citation purposes)). Detective Fancher, with Detective Fischer present, started the dialogue at 10:07 a.m. (IR, 06:00). After introductions, the first thing that Detective Fancher did was read the Defendant his Miranda rights. (IR, 6:25-6:44). Detective Fancher concluded the recitation of rights, with the question, "Do you understand these rights?" (*Id.*). The Defendant immediately responded, "Yeah, but what am I being charged with?" (*Id.*). Fischer gave the Defendant a water and a Sprite within the first fifteen minutes of the interview. (IR, 13:20-13:45).

The Defendant quickly started his attempt to mislead or outsmart the detectives. He created a fictional suspect, named "Rich," to cast blame upon. (IR, 6:45-7:30, 17:30-18:00). The Defendant attempted to mislead the detectives that "Rich" came over that night and the Defendant had to fight with "Rich." (IR, 21:10-24:45). The Defendant further claimed that the victim, Jonathan Piper, was injured trying to break up a fight between the Defendant and "Rich." (IR, 24:20-24:45, 28:10-28:45).

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1 In the middle of giving this story, and post-Miranda warnings, the Defendant clarified
2 that he was willing to talk to the detectives.

3 Det. Fischer: How do you feel about talking to us?

4 Defendant: I'm willing to talk to you.

IR, 16:06-16:15.

5
6 During the interview, the Defendant provided details to the detectives that he
7 now challenges in his voluntariness claim. Although the Defendant told detectives he
8 had sleep problems, he also told them that he slept in until 4:00 or 5:00 p.m.,
9 approximately 17 or 18 hours before the interview. (IR, 16:20-16:36). The Defendant
10 described himself to detectives as a "former addict" that "got that out of [his] system."
11 (IR, 23:00-23:45). During the interview, the Defendant felt free enough to stand up and
12 demonstrate acts without feeling a need to ask the detectives for permission. (IR,
13 29:30-29:42).

14 The detectives then took a break and left the Defendant in the interview room
15 by himself. (IR, 33:50-42:30). A few minutes after returning from the break—
16 approximately 45 minutes into the interview—the Defendant acknowledged that
17 "Richard" was fictitious.

18 Det. Fancher: I want you to start over, alright. Marco, can you tell us what happened
19 please?

20 Defendant: Ok.

21 Det. Fancher: You're a good person, tell me the truth.

22 Defendant: I'm just nervous.

23 Det. Fancher: I know, I need you to relax.

24 Defendant: Ok, there was no Richard. I lied to you. I'm sorry.

(IR, 45:30-45:55).

///

1 The Defendant then attempted a new story. He told the detectives he had an
2 argument with Jon, the victim, where the Defendant was breaking things in the living
3 room, the victim then went to bed, and in this version, the Defendant offered that
4 maybe he died of a heart attack. (IR, 46:15-47:15). Detective Fancher then pointed
5 out that the defendant was leaving facts out and that the detective could tell that from
6 the physical evidence. (IR, 47:50-48:30). Approximately 48 minutes into the interview,
7 the Defendant admitted that he "squeezed [the victim] too hard" and "he started, uh,
8 um, gasping, and then I, then I, I tried to revive him." (IR, 48:30-49:30).

9 Shortly after being more truthful and admitting to committing the physical act
10 that killed the victim, the Defendant acknowledged that his statements could end up
11 placing him in jeopardy of criminal punishment.

12 Defendant: He called the cops and I pulled the phone out.

13 Det. Fancher: Ok.

14 Defendant: He called the cops, and I didn't know he was calling the cops, but then I
15 heard—I heard--what's your emergency, blah, blah, blah, and I grabbed it and I'm like
there's no emergency. And then I couldn't turn the phone off so, yeah.

16 Det. Fancher: So um, you grabbed—can you tell me exactly, and this is—details are
important. And I know you remember because you've been very detailed.

17 Defendant: What I'm telling you now is going to get me locked up for life.

18 Det. Fancher: We'll see. Listen, you've said, you've painted this whole picture about
you being—

19 Defendant: It was an accident.

20 (IR, 50:55-51:33).

21 Defendant: This could be a second degree murder. I could never come out of jail for
years, but there was no intent.

22 (IR, 52:50-53:02).

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1 The Defendant then got confused in his own lies and said, "I didn't answer the
2 phone." (IR, 56:00-56:30). The detectives then told the Defendant that they had
3 listened to the 911 call, to which the Defendant feigned surprise that the detectives
4 would say he was on the phone. (IR 56:30-56:50). Fancher asked the Defendant if he
5 wanted to be a liar or someone that just made mistake, because the detectives could
6 relate to the latter. (IR, 57:00-57:24). The Defendant told the detectives that he "called
7 him a rat," while the Defendant and victim were in the bedroom and that the Defendant
8 kicked the victim's door in. (IR, 57:25-58:30). The detectives had a minimized
9 confession within the first hour.

10 **The Second Hour of the Interview: The Defendant Continues and Explains why**
11 **he Confessed**

12 The detectives asked the Defendant if there was anything else that he wanted
13 to tell them so that they wouldn't think he was a liar. (IR, 1:13:00-1:14:00). He
14 responded, "I might have constricted his neck a little," while demonstrating an arm
15 around the neck. (*Id.*).

16 Fischer asked the Defendant how he felt about the interview and why he
17 confessed, the Defendant responded, "You guys are chill." (IR, 1:14:00-1:14:45). The
18 Defendant then showed remorse about his "Rich" lie. *Id.* Next, he explained why he
19 waived his Miranda rights.

20 Det. Fischer: Knowing that you committed this crime, you ultimately waived your
21 Miranda rights and spoke to us and told us what happened. Why did you tell us?

22 Defendant: I wanted to do the right thing.

23 Det. Fischer: Just do the right thing, that's good.

24 Defendant: When you lose your Miranda rights, what do you mean?

Det. Fancher: You know how I read you your rights, and you knew you didn't have to
talk, but you did, and my question is what—the question is—why, why were you so
cooperative? What made you come to that?

1 Defendant: Because I'm hoping that there's going to be a light at the end of the tunnel.
2 (IR, 1:14:45-1:15:30).

3 Det. Fischer: What did we do or say that made you decide to tell the truth. Like, what
4 was that moment?

5 Defendant: You guys are like the type of guys I would hang out with out in the world.
6 You guys are pretty cool dudes and if I wanted to be friends with somebody, I would—
7 you guys would seem like solid dudes...I couldn't say anything else but the truth, I just
8 wanted to come clean to you guys.

9 (IR, 1:16:20-1:17:10).

10 The detectives left the room with the door cracked and the defendant uncuffed.
11 (IR, 1:20:00-1:21:50). Captain Boruchowitz then entered the interview room—for the
12 first time—by himself and introduced himself to the Defendant as the supervisor of the
13 detectives. (IR, 1:21:50-1:22:30). The Defendant told Boruchowitz why he confessed
14 to the detectives, "Those guys seem like the kind of guys I want to hang out
15 with...solid dudes. And you know what, I felt a vibe, and I knew he didn't believe me...I
16 take it to court and I try to lie like that, that's going to really f**k me up." (IR, 1:31:19-
17 1:31:43).

18 After the Defendant and Boruchowitz small-talked about skating, Boruchowitz
19 confronted the Defendant about telling the truth. (IR, 1:36:45-1:45:00). During this, the
20 Defendant then threw out that he was foggy—he was pretty drunk. (*Id.*). He also
21 mentioned that he was "blacking out" earlier in the night. (*Id.*). The Defendant again
22 said that he was drunk. (IR, 1:48:50-1:49:00, 1:56:25-1:56:35).

23 The Defendant told Boruchowitz that there was a scuffle, the Defendant and the
24 victim fell, and the Defendant helped the victim to his room, but the Defendant then
stated that he couldn't remember. (IR, 1:51:00-1:51:55). The Defendant immediately
followed this up by saying that the victim locked his door and the Defendant kicked it in
and found the victim on the phone with 911. (IR, 1:51:55-1:52:45). The Defendant then

1 described how he squeezed until the victim gasped for air and passed out. (1:52:45-
2 1:55:54). The Defendant claimed that he went back to bed for an hour after killing
3 Jonathan Piper. (IR, 1:55:15-1:55:30).

4 **The Final 42 Minutes of the Interview**

5 Boruchowitz confronted the Defendant about the marks on the victim's face and
6 told the Defendant that he believed they were from something hitting the victim's face.
7 (IR, 2:04:42-2:07:26). Still, the Defendant did not relent—he maintained that he did not
8 hit the victim with anything. (*Id.*).

9 When Boruchowitz confronted the Defendant about his half-truths, the
10 Defendant replied, "But now I'm sober, but I wasn't sober then." (IR, 2:11:00-2:11:40).
11 The Defendant asked Boruchowitz to crack the door, which Boruchowitz did. (IR,
12 2:11:40-2:11:55). Boruchowitz confronted the Defendant about his minimizing, or
13 downplaying, or providing a "mundane" version of the facts. (IR, 2:11:55-2:18:00).
14 Boruchowitz then left the Defendant in the room, with the door open, to get the
15 detectives. (2:18:00-2:22:45).

16 Fancher and Fischer then returned to continue the interview with the Defendant.
17 (IR, 2:22:45). The Defendant told the detectives that he downplayed several parts of
18 the story. (IR, 2:22:50-2:23:37). The detectives made clear that they did not want to
19 hear the Defendant say what their boss said he did, they wanted to hear his version.
20 (IR, 2:22:30-2:24:40). The Defendant then described details that he had told
21 Boruchowitz. (IR, 2:26:00-2:28:20).¹ The Defendant explained that he was more
22 aggressive than he had told the detectives. (IR, 2:29:10-2:29:30).

23 ///

24
¹ Little else was revealed in this follow up. Prior to this, and within the first hour, the Defendant had already told the detectives he kicked in the door and called the victim a rat. (See, IR, 57:25-58:30).

1 The Defendant then explained that earlier in the night, he had a "few beers" and
2 a "couple shots of whiskey." (IR, 2:29:30-2:29:40). The interview, which lasted 2 hours,
3 41 minutes, and 29 seconds, ended at 12:42:30 p.m. (IR, 2:41:20-2:41:30).

4 **The Defendant's Background**

5 The Defendant was 58 years old at the time of the interview. (IR, 44:05-44:15).
6 The State submits to the Court that the video evidence of the interview shows that the
7 Defendant did not show signs of intoxication: his speech was not slurred, he
8 responded appropriately to the detective's questions, and he stood up without losing
9 balance. Prior to the Defendant's interview, he had been convicted of five felonies.
10 (PHT, 236:17-23) (admitting five certified convictions—PH Exhs. 30-34). Additionally,
11 including arrests on warrants, the Defendant had been arrested by police on 40
12 separate occasions prior to this interview. (Defendant's NCJIS Criminal History).

13 **Timeline of Key Events**

- 14 • April 3, 2020, 4:00-5:00 p.m.—the Defendant wakes up to start his day.
- 15 • April 4, 2020, 2:59 a.m.—the victim calls 911.
- 16 • 4:36 a.m.—deputies gain entry and declare Jonathan Piper deceased.
- 17 • 6:00 a.m.—Detective Fancher is dispatched to investigate by NCSO.
- 18 • 10:00 a.m.—patrol deputies place the Defendant in the interview room.
- 19 • 10:07 a.m.—Detective Fancher gives the Defendant his Miranda warnings.
- 20 • 10:08 a.m.—the Defendant introduces "Rich."
- 21 • 10:14 a.m.—the detectives give the Defendant water and Sprite.
- 22 • 10:34 a.m.—the detectives leave the room.
- 23 • 10:43 a.m.—the detectives return to the room.
- 24 • 10:46 a.m.—the Defendant admits that "Rich" was a lie.

- 1 • 10:50 a.m.—the Defendant admits that he squeezed the victim too hard.
- 2 • 11:14 a.m.—the Defendant offers more details about how he asphyxiated the
- 3 victim.
- 4 • 11:15 a.m.—the Defendant explains why he waived his rights and confessed to
- 5 the detectives.
- 6 • 11:22 a.m.—Captain Boruchowitz enters without the detectives.
- 7 • 11:52 a.m.—the Defendant admits that he kicked in the victim's locked door.
- 8 • 12:13 p.m.—Boruchowitz tells the Defendant how Boruchowitz perceives the
- 9 facts.
- 10 • 12:19 p.m.—Boruchowitz leaves the room.
- 11 • 12:23 p.m.—the detectives return and the Defendant acknowledges that he
- 12 previously downplayed.
- 13 • 12:42 p.m.—the interview ends.

14 II. Legal Argument

15 A. Procedural Rules in Suppression Motions

16 Suppression motions for confessions involving voluntariness present mixed
17 questions of law and fact. *Rosky v. State*, 121 Nev. 184, 191, 111 P.3d 690, 694
18 (2005). The Nevada Supreme Court has advised that district courts should “clearly set
19 forth the factual findings relied upon in resolving suppression motions.” An appellate
20 court will review the trial court's findings of fact for clear error. *Id.* at 190. Based upon
21 those factual findings, an appellate court will conduct a de novo review of the ultimate
22 determination of custodial status and voluntariness. *Id.* Voluntariness of a confession
23 is based on an evaluation of the totality of the circumstances. *Passama v. State*, 103
24 Nev. 212, 214, 735 P.2d 321, 323 (1987), citing, *Schneckloth v. Bustamonte*, 412 U.S.

1 218, 226-227 (1973). The "prosecution has the burden of proving by a preponderance
2 of the evidence that the statement was voluntary, *i.e.*, that the defendant's will was not
3 overborne." *Rosky*, 121 Nev. at 193 (internal punctuation omitted).²

4 **B. The Defendant Gave his Statement Voluntarily**

5 Police coercion or overreaching is the crucial element in determining the
6 voluntariness of a confession. *Passama*, 103 Nev. at 216; *Colorado v. Connelly*, 479
7 U.S. 157, 163 & 167, 107 S. Ct. 515, 520, 93 L. Ed. 2d 473 (1986). In determining
8 whether a statement was voluntarily given, the courts must at least consider the
9 following factors: "the youth of the accused; his lack of education or his low
10 intelligence; the lack of any advice of constitutional rights; the length of detention; the
11 repeated and prolonged nature of questioning; ...the use of physical punishment such
12 as the deprivation of food or sleep;" and the defendant's "prior experience with law
13 enforcement." *Rosky*, 121 Nev. at 193-194. In *Rosky*, the Court considered another
14 factor without explicitly outlining it, the defendant's attempts to mislead or outsmart the
15 police. *Id.* at 194 (considering the defendant's attempts to deflect accusations, use
16 semantical dodges, and mislead the detectives in the Court's determination of
17 voluntariness).

18 In *Rosky*, the Court found the police did not overbear the defendant's will, *i.e.*,
19 his statement was voluntary. *Id.* at 189. The factors there can be summarized as
20 follows: the defendant was an adult, *see generally*³; his education or intelligence was
21 not detailed; he was not read his constitutional rights, presumably because he was not

22
23 ² The Defendant is not arguing that *Miranda* rights were not read, therefore custodial status is not at
24 issue. The State stipulates that the Defendant was in custody during the interview. The Defendant was
read his *Miranda* rights so whether or not the Defendant was in custody is not determinative to the
admissibility of the statement. Thus, only the voluntariness of the statement is being contested by the
Defendant.

³ The opinion does not give the age of the defendant, but given the facts of the case, a reasonable
deduction is that he was an adult.

1 in custody for *Miranda* purposes, *id.* at 189, 192; he was detained for 1 ½ hours, *id.* at
2 189; regarding the repeated and prolonged nature of questioning, the Court found that
3 the police used "mild forms of deception[.]" and "confronted [the defendant] with their
4 belief that he was guilty[.]" but nevertheless, found that these were not "'strong arm' or
5 impermissibly coercive tactics[.]" and even commended the police on the highly
6 professional interrogation techniques, *id.* at 193; he had no prior experience with law
7 enforcement that was significant enough for the Court to mention; and the defendant
8 attempted to mislead the detectives, *id.* at 194.

9 Here, applying the *Rosky* factors of voluntariness to the Defendant shows that
10 the balance pushes in favor of voluntariness even more than it did in *Rosky*. Nearly all
11 of the factors are positive for voluntariness in favor of the State, and none of the
12 factors detract from that: the Defendant was 58-years-old; his intelligence or education
13 is unclear so that is neutral; detectives advised him of his constitutional rights; the
14 sheriffs detained him for a little over five hours before questioning, which afforded him
15 a break; the questioning did not involve strong arm tactics, rather—even more
16 commendable than *Rosky*—the detectives did not rely on deception, but instead, the
17 truth, and the Defendant confessed within an hour, with the interview totaling less than
18 three hours; the detectives provided the Defendant drinks, but he did say late in the
19 interview that he had not eaten, and as far as sleep, the Defendant had not been up a
20 full day, merely a normal amount of time, approximately 17-18 hours when the
21 interview started; the Defendant was very experienced with law enforcement as
22 demonstrated by his five felony convictions and this being his 41st arrest; and the
23 Defendant attempted to mislead or outsmart the detectives by creating a story about
24 an alternate suspect, "Rich," then stating it might have been a heart attack, then

1 saying it was a mistake, until finally admitting that he strangled or asphyxiated his
2 roommate, all with the hope of creating the best outcome for himself.

3 All of this demonstrates that it was not the detectives that coerced a confession.
4 Instead, the Defendant understood his circumstances and what he was up against, but
5 decided, as a street-wise criminal, to waive his constitutional rights in an attempt to
6 outsmart the detectives. He failed in his efforts and now he seeks to suppress that
7 statement. The Fifth and Fourteenth Amendments do not work to protect criminals that
8 attempt to outsmart the police but fail. Thus, the Defendant's confession is admissible.

9 **1. The Defendant's mental health does not negate voluntariness**

10 Coercive police conduct is a necessary element for finding that a confession
11 was involuntary. *Connelly*, 479 U.S. at 167. A defendant's mental condition that
12 causes him to confess, independent of coercive conduct by the police, is not relevant
13 to the voluntariness of the confession. *Id.* at 163-65, 167. In *Connelly*, the Court held
14 that the defendant's confession was admissible, despite his feeling compelled to
15 confess to a murder by the voice of god. *Id.* at 169-71. It was not important to the
16 Court that a doctor testified that the defendant was suffering from hallucinations that
17 affected "his ability to make free and rational choices" and his psychosis motivated his
18 confession. *Id.* at 161-62. What was important to the Court was that the police did not
19 overreach: they did not exploit the weakness with coercive tactics. *Id.* at 164-65
20 (contrasting the facts of *Connelly* against *Blackburn v. Alabama*, 361 U.S. 199 (1960),
21 and *Townsend v. Sain*, 472 U.S. 293 (1963))

22 Similarly here, whatever the defendant's mental health conditions may have
23 been, the detectives were unaware of it, therefore, they could not have exploited it to
24 coerce an involuntary confession out of the Defendant. Thus, following *Connelly*, even
if the Defendant were to prove his mental health conditions, it would be irrelevant in

determining the voluntariness of the Defendant's confession because the police did not overreach by exploiting the weakness with coercive tactics.

2. The Defendant's intoxication does not negate voluntariness

a. The Defendant's intoxication was not significant enough to affect his voluntariness

"The general rule with respect to confessions made by a person under the influence of intoxicants can be summarized as follows: proof that the accused was intoxicated at the time he confessed his guilt will not, without more, prevent the admission of his confession." *Tucker v. State*, 92 Nev. 486, 488, 553 P.2d 951, 952 (1976). Rather, to make the confession inadmissible, the defendant must have been "intoxicated to such extent that he was unable to understand the meaning of his statements[.]" *Id.*

Confessions involving defendant's that were as intoxicated as the Defendant is merely alleging, or even more intoxicated, have stood up on appeal in Nevada. The Nevada Court of Appeals offered the following summary to prove this point:

"Chambers v. State, 113 Nev. 974, 981-82, 944 P.2d 805, 809-10 (1997) (confession voluntary even when given with blood alcohol content (BAC) of .27 and other drugs were present in defendant's system, and defendant was in pain from an open stab wound in arm); *Kirksey v. State*, 112 Nev. 980, 992, 923 P.2d 1102, 1110 (1996) (to render confession involuntary, defendant must have been so intoxicated that "he was unable to understand the meaning of his comments" (internal quotation marks omitted)); *Falcon v. State*, 110 Nev. 530, 533-35, 874 P.2d 772, 774-75 (1994) (confession admitted even though defendant was under influence of illegal narcotics at time of questioning); *Tucker v. State*, 92 Nev. 486, 487-88, 553 P.2d 951, 952

1 (1976) (confession admissible even though defendant's BAC was .20 at the
2 time he signed the confession); *Wallace v. State*, 84 Nev. 603, 605, 447 P.2d
3 30, 31 (1968) (confession voluntary even when given in emergency room after
4 being shot)."

5 *Gonzales v. State*, 131 Nev. 481, 488, 354 P.3d 654, 659, n.2 (Nev. App.
6 2015).

7 Furthermore, in determining voluntariness and intoxication, it is appropriate for
8 a court to consider the defendant's appearance during the interview. *Pickworth v.*
9 *State*, 95 Nev. 547, 549, 598 P.2d 626, 627 (1979). In *Pickworth*, the Court rejected
10 the defendant's voluntariness objection by noting that the defendant's confession was
11 coherent, he was able to recall facts in great detail, and he showed no signs of
12 discomfort. *Id.*

13 Here, the interview demonstrates that the Defendant was not "intoxicated to
14 such extent that he was unable to understand the meaning of his statements." Like the
15 defendant in *Pickworth*, he did not appear intoxicated, instead, he was coherent, he
16 was able to recall facts in great detail, and he showed no signs of discomfort from any
17 intoxication. Additionally, he always referred to his intoxication as past tense, even
18 saying during the interview that he was sober now. Furthermore, during the interview,
19 he attempted to mislead the detectives, demonstrating his ability to understand the
20 meaning of his statements—to his detriment for the purposes of suppression.

