

IN THE SUPRME COURT OF THE STATE OF NEVADA

DARWYN ROSS YOWELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
NO. 83577  
Feb 01 2022 02:21 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**JOINT APPENDIX TO APPELLANT'S OPENING BRIEF VOL I**

MATTHEW PENNELL  
Elko County Public Defender  
569 Court Street (Physical Address)  
571 Idaho Street (Mailing Address)  
Elko, NV 89801  
NV Bar Number 13298

*Attorney for Appellant*

AARON FORD  
Nevada Attorney General  
100 North Carson Street  
Carson City, NV 89701  
NV Bar Number 7704

TYLER J. INGRAM  
Elko County District Attorney  
540 Court Street  
Second Floor  
Elko, NV 89801  
NV Bar Number 11819

CHAD THOMPSON  
Chief Deputy District Attorney  
Elko County District Attorney  
540 Court Street  
Second Floor  
Elko, NV 89801  
NV Bar Number 10248

*Attorneys for Respondent*

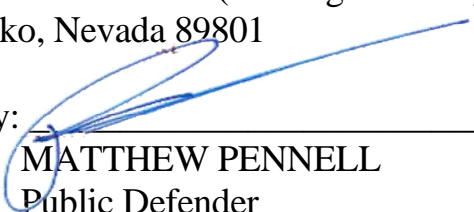
Elko County  
Public Defender

1 The Appellant, DARWYN ROSS YOWELL, by his attorney,  
2 MATTHEW PENNELL, of the Elko County Public Defender's Office, and  
3  
4 Respondent, THE STATE OF NEVADA, by its attorney, CHAD B.  
5 THOMPSON, appends herewith the following exhibits in support of the Joint  
6  
7 Appendix:

8	1. Criminal Complaint filed June 15, 2020.....	1-8
9		
10	2. Criminal Information filed August 21, 2020.....	11-15
11		
12	3. Judgement of Conviction filed September 13, 2021.....	112-114
13	4. Memorandum of Temporary Assignment filed March 21, 2021...	108
14	5. Motion for Guidance from the Court filed Dec 1, 2021.....	105-107
15	6. Motion to Transmit Marked Exhibit.....	967-969
16		
17	7. Notice of Appeal filed September 28, 2021.....	115-116
18	8. Order Binding Over filed August 18, 2020 .....	9-10
19		
20	9. Order for Commitment filed June 17, 2021.....	109-111
21	10. Order to Transmit Marked Exhibit.....	970
22		
23	11. Pretrial Order filed November 10, 2021.....	100-104
24	12. Transcript of Preliminary Hearing filed September 25, 2020...	16-99
25	13. Transcript of Trial Volume 1 filed November 18, 2021.....	117-367
26	14. Transcript of Trial Volume 2 Filed November 18, 2021...	368-669
27	15. Transcript of Trial Volume 3 Filed November 18, 2021...	670-857
28	16. Transcript of Trial Volume 4 Filed Nov 18, 2021.....	858-966


1 RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of January, 2022.

2  
3  
4 MATTHEW PENNELL  
5 ELKO CO. PUBLIC DEFENDER  
6 571 Idaho Street (Mailing Address)  
7 Elko, Nevada 89801

8 By:   
9 MATTHEW PENNELL  
10 Public Defender  
11 Nevada Bar Number 13298  
12 [mpennell@elkocountynv.net](mailto:mpennell@elkocountynv.net)

13 RESPECTFULLY SUBMITTED this 31<sup>st</sup> day of January, 2022.

14  
15 TYLER J. INGRAM  
16 ELKO CO. DISTRICT ATTORNEY  
17 571 Idaho Street (Mailing Address)  
18 Elko, Nevada 89801

19 By:   
20 CHAD B. THOMPSON  
21 Chief Deputy District Attorney  
22 Nevada Bar Number 10248  
23 [cthompson@elkocountynv.net](mailto:cthompson@elkocountynv.net)

1                                    CERTIFICATE OF SERVICE BY ELECTRONIC FILING

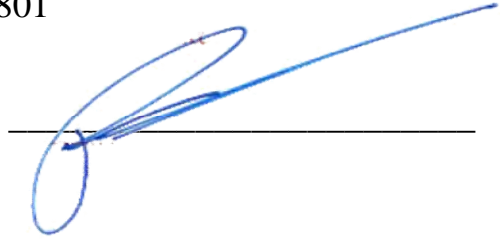
2                    I hereby certify, pursuant to the provisions of NRAP 25, that I am an  
3 employee of the Elko County Public Defender's Office, and that on the  
4 \_\_\_\_\_ day of 31<sup>ST</sup> January 2022, I electronically filed a copy of the  
5 foregoing, Appendix to Appellant's Fast Track Statement, and the following  
6 parties have consented to receive electronic filings in this matter:

7                                    CLERK OF THE SUPREME COURT  
8                                    Supreme Court Building  
9                                    201 S Carson Street  
10                                    Carson City, NV 89701-4702

11                                    OFFICE OF THE ATTORNEY GENERAL  
12                                    100 N. Carson Street  
13                                    Carson City, NV 89701-4717

14                                    CHAD THOMPSON  
15                                    ELKO COUNTY DISTRICT ATTORNEY'S OFFICE  
16                                    540 Court Street  
17                                    Elko NV 89801

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29

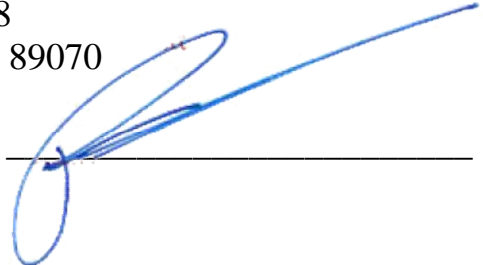


30                                    CERTIFICATE OF MAILING

31                    I hereby certify, pursuant to the provisions of NRAP 25, that I am an  
32 employee of the Elko County Public Defender's Office, and that on the 31<sup>ST</sup>  
33 day of January, 2022, I mailed and postage prepaid, a copy of the foregoing  
34 Appendix to Appellant's Fast Track Statement to the following:

35                                    DARWYN R. YOWELL #1249369  
36                                    SDCC  
37                                    P.O. Box 208  
38                                    Indian Springs NV 89070

39  
40  
41  
42  
43  
44  
45  
46  
47  
48  
49  
50





2020 JUN 15 PM 2:30

CLERK

CASE NO. EL-JC-CR-F-20-2845

IN THE ELKO JUSTICE COURT  
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

vs.

DARWYN ROSS YOWELL,

Defendant.

**CRIMINAL**

**COMPLAINT**

COMES NOW, THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and based upon the Declaration Of Probable Cause and/or the narrative report and the Officer Declaration executed by the submitting officer in connection with said narrative report, complains and alleges that the Defendant above-named, on or about the 5th day of June, 2020, at or near the location of the city of Elko and/or SR 227 and/or SR 288, within the County of Elko, and the State of Nevada, committed the following described criminal offense(s):

**COUNT 1**

**KIDNAPPING IN THE FIRST DEGREE, A FELONY AS DEFINED BY NRS  
200.310(1). (NOC 50051)**

That the Defendant did willfully and unlawfully seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap or carry away another person, to-wit: Jean Ortega, with the intent to hold or detain, or held or detained, the victim for the purpose of committing robbery upon or from the victim, or for the purpose of

1 killing the victim or inflicting substantial bodily harm upon the victim, in the  
2 following manner: by taking Ms. Ortega in her car and driving her out to the  
3 South Fork and/or Lee area on SR 227 and/or SR 228 in order to kill her by  
4 stating he was going to the reservation to get a shotgun to kill her and/or while  
5 driving her out to that area the Defendant did hit or punch or strike the victim  
6 resulting in substantial bodily harm, specifically a brain bleed and/or concussion  
7 and/or prolonged physical pain due to her injuries and/or disfigurement and/or  
8 some other injury as yet unknown which may qualify under NRS 0.060 and/or by  
9 robbing her of her possessions, to include but not limited to her keys and/or  
10 purse and/or driver's license, which occurred after the battery and leaving her at  
11 the area of SR 228 mile marker 16 and/or by some other manner or means as  
12 yet unknown.

13  
14 OR, IN THE ALTERNATIVE TO COUNT 1,

15 COUNT 2

16 **KIDNAPPING IN THE SECOND DEGREE, A CATEGORY B FELONY AS**  
17 **DEFINED BY NRS 200.310 AND NRS 200.330. (NOC 50075)**

18 That the Defendant did willfully and unlawfully seize, inveigle, take, carry away or  
19 kidnap another person, Jean Ortega, and the Defendant did so:

- 20 1. With the intent to keep the said person secretly imprisoned within the  
21 State of Nevada; and/or
- 22 2. For the purpose of conveying said person out of the State of Nevada  
23 without lawful authority; and/or
- 24 3. To hold said person, in any manner, to service or to detain said person  
25 against their will.

26 The Defendant committed said offense in the following manner: by taking Ms.  
27 Ortega against her will in her car to the South Fork / Lee area of Elko County  
28 and/or to the Lee Reservation and/or by some other manner or means as yet

1 unknown.

2  
3 OR, IN THE ALTERNATIVE TO COUNTS 1 AND 2,

4 COUNT 3

5 **COERCION, A CATEGORY B FELONY AS DEFINED BY NRS 207.190(1).**  
6 **(NOC 53159)**

7 That the Defendant, with the use of physical force or the immediate threat of  
8 physical force, did willfully and unlawfully (a) use violence or did inflict injury  
9 upon Jean Ortega, or did threaten to use violence or inflict injury upon Jean  
10 Ortega; or (b) did deprive Jean Ortega of any tool, implement or clothing, or  
11 hinder the person in the use thereof; or (c) did attempt to intimidate Jean Ortega  
12 by threats of force, and that the Defendant did so with the intent to compel Jean  
13 Ortega to do or abstain from doing an act which Jean Ortega had a right to do or  
14 abstain from doing, to-wit: by hitting or striking Ms. Ortega in the head or body to  
15 compel her to go with him to the South Fork or Lee area via SR 227 and/or SR  
16 228 and/or to allow the defendant to use her vehicle to go there and/or to compel  
17 Ms. Ortega to allow him to take her keys and/or car and/or purse and/or driver's  
18 license and/or when Ms. Ortega told the Defendant she didn't want to go to  
19 South Fork and/or Lee by not letting her out of the vehicle when she tried to get  
20 out or made attempts to get out and/or by some other manner or means as yet  
21 unknown.

22 COUNT 4

23 **DOMESTIC BATTERY RESULTING IN SUBSTANTIAL BODILY HARM, A**  
24 **CATEGORY B FELONY AS DEFINED BY NRS 200.485(5). (NOC 57937)**

25 That the Defendant willfully and unlawfully used force or violence upon Jean  
26 Ortega in the following manner: by hitting her or striking her multiple times in the  
27 head or face. Furthermore, the battery resulted in substantial bodily harm to the  
28 victim described as follows: a brain bleed and/or concussion and/or prolonged

1 physical pain due to her injuries and/or disfigurement and/or some other injury as  
2 yet unknown which may qualify under NRS 0.060.

3  
4 The Defendant's relationship to the victim above-named is one of the following:  
5 a spouse, former spouse, a relative by blood or marriage, a person with whom  
6 the Defendant has had or is having a dating relationship, a person with whom  
7 the Defendant has a child in common, and/or the minor child of any of the above  
8 indicated victims or the Defendant's minor child.

9  
10 OR, IN THE ALTERNATIVE TO COUNT 4,

11 COUNT 5

12 **BATTERY RESULTING IN SUBSTANTIAL BODILY HARM, A CATEGORY C**  
13 **FELONY AS DEFINED BY NRS 200.481. (NOC 50214)**


14 That the Defendant willfully and unlawfully used force or violence upon the  
15 person of Jean Ortega, in the following manner: by the same manner or means  
16 in Count 3. Further, the force or violence resulted in the infliction of substantial  
17 bodily harm within the meaning of NRS 0.060, described as follows: a brain  
18 bleed and/or concussion and/or prolonged physical pain due to her injuries  
19 and/or disfigurement and/or some other injury as yet unknown which may qualify  
20 under NRS 0.060.

21  
22 All of which is contrary to the form of the statute in such cases made and provided,  
23 and against the peace and dignity of the State of Nevada. Said Complainant, therefore,  
24 prays that the Defendant be dealt with according to law.

25  
26 The undersigned hereby declares under penalty of perjury that the foregoing  
27 Complaint is true to the best of his/her knowledge, information, and belief.  
28

1 Dated: June 15, 2020.

2  
3 TYLER J. INGRAM  
4 Elko County District Attorney

5   
6 CHAD B. THOMPSON  
7 Chief Criminal Deputy District Attorney  
8 State Bar Number: 10248

9 **The Issue Of Obtaining The Discovery**  
10 **Available In This Matter**

11 **To: The Defendant's Counsel or The Defendant Representing Himself/Herself**

12 The Elko County District Attorney's Office has an open file discovery policy. This  
13 means you will be provided with a complete copy of all reports, photos and compact discs  
14 received by the DA's Office from the submitting Officer and agency in connection with this  
15 case. Private Counsel and/or Defendants appearing without Counsel will be charged a  
16 reasonable copying and duplication fee. If this is a misdemeanor case the State believes and  
17 avers that by providing a copy of the discovery containing the names and addresses of the  
18 witnesses the State may call in its case-in-chief, the State is fulfilling its discovery obligations  
19 pursuant to NRS 174.234.(1)(b)(2) which provides that:

20 (2) The prosecuting attorney shall file and serve upon the  
21 defendant a written notice containing the name and last known  
22 address or place of employment of any witness the prosecuting  
23 attorney intends to call during the case in chief of the State whose  
24 name and last known address or place of employment have not  
25 otherwise been provided to the defendant pursuant to NRS  
26 171.1965 or 174.235.

27 Extradition Scope: All 50 States

28 DA #F-20-01235/ REPORT #: 20EL08585/ OFFICER WILLIAMS / AGENCY: ELKO  
COUNTY SHERIFF'S OFFICE

## DECLARATION OF PROBABLE CAUSE

ARRESTEE'S NAME: Darwyn Yowell

DATE OF ARREST:

TIME OF ARREST:

LOCATION OF ARREST:

TYPE OF ARREST: Without Arrest Warrant ☒ With Arrest Warrant ☐ Citizen's Arrest

If Domestic Violence is charged, indicate date and time that the battery occurred: Date: 6/5/2020 Time: 2120

If DUI is charged, indicate the ARREST and CONVICTION dates for each prior DUI offense within 7 years:

Prior Arrest Date:

Prior Conviction Date:

NOC/NRS/ CITY/COUNTY	CHARGE	COUNTS	M/GM/F	BAIL	COURT
1. 200.320	1 <sup>st</sup> Deg Kidnapping	1	F	250,000.00	ELJC
2. 200.485	Domestic Battery w/SBH	1	F	20,000.00	ELJC
3.					
4.					

I, Deputy Calvern Williams, MADE THE ARREST OF THE ABOVE NAMED ARRESTEE AND HEREBY DECLARE, UNDER PENALTY OF PERJURY, THAT I HAVE KNOWLEDGE OF OR HAVE BEEN INFORMED OF THE FOLLOWING FACTS AND CIRCUMSTANCES WHICH SUPPORT THAT A CRIME OR CRIMES HAS OR WERE COMMITTED:

On 6/5/2020 I, Deputy Calvern Williams, was dispatched to an area along Highway 228 near the Jiggs area of Elko County for a report of a physical domestic dispute where a female suffered injuries. I made contact with Jean Ortega at mile marker 16. She saw sitting in the back of a vehicle driven by Trey Green who picked her up on the side of the road. Jean was visibly upset and crying. I observed Jean had multiple lacerations to her face along with significant swelling on her cheeks, lips, and around her eyes. I asked Jean if I knew her. Jean stated she could not see me although I was standing directly in front of her. I asked Jean what happened to her face. She stated Darwyn Yowell. I asked her where Darwyn went. She stated he took off with her keys, purse, and driver license. Jean stated Darwyn was headed to his grandmother's house on the Lee Reservation. She stated Darwyn told her he was taking her to the reservation to get a shotgun and kill her. There was a white sedan in the roadway with its hazard lights flashing. Jean stated the vehicle was hers and it was being driven by Darwyn. Jean stated Darwyn told her he was holding her hostage and that he would kill her. I asked Jean how she got the injuries to her face. She stated Darwyn kept punching her because she wouldn't listen to him. She stated he kept punching her and she tried to defend herself but could not. She stated Darwyn punched her on her face, arms, and back. She stated she tried to get out of the vehicle and Darwyn slammed on the brakes and stopped the vehicle. She tried sliding out of the vehicle but he kept grabbing her. When Trey pulled up behind them she pulled the keys from the ignition and was able to get out of the vehicle and wave at Trey. She stated she kept trying to wave at people while they were in Elko because Darwyn was holding her hostage and wouldn't let go or stop the vehicle. She stated he made her go to Lee with him. Jean was transported by ambulance from the scene to NNRH.

A records check of the white sedan bearing Nevada license plate 761L67 revealed Jean as the registered owner. I observed blood smeared on the rear of the vehicle above the driver side tail light. I observed blood spatter on the seat cushion of the rear seat directly behind the center console. I observed blood smeared on the center console as well as the front driver and passenger doors. I observed blood spatter on the ceiling of the vehicle.

### \*FOR JUDGE'S USE ONLY

PROBABLE CAUSE FOR FURTHER DETENTION: ☐ FOUND ☐ NOT FOUND

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ TIME: \_\_\_\_\_

(MAGISTRATE)

## DECLARATION OF PROBABLE CAUSE

I made contact with Jean in the emergency room at NNRH. Jean explained she is in a dating relationship with Darwyn. She stated they were at the American Inn room 28 when an argument started over Darwyn's ex-girlfriend. She stated they left and Darwyn began driving. She asked where they were going and Darwyn stated they were going to Lee. She stated she told him she did not want to go to Lee and Darwyn punched her. I asked Jean whose decision it was to go to Lee. She stated it was Darwyn's.

