

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 02:31 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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

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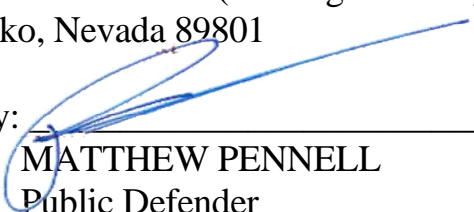
Elko County  
Public Defender

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
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10	2. Criminal Information filed August 21, 2020.....	11-15
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12	3. Judgement of Conviction filed September 13, 2021.....	112-114
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18	8. Order Binding Over filed August 18, 2020 .....	9-10
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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  
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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:   
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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

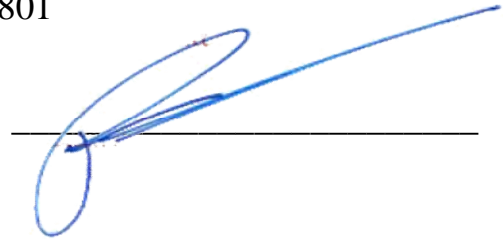
2                    I hereby certify, pursuant to the provisions of NRAP 25, that I am an  
3 employee of the Elko County Public Defender's Office, and that on the  
4 \_\_\_\_\_ day of 31<sup>ST</sup> January 2022, I electronically filed a copy of the  
5 foregoing, Appendix to Appellant's Fast Track 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

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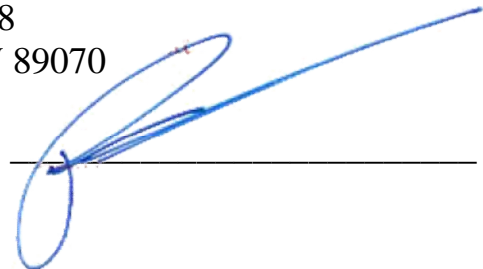


30                                    CERTIFICATE OF MAILING

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

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FILED

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ELKO CO DISTRICT COURT

IN THE FOURTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO,  
BEFORE THE HONORABLE MASON SIMONS, DISTRICT JUDGE

CLERK DEPUTY *lu*

-oOo-

STATE OF NEVADA,

Plaintiff,

Case No. DC-CR-20-159

V.

Dept. No. 3

DARWYN ROSS YOWELL,

Defendant.

**COPY**

Transcript of Proceedings

Jury Trial

Volume IV

June 17, 2021

Elko, Nevada

Transcribed By: Julie Rowan - (775) 745-2327

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A P P E A R A N C E S

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1 AUGUST 17, 2021, ELKO, NEVADA

2 -oOo-

3 THE COURT: Court is in session. Please be  
4 seated.

5 Okay, the time is 9:11 a.m., the date,  
6 June 17th, 2021. We're back on the record in Case  
7 DC-CR-20-159, the State of Nevada versus Darwyn Ross  
8 Yowell. We do have Mr. Yowell present, along with his  
9 counsel, Mr. Pennell. Mr. Thompson is here from the  
10 District Attorney's Office. We are convened outside the  
11 presence of the jury for the purposes of settling the  
12 jury instructions.

13 I'm going to provide a copy of the latest  
14 version of the revised jury instructions. If both  
15 parties will please approach. The record will reflect  
16 that court has reconvened outside the presence of the  
17 jury for the purpose of settling jury instructions. I  
18 have just provided to the State and to the Defense  
19 copies of those instructions, which the Court proposes  
20 to give.

21 These contain the corrections that were  
22 suggested in the e-mail communications last night and  
23 this morning. They're identical to the ones I e-mailed  
24 out earlier this morning, other than a change to  
25 instruction 8 and instruction 19 that had been

1 suggested.

2 I think instruction number 8, page 17, I  
3 believe there was a -- a word missing or a letter  
4 missing. And then on instruction 19, the same language  
5 that we had removed on several of the other instructions  
6 about the evidence has shown that or language to that  
7 effect, that was removed and, otherwise, it was left the  
8 same.

9 Okay, does the State object to any of the  
10 Court's proposed instructions?

11 MR. THOMPSON: I do not.

12 THE COURT: Does the Defense object to any of  
13 the Court's proposed instructions?

14 MR. PENNELL: I do not, Your Honor.

15 THE COURT: Does the State wish to offer any  
16 instructions in addition to those proposed by the Court?

17 MR. THOMPSON: No.

18 THE COURT: Does the Defense wish to proffer  
19 any instructions in addition to those proposed by the  
20 Court?

21 MR. PENNELL: No, Your Honor.

22 THE COURT: Will counsel stipulate on the  
23 record that the instructions have been settled in open  
24 court?

25 MR. THOMPSON: Yes.



1 MR. PENNELL: So stipulated.

2 THE COURT: I'm going to provide now a  
3 copy -- if you'll both please approach. I have a copy  
4 of the revised verdict form with the changes  
5 incorporated that were suggested by the e-mail  
6 communications earlier today, which I had the same  
7 actual concern as well when I was making those changes  
8 was it makes reference to all these counts that don't  
9 line up with the criminal information.

10 So we removed the paragraph that was below --  
11 or the paragraph above each one of the sections and then  
12 took out any reference to any count numbers, and it is  
13 on two pages. Hopefully, that won't be a problem.

14 Any concerns about the verdict forms? Does  
15 it look okay?

16 MR. THOMPSON: Not for the State.

17 MR. PENNELL: It looks fine, your Honor.

18 THE COURT: Okay. Anything else we need to  
19 address before we bring the jurors back in?

20 MR. THOMPSON: No.

21 MR. PENNELL: No.

22 THE COURT: Okay. All rise, please.

23 (Whereupon, the jury entered the courtroom)

24 THE COURT: Court is back in session. Please  
25 be seated.

1                   Okay, the time is 9:16 a.m., the date  
2 June 17th, 2021. We're back on the record in Case  
3 DC-CR-20-159, the State of Nevada versus Darwyn Ross  
4 Yowell. The Defendant is present, along with counsel,  
5 Mr. Pennell. Mr. Thompson is here from the District  
6 Attorney's Office.

7                   Do the parties stipulate to the presence of  
8 the jurors and alternates?

9                   MR. PENNELL: Yes, Your Honor.

10                  MR. THOMPSON: Yes.

11                  THE COURT: Ladies and gentlemen of the jury,  
12 I'm about to instruct you on the law as it applies to  
13 this case. I would like to instruct you orally without  
14 reading to you, however, these instructions are of such  
15 importance that almost every word is of some  
16 significance. Therefore, it is necessary for me to read  
17 to you from carefully prepared written instructions.

18                  The instructions are relative long and some  
19 are quite complicated. If they are not especially clear  
20 when I read them to you, please bear in mind that when  
21 you retire to the jury room, you will be able to take  
22 copies of these written instructions with you so that  
23 you can read and consider them carefully.

24                  I previously read to you Instruction No. 1  
25 and Instruction No. 2 at the beginning of the

1 proceedings so I'm not going to read those to you again.  
2 I will start at Instruction No. 3.

3 Instruction No. 3: This is a prosecution by  
4 the State of Nevada against the Defendant, Darwyn Ross  
5 Yowell. The criminal information omitting formal parts  
6 reads as follows:

7 Count 1, kidnapping in the first degree, a  
8 felony as defined by NRS 200.310, subsection (1),  
9 NOC Code 50051, that the Defendant did willfully and  
10 unlawfully seize, confine, inveigle, entice, decoy,  
11 abduct, conceal, kidnap, or carry away another person,  
12 to wit: Jean Ortega, with the intent to hold or detain,  
13 or held or detained, the victim for ransom or reward or  
14 for the purpose of committing sexual assault, extortion,  
15 or robbery upon or from the victim, or for the purpose  
16 of killing the victim or inflicting substantial bodily  
17 harm upon the victim or to exact money or valuables from  
18 others for the return or disposition of the victim by  
19 the following manner:

20 By taking Ms. Ortega in her car and driving  
21 her out to the South Fork and/or Lee area on SR 227  
22 and/or SR 228 in order to kill her by stating he was  
23 going to the reservation to get a shotgun to kill her  
24 and/or while driving her out to that area, the Defendant  
25 did hit or punch or strike the victim resulting in

1 substantial bodily harm, specifically a brain bleed  
2 and/or concussion and/or prolonged physical pain due to  
3 her injuries and/or disfigurement and/or some other  
4 injury as yet unknown, which may qualify under NRS 0.060  
5 and/or by robbing her of her possessions to include, but  
6 not limited to, her keys and/or purse and/or driver's  
7 license, which occurred after the battery and leaving  
8 her at the area of SR 228, mile marker 16 and/or by some  
9 other manner or means as yet unknown;

10 Or in the alternative to Count 1, kidnapping  
11 in the second degree, a category B felony as defined by  
12 NRS 200.310 and NRS 200.330, NOC Code 50075, that the  
13 Defendant did willfully and unlawfully seize, inveigle,  
14 take, carry away, or kidnap another person, Jean Ortega,  
15 and the Defendant did so with the intent to keep the  
16 said person secretly imprisoned within the State of  
17 Nevada and/or for the purpose of conveying said person  
18 out of the State of Nevada without lawful authority  
19 and/or to hold said person in any manner to service or  
20 to detain said person against their will.

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

1                   Or in the alternative to Counts 1 and 2,  
2 Count 3, coercion, a category B felony as defined by  
3 NRS 207.190, subsection 1, NOC Code 53159, that the  
4 Defendant, with the use of physical force or the  
5 immediate threat of physical force, did willfully and  
6 unlawfully use violence or did inflict injury upon Jean  
7 Ortega or did threaten to use violence or inflict injury  
8 upon Jean Ortega or did deprive Jean Ortega of any tool,  
9 implement, or clothing, or hinder the person in the use  
10 thereof or did attempt to intimidate Jean Ortega by  
11 threats of force and that the Defendant did so with the  
12 intent to compel Jean Ortega to do or abstain from doing  
13 an act, which Jean Ortega had a right to do or abstain  
14 from doing:

15                   To wit, by hitting or striking Ms. Ortega in  
16 the head or body to compel her to go with him to the  
17 South Fork or Lee area, via SR 227 and/or SR 228 and/or  
18 to allow the Defendant to use her vehicle to go there  
19 and/or to compel Ms. Ortega to allow him to take her  
20 keys and/or car and/or purse and/or driver's license  
21 and/or when Ms. Ortega told the Defendant she didn't  
22 want to go to South Fork and/or Lee by not letting her  
23 out of the vehicle when she tried to get out or made  
24 attempts to get out and/or by some other manner or means  
25 as yet unknown.

1           In addition to Counts 1 through 3, Count 4,  
2 domestic battery resulting in substantial bodily harm,  
3 a category B felony as defined by NRS 200.485,  
4 subsection 5, NOC Code 57937, that the Defendant  
5 willfully and unlawfully used force or violence upon  
6 Jean Ortega in the following manner: By hitting her or  
7 striking her multiple times in the head or face.  
8 Furthermore, the battery resulted in substantial bodily  
9 harm to the victim described as follows:

10           A brain bleed and/or concussion and/or  
11 prolonged physical pain due to her injuries and/or  
12 disfigurement and/or some other injury as yet unknown,  
13 which may qualify under the NRS 0.060.

14           The Defendant's relationship to the victim  
15 above-named is one of the following: A spouse, a former  
16 spouse, a relative by blood or marriage, a person with  
17 whom the Defendant has had or is having a dating  
18 relationship, a person with whom the Defendant has a  
19 child in common and/or the minor child of any of the  
20 above-indicated victims or the Defendant's minor child;

21           Or in the alternative to Count 4, Count 5,  
22 battery resulting in substantial bodily harm, a category  
23 C felony, as defined by NRS 200.481, that the Defendant  
24 willfully and unlawfully used force or violence upon the  
25 person of Jean Ortega in the following manner: By the

1 same manner or means in Count 3.

2 Further, the force or violence resulted in  
3 the infliction of substantial bodily harm within the  
4 meaning of NRS 0.060 described as follows: A brain  
5 bleed and/or concussion and/or prolonged physical pain  
6 due to her injuries and/or disfigurement and/or some  
7 other injury as yet unknown, which may qualify under  
8 NRS 0.060.

9 To the charges, the Defendant has entered  
10 pleas of not guilty. Upon the issue thus joined, the  
11 burden is on the State of Nevada to prove him guilty of  
12 the crimes charged beyond a reasonable doubt.

13 Instruction No. 4: To find Darwyn Ross  
14 Yowell guilty of the charged offense of kidnapping in  
15 the first degree with substantial bodily harm, you must  
16 conclude that:

17 One, Darwyn Ross Yowell; two, willfully; and  
18 three, unlawfully; four, ceased, confined, inveigled,  
19 decoyed, abducted, concealed, kidnapped or carried away;  
20 five, Jean Ortega; and six, held or detained Jean Ortega  
21 with the specific intent to commit robbery, kill her, or  
22 inflict substantial bodily harm upon her; and seven,  
23 Jean Ortega suffered a substantial bodily harm during  
24 the act of kidnapping or the subsequent detention and  
25 confinement or in attempted escape. The failure of the

1 State to prove any of the above seven elements beyond a  
2 reasonable doubt must result in a verdict of not guilty  
3 for this charge.

4 Instruction No. 5: If you are unable to  
5 agree that Darwyn Ross Yowell is guilty of kidnapping in  
6 the first degree with substantial body harm, you may  
7 consider if Darwyn Ross Yowell is guilty of the lesser  
8 included crime of kidnapping in the first degree.

9 To find the Defendant guilty of kidnapping in  
10 the first degree, you must conclude that one, Darwyn  
11 Ross Yowell; two, willfully; and three, unlawfully;  
12 four, ceased, confined, inveigled, decoyed, abducted,  
13 concealed, kidnapped or carried away; five, Jean Ortega;  
14 and six, held or detained Jean Ortega with the specific  
15 intent to commit robbery, kill her, or inflict  
16 substantial body harm upon her. Failure of the State to  
17 prove any of the above six elements beyond a reasonable  
18 doubt must result in a verdict of not guilty for this  
19 charge.

20 Instruction No. 6: If you're unable to agree  
21 that Darwyn Ross Yowell is guilty of kidnapping in the  
22 first degree, you may consider if Darwyn Ross Yowell is  
23 guilty of the lesser included crime of kidnapping in the  
24 second degree.