21 b. *The Defendant's intoxication is irrelevant because the detectives did not*
22 *use it to coerce the Defendant*

23 Intoxication, like mental health, is not relevant to the voluntariness
24 determination, unless the police exploit it to coerce a confession. *Chambers v. State*,
113 Nev. 974, 981, 944 P.2d 805, 809 (1997). In *Chambers*, the defendant claimed

1 that he was incompetent to waive his rights because of intoxication, but not because of
2 any coercion by the police. *Id.* The Court applied *Colorado v. Connelly* and rejected
3 the defendant's claim, holding that "the ultimate issue" is "whether the will of the
4 accused was overborne by government agents." *Id.*

5 Therefore, even if the Defendant here proved that he was grossly intoxicated,
6 he would have to show that the detectives exploited that knowledge. The Defendant
7 has not been able to identify any instance of the detectives exploiting his supposed
8 intoxication to the point of it being coercive conduct. Instead, the Defendant cites case
9 law which pre-dates *Connelly* and *Chambers* and fails to recognize that coercive
10 police conduct is a necessary element to negate voluntariness. See Def. Mot. to Supp.
11 6:7-27 (relying upon *Stewart v. State*, 92 Nev. 168, 547 P.2d 320 (1976)).

12 This point is driven home even more because the Defendant raises arguments
13 that the *Connelly* Court cautioned against. The Defendant argues that his mental
14 health and intoxication affected the reliability of his statements, see Def. Mot. 6:18-22,
15 despite the Supreme Court's warning that reliability is not an appropriate grounds upon
16 which to exclude evidence under the Fifth and Fourteenth Amendments, see *Connelly*,
17 479 U.S. at 167.

18 Thus, the claim of intoxication only becomes relevant if the Defendant ties it to
19 coercive police conduct—which he has not done.

20 **C. The Defendant Waived his Rights Under *Miranda***

21 To invoke the *Miranda* right to counsel or to remain silent, a defendant must
22 *unambiguously* invoke. *Davis v. United States*, 512 U.S. 452, 459, 114 S. Ct. 2350,
23 2355, 129 L. Ed. 2d 362 (1994) (applying the rule to the *Miranda* right to counsel);
24 *Berghuis v. Thompson*, 560 U.S. 370, 381, 130 S. Ct. 2250, 2260, 176 L. Ed. 2d 1098

1 (2010) (following *Davis* and explicitly applying the same rule to the right to remain
2 silent).

3 Here, not only did the Defendant waive by speaking and not unambiguously
4 invoking his rights, he went further and explicitly waived his rights. First, merely
5 speaking after receiving his rights was a waiver under *Davis* and *Berghuis*. But the
6 Defendant went further by explicitly stating, "I'm willing to talk to you." The Defendant
7 even told the detectives why he chose to waive his rights: because they were good
8 guys that he wanted to be honest with, and he was hoping that by speaking, he would
9 receive some benefit, or create a light at the end of the tunnel.

10 Thus, the Defendant waived his constitutional rights more explicitly than the
11 Fifth and Fourteenth Amendments require, and his statements are therefore
12 admissible.

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1 CONCLUSION

2 To the extent that an evidentiary hearing would assist the Court in making
3 findings of fact, the State does not oppose one. However, ultimately the Defendant has
4 not presented grounds upon which to suppress the statements because he has failed
5 to identify coercion by the detectives. The Defendant is a street-wise, 58-year-old
6 criminal that understood the criminal justice system and the risk that talking to
7 detectives posed. He chose to voluntarily waive his constitutional rights in an attempt
8 to outsmart the detectives: the detectives did not coerce him to do so. His efforts failed
9 and now his defense counsel attempts to have those statements suppressed. Because
10 the balance of factors tips in favor of this being a voluntary statement, and the
11 Defendant's claims are not attached to coercive conduct by the police, the Court
12 should deny the Defendant's motion to suppress.

13 DATED this 10th day of March, 2021.

14
15 CHRIS ARABIA
16 NYE COUNTY DISTRICT ATTORNEY

17 By 
18 (for) MICHAEL D. ALLMON
19 District Attorney
20
21
22
23
24

NYE COUNTY DISTRICT ATTORNEY
P.O. BOX 39
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(775) 751-7080

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EXHIBIT 1

Justice Court Case No. 20 CR 01098

BY C. Dumbert

Department B

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,)

ORIGINAL

Nye County Clerk
Deputy

Plaintiff,)

vs.)

TRANSCRIPT OF PROCEEDINGS

MARCO ANTONIO TORRES,)

PRELIMINARY HEARING

Defendant.)

BEFORE KENT JASPERSON, JUSTICE OF THE PEACE

1520 EAST BASIN AVENUE, PAHRUMP, NEVADA 89060

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

APPEARANCES:

For the State:

Kirk Vitto, Esq.

Michael Allmon, Esq.

Deputies District Attorney

For the Defendant: Daniel Martinez, Esq.

Ronni Boskovich, Esq.

Public Defenders

Reported by:

I N D E X

WITNESSES DIRECT CROSS REDIRECT RE-CROSS

By the State:

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

	<u>STATE'S EXHIBITS</u>	<u>RECEIVED</u>
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2		
3		
4	1 Photo	12
5	1A Photo	75
6	2 Photo	14
7	2A Photo	46
8	3 MEDS	7
9	3A Abridged MEDS	7
10	4 911 call	7
11	4A CAD report	95
12	5 Autopsy report	7
13	6 Photo	144
14	7 Photo	146
15	8 Photo	147
16	9 Photo	148
17	10 Photo	148
18	11 Photo	245
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20	13 Photo	245
21	14 Photo	245
22	15 Photo	160
23	16 Photo	161
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1	<u>STATE'S EXHIBITS</u>	<u>RECEIVED</u>
2	18 Photo	163
3	19 Photo	166
4	20 Photo	172
5	21 Photo	172
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9	25 Samsung phone	185
10	26 Impound inventory	168
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12	28 4/6/2020 court transcript	238
13	29 4/9/2020 court transcript	238
14	30, 31, 32, 34 Prior offenses	238
15	35, 36, 37, 38, 39 Photos	222

16

17 DEFENSE EXHIBITS

18	1 Diagram	82
19	2 Diagram	113

20

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24

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

4 THE CLERK: You may be seated.

5 THE BAILIFF: Speak clearly into the
6 microphone.

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

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

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

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

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

16 THE COURT: Okay. Mr. Vitto.

17 MR. VITTO: Thank you, Your Honor.

18
19 DIRECT EXAMINATION

20 BY MR. VITTO:

21 Q What is your occupation, sir?

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

23 Q And where do you currently reside?

24 A La Crescenta.

25 Q California?

1 A Yes.

2 Q You drove here yesterday?

3 A Yes.

4 Q Mr. Piper, are you related to

5 Jonathan A. Piper?

6 A Yes. I'm his only sibling.

7 Q And who was the older brother?

8 A Jonathan.

9 Q Okay. So Jonathan was your older brother?

10 A Yes.

11 Q Do you recall his birthdate?

12 A 4/29/62.

13 Q April 29, 1962. Is that correct?

14 A Yes.

15 Q Are you familiar with Marco Antonio Torres?

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

17 up together.

18 Q All right. Is that upon what your familiarity

19 is based? You grew up with him?

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

21 Q All right. Do you see Marco Antonio Torres in

22 the courtroom today?

23 A Yes.

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

25 wearing?

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

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

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

6 BY MR. VITTO:

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

9 A Yes. I took it.

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

12 A Yes, I did.

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

15 A That is my brother.

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

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

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

25 A Yes.

1 Q -- in Pahrump?

2 A Uh-huh.

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

5 A Yeah. Do you need the specific day?

6 Q Not right now.

7 A Okay.

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

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

12 Q Okay. You made those purchases?

13 A Yes.

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

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

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

19

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

22

23 MR. VITTO: Thank you, Your Honor.

24 BY MR. VITTO:

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

1 preliminarily marked as State's proposed Exhibit 2.

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

4 A Yeah. That's my brother.

5 Q That's your brother, Jonathan?

6 A Yeah.

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

10 A Yes.

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

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

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

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

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

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

7 THE COURT: Sure.

8 BY MR. VITTO:

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

12 A Yes.

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

15 A Yes.

16 Q The bedding that you purchased?

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

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

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

21

22 (State's Exhibit No. 2

23 was received into evidence.)

24

25 MR. VITTO: Thank you, Your Honor.

1 MR. MARTINEZ: Thank you, Judge.

2 BY MR. VITTO:

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

5 A Yeah, this one.

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

7 This is 1A.

8 BY MR. VITTO:

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

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

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

15 A Yeah.

16 Q That's you and your brother?

17 A Yes.

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

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

1 Q You live in California?

2 A Yeah.

3 Q Did you bring that with you from California?

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

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

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

9 Q And he gave that to you this morning?

10 A Yeah.

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

13 A 835 South Linda.

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

15 A A trailer house.

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

18 A Yes.

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

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

23 Q Had you ever been to that residence?

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

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

3 A Yes.

4 Q All right. How did that come about?

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

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

13 MR. VITTO: Okay.

14 THE COURT: Sustained.

15 BY MR. VITTO:

16 Q How did you know about this conversation?

17 A Both Marco and both Paul told me.

18 Q Okay. Marco told you?

19 A And his friend Paul.

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

22 A Yeah, right.

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

25 A Yes, I did.

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

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

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

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

12 Q Okay. February 2nd of this year?

13 A Yeah.

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

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

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

22 A Yes.

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

25 A And that was taken on February 2nd.

1 Q And you showed me that photograph yesterday?

2 A Yes, I did.

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

5 A Yes.

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

8 A Yes.

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

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

13 Q Some restaurant here in Pahrump?

14 A Yes, right.

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

18 A About a week before that.

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

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

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

24 A On the day of the murder.

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

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

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

5 MR. MARTINEZ: Yes.

6 BY MR. VITTO:

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

9 A Yes.

10 Q Is that fair?

11 A That's fair.

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

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

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

18 A I'm trying to remember.

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

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

24 Q Okay.

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

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

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

5 A Right.

6 Q Okay. Did your brother leave a message?

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

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

10 MR. VITTO: That's fine.

11 BY MR. VITTO:

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

13 A Yeah.

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

15 A Yes.

16 Q Do you still have that?

17 A No. No, I don't.

18 Q You would have erased it?

19 A Yeah, because -- I erased it the next day.

20 I didn't think anything of it.

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

23 A Yes.

24 Q All right.

25 MR. MARTINEZ: Again, just for the record

1 there, Your Honor --

2 MR. VITTO: I said "killed".

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

4 BY MR. VITTO:

5 Q All right. Who is your carrier?

6 A T-Mobile.

7 Q And what number would that be under?

8 A (818)294-9995.

9 Q Got it. Thank you.

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

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

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

22 A Yes.

23 Q What can you tell us about that?

24 A He was eating like a bird.

25 MR. MARTINEZ: Object as to foundation here,

1 Judge.

2 BY MR. VITTO:

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

5 A Yeah.

6 Q Was he eating then?

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

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

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

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

15 A Yes.

16 Q And what was that used for?

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

20 Q Okay.

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

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

3 MR. MARTINEZ: Thank you.

4 BY MR. VITTO:

5 Q Could your brother run?

6 A Absolutely not.

7 Q Could he yell loudly for help?

8 A No.

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

12 A Yes.

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

16 THE COURT: Sustained.

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

18 THE COURT: Yes.

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

20 THE COURT: That's fine.

21 BY MR. VITTO:

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

24 A Yes.

25 Q And you were aware of treatment he had

1 undergone?

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

4 Q All right. Was he able to drive?

5 A No.

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

8 A Yes.

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

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

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

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

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

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

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

24 So I will allow the question.

25 MR. MARTINEZ: Thank you, Judge.

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

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

5 MR. VITTO: Yeah.

6 BY MR. VITTO:

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

9 A Yes.

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

14 A Yes.

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

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

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

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

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

15 THE COURT: Defense.

16 MR. MARTINEZ: Thank you.

17

18 CROSS-EXAMINATION

19 BY MR. MARTINEZ:

20 Q Good morning.

21 A Hi.

22 Q Do you prefer Chris or Christopher?

23 A Christopher is fine.

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

- 1 A Yes.
- 2 Q Decades?
- 3 A Yes, since I was little.
- 4 Q And now was it sometime in January when he
5 reconnected with Jonathan?
- 6 A Yeah, that's -- sometime in January, yeah, I
7 would imagine.
- 8 Q When was the last time you had any contact
9 with Marco prior to that?
- 10 A Let me think. Early '90s or late '80s? I'm
11 trying to pinpoint it. Yeah. Well, actually, it would
12 have been mid '90s.
- 13 Q So quite some time?
- 14 A Yes.
- 15 Q Do you know when the last time Jonathan had
16 any contact with Marco was?
- 17 A It was the same with him.
- 18 Q Okay.
- 19 A Yeah. As far as I know, yeah.
- 20 Q You said Jonathan had cancer?
- 21 A Yes.
- 22 Q Was it throat cancer that he had?
- 23 A He never told me exactly. Because they took
24 out a lymph node there, I would assume it's lymphoma.
- 25 Q Do you know when he was diagnosed with cancer?

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

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

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

7 Q Okay.

8 A Yeah.

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

11 A Yes.

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

13 A Oh, about a year, yeah.

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

16 A Yes.

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

19 A No.

20 Q Where did he live prior to that?

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

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

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

1 Laurence. Okay. That's the name of the street.
2 Q Okay.
3 A Yeah.
4 Q Did he live by himself at that address?
5 A No. He lived with this retired teacher.
6 Q Okay. Now, at that time prior to his
7 diagnosis when he first moved here to Pahrump was
8 Jonathan still driving?
9 A No.
10 Q So he stopped driving even prior to being
11 diagnosed?
12 A Yeah, many years ago.
13 Q When you say many years, five years, ten years
14 ago?
15 A Over 20 years ago.
16 Q Okay.
17 A Yeah. I did the driving when we were
18 together.
19 Q You said in early February you drove Marco out
20 to --
21 A Yes.
22 Q -- Pahrump?
23 And that was from California that you drove
24 him?
25 A Yeah.

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

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

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

7 A Uh-huh, yes.

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

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

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

13 A No.

14 Q Did he rent from someone?

15 A We rented it for him.

16 Q You say "we"?

17 A My father and I, yeah.

18 Q Okay.

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

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

22 A I was.

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

25 A Yes, I did.

1 Q Did Marco contribute anything to the rent?

2 A He would help out with food. My brother would

3 use his food card. Yeah, Marco would contribute.

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

5 A Well, to the food, yeah.

6 Q Okay.

7 A Yeah.

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

9 house?

10 A Yeah.

11 Q So you said, just to reiterate, you never made

12 it back out there to see them once they moved into the

13 Linda Street address; right?

14 A No, because of Covid. Yeah.

15 Q So you never got to see kind of their daily

16 routines; right?

17 A No.

18 Q You didn't know where in the house they spent

19 their time usually? Well, at least you didn't see it

20 with your own eyes; right?

21 A No.

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

23 A What was in the bedroom?

24 Q That they spent their time in a bedroom?

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

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

3 Q Where was that chair?

4 A In the living room.

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

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

12 Q So your brother would dogsit for him?

13 A Yes.

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

15 A Yes.

16 Q Your brother was able to shower himself?

17 A Yes.

18 Q Change his own clothes?

19 A Yes.

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

21 A He could ride his bicycle.

22 Q He rode a bicycle?

23 A Yeah, but by the time --

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

25 A Right.

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

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

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

6 A Yes.

7 Q Lost a lot of muscle mass?

8 A And his hair. I mean, yeah.

9 Q Is that from the chemotherapy?

10 A Yeah.

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

13 A All the way from February until April?

14 Q Till April?

15 A I heard that he had, yeah.

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

17 A Yes.

18 Q Regularly?

19 A Yeah. He did.

20 Q How much did he drink?

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

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

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

1 yeah.

2 Q Did he smoke?

3 A Yes.

4 Q How often did he smoke?

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

6 Q Did he do any drugs?

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

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

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

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

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

16 Q Call it more disagreement than an argument?

17 A Yeah. Yeah.

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

20 A Yes. I spoke to my father.

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

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

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

3 A No.

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

6 A No.

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

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

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

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

14 Q Okay.

15 A It wasn't much longer.

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

18 Pass the witness, Your Honor.

19 THE COURT: Redirect by the State.

20 MR. VITTO: Thank you, Your Honor.

21

22 REDIRECT EXAMINATION

23 BY MR. VITTO:

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

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

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

6 A Yeah.

7 Q -- was he working at that?

8 A No.

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

11 A Well --

12 Q He would pitch in?

13 A Yeah. He would pitch in, yeah.

14 Q Did he pay any rent?

15 A No.

16 Q Did he pay any utilities?

17 A No.

18 Q Did he pay anything else?

19 A No.

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

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

24 Q I'm sorry?

25 A He would do his reading in that chair.

1 Q Gotcha.

2 A And the sudoku.

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

5 MR. MARTINEZ: Okay.

6 BY MR. VITTO:

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

10 A Uh-huh.

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

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

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

17 MR. VITTO: Okay.

18 THE WITNESS: Oh.

19 BY MR. VITTO:

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

22 A I thought it was bizarre.

23 Q Because that was his favorite chair?

24 A Yeah.

25 Q Are they the same chair?

1 A Yes.

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

4 A Yes.

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

7 A No.

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

10 MR. MARTINEZ: Briefly, Judge.

11

12 RECROSS-EXAMINATION

13 BY MR. MARTINEZ:

14 Q You mentioned they were matching chairs?

15 A Yes.

16 Q So was there more than one white chair?

17 A Yes.

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

20 A Just two.

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

24 A No.

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

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

2 A No.

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

5 MR. VITTO: Nothing further.

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

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

10 THE WITNESS: You want to see me later?

11 MR. VITTO: Yeah. Just hang around.

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

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

17 MR. MARTINEZ: Too late. Just joking.

18

19 REDIRECT EXAMINATION

20 BY MR. VITTO:

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

23 A Yeah.

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

1 A Yes.

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

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

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

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

10 BY MR. VITTO:

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

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

15 Q But he was unable to?

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

17 Q Okay. It was difficult?

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

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

22 A Yes, by then.

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

25 A Yes.

1 Q So his health was deteriorating?

2 A Yes.

3 MR. VITTO: Nothing further.

4 THE COURT: Mr. Martinez.

5

6 RECROSS-EXAMINATION

7 BY MR. MARTINEZ:

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

10 A Probably in January.

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

12 MR. VITTO: One, yes.

13

14 REDIRECT EXAMINATION

15 BY MR. VITTO:

16 Q Did you see a bike at Linda?

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

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

20 A No.

21 MR. VITTO: Nothing further.

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

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

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

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

3 THE WITNESS: Okay.

4 MR. VITTO: Okay? Thanks.

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

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

10 THE WITNESS: Okay.

11 THE COURT: All right. Thank you.

12 MR. VITTO: Thanks, Judge.

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

18 Did defense receive a copy of that?

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

25 THE COURT: I just wanted to make sure defense

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

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

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

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

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

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

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

18 THE COURT: Do you want this?

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

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

23 MR. VITTO: Yes.

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

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

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

3 2A.

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

6
7 THE COURT: 3 was the medical record. That's
8 been admitted by stipulation.

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

11 THE COURT: That was admitted also.

12 MR. VITTO: Thanks, Judge.

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

15 MR. VITTO: Yes.

16 THE COURT: All right.

17 MR. VITTO: Thank you, Your Honor.

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

20
21 DENNIS ARTHUR LA DUE,
22 having been first duly sworn to tell the truth, testified
23 as follows:

24 THE CLERK: You may be seated.

25 THE BAILIFF: Speak into the microphone.

1 THE WITNESS: Oh, microphone?

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

5 THE WITNESS: Yes. Thank you.

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

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

10 THE COURT: All right. Mr. Vitto.

11 MR. VITTO: Thank you, Your Honor.

12

13 DIRECT EXAMINATION

14 BY MR. VITTO:

15 Q What is your occupation, sir?

16 A Independent contractor, I guess.

17 Q All right.

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

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

21 A 835 South Linda, unit 9.

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

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

25 Q Okay.

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

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

4 A Yes.

5 Q How --

6 A I did.

7 Q Thank you. How did you know him?

8 A He moved into unit 4.

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

11 A Well, the trailer --

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

14 BY MR. VITTO:

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

17 A That's where Jonathan lived.

18 Q And who did Jonathan live with?

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

21 Q All right.

22 MR. MARTINEZ: Objection as to foundation.

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

25 (No Omissions.)

1 BY MR. VITTO:

2 Q Marco moved in?

3 A Yes.

4 Q All right. And you know Marco?

5 A From that.

6 Q Do you see him in the courtroom today?

7 A Yes, I do.

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

10 A Orangish/pink and white.

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

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

16 THE COURT: The record --

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

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

21 THE WITNESS: It's pinkish to me.

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

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

25 THE WITNESS: There you go, melting

1 creamsicle.

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

4 MR. VITTO: Thank you, Your Honor.

5 BY MR. VITTO:

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

8 A Yes.

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

11 A Yes.

12 Q Why is that?

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

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

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

25 Q Now, how long had you known Jonathan Piper

1 before he died?

2 A Only a couple -- a few months.

3 Q All right.

4 A Two to three months, right there.

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

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

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

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

13 Q So it was a couple months before April?

14 A Yes.

15 Q Is that fair?

16 A He was only there a couple of months.

17 Q How long was Marco there?

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

20 Q All right.

21 A Approximately.

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

24 A They suppose -- I guess grew up together.
25 They've known each other since kids. Children, anyway.

1 MR. MARTINEZ: Objection to foundation.

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

3 BY MR. VITTO:

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

6 A Yes.

7 Q What did he tell you?

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

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

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

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

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

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

24 BY MR. VITTO:

25 Q How close do you live to that trailer?

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

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

4 A Yes.

5 Q A hundred fifty feet?

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

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

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

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

20 A Yes. It's definitely distinct.

21 Q All right. Did you hear another voice?

22 A No.

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

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

1 talked to him in a month and a half.