I asked Jean if she asked Darwyn to stop the vehicle at any time. She stated she asked him to stop the vehicle several times. During my interview with Jean she appeared to lose consciousness several times. I asked Jean why Darwyn stopped the vehicle at mile marker 16. She stated he stopped the vehicle because she wasn't listening to him. She stated she was trying to go to the back seat to get her cigarettes and he got mad and slammed on the brakes. She stated Darwyn asked her what she had in the back and asked her what she was trying to take him out with. She stated Darwyn started yanking her around and hitting her in the back of her head. She stated Darwyn told her "Get in the front I'm holding you hostage." I concluded my interview with Jean.

At approximately 2359 hours I was dispatched to contact Dr. Justin Sempsrott at the emergency room at NNRH. Dr. Sempsrott was the physician treating Jean. He advised me Jean suffered a serious head injury as a result of the battery. Her injury involved bleeding in her brain and is life threatening. He advised me Jean was being life flighted to the University of Utah hospital for her injuries.

Due to Jean being willfully seized and carried towards the Lee Reservation without her consent and suffering substantial bodily harm during the act of kidnapping I am charging Darwyn Yowell with a violation of NRS 200.320.1 Kidnapping in the First Degree.

Due to Jean being in a dating relationship with Darwyn and the battery resulted in life threatening injuries I am charging Darwyn Yowell with a violation of NRS 200.485.5 Battery Constituting Domestic Violence Causing Substantial Bodily Harm.

DATE: 6/5/2020  D32  
(PEACE OFFICER OR CITIZEN)

DEPT: ECSO ID NO: D32

\*FOR JUDGE'S USE ONLY

PROBABLE CAUSE FOR FURTHER DETENTION: ☐ FOUND ☐ NOT FOUND

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_

TIME: \_\_\_\_\_

\_\_\_\_\_  
(MAGISTRATE)

# DECLARATION OF PROBABLE CAUSE

**ARRESTEE'S NAME:** Darwyn Yowell

**DOB:**

**DATE OF ARREST:** 06/06/2020

**TIME OF ARREST:** 0910

**PLACE OF ARREST:** #6 Cottonwood South Fork Indian Reservation

**TYPE OF ARREST:**

Without Arrest Warrant: ☒

With Arrest Warrant: ☐

Arrested for P & P Hold: ☐

Citizen's Arrest: ☐ (Citizen's Arrest Form must be attached)

(If Domestic Violence is charged, indicate date and time that the battery occurred:

Date: 06/05/2020

Time: )

(If DUI is charge, indicate the arrest and conviction dates for each prior DUI offense within 7 years:

Prior Arrest:

Prior Conviction:

Prior Arrest:

Prior Conviction: )

NOC	NRS CITY COUNTY	CHARGE DESCRIPTION	# CT	M GM F	BAIL	COURT
-----	-----------------------	--------------------	---------	--------------	------	-------

I, A. Neff MADE THE ARREST OF THE ABOVE NAMED ARRESTEE AND HERBY DECLARE, UNDER PENALTY OF PERJURY, THAT I HAVE KNOWLEDGE OF OR HAVE BEEN INFORMED OF THE FOLLOWING FACTS AND CIRCUMSTANCES WHICH SUPPORT THAT A CRIME OR CRIMES HAS OR WERE COMMITTED:

On 06/05/2020, I Chief Neff was contacted by Deputy Calvern Williams with the Elko County Sheriff's Department regarding a Domestic situation, between Darwyn Yowell and Jean Ortega. The incident occurred on SR 228 mm 16 and Darwyn left the scene and proceeded to the South Fork Indian Reservation. Deputy Williams advised me there was Probable Cause for arrest. I advised Williams I would go to his grandmother's residence in the morning. On 06/06/2020 at approximately 08:45 I arrived at #6 Cottonwood on the South Fork Indian Reservation, making contact with Darwyn Yowell. I advised Yowell, I was placing him under arrest for Domestic Violence, and I was assisting the Elko County Sheriff's Department. Yowell complied and Yowell was transported to the Elko County Jail for booking.

DATE: 06/06/2020

(PEACE OFFICER OR CITIZEN)

DEPT.: SFTPD ID NO.: 530

**\*FOR JUDGE'S USE ONLY**

PROBABLE CAUSE FOR FURTHER DETENTION:

FOUND: ☐

NOT FOUND: ☐

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ TIME: \_\_\_\_\_

(MAGISTRATE)



2020 AUG 18 AM 8:12

CLERK

CASE NO. EL-JC-CR-F-20-2845

IN THE JUSTICE COURT OF THE ELKO TOWNSHIP  
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA

THE STATE OF NEVADA,

Plaintiff,

vs.

DARWYN ROSS YOWELL,

Defendant.

**ORDER BINDING OVER**

**(IN CUSTODY)**

It appearing from the evidence adduced at a Preliminary Hearing held in the above-entitled Court on the 14th day of August, 2020, in which the Defendant was represented by Attorney Benjamin Gaumond, and the State was represented by Justin Barainca of the Elko County District Attorney's Office. That there is sufficient probable cause to believe that the following crime(s) has or have been committed and that the Defendant has committed it or them.

I HEREBY ORDER that the Defendant be held to answer upon the following charge(s):

**COUNT 1**

**KIDNAPPING IN THE FIRST DEGREE, A FELONY AS DEFINED BY  
NRS 200.310(1). (NOC 50051)**

**OR, IN THE ALTERNATIVE TO COUNT 1,**

**COUNT 2**

**KIDNAPPING IN THE SECOND DEGREE, A CATEGORY B FELONY  
AS DEFINED BY NRS 200.310 AND NRS 200.330. (NOC 50075)**

1 OR, IN THE ALTERNATIVE TO COUNTS 1 AND 2,

2 COUNT 3

3 **COERCION, A CATEGORY B FELONY AS DEFINED BY NRS**  
4 **207.190(1). (NOC 53159)**

5 COUNT 4

6 **DOMESTIC BATTERY RESULTING IN SUBSTANTIAL BODILY**  
7 **HARM, A CATEGORY B FELONY AS DEFINED BY NRS 200.485(5).**  
8 **(NOC 57937)**


9 OR, IN THE ALTERNATIVE TO COUNT 4,

10 COUNT 5

11 **BATTERY RESULTING IN SUBSTANTIAL BODILY HARM, A**  
12 **CATEGORY C FELONY AS DEFINED BY NRS 200.481. (NOC 50214)**

13 And that Defendant be held to answer in the District Court of the Fourth Judicial District of the  
14 State of Nevada, in and for the County of Elko, said Defendant to be held on bail in the  
15 amount of \$270,000.00 and remanded to the custody of the Elko County Sheriff to await  
16 further proceedings.

17 Dated this 18 day of August, 2020.

18   
19 ELIAS D. GOICOECHEA  
20 JUSTICE OF THE PEACE  
21 ELKO JUSTICE COURT  
22  
23  
24  
25  
26  
27  
28

FD-Gaumerd

FILED

2020 AUG 21 PM 3:01

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY DP

CASE NO. DC-CR- 20-159

DEPT. NO. 1

Affirmation Pursuant to NRS 239B.030

SSN Does Appear \_\_\_\_\_

SSN Does Not Appear \_\_\_XXX\_\_\_

IN THE FOURTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

vs.

DARWYN ROSS YOWELL,

Defendant.

CRIMINAL

INFORMATION

COMES NOW THE STATE OF NEVADA, the Plaintiff in the above-entitled cause, by and through its Counsel of Record, the Elko County District Attorney's Office, and informs the above-entitled Court that Defendant above-named, on or about the 5th day of June, 2020, at or near the location of the city of Elko and/or SR 227 and/or SR 288, within the County of Elko, and the State of Nevada, committed a crime or crimes described as follows:

COUNT 1

**KIDNAPPING IN THE FIRST DEGREE, A FELONY AS DEFINED BY NRS 200.310(1). (NOC 50051)**

That the Defendant did willfully and unlawfully seize, confine, inveigle, entice, decoy, abduct, conceal, kidnap or carry away another person, to-wit: Jean Ortega, with the intent to hold or detain, or held or detained, the victim for ransom, or reward, or for the purpose of committing sexual assault, extortion or robbery upon or from the victim, or for the purpose of killing the victim or inflicting substantial bodily harm upon the victim, or to exact money or valuables from others for the return or disposition of the victim, by the following manner: by taking Ms. Ortega in her car and driving her out to the South Fork and/or Lee area on SR 227 and/or SR 228 in order to kill her by

AUG 21 2020 PM 3:54

1 stating he was going to the reservation to get a shotgun to kill her and/or  
2 while driving her out to that area the Defendant did hit or punch or strike the  
3 victim resulting in substantial bodily harm, specifically a brain bleed and/or  
4 concussion and/or prolonged physical pain due to her injuries and/or  
5 disfigurement and/or some other injury as yet unknown which may qualify  
6 under NRS 0.060 and/or by robbing her of her possessions, to include but not  
7 limited to her keys and/or purse and/or driver's license, which occurred after  
8 the battery and leaving her at the area of SR 228 mile marker 16 and/or by  
9 some other manner or means as yet unknown.

10 OR, IN THE ALTERNATIVE TO COUNT 1  
11 COUNT 2

12 **KIDNAPPING IN THE SECOND DEGREE, A CATEGORY B FELONY AS**  
13 **DEFINED BY NRS 200.310 AND NRS 200.330. (NOC 50075)**

14 That the Defendant did willfully and unlawfully seize, inveigle, take, carry  
15 away or kidnap another person, Jean Ortega, and the Defendant did so:

- 16 1. With the intent to keep the said person secretly imprisoned within the  
17 State of Nevada; and/or
- 18 2. For the purpose of conveying said person out of the State of Nevada  
19 without lawful authority; and/or
- 20 3. To hold said person, in any manner, to service or to detain said person  
21 against their will.

22 The Defendant committed said offense in the following manner: by taking Ms.  
23 Ortega against her will in her car to the South Fork / Lee area of Elko County  
24 and/or to the Lee Reservation and/or by some other manner or means as yet  
25 unknown.

26 OR, IN THE ALTERNATIVE TO COUNTS 1 AND 2  
27 COUNT 3

28 **COERCION, A CATEGORY B FELONY AS DEFINED BY NRS 207.190(1).**  
**(NOC 53159)**

That the Defendant, with the use of physical force or the immediate threat of  
physical force, did willfully and unlawfully (a) use violence or did inflict injury  
upon Jean Ortega, or did threaten to use violence or inflict injury upon Jean  
Ortega; or (b) did deprive Jean Ortega of any tool, implement or clothing, or  
hinder the person in the use thereof; or (c) did attempt to intimidate Jean  
Ortega by threats of force, and that the Defendant did so with the intent to



1 compel Jean Ortega to do or abstain from doing an act which Jean Ortega  
2 had a right to do or abstain from doing, to-wit: by hitting or striking Ms.  
3 Ortega in the head or body to compel her to go with him to the South Fork or  
4 Lee area via SR 227 and/or SR 228 and/or to allow the defendant to use her  
5 vehicle to go there and/or to compel Ms. Ortega to allow him to take her keys  
6 and/or car and/or purse and/or driver's license and/or when Ms. Ortega told  
7 the Defendant she didn't want to go to South Fork and/or Lee by not letting  
8 her out of the vehicle when she tried to get out or made attempts to get out  
9 and/or by some other manner or means as yet unknown.

10 IN ADDITION TO COUNTS 1 THROUGH 3  
11 COUNT 4

12 **DOMESTIC BATTERY RESULTING IN SUBSTANTIAL BODILY HARM, A**  
13 **CATEGORY B FELONY AS DEFINED BY NRS 200.485(5). (NOC 57937)**

14 That the Defendant willfully and unlawfully used force or violence upon Jean  
15 Ortega in the following manner: by hitting her or striking her multiple times in  
16 the head or face. Furthermore, the battery resulted in substantial bodily harm  
17 to the victim described as follows: a brain bleed and/or concussion and/or  
18 prolonged physical pain due to her injuries and/or disfigurement and/or some  
19 other injury as yet unknown which may qualify under NRS 0.060.

20 The Defendant's relationship to the victim above-named is one of the  
21 following: a spouse, former spouse, a relative by blood or marriage, a person  
22 with whom the Defendant has had or is having a dating relationship, a person  
23 with whom the Defendant has a child in common, and/or the minor child of  
24 any of the above indicated victims or the Defendant's minor child.

25 OR, IN THE ALTERNATIVE TO COUNT 4  
26 COUNT 5

27 **BATTERY RESULTING IN SUBSTANTIAL BODILY HARM, A CATEGORY**  
28 **C FELONY AS DEFINED BY NRS 200.481. (NOC 50214)**


That the Defendant willfully and unlawfully used force or violence upon the  
person of Jean Ortega, in the following manner: by the same manner or  
means in Count 3. Further, the force or violence resulted in the infliction of  
substantial bodily harm within the meaning of NRS 0.060, described as  
follows: a brain bleed and/or concussion and/or prolonged physical pain due  
to her injuries and/or disfigurement and/or some other injury as yet unknown  
which may qualify under NRS 0.060.

All of which is contrary to the form of the Statute in such cases made and provided,

1 and against the peace and dignity of the State of Nevada.


2 Dated: August 14, 2020.

3 TYLER J. INGRAM  
4 Elko County District Attorney

5   
6 JUSTIN M. BARAINCA  
7 Deputy District Attorney  
8 State Bar Number: 14163

9 **Declaration By State's Counsel Estimating**  
10 **The Number Of Days Needed For Trial**

11  
12 **COMES NOW THE STATE OF NEVADA**, by and through its Counsel of Record the  
13 Elko County District Attorney's Office and, specifically by the Deputy District Attorney  
14 assigned the above-entitled matter, who, by his signature hereunder, would declare to the  
15 above-entitled Court that it is State's Counsel's estimate that 4 days, including jury selection,  
16 should be set aside for the trial of this matter.

17   
18 JUSTIN M. BARAINCA  
19 Deputy District Attorney  
20 State Bar Number: 14163

21 Witnesses' names and addresses known to the District Attorney at the time of filing  
22 the above Criminal Information, if known, are as follows.

23 BRENDA CORTEZ: 775 WEST SILVER STREET ELKO, NV 89801

24 NNRH CUSTODIAN OF RECORDS: 2001 ERRECART BLVD. ELKO, NV 89801

25 TREY DANIEL GREEN: HC 30 BOX 335 SPRING CREEK, NV 89815

26 MIKALA GREEN: HC 30 BOX 335 SPRING CREEK, NV 89815

27 JEAN ANGEL ORTEGA: ADDRESS WITHHELD  
28



1 JUSTIN SEMPSROTT: 2001 ERRECART BLVD ELKO, NV 89801

2 NICK STAKE: 775 WEST SILVER STREET ELKO, NV 89801

3 CALVERN WILLIAMS: 775 WEST SILVER STREET ELKO, NV 89801

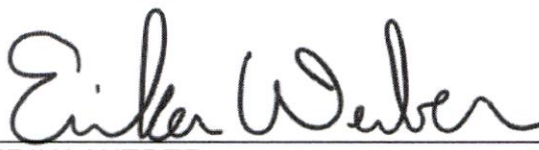
4  
5  
6 **CERTIFICATE OF SERVICE**

7 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the  
8 Elko County District Attorney's Office, and that on the 21<sup>st</sup> day of August, 2020, I  
9 hereby served a copy of the CRIMINAL INFORMATION, by delivering, mailing, faxing, or  
10 causing to be delivered, faxed, or mailed, a copy of said document to the following:

11 By delivering to:

12 HONORABLE DISTRICT COURT JUDGE  
13 FOURTH JUDICIAL DISTRICT COURT  
14 ELKO COUNTY COURTHOUSE  
ELKO, NV 89801

15  
16 BENJAMIN GAUMOND  
17 ATTORNEY AT LAW  
18 569 COURT STREET  
ELKO, NV 89801

19   
20  
21 ERIKA WEBER  
CASEWORKER

22 DA # F-20-01235

Case No. EL-JC-CR-F-20-2845

FILED

2020 SEP 25 PM 1:51

IN THE ELKO TOWNSHIP JUSTICE COURT

OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO,  
 THE HONORABLE ELIAS D. GOICOECHEA, JUSTICE OF THE PEACE

-oOo-

STATE OF NEVADA,

Plaintiff,

V.

PRELIMINARY HEARING

DARWYN ROSS YOWELL,

Defendant.

**COPY**

TRANSCRIPT OF PROCEEDINGS

August 14, 2020  
 Elko, Nevada

APPEARANCES:

For the Plaintiff: Justin Barainca, Esq.  
 Elko County District Attorney's  
 Office  
 540 Court Street, 2nd Floor  
 Elko, NV 89801

For the Defendant: Benjamin Gaumond, Esq.  
 Elko County District Attorney's  
 Office  
 569 Court Street  
 Elko, NV 89801

Transcription Service: Julie Rowan  
 Nevada Dictation  
 P.O. Box 4332  
 Carson City, NV 89702

SEP 25 2020 PM 2:08



## INDEX

1		
2	WITNESSES ON BEHALF OF THE STATE OF NEVADA:	<u>Page</u>
3	JEAN ORTEGA	
	Direct by Mr. Barainca.....	8
4	Cross by Mr. Gaumond.....	28
	Redirect by Mr. Barainca.....	34
5	Recross by Mr. Gaumond.....	36
	Witness retained.....	37
6		
	MIKALA GREEN	
7	Direct by Mr. Barainca.....	38
	Cross by Mr. Gaumond.....	44
8	Witness retained.....	44
9	CALVERN WILLIAMS	
	Direct by Mr. Barainca.....	45
10	Cross by Mr. Gaumond.....	59
	Redirect by Mr. Barainca.....	60
11	Witness retained.....	61
12	CALVERN WILLIAMS	
	Direct by Mr. Barainca.....	62
13	Witness retained.....	63
14	MIKALA GREEN	
	Direct by Mr. Barainca.....	63
15	Cross by Mr. Gaumond.....	64
	Witness retained.....	65
16		
	NICK STAKE	
17	Direct by Mr. Barainca.....	65
	Cross by Mr. Gaumond.....	77
18	Witness excused.....	79
19	JEAN ORTEGA	
	Direct by Mr. Barainca.....	79
20	Cross by Mr. Gaumond.....	80
	Witness retained.....	81
21		
22	WITNESSES ON BEHALF OF THE DEFENSE:	
23	None	
24		
25		

## INDEX (Continued)

			<u>Admitted</u>
EXHIBITS:			
PX-2	Photo		48
PX-3	Photo		48
PX-4	Photo		75
PX-5	Photo		75
PX-6	Photo		75
PX-7	Photo		70
PX-8	Photo		70
PX-9	Photo		70
PX-10	Photo		70
PX-11	Photo		70
PX-12	Photo		70
PX-13	Photo		70
PX-14	Photo		70
PX-15	Photo		70
PX-16	Medical Records		26
PX-17	DVD-Body Cam Footage		56
PX-18	DVD-Body Cam Footage		56

1 THE COURT: We'll be on the record. Today is  
2 the 14th of August. It's 1:04 in the afternoon. This  
3 is the Elko Justice Court, and I'm Elko Justice of the  
4 Peace Elias Goicoechea. We'll be on the record today in  
5 Case No. EL-JC-CR-F-20-2845.