25 To find the Defendant guilty of kidnapping in



1 the second degree, you must conclude that one; Darwyn  
2 Ross Yowell; two, willfully; and three, unlawfully;  
3 four, ceased, confined, inveigled, decoyed, abducted,  
4 concealed, kidnapped or carried away; five, Jean Ortega;  
5 and with a specific intent or purpose to keep Jean  
6 Ortega secretly imprisoned within the State of Nevada or  
7 convey Jean Ortega out of the State of Nevada without  
8 the lawful authority to do so or hold Jean Ortega in any  
9 manner to service or detain her against her will. The  
10 failure of the State to prove any of the above five  
11 elements beyond a reasonable doubt must result in a  
12 verdict of not guilty of this charge.

13           Instruction No. 7: If you're unable to agree  
14 that Darwyn Ross Yowell is guilty of kidnapping in the  
15 second degree, you may consider if Darwyn Ross Yowell is  
16 guilty of the lesser included crime of felony coercion.  
17 To find the Defendant guilty of felony coercion, you  
18 must conclude that one, Darwyn Ross Yowell; two,  
19 willfully; and three, unlawfully; four, with the  
20 specific intent to compel Jean Ortega to do or abstain  
21 from doing an act that she has a right to do or abstain  
22 from doing, either used violence or inflicted injury  
23 upon Jean Ortega or threatened immediate violence or  
24 injury or used violence or threatened immediate violence  
25 to deprive Jean Ortega of any tool, implement, or

1 clothing, or hindered her use thereof, or used violence  
2 or threatened immediate violence to intimidate Jean  
3 Ortega.

4           The failure to prove any of the above four  
5 elements beyond a reasonable doubt must result in a  
6 verdict of not guilty of this charge. In deciding if  
7 the Defendant is guilty of felony coercion, you must  
8 consider if the Defendant had the apparent ability to  
9 use immediate force in the course of making any threat  
10 or intimidation. You must weigh the evidence presented  
11 at trial, including the apparent ability to use  
12 immediate force, and decide if a reasonable person  
13 facing the threat would conclude the threat was an  
14 immediate threat or future threat.

15           If you decide that a reasonable person facing  
16 the threat could not conclude beyond a reasonable doubt  
17 that the threat was an immediate one, you must find the  
18 Defendant not guilty of felony coercion.

19           Instruction No. 8: If you are unable to  
20 agree that Darwyn Ross Yowell is guilty of felony  
21 coercion, you may consider if Darwyn Ross Yowell is  
22 guilty of the lesser included crime of misdemeanor  
23 coercion.

24           To find the Defendant guilty of misdemeanor  
25 coercion, you must conclude that one, Darwyn Ross

1 Yowell; two, willfully; and three, unlawfully; four,  
2 with the specific intent to compel Jean Ortega to do or  
3 abstain from doing an act, which the Defendant had a  
4 right to do or abstain from doing, either threatened her  
5 with violence or injury or deprived her of any tool,  
6 implement, or clothing, or hindered her in the use  
7 thereof, or attempted to intimidate her by threats of  
8 force. The failure to prove any of the four elements  
9 above beyond a reasonable doubt must result in a verdict  
10 of not guilty of this charge.

11 Instruction No. 9: To find the Defendant  
12 guilty of domestic battery resulting in substantial  
13 bodily harm, the jury must conclude that each of the  
14 following elements has been proven beyond a reasonable  
15 doubt:

16 One, that Darwyn Ross Yowell; two, willfully;  
17 and three, unlawfully; four, used force or violence;  
18 five, upon Jean Ortega; six, the force or violence used  
19 resulted in substantial bodily harm; and that seven,  
20 Darwyn Ross Yowell had a relationship to Jean Ortega in  
21 at least one of the following categories: Spouse,  
22 former spouse, past or present dating relationship. The  
23 failure to prove any element beyond a reasonable doubt  
24 must result in a verdict of not guilty of this charge.

25 Instruction No. 10: If you are unable to

1 agree that Darwyn Ross Yowell is guilty of domestic  
2 battery resulting in substantial bodily harm, you may  
3 consider if Darwyn Ross Yowell is guilty of the lesser  
4 included crime of battery resulting in substantial  
5 bodily harm.

6 To find the Defendant guilty of battery  
7 resulting in substantial bodily harm, the jury must  
8 conclude that each of the following elements has been  
9 proven beyond a reasonable doubt:

10 One, that Darwyn Ross Yowell; two, willfully;  
11 and three, unlawfully; four, used force or violence;  
12 five, upon Jean Ortega; and that six, the force or  
13 violence used resulted in substantial bodily harm.  
14 Failure to prove any element beyond a reasonable doubt  
15 must result in a verdict of not guilty of this charge.

16 Instruction No. 11: If you are unable to  
17 agree that Darwyn Ross Yowell is guilty of domestic  
18 battery resulting in substantial bodily harm and battery  
19 resulting in substantial bodily harm, you may consider  
20 if Darwyn Ross Yowell is guilty of the lesser included  
21 crime of domestic battery.

22 To find the Defendant Ross -- to find Darwyn  
23 Ross Yowell guilty of domestic battery, the jury must  
24 conclude that each of the following elements has been  
25 proven beyond a reasonable doubt: One, that Darwyn Ross

1 Yowell; two, willfully; and three, unlawfully; four,  
2 used force or violence; five, upon Jean Ortega; and that  
3 six, Darwyn Ross Yowell had a relationship to Jean  
4 Ortega in at least one of the following categories:  
5 Spouse, former spouse, past or present dating  
6 relationship. The failure to prove any element beyond a  
7 reasonable doubt must result in a verdict of not guilty  
8 of this charge.

9 Instruction No. 12: Substantial bodily harm  
10 means one, bodily injury, which creates a substantial  
11 risk of death or which causes serious permanent  
12 disfigurement or protracted loss or impairment of the  
13 function of any bodily member or organ; or two,  
14 prolonged physical pain or physical suffering or injury  
15 that lasts longer than the pain immediately resulting  
16 from the wrongful act.

17 Instruction No. 13: A dating relationship is  
18 defined as frequent intimate associations primarily  
19 characterized by the expectation of affectional or  
20 sexual involvement. The term does not include a casual  
21 relationship or an ordinary association between persons  
22 in a business or social context.

23 Instruction No. 14: Willful means an act or  
24 omission, which is done intentionally, deliberately, or  
25 designedly, as distinguished from an act or omission

1 done accidentally, inadvertently, or innocently.

2           Instruction No. 15: The word unlawfully  
3 refers to the State's burden to prove beyond a  
4 reasonable doubt that the Defendant's affirmative  
5 defense does not exist or is otherwise not legally  
6 justified. You may consider consent in deciding if  
7 Darwyn Ross Yowell is not guilty of kidnapping in the  
8 first degree with substantial bodily harm, kidnapping in  
9 the first degree, kidnapping in the second degree,  
10 felony coercion, or misdemeanor coercion.

11           The law requires the State to prove beyond a  
12 reasonable doubt that the defense of consent does not  
13 apply. Consent must be judged based on the totality of  
14 the circumstances. Under certain circumstances, a lack  
15 of protest may properly be viewed as evidence of  
16 consent. Lack of protest by an alleged victim is simply  
17 one among the totality of circumstances. While consent  
18 inevitably involves submission, submission does not  
19 inevitably involve consent. Whether the victim  
20 manifested opposition or did, in fact, consent depends  
21 on the facts of the particular case.

22           Instruction No. 16: The word unlawfully  
23 refers to the State's burden to prove beyond a  
24 reasonable doubt that the Defendant's affirmative  
25 defense does not exist or is otherwise not legally

1 justified. You may consider self-defense in deciding if  
2 Darwyn Ross Yowell is not guilty of domestic battery  
3 resulting in substantial bodily harm, domestic battery,  
4 battery resulting in substantial bodily harm, kidnapping  
5 in the first degree with substantial bodily harm,  
6 kidnapping in the first degree, felony coercion, or  
7 misdemeanor coercion.

8 Instruction No. 17: Specific intent is the  
9 intent to accomplish the precise act the law prohibits.  
10 To hold the Defendant criminally liable for a specific  
11 intent crime, Nevada law requires proof that a defendant  
12 possessed the state of mind required by the statutory  
13 definition of the crime. To prove a specific intent  
14 crime, the State must show that the Defendant actually  
15 possessed the requisite statutory intent.

16 The crimes of kidnapping in the first degree  
17 with substantial bodily harm, kidnapping in the first  
18 degree, kidnapping in the second degree, felony  
19 coercion, and misdemeanor coercion are specific intent  
20 crimes.

21 Instruction No. 18: Actual danger is not  
22 necessary to justify self-defense. The right of  
23 self-defense exists whether the danger is real or merely  
24 apparent so long as the Defendant acted reasonably under  
25 the circumstances of the real or apparent danger. If

1 one is confronted by the appearance of danger, which  
2 arouses in his mind as a reasonable person, an honest  
3 conviction and fear that he is about to suffer bodily  
4 injury, and if a reasonable person in a like situation,  
5 seeing and knowing the same facts, would be justified in  
6 believing himself in like danger, and if the person so  
7 confronted acts in self-defense upon such appearances  
8 and from such fear and honest convictions, his right of  
9 self-defense is the same whether such danger is real or  
10 merely apparent.

11           Instruction No. 19: The law requires the  
12 State to prove beyond a reasonable doubt that Darwyn  
13 Ross Yowell did not defend himself against real or  
14 apparent danger. The State may show that by proving  
15 beyond a reasonable doubt that Darwyn Ross Yowell, one,  
16 acted as the aggressor in the encounter; or two, was not  
17 confronted with immediate, actual, or reasonably  
18 apparent danger of unlawful bodily harm; or three, used  
19 force that was unnecessary to avoid this danger, or used  
20 force that was not a proportionately reasonable amount  
21 in face of this danger.

22           Instruction No. 20: The right of  
23 self-defense is not available to an original aggressor.  
24 An original aggressor is a person who has sought a  
25 quarrel with the design to force a confrontation and,



1 thus, through his fraud, contrivance, or fault, creates  
2 a real or apparent necessity for the use of force.

3 There is an exception to that rule. If a  
4 person is the initial aggressor but attempts to retreat  
5 or otherwise decline further struggle, then that person  
6 is entitled to act in self-defense.

7 Instruction No. 21: If a person without  
8 voluntarily seeking, provoking, inviting, or willingly  
9 engaging in combat is attacked by an assailant, he has  
10 the right to stand his ground and need not retreat when  
11 faced with the threat.

12 Instruction No. 22: Battery is a general  
13 intent crime. General intent is the intent to do that  
14 which the law prohibits. It is not necessary for the  
15 Prosecution to prove that the Defendant intended the  
16 precise harm or the precise result, which eventuated.

17 Instruction No. 23: Force and violence are  
18 synonymous and mean any lawful application of physical  
19 force against the person of another, even if it causes  
20 no pain or bodily harm or leaves no mark and even though  
21 only the feelings of such person are injured by the act.  
22 The slightest unlawful touching if done in an insulant,  
23 rude, or an angry manner is sufficient.

24 It is not necessary that the touching be done  
25 in actual anger or with actual malice. It is sufficient

1 if it is unwarranted and unjustifiable. The touching  
2 essential to a battery may be a touching of the person  
3 or the person's clothing or of something attached to or  
4 closely connected with the person.

5 Instruction No. 24: The flight of a person  
6 immediately after the commission of a crime or after he  
7 is accused of a crime is not sufficient in itself to  
8 establish his guilt, but is a fact, which is proved, may  
9 be considered by you in the light of all other proved  
10 facts in deciding whether a defendant is guilty or not  
11 guilty. The weight to which this circumstance is  
12 entitled is a matter for the jury to determine.

13 Instruction No. 25: To warrant a conviction  
14 of any crime, the Defendant must be proven guilty beyond  
15 a reasonable doubt of the crime and of each and every  
16 element of the crime. The failure to prove any element  
17 of a crime beyond a reasonable doubt must result in a  
18 verdict of not guilty of that crime.

19 Instruction No. 26: You are here to  
20 determine whether the Defendant is guilty or not guilty  
21 of an offense from the evidence in the case. You are  
22 not called upon to return a verdict as to whether any  
23 other person is guilty or not guilty of an offense. So  
24 if the evidence in the case convinces you beyond a  
25 reasonable doubt that the Defendant is guilty of an

1 offense, you should so find even though you may believe  
2 one or more persons are also guilty.

3 Instruction No. 27: A reasonable doubt is  
4 one based on reason. It is not a mere possible doubt  
5 but is such a doubt as would govern or control a person  
6 in more weighty affairs of life. If the minds of the  
7 jurors, after the entire comparison and consideration of  
8 all the evidence, are in such a condition that they can  
9 say they feel an abiding conviction of the truth of the  
10 charge, there is not a reasonable doubt. Doubt to be  
11 reasonable must be actual, not mere possibility or  
12 speculation.

13 Instruction No. 28: Every person charged  
14 with the commission of a crime shall be presumed  
15 innocent until the contrary is proved by competent  
16 evidence beyond a reasonable doubt. This is a  
17 presumption of law with which the Defendant is clothed,  
18 and it abides with the Defendant throughout the entire  
19 trial of the case until it is overcome by competent  
20 evidence sufficient in your minds to establish the  
21 Defendant is guilty of a crime beyond a reasonable  
22 doubt.

23 In determining whether the Defendant is  
24 guilty or not guilty of a crime, it is not necessary  
25 that he establish his innocence, but it is sufficient in

1 order to warrant an acquittal if a reasonable doubt  
2 exists in your minds as to his guilt, and it makes no  
3 difference whether the reasonable doubt thus created  
4 exists or is established from the evidence produced on  
5 the part of the State or that produced on the part of  
6 the Defendant or from the lack of evidence or its  
7 unreliability or weight.

8           Instruction No. 29: There are two types of  
9 evidence, which a jury may properly consider. One is  
10 direct evidence, such as the testimony of an eyewitness.  
11 The other is circumstantial evidence, proof of a chain  
12 of circumstances pointing to the commission of the  
13 offense. As a general rule, the law makes no  
14 distinction between direct and circumstantial evidence.  
15 It simply requires that before convicting a defendant,  
16 the jury be satisfied of his guilt beyond a reasonable  
17 doubt from all the evidence in the case.