2 Q Okay.

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

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

8 A Yeah.

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

10 A Yes.

11 Q -- Jonathan died; is that correct?

12 A Yes, sir.

13 Q How would you describe Jonathan's voice?

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

16 Q I think you said low tone?

17 A Yeah.

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

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

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

6 MR. MARTINEZ: Objection.

7 THE WITNESS: Well, it was definitely --

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

10 MR. VITTO: Is the objection hearsay?

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

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

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

17 BY MR. VITTO:

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

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

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

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

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

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

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

11 A The voice.

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

14 A Jonathan.

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

18 A Yep.

19 Q All right.

20 A I wish I would have went over.

21 Q And your provider was Verizon?

22 A Yes, sir.

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

25 A 7841, yes, sir.

1 Q Got it. All right.

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

4 Q You listened to both messages?

5 A Yes.

6 Q All right.

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

10 Q Okay.

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

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

15 THE COURT: Sustained.

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

17 BY MR. VITTO:

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

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

21 MR. MARTINEZ: Judge --

22 A Three helps.

23 MR. MARTINEZ: Judge --

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

1 MR. MARTINEZ: Yes.

2 MR. VITTO: What's the objection?

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

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

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

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

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

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

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

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

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

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

21 MR. VITTO: Thank you, Your Honor.

22 MR. MARTINEZ: Thank you, Judge.

23 BY MR. VITTO:

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

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

4 Q You could tell he was stressed?

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

6 MR. MARTINEZ: Objection.

7 A -- they were from his phone number.

8 MR. MARTINEZ: There is no question posed.

9 BY MR. VITTO:

10 Q Your phone had captured the phone number?

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

15 MR. MARTINEZ: Objection to hearsay.

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

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

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

22 MR. MARTINEZ: Okay.

23 BY MR. VITTO:

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

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

2 Q The phone call stopped?

3 A Yeah, the phone call stopped.

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

7 A Yes, because it was a California number.

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

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

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

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

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

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

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

2 A No.

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

5 A Never knew they were even there.

6 Q When you woke up they were already there?

7 A They were already gone.

8 Q They were already gone?

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

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

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

19 Q All right. You built that porch?

20 A Yes.

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

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

2 Q So that's the evening before?

3 A Yeah, p.m.

4 Q Okay.

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

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

11 A Yeah.

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

14 A No.

15 Q It was fine?

16 A Yes.

17 Q It wasn't destroyed at all?

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

20 Q You're talking about the --

21 A That oscillating heater his brother bought
22 him.

23 Q How about this white chair?

24 A That was inside also.

25 Q All right.

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

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

4 THE COURT: Sustained.

5 BY MR. VITTO:

6 Q Do you recognize that white chair?

7 A Yes.

8 Q And --

9 A I gave it to him.

10 Q Okay.

11 A Two identical ones, actually.

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

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

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

18 A He always sat in it.

19 Q All right.

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

23 THE WITNESS: Until that day.

24 BY MR. VITTO:

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

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

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

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

14 Q Okay. But then the defendant became involved?

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

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

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

1 for beating up --

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

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

6 MR. MARTINEZ: Okay.

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

9 THE COURT: Overruled.

10 MR. MARTINEZ: Thank you, Your Honor.

11 BY MR. VITTO:

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

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

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

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

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

1 MR. VITTO: That's fine.

2 THE WITNESS: I believe that was in Hawaii.

3 THE COURT: Okay.

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

6 BY MR. VITTO:

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

10 A Personally, no.

11 Q What makes you say that?

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

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

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

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

24 MR. VITTO: Is that an objection?

25 MR. MARTINEZ: Yes. Relevance.

1 MR. VITTO: So the objection is relevance.

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

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

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

17 BY MR. VITTO:

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

23 A No.

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

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

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

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

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

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

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

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

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

9 BY MR. VITTO:

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

15 A No.

16 Q Why do you say that?

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

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

3 A Cooking.

4 Q Okay. So he would cook?

5 A And clean.

6 Q He did cook and clean?

7 A (Nods head up and down).

8 Q That would be caretaking?

9 A I guess so.

10 Q Did you ever see him drive him anywhere?

11 A No.

12 Q Did they have a vehicle?

13 A No.

14 Q All right.

15 A I took him originally myself in my vehicle.

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

18 A No.

19 Q Did you ever see him bring him food?

20 A Yeah.

21 Q Okay.

22 A Once.

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

24 A No.

25 Q Did he need help walking? Jon?

1 A Not really. I mean, he moved slow.
2 Q Okay.
3 A But --
4 Q He moved slow. Was he unsteady?
5 A I guess you could -- I guess his age. I'm not
6 sure about that. He just moved slower than most people
7 do.
8 Q Do you have any idea how old he was?
9 A In his 60s, I believe.
10 Q Okay. Did you ever see Jonathan ride a bike?
11 A Yes.
12 Q Okay. Did he have a bike there?
13 A Yes.
14 Q All right. And how often would you see him
15 ride the bike?
16 A Only when he rode up to the store.
17 Q Okay. How far was that?
18 A He went to the one up around the corner,
19 probably a mile.
20 Q Okay. So he was able to ride the bike without
21 a problem?
22 A Right.
23 Q All right. Now, let me show you State's
24 proposed Exhibit 1A. What can you tell me about that?
25 A It's a picture that we found when we were

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

4 MR. MARTINEZ: Objection. Foundation.

5 BY MR. VITTO:

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

8 A Jonathan's room.

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

11 A Yes.

12 Q And what did you do with it today?

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

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

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

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

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

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

2

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

5

6 MR. VITTO: Thank you, Your Honor.

7 MR. MARTINEZ: Thank you, Judge.

8 BY MR. VITTO:

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

12 A No.

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

16 A Yes.

17 Q -- prior to his death?

18 A Yes.

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

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

23 Q So it was around that time?

24 A Yes.

25 Q And you testified that he had no injury when

1 you saw him last?

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

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

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

8 Q Okay.

9 A -- wow.

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

12 A No.

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

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

18 Q Okay. And it wasn't there?

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

21 Q Okay.

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

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

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

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

1 witness at this time.

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

3 MR. MARTINEZ: Thank you, Judge.

4

5 CROSS-EXAMINATION

6 BY MR. MARTINEZ:

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

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

11 Q So you were there before Jonathan; right?

12 A Yes.

13 Q And you were there before Marco?

14 A Oh, yeah. I just finished --

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

17 A No.

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

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

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

3 A Yes.

4 Q And that included Marco and Jonathan; right?

5 A Uh-huh.

6 Q Did you see Marco and Jonathan regularly?

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

8 Q Okay.

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

11 Q Would you wave to Marco?

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

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

15 A Not after I said no more.

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

18 A No.

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

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

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

24 A Total of five now. Well, total of five.
25 There was a sixth one I was working on, but I got let go.

1 Q So at the time --

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

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

8 A Yeah.

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

11 A They're all pretty close.

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

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

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

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

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

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

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

7 A Yes.

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

9 A Yes.

10 Q Now --

11 A He was outside smoking a cigarette.

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

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

16 Q Did he invite you into the house?

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

18 Q Did you guys sit down inside the house?

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

22 Q You said you had a beer; right?

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

24 Q What kind of beer were you drinking?

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

1 Light or something like that. Cheap beer.

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

4 A Right.

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

7 A Yeah.

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

10 A No.

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

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

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

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

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

20 A Yes.

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

23 A No.

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

1 A 2:00 a.m.

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

4 A Yes. All one-sided, too.

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

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

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

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

13 Q Do you recall making a written statement?

14 A Yes.

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

17 THE COURT: Sure.

18 MR. VITTO: No objection to its admission.

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

21 MR. VITTO: Yeah.

22

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

25

1 THE COURT: What is it?

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

3 If I may approach the witness.

4 THE COURT: Sure.

5 BY MR. MARTINEZ:

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

8 A Yep.

9 Q Is that the written statement that you made?

10 A Yes.

11 Q Did you read through this written statement?

12 A Yeah.

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

15 A Yeah. I had forgot about the bass.

16 Q Was that bass like the bass from music?

17 A From his amp.

18 Q From his guitar?

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

21 Q So did loud music wake you up?

22 A I'm not sure.

23 Q And then you heard this argument?

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

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

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

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

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

10 A Yes. I walked out.

11 Q How close did you get to unit 4?

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

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

18 A Maybe a hundred feet, 75 feet.

19 Q All right. You heard the arguing?

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

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

25 A Nothing at that moment.

1 Q Did you go back in your house?
2 A Yep.' Laid back down.
3 Q But you heard some more arguing later on;
4 right?
5 A Well, shortly after that, yeah, all of a
6 sudden, because I wasn't asleep yet.
7 Q Did you get up to go investigate again?
8 A I walked back to the same spot.
9 Q By the time you got back to the same spot --
10 A Nothing again.
11 Q You could still hear nothing. You decided you
12 would deal with it in the morning, you said?
13 A Because I knew where it was coming from.
14 Q So you didn't call 911; right?
15 A No, not for --
16 Q You didn't go knock on the door; right?
17 A I should have.
18 Q But you didn't?
19 A No.
20 Q All right. Now, you said by about 3:00 a.m.
21 it was all quiet again and you went back to sleep; right?
22 A (Nods head up and down).
23 MR. VITTO: Is that a "yes"?
24 A Yes.
25 (No Omissions.)

1 BY MR. MARTINEZ:

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

4 A Never heard them.

5 Q Never saw any sirens?

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

8 Q You turned the TV up a little louder?

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

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

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

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

21 A No, I don't.

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

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

1 Q So you saw him a couple of times?

2 A Yes.

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

5 A In the middle.

6 Q In the middle? All right.

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

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

13 A No. Still as skinny as a rail.

14 Q Did he look any different?

15 A A little healthier.

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

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

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

25 A Yeah.

1 Q Okay.

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

5 MR. MARTINEZ: Pass the witness, Judge.

6 THE COURT: Redirect by the State.

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

9

10 REDIRECT EXAMINATION

11 BY MR. VITTO:

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

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

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

21 A On the bicycle.

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

23 THE COURT: Re-cross.

24 MR. MARTINEZ: Nothing further, Your Honor.

25 THE COURT: So this witness can be excused?

1 MR. VITTO: Yes.

2 THE COURT: Is he subject to recall?

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

5 THE COURT: Okay.

6 THE WITNESS: So I gotta stay?

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

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

12 MR. VITTO: All right. Good man.

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

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

16 THE COURT: Who is your next witness?

17 MR. VITTO: Stephanie Rucker.

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

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

21 MR. VITTO: We both do, Judge.

22 THE COURT: All right.

23 MR. VITTO: Thanks, Judge.

24

25 (No Omissions.)

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

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

6 MR. VITTO: Stephanie Rucker.

7 THE COURT: Stephanie Rucker. Okay.

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

10

11 STEPHANIE RUCKER,

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

14 THE CLERK: You may be seated.

15 THE BAILIFF: Speak clearly into the
16 microphone.

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

21 THE WITNESS: Okay.

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

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

1 THE COURT: Mr. Vitto.

2 MR. VITTO: Thank you, Your Honor.

3

4 DIRECT EXAMINATION

5 BY MR. VITTO:

6 Q Stephanie, what is your occupation?

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

9 Q And how long have you been so employed?

10 A About eight and a half years.

11 Q What are your job duties?

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

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

17 A Yes.

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

21 A Yes, sir.

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

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

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

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

5 Q And what happened next?

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

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

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

16 Q Is that part of the CAD?

17 A Yes, sir.

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

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

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

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

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

1 purse if I'm allowed to get it.

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

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

6 MR. MARTINEZ: Kirk.

7 MR. VITTO: Yeah.

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

9 MR. VITTO: 1:42?

10 MR. MARTINEZ: Yeah.

11 MR. VITTO: Thanks, man.

12 BY MR. VITTO:

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

15 A Yes, sir.

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

18 A Yes, sir.

19 Q Did you bring it to work?

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

22 MR. VITTO: Great.

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

1 BY MR. VITTO:

2 Q And it's in your purse?

3 A Yes.

4 MR. VITTO: Do you mind, Judge?

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

6 THE BAILIFF: I'll get it.

7 THE WITNESS: Okay. Thank you.

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

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

10 THE WITNESS: It is not.

11 Thank you.

12 THE BAILIFF: You're welcome.

13 BY MR. VITTO:

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

16 A Yes, sir.

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

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

23 MR. VITTO: And 4 as well?

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

1 MR. VITTO: Gotcha.

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

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

5 MR. MARTINEZ: Yes, Judge.

6
7 (State's Exhibit 4A
8 was received into evidence.)
9

10 BY MR. VITTO:

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

14 A Yes, sir.

15 Q What phone number is that?

16 A (760) 412-0024.

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

19 A Yes.

20 Q How do you recognize it?

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

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

25 A Yes.

1 Q What is that?

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

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

10 THE COURT: Okay.

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

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

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

15 MR. VITTO: Thank you, sir.

16

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

18

19 BY MR. VITTO:

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

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

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

5 Q Okay.

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

9 Q Did you call back?

10 A Yes, sir.

11 Q Nobody answered?

12 A No, sir.

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

15 A I believe so.

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

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

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

21 THE COURT: Cross-examination.

22 MR. MARTINEZ: Just briefly, Judge.

23

24

25

(No Omissions.)

CROSS-EXAMINATION

BY MR. MARTINEZ:

Q The Rapid SOS program --

A Yes, sir.

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

A No.

Q Tell me more about how that works.

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

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

A Correct.

Q Did you receive training on that?

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

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

A I could not answer that question because I'm

1 not certain.

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

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

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

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

11 MR. MARTINEZ: Nothing further, Judge.

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

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

14 THE COURT: Thank you.

15 THE WITNESS: Thank you.

16 THE COURT: Who is your next witness?

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

1 far as I know.

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

4 MR. VITTO: Thanks, Judge.

5 THE COURT: Okay.

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

8

9

XAVIER GIDEON,

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

12 THE CLERK: You may be seated.

13 THE BAILIFF: Speak clearly in the microphone.

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

17 THE BAILIFF: Are we done with it?

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

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

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

22 And that's been admitted?

23 MR. VITTO: Yes, by stipulation.

24 THE COURT: All right. First of all,
25 everybody else that has been testifying, we have had them

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

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

7

8 DIRECT EXAMINATION

9 BY MR. VITTO:

10 Q What is your occupation, sir?

11 A Patrol deputy.

12 Q How long have you been so employed?

13 A Two years.

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

17 A Yes.

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

20 A I believe 0301 hours.

21 Q All right. 0301?

22 A Yes.

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

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

1 Q What did you observe upon arrival?

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

6 Q What did you do upon arrival?

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

12 Q What duties were you tasked with on scene?

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

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

18 A I did.

19 Q Do you see him in the courtroom today?

20 A I do.

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

23 A He's wearing an orange striped jumpsuit.

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

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

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

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

5 MR. VITTO: It's faded.

6 BY MR. VITTO:

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

9 A He identified himself as Bozo the Clown.

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

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

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

18 A Correct.

19 Q Or with anybody inside the trailer?

20 A Correct.

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

24 A Yes.

25 Q Did you have opportunity to observe the body

1 of the decedent?

2 A I did, once inside.

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

5 A Via locksmith.

6 Q Okay. Can you tell me what happened?

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

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

12 A Correct.

13 Q You didn't know his name?

14 A Correct.

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

17 A Yes.

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

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

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

1 blows being exchanged?

2 A It was a verbal confrontation.

3 Q A verbal confrontation?

4 A Correct.

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

7 A Correct.

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

11 A Yes.

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

14 A Yes.

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

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

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

20 A That he was deceased.

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

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

25 MR. MARTINEZ: I would object to foundation

1 here, Judge.

2 MR. VITTO: Sure. We have time.

3 THE COURT: I'll sustain that.

4 MR. VITTO: That's fine.

5 BY MR. VITTO:

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

8 A Yes.

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

11 A Through my training and experiences.

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

14 A Yes.

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

16 A Yes.

17 Q What is agonal breathing?

18 A Someone who has difficulty breathing.

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

22 A Yes.

23 Q Can you describe what you heard?

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

1 released from the body.

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

3 A Correct.

4 Q All right. How long did it happen?

5 A Approximately a minute.

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

8 A Correct.

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

11 A Approximately.

12 Q And then it stopped?

13 A Yes.

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

16 A Correct.

17 Q What had you done?

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

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

22 A Correct.

23 Q Was it dilated?

24 A It was not dilated.

25 Q Okay. So it was pinpoint?

1 A Correct.

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

3 A It did not.

4 Q And he had no pulse?

5 A Correct.

6 Q Did you take any action at that point?

7 A No.

8 Q At some point was he officially pronounced

9 deceased at the scene?

10 A Yes.

11 Q And who did that?

12 A I originally did it; however, I believe

13 dispatch typed it in incorrectly. But I believe they did

14 it at 4:36 a.m.

15 Q And you were the person that did that?

16 A Correct.

17 Q At 0436?

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

19 correct.

20 Q All right. So you're dispatched at 0301.

21 It's not until 45 minutes later that you have any

22 contact, verbal communication with anybody in the

23 trailer; is that correct?

24 A Correct.

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

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

3 A Correct.

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

6 A Yes.

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

9 THE COURT: Mr. Martinez.

10 MR. MARTINEZ: Thank you, Judge.

11

12 CROSS-EXAMINATION

13 BY MR. MARTINEZ:

14 Q Good morning again, Deputy.

15 A Hello.

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

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

19 A Yes.

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

22 A Somewhat of it.

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

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

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

5 BY MR. MARTINEZ:

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

9 A Yes.

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

13 A Yes.

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

16 A Okay.

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

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

23 THE WITNESS: No.

24 BY MR. MARTINEZ:

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

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

3 A Yes.

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

6 A No. It was to the back.

7 Q It was through the back patio?

8 A Correct.

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

10 A Correct.

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

14 A (Indicating).

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

17 A Correct.

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

21 A Correct.

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

24 A Could have been the bedroom or the bathroom.

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

1 the room where the decedent was found?

2 A Correct.

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

6 A (Indicating).

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

9 A I was one of two, correct.

10 Q Who was the other?

11 A Deputy Williams.

12 Q Where did Deputy Williams --

13 A Where did he --

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

16 A (Indicating).

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

19 A Yes.

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

22 A Correct.

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

25 A Correct.

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

3 A Yes.

4 Q What did you hear?

5 A Sounds of someone walking.

6 Q Okay. So not a big commotion?

7 A No.

8 Q You didn't hear any argument?

9 A No.

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

11 A No.

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

14 A Yeah. It was not someone running.

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

18 MR. VITTO: Thumbs up, man.

19 THE COURT: That's fine.

20

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

23

24 BY MR. MARTINEZ:

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

1 arrived you heard someone walking inside the house?

2 A Yes.

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

5 A No.

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

8 A Correct.

9 Q How long did that walking last for?

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

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

12 A I believe so.

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

15 A Correct.

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

20 A Correct.

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

22 A Approximately.

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

24 A Approximately, correct.

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

1 well, let me ask -- back up.

2 A locksmith was called?

3 A Correct.

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

6 A No.

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

9 A No.

10 Q Do you recall the name of the locksmith?

11 A No.

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

14 A I believe it was after.

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

17 A Not personally, no.

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

20 A Yes.

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

24 A Yes.

25 Q Okay. Mr. Torres identified himself as Bozo

1 the Clown?

2 A Yes.

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

4 A Correct.

5 Q He told you everybody was fine; right?

6 A Correct.

7 Q He asked you guys to leave?

8 A Correct.

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

11 A Correct.

12 Q And when you arrived, it essentially became a
13 welfare check; right?

14 A Correct.

15 Q And do you have a certain policy or procedure
16 that you're supposed to follow when it comes to welfare
17 checks?

18 A Yes.

19 Q What's that policy or procedure?

20 A To attempt to ascertain the status of the
21 person we're doing the welfare check on, make sure they
22 are okay.

23 Q Okay. And now -- you said you attempted to
24 ascertain --

25 A Correct.

1 Q -- the person --
2 A Yes.
3 Q -- that the welfare check is on.
4 In a situation like this, you just know it's a
5 residence; right?
6 A Correct.
7 Q Had you ever been to that residence before?
8 A No.
9 Q Ever -- ultimately there were two people
10 involved; right?
11 A Correct.
12 Q Ever met either of them before?
13 A No.
14 Q Okay. So when you first showed up, you didn't
15 know who lived in the house; right?
16 A Correct.
17 Q You didn't know how many people?
18 A Correct.
19 Q Okay. You didn't have the name of an
20 individual that you were there for a welfare check on;
21 right?
22 A Correct.
23 Q So when the welfare check is on a residence
24 itself, what does policy dictate you're supposed to do?
25 A To check the occupants inside of the

1 residence.

2 Q Okay. You did make verbal contact with one
3 occupant; right?

4 A Correct.

5 Q Now, at that point had you been notified that
6 there was more than one occupant?

7 A By the male in the first residence, yes.

8 Q Okay. Did you take down the name of the male
9 in the first residence at all?

10 A I did.

11 Q You did?

12 A Yes.

13 Q Do you recall it off the top of your head?

14 A I do not.

15 Q Now, with your welfare check policy, are you
16 trained that at a certain point you're supposed to make
17 forcible entry into a house?

18 A Yes. When there is exigent circumstances,
19 yes.

20 Q Okay. You characterized the house as being
21 trashed. Can you explain that a little bit more for me.
22 What did you mean by that?

23 A I remember seeing one of the patios. It
24 looked like the wood was broken. Just a bunch of -- just
25 trash around the property, cans, old things that -- that

1 don't seem to be in use, just there.

2 Q All right. Do you remember what time the
3 locksmith arrived?

4 A No.

5 Q About how long did it take for the locksmith
6 to arrive after he was called?

7 A Approximately 30 minutes.

8 Q Okay. So we're talking about -- we're about
9 4:15 a.m. at this point; right?

10 A About.

11 Q Okay. The locksmith opened the door. Were
12 you the first deputy inside?

13 A No.

14 Q Who was the first deputy to go inside, or
15 deputies?

16 A I believe it was going to be Deputy Stone and
17 Deputy Waitland.

18 Q Okay. So was Mr. Torres immediately detained?

19 A I believe so, yes.

20 Q But you didn't do the detaining; right?

21 A I did not.

22 Q So do you know if he was read his *Miranda*
23 rights immediately?

24 A I do not.

25 Q After those first two deputies, were you the

1 next one in the stack?

