

IN THE SUPREME COURT OF THE STATE OF NEVADA

SARAH ELIZABETH GRAVELLE,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed  
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Elizabeth A. Brown  
Clerk of Supreme Court

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

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1 RESPECTFULLY SUBMITTED this 25 day of January 2022.

2  
3 MATTHEW PENNELL  
4 ELKO CO. PUBLIC DEFENDER  
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9 ROGER H. STEWART  
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13 RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of January 2022.

14 TYLER J. INGRAM  
15 ELKO CO. DISTRICT ATTORNEY  
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17 Elko, Nevada 89801

18 By: Walter F. Fick  
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1                                    CERTIFICATE OF SERVICE BY ELECTRONIC FILING

2                    I hereby certify, pursuant to the provisions of NRAP 25, that I am an employee  
3 of the Elko County Public Defender's Office, and that on the 25 day of January  
4 2022, I electronically filed a copy of the foregoing, Appendix to Appellant's Fast  
5 Track Statement, and the following parties have consented to receive electronic  
6 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                                   WALTER F. FICK  
15                                   ELKO COUNTY DISTRICT ATTORNEY'S OFFICE  
16                                   540 Court Street Second Floor  
17                                   Elko NV 89801

18                                   

19                                   CERTIFICATE OF MAILING

20                    I hereby certify, pursuant to the provisions of NRAP 25, that I am an employee  
21 of the Elko County Public Defender's Office, and that on the 25 day of January  
22 2022, I mailed and postage prepaid, a copy of the foregoing Appendix to Appellant's  
23 Fast Track Statement to the following:

24                                   SARAH ELIZABETH GRAVELLE  
25                                   FMWCC  
26                                   4370 Smiley Road  
27                                   Las Vegas NV 89115

28                                   

2021 DEC 14 PM 4:20

ELKO CO DISTRICT COURT

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

**In The Matter Of:**  
*THE STATE OF NEVADA v.*  
*SARAH ELIZABETH GRAVELLE*

COPY

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*Vol. I*  
*February 19, 2019*

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*Capitol Reporters*  
*628 E. John St # 3*  
*Carson City, Nevada 89706*  
*775 882-5322*

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IN THE FOURTH JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA  
THE HONORABLE NANCY PORTER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA, )  
Plaintiff, ) Case No. CR-FP-18-7207  
vs. ) Dept. No. I  
SARAH ELIZABETH GRAVELLE, )  
Defendant. )

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL, VOLUME I  
TUESDAY, FEBRUARY 19, 2019  
ELKO, NEVADA

Transcribed by: Shellie Loomis, RPR

ELKO, NEVADA, TUESDAY, FEBRUARY 19, 2019, P.M. SESSION  
-oOo-

THE COURT: The first thing we need to do is have you all sworn. Will you please stand, face the clerk and raise your right hand.

(Jury panel sworn.)

THE COURT: Thank you. You may be seated. Some housekeeping matters first. The bailiff will have the jury room open during all recesses in the trial.

If you need anything for your personal comfort, please tell the bailiff and he will let me know and we will do the best we can to accommodate you.

You've been supplied with tablets and pencils so you can take notes during the trial. You don't have to, that's up to you. But I do caution you not to rely on your notes in case of a conflict among you about what the evidence actually was.

The Court recording is the official record of the trial, and if necessary, during your deliberations we can play testimony back.

Some courts allow jury note taking, some do not. This Court does. Most of the decisions that I make in my job I take notes myself so that I can remember everything that's

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APPEARANCES:

For the State: Elko County District Attorney's Office  
By: Daniel Roche,  
Deputy District Attorney  
  
For the Defendant: Elko County Public Defender  
By: Phillip Leamon,  
Deputy Public Defender

(INDEX LOCATED AT THE BACK OF THE TRANSCRIPT.)

happened. But, again that's up to whether you choose to do that.

We will usually try to take two recesses a day. One in the morning, 1:00 in the afternoon. They each will be about 20 minutes long sometimes they'll go longer. Sometimes there are things that the attorneys and I need to deal with outside your presence but we will try to keep the recesses to 20 minutes.

Before we go further the law requires that I admonish you as follows:

No juror may declare to his or her fellow jurors any fact relating to the case as of their own knowledge. If any juror discovers during the trial or after the jury has retired that he or she or any other juror has personal knowledge of any fact in controversy that juror shall disclose that situation to the Judge out of the presence of the other jurors.

The clerk will now read the Criminal Information filed by the State in this case and state to the jury the plea entered by the Defendant.

THE CLERK: Case Number CR-FP-18-7207, Department Number I. In the Fourth Judicial District Court of the State of Nevada in and for the County of Elko. The State of Nevada, Plaintiff versus Sarah Elizabeth Gravelle, Defendant.

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1 Criminal Information: Comes now the State of  
2 Nevada, the Plaintiff in the above-entitled cause by and  
3 through its counsel of record the Elko County District  
4 Attorney's office and informs the above entitled court that  
5 the Defendant above named on or about the 22nd day of August,  
6 2018 at or near the location of Fourth and Court Streets, City  
7 of Elko within the County of Elko and the State of Nevada  
8 committed a crime or crimes described as follows:

9 Count I, possession of a controlled substance, a  
10 category E felony, as defined by NRS 453.336.

11 That the Defendant did unlawfully and knowingly  
12 or intentionally possess actually or constructively  
13 methamphetamine is controlled substance.

14 All of which is contrary to the form of the  
15 statute in such cases made and provided and against the peace  
16 and dignity of the State of Nevada.

17 Dated September 19th, 2018, Tyler J. Ingram, Elko  
18 County District Attorney. Signed Daniel M. Roche, Deputy  
19 District Attorney, State Bar Number 10732.

20 To this charge, the Defendant has previously  
21 entered a plea of not guilty.

22 THE COURT: Thank you.

23 Counsel, do you stipulate to the Court reading  
24 jury instructions number 1 and 2 to the jury?

1 before you retire to consider your verdict.

2 This is a criminal case commenced by the State of  
3 Nevada which I may sometimes refer to as the State, against  
4 the Defendant, Sarah Elizabeth Gravelle. The case is based on  
5 a criminal information which has been read to you.

6 You should distinctly understand that the  
7 Criminal Information simply contains a charge. It is not in  
8 any sense evidence of the allegations it contains, nor is it  
9 an exhibit substitute for the instructions which detail the  
10 elements of the crime charged which I will give you at the  
11 close of the case.

12 The Defendant plead not guilty to the crime  
13 charged in the Criminal Information. The State therefore, has  
14 the burden of proving each element of the crime charged beyond  
15 a reasonable doubt.

16 The purpose of the trial is to determine whether  
17 the State can meet this burden. The trial will proceed in the  
18 following order.

19 First, the parties have the opportunity of making  
20 opening statements. The State may make an opening statement  
21 at the beginning of the case.

22 The Defendant may make an opening statement  
23 following the opening statement for the State or may defer the  
24 making of an opening statement until the close of the state's

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1 MR. LEAMON: Yes, Your Honor.

2 MR. ROCHE: We do, Your Honor.

3 THE COURT: Thank you. Some jurors have wondered  
4 why the jury instructions are not read until after all the  
5 evidence has been admitted at the end of the case.

6 First of all, that's because the law in Nevada  
7 actually requires that the jury instructions be read at that  
8 time.

9 But the reason behind that is until the evidence  
10 is developed during the trial, I don't know which specific  
11 instructions should be given to the jury.

12 However, the attorneys usually agree that the  
13 Court can read jury instructions number 1 and 2 to the jury  
14 before we start.

15 Jury instruction number one gives you kind of a  
16 road map about how the trial will go along and how it will  
17 develop.

18 Instruction number two tells you how jurors can  
19 ask questions.

20 Instruction number one. Ladies and gentlemen of  
21 the jury, this instruction is intended to serve as an  
22 introduction to the trial of this case. It is not a  
23 substitute for the detailed instructions on the law and the  
24 evidence which I will give you at the close of the case and

1 case.

2 Neither party is obliged to make an opening  
3 statement. What is said in the opening statements is not  
4 evidence. The statements simply serves the purpose of an  
5 introduction to the evidence which the party making it intends  
6 to produce.

7 Second, the State will introduce evidence in  
8 support of the charge contained in the criminal information.

9 Third, after the State has presented its  
10 evidence, the Defendant may present evidence. However, she is  
11 not obliged to do so.

12 The burden is always on the State to prove every  
13 element of the offense charged beyond a reasonable doubt. The  
14 law never imposes on the Defendant in a criminal case the  
15 burden on calling any witnesses or introducing any evidence.

16 Fourth, I will instruct you on the applicable  
17 law. Your verdict must be unanimous.

18 First, each party has the opportunity to present  
19 oral argument in support of the respective case of each. What  
20 is said in closing argument is not evidence just as what is  
21 said in the opening statement is not evidence.

22 The arguments are designed to present to you the  
23 contentions of the parties as to what the evidence has shown  
24 and what inferences maybe drawn from the evidence.

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1 The State has the right to open and close the  
2 argument.  
3 Your purpose as jurors is to find and determine  
4 the facts. Under our system of criminal procedure, you are  
5 the sole judge of the facts.  
6 If at any time I should make a comment regarding  
7 the facts, you are admonished to disregard it.  
8 It is especially important that you perform your  
9 duty of determining the facts diligently and consciously for  
10 ordinarily there is no means of correcting an erroneous  
11 determination of the facts by a jury.  
12 On the other hand, and with equal emphasis, I  
13 instruct you that the law as given by the Court constitutes  
14 the only law for your guidance. It's your duty to accept and  
15 follow it. It is your duty to follow the law as I give it to  
16 you even though you may disagree with the law.  
17 You are to determine the facts in the case solely  
18 from the evidence produced at trial which consists of the  
19 testimony of witnesses and exhibits received in evidence.  
20 Questions asked by lawyers are not evidence for  
21 the evidence consists of answers given by witnesses, the  
22 questions posed by the lawyers.  
23 Again, statements and arguments of counsel are  
24 not evidence. Counsel, however may enter into agreements or

1 witness in the outcome of the case if any, the existence or  
2 non extensive a bias or motive. The inclination of the  
3 witness to speak truthfully or not.  
4 The probability or improbability of the  
5 statements of the witness. The statement previously made by  
6 him or her that is inconsistent with his or her testimony.  
7 Evidence of the existence or non-existence of any fact,  
8 testified to by him and all other facts and circumstances in  
9 evidence.  
10 No statement, running remark or comment which I  
11 may make during the course of the trial is intended to  
12 indicate my opinion as to how you should decide the case or to  
13 influence you in any way in your determination of the facts.  
14 At times I may ask questions of witnesses. If I  
15 do so, it is for the purpose of bringing out matters which I  
16 feel should be brought out and not in any to indicate my  
17 opinion about the facts or to indicate the weight I feel you  
18 should give the testimony of the witnesses.  
19 I may also find it necessary to admonish the  
20 lawyers. If I do, you should not show prejudice toward a  
21 lawyer or his client because I have found it necessary to  
22 admonish him.  
23 It is the duty of an attorney to present to you  
24 his client's case in the most favorable light consistent with

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1 stipulations of facts which are not in dispute. When they do  
2 so, you are to accept the facts as stipulated by counsel.  
3 On occasion, I may tell you that I am taking  
4 judicial notice of certain facts. You then may accept those  
5 facts as true but are not required to.  
6 It is up to you to decide what inferences are to  
7 be drawn from the evidence and what facts are established by  
8 the evidence. The parties may sometimes present objections to  
9 some of the testimony or other evidence.  
10 It is the duty of a lawyer to object to evidence  
11 which he believes may not properly be offered, and you should  
12 not be prejudiced in any way against a lawyer who makes  
13 objections or against the party who represents.  
14 At times I may sustain objections or direct that  
15 you disregard certain testimony or exhibits. You must not  
16 consider any evidence to which an objection has been sustained  
17 or which I've instructed you to disregard.  
18 In considering the weight and value of the  
19 testimony of any witness, you may take into consideration the  
20 appearance attitude and behavior of the witness.  
21 The extent of this opportunity and ability to see  
22 or hear or otherwise become aware and to remember and  
23 communicate the interest of the witness -- let me try that  
24 again and to remember and to communicate. The interest in the

1 the truth and the law.  
2 During the trial I ask you not to communicate  
3 with the attorneys even on matters having no connection  
4 whatsoever with this case. The attorneys are officers of the  
5 court and they are aware of their responsibilities as such.  
6 Even if you are acquainted with the attorney, you  
7 will observe that he will avoid any contact with you during  
8 the trial and you should not be offended there by it.  
9 He will be attempting to merely comply with the  
10 rules of professional conduct and avoid the appearance of any  
11 impropriety.  
12 Not only must your conduct as jurors be above  
13 reproach, but you must avoid the appearance of improper  
14 conduct. Do not talk to the parties, attorneys or witnesses  
15 during the trial even upon matters unconnected with the case.  
16 In the event that anyone should attempt to  
17 improperly influence you in any matter you should promptly  
18 report the matter to me or to the bailiff.  
19 If you notice anything out of the ordinary you  
20 should promptly report the matter to me or to the bailiff.  
21 You must not consider anything you have read or heard about  
22 the case outside the courtroom whether before or during the  
23 trial.  
24 You must not conduct independent research,



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1 investigations or experiments prior to or during your  
2 deliberations.

3 Under our system of criminal procedure, you are  
4 not to concern yourself in any way with the sentence which the  
5 Defendant might receive if you should find her guilty. Your  
6 function is solely to decide whether the Defendant is guilty  
7 or not guilty of the charge against her.

8 If and only if you find her guilty of the charge  
9 in this case, then it becomes the duty of the court to  
10 pronounce sentence.

11 Until this case is submitted to you, you must not  
12 discuss it with anyone even with your fellow jurors.

13 After it is submitted to you, you must discuss it  
14 ohm in the jury room with your fellow jurors. It is important  
15 that you keep an open mind and not decide any issue in the  
16 case until the entire case has been submitted to you under  
17 instructions of the court.

18 Instruction number two. You will be given the  
19 opportunity to ask written questions of any witnesses called  
20 to testify in this case.