18           Facts may be proven by direct evidence or  
19 circumstantial evidence. Both direct evidence and  
20 circumstantial evidence are acceptable as a means of  
21 proof. Neither is entitled to a greater weight than the  
22 other.

23           Instruction No. 30: In every crime or public  
24 offense, there must exist a union or joint operation of  
25 act and intention.

1           Instruction No. 31: Intention is manifested  
2 by the circumstances connected with the perpetration of  
3 the offense and the sound mind and discretion of the  
4 person accused.

5           Instruction No. 32: Intent may be proven by  
6 circumstantial evidence. It rarely can be established  
7 by any other means. While witnesses may see and hear  
8 and thus be able to give direct evidence of what a  
9 defendant does or fails to do, there can be no  
10 eyewitness account of a state of mind with which acts  
11 are done or omitted. But what a defendant does or fails  
12 to do may indicate intent or lack of intent to commit a  
13 crime.

14           In determining the issue as to intent, the  
15 jury is entitled to consider any statements made and  
16 acts done or omitted by a defendant, and all facts and  
17 circumstances in evidence, which may aid determination  
18 of state of mind.

19           Instruction No. 33: It is not necessary to  
20 call as witnesses all persons who may have been present  
21 at any of the events disclosed by the evidence or who  
22 may appear to have some knowledge of these events or to  
23 produce all objects or documents mentioned or suggested  
24 by the evidence.

25           Instruction No. 34: Motive is not an element

1 of the crimes charged and need not be shown. However,  
2 you may consider motive or lack of motive as a  
3 circumstance in this case. Presence of motive may tend  
4 to establish guilt. Absence of motive may tend to  
5 establish innocence. You will, therefore, give its  
6 presence or absence, as the case may be, the weight to  
7 which you find it to be entitled.

8           Instruction No. 35: A statement made by the  
9 Defendant, other than at this trial, may be an admission  
10 or a confession. An admission is a statement by the  
11 Defendant, which by itself is not sufficient to warrant  
12 an inference of guilt, but which tends to prove guilt  
13 when considered with the rest of the evidence. A  
14 confession is a statement by the Defendant, which  
15 discloses his intentional participation in the criminal  
16 act for which he is on trial and which discloses his  
17 guilt of that crime.

18           You are the exclusive judges as to whether an  
19 admission or a confession was made by the Defendant, and  
20 if so, whether such statement is true in whole or in  
21 part. If you should find that any such statement is  
22 entirely untrue, you must reject it. If you find it is  
23 true in part, you may consider that part which you find  
24 to be true.

25           Instruction No. 36: Evidence may have been

1 admitted that tends to show the Defendant committed  
2 wrongs or acts other than that -- other than that for  
3 which he is on trial. Such evidence was not received  
4 and may not be considered by you to prove that he is a  
5 person of bad character or that he has a disposition to  
6 commit crimes. Such evidence was received and may be  
7 considered by you only for the limited purpose of  
8 determining if it tends to prove motive, opportunity,  
9 intent, preparation, plan, knowledge, identity, absence  
10 of mistake or accident, or a common scheme or plan.

11 For the limited purpose for which you may  
12 consider such evidence, you must weigh it in the same  
13 manner as you do all other evidence in the case. You  
14 are not permitted to consider such evidence for any  
15 other purpose.

16 You may have heard evidence that a witness  
17 made statements on an earlier occasion -- this is  
18 Instruction No. 37. You may have heard evidence that a  
19 witness made statements on an earlier occasion, which  
20 counsel argues are inconsistent with his trial  
21 testimony. If you find that the witness made earlier  
22 statements that conflict with his or her trial  
23 testimony, you may consider that fact in deciding how  
24 much of his trial testimony, if any, to believe.

25 In making this determination, you may

1 consider whether the witness purposely made a false  
2 statement or whether it was an innocent mistake, whether  
3 the inconsistency concerns an important fact or whether  
4 it had to do with a small detail, whether the witness  
5 had an explanation for the inconsistency and whether  
6 that explanation appealed to your common sense.

7           It is exclusively your duty, based upon all  
8 the evidence and your own good judgment, to determine  
9 whether the prior statements were inconsistent. If you  
10 find that a witness made prior inconsistent statements,  
11 it is your duty to determine how much, if any, weight to  
12 be given to the inconsistent statements. Evidence that  
13 at some other time a witness made a statement or  
14 statements that is or are inconsistent with his or her  
15 testimony in this trial, may be considered by you for  
16 not only the purpose of testing the credibility of the  
17 witness, but also as evidence of the truth of the facts  
18 as stated by the witness on that former occasion.

19           Instruction No. 38: A witness willfully  
20 false in one material part of his or her testimony is to  
21 be distrusted in others. You may reject the whole  
22 testimony of a witness who willfully has testified  
23 falsely as to a material point, unless from all the  
24 evidence, you shall believe the probability of truth  
25 favors his or her testimony and other particulars.



1           However, discrepancies in the testimony of a  
2 witness or between his or her testimony and that of  
3 others, if there were any, do not necessarily mean that  
4 the witness should be discredited. Failure of  
5 recollection is not uncommon. It is a fact that two  
6 persons witnessing an incident or a transaction often  
7 will see or hear it differently. Whether a discrepancy  
8 pertains to a fact of importance or only to a trivial  
9 detail should be considered in weighing its  
10 significance.

11           Instruction No. 39: It is your duty as  
12 jurors to consult with one another and to deliberate  
13 with a view of reaching an agreement if you can do so  
14 without violence to your individual judgment. You each  
15 must decide the case for yourself but should do so only  
16 after a consideration of the case with your fellow  
17 jurors, and you should not hesitate to change an opinion  
18 if you become convinced that it is erroneous.

19           However, you should not be influenced to vote  
20 in any way on any question submitted to you by the  
21 single fact that a majority of the jurors or any of them  
22 favors such a decision. In other words, you should not  
23 surrender your honest convictions concerning the effect  
24 or weight of the evidence for the mere purpose of  
25 returning the verdict or solely because of the opinion

1 of the other jurors.

2           Instruction No. 40: You are further  
3 instructed that you should also keep in mind the  
4 importance to the parties of the result of your  
5 deliberations and be just to the Defendant as well as to  
6 the State. Both the State and the Defendant have a  
7 right that you determine, and they do so demand and  
8 expect that you will carefully and dispassionately weigh  
9 and consider the evidence and the law of the case and  
10 give each your conscientious judgment and that you will  
11 reach a verdict that will be just to both sides  
12 regardless of what the consequences may be.

13           Instruction No. 41: If during your  
14 deliberation you should desire to be further informed on  
15 any point of law or hear again portions of the  
16 testimony, you must reduce your request to writing,  
17 signed by the foreperson. The officer will then return  
18 you to court where the information sought will be given  
19 to you -- given you in the presence of and after notice  
20 to the State and the Defendant and his counsel.

21           Playbacks of testimony are time-consuming and  
22 are not encouraged unless you deem it a necessity.  
23 Should you require a playback, you must carefully  
24 describe the testimony to be played back so that the  
25 court recorder can locate the appropriate portion of the

1 recording. Remember, the Court is not at liberty to  
2 supplement the evidence.

3 Instruction No. 42: The Court has already  
4 instructed you that you are made the sole judges of the  
5 testimony and of the weight to be given the same. In  
6 determining questions of fact presented in this case,  
7 you should be governed solely by the evidence introduced  
8 and admitted before you. You are to bring to the  
9 consideration of the evidence before you your everyday  
10 common sense and judgment as reasonable men and women.

11 Instruction No. 43: Statements made by the  
12 attorneys during the trial are not evidence. However,  
13 if the attorneys have stipulated or agreed to a fact as  
14 stated to you by the Judge, you must regard that fact or  
15 facts as proven.

16 Instruction No. 44: Jurors shall not conduct  
17 any form of independent research, investigations, or  
18 experiments prior to or during jury deliberations. This  
19 prohibition includes, but is not limited to, one,  
20 communicating with anyone in any way regarding the case  
21 or its merits by phone, e-mail, text, the Internet or  
22 other means; two, reading, watching, or listening to any  
23 news or media accounts or commentary about the case;  
24 three, doing any research, such as consulting  
25 dictionaries, using the Internet, or using referenced

1 materials; and four, making any investigation, testing  
2 the theory of the case, recreating any aspect of the  
3 case, or any other way, investigating or learning about  
4 the case on one's own.

5           Instruction No. 45: Every member of the jury  
6 has been permitted to take notes during the trial.  
7 However, you are cautioned not to rely upon your  
8 respective notes in the case of a conflict among those  
9 notes because the recording of the trial contains the  
10 complete, authentic record of the trial.

11           Instruction No. 46: In this case, there are  
12 ten possible verdicts. These possible verdicts are set  
13 forth in the form, which you will receive. If you all  
14 have agreed upon your verdicts, check the boxes that  
15 correspond to the verdict you have reached. Once you  
16 have reached your verdicts, the foreperson shall sign  
17 and date the verdict form.

18           Instruction No. 47: Ladies and gentlemen, it  
19 takes all 12 of you to agree upon your verdicts in this  
20 matter. When you have agreed upon your verdicts, you  
21 will have the verdicts agreed upon signed by the  
22 foreperson and returned to the Court. In determining  
23 whether the Defendant is guilty or not guilty of an  
24 offense, you will follow the evidence and the law.

25           You will choose your own foreperson, and when

1 you have agreed upon your verdicts and the verdict form  
2 is signed and dated by your foreperson, you will return  
3 the verdict form to the Court.

4 Instructions 1 through 47 have been given by  
5 the Court. I'm signing the last page of the jury  
6 instructions. The original copy of the jury  
7 instructions will be filed here in open court.

8 We've now arrived at the time for closing  
9 statements. The State goes first, Mr. Thompson.

10 PLAINTIFF'S CLOSING ARGUMENT

11 MR. THOMPSON: Thank you, Judge, counsel.

12 All right, ladies and gentlemen, we're nearly  
13 there. I know you're dying to go back and talk about  
14 this case, but if you'll just give me a little bit of  
15 your time and attention here, hopefully, I can direct  
16 you and help you, as the Judge has just given you a lot  
17 of law on how that is going to mesh together with the  
18 facts and, hopefully, be able to make your deliberations  
19 a little bit more efficient.

20 To that end, I wanted to go through some of  
21 the same jury instructions, but I want to throw them up  
22 on the screen so you can see those. You will get  
23 packets back there. You just haven't had the chance yet  
24 to look at those.

25 I'd prefer if the lights stay on, if you

1 would, Judge.

2 THE COURT: You want to leave them on?

3 MR. THOMPSON: Yeah.

4 THE COURT: Okay.

5 MR. THOMPSON: Okay. What you're going to  
6 find in instructions 4 through 11, we call them elements  
7 pages. For each of the offenses, they give you a little  
8 laundry list here of things that you have to find beyond  
9 a reasonable doubt. Each and every one of them has  
10 this, okay.

11 You're going to find them to be somewhat  
12 repetitive because we have all of these related offenses  
13 that you have to kind of choose between, but they all  
14 have a similar type read to them where you start out  
15 with -- we have to prove the Defendant did this. So  
16 they're all going to start with the Defendant.

17 Then there's going to be some sort of an  
18 intent element, that he did it on purpose. It wasn't an  
19 accident. That's the willfully portion of it.  
20 Unlawfully, we have to prove that as well. That gets  
21 into the self-defense or the consent arguments that we  
22 talked about or that the Judge instructed you about.  
23 I'll get into those a little bit later.

24 So we have to show that it's unlawful, the  
25 action that he took. And then in this one, it has to do

1 with the kidnapping one. So number 4 is the kidnapped  
2 or carried away. The last two are probably the easiest  
3 ones to understand.

4 I know the big question on everybody's mind  
5 is, what the heck is inveigle? That's just to entice.  
6 That's all that that means. We don't use that word  
7 hardly at all. I think it's a fairly old word, but  
8 that's to entice somebody or trick them, I guess. But  
9 the reality is we're kind of talking about kidnapped and  
10 carried away. Those are the easier ones to understand  
11 here. So that he kidnapped or carried away Jean Ortega  
12 in the car, and you can do it by any means. I mean, it  
13 could be by a car. You can put them in a gunnysack, I  
14 mean, however you want to do it.

15 And then a person, it has to be a person,  
16 obviously. You can't kidnap a dog or something like  
17 that. The statute wouldn't apply. Then held or  
18 detained Jean Ortega with the specific intent, and this  
19 is where we have to show that he did this, took her,  
20 carried her away with an intent to do something else, so  
21 a second intent.

22 One -- the first intent was just to take her  
23 and carry her away. The second one is with an intent to  
24 kill her, in this particular instance, or to cause  
25 further substantial bodily harm to her or substantial

1   bodily harm to her. So we have to prove that he had  
2   that intent. And then -- on the last one is that she  
3   suffered substantial bodily harm during the act of  
4   kidnapping or the subsequent detention and confinement  
5   or in an attempted escape.

6               So in this particular case -- and this is  
7   where the State would suggest to you that, based on the  
8   evidence you received, it's probably -- with regards to  
9   the first one, kidnapping resulting in substantial  
10  bodily harm, it's probably these last two that you're  
11  going to be talking about.

12              And what I mean by that is you've heard  
13  evidence that the battery, or at least part of it,  
14  occurred in the car, and she was driving, and then they  
15  switch, and then he drives, and that's it. I'm taking  
16  you out there now. And so if the kidnapping, in your  
17  mind, if he formed that intent and said I'm going to --  
18  this is it, I'm done with her. I'm driving now. I'm  
19  taking her out there, and I'm going to kill her, and  
20  that's it, and that the substantial bodily harm had  
21  already happened, then it wouldn't apply for this  
22  particular one.

23              Does that make sense? So that's probably  
24  some part that you're going to be talking about is  
25  whether or not that substantial bodily harm had already



1 happened before he formed the intent to drive her to Lee  
2 and to finish the job, in the State's view.