6 This is the State of Nevada versus Darwyn  
7 Ross Yowell. Mr. Yowell is present in court today. He  
8 is in custody. He's represented by Ben Gaumond from the  
9 Public Defender's Office. Justin Barainca is present  
10 representing the State for the District Attorney's  
11 Office. And this is the time set for a preliminary  
12 hearing.

13 Are we going forward with the prelim?

14 MR. GAUMOND: Yes, Your Honor.

15 MR. BARAINCA: Yes, Your Honor.

16 THE COURT: All right. So this preliminary  
17 hearing is going to be on a criminal complaint that  
18 was filed in the Elko Justice Court on or -- or on  
19 June 15th, this year, alleging on or about the 5th day  
20 of June, this year, at or near the location of the City  
21 of Elko and/or State Route 227 and/or State Route 228,  
22 within the County of Elko, State of Nevada, that you  
23 committed the following described criminal offenses:

24 Count 1 is kidnapping in the first degree,  
25 which is -- and Count 2, in the alternative to Count 1,

1 is kidnapping in the second degree, and that's a  
2 category B felony. The first one is -- I'm not sure  
3 exactly how it's written. In the alternative to  
4 Counts 1 and 2 is Count 3 is coercion, Count 4 is  
5 domestic battery resulting in substantial bodily harm,  
6 and in the alternative to Count 4, Count 5 is battery  
7 resulting in substantial bodily harm.

8 And are the parties ready to proceed?

9 MR. BARAINCA: Yes, Your Honor.

10 MR. GAUMOND: The Defense is ready.

11 THE COURT: And do we have any preliminary  
12 issues before we get into the preliminary hearing?

13 MR. BARAINCA: Not for the State, Your Honor.

14 MR. GAUMOND: Not for the Defense.

15 THE COURT: All right. Mr. Barainca, do you  
16 want to go with your witnesses.

17 MR. BARAINCA: Jean Ortega.

18 THE COURT: Jean Ortega?

19 MR. BARAINCA: Yes, Your Honor.

20 THE COURT: J-E-A-N or G?

21 MR. BARAINCA: J-E-A-N.

22 THE COURT: Okay.

23 MR. BARAINCA: Mikala Green.

24 THE COURT: Mikala, spell it for me.

25 MS. GREEN: M-I-K-A-L-A.



1 THE COURT: M-I-K-A-L-A?

2 MS. GREEN: Uh-huh.

3 THE COURT: Green?

4 MS. GREEN: (No audible response)

5 THE COURT: Okay.

6 MR. BARAINCA: Calvern Williamson.

7 THE COURT: Okay.

8 MR. BARAINCA: Nick Stake.

9 THE COURT: Mr. Gaumond, do you have any  
10 witnesses to name?

11 MR. GAUMOND: No, Your Honor.

12 THE COURT: All right. So we're going to go  
13 ahead and invoke the rule of exclusion, and what that  
14 means is you have -- you're going to have to have a seat  
15 outside of the courtroom. You're not going to be able  
16 to discuss the facts of the case or your testimony with  
17 anybody. You can have casual conversation. You can  
18 talk about going to the beach next summer. It doesn't  
19 matter. But you cannot discuss anything about the case,  
20 your testimony, unless Mr. Gaumond and/or Mr. Barainca  
21 come out to speak with you.

22 Now, if they come out to speak with you at  
23 that time, then, of course, you can discuss the case  
24 with them. However, you have to be out of the hearing  
25 of the other witnesses and/or quiet enough to where the

1 other witnesses cannot understand or hear your  
2 discussion.

3 All right, is there any questions on that?

4 All right. Mr. Barainca, your first witness.

5 MR. BARAINCA: Ms. Ortega.

6 THE COURT: Ms. Ortega, will you come forward  
7 to be sworn. The other witnesses have a seat outside,  
8 please.

9 All right, face me raise your right hand. Do  
10 you swear the testimony you're going to provide to the  
11 Court today will be the truth, the whole truth, and  
12 nothing but the truth, so help you God?

13 MS. ORTEGA: I do.

14 THE COURT: All right. I need you to take  
15 your mask off. Have a seat, state your name and spell  
16 your name. The next time you come into any courtroom  
17 across the United States, you need to be in a much more  
18 appropriate attire, okay. Shorts and a t-shirt do not  
19 cut it.

20 Go ahead with your name.

21 THE WITNESS: State my name?

22 THE COURT: State your name and spell your  
23 name for the record, please.

24 THE WITNESS: Jean Ortega; J-E-A-N,  
25 O-R-T-E-G-A.

1 THE COURT: Go ahead, Mr. Barainca.

2 JEAN ORTEGA

3 (Sworn as a witness, testified as follows)

4 DIRECT EXAMINATION

5 BY MR. BARAINCA:

6 Q. Ma'am, are you familiar with a gentleman by the name  
7 of Darwyn Yowell?

8 A. Yes, I am.

9 Q. Is he here in court today?

10 A. Yes, sir.

11 Q. Where is he seated?

12 A. Right over there.

13 Q. What do you mean right over there?

14 A. Right over there in the red.

15 Q. At the Defense table?

16 A. Yes.

17 Q. What's he wearing?

18 A. A red outfit.

19 Q. A red jumpsuit?

20 A. Yes.

21 MR. BARAINCA: Your Honor, may the record  
22 reflect that the witness has identified the Defendant.

23 THE COURT: The record will so show.

24 BY MR. BARAINCA:

25 Q. And so, ma'am, how do you know Mr. Yowell?

1 A. I've known him for a few years. Since we were kids,  
2 I guess.

3 Q. What's that?

4 A. I've known him for a few years.

5 Q. Okay. And have you ever been involved in a  
6 relationship with Mr. Yowell?

7 A. Yes, I have.

8 Q. When did that start?

9 A. 2012.

10 Q. What kind -- and what was that relationship?

11 A. It was an on and off thing.

12 Q. Were you guys dating?

13 A. Yeah, pretty much.

14 Q. Was it a sexual relationship?

15 A. Yes, it was.

16 Q. Were you married?

17 A. Possibly.

18 Q. Were there at least talks of being married?

19 A. Yes.

20 Q. And I take it you're not together anymore?

21 A. No.

22 Q. Did you have any contact with Mr. Yowell on  
23 June 5th, 2020?

24 A. June 5th? Is that the day that happened?

25 Q. Yes.



1 MR. GAUMOND: Your Honor, I object.

2 MR. BARAINCA: Yeah, that's -- yeah, that's  
3 exactly the --

4 BY MR. BARAINCA:

5 Q. When was the last --

6 THE COURT: Sustained.

7 BY MR. BARAINCA:

8 Q. Do you remember when you had -- do you remember the  
9 last time you had contact with Mr. Yowell?

10 A. I thought it was the 30th of May, but I guess it was  
11 June 5th. I don't know.

12 Q. That's okay. We can talk about with some --

13 A. All right.

14 Q. But did you have contact with Mr. Yowell in a matter  
15 that brings us into court today?

16 A. Excuse me?

17 Q. Did you have contact with Mr. Yowell in a matter  
18 that brings us into court today?

19 A. No.

20 Q. Okay. So I'm going to walk you through the  
21 beginning of the last day you had contact with  
22 Mr. Yowell.

23 A. Okay, the last day I had was the day we got -- well,  
24 I got beat up and (indiscernible), and that was it.

25 Q. Okay.

1 THE COURT: Okay. First of all, you're going  
2 to have speak up. You've got to either get rid of the  
3 candy or stick it on the side your mouth so I can  
4 understand you.

5 THE WITNESS: Okay. The last day I seen him  
6 was the day that we got in an argument, got in a fight.  
7 He beat me up. Threatened to kill me in his  
8 grandfather's dog house, and told me he was keeping me  
9 captive.

10 BY MR. BARAINCA:

11 Q. Okay. So there's a lot that you just -- that you  
12 said there that we're going to have to unpack. So just  
13 walk us through -- I'm just going to ask you to -- from  
14 the beginning, what was the first part of the day for  
15 you?

16 A. It was pretty good, not too bad.

17 Q. Where were you guys at?

18 A. We had a motel room.

19 Q. Where was that at?

20 A. I can't remember what it's called. It's on like 5th  
21 and Idaho.

22 Q. Do you remember telling Deputy Williams it was the  
23 American?

24 A. Yes.

25 Q. Okay.

1 A. I don't remember telling him. I got hit so hard  
2 that my brain was bleeding, so.

3 Q. And so -- but you don't remember telling Deputy  
4 Williams that?

5 A. Vaguely, not really. You know, I can't remember  
6 that much.

7 Q. Okay. So you had this hotel room at the -- you had  
8 this hotel room. Was that here in Elko?

9 A. Yes.

10 Q. And was all of your -- was all of your contact with  
11 Mr. Yowell that day within Elko County, State of Nevada?

12 A. Yes.

13 Q. Okay. So you started the day at this -- at this  
14 hotel. What about the afternoon, what took place in the  
15 afternoon?

16 A. What take place, we were hanging out and everything  
17 was good. And we were going to go see a friend, and he  
18 just tripped the fuck -- or, excuse me, he just tripped  
19 out and started like hitting me. And I was like, what  
20 the hell? I thought he was going to stop, but he didn't  
21 stop. And then I couldn't see so I told him you got to  
22 drive, man. And I jumped in the passenger seat, and we  
23 took off.

24 And he was like, huh-huh, we're going to Lee, and I  
25 was like, why? He goes -- he goes, because I'm going to

1 kill you. I was like, what? And I was like, no, I  
2 don't want to go. I don't want to go. And he was,  
3 well, I'm holding you captive, and I'm going to take you  
4 out to my grandfather's ranch, and I'm going to shoot  
5 you in the dog shed. And I said, okay. What else can I  
6 say?

7 THE COURT: Do you still have candy in your  
8 mouth?

9 THE WITNESS: No, I don't.

10 THE COURT: Okay. So you said you were going  
11 to -- he's taking you to Lee, and he's going to shoot  
12 you where?

13 THE WITNESS: In the -- they call it -- it's  
14 a shed.

15 THE COURT: What did you say?

16 THE WITNESS: Dog house.

17 THE COURT: Dog house, okay.

18 BY MR. BARAINCA:

19 Q. Do you remember what started the argument?

20 A. I don't. It was -- just came out of nowhere. It  
21 was weird but...

22 Q. Do you remember telling Deputy Williams that it was  
23 over Mr. Yowell's ex-girlfriend?

24 A. I don't recall that.

25 Q. You don't recall that, okay. And so do you own any



1 vehicles, ma'am?

2 A. Huh?

3 Q. Do you own any vehicles?

4 A. Yes, I do.

5 Q. What do you own?

6 A. I own a -- I can't remember what year it is, but  
7 it's a Chrysler.

8 Q. What color is it?

9 A. White.

10 Q. Was this the vehicle that you guys had at this  
11 hotel?

12 A. Yes.

13 Q. Okay. Now, so when -- so how did he first -- so  
14 what did Mr. Yowell first do to you that you remember?

15 A. What did he do what?

16 Q. So what was the first visible contact of that? Did  
17 he hit you?

18 A. Yeah, he just hit me.

19 Q. And was that a -- how did he hit you? Was that a  
20 punch or a slap?

21 A. Yeah, it was a punch. It was all punches.

22 Q. Okay. And where did he you at on --

23 A. On my face.

24 Q. On your face. And now, were you in the car at this  
25 point in time?

1 A. Yeah -- yes.

2 Q. Were you still at the hotel when this happened?

3 A. No, we were driving.

4 Q. Where were you -- do you recall where you were at?

5 A. Like 5th and -- I can't remember what street it is.  
6 It's by the old -- old colony.

7 Q. Okay. Were you still in Elko, though?

8 A. Yes.

9 Q. Okay. So you said that he -- and so did you ever --  
10 while you were in Elko, did you ever tell Mr. Yowell to  
11 let you out of the vehicle?

12 A. Yes, I did.

13 Q. Would he let you?

14 A. Huh-huh, he was driving. He just pushed the gas  
15 faster.

16 Q. Did you want to travel with him?

17 A. No, I didn't. He doesn't even have a license. Why  
18 would I let him drive my car? I couldn't see so he had  
19 no choice but to drive.

20 Q. Why couldn't you see?

21 A. My face was totally -- like it was -- he was  
22 laughing at it. He thought it was funny.

23 Q. So swelling causes it to where you couldn't see?

24 A. Yes.

25 Q. Where did that swelling first occur?

1 A. I don't know. I mean, it happened so fast.

2 Q. Was it -- were you still in town at the very least?

3 A. Yeah.

4 Q. Okay.

5 A. Yes.

6 Q. What happened after -- so you also testified that he  
7 said that he was going to take you out and shoot you.  
8 Where did that statement come? Where were you guys at  
9 when he made that statement?

10 A. Because my face was getting bashed in, I don't  
11 recall exactly where it was.

12 Q. Okay. Do you remember if it was still in Elko or --

13 A. I don't know. We could have been in Elko. Yeah,  
14 most likely it was in Elko. I'm going to say yes.

15 Q. Okay. Do you recall about how long this was after  
16 he started hitting you?

17 A. No, I don't recall.

18 Q. Do you remember where you went from there?

19 A. Just the same (indiscernible), you know. I'm trying  
20 to remember.

21 Q. Where did -- so where was Mr. Yowell taking you,  
22 saying he was going to take you?

23 A. He was taking me to his grandfather's ranch to take  
24 me to a shed to shoot me with a shotgun.

25 Q. Where is that ranch at?

1 A. In Lee, Nevada, South Fork.

2 Q. And, ma'am, I understand that I'm asking a bunch of  
3 questions that sound obvious, but it's just we're making  
4 a record. But how do you get out to this ranch?

5 A. You just go out to Spring Creek and you take that  
6 first four-way into (indiscernible) and go straight out.

7 Q. And which highway do you take?

8 A. I don't recall what it is, Lamoille Highway, and the  
9 first intersection.

10 Q. Now, did -- while you were traveling out there, did  
11 -- how many times did you ask Mr. Yowell to let you go?

12 A. I could say a couple times. I -- it's kind of like  
13 a blur but...

14 Q. Do you remember when you stopped?

15 A. We slowed down at the intersection on Lamoille  
16 Highway and -- to take a right. We were driving down  
17 that -- I don't know what it -- I don't remember what  
18 like road it is, but I kept telling him to pull over and  
19 -- oh, finally, I grabbed my gear shaft, because I was  
20 in the passenger seat, put it in park, and then put it  
21 back in drive, and then I think I tried to jump out or  
22 something and -- or jump in the back seat. And I was  
23 trying to get my stuff from the back, and he stopped the  
24 car and started like beating me up in the back seat, so.

25 MR. BARAINCA: May I have the Court's brief



1 indulgence, please?

2 THE COURT: You may.

3 BY MR. BARAINCA:

4 Q. Do you remember the injuries that you had?

5 A. I had lacerations on my face, which I had to have  
6 stitches in three different places.

7 Q. Is there any scarring from that?

8 A. I have little ones on my face, but, yeah, I got  
9 three places where I got stitches. I had swelling of  
10 the brain -- or bleeding of the brain, I'm sorry,  
11 swelling of the face. I think that's it.

12 Q. So do you remember where you stopped at on the  
13 highway?

14 A. It was dark and -- and plus, I couldn't see that  
15 well. I couldn't see at all really, so.

16 Q. Do you remember who you had contact with later that  
17 day or that night?

18 A. Some guy pulled up in a truck, and I couldn't see  
19 and flagged him down. And he started to act like --  
20 Darwyn tried to act like nothing was going on, but I'm  
21 all bloody and everything.

22 Q. What was Darwyn saying when these folks arrived?

23 A. He was just -- he was like acting like -- I can't  
24 remember how he said it, but like hi, you know,  
25 something -- you know, we're okay, or something like

1 that. And I was like -- and I told him -- I told that  
2 guy, I said, we're not okay. I'm not okay. And like he  
3 helped me, and he told Darwyn to step away from the  
4 truck or step away from me or something like that.

5 And he goes, what do you want me to do? And I said,  
6 can you call the cops for me? He was like, yeah. So he  
7 called the cops, and Darwyn took off with my purse and  
8 my wallet. And I don't know if he took my keys. I  
9 don't know. And so the guy and his wife and his  
10 daughter, they kept me in the truck, and the police came  
11 with an ambulance. I got in the ambulance, and I  
12 blacked out for like two days.

13 Q. Do you remember having any conversation with  
14 Deputy Williams while you were at the hospital?

15 A. Kind of. Because he was like, you remember me,  
16 don't you -- or I know you. And I said, I can't even  
17 see you. If I did know you, I wouldn't know. I  
18 couldn't -- you know what I mean? I can't see you.

19 Q. You couldn't see him while he was standing there  
20 talking to you?

21 A. My eyes were so swollen, it was -- I couldn't see.

22 Q. So do you remember telling -- while you were at the  
23 hospital, do you remember telling Deputy Williams that  
24 you guys were staying at the American Inn, room 28?