21 However, I caution you that you are not to  
22 consider yourselves advocates and you are not encouraged to  
23 ask large number of questions because it is the primary  
24 responsibility of each lawyer to present his client's case and

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1 evidence.

2 You may ask a question which you need to have  
3 answered in order to obtain all of the facts necessary for  
4 your deliberations.

5 Questions maybe asked only in the following  
6 manner. After both lawyers have finished questioning a  
7 witness, I will ask the jury if it has any questions. Your  
8 questions must be written with your juror number on each  
9 question.

10 In order to ask a question, simply raise your  
11 hand and the bailiff will deliver your written question to the  
12 court. Questions must be directed to the witness instead of  
13 the lawyers or the Judge.

14 After consulting with counsel at a side bar  
15 conference, the Court will determine if the written question  
16 is legally proper. If it is, I will ask it. Only questions  
17 permissible under the rules of evidence will be asked.

18 No adverse inference should be drawn if the Court  
19 does not allow a particular question to be asked. After the  
20 question has been answered the Court may ask a follow up  
21 question and will permit the attorneys to ask follow up  
22 questions.

23 The jury must not place undue weight on the  
24 responses to its questions. It's not necessary that you spell

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1 each word in a given jury question correctly. Please try to  
2 be specific with your questions and only cover one subject  
3 with each question. Phonetic spelling is acceptable.

4 Do not concern yourselves with the form of the  
5 question because I will reword it so that it is presented to  
6 the Court witness in the proper manner.

7 We have now reached the stage of the proceeding  
8 where the attorneys make their opening statements. The law  
9 requires that the attorney for the State make his opening  
10 statement first. Defense counsel may then make his opening  
11 statement or reserve it until the conclusion of the state's  
12 evidence.

13 Mr. Roche, you may proceed.

14 MR. ROCHE: Members of the jury, the State  
15 intends to present evidence at this trial showing that on  
16 August 22nd of 2018, the Defendant, Sarah Gravelle having  
17 possession of methamphetamine. This should be a relatively  
18 short trial.

19 In order to prove these charges, the State only  
20 intends to call four witnesses. The first witness will be  
21 Elko police officer, Joshua Taylor who conducted a traffic  
22 stop at 2 o'clock in the morning on August 22nd, 2018.

23 His testimony will be that the Defendant, Sarah  
24 Gravelle was driving a vehicle and there was a passenger named

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1 Nicholas Dunn. The passenger was known to law enforcement and  
2 Officer Taylor became concerned so he had another officer  
3 report and assist him in the traffic stop. And that officer  
4 dealt with Mr. Dunn and Officer Taylor went around the vehicle  
5 and spoke with Miss Gravelle.

6 During his interactions with her, for various  
7 reasons, he became suspicious that there were narcotics in the  
8 vehicle. And Officer Taylor is a canine officer and his  
9 partner King was brought out and did a drug sniff on the  
10 vehicle and alerted to the presence of narcotics.

11 And so Officer Taylor and our second witness,  
12 Officer Pinkham, conducted a search of that vehicle and in the  
13 back of that vehicle they found a blue back pack.

14 Inside of that blue backpack there was a pink  
15 eyeglasses case and inside of that pink eyeglasses case, and  
16 inside of that pink eyeglasses case, among other items, there  
17 was a small baggy of white crystalline substance and there was  
18 also a little container with another white baggy with  
19 crystalline substance.

20 The State intends to call Brandin Smith from the  
21 Elko Police Department. She packaged those two items and sent  
22 them to Washoe County and then our last witness tomorrow  
23 morning will be Brad Taylor from the Washoe County crime lab  
24 who will testify that he tested those substances, or he tested

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1 one of those baggies and was positive for methamphetamine and  
2 he confirmed that's what it was.

3 Based on that evidence and the fact that there  
4 were multiple items found in that backpack that belonged to  
5 the Defendant, Miss Gravelle, the State will ask you to find  
6 her guilty of possession of a controlled substance.

7 Thank you.

8 THE COURT: Mr. Leamon, do you wish to make your  
9 opening statement now or reserve it until the chose of the  
10 State's case?

11 MR. LEAMON: I'll make it now, Your Honor.

12 Good afternoon. As Mr. Roche indicated, the  
13 evidence is going to show a lot of things today.

14 One, Mr. Dunn was known to law enforcement. He  
15 was known as a methamphetamine user. Officer Taylor is going  
16 to testify to that.

17 Officer Taylor is also going to testify that when  
18 he initiated the stop, he saw Mr. Dunn looking around making  
19 erratic movements with his left hand. He was going to testify  
20 that he was worried that Mr. Dunn might have been stashing  
21 something.

22 Officer Pinkham is going to testify that the  
23 backpack was found in the rear passenger floor board. Then  
24 heaps going to testify that the eyeglasses case where the

1 THE WITNESS: Joshua Taylor. J-O-S-H-U-A.

2 T-A-Y-L-O-R.

3 THE COURT: Thank you. Go ahead, Mr. Roche.

4 DIRECT EXAMINATION

5 BY MR. ROCHE:

6 Q. Mr. Taylor, where are you employed?

7 A. City of Elko in the police department.

8 Q. And how long have you worked there?

9 A. Just over four years, now.

10 Q. What kind of training did you have in order to  
11 work there?

12 A. Police academy, POST in Carson City.

13 Q. And do you have a partner that you work with?

14 A. I do.

15 Q. And what's his name?

16 A. He's a Belgian Malinois named King.

17 Q. And how long have you known King?

18 A. Let's see, over two and a half years now.

19 Q. What kind of training has he received?

20 A. Narcotics detection.

21 Q. And where did he receive that training?

22 A. He -- he trained with some other trainers prior

23 to me and then came to me and now we continually train.

24 Q. And what has he been trained to do?

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1 methamphetamine was found was located in the top compartment  
2 of that backpack.

3 So we believe that these facts, we're going to  
4 ask that you come back with a verdict of not guilty based on  
5 these facts.

6 Thank you.

7 THE COURT: The Court will order the exclusion of  
8 witnesses. What that means is that other than a witness, when  
9 the witness is testifying in court, the witness must wait  
10 outside the courtroom.

11 The witness is also not to discuss the testimony  
12 with one another or with anyone else other than the attorneys  
13 until the conclusion of the trial.

14 Mr. Roche, you may call your first witness.

15 MR. ROCHE: The State's first witness is Joshua  
16 Taylor.

17 THE COURT: Please face the clerk and raise your  
18 right hand.

19 JOSHUA TAYLOR,  
20 called as a witness on behalf of the  
21 STATE, was duly sworn and  
22 testified as follows:

23 THE COURT: Please state and spell your first and  
24 last names.

1 A. Find a narcotic odor specifically for  
2 methamphetamine, cocaine heroin and ecstasy.

3 Q. Does he alert to any other narcotic?

4 A. No.

5 Q. And have you been able to determine whether to  
6 confirm that's the case in your experience with him?

7 A. That's through training and live experiences,  
8 yes.

9 Q. I'm going to draw your attention to August 22nd  
10 of this last year, were you working that day?

11 A. I was on that shift.

12 Q. What hours is that shift?

13 A. 7:00 p.m. to 7:00 a.m..

14 Q. And did you become involved in conducting a  
15 traffic stop that night?

16 A. Yes.

17 Q. Do you recall what time it was?

18 A. Around the 2 o'clock hour in the morning, around  
19 2:00 a.m., around that time.

20 Q. And what is the reason for the traffic stop?

21 A. There was. I couldn't see the license plate, so  
22 the license plate light was completely out. It was all dark  
23 around the license plate.

24 Q. And where did you conduct that stop?

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1 A. I turned on my lights behind the vehicle as it  
2 turned north, so a right-hand turn off of Idaho on Fourth  
3 Street and it stopped around Fourth and Court.  
4 Q. And is that here in the City of Elko, Elko  
5 County, Nevada?  
6 A. Yes, sir.  
7 Q. And where exactly did that vehicle come to a  
8 stop?  
9 A. Just, just on Court Street, just east of Fourth,  
10 I kind of made the turn and turned next to the curb.  
11 Q. Is that relatively close to where we are right  
12 now?  
13 A. Yeah, a block, block and a half a way.  
14 Q. After you made that stop, what were your first  
15 observations?  
16 A. Well, as we were making the stop, the vehicle  
17 didn't have any tint on it. I'm sure a lot of people have  
18 seen lights on patrol vehicles is very, very bright so I was  
19 able to let somewhat of occupants inside.  
20 I saw the passenger kind of make some weird  
21 movements at first and then I approached that passenger side.  
22 Q. Could you describe those movements this more  
23 detail for it us?  
24 A. It was kind of taller person, you could see just

1 Q. Did you know who that was?  
2 A. I've spoken to him several times.  
3 Q. Do you recall his name?  
4 A. Nicholas Dunn or Dunn (pronouncing), I don't know  
5 exact, I always say it wrong, but it's spelled Dunn.  
6 Q. Once you made contact with him, what did you  
7 decide to do?  
8 A. I decided to go back to my vehicle because I was  
9 the only officer there at the time there was two people I  
10 didn't know. The driver at the time, I hadn't had prior  
11 history with her. I had history with Mr. Dunn.  
12 So I went back to my vehicle to give a records  
13 check to dispatch and their information and wait for another  
14 unit to arrive. I forget who copied my traffic stop, but I  
15 heard someone on the radio that they were heading to my  
16 location.  
17 Q. When did that other person arrive?  
18 A. What's that?  
19 Q. How long was it before that other person arrived?  
20 A. A minute or two.  
21 Q. When they arrived, what did you do?  
22 A. I asked them and I don't remember exactly who it  
23 was, but I asked them to go talk to Mr. Dunn, get him out of  
24 the vehicle, make sure he didn't stash any weapons on his

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1 sitting (indiscernible) seat reach down with his left-hand  
2 come down next to his thigh below the seat cushion right next  
3 to him, kind of move around a little bit down there and came  
4 back up.  
5 Q. Did you see him reach anywhere else in?  
6 A. No.  
7 Q. Based on what you observed, what did you decide  
8 to do?  
9 A. I decided to do a passenger side approach like  
10 talk to that person as well, because it's always nervous for a  
11 law enforcement officer when somebody puts hands, especially  
12 out of sight, reach down during a traffic stop and stuff like  
13 that.  
14 Q. What are the concerns? I know that you say  
15 they're obvious, but can you state those for us?  
16 A. Fear, fear for my safety for any type of weapons.  
17 I don't know how many times I've found knives, batons  
18 actually, guns, all kind of stuff underneath the seat or  
19 stuffed next to the seats.  
20 Q. So did you make that passenger side approach?  
21 A. I did.  
22 Q. And did you make contact with the passenger in  
23 the vehicle.  
24 A. Yes, I did.

1 person and didn't pull any weapons out, make sure he had no  
2 weapons while I spoke to the driver.  
3 Q. Did you speak with the driver?  
4 A. I did.  
5 Q. Is that person in here in court today?  
6 A. Yes, she is.  
7 Q. And could you point to where she's seated and  
8 tell us what she's wearing?  
9 A. To your right my left, red hair glasses and a  
10 leather type jacket.  
11 MR. ROCHE: May the record reflect identification  
12 of the Defendant?  
13 THE COURT: The record will so reflect.  
14 BY MR. ROCHE:  
15 Q. At that point in time, was anyone in custody?  
16 A. No.  
17 Q. You initially contacted the driver of the  
18 vehicle. Did you speak to her first or did she speak to you  
19 first?  
20 A. On the very initial approach on the passenger  
21 side.  
22 Q. Yes?  
23 A. I don't know if she said something to me first or  
24 I said something to her first but I spoke to both occupants

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1 from the passenger side initially.  
2 Q. So Mr. -- so when you first approached the  
3 passenger side, you spoke to both people?  
4 A. Yes, sir.  
5 Q. And at that time what was their conversation?  
6 A. I asked Mr. Dunn what he was doing, and he said  
7 oh, I was just messing with my seat belt or taking off my seat  
8 belt, something about the seat belt with his actions.  
9 And then I got information I don't remember if I  
10 got the insurance and registration paperwork but the traffic  
11 stop stuff identify the people inside and get the paperwork.  
12 Q. And then after that, what did you do?  
13 A. That's when I went back to the vehicle and waited  
14 for back up and gave the information to dispatch.  
15 Q. When you approached the driver's side door the  
16 second time, what was the conversation at that point?  
17 A. I wanted to talk to Miss Gravelle a little bit  
18 about how she knew the passenger immediately because Mr. Dunn  
19 is an admitted narcotic user, I've talked to him several  
20 times, he's been around narcotics. He's a known felon, he's a  
21 known person in the community with law enforcement.  
22 So I kind of talked to her about what her  
23 association with him and if she's ever used narcotics before.  
24 Q. Was anyone in custody at that point?

1 I said, okay, so you decided to detain her  
2 further because of who she was hanging out with?  
3 Answer, I decided to speak with her regarding  
4 dot, dot, dot. Well, she wasn't free to leave, was she.  
5 No, she was being detained. Oh, yes, sir.  
6 So I think that would establish that she was in  
7 custody for the purpose of Miranda or I think that was  
8 establish custody for the purpose of Miranda which would have  
9 required Miranda warnings at that time.  
10 THE COURT: Okay. Mr. Roche.  
11 MR. ROCHE: We're at the initial stage of a stop,  
12 so based on that argument any statement by anyone subject to a  
13 traffic stop would be suppressed and honestly, the State still  
14 would be adamant that the defense never moved to suppress  
15 these statements and that's the argument is that there was a  
16 custodial un- Mirandized interrogation. That's something they  
17 should have brought up earlier.  
18 THE COURT: Well, I --  
19 MR. ROCHE: -- setting that aside, every -- every  
20 time you have a conversation at the driver's side window with  
21 somebody at a traffic stop, it's not a custodial  
22 interrogation.  
23 She volunteered this information because he just  
24 asked about her relationship with Mr. Dunn.