3 So that's something that you'll talk about.  
4 In our view, the relationship was on the outs, and it  
5 was rough already at this juncture. And that's your  
6 motive for this. And it's one of those arguments that a  
7 lot of people don't remember where the argument starts  
8 or what it was about, but they remember what happened  
9 afterwards.

10 If you remember Jean saying, I wouldn't  
11 listen to him. Something as simple as that. I wouldn't  
12 listen to him, and that set him off. That's what she  
13 said when she was in the -- I believe it was in the  
14 hospital or in the back of the car, one of those two.  
15 But it was one of those types of marital relationships  
16 where that kind of remark set him off.

17 And the question is for you to determine  
18 whether or not at that juncture he formed that intent to  
19 take her out and to commit substantial bodily harm and  
20 to kill her and then -- and then caused the substantial  
21 bodily harm, or you'll see here in the next one, the  
22 other variety of first degree kidnapping, you'll see  
23 that number seven is gone, okay. We're missing the  
24 substantial bodily harm.

25 So everything else reads exactly the same,

1 but the one that's missing is, is that during the act of  
2 kidnapping, he caused substantial bodily harm, okay.  
3 And so that's the difference. So on the first one, if  
4 you think that already happened and then he formed that  
5 intent to go out and kill her or to cause the  
6 substantial bodily harm, then you would go to the second  
7 one.

8 If you believe that he -- that's it, fired  
9 off at her and then had the opportunity to finish the  
10 job but had it already in his mind that that's what he  
11 was going to do, then it's the first one, okay.

12 And then we get to instruction 6. So this is  
13 the next one in line. So you remove substantial bodily  
14 harm between the first two. In this one, what gets  
15 removed is not only the substantial bodily harm is not  
16 there, but now the intent to kill is not there.

17 So basically this one is, is you kidnapped or  
18 carried away the person, okay, and -- and it's probably  
19 the easiest one to understand is down here at (c), held  
20 her in a manner to detain her against her will, okay.  
21 She didn't want to go out there. She told you that.  
22 She didn't want to be out there in Lee. She didn't want  
23 to go out there. He held her against her will.

24 When she crawls out of the car, the Greens  
25 hear her say, help me, help me. She did not want to be

1 there. She was being held against her will, okay. So  
2 if you don't believe the State has proved that he had  
3 that intent to kill, if you don't believe Jean in those  
4 statements that she made, he told me multiple times that  
5 I'm taking you out there. I'm going to shoot you with a  
6 shotgun at the ranch at the dog shed. He had the place,  
7 he had the means, he knew what he wanted to do, and he  
8 told her what it was, what the whole intent of that  
9 detention was.

10 If you don't believe that, then this is where  
11 you fall. He still detained her against her will. And  
12 if you feel like, well, he was just blowing smoke. He  
13 wasn't really serious about that. Okay, we respect that  
14 if that's the way it is, but then Count 2 is where you  
15 fall -- or not Count 2, I'm sorry, kidnapping in the  
16 second degree is what it's called where you remove that  
17 intent to kill, that second intent, okay. This one's  
18 just an intent to detain her. It doesn't have to be the  
19 intent to kill.

20 All right, so then we go one step further, if  
21 -- and again, these are all -- every single one at the  
22 very top, it starts out with if you are unable to agree,  
23 okay. So the way this works is they are in order for  
24 you, and you have to consider the first one first. And  
25 if you're unable to agree on the first one, then you

1 move to the second one. But if you are able to agree on  
2 the first one, that he's guilty, you're done. You don't  
3 even have to look at all the rest of them.

4 Or if you get to the second one and you're  
5 all able to agree on the second, yeah, it's first degree  
6 but not the substantial body harm, you're done as to  
7 that particular portion of the case, okay. You don't  
8 need to look at the rest of it, but you have to consider  
9 the first one first and then go in order. So each one  
10 is written that way, okay.

11 So then we get down -- this is your fourth  
12 option with regards to the detention in the car. This  
13 is felony coercion, okay, that he willfully and  
14 unlawfully -- again, you've seen those words in the  
15 other ones. They're similar. And to keep her from  
16 doing an act that she has a right to doing -- to do --  
17 to do or abstain from doing an act that she has a right  
18 to do.

19 She has a right to stay in Elko. She has a  
20 right to go back to her hotel room. She has her right  
21 to have her car. She has a right not to go to Lee. She  
22 did not want to go there, okay. And so -- and then he  
23 used violence or threatened immediate violence, which  
24 all of this violence was very immediate. He's right  
25 there. He used violence to threaten it or to get his

1 way, to get her to comply with what he wanted, and  
2 that's what felony coercion is, is using that violence  
3 or the threat of violence, okay.

4 So then that moves us on to the last one that  
5 the law requires that you also consider is misdemeanor  
6 coercion. So that would be no threat of violence in  
7 this case or removes that physical violence or threat of  
8 physical violence. You still compel someone but without  
9 violence.

10 In the State's view, this doesn't even apply  
11 here. We clearly have plenty of violence going on.  
12 She's hit before, during, and while they're out there  
13 even stopped on the road. When she's trying to get out,  
14 he grabbed her and pulled her back from the back seat.  
15 So there's a threat of violence. We don't think this  
16 one applies, but the law requires that we give this as  
17 well.

18 So what your verdict form then looks like as  
19 to that portion of it is this. There's your choices,  
20 and, again, we've set them in the order that you have to  
21 consider them. So with the substantial bodily harm,  
22 without substantial bodily harm, without the intent to  
23 kill, and then the felony coercion is now -- it's just  
24 threats, and it's without that, I guess, the intent to  
25 detain.

1           So kidnapping is -- has an intent to detain  
2 her against her will. Coercion could be any number of  
3 things. Whereas, if she wanted to get in the back seat,  
4 and he wouldn't let her do that, he used physical force  
5 to pull her back out of the back seat. It would  
6 encompass a lot of smaller acts, not the larger act of  
7 kidnapping.

8           And then you have the misdemeanor coercion  
9 and then, of course, not guilty. Those are your options  
10 on that one. You take them in order, and once you agree  
11 on one, you're done. You don't have to consider the  
12 rest of it. So those are the elements page as to the  
13 kidnapping.

14           With regards to the next one, which is the  
15 domestic battery resulting in substantial bodily harm --  
16 some of you might think, well, gee, if we don't do the  
17 first one where it has substantial bodily harm as a  
18 portion of it, is there any -- is there anything that  
19 accounts for that, and there is.

20           So the next count is domestic battery  
21 resulting in substantial bodily harm. So, again, we  
22 have to show that Mr. Yowell -- willfully, unlawfully  
23 will have to do with self-defense that we'll talk about  
24 here shortly. Used force or violence as to punching,  
25 hitting, whatever it was, upon Jean Ortega, and that the

1 force or violence resulted in substantial bodily harm.

2 I want to focus on that word resulted. He  
3 does not have to intend to commit substantial bodily  
4 harm. He only is -- that's that general intent crime  
5 that the Judge talked about. He has to intend to hit  
6 her, but he does not have to intend the result, okay.  
7 We just have to prove that it was the result, is that he  
8 did cause substantial bodily harm, not that he intended  
9 it.

10 And then the last one is that he's in a  
11 relationship with her, and there's no question about the  
12 relationship here between both of them. They're either  
13 married or in a boyfriend/girlfriend, but they're in a  
14 sexual relationship. So those are the elements for that  
15 one.

16 Now, then you have an alternative to that as  
17 well, which is instruction 10, and that one is battery  
18 resulting in substantial bodily harm. These are all the  
19 same except for we took out the relationship. The law  
20 requires that we instruct you about this.

21 In this case, the State would suggest there's  
22 really no question about the relationship so you're  
23 going to be at the domestic violence substantial bodily  
24 harm, and if you're unable to agree on that one and it  
25 has to do with the relationship, then you would be here.

1 But the State would suggest that even through the  
2 Defendant, their relationship has been established.

3 And then lastly is the third alternative,  
4 which would be just simple domestic violence where no  
5 substantial bodily harm resulted. So you would have the  
6 relationship still. You would still have a battery, but  
7 the finding would be, well, we don't think that a  
8 subdural hematoma brain bleed is substantial bodily  
9 harm. We don't think that her broken nose was  
10 substantial bodily harm. We don't think that the way  
11 that she's talking now is substantial bodily harm.

12 If that were the finding, this is where you'd  
13 fall. Again, we would suggest that we have proven  
14 substantial bodily harm. You got to see how Jean is  
15 now. She's not the same. She talks funny. She can't  
16 remember things.

17 And to that end, you get a bunch of other  
18 instructions, but before I get to those, this is what  
19 your -- the second page of your verdict form looks like  
20 as to those. And, again, they're in the order that you  
21 have to review them.

22 You start out with domestic battery resulting  
23 in substantial. If you aren't able to agree, then you  
24 move to the next one. If you're unable to agree, you  
25 move to the next one. And then, of course, not guilty



1 is at the bottom, okay. Just one check on page 2 and  
2 one check on page 1.

3 Now, to help you make those decisions, we've  
4 given you other instructions. And, for example,  
5 Instruction No. 12 gives you a definition of substantial  
6 bodily harm. Bodily injury which creates a substantial  
7 risk of death or which causes serious permanent  
8 disfigurement or protracted loss or impairment of the  
9 function of any bodily member or organ.

10 Okay, under this first one, substantial risk  
11 of death. I know you haven't -- we didn't talk a lot  
12 about the medical records. For the State's perspective,  
13 this has been shown, her substantial bodily harm, but I  
14 did want to read a couple portions from the medical  
15 records to you.

16 Let's see, this one is Exhibit 60. This is  
17 from the University of Utah, and these are the last --  
18 they're numbered for you. I think it's -- the excerpt  
19 that we provided for you is about 87 pages long, but if  
20 you look towards the end, that's where you're going to  
21 find the doctor's attestation, and he signs it.

22 But on page 84, they talk about the problems  
23 or injuries identified. Active problems is a subdural  
24 hematoma, left side, and then she had a right nasal bone  
25 fracture. Those are the two things that they were most

1 concerned about with her.

2 He described in his end here, that this  
3 patient has critical care diagnoses that placed the  
4 patient at significant risk of organ failure and  
5 possible risk of death. I have spent approximately 36  
6 minutes of continuous critical care time in the care of  
7 this patient for the above-listed diagnoses involving  
8 the above-listed interventions.

9 The patient has a critical care diagnosis of  
10 traumatic brain injury and is at a risk of deterioration  
11 from the neurological and respiratory standpoint with  
12 risk of neurological decline and subsequent inability to  
13 protect airway, therefore, possibly requiring intubation  
14 and mechanical ventilation. Therefore, requires  
15 frequent and continuous monitoring. This time is  
16 exclusive of procedures and includes the following  
17 activities.

18 And then they talk about what they did, and  
19 that's Jason B. Young. He's the MD who was at the  
20 department of surgery over at the U of U. So that's  
21 what they found.

22 Here at NNRH. Before they life flighted her  
23 over, Dr. Sempsrott, he said -- this one is not numbered  
24 quite as well. I can leave my little tab on it to go  
25 back to the jury if that helps. But he says, I just

1 received a call from the radiologist who indicated that  
2 she had a five millimeter left posterior temporal extra  
3 axial hemorrhage concerning for subarachnoid versus  
4 epidural. Call place of the University of Utah trauma.  
5 I suggest he was talking about the brain bleed there in  
6 very complex terms.

7            Luckily, the next one he says, a few minutes  
8 ago, I spoke to the initial responding officer. On this  
9 call I informed him that she had a potentially  
10 life-threatening bleeding within her brain and was being  
11 transferred to the trauma center. So thankfully, he was  
12 able to explain it to us in laymen's terms. He's  
13 talking about that same subdural hematoma.

14           All right, so it was found here at our  
15 hospital. It was confirmed at the University of Utah  
16 Hospital. Exhibit 90 has the definition for a subdural  
17 hematoma. We think that we have proved substantial  
18 bodily harm beyond a reasonable doubt.

19           The next one is the dating relationship, and  
20 I don't want to spend too much time on this one either,  
21 but they actually give you a definition of that, spouse,  
22 former spouse, but it also includes intimate sexual  
23 involvement. They talked about that. Clearly we've  
24 shown that there's a dating relationship between these  
25 two. That would have to do with the domestic violence

1 count that we have to show that.

2 All right, now we're going to get a little  
3 bit into those unlawfully instructions where we talk  
4 about unlawfully. And you have instruction 15 that  
5 tells you that consent, obviously, can be a -- a defense  
6 or something we have to disprove, otherwise, are all the  
7 soccer moms taking a kid kicking and screaming to soccer  
8 practice? He doesn't want to go, you know.

9 You know, if we take someone someplace, it  
10 has to be against their will, right? I guess a parent  
11 is probably a bad definition because they can consent  
12 for their child, but I can't force my buddy to go with  
13 me to a basketball game or something like that. And so  
14 consent can be a defense in a case.

15 And so the last paragraph is the one that is  
16 really helpful, and it just tells you, more or less,  
17 ladies and gentlemen, that you look at the facts. Just  
18 look at the facts, and did Ms. Ortega consent to this  
19 trip out to Lee? And we would suggest to you that no,  
20 no, she did not.

21 Consent must be judged based on the totality  
22 of the circumstances. That's just all the facts,  
23 everything that you've received. Under certain  
24 circumstances, a lack of protest may properly be viewed  
25 as evidence of consent. It may, but not necessarily.

1 Lack of protest on an alleged victim is simply one among  
2 the totality of circumstances, while consent inevitably  
3 involves submission. Submission does not inevitably  
4 involve consent.

5           If you've been beaten so bad that you're not  
6 jumping out of the car, if you're not demonstrating it  
7 by jumping out of the car at a stop sign or a stoplight  
8 because your brain is bleeding, because you can't see,  
9 does it mean that you consented? No. She told you he  
10 didn't want to -- she didn't want to go, and when the  
11 Greens show up, she falls out of the car and says, help  
12 me, help me. She had no desire to be there. She did  
13 not consent to this.

14           With regards to the unlawfulness of the  
15 battery, this is an interesting one. This is the  
16 self-defense instruction, number 19.