2 A I was one of the next ones, correct.

3 Q And where did you go first when you went in
4 the house?

5 A I went down a hallway of the residence.

6 Q Eventually you came to the bedroom --

7 A Yes.

8 Q -- at the end of a hallway?

9 A Yes.

10 Q And that's where the decedent was?

11 A Yes.

12 Q Did you identify the decedent?

13 A I did not.

14 Q Now, when you first saw the decedent, he was
15 on the bed, on the mattress; right?

16 A Yes.

17 Q Is that when you saw -- I'm sorry. What was
18 the word that you used to describe his breathing that the
19 State was asking you about?

20 A Agonal.

21 Q Agonal. Did you hear the agonal breathing
22 while he was on the mattress?

23 A No.

24 Q When did you hear the agonal -- well, let me
25 back up. The sheriff's office moved him from the

1 mattress to the floor; right?

2 A Yes.

3 Q And performed some attempted life-saving
4 procedures; right?

5 A Correct.

6 Q Did CPR?

7 A Correct.

8 Q Mouth to mouth, or attempted to; right?

9 A Correct.

10 Q When did you hear the agonal breathing?

11 A When he was moved from the mattress to the
12 floor.

13 Q So you didn't hear it while he was on the
14 mattress?

15 A I did not.

16 Q Did you hear it once he was on the floor?

17 A Yes.

18 Q Okay. You said it lasted for about a minute?

19 A About a minute.

20 Q Was that while the life-saving measures were
21 being performed?

22 A Correct.

23 Q And you said you're the one who called
24 dispatch to pronounce the victim deceased; right?

25 A Yes.

1 Q And that was at about -- a little bit after
2 4:30 a.m.?

3 A Approximately.

4 Q How much longer did you stay at the house once
5 that happened?

6 A I want to say at most an hour.

7 Q Now, at some point Mr. Torres was arrested;
8 right?

9 A Yes.

10 Q He was taken to the detention center?

11 A Correct.

12 Q Do you know when that was that he was
13 transported to the detention center?

14 A No.

15 Q Could you give me an estimate as to when that
16 happened? If you're not able to, I understand. I'm sure
17 you were busy doing other things, because somebody else
18 transported him to the detention center; right?

19 A I know I clocked off at 7:00 a.m., and I
20 believe they were still there. I'm not sure.

21 Q Including Mr. Torres?

22 A I believe so.

23 Q Okay. Do you know -- did they have Mr. Torres
24 seated somewhere while he was still at the house?

25 A I don't know.

1 Q Did they give him anything to eat?

2 A I don't know.

3 Q Anything to drink?

4 A I don't know.

5 Q Do you know if they let him sleep, take a nap?

6 A I don't know.

7 Q Now, as part of your training with the Nye

8 County Sheriff's Office, you do -- you work in the

9 detention center; right?

10 A I have worked, correct.

11 Q Are you familiar with the booking procedure

12 there?

13 A No.

14 Q You're not?

15 A Not too much.

16 Q In what capacity did you work in the detention

17 center?

18 A As a jail deputy.

19 Q Okay.

20 A However, I know they have changed the way they

21 do things.

22 Q I understand. Did you have any personal

23 contact with Mr. Torres?

24 A I don't think so.

25 Q Okay. So you never spoke to him?

1 A I don't think so.

2 Q Never questioned him at all?

3 A I don't think so.

4 Q Now, while you were waiting outside, I know
5 you called the locksmith, but before the locksmith, no
6 one ever called a judge; right?

7 A Correct. I don't believe so.

8 Q No one sought a search warrant for the house;
9 right?

10 A I don't believe so.

11 MR. MARTINEZ: Pass the witness, Judge.

12 THE COURT: Redirect by the State.

13 MR. VITTO: A little bit, Judge.

14

15 REDIRECT EXAMINATION

16 BY MR. VITTO:

17 Q So I may have made a mistake, Deputy, at least
18 insofar as my understanding. So you were dispatched at
19 0301?

20 A I believe so.

21 Q What time do you think you arrived?

22 A Just -- I know just shortly after. I was in
23 the area already.

24 Q So it didn't take long?

25 A No.

1 Q Not more than five minutes, not more than 10
2 minutes?

3 A I would say not more than five.

4 Q All right. And we know that the defendant at
5 the time began to communicate with you verbally about 45
6 minutes later on.

7 A Approximately.

8 Q And the locksmith was after that?

9 A It was maybe during the same time. When --
10 maybe when the locksmith was on the way there is when we
11 made contact with him. I'm not sure exactly when and who
12 called the locksmith.

13 Q I understand. Now, did you hear the defendant
14 identify himself by name?

15 A As Bozo the Clown.

16 Q No, as Marco Antonio Torres?

17 A No.

18 Q Okay. But -- and defense counsel asked you
19 this on cross-examination. What were some of the other
20 things that the defendant said from the residence?

21 A For us to go away, that everyone was okay
22 inside. And that's when we knew that someone else was in
23 the residence.

24 Q Okay. So until he said, "Everybody here is
25 fine," you didn't know there was somebody else inside the

1 residence?

2 A Correct.

3 Q And just so I understand, the agonal breathing
4 that you described, that was the air inside his body
5 leaving his body while he was being moved to the floor?

6 A I believe so, correct.

7 Q That's what you recall?

8 A Yes.

9 Q All right. And then while CPR was being
10 performed?

11 A Correct.

12 MR. VITTO: I have no more questions of this
13 witness at this time, Judge.

14 THE COURT: Mr. Martinez?

15 MR. MARTINEZ: I just want to be crystal
16 clear.

17

18 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 DIRECT EXAMINATION

14 BY MR. VITTO:

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

17 A Yes.

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

22 A Yes.

23 Q Do you have a recollection of that?

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

25 Q All right. Now, we have in evidence the

1 number that called 9-1-1. Can you tell us your brother's
2 phone number?

3 A (760) 412-0024.

4 Q Okay.

5 A And I pay for it. I paid for both that number
6 and this one.

7 Q I understand.

8 A It no longer exists anymore. I canceled it,
9 but --

10 Q Oh, that's interesting. That could be
11 helpful, actually. So who is your carrier?

12 A T-Mobile.

13 Q That's right. You had told us that earlier.
14 So your brother's phone number -- any records associated
15 with your brother's phone are going to be on T-Mobile and
16 under your name?

17 A Yes.

18 Q Perfect. And one last thing I wanted to show
19 you. I hesitated earlier, but I want to show it to you
20 now. And it's State's proposed Exhibit 19. Do you
21 recognize the person depicted there?

22 A Yes.

23 Q Who is that?

24 A My brother.

25 Q All right. Jonathan A. Piper. And what was

1 the middle initial A? What did that stand for?

2 A Andrew.

3 MR. VITTO: All right. May I have the Court's
4 indulgence just a moment, Your Honor?

5 THE COURT: Sure.

6

7 (Off-the-record discussion.)

8

9 MR. VITTO: Judge, I have no more questions
10 of this witness at this time. I know he wants to stick
11 around until it's over, and we may get into something
12 later. We'll see how the testimony goes with
13 Mr. Fancher.

14 THE COURT: All right. Mr. Martinez,
15 cross-examination?

16 MR. MARTINEZ: No, Judge. I don't have any
17 additional questions.

18 THE COURT: All right. So this witness can be
19 excused to remain outside in the hallway?

20 MR. VITTO: Yes.

21 THE COURT: All right.

22 MR. VITTO: Thanks, Judge.

23 THE COURT: Thank you.

24 THE WITNESS: May I get lunch, or I have to
25 stay around?

1 MR. VITTO: He has an easy hour that --

2 THE COURT: You could probably go and get
3 lunch if you want to do that. We're not going to stop
4 for lunch, but if you want to go get something to eat,
5 you're more than welcome to.

6 THE WITNESS: Okay. Thank you.

7 MR. VITTO: Thank you, Mr. Piper. Wes is
8 next.

9 Your Honor, can you take judicial notice of
10 the fact that the phone number that our last witness gave
11 as the number for his brother is the exact same phone
12 number that is listed as the number calling 9-1-1 on the
13 CAD call, which is State's Exhibit 4A?

14 MR. MARTINEZ: Did he just ask the Court take
15 judicial notice of what's in testimony?

16 MR. VITTO: Yeah. Well, of the fact that
17 they're the same, the fact that they're the same number.
18 It's in evidence.

19 MR. MARTINEZ: Okay.

20 THE COURT: I can recognize that he made the
21 statement that that phone number was the same phone
22 number that was on the CAD.

23 MR. VITTO: Hey, man. Just pointing it out.

24

25 (No Omissions.)

1 WESLEY FANCHER,
2 having been first duly sworn to tell the truth, testified
3 as follows:

4 THE COURT: All right. Mr. Fancher, if you
5 wouldn't mind pulling your mask down below your mouth so
6 that the court reporter can hear you clearly.

7 THE WITNESS: Absolutely.

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

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
19 Office.

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
23 detective?

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.

(State's Exhibit No. 8
was received into evidence.)

BY MR. VITTO:

Q Number 9?

A Number 9. This is the interior of the residence from the kitchen capturing some empty beer cans, miscellaneous debris, looks like a picture frame, possibly two picture frames. One of them might not be a picture, but just miscellaneous debris, and then the hallway leading into the room at the end, which was Jonathan's room.

Q And the point of taking that photograph?

A It was to capture the debris leading into the hallway inevitably. It doesn't capture Jonathan's door, but almost does in this photograph.

Q Okay. So just a state of disarray, is what you're trying to capture?

A Yes, sir, just the overall condition of the house.

MR. VITTO: The State would move for admission.

THE COURT: All right. It will be admitted.
That was 9.

MR. MARTINEZ: No objection.

1 (State's Exhibit No. 9
2 was received into evidence.)

3
4 BY MR. VITTO:

5 Q 10?

6 A This is a photograph of -- I believe it looks
7 like the kitchen floor where there is what looks like
8 marijuana, a joint, other miscellaneous debris, trash
9 that had been -- well, trash, empty beer cans and a
10 dinosaur toy.

11 MR. VITTO: The State would move for
12 admission.

13 MR. MARTINEZ: No objection.

14 THE COURT: 10 will be admitted.

15
16 (State's Exhibit No. 10
17 was received into evidence.)

18
19 THE WITNESS: That is a photograph of
20 nunchucks or --

21 BY MR. VITTO:

22 Q Nunchaku?

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

25 MR. VITTO: Are we going to fight about this?

1 MR. MARTINEZ: We are.

2 THE COURT: I'm waiting for the objection
3 already.

4 MR. MARTINEZ: This one I'm opposed to for
5 relevance, Judge.

6 MR. VITTO: I guess at this point -- and I
7 appreciate Counsel's -- look, Daniel Martinez is a very
8 good defense attorney. He spots issues, he fights his
9 issues, and, frankly, I appreciate it. That's when the
10 system works best. He's looked at the charging document.
11 He's looking at this. What's going on? Why do we have
12 this? I would ask that this Court withhold its ruling.
13 I want to show the pictures -- I want to admit some other
14 photographs in contemplation of our -- at the close of
15 evidence -- moving to admit the charging document to
16 include a count of 202.350, possession of a dangerous
17 weapon. That's why we're seeking to admit, amongst other
18 things, photographs that include the photographs of the
19 nunchaku.

20 So I'm just asking you to withhold your ruling
21 until we're done.

22 MR. MARTINEZ: What was the statute again?

23 MR. VITTO: I'm sorry?

24 THE COURT: 202.350.

25 MR. VITTO: 202.350. Judge, I think it's fair

1 that you withhold your ruling at this point and not rule
2 on that until more of the evidence comes in or all of the
3 evidence comes in.

4 THE COURT: Did you ask what the point of this
5 picture was? You asked all the other ones what the point
6 of the picture was, but did you ask him?

7 MR. VITTO: I was just about to. Not really,
8 but thanks for reminding me.

9 BY MR. VITTO:

10 Q What was the point of taking that picture?

11 A So there was some abrasions, bruising. There
12 was some injuries to the face of the decedent, and we
13 took scaled photographs for the purposes of -- in the
14 event this was used in the commission of the crime.

15 MR. MARTINEZ: Can I just clarify a little bit
16 on voir dire --

17 THE COURT: Sure.

18 MR. MARTINEZ: -- Judge?

19

20 VOIR DIRE EXAMINATION

21 BY MR. MARTINEZ:

22 Q So, Detective, it's fair to say when you first
23 arrived on the scene and you began taking pictures, you
24 didn't know what happened; right?

25 A Yes, sir. That's correct.

1 Q So you're kind of taking pictures of
2 everything so as you figure out what happened you have
3 what you need later?

4 A Yes.

5 MR. MARTINEZ: Okay. Nothing further.

6 MR. VITTO: Okay. What's the next number?

7 THE COURT: 12.

8 MR. VITTO: Actually, you know what? So the
9 ones in dispute -- that first one in dispute is number
10 11.

11 THE COURT: 11. So 11 is questionable. All
12 the other ones prior have been admitted.

13 BY MR. VITTO:

14 Q All right. So let's move on to 12.

15 A 12 is a photograph of the hallway floor where
16 there is a pair of scissors just lying -- just lying on
17 the floor.

18 Q Okay. And the purpose of that, to paraphrase
19 defense counsel who did it so well, is you don't know
20 what happened and you're taking pictures of everything?

21 A Correct.

22 MR. VITTO: All right. Move for admission.

23 MR. MARTINEZ: I would object as to relevance
24 of the scissors, Judge.

25 MR. VITTO: My point with most of these

1 photographs -- and I don't think it necessarily includes
2 the nunchaku -- is that the house is in a state of
3 disarray, and you're going to hear that there was a
4 tussle, and I believe that the state of the house, being
5 in disarray, is exemplary of what was happening inside
6 the house.

7 We've got a pair of scissors willy-nilly or
8 pell mell or whatever other word you want to use -- or
9 phrase, just laying in the hallway. That's odd.

10 Obviously it got there somehow, and my point is that the
11 condition of this house is the result of the struggle or
12 tussle that ensued prior to the death of the decedent.

13 THE COURT: You mean everybody doesn't keep
14 their scissors on the hallway floor?

15 MR. VITTO: Daniel might.

16 MR. MARTINEZ: Judge, I certainly get that
17 with the State, which is why the previous pictures of the
18 exterior and interior of the house I haven't had any
19 objection to. This one specifically, though, it's more
20 specific, just of the scissors, not necessarily the
21 disarray of the house. So I don't think it depicts what
22 the State is intending to use it for in argument, and
23 that's why I don't think it's relevant and I would
24 object.

25 MR. VITTO: I'm simply using it to demonstrate

1 or manifest the disarray.

2 THE COURT: Okay. We will put number 12 down
3 with number 11, and then I will withhold my ruling on
4 that one also.

5 MR. VITTO: Thanks, Judge.

6 BY MR. VITTO:

7 Q 13.

8 A This is a photograph of more nunchaku --
9 nunchucks, other miscellaneous clothing. This was taken
10 in the defendant's room.

11 MR. MARTINEZ: Judge, I'm going to object as
12 to foundation, and I probably should have done this
13 earlier. Detective Fancher has testified as to whose
14 room belonged to who, where he found items, but we don't
15 have any foundation as to how we knew it was their room,
16 and that's why I would object too here as well, Judge, as
17 to foundation as to how we know who that room belonged
18 to.

19 BY MR. VITTO:

20 Q How many bedrooms were in this house? Perhaps
21 we should get the diagram. Let me show you State's --
22 excuse me -- defense's --

23 THE COURT: Defense.

24 MR. VITTO: -- art work.

25 THE COURT: Scaled diagram.

1 BY MR. VITTO:

2 Q Scaled diagram. Defense Exhibit B. Now, this
3 has been admitted as Defense Exhibit B, and this was
4 drawn by Deputy Sheriff Xavier Gideon. Did I say that
5 correctly? Xavier Gideon. He drew this diagram. XG is
6 where he parked when he arrived. CW is where Colton --

7 THE COURT: Williams.

8 Q -- Williams parked when he arrived. The red X
9 in the interior is where he believed the decedent was
10 found. Is that consistent with your understanding as to
11 where the decedent was found?

12 A It's fairly consistent, excluding I would move
13 this X over a little bit, but that's --

14 Q I don't believe that the red X indicating
15 where the decedent was found was exactly where he was
16 laying.

17 A No, just the room where he was found.

18 Q This is the room where the decedent was found?

19 A Yes, sir.

20 Q You will see that there is a room, a bathroom,
21 and then there's a room. Would that be the defendant's
22 room?

23 A Yes, sir.

24 Q Okay. Have you identified the defendant yet?

25 A No, I have not.

1 Q Do you see Marco Antonio Torres in this
2 courtroom?

3 A Yes, I do.

4 Q Could you describe an article of clothing he's
5 wearing?

6 A Yes. He's wearing the Nye County Detention
7 Center clothing with a black mask.

8 Q What colors would you say those were?

9 A Oh, orange and white.

10 Q Orange and white.

11 Your Honor, may the record reflect that this
12 witness has made an in-court identification of the
13 defendant himself?

14 THE COURT: The record will reflect the
15 in-court identification of the defendant.

16 MR. VITTO: Thank you, Judge.

17 BY MR. VITTO:

18 Q So where would the defendant's room be in this
19 diagram?

20 A Oh, right here.

21 MR. VITTO: Okay. Do you want a circle
22 perhaps of where this witness identified?

23 MR. MARTINEZ: Whatever you would like.

24 BY MR. VITTO:

25 Q Let's put a circle where the defendant's

1 bedroom was.

2 A (Indicating).

3 Q Okay. All right. So --

4 THE COURT: Go ahead.

5 MR. VITTO: Okay. Thanks, Judge.

6 BY MR. VITTO:

7 Q So how were you able to determine that where
8 the X is is the decedent's bedroom?

9 A I believe it was through -- we did an
10 interview with him, and the story was Jon -- the
11 defendant (sic) ran to his room and locked the door, and
12 being there was only one other bedroom, that would be the
13 defendant's bedroom, along with -- I believe we found
14 some items there. I think there was a tablet that was
15 also the defendant's.

16 Q Okay. So you found the defendant's tablet in
17 what you have identified as the defendant's room?

18 A Yes, sir.

19 Q Okay. And you did an interview where the
20 defendant told you something about the decedent?

21 A Yes.

22 Q Okay. And the decedent ran to his room and
23 locked the door?

24 A Yes.

25 Q Was the decedent's room -- was the door to the

1 decedent's room locked when you found it?

2 A Yes, sir.

3 Q How about the defendant's door? Was it
4 locked?

5 A No.

6 Q All right. So where were we? Number 13?

7 THE COURT: Number 13.

8 BY MR. VITTO:

9 Q 13 with the nunchaku. So what do we have a
10 picture of? The picture is the nunchaku in the
11 defendant's bedroom; correct?

12 A Yes, sir.

13 Q How many pairs of nunchaku were found in
14 the -- outside of his bedroom?

15 A Oh, I want to say there was three -- no. One
16 pair I think was out in the living room, and there was
17 two inside his bedroom. I believe there was three total.

18 Q Okay. So you think there was only one outside
19 the bedroom and there was more than one in his bedroom?

20 A Yes, sir.

21 Q All right. And so what we have depicted in 13
22 is his bedroom with more than one pair?

23 A Yes, sir.

24 MR. VITTO: All right. We have the same
25 objections. We can put 13 in the pile of not yet --

1 THE COURT: Questionable, yeah.

2 BY MR. VITTO:

3 Q All right. What's 14?

4 A 14 is a photograph of one of the nunchakus
5 being held up inside the defendant's room.

6 Q Okay. So that's one of the pair. So the pair
7 that's being held up in 14 is one of the pair that is in
8 13?

9 A Yes, sir. There was also some skateboards in
10 the background. We don't believe it belonged to the
11 defendant (sic) because through the interview it comes
12 from California.

13 Q In the interview with the defendant did he
14 talk at some length about his skateboarding and music
15 playing?

16 A Music playing and the -- yes, the California
17 life, like talking about California and music playing and
18 stuff like that.

19 Q Now, in the picture that we have in your hand
20 as 14, do you see any skateboards in that picture?

21 A Yes, sir.

22 Q Okay. How many?

23 A One, two, three, four, five. It looks like
24 five, possibly four depending on the paint on one of
25 them. But it looks -- actually, five. It looks like

1 five.

2 Q Okay. Now, I want to understand some of your
3 testimony from earlier. You know that you were
4 dispatched to a homicide. You haven't interviewed the
5 defendant yet; is that correct?

6 A Correct.

7 Q On your first arrival?

8 A Correct.

9 Q When you're taking these pictures you have yet
10 to interview the defendant?

11 A I began taking -- I got a search warrant.
12 I took some overall preliminary photographs of the scene,
13 and then I was told by my captain, my sergeant, to go
14 interview the defendant, at which point me and
15 Detective Fisher went and conducted an interview, and we
16 returned to the scene where we processed the residence
17 more thoroughly.

18 Q So if I understand your testimony earlier, you
19 started talking about scale and injuries. Were you
20 looking at the potential for the nunchaku to have been
21 responsible for the injury observed?

22 A Yes, sir.

23 Q Okay. And you took some measurements along
24 those lines?

25 A Yes, sir.

1 Q And what were your findings?

2 A The findings -- I did measurements to the
3 nunchucks and also did some to-scale photographs of the
4 injuries to the left side of the decedent's head, face,
5 and I couldn't comment as far as if they were consistent
6 with the nunchucks or --

7 Q Okay. All right. So 14 is contested. Let's
8 move on to 15.

9 A 15 is a photograph -- this is the living room.
10 There is a couch. There is a skateboard. There's books.
11 There's a guitar, other miscellaneous debris. There is a
12 broken heater. It looks like the bottom part of an
13 electric heater had been broken. A green shoe. Yeah.

