

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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Elizabeth A. Brown  
Clerk of Supreme Court

IAN CHRISTOPHER HELD,	)	
	)	
Appellant,	)	Case No. 83549
	)	
vs.	)	
	)	
THE STATE OF NEVADA,	)	
	)	
Respondent.	)	
_____	)	

Appeal from Jury Verdict and Conviction  
Second Judicial District Court of the State of Nevada  
The Honorable David Hardy

**APPELLANT'S JOINT APPENDIX – VOLUME IX**

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1     there -- she's a jogger -- every day and looks at it.

2       **Q**     Let me ask you something.  If you're just running  
3     along the front of the street, you couldn't see the point  
4     of entry; correct?

5       **A**     No, but would probably have seen that screen off  
6     the front of the house.

7       **Q**     She was alerted by the gardener, it wasn't  
8     something that she saw on her own?

9       **A**     She was alerted to some activity at the side of  
10    the house when she was running by, and I think the  
11    gardener may have flagged her down.  I don't know.  But  
12    it looks like that window of opportunity was probably  
13    within 24-hours.

14      **Q**     Okay.  You say that because your gardener is there  
15    on Monday?

16      **A**     Monday morning, yes.

17      **Q**     So it could have been any time before that Monday  
18    to the previous Monday; correct?

19      **A**     Yes.

20      **Q**     Okay.

21           MR. SILVERBERG:  Thank you.  May I have just one  
22    moment, your Honor?

23           Pass the witness.  Thank you, sir.

24           THE COURT:  Any redirect?



1 MR. DELONG: Yes, your Honor. Thank you.

2

3 +++ REDIRECT-EXAMINATION +++

4 BY MR. DELONG:

5 Q So you testified that you believed it was two  
6 persons or multiple persons potentially that were  
7 involved. Do you have any specific reason to believe  
8 that?

9 A It -- in a discussion, when we got up there in  
10 Reno that afternoon, that very afternoon on the 21st, and  
11 in talking to my neighbor, Chris Gardella, that there may  
12 have been two people involved with that U-Haul truck that  
13 had been out in front of the house and it was unusual  
14 that that U-Haul truck would be on the street, that's why  
15 he became concerned that it was suspicious.

16 And I got the feeling, and it wasn't stated  
17 explicitly, that there were two people, but I remember in  
18 discussion that it might have been one other person -- at  
19 least one other person involved.

20 Q You're saying *might* a lot. You're not sure?

21 A I am. I'm not certain, not at all.

22 Q How long did you own the house?

23 A We took title to that house February of 2004.

24 Q So quite some time?



1       **A**     Yeah.

2       **Q**     How long had you been using that gardening service  
3     that was there?

4       **A**     For the entire time.

5       **Q**     Did you ever have any incidents or issues?

6       **A**     Pardon?

7       **Q**     Did you have any incidents or issues with the  
8     house?

9       **A**     Never. We've never had an incident with that  
10    house, not one time.

11      **Q**     No incidents with the pest service?

12      **A**     No.

13      **Q**     How long were you working with the pest service?

14      **A**     We've only had that pest service for three years  
15    now.

16      **Q**     I just want to clarify for the record. *Pest*  
17    *service* as in bug control?

18      **A**     As in what?

19      **Q**     Pest service.

20           MR. SILVERBERG: P-E-S-T.

21           MR. GRAHAM: Thank you.

22           THE WITNESS: Yeah. Ants, cockroaches, where they  
23    spray the house outside, yes.

24           MR. GRAHAM: Perfect. I wasn't hearing you



1 clearly. Thank you very much. Thank you for your time.

2 No further questions, your Honor, at this time.

3 THE COURT: To the defense, recross?

4 MR. SILVERBERG: No, your Honor. Thank you.

5 THE COURT: Thank you. You are free to step down  
6 and leave the courtroom.

7 THE WITNESS: Thank you.

8 THE COURT: To the State, we are going to break  
9 early for lunch. Who do you anticipate your next witness  
10 to be?

11 MR. DELONG: Joe Trail, your Honor. Officer Joe  
12 Trail.

13 THE COURT: About how long will that direct  
14 examination be?

15 MR. DELONG: Twenty, thirty minutes.

16 THE COURT: Okay. Ladies and gentlemen of the  
17 jury, during this recess please do not discuss this case  
18 amongst yourselves. Please do not form or express any  
19 opinion about this matter until it has been submitted to  
20 you.

21 We're going to take a slightly longer lunch.  
22 We'll be in recess until 1:30. Please be in the jury  
23 deliberation room for entry into the courtroom at 1:30.

24 We'll stand for our jury.



1           (At 11:45 a.m., jury exited courtroom.)

2           THE COURT: Please be seated.

3           Enjoy your recess, counsel, as we have begun.

4           It is not my job to be an advocate. From time to  
5 time the Nevada Supreme Court has cautioned trial judges,  
6 and me in particular, that when certain issues arise, if  
7 they rise to a certain level of significance I must  
8 confront them sua sponte. So I'm sorry to say I'm doing  
9 the job the best I can.

10           I'm not sorry to the State, Mr. Held. I should  
11 reframe that.

12           I'm not sorry in the slightest, though I'm about  
13 to describe my thought process.

14           We had a motion pre-trial on suppression of the  
15 RYOBI. The context of pre-trial decisions is critical  
16 because they're presented in a vacuum. Think about the  
17 civil motions in limine that come in where I'm always  
18 asked to make trial rulings in advance of trial. So I in  
19 every order regarding in limine requests cite decisional  
20 authority saying, this is preliminary, I reserve the  
21 right to change my decision as trial unfolds and evidence  
22 appears.

23           When I considered the motion to suppress on RYOBI,  
24 I had no information that the evidence bore any indicia



1 of ownership. It was one of countless numbers of tools  
2 that were purchased initially and resold in the secondary  
3 market. I therefore concluded that the absence of the  
4 tool itself was not unduly prejudicial. I learned today  
5 through this witness that there may have been markers on  
6 that evidence that connected ownership.

7 Now, as I'm preliminarily thinking about it, this  
8 is not a case ending question for me. It's a curative  
9 question. But it is now possible, based upon this  
10 witness' testimony, that there could be an exculpatory  
11 feature to that hard evidence that is absent from the  
12 photographic evidence. And so the moment I heard that, I  
13 began my research.

14 I've been communicating with our law clerk and at  
15 the moment I'm reading NRS 47.250, which is disputable  
16 presumptions, evidence which does not exist. There's the  
17 *Bass-Davis* case, which is a sentinel civil case on  
18 adverse inferences when there's missing evidence. I'm  
19 not sure how to go, where to go from here, but I'm  
20 identifying the issue for the appropriate time. I can't  
21 un-ring the bell of the evidence that has been presented  
22 so far today. But, counsel, begin looking at that during  
23 our off hours.

24 Anything to add before we take our noon recess?



1 MR. DELONG: Yes, your Honor, if I may?

2 My concern with what the court has addressed as an  
3 issue here, we're in this odd *may* territory. It *may* have  
4 those markings. We did hear during the motion -- or  
5 evidence that was entered during the motion that no one  
6 identified anything that would have exculpatory value  
7 that made it material.

8 THE COURT: Hold on, please. I don't want to  
9 argue the substance of the issue right now. I think  
10 counsel need a chance to reflect upon it, do a little bit  
11 of research, and you're going right to the substance of  
12 it.

13 I felt a duty to identify it because the court has  
14 told me from time to time that I didn't and should have.  
15 I will give you full opportunity to be heard. We'll do  
16 so out of the jury's presence. The defense needs the  
17 same opportunity.

18 I'm not reflecting on the substance. I reread the  
19 motion to suppress, and the standard is whether the  
20 exculpatory -- oh, no. I just lost it. Hold on,  
21 everybody. I'll summarize it.

22 Whether the exculpatory nature of the evidence was  
23 apparent at the time, that's going to be critical.  
24 Again, primarily I don't see this is case ending. I see



1     it as curative. In fairness to the defense, they need a  
2     chance to reflect, research as necessary, as well as the  
3     State.

4             We're going to continue with trial and probably  
5     tomorrow morning or tomorrow during the noon hour, we'll  
6     address this issue. It may be meaningful. It may be  
7     meaningless. I don't know.

8             MS. ROSENTHAL: Your Honor, one other thing not  
9     related to that. If the court could address the just not  
10    to attempt to look at photos that haven't been introduced  
11    yet, I think that would be helpful. Because when  
12    Mr. McCulloch was shown the drill before they were  
13    admitted, some of the jurors were attempting to look  
14    over, and I think given instructions from the court not  
15    to attempt to look at what the witness is looking at,  
16    only if it's displayed, that would be helpful.

17            THE COURT: I'll see if I can do that in a  
18    non-awkward way in the flow of trial.

19            MS. ROSENTHAL: Specifically because those were  
20    objected to at the time and we don't know what the  
21    court's ruling will be.

22            THE COURT: You'll notice I was reading the motion  
23    to bifurcate, so I quickly shifted my screen because we  
24    are all aware of the verdict -- I'm sorry -- the mistrial



1     because of a briefcase that had a marker on it that the  
2     jury saw, so we're all very careful and I'll find a way.

3             MR. SILVERBERG: Do you want us back here at 1:30  
4     just the same, Judge?

5             THE COURT: We'll be in recess and off the record.

6             (Lunch recess taken.)

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2 RENO, NEVADA, WEDNESDAY, JUNE 30TH, 2021, 1:30 P.M.

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5

6 THE COURT: Counsel, anything before I bring the  
7 jury in?

8 MR. GRAHAM: Not by the State.

9 MS. ROSENTHAL: My jacket is still in the jury  
10 room. Could I grab that?

11 THE COURT: Of course.

12 MS. ROSENTHAL: Before that, I would ask to  
13 address the thing the court brought up sooner rather than  
14 later because I think it's important and I think it could  
15 alter how things move forward.

16 THE COURT: It's not my practice to have the jury  
17 wait while counsel argue extensively so I always try and  
18 find a break where I can either send the jury away for an  
19 extended time or have them arrive late or depart early,  
20 which -- take a moment. Grab your jacket.

21 MS. ROSENTHAL: I think Mikki went to grab it.

22 THE COURT: Let's wait until the clerk returns.  
23 Bring the jury in. I'm going to tell them to return to  
24 the jury room for not more than ten minutes and I'll see



1     what direction it goes. I don't want to anticipate what  
2     it is. If you tell me it will change the proceedings, I  
3     should at least allow you to give a headline.

4             All right. Stand for the jury, please.

5             (At 1:30 p.m., jury entered courtroom.)

6             THE COURT: Ladies and gentlemen of the jury,  
7     remain standing when you arrive at your seats, because  
8     I'm going to have a quick word with you.

9             The jury is present, as are all trial  
10    participants.

11            Ladies and gentlemen, I need about another ten  
12    minutes before I bring you in to return to trial. I just  
13    didn't want you to sit there in the jury room wondering  
14    when we were going to begin.

15            So if you'll return to the jury deliberation room,  
16    it will not be longer than 10 minutes. As always, do not  
17    discuss this case amongst yourselves or form any opinion  
18    about this matter before it's submitted to you.

19            You're free to leave.

20            (At 1:31 p.m., jury exited courtroom.)

21            THE COURT: Be seated, please.

22            To the defense.

23            MS. ROSENTHAL: Thank you, your Honor.

24            The defense anticipates filing a motion for



1 reconsideration based off the testimony today and given  
2 that I find it important to have a set time when we would  
3 be able to address that so that witnesses could be  
4 subpoenaed for a hearing on the reconsideration,  
5 specifically officers to be recalled based off  
6 Mr. McCulloch's testimony today and perhaps himself.

7 THE COURT: Officers being recalled?

8 MS. ROSENTHAL: Based off of the testimony that  
9 was provided by Mr. McCulloch today that has not been  
10 previously disclosed in any capacity or unknown to the  
11 defense prior to today that relates to the best evidence,  
12 specifically regarding just that motion, the best  
13 evidence in the drill.

14 THE COURT: Unfortunately, the word *recall*,  
15 focusing on the word *recall*, will there be officers to  
16 testify at the suppression hearing who will not testify  
17 at trial?