17           THE COURT: Is that the old version of the  
18 instruction?

19           MR. THOMPSON: Is it?

20           MR. PENNELL: It is not.

21           THE COURT: What's that?

22           MR. PENNELL: It is not the self-defense  
23 instruction. It was one of the series of them, though.

24           MR. THOMPSON: Yeah, this is the elements of  
25 it, but you're asking if this is a different one?

1 THE COURT: Can I see the --

2 MR. THOMPSON: I want to make sure.

3 THE COURT: I just want to check on something  
4 real quick.

5 MR. THOMPSON: Oh, I think you're right.

6 THE COURT: I think that's the prior version.

7 MR. THOMPSON: There we go. All right, here  
8 we go. It's number 19, sorry about that. The law  
9 requires the State to prove beyond a reasonable doubt  
10 that he did not defend himself against a real or  
11 apparent danger, and we prove this by showing that  
12 either (a), he was the initial aggressor or that he's  
13 the aggressor. If he's the aggressor in this, if you  
14 decide that, there is no self-defense issue here, none  
15 at all if he's the initial aggressor. If he's the first  
16 puncher, he's done, okay.

17 You do have an instruction later that says  
18 you can acquire the right to self-defense again if you  
19 were the initial aggressor, but you have to retreat  
20 first and there has to be like a cooling off period. We  
21 don't have that here. They're in the car together the  
22 whole time.

23 So if he's the initial aggressor, as Jean  
24 said, where she punched him -- or he punched her first,  
25 if that's what you find, he has no right to

1 self-defense.

2 MR. PENNELL: Your Honor, I just want to  
3 object based on what I think is a proper clarification.  
4 Instruction 20 does not talk about a cooling off period,  
5 and I believe that is the instruction that is being  
6 alluded to, instruction 20.

7 THE COURT: Mr. Thompson, maybe just make  
8 reference to the actual instruction.

9 MR. THOMPSON: All right. All right, so the  
10 actual instruction is there is an exception that if the  
11 person is the initial aggressor but attempts to retreat  
12 or otherwise declines further struggle -- there's a  
13 break -- then the person is entitled to act in  
14 self-defense, okay. So if he's the initial aggressor,  
15 though, there's no self-defense here. That's one thing.

16 Notice the little tiny word or. This will be  
17 important here in a second. If he was not confronted  
18 with immediate actual or reasonably apparent danger of  
19 unlawful bodily harm, again, or used force that was  
20 unnecessary to avoid the danger, again, or used force  
21 that was not a proportionately -- proportionately  
22 reasonable amount in face of the danger.

23 So in this case particular case, you're going  
24 to have a discussion, I'm sure amongst you, is who  
25 started this? Who's the first one here? We suggest to

1 you that Mr. Yowell is the one who started it, as Jean  
2 said. But there may be some of you that say, well,  
3 maybe Jean did try something or she smacked him or hit  
4 him, hit him with a hot one, like he said.

5 But then you recognize she had these horrible  
6 injuries. He went to town on her. I mean, she ended up  
7 not even being able to see, and you say, so he used  
8 force that was not proportionately reasonable because  
9 you look at his -- we'll get there, but alleged injuries  
10 from this fight. If you look at his where he got  
11 scratched, she got a brain bleed. Is that  
12 proportionate? No, the State would suggest.

13 Now, to that word or. Let's say one of you  
14 thinks I think he was the initial aggressor so I don't  
15 think self-defense applies, and the other one says,  
16 well, I think she was the initial aggressor, but I do  
17 think that the use of force that he used was  
18 disproportionate. You're both right. You're done. You  
19 do not have to agree on which of these four have been  
20 proven by the State. If some of you think that it was  
21 disproportionate force and some of you think that he was  
22 the initial aggressor, you're all right and you're done.  
23 You don't have to agree on which one, all right.

24 But that's how self-defense will be discussed  
25 during your deliberations, is whether or not the State



1 has proven one of those two -- one of those such that  
2 all of you agree that self-defense doesn't apply here,  
3 all right.

4 Now, I'm going to get more into the facts  
5 here, but I want you to remember a couple more of these  
6 instructions. The intent, his intent to kidnap, we have  
7 actual statements of him, what he intended to do and  
8 what he was planning to do. He told Jean what he was  
9 going to do, but at what point in time he formed that  
10 intent could be important for you in deciding whether or  
11 not she had already suffered her substantial bodily harm  
12 or if it was still in the context of the kidnapping that  
13 he had done so.

14 Look at the totality of the facts is what we  
15 ask you to do. That's how we are able to prove intent.  
16 That's how we're able to do it. So we establish it by  
17 circumstantial evidence, which is all the facts of  
18 everything, to include his statement to her. Let's save  
19 those last two there.

20 So in this particular case, whose side do you  
21 believe? Whose side do you believe? And we'd ask you  
22 to look at the evidence the State presented. First and  
23 foremost, we put the Greens on. He is standing right in  
24 front of their car in their headlights with a white tank  
25 top on. They see zero injuries on him.

1           That left shoulder that Mr. Yowell loves to  
2 show us in all those videos, nothing there. They can  
3 see the left side of his face, nothing there. And if  
4 they are as bad as what he's claiming, where's the blood  
5 from those injuries? Surely, he's going to have blood  
6 streaming down his arm. Surely he's going to have blood  
7 streaming off his face. They don't see any blood, and  
8 they don't see any injuries.

9           And I ask you, what's their motive in all  
10 this? You're going to hear, I'm sure, from the Defense,  
11 that, oh, Jean has all this motive to stay out of  
12 prison, and she doesn't want to get in trouble. What's  
13 the motive for the Greens to come in here and tell you  
14 that? They didn't know either of these people. Never  
15 met them before.

16           They're just driving home, and they come  
17 across a man who's wearing a tank top, got his hands up.  
18 That's an interesting position, isn't it? That he just  
19 stays like this and walks up to them with his hands up  
20 in the air.

21           And then what does Mr. Yowell tell them? We  
22 were in an accident, that there was an accident a ways  
23 up there, an accident. They see no injuries on him, no  
24 damage to their car. And then she opens the door and  
25 falls out and says, help me, help me. Ms. Green is on

1 the phone to 911, and to the woman that Mr. Yowell loves  
2 so much and was trying to protect says, you F'ing bitch,  
3 I'm going to jail, and he walks off.

4 That's what the Greens saw. That's what the  
5 Greens heard. That does not jive one wit with what  
6 Mr. Yowell said, not one wit. Mr. Yowell talked to the  
7 Greens right then and there. About 12 hours later --  
8 and that's important because we're suggesting to you  
9 that those injuries are to try and get him out of this.  
10 I don't know how he did it, but that's what he did to  
11 try and get himself out of this.

12 Twelve hours later, he gets picked up, and  
13 now he's got scratches and now he's got this on his  
14 shoulder. Another about 12 hours later is when Williams  
15 talks to him. He asks him, hey, do you want to talk to  
16 me? Yeah, I'll talk to you. They go in there. You  
17 watched the interview. You watch him, every time she's  
18 hitting me, she's hitting me, she's hitting me,  
19 referencing the right side. There are no injuries on  
20 his right side. This is his initial statement to the  
21 police.

22 And he says in that one that he dotted her.  
23 Every time she hit him, he hit her right back. She got  
24 tattooed. Now he says that was a mistake. That was a  
25 mistake what he told the officer. I wonder, he said it

1 was 20 to 50 times and then yesterday he said what, 30  
2 to 50. He has a tough time with numbers.

3 Jean told us she took three medications.  
4 When Williams was interviewed -- or when Yowell was  
5 interviewed by Williams, she takes five or six.  
6 Yesterday, she takes eight medications. They're in room  
7 28 in the hotel. No, they're not, they're in room 1.  
8 Nope, 28. So nothing that he said lines up with what  
9 the Greens told you.

10 They don't line up. He had the chance. He  
11 could have told this officer everything. You watch it  
12 again. Is Sergeant Williams being in any way tricky in  
13 his questioning? What happened? He has no idea so he  
14 asks. Is he being tricky? No. Could he have said all  
15 the stuff that he said yesterday? Yeah. Did he? No.

16 Then a week later here comes Mr. Yowell  
17 again. Now I got this figured out, and he's interviewed  
18 again by Sergeant Williams. Again, Sergeant Williams,  
19 go ahead, tell me. What's going on? And now he's got  
20 more of his turtling in and -- again, if she's -- if  
21 he's doing this, where's all these horrible, awful  
22 injuries that this 300-pound woman whose so dangerous,  
23 so dangerous -- that's what they want you to believe.  
24 Yeah, she's been convicted of a felony.

25 But she's so dangerous, and where's all the

1 injuries on him? He has scratches. He has scratches,  
2 and he's got this mark on his shoulder. That's it. And  
3 she punched him, a 300-pound woman, with all she's -- a  
4 little hot one, he said. Punches him as hard as she  
5 can. Where's all the bruises all up and down the side?  
6 Nope.

7 And then so he wanted all those documented  
8 again. Does he mention the cut on the inside of his lip  
9 that we heard about for the first time yesterday? Nope.  
10 Does he mention his penis being bitten? Nope. When  
11 does he come up with that one? Just a month before  
12 trial, talks to Holliday. And then yesterday we hear  
13 about the cheek that swelled up really big. This is not  
14 making sense.

15 On the flip side, look at Jean. She is  
16 suffering from a brain bleed at that very moment in the  
17 back seat of that car or in the hospital when Sergeant  
18 Williams is talking to her. Both occasions, he's taking  
19 me out to Lee. He's going to shoot me with a shotgun.  
20 He's going to kill me. They were arguing about his ex.  
21 She wouldn't listen to him.

22 You're telling me she came up with this  
23 whopper to get him in trouble while under the influence  
24 of those medical conditions. That's what she came up  
25 with. If all she's got to do is get out of trouble, why

1 didn't she just say, yeah, he beat me up? Just call it  
2 a he said/she said type DV case. Why go to that extent  
3 if you're going to make this up?

4           Doesn't that suggest to you that Jean's  
5 telling you what she knows and what she remembers that  
6 close in time? I get it, that now she has no memory of  
7 even talking to Sergeant Williams in the hospital, no  
8 memory of it. And her memory is tough now, and she'll  
9 never be the same. But doesn't that make what she said  
10 all the more impressive to you, important for you, that  
11 that's what she told them?

12           In the 911 call you hear it. That's what he  
13 told -- that's what she told Sergeant Williams when he  
14 got there. That's what she told him when he's at the  
15 hospital. There's consistency there. Mr. Yowell lacks  
16 all the consistency. He just keeps adding and adding  
17 and adding and adding hoping that somewhere you'll grab  
18 onto something and believe it and let him off here.

19           There are a host of inconsistencies in what  
20 he talked about. Mariah Carey being first and foremost.  
21 I'm listening to music just minding my own business.  
22 She hits me so hard I drop my phone. It's in the car.  
23 Go get it. It's not in the car. There's no phone in  
24 the car. There wasn't on the night of. There isn't  
25 when they go out there in January. The phones are in

1 the bedroom of the hotel room. Maybe he sings Mariah  
2 Carey in his head. I don't know, but there's no phone.

3 That doesn't match up. It's just a simple  
4 little thing, but it just kind of shows you. If you go  
5 from three pills to five pills to eight pills, now you  
6 throw Mariah Carey in the mix, just whatever he can do.  
7 He just keeps adding to the story instead of having told  
8 somebody something consistently, and he hasn't been. He  
9 hasn't been.

10 We suggest to you, ladies and gentlemen, that  
11 when you look at the both of them and you judge who to  
12 believe in this, that we have proven our case beyond a  
13 reasonable doubt via Jean and via all these other  
14 witnesses who have zero axe to grind in this. No  
15 motivations by the Greens.

16 These officers, crikies, well, it seems kind  
17 of bad that Williams didn't talk to Stake about finding  
18 the phones. Fine, write his boss a letter and tell him  
19 he should do a better job, but these guys have no axe to  
20 grind in this. They just find what they find and then  
21 they tell us and then they just move on to the next one.  
22 They're not making stuff up. This is what they found.  
23 This is the evidence in the case.

24 And we suggest to you that we have proven  
25 beyond a reasonable doubt that Mr. Yowell is guilty of

1 kidnapping in the first degree and of domestic violence  
2 resulting in substantial bodily harm, and we ask that  
3 you find him so. Hold him accountable for this. She  
4 did not deserve this. Don't let them blame it on her  
5 mental health. That's not what happened here.

6 Thank you.

7 THE COURT: Closing, Mr. Pennell.

8 MR. PENNELL: I did have some exhibits, Your  
9 Honor, if I could prepare those.

10 THE COURT: Go ahead, sure.

11 DEFENDANT'S CLOSING ARGUMENT

12 MR. PENNELL: I'd do almost anything to not  
13 go back to prison. I stabbed my father ten times. He  
14 made me drink. He made me leave the room. These are  
15 three of the most important parts of this case, along  
16 with the physical evidence, and they show certain things  
17 that are important to judge the evidence as a whole.

18 The first is that Jean did admit that she  
19 would be willing to do almost anything to avoid going  
20 back to prison. It doesn't take a lot to make the  
21 inference that that includes lying about what happened,  
22 lying about how these things happened, what happened  
23 before, what happened after.

24 Now, she never said that she drank at the  
25 hotel, but yet, she told the officers roadside that he



1 made me drink. And she also said she didn't have any  
2 alcohol. So, I guess, which is it? Did she drink  
3 alcohol or not? And if she drank alcohol, did Darwyn  
4 force her to somehow, or did she do it herself?

5 And also, made me leave my room. When she  
6 testified, she said, it was fine. We just left. She  
7 didn't say anything about Darwyn forcing her either  
8 verbally or physically making her leave the room.  
9 There's already inconsistencies in her testimony.

10 And I won't overburden you with jury  
11 instructions, but number 38 does talk about false  
12 testimony. If you believe that one thing is false in  
13 that testimony, you can discredit the entire testimony  
14 of that person. Those two things alone indicate that  
15 she is not being consistent, and her motive originally  
16 and probably still today is to not go back to prison, a  
17 place she didn't want to be.

18 Now, the history of violence is also  
19 important, the second major point. She did say that she  
20 stabbed her own family member and did so multiple times.  
21 This shows clearly that she has some violent past. Now,  
22 what the law allows under those circumstances, when we  
23 present that kind of evidence, the State is then allowed  
24 to do the same thing for Mr. Yowell if it exists.