14 Q Disarray?

15 A Yes, sir.

16 MR. VITTO: Your Honor, the State would move
17 15.

18 MR. MARTINEZ: No objection, Judge.

19 THE COURT: There is no nunchaku in 15?

20 MR. MARTINEZ: Didn't seem to be.

21 THE COURT: 15 can be admitted.

22

23 (State's Exhibit No. 15

24 was received into evidence.)

25

1 THE WITNESS: This photograph is of the
2 decedent's room, where there is a box spring mattress
3 that's been tipped over leaning up against the room.
4 There's blankets in the background. The bed's tipped
5 completely over on its side, and a plant.

6 Q Again, disarray?

7 A Yes, sir.

8 MR. VITTO: The State would move 16.

9 THE COURT: Admitted.

10

11 (State's Exhibit No. 16
12 was received into evidence.)
13

14 BY MR. VITTO:

15 Q 17?

16 A That is a photograph of the black Samsung cell
17 phone that was actually underneath the mattress, the box
18 spring, and it -- yeah, it's the back side of the phone.

19 MR. VITTO: Okay. The State would move that
20 Samsung phone -- or that photo of the Samsung phone into
21 evidence.

22 MR. MARTINEZ: What's the relevance of the
23 phone?

24 MR. VITTO: The relevance of the phone?

25 Does the next picture show the broken phone?

1 THE WITNESS: Yes, sir.

2 MR. VITTO: All right. The relevance of the
3 photo is that the phone is broken.

4 MR. MARTINEZ: Is it the same phone?

5 MR. VITTO: Yeah.

6 MR. MARTINEZ: Just front and back? Let's do
7 the next one, and then I will probably have no objection
8 either.

9 BY MR. VITTO:

10 Q So 17 shows the phone as initially observed;
11 is that correct?

12 A Yes, sir.

13 Q All right. And then the next photograph that
14 you have, is that 18?

15 A Yes, that is 18, the last photograph.

16 Q So 18 is when somebody picks up the phone and
17 notices that it's cracked, broken --

18 A Yes.

19 Q -- is that correct?

20 A It is completely destroyed. I believe there
21 is a wire hanging out of it.

22 MR. VITTO: Okay. The State would request
23 that 17 and 18 be admitted into evidence.

24 MR. MARTINEZ: No objection.

25 THE COURT: All right. 17 and 18 will be

1 admitted.

2

3

(State's Exhibits 17 and 18

4

were received into evidence.)

5

6 BY MR. VITTO:

7

Q All right. So what did you immediately do

8

upon arrival to the scene at 835 South Linda Street at

9

your first arrival?

10

A I got a briefing of what the patrol had -- the

11

information that they had obtained, and immediately

12

secured the crime scene.

13

Q All right. And what duties were you initially

14

tasked with on the scene?

15

A Initially I was the stand-by until supervisors

16

showed up, Captain Boruchowitz and Sergeant Fowels. Then

17

I applied for a search warrant for the residence.

18

Q Okay. And did you get permission?

19

A Yes, sir.

20

Q All right. Now, did you have opportunity to

21

observe the body of Jonathan A. Piper?

22

A I did.

23

Q Did you see any indication of injury?

24

A Yes, sir.

25

Q And how would you describe the injury you were

1 able to observe?

2 A The injuries -- there were linear lines, like
3 bruising to the left side of his head and his face.
4 There was bruising on the inside of his mouth and --
5 yeah, that's essentially the general description of the
6 injuries.

7 Q All right. Let me show you State's proposed
8 Exhibit 19. Do you recognize that photograph?

9 A Yes, sir, I do.

10 Q Did you take that photograph?

11 A Yes, sir, I did.

12 Q Does it accurately depict what it portrays?

13 A Yes.

14 Q And is that the injury that you just
15 referenced that you can see in that photograph?

16 A Yes.

17 Q So there's bruising or injury, red mark,
18 whatever you want to refer to it as, along the left side
19 of his head and face?

20 A Yes, sir.

21 Q Including the eye?

22 A Yes, sir.

23 Q All right. What did you see first, the
24 nunchaku or the injury to the decedent?

25 A The injuries to the decedent I saw first, and

1 then I -- that's when I exited the residence, made sure
2 the scene was secure, and then went forward with the
3 search warrant and interview.

4 Q Okay. So you saw the injury to the decedent,
5 you got the search warrant, then you're searching to
6 collect evidence. And your attention was drawn after
7 seeing the injury to the nunchaku?

8 A Yes.

9 Q And you did what you could to try to see if
10 there was any way to match it up?

11 A Yes, sir. There was also the possibility
12 of -- because of the linear lines, whether it was a
13 heater, one of them heaters -- the electric heaters that
14 might have been a point of contact like a blunt force
15 trauma type stuff.

16 Q That's why we have pictures of the measuring
17 of the heater?

18 A Yes, sir.

19 Q I understand. Do you know whether the
20 defendant is right- or left-handed?

21 A I believe -- I usually ask that question
22 during an interview. I may or may not have. I would
23 have to review the interview.

24 Q You don't have any recollection one way or the
25 other?

1 A No, I don't.

2 MR. VITTO: Okay. Your Honor, I request that
3 19 be admitted into evidence.

4 MR. MARTINEZ: No objection.

5 THE COURT: Okay. Put it down in the
6 questionable stack. Did you say objection?

7 MR. MARTINEZ: I said no objection, Your
8 Honor.

9 THE COURT: Okay. Then it will be admitted.
10 I thought you said objection.

11

12 (State's Exhibit No. 19
13 was received into evidence.)

14

15 MR. MARTINEZ: First time with the mask that I
16 didn't get that out. Sorry.

17 THE COURT: Okay. So 19 will be admitted.

18 MR. VITTO: Now, let me show you State's
19 Exhibit 2.

20 THE COURT: State's 2? It's right here, I
21 believe.

22 MR. VITTO: Yes, sir. Thank you very much.

23 BY MR. VITTO:

24 Q Showing you State's Exhibit 2, do you
25 recognize that photograph?

1 A I do.

2 Q Did you take that photograph?

3 A I did.

4 Q And who was depicted in that photograph?

5 A Jonathan Piper.

6 Q And is that how you initially observed him?

7 A Yes.

8 Q And does that photograph depict a feeding

9 tube?

10 A Yes, sir, it does.

11 Q All right. And that is already in evidence.

12 Now, pursuant to the signed search warrant you

13 received, what items did you recover? Do you recall?

14 A Yes. There were the nunchucks, two cell

15 phones, a tablet, a ripped zip-lock baggie, I believe

16 suspected marijuana, a bent broom. I think that's -- to

17 the best of my memory, that's what we collected.

18 Q Okay. And let me show you State's proposed

19 Exhibit 26. Showing you State's proposed Exhibit 26, do

20 you recognize that?

21 A Yes, I do.

22 Q How do you recognize that?

23 A It's our return of services that we do during

24 search warrants.

25 Q Okay. And that specifically includes all of

1 the items that were recovered from the residence pursuant
2 to that search warrant?

3 A Yes, sir.

4 Q And you went through a litany of things just a
5 moment ago. Looking at that list now, is there anything
6 that you forgot?

7 A I mean, it looks like the amount of hours
8 wasn't filled in.

9 Q I just mean the items.

10 A Oh. No, everything looks good.

11 Q Okay. That's accurate?

12 A Yes, sir.

13 Q Those are all the things that were taken from
14 the house?

15 A Yes, sir.

16 MR. VITTO: Judge, I would ask that 26 be
17 admitted into evidence.

18 MR. MARTINEZ: No objection.

19 THE COURT: 26 can be admitted.

20

21 (State's Exhibit No. 26
22 was received into evidence.)

23

24 MR. VITTO: Thank you, Your Honor.

25 (No Omissions.)

1 BY MR. VITTO:

2 Q Now, did you have opportunity to interact with
3 Marco Antonio Torres?

4 A Yes, sir.

5 Q And in fact, you interviewed him; is that
6 correct?

7 A Yes, sir.

8 Q Where did that interview take place?

9 A At the Nye County Sheriff's Office in one of
10 our interview rooms.

11 Q And did he identify himself to you?

12 A Yes, sir.

13 Q Was he *Mirandized* prior to him being
14 interviewed?

15 A Yes, sir.

16 Q Did he agree to speak with you?

17 A Yes, he did.

18 Q Was that interview recorded?

19 A Yes, sir.

20 Q Was anyone else present?

21 A Detective Fisher was.

22 Q All right. Now, initially did he ultimately
23 take responsibility for what occurred?

24 A Yes, he did.

25 Q What was his initial reaction when he was

1 asked questions about what happened?

2 A He initially stated that he had found him,
3 found the decedent in that condition. But as the
4 interview progressed, he -- you know, at one point we
5 went back into the interview room, and that was when he
6 said that he was going to be honest and that he was
7 responsible for his death.

8 Q He was responsible for Jonathan Piper's death?

9 A Yes, sir.

10 Q All right. And in fact, he admitted lying to
11 you previously?

12 A He did, yes.

13 Q All right. Now, after that did he explain
14 what happened?

15 A Yes.

16 Q What did he say?

17 A He stated that at a point in the night earlier
18 he got upset at Jonathan for ripping open a bag of
19 marijuana. I guess when the bag was ripped open the
20 marijuana went flying everywhere.

21 Q All right. Let me stop you right there. So
22 let me show you what has been preliminarily marked as
23 State's proposed Exhibits 20 and 21.

24 MR. MARTINEZ: What number?

25 MR. VITTO: 20 and 21.

1 MR. MARTINEZ: Okay.

2 MR. VITTO: Yeah.

3 BY MR. VITTO:

4 Q All right. Do you recognize those
5 photographs?

6 A I do.

7 Q Are they accurate?

8 A Yes, sir, they are.

9 Q Thank you. Did you take them?

10 A I did.

11 Q And what were you photographing in those
12 exhibits as depicted in those exhibits?

13 A The torn zip-lock baggie with what looks like
14 to be pieces of marijuana inside, around it, green leafy
15 substance. And then in that same photograph is a trash
16 can in the background where there's a -- it looks like a
17 larger ball or clump of marijuana, which is the closer
18 photograph in the second --

19 Q Wouldn't that be a bud?

20 A It may be a bud, yeah.

21 Q I don't know.

22 A Next to the potting mix.

23 Q And so you found actual physical evidence of
24 exactly what the defendant told you had started this
25 argument; is that correct?

1 A Yes, sir.

2 Q And you seized the -- what is suspected to be
3 marijuana and the torn baggie as evidence?

4 A Yes, sir.

5 Q All right. And that's photographic evidence
6 of what it is that you found and recovered; is that
7 correct?

8 A Yes, sir.

9 Q And those items, the baggie and the marijuana,
10 is exactly where it was initially observed?

11 A Yes.

12 MR. VITTO: Your Honor, I would ask that
13 State's proposed Exhibits 20 and 21 be admitted into
14 evidence.

15 MR. MARTINEZ: No objection, Judge.

16 THE COURT: All right. 20 and 21 shall be
17 admitted.

18
19 (State's Exhibits 20 and 21
20 were received into evidence.)

21
22 BY MR. VITTO:

23 Q And the baggie and the suspected marijuana are
24 currently in the custody of the Nye County Sheriff's
25 Office?

1 A Yes, sir.

2 Q All right. So the defendant told you how the
3 tussle started. What did the defendant say happened
4 after that?

5 A He said during the tussle at one point
6 Jonathan fell or went to the ground, and he got up and
7 ran to his room, where he slammed the door. Marcos then
8 stated that he -- that agitated him, because he slammed
9 the door, and so he went to the door, found it locked,
10 and then that's when he kicked the door open and then he
11 saw Jonathan on the phone.

12 Q All right. Let me stop you there. So if I
13 understand correctly, the defendant told you they had
14 began to tussle. Jonathan Piper fell to the floor, went
15 to his bedroom, slammed the door. According to the
16 defendant he locked the door, and the pictures that we
17 have admitted into evidence, with the exception of 11,
18 12, 13 and 14, are evidence or a manifestation of a
19 tussle through the house?

20 A Yes, sir.

21 Q That's why you took the photographs?

22 A Yes, sir.

23 Q All right. So the defendant -- or excuse me.
24 The decedent, Jonathan Piper, is now locked within his
25 bedroom door, according to the defendant himself, and the

1 slamming of the door agitated him. What did he say
2 happened after that?

3 A He went to the door. He ran to the -- to
4 Jonathan's door, and that's where he found it locked, and
5 then kicked it open.

6 Q All right. So let me show you State's
7 proposed Exhibits 22, 23 and 24. Take your time. Go
8 through those. Look up when you've had that opportunity
9 and I'll ask you some questions.

10 A Okay.

11 Q Do you recognize those photographs?

12 A I do.

13 Q Did you take them?

14 A I did.

15 Q Are they accurate?

16 A Yes, sir.

17 Q By number, starting with 22, what do we see
18 depicted there?

19 A This is a photograph of the -- of Jonathan's
20 door with damage to that door looking at it from the
21 hallway.

22 Q Okay. It looks like there's a crack?

23 A Yes, sir.

24 Q All right. And how about 23?

25 A 23 is a photograph standing from the opposite

1 side facing the door frame that's got substantial damage
2 to the door frame where the door closes.

3 Q And can you see the wall in that photograph?

4 A Yes.

5 Q And was there anything in the wall that you
6 were seeking to capture?

7 A Yes. There's a large hole into the drywall.

8 Q And what about 24?

9 A 24 is a more close-up photograph of the door
10 frame showing the amount of damage that was done to the
11 door frame.

12 Q Okay. As if the door was kicked open?

13 A The door was definitely kicked open.

14 Q Just like the defendant said?

15 A Yes, sir.

16 MR. VITTO: Okay. I would ask that 23 -- 22
17 through 24 be admitted.

18 MR. MARTINEZ: No objection, Judge.

19 THE COURT: All right. They shall be
20 admitted.

21

22 (State's Exhibits 22, 23, 24
23 were received into evidence.)

24

25 (No Omissions.)

1 BY MR. VITTO:

2 Q Okay. So the defendant said he kicked the
3 door open. You found evidence consistent with what he
4 said, corroborating exactly what he said. What did he
5 say happened after that?

6 A He said that Jonathan was on the phone on his
7 bed, and he grabbed the phone -- he took the phone from
8 Jonathan -- oh. He -- first he said that -- during the
9 interview he said that he took the phone from Jonathan,
10 and that he told -- he told -- he knew he was on the
11 phone with the cops, is what he said, and then that upset
12 him because he called -- he said he was ratting him out.
13 And then at that point he threw the phone down on the
14 ground.

15 Q Who threw the phone on the ground?

16 A I'm sorry. Marco threw the phone on the
17 ground.

18 Q The defendant --

19 A The defendant.

20 Q -- threw Jonathan Piper's phone on the ground?

21 A Yes, sir.

22 Q All right. He knew he was calling the police.
23 It upset him. He thought he was being ratted out?

24 A Yes, sir.

25 Q That's what he told you?

1 A Yes.

2 Q All right. Did he say anything about
3 overhearing any of the conversation?

4 A Yes. He -- when he heard who was on the
5 phone, he knew that he had called the cops. And that he
6 had spoken to the dispatcher on the phone, telling them
7 that it was a false alarm.

8 Q And those were his words? He said that he
9 told dispatch, "False alarm"?

10 A That -- I've listened to the recording, so as
11 far as in the interview, I don't know if I want to quote
12 him with that exact statement --

13 Q Okay.

14 A -- but he did know -- he did tell me in the
15 interview he knew he was on the phone with the cops.

16 Q Okay. "False alarm" is what you heard on the
17 call itself?

18 A Yes, sir.

19 Q I understand. We will get to that in a
20 minute. And did he use any adjectives to describe
21 Jonathan Piper's phone and the floor?

22 A I think he smashed -- smashed it.

23 Q So we found evidence to corroborate the
24 defendant in regard to how the fight started?

25 A Yes, sir.

1 Q We have evidence corroborating the tussle that
2 occurred in the living room or throughout the house down
3 to the decedent's room; right?

4 A Yes, sir.

5 Q You photographed that. We have evidence
6 corroborating kicking down the door, right, or kicking
7 the door open?

8 A Yes, sir.

9 Q And then did you find -- is how you found
10 Jonathan Piper's phone consistent with what the defendant
11 told you he did with the phone?

12 A Yes.

13 Q All right. So let me show you -- let me ask
14 you this. Did you bring anything with you today?

15 A I did.

16 Q And what did you bring with you?

17 A The -- that specific phone.

18 Q Jonathan Piper's smashed phone?

19 A Yes, sir.

20 Q The phone recovered from his bedroom?

21 A Yes, sir.

22 Q All right. Or where he was found deceased,
23 anyway. Do you have that with you?

24 A I do.

25 MR. VITTO: Let me collect that. Okay.

1 Your Honor, may the record reflect that
2 Detective Fancher has handed me a sealed envelope. . The
3 description of evidence says cell phone. I do not know
4 what that word is.

5 MR. MARTINEZ: Broke.

6 MR. VITTO: Broke. Thank you. Broke cell
7 phone.

8 BY MR. VITTO:

9 Q And Detective, it is your testimony that
10 within this sealed evidence bag is the phone you
11 testified regarding?

12 A Yes, sir.

13 MR. VITTO: All right. Your Honor, I would
14 ask to have this marked as State's proposed Exhibit 25.

15 THE COURT: Okay. And you believe there's a
16 phone in there?

17 MR. VITTO: Well, you know, what? Perry Mason
18 moment. We're going to ask Mr. Fancher -- Detective
19 Fancher to break the seal and retrieve the contents of
20 this envelope if we have a utensil capable of doing same.

21 THE COURT: We have some scissors.

22 MR. VITTO: Scissors have worked in the past
23 historically as well.

24 THE COURT: Just so you know, for the record,
25 we don't keep those on the hallway floor.

1 MR. VITTO: Thank you very much, Judge. I
2 appreciate that.

3 THE COURT: Did you have an opportunity to
4 examine the chain of custody that was listed on the front
5 of that? Did you have any questions on that?

6 MR. MARTINEZ: The State is keeping it a
7 secret, Judge. I haven't had the opportunity to do that.
8 He --

9 THE WITNESS: I can touch this?

10 MR. VITTO: Would you like gloves?

11 MR. MARTINEZ: That's a good idea.

12 MR. VITTO: Just to be on the safe side.

13 THE COURT: Do we have gloves?

14 THE CLERK: Department A does.

15 THE COURT: I do at my house. I didn't know I
16 needed to bring them today, but --

17 THE BAILIFF: Try these. I don't know if
18 they're going to be any better.

19 THE WITNESS: Those were bad.

20 THE BAILIFF: These are small. I don't know
21 whose they are.

22 THE WITNESS: For children?

23 THE COURT: Those were in Department A?

24 THE BAILIFF: Yeah, I think they were. I
25 think they were --

1 THE WITNESS: This is what I can do here.

2 I've got an idea.

3 BY MR. VITTO:

4 Q What do we got there?

5 A A completely destroyed phone.

6 Q Okay. And does it look as if it's been
7 smashed?

8 A Yes, sir.

9 Q And that's the phone you recovered from the
10 decedent's room?

11 A It is.

12 Q All right. And that's consistent with what
13 the defendant himself told you he did?

14 A Yes, sir.

15 MR. VITTO: Your Honor, I would ask that
16 State's proposed Exhibit 25 be admitted into evidence.

17 MR. MARTINEZ: I just -- can we lay some more
18 foundation as to chain of custody?

19 MR. VITTO: Okay.

20 BY MR. VITTO:

21 Q So you picked it up at the house?

22 A Yes, sir.

23 Q It's included on the impound inventory, which
24 has been admitted into evidence as State's Exhibit 26; is
25 that correct?

1 A Yes, sir.

2 Q And what did you do with it after you picked
3 it up off the floor?

4 A Well, first photographed. I picked it up off
5 the floor, placed it in an evidence bag.

6 Q That evidence bag?

7 A Yes, sir.

8 Q Then what happened?

9 A And then took it to the office where we booked
10 it in for evidence.

11 Q Okay. So that was booked into evidence?

12 A Yes, sir.

13 Q While in an evidence bag?

14 A Yes, sir.

15 Q And then you retrieved it this morning?

16 A I did.

17 Q From where?

18 A From evidence.

19 Q Who gave it to you?

20 A The evidence tech. I don't know his name.

21 Q Okay. So it was checked out to you this
22 morning?

23 A It was.

24 Q Remaining in your sole care, custody and
25 control at all times up to and including right now?

1 A Yes, at 0858 hours this morning.

2 Q You picked it up and brought it here?

3 A Yes, sir.

4 MR. VITTO: All right. I think we're good.

5

6 VOIR DIRE EXAMINATION

7 BY MR. MARTINEZ:

8 Q Detective Fancher, did you put any sort of
9 tape on the envelope?

10 A Yes, sir. I am the one that applied the
11 evidence tape.

12 Q Okay. Did you put any other markings on the
13 envelope?

14 A Yes, sir. I put my initials on the evidence
15 tape to confirm that it was me for integrity purposes,
16 and then I'm the one that filled out the evidence sticker
17 with all the information.

18 Q What information goes on that evidence
19 sticker?

20 A A case number, a property number or a spillman
21 number for evidence, so it's the assigned property
22 number. What kind of offense it is. The description of
23 it. Then the suspect name, victim name, the date and
24 time of recovery, and then the location of recovery, and
25 then recovered by, and then received from me to evidence,

1 and then from evidence to me and the date and time.

2 Q And the case number that it says on there, is
3 that the sheriff's office case number?

4 A Yes, sir. It's been smudged.

5 Q Is it legible?

6 A It is, because it's my handwriting.

7 Q Read that for me.

8 A It's 20NY-1012.

9 Q Okay. And now, when you picked up that
10 envelope from the evidence vault this morning, did there
11 appear to be any changes from when you dropped it off
12 initially?