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1 A. No.  
2 Q. Nobody had been placed under arrest?  
3 A. No.  
4 Q. And what was her response to your question?  
5 MR. LEAMON: I'm going to object at this point,  
6 Your Honor, based on our or the Court's previous ruling, he  
7 would have to establish that this was not a custodial  
8 interrogation, Miranda was not present.  
9 THE COURT: Let's argue this in a side bar.  
10 Counsel, come forward, please.  
11 (Side bar conference.)  
12 THE COURT: You got to make sure you get into the  
13 microphone our transcriptionist is not picking things up from  
14 these arguments very well.  
15 MR. LEAMON: So I -- I believe --  
16 THE COURT: Closer.  
17 MR. LEAMON: So I believe the State has --  
18 THE COURT: You're going to have to be louder.  
19 MR. LEAMON: Okay. So the State has not shown  
20 that she was not in custodial interrogation. I think she was  
21 clearly in custody and I think Officer Taylor's testifying  
22 inconsistently with what he testified to at the prelim. I was  
23 specifically asked him, they were talking about the  
24 conversation.

1 THE COURT: I think you were asking he was asking  
2 what she knew about drugs or if she had used drugs before  
3 that's where we were getting to.  
4 Mr. Leamon, you should have raised this in a  
5 motion to suppress. With that being said, Mr. Roche, I can't  
6 allow evidence in that's would be plain error on appeal.  
7 I make the initial decision, but there's a jury  
8 instruction that has to be read to the jury where they can  
9 also make a decision about whether this was custodial  
10 interrogation, but you're going to have to one of those  
11 instructions before it's time to instruct them.  
12 What I'm going to do, Mr. Leamon, is let you take  
13 the witness on voir dire because of what appeared to be  
14 inconsistent statements and then I will rule on whether it's  
15 admissible.  
16 MR. LEAMON: Okay.  
17 THE COURT: If you want to ask more questions  
18 after he takes the witness on voir dire, you can to further  
19 develop the case, and then I'll make the decision whether it's  
20 admissible.  
21 MR. LEAMON: Okay. Thank you.  
22 (Side bar conference concluded.)  
23 THE COURT: Go ahead, Mr. Leamon, you can take  
24 the witnesses on voir dire.

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1 VOIR DIRE EXAMINATION  
2 BY MR. LEAMON:  
3 Q. Officer Taylor, at any point in your interactions  
4 with Miss Gravelle, did you ever Mirandize her?  
5 A. Prior to the arrest, no, sir.  
6 Q. Now, you just testified that she was not in  
7 custody at that point; correct?  
8 A. When I was at the driver's side?  
9 Q. Correct?  
10 A. Yes, sir.  
11 Q. And at this point, you cannot remember whether  
12 you had her ID, insurance or any documentation like that?  
13 A. I would have asked for it already, but I don't  
14 know if she was able to provide it.  
15 Q. So do you remember testifying about this case at  
16 a preliminary hearing?  
17 A. Yes, sir.  
18 Q. And you were placed under oath at that  
19 preliminary hearing; correct?  
20 A. Yes, sir.  
21 Q. And you were ordered to tell the truth?  
22 A. Yes, sir.  
23 Q. And that's what you did?  
24 A. Yes, sir.

1 words.  
2 Q. Would she have felt like she was free to leave  
3 under the circumstances of your conversation?  
4 A. Probably not.  
5 THE COURT: The Defendant was in custody at that  
6 time. There were two officers present. Officer Taylor, were  
7 you in uniform.  
8 THE WITNESS: Yes, ma'am.  
9 THE COURT: With your weapon?  
10 THE WITNESS: Yes, ma'am.  
11 THE COURT: And was the other officer also?  
12 THE WITNESS: Yes, ma'am.  
13 THE COURT: The officers were on duty dressed as  
14 police officers. The officer testified she wasn't free to  
15 leave. He doesn't know whether he communicated to her, but  
16 felt she probably would not have felt free to leave.  
17 A reasonable person would not have felt free to  
18 leave there for she was in custody, had not been Mirandized,  
19 so therefore, her statements will not be admissible.  
20 Go ahead with your examination, Mr. Roche.  
21 BY MR. ROCHE:  
22 Q. During your conversation --  
23 MR. ROCHE: So to clarify, nothing that she says  
24 to the officer is admissible at trial?

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1 Q. Okay. So do you remember me asking you questions  
2 about the same situation at that time?  
3 A. Vaguely.  
4 Q. Okay. And I'm going to read part of the  
5 transcript. And I asked you, okay, so you decided to detain  
6 her further because of who she was hanging out with?  
7 And you stated, and tell me if this is your  
8 recollection. I decided to speak with her regarding, I guess  
9 that's -- I guess I interrupted you. I apologize about that.  
10 I asked you well, she wasn't free to leave was  
11 she and you testified no.  
12 Do you remember testifying to that at the  
13 preliminary hearing?  
14 A. And which is correct she wouldn't be free to  
15 leave at that time.  
16 Q. Okay. So she was not free to leave and you did  
17 not read her Miranda rights; correct?  
18 A. Correct.  
19 MR. LEAMON: Nothing further, Your Honor.  
20 THE COURT: Any questions on that particular  
21 subject, Mr. Roche.  
22 BY MR. ROCHE:  
23 Q. Did you tell her if she was free to leave.  
24 A. I don't recall if I specifically said those

1 THE COURT: Not under right where we're talking  
2 about right here. She's in the car, the two officers are  
3 there. He's asked her questions, hasn't Mirandized her yet.  
4 So if he's got something further down the road  
5 that she was no longer in custody, then I could consider that.  
6 But under the circumstances of these, this, what you're trying  
7 to elicit right here is not admissible.  
8 BY MR. ROCHE:  
9 Q. After your conversation with Miss Gravelle, what  
10 did you ask her to do?  
11 A. I asked her to exit the vehicle.  
12 Q. And after she exited the vehicle, what did you  
13 do?  
14 A. I retrieved my narcotic detection dog.  
15 Q. And what did you do with that dog?  
16 A. I typically call random on the car. Basically, I  
17 deployed him on the vehicle and searched for narcotic odor.  
18 Q. Now when you ask someone to step out of the  
19 vehicle, do you normally do anything for officer safety?  
20 A. When I'm suspecting narcotics and asking them to  
21 exit a vehicle I do conduct a Terry pat to make sure there's  
22 no weapons on them.  
23 Q. Did you conduct a Terry pat in this case?  
24 A. I did.

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1 Q. Did you find any --  
2 MR. LEAMON: I'm going to object at this point,  
3 Your Honor.  
4 THE COURT: What's your objection?  
5 MR. LEAMON: Relevance. I would like to explain  
6 further at side bar.  
7 THE COURT: All right. Side bar, counsel.  
8 (Side bar conference.)  
9 THE COURT: Okay. Just a moment. I want to just  
10 let you know, Mr. Roche, in the future if you want to put in  
11 statements, you can always file a motion in limine even if the  
12 Defendant doesn't file a motion to suppress.  
13 And then I can rule at pretrial whether they're  
14 coming in and then you know what direction you can go with.  
15 Mr. Mills does that quite a bit.  
16 All right. What's your objection, Mr. Leamon.  
17 MR. LEAMON: Okay. So I'm objecting to  
18 relevance. I believe the State was about to elicit testimony  
19 about the white plunger cap that was found on Ms. Gravelle's  
20 person. I don't believe it's relevant. I don't think it  
21 shows narcotics use.  
22 Had there been some nexus between the white cap  
23 and the orange other cap that was found in the case, I think  
24 it might be a different situation, or if there was some needle

1 two parts of the hypodermic needle are from the same needle.  
2 The relevance for me is whether you're going to be able to  
3 establish that this is how methamphetamine is sometimes used  
4 is with the needle.  
5 So are you going to be able to establish that?  
6 MR. ROCHE: I'm not intending to offer any  
7 evidence of methamphetamine use with a needle. I'm simply  
8 trying to offer, this is evidence that of possession of the  
9 backpack because of one item and another item that generally  
10 would go together are (indiscernible) inside of the backpack.  
11 THE COURT: Do you have anybody who can testify  
12 that these are both parts of a hypodermic needle?  
13 MR. ROCHE: Sure, every officer.  
14 THE COURT: I saw your picture and I know what  
15 they look like.  
16 MR. ROCHE: Every officer in this case can  
17 testify to that.  
18 THE COURT: You're going to have to be able to  
19 link it up that these two parts are parts of the hypodermic  
20 needle. It goes to the weight whether they're from the same.  
21 MR. ROCHE: Okay.  
22 THE COURT: Okay. So as long as you can link  
23 those two things that they're both parts of the same kind of  
24 equipment then can you get it in.

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1 that was found that this fit to, I believe it might be  
2 admissible, but just a cap alone, I don't think it's relevant.  
3 I don't think there's a foundation that the State can lay to  
4 show it's relevant.  
5 THE COURT: Is that where you're going, Mr.  
6 Roche?  
7 MR. ROCHE: No. It has nothing to do with drug  
8 use. It has to do with the fact that the other orange needle  
9 cap was found in the backpack.  
10 It shows possession, because the plunger cap was  
11 found in her pocket and the orange cap was found in the  
12 eyeglasses case with the contraband, so it shows possession.  
13 It's not intended to offer any such thing as  
14 evidence of narcotics use.  
15 MR. LEAMON: Just to respond to that, I believe  
16 he would have lay a foundation showing that these two items  
17 belong or were part of the same kit or the same needle, and  
18 without the ability, unless he can lay a foundation showing  
19 that, I don't believe it would be relevant.  
20 MR. ROCHE: I can't do that until the time comes.  
21 It's chronological of when these items were found and so the  
22 relevance is not going to be apparent until the other item is  
23 found in the search of the vehicle.  
24 THE COURT: For me the issue is not whether the

1 MR. ROCHE: Well, the significance is not going  
2 to be apparent until we get into the search of the vehicle.  
3 THE COURT: Okay. Well, why don't you just --  
4 don't ask her about that part that was found on her person at  
5 this point and just patted her down move on and we'll get to  
6 the search of the vehicle, then bring in what you found on her  
7 body and what you found in the vehicle.  
8 MR. ROCHE: Okay.  
9 THE COURT: And put them together. All right.  
10 Thank you.  
11 (Side bar conference concluded.)  
12 THE COURT: The objection is overruled at this  
13 time.  
14 Go ahead, Mr. Roche.  
15 MR. ROCHE: We'll come back to that in a minute.  
16 BY MR. ROCHE:  
17 Q. After you conduct that pat down search, you  
18 mentioned before that you deployed your canine King. Please  
19 describe that process for us?  
20 A. It was for a regular vehicle deployment depending  
21 on the area, but most of the time I get him out on a lead or a  
22 leash, get him out of the vehicle and we'll start either the  
23 rear bumper or the front bumper, somewhere that's easily  
24 accessible. I always try to choose the front bumper just the



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1 same spot, so it's pretty well fair for everything.  
2 Go to the front bumper and I start  
3 counter-clockwise pattern or circle around the vehicle, I  
4 think it's two full circles around it I guess smell or sniff  
5 for narcotic odor outside the vehicle.  
6 Q. Is that what you did in this case?  
7 A. It didn't make two full passes, he didn't even  
8 make one full pass, yes, sir.  
9 Q. So tell us what happened?  
10 A. So we're walking up to the vehicle to the front  
11 bumper, several feet away from the car and I noticed he had a  
12 change of breathing. So we went from that typical, goofy,  
13 panting dog to engage his nose and his head -- well, I call it  
14 a head snap.  
15 He directed his nose, towards -- towards an area,  
16 in it case it was kind of the front door of the vehicle. He's  
17 still three, four feet away which indicates to me he's found  
18 already found some type of narcotic odor.  
19 That's one of his behavior changes when he finds  
20 a narcotics odor his behavior, his breathing really starts to  
21 change and his head will snap to the direction that he  
22 believes it's coming from.  
23 Instead of allowing him to follow that trail of  
24 narcotic odor, I actually pulled him off of that, where his

1 that's a positive alert to the presence of a narcotic odor.  
2 Q. What did that signify to you?  
3 A. That he had it was a positive alert to the  
4 vehicle of a narcotic odor.  
5 Q. And what did you do with him at that point?  
6 A. I rewarded him, gave him his pay check and put  
7 him in the car.  
8 Q. Based on the drug scent, what did you decide to  
9 do next?  
10 A. Conduct a -- excuse me, probable cause search of  
11 the vehicle.  
12 Q. Did you do that by yourself?  
13 A. Myself and Officer Pinkham, Dean Pinkham searched  
14 the vehicle.  
15 Q. And how did that occur, what was the process that  
16 you went through to search the vehicle?  
17 A. I don't even recall if I put on gloves, but  
18 basically Officer Dean Pinkham kind of like hey, you want to  
19 start on that side, I'll start on this side. Just open the  
20 door to start searching underneath seats and through  
21 everything in the vehicle.  
22 Q. And what part of the car did you start on?  
23 A. I started object on the front driver area.  
24 Q. And what about Officer Pinkham?

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1 breathing went back to normal to the front of the vehicle and  
2 started in a counter-clockwise manner.  
3 In which he had another breathing change as he  
4 came to the front door which the of the vehicle the driver's  
5 door and the window was mostly down and his change of  
6 breathing to engage in what's called rapidness where it's way  
7 faster than we can ever sniff through our nose.  
8 And he's sniffing super, super fast on the bottom  
9 edge of the window. His tail is really speeding up, that's  
10 one of his behaviors. He's getting excited because he knows  
11 that odor.  
12 He goes down, he's pressing his nose on the  
13 window all the way to the back like rear seat where like you  
14 would smash your financial if you shut your hand in the door.  
15 Pressed his nose kind of worked that seem and just stopped,  
16 just stopped done. I'm done, I'm not moving.  
17 I continue down the end of the lead, all right,  
18 let's go, come on, keep working, whatever I said. Sometimes  
19 it's English sometimes in Czech, sometimes I speak to him in  
20 Czech sometimes, and he -- no. So I applied some pressure to  
21 the lead and he was, he's pulling back, he said no, I'm done.  
22 And the culmination of the breathing, changes the  
23 behavior changes the head snap the nose press him committed  
24 not removing himself and continue to work on, that's it,

1 A. I don't recall exactly where, but I believe he  
2 was on the passenger side.  
3 Q. And as you searched that vehicle, did you find  
4 that confirmed an alert from your canine?  
5 A. Officer Dean Pinkham brought to my attention some  
6 things that he had found and then showed me.  
7 Q. What exactly did he show you?  
8 A. There's a, from a backpack in the back seat  
9 somewhere, found a, like a pink, Juicy Couture eyeglasses case  
10 and inside the eyeglasses case specifically the items we were  
11 talking about, but there was specifically one bag with  
12 suspected methamphetamine in it, and then there was like  
13 another silver tin with another bag of suspected  
14 methamphetamine in it.  
15 Q. Did you do anything to document what you found in  
16 the vehicle?  
17 A. As far as later took pictures.  
18 Q. All right.  
19 A. And seize or seize the evidence.  
20 Q. I show you what has previously been marked for  
21 identification as State's Exhibit number seven; do you  
22 recognize that?  
23 A. I do. It's the Juicy Couture pink eyeglasses  
24 case.