25 When Darwyn Yowell was on that stand, you

1 didn't hear the State say you've been convicted of a  
2 felony, haven't you, because he hasn't. You didn't hear  
3 the State ask him, you've been convicted of a violent  
4 crime because he hasn't. He didn't say, you've  
5 committed acts of domestic violence against Jean before.  
6 Didn't ask him that because it never happened.

7           And the reason why I want you to weigh that  
8 in the balance is to see who has the kind of impulse to  
9 act not only impulsively, but to react out of that  
10 impulse violently when they're triggered, especially  
11 someone who unfortunately with -- when they have mental  
12 health issues, that trigger is a hair trigger. That can  
13 be set off in a moment.

14           And part of that evidence shows that just  
15 before that happened, this attack, that there was a  
16 discussion about Darwyn, his main goal being to get his  
17 kids back. His main goal is if you want to be with me,  
18 this is where my life was going, and that the rest of  
19 this stuff has to stop. This is the direction I want to  
20 go.

21           And you can see in Darwyn's interview with  
22 Williams, he says, I wish I could tell you why the  
23 attack happened. Well, I can tell you based on the  
24 evidence, the circumstantial evidence all coming  
25 together, that that hair trigger was triggered when he

1 started talking about his ex and his children and how  
2 this is the direction his life wants to go.

3 Now, the physical evidence is completely  
4 consistent with Darwyn's story in terms of his injuries.  
5 There were two series of attacks or at least two very  
6 distinguishable attacks. All the injuries were on  
7 Darwyn's left side of his body, which indicates that he  
8 was in the passenger seat on the initial attack.

9 And then when he was in the driver's seat  
10 driving, he said he was attacked as well. And the  
11 evidence has shown and what has been said is he just  
12 basically defended himself but didn't hit her as hard as  
13 he did when she bit down on his arm.

14 Now, the State wants you to, I guess, assume  
15 -- that was what I got from it -- is that Darwyn  
16 committed these injuries to himself somehow in the time  
17 between when someone goes to bed and when they wake up  
18 in the morning, that he scratched his own face somehow,  
19 that he somehow bit his own arm and created that  
20 impression.

21 It doesn't take a lot to see what happened.  
22 Now, remember, this is Deputy Holladay who took this  
23 picture. This was at booking, as soon as he was  
24 arrested. After --

25 MR. THOMPSON: It was actually Deputy Bear.

1 MR. PENNELL: One of the deputies.

2 After -- Chief Neff also indicated that after  
3 viewing his body cam video, yeah, clearly Darwyn had  
4 this injury on his arm, and he had the scratches on his  
5 face. And he didn't have those injuries on the way of  
6 going -- being transported to the jail. So it leaves us  
7 with this one period of time, this several hours at  
8 night when someone usually goes to bed.

9 And when you look, when Detective -- or  
10 excuse me, Chief Neff goes up to the door and says  
11 Darwyn, basically, you're under arrest, puts him in  
12 handcuffs, Darwyn looks like he just woke up. He  
13 doesn't have his shirt on. He needs to get his pants  
14 on. His eyes are kind of closed. It looks like someone  
15 who just got out of bed or was just woken up by a knock  
16 at the door.

17 So you're telling me that someone who just  
18 woke up had this master plan to injure themselves in  
19 that period of time. It just doesn't make sense. And  
20 what you can see here are two different marks going  
21 vertical and near each other. This perfectly fits the  
22 shape of how teeth would be on a person's arm if they  
23 were sunk in and clamping down.

24 And without even asking Deputy Bear about it,  
25 he said, yeah, and there's that big -- there's that

1 bruise that goes -- circular bruise that goes all around  
2 it. You know, the kind of bruise that would be  
3 happening if there was pressure from the rest of the  
4 mouth coming down on the arm.

5           The physical evidence clearly shows that  
6 Darwyn's story is the most accurate story, rather than  
7 believing some wild theory about in a few hours span of  
8 time, these injuries occurred some other way, especially  
9 Darwyn creating them on himself.

10           Now, in terms of that bite and the  
11 consistency with the story, we also did have some  
12 testimony from Detective Stake regarding these two  
13 photographs. So there was the injuries to Jean's lip on  
14 the upper lip. Clearly, there was some bruising. Now  
15 we see the lower lip free of injury, not even a tiny  
16 little bruise anywhere to be seen on that lower lip.

17           Now, what's the significance of that? It  
18 shows that Darwyn's story is the true story because when  
19 Jean clamped down on his arm, her teeth were on his  
20 forearm, and he said, I hit her. I hit her eight or  
21 nine times, and that's actually one of the only things  
22 that he and Jean agreed on is during that moment, that  
23 was about the number of times that she got hit.

24           And if someone is biting down on your arm  
25 from your left side and you hit them, they're likely

1 going to have injuries around their eyes, probably their  
2 nose, their upper lip, but since their lower lip is  
3 being protected by that person's own arm who's getting  
4 attacked, there's not going to be any sign of injury.  
5 The physical evidence matches up completely with this  
6 bite happening.

7 Now, Jean did get hurt. We can all agree on  
8 that, but that doesn't mean Darwyn's guilty. And this  
9 isn't to disrespect Jean or her problems or her  
10 condition, but what it is important to emphasize is that  
11 these injuries resulted from someone acting lawfully in  
12 self-defense.

13 Now, the State said he didn't have to intend  
14 to cause this serious injury, and the evidence, I think  
15 has shown, is that he didn't. He acted in self-defense.  
16 And under that moment, under the stress of having  
17 someone's teeth sunk into your arm, to feel your flesh  
18 ripping, to tell them to stop, there's little left for a  
19 reasonable person to do.

20 Now, the State did talk about why didn't you  
21 push her arm off or push her head off? Well, it seems  
22 to have caught -- would have just caused further injury.  
23 So under that circumstance, it was completely reasonable  
24 to act the way that Darwyn did. Now, when she let go,  
25 did he hit her again? No evidence indicating that he

1 did.

2 And like I said, Jean's evidence of character  
3 in terms of her violent past shows that it's impulsive,  
4 shows that it's even something she'll do to a loved one,  
5 and that's unfortunate for someone who has mental health  
6 issues. And that may be a failure of our system to help  
7 address that for people, but it doesn't mean that Darwyn  
8 in that moment wasn't allowed to defend himself against  
9 his own serious bodily injury that was occurring.

10 Now, Jean did agree that she's bipolar and  
11 has depression and has post-traumatic stress disorder,  
12 and one thing she added to that was I have a lot of PTSD  
13 from my past issues. Now, we can only guess what all  
14 those issues are, but we know one of them is the crime  
15 that she had been convicted of.

16 And she also talks about having eight or nine  
17 prior concussions to that day. Now, we can use our  
18 common sense based on what we know about the world as a  
19 whole and what we've learned, and concussions can cause  
20 serious problems for someone's ability to be impulsive.  
21 They did a big study about the NFL players and Junior  
22 Seau and what happened in those circumstances. You can  
23 see if someone has those kinds of injuries previously,  
24 how that can influence someone acting impulsively, and  
25 more importantly, acting violently when they're acting

1 impulsively.

2           Now, the State also went over the fact that  
3 why didn't you control her more? Why didn't you stop  
4 her from drinking? Why didn't you stop her from doing  
5 this? And the simple answer is there's only so much  
6 control one adult can have over another person,  
7 especially if your relationship has been perhaps a  
8 little rocky and you're trying to repair it.

9           You can't just snatch a beer out of  
10 somebody's hand, and if you're trying to get home, you  
11 can only force someone to go immediately back home so  
12 much. I mean, what basically happened is that there was  
13 a plan to go to Lee. Jean admitted she bought a travel  
14 trailer.

15           She bought that and put it on Darwyn's --  
16 Darwyn Yowell's family property, and she did that just  
17 before this incident occurred. That clearly shows her  
18 intent to live there. It also shows the fact that she  
19 intended to go there. I mean, unless you're out of  
20 multiple places where you can live, generally, that's  
21 the place you're going to go when you're living your  
22 daily life.

23           Now, I wanted to back up a little bit and  
24 kind of follow what the State was talking about in their  
25 argument. The first is telling you about the Greens at



1 the initial incident. They didn't see any injuries.  
2 But what she saw was a blond man who was walking  
3 aggressively and swinging his arms and getting two  
4 inches from the window of the car.

5 What Mr. Green saw was a man, who he couldn't  
6 remember what clothes he was wearing, walking with his  
7 hands up saying sort of I come in peace, going up to the  
8 car and stopping at least three feet in front of the  
9 car. Right there, it shows you how eyewitness  
10 testimony, it can be so poorly relied upon, that it's  
11 something that we shouldn't rely upon to determine  
12 facts.

13 The physical evidence is there. So whether  
14 or not they saw injuries -- in those circumstances, they  
15 admitted this was a stressful situation for them. They  
16 were worried about their kids in the car. They got the  
17 description of him wrong or at least they're  
18 inconsistent with each other.

19 They're not going to be looking for injuries  
20 on a person probably. That's not going to be -- well,  
21 in my mind, the first thing I'm going to do is look to  
22 see if there's some scratches on this guy's face.  
23 They're probably more concerned with what the stressful  
24 situation was, especially if they saw a woman fall out  
25 of the car. They're not going to be looking directly at

1 this man.

2 And so I think it's clear that the Greens  
3 were acting -- were witnessing this under stress. They  
4 didn't see every detail, and, therefore, there's no  
5 reason to not believe that the injuries were already  
6 there on Darwyn's face and his arm.

7 And I did want to talk also about what Jean  
8 said immediately and what she said later through her  
9 testimony. Now, she did say that she was yelling and  
10 waving at people in the City of Elko trying to get their  
11 attention at stop lights and stop signs. When she  
12 testified, she said -- didn't say anything to that  
13 effect. She just stayed in the car.

14 There were multiple stops at a stop sign.  
15 There was a long stop at an intersection, and she even  
16 said, Darwyn never locked the doors. If you were truly  
17 afraid for your life and you had just undergone the kind  
18 of attack that she described, why wouldn't you just jump  
19 out of the car and start flailing your arms? She didn't  
20 do that. It doesn't make sense unless we consider  
21 Darwyn's story.

22 It's consistent, and it makes sense with that  
23 story. She didn't want to go back to prison. Go to Lee  
24 or go to jail. That is my condition about driving your  
25 car right now. That's fine. I don't want any cops

1 involved. And then the violence continued and continued  
2 but not by Darwyn. And as the jury instructions did  
3 show you that were reviewed, a person has a right to  
4 stand their ground. They're not required to try and  
5 retreat first.

6 Now, there was this talk about a shotgun and  
7 whether Darwyn said that or not. And as I've already  
8 stated, there's not enough evidence to indicate that  
9 that statement was ever said. But there was no shotgun  
10 found. The Greens didn't see a gun or a shotgun at any  
11 point in time. There wasn't one found in the car.  
12 There wasn't one seen at the residence Darwyn was  
13 arrested at.

14 I don't know what the officers did, but what  
15 I do know is that if they had found a gun at that  
16 residence or anywhere else, it would have been part of  
17 this case. It would have been evidence. They would  
18 have put that up, clearly. And so there's no shotgun at  
19 all.

20 Now, the officers could have searched these  
21 phones to see whose phones they were, and it seems like  
22 everybody was saying that guy was supposed to do it.  
23 There was someone else that was supposed to do it, or I  
24 just need to move on to the next case. Go ahead and  
25 call their boss. Tell him you didn't do a good job.

1           No, they didn't do a good job, and that's  
2           because they could have found out who these phones  
3           belonged to. They could have looked into the contents  
4           of these phones to see if any of the stories from either  
5           of these two people matched up with what the text  
6           messages or phone calls were saying, but they didn't  
7           even bother to do that.

8           And they all said, well, it -- it was kind of  
9           this other guy's decision, or that wasn't really my  
10          field. But what Williams did say is I didn't really  
11          care because I already made my decision. I already made  
12          my mind up so I didn't need to go and do this other  
13          stuff. I already made my mind up. I don't need to go  
14          find this video. I don't need to check these phones. I  
15          didn't need to check the surveillance video outside the  
16          jail.

17          He said that after he did his probable cause  
18          sheet to arrest Darwyn, he did that without talking to  
19          Darwyn, without getting his side of the story, and then  
20          basically, he was had -- was on a one track mind at that  
21          point. He had made his decision. He was going that  
22          direction. Nothing was going to deter him. He wasn't  
23          going to go check the phones to see whose phones these  
24          were. He wasn't going to look at the surveillance  
25          videos or try and find them because he already

1 determined what he thought happened.

2 But what all these would have done is clearly  
3 the surveillance video at the initial attack would have  
4 shown, hopefully, but we'll never know because we don't  
5 actually have them, that who was the initial aggressor?  
6 What kind of attacks happened? What kind of  
7 circumstances did it happen in? You know, how long did  
8 it get out? How long did it take?

9 MR. THOMPSON: I'm going to object. He's  
10 arguing about a surveillance video of the initial  
11 attack. There's never been any testimony that there was  
12 surveillance video or even -- Mr. Yowell even said that  
13 there was surveillance video of the initial attack over  
14 by Shears and such.

15 MR. PENNELL: There's been evidence saying  
16 that he was notified of that and decided not to, Your  
17 Honor.

18 THE COURT: I'm going to overrule the  
19 objection.

20 MR. PENNELL: So, again, he didn't -- he  
21 decided not to go and see that surveillance video.  
22 Also, he didn't decide to go and get the one at the  
23 street light, which showed the car suddenly stopping in  
24 front of the jail. That would have been vitally  
25 important to show Darwyn's case and his story, but we

1 don't get that because Williams already made his mind up  
2 about what he was going to do.

3 Now, Williams also says, well, I was just  
4 trying to get at the truth. I wasn't trying to just get  
5 one side of the story. And as the State said, he wasn't  
6 asking tricky questions, but remember, at the end of  
7 that second interview, he asked Darwyn, are you sure you  
8 didn't hear Jean say she didn't want to go to Lee? No.  
9 Are you sure Jean didn't say that? No. Are you really  
10 sure she didn't say she wanted to not go to Lee? No.