25 A. No, I blacked out totally. I don't remember at all.

1 Q. Do you remember telling him that the argument  
2 started over your -- a fight over Darwyn's  
3 ex-girlfriend?

4 A. Nope, I don't recall that either.

5 Q. I just have to ask each --

6 A. Yeah, that's fine.

7 Q. I have to ask each of these.

8 A. That's fine.

9 Q. Do you remember telling Deputy Williams at this time  
10 you didn't want to go to Lee with Darwyn, and he started  
11 punching you -- or he punched you?

12 A. I don't recall, but I know -- I don't remember -- he  
13 must have asked me what happened, and I told him.

14 Q. Do you remember -- do you remember telling Deputy  
15 Williams that you -- you asked Darwyn to let you go --

16 A. Uh-huh.

17 Q. -- various times?

18 A. Uh-huh, yes.

19 Q. Do you remember telling --

20 A. I don't remember telling him, but that makes --

21 Q. But you remember that you did that?

22 A. Yes, you're refreshing my memory, yeah.

23 Q. Okay.

24 A. Yes.

25 Q. Do you recall how many times you told Darwyn not to

1 -- or to let you go?

2 A. I don't. I don't.

3 Q. And what would he say each time?

4 A. No. No, I'm holding you captive. I was like, what,  
5 you know.

6 Q. So do you remember going to the hospital at all?

7 A. No.

8 Q. What's the next thing you remember after that night?

9 A. Waking up in the hospital like two days later.

10 Q. And which hospital were you at?

11 A. U of U, University of Utah.

12 Q. When you woke up, did you have any pain?

13 A. Yes, I did. I was on pain pills for a week, over a  
14 week.

15 Q. How long did the pain last?

16 A. What do you mean, like -- for about over a week.

17 Q. Okay. So you did have pain for over a week?

18 A. About a week and a half.

19 Q. Now, could you describe the pain that you were  
20 having?

21 A. My head. My head's been pounding. It's just --  
22 it's just like headaches all the time.

23 Q. Was there any pain to your face?

24 A. I don't really remember.

25 Q. But you said you did have to have stitches?



1 A. Yeah, I did. Yes, I did.

2 Q. But mostly a pounding headache for the most part?

3 A. Yes.

4 Q. Okay.

5 MR. BARAINCA: Your Honor, may I approach?

6 THE COURT: You may.

7 MR. BARAINCA: Your Honor, at this point in  
8 time, the State is offering Exhibit 16 into evidence.  
9 It's the certified copy of the medical records from  
10 NNRH.

11 THE COURT: Mr. Gaumond, any objection?

12 MR. GAUMOND: Well, reserving the right to  
13 object, I would inquire if they filed the notice that  
14 they were going to offer that with the custodian of  
15 records certificate.

16 MR. BARAINCA: It was filed a couple days  
17 ago.

18 MR. GAUMOND: A couple days ago. Okay, the  
19 rule says ten days. Does the State agree with that?

20 MR. BARAINCA: Yes, it does, but -- yes, it  
21 does, but also at the same time, Judge, Mr. Gaumond has  
22 had these records for some time. They were discovered  
23 and -- they were discovered July 7th, so. And there was  
24 a discussion between Mr. Gaumond and Mr. Thompson about  
25 the admissibility of these -- or at least, at the very

1 least, the marking of these -- of the records of these  
2 -- these records being brought to the preliminary  
3 hearing, so.

4 MR. GAUMOND: I've had the records for over  
5 ten days, but it says the intent to offer them has to be  
6 filed ten days. That's under NRS 52.260. And the  
7 conversation between Mr. Thompson, and (indiscernible)  
8 that Mr. Barainca is referencing, was, likewise, two  
9 days ago, and this Court has not shortened time for good  
10 cause, so. If there's good cause shown, the Court can  
11 go lower than ten days. I haven't seen good cause yet,  
12 especially when records are in existence for over ten  
13 days. It's not like these records just came out two  
14 days ago.

15 THE COURT: Mr. Barainca.

16 MR. BARAINCA: I'll submit.

17 MR. GAUMOND: Does the Court have a copy of  
18 the notice that Mr. Barainca is referencing?

19 THE COURT: No, I don't have a copy of it,  
20 Mr. Gaumond.

21 MR. GAUMOND: I'm wondering if Mr. Barainca  
22 has the copy of the notice that was filed in the court.

23 MR. BARAINCA: There's a copy of it.

24 MR. GAUMOND: Okay. All right, and then did  
25 the Court want -- Mr. Barainca is right, it's two days,

1    which, of course, is less than ten days, but would the  
2    Court like to inspect?

3                   THE COURT:    Sure.

4                   (Whereupon, The Court and the Clerk confer)

5                   THE COURT:    Mr. Barainca, elaborate on some  
6    good cause for me.

7                   MR. BARAINCA:  I'll submit it, Judge.

8                   THE COURT:    Mr. Gaumond, you've had them  
9    since when, the notice --

10                  MR. GAUMOND:  Well, I'm not sure where in my  
11   office it's at.  I mean, I can take at face value the  
12   certificate of service, which still would put it eight  
13   days late, and the State, when given the opportunity to  
14   present good cause, has said they'll submit it, I  
15   mean --

16                  MR. BARAINCA:  Judge, it was something that I  
17   caught --

18                  MR. GAUMOND:  Your Honor --

19                  MR. BARAINCA:  It was something that I caught  
20   and --

21                  THE COURT:    Hang on, Mr. Barainca.

22                  MR. BARAINCA:  Sorry.

23                  THE COURT:    Go ahead.

24                  MR. GAUMOND:  Okay.  I guess they want to  
25   present good cause now.  I mean, they just -- it seemed

1 like they forfeited the opportunity. So, Your Honor,  
2 when given the opportunity to present good cause,  
3 Mr. Barainca responds -- if everything else wasn't  
4 failed their position, that is.

5 THE COURT: Mr. Barainca, go ahead.

6 MR. BARAINCA: Your Honor, this is something  
7 that the State caught when prepping for this preliminary  
8 hearing, notice that this was -- notice this was there.  
9 Also, in -- also with this, Judge, there's been ample  
10 opportunity to inspect, and there are also remedies for  
11 Mr. Gaumond. The evidence shouldn't be admitted, or  
12 Mr. Gaumond is also entitled to a continuance.

13 But then, also, Judge, I just wanted -- I  
14 would say this is what -- this was what the State saw.  
15 I had these records, no notice. We filed it. We got it  
16 there. There was a discussion -- Mr. Gaumond has had  
17 these -- has had these records for some time so he has  
18 had a chance -- the opportunity to inspect them.

19 MR. GAUMOND: And, Your Honor, the State has  
20 too, even less reason to be allowing a late notice.  
21 It's not like I had the records and they didn't. If I  
22 had the records, they had the records too for the same  
23 amount time and ample opportunity to file this on time  
24 rather than late.

25 THE COURT: Let me ask you this,



1 Mr. Barainca. Has this been your case all the way  
2 through --

3 MR. BARAINCA: No.

4 THE COURT: -- and Mr. Thompson was the  
5 charging attorney?

6 MR. BARAINCA: Yes, Your Honor.

7 THE COURT: And Mr. Thompson, has he prepped  
8 the majority of this, and did you just pick this up?

9 MR. BARAINCA: Yes, but I'm not going to  
10 throw Mr. Thompson under the bus.

11 THE COURT: I'm not asking you to.

12 MR. BARAINCA: I'm just going based on --  
13 just going based on my office and that Mr. Gaumond has  
14 had the -- has had these records or at least -- our  
15 discovery log says that they were discovered out on  
16 July 7th of this year.

17 THE COURT: I'm going to go ahead and allow  
18 it with objection from Mr. Gaumond.

19 Go ahead.

20 (Whereupon, Plaintiff's Exhibit 16 admitted)

21 BY MR. BARAINCA:

22 Q. Now, ma'am, what belongings did Mr. Yowell take from  
23 you from your car?

24 A. My purse --

25 THE COURT: Mr. Yowell, you -- first of all,

1 let's stop. Mr. Yowell, you need to quit making facial  
2 expressions. I'm not a hundred percent certain if  
3 you're trying to catch the attention of the witness,  
4 however, you can't do that. You can't intimidate the  
5 witness.

6 Is that understood?

7 THE DEFENDANT: (No audible response)

8 THE COURT: So I'm telling you --

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: -- you've been bobbing back and  
11 forth. I've been paying attention, but I'm telling you  
12 enough is enough, all right?

13 Go ahead, Mr. Barainca.

14 BY MR. BARAINCA:

15 Q. So what possessions of yours did Mr. Yowell take  
16 from your car?

17 A. He took my purse and my belongings in there, my  
18 wallet, and I don't know what else was in there.

19 Q. And so is Mr. Yowell's -- where you were going to  
20 Lee in South Fork -- or is this on the reservation?

21 A. It's on the reservation.

22 Q. And did you have any other contact with Mr. Yowell  
23 after this incident?

24 A. Did I have any contact with him?

25 Q. Yes, ma'am.

1 A. No. No, sir.

2 Q. So did he leave you with these folks that pulled  
3 over?

4 A. Yeah, he took off running with my purse, and I don't  
5 know where he went but...

6 THE COURT: He took off what?

7 THE WITNESS: Running --

8 THE COURT: Running?

9 THE WITNESS: -- in the dark.

10 THE COURT: Okay.

11 THE WITNESS: So I'm assuming he went to his  
12 grandmother's house.

13 MR. BARAINCA: I'll pass the witness, Your  
14 Honor.

15 THE COURT: Thank you, Mr. Barainca.

16 Mr. Gaumond, cross-exam.

17 MR. GAUMOND: Yes, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. GAUMOND:

20 Q. Ms. Ortega, in the last ten years, have you been  
21 convicted of a felony?

22 A. No, I think -- yeah -- I don't know. I had an  
23 assault resulting in serious bodily injury.

24 Q. You said assault?

25 A. Assault resulting in serious bodily injury.

1 Q. Where was that conviction out of?

2 A. Where? Here -- or Reno, I apologize.

3 Q. No worries. So on the date of this incident, were  
4 you taking medication?

5 A. I do take medication. I take a psychiatric  
6 medication.

7 Q. Well, let's focus on this day that you said this  
8 happened.

9 A. Uh-huh.

10 Q. Were you on those medications on that day?

11 A. Yes.

12 Q. Okay. Were you taking them as prescribed?

13 A. Yes.

14 Q. And what were they?

15 A. I don't recall what they are. I just get them and  
16 take them. They're for bipolar, manage -- or major  
17 depressive disorder, and post-traumatic stress disorder.

18 Q. Were you taking any mind-altering substances on this  
19 day?

20 A. No.

21 Q. And just to clarify, does that include alcohol? You  
22 didn't consume any alcohol on that day?

23 A. No.

24 Q. Now, you talked about how Mr. Yowell hit you.

25 Didn't you try to hit him as well?



1 A. Out of defense, yes.

2 Q. How did you try to hit him?

3 A. To block his hits. They were full force punches to  
4 my face, directly. I tried to put my hand up, and then  
5 I tried to defend myself to push him away, and I  
6 couldn't because he's much more stronger than me. I  
7 didn't know what else to do.

8 Q. Did you throw punches back?

9 A. I may have, yes.

10 Q. But you're not positive?

11 A. No, I didn't start it.

12 Q. Okay. At any point did you bite Mr. Yowell?

13 A. Excuse me?

14 Q. At any point did bite Mr. Yowell?

15 A. I don't recall. Like I said, I had a brain injury  
16 so I can't remember everything to a -- to a total fact.

17 Q. Now, you testified earlier that you didn't want  
18 Mr. Yowell in the car. Am I correct on that?

19 A. I didn't say that I didn't want him in the car  
20 because we were going to go see a friend, and he just  
21 started hitting me. I couldn't see so I had to ask him,  
22 can -- you have to get in the driver's seat. I'm  
23 bleeding. I can't see. And so he jumped in the  
24 driver's seat. I don't recall asking him to get out but  
25 -- oh, no, I did. I did along the way. I did, yes.



1 Yes, I did.

2 Q. But at some point you wanted him to drive?

3 A. I couldn't see, yes. I had no other thing to do,  
4 like...

5 Q. So when you wanted him out of car, that was before  
6 you let Mr. Yowell drive your car?

7 A. After, because I don't -- like I have PTSD, and I'm  
8 dealing with my past issues when I deal with PTSD. The  
9 first thing that popped in my head is I need to be safe,  
10 you know, and he's supposed to be my safety, like  
11 someone I could trust and, you know, and I thought that  
12 would end right there, but it didn't.

13 Q. So Ms. Ortega, how long did you allow Mr. Yowell to  
14 drive your car?

15 A. Maybe a half hour or something -- maybe less than  
16 that. I don't know. It was probably less. I don't  
17 know how long.

18 Q. Now, you said to go to a friend. Where is the  
19 friend's place?

20 A. It's up on the colony.

21 Q. Okay, when you say "colony," it looks like you were  
22 referencing in front of you. Are you referring to the  
23 Elko Band Council?

24 A. The --

25 Q. Okay. I'll rephrase. What reservation are you

1 referring to?

2 A. The one here, up top.

3 Q. Are you pointing north right now?

4 A. I guess that's north. I don't know.

5 Q. Okay. So you're pointing in front of you.

6 A. Okay. There's a reservation. It's just spread out.  
7 There's three of them. There's one up top, there's one  
8 lower, and then one old. The one we went to was the one  
9 up top -- or we were going to. We didn't make it even  
10 close to there.

11 Q. Okay.

12 A. We were all downtown land.

13 Q. So you stated Mr. Yowell started striking you.  
14 Where were you geographically at that time?

15 A. We were over on like 5th and -- I don't know. It's  
16 not Oak, a little bit further down.

17 Q. Okay. So the way that you drive, how long would it  
18 ordinarily take to go to your friend's place at the  
19 reservation?

20 A. About 10 or 15 -- 10 or 15 minutes maybe, not very  
21 long.

22 Q. As a result of this incident, did you ever apply for  
23 a restraining order?

24 A. Yes, I did, both through the tribe and through  
25 downtown. Apparently, it's a six-month TPO.

1 Q. Did you have to attend court for either one?

2 A. No, they did the process -- we did the paperwork,  
3 handed in the paperwork, and we got it all taken care  
4 of.

5 Q. Now, for the protective order in town --

6 A. Uh-huh.

7 Q. -- how long did that last?

8 A. Six months.

9 Q. So getting to the point where you saw this  
10 gentleman, that was on Jiggs Highway?

11 A. Huh?

12 Q. When you noticed a man, a woman, and their daughter  
13 --

14 A. Yes.

15 Q. -- that was on Jiggs?

16 A. Yeah, that's the highway, Jiggs Highway.

17 Q. Okay. So Mr. Yowell was not physically stopping you  
18 from going to them, did he?

19 A. No, huh-huh. He was like standing in front of me  
20 and like trying to reassure them that we're okay, but I  
21 was trying to go around him, but I couldn't see, you  
22 know.

23 Q. Based on you not being able to see, how do you know  
24 Mr. Yowell was in front of you?

25 A. I could like barely -- like I can barely see I

1 should say.

2 Q. So you testified earlier, after Mr. Yowell had left  
3 that area by the Jiggs Highway, you didn't have any  
4 further contact with him?

5 A. No.

6 Q. Does that include telephonic contact?

7 A. No contact with him; no phone, no in-person, no  
8 whatever else there is.

9 Q. Okay.

10 MR. GAUMOND: I'll pass the witness.

11 THE COURT: Thank you, Mr. Gaumond.

12 Mr. Barainca, do you have redirect?

13 MR. BARAINCA: Yes.

14 REDIRECT EXAMINATION

15 BY MR. BARAINCA:

16 Q. Ma'am, so is it fair to say that as you're  
17 testifying, things are coming back to you?

18 A. A little bit. It's still foggy. I don't know.  
19 Yeah, it's still a little foggy, but I try not think  
20 about it. It's a little traumatic.

21 Q. On cross-examination, you testified that you let him  
22 drive and that you thought it would end, but it didn't.

23 What were you talking about?

24 A. What do you mean?

25 Q. After Mr. Gaumond -- after Mr. Gaumond asked you



1 about letting Darwyn drive your car, you testified that  
2 you said that you did and that you thought it would end,  
3 but it didn't.

4 What were you referring to?

5 A. Probably the punches.

6 Q. So when -- so you testified earlier that you had  
7 asked -- that you asked Mr. Yowell to let you out of the  
8 car.

9 A. Yeah.

10 Q. Was being able to walk around when the folks showed  
11 up, was that the first time that you had a chance to  
12 walk around or be out of the vehicle?

13 A. Uh-huh.

14 THE COURT: Is that a yes?

15 THE WITNESS: Yes, sorry.

16 THE COURT: Okay.

17 MR. BARAINCA: Yeah, you just have to say yes  
18 or no. We're recording.

19 THE WITNESS: Okay.

20 MR. BARAINCA: It makes it easier on the  
21 reporter.

22 THE WITNESS: Okay.

23 MR. BARAINCA: Thank you.

24 BY MR. BARAINCA:

25 Q. But until then, would Mr. Yowell let you go?



1 A. No. Nope.

2 Q. So you were able to -- you said you were able to see  
3 a little bit. Like what were you able to see?

4 A. It was very minimal. I think my right eye was more  
5 swollen than my left eye.

6 Q. Could you make out faces?

7 A. Blurs. I could barely -- I --

8 Q. Could you see light?

9 A. I could barely see, like even going to the --  
10 getting out of the car trying to walk, I mean, I was off  
11 balance already because of getting hit, but I had to  
12 feel the car to make my way around.

13 MR. BARAINCA: Pass the witness, Your Honor.

14 THE COURT: Thank you. Mr. Gaumond, do you  
15 have any recross?

16 MR. GAUMOND: Yes.

17 RECROSS-EXAMINATION

18 BY MR. GAUMOND:

19 Q. So during this time that you say that Mr. Yowell  
20 wouldn't let you go, you had a phone on you, correct?

21 A. Yes.

22 Q. Mr. Yowell didn't take that phone away from you?

23 A. I think he tried to.

24 Q. But he didn't succeed?

25 A. I think he did -- no, he -- he tried to take it away

1 from me, and I kept trying to pull it away from him.