18 MS. ROSENTHAL: I do not believe so.

19 THE COURT: Every officer who testified at the  
20 suppression hearing will testify at trial?

21 MR. DELONG: Yes, your Honor.

22 THE COURT: So you're asking that I stop trial  
23 until the motion is filed?

24 MS. ROSENTHAL: Not that you stop trial, your



1 Honor, but if we have -- if we know we file a motion for  
2 reconsideration and there's a hearing on it, that we know  
3 it's in the morning or tomorrow so we have subpoenas  
4 ready for those officers to make sure they're available  
5 and/or Mr. McCulloch. I don't know if he was officially  
6 released from his subpoena. I want to make sure we have  
7 the availability to present our argument through the  
8 witnesses.

9 I also think it would be important to get a  
10 transcript of Mr. McCulloch's testimony because his  
11 testimony is, for the most part, as it relates to the  
12 best evidence, completely new to both sides.

13 THE COURT: So you can file whatever you want, of  
14 course, but I'm thinking about what bucket each filing  
15 goes into as I take guidance from our civil law, which  
16 I'm sure migrates into criminal law, what we call things  
17 is less important than what they are.

18 If you're going to ask me to reconsider a decision  
19 I made, it's unlikely I'll reconsider the decision I made  
20 because the decision I made was based on the information  
21 then before me.

22 It appears if there's new information, it's not  
23 styled as reconsideration as opposed as to a new motion  
24 of some type. You can call it whatever you want, and I



1 don't know if you're going to require an evidentiary  
2 hearing outside just the trial flow. I'd have to read  
3 it. When do you anticipate having something filed?

4 MS. ROSENTHAL: I would anticipate -- again, that  
5 goes to whether or not a transcript is needed. So your  
6 Honor has not written a formal order based off the  
7 motion, it's just the verbal order denial that was  
8 presented yesterday. So it's just from memory what the  
9 reasons for the denial were and not a written form, so  
10 it's hard to say whether it would be a reconsideration  
11 based on new evidence or a new motion.

12 We also don't have written down physically what  
13 Mr. McCulloch said today, but my understanding is the  
14 court's ruling was based off of an identifiable piece in  
15 that drill set which Mr. McCulloch completely changed  
16 today and said that's not specific, and also provided  
17 testimony that there was something specific that was not  
18 pursued or known or done in any regard that could have  
19 been, but we don't have the evidence here to examine it.

20 And I think if -- moving forward, if the court  
21 were to say that the drill is -- the drill itself is the  
22 best evidence and not the photos, those photos have  
23 already been admitted and this jury has already been  
24 exposed to that and that creates significant issues.



1           THE COURT: So the consequence -- I have one  
2 question, understanding the substance comes later and I'm  
3 not going to invite the State to respond to the  
4 substantive question, but I wanted to get an idea of what  
5 you're thinking.

6           Several legal concepts work by analogy to  
7 influence other legal concepts. One such concept is that  
8 evidence, by its very nature, is prejudicial. And events  
9 in trial are -- can be prejudicial. It doesn't effect  
10 the trial and make it defective.

11          The request to suppress rises to a constitutional  
12 level and the spirit of suppression is to correct and  
13 prevent, among some of the things, misconduct, which is  
14 why the standard is was there a bad faith action? I  
15 concluded there was not. In fact, I said there was a  
16 policy-driven purpose.

17          Destructively, was the evidence that was either  
18 lost or destroyed, does it create undue prejudice or  
19 whether it was exculpatory from its appearance? That is  
20 a constitutional standard of some magnitude entirely  
21 different from whether the absence of this evidence to --  
22 whether the absence of this evidence is an element or  
23 does it itself constitute a reasonable doubt? Again,  
24 analogous concepts.



1           I hear all the time from the State's expert,  
2   there's no fingerprints on the gun but that doesn't mean  
3   that the defendant didn't touch the gun. There's always  
4   a fact somewhere for the jury to decide, and I anticipate  
5   at the very least from this evidence that your argument  
6   is going to be, with emphasis, *Well, State has failed to*  
7   *produce the evidence that does have the initials, that*  
8   *constitutes a reasonable doubt.* And so I have to weigh  
9   the typical events at trial versus constitutional  
10   magnitude. Why is this not just a reasonable doubt  
11   argument that you've now been given?

12           MS. ROSENTHAL: Because I think, your Honor, the  
13   arguments -- or the testimony presented at the  
14   evidentiary hearing related specifically to the drill  
15   bit, and was the identifiable thing that made it  
16   Mr. McCulloch's, and Mr. McCulloch himself said that was  
17   not unique. And something that would have been unique  
18   would have been his writing on there, which was not  
19   pursued at all. It's unclear whether it was asked if  
20   there's anything else unique, but it's clear that nothing  
21   else was pursued by officers. So I think the policy of  
22   returning the items to somebody that could identify them.  
23           The constitutionality question is that they did  
24   not -- they were not unique, based off what was presented



1 to the officers to return them at that time. From the  
2 testimony of Mr. McCulloch, they showed him it. He said,  
3 "Yes, that's mine." That was the end of it. It was not,  
4 "What is there" -- I know they said they asked him if he  
5 said there was a drill bit, but you heard that the drill  
6 bit is not unique. There's nothing unique about the  
7 drill bit that makes it Mr. McCulloch's.

8 Dissimilar to the guns that were returned that had  
9 the serial number and someone's name on it, so I think it  
10 does go to the constitutionality of it. I think the  
11 policy is returning the items, the policy is not give  
12 them something that is identified by one thing.

13 THE COURT: I'll await your written document. I  
14 don't see the unique feature, whether it exists or is  
15 absent as a constitutional standard. I see the conduct  
16 of the law enforcement officers involved as the  
17 constitutional standard.

18 MS. ROSENTHAL: So, your Honor, I guess, would the  
19 court consider a jury instruction related to the --

20 THE COURT: Absolutely. That's what I've been --  
21 researching throughout the entire lunch, is what  
22 instruction is appropriate? And I'll withhold my  
23 preliminary research but there might be, yeah.

24 To the State, I've kind of signaled *not yet*. Keep



1 your powder dry. I didn't want to bring the jury in.

2 As to the underlying request that I designated  
3 time certain for arguments --

4 MR. DELONG: My concern, your Honor, is  
5 procedurally in this case. We had a motion to suppress  
6 that was heard regarding constitutional issues and  
7 constitutional standards. This is not a best evidence  
8 rule nor is this an evidence unique moment.  
9 Particularly, what was just argued to the court was that  
10 McCulloch somehow changed his testimony. He didn't even  
11 testify in the hearing, your Honor. The question in the  
12 constitutional standard which was before the court --  
13 properly before the court with the proper witnesses is,  
14 was this apparent? Was any exculpatory nature of the  
15 item apparent to the witnesses who were testifying, the  
16 officers? So it's not appropriate to change the  
17 proceedings at this moment.

18 I understand if we needed to have further research  
19 and argument, but I don't see any need for a stay, any  
20 need at this point, especially not for a special  
21 instruction for the jury, because I think procedurally  
22 Mr. McCulloch could have been called to testify at that  
23 hearing. This is one of those unique circumstances where  
24 the defense had the burden of proof. And as the court



1 pointed out, this motion was very late.

2 THE COURT: Okay. Let me know as soon as you file  
3 whatever you file so I can read it. I'll give the State  
4 a reasonable amount of time. We'll have these arguments.

5 Please stand with me for the jury.

6 (At 1:43 p.m., jury entered courtroom.)

7 THE COURT: The entire jury is present, as are our  
8 trial participants.

9 You may all be seated.

10 To the State, please call your next witness.

11 MR. DELONG: Thank you, your Honor. The State  
12 calls Officer Ty Joe Trail.

13 (Witness sworn.)

14 THE COURT: Officer, during your testimony you're  
15 allowed to remove your mask -- there you go -- only if  
16 you're comfortable. You are not required to do so.

17 THE DEFENDANT: I'm comfortable.

18 THE COURT: Thank you.

19 To the State.

20 / / / /

21 / / / /

22 / / / /

23 / / / /

24 / / / /



1 TY JOE TRAIL

2

3 called as a witness on behalf of the State,  
4 having been duly sworn, testified as follows:

5

6 +++ DIRECT EXAMINATION +++

7 BY MR. DELONG:

8 Q Good afternoon, Officer Trail.

9 A Good afternoon.

10 Q Could you please state and spell your name for the  
11 record?

12 A Yes. My name is -- I go by Ty Joe Trail; T-Y,  
13 J-O-E, Trail, T-R-A-I-L.

14 Q What is your current profession?

15 A I'm a Reno police officer.

16 Q How long have you been a Reno police officer?

17 A Six years.

18 Q Can you briefly describe for us your duties within  
19 those six years?

20 A Yes. I worked six months in the academy, Patrol  
21 Academy. Then I've been patrol based with mostly working  
22 north beat for Reno.

23 Q Do you remember being involved in an investigation  
24 on September 21st, 2020?



1       **A**     I do.

2       **Q**     What was the nature of that investigation?

3       **A**     The nature of the investigation was a burglary  
4     call.

5       **Q**     Where at?

6       **A**     It was in Somerset, northwest Reno.

7       **Q**     Do you know the address?

8       **A**     I believe -- I believe it's 1440 Whisper Rock.

9       **Q**     Thank you. Sorry. I wasn't trying to quiz you.  
10            So you responded to that residence during the  
11     investigation?

12       **A**     Yes.

13       **Q**     What did you do while you were there?

14       **A**     When I was there -- I was the first officer on  
15     scene and I conducted my investigation for a burglary.

16       **Q**     What did that entail?

17       **A**     It entailed having a cover officer assist me as --  
18     it was unknown if the house was occupied.

19       **Q**     So you went and cleared the house?

20       **A**     Yes.

21       **Q**     When you went in and cleared the house, what did  
22     you discover?

23       **A**     Once my partner arrived on scene -- excuse me --  
24     on scene, we discovered one of the side doors was open.



1       **Q**     And you don't know of anyone who opened that  
2 before you got there?

3       **A**     Correct.

4       **Q**     Did you go inside to clear the house?

5       **A**     Yes, I did.

6       **Q**     What did you discover on entry?

7       **A**     Upon entering the house, I noticed a large brick  
8 in the hallway, broken glass looked like from a sliding  
9 glass door. Once we continued to clear the residence, I  
10 noticed multiple side tables and doors that were opened,  
11 which was evidence of a burglary.

12           Once we cleared the house, we searched the  
13 outside. I noticed pry marks on the front door, as well  
14 as a window screen that was down on the side of the  
15 house.

16       **Q**     And did you -- did you open those doors or were  
17 those doors open when you were clearing the house?

18       **A**     Those doors were already open.

19       **Q**     Did you see any officers opening doors that they  
20 then left open that were closed before?

21       **A**     No.

22       **Q**     Is that your practice, to do such things?

23       **A**     No.

24       **Q**     What were you looking for when you were clearing



1 the house?

2 A We were looking for any individuals that might be  
3 still inside the house. Once we cleared the house, we  
4 started looking for any sort of evidence.

5 Q This may sound funny, you wouldn't be looking in  
6 dresser drawers for those individuals or in cabinets over  
7 the laundry; would you?

8 A No.

9 Q What else did you do in connection with the  
10 investigation?

11 A I believe I met with the reporting party who  
12 called the 9-1-1 call, Chris Gardella. I met with him.  
13 He was on scene.

14 Q Did he show you anything?

15 A Yes, he did.

16 Q What was that?

17 A He showed me a picture of a U-Haul that he took a  
18 picture of.

19 Q Showing you what's been marked as proposed  
20 Exhibits 3 and 4?

21 THE COURT: Officer, please just make sure that  
22 that document remains concealed from the jury while  
23 you're viewing it. It will not be reviewed by the jury  
24 until it's been admitted.



1 BY MR. DELONG:

2 Q Have you seen these photos before?

3 A Yes.

4 Q Do you know who took the photos?

5 A I took the photos.

6 Q Do they look accurate as to the time you took  
7 them?

8 A Yes, it does.

9 Q Were these taken on September 21st as part of your  
10 investigation?

11 A Yes, they were.

12 MR. DELONG: The State moves for the admission of  
13 proposed Exhibits 3 and 4, your Honor.

14 MS. ROSENTHAL: No objection.

15 THE COURT: 3 and 4 are admitted, Ms. Clerk.

16 (Exhibits 3 and 4 were admitted.)