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1 Q. Do you know who took that picture?  
2 A. It's got to be me.  
3 Q. And is that a true and accurate depiction of what  
4 you observed on August 22nd of last year?  
5 A. Yes, sir.  
6 MR. ROCHE: Move for the admission of State's  
7 Exhibit 7.  
8 THE COURT: Any objection to the admission of  
9 State's Exhibit 7?  
10 MR. LEAMON: No objection, Your Honor.  
11 THE COURT: Exhibit 7 is admitted.  
12 (Exhibit 7 admitted into evidence.)  
13 MR. ROCHE: May I publish it, Your Honor?  
14 THE COURT: Yes.  
15 BY MR. ROCHE:  
16 Q. Showing you what's been marked for identification  
17 purposes as State's Exhibit 1.  
18 Do you recognize that?  
19 A. I do.  
20 Q. And what is it?  
21 A. So there's, the card in here but more  
22 specifically it's that same eyeglasses case that I took  
23 pictures of.  
24 Q. And is there any way for you to determine that

1 A. The bag of narcotics or (indiscernible) bag of  
2 narcotics at the time and then an orange cap.  
3 Q. Did you just find one bag of narcotics?  
4 A. There was two in total.  
5 Q. Can you describe those how they looked to us  
6 precisely?  
7 A. Miniature Ziploc bags with like a white clear  
8 crystalline substance inside of them. One was a little bit  
9 bigger.  
10 There's another one that was smaller and folded  
11 up it was a smaller Ziploc bag with the same type of substance  
12 in it folded up with a tin, it the tin had a clear top to it.  
13 MR. ROCHE: (Indiscernible), Your Honor.  
14 BY MR. ROCHE:  
15 Q. I'm going to show you what's been marked for  
16 identification purposes as State's Exhibit 11.  
17 Do you recognize that?  
18 A. That's one of the bags.  
19 Q. Do you know which bag it is?  
20 A. I can't remember which bag it is.  
21 Q. I'm going to show you what's been marked as  
22 State's Exhibits 9 and 10.  
23 Do you recognize those?  
24 A. Yes. Ten or I guess 9. 9 is the tin with the

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1 that's the eyeglasses case that you saw that evening?  
2 A. It's still sealed exactly how I sealed it with my  
3 initials especially how (indiscernible) bags.  
4 MR. ROCHE: Move for the admission of State's  
5 Exhibit 1?  
6 THE COURT: Any objection.  
7 MR. LEAMON: Can I see that? Your Honor, we I  
8 don't object to the admissibility. There's a stipulation  
9 between the parties that the item is not to be opened.  
10 THE COURT: Is that correct, Mr. --  
11 MR. ROCHE: That's correct, Your Honor.  
12 THE COURT: Exhibit 1 is admitted with that  
13 stipulation then the eyeglass case will not be opened.  
14 (Exhibit 1 admitted into evidence.)  
15 BY MR. ROCHE:  
16 Q. Did you observe the contents of that eyeglasses  
17 case at the time?  
18 A. In the vehicle or at the vehicle?  
19 Q. Yeah.  
20 A. At the scene at least, yes, sir.  
21 Q. And did you find items inside of that that were  
22 significant with respect to your search for narcotics?  
23 A. Yes.  
24 Q. What exactly did you find?

1 folded bag in it.  
2 Q. Okay.  
3 A. And then 10 is the tin opened with the bag pulled  
4 out.  
5 Q. And then does that help you determine what's in  
6 Exhibit Number 11?  
7 A. 11 would have been the other bag I found.  
8 MR. ROCHE: I move for the admission of state's  
9 Exhibits 9, 10 and 11.  
10 THE COURT: Any objection Mr. Leamon?  
11 MR. LEAMON: May I see them?  
12 No objection to 11. No objection, Your Honor.  
13 THE COURT: Exhibits 9, 10 and 11 admitted.  
14 (Exhibit 9 admitted into evidence.)  
15 (Exhibit 10 admitted into evidence.)  
16 (Exhibit 11 admitted into evidence.)  
17 MR. ROCHE: May I have permission to publish  
18 those to the jury.  
19 THE COURT: Yes.  
20 BY MR. ROCHE:  
21 Q. State's Exhibit 9, if you could just tell us  
22 again what they're looking at when I put it up there, officer?  
23 A. So that's, that tin actually has the lid and  
24 there's like the tin the lid is clear and that was the bag

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1 folded up with the white clear-ish crystalline substance.  
2 Q. And I apologize, that's State's Exhibit 10?  
3 A. That's 10.  
4 Q. And here's State's Exhibit 9?  
5 A. That's that same one we just saw but as found.  
6 The bag folded up in the tin and the tin with the lid on.  
7 Q. And State's Exhibit 11?  
8 A. And that one was what I call more like the free  
9 bag it was just in the eyeglasses case (indiscernible).  
10 MR. ROCHE: Indulgence, Your Honor.  
11 BY MR. ROCHE:  
12 Q. I'm going to show you what's been marked as  
13 State's Exhibit 2.  
14 Do you recognize that?  
15 A. Yes.  
16 Q. What is that?  
17 A. So this is one of the bags, right now I don't  
18 recall if I can get it to move. One of the bags that had the  
19 crystalline-type substance the suspected methamphetamine in  
20 it.  
21 Q. And is there away that you can determine that is  
22 the bag that you took into evidence that night?  
23 A. It is the bag that I took into evidence. It has  
24 my seal on top. The only thing different is it's been

1 Q. Describe that for us, if you would?  
2 A. So it's a, it's a cylindrical cap kind of ribbed,  
3 real small and thin. I see them a lot as a law enforcement  
4 officer especially one that tries to find narcotics. I see  
5 them a lot (indiscernible). It's the cap end to cover the  
6 needle of a hypodermic device or an injection needle.  
7 Q. And why did that have significance to you?  
8 A. Because I found the other -- well most hype  
9 determine mix I've ever found have two caps. The orange one  
10 that covers the needle and there's the white large one that  
11 covers the plunger side. I found the white plunger side  
12 earlier.  
13 Q. Where did you find that white plunger side?  
14 A. I believe it was, I can't remember exactly which  
15 pocket now, I believe it was the left front pocket of Ms.  
16 Gravelle's jeans.  
17 Q. And when did that occur?  
18 A. During the Terry pat, I asked her if I could  
19 search her pockets and she allowed.  
20 Q. So just to clarify you found a white plunger cap  
21 in her pocket when you patted her down?  
22 A. Yes.  
23 Q. And then you found an orange needle cap inside  
24 the eyeglasses case in the backpack?

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1 probably by lab or whoever did the testing cut and sealed  
2 again at the bottom.  
3 Q. I'm going to show you what's been marked as  
4 State's Exhibit 3.  
5 Do you recognize that?  
6 A. That's the other bag.  
7 Q. Are you able to determine which bag is which?  
8 A. I don't recall exactly one honestly came from the  
9 (indiscernible) I don't know which ones came from the  
10 (indiscernible).  
11 Q. Was there much difference where you located  
12 these?  
13 A. They were both in the same eyeglasses case.  
14 MR. ROCHE: Move for the admission of State's  
15 Exhibits 2 and 3.  
16 THE COURT: Any objection?  
17 MR. LEAMON: No objection.  
18 THE COURT: Exhibits 2 and 3 are admitted.  
19 (Exhibit 2 admitted into evidence.)  
20 (Exhibit 3 admitted into evidence.)  
21 BY MR. ROCHE:  
22 Q. Did you look at anything else inside that  
23 eyeglasses case that has significance to you?  
24 A. There's that orange cap.

1 A. Yes, sir.  
2 Q. Did you find anything else in that backpack that  
3 was significant to you?  
4 A. Again more items were brought to my attention but  
5 I did seize like receipts.  
6 Q. Okay. Can you describe those receipts or why  
7 were they significant?  
8 A. So there was several receipts in the bag. And  
9 the ones that I was looking at, I don't remember how many  
10 there were, but there were several receipts with Sarah  
11 Gravelle's name on it and then also locations of California.  
12 Q. I show you what has been marked as State's  
13 Exhibits 5 and 6.  
14 Do you recognize those?  
15 A. So, this one is five. This one has her name and  
16 someone else's name on it. It's a money transfer slip or a  
17 money receipt and it had Sarah Gravelle's name on it.  
18 MR. LEAMON: I'm going to object at this point,  
19 Your Honor, I believe we're getting into hearsay territory as  
20 to what the receipts say, what they're supposedly for.  
21 And using that information would be hearsay.  
22 Granted it's not from a person but it is an out-of-court  
23 statement right now.  
24 THE COURT: Mr. Roche?

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1 MR. ROCHE: I'm not sure what statement he's  
2 referring to, if he's talking about the contents of the  
3 receipts (indiscernible) for the photographs.  
4 But the only reason they're being offered at this  
5 point is that printed names on them so we don't need to go  
6 into (indiscernible).  
7 THE COURT: That's fine. Then I guess the  
8 objection is sustained.  
9 BY MR. ROCHE:  
10 Q. Continue describing those. Why were those  
11 significant?  
12 A. Because they have Sarah Gravelle's name on them.  
13 Q. Now you have two photographs there. Are those  
14 the same receipt?  
15 A. Different receipts.  
16 Q. And where were those located?  
17 A. From that same backpack with the eyeglasses case  
18 was found.  
19 Q. Did you take those photographs?  
20 A. I did.  
21 MR. ROCHE: Move for the admission of State's  
22 Exhibits 5 and 6.  
23 THE COURT: Any objection?  
24 MR. LEAMON: No objection, but we need, I guess,

1 information that would be detrimental to Miss Gravelle. It's  
2 just mainly the money transfer of this.  
3 THE COURT: Do you have any objection, Mr. Roche,  
4 to the Court instructing the jury this is offered only for  
5 purposes of showing her name is on the receipt and the receipt  
6 was found in the backpack where the eyeglass case was found  
7 and you shouldn't draw any other inferences.  
8 MR. ROCHE: That's fine, Your Honor.  
9 MR. LEAMON: Okay.  
10 THE COURT: That works for you, Mr. Leamon.  
11 MR. LEAMON: Yep.  
12 THE COURT: All right.  
13 (Side bar conference concluded.)  
14 THE COURT: Mr. Roche, why don't you go ahead and  
15 publish Exhibit 5 and then I will instruct the jury.  
16 You will notice here on Exhibit 5, this receipt  
17 shows the name of Sarah Gravelle. That receipt has been  
18 admitted in evidence for purposes of showing that it was found  
19 in the backpack where the eyeglass case was found.  
20 You shouldn't draw any other inference from the  
21 information that's contained on that receipt other than her  
22 name.  
23 MR. ROCHE: May I publish Exhibit 6, Your Honor?  
24 THE COURT: Yes.

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1 this should be a limiting instruction based on the prior  
2 ruling.  
3 Basically it's just offered for Miss Gravelle's  
4 name. And there's no way to admit it without admitting all  
5 the other stuff that's also located on the receipt.  
6 THE COURT: Mr. Roche.  
7 MR. ROCHE: I'm not quite sure what the objection  
8 is.  
9 THE COURT: I'm not either.  
10 MR. LEAMON: Permission to approach for a side  
11 bar?  
12 THE COURT: Yes.  
13 (Side bar conference.)  
14 MR. LEAMON: Basically the objection is due to  
15 the nature of this, this is a money transfer, so I'm worried  
16 that would be potentially be looked at as maybe the money  
17 part, some type of drug deal or something along those lines.  
18 So the objection was sustained as to any hearsay  
19 information because as far as the truth of the matter  
20 asserted, you know, this is saying that there was some type of  
21 financial transaction between these parties.  
22 So then I guess the question is how do we admit  
23 this. You know based on the court's prior ruling, this one  
24 recycling I've got no issue with 6. I don't think it has any

1 BY MR. ROCHE:  
2 Q. And Officer Taylor, does that --  
3 A. Underneath that line at the bottom of that  
4 receipt shows Sarah Gravelle again.  
5 Q. And what did that signify to you.  
6 A. Her, her receipts and what I suspect would be her  
7 backpack where the eyeglasses came from.  
8 Q. Let me show you what's been marked as State's  
9 Exhibit 4.  
10 Do you recognize that?  
11 A. I do.  
12 Q. And what is it?  
13 A. So see if I can move, it's got the receipts it  
14 should have been both there are stickers in the way. There we  
15 go. It's got we put them kind of back to back. It's got both  
16 of those receipts that were just shown in this bag.  
17 Q. Do you know how those receipts got in the  
18 envelope?  
19 A. I put them in there.  
20 Q. Are those the receipts that we just saw on the  
21 over head project tore?  
22 A. Yes, sir.  
23 MR. ROCHE: I move for the admission of State's  
24 Exhibit 4.

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1 THE COURT: Any objection?  
2 MR. LEAMON: No objection, just with the limiting  
3 instruction.  
4 THE COURT: State's Exhibit 4 is admitted with  
5 the same instruction from the Court about Exhibit 5, that it's  
6 admitted only for purposes of her name on the receipt that was  
7 found in the backpack where the eyeglass case was found.  
8 (Exhibit 4 admitted into evidence.)  
9 BY MR. ROCHE:  
10 Q. So we've covered some of this already, but you  
11 photographed those items after you located them. And what did  
12 you do with them after you photographed them?  
13 A. I packaged them in the evidence bag, sealed them,  
14 put the case number and date and my initials on them and put  
15 them into our evidence system.  
16 Q. Now, I'm going to draw your attention  
17 specifically to Exhibits 2 and 3, those two baggies that you  
18 (indiscernible)?  
19 A. Okay.  
20 Q. Do you do anything with those prior to putting  
21 them up as evidence?  
22 A. Yes.  
23 Q. What did you do?  
24 A. I used a NIK kit on each of them individually.