13 A Yes.

14 Q What were the changes?

15 A The -- the evidence has a -- like a --
16 MR. VITTO: Bar code.

17 A -- bar code, yeah.

18 BY MR. MARTINEZ:

19 Q So you did not put the bar code on there?

20 A No, sir.

21 Q Was the evidence tape tampered with in any
22 way?

23 A No, sir.

24 Q Not until you just cut it off?

25 A Not until I just cut it.

1 MR. MARTINEZ: Okay. All right. Nothing
2 further, Judge. No objection to its admission.

3 THE COURT: It will be admitted into evidence.
4

5 (State's Exhibit No. 25
6 was received into evidence.)
7

8 MR. VITTO: Thank you, Your Honor.

9 THE COURT: However, for purposes of the
10 hearing, it will be retained by the sheriff's office in
11 their evidence locker. We won't secure it in our
12 evidence locker.

13 MR. VITTO: Judge, I'm fine with that. I
14 actually prefer that. I think Counsel and I are going to
15 want to do a lot of work with phones and getting them
16 examined, and should we move to the next level at the
17 close of these proceedings, there is a lot of work to be
18 done. So I think we appreciate that.

19 THE COURT: So it will be retained by the
20 sheriff's office. We won't secure it here for court.

21 MR. VITTO: Thank you very much, Your Honor.

22 MR. MARTINEZ: Detective, make sure you take
23 good notes and good observations when you retape that.

24 THE WITNESS: I didn't catch the last part of
25 that.

1 MR. MARTINEZ: When you retape it, make
2 sure you take good notes and make good observations.

3 THE WITNESS: Yes, sir.

4 MR. VITTO: You might want to even photograph
5 before and after. Okay?

6 THE WITNESS: Definitely.

7 MR. VITTO: Okay? Just to document.

8 BY MR. VITTO:

9 Q All right. So we are up to the point where
10 the defendant -- he tells you he smashed Jonathan Piper's
11 phone on the floor. What did he tell you had happened
12 next?

13 A That he grabbed him from behind in a
14 chokehold-type fashion where he squeezed him. At one
15 point he heard Jon -- the decedent gasping, making a
16 gurgling or gasping sound. He described the defendant as
17 reaching for his phone, trying to grab his phone during
18 the struggle, and then at one point he described the
19 defendant (sic) as going limp. So he used his
20 chokehold-style fashion until he felt the defendant --
21 the decedent's body go limp, and at that point he felt
22 that he was dead.

23 Q All right. And did you just -- did you
24 mention something about gasping?

25 A Yes, sir.

1 Q What did he say about hearing the decedent
2 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 lurched.
3 I think I remember him talking about taking a deep breath
4 or a large, like, gasp of air or whatever. Yeah, I do
5 recall that.

6 Q He said at that point he had hoped that maybe
7 it brought him back to life?

8 A As he was resuscitating him?

9 Q Yeah.

10 A I believe I remember that, yes. That sounds
11 right, yeah.

12 Q Now, do you remember in the interview having
13 to explain the *Miranda* rights to Marco a second time?

14 A I think when -- I may have read him the rights
15 twice, coming back and reminding him of his rights. I
16 believe that to be accurate.

17 Q Do you recall Marco saying something along the
18 lines of, "I gave up my *Miranda* rights? What does that
19 mean?"

20 A I don't remember that.

21 Q Okay. Now, prior to the interview with Marco,
22 you listened to the 9-1-1 call; right?

23 A I think it was at one point during the
24 interview. That's when the captain had us listen to it.
25 It could have been before, but it was early.

1 Q So possibly when you stepped out for 10
2 minutes with Detective Fisher?

3 A Yes, sir.

4 Q The pictures of the nunchucks, did you take
5 those prior to your interview with Mr. Torres?

6 A I don't believe I did. I think those were
7 after.

8 Q Okay. Do you remember Mr. Torres mentioning
9 the nunchucks at all in your interview with him?

10 A No, sir.

11 MR. MARTINEZ: Pass the witness, Judge.

12 THE COURT: Redirect by the State.

13 MR. VITTO: Thank you, Your Honor. Can I have
14 the Court's indulgence a moment?

15 THE COURT: Sure.

16 MR. VITTO: Thanks, Judge.

17 Thanks, Judge.

18

19 REDIRECT EXAMINATION

20 BY MR. VITTO:

21 Q So let me understand exactly what happened
22 here with the defendant's resuscitation effort. It was
23 my understanding that he told you -- the defendant being
24 the "he" -- the defendant told you that his effort to
25 resuscitate came after he observed the arrival of law

1 enforcement?

2 A Yes.

3 Q Okay. So he didn't try to revive
4 Jonathan Piper, his dead friend, until after law
5 enforcement arrived. Is that what he told you?

6 A Correct. When they arrived, it was at that
7 point that he had began resuscitating him. I believe so.
8 Or maybe at the same time, but I believe that's accurate.

9 Q All right. Now, about the interview itself,
10 correct me if I'm wrong. During cross-examination you
11 saw no indication -- nothing to make you think that there
12 was any alcohol or marijuana impairing the defendant's
13 ability to reason or hear questions and answer questions;
14 is that correct?

15 A Correct.

16 Q He was *Mirandized*?

17 A Yes, sir.

18 Q He agreed to talk?

19 A Yes.

20 Q Yes?

21 A Yes, sir.

22 Q Any reason to suspect or believe that your
23 questioning was in any way involuntary?

24 A No, sir.

25 Q Did he at any point during this interview say,

1 "Man, I love talking to you guys, but I'm just so sleepy,
2 can I get some sleep?"

3 A No, sir.

4 Q So if I understand correctly, the defendant --
5 well, you tell me. At what point in your interview did
6 the defendant volunteer the black-out defense?

7 A I think the black out --

8 MR. MARTINEZ: I object to the
9 characterization there, Your Honor, blacking out being a
10 defense to anything.

11 MR. VITTO: I would take "defense" out.

12 BY MR. VITTO:

13 Q So at what point did the -- at what point in
14 the interview did the defendant say he blacked out?

15 A Well, I'm not -- he -- more like it's snapped.
16 I think the term may be blacked out or snapped, kind of
17 like an abrupt -- it wasn't more of a blacked out -- from
18 my perception it was not intoxication, but more of a --
19 an anger.

20 Q Okay. All right. So -- all right. That's
21 good. Let me understand that, then. So he wasn't
22 saying, I blacked out and don't remember. This is more
23 along the lines of a red rage?

24 A Yes, sir. That's --

25 Q Okay. Because he clearly remembered

1 everything that he did?

2 A Yes, sir.

3 Q And in fact, everything that he told you he
4 did, you were able to independently corroborate with
5 physical evidence that you photographed and collected?

6 A Yes, sir.

7 Q And I remember defense counsel asking you
8 about photographs of the defendant, which I'm trying to
9 retrieve. So you did photograph the defendant?

10 A I believe I did. I usually photograph hands
11 and, you know, during these types of -- I want to say
12 yes, but I don't remember specifically taking
13 photographs.

14 Q Maybe if I show them to you, they'll spark
15 that recollection.

16 A Okay.

17 Q So that's what I'm trying to get. So let me
18 ask you this. Did you see any injury of any kind at all
19 whatsoever to the defendant?

20 A No, sir, I didn't.

21 Q And you said that you usually photograph the
22 hands?

23 A Usually, yes.

24 Q Do you recall any injury at all whatsoever to
25 the defendant's hands?

1 A I don't recall any, no, sir.

2 Q All right. But we know that the decedent had
3 injury to the left side of his face and head --

4 A Yes.

5 Q -- correct?

6 A Yes, sir.

7 Q And we know that the defendant takes
8 responsibility for the death of Jonathan A. Piper;
9 correct?

10 A Correct.

11 Q Is that any indication to you that perhaps an
12 object was used to cause the injury you observed to the
13 decedent? He's got no -- the defendant has no injury on
14 his hands?

15 A Right.

16 Q Is that an indication that he didn't strike
17 the decedent with his hands?

18 A It might be, yes.

19 MR. VITTO: We're getting back to the
20 nunchaku. So Judge, that's all I have for redirect,
21 except that I want to show this witness those
22 photographs, and we can wait a few minutes to get it or
23 we can call another witness. It's the Court's pleasure.

24 MR. MARTINEZ: I have a few more questions to
25 ask if you want to do that in the meantime.

1 MR. VITTO: Sure. Absolutely.

2 THE COURT: Mr. Martinez will help you buy
3 some time.

4 MR. VITTO: Excellent.

5

6 RE CROSS-EXAMINATION

7 BY MR. MARTINEZ:

8 Q Detective, do you remember in the interview,
9 Marco -- him telling you multiple times, "I remember
10 now," or something to that effect?

11 A I don't remember him -- I don't remember him
12 going, "Oh, I remember now." From what I can remember --
13 I can recollect, it was more of a -- this is what
14 happened, but --

15 Q You said you've been a detective for five
16 years; right?

17 A Yes, sir.

18 Q You have interviewed a lot of people; right?

19 A Yes, sir.

20 Q Would you agree that as you talk to people
21 about an event, oftentimes it jogs their memory?

22 A Absolutely.

23 Q So they remember details?

24 A Yes.

25 Q And that's happened to you on the stand today

1 with some of my questions?

2 A Yes.

3 Q Okay. Do you think it's possible to believe
4 that happened with Marco during his interview with you?

5 A Absolutely.

6 Q All right. Mr. Vitto asked you some questions
7 that have made it seem as though the reason Mr. Torres
8 attempted to resuscitate Mr. Piper is because the police
9 showed up. Is that the impression you got from your
10 interview?

11 A I don't recall if that was my perception of
12 it. It was a time line thing, so whether --

13 Q So him doing resuscitation and the sheriff's
14 office arriving happened very close in time?

15 A Very close in time, yes, sir.

16 Q When we talk about Mr. Torres' intoxication,
17 did he tell you at any point in the interview that this
18 isn't -- he wouldn't have acted this way if he hadn't
19 been drinking?

20 A I believe he did say that.

21 Q Okay.

22 A Yes. I specifically remember.

23 MR. MARTINEZ: Nothing further, Judge.

24 THE COURT: Okay. Anything else from the
25 State?

1 MR. VITTO: Yeah. A little bit of redirect.

2 THE COURT: You already had redirect.

3 MR. VITTO: Re-re.

4 THE COURT: Re-re?

5 MR. VITTO: Re-re.

6

7

REDIRECT EXAMINATION

8 BY MR. VITTO:

9 Q So what did the defendant tell you he did when
10 law enforcement arrived?

11 A Began to resuscitate -- try to resuscitate his
12 friend.

13 Q Did he tell you that when law enforcement
14 arrived, he threw open the door and said, "Help, help, my
15 friend needs help"?

16 A No, sir.

17 Q What did he say?

18 A That he actually, at one point, went and tried
19 to fall asleep in the other room. And then we asked him,
20 you know, "Well, why didn't you open the door?" And he
21 said that he was scared.

22 MR. VITTO: Okay. Judge, I have nothing else
23 except those photographs. I can call another witness or
24 we can wait. I don't know how much longer it's going to
25 take. I can go check. However you want is fine with me.

1 THE COURT: Well, have Mr. Fancher wait
2 outside and call another witness --

3 THE WITNESS: I got no place to be.

4 THE COURT: -- and if you find the photographs
5 you're looking for, we can always call him back. He
6 doesn't have anything else to do, anyway.

7 THE WITNESS: No. I've got no life.

8 THE COURT: He's going to retain possession of
9 the phone.

10 MR. VITTO: Does he have it?

11 THE BAILIFF: Your photos are here.

12 MR. VITTO: Of course.

13 MR. MARTINEZ: Welcome back, Detective.

14 THE WITNESS: Thank you.

15 THE COURT: Let me remind you you're still
16 under oath.

17 MR. VITTO: Okay. Next will be State's
18 proposed Exhibits -- we did 35?

19 THE CLERK: We ended on 34.

20 MR. VITTO: Okay. So I need 35, 36, 37 and
21 38.

22 THE COURT: Okay. I see what you're saying.
23 The last one you marked was 34.

24 THE CLERK: Yes.

25 THE COURT: 34 hasn't been admitted.

1 THE CLERK: No.

2 MR. VITTO: No. We haven't got there yet.

3 All right. May I proceed, Judge?

4 THE COURT: You may.

5 MR. VITTO: Thank you very much.

6

7 REDIRECT EXAMINATION

8 BY MR. VITTO:

9 Q So showing you State's proposed Exhibits 35,
10 36 and 37. Okay. Go ahead and look at those
11 photographs. We've got one more coming.

12 Oh, that's my shadow. I kept thinking that
13 was Daniel. That was my shadow in the window. Or not
14 Daniel. Michael. I'm sorry.

15 Do you recognize those photographs?

16 A Yes.

17 Q It's okay if you don't.

18 A It's just my fashion. I always take pictures
19 of hands. And I just want to say that I did; that's
20 usually what I do. I just -- yeah. I mean, I don't --

21 Q Let me ask you this. Do they appear accurate?

22 A Yes.

23 Q All right. So what do we have there, by
24 number? Just generically speaking, what do we have?

25 A A photograph of his hands, the outside of his

1 hands, and his back.

2 Q Okay. And can you tell us from those
3 photographs where those photographs were taken?

4 A Looks like inside the living room.

5 Q Inside?

6 A Inside the living room.

7 Q At the house. That was up to 37? You've got
8 35, 36, 37?

9 A Yes, sir.

10 MR. VITTO: Here comes 38. Hot off the press.
11 Perry Mason moment.

12 MR. MARTINEZ: You can't have two of them.

13 MR. VITTO: Okay. Actually, I have two more.

14 THE CLERK: 38 and 39.

15 MR. VITTO: Yeah.

16 BY MR. VITTO:

17 Q Detective, I'm going to show you a couple
18 more. 38 and 39, I believe.

19 A Uh-huh.

20 Q Specifically let's just talk about his hands
21 for a second because you've got a photograph of the
22 outside of the right hand, a photograph of the outside of
23 the left hand, and then a photograph of the right and
24 left hand, the inside; correct?

25 A Correct.

1 Q Do you see any indication of an injury at all
2 whatsoever to the defendant's hands?

3 A No, sir.

4 Q And which photograph -- what number is the
5 photograph depicting the defendant's back?

6 A That would be photograph 35.

7 Q And which photograph depicts the front of the
8 defendant?

9 A That would be 39.

10 Q All right. On either of those photographs do
11 you see any indication at all whatsoever of any injury of
12 any kind?

13 A No, sir.

14 Q Now, to be fair, defense counsel has told me
15 that there was a photograph of the defendant's leg that
16 has a scratch on it. You can't see it in the
17 photographs, but do you recall that at all?

18 A Yes, I do, actually.

19 Q Okay. You recall that he had a scratch on his
20 leg?

21 A Yes.

22 Q Do you recall which leg?

23 A I do not recall which leg, but I do remember
24 there being a scratch to the leg.

25 Q All right. Is there -- is that the only

1 indication of any injury that you recall?

2 A That is the only one that I recall, yes.

3 Q All right. But there is no injury to his
4 face, like he got hit in the face, is there?

5 A No.

6 Q No injury to the back of his head, like he got
7 hit in the back of his head?

8 A No.

9 Q And no injury to his hands, like he hit
10 anything?

11 A No.

12 MR. VITTO: Your Honor, I would ask these
13 photographs be admitted into evidence.

14 MR. MARTINEZ: No objection.

15 THE COURT: Okay. Then they will be admitted.

16

17 (State's Exhibits 35 through 39
18 were received into evidence.)

19

20 MR. VITTO: That was 35 through 39?

21 THE CLERK: Yes.

22 MR. VITTO: Got it.

23 THE WITNESS: Yes. Wait. Yes.

24 MR. VITTO: I have no more questions of this
25 witness at this time.

1 MR. MARTINEZ: Nothing further, Judge.

2 THE COURT: No more witnesses or no more
3 questions?

4 MR. MARTINEZ: No more questions.

5 THE COURT: Okay.

6 MR. VITTO: Thanks. Britain Hoffman.

7

8 BRITAIN HOFFMAN,

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

11 THE CLERK: You may be seated.

12 THE WITNESS: I have a copy of my report, just
13 for notes.

14 MR. VITTO: Do you want me to take it,
15 Counsel, for now?

16 MR. MARTINEZ: Your call.

17 MR. VITTO: Turn it upside down on the desk,
18 but don't look at it.

19 THE COURT: If you want, you can pull your
20 mask down below your mouth so everyone can hear your
21 testimony and it's not muffled or garbled. And if you
22 can start by stating and spelling your name for the
23 record.

24 THE WITNESS: Deputy Britain Hoffman,
25 H-o-f-f-m-a-n.

DIRECT EXAMINATION

BY MR. VITTO:

Q What is your occupation, sir?

A Deputy with the Nye County Sheriff's Office.

Q How long have you been so employed?

A Almost eight years.

Q What's your detail?

A Traffic.

Q Let me direct your attention to April 4, 2020,
835 South Linda Lane. Did you respond to that location
on that date?

A I did.

Q What time?

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

Q Okay. And for what purpose?

A To relieve the deputies -- the patrol deputy
that's on scene.

Q Who was the patrol deputy on scene that you
relieved?

A Deputy Christen.

Q What did you observe upon arrival?

A When I arrived there I observed obviously
Deputy Christen on scene, detective vehicles, a few
detectives, and the operations captain and yellow crime
scene tape.

1 Q What did you do upon arrival?

2 A I went to Deputy Christen, and at that point
3 she turned the crime scene log over to me.

4 Q All right. And with what duties were you
5 tasked on scene?

6 A Crime scene log and scene security.

7 Q All right. Now, you've provided a report.
8 It's actually, frankly, perhaps the best synopsis of a
9 scene -- of the events that I've seen. I commend you for
10 that. So obviously someone briefed you; is that correct?
11 You were given some information about the scene and what
12 had transpired?

13 A Afterwards.

14 Q Yes?

15 A Yes.

16 Q All right. Let me show you State's proposed
17 Exhibit 27.

18 Is that still at the desk or did it find its
19 way back?

20 THE COURT: Probably over here.

21 MR. VITTO: All right. 27 is the death
22 investigation report. Aha. Thank you.

23 BY MR. VITTO:

24 Q Showing you State's proposed Exhibit 27. Does
25 that look at all familiar to you?

1 A Can I flip through it?

2 Q Yes, please.

3 A Yes, it does. It looks like the copy that I
4 brought with me.

5 Q Which is laying face down on the desk in front
6 of you?

7 A Yes.

8 Q Okay. What is that?

9 A This is what we send to the coroner.

10 Q Okay.

11 A It's just basically a brief -- real brief of
12 who the person is, when the last time they were seen
13 alive, time and date of when they were pronounced
14 deceased, and then the last person to see them alive.

15 Q And were you the one that created that
16 document?

17 A Yes.

18 Q All right. And that was based on information
19 provided to you?

20 A Yes.

21 MR. VITTO: Your Honor, I would ask that
22 State's proposed Exhibit 27 be admitted into evidence.

23 THE COURT: I think it already has been.

24 MR. VITTO: It's already in?

25 MR. MARTINEZ: I didn't think it was either,

1 but no objection.

2 THE COURT: I have it admitted. I wrote it
3 down.

4 (State's Exhibit No. 27
5 was received into evidence.)
6

7 BY MR. VITTO:

8 Q Is that the extent of your involvement with
9 this matter?

10 A As well as just scene security and writing the
11 names of the individuals that entered the scene.

12 Q The crime scene log?

13 A Yes.

14 MR. VITTO: Okay. I have no more questions of
15 this witness.

16 THE COURT: Mr. Martinez.

17 MR. MARTINEZ: Briefly.
18

19 CROSS-EXAMINATION

20 BY MR. MARTINEZ:

21 Q Deputy, when you take into inventory the
22 property or personal effects for that death investigation
23 report, does that include the clothing that the decedent
24 is wearing?

25 A Normally.

1 Q Okay. Was the decedent in this case naked?

2 A I never saw the decedent.

3 Q You didn't?

4 A No.

5 Q Okay. So I understand --

6 A I never went inside the scene. I based all my
7 information off information given to me by detectives.

8 Q Okay. So on page 2 of that death
9 investigation report where -- on the inventory of
10 property, it lists jacket, shirt, trousers, belt, shoes.
11 All of those are left blank. Is that because you just
12 didn't have the information?

13 A I didn't have the information, correct.

14 MR. MARTINEZ: Nothing further, Judge.

15 THE COURT: Okay.

16 MR. VITTO: Nothing further, Your Honor.

17 THE COURT: All right. You may be excused.

18 MR. VITTO: Joseph Marshall.

19 THE COURT: Are you gonna keep that?

20 MR. VITTO: I'm not gonna keep it; I'm just
21 looking at it.

22

23 JOSEPH MARSHALL,

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

1 THE CLERK: You may be seated.

2

3 DIRECT EXAMINATION

4 BY MR. VITTO:

5 Q What is your occupation, sir?

6 THE COURT: Please begin by stating and
7 spelling your name.

8 MR. VITTO: Little long in the tooth, Judge.

9 THE COURT: Can you state and spell your name
10 for the record?

11 THE WITNESS: Yes. Joseph Marshall,
12 M-a-r-s-h-a-l-l.

13 THE COURT: All right. Mr. Vitto.

14 MR. VITTO: Thank you, Your Honor. That's
15 always been tough for me.

16 THE COURT: What is, spelling your name?

17 MR. VITTO: Yeah. It's -- no. Because at the
18 District Court level I'm the one that asks them to state
19 their name and spell their name for the record, and so I
20 just flow into my thing.

21 THE COURT: I've just got into the habit of it
22 because sometimes, depending on the deputy district
23 attorneys that are going through here, they don't always
24 do it.

25 MR. VITTO: Thanks, Judge.

1 BY MR. VITTO:

2 Q All right. What is your occupation?

3 A I'm a detective with the Nye County Sheriff's
4 Office.

5 Q And how long have you been so employed?

6 A Since February of 2009.

7 Q Since February of 2009 as an employee of the
8 Nye County Sheriff's Office?

9 A Yes.

10 Q How long as a detective?

11 A One year. June of last year.

12 Q Let me direct your attention to April 6th of
13 this year at approximately 1150 hours, just before noon
14 on April 6th. Do you recall where you were?