17 BY MR. DELONG:

18 Q I'm going to put this up on the screen. Can you  
19 describe what this photo is?

20 A Yes. It's a picture of a U-Haul truck with  
21 Arizona plates.

22 Q That's the underlying pictures; isn't it? What  
23 did you take a picture of?

24 A I took a picture of Chris Gardella's phone that



1 had the picture that he took.

2 Q So this is what he showed to you?

3 A Correct.

4 Q And then -- I'm sorry, that was Exhibit 3.

5 Showing you what's been marked admitted as  
6 Exhibit 4, is that, once again, the same U-Haul truck?

7 A Yes.

8 Q And then there's the mailboxes for the  
9 neighborhood right there; is that correct?

10 A Yes.

11 Q Then behind it, is that 1440 Whisper Rock Way?

12 A Yes, it is.

13 Q Are you able to describe where the broken glass  
14 sliding glass door was?

15 A Yes.

16 Q Where was that?

17 A It's directly -- that ledge, right directly behind  
18 the U-Haul.

19 Q So the shorter wall there?

20 A Correct.

21 Q It's behind that?

22 A Correct. There's an opening, and that's where the  
23 broken slider was.

24 Q Okay. So you took the picture of the U-Haul



1 truck. Did you do anything in connection with your  
2 investigation?

3 A Yes, I did.

4 Q What did you do?

5 A I first did a registration check for the vehicle.

6 Q And what did that return?

7 A It returned as not stolen. It was still currently  
8 registered under U-Haul, so I then contacted U-Haul to  
9 get the renter's information.

10 Q Before you contacted U-Haul, was there any more  
11 investigation done with respect to the home?

12 A Yes.

13 Q What was that?

14 A I contacted our community service officer to do a  
15 fingerprint check of that residence.

16 Q What were the results of that?

17 A I didn't find any prints.

18 Q So you contacted U-Haul?

19 A I did.

20 Q What was the result of that?

21 A U-Haul informed me that the U-Haul was legally  
22 rented and provided me with the renter's information.

23 Q And what was the renter's information?

24 A The renter came back to the -- Ian Held. They



1 provided me an address, as well as an associate contact.

2 Q Do you remember that address?

3 A Yes, I do.

4 Q What is it?

5 A 1455 West Fourth Street, Space No. 81.

6 Q You indicated an associate contact. Who was that?

7 A It would be Annabelle Bush.

8 Q So I'm showing you what's been marked as proposed  
9 Exhibits 35 and 36. Please take a look at those real  
10 quick.

11 Have you seen those photos before?

12 A Yes.

13 Q Did you take these photos?

14 A Yes.

15 Q Is this on September 21st, 2020?

16 A Yes.

17 Q Do they look accurate or in any way changed?

18 A No. They look accurate.

19 MR. DELONG: Your Honor, the State moves for  
20 admission.

21 MS. ROSENTHAL: No objection.

22 THE COURT: Would you recite the exhibit numbers,  
23 please?

24 MR. DELONG: Yes, your Honor. These are Exhibits



1 35 and 36.

2 THE COURT: 35 and 36 are admitted, Ms. Clerk.

3 (Exhibits 35 and 36 were admitted.)

4 BY MR. DELONG:

5 Q So I'm showing you what's been admitted as  
6 Exhibit 35. What is this image that you took depicting?

7 A This was the U-Haul truck that was seen in Chris  
8 Gardella's phone at 1455 West Fourth Street, Space No.  
9 81.

10 Q So there's a trailer right to the right of that  
11 truck?

12 A Yes.

13 Q Do you know what space that is in?

14 A That is Space 81.

15 Q So is that the address that is registered to the  
16 rental of the vehicle?

17 A Yes.

18 Q Then taking a look at Exhibit 36. Now, this is  
19 just a close-up of the U-Haul truck; right?

20 A Correct.

21 Q Is this just simply a close-up of almost that same  
22 picture you took?

23 A Yes.

24 Q Are you able to make out the license plate in



1     that?

2       **A**     Yes.

3       **Q**     What is it?

4       **A**     It's going to be A, as in *Adam*, K, as in *king*,  
5     0004, with an Arizona plate.

6       **Q**     Is that a plate that you ran with the U-Haul  
7     company to figure out who was renting it?

8       **A**     Yes.

9       **Q**     Did you do anything in addition in your  
10    investigation?

11      **A**     I did.

12      **Q**     What was that?

13      **A**     I conducted a pawn search for Ian Held's name to  
14    see if he pawned any recent items.

15      **Q**     What did that reveal?

16      **A**     It didn't show up with any returns.

17      **Q**     And then what was your final steps in the case?

18      **A**     Final step was at that time I didn't have any  
19    other leads or follow-up, so I submitted the case to  
20    Detectives.

21           MR. DELONG:  No further questions at this time,  
22    your Honor.  Thank you.

23           THE COURT:  To the defense.

24    / / / /



1                                   **+++ CROSS-EXAMINATION +++**

2       BY MS. ROSENTHAL:

3           **Q**     Thank you, Officer Trail.

4                    You indicated that Chris Gardella was the one that  
5       contacted law enforcement; is that correct?

6           **A**     From my knowledge, yes.

7           **Q**     Was he present when you arrived?

8           **A**     Yes.

9           **Q**     Do you know if he had previously entered the  
10       residence prior to you getting there?

11          **A**     Not to my knowledge.

12          **Q**     And was the U-Haul present when you arrived?

13          **A**     No.

14          **Q**     And what day did you arrive?

15          **A**     I arrived on September 21st.

16          **Q**     And were you aware -- or are you aware if the  
17       homeowner was home during that time?

18          **A**     The homeowner was not home.

19          **Q**     Did you contact the homeowner?

20          **A**     I did.

21          **Q**     Did he indicate whether anybody had permission to  
22       be in that home?

23          **A**     He didn't indicate that.

24          **Q**     And when you arrived on scene, you were shown a



1 photo on Chris Gardella's phone; correct?

2 A Correct.

3 Q That's the photo that you took a photo of?

4 A Yes.

5 Q Okay. That's kind of the one where we see the two  
6 screens?

7 A Yes.

8 Q Showing you Exhibit 4, this one -- I'll pull it  
9 over. This is a picture you took?

10 A Yes.

11 Q Who is holding that phone?

12 A Chris Gardella.

13 Q Do you see on Exhibit 4 a date indication on when  
14 it was taken?

15 A I don't see a date, no.

16 Q Do you see that it says, "Yesterday," right here?

17 A Yes.

18 Q And so this would have been on September 20;  
19 correct?

20 A Yes.

21 Q Around 4:39?

22 A Yes.

23 Q So it was not taken on September 21st?

24 A Correct.



1       **Q**     And a report was not called in on September 20th;  
2     correct?

3       **A**     Not to my knowledge.

4       **Q**     And you don't know when that house was broken  
5     into; correct?

6       **A**     Correct.

7       **Q**     And you said that some forensics were attempted to  
8     be taken; correct?

9       **A**     Correct.

10      **Q**     Was the brick ever seized as evidence in this  
11     case?

12      **A**     No.

13      **Q**     And you contacted U-Haul and it came back that the  
14     U-Haul truck in question was legally rented; correct?

15      **A**     Correct.

16      **Q**     It was still a valid rental?

17      **A**     Yes.

18      **Q**     And Ms. Bush was also listed on that U-Haul  
19     agreement?

20      **A**     Yes.

21      **Q**     And when you ran the pawn search, you only  
22     searched for Mr. Held's name?

23      **A**     Correct.

24      **Q**     You did not search for if Annabelle Bush had



1     pawned anything; correct?

2     **A**     Correct.

3     **Q**     Because you were not focusing on Ms. Bush?

4     **A**     I was focused on who rented the vehicle.

5     **Q**     But not somebody else that could have been in the  
6     vehicle?

7     **A**     Correct.

8     **Q**     And you were the one that took the photos of the  
9     U-Haul in front of the trailer?

10    **A**     Yes.

11    **Q**     Did you go by that truck?

12    **A**     I went close enough to get a picture.

13    **Q**     You didn't try to look in the truck at all?

14    **A**     No.

15    **Q**     Did you see anything in the truck that you could  
16    tell?

17    **A**     There was no one in the truck.

18    **Q**     There was nothing in the truck?

19    **A**     There was nobody in the truck.

20    **Q**     There was nobody in the truck, but was there any  
21    items in the bed of the truck when you drove by?

22    **A**     I don't know.

23    **Q**     Nothing visible?

24    **A**     Correct.



1       **Q**     Did you get out of your vehicle in any way to go  
2 around the truck?

3       **A**     No.

4       **Q**     You just drove by?

5       **A**     Correct.

6       **Q**     Were you in a marked vehicle during this time?

7       **A**     Yes.

8       **Q**     Was your body cam on during this time?

9       **A**     No.

10      **Q**     Was there a reason for that?

11      **A**     I wasn't actually talking to anyone so...

12      **Q**     You only activate your body cam when you're  
13 talking to someone?

14      **A**     When I'm conducting an investigation with someone,  
15 yes.

16      **Q**     So you weren't investigating anything at this  
17 time?

18      **A**     I was, but I wasn't in contact with any individual  
19 person.

20               MS. ROSENTHAL: The court's indulgence.

21               Pass the witness, please.

22               THE COURT: Any redirect?

23               MR. DELONG: Thank you, your Honor.

24     / / / /



1                   +++ REDIRECT EXAMINATION +++

2       BY MR. DELONG:

3           Q       So when you looked up the U-Haul rental  
4       information, how many addresses did you find listed for  
5       that U-Haul?

6           A       One.

7           Q       So it was one single address?

8           A       Yes.

9           Q       That was the trailer park?

10          A       Yes.

11          Q       And -- but there was two individuals on the  
12       contract?

13          A       Yes.

14          Q       Did it give any indication who the renter was?

15          A       The indication who the renter was?

16          Q       Yes.

17          A       Can you rephrase the question?

18          Q       Did it let you know who rented the vehicle versus  
19       who was just an associate on the contract?

20          A       Yes.

21          Q       So who rented the vehicle?

22          A       Ian Held.

23               MR. DELONG: No further questions. Thank you.

24               THE COURT: Recross?



1 MS. ROSENTHAL: Yes, just based off of that.

2

3 +++ RECROSS-EXAMINATION +++

4 BY MS. ROSENTHAL:

5 Q Officer Trail, did you ever see this contract?

6 A No.

7 Q You were just relayed the information?

8 A Yes.

9 MS. ROSENTHAL: Thank you. That's all.

10 THE COURT: Officer, you're free to step down and  
11 leave the courtroom.

12 Ladies and gentlemen, we'll stand while we await  
13 the next witness.

14 Please call your next witness.

15 MR. DELONG: Yes, your Honor. At this time the  
16 State would call Mark Swanner.

17 THE COURT: Please be seated.

18 (Witness sworn.)

19 THE COURT: Mr. Swanner, you may remove your mask  
20 only if you're comfortable. You're not required to do  
21 so. It's your choice.

22 THE WITNESS: Thank you.

23 / / / /

24 / / / /



1                                   **MARK CLOVIS SWANNER**

2

3                   called as a witness on behalf of the State,  
4                   having been duly sworn, testified as follows:

5

6                                   **+++ DIRECT EXAMINATION +++**

7       BY MR. DELONG:

8           **Q**     Mr. Swanner, good afternoon. Can you please state  
9           and spell your full name for the record?

10          **A**     My name is Mark Clovis Swanner; last name is  
11          S-W-A-N-N-E-R.

12          **Q**     What is your current profession?

13          **A**     I'm the General Manager at U-Haul at 10400 South  
14          Virginia.

15          **Q**     How long have you had this position?

16          **A**     I've had this position for eight months.

17          **Q**     For eight months?

18          **A**     Yes, sir.

19          **Q**     What did you do before that?

20          **A**     I worked for Hertz Corporation for 20 years.

21          **Q**     What was your positions there?

22          **A**     I had several, but general -- as a manager mainly.

23          **Q**     Now, as a manager of U-Haul in Reno, one of the  
24          U-Hauls at least in Reno, do you have access to their



1 records?