2 Q. So when you saw the gentleman, the lady, and their  
3 daughter, to the best of your recollection, you had your  
4 phone on you, correct?

5 A. No, I didn't. They found the phone in the car.  
6 They found my phone, his phone, I think my -- possibly  
7 my keys. Because I was shocked that they had -- yeah,  
8 because I had to get a whole new phone because they  
9 won't let my property go right now.

10 MR. GAUMOND: I'll pass the witness.

11 THE COURT: Thank you. Can --

12 MR. BARAINCA: The State would like --

13 THE COURT: -- Ms. Ortega be excused, or  
14 would you like her retained?

15 MR. BARAINCA: The State would like her  
16 retained, Judge.

17 THE COURT: Okay. You can have a seat  
18 outside.

19 Your next witness?

20 MR. BARAINCA: Ms. Green.

21 THE COURT: Will you raise your right hand to  
22 be sworn, please. Do you swear the testimony you're  
23 going to provide to the Court today will be the truth,  
24 the whole truth, and nothing but the truth, so help you  
25 God?

1 MS. GREEN: Yes, sir.

2 THE COURT: All right. I need you to state  
3 your name and spell your name for the record. Have a  
4 seat. Go ahead and remove your mask, please.

5 THE WITNESS: Okay. Mikala Green;  
6 M-I-K-A-L-A, G-R-E-E-N.

7 THE COURT: Mr. Barainca, go ahead.

8 MR. BARAINCA: Thank you, Your Honor.

9 MIKALA GREEN

10 (Sworn as a witness, testified as follows)

11 DIRECT EXAMINATION

12 BY MR. BARAINCA:

13 Q. Ma'am, do you currently reside in Elko County, State  
14 of Nevada?

15 A. Yes, sir.

16 Q. And have you ever come in contact with -- or do you  
17 ever have occasion to travel on the Jiggs Highway or  
18 SR 228?

19 A. Yeah, that's the only way home.

20 Q. And so that's a way for you -- and are you married?

21 A. Yes.

22 Q. What's your husband's name, ma'am?

23 A. Tray.

24 Q. And do you have any children?

25 A. Yes.

1 Q. And who are your children?

2 A. Madison, Kelin (phonetic), and Dein (phonetic).

3 Q. Now, did -- do you remember traveling on the Jiggs  
4 Highway -- or did you travel on the Jiggs Highway on  
5 June 5th of 2020?

6 A. Yes.

7 Q. And do you recall an incident that brings us into  
8 court today?

9 A. Yes.

10 Q. Now, just going through the first part of the  
11 incident, what do you first remember?

12 A. Seeing a car in the middle of the road. We couldn't  
13 tell if it was moving or not.

14 Q. Did it have flashers on?

15 A. No.

16 Q. Where was the car at in relation to the road?

17 A. In the middle.

18 Q. So was it in the travel lane?

19 A. It was in both travel lanes.

20 Q. Is there a -- do you recall if there's a double  
21 yellow or a line in the middle of the highway?

22 A. Yes.

23 Q. There is one?

24 A. Yes.

25 Q. And so was the -- was this car that you're

1 describing straddling that line?

2 A. Yes.

3 Q. Do you recall what color of that car?

4 A. White.

5 Q. White. Okay, did you have any occasion to see  
6 people there at the -- at this scene?

7 A. Yes.

8 Q. And is one of those gentleman here in court today --

9 A. Yes.

10 Q. -- or one of these people here in court today?

11 A. Yes.

12 Q. Now, could you -- where is he seated, ma'am?

13 A. Over there.

14 Q. At the Defendant's table?

15 A. Yes.

16 Q. What's he wearing?

17 A. A red jumper.

18 MR. BARAINCA: And, Your Honor, may the  
19 record reflect that the witness has identified the  
20 Defendant.

21 THE COURT: The record will so show.

22 BY MR. BARAINCA:

23 Q. Now, did you see anybody else there?

24 A. Yes.

25 Q. And who was that?



1 A. I think it's the lady, but her face was so swollen  
2 that night, that I -- yeah, I couldn't recognize her  
3 today if it --

4 Q. There was a lady there --

5 A. Yes.

6 Q. -- with a swollen face?

7 A. Yes.

8 Q. And how bad were the injuries?

9 A. Very bad.

10 Q. When you were talking to her, could she see?

11 A. No. She kept telling me her eyes were bleeding.

12 Q. Now, what was Mr. Yowell doing while you were --  
13 while you and your husband were there -- or were you  
14 with your husband at this point in time?

15 A. Yes.

16 Q. Okay. What was Mr. Yowell doing?

17 A. In the beginning, he came walking up to our car very  
18 aggressively so we only cracked the window that much,  
19 and when he figured out I was on the phone with 911, he  
20 looked at the lady and goes, you Fing B, I'm going to  
21 jail, and started walking off.

22 Q. For the purposes of the record, what exactly did he  
23 say?

24 A. You fucking bitch, I'm going to jail.

25 Q. And where did he go from there?

1 A. Towards the south.

2 Q. And what's -- and is the reservation to the south?

3 A. Yeah.

4 Q. Now, this is going to sound like a stupid question,  
5 but did all this occur in Elko County, State of Nevada?

6 A. Yes.

7 Q. Now, so after -- so after he left -- after he left,  
8 what happened?

9 A. The woman fell on the ground, and we realized, oh,  
10 she really does need help. He -- we brought her back to  
11 our car and asked the 911 operator if it would be better  
12 if we put her in our car, and we did. And she was  
13 bruised and swollen from ear to ear, and we waited for  
14 the cops.

15 Q. What was her demeanor?

16 A. Very out of it and scared.

17 Q. And what was she saying?

18 A. That he had taken her prisoner and made her drink  
19 and that he was going to kill her. He was taking her to  
20 Lee to kill her.

21 MR. BARAINCA: May I approach, Your Honor?

22 THE COURT: You may.

23 (Whereupon, counsel confer)

24 BY MR. BARAINCA:

25 Q. Ma'am, I'm going to hand you what's been marked for

1 identification as State's Exhibits 3 and -- or 2 and 3,  
2 excuse me.

3 A. Okay.

4 Q. Looking through those pictures, what's going on in  
5 those pictures?

6 A. This is right after they loaded her in the ambulance  
7 out of -- took her out of my car and put her in the  
8 ambulance.

9 Q. Is that how she looked that night?

10 A. Yeah.

11 Q. Is that the lady from that night?

12 A. Yes.

13 Q. And does that -- do those pictures accurately depict  
14 the injuries that you saw?

15 A. Yes.

16 Q. Okay, thank you. Can I have those back from you.

17 A. Yeah.

18 Q. Was this lady saying anything else?

19 A. Just she kept repeating, my eyes are bleeding. My  
20 eyes are bleeding. Are they coming? Are they coming to  
21 help me?

22 Q. Okay, thank you.

23 MR. BARAINCA: I'll pass the witness, Your  
24 Honor.

25 THE COURT: Thank you, Mr. Barainca.

1 Mr. Gaumond, do you have cross?

2 MR. GAUMOND: Certainly, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. GAUMOND:

5 Q. You didn't record this incident in any way?

6 A. No, I was on the phone with 911, and I had my  
7 two-year-old son with me. I was not thinking of  
8 recording it.

9 Q. Okay. So when you say that -- that the gentleman  
10 that you testified to walked away?

11 A. Yes.

12 Q. So you never saw him running away?

13 A. He walked up the hill.

14 Q. Now, you stated that the woman had indicated being  
15 forced to drink. You didn't smell alcohol on her, did  
16 you?

17 A. No, but you couldn't smell much besides the blood  
18 all over her.

19 MR. GAUMOND: I'll pass the witness.

20 THE COURT: Thank you, Mr. Gaumond.

21 Mr. Barainca, do you have any redirect?

22 MR. BARAINCA: No, Your Honor, but the State  
23 would still like Ms. Green held subject to recall.

24 THE COURT: Okay. Have a seat back out in  
25 the --



1 MS. GREEN: Okay.

2 THE COURT: -- lobby please.

3 MS. GREEN: Thank you.

4 THE COURT: Your next witness.

5 MR. BARAINCA: Deputy Williams.

6 THE COURT: Deputy Williams, will you raise  
7 your right hand to be sworn, sir. Do you swear your  
8 testimony today is going to be the truth, the whole  
9 truth, and nothing but the truth, so help you God?

10 MR. WILLIAMS: I do.

11 THE COURT: Have a seat. State your name and  
12 spell your name for the record, please.

13 THE WITNESS: Thank you. My name is Deputy  
14 Calvern Williams; C-A-L-V-E-R-N, W-I-L-L-I-A-M-S.

15 THE COURT: Mr. Barainca, go ahead.

16 CALVERN WILLIAMS

17 (Sworn as a witness, testified as follows)

18 DIRECT EXAMINATION

19 BY MR. BARAINCA:

20 Q. Sir, where do you work?

21 A. At the Elko County Sheriff's Office.

22 Q. How long have you been doing that?

23 A. About six years.

24 Q. How long have you been on the road?

25 A. How long have I been on the road? About three



1 years, I think, something like that.

2 Q. So some time?

3 A. Yeah, I've been out there for a while.

4 Q. And, sir, what are your duties while you're -- are  
5 you a patrol deputy?

6 A. I am. I'm a patrol deputy.

7 Q. What are your duties as a patrol deputy?

8 A. Enforce the laws of the State of Nevada, keep the  
9 peace in the State of Nevada, investigate crimes.

10 Q. Were you working at -- were you working on the  
11 evening of June 5th, 2020?

12 A. I was.

13 Q. And do you recall anything at about 9:20 that night  
14 -- that evening that brings us into court today?

15 A. Yeah, I was dispatched to a domestic dispute where a  
16 female was injured on the -- Highway 228 leading to Lee.

17 Q. And just to kind of just get a layout for -- I  
18 guess, a layout for where you had to go --

19 A. Uh-huh.

20 Q. -- how do you get out to 228?

21 A. You take Lamoille Highway, 227, out towards Spring  
22 Creek. Once you get to the traffic light that's at  
23 Spring Valley Parkway, you make a right onto  
24 Highway 228. It's known as the Jiggs Highway.

25 Q. And how far did you have to travel to where you --

1 before you met with -- or until you made it to the  
2 scene?

3 A. About 30, 32 miles, something like that.

4 Q. Do you recall what mile marker it was on 228?

5 A. It was mile marker 16 on 228.

6 Q. When you got there, who did you meet with?

7 A. I met with a female. Her name was Jean Ortega.

8 Q. Have you had prior contact with Jean Ortega?

9 A. I have.

10 Q. And when you saw her there, could you recognize her?

11 A. I could not.

12 Q. Why was that?

13 A. Her face was badly swollen. There was lacerations  
14 on her face. Her eyes were swollen shut. Her face was  
15 covered in blood. I did not realize that was Jean.

16 Q. And did she say whether or not she could see you?

17 A. No. I asked her if I knew her, and she told me that  
18 she couldn't see me. So she didn't know if I knew her  
19 or not.

20 (Whereupon, counsel confer)

21 BY MR. BARAINCA:

22 Q. I'm going to hand you what's been marked for  
23 identification as State's Exhibits 2 and 3.

24 A. All right.

25 Q. Did you take those pictures, Deputy?

1 A. I did.

2 Q. And what are those pictures of?

3 A. They are photographs of Jean in the back of the  
4 ambulance.

5 Q. And did you take those the night that you met with  
6 her on June 5th?

7 A. I did.

8 Q. And do those pictures fairly and accurately  
9 represent the -- what you saw that night?

10 A. They do.

11 MR. BARAINCA: Your Honor, at this time, the  
12 State's moving for the admission of Exhibits 2 and 3.

13 THE COURT: Any objection, Mr. Gaumond?

14 MR. GAUMOND: No, Your Honor.

15 THE COURT: All right. So 2 and 3 admitted,  
16 no objection.

17 (Whereupon, Plaintiff's Exhibits 2 and 3  
18 admitted)

19 BY MR. BARAINCA:

20 Q. Now, what did Ms. Ortega tell you happened?

21 A. I asked her what happened to her face, and she said  
22 one thing. She said, Darwyn Yowell. And I asked her  
23 where Darwyn was, and she said that Darwyn left and went  
24 to his grandmother's house in Lee. I asked her to tell  
25 me about the incident. She said that Darwyn kept

1 hitting her because she wasn't listening. She explained  
2 that the vehicle stopped there because she was trying to  
3 get into the back seat to get a cigarette, and Darwyn  
4 thought she was going back there to get something to  
5 take him out with. So he started hitting her and pulled  
6 her back in the front seat, placed the vehicle into  
7 park. She was able to get the key out of the vehicle,  
8 run out, and she said she was able to flag down a  
9 gentleman by the name of Tray Green.

10 Q. Did you meet with Mr. Green?

11 A. I did.

12 Q. Was his wife present with him?

13 A. She was in the passenger seat, yes.

14 Q. And do you -- did you see her here in court today?

15 A. I did.

16 Q. Was she the lady that testified right before you?

17 A. She was.

18 Q. And you recognized Jean being here as well?

19 A. Yes.

20 Q. Now, after -- after this contact, what happened  
21 next?

22 A. I had the medical staff -- the ambulance was on  
23 standby. I had them come down and check on Jean. While  
24 they were doing that, I went and checked out the  
25 vehicle. Darwyn was not at the vehicle. There was some



1 blood on the outside of the vehicle on the rear driver's  
2 side taillight. There was blood all over the interior  
3 of the vehicle, some blood spatter in the back seat,  
4 blood smeared on both seats, on the roof of the vehicle.

5 Q. What did you do next?

6 A. After I inspected the vehicle or I -- I looked at  
7 the vehicle, I went back, and I made contact with Jean  
8 in the back of the ambulance. And then I tried to  
9 figure out where Darwyn was. While I was there, when I  
10 took these photographs, I couldn't get too much more out  
11 of Jean at that point. So I let them take her to the  
12 hospital. We attempted to -- we followed 228 down  
13 towards the Lee reservation. We stopped before we got  
14 on the reservation. We never made contact with Darwyn.  
15 So we cleared the scene, and I went to NNRH to meet with  
16 Jean and see if I could do some more follow-up.

17 Q. So where you were at wasn't on the reservation?

18 A. No.

19 Q. Okay. So when you got to NNRH, did you meet with  
20 Jean?

21 A. I did. She was in -- she was in a hospital room. I  
22 asked her to tell me what happened because I remember  
23 while I was investigating her, I thought I remember her  
24 saying that she was waving -- trying to wave people down  
25 in Elko. So it sounded like the incident started in



1 Elko. So I asked her to explain the incident a little  
2 bit more now that we weren't on the side of the road,  
3 maybe a little bit more comfortable setting.

4 And she explained that they were staying at the  
5 American Inn in room 28, and they had gotten into an  
6 argument over Darwyn's ex-girlfriend. And they left the  
7 room and Darwyn started driving, and she said that she  
8 asked Darwyn where they were going. He said they were  
9 going to Lee. She told Darwyn she didn't want to go to  
10 Lee, and that's when Darwyn hit her.

11 Unfortunately, during my interview with Jean, she  
12 kept losing consciousness or she appeared to lose  
13 consciousness. I would have to shake her, or I would  
14 have to prod her, and then she would -- she would come  
15 back to me. But she stated that -- that they got in an  
16 argument. They left. Darwyn said they were going to  
17 Lee. She said she didn't want to go to Lee, and Darwyn  
18 hit her.

19 Q. Did she say whether or not she told Darwyn to let  
20 her go?

21 A. Yeah, I did ask her if at any point she asked Darwyn  
22 to let her out of the vehicle. She said that she asked  
23 Darwyn to let her out of the vehicle several times  
24 actually.

25 Q. And are you familiar with Darwyn Yowell?

1 A. I am.

2 Q. Is he here in court today?

3 A. He is.

4 Q. Where is he seated, sir?

5 A. He's seated to your right at the Defense table with  
6 his attorney.

7 Q. What's he wearing?

8 A. He's wearing the red jail jumpsuit and a blue mask.

9 MR. BARAINCA: Your Honor, may the record  
10 reflect that the witness has identified the Defendant.

11 THE COURT: The record will so show.

12 BY MR. BARAINCA:

13 Q. So did Jean say where this fight started at?

14 A. She said that the fight started -- the first time  
15 she was hit is after they were driving. She mentioned  
16 she got hit up by the -- it sounded like she said up by  
17 the (indiscernible) Park by 4th Street by the old  
18 colony. I tried to get some clarification on that, and  
19 at one point she did clarify that, and then at another  
20 point, she told me that they were never near the old  
21 colony. So I'm not sure if they ever made it to the old  
22 colony.

23 Q. Do you know whether or not Jean was Life Flighted?

24 A. Yeah, I was dispatched a call Dr. Justin Sempsrott  
25 at the emergency room, and when I contacted him by

1 phone, he told me that --

2 MR. GAUMOND: Objection, hearsay.

3 MR. BARAINCA: I'm just -- I'll submit to  
4 where he's going -- or with it on the hearsay, but as  
5 far as saying whether or not Ms. Ortega was Life  
6 Flighted, I could say that's present sense impression.

7 MR. GAUMOND: Of the doctor perhaps or  
8 whoever is on the other side of the call. It may be a  
9 present sense impression for someone else, not the  
10 person on the stand. That exception doesn't apply.

11 MR. BARAINCA: So where I'm going with this,  
12 Judge, is that I'm going to ask him if the doctor told  
13 him whether or not Ms. Ortega was being Life Flighted,  
14 which I am offering that for the truth of the matter  
15 asserted, which is hearsay, but the exception would be  
16 present sense impression. He's saying, yeah, she's  
17 being Life Flighted. He's describing it in realtime.

18 THE COURT: Okay. Mr. Gaumond.

19 MR. GAUMOND: We'll submit it.

20 THE COURT: Go ahead, I'll overrule it.

21 BY MR. BARAINCA:

22 Q. Did you speak with the doctor?

23 A. I did. He told me that Jean's injuries were pretty  
24 significant. There was some bleeding on the brain and  
25 that she was being Life Flighted to Salt Lake for her

1 injuries.