1 recollection to review your report?  
2 A. It probably would.  
3 Q. I show you what's been -- I don't know. It's  
4 been marked for identification purposes as State's Exhibit 15  
5 and I draw your attention to the second page?  
6 A. I'm sorry.  
7 Q. If you could review that to yourself and tell us  
8 when you're done?  
9 A. (Complies.)  
10 Q. Does that refresh your recollection?  
11 A. Yes.  
12 Q. And what was the result of the weight of those  
13 bags?  
14 A. Off of our scale at the police department, the  
15 smaller with the tin was .66 grams gross. I guess the other  
16 one was about 1.4 grams.  
17 Q. Now, did you do anything to document those  
18 weights?  
19 A. I believe I usually take pictures, I should have  
20 taken pictures on those.  
21 Q. I show you these exhibits again, 2 and 3?  
22 A. I also write them on the bag so I don't get them  
23 mixed up when I put them in evidence.  
24 Q. Did you write those weights on those bags?

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1 Q. And describe what a NIK kit is?  
2 A. It's a narcotics identification kit and it's --  
3 got trained on it years ago. But it's a real small kit that  
4 you take a small sample of the narcotics for the bag. It has  
5 some chemicals, you follow the instructions on the kit itself,  
6 it's real easy.  
7 And they'll give you a positive or not positive  
8 for being methamphetamine. The kits are specific to  
9 narcotics.  
10 Q. Did you use a NIK kit on both of those baggies?  
11 A. I did.  
12 Q. And what is was the result?  
13 A. They were both, it would be called presumptively  
14 positive for methamphetamine for both of those.  
15 Q. And did you do anything to document the amount?  
16 A. I gained gross weights on each bag. So the  
17 weight of the substance with the bag itself on our scales.  
18 Q. Do you recall what the results of that one was?  
19 A. Exactly I don't recall. The -- one was more than  
20 a gram. One was less than a gram.  
21 Q. Did you prepare a report at the time that you  
22 weighed those substances?  
23 A. Yes.  
24 Q. And was your memory, would it refresh your

1 A. It's, I'm one of the few that does at the police  
2 department, but yeah, I did write it on the bags it's my way  
3 of keeping organized by putting (indiscernible) I guess.  
4 Q. So how sure are you those are the bags that you  
5 took into custody on August 22nd (indiscernible)?  
6 A. Oh, these are the bags.  
7 Q. I'm going to go back a little bit to the initial  
8 stop. I don't want to mix up too many exhibits, so I'm going  
9 to put this one back.  
10 Without telling us anything that the Defendant  
11 said to you during your conversation with her, was there any  
12 aspects of her behavior that raised your suspicions?  
13 A. There was a change in behavior from my very first  
14 contact to the passenger side window to the driver's side  
15 window.  
16 Q. Please describe that for us?  
17 A. Passenger side she talked a little bit, kind of  
18 gave the information. By the time I started talking on the  
19 passenger side, the behavior went kind of like from a normal  
20 traffic stop, just -- just talking, you know, to behavior, her  
21 behaviors changed specifically where she started stuttering a  
22 lot more.  
23 I don't know if it's a normal speech, but I  
24 noticed the stuttering. Not wanting to look me in the eyes,

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1 looking away, down a lot and right knee was bouncing really a  
2 lot and interrupted a lot in the conversation. Just seemed  
3 very, very erratic or nervous with me.  
4 Q. Now were those behaviors present when you first  
5 approached the vehicle?  
6 A. I didn't notice any behaviors like that when I  
7 was on the passenger side.  
8 Q. So what did you notice anything (indiscernible)  
9 the behaviors?  
10 A. The details of the conversation.  
11 MR. ROCHE: I'll pass the witness, Your Honor.  
12 THE COURT: Cross-examination.  
13 MR. LEAMON: Yes, Your Honor.  
14 CROSS-EXAMINATION  
15 BY MR. LEAMON:  
16 Q. Officer Taylor, I would like to draw your  
17 attention to the beginning of the stop. You stopped Miss  
18 Gravelle due to her license plate light being out; correct?  
19 A. The best I can tell, yes, sir.  
20 Q. Okay. And you previously testified you can see  
21 into the vehicle when you stopped it?  
22 A. Yeah, no tint, I could see in the through the  
23 back.  
24 Q. Now, what kind of car do you (indiscernible)?

1 right?  
2 A. Slightly, yes, sir.  
3 Q. And that's because of the actions that he was  
4 taking; right?  
5 A. Yes, sir.  
6 Q. You previously described or you previously stated  
7 that he was kind of looking around?  
8 A. He looked around a little bit, but it was the  
9 action of his hand going down below the seat that really made  
10 me nervous.  
11 Q. And you were worried he could be have been  
12 stashing something?  
13 A. Can you repeat the question?  
14 Q. You thought it was possible that he was stashing  
15 something?  
16 A. Oh, yes, sir.  
17 Q. And so based on this behavior, that's why you  
18 decided to approach the passenger side first; correct?  
19 A. I wanted to be able to get as much view on him as  
20 possible immediately.  
21 Q. And your normal protocol would be to approach the  
22 driver on a moving violation; right?  
23 A. Not necessarily, I try to stay out of the road  
24 we, I probably do more passenger side approach than driver.

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1 A. Chevrolet Tahoe.  
2 Q. Okay. So there were two passengers in the  
3 vehicle?  
4 A. Yes.  
5 Q. One was Miss Gravelle?  
6 A. She was the driver.  
7 Q. And that's right but there were two people in the  
8 car and Miss Gravelle was the driver; correct?  
9 A. Yes, sir.  
10 Q. And Mr. Dunn was the passenger?  
11 A. Yes, sir.  
12 Q. Now, prior to this incident you've never met Miss  
13 Gravelle before; correct?  
14 A. Not that I can remember.  
15 Q. Okay. But you have had previous contact with Mr.  
16 Dunn; correct?  
17 A. Yes, sir.  
18 Q. And I believe you previously testified that he  
19 was a known methamphetamine user?  
20 A. Yes, sir.  
21 Q. Okay. He was located in the front passenger side  
22 of the vehicle; correct?  
23 A. Yes, sir.  
24 Q. Now, when you first saw him, he made you nervous;

1 Q. Okay. So, based on all of this, you ordered Mr.  
2 Dunn out of the vehicle; correct?  
3 A. No, I didn't.  
4 Q. Who got Mr. Dunn out of the vehicle?  
5 A. I don't recall who, but I didn't want to be one  
6 officer and two people especially with the movements alone.  
7 Q. Right so at some point Officer Pinkham arrived on  
8 the scene?  
9 A. Officer Pinkham, and I know there was more, but I  
10 know Officer Pinkham was there.  
11 Q. Okay. And so when the other officers arrived at  
12 the scene, did you have Mr. Dunn or, I guess, Dunn  
13 (pronouncing) is the correct pronunciation?  
14 A. I think that's how they pronounce it.  
15 Q. But he didn't exit the vehicle at that point did  
16 the other officers arrive?  
17 A. I never asked him. I never asked him to get out  
18 of the vehicle. I asked other officers to get him out of the  
19 vehicle.  
20 Q. Okay.  
21 A. When I (indiscernible).  
22 Q. Did you do a pat down of Mr. Dunn?  
23 A. Not that I recall.  
24 Q. Okay. Do you remember just being there anything



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1 of significance of being found on Mr. Dunn's person?  
2 A. No, I don't.  
3 Q. Had something been found by whatever officer  
4 patted him down, would you have been alerted to it?  
5 A. If it was like an illegal nature, sure.  
6 Q. Okay. So eventually, based on your  
7 investigation, you decided to deploy King?  
8 A. Yes, sir.  
9 Q. And based on his reactions, you decided to do a  
10 search of the vehicle?  
11 A. Based on his positive alert, yes, sir.  
12 Q. And during that search Officer Pinkham found the  
13 backpack that we've been talking about; right?  
14 A. Yes, sir.  
15 Q. And that was located on the rear passenger floor  
16 board?  
17 A. I don't know exactly where it was in the rear.  
18 Q. And so no other narcotics were found other than  
19 what was found in the backpack?  
20 A. Illegal narcotics, no.  
21 Q. No weapons were found in the car either; correct?  
22 A. I don't, I don't recall, it's as far as like  
23 guns, no, there's no guns I found in the vehicle, but there  
24 was like knives, there could have been knives somewhere I

1 Q. So are you telling us that you wouldn't search  
2 the area where he might have stashed something more thoroughly  
3 in the other area, you wouldn't pay special attention to that  
4 area?  
5 A. I would have made sure I paid attention to it,  
6 but I wouldn't treat any area less.  
7 Q. And you didn't find anything in that immediate  
8 area?  
9 A. No, sir.  
10 Q. So, you eventually took possession of the  
11 eyeglasses case; correct?  
12 A. Yes, sir.  
13 Q. And without getting into what anybody actually  
14 said, no party claimed it was there's; correct?  
15 A. No one on scene claimed it was their --  
16 Q. No one asserted ownership over that?  
17 A. Correct, no ownership.  
18 Q. So did you ever do anything to check the  
19 eyeglasses case or the tin or the baggies for fingerprints?  
20 A. No, sir.  
21 Q. That's something the police department has the  
22 capability to do; correct?  
23 A. You can pull prints if (indiscernible) to, yes.  
24 Q. Okay. And had you done that in the case we would

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1 don't know recall, I don't really keep track of like small  
2 pocket knives.  
3 Q. Like I said, if something of note would have been  
4 found, you would have put it in your report; right?  
5 A. Something of an illegal nature probably.  
6 Q. Sure. And for based on your previous testimony  
7 it would be illegal for Mr. Dunn to have owned a firearm;  
8 correct?  
9 A. As far as I know, yes.  
10 Q. So, I imagine, based on Mr. Dunn's initial I  
11 guess actions when you stopped the vehicle, I imagine you were  
12 very careful to search that immediate area; right?  
13 A. When it came to the probable cause search?  
14 Q. Sure?  
15 A. Like half my dog yeah, that one, yeah, we would  
16 have searched the area.  
17 Q. And you would have searched that area, extra  
18 while given that you thought he could have been stashing  
19 something; right?  
20 A. I try not to base my searches off like different  
21 areas, I just want to search as best I can the whole vehicle.  
22 Q. Right. But you previously testified that you  
23 thought he could have been stashing something?  
24 A. Agreed, yes.

1 have an idea of whether Miss Gravelle handled that item;  
2 correct potentially?  
3 A. My experience with fingerprints they're real  
4 difficult, especially when it comes to folded up bags and like  
5 clot or textured things.  
6 Q. Well the eyeglasses case isn't, (indiscernible)?  
7 A. No, on the inside it is on the outside it's more  
8 textured still.  
9 Q. Okay. What about DNA, did you happen swab it for  
10 touch DNA?  
11 A. As far as I understand it won't run any type of  
12 DNA on possession of controlled substance case.  
13 Q. But the Department has the capabilities to do  
14 that; correct?  
15 A. I don't know if we do it or Washoe I've never  
16 done DNA but I know we take DNA swabs for like high profile  
17 cases but not possession cases.  
18 Q. And so you're not aware that anybody through your  
19 department did that in this case; correct?  
20 A. No, I didn't and I don't can I pretty much  
21 guarantee no one else did.  
22 Q. But you are generally aware that your department  
23 has that capability that they usually (indiscernible)?  
24 A. Yes, sir.

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1 Q. Okay. And had these tests been conducted, they  
2 could possibly show that she did or didn't handle the items;  
3 correct?

4 A. There's a possibility.

5 Q. We don't know that because the test was never  
6 conducted?

7 A. Correct.

8 MR. LEAMON: Nothing further, Your Honor.

9 THE COURT: Redirect.

10 MR. ROCHE: I have no further questions for this  
11 witness.

12 THE COURT: Are there any jury questions for this  
13 witness? None.

14 Is there any need to have this witness retained?

15 MR. ROCHE: The State would ask that you retain  
16 subject to recall.

17 THE COURT: Okay. You can leave the courthouse,  
18 you may be called back. Do not discuss your testimony with  
19 anyone other than the attorneys.

20 Thank you. (Indiscernible).

21 THE WITNESS: Where would you like the evidence?  
22 You want to take that.

23 THE COURT: Yes, that will work. Mr. Roche, just  
24 put it back. We're going to take our afternoon recess.

1 that is a person is not free to leave once detained for a  
2 traffic stop, but they are not for purposes of Miranda.

3 Under (indiscernible) versus McCarty which is  
4 U.S. Supreme Court, and -- as well as Maryland vs. Shatzer,  
5 559 U.S. 98.

6 And so we would ask the Court to reconsider its  
7 decision to suppress, basically every statement by the  
8 Defendant from the initiation of the traffic stop.

9 We also point out that NRS 174.025 does make it  
10 mandatory that motions to suppress be filed prior to trial.  
11 And I understand the Court made a sua sponte ruling finding it  
12 would be plain error to admit these statements, but there's a  
13 reason why the statute exists and that's because we are  
14 precluded from appealing any such ruling.

15 So if the Court's not inclined to reconsider, we  
16 would also ask this Court to stay this trial so that we have a  
17 chance to appeal that issue. The District Attorney's office  
18 would like to appeal the suppression of these issues.

19 I mean, when you think about it logically under  
20 the Court's ruling, any DUI investigation would be null and  
21 void (indiscernible) required to Mirandize to someone when  
22 they are pulled over for DUI -- in a DUI investigation.

23 THE COURT: There's specific case law on that  
24 point for DUIs. The Supreme Court cases, I have not been able

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1 The jury is admonished as follows: Do not  
2 converse amongst yourselves or with anyone else on any subject  
3 connected with this trial.