15 A Yes.

16 Q Where was that?

17 A Clark County Coroner's Office.

18 Q For what purpose?

19 A To attend an autopsy.

20 Q And the autopsy of who?

21 A I believe it was Jordan Piper.

22 Q Jordan Piper? Let me show you -- did you make
23 out a report in this case?

24 A Yes, sir. I have it here, face down.

25 Q You have it?

1 A Yes.

2 Q Well, without objection, I'm going to ask you
3 to review the report and see if it refreshes your
4 recollection at all.

5 Counsel, do you have any objection?

6 MR. MARTINEZ: No.

7 A Oh. Yes.

8 BY MR. VITTO:

9 Q What autopsy did you attend?

10 A Jonathan Piper.

11 Q All right. Now, in the attendance of that
12 autopsy did you observe any injury to the decedent?

13 A Yes.

14 Q Can you describe that?

15 A There was a mark, a reddish mark, above his
16 left ear on his head.

17 Q Okay. Let me show you State's Exhibit 19.

18 Thank you, sir. Showing you State's Exhibit 19, do you
19 recognize the person depicted there?

20 A Yes.

21 Q Who is that person?

22 A Jonathan Piper.

23 Q That's the person whose autopsy you attended
24 April 6th; is that correct?

25 A Yes.

1 Q All right. And you see injury to the
2 individual in that photograph?

3 A Yes.

4 Q Is that the injury you observed at the
5 autopsy?

6 A Yes.

7 Q All right. And you were present for the
8 entire autopsy?

9 A Yes.

10 Q What was the cause of death?

11 A I believe it was asphyxiation.

12 Q And the manner of death?

13 A Homicide?

14 Q Well, now, I don't know. Is that a question
15 to me? Let me show you State's -- did we stipulate to 5
16 yet?

17 MR. MARTINEZ: We stipulated at the beginning
18 of the --

19 MR. VITTO: We stipulated to the admission of
20 the autopsy report. That's State's Exhibit 5.

21 BY MR. VITTO:

22 Q Let me show you State's Exhibit 5. I want you
23 to take your time. Go through State's Exhibit 5, and
24 when you've had the opportunity to review that, look up
25 and I'll ask you some questions about it.

1 A Yeah.

2 Q Have you had an opportunity to review the --

3 A Yes. I reviewed it when it came in as well.

4 It appears to be the autopsy report sent from Clark
5 County.

6 Q Okay. Now, you see that the autopsy report
7 includes a cause of death; correct?

8 A Yes.

9 Q And what do they list as the cause of death?

10 A Asphyxia.

11 Q And the manner of death?

12 A Homicide.

13 Q All right.. That's consistent with what you
14 observed at the autopsy --

15 A Yes.

16 Q -- that you were personally present for?

17 A Yes.

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

20 A Yes.

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

23 THE COURT: Mr. Martinez?

24

25 (No Omissions.)

CROSS-EXAMINATION

BY MR. MARTINEZ:

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

A I did not.

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

A No, I did not.

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

A I did not.

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

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

MR. MARTINEZ: No further questions, Judge.

REDIRECT EXAMINATION

BY MR. VITTO:

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

A Yes.

Q And what do you recall hearing at that autopsy?

A He said that there was some kind of -- I don't

1 remember the term, but it was something about the
2 shoulders and the neck. They asked if he had cancer.
3 They were able to verify that. They mentioned -- they
4 drew attention to a hyoid bone, and that's kind of all I
5 remember, is mainly around the neck. The mark on the
6 head, they couldn't specify where that had come from.

7 MR. VITTO: I have no more questions of this
8 witness, Judge.

9 MR. MARTINEZ: Nothing further, Judge.

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

11 MR. VITTO: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. VITTO: So, Judge, I have -- obviously we
14 need to argue admissibility of 11, 12, 13 and 14. Just
15 prior to that and before I close -- I don't have any more
16 witnesses to call. I would like this Court to receive
17 into evidence transcripts of hearings in front of this
18 Court on April 6th in this courtroom. I have the
19 transcript marked as State's proposed Exhibit 28, page
20 8 -- wait. April 6 is page 4, where the transcript
21 reflects that the defendant acknowledges that he was in
22 fact the decedent's caretaker. As I'm going to be
23 arguing that the decedent was a vulnerable person, I
24 think it important to note that from the defendant's own
25 mouth he acknowledges that the defendant needed a

1 caretaker.

2 I would also ask the Court to receive into
3 evidence a transcript of this Court's proceeding marked
4 preliminarily as State's proposed Exhibit 29, where, on
5 page 8, the defendant says, "What happened to my
6 second-degree murder charge? I was happy. This ain't
7 first-degree murder." I think it relevant and important
8 that out of his own mouth, in this courtroom in front of
9 this judge, the defendant says that he was happy with his
10 second-degree murder charge, and then Counsel went on to
11 explain to him that, well, it just isn't his call.

12 Additionally, Your Honor, for notice purposes,
13 the State has alleged that the State will be seeking --
14 should the defendant be convicted of any offense that's
15 alleged, the State will be seeking to have his sentence
16 enhanced as an habitual criminal.

17 In that regard and along those lines, Judge,
18 I would like marked and admitted what is preliminarily
19 marked currently as State's proposed Exhibits 30, 31, 32,
20 33, and 34, certified copies of criminal convictions from
21 California, all reflecting felony convictions, reflecting
22 that the defendant was represented by counsel, reflecting
23 that the defendant pled guilty to felony offenses. And I
24 believe that's all that's necessary for purposes of any
25 notice requirement incumbent upon the State to make

1 manifest at a preliminary hearing.

2 I would ask that those items be admitted into
3 evidence.

4 THE COURT: Mr. Martinez?

5 MR. MARTINEZ: Are you moving to admit them
6 through judicial notice, or how are you moving to admit
7 them?

8 MR. VITTO: Judicial notice on the
9 transcripts. We have certified copies of the judgments
10 of conviction, which is all that's necessary for -- to
11 manifest a prima facie case, especially when we have
12 evidence that the defendant, out of his own mouth,
13 acknowledged having two prior felony convictions. I'm
14 showing evidence of five.

15 We have alleged that should the defendant --
16 or we put the defendant on notice that should he be
17 convicted of any felony offense for which he's been
18 charged, we put him on notice that we would be seeking
19 the small or large, the A or B, felony enhancement to any
20 offense he's convicted of.

21 MR. MARTINEZ: Based on the judicial notice as
22 well as the certified records, Your Honor, I can object
23 all I want, but I don't think I'm on firm legal ground to
24 do that. I think they're getting in no matter what.

25 THE COURT: Well, you are correct. I believe

1 they are going to be admitted.

2

3

(State's Exhibits 28, 29, 30, 31,

4

32, 33, 34 were received into

5

evidence.)

6

7

MR. VITTO: Thank you, Your Honor.

8

I have no more witnesses, Judge. We do have

9

to argue admissibility of 11 through 14. I'm ready when

10

you are.

11

THE COURT: Does the defense have any

12

witnesses that they're going to call at this time?

13

MR. MARTINEZ: No, Judge. I have spoken with

14

Mr. Torres about his right to testify as well as his

15

right to remain silent at today's hearing. On advice of

16

counsel, he's going to make the correct move and invoke

17

his Fifth Amendment -- is that right? -- and remain

18

silent today and not testify.

19

THE COURT: Okay.

20

MR. MARTINEZ: With that, the defense would

21

rest as well.

22

THE COURT: All right. With regards, then, to

23

11, 12, 13 and 14, Mr. Vitto, if you want to go ahead.

24

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

25

have a lot to add since we have argued it probably to the

1 extent that we can at this level.

2 Specifically what we're talking about are
3 photographs that depict nunchaku. The only thing that I
4 would add to all of the argument that I previously set
5 forth is that there's obvious injury to the left side of
6 the decedent's head and face. There is no injury to the
7 defendant, to his hands, that would be any indication
8 that the injury to the decedent was caused by the
9 defendant hitting him with his hands. I think it beyond
10 cavil that the defendant caused the injury that we see.
11 If it wasn't with his hands, it was with an object. I
12 think that the nunchaku being found where it was -- there
13 was some in the bedroom and there was one in the living
14 room, which is the living room area, kitchen area, which
15 is where the tussle began. I don't think it untoward to
16 think that the defendant didn't use the nunchaku. Maybe
17 he did; maybe he didn't.

18 But the State is going to be asking this Court
19 to amend the criminal complaint before the Court in two
20 ways. The first one's the easy one. I'm asking the
21 Court to amend by interlineation the criminal complaint
22 before the Court insofar as it pertains to all five
23 counts.

24 I think it easy to understand why the State
25 alleged unit 103 at 835 South Linda Street. What we

1 heard today was that although the trailer says 103 on the
2 outside, it's actually unit 4, according to the property
3 manager. So I would ask that each count be amended to
4 say -- taking count one, for instance, at the time he was
5 murdered at -- I would ask that it say unit 4 or within a
6 residence marked 103 or unit 103, 835 South Linda Street,
7 and the same interlineation being made for each of the
8 seven counts before the Court.

9 I'm asking for that amendment to conform to
10 the evidence that we heard, Judge.

11 MR. MARTINEZ: No objection from the defense
12 as to that amendment, Judge.

13 MR. VITTO: And then the second amendment
14 would be to add a Count XIII to be an allegation of --
15 under 202.350, in this case I'm going to cut out some
16 of the surplusage, possession or use of dangerous weapon,
17 that dangerous weapon in this case being the nunchaku.
18 Under paragraph 3, that the defendant possessed the
19 nunchaku with the intent to inflict harm upon the person
20 of another, a gross misdemeanor. It's (1)(c), Judge. So
21 it would be 202.350(1)(c), possessing nunchaku with the
22 intent to inflict harm upon the person of another, a
23 gross misdemeanor.

24 THE COURT: So the habitual criminal will then
25 become Count IX?

1 MR. VITTO: That's correct, Judge.

2 THE COURT: Because Count VIII is now habitual
3 criminal enhancement.

4 MR. VITTO: That's correct, Judge. The
5 habitual criminal would become Count IX.

6 THE COURT: What I did on the first one, on
7 Count I of the one I have before me, I've crossed out
8 103. I drew a line through 103 and I wrote below it
9 "Unit 4 marked by numbers 103 at 835 South Linda Street."

10 MR. VITTO: That's perfect.

11 THE COURT: Okay.

12 MR. VITTO: I can't improve upon that.

13 THE COURT: Mr. Martinez?

14 MR. MARTINEZ: I'm kind of in a weird spot
15 procedurally here, Your Honor. The State has the right
16 to amend the complaint to a certain degree.

17 THE COURT: Correct.

18 MR. MARTINEZ: And this is something that I
19 know is being argued by some colleagues of mine in Clark
20 County, so I'm going to make the argument today that the
21 purpose of amending the complaint is to conform to the
22 testimony that we've heard today during the preliminary
23 hearing, as the State did with their first amendment.
24 They haven't charged any offenses; they haven't changed
25 any offenses. It's to change a date, an address number,

1 change a small detail that ultimately won't change the
2 big case, or to amend charges when the State is surprised
3 and there's new information that's brought to their
4 attention at the preliminary hearing.

5 It's not to be in a situation where the State
6 can use it in a negotiation tactic, which the State isn't
7 doing in this case, where other times other district
8 attorneys will say, Well, this is my offer to negotiate
9 the case, but if you don't at the preliminary hearing I'm
10 going to add all of these charges. That's not the
11 purpose; that's not why the State is allowed to amend the
12 charge.

13 There's been no new evidence presented today.
14 These pictures were available in the discovery and the
15 State gave them to me ahead of time. The marks on
16 Jonathan Piper's face, again, in pictures given to me
17 ahead of time, available in discovery ahead of time.
18 There was just an amended complaint filed August 4th, on
19 Tuesday, when all this information was available. We
20 didn't add it there.

21 So procedurally speaking, this is not based on
22 new information, so the State should not be allowed to
23 amend the complaint to add that additional crime and add
24 that additional charge. Whether or not there's probable
25 cause for that additional charge I will speak to later.

1 Everything kind of crosses over because the State -- I
2 will speak to that in my closing argument, because if the
3 Court allows the State to amend the complaint to add
4 that, then the pictures of the nunchucks are probably
5 relevant to this charge and they should probably be
6 admitted. But it's my stance that they should not be
7 allowed to amend the complaint because this is not new
8 information, and then once we take it a step further,
9 since they cannot add this charge, the pictures of the
10 nunchucks are not relevant to any of the charges in the
11 complaint and they should not be admitted.

12 MR. VITTO: Judge, there's nothing -- the
13 defense has no authority for the position that if it's
14 not new, you can't add it. There is no authority for
15 that position.

16 MR. MARTINEZ: There sure is.

17 MR. VITTO: The statute says prejudicial. The
18 statute says new or different, but that's talking about
19 amending up until the time of verdict. You can make
20 amendments up until the time of verdict. We're way below
21 that point. Nothing stands between the prosecution
22 filing a new gross misdemeanor charge this afternoon and
23 having a new preliminary hearing on the nunchaku charges,
24 and then seeking to join them if we were to get a
25 bindover at the District Court level prior to trial.

1 Nothing stops the prosecution from seeking to do that.
2 It doesn't mean we would be successful, but nothing stops
3 us from doing that.

4 So here we are at a probable cause
5 determination. I believe that amending the complaint
6 will conform to the evidence that's been presented, and I
7 can't think of -- because the State could file the charge
8 separately and independently, and it could march along on
9 a separate line, I don't think any argument about this
10 being somehow prejudicial to the defense or to the
11 defendant would be successful or could have merit.

12 That's my position, Judge.

13 MR. MARTINEZ: I'm just standing, Judge.

14 THE COURT: So you're just standing. You're
15 just tired of sitting?

16 MR. MARTINEZ: Little bit.

17 THE COURT: Okay. Well, with regards to the
18 amendment of the complaint in and of itself, I believe
19 the State does have the right to add or delete or
20 interdelineate anything to do with any charges that seems
21 fit based on any evidence that it may have at the time.
22 So if they want to add the charge of the possession of
23 the nunchucks for whatever reason, I believe the State
24 has the authority to do that. So I will allow that to
25 happen.

1 And then with that, obviously, 11, 12, 13 and
2 14 would be admitted as evidence.

3
4 (State's Exhibits 11 through 14
5 were received into evidence.)

6
7 THE COURT: I would request the State go ahead
8 and make those changes.

9 MR. VITTO: We will get a conforming second
10 amended criminal complaint.

11 THE COURT: And file that with us so it can
12 accompany whatever other paperwork we have in this case.

13 MR. VITTO: Certainly. Thank you, Judge. I'm
14 ready to close. Is the defense ready?

15 MR. MARTINEZ: Born ready.

16 MR. VITTO: Oh, boy. Are you ready, Judge?
17 All right. This isn't a Kirk Vitto closing. This is a
18 much abbreviated and probably a much appreciated version.
19 So, Judge, I'll try to hit some high points, I guess.

20 The defendant himself, out of his own mouth,
21 has provided all that's necessary to support his being
22 bound over as charged. The State has made abundantly
23 manifest the corpus delicti. You have before you all the
24 evidence you need to conclude that Jonathan A. Piper was
25 found dead, he died as a result of being strangled,

1 asphyxia, and his death was a homicide.

2 After hearing what the defendant himself said,
3 it is clear that this was a murder falling under the
4 category of an open murder, which is Count II. That
5 includes first degree, second degree, voluntary
6 manslaughter and involuntary manslaughter. With the
7 evidence you have at this level, for purposes of probable
8 cause you have enough evidence to hold the defendant to
9 answer for the first-degree murder, which is Count I, the
10 first-degree murder of a vulnerable person, and every
11 other charge that's been alleged.

12 And the prosecution is allowed to plead and
13 prosecute in the alternative. There's no way that the
14 State would allow the defendant to be convicted of
15 first-degree murder and open murder. As we brought up
16 earlier, there will be jury instructions instructing the
17 jury of their responsibility, their legal responsibility
18 based on their conclusions, so that *Blockburger* is not
19 violated.

20 Some interesting things in the trial, Judge.
21 As pointed out in the testimony, if you look at 1 and 2A,
22 we have a photograph in number 1 of the decedent alive,
23 taken by his brother, on the bed that the brother bought
24 him, with the bedding that the brother purchased. And if
25 you look at the photographs of the decedent lying dead,

1 you'll see that he is lying on the same exact bedding
2 that his little brother brought him, bedding upon which
3 he was slain by the defendant.

4 You have some interesting testimony about the
5 two white chairs. Mr. La Due -- Mr. La Due gave those
6 chairs to the decedent. There was some testimony that
7 that's where he sat. That's where he did his sudoku.
8 That's where he liked to sit. That's where he was always
9 seen sitting. And we see one of those white chairs
10 thrown out the front door and one of those white chairs
11 thrown out the back door.

12 A lot of this evidence ties together
13 exceedingly well before you even get to the statements
14 made by the defendant, and some reasonable inferences
15 along the way. Why would the defendant strangle the
16 decedent while he's gasping, while he's reaching for his
17 phone? After taking the phone away from him and smashing
18 the phone, listening to him gurgle and gasp and
19 ultimately go limp, why did he try to resuscitate the
20 victim? Because he was in trouble and he knew it.
21 Because as the Court can see from the parts of the
22 criminal history that's in evidence before this Court,
23 the defendant is no neophyte to the criminal justice
24 system. He was in trouble and he knew it.

25 Based on the testimony of Christopher Piper,

1 the decedent's brother, the decedent couldn't run away.
2 He couldn't fight. He had no muscle mass. He was weak,
3 subjected to chemotherapy, radiation, on quite a list of
4 medications. The evidence reflects that all he could do
5 is what he did. He tried to escape to his bedroom and he
6 locked the door. And that didn't work because the
7 defendant kicked the door open as the Court can plainly
8 see.

9 He tried to call the closest person he knew,
10 Mr. La Due. Called him twice. "Help. Help. Help.
11 Dennis, help." Unfortunately, because of the provider
12 Mr. La Due has, Mr. La Due didn't get those phone calls
13 until 6:00 or 7:00 that morning. He tried to call his
14 closest loved one, his little brother. His brother saw
15 the phone call come in at 2:00 or 3:00 in the morning.
16 He didn't pick it up.

17 He tried to call 9-1-1. So he obviously
18 called Mr. La Due twice before the defendant got in his
19 room, and he called his little brother once before the
20 defendant got in the room. He had no success calling
21 them.

22 He called 9-1-1. "Help." The defendant kicks
23 open the door, sees him on the phone. This agitates him
24 even further. You can hear the struggle. There's a
25 struggle for the phone. The defendant says he smashes

1 the phone on the ground. The decedent did what he could,
2 which wasn't much. He could mount no defense.

3 The defendant says he tried to resuscitate --
4 immediately tried to resuscitate the victim to no avail.
5 The N.C.S.O. tried to resuscitate the victim to no avail.
6 There's no injury on the defendant's hands. There's no
7 defensive wounds to the defendant. This was a completely
8 lopsided and one-sided battle. There was one aggressor
9 and one victim.

10 It's interesting that when law enforcement
11 arrives, the defendant didn't say, "Help, help. My
12 friend needs help. Come on in. Get the medics here."

13 "Identify yourself."

14 "Bozo the Clown. We're all fine here.
15 Nothing to see here. Keep moving. Nothing going on."

16 You can hear on the 9-1-1 call where he tells
17 the dispatcher, "False alarm." False alarm. It's very
18 clear what's happening here based on the great weight of
19 the evidence.

20 A vulnerable person. Has the prosecution
21 presented slight or marginal evidence that the decedent
22 was a vulnerable person? We have his medical records.
23 They reflect that due to degeneration, the decedent
24 experiences chronic back pain, malnutrition, neuropathy,
25 cancer in his neck, lymphoma. He underwent chemotherapy.

1 His brother mentioned radiation. He has a feeding tube.
2 He's taking hydrocodone every four hours to manage his
3 pain, and that doesn't work. Hand surgery, hip surgery,
4 knee surgery. Five-foot-ten, and he weighed 106 in
5 February, which is the last medical record I think that
6 this Court has.

7 The medical records reflect that he was very
8 thin and listless. He didn't work. His brother
9 testified he had no muscle mass. Basically he could move
10 about, but it's slow and it's difficult.

11 La Due said that all was quiet at about 3:00.
12 He was pronounced at 0436 hours, about 95 minutes after
13 the 9-1-1 call, which came in at about 0301. Reasonable
14 inference, he was dead within minutes of that call. And,
15 frankly, the time frames that we have are pretty exact.

16 I do want to look at the autopsy report real
17 quick, if I can, Judge. I think that that's number 5.
18 As we've gone through, the cause of death is asphyxia,
19 manner of death is homicide. Under heading 1 of the
20 autopsy findings, asphyxia, the Clark County coroner's
21 office found, as part of their autopsy findings, a
22 fracture of the left superior horn of thyroid cartilage.
23 The findings included abrasions and contusions of the
24 head and neck, torso and upper extremities. Left fifth
25 rib fracture. History of stage four head and neck

1 cancer. Status postchemotherapy and radiation. Status
2 post gastrostomy tube placement. He was underweight. He
3 had his medications in his system. He had marijuana in
4 his system, and he had a level of ethanol that I'm not --
5 I don't personally have the expertise to translate into
6 what I'm more familiar with, a blood alcohol level.

7 I don't know what 173 milligrams means, if
8 Counsel would help me. I better put my glasses on.

9

10 (Counsel spoke off the record.)

11

12 MR. VITTO: Thanks. The Clark County
13 coroner's office found his alcohol level at a .17. So he
14 had his prescribed hydrocodone in his system, a plethora
15 of other drugs, marijuana, and a one-seven alcohol level
16 which, frankly, makes him even more helpless to a
17 defendant that showed no indication -- certainly voiced
18 no indication that he was under the influence of alcohol
19 or marijuana, did not give voice to that and gave no
20 indication of being under the influence of anything.

21 That being said, Judge, we have Count I, the
22 first-degree murder of a vulnerable person. We've
23 established all of the elements necessary of being a
24 vulnerable person, certainly for the purposes of probable
25 cause and a preliminary hearing. The open murder, as I

1 said, includes first-degree murder, second-degree murder,
2 voluntary and involuntary manslaughter.

3 Count III, the invasion of the home, includes
4 invading a room. They were roommates. They had separate
5 rooms. The evidence is undeniable.