2 Q. Did you talk to Jean about fighting back at all,  
3 about her fighting back with Darwyn?

4 A. Yeah, she said that she tried to defend herself, but  
5 she couldn't. She wasn't able to defend herself from  
6 Darwyn.

7 Q. Did you ever meet with Mr. Yowell when it came to --  
8 did you ever interview him?

9 A. I did. I did interview Darwyn the next day at the  
10 jail.

11 Q. Did you Mirandize him?

12 A. I did. I read him the Miranda warnings and asked  
13 him if he understood those warnings. He told me he did.  
14 I also informed him that at any point, he could  
15 terminate the interview.

16 Q. And did you notice any injuries on Darwyn?

17 A. Yeah, Darwyn had scratches on the left side of his  
18 face.

19 Q. Did that seem consistent with what you were  
20 investigating?

21 A. Not at that time, no. Darwyn explained to me that  
22 he was driving, and while he was driving, Jean was  
23 attacking him. And he told me that every time Jean  
24 would attack him, he would dot her back, but as he said  
25 that, he would lean to his left and jab to the right



1 with his right hand as if he were fending off attack  
2 from the right. So the injuries on the left side of his  
3 face didn't match his actions as defending himself from  
4 the right.

5 Q. And this was during his interview on -- the next --  
6 I guess it would be June 6th?

7 A. Yeah, it was during his interview the next day.

8 Q. Now, taking a step back, throughout your training  
9 and experience, are you trained to look for signs of  
10 battery and injuries?

11 A. Yes.

12 Q. And were the injuries that you saw on Jean  
13 consistent with being battered?

14 A. Yes.

15 Q. And so -- but Mr. Yowell did say he used force?

16 A. Yes. He -- at one point he told me that Jean  
17 couldn't see because she -- she got tattooed, something  
18 to that effect. And he told me at one point that they  
19 got in a fight. He told me he that he hit her. He  
20 wasn't going to deny the fact that he hit her.

21 Q. Now, we can get into it later, but were your  
22 interactions with Jean and with Mr. Yowell recorded by  
23 anything?

24 A. Yes, my body-worn camera.

25 (Whereupon, counsel confer)



1 BY MR. BARAINCA:

2 Q. Sir, I'm handing you what's been marked for  
3 identification as State's Exhibit 17 and -- 17 and 18.

4 A. Okay.

5 Q. Can you tell me what those are?

6 A. They are DVD's of body cam footage at NNRH, and I'm  
7 not sure where the other one was from.

8 Q. But have you reviewed those copies of your body  
9 camera?

10 A. Yeah.

11 Q. And are those fair and accurate depictions of what  
12 happened that night?

13 A. Yes.

14 Q. And what you saw with Jean roadside and at the  
15 hospital?

16 A. Yes.

17 MR. BARAINCA: Your Honor, at this time the  
18 State moves for the admission of State's Exhibit 17 and  
19 18.

20 THE COURT: Mr. Gaumond, any objection?

21 MR. GAUMOND: No, Your Honor.

22 THE COURT: So 17 and 18 will be admitted  
23 without objection.

24 (Whereupon, Plaintiff's Exhibits 17 and 18  
25 admitted)

1 MR. BARAINCA: Here you go, Judge.

2 THE COURT: Thank you.

3 MR. BARAINCA: So the first one will be --

4 just for the record, it will be State's Exhibit 18.

5 BY MR. BARAINCA:

6 Q. Before I continue, did Mr. Yowell say what his  
7 relationship to Jean was?

8 A. Jean explained to me that they were in a dating  
9 relationship. They were on the verge of getting married  
10 and/or divorced. Darwyn did confirm that, during our  
11 interview, say that they were in their honeymoon phase.

12 (Whereupon, Plaintiff's Exhibit 18 played)

13 MR. BARAINCA: I'll play 17 now.

14 (Whereupon, Plaintiff's Exhibit 17 played)

15 BY MR. BARAINCA:

16 Q. And then, Deputy Williams, how many times did you  
17 interview Mr. Yowell?

18 A. Twice.

19 Q. And when was the second interview?

20 A. I think it was on the 13th. I got a call from the  
21 -- June 13th I got a call from the jail staff saying  
22 that Darwyn had some bruises that developed that he  
23 wanted me to take photographs of.

24 Q. And did you see the -- did you see any bruising --  
25 any bruises when you first met with him?

1 A. No, he only had the scratches on the side of his --  
2 the left side of his face.

3 Q. And what injuries was he describing to you when you  
4 met with him the second time?

5 A. He had a wound with some bruising on his left tricep  
6 muscle. He said that they were from when Jean bit him,  
7 and he pointed out some, what he said were teeth marks  
8 from him trying to flex his bicep to get Jean's teeth  
9 off of his arm.

10 Q. Did he say whether or not he hit Jean during that  
11 time?

12 A. Yeah, he said that when he flexed, then Jean  
13 wouldn't let go. He said that's when he started hitting  
14 her. He said that -- he says that's where Jean suffered  
15 most of her damage. It caught my attention because it  
16 was kind of contradicting the first statement where he  
17 stated majority of Jean's damage came from him hitting  
18 her every time she hit him, which was, according to him,  
19 50 to 20 times on the way out to Lee.

20 Q. So the way you're just describing, so is it fair to  
21 say it was different from the first time you interviewed  
22 him on the 6th?

23 A. Yes.

24 Q. Okay. And did he try to show you any injuries on  
25 his left arm on the 6th?

1 A. No.

2 Q. And I believe I've already asked you this, but  
3 again, were all your interactions in this case with  
4 everybody within Elko County, State of Nevada?

5 A. Yes.

6 MR. BARAINCA: I'll pass the witness, Your  
7 Honor.

8 THE COURT: Thank you, Mr. Barainca.

9 Mr. Gaumond, do you have cross?

10 MR. GAUMOND: Yes.

11 CROSS-EXAMINATION

12 BY MR. GAUMOND:

13 Q. Were you inspecting Mr. Yowell's shoulders for  
14 injuries during your first interview?

15 A. I was not.

16 Q. Okay. It's fair to say when you interviewed him,  
17 his shoulders were covered by a shirt?

18 A. Yes.

19 Q. Okay. So the time frame between the first interview  
20 and the second interview was about a week apart.

21 Would you say that's accurate?

22 A. Yes, I would say that's accurate, (indiscernible).

23 Q. Okay. Now, you indicated Mr. Yowell contradicted  
24 himself when talking about most of the injuries coming  
25 from Ms. Ortega trying to hit him versus Ms. Ortega



1 biting him. Did you clarify whether or not Mr. Yowell  
2 was trying to say the biting and the hitting were  
3 simultaneous?

4 A. I'm sorry?

5 Q. Okay. Did you ask Mr. Yowell if the biting that he  
6 claimed Ms. Ortega did and the hitting were  
7 simultaneous?

8 A. No, I didn't ask that question. I did ask him if he  
9 was driving at the time, and that's when -- that's when  
10 I found out he was in the passenger seat when that  
11 happened. In the initial interview, the injuries he  
12 sustained from Jean were from when he was driving to  
13 Lee, which is where I got my contradiction.

14 MR. GAUMOND: I'll pass the witness.

15 THE COURT: Thank you, Mr. Gaumond.

16 Mr. Barainca, any redirect?

17 MR. BARAINCA: Yes.

18 REDIRECT EXAMINATION

19 BY MR. BARAINCA:

20 Q. Did Mr. Yowell say any -- say whether or not he was  
21 in the passenger seat during the first interview?

22 A. During the first interview, no, he did not mention  
23 being in the passenger seat. During the first  
24 interview, he was driving, and he was defending himself  
25 by jabbing out at Jean whenever Jean attacked him.



1 MR. BARAINCA: I'll pass the witness, Your  
2 Honor.

3 THE COURT: Thank you. Mr. Gaumond.

4 MR. GAUMOND: Nothing further.

5 THE COURT: I'm sorry?

6 MR. GAUMOND: Nothing further, Your Honor.

7 THE COURT: Okay. Can Deputy Williams be  
8 excused, or would you like him retained?

9 MR. BARAINCA: The State would like him  
10 retained, Judge.

11 THE COURT: Okay. Let's take a five-minute  
12 break. We'll come back at 2:30.

13 (Whereupon, court recessed)

14 THE COURT: Okay. We'll be back on the  
15 record. Today is the 14th of August, 2:31 in the  
16 afternoon, the Elko Justice Court. The Case No. is  
17 EL-JC-CR-F-20-2845, the State of Nevada versus Darwyn  
18 Ross Yowell. We just took a brief five-minute break.  
19 Deputy Williams was done testifying so I thought,  
20 Mr. Barainca.

21 MR. BARAINCA: Your Honor, the State is  
22 recalling him -- recalling Deputy Williams just to cover  
23 -- just to cover something little that came up during  
24 the break, so.

25 THE COURT: Okay.

1 CALVERN WILLIAMS

2 (Recalled and previously sworn a witness,  
3 testified as follows)

4 DIRECT EXAMINATION

5 BY MR. BARAINCA:

6 Q. Sir, you -- you approached me during the break; is  
7 that correct?

8 A. Yes.

9 Q. And why did you do that, sir?

10 A. I reread my incident report from the first interview  
11 and Darwyn did state to me that there was a bite mark on  
12 his tricep in the first interview.

13 Q. Was the inconsistency a mistake?

14 A. Yes.

15 Q. Okay. Did it help -- did rereading that help  
16 refresh your recollection as to that?

17 A. Yes.

18 Q. Okay.

19 MR. BARAINCA: Thank you, I'll pass the  
20 witness, Judge.

21 THE COURT: Thank you. Mr. Gaumond.

22 MR. GAUMOND: We have no questions of  
23 Mr. Williams.

24 THE COURT: No questions, all right. So do  
25 you still want Deputy Williams to be retained?

1 MR. BARAINCA: Yes, please.

2 THE COURT: All right. Will you have a seat  
3 outside.

4 Your next witness, please.

5 MR. BARAINCA: Recalling Mikala.

6 THE COURT: Ms. Green, you're still under  
7 oath. If you'll have a seat.

8 Go ahead, Mr. Barainca.

9 MIKALA GREEN

10 (Recalled and previously sworn as a witness,  
11 testified as follows)

12 DIRECT EXAMINATION

13 BY MR. BARAINCA:

14 Q. Ma'am, just to cover a couple of questions I should  
15 have asked you when you were in here before. When you  
16 saw Mr. Yowell on the evening of June 5th, did you  
17 happen -- did you get a good look at his face?

18 A. Yeah.

19 Q. Did he have any injuries on his face?

20 A. No.

21 Q. Did he have any scratches on his face?

22 A. None.

23 Q. Anything on the left side of his face?

24 A. No.

25 Q. Okay.

1 MR. BARAINCA: I'll pass the witness, Your  
2 Honor.

3 THE COURT: Thank you. Mr. Gaumond, any  
4 cross?

5 MR. GAUMOND: Yes.

6 CROSS-EXAMINATION

7 BY MR. GAUMOND:

8 Q. Ms. Green, what is the closest proximity you got  
9 between yourself and Mr. Yowell that day?

10 A. Probably two foot.

11 Q. You weren't making it a point to inspect for  
12 injuries were you?

13 A. I was looking at the man. He was coming  
14 aggressively at my car. I was going to get a good look  
15 at him.

16 Q. Was it your point -- was it your purpose rather?

17 A. To get a good look at him, yes.

18 Q. At injuries. You were looking specifically at  
19 injuries?

20 A. Anything, detail.

21 MR. GAUMOND: I'll pass the witness.

22 THE COURT: Thank you, Mr. Gaumond.

23 Mr. Barainca.

24 MR. BARAINCA: Nothing based on that, Judge.

25 THE COURT: And do you still want Ms. Green

1 to be retained, or can she be excused?

2 MR. BARAINCA: Can she be retained, please.

3 THE COURT: All right. You're still being  
4 retained. If you'll have a seat outside again, thank  
5 you.

6 MS. GREEN: Thank you.

7 THE COURT: Your next witness.

8 MR. BARAINCA: Detective Stake.

9 THE COURT: Raise your right hand, Detective,  
10 to be sworn. Do you swear the testimony you're going to  
11 provide to the Court today will be the truth, the whole  
12 truth, and nothing but the truth, so help you God?

13 MR. STAKE: I do.

14 THE COURT: Have a seat. State your name and  
15 spell your name for the record, please.

16 THE WITNESS: Nick Stake; N-I-C-K, S-T-A-K-E.

17 THE COURT: Mr. Barainca, go ahead.

18 NICK STAKE

19 (Sworn as a witness, testified as follows)

20 DIRECT EXAMINATION

21 BY MR. BARAINCA:

22 Q. And, sir, where do you work?

23 A. Elko County Sheriff's Office.

24 Q. What's your position?

25 A. I'm the detective sergeant.



1 Q. Were you the detective sergeant on June 6th, 2020?

2 A. Not yet, no, sir, I wasn't.

3 Q. But were you in the detectives at that point in  
4 time?

5 A. I was.

6 Q. Did you have any contact with Deputy Calvern  
7 Williams in the early morning hours on June 6th?

8 A. I did.

9 Q. And what was the nature of the contact?

10 A. He informed me over the telephone that he was  
11 conducting what he said there -- described to me as a  
12 domestic violence investigation, domestic battery  
13 investigation, and he needed some assistance from me.

14 Q. And what was -- what was your initial involvement in  
15 assisting Deputy Williams?

16 A. He informed me that there was a hotel room he  
17 possibly would like assistance seeking a search warrant  
18 with at the American Inn in Elko, as well as a vehicle  
19 that was parked at mile marker 16 of SR 228, State  
20 Route 228.

21 Q. Did you come across this -- did you go to this  
22 vehicle?

23 A. I did.

24 Q. What kind of vehicle was it?

25 A. If I recall, it was a white Chrysler Concorde.

1 Q. And is this location in Elko County, State of  
2 Nevada?

3 A. It is.

4 Q. And what did you see -- what did you see when you  
5 were looking at this -- at this white Chrysler?

6 A. Well, after I arrived, I examined the exterior of  
7 the vehicle. I saw what appeared to be some small  
8 droplets of red staining covering portions of the  
9 exterior of the vehicle. I also noticed what appeared  
10 to me to be a dark-colored hair approximately six inches  
11 long on the trunk area of the vehicle near where it said  
12 Concorde.

13 Q. And was the red staining, was it consistent with  
14 being blood?

15 A. It appeared to me to be so, yes, sir.

16 Q. Okay. And after you observed this, what did you do  
17 with the car?

18 A. Deputy Cortez was at the vehicle when I arrived so I  
19 requested that she seal the vehicle as evidence and  
20 transport it to the Elko County Sheriff's Office impound  
21 yard as evidence.

22 Q. And what was your intent to having the vehicle  
23 sealed?

24 A. To preserve it as evidence for a later service of a  
25 search warrant or a consensual search, something of that

1 nature, for forensic processing.

2 Q. And did you ever get -- did you ever search the  
3 vehicle?

4 A. I did.

5 Q. And how did you go about the search? Did you get a  
6 warrant, or did you get consent?

7 A. Well, I had two contacts with the vehicle after  
8 that.

9 Q. Uh-huh.

10 A. One, I processed the exterior of the vehicle, and  
11 then on a later date, I obtained consent from  
12 Ms. Ortega, who is the registered owner of the vehicle,  
13 and she provided me with verbal consent.

14 Q. So that first time you had -- the first --  
15 subsequent contact that you had, what did you observe  
16 about the vehicle when you took another look at it?

17 A. Well, I -- the second contact was in the Elko County  
18 Sheriff's Office evidence impound yard, and it was the  
19 same observations as the first.

20 Q. Okay.

21 A. I just processed the exterior of it because I had  
22 concerns of changing weather. It appeared to me like it  
23 might rain so I wanted to get the exterior of the  
24 vehicle processed before the weather was able to destroy  
25 any potential evidence on the outside of the car.

1 Q. And when you did the -- and when you searched the  
2 inside of the vehicle after obtaining the consent from  
3 Ms. Ortega, what did you see?

4 A. I observed multiple areas of red staining throughout  
5 the passenger compartment of the vehicle, as well as  
6 portions of the headliner, windows, seats, floor. There  
7 were multiple items on the inside of the vehicle, which  
8 appeared to have some red stain that was also consistent  
9 with blood as well -- or what appeared to be consistent  
10 with blood.

11 Q. Did you take pictures of the vehicle while you were  
12 doing this?

13 A. I did.

14 Q. And I may have the order jumbled up, so. Let me go  
15 over these. Did you see any blood on the back seat?

16 A. What appeared to be blood, yes, sir.

17 MR. BARAINCA: May I approach, Your Honor?

18 THE COURT: You may.

19 (Whereupon, counsel confer)

20 BY MR. BARAINCA:

21 Q. I'm handing you what's been marked for  
22 identification as State's Exhibit 7 through 15. Can you  
23 tell me what those are, sir?

24 A. They're photographs I took during the processing of  
25 the interior of the vehicle on the 9th of June.



1 Q. And do they detect what you described just now in  
2 your testimony?

3 A. I'm sorry, what's that?

4 Q. Do they depict what you just described in your  
5 testimony, what you observed on that car?

6 A. They do, yes.

7 Q. And are those pictures fair and accurate  
8 representations of what you observed that day?

9 A. They are.

10 MR. BARAINCA: Your Honor, at this time, the  
11 State's moving for the admission of Exhibits 7 through  
12 15.

13 MR. GAUMOND: No objection, Your Honor.

14 THE COURT: Any objection, Mr. Gaumond?

15 MR. GAUMOND: None.

16 THE COURT: All right. 7 through 15 will be  
17 admitted without objection.

18 (Whereupon, Plaintiff's Exhibits 7, 8, 9, 10,  
19 11, 12, 13, 14, and 15 admitted)

20 BY MR. BARAINCA:

21 Q. And starting with Exhibit 7, what's going on with --  
22 or 7 is on the bottom. What's going on in that picture?

23 A. It appears to me to be the -- one of the seats.  
24 It's a close-up view. I can't tell exactly what seat.  
25 I believe it's the back seat of the vehicle. It has my



1 placard number 22 in the middle of what appears to be  
2 several drops of red staining or multiple areas of red  
3 staining that are consistent -- what appears to be  
4 consistent with blood.