2 A Yes, I do.

3 Q Their computer records that you keep on file?

4 A Yes, sir.

5 Q And do you have access to historical information  
6 of the records regarding rental vehicles?

7 A Yes.

8 Q Are you able to pull that information?

9 A Yes, I am.

10 Q I'm going to show you what is marked as proposed  
11 Exhibits 33 and 34.

12 A Yes, sir.

13 Q Please take a look at those for a second.

14 Do those look familiar to you?

15 A Yes, they are.

16 Q Do you know how they were created?

17 A These were created from the computer-generated  
18 filing system through the U-Haul.net system.

19 Q Were these records generated in the normal course  
20 of business at your U-Haul location?

21 A Yes, they are.

22 Q They're searchable by you in your U-Haul location?

23 A Yes, they are.

24 Q Did you generate these records?



1       **A**     I did.

2       **Q**     You did?

3       **A**     I had access to these. I have seen these online,  
4     yes, sir.

5               MR. DELONG: At this time, your Honor, the State  
6     would move for admission of proposed 33 and 34.

7               MS. ROSENTHAL: I would like to voir dire this  
8     witness on that.

9               THE COURT: Yes.

10

11                       +++ VOIR DIRE EXAMINATION +++

12     BY MS. ROSENTHAL:

13       **Q**     Is it Mr. Swanner or Swanner?

14       **A**     Swanner.

15       **Q**     Swanner. These documents that you have in front  
16     of you, they're not signed; correct?

17       **A**     They're not -- they're not signed.

18       **Q**     They're not executed at all?

19       **A**     They are executed at the time of rental.

20       **Q**     But the ones in front of you are not executed  
21     agreements; correct?

22       **A**     Not at time -- not from the records. They are  
23     signed at time of rental.

24       **Q**     Do you keep records of signed contracts?



1       **A**     They're kept electronically like this.

2       **Q**     But those are not them?

3       **A**     No, these are not the ones that he signed.

4             MS. ROSENTHAL: Your Honor, I would object to the  
5 admission. These are not the contracts.

6             THE COURT: The objection is overruled. 33 and 34  
7 are admitted.

8             (Exhibits 33 and 34 were admitted.)

9             THE COURT: You may continue, State.

10            MR. DELONG: Thank you.

11

12                           **+++ DIRECT EXAMINATION +++**

13                           **(Resumed)**

14 BY MR. DELONG:

15       **Q**     Are you able to see the numbers on the back of  
16 those exhibits?

17       **A**     Yes.

18       **Q**     And so, looking at the one that is marked the  
19 latter, 34 --

20       **A**     Yes, sir.

21       **Q**     -- what does that document tell me?

22       **A**     This tells me that was an in-town rental generated  
23 on Saturday, September 19, 2020, at 3:46 p.m., for  
24 customer Ian Heald -- or Held, at his address, 1455 West



1 Fourth, Reno 89503. The equipment was a pickup truck. I  
2 have a phone number on here for him as well,  
3 (775) 233-6141, and driver's license ends in 8540.  
4 That's the only four numbers I see on the contract  
5 because that's all they ever show. The equipment went  
6 out at 6652 on mileage and the tag number is an Arizona  
7 tag, AK00004.

8 Q Is there anyone else associated with that contract  
9 besides Ian Held?

10 A No.

11 Q And are these normal business records that are  
12 created every time a rental is made?

13 A Yes, sir.

14 Q These are your company's records for each of your  
15 rentals?

16 A Yes, sir.

17 Q Taking a look at Exhibit 33, what does that  
18 document tell you?

19 A This tells me that the pickup truck was returned  
20 on Wednesday, 9/23/2020, at 6:55 p.m., Ian Held, the same  
21 address 1455 West Fourth Street, Reno 89503, the same  
22 phone number. It tells me the rental date was the 19th  
23 and that the return time was actually on 9/21 at 3:45.

24 Q I may have missed it. Did you indicate the date,



1 the day and the year that the U-Haul was returned?

2 A Yes. The -- the return date was on here, it shows  
3 9/21/2020; the report was generated on the 23rd.

4 Q So the vehicle was returned on the 21st?

5 A It was return on the 21st.

6 Q Do you see anything -- what time on the 21st was  
7 it returned?

8 A 3:45, according to this document.

9 Q Is there anything within those two documents that  
10 indicates there's another driver permitted to drive the  
11 vehicle?

12 A There is not.

13 Q Would that usually be on there, though?

14 A Only if the customer requests to do it at the time  
15 of rental. The customer always has the option to allow  
16 someone else to drive if they have a valid driver's  
17 license and they allow them to do that because it's at  
18 time of rental whoever's name is on here is the one  
19 responsible for the vehicle. So if they feel that they  
20 can lend keys to someone else to drive the truck, that is  
21 their option.

22 Q That doesn't always make it on the business  
23 records; does it?

24 A No, it does not.



1 MR. DELONG: Thank you very much.

2 No further questions at this time, your Honor.

3 THE COURT: Recross?

4 MS. ROSENTHAL: Your Honor, I believe it's cross.

5 THE COURT: Excuse me. Thank you.

6 MS. ROSENTHAL: Thank you.

7

8 +++ CROSS-EXAMINATION +++

9 BY MS. ROSENTHAL:

10 Q Mr. Swanner, you said you worked at U-Haul for  
11 quite a while?

12 A Eight months.

13 Q How many U-Hauls are rented each day?

14 A We can rent anywhere from 20 to 25.

15 Q Okay. Are there different types of vehicles that  
16 can be rented?

17 A Yes. Pickup trucks, cargo vans, box trucks.

18 Q So there's several different options?

19 A Yes.

20 Q How many pickup U-Haul trucks do you have on your  
21 lot; do you know?

22 A At my lot? I have -- pickup trucks, right now I  
23 have eight.

24 Q Is that a common rental?



1       **A**     Yes, it's very common.  It's generally a short  
2     rental, very common.

3       **Q**     I'm going to grab those exhibits from you, if you  
4     still have them.

5             Thank you.

6             And, Mr. Swanner, as you indicated earlier, those  
7     are just documents, they're not the executed agreement;  
8     correct?

9       **A**     No, they are not.  The executed agreements would  
10    be at the store at the time of rental.  It would be --  
11    generally they're just -- they're held electronically but  
12    they can be generated with the signature.

13       **Q**     Have you seen the executed agreement in this case?

14       **A**     No, I have not.

15       **Q**     So this agreement is just -- it's -- pardon me.  
16    Let me back up.

17             If I were to go online to request a rental, would  
18    this report be generated?

19       **A**     Yes.

20       **Q**     Even if I never came into the store, this report  
21    would be there?

22       **A**     Yes.

23       **Q**     So this is not something saying somebody rented a  
24    U-Haul from this date to this date?



1       **A**     It actually says it's rented from the 19th to the  
2     21st.

3       **Q**     But if there was another driver added, it's not in  
4     that information?

5       **A**     It's not in that document.

6       **Q**     Because that's not the executed agreement?

7       **A**     That is not the executed agreement, but in most  
8     cases, like I was saying, it's up to the renters on  
9     whether there's an additional driver.

10      **Q**     But you don't know whether this renter added a  
11     driver or not?

12      **A**     I do not.

13      **Q**     But you did say that although it's the renter's  
14     responsibility, anybody could drive the vehicle while  
15     it's gone?

16      **A**     Anyone he gives permission to.

17      **Q**     He's basically taking over responsibility for the  
18     vehicle?

19      **A**     He's responsible for the vehicle, period.

20      **Q**     You don't say who can or cannot drive the vehicle?

21      **A**     Generally we do not. Generally they will have  
22     more than one person.

23      **Q**     All you know is Mr. Held was on the rental  
24     agreement but you don't know who drove it during that



1 time?

2 A I would have no way of knowing.

3 Q Were you contacted, you personally, by law  
4 enforcement about this rental other than pulling this  
5 record?

6 A Not until I was subpoenaed, no.

7 MS. ROSENTHAL: Nothing further, your Honor.

8 THE COURT: To the State.

9 MR. DELONG: Nothing further. Thank you, your  
10 Honor.

11 Thank you.

12 THE COURT: All right. Thank you. You're free to  
13 step down.

14 Your next witness, please.

15 MR. GRAHAM: The State calls Robert Merrill.

16 (Witness sworn.)

17 THE COURT: Sir, you may choose to lower your mask  
18 if you wish. You are not required to do so. You are in  
19 complete control of that decision.

20 THE WITNESS: Okay. Thank you.

21 / / / /

22 / / / /

23 / / / /

24 / / / /



1                                    **ROBERT W. MERRILL**

2

3                    called as a witness on behalf of the State,  
4                    having been duly sworn, testified as follows:

5

6                                    **+++ DIRECT EXAMINATION +++**

7        **BY MR. GRAHAM:**

8            **Q**        Mr. Merrill, thank you for coming in today.    Would  
9        you please state and spell your name for the record?

10          **A**        Robert W. Merrill; M-E-R-R-I-L-L.

11          **Q**        Mr. Merrill, can you please tell us and tell the  
12        jury where you live?

13          **A**        920 South University Park Loop, one of the longest  
14        addresses I've ever seen.

15          **Q**        Is that in Reno, Washoe County, Nevada?

16          **A**        Reno.    Reno.

17          **Q**        Appreciate that.    How long have you lived at that  
18        address?

19          **A**        About 25 years now.

20          **Q**        Okay.    Just to give some context, what did you do  
21        or what do you do for a living?

22          **A**        I was a professor at UNR.

23          **Q**        What did you teach?

24          **A**        English.



1       **Q**     Thank you.

2               I'd like to draw your attention specifically to  
3     September 24th, 2020. Do you remember that date?

4       **A**     Yes, indeed.

5       **Q**     Did something happen that day which causes you to  
6     come to court today?

7       **A**     Well, yes. We had what seemed to us a burglary  
8     that didn't quite come to pass.

9       **Q**     I want to draw your attention to specifically  
10    about 3 o'clock p.m. Before that, what were you doing?  
11    Were you in your residence?

12    **A**     I had been at home for several hours. I had  
13    napped. Roughly, I would guess at 2:30 I got up and went  
14    into the living room.

15    **Q**     All right. What were you doing in the living  
16    room?

17    **A**     I think I was watching television.

18    **Q**     Okay.

19    **A**     Baseball game.

20    **Q**     Can you describe for the jury what type of home  
21    you live in? Is it double -- a single-story?

22    **A**     Single-story.

23    **Q**     Single-family residence?

24    **A**     Yes. A little over 2,000 square feet.



1       **Q**     While you were in the living room, did something  
2     happen that caught your attention?

3       **A**     There was a very loud sound, a crashing sound,  
4     which I took to be coming from our bedroom, which is  
5     where I went.

6       **Q**     Is your living room where you're watching TV close  
7     to your master bedroom where the sound came from?

8       **A**     Twenty, twenty-five feet away, I would guess.

9       **Q**     When you hear this sound, what do you do?

10      **A**     Well, I just -- I just went to see what it was,  
11     not having any real idea what it was.

12      **Q**     When you got into your room, what did you see?

13      **A**     I saw a lot of broken glass throughout the bedroom  
14     and this very large rock, kind of a boulder in fact, and  
15     immediately I could see that the window had been broken  
16     on the left side of the bedroom.

17      **Q**     I want to ask you specifically about your windows.  
18     On your windows, do you have any coverings on the inside?

19      **A**     We have shutters.

20      **Q**     Plantation shutters?

21      **A**     I think that's the term. My wife would know.

22      **Q**     Okay. But it would be like a heavier type  
23     covering?

24      **A**     Yes, they are. They're not truly heavy but



1 they're heavier than most coverings.

2 Q They're attached to the wall?

3 A No.

4 Q Not the top part of the window but the wall and  
5 they swing?

6 A They can -- the window can -- yes, they can swing.  
7 The window stays shut.

8 Q I want to ask you about the outside of your master  
9 bedroom window that was broken. Normally do you have a  
10 screen on it?

11 A Yes.

12 Q When you got into your bedroom and you see the  
13 glass and you see the rock, can you tell us the state of  
14 the plantation shutter?

15 A Well, it must have been damaged. I don't remember  
16 specifically noticing that other than the fact that  
17 everything in that area had been -- I'm -- I don't know  
18 if *destroyed* is quite the right word but damaged heavily.

19 Q Was it open or shut?

20 A Well, the whole thing was open at that point.

21 Q Was the screen off?

22 A The screen, I believe, was knocked off.

23 Q Did you look through the window?

24 A Yes.



1       **Q**     What did you see?

2       **A**     Well, I saw a man with -- holding a pole, which I  
3     believe came from our backyard. I guess I didn't  
4     absolutely know that but I assumed it. And he was just  
5     outside the window.