6 The door shows the indication of being kicked.
7 It's cracked. You see the door jamb where clearly the
8 door was forced open by the defendant, by his own
9 admission, to gain ingress.

10 The battery by strangulation is clearly
11 established again by the defendant's own statements. The
12 abuse of a vulnerable person, again, clearly established
13 by all of the evidence, the autopsy, all of the physical
14 evidence presented, the medical records, the photographs
15 depicting what occurred, the injury to the decedent, the
16 injury to his head.

17 And this count could easily survive a
18 *Blockburger* challenge if the injury causing death which
19 the State has alleged is the strangulation causing
20 asphyxia and the broken bone in the throat or neck area,
21 and the abuse of a vulnerable person being otherwise the
22 injury as observed, the broken rib and the injury to the
23 face and head other than the injury actually causing
24 death.

25 Count VI, interception, interruption or delay

1 of message sent over telephone line, we clearly have.
2 The decedent called asking for help. The defendant is
3 overheard -- there was a dispute about the phone. He
4 says, "False alarm," and smashes the decedent's phone on
5 the floor, as he admitted, before doing these acts
6 alleged in Count 1 incorporated herein by reference.
7 That's under Count VI.

8 The injury to other property is the damage to
9 the phone. Well, this was April 4th, before the new law.
10 So we have the injury to the property, a gross
11 misdemeanor.

12 And then we've added a Count VIII, the
13 nunchaku, three of them found, as the photos establish in
14 the defendants's bedroom, another pair found in the
15 living room where the fracas or tussle began after the
16 decedent ripped open the bag of marijuana, spilling the
17 contents to the floor.

18 And then the defendant is on notice with the
19 prior offenses before this Court in regard to the
20 habitual criminal.

21 Your Honor, the State would request that the
22 defendant be bound over as charged on each of the counts.
23 Thank you very much.

24 THE COURT: All right. Mr. Martinez?

25 MR. MARTINEZ: Thank you, Judge.

1 Your Honor, I'll start with what I told the
2 Court we'd be arguing about earlier, which is that many
3 of the charges in the complaint right now are underlying
4 offenses of other charges that, as the State has admitted
5 and been forthcoming with, he cannot be convicted of all
6 of them at trial. It will be one or the other when we
7 get there. And I have briefed this issue and I know even
8 if the Court binds him over on all of these charges and
9 does not dismiss them today and discharge him today, we
10 will be briefing them again when we go up to District
11 Court.

12 No, the State cannot charge it this way. The
13 way that this is handled is in a jury verdict form, that
14 ultimately whatever crime he would stand trial for, we
15 would get the underlying offenses on the jury verdict
16 form and tell the jury, If you do not find the State has
17 met their burden on this charge, you can however find
18 they met their burden of proof on these other charges on
19 the jury verdict form, not in the complaint itself. They
20 are not separate offenses. They are the same offenses,
21 and he cannot be tried for the same offenses in this
22 manner.

23 And to that, Your Honor, I will start here.
24 The battery by strangulation is necessarily an underlying
25 offense of the open murder charge. The first-degree

1 murder charge is necessarily an underlying offense of the
2 open murder charge. The abuse of a vulnerable person is
3 necessarily an underlying offense of the first-degree
4 murder charge. The only reason it's charged as
5 first-degree murder is because it's a vulnerable person
6 there. They have the same elements. It would not pass
7 the *Blockburger* test. And again, my argument would be
8 that some of these charges need to be dismissed so that
9 the underlying offenses are not charged.

10 To speak to the vulnerable person, Your Honor,
11 I will make an argument that Mr. Piper was not a
12 vulnerable person. I know that we heard a lot of
13 testimony about him being sick. We also heard testimony
14 about him about how he was personally capable of riding
15 his bike down to the corner store to go pick up what he
16 needed to. That he drank a lot. That it was worrisome
17 to his brother. He smoked. It's how he got cancer in
18 the first place. He continued to smoke. He was not
19 restricted in his daily activities, and that is the
20 definition of a vulnerable person under the Nevada
21 Revised Statutes and whether or not they have a medical
22 or physical illness or disability that restricts them in
23 carrying out the daily activities.

24 And I think seeing here -- he didn't need any
25 assistance in cooking when he did live by himself before

1 Mr. Torres went out and lived with him. He didn't need
2 assistance to take a shower. He did not need assistance
3 to change his own clothes. Again, he was able to ride
4 his bike and go down to the corner store. He was able to
5 drink; he was able to smoke. Even though he moved
6 slowly, I do not believe that the State has met that
7 burden to show that he is a vulnerable person.

8 And to that angle, Your Honor, I would ask
9 that Count V be discharged for that reason, as well as
10 Count I, which is the murder of a vulnerable person.
11 Again, the only reason it is first-degree murder is
12 because they have alleged that Mr. Piper was a vulnerable
13 person.

14 On Count III, invasion of the home, Judge, the
15 case law is clear that a person cannot commit the crime
16 of home invasion by forcibly entering his or her own home
17 if that person is a lawful occupant or resident of the
18 home. I know that it says in the statute that a home
19 invasion can be committed on a room and not necessarily a
20 residence or an exterior door -- as opposed to a
21 residence, an exterior door in an apartment or a house,
22 and what I would submit to the Court is that the
23 intention behind that is a hotel room or a dorm room,
24 something where you check in and you have a specific room
25 where you live and that other people do not have standing

1 permission to be there.

2 What we know here is that Mr. Piper and
3 Mr. Torres shared the house. They -- Mr. Torres
4 contributed to the bills, even though the house was in
5 Christopher Piper's name. Christopher Piper told him
6 that neither of them had any restrictions on the house on
7 anywhere that they can go.

8 Mr. Torres told Detective Fancher in the
9 interview that nobody locked the doors, because, I would
10 go into Mr. Piper's room in the middle of the night
11 sometimes to check on him to make sure everything was
12 okay. He had standing permission to go anywhere in the
13 room. He had the legal authority to every room in the
14 house, so legally he cannot commit home invasion in that
15 bedroom. So I would ask the Court to discharge Count
16 III.

17 On Count VII, Your Honor, this one is real
18 brief and straightforward. The State has to prove by
19 slight or marginal evidence that the property destroyed
20 had a valued greater than \$250. We didn't hear any
21 evidence as to the value of the cellular phone, Judge, so
22 they have not presented any evidence that that phone was
23 worth -- had a value of more than \$250. So I would ask
24 the Court to discharge that, because we don't assume it
25 has a value higher than \$250. We would assume the

1 opposite; that the value is less than \$250, Judge.

2 The count the State added is use or possession
3 of a dangerous weapon, specifically possessing it with
4 the intent to inflict harm. There is zero evidence at
5 all that was presented today that there was intent to
6 inflict harm with the nunchucks that were found in the
7 house. The State is wildly speculating that it possibly
8 maybe could have been used, but that could be -- the same
9 could be said for any number of items in the house, not
10 for the nunchucks. That is not slight or marginal
11 evidence that they were ever possessed with the intent to
12 harm anyone. They have not met their burden. They
13 haven't come close to meeting their burden on that count,
14 Judge, and on Count VIII, I would ask the Court to
15 discharge that as well.

16 We also heard evidence that in the scuffle,
17 whether Mr. Piper was running down the hall to his
18 bedroom or he was being -- forcibly being pushed down the
19 hall to his bedroom, he fell a couple times along the
20 way. Based on the testimony that we heard today, I'd say
21 it's much more likely that as he fell, he hit his head,
22 he hit his face while he was falling, or that's something
23 that happened in the scuffle, not that he was hit over
24 the head with a pair of nunchucks or any other item,
25 because we haven't heard any other testimony or any

1 testimony about that at all.

2 Mr. Torres, in his interview with
3 Detective Fancher, what we heard today is that at first
4 he was not very forthcoming. He was not very honest, but
5 then he was honest. He told all the details. He told
6 Detective Fancher and Detective Fisher what occurred.
7 Not once in that interview, Your Honor -- and I've
8 watched the entire interview. It's three hours. Not
9 once were nunchucks ever mentioned. The State has not
10 met its burden, and I ask the Court to discharge Count
11 VIII in the criminal complaint.

12 With habitual criminal, Your Honor, the
13 information we have, the legality of that, is a little
14 fluid right now. I know in the special session the State
15 just passed -- the legislature just passed another bill
16 giving more guidance as to what laws apply and when since
17 the new law went into effect on July 1st, so that's
18 something I'm sure we're going to be litigating as we go
19 up to the District Court level as to whether or not the
20 habitual criminal statute would still apply.

21 But for purposes of today's case, I would
22 submit on that and the remainder of the counts in the
23 complaint. Thank you, Judge.

24 MR. VITTO: Thank you, Your Honor.

25 Judge, insofar as the double jeopardy is

1 concerned, the double jeopardy clause protects against
2 three things. A second prosecution for the same offense
3 after acquittal. Double jeopardy says you can't do that.
4 It protects against a prosecution for the same offense
5 after conviction. The double jeopardy clause says you
6 can't do that. And importantly, it protects against
7 multiple punishments for the same offense. That's all
8 that double jeopardy clause does.

9 The double jeopardy clause does not and cannot
10 speak to the prosecutor's charging document. That's from
11 *Jackson v State*, 128 Nevada 598. It's a 2012 decision,
12 and it's frankly at this point in our jurisprudence in
13 Nevada a seminal decision on *Blockburger* and double
14 jeopardy. That's the Bible of double jeopardy right now
15 in the State of Nevada.

16 Nothing legally prohibits the prosecution from
17 charging this case in the alternative and bringing it
18 forward in the manner we have. The defendant can't be
19 punished for the same offense. If the jury were to
20 somehow convict him after getting jury instructions on
21 how to properly find -- reach a verdict in regard to
22 these charges or whatever charges it ultimately ends up
23 deliberating, the prosecution would step forward at that
24 time because the prosecution doesn't want to violate
25 *Blockburger* and double jeopardy and *Jackson v State* by

1 allowing the defendant to be punished for the same
2 offense. We're not going to do that.

3 If the defendant is convicted of first-degree
4 murder and open murder, we're going to dismiss open
5 murder. If he's convicted of first-degree murder, open
6 murder, and battery by strangulation, we're going to
7 dismiss open murder and battery by strangulation. We're
8 not going to allow -- it would be our obligation and
9 responsibility to not allow the defendant to face
10 multiple punishments for the same offense, and I would be
11 arguing in closing argument as I've stated earlier.
12 Don't do this. Follow the instructions on the law that
13 you've been given. That would be my argument to the
14 jury.

15 The defendant (sic) clearly undeniably has the
16 right to feel safe within his room in his home. They
17 always leave the doors unlocked. Well, not this time,
18 and there's a reason. He was doing all he could to
19 preserve himself, to preserve his own life, to be safe
20 from the defendant and what he knew was coming clearly
21 because he locked the door, which is something they don't
22 do. He sought refuge in his own bedroom, which he has a
23 right to do, which the defendant doesn't have a right to
24 violate. Clearly the statute sets forth that invasion of
25 the home can include invasion of a room.

1 There isn't zero evidence to support the
2 nunchaku allegation, and all the prosecution has to
3 establish is slight or marginal evidence. There were
4 sets of nunchaku in his bedroom. There was one set of
5 nunchaku in the living room where the tussle began, and
6 the victim has injury to the left side of his head and
7 face. Could that have been caused by falling against the
8 wall? Absolutely. It could have. But that is a fact
9 determination for the jury to decide. They alone are
10 trusted with the responsibility to determine contested
11 aspects of information and evidence so long as the State
12 has met their burden of slight and marginal evidence at
13 this level.

14 In regard of -- regard to the vulnerable
15 person and whether the defendant was a vulnerable person,
16 the defense gave short shrift to one word in what defines
17 a vulnerable person. Vulnerable person means a person,
18 18 years of age or older, who, under paragraph (b) -- so
19 this would be 200.509(8)(b) -- has one or more physical
20 or mental limitations that restrict the ability of the
21 person to perform the normal activities of daily living.
22 Not that he can't do them, but that they're limited,
23 they're restricted.

24 He doesn't function the way you do, Judge, or
25 the way I do or Mr. Martinez does or anybody else in this

1 courtroom does. He doesn't function that way. He
2 functions in a restricted way because of all that he's
3 had to endure in a relatively short period of time as his
4 body continued to deteriorate. He was given at best a
5 year to live. And you know what, Judge? He might not
6 have had a long life expectancy, but he didn't deserve to
7 go out this way. He deserved to go out with dignity and
8 he deserved to live his life to the fullest extent that
9 he possibly could without it being snuffed out by the
10 defendant strangling him.

11 The State requests the defendant be bound over
12 as charged.

13 THE COURT: Based on everything that we've
14 heard here today and all the evidence that has been
15 presented here today, I feel that the State has met its
16 burden of proof in this matter, and I'm going to bind the
17 defendant over to the District Court on all charges.

18 Do you have a date?

19 THE CLERK: August 28, 2020, at 9:00 a.m.,
20 Department One.

21 MR. VITTO: And we don't get the CR at this
22 level?

23 THE COURT: No. Because of the new case
24 management system they have down there, they assign the
25 number at a later date. They don't give us case numbers

1 anymore.

2 MR. VITTO: Thanks, Judge.

3 THE COURT: And you'll --

4 MR. VITTO: Get you that amended complaint
5 probably before the end of the day.

6 THE COURT: By 4:30?

7 MR. VITTO: Yes. I will go do it right now.

8 THE COURT: Okay.

9 MR. VITTO: Thank you, Your Honor.

10 THE COURT: Thank you.

11

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

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C E R T I F I C A T E

STATE OF NEVADA)

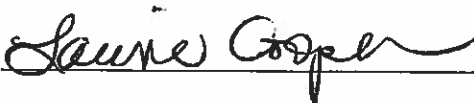
COUNTY OF NYE)

_____))

I, LAURIE COOPER, CCR No. 848, hereby
certify that the foregoing transcript, pages
1 to 265, comprises a full, true, and correct
transcription of my stenographic notes taken
in the above-entitled cause, to the best of
my ability.

Dated this 27th day of August, 2020.

s/s



LAURIE COOPER, CCR No. 848


CERTIFICATE OF SERVICE BY MAIL

I, Renne McKeen, Paralegal, Office of the Nye County District Attorney, P.O.
Box 39, Pahrump, Nevada 89041, do hereby certify that I have served the following:

**RESPONSE TO DEFENDANT'S MOTION TO SUPPRESS DEFENDANT'S
STATEMENTS AND REQUEST FOR JACKSON V. DENNO HEARING in
Case No(s). CR20-0092,
STATE v. MARCO ANTONIO TORRES,**

upon said Defendant(s) herein by mailing a true and correct copy thereof, postage
prepaid, on 3/10/21, to the following:

DANIEL E MARTINEZ ESQ.


Renne McKeen

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

MAR 12 2021

Nys Court Clerk

~~Juanita Torres~~

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

THE STATE OF NEVADA,

Plaintiff,

vs.

MARCO ANTONIO TORRES,

Defendant.

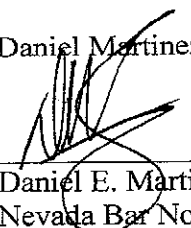
**REPLY TO STATE'S INSTANT
RESPONSE TO DEFENDANT'S
SUPPLEMENTAL BRIEF IN SUPPORT
OF MOTION TO SUPPRESS**

COMES NOW, the Defendant, Marco Antonio Torres, by and through his Public Defender, Daniel E. Martinez, Esq., of Daniel Martinez Law, LLC, and hereby files his reply to the State's Instant Response to the Defendant's Supplemental Brief in Support of Motion to Suppress.

This reply is made and based on all the papers and pleadings on file herein, the Points and Authorities submitted herewith, the exhibits attached hereto, and any further evidence and argument as may be adduced at the hearing of this matter.

DATED this 10th day of March, 2021.

Daniel Martinez Law, LLC


Daniel E. Martinez, Esq.
Nevada Bar No.: 12035

ARGUMENT

At the oral argument on the Defendant's Motion to Suppress on January 27, 2021, the Court asked the parties to brief the additional issue of whether an exigent circumstance can expire, and if that happened in this case. The answer is firmly, yes, an exigent circumstance can expire. A search or seizure based on exigent circumstances ends when the emergency passes. *People v. Duncan*, 42 Cal. 3d 91, 720 P.2d 2 (Cal. 1986).

In arguing that an exigent circumstance did not expire in this case, the State cites no controlling law. First, they compare the circumstances of this case to a detention during a traffic stop. The case at hand is obviously not a traffic stop, and it is certainly not any sort of detention. So, *Sharpe* is irrelevant and does not apply here, and the State's reliance on that case is misplaced.

The State next relies heavily on *Najar*, from the Tenth Circuit Court of Appeals. Again, this case is not controlling, merely persuasive at best. Furthermore, the State neglects the most important distinction between *Najar* and the instant case: law enforcement in that case continued to see and hear movement coming from inside the house until the time they made entry a mere half an hour after their arrival on scene. Here, the Nye County Sheriff's Office went for more than an hour without seeing or hearing anything inside the house.

The existence of an emergency which would justify a warrantless entry is a question of mixed law and fact. *United States v. Flickinger*, 573 F.2d 1349, 1357 (9th Cir. 1978). Each case is unique, whether law enforcement had an objectively reasonable basis to believe that there was an immediate need to protect the lives or safety of themselves or others must be decided on a case-by-case basis. Because of the body worn cameras used by the Nye County Sheriff's Office, we know that the Deputies in this case did *not* believe they had an objectively reasonable basis to believe there was an immediate need to protect the lives of safety of themselves or others, and make entry into the house at 835 South Linda Street, in Pahrump, Nevada. They did not believe exigent circumstances were present, and that was the reason for their extended delay.

Attached hereto are the following exhibits:

- Exhibit A: Deputy Xavier Gideon's body worn camera video from the morning of April 4, 2020.
- Exhibit B: Deputy Colton Williams' body worn camera video from the morning of April 4, 2020.
- Exhibit C: Deputy D. Stone's body worn camera video from the morning of April 4, 2020.
- Exhibit D: Sgt. Alexandra Fernandes' body worn camera video from the morning of April 4, 2020.

Deputies Gideon and Williams were the first to arrive on scene, with Deputy Stone right behind them. After assessing the scene and the situation, all three Deputies confer about what to do, and the following conversation takes place.

Deputy Williams: "We don't have enough to go inside."

Deputy Stone: "Maybe. If there was an altercation."

Deputy Williams: "But we can't prove that, though."

(Exhibit B, at the 10:39 mark, and Exhibit C at the 9:13 mark, 3:22am.) Minutes later, Deputy Gideon reiterates: "I don't think we have exigent circumstances to go in there. Definitely don't have exigent circumstances now. It's quiet." (Exhibit A, at the 12:22 mark, 3:24am.) Deputy Stone agrees with his assessment of the situation. (Exhibit C, at the 11:07 mark, 3:24am.)

Deputy Williams then calls Sgt. Fernandes, and learns she is already in route to the scene. One of the first things Deputy Williams tells his superior is that he is not sure they have enough exigent circumstances to go inside the house. "I don't think we do," was Sgt. Fernandes' response. (Exhibit B, at the mark, and Exhibit D, at the 1:27 mark, 3:29am.) She changes her mind back and forth over the next fifteen minutes, stating first "Well I am going to say we have exigent circumstances to maybe try

1 and get in" (Exhibit D at the 9:31 mark, 3:37am.) Deputy Stone goes so far as to offer to kick the door
2 open, saying "If we have enough, I'll kick it." (Exhibit C at the 28:37 mark, Exhibit D at the 14:02
3 mark, 3:42am.) Sgt. Fernandes refuses his offer. (Id.) She then backtracks, saying "I would like to say
4 we have enough, but..." (Exhibit D at the 14:12 mark, 3:42am). Between changing her mind, Sgt.
5 Fernandes asks if they see any blood on the ground, and Deputy Stone confirms he was looking for
6 blood, but did not see any. (Exhibit C at the 24:17 mark, Exhibit D at the 9:44 mark, 3:37am.) Sgt.
7 Fernandes turns off her body worn camera to make a phone call, and when she reactivates it, the
8 decision has already been made to call a locksmith.
9

10 The members of the Nye County Sheriff's Office tell us in their own words that there were not
11 exigent circumstances to go into the house. Deputy Gideon even answers the specific question of
12 whether any exigency may have expired in the affirmative. The members of Nye County Sheriff's
13 Office are trained and experienced in identifying exigent circumstances, and knowing when someone
14 may be in need of emergency aid. That is why they discussed the lack of evidence of any altercation.
15 That is why they specifically looked for blood at the scene. Any evidence of an altercation, or any
16 evidence that someone was injured, would have provided the exigent circumstances necessary to make
17 entry into the house without a warrant. But that evidence was not present, and the Deputies knew it.
18 Exigent circumstances were not present, and the Deputies knew it, and they admitted it.
19

20 //

21 //

22 //

CONCLUSION

When Deputies with the Nye County Sheriff's Office entered the house at 835 South Linda Street in Pahrump, Nevada, they did so without any objectively reasonable basis to believe there was an immediate need to protect the lives or safety of themselves or others, and they can be heard admitting the same in the body worn camera video. As such, their entry was unlawful and violated the Fourth Amendment rights of Marco Torres. Any evidence obtained after the illegal entry must be suppressed.

DATED this 10th day of March, 2021.

Daniel Martinez Law, LLC


Daniel E. Martinez, Esq.
Nevada Bar No.: 12035


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CERTIFICATE OF SERVICE

I, Daniel E. Martinez, Esq., Nye County Public Defender and counsel for the Defendant,
MARCO ANTONIO TORRES, do hereby certify that I have served the following:
**Defendant's Reply to the State's Instant Response to Defendant's Supplemental Brief in
Support of Motion to Suppress in
Case No. CR20-0092
State v. Marco Antonio Torres**

upon said Plaintiff by delivering a true and correct copy thereof on March 10, 2021, to the following:

NYE COUNTY DISTRICT ATTORNEY'S OFFICE



Daniel E. Martinez, Esq.

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EXHIBIT A