4 Do not read watch or listen to any report of the  
5 trial or commentary on the trial or to any person connected  
6 with the trial.

7 This includes any medium of information,  
8 including without limitation, newspapers, television, radio  
9 and internet.

10 Do not form or express any opinion on any subject  
11 connected with this trial until the case is finally submitted  
12 to you.

13 Do not visit the alleged scene or conduct any  
14 independent research investigations or experiments concerning  
15 this matter prior to or during your deliberations. A  
16 violation of these admonishments may result in a mistrial.

17 We'll take a 20-minute recess.

18 (Recess.)

19 THE COURT: The Defendant and counsel are  
20 present. We're outside the presence of the jury.

21 Mr. Roche, you had something.

22 MR. ROCHE: Yes, Your Honor. The District  
23 Attorney and I, our Chief Deputy District Attorney had done  
24 research since the Court's ruling. And it's our understanding

1 to conduct research while you have had other members of your  
2 staff conducting research.

3 So as you said, I'm kind of making these  
4 decisions on the fly. Certainly, a motion to suppress is  
5 supposed to be filed before a trial.

6 But the issues are in front of me and I have to  
7 deal with them, and that's what I'm trying to do.

8 So Mr. Leamon, what's your position on these U.S.  
9 Supreme Court cases?

10 MR. LEAMON: Well, I am in the same position,  
11 Your Honor, as I haven't had the opportunity to conduct any  
12 research at this point. But it kind of goes back to the  
13 Beckman issue that we raised earlier.

14 I think almost at the outset of this stop, it  
15 stopped being your routine traffic stop. And like I said, I  
16 haven't had a chance to review those cases recently, but I  
17 believe that's in context in the routine traffic stop.

18 As we noted in the testimony, or in the Beckman  
19 motion that we filed, there were almost no indicia of the  
20 normal traffic stop of this case.

21 It almost immediately switched to a narcotics  
22 investigation based on, first off, Mr. Dunn being in the  
23 vehicle. So I think that's a distinguishing factor. Like I  
24 said, off the top of my head, not being able to review the

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1 cases, but I would ask the Court to stick with its original  
2 ruling.

3 THE COURT: What I'm going to do is we're going  
4 to recess for the rest of the day.

5 Mr. Roche, you need to give those citations to my  
6 law clerk and to Mr. Leamon. And then I want counsel and the  
7 Defendant here at 9 o'clock tomorrow morning to argue that  
8 issue.

9 If you have any witnesses that need to testify  
10 about it, you need to have them here then as well, Mr. Roche.  
11 Part of what's going on here is not only am I having to decide  
12 this without the law right at my fingertips, I'm deciding it  
13 in a vacuum in terms of what the evidence is going to be.

14 So we're going to recess until morning. You all  
15 be back here at nine.

16 Mr. Bailiff, will you excuse the jurors for the  
17 evening. I've already instructed them. They're not supposed  
18 to talk about the case and tell them to be back here at 9:30  
19 tomorrow morning.

20 THE BAILIFF: Yes, ma'am.

21 THE COURT: We're in recess.

22 (Recess.)  
23  
24

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1 STATE OF NEVADA, )  
2 CARSON CITY. ) ss.  
3

4 I, SHELLIE LOOMIS, do hereby certify:

5 That on February 19, 2019, a trial was held in the  
6 within-entitled matter in the Fourth Judicial District Court,  
7 State of Nevada;

8 That said trial was recorded on JAVS CD-ROM, and  
9 said JAVS CD-ROM was delivered to me for transcription;

10 That the foregoing ROUGH DRAFT TRANSCRIPT,  
11 consisting of pages 1 through 69, is a full, true and correct  
12 transcript of said recorded JAVS CD-ROM performed to the best  
13 of my ability under the circumstances.  
14

15 Dated at Carson City, Nevada, this 14th day of  
16 December, 2021.  
17  
18

19 //Shellie Loomis//  
20 Shellie Loomis, RPR  
21  
22  
23  
24

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**In The Matter Of:**  
***THE STATE OF NEVADA v.***  
***SARAH ELIZABETH GRAVELLE***

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ELKO CO DISTRICT COURT

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IN THE FOURTH JUDICIAL DISTRICT COURT  
IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA  
THE HONORABLE NANCY PORTER, DISTRICT JUDGE

-oOo-

THE STATE OF NEVADA, )  
Plaintiff, ) Case No. CR-FP-18-7207  
vs. ) Dept. No. I  
SARAH ELIZABETH GRAVELLE, )  
Defendant. )

ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL, VOLUME II  
WEDNESDAY, FEBRUARY 20, 2019  
ELKO, NEVADA

Transcribed by: Shellie Loomis, RPR

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APPEARANCES:

For the State: Elko County District Attorney's Office  
By: Daniel Roche,  
Deputy District Attorney  
  
For the Defendant: Elko County Public Defender  
By: Phillip Leamon,  
Deputy Public Defender

ELKO, NEVADA, WEDNESDAY, FEBRUARY 20, 2019, A.M. SESSION  
-oOo-

THE COURT: The Defendant and counsel are present. We are outside the presence of the jury for a hearing on the admissibility of the Defendant's statements to the police.

Mr. Leamon submitted a brief this morning. Did you have anything, Mr. Roche?

MR. ROCHE: In writing, I do not, Your Honor.

THE COURT: Did you see Mr. Leamon's brief?

MR. ROCHE: I did.

THE COURT: Okay. Your research Mr. Leamon pretty much mirrored what my law clerk and I found yesterday and last night.

Do you have witnesses here to testify?

MR. ROCHE: Josh Taylor is supposed to be here at 9 o'clock. So he's already testified about the process of the stop, so I'm not sure that he's necessary.

THE COURT: Well, it is for me. I went through the preliminary hearing transcript, I considered his testimony yesterday and I just don't have enough information.

I made the decision I made yesterday based on his testimony which did not establish by a preponderance of the

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1 State's burden that her testimony was voluntary. I want more  
2 detail.

3 I read through that preliminary hearing  
4 transcript probably three times now and there was very little  
5 in there. So I know you cited to Berkemer yesterday, and I  
6 read through that. That is just a starting point.

7 That case talked about an ordinary traffic stop,  
8 it used that phrase at least three times I saw it three times  
9 in there. An ordinary traffic stop in and of itself is not  
10 custody. The Berkemer case is a DUI case our case is  
11 different. Our case is not an ordinary traffic stop.

12 So then you got to look at the factors for  
13 custody, and those are in Alward v. State. They're in several  
14 cases.

15 Did you look at those yesterday or today?

16 MR. ROCHE: I looked at a lot of cases, Your  
17 Honor, and I'm prepared to argue as to the order last night.  
18 Are you going to make an announcement before we have the  
19 opportunity to argue the issue?

20 THE COURT: No. No, I'm not. But I also told  
21 you to have your witnesses here to provide other testimony.

22 MR. ROCHE: And I told him to be here at  
23 9 o'clock for this hearing.

24 THE COURT: Okay.

1 Judge declined to hear a motion to suppress during trial and  
2 the Nevada Supreme Court said that was discretionary and that  
3 was fine.

4 But then there are probably 25 cases where the  
5 Nevada Supreme Court then reviewed on appeal suppressible  
6 evidence where possibly suppressible evidence where no motion  
7 to suppress was brought and said that the failure to comply  
8 with the statutory procedure does not preclude appellate  
9 consideration when the conditions are grounded on  
10 constitutional questions.

11 So my reading of all this is there's no  
12 consistency. The statute says must and then the Supreme Court  
13 says the District Court has discretion, and then the Supreme  
14 Court says they're going to review it even if the District  
15 Court doesn't hear it.

16 So I'm reading that as I have the discretion  
17 whether to hear it or not. And I am going to hear it, I told  
18 you both I would today.

19 So you can certainly make argument if you think  
20 you've got enough already, Mr. Roche, go ahead and make your  
21 argument and I'll let you both argue and I'll decide.

22 THE BAILIFF: Your Honor --

23 THE COURT: Yes.

24 THE BAILIFF: Mr. Taylor is a waiting your call

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1 MR. ROCHE: So I don't know if he's outside.  
2 I've been in here. He might be here.

3 THE COURT: Okay. I was getting the impression  
4 you didn't intend to put him on.

5 MR. ROCHE: I don't, because the statements that  
6 he made on the stand yesterday were in my mind sufficient  
7 under Berkemer and all the case law that haven't had an  
8 opportunity to argue to show that none of these statements by  
9 the Defendant are suppressible.

10 THE COURT: Okay. You don't have to put him on.  
11 I'm not going to make your case for you, but --

12 MR. ROCHE: You can. I'm happy to have you call  
13 him and have up ask him (indiscernible) questions about what  
14 the details are that you're looking for. I don't know what  
15 those are.

16 THE COURT: I'm not going to make your case for  
17 you, Mr. Roche. I want you both to know this is your last  
18 opportunity on this issue.

19 I also looked at the motion to suppress statute  
20 Mr. Leamon which says these motions must be made before trial.  
21 That's what it says.

22 Then I looked at the case law in Williams v.  
23 State which is kind of a notorious case where a woman killed  
24 six teen-teenagers driving under the influence. The trial

1 in the lobby.

2 THE COURT: All right. Thank you. I don't think  
3 that Mr. Roche is going to call him. So go ahead, Mr. Roche.

4 MR. ROCHE: Your Honor, as you have already  
5 discovered the seminal case in this issue is Berkemer and  
6 Berkemer did state that a routine traffic stop is not a  
7 custody pursuant to Miranda.

8 The fact that it's a DUI case has been mentioned  
9 by the Court a couple of times and the State fails to see the  
10 relevance of that. The 5th Amendment to the United States  
11 constitution does not change depending on the crime that is at  
12 issue (indiscernible) case.

13 It is a blanket rule when Miranda applies and the  
14 type of case that's involved has no bearing whatsoever on the  
15 applications of the constitutional protections of the Bill of  
16 Rights.

17 So whether or not cases are DUI cases are  
18 narcotics investigations or any other traffic offense is not  
19 relevant and that was stated in Berkemer because that was one  
20 of the issues addressed in Berkemer before they got to the  
21 question of whether a person in a traffic stop was in custody  
22 for Miranda purposes was whether the 5th Amendment would apply  
23 in a misdemeanor investigation and they said that doesn't  
24 matter.

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1 The constitution is the constitution and that is  
2 true. So it doesn't matter what kind of case it is whether  
3 someone is in custody for purposes of Miranda is not based on  
4 what potential crime might be prosecuted as a result of the  
5 stop or (indiscernible) investigation.

6 Berkemer stated quite clearly that the non course  
7 of aspect of ordinary traffic stops prompts us to hold that  
8 persons temporarily detained pursuant to such stops are not in  
9 custody for the purposes of Miranda. Well, that's not going  
10 to be disputed by anyone this in this courtroom.

11 So the question becomes what fact and change that  
12 would lead a normal traffic stop which this was a traffic stop  
13 for a (indiscernible) violation to become something more than  
14 that.

15 And the briefing by the defense in this case  
16 argues that as soon as it morphed into a narcotics  
17 investigation that that was a change that rendered the stop  
18 not an ordinary traffic stop. That is not what the case law  
19 states.

20 Berkemer is pretty clear that someone's not in  
21 custody for Miranda purposes until they typically show a  
22 formal arrest occurred. So if we go through the traffic stop  
23 in this case what would be the indicia of a formal arrest.

24 So initially Nicholas Dunn was asked to step out

1 What else is conducted? She was subjected to a  
2 Terry pat a search for contraband for weapons. The case law  
3 and Berkemer makes it abundantly clear and I'll quote this  
4 language in a minute. But a Terry stop or a pat down doesn't  
5 constitute somebody in custody for Miranda purposes.

6 The next step of this stop after she was  
7 questioned was to (indiscernible) drug dog around the  
8 (indiscernible) of the vehicle. She was still standing  
9 outside in a public place, not in handcuffs, not physically  
10 restrained and a dog was walked around her vehicle. That  
11 doesn't change the formal indicia of arrest or the place of  
12 arrest for Miranda purposes.

13 The next stop was a search of her vehicle she was  
14 still in a public place standing on the side of the road. She  
15 was not placed under arrest she was not in handcuffs she was  
16 not being physically restrained and the search occurred.

17 Well, (indiscernible) contraband I suppose she  
18 might have believed that she's not in, free to leave but she  
19 was never free to leave that's not in dispute. That's what  
20 Berkemer makes clear is the fact that somebody is not free to  
21 leave does not place them in custody for Miranda purposes.

22 THE COURT: Tell me where that is in Berkemer. I  
23 know that the language is that the officers testimony and the  
24 defendants subjective opinion don't matter, but where does it

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1 of the vehicle in this case and patted down for weapons. The  
2 DUI case law should make it an exhibit abundantly clear that  
3 asking someone to step out of the vehicle does not convert a  
4 normal traffic stop into a formal arrest or indicia into a  
5 formal arrest otherwise you would never have a DUI  
6 investigation on the side of the road.

7 What occurred after that? There was some  
8 question whether or not (indiscernible) was quite clear that  
9 asking a moderate amount of questions in a relatively brief  
10 amount of time does not convert it into a formal indicia of  
11 arrest it's still a traffic stop and the (indiscernible) is  
12 not in custody.

13 What occurred after that? Miss Dunn was asked to  
14 step out of the vehicle we already covered that and that was  
15 the facts of this case.

16 THE COURT: Wait a minute. You said Ms. Dunn.  
17 There isn't --

18 MR. ROCHE: -- Miss Gravelle --

19 THE COURT: -- isn't a Miss Dunn. What do you  
20 mean --

21 MR. ROCHE: -- the Defendant was asked to step  
22 out of the vehicle. Asking someone to step out of the vehicle  
23 does not convert a normal traffic stop into in-custody for  
24 Miranda purposes.

1 say not being free to leave is not custody.

2 MR. ROCHE: It must be acknowledged at the out  
3 set that a traffic stop significantly curtails the freedom of  
4 the driver and the passengers if any (indiscernible) vehicle  
5 under the law of most states it is a crime either to ignore a  
6 policeman's signal to stop one's car or once having stopped to  
7 drive away without permission.