6       **Q**     How is he holding this pole?

7       **A**     He was just holding it in one of his hands, I  
8     believe.

9       **Q**     Was he -- I guess my question is more  
10    specifically, there's several different ways to hold a  
11    pole, you could hold it over your head, you could hold it  
12    to the side, hold it like a spear. How was he holding  
13    it?

14      **A**     Well, he certainly seem to be out to throw it or  
15    something. I took him to be about to use it for some  
16    purpose, but at this point he wasn't doing anything with  
17    it.

18      **Q**     About to use it to do what?

19      **A**     I assumed he was going to clear away the rest of  
20    the broken glass.

21      **Q**     So there was glass still left in the window?

22      **A**     It wasn't completely shattered.

23      **Q**     Below your window, what do you have?

24      **A**     We have plants.



1       **Q**     If you put in -- or if it was reported to police  
2     that you have a blue spruce type of bush right there --

3       **A**     That sounds about right.

4       **Q**     Where in relation to that bush is this person that  
5     you saw?

6       **A**     He was standing in the -- right behind it, I  
7     think, very close to it.

8       **Q**     Has anything like this ever happened to you?

9       **A**     No.

10      **Q**     Was it surprising to you?

11      **A**     Of course.

12      **Q**     All right. At some point -- let me back up. Were  
13     you the only person home when this occurred?

14      **A**     Yes. My wife had left earlier.

15      **Q**     At some point did she return?

16      **A**     Well, as it happened, she returned very soon after  
17     I entered the bedroom.

18      **Q**     When she returned, eventually do you know if she  
19     called the police?

20      **A**     Yes.

21      **Q**     And when she started to call the police, what did  
22     the person outside your room do?

23      **A**     He left.

24      **Q**     What did you do as soon as that person left?



1       **A**     I began to look for our cat, for one thing. My  
2     wife was, as you say, making a phone call and I left the  
3     bedroom in order to do that, using her phone -- her cell  
4     phone. I was -- I was briefly trying to find where our  
5     cat had gone. He was supposed to be on our bed but  
6     during this event he had left. We very much hoped that  
7     he would not be leaving the house.

8       **Q**     When you were speaking -- or when you were  
9     interacting with this man who is outside your window, did  
10    you get a good look at him?

11    **A**     Pretty good look.

12    **Q**     Was he wearing a mask?

13    **A**     I don't believe at that point he was wearing a  
14    mask.

15    **Q**     And how long do you think you guys interacted?

16    **A**     Several minutes. A few minutes. Not very many.

17    **Q**     A few minutes. Do you see the person that you  
18    were interacting with outside your bedroom window here in  
19    court today?

20    **A**     I believe I am seeing him.

21    **Q**     Can you point to that person and identify an  
22    article of clothing that he's wearing?

23    **A**     He's wearing the shirt, the blue shirt.

24    **Q**     We've got two people, arguably the one in the



1 middle is a blue shirt. Can you be a little bit more  
2 specific? What color of tie, if you can tell? Which one  
3 of the three at this table, I guess?

4 A I believe the person I saw had a beard, unlike at  
5 the moment. I believe he's the person on the far  
6 outside.

7 Q Far right?

8 MR. GRAHAM: Your Honor, at this time, I ask that  
9 the witness has identified the defendant, Mr. Ian Held.

10 THE COURT: He has.

11 MR. GRAHAM: Thank you.

12 BY MR. GRAHAM:

13 Q Now, I wanted to ask you something about your  
14 home. Do you have any type of home surveillance?

15 A We do. My wife has various things. The -- we  
16 have for the front door, in particular, where we have  
17 video of people coming to the front door.

18 Q Is that called a Ring doorbell?

19 A I believe that is the case. I didn't purchase  
20 this but that's the phrase I've heard.

21 Q Does your Ring doorbell -- have you been home when  
22 somebody has pressed the Ring doorbell button?

23 A Oh, many times, of course.

24 Q Have you been able to hear that from inside your



1 residence?

2     **A**     Yes. I believe that the doorbell itself can be  
3 heard from every room.

4     **Q**     On this occasion, September 24th, 2020, did you  
5 ever hear that Ring doorbell after it had been pressed?

6     **A**     No.

7     **Q**     At any time while you were inside your residence  
8 from around 3 o'clock -- about 2:45 to 3 o'clock, did you  
9 hear anybody knocking on the door?

10    **A**     No.

11    **Q**     I want to talk to you a little bit about your  
12 residence, in that on the side -- I guess that would be,  
13 if you're facing your residence, to your right, is that  
14 how you get around to the back?

15    **A**     Yes. There's -- there's -- we have a fence there  
16 but you go through that door.

17    **Q**     Is it a door or a gate?

18    **A**     It's a gate.

19    **Q**     Was that gate locked --

20    **A**     No.

21    **Q**     -- to the best of your --

22    **A**     Never locked.

23    **Q**     Never locked?

24    **A**     (No audible response.)



1       **Q**     Okay.

2             MR. GRAHAM: May I approach?

3             THE COURT: Yes.

4             MR. GRAHAM: Thank you.

5     BY MR. GRAHAM:

6       **Q**     I'm going to show you a series of exhibits. This  
7     is going to be what's been previously marked but not  
8     admitted as proposed State's Exhibit 37 through 46. If  
9     you could take a look at those and tell me if you  
10    recognize that?

11    **A**     That's --

12    **Q**     Just to yourself, then I'll ask you about them.  
13             Do you recognize those photos?

14    **A**     Yes. They're all from our place.

15    **Q**     Do you recognize those photos as being taken on  
16    September 24th during the investigation of this case?

17    **A**     Yes. I believe they all are pictures of what had  
18    occurred, or the aftermath in many cases.

19    **Q**     Do they fairly and accurately depict your house as  
20    it appeared to you on September 24th, 2020?

21    **A**     I'm afraid so, yes.

22             MR. GRAHAM: Your Honor, at this time, I move for  
23    admission and publication of State's proposed exhibits,  
24    it's going to be 37 through 46.



1 MR. SILVERBERG: No objection, your Honor.

2 THE COURT: 37 through 46 are admitted.

3 (Exhibits 37 through 46 were admitted.)

4 MR. GRAHAM: Permission to publish?

5 THE COURT: Yes.

6 MR. GRAHAM: Thank you.

7 BY MR. GRAHAM:

8 Q Showing you what is marked and admitted as State's  
9 Exhibit 37, it's going to be up on the screen. It's  
10 going to be hard to read and see, but what are we looking  
11 at in this photo?

12 A That's our house number, of course, 920, and the  
13 front door, I believe.

14 Q And if that was over the garage door, would that  
15 be correct?

16 A Yes.

17 Q Okay. Showing you what's been marked as 38, what  
18 are we looking at in this photo?

19 A That is the front of the house, the front door and  
20 the decorations surrounding it just before the holidays.

21 Q I am not going to show you 39, so I'm not  
22 publishing that at this time.

23 Showing you what's been marked and admitted as  
24 State's Exhibit 40, I'm going to try to cut this, maybe



1     you can see it a little bit. What are we looking at in  
2     this photo?

3     **A**     This is a picture of the broken window and the  
4     pole, which is lying on top of the plants outside.

5     **Q**     I know it's a little bit difficult to see, but is  
6     this the glass that was left in the window?

7     **A**     Right. Around the frames.

8     **Q**     And then right here, you can see where my pen is,  
9     is that the shutter?

10    **A**     Yes.

11    **Q**     Okay. Showing you what's been marked and admitted  
12    as State's Exhibit 41, just another photo of the broken  
13    window and the shutter?

14    **A**     Right.

15    **Q**     Then a table right here?

16    **A**     Right.

17    **Q**     I see some stuff on the ground. What is that?

18    **A**     These were pictures that were on the table before.

19    **Q**     Knocked over when it --

20    **A**     Yes.

21    **Q**     -- was broken?

22    **A**     Yes.

23    **Q**     To the best of your recollection, was this  
24    plantation shutter that I'm pointing to on the left upper



1 side corner, was that closed while you were in the  
2 bedroom before it was broken?

3 A Yes. Yes. The shutters are sometimes open and  
4 sometimes closed, but they're always in position or --  
5 almost never are open like that.

6 Q Okay. So I'm not actually sure what this is  
7 called, but the middle portion you open or close, but you  
8 never open it, I guess, horizontally?

9 A Right.

10 Q Showing you what's been marked as State's  
11 Exhibit 42, what are we looking at in this photo?

12 A That's a close-up of just outside the window with  
13 the pole and the plants.

14 Q Showing you what's been marked and admitted as  
15 State's Exhibit 43, I'm going to kind of try to zoom in  
16 on this. What are we looking at in this photo?

17 A Well, that's the rock that came through the window  
18 and traveled some distance into the bedroom actually.

19 Q So I want to be as specific as I can about this.  
20 If I'm looking directly at the window where the rock came  
21 through, is that rock that we see in this photo in front  
22 of that window, is it directly in front of it? Can you  
23 explain to the jury where?

24 A Well, it's some distance from the window. It



1     traveled maybe ten feet.

2       **Q**     Did it come in at a straight line straight through  
3     or at an angle?

4       **A**     That's a fair question. I'm not sure. It didn't  
5     come straight through because it moved toward our bed, so  
6     I would say at an angle.

7       **Q**     And is this the bed that we're talking about --

8       **A**     Right.

9       **Q**     -- right here? So we can kind of see, it looks to  
10    me this is maybe a shoe right here?

11      **A**     Could be. There's -- the table has -- it could be  
12    that, the bottom part of it.

13      **Q**     Direct you back to 41. I guess my question is, is  
14    this carpet on the bottom the same as this carpet?

15      **A**     No. There's two carpets there.

16      **Q**     In 43. So kind of if the window is here, this way  
17    your bed is there, the rock is here, almost an L; does  
18    that make sense?

19      **A**     Yes.

20      **Q**     Am I correct in stating that?

21      **A**     I think so.

22      **Q**     Here's a picture, State's Exhibit 44. What are we  
23    looking at here?

24      **A**     Well, this is the same situation but from the



1 outside looking into now the broken glass, and you can't  
2 really see much of the bedroom of course.

3 Q I wanted to ask you, and it's difficult in this --  
4 with this Elmo here, but it appears to me that the window  
5 right here, and then there's a 90-degree wall right here  
6 next to this bush. We don't have a photo of the rest of  
7 your house but can you explain to the jury, is this bush  
8 kind of in an alcove, I guess?

9 A Yes. The area there is sort of contained, unlike  
10 the rest of the area in the back of the backyard.

11 Q All right. What is this -- if this is a 90-degree  
12 angle right here and it's coming out, does that go out  
13 into the back of your yard?

14 A Only a few feet.

15 Q On the other side of that wall, what is there?

16 A The backyard, the vegetation and such, the lawn of  
17 course.

18 Q To get to that lawn from your master bedroom, is  
19 there another way?

20 A Not really.

21 Q Do you have another sliding glass door in your --

22 A Well, you could from the -- from the living room  
23 there's another -- there's another entrance, which we  
24 don't use very much. But, yes.



1       **Q**     So correct -- do you have a sliding glass door in  
2     your master bedroom?

3       **A**     Yeah.

4       **Q**     And a sliding glass door next to like, I guess, a  
5     patio area of your home?

6       **A**     Right. And from the living room we would go to  
7     the patio.

8       **Q**     Okay. Perfect.

9             Do you have neighbors on both sides of you?

10      **A**     We do.

11      **Q**     Is the window that I'm showing you in State's  
12     Exhibit 44 visible to your neighbors because of this  
13     outcropping of your home?

14      **A**     I don't think so, although I've never stood in  
15     their backyard to test it, but it's certainly not visible  
16     to the people to our east.

17      **Q**     Here's a question for you. What about the sliding  
18     glass door into your master bedroom, is that visible by  
19     your neighbors?

20      **A**     Certainly the people to our east could see it, as  
21     we can see them very clearly.

22      **Q**     Thank you.