11 Why would you repeat a line of questioning  
12 that clearly is meant to help make someone look guilty  
13 if all you were doing was trying to get at the truth?  
14 He made his mind up, and that's where the direction of  
15 this case went from start to finish.

16 It wasn't until we got here and had a trial  
17 where you got to hear the whole story or anybody knew  
18 about the whole story and where Darwyn finally got to  
19 tell his side of the story. Now, remember, Williams did  
20 the first interview the next day, but these pictures of  
21 Darwyn's injuries occurred as soon as he got to the  
22 jail.

23 And as you saw in the video, Darwyn is waking  
24 up out of a dead sleep. He's brought to another room.  
25 He sits down. Is it all that surprising that he may not

1 remember every detail immediately after he just woke up,  
2 that it might be somewhat inconsistent or his numbers  
3 might not be correct?

4           It makes sense that later on when he speaks  
5 to Williams and gives the account of his story, he's not  
6 just being woken up out of a dead sleep. He's able to  
7 articulate everything, and he's primarily just answering  
8 the questions that he's being asked.

9           Now, I did want to go into a few of the  
10 instructions. I'll try not to repeat too much, but what  
11 the State said is you'll be talking about these ones  
12 down here probably, but I would say what you'll likely  
13 be talking about is this one right here for all these  
14 offenses, unlawfully.

15           Did Darwyn act in self-defense? That's what  
16 that unlawfully is asking you to decide. Did Jean  
17 consent to going to Lee? This is what this unlawfully  
18 is asking you to decide. Now, the State did go to great  
19 pains to say, well, if you don't believe this, then you  
20 can go to this next lesser included, but I think this  
21 one is pretty important is that specific intent to  
22 commit robbery, kill, or inflict substantial bodily  
23 harm.

24           The State has to prove, essentially, that  
25 before this initial attack even happened, Darwyn had

1 this plan in his mind. That's basically what specific  
2 intent is. It's a plan for a result, that before there  
3 was this attack, he planned on committing one of these  
4 offenses. Now, remember it says robbery, and the  
5 State's getting at, you know, taking of the purse, but  
6 that happened clearly after everything happened and as  
7 an afterthought.

8           And then the intent to kill her or inflict  
9 substantial bodily harm, the harm happened after. So he  
10 couldn't have possibly had the intent before. And the  
11 intent to kill, as I said before, Jean's story cannot be  
12 trusted because of her motive and because she's been  
13 inconsistent in her testimony.

14           And so in terms of all the kidnapping charges  
15 -- I won't go through everything -- but you're going to  
16 have even less to consider on these other ones, but what  
17 you always can consider is the defense for all the  
18 applicable ones and consent.

19           Now, the circumstantial and direct evidence  
20 that the State talked about is important to show the  
21 consent as well because there's Darwyn's account of  
22 saying I'm going to Lee. I will not drive your car  
23 unless that's our destination. Okay, just get me out of  
24 here. I don't want the cops here.

25           But there's circumstantial evidence as well,



1 and I already mentioned it. There was a travel trailer  
2 that she purchased and specifically put on that property  
3 in Lee. That circumstantial evidence clearly indicates  
4 that was her intended destination once they were going  
5 to go home, but this party -- or excuse me, this  
6 partying and honeymooning, as they called it, or as  
7 Mr. Yowell did, you know, once that was over, that that  
8 was their intended destination.

9 Now, I did want to talk to you also about  
10 some of the instructions for self-defense, specifically  
11 if you're writing them down, 16, 18, and 21. Now, the  
12 word unlawfully applies to all of these charges and  
13 requires the State to prove beyond a reasonable doubt  
14 that Darwyn did not act in self-defense.

15 So at this point, I just want to back up and  
16 go a little bit through what happened directly leading  
17 up to that initial attack. As I already mentioned and  
18 you've heard from the State and evidence throughout the  
19 trial, they left the room. Inconsistent testimony with  
20 Jean about whether she was forced to or not, but at  
21 trial she said she wasn't.

22 They left. They went to the old Colony.  
23 They went to the residence that Darwyn's children were  
24 at, and that was where the discussion about this is  
25 where my life's going. This is where I want to go, the

1 inciting event. So like I said, the person who has the  
2 impulse to act violently had a hair trigger, and that  
3 was the event that caused that trigger to be pulled.

4 It was shortly thereafter that there was an  
5 attack out of nowhere and a continued attack where  
6 Darwyn kept saying, are you done yet after she ran out  
7 of breath and she would start again. She ran out of  
8 breath. She would start again, hitting him. Even at  
9 one point, he held her arm, and you can look at some of  
10 these exhibits, and I asked Detective Stake about it,  
11 about a circular sort of small purple bruise on the  
12 inside of her arm.

13 Darwyn said that he held that arm out and  
14 said stop. You can see where his finger would have been  
15 pressing in. That's where that purple bruise came from,  
16 and at that point in time, with her arm crossed over,  
17 she reached over his arm, clamped her teeth down onto  
18 his arm, and started biting down ripping his flesh.

19 Now, any person, any reasonable person would  
20 have been terrified in that moment so when you have the  
21 jury instructions say, did this person act reasonably?  
22 A reasonable person terrified by someone biting into  
23 them and tearing their flesh would probably immediately  
24 start attacking, but what Darwyn did is told her to  
25 stop. Stop or I'll hit you. He actually gave her a

1 warning, which he, by law, he wasn't even required to  
2 do, and so he hit her. And at that point in time, she  
3 let go.

4           So this is where I get to the next  
5 instruction, actual danger is not necessary. Now, as  
6 the State has said, you don't even have to get to the  
7 rest of this if you've seen this -- or if this is  
8 proven. Sinking your teeth into someone's arm is actual  
9 danger. I don't know if he was in actual danger, but  
10 under the instructions that you received, you can  
11 determine that was probably substantial bodily harm.

12           So was that reasonable or proportionate or  
13 necessary when you're suffering substantial bodily harm  
14 to also do an act, which may result in substantial  
15 bodily harm? The law says yes. This instruction says  
16 that this person doesn't even have to be confronted with  
17 real danger. It just has to be apparent under those  
18 circumstances. They could be completely mistaken that  
19 this is real danger, but if a reasonable person under  
20 those circumstances would make that mistake, you can act  
21 in self-defense.

22           Like I said, there's not even a mistake. He  
23 was suffering substantial bodily harm. So I say to you,  
24 he acted completely reasonably, and the State cannot  
25 show you that he did not lawfully act in self-defense.

1           This is the last one, and I've already gone  
2 over this in some detail, is that you don't have to  
3 retreat. Now, we may have a moral inclination in our  
4 own mind as you should probably do that. You should try  
5 and get out of the car while you're being pummeled. You  
6 should try and open the door and escape. Darwyn legally  
7 did not have to do that. He had a right to stand his  
8 ground and not retreat.

9           And after she bit him, after he gave her a  
10 warning, he did hit her, but as I said, the law supports  
11 that. So whether or not you think someone has a duty to  
12 retreat, Nevada law says, well, that may be your  
13 opinion, but that's not what your tasked with doing,  
14 that Darwyn had no obligation to retreat under those  
15 circumstances.

16           And as I said, again, this is not to be cruel  
17 to Jean or take away what she's had to endure in her  
18 life, both before and after this, but it's important to  
19 note, to speak truthfully and bluntly about the issue of  
20 her history of violence, Darwyn's lack of history of  
21 violence, Jean's mental health issues, her PTSD, that  
22 she says I have a lot of past issues from that, the  
23 violence that she was willing to engage against her own  
24 father, and clearly, did not want to go back to prison  
25 under any circumstances.

1           That shows that between the two stories you  
2 have, you should trust Darwyn's version of it, and if  
3 you say to yourself, well, I don't know who has the  
4 right version of events, well, then let the physical  
5 evidence speak to you. Look at the bite mark, the  
6 bruise, the circular bruise around it, that pretty  
7 clearly is probably from someone's mouth clamping down,  
8 the scratches on the left side of the face after he  
9 huddled up, and that was her only point of attack to  
10 harm him. The physical evidence tells the story, and  
11 the story is that Darwyn acted in self-defense.

12           Now, if you find yourself right now or back  
13 in the jury deliberation room saying, I don't know what  
14 happened. I'm not sure what happened. That is  
15 reasonable doubt. And as the State likes to say, once  
16 you get there, you're done. If you have that kind of  
17 question rolling through your mind, you're done. There  
18 is reasonable doubt.

19           Now, as I said, this case has two witnesses  
20 and two stories about what really happened. The  
21 physical evidence tells Darwyn's story, that he acted in  
22 self-defense. So not only does the evidence show that,  
23 but you have an obligation to find Darwyn not guilty  
24 because he is innocent.

25           THE COURT: Okay, rebuttal argument,

1 Mr. Thompson.

2 MR. PENNELL: Do you want me to clean that up  
3 first?

4 MR. THOMPSON: Yeah.

5 THE COURT: Do you want your notes?

6 PLAINTIFF'S REBUTTAL ARGUMENT

7 MR. THOMPSON: All right. So let's talk  
8 about the bite mark, the alleged bite mark. You saw it.  
9 You can even see Jean's teeth in that one picture.  
10 She's got teeth underneath here. It's not like she's  
11 missing them. And the bite mark has, the alleged bite  
12 mark that they say, has on the top and then  
13 off-centered. I get that they're going two different  
14 directions, but they are not next to each other. It  
15 should be a lot more circular for a bite mark. The  
16 officer looked. Did he see any teeth marks? No. No  
17 teeth marks.

18 Now, Darwyn testified yesterday how he was  
19 holding her when she bit him. Arm fully extended, fist  
20 cocked, ready to go, and she bites him. How in the heck  
21 is her head -- if this is her arm, even her upper arm,  
22 how is her arm -- her head getting to his upper bicep?  
23 That's impossible.

24 Worse yet, to get on the back of the bicep.  
25 There's no way. There's no way. He was holding her

1 like this when she bit him is what he said, arm's  
2 length. There's no way that she gets there. The shape  
3 does not match a bite mark. There are no teeth in the  
4 bite mark. It's not a bite mark. I don't know what he  
5 did. It's not a bite mark.

6 And, again, you have to take this from  
7 Mr. Yowell. They said there was no more hitting after  
8 the initial incident. Yeah, there was. According to  
9 Mr. Yowell, she hit him over and over several times,  
10 three or four times on the way out to Jiggs, and we  
11 still have zero injuries to the right side of his body.  
12 That's when he's driving, and he said it. She hit him  
13 multiple times.

14 If you remember the one where she hit him and  
15 they almost swerved off the road. Remember there was  
16 almost a wreck. And what did he do, took a deep breath,  
17 bam, hit her. But he said that she hit him multiple  
18 times on the way out there. No injuries on the  
19 right-hand side.

20 The drive out, she calms down. She wants a  
21 cigarette. He wants a cigarette. Wait, just prior to  
22 that, he had testified that he was driving under the  
23 speed limit, really slow, being really careful, then she  
24 told him to speed up because her head was starting to  
25 hurt, and then all of a sudden, she wants a cigarette

1 and they stop on the road for 15 minutes. They took a  
2 cigarette break literally in the middle of the road, or  
3 is it as Jean says, that she fussed with the break and  
4 caused them to stop in the middle of the lane?

5 He says they just kind of pulled up to the  
6 middle of the lane and just stopped there so they could  
7 have a cigarette break. Really? He says that when they  
8 stopped, she got out and ran down the road. This woman  
9 who cannot see, who's suffering a brain bleed, got up  
10 and ran down the road, and the Greens say they saw her  
11 open the door and fall over. Who are you going to  
12 believe?

13 They like to talk about injuries at the top.  
14 Do you remember Detective Stake, injuries to the lower  
15 jaw. Hum, he didn't mention that, did he? When you go  
16 back and you listen to his interview or that first one  
17 when he talks about hitting her back every time, that's  
18 before the bite mark when he's hitting her every time.

19 He's punishing her if anything. He's  
20 punishing her. Okay, so they have this discussion about  
21 his kids. She has the money. She has the car, and  
22 maybe she said, nah, not interested. Remember, she  
23 wasn't listening to him. That's what she said on the  
24 video. That's what he wants, remember. He said he  
25 wanted her to share that money. She's not listening to



1 him. We suggest to you that -- that ticked him off.  
2 He's the one who got angry because she wasn't going to  
3 share the money. She wasn't going to share in his  
4 dream.

5           There was no graduation party. She did not  
6 want to go out to Lee. She thought she was going back  
7 to the hotel or to the friend's house when she said  
8 you're going to have to drive, and then he said, we're  
9 going out to Lee and this is it. I'm done with you, and  
10 I'm going to kill you.

11           That's what happened in this case.  
12 Mr. Yowell is all over the place with his story, and it  
13 does not line up with the facts. They want us to ignore  
14 everyone, ignore everybody. If the phones had been  
15 found in the car, that would have been interesting,  
16 sure, but they weren't. So none of what happened  
17 between them for this whole thing is on those phones.  
18 They're in the hotel room.

19           We've got to search them? Why? There's  
20 nothing there. The only thing that the phone does for  
21 us is we know that he wasn't watching Mariah Carey on  
22 the phone like he says, like so many things that  
23 Mr. Yowell says that just do not match up whatsoever.

24           Ladies and gentlemen, he's guilty of first  
25 degree kidnapping. We ask that you find him such and

1 also a battery resulting in -- domestic battery  
2 resulting in substantial bodily harm.

3 Thank you.

4 THE COURT: If counsel will please verify  
5 that they don't have any of the admitted exhibits at the  
6 tables. Please get those to Brandi so she can get those  
7 organized for the jury.

8 It now is the time for us to dismiss, at  
9 least for the moment, the alternate jurors. That would  
10 be Juror No. -- excuse me, Juror Kough and Juror  
11 Peterson, our alternate jurors. The bailiff is going to  
12 have a couple of packets to give you on your way out.  
13 This has some important documentation in there for you.

14 Now, it is possible that after you have been  
15 excused, we might still have to bring you back if  
16 something happened with the jury before they're done  
17 deliberating. It is possible. We may still have to  
18 have you come back and begin deliberation with the jury.

19 So after you've been excused, please do not  
20 discuss anything about the trial until you've been  
21 notified that they've reached a verdict, and at that  
22 point, you're welcome to discuss anything you'd like  
23 about the trial with anyone you like.