8 THE COURT: Excuse me, what page are you on?

9 MR. ROCHE: It's page 436. Certainly in Nevada  
10 that's the case. We know it's a crime eats either eluding or  
11 failing to obey the directions of the traffic officer to leave  
12 in the middle of a traffic stop so they're not free to leave.

13 Certainly a few more (indiscernible) feel free  
14 directive to pump over traffic stop told might do so. Partly  
15 for these reasons, we have long acknowledged that stopping an  
16 automobile and detaining it's occupants constitutes a seizure  
17 in the meaning of the Fourth Amendment even though the purpose  
18 of the stop is limited and the result in detention quite  
19 brief.

20 However, we decline to a (indiscernible) power of  
21 the Miranda opinion emphasized by Respondent. (Indiscernible  
22 reading) doctrine announced in Miranda requires that it be  
23 enforced strictly but only in those type of situations in  
24 which the concerns the power of the decision are implicated.

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1 Thus we must decide whether a traffic stop exerts  
2 upon a detained person pressures that sufficiently impair his  
3 free exercise of his privilege against self-incrimination to  
4 require that he be warranted his constitutional rights.

5 Two features of a (indiscernible reading) traffic  
6 stop mitigate the danger that a person in question will be  
7 induced to speak where he would not do other so freely.

8 First, (indiscernible) motorist pursuant to a  
9 traffic stop is presumptively temporary and free. And then we  
10 skip ahead second circumstances associated with the typical  
11 traffic stop are not such that the motorist feels completely  
12 at the mercy of the please.

13 To be sure the aura of an authority surrounding  
14 an armed uniformed officer and the knowledge that the officer  
15 has some discretion deciding whether to issue a citation in  
16 combination exerts some pressure on the detainee to respond to  
17 the question.

18 But other aspects of the situation substantially  
19 offset these forces. Perhaps most importantly the typical  
20 traffic stop is public at least to some degree passerby on  
21 foot or other cars witness the interaction of the officer and  
22 the motorists.

23 This exposure to public view both reduces the  
24 ability of an unscrupulous policeman to use (indiscernible

1 suspect's freedom of action is curtailed to a degree  
2 associated with formal arrest. That's the United States  
3 Supreme Court.

4 So as soon as her freedom became curtailed  
5 sufficient to be what would be associated with a formal  
6 arrest, being placed in handcuffs, physically detained,  
7 perhaps put in the back of a squad car, up until that point  
8 they're not in custody for Miranda purposes during a traffic  
9 stop.

10 A lot of the arguments that are going to be made  
11 or that were made in the written, supplemental briefing argue  
12 that this stop in particular morphed into a narcotics  
13 investigation right from the beginning.

14 But the subjective intent of the officer has no  
15 bearing whatsoever on whether someone is in custody for  
16 Miranda purposes and that is also made clear in Berkemer.

17 If you go to page 442, the very top of that page,  
18 it says that all though Trooper Williams decided as soon as  
19 that respondent would be taken into custody Williams never  
20 communicated his intention to the respondent.

21 A policeman's unarticulated plan has no bearing  
22 on the question whether a suspect was in custody at a  
23 particular time. The only relevant inquiry is how a  
24 reasonable man in a suspect's position would have understood

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1 reading) means to self-incriminating statements and diminishes  
2 the motorists' fear if he does not cooperate he will be  
3 subject to abuse.

4 The fact that the detained motorist is typically  
5 only one or at most two policeman further mutes the sense of  
6 vulnerability.

7 In short, the atmosphere surrounding an ordinary  
8 traffic stop is substantially less police dominated than  
9 surrounding the kinds of interrogation at issue in Miranda.  
10 And the subsequent cases which have applied Miranda.

11 In both of these respects the usual traffic stop  
12 is more analogous to a Terry stop than a formal arrest.

13 So while a Fourth Amendment detention occurs  
14 while someone stops (indiscernible), they're not free to leave  
15 the U.S. Supreme Court has held that doesn't place them in  
16 custody for purposes of Miranda. And that's clear cut case  
17 law from 1984. This isn't a new development in the law.

18 The Nevada Supreme Court has repeatedly quoted  
19 Berkemer including decisions from this district appealing the  
20 denials of motions to suppress during statements made during  
21 traffic stops that subsequently resulted in felony arrests.

22 In Berkemer, the U.S. Supreme Court quoted  
23 California v. Bieler by stating it is settled that the safe  
24 guards prescribed by Miranda become applicable as soon as the

1 the situation.

2 Sarah Gravelle was stopped in driving a vehicle.  
3 Her license plate light was out and she was being asked  
4 questions. There was no indicia of arrest until she was  
5 arrested. She was never told she was not free to leave. She  
6 was never placed in custody. Officer Taylor testified to  
7 those facts yesterday from the stand.

8 I asked him those questions repeatedly. Did you  
9 ever tell her she was under arrest? Did you place her in  
10 handcuffs did you tell her she wasn't free to leave?

11 Obviously, she wasn't free to leave and the Supreme Court  
12 acknowledges that people stopped in traffic stops aren't free  
13 to leave, but that doesn't put them in custody for purposes of  
14 Miranda.

15 Now this case is slightly different from  
16 Berkemer, but if you read the language from Berkemer from that  
17 appears in the stipulation of facts so the judges in Berkemer  
18 have the same complaint that this Court does that they wish  
19 they had more facts about every detail of the stop.

20 A single police officer asked respondent a modest  
21 number of questions and requested him to perform a simple and  
22 this was a DUI, balancing test at a location visible to  
23 passing motorists. Treatment of this sort cannot be  
24 characterized as a function of formal arrest.

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1 So the question is what else did Officer Taylor  
2 do in this case that might indicate to Ms. Gravelle that she  
3 was under formal arrest. And we've already talked about a  
4 Terry pat and asking someone to step out of the vehicle can't  
5 possibly be that kind of fact. Asking someone questions can't  
6 be those facts that is clear from Berkemer.

7 And if you look at the Nevada Supreme Court cases  
8 that apply to Berkemer, you look at State v. Taylor in 114  
9 Nevada 1071, footnote 2, they cite this case we just talked  
10 about and they say the seizure of the Fourth Amendment does  
11 not necessarily render a person in custody for Miranda  
12 purposes.

13 Indeed, a traffic stop constitutes a seizure  
14 under the Fourth Amendment and cites (indiscernible) v. Cross  
15 and does not place a person in custody under Miranda and it  
16 cites Berkemer.

17 The Nevada Supreme Court goes on to say,  
18 similarly officers may seize an individual to perform a pat  
19 down search of the individual's outer clothing pursuant to  
20 Terry v. Ohio State, but such does not render a person in  
21 custody for Miranda. And again cites Berkemer, 468 United  
22 States at 439, 4th.

23 So the Nevada Supreme Court has recognized that  
24 Terry pats and Terry stops don't place them in custody for

1 investigation that ever occurs on a road side traffic stop  
2 would ever result in admissible statements, and Berkemer makes  
3 it clear that's simply not the State of the law.

4 I would also point for informational purposes to  
5 Grand v. State which is an unpublished order of the Supreme  
6 Court from 2013. This issue was raised in this district.

7 The State moved to suppress issues made during a  
8 traffic stop and the Nevada Supreme Court --

9 THE COURT: The State moved to suppress it?

10 MR. ROCHE: The defense moved to suppress. This  
11 is the Len Green case. Judge Kacin was the Judge in this case  
12 and his denial of the motion to suppress was appealed and the  
13 Nevada Supreme Court said: Quote, because law enforcement  
14 questioned Green in public subsequent to a car accident, not a  
15 fact here, but in public, she was right out here on Fourth  
16 Street, we conclude that Green was not in custody and the  
17 District Court did not error by denying his motion on this  
18 ground.

19 And then it cites Berkemer v. (Indiscernible) and  
20 then the parenthetical from the Nevada Supreme Court says:  
21 Holding that all though one is not free to leave once detained  
22 pursuant to a traffic stop, he is not in custody for Miranda  
23 purposes unless the encounter escalates into a formal arrest.

24 I don't want to harp on Berkemer all day, but I

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1 Miranda purposes.

2 And the Nevada Supreme Court has also defined and  
3 this is probably (indiscernible) complete through out the case  
4 law (indiscernible) custody, custody is defined as formal  
5 arrest or restraint on the freedom of movement to a degree  
6 associated with formal arrest.

7 Accordingly, (indiscernible) inquiry how a  
8 reasonable man in the suspect's position would have understood  
9 the situation. Miss Gravelle probably understood that they  
10 were investigating possible offenses that they were suspicious  
11 of her. She might have understood that they suspected Mr.  
12 Dunn of possibly (indiscernible) weapons.

13 But she was well aware that she was not in  
14 handcuffs. She was not being physically restrained and that  
15 she was not placed under arrest or told that she was under  
16 arrest.

17 And the most incriminating statements that she  
18 made occurred pretty early on in the traffic stop and of at  
19 the conversation that occurred while she was sitting in the  
20 passenger side of the driver's side of her vehicle and Officer  
21 Taylor was standing at that same door talking to her from the  
22 window.

23 If that is formal indicia of arrest then her  
24 statements are inadmissible under Miranda then no

1 do want to touch on one other thing before and that is that  
2 there's been repeated discussions of evidence in this case  
3 being prejudicial to the Defendant and whether or not she  
4 (indiscernible).

5 And for the record, I just want to make a record  
6 about the State of the case law regarding the prejudicial  
7 effect of evidence against the Defendant. NRS 48.035 which is  
8 not (indiscernible) statute, but simply talks about how if  
9 evidence, if the danger of unfair prejudice substantially out  
10 weighs the (indiscernible) (indiscernible) should be admitted  
11 even if it's relevant.

12 So whether or not something is relevant, if it's  
13 danger and (indiscernible) substantially out weighs it's full  
14 (indiscernible) then it needs to be (indiscernible).

15 Then there are obvious situations where that's  
16 applicable for instance her prior conviction and the fact that  
17 she was on probation this last summer. Those are things that  
18 aren't directly relevant to the facts of the case, but my,  
19 (indiscernible) let me first read to you the definition from  
20 the Nevada Supreme Court on what constitutes unfair  
21 (indiscernible).

22 Because the Supreme Court has acknowledged  
23 numerous times that every piece of evidence that the state  
24 would ever present (indiscernible) Defendant's prejudicial

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1 that's the whole point of prejudice, that's why we're having a  
2 trial we're trying to present evidence to a jury that a  
3 prejudicial to the Defendant that she is guilty of  
4 (indiscernible).

5 If it's not prejudicial, then it's not relevant,  
6 and so the question isn't whether evidence is more prejudicial  
7 than probative, but whether it's a risk of unfair prejudice.

8 Unfair prejudice has been defined by the Nevada  
9 Supreme Court and this is -- this is a writ petition, State  
10 versus 8th JD, 127 Nevada 927, and I'm on page 933.

11 Unfair prejudice under NRS 48.035 has been  
12 defined as an appeal to the emotional and sympathetic tendency  
13 of the jury rather than the jury's intellectual  
14 (indiscernible) evidence.

15 All though unfair prejudice commonly refers to  
16 decisions based on emotion it is not so limited. Unfair  
17 prejudice in the Federal Court and the federal rules of  
18 evidence is evidence that has an undue tendency to suggest  
19 decisions on improper basis commonly, though not necessarily,  
20 an emotional one.

21 As the United States Supreme Court has explained  
22 in addressing the federal rules of evidence, the term unfair  
23 prejudice as to a criminal Defendant speaks to the capacity of  
24 some conceivably relevant evidence to lure the factfinder to

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1 declaring guilt on a ground different from proofs specific to  
2 the offense charged.

3 And that's why convictions for prior offenses  
4 that are unrelated creates a risk of unfair prejudice. A jury  
5 might say hey that Defendant is a criminal, they've done this  
6 stuff in the past, they're probably guilty we'll convict them.  
7 That's not a quote by any means and we recognize that.

8 But the statements that are seeking to be  
9 admitted in this case, specifically the Defendant  
10 (indiscernible) before this traffic stop had used  
11 methamphetamine are of immense probative value.

12 That goes directly to the issues in the trial  
13 whether or not this Defendant knowingly possessed  
14 methamphetamine that was in her vehicle when she was stopped.  
15 The probative value, I can't even imagine, I mean  
16 maybe if she had put pulled out some drugs and said those are  
17 mine, that's more probative than what we're seeking to admit  
18 in this case.

19 But nevertheless, the probative value of that  
20 statement is immense. And the danger of unfair prejudice is  
21 minimal. She wasn't coerced. She made a voluntary statement  
22 and it goes directly to the point of whether or not she knew  
23 number one was familiar with methamphetamine, knew what it  
24 looked like, was aware of it and she was somebody that had

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1 recently used it.

2 Those are all directly relevant and probative  
3 evidence that goes to show whether or not the charge in this  
4 case is true. It's not trying to get the jury to convict her  
5 based on something else or on an improper reason. It goes to  
6 the fact that this Defendant on August 22nd, 2018 possessed  
7 methamphetamine.

8 It's a highly probative statement and the danger  
9 of unfair prejudice is minimal. It's a highly prejudice  
10 statement, because it's evidence of her guilt. That's the  
11 whole reason why the State is seeking to admit it. And the  
12 fact of that is true is obvious from the defense's intent to  
13 submit evidence that her passenger in the vehicle was a known  
14 user of narcotics.

15 The defense sees the evidentiary value, the  
16 probative value of that evidence, because they're seek  
17 together shift the blame on to the passenger of the vehicle  
18 and say well he had drugs because he was a known user of  
19 drugs.

20 So defense's strategy in this trial makes it  
21 abundantly clear that that's highly probative evidence and so  
22 the only reason it should be excluded is it's danger of unfair  
23 prejudice is out weighs that probative value.

24 Number one, that probative value is already high.

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1 Number two, the unfair prejudice is minimal because this is  
2 not a statement about when I was a teenager I used  
3 methamphetamine, or I used methamphetamine five years ago.  
4 This was in the past week, she just got back from California.  
5 She had used methamphetamine. It's relevant to her knowledge  
6 and intent and possession of methamphetamine (indiscernible).