23             MR. GRAHAM: I'm not going to be publishing 45 and  
24     46 at this time. The court's indulgence.



1 Pass the witness. Thank you.

2 THE COURT: To the defense.

3

4 +++ CROSS-EXAMINATION +++

5 BY MR. SILVERBERG:

6 Q Good afternoon, sir.

7 Could you tell me again what street is it that you  
8 live on?

9 A 920 South University Park Loop.

10 Q And you've been there for quite some time, you  
11 said over 20 years; right?

12 A Twenty-five.

13 Q Twenty-five years.

14 Can you tell me a little bit about the  
15 neighborhood, if you could? Is it -- tell me about -- is  
16 it a residential neighborhood?

17 A It has become such. When we moved in, there was  
18 nobody up there. We were the farthest house up Socrates.  
19 Now there are a thousand houses behind us.

20 Q That's right above the University?

21 A Right.

22 Q As far as the neighbors themselves, is it -- can  
23 you characterize it as retired community or all ages?  
24 Students?



1       **A**     Well, not all ages. There aren't that many  
2     children in the area, I would say. Not everyone is a  
3     senior, however.

4       **Q**     Okay.

5       **A**     Especially to our east, which is rented to  
6     families. It has been rented to all kinds of families  
7     through the years.

8       **Q**     Understood. So the house to your east is a  
9     rental?

10      **A**     It's my impression that's been the case for some  
11     years.

12      **Q**     Okay.

13      **A**     I'm not quite sure if it was always such but we've  
14     certainly had very different neighbors over the years.

15      **Q**     A lot of turnover?

16      **A**     Well, certainly not every few weeks but every year  
17     I would say pretty much.

18      **Q**     Just that house? Or have you noticed that trend  
19     in other houses in your neighborhood?

20      **A**     I have not noticed that. If there's another house  
21     on our street that is rented, I don't know it. But I'm  
22     not an expert on that.

23      **Q**     Understood. I appreciate your answer.

24             I'm going to show you what is admitted as



1 Exhibit 45. Can you see that?

2 A That's our backyard.

3 Q Okay. That's your back slider?

4 A Yeah, that's from the -- the other side of the  
5 shutters is our living room.

6 Q Got you. Can you tell the jury, please, where is  
7 this in comparison to where the window is that was  
8 broken?

9 A Well, this is to the east of that area, the one  
10 that the pictures depicted.

11 Q The same side of the house?

12 A The same side, yes.

13 Q Okay. So whatever was visible as far as your  
14 neighbors go, that window that was broken is every bit as  
15 visible as this; correct?

16 A I don't think so.

17 Q No? But they're on the same side of the house?

18 A They are.

19 Q How far from each other would you say they are?

20 A Fifteen feet maybe.

21 Q Okay.

22 A From the far corner on the left-hand side.

23 Q So there's no attempt, as far as you know, to make  
24 entry through that door?



1       **A**     No.

2       **Q**     Okay. Showing you what's been marked and admitted  
3 as Exhibit 44, you saw this already. That's the broken  
4 window; correct?

5       **A**     Yes.

6       **Q**     And that big bush there, that's the spruce?

7       **A**     Spruce, I guess, yes.

8       **Q**     I'm not sure what it's called either. We'll call  
9 it a big bush for today. Is it -- it's got a lot of  
10 stickers in it?

11      **A**     I've been there a couple of times and I didn't  
12 want to go too far in, that's right.

13      **Q**     Understood. So not the easiest to make entry into  
14 the window; would you agree?

15             MR. GRAHAM: Objection; calls for speculation.

16             THE COURT: Overruled.

17             THE WITNESS: It's not -- it's not easy but  
18 there's no other way to get into that window.

19 BY MR. SILVERBERG:

20      **Q**     To that window, but there's others, like the  
21 sliding door that I just showed you; correct?

22             I'll show it to you again. Sorry. Going back to  
23 Exhibit 45.

24      **A**     It's there. It's almost never opened.



1       **Q**     Understood. But as far as obstructions --

2       **A**     Oh. Now, this is open quite often because we go  
3 out on the patio.

4       **Q**     And there's no bushes or anything there  
5 obstructing?

6       **A**     No.

7       **Q**     Okay.

8       **A**     Not immediately.

9       **Q**     Now, you saw that rock. We all saw that rock in  
10 your bedroom?

11      **A**     Yes.

12      **Q**     Okay. You didn't see who threw that rock;  
13 correct?

14      **A**     No.

15      **Q**     And the person that you interacted with at that  
16 time, did that person physically try to enter your  
17 property?

18      **A**     No.

19      **Q**     As you sit here, you don't know what his intent  
20 was; correct?

21      **A**     I don't know 100 percent what his intent was.

22      **Q**     In fact, when you reported this to the police --  
23 or your wife did; correct?

24      **A**     Yes.



1       **Q**     It was reported as destruction of property; wasn't  
2     it -- not a burglary?

3       **A**     The destruction of the property is what occurred,  
4     yes.

5       **Q**     Okay. That's how it was reported?

6       **A**     I'm actually not sure how it was officially  
7     reported.

8       **Q**     Okay. And the person that you interacted with,  
9     you indicated wore no mask?

10      **A**     When I was -- when I was conversing with him, I  
11     don't believe he was wearing a mask.

12      **Q**     In other words, he wasn't trying to conceal his  
13     appearance?

14      **A**     I suppose.

15             MR. SILVERBERG: Could I have just one moment,  
16     your Honor?

17             THE COURT: Yes.

18             MR. SILVERBERG: Your Honor, I'll pass the  
19     witness. Thank you.

20             THE COURT: Thank you.

21             To the State.

22             MR. GRAHAM: Just one brief question.

23     / / / /

24     / / / /



1                   +++ REDIRECT EXAMINATION +++

2       BY MR. GRAHAM:

3           Q     Mr. Merrill, how many people were outside your  
4       window?

5           A     One.

6           Q     And that's the defendant; correct?

7           A     Yes.

8           MR. GRAHAM:   Nothing further.

9           THE COURT:   Anything on that?

10          MR. SILVERBERG:   No.

11          THE COURT:   Thank you.   You're free to step down.

12               I'm going to take a quick break and talk to the  
13       clerk right here.   Please feel free to stand and be at  
14       ease and stretch.

15               Those in the well of the court may do so as well.

16               (Pause in proceedings.)

17          THE COURT:   The State's next witness, please.

18          MR. GRAHAM:   Thank you, your Honor.

19               The State calls Dorothy Merrill.

20          THE BAILIFF:   Turn, face the court clerk, and  
21       raise your right hand.

22               (Witness sworn.)

23          THE COURT:   Ma'am, if you wish, you may drop your  
24       mask during your testimony.   You're not required to do



1     so.  It's your comfort level.

2             THE WITNESS:  Thank you.

3             THE COURT:  Go ahead.

4             MR. GRAHAM:  Thank you, your Honor.

5

6                             **DOROTHY LOUISE MERRILL**

7

8             called as a witness on behalf of the State,  
9             having been duly sworn, testified as follows:

10

11                            **+++ DIRECT EXAMINATION +++**

12     BY MR. GRAHAM:

13         **Q**     Ms. Merrill, could you please state and spell your  
14     name for the record?

15         **A**     Dorothy Louise Merrill; D-O-R-O-T-H-Y,  
16     L-O-U-I-S-E, M-E-R-R-I-L-L.

17         **Q**     Thank you, Ms. Merrill.

18             Do you own a home here in Reno, Washoe County,  
19     Nevada?

20         **A**     Yes.

21         **Q**     What's the address?

22         **A**     920 South University Park Loop.

23         **Q**     How long have you lived there?

24         **A**     Almost 25 years.



1       **Q**     Thank you. I'd like to draw your attention to the  
2       afternoon of September 24th, 2020, specifically around  
3       the hours of 2:30 p.m. in the afternoon. Did something  
4       happen -- were you at home at that time?

5       **A**     I left our house about 2:30.

6       **Q**     Where were you going?

7       **A**     To the University Station Post Office.

8       **Q**     At the time that you left -- let me back up.

9       Did you live with anybody at your residence?

10      **A**     I'm sorry?

11      **Q**     Do you live with anybody at your residence?

12      **A**     Just my husband, Robert Merrill.

13      **Q**     Was he the one that we just listened to?

14      **A**     Yes.

15      **Q**     When you left the residence, what was Robert  
16      doing?

17      **A**     He was taking a nap.

18      **Q**     Okay. When you left, I want to ask a little bit.  
19      It may seem weird but I want to get this information out.  
20      Do you park your cars in your garage?

21      **A**     Correct.

22      **Q**     So when you exited your garage, were there any  
23      cars in the driveway?

24      **A**     No.



1       **Q**     When you exited your garage, did you close your  
2     garage door?

3       **A**     Yes.

4       **Q**     Okay. How long were you over at the post office?

5       **A**     Half an hour.

6       **Q**     At some point, did you return back to your  
7     residence?

8       **A**     Yes.

9       **Q**     When you came back to your residence, did you  
10    notice anything out of the ordinary?

11      **A**     I noticed a large red Jeep-type SUV vehicle parked  
12    between our driveway and that of our neighbor on the west  
13    side with very, very large tires. I noticed because I  
14    hadn't seen it in our neighborhood before. Not that I'm  
15    an expert, but I just haven't noticed it.

16      **Q**     You've lived in that neighborhood for almost  
17    25 years?

18      **A**     Yes.

19      **Q**     Do you normally recognize the vehicles of your  
20    neighbors'?

21      **A**     I normally recognize the ones that we see  
22    periodically.

23      **Q**     This one you had not?

24      **A**     Yes.



1       **Q**     Did you see anybody inside that vehicle?

2       **A**     I think I saw a person on the passenger's side.

3       **Q**     Do you know if it was a male or a female?

4       **A**     I don't know.

5       **Q**     Okay. At some point -- so you see this vehicle  
6 and as you're driving to your home, is your house on your  
7 right-hand side?

8       **A**     That's correct.

9       **Q**     So you actually have to pass by the vehicle --

10      **A**     That's right.

11      **Q**     -- as you turn into your residence?

12      **A**     Yes.

13      **Q**     So you take note of that, go inside, and you  
14 arrive around 3 o'clock?

15      **A**     Yes.

16      **Q**     When you get inside, do you close the garage door?

17      **A**     Yes.

18      **Q**     What happens when you get inside your house?

19      **A**     I am called by my husband to our bedroom, and I  
20 noticed that there was glass everywhere on the floor, the  
21 shutters were hanging open, and the window was broken.

22      **Q**     Did you see anything on the floor besides the  
23 glass, I guess?

24      **A**     I saw a very, very large rock, almost a small



1 boulder, when my husband drew my attention to it. I  
2 didn't notice it instantly when I went into the room.

3 Q I'm going to break into the linear progression.  
4 Are you working at the moment?

5 A I am not.

6 Q Are you retired?

7 A Yes.

8 Q What was your former profession?

9 A I was with the Washoe County School District for  
10 36 years as a teacher of English, school administrator,  
11 then a district level administrator.

12 Q When you were an administrator and a teacher, what  
13 age group of people did you teach?

14 A High school.

15 Q What about when you were an administrator?

16 A High school.

17 Q All right. What high school was that?

18 A As an administrator, I was at Reno High.

19 Q Thank you.

20 Now, when you go in and you see this, what's going  
21 on in your mind?

22 A Well, I thought, *What on earth has happened here?*  
23 And then I heard a voice, and there was a person standing  
24 outside the window.



1       **Q**     Did you look out the window?

2       **A**     I did.

3       **Q**     Did you see -- what did you see when you looked  
4     out the window?

5       **A**     I saw more broken glass, a person standing there  
6     and a pole standing on top of the blue spruce shrub --  
7     sitting on top of it rather.

8       **Q**     Did you get a good look at the person that was  
9     outside your window?

10      **A**     Yes.

11      **Q**     Male?   Female?

12      **A**     Male.

13      **Q**     How long did you interact with this person?

14      **A**     It's hard to say.   Three minutes maybe, give or  
15     take.

16      **Q**     Do you see a person in court today that you saw  
17     outside your window?

18      **A**     Yes, I do.

19      **Q**     Can you point to him and identify an article of  
20     clothing that he's wearing?

21      **A**     Blue shirt.

22             MR. GRAHAM:   Your Honor, I'd ask that the witness  
23     has identified the defendant.

24             MR. SILVERBERG:   Your Honor, objection.   I don't



1 believe that's an identification.