24 And so on your way out, you're going to  
25 provide Carlos with your phone numbers just in case we

1 need to call you and have you come back, but at this  
2 point, we're going to go ahead and excuse you, and you  
3 can step out with Carlos and give him your phone number.

4 Okay, if Bailiff Nunes will please come  
5 forward, the clerk will now swear in the bailiff to take  
6 charge of the jury.

7 THE CLERK: Do you solemnly swear that you  
8 will keep the jury together in some private and  
9 convenient place and not permit any person or persons to  
10 speak or communicate with them nor do so yourself unless  
11 it be by order of the Court or to ask them whether they  
12 have agreed upon a verdict and to return them into court  
13 when they have so agreed or when ordered by the Court,  
14 so help you God?

15 THE BAILIFF: I will.

16 THE COURT: The jury may take with them to  
17 the jury room all papers and other items, which have  
18 been received as evidence in this case, including the  
19 written instructions that have been given by the Court.  
20 We have several copies of those written instructions  
21 that you'll be able to take back to the jury room with  
22 you and all notes taken by the members of the jury  
23 during the trial. The jury may request through the  
24 bailiff further information or instruction if that  
25 becomes necessary.

1           After this case has been submitted to you and  
2     you have begun your deliberations, you may be permitted  
3     to separate for breaks or you may be allowed to leave  
4     for the evening. During periods that you are separated,  
5     you must not discuss with anyone any subject connected  
6     with this trial or you -- and you must not deliberate  
7     further upon the case with any of your fellow jurors  
8     until all 12 of you are together again and you are  
9     assembled in the jury room. Once you are all together  
10    again after a break or after an evening recess, you may  
11    then continue your deliberations.

12           We have ordered lunch for you. It should be  
13    arriving in the next 15 minutes or so to the jury room.  
14    So if you'll all please rise, you can now follow Bailiff  
15    Nunes to the jury room.

16           (Whereupon, the jury left the courtroom)

17           (Whereupon, court recessed)

18           THE COURT: Court is back in session. Please  
19    be seated.

20           The time is 1:32 p.m., June 17th, 2021.  
21    We're back on the record in Case DC-CR-20-159, the State  
22    of Nevada versus Darwyn Ross Yowell. The Defendant is  
23    present, along with counsel, Mr. Pennell. Mr. Thompson  
24    is here from the District Attorney's Office.

25           We're convened outside the presence of the

1 jury. We've been notified that a -- a verdict has been  
2 reached. Is there anything we need to address before we  
3 bring the jury in?

4 MR. THOMPSON: Not for the State.

5 MR. PENNELL: No, Your Honor.

6 THE COURT: Okay, all rise, please.

7 (Whereupon, the jury entered the courtroom)

8 THE COURT: Court is back in session. Please  
9 be seated.

10 The time is 1:34 p.m., June 17th, 2021.  
11 We're back on the record in Case DC-CR-20-159, the State  
12 of Nevada, Plaintiff, versus Darwyn Ross Yowell.  
13 Mr. Yowell is present, along with counsel, Mr. Pennell.  
14 Mr. Thompson is here from the District Attorney's  
15 Office.

16 We're going to start by doing a roll call of  
17 the jurors. When you're name is called, please answer  
18 present or here.

19 Go ahead, Ms. Clerk.

20 THE CLERK: David Gubler.

21 MR. GUBLER: Present.

22 THE CLERK: Jennifer Bondelie.

23 MS. BONDELIE: Present.

24 THE CLERK: Ronnie Barruetabena.

25 MR. BARRUETABENA: Present.

1 THE CLERK: Shanna Stevenson.  
2 MS. STEVENSON: Present.  
3 THE CLERK: Yannett Daines.  
4 MS. DAINES: Present.  
5 THE CLERK: Theresa Nutting.  
6 MS. NUTTING: Present.  
7 THE CLERK: Jared Moffitt.  
8 MS. MOFFITT: Here.  
9 THE CLERK: Steven Gress.  
10 MR. GRESS: Present.  
11 THE CLERK: Rhonda Powrie.  
12 MS. POWRIE: Present.  
13 THE CLERK: Rye McKay.  
14 MR. MCKAY: Here.  
15 THE CLERK: James Kennedy.  
16 MR. KENNEDY: Present.  
17 THE CLERK: And Kenneth Griswold.  
18 MR. GRISWOLD: Here.  
19 THE COURT: Thank you. The next question  
20 will be answered by the foreperson. Has a foreperson  
21 been selected?  
22 UNIDENTIFIED JUROR: Yes.  
23 THE COURT: We do have a foreperson. It  
24 looks like you're at the end. The answer to this  
25 question is simply a yes or no.

1 Has the jury reached a verdict?

2 MR. GRESS: Yes.

3 THE COURT: If you'll please pass that  
4 verdict form to the bailiff, and he'll bring that up to  
5 the Court.

6 Okay. Mr. Yowell, please stand as the  
7 verdict is being read by the court clerk.

8 THE CLERK: Case No. DC-CR-20-159, Department  
9 No. 3, Fourth Judicial District Court, County of Elko,  
10 State of Nevada, State of Nevada, Plaintiff, versus  
11 Darwyn Ross Yowell, Defendant.

12 We the jury, being duly empanelled in the  
13 above-entitled matter find the Defendant not guilty. On  
14 Count 2, we the jury find the Defendant guilty domestic  
15 battery resulting in substantial bodily harm. Dated  
16 this 17th day of June, 2021, signed the foreperson.

17 Ladies and gentlemen, is this your true  
18 verdict as rendered?

19 THE JURY: (Affirmative)

20 THE COURT: Okay. Would either party like  
21 the jury to be polled?

22 MR. THOMPSON: No.

23 MR. PENNELL: No, Your Honor.

24 THE COURT: Okay. I want to sincerely  
25 express my appreciation to the members of the jury. I

1 know that it's been a long week, and there's been lots  
2 of hours that we've spent sitting in these chairs, and  
3 so I sincerely appreciate your efforts in this regard.  
4 Our system doesn't work without jurors who are willing  
5 to show up and take part in this process so I want to  
6 express my sincere appreciation for you -- or to you.

7           As you're exiting the courtroom, there's a  
8 packet that Mr. Nunes, the bailiff, will hand to you.  
9 There's several items in this packet, including a letter  
10 from the Court, a certificate of appreciation for your  
11 service on the jury. And there's also, in that packet,  
12 a letter from the Clerk's Office that you can present to  
13 your employer if you need to -- if you need any  
14 documentation about your jury service.

15           And then there's also a questionnaire in  
16 there about your jury service. We would certainly  
17 appreciate any feedback that you can provide the Court  
18 about this process, things that we could do better.  
19 We're always looking to make this process better for you  
20 and more enjoyable. So if there's any thoughts or  
21 advice you might want to offer to the Court, feel free  
22 to use that questionnaire to provide some feedback to  
23 the Court.

24           So if everyone will please stand at this  
25 time, we'll go ahead and excuse the jury. Thank you for



1 your service.

2 (Whereupon, the jury left the courtroom)

3 THE COURT: Okay. Please be seated.

4 Okay, Mr. Yowell, there is a questionnaire  
5 that you're going to need to fill out with the Division  
6 of Parole and Probation. It's a rather lengthy  
7 document. We're going to hand a copy of that to you.  
8 Just make sure you get that filled out and provide that  
9 back to them. They're likely to request an interview  
10 with you as well so please be cooperative in that  
11 process.

12 We're going to set out sentencing to occur in  
13 about two months or so. Are you envisioning any --  
14 excuse me, victim impact testimony, Mr. Thompson? Hard  
15 to say?

16 MR. THOMPSON: Hard to say.

17 THE COURT: Would you like to set on a  
18 non-law and motion day?

19 MR. THOMPSON: No, I think it will be fairly  
20 brief.

21 THE COURT: Okay. So we'll go ahead and find  
22 an available date about two months out.

23 MR. PENNELL: And, I apologize, Your Honor, I  
24 didn't bring my calendar with me.

25 THE COURT: Okay. We can certainly contact

1 your office and set it if you prefer.

2 MR. PENNELL: You could do that. Exactly,  
3 that's fine.

4 THE COURT: Okay. So we will find -- we'll  
5 fine a date approximately a couple months out, and we'll  
6 set that with your office, okay. So the Defendant is  
7 remanded back into the custody of the Sheriff's Office  
8 at this time, and we're now adjourned, thank you.

9 (Whereupon, proceeding concluded)

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


I, JULIE ROWAN, do hereby certify:

That on June 17, 2021, a jury trial was held in the within-entitled matter in the Fourth Judicial District Court, Department 3, within the State of Nevada, in and for the County of Elko;

That said 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 95, is a full, true, and correct transcript of said recording performed to the best of my ability.

Dated this 16th day of November, 2021.

  
Julie Rowan

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1                   IN THE SUPREME COURT OF THE STATE OF NEVADA  
2

3           DARWYN ROSS YOWELL,

4                               Appellant,

5           v.

6           THE STATE OF NEVADA,

7                               Respondent.  
8

NO. 83577

Electronically Filed  
Jan 27 2022 02:07 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

9           MOTION TO TRANSMIT ORIGINAL EXHIBIT PURSUANT TO NRAP  
10                               10(b)(2) and 30(d)

11                   COME NOW, DARWYN ROSS YOWELL, The Appellant, by and  
12  
13           through his attorney, MATTHEW PENNELL, and hereby moves for an  
14  
15           Order directing the Fourth Judicial District Court Clerk to transmit the  
16           Original Plaintiff's Exhibit 3 – DVD Williams body camera at NNRH in  
17           this case for review by this Court. Appellant believes review of this Exhibit  
18  
19           by this Court is relevant because part of Appellant's appeal is the unlawful  
20           admission of the Exhibit. Appellant also believes it is necessary for the  
21           Court to review the original Exhibit, because the Exhibit's contents were not  
22           transcribed and the jury viewed the admitted Exhibit.  
23

24           //

25           //

26           //

27  
28  
29           Elko County  
          Public Defender

1 DATED this 27<sup>th</sup> day of January, 2022.

2  
3 MATTHEW PENNELL  
4 Elko County Public Defender  
5 569 Court Street (Physical address)  
6 571 Idaho Street (Mailing address)  
7 Elko, NV 89801  
8 (775) 738-2521

9 By: /s/ Matthew Pennell  
10 Elko County Public Defender  
11 NV Bar number 13298  
12  
13  
14

15 CERTIFICATE OF ELECTRONIC FILING

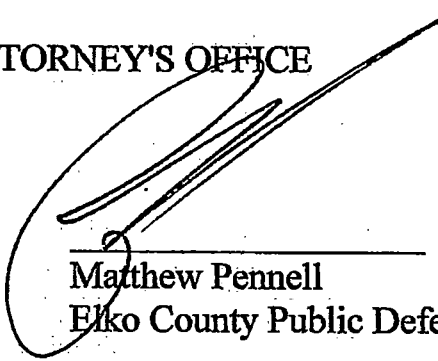
16  
17 I hereby certify, pursuant to the provisions of NRCP 25(c)(1)(D),  
18 that I am an employee of the Elko County Public Defender's Office, and  
19 that on the 27<sup>th</sup> day of January, 2022, I electronically filed a copy of the  
20 foregoing MOTION TO TRANSMIT MARKED EXHIBIT, and the  
21 following parties have consented to receive electronic filings in this matter:  
22  
23

24 CLERK OF THE SUPREME COURT  
25 Supreme Court Building  
26 201 S Carson Street  
27 Carson City, NV 89701-4702

28 OFFICE OF THE ATTORNEY GENERAL  
29 100 N. Carson Street  
30 Carson City, NV 89701-4717

Elko County  
Public Defender

1  
2 TYLER INGRAM  
3 Elko County District Attorney  
4 CHAD B. THOMPSON  
5 Deputy District Attorney  
6 ELKO COUNTY DISTRICT ATTORNEY'S OFFICE  
7 540 Court Street  
8 Elko NV 89801

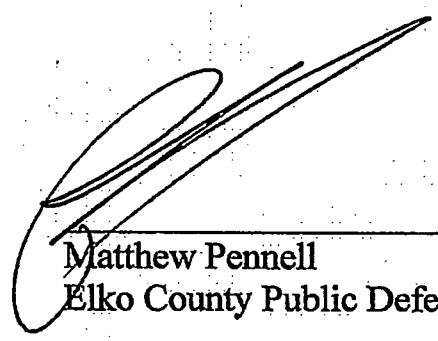


Matthew Pennell  
Elko County Public Defender

10 CERTIFICATE OF MAILING

11  
12 I hereby certify, pursuant to the provisions of NRCP 25(c)(1)(B),  
13 that I am an employee of the Elko County Public Defender's Office, and  
14 that on the 29<sup>th</sup> day of January, 2022, I mailed, postage prepaid, a copy  
15 of the foregoing MOTION TO TRANSMIT MARKED EXHIBIT to the  
16 following:  
17  
18

19 Darwyn Ross Yowell #1249369  
20 SDCC  
21 PO Box 208  
22 Indian Springs NV 89070



Matthew Pennell  
Elko County Public Defender

23  
24  
25  
26  
27  
28  
29 Elko County  
Public Defender

IN THE SUPREME COURT OF THE STATE OF NEVADA

DARWYN ROSS YOWELL,  
Appellant,  
vs.  
THE STATE OF NEVADA,  
Respondent.

No. 83577

**FILED**

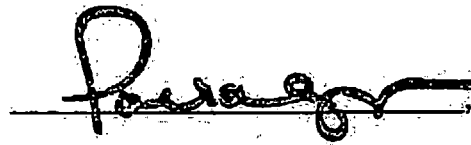
**JAN 28 2022**

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

***ORDER GRANTING MOTION TO TRANSMIT ORIGINAL EXHIBIT***

Appellant's unopposed motion for the transmission of an original exhibit is granted. NRAP 30(d). The clerk of the district court shall have 14 days from the date of this order to transmit to this court trial exhibit 3, identified on the district court exhibit list as "DVD-Williams' body camera at NNRH."

It is so ORDERED.

 C.J.

cc: Elko County Public Defender  
Elko County District Attorney  
Attorney General/Carson City  
Elko County Clerk