5 Q. All right. What about number 8?

6 A. It appears to be a seat cushion on the vehicle with  
7 a placard number 24 that I placed there with several  
8 smaller drops of what appears to be red staining or  
9 blood.

10 Q. Number 9.

11 A. It is a picture of one of the doorjambs of the  
12 vehicle, the bottom doorjamb of the vehicle with placard  
13 number 28 and several drops of red staining as well.

14 Q. Number 10.

15 A. It is one of the front seats of the vehicle with  
16 placard number 29 that I placed there, and to the left  
17 of placard number 29, there is an area of light red  
18 staining in that area.

19 Q. I believe I left off on number 11, or is that number  
20 11 there?

21 A. I have number 10.

22 Q. Okay. So number 11.

23 A. Number 11 is one of the doorjambs from the door  
24 itself of the vehicle that I marked with placard  
25 number 33, and just above the placard on the window of

1 the door, there's another area of what appears to be  
2 some red staining.

3 Q. Number 12.

4 A. Number 12 is the center console of the vehicle. It  
5 appears to be the right side of the vehicle -- or the  
6 right side of the console or the passengers side.  
7 Placard number 37 is placed on the console, and there  
8 are several areas of what appears to be red staining.

9 Q. 13.

10 A. Number 13 is what appears to be a plastic object in  
11 the center console area of the vehicle with placard  
12 number 38, and above placard number 38 there is -- what  
13 appears to be a drop of staining. I can't quite make  
14 out the color in this photo.

15 Q. 14, I believe.

16 A. Number 14 is the headliner of the vehicle in the  
17 front passenger compartment. It's got placards number  
18 41 and 39 placed on the headliner, and there appears to  
19 be several areas of red staining near each of those  
20 placards.

21 Q. And number 15.

22 A. Number 15 is another picture of a seat. It appears  
23 to be the rear seat of the vehicle with placards number  
24 21 and number 20 with several areas of red staining next  
25 to those placards as well.

1 Q. All right, thank you. And if I can get you to pass  
2 those to the (indiscernible).

3 And did you ever have any contact with Ms. Ortega?

4 A. I did.

5 Q. And did you observe any injuries on her when you met  
6 with her?

7 A. I did.

8 Q. Do you recall when you met with her?

9 A. It was June 10th, I believe.

10 Q. So approximately four days after you got involved?

11 A. Yes, sir.

12 Q. And what were the injuries that you observed with  
13 Jean as you were meeting with her?

14 A. I recall several -- well, there was multiple  
15 injuries to her face, and there was also -- if I recall,  
16 there was two what appeared to me to be bruises on her  
17 right inner bicep and I believe on her forearm.

18 Q. And I'm going to hand you what's marked for  
19 identification as State's Exhibits 4 through 6. Could  
20 you tell me what those are, sir.

21 A. Number 4 is a picture I took of the left side of  
22 Ms. Ortega's face using a scale, and it's the cheekbone  
23 area of her face, and there are several areas -- well,  
24 at least two areas in this picture that I can see of  
25 bruising under the eye and near the corner of the mouth,

1 as well as a yellow coloration to the cheek itself.

2 Q. Is there any lacerations in that picture?

3 A. It appears to me that there is a -- a laceration on  
4 her left side of her lip, upper lip.

5 Q. And what's going on in number 5?

6 A. Number 5 is a straight-on view of the left side of  
7 her -- yeah, left side of her face of the eye socket and  
8 cheekbone area, as well as her upper lip. And I observe  
9 discoloration around the eye, what appears to be a small  
10 laceration with several stitches in it, and there's  
11 yellow coloration on her cheek, as well as what appears  
12 to be a laceration on her upper left portion of the lip  
13 and some discoloration in that area as well.

14 Q. Number 6.

15 A. Number 6 is a picture of the right side of  
16 Ms. Ortega's face of the eye socket and right side of  
17 her nose and cheekbone area.

18 Q. Is there any -- is there anything to observe  
19 regarding her eye?

20 A. There is. There is discoloration on the upper  
21 eyelid and lower eyelid. There's a -- also what appears  
22 to me to be several broken blood vessels on the inside  
23 of her eye on the right side of her pupil.

24 Q. And so are all three of these pictures fair and  
25 accurate representations of what you saw on Ms. Ortega



1 that day?

2 A. They are.

3 MR. BARAINCA: Your Honor, at this time, the  
4 State's moving for the admission of Exhibits 4 through  
5 6.

6 MR. GAUMOND: No objection.

7 THE COURT: No objection, Mr. Gaumond. All  
8 right, 4 through 6 we'll admit without objection.

9 (Whereupon, Plaintiff's Exhibits 4, 5, and 6  
10 admitted)

11 BY MR. BARAINCA:

12 Q. And throughout your training and experience,  
13 Detective Stake -- how long have you been working for  
14 the Elko County Sheriff's Office?

15 A. With the Elko County Sheriff's Office, since 2004.

16 Q. And throughout your training and experience, have  
17 you been trained in and have experience in the -- seeing  
18 injuries and figuring out their causes?

19 A. Observing injuries and identifying them, yes, sir.

20 Q. And do the injuries that you observed on Jean Ortega  
21 appear to be -- are they consistent with being battered?

22 A. From my experience, yes, sir.

23 Q. Did you ever -- did you ever have any involvement  
24 with room 28 at the American?

25 A. I did.



1 Q. And what was your -- and what was your involvement  
2 there?

3 A. I believe around 7:30, 7:40 in the morning on  
4 June 6th, I executed a search warrant that I obtained  
5 from the Elko Justice Court on hotel room number 28.

6 Q. And what was the purpose of searching that room?

7 A. Deputy Williams had informed me that the  
8 investigation he was conducting had potentially started  
9 in that hotel room so I executed a search warrant in  
10 there to determine if there was any evidence.

11 Q. Now, when you executed the search warrant, what did  
12 you find?

13 A. I located several items inside the room. There was  
14 some cell phones on the bed. There was a hat, I  
15 believe, on the floor, a notebook on the couch, I  
16 believe, as well as some personal effects. There was  
17 also what appeared to be some items of -- food-related  
18 items. I don't recall exactly what they were, but they  
19 were on the desk, which would have been located to the  
20 right of the door as you walked in.

21 Q. Were there any items in the room that had  
22 Ms. Ortega's name on them?

23 A. I believe the notebook had Ms. Ortega's information  
24 in it, but I don't recall anything else specific in the  
25 room.

1 Q. Okay. And was all your involvement in this case  
2 within Elko County, State of Nevada?

3 A. It was.

4 MR. BARAINCA: Thank you, I'll pass the  
5 witness, Your Honor.

6 THE COURT: Thank you, Mr. Barainca.

7 Mr. Gaumond, cross.

8 MR. GAUMOND: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. GAUMOND:

11 Q. So you were able to examine the interior of the car  
12 that you spoke of, correct?

13 A. Yes, sir.

14 Q. Okay. How did you get into the car?

15 A. I utilized the -- forgive me for asking. Could you  
16 repeat the question for me?

17 Q. So when you saw the car before looking inside, it  
18 had been locked?

19 A. Correct, I believe so.

20 Q. Okay. So how did you get in the car?

21 A. I utilized the car keys itself.

22 Q. And how did you retrieve the keys?

23 A. Deputy Williams provide me those keys at a later  
24 date.

25 Q. Now, other than taking still photos, did you take a

1 video of the interior of the car?

2 A. I did not.

3 Q. Okay. To the best of your knowledge, did anyone  
4 else in your department take any kind of photos other  
5 than you?

6 A. I believe that the other deputies, either Deputy  
7 Williams or Deputy Cortez, took photos, but I am not for  
8 certain which one did.

9 Q. Now, when you talked about preserving evidence for  
10 forensics, what area of forensics were you referring to?

11 A. Well, at the time, I didn't know exactly what was  
12 going to happen until I got in there. So common  
13 procedure in that would be to seal the vehicle and then  
14 determine what you find later on to determine what  
15 forensic processing is needed.

16 Q. Okay. Is that process still ongoing?

17 A. In terms of I have the evidence and I still have the  
18 vehicle so if there was further processing to be done,  
19 it could be.

20 Q. Okay. Is that the intention of you currently?

21 A. Well, I would like to send off blood samples, but I  
22 have not received any information from either the main  
23 deputy on the case or either the Defense or the  
24 Prosecution in any items that they might want processed.

25 MR. GAUMOND: I'll pass the witness.

1 THE COURT: Thank you, Mr. Gaumond.

2 Mr. Barainca.

3 MR. BARAINCA: Nothing based on that, Judge.

4 THE COURT: And can Detective Stake be  
5 excused, or would you like him retained?

6 MR. BARAINCA: He can be excused, Judge.

7 THE COURT: Mr. Gaumond.

8 MR. GAUMOND: For the Defense as well.

9 THE COURT: Okay. Thank you, excuse me,  
10 Sergeant Stake, you can be excused.

11 MR. STAKE: Thank you, sir.

12 THE COURT: Mr. Barainca.

13 MR. BARAINCA: And then the State's going to  
14 recall Ms. Ortega for a couple final questions.

15 THE COURT: Okay. Ms. Ortega, you're still  
16 under oath. Will you take your mask down.

17 Mr. Barainca, go ahead with your questions.

18 JEAN ORTEGA

19 (Recalled and previously sworn as a witness,  
20 testified as follows)

21 DIRECT EXAMINATION

22 BY MR. BARAINCA:

23 Q. Ma'am, you testified a few minutes ago about the  
24 evidence that took place on June 5th, 2020; is that  
25 correct?



1 A. Yes.

2 Q. Now, you were asked several questions regarding the  
3 use of your cell phone.

4 Do you recall that?

5 A. Yes.

6 Q. During the incident, would you have been able to see  
7 your cell phone and able to use -- in order to use it?

8 A. I think I attempted to use it and was not  
9 successful.

10 Q. Why was that?

11 A. I believe he tried to yank it from my hand, and I  
12 don't know if he got it away or I got it away, but I did  
13 try to use -- to reach for the phone.

14 Q. And you were just unsuccessful?

15 A. Yes.

16 MR. BARAINCA: I'll pass the witness, Your  
17 Honor.

18 THE COURT: Thank you, Mr. Barainca.

19 Mr. Gaumond, do you have any cross on that?

20 CROSS-EXAMINATION

21 BY MR. GAUMOND:

22 Q. So while trying to use the phone, you had some  
23 degree of ability to see, correct?

24 A. Ability, I think so. I think that was in town when  
25 I was trying to use my phone.



1 Q. Okay. So at that point --

2 A. Because he -- it didn't stop at one point.

3 Throughout the whole -- the time that we -- from when we  
4 first started to going out to Lee, he kept hitting me,  
5 so.

6 Q. So when you first tried to use the phone inside the  
7 car, you had -- your eyes were not swollen shut?

8 A. They were swollen, but not fully, no.

9 Q. Not fully enough where you can't see the phone?

10 A. Yes, sir.

11 MR. GAUMOND: I'll pass the witness.

12 THE COURT: Thank you, Mr. Gaumond.

13 Mr. Barainca.

14 MR. BARAINCA: Nothing based on that, Judge,  
15 and the State would like Ms. Ortega to still be held  
16 subject to recall.

17 THE COURT: Okay. Mr. Gaumond -- never mind,  
18 Mr. Gaumond. Ms. Ortega, will you have a seat outside.

19 MS. ORTEGA: All right.

20 THE COURT: Mr. Barainca.

21 MR. BARAINCA: Your Honor, at this point in  
22 time, the State rests.

23 THE COURT: Mr. Gaumond, case-in-chief?

24 MR. GAUMOND: The Defense rests.

25 THE COURT: Defense rests. Mr. Barainca.

1 MR. BARAINCA: The State waives its initial,  
2 reserves any rebuttal.

3 MR. GAUMOND: We'll waive as well, Your  
4 Honor.

5 THE COURT: Mr. Yowell, go ahead and stand  
6 for me, please. All right, Mr. Yowell, so the  
7 preliminary hearing has -- slight or marginal evidence  
8 has to be shown by the State on each and every count.  
9 Count 1 would be kidnapping, Count 2 would be -- well,  
10 kidnapping in the first degree, Count 2 is kidnapping in  
11 the second degree, Count 3 is coercion -- let me back  
12 up. Count 2 is in the alternative to Count 1, and first  
13 degree to second degree kidnapping, and then Count 3 is  
14 coercion, which is in the alternative to Counts 1 and 2,  
15 and Count 4 is domestic battery resulting in substantial  
16 bodily harm, and then -- in the alternative to Count 4,  
17 Count 5 is battery resulting in substantial bodily harm.

18 With the evidence that's been provided by the  
19 testimony of the witnesses today, Counts 1, 2, 3, 4, and  
20 5, there has been sufficient evidence to bind you over  
21 to the Fourth Judicial District Court for further  
22 proceedings.

23 Is there anything before we do the final  
24 bindover?

25 MR. BARAINCA: Not for the State, Your Honor.

1                   THE COURT: And with that, you'll be remanded  
2 back to the custody of the Elko County Sheriff's Office  
3 pending the posting of bail.

4                   And we'll be adjourned.

5                   (Whereupon, proceeding concluded)  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T I O N

I, JULIE ROWAN, do hereby certify:

That on August 14, 2020, a preliminary hearing was held in the within-entitled matter in the Elko Township Justice Court, within the State of Nevada, in and for the County of Elko;

That said preliminary hearing was recorded on a recording system, and said recording was delivered to me for transcription;

That the foregoing transcript, consisting of pages 1 through 83, is a full, true, and correct transcript of said recording performed to the best of my ability.

Dated this 21st day of September, 2020.

/s/ Julie Rowan  
Julie Rowan

1 Case No. DC-CR-20-159

2 Dept. No. 1

FILED

2020 NOV 10 AM 10:38

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY 

3  
4  
5  
6 IN THE FOURTH JUDICIAL DISTRICT COURT  
7 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA  
8

9 THE STATE OF NEVADA,

PRETRIAL ORDER  
(Criminal Case)

10 Plaintiff,

11 V.

12 DARWYN ROSS YOWELL,

13 Defendant.  
14 \_\_\_\_\_/

15 **IT IS HEREBY ORDERED** that:

16 1. The above-entitled case shall be tried before a jury commencing Tuesday, the 2<sup>nd</sup> day of  
17 February, 2021, at the hour of 9:00 a.m. Further, the Elko County Jury Commissioner shall draw a panel  
18 consisting of 110 prospective jurors two (2) weeks prior to the scheduled trial date. Three days have been  
19 set aside for the trial in this matter. During Defendant's arraignment hearing held on the 5<sup>th</sup> day of October,  
20 2020, Defendant waived the right to a trial within 60 days.

21 2. The Early Case Conference shall be held on the 19<sup>th</sup> day of January, 2021, at the hour of  
22 3:00 p.m. Counsel shall attend said conference on the record, and expect to discuss whether there is  
23 possible settlement of the case.

24 **PRE-TRIAL MOTIONS**

25 3. All Pretrial Motions, including but not limited to Motions in Limine, Motions to Suppress,  
26 whether filed by the State or Defendant, as well as Offers of Proof by the State of Nevada alleging

NOV 10 2020 PM 11:18



1 uncharged crimes or misconduct by the Defendant that the State intends to introduce in its case in chief,  
2 shall be filed and served on or before forty-five (45) days prior to the scheduled trial date, any oppositions  
3 thereto shall be filed and served within ten (10) days thereafter, and any replies to oppositions shall be filed  
4 and served within five (5) days thereafter. In all situations where Defendant has not waived time, the  
5 deadline for filing all Pretrial Motions shall be thirty (30) days prior to the scheduled trial date; the  
6 deadlines for filing any oppositions and replies shall remain the same. The foregoing Pretrial Motions and  
7 Offers of Proof shall be accompanied by written points and authorities that clearly articulate that party's  
8 position as to why the evidence in question should be admitted or excluded at the trial.

9       **4. Except upon a showing of unforeseen extraordinary circumstances, or unless**  
10 **specifically excused by law, no additional pre-trial motions may be filed or orally presented later**  
11 **than as described above in paragraph 4.**

#### 12 PENDING MOTIONS

13       5. Fifteen (15) days prior to trial, each party shall file a list of any pending motions and  
14 provide a copy to chambers. That list shall include the title of the motion, its filing date, and any  
15 subsequent filings related thereto, including the date of filing. The list shall also include whether a hearing  
16 is requested on any pending motion and an estimate of the time such a hearing will require.

#### 17 TRIAL EVIDENCE

18       6. No later than thirty (30) days before trial, the parties shall meet and confer with respect to  
19 submission of a joint list of witnesses, a joint list of trial exhibits, and a joint list of discovery material  
20 which each party intends to offer in evidence during the course of trial. To accommodate witness  
21 schedules, the parties shall also address the anticipated dates of witness attendance, including any experts.

22       7. The parties shall file and lodge with chambers no later than fifteen (15) days prior to trial  
23 a copy of the joint list of witnesses (including any anticipated appearance dates) and joint list of trial  
24 exhibits (identifying whether a witness or an exhibit is that of the State or Defendant) which each party  
25 intends to offer in evidence during the course of trial. The joint list shall indicate any witness, exhibit, or  
26 other item of evidence to which an objection continues to be raised by the opposing party. If no objection

1 is raised or reserved, the Court will view this as a stipulation of admissibility.

2 8. Trial counsel for all parties shall contact Lani Broxson at the Elko County Clerk's Office  
3 [(775) 753-4600] no later than ten (10) days prior to trial, to arrange a date and time to mark trial exhibits.  
4 All State's exhibits shall be marked in one numbered series (Exhibit 1, 2, 3, etc.). All Defense exhibits  
5 shall be marked alphabetically (Exhibit A, B, C, etc.). All exhibits shall be placed in binders provided by  
6 counsel with a bound copy provided to the court. Once trial exhibits are marked by the clerk, they shall  
7 remain in the custody of the clerk. When marking the exhibits with the clerk, counsel shall advise the clerk  
8 of all exhibits which may be admitted without objection and those that may be admissible subject to  
9 reserved objections.