2 THE COURT: Carry on for that purpose, Mr. Graham.

3 BY MR. GRAHAM:

4 Q Well, the reason is there's two people over there  
5 wearing a blue shirt. Can you be a little more specific?

6 A Without a sports jacket or a suit jacket.

7 MR. GRAHAM: Thank you. I'd request that the  
8 witness has identified the defendant with particularity.

9 THE COURT: Yes.

10 MR. GRAHAM: Thank you.

11 BY MR. GRAHAM:

12 Q At some point -- well, I'll just ask you. At some  
13 point, did you end up calling the police?

14 A I did.

15 Q What type of phone did you call the police on?

16 A A cell phone.

17 Q Does your cell phone have the ability to take  
18 photos as well as make phone calls?

19 A It does.

20 Q At any point did you attempt to take a photo of  
21 the person that you identified as the defendant?

22 A That was my first intent, but when I pulled my  
23 cell phone out and I mentioned that I was going to call  
24 9-1-1, then there was no person left outside the window.



1       **Q**     Left?

2       **A**     Disappeared.

3       **Q**     What did you do next?

4       **A**     I called 9-1-1. I was walking through our house  
5     from our master bedroom, through a hallway to the living  
6     room towards the front door talking with the dispatcher  
7     the whole time responding to her questions. I was  
8     heading for the front door because it was my intention to  
9     go outside to take a picture of that vehicle I had seen  
10    parked, hoping that I'd be able to get a picture of the  
11    license plate on the front of the vehicle.

12      **Q**     Were you able to?

13      **A**     I was not. When I came around on the sidewalk to  
14    the driveway, the vehicle was gunned and started in  
15    reverse down our street west towards Socrates.

16      **Q**     Were you say "gunned," what specifically do you  
17    mean by that?

18      **A**     Really loud noise, going very fast.

19      **Q**     In reverse?

20      **A**     Yes, sir.

21      **Q**     Forgive me if I missed it, was there a license  
22    plate on the front?

23      **A**     No, there was not.

24      **Q**     Were you able to see the occupants?



1       **A**     I was not.

2       **Q**     How many people were in the vehicle?

3       **A**     A driver. I don't know if there was any other  
4 person in there.

5       **Q**     Okay. Now, after this occurs, did you notice  
6 anything about -- we're going to get into specifics --  
7 but about the entryway to your home?

8       **A**     Yes. I noticed that there was a latex glove  
9 hanging over the doorbell.

10      **Q**     This doorbell, is it a Ring doorbell?

11      **A**     That's right.

12      **Q**     And had you specifically had that installed?

13      **A**     Yes.

14      **Q**     Now, when you see that, we've got some photos that  
15 have already been marked and admitted, you'll be able to  
16 see them up here on this. I want to go through them, if  
17 I could.

18               Showing you what's been marked as State's  
19 Exhibit 37, what are we looking at in this photo?

20      **A**     Well, that's our house number.

21      **Q**     That number is right above the garage?

22      **A**     Yes, sir.

23      **Q**     Showing you what's been marked and admitted as  
24 State's Exhibit 38.



1       **A**     That's the entryway to our house.

2       **Q**     I'm going to zoom in, if I can.

3       **A**     On the left side right there, you can see the  
4     latex glove that had been placed over the doorbell  
5     camera.

6       **Q**     Are you aware of whether it was effective at  
7     covering the camera portion of this Ring doorbell.

8       **A**     I'm sorry, could you say that again?

9       **Q**     Absolutely. Are you aware if the covering -- if  
10    the use of that latex glove was effective in covering the  
11    camera in that doorbell?

12      **A**     There were -- yes and no.

13      **Q**     Okay.

14      **A**     There were two recordings. In the first  
15    recording, there was no latex glove there, and the second  
16    recording the individual came up to the door and put the  
17    latex over the camera.

18      **Q**     So that's what you mean by *yes and no*?

19      **A**     Yes.

20      **Q**     In the first video, no; second video, yes?

21      **A**     Yes.

22      **Q**     We'll get to that. So at the time that you see  
23    Exhibit 38, are you still on the phone with dispatch?  
24    When you see this, when you're coming back in your



1 residence after -- correct me if I'm wrong, but my  
2 understanding of your testimony is that you go out the  
3 front of your residence to see if you can get the license  
4 plate while you're speaking on the phone with dispatch?

5 A That's correct.

6 Q When did you see that latex glove?

7 A After the officers arrived and I met them in the  
8 driveway and we were walking toward the front of the  
9 house, so I think it was then. It may have been later  
10 when I was talking with an officer in our master bedroom.  
11 I'm not sure of the precise moment.

12 Q Thank you.

13 Showing you what's been marked and admitted as 39,  
14 zoom out a little bit here. This is just a close-up of  
15 the same thing -- I'm sorry -- close-up of the same  
16 thing?

17 A I'm sorry?

18 Q That's just a close-up of your Ring doorbell with  
19 the glove?

20 A Yes. That's correct.

21 I apologize. I've had some ear difficulty, so if  
22 I ask you to repeat yourself?

23 Q Absolutely. I will.

24 A Thank you.



1       **Q**     Showing you what's been marked as State's  
2     Exhibit 40, I'm going to try to zoom out here.  What are  
3     we looking at in this photo?

4       **A**     You're looking through our bedroom window at --  
5     with the glass broken around the window pane.  The screen  
6     is not there.  The shutters are open.  There's a disused  
7     umbrella pole, the lower half of an umbrella pole on top  
8     of the blue spruce.

9       **Q**     This umbrella pole, do you know where that came  
10    from?

11      **A**     Yes.  We had an umbrella stand with a table on our  
12    patio up against the house, and I had taken down the  
13    umbrella and just left that pole there.  It was easier to  
14    store that way.

15      **Q**     State's Exhibit 41, more of an interior view of  
16    the same thing?

17      **A**     Yes.  The glass came all the way over several feet  
18    on the right side of the window, as well as in front of  
19    the window.

20      **Q**     See if I can zoom in on that.

21               Is this portion right here what you were  
22    referencing?

23      **A**     Yes.  Yes.

24      **Q**     42 seems to be a close-up of that pole; is that



1 correct?

2 A Yes.

3 Q And then 43 -- we talked about this a little  
4 bit -- that rock, where is it in relationship to the  
5 window?

6 A It's about -- I would say about 9 or 10 feet from  
7 the window at an angle.

8 Q At an angle. So it would be an angle to the left?

9 A Yes, sir. It was a very large rock. The figures  
10 on that carpet -- it's a Persian carpet, and the figures  
11 are I'd say maybe 12, 14 inches in length, so the rock  
12 was about half of that length.

13 Q Now we're showing you what's been marked as  
14 State's 44.

15 A Yes. That's the outside of the window with the  
16 pole there.

17 Q Now, the angle of this pole. Is that similar to  
18 the angle of where the rock landed, maybe a little less?

19 A That's an interesting question. I would say it  
20 was at more of an angle than the pole right there.

21 Q I have two pictures that have been admitted and I  
22 didn't publish them but I believe the defense did. I  
23 want to ask you about State's Exhibit 45. What are we  
24 looking at in this photo?



1       **A**     You're looking at our sliding patio door from our  
2     family room, which is connected with the dining room and  
3     the kitchen. The door was on the ground, and when the  
4     officer and I walked to the back of the house I saw it  
5     down on the ground.

6       **Q**     That morning, had you had the sliding glass door  
7     open?

8       **A**     I had. I'd had the slider open because our cat  
9     likes to watch the rabbits in the backyard, and we opened  
10    the door with the plantation shutters and sometimes I let  
11    the cat look out there.

12      **Q**     And was that screen door to the slider on the  
13    window when you left --

14      **A**     Yes, it was.

15      **Q**     -- for the post office?

16      **A**     Yes.

17      **Q**     I wanted to show you something specific and ask  
18    you questions about this. You see something right here  
19    in the middle, what's that?

20      **A**     That's a brace that we have to prevent the patio  
21    door on the right-hand side from being pushed back or  
22    lifted out of its position.

23      **Q**     To open up that slider, do you have to remove  
24    that?



1       **A**     That's correct.

2       **Q**     Now, it's my understanding from previous testimony  
3     that you actually have two sliding windows in the back?

4       **A**     That's correct.

5       **Q**     So this one goes -- let me zoom out. This one  
6     goes to the dining room?

7       **A**     Our family room.

8       **Q**     Okay.

9       **A**     On the right side, those windows that are kind of  
10    bay-like windows, that's the dining area. And then the  
11    kitchen is kind of adjacent to the two of them.

12      **Q**     So family room where my finger is?

13      **A**     Yes.

14      **Q**     And then --

15      **A**     Dining area.

16      **Q**     Dining area. Got you.

17            If I am -- if we're looking at just like we are  
18    now, you can see the officer taking the photos, to the  
19    left of that, what is immediately to our left if you're  
20    looking at it just like this?

21      **A**     What's immediately to the left? Well, there's a  
22    wall between this photo -- between this sliding door that  
23    you see there, the three-panel piece, about ten feet over  
24    to the window that you've shown me in other pictures.



1       **Q**     So that's where the broken window is?

2       **A**     Yes.

3       **Q**     As you can see in this --

4             MR. SILVERBERG: Your Honor, I'm going to object.  
5     There's no question.

6             THE COURT: Sustained.

7     BY MR. GRAHAM:

8       **Q**     This one is -- I need to zoom in, because I think  
9     I know where I'm going and I'm going to go there with  
10    you.

11            Right here, we can see a wall at 90 degrees; do  
12    you agree with that?

13       **A**     Yes. That's where the bedroom juts out, so to  
14    speak.

15       **Q**     On the other side of that, what is there?

16       **A**     There's another sliding door, a three-panel door,  
17    not quite as big as the one in the family room.

18       **Q**     So directing your attention back to 45, is this  
19    area, if you know, visible -- as visible to your  
20    neighbors as the sliding door that goes into your master  
21    bedroom?

22       **A**     That's a difficult question to answer because of  
23    the way the house is situated.

24            The neighbor on our east side can see this area



1 more easily than the neighbor on the west side. The  
2 neighbor on the west side can see the area where our  
3 bedroom is more easily than the neighbor on the other  
4 side.

5 Q What about where the window is broken with this  
6 wall right here?

7 A That area would be difficult for either neighbor  
8 to see.

9 Q Thank you.

10 Now I wanted to get into the Ring doorbell.

11 The Ring doorbell, you have a -- how is the  
12 footage from the Ring doorbell kept?

13 A I don't know the technicalities of it but I access  
14 it through my cell phone.

15 Q Is it specifically tied to your camera?

16 A That's correct.

17 Q And you can't access other people's cameras  
18 through your phone?

19 A That's correct.

20 Q And in this case were you able to pull up the  
21 actual footage from your home?

22 A I was.

23 Q Were you able to review it?

24 A I looked at it with one of the officers.



1       **Q**     And did you -- did it fairly and accurately  
2     depict, the video, your front door?

3       **A**     Yes.

4       **Q**     And it had a date and time on it?

5       **A**     Yes.

6       **Q**     Okay. And you provided that to the police?

7       **A**     I did.

8             MR. GRAHAM: If I may approach the witness?

9             THE COURT: Yes.

10       BY MR. GRAHAM:

11       **Q**     Showing you what has been previously marked as  
12     1 and 2 -- showing you both Exhibits 1 and 2 -- for the  
13     record, these are thumb drives so they're not really  
14     discernible but they have tags on them -- do you  
15     recognize those tags?

16       **A**     Yes.

17       **Q**     How is it that you recognize the tags?

18       **A**     Mr. Rodriguez brought these to my home and played  
19     the videos that were are on them. Then I initialed and  
20     signed -- dated them.

21       **Q**     Do you see your initials?

22       **A**     I do.

23       **Q**     And the date?

24       **A**     I do.



1       **Q**     When you reviewed these, did they fairly and  
2 accurately depict the videos from your home video  
3 surveillance system?

4       **A**     That's correct.

5             MR. GRAHAM: Your Honor, at this time I move for  
6 admission and publication of State's Exhibits 1 and 2.

7             MR. SILVERBERG: No objection, your Honor.

8             THE COURT: Exhibits 1 and 2 are admitted,  
9 Ms. Clerk.

10            (Exhibits 1 and 2 were admitted.)

11            THE COURT: Counsel, you may continue.

12            MR. DELONG: Thank you.

13 BY MR. GRAHAM:

14       **Q**     Showing you what's been marked and admitted as  
15 State's Exhibit 1. Before we start, I want to draw your  
16 attention to the bottom right-hand corner. And I'm not  
17 sure if you can see it, but if I represent to you that it  
18 says 9/24/2020 at 1445 hours 3 seconds, would you dispute  
19 that?

20       **A**     Yes.

21       **Q**     Would you agree with that?

22       **A**     I think it says that, yes.

23       **Q**     Okay. So that would be September 24, 2020, and  
24 1445 hours would be 2:45 p.m. So based on your



1 testimony, would that be approximately 15 minutes after  
2 you had left to go to the --

3 A Yes.

4 Q -- post office?

5 A That's correct.

6 Q All right. I'm just going to press *Play*.

7 (Video played.)

8 At any time during that video did you see the  
9 defendant press the -- let me back up.

10 Was that the same person that you saw outside of  
11 your residence?

12 A Yes.

13 Q Okay. So the person in the Ring video is the  
14 person who was outside your window, who is the same  
15 person who is sitting here in court today?

16 A Yes.

17 Q At any time did that person, Mr. Held, press the  
18 Ring doorbell?

19 A Not that I could see or hear.

20 Q Publishing State's Exhibit 2, back it up real  
21 quick. For the record, this is small. If I represent  
22 September 24, 2020, at 1446 hours and 44 seconds, would  
23 you agree with that?

24 A Yes.



1       **Q**     So approximately one minute later?

2       **A**     Yes.

3       **Q**     Now, at your residence, can you tell -- I mean,  
4     you're the one who has lived there and is most familiar  
5     with it -- where is he standing at this moment?

6       **A**     To the right of the front porch area, there's a  
7     gap between the front porch corner wall, so to speak, and  
8     a Forsythia bush that can be seen just on the edge behind  
9     his person.

10      **Q**     Thank you.

11             Pressing play.

12             (Video played.)

13             Going back to the photos, showing you what's been  
14     marked as 38, zoom in. So now we can see, is this a  
15     representation of what we just saw in the video?

16      **A**     That's correct.

17      **Q**     Okay. And to do that, do you have to step over  
18     this statue and the, looks like, fall decorations?

19      **A**     Yes. That's a rather large planter vase that we  
20     had there and fall silk flowers and leaves and stuff in  
21     it.

22      **Q**     At any point during the second video that we just  
23     watched did he press the button?

24      **A**     I neither heard it nor saw it.



1 MR. GRAHAM: The court's indulgence.

2 Pass the witness. Thank you, your Honor.

3 THE COURT: To the defense.

4

5 +++ CROSS-EXAMINATION +++

6 BY MR. SILVERBERG:

7 Q Good afternoon, Ms. Merrill.

8 When you left the residence to go to the post  
9 office -- do you recall testifying about that?

10 A I'm sorry.

11 Q When you left the residence to go to the post  
12 office -- do you recall testifying about that?

13 A Yes.

14 Q Okay. Now, at that point, did you see the red  
15 Jeep?

16 A I did not.

17 Q Okay. It was certainly a distinguishing vehicle;  
18 correct? It stood out to you when you did see it?

19 A Yes.

20 Q So if it were there when you went to the post  
21 office, you're pretty sure you would have seen it?

22 A That's correct.

23 Q Did you see it driving at all on the street on the  
24 way towards your neighborhood or anything?



1       **A**     No, I don't think so.

2       **Q**     Okay. You indicated when you got home the Jeep  
3 was there?

4       **A**     (No audible response.)

5       **Q**     Yes?

6       **A**     Yes.

7       **Q**     And there was somebody in the passenger side?

8       **A**     I thought so, yes.

9       **Q**     Okay. And then at the end of all this, when you  
10 were going to go try to get a picture of that Jeep, you  
11 indicated there was only one person in it?

12      **A**     I could only see the driver.

13      **Q**     Okay. You couldn't see anybody in the passenger  
14 side?

15      **A**     I didn't. And I could barely see the driver.

16      **Q**     Okay.

17      **A**     Someone was driving it.

18      **Q**     Certainly.

19             The Ring video that we just saw in Exhibits 1 and  
20 2, the State asked you if there was any indication that  
21 somebody pushed that Ring doorbell and you answered *no*;  
22 correct?

23      **A**     I didn't hear it or see it.

24      **Q**     Okay. When somebody hits that Ring doorbell,



1     would there be a notification on your phone?

2     **A**     Yes.

3     **Q**     That would be recorded just like the video was?

4     **A**     Yes.

5     **Q**     That wasn't there; correct?

6     **A**     Well, I had turned my phone to *Silent* when I was  
7     at the post office so I didn't see that the notice had  
8     come up on my phone until I got back home and I was  
9     looking to see if there had been a response from the  
10    doorbell camera. And there was. I just hadn't observed  
11    it when it came across.

12    **Q**     So there was some indication that the doorbell was  
13    pushed?

14    **A**     No. The camera records the presence of  
15    individuals. They don't have to push the doorbell to  
16    activate the camera. The camera is activated when  
17    someone comes within the radius of its sphere.

18    **Q**     I understand. Because it was on *Silent*, you  
19    didn't get that notice at that time?

20    **A**     That's correct.

21    **Q**     Okay. Now, although there was no pressing of the  
22    doorbell, we did hear at least five knocks; correct?

23    **A**     I wasn't counting them. I don't know.

24    **Q**     Did you hear that person --



1       **A**     I heard some knocks.

2       **Q**     -- gradually a little bit louder at each time?

3       **A**     I didn't notice that.

4       **Q**     Okay. When you got home, your husband calls you  
5 to the back room; correct?

6       **A**     Into our bedroom, yes.

7       **Q**     Into the bedroom. And you see the glass and he's  
8 interacting with this individual?

9       **A**     Yes.

10      **Q**     Was it heated?

11      **A**     No.

12      **Q**     Okay. And I think you said it was like three  
13 minutes?

14      **A**     That's my best guess.

15      **Q**     Certainly. I understand that. But the -- that's  
16 your best guess, that it was about a three-minute  
17 interaction?

18      **A**     Two or three minutes. Difficult to judge time --

19      **Q**     It certainly is.

20      **A**     -- in those situations.

21      **Q**     I think we all appreciate that. Thank you for  
22 giving us your best testimony.

23             Then you indicated that you're going to call the  
24 police; correct?



1       **A**     I said I was going to call 9-1-1, yes.

2       **Q**     And then you looked down for your phone?

3       **A**     I pulled it out of my pocket, yes.

4       **Q**     Then by the time you looked up again, that  
5 individual was gone?

6       **A**     That's correct.

7       **Q**     Did you say it out loud, "I'm calling the police,"  
8 to that individual?

9       **A**     I did.

10      **Q**     Okay.

11      **A**     I had already seen him there earlier, I just  
12 wanted to make that clear.

13      **Q**     Oh, yes. I understood. You saw him when you went  
14 into the back bedroom when your husband called you?

15      **A**     Yes. That's correct.

16      **Q**     You had at least three minutes of interaction --

17      **A**     Yes.

18      **Q**     -- correct?

19      **A**     Yes.

20      **Q**     Question. When you walked back there, were they  
21 already -- your husband and this individual already  
22 interacting?

23      **A**     They were talking.

24      **Q**     And while you were there seeing this individual,



1 did he make any attempts to enter your property?

2 A Not at that time, no.

3 Q Okay.

4 MR. SILVERBERG: If I could have just a moment,  
5 your Honor?

6 BY MR. SILVERBERG:

7 Q I'm pretty sure I know this. You indicated that  
8 you saw the vehicle back in, the Jeep going backwards?

9 A In reverse, yes.

10 Q In reverse. And somebody was in the driver's  
11 side?

12 A Yes.

13 Q Could you tell me if that person was male or  
14 female?

15 A My impression was male.

16 Q Okay. Could you identify that person?

17 A No.

18 Q Okay. Thank you so much.

19 MR. SILVERBERG: Your Honor, nothing further.

20 THE COURT: To the State.

21 MR. GRAHAM: Nothing further.

22 THE COURT: Thank you. You're free to step down.

23 Ladies and gentlemen of the jury, during this  
24 afternoon recess, please do not discuss this case amongst



1 yourselves. Please do not form or express any opinion  
2 about this matter until it is submitted to you.

3 We'll stand for our jury.

4 (At 3:17 p.m., jury exited courtroom.)

5 THE COURT: I'm going to continue standing because  
6 I sit a lot.

7 How are you doing on your case, as you estimate  
8 where we would be at this time?

9 MR. DELONG: Very well, your Honor. I think we  
10 have three main witnesses, two that would probably go a  
11 bit longer, one that will be fairly short, so I don't  
12 know if we can finish today but we're very close.

13 THE COURT: I'm not urging you to finish today.  
14 I'm wondering if you're ahead of the pace or behind the  
15 pace.

16 MR. DELONG: Understood.

17 THE COURT: I have a note from a juror. I'll just  
18 read it into the record. Then the clerk will make it  
19 part of the actual electronic record, and I don't know  
20 who it's from.

21 Dorothy Merrill was one of my high  
22 school English teachers at Wooster High  
23 School. I did not know until I saw her  
24 today.



1           Oh, Bobbi Stevenson. I don't feel that there  
2       needs to be a response necessarily from the court. I'll  
3       let you have that information.

4           MS. ROSENTHAL: Your Honor, I do have a matter I'd  
5       like to address.

6           THE COURT: Okay.

7           MS. ROSENTHAL: As the court indicated during the  
8       previous break, that it might be inclined to ask us to  
9       pursue some questioning during the normal trial related  
10      to the evidence, I believe that the last three witnesses  
11      are those officers and I would ask that we don't return  
12      in the morning to -- for a couple reasons, that we take a  
13      break.

14          I do have a prepared court filing for -- to  
15      address our concerns of what was raised today, if it will  
16      allow us the opportunity to respond to that, and for the  
17      court to make a decision on that prior to moving forward.  
18      If the court determines that suppression is not the  
19      appropriate avenue and that simply questioning the  
20      officers about it is more appropriate, then we would know  
21      that at that time instead of going into that today.

22          THE COURT: I'm not going to delay this trial to  
23      give additional time. You'll examine the witnesses as  
24      they appear in this courtroom. And if at any time I



1 decide to dismiss, declare a mistrial, or suppress, it  
2 will occur in the normal course of the moving papers and  
3 arguments.

4 Anything else?

5 MS. ROSENTHAL: Your Honor would prefer a written  
6 motion rather than an oral motion at this time?

7 THE COURT: I'd prefer that the defense have a  
8 full opportunity to present its best case. I have the  
9 luxury of preparing during trial, you don't. I'm  
10 actually ready for the question, having spent the last  
11 several hours reading decisions and outlining them. If  
12 you think you can be persuasive through an oral motion, I  
13 would prefer that over any requirement that you file a  
14 written motion.

15 MS. ROSENTHAL: The court's indulgence.

16 Would you, your Honor, like us to do that now or  
17 after the break?

18 THE COURT: My preference is to break and then  
19 send the jury home sooner so that we can devote some time  
20 at the end of trial day.

21 MR. DELONG: Your Honor, I have some concern that,  
22 candidly, I have not had any time to review the case law  
23 in addition to the case law I already reviewed when I  
24 opposed the motion originally.



1           THE COURT: Let's see what the oral motion is.  
2   And if it's fair to the State to have additional time, I  
3   would grant that.

4           MR. DELONG: Thank you, your Honor.

5           THE COURT: I don't want to talk much more during  
6   our break. Let's go off the record.

7           (Recess.)

8           THE COURT: The jury, please.

9           MS. ROSENTHAL: Your Honor, one second. I was  
10   wondering if we could question Ms. Stevenson about her  
11   disclosures to make sure her knowing -- like any question  
12   that would have come up during jury selection that her  
13   knowing of Ms. Merrill does not give her more or less  
14   credibility to her testimony.

15          THE COURT: If that is your request, it is  
16   granted.

17          Deputy, will you grab Juror No. -- Juror  
18   Stevenson.

19          (Juror entered courtroom.)

20          THE COURT: Ms. Stevenson, I have your note.  
21   Thank you.

22          I have reviewed it with the attorneys, and you  
23   have -- Ms. Dorothy Merrill was your high school teacher?

24          JUROR Stevenson: Correct.



## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the Appellant's Joint Appendix – Volume IX to the following:

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DATED this 28<sup>th</sup> day of February, 2022.

/s/Randi Jensen  
Randi Jensen