#### 10 **JURY INSTRUCTIONS AND VERDICT FORMS**

11 9. The Court shall give Instructions 1 and 2 to the jury prior to the commencement of the trial.  
12 The Court shall give instruction 3 during trial, if necessary, and instructions 4 through 22 prior to closing  
13 arguments. Any objection to these instructions shall be filed at least fifteen (15) days prior to the scheduled  
14 trial date. Jury instructions 1-22 can be found online at the Elko County website,  
15 <http://www.elkocountynv.net>. Departments > District Courts > Department 1 > Forms > Criminal Jury  
16 Trial Forms.

17 10. On or before fifteen (15) days prior to trial, the State shall provide to the Court and  
18 opposing counsel its proposed jury instructions and verdict forms. **Both parties are hereby ordered NOT**  
19 **to submit duplicates of Instructions 1-22.** The parties shall then meet and confer regarding the State's  
20 proposed instructions and verdict forms. The parties shall submit to the Court, signed by counsel for both  
21 parties, the instructions and verdict forms upon which they agree, no later than seven (7) days before trial.  
22 Defendant shall submit his/her proposed instructions and verdict forms to the Court no later than seven (7)  
23 days before trial, and to opposing counsel no later than after Defendant's opening statement.

24 (i) Any **pattern instructions** must be ***identical*** to those instructions as they appear in  
25 the most recent publication of the pattern jury instructions and include a citation to the pattern jury  
26 instruction.



1 (ii) Any **original instructions** shall be accompanied by a separate copy of the  
2 instruction containing a citation to the form instruction, statutory or case authority supporting that  
3 instruction. All modifications made to pattern instructions taken from statutory or other authority  
4 shall be specifically noted on the citation page.


5 (iii) On or before seven (7) days prior to trial, counsel shall also jointly provide this  
6 Court with a USB drive ("thumb-drive") containing the complete set of agreed-upon and/or  
7 individually proposed jury instructions and verdict forms in MS Word or WordPerfect, or email  
8 said instructions to the Court's Judicial Administrator. Said instructions and verdict forms shall  
9 be prepared in 12 point Times New Roman font.

10 11. Should the parties negotiate a resolution of the case, a written Memorandum of Plea  
11 Agreement **must** be filed before the case is taken off calendar.

12 12. Nothing in this Order is intended to require Defendant to waive or violate any of his/her  
13 Constitutional rights.

14 13. Failure to comply with any provision of this Pretrial Order may result in the imposition of  
15 sanctions.

16 DATED this 29 day of October, 2020.

17  
18   
19 NANCY PORTER  
District Judge – Department 1  
20  
21  
22  
23  
24  
25  
26

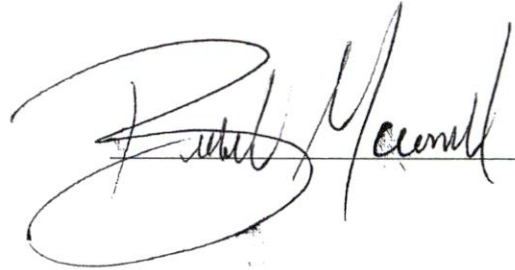
1 CERTIFICATE OF HAND DELIVERY

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court,  
3 Department 1, and that on this 10<sup>th</sup> day of ~~October~~ <sup>November</sup>, 2020, I personally hand delivered a true file-stamped  
4 copy of the foregoing PRETRIAL ORDER (Criminal Case) addressed to:

5 Tyler J. Ingram, Esq.  
6 Elko County District Attorney  
7 540 Court Street, 2<sup>nd</sup> Floor  
8 Elko, NV 89801  
9 [Box in Clerk's Office]

Benjamin C. Gaumont, Esq.  
Elko County Deputy Public Defender  
571 Idaho Street  
Elko, NV 89801  
[Box in Clerk's Office]

8 Elko County Jury Commissioner  
9 C/O Elko County Clerk  
10 550 Court Street, Third Floor  
11 Elko, NV 89801  
12 [Box in Clerk's Office]

13   
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26



1 CASE NO. DC-CR-20-159

2 DEPT. NO. 1

FILED

2020 DEC -1 AM 11:30

ELKO CO DISTRICT COURT

3  
4  
5 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
6 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

7 THE STATE OF NEVADA,

8  
9 Plaintiff,

10 vs.

11 DARWYN ROSS YOWELL,

12 Defendant.  
13  
14


15 **MOTION FOR GUIDANCE FROM THE**  
16 **COURT AS TO THE ATTORNEY-**  
17 **CLIENT RELATIONSHIP**

18 COMES NOW Deputy Public Defender BENJAMIN C. GAUMOND and hereby moves  
19 this Court for Guidance from the Court regarding the continued representation of the Defendant.

20 This Motion is based upon the papers and pleadings on file herein, the Points and  
21 Authorities contained in this Motion, and the Declaration of Counsel attached hereto. This  
22 Motion is made in good faith and not for purposes of delay.

23 DATED this 30th day of November, 2020.

24 KRISTON N. HILL  
25 ELKO COUNTY PUBLIC DEFENDER  
26 569 Court Street  
27 Elko, Nevada 89801

28 By:   
29 BENJAMIN C. GAUMOND  
Deputy Public Defender  
NV Bar Number 8081

///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29


**POINTS AND AUTHORITIES**

Mr. Yowell has explicitly told undersigned counsel that he is firing counsel of record and that he wants new counsel. Mr. Yowell has taken a position that is consistent with wanting to micromanage the defense and if undersigned counsel does not defend this case at trial the way Mr. Yowell wants it, then Mr. Yowell will want a termination of the attorney-client relationship.

Undersigned counsel cannot practice law under these circumstances and avers that the attorney-client relationship is irretrievably broken down. As such, undersigned counsel asks that this Court consider appointing other counsel to represent Mr. Yowell.

DATED this 30th day of November, 2020.

KRISTON N. HILL  
ELKO COUNTY PUBLIC DEFENDER  
569 Court Street  
Elko, Nevada 89801

By:   
BENJAMIN C. GAUMOND  
Deputy Public Defender  
NV Bar Number 8081

**UNSWORN DECLARATION OF BENJAMIN C. GAUMOND**

I, BENJAMIN C. GAUMOND, hereby declare the following:

1. That I am an attorney duly licensed to practice law in the State of Nevada;
2. That as such I am employed with the Elko County Public Defender's Office;
3. The Elko County Public Defender's Office was appointed to represent the Defendant;
4. Undersigned has represented Mr. Yowell for the duration of this case;
5. Mr. Yowell has expressed dissatisfaction with undersigned counsel;
6. Undersigned counsel asks for a hearing wherein Mr. Yowell can address his concerns;

- 1 7. That this Motion is made in good faith and not for purpose of delay; and  
2  
3 8. I make these statements under penalty of perjury.  
4  
5 9. Further declarant sayeth naught.

6  
7   
BENJAMIN C. GAUMOND

8 NOTICE OF MOTION

9  
10 A hearing on Defendant's MOTION is requested and a court reporter is requested. It is  
11 estimated that approximately 30 minutes should be set aside for a hearing on this motion.

12 DATED this 30th day of November, 2020.

13 KRISTON N. HILL  
14 ELKO COUNTY PUBLIC DEFENDER  
15 569 Court Street, Elko, NV 89801

16 By: 

17 BENJAMIN C. GAUMOND  
18 Elko County Deputy Public Defender  
19 NV Bar Number 8081

20 CERTIFICATE OF SERVICE

21 I hereby certify, pursuant to the provisions of NRCP 5(b), that I am an employee of the Elko  
22 County Public Defender's Office, and that on this 1st day of December, 2020, I delivered or caused  
23 to be delivered a copy of the foregoing MOTION by leaving a copy of said document at the offices  
24 of the following:

25 District Court Dept. One  
26 Elko County Courthouse  
27 Elko, NV 89801

28 OFFICE OF THE ELKO COUNTY DISTRICT ATTORNEY  
29 540 Court Street, Second Floor  
Elko, Nevada 89801



--FILED--  
Administrative Office of the Courts  
Date: 03/29/21

By: Deborah Owen

**SUPREME COURT OF THE STATE OF NEVADA  
ADMINISTRATIVE OFFICE OF THE COURTS**

IN THE MATTER OF THE ASSIGNMENT OF  
A SENIOR JUDGE

Case No. 21-00413

**MEMORANDUM OF TEMPORARY ASSIGNMENT**

WHEREAS, no District Judges in the Fourth Judicial District Court will be available to preside over the settlement conference in the matter of *State of Nevada v. Darwyn Ross Yowell*, Case No. DC-CR-20-159, now therefore,

IT IS HEREBY ORDERED that the Honorable William A. Maddox, Senior Judge, is assigned to hear the settlement conference in the matter of *State of Nevada v. Darwyn Ross Yowell*, Case No. DC-CR-20-159. William A. Maddox, Senior Judge shall have authority to sign any orders arising out of this assignment.

Entered this 29 day of March 2021.

NEVADA SUPREME COURT

By: Parras, Justice

Copy: The Honorable William A. Maddox, Senior Judge  
The Honorable Mason Simons, Judge, Fourth Judicial District Court



Case No. DC-CR-20-159

Dept. No. 3

FILED

2021 JUN 17 PM 2:28

ELKO CO DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY 

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

V.

DARWYN ROSS YOWELL,

Defendant.

**ORDER FOR COMMITMENT  
PURSUANT TO NRS 176.015(1)**

On June 17, 2021 the Defendant was found guilty, following a jury trial, of Count 4:  
DOMESTIC BATTERY RESULTING IN SUBSTANTIAL BODILY HARM, A CATEGORY B  
FELONY AS DEFINED BY NRS 200.485(5).

NRS 176.015(1) provides in relevant part that "pending sentence, the court may commit the  
defendant or continue or alter the bail."

The Court determined the Defendant should not be able to bail out prior to sentencing.

GOOD CAUSE APPEARING,

IT IS HEREBY ORDERED that the Defendant is ordered committed to the Elko County Jail  
pending the upcoming sentencing hearing in this matter.

///

///

///

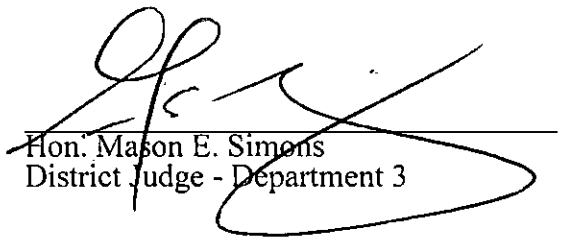
///

///

JUN 17 2021 PM 4:18

1 IT IS FURTHER ORDERED that a release of the Defendant on bail in this matter, shall not be  
2 permitted.

3 DATED this 17 day of June, 2021.

4  
5  
6   
7 Hon. Mason E. Simons  
8 District Judge - Department 3  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District Court, Department 3, and that on this 17 day of June, 2021, served by hand delivery a true copy of the foregoing document addressed to:

Tyler J. Ingram, Esq.  
Elko County District Attorney's Office  
[Box in Clerk's Office]

Matthew Pennell, Esq.  
Elko County Public Defender's Office  
[Box in Clerk's Office]

Elko County Sheriff's Office  
[Box in Clerk's Office]

Melissa Schman  
Signature of Court Employee

1 CASE NO. DC-CR-20-159

2 DEPT. NO. 3

FILED

2021 SEP 13 PM 1:26

ELKO CO DISTRICT COURT

4 FOURTH JUDICIAL DISTRICT COURT

5 COUNTY OF ELKO, STATE OF NEVADA— DEPUTY

9 THE STATE OF NEVADA,

10 Plaintiff,

**JUDGMENT OF CONVICTION**

11 vs.

12 DARWYN ROSS YOWELL,

13 Defendant.

14  
15  
16 On June 17, 2021, Defendant, Darwyn Ross Yowell (date of birth: 10/13/1983, place of  
17 birth: Elko, NV) was found guilty of the crime of **COUNT 4: DOMESTIC BATTERY**  
18 **RESULTING IN SUBSTANTIAL BODILY HARM, A CATEGORY B FELONY AS DEFINED**  
19 **BY NRS 200.485(5) (NOC 57937)** which crime occurred on or about June 5, 2020, and  
20 sentenced the Defendant on September 10, 2021 as follows:

21  
22 **IT IS HEREBY ORDERED** that Defendant shall pay an administrative  
assessment fee of \$25.00 pursuant to NRS 176.062.

23 **IT IS FURTHER ORDERED** that Defendant shall pay a \$3.00 administrative  
24 assessment for obtaining biological specimens and conducting genetic  
25 marker analyses pursuant to NRS 176.0623.

26 **IT IS FURTHER ORDERED** that Defendant shall pay a \$150.00 fee for  
27 purposes of obtaining a biological specimen from the Defendant and for  
28 performing genetic marker analysis of said specimen pursuant to NRS  
176.0915.

SEP 13 2021 PM 3:58

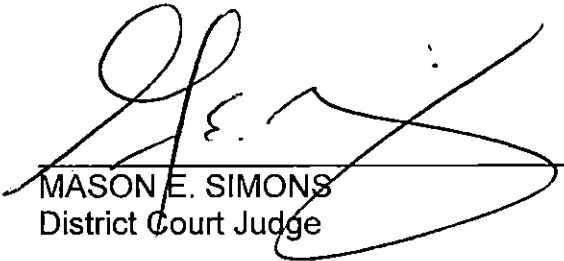


1       **IT IS FURTHER ORDERED** for Count 4, Defendant shall be imprisoned in  
2       the Nevada Department of Corrections for a term of 28 to 72 months.  
3       Defendant shall receive credit for 462 days previously served as of  
4       September 10, 2021.

5       At the time Defendant was found guilty, and at the time he was sentenced, he was  
6       represented by MATTHEW PENNELL, Esq., Elko County Public Defender.

7       **THEREFORE**, the Clerk of the Court is directed to enter this Judgment of Conviction  
8       as part of the record in the above-entitled matter.

9       **DATED** this 11 day of September, 2021.

10  
11         
12       MASON E. SIMONS  
13       District Court Judge  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District  
3 Court, Department 3, and that on this 13 day of September, 2021, I served by hand delivery  
4 by placing a copy of said document in the agency box located in the Elko County Clerk's Office,  
5 a true copy of the foregoing document to:

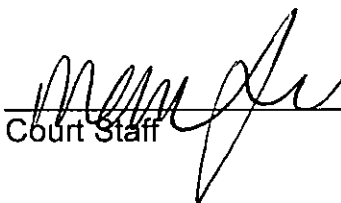
6 Elko County District Attorney

7 Elko County Public Defender

8 State of Nevada, Division of Parole & Probation

9 Elko County Sheriff

10 Director, Nevada Department of Corrections (copy to accompany Defendant at time of  
11 transport)

12   
13 Court Staff

14 **CERTIFICATE OF SERVICE**

15 Pursuant to NRCP 5(b), I certify that I am an employee of the Fourth Judicial District  
16 Court, Department 3, and that on this 13 day of September, 2021, I served by regular  
17 U.S. Mail, a true copy of the foregoing document to:

18 Nevada Department of Corrections  
19 Offender Management Division,  
20 Sentence Management  
21 PO Box 7011  
22 Carson City, NV 89702  
23 [Via Regular Mail]

24   
25 Court Staff  
26  
27  
28

FILED

CASE NO.: DC-CR-20-159  
DEPT. III

2021 SEP 28 AM 10:42

4th JUDICIAL DISTRICT COURT

CLERK \_\_\_\_\_ DEPUTY B

IN THE FOURTH JUDICIAL DISTRICT COURT OF THE  
STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO

THE STATE OF NEVADA,

Plaintiff,

vs.

DARWYN ROSS YOWELL,

Defendant.

NOTICE OF APPEAL

TO: TYLER INGRAM, Elko County District Attorney

NOTICE is hereby given that DARWYN ROSS YOWELL, defendant above named, hereby appeals to the Supreme Court of Nevada from the Judgment of Conviction filed on September 13, 2021, in the above-entitled action.

This appeal is to all issues of fact and law.

DATED this 28 day of September, 2021.

MATTHEW PENNELL  
ELKO COUNTY PUBLIC DEFENDER  
569 Court Street (Physical Address)  
571 Idaho Street (Mailing Address)  
Elko, NV 89801  
(775) 738-2521

By: 

MATTHEW PENNELL  
NV Bar Number 132988

SEP 28 2021 AM 10:42

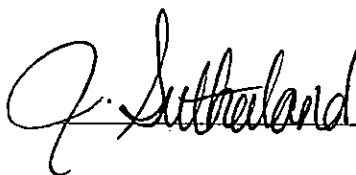
1 CERTIFICATE OF SERVICE

2 I hereby certify, pursuant to the provisions of NRCP 5(b), that on the 28<sup>th</sup> day of  
3 September 2021, I served the foregoing NOTICE OF APPEAL, by delivering or causing to be  
4 delivered a copy of said document, to the following:

5 HONORABLE MASON SIMONS  
6 District Judge, Department III  
7 Elko County Courthouse  
8 Elko NV 89801

9 ELKO COUNTY DISTRICT ATTORNEY'S OFFICE  
10 540 Court Street  
11 Elko NV 89801

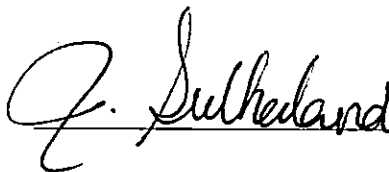
12 OFFICE OF THE ATTORNEY GENERAL  
13 100 N. Carson Street  
14 Carson City NV 89701-4717

15   
16

17 CERTIFICATE OF MAILING

18 I hereby certify, pursuant to the provisions of NRCP 5(b), that on the 28<sup>th</sup> day of  
19 September 2021 I mailed, postage prepaid, a copy of the foregoing NOTICE OF APPEAL, to the  
20 following:

21 DARWYN ROSS YOWELL  
22 Elko County Jail Inmate

23   
24  
25  
26  
27  
28  
29