7 And so it needs to be, I think, clear for the  
8 record that that is prejudicial evidence, it's not unfairly  
9 prejudicial evidence and it's probative value is immense.  
10 That's the whole --

11 THE COURT: I get all that, Mr. Roche.

12 MR. ROCHE: That's the crux of the case.

13 THE COURT: I have no intention of making any  
14 ruling that the danger of unfair prejudice exceeds the  
15 probative value. The issue in my mind was whether she was in  
16 custody.

17 MR. ROCHE: Okay.

18 THE COURT: So that's --

19 MR. ROCHE: -- well, I think that the case --

20 THE COURT: You won that before you even started  
21 arguing it.

22 MR. ROCHE: Well, I won't waste too much time.  
23 You think about the facts in this case and what things  
24 occurred in this case that the defense will argue

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1 (indiscernible) and the examples that are replete with case  
2 law are clear that those things don't place them in custody.  
3 Being asked to step out of a vehicle doesn't  
4 place you in custody. Being patted down for a weapon or  
5 contraband doesn't place them in custody. Speaking to you on  
6 the side of the road doesn't place you in custody.

7 What places you in custody is physical restraint  
8 associated with formal arrest. She was never placed under  
9 those restraints until she was arrested. And at that point,  
10 she was in custody for Miranda purposes.

11 Part of that (indiscernible) statements are  
12 admissible statements made to an officer during an  
13 investigation. And it wasn't a (indiscernible) investigation.  
14 That's not relevant.

15 Berkemer makes it clear that's not a relevant  
16 consideration for whether someone's statements have to be  
17 suppressed. The intent or the purpose of the officer  
18 conducting the stop is not a relevant consideration to whether  
19 or not physical indicia of a formal arrest were present in  
20 this case.

21 The State would assert that they were not until  
22 she was actually arrested. She was simply standing there by  
23 her vehicle and prior to that in her vehicle conversing with  
24 an officer.

1 What happens after that, he has to wait for other  
2 officers to arrive. Now, he said we know Officer Pinkham was  
3 there and we know Officer Taylor was there, and Officer  
4 Taylor's testimony was there were other officers there at the  
5 scene as well. So we have at minimum three.

6 The Berkemer case specifically talks about one  
7 officer questioning somebody, maybe two. This we have at  
8 least three officers on the scene. We have at least multiple  
9 vehicles on the scene. So this is something that's indicia of  
10 not a routine traffic stop. And that's why Berkemer goes to  
11 routine traffic stops.

12 So now we have multiple officers on the scene.  
13 Another reason why Berkemer ruled the way that it did was  
14 because it's in public, there's going to be pass certificates  
15 by, so that there's not indicia of strong arm tactics or  
16 anything like that.

17 We don't have that protection here. This is,  
18 yes, it's in a public area, you know it's on the side street  
19 over here, but it's 2 o'clock in the morning. There's not  
20 going to be necessarily people walking around observing the  
21 events at this late hour and it goes to the case I cited,  
22 United States and I'm going to butcher his last name, Chevelly  
23 (phonetic), in that case we have fairly similar facts to what  
24 we have here.

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1 THE COURT: Mr. Leamon.

2 MR. LEAMON: Listening to the State's argument,  
3 you would think that Berkemer announced a bright line rule  
4 that for the purpose of a traffic stop you're only in custody  
5 until you're formally arrested. They did not say that. That  
6 language is not present anywhere in Berkemer. If they wanted  
7 to say that, certainly they could have.

8 There's no bright line rule and that's why they  
9 lived these other factors and as you noted they used the word  
10 routine traffic stop multiple times. And this is anything  
11 other than routine.

12 Now it started off routine, but in my mind,  
13 there's a bifurcation of the events here. Officer Taylor  
14 testified that he stopped her for a traffic or a taillight or  
15 license plate light violation. Then he sees Mr. Dunn making  
16 the erratic movements, he decides to approach the passenger  
17 side and sighting to the preliminary hearing transcript and to  
18 the motion, he indicates that the initial conversation was  
19 just routine traffic stop.

20 So at this point, we're still in Berkemer  
21 territory. Any statements made at that very initial stop at  
22 the passenger side window I agree with the State those would  
23 not be inappropriate. Those would not be able to be  
24 suppressed.

1 It was a stop late at night. There were multiple  
2 officers involved and the questioning and this is why Terry's  
3 important and this is why the fact that Berkemer was a DUI  
4 case was important.

5 The reason that that's important is because the  
6 question shifted from a routine traffic stop to something  
7 else. Now, in the Chevelly (phonetic) case, it was  
8 immigration focused here it's narcotics focused.

9 But the fact that Officer Taylor is not asking  
10 her about a license plate light any more that he's asking her  
11 about narcotics. This shows there's been a shift we're no  
12 longer in a normal traffic stop here. So all those factors go  
13 toward showing that she was in custody.

14 THE COURT: What jurisdiction is that case from?  
15 You just have --

16 MR. LEAMON: So it's District Court case, it's  
17 from New York. It's cited, 81 app soc. I don't have the case  
18 printed, but it was a New York District Court.

19 THE COURT: Okay.

20 MR. LEAMON: Federal case. And I Shepardized,  
21 there were no red or yellow flags even.

22 So it's a very similar case to what we have here  
23 and like I said Berkemer could have announced the bright line  
24 rule, could have said Miranda is not required in the context



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1 of the traffic stop until there's a formal arrest or handcuffs  
2 or something like that. They don't use that language.

3 Just that there's curtailing of freedom that a  
4 reasonable person would, would associate with a custodial  
5 without being free to leave.

6 And then when we look at United States v.  
7 McKinney. We look at some of these factors that indicate  
8 whether somebody was free to leave and it's the foot note on  
9 page 4 of the brief.

10 And these factors include whether the suspect was  
11 told questioning was voluntary or he was free to leave. Miss  
12 Gravelle was in no way free to leave. Officer Taylor  
13 acknowledged that and she was never at any point told she was  
14 free to leave.

15 We don't know whether or not Officer Taylor had  
16 her ID, but it's possible he did. If he did, obviously you  
17 can't go anywhere when the police have custody of your ID.  
18 That's something that we don't know.

19 And then whether the suspect can move about  
20 freely during questioning. That's a no. She was not free to  
21 go. Had she tried to get out of her vehicle, I'm certain the  
22 cop, this Officer Taylor would have stopped her.

23 And then whether that the atmosphere of  
24 questioning was police dominated. Of course it was police

1 routine traffic stops, and that's why they give us these other  
2 factors to determine whether or not something is routine and  
3 whether Berkemer applies.

4 So in Berkemer, they were doing a DUI  
5 investigation. So the incriminating evidence that they were  
6 eliciting were related to the reason that the traffic stop was  
7 conducted because it was a moving violation. It's a DUI case.

8 So all of the evidence or all the questioning is  
9 going to be relevant to the initial stop. Here the  
10 questioning after the initial stop is no longer related to the  
11 traffic violation, it's narcotics.

12 So after that point we have a break in the  
13 action, and then there's a bifurcation of the stops. The  
14 initial passenger side with the Berkemer territory, but when  
15 he approaches on the driver's side and it shifts to narcotics.  
16 Mr. Dunn is being pulled out of the vehicle, this is multiple  
17 officers around, multiple cars around.

18 Now, we're in a different situation. We are no  
19 longer in a routine traffic stop and Berkemer doesn't apply  
20 the so there for Miranda was required. And it wasn't given so  
21 the statements should be suppressed.

22 Like I said, Berkemer certainly could have  
23 announced a Bright-line rule, the Supreme Court declined to do  
24 so.

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1 dominated. We have at least three cops, possibly more. We  
2 had multiple police vehicles and we have Mr. Dunn getting  
3 pulled out of the vehicle and searched.

4 You know Berkemer also talks about that most  
5 people associate a traffic stop, one officer one answer a few  
6 brief questions and then you know you got on your way.

7 When they're pulling people out of the vehicle  
8 patting them down, you know this is no longer going to be a  
9 brief stop related to why they pulled you over.

10 And that's also why Terry is important, because  
11 they cite Terry and there's language that you know the officer  
12 in a Terry stop, they can kind of ask you about your  
13 whereabouts, but the conversation should be limited why they  
14 stopped you.

15 Here the initial conversation was that Officer  
16 Taylor says, you want to talk routine traffic stop, but then  
17 there's a break in the action. He waits for other officers to  
18 arrive and then he approaches at the driver's side. So, you  
19 know, he's face to face with Miss Gravelle. She's not free to  
20 leave. He's in uniform as he testified the other day his gun  
21 was out where it was seen and he starts questioning her about  
22 narcotics.

23 So this break in the action shows that it's no  
24 longer a routine traffic stop and Berkemer only applies to

1 THE COURT: Thank you. Mr. Roche.

2 MR. ROCHE: I mean, some of the statements that  
3 were just made are specifically related to the things that the  
4 Supreme Court of the United States has already state  
5 (indiscernible). Pulling people out of the vehicle, patting  
6 them down at a brief stop.

7 That doesn't put you in custody for Miranda  
8 purposes, otherwise there would never be a DUI investigation  
9 (indiscernible). It would all be suppressed because people  
10 are pulled out of vehicles and they're subject to questioning  
11 and they're patted down for the officer (indiscernible)  
12 safety.

13 None of those things in Berkemer makes that  
14 abundantly clear and the Nevada Supreme Court cases that have  
15 cited Berkemer, those don't place them in custody. The gun  
16 was out, visible. It was in uniform those are the exact facts  
17 of Berkemer. It was an armed officer who conduct the traffic  
18 stop. Those factors do not put you in custody for Miranda  
19 purposes.

20 Berkemer only applies to routine traffic stops  
21 that's not a quote from Berkemer either. They use the word  
22 ordinary traffic stops as saying that Miranda doesn't apply.  
23 But then they explain that Miranda begins to apply when  
24 there's indicia of a formal arrest.

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1 In question the investigations occur and those  
2 are not indicia of formal arrest. Those are investigations  
3 that lead up to a formal arrest. Those are the steps  
4 necessary before someone is arrested for a crime.

5 In the argue of this about the numbers of cars  
6 that were around or the officers is not evidence of an act  
7 it's no evidence whatsoever of how many vehicles were there.

8 There could have been possibly three officers  
9 there. Dean Pinkham was there. Officer Taylor wasn't sure if  
10 he was the one that did the pat down or not. But there's no  
11 reports from any officers in this case that any one other than  
12 those two people were present at the scene.

13 And Berkemer quite explicitly used the number  
14 two, two officers at a traffic stop not rendering  
15 (indiscernible). So once again the State would assert that  
16 Ms. Gravelle was not in custody for purposes of Miranda unless  
17 there was physical restraints associated with a formal arrest  
18 and that didn't occur until she was arrested in this case.

19 THE COURT: I disagree with the State's reading  
20 of Berkemer. A traffic stop is not always not in custody. An  
21 ordinary traffic stop in and of itself is not custody.

22 So then the next evaluation comes under State or  
23 Alward, A-L-W-A-R-D vs. State. This started out as an  
24 ordinary traffic stop. It progressed to an investigation

1 she couldn't move about the area at all.

2 Next is whether the suspect voluntarily responded  
3 to questions. She did.

4 Next is whether the atmosphere of questioning was  
5 police dominated. The officer did testify yesterday that  
6 there were other officers there besides Officer Taylor and  
7 Officer Pinkham. I don't know how many were there, but there  
8 were more than two, there were, under those circumstances at  
9 least two police cars there. I don't know how many different  
10 cars they arrived in.

11 Next is whether police used strong-arm tactics or  
12 deception during questioning. They did not.

13 The last factor is whether the police arrested  
14 the suspect for the determination of questioning. They did.  
15 And I'm finding that the objective indicia of arrest were not  
16 present the Defendant was not in custody, so her statements  
17 will be admissible.

18 Are you going to put Officer Taylor back on first  
19 thing this morning?

20 MR. ROCHE: May I -- I think what we intend to do  
21 is call Officer Pinkham to testify and then when he's  
22 concluded, his testimony, then recall Officer Taylor to  
23 clarify some of the issues that we anticipate will arise with  
24 Officer Pinkham's testimony.

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1 involving narcotics.

2 The first factor in Alward is the site of the  
3 interrogation. It was roadside, it was 2 o'clock in the  
4 morning, but it was also near downtown. I don't know if there  
5 was traffic in the vicinity, but it was close to the downtown  
6 area where the casinos are.

7 The second factor is whether the investigation  
8 focused on the subject. The investigation did focus on the  
9 Defendant and her passenger.

10 The fourth factor is the length and form of  
11 questioning. The questioning was rather brief, there's no  
12 indication it was aggressive or over bearing or coercive.

13 The third factor is the complicated one, whether  
14 the objective indicia of arrest are present. The first factor  
15 is whether the suspect was told that the questioning was  
16 voluntary or that she was free to leave. She was not told  
17 either of those things.

18 The next factor is whether she was, whether the  
19 suspect was not formally under arrest. She was not formally  
20 under arrest until she was cuffed and placed under arrest.

21 The next factor is whether the suspect could move  
22 about freely during questioning. She was in her car.  
23 Initially, she was told to get out of the car, she wasn't free  
24 to leave the area, but there's no indication that she was told

1 THE COURT: All right. Let's take oh, I'm also  
2 making a finding that the -- the probative value is not  
3 exceeded by the danger of unfair prejudice (indiscernible)  
4 evidence.

5 All right. Let's take about a five-minute recess  
6 and then we'll get the jury in here and Officer Pinkham.  
7 (Recess.)

8 THE COURT: Good morning. You may be seated.  
9 The Defendant and counsel are present.

10 Counsel, will you stipulate to the presence of  
11 the jury?

12 MR. LEAMON: Yes, Your Honor.

13 MR. ROCHE: Yes, Your Honor.

14 (Jury present.)

15 THE COURT: Your next witness, Mr. Roche.

16 MR. ROCHE: The State would call Dean Pinkham.  
17 DEAN PINKHAM,

18 called as a witness on behalf of the  
19 STATE, was duly sworn and  
20 testified as follows:

21 THE COURT: We got to get a new chair with that.

22 THE WITNESS: These wide (indiscernible) sorry.

23 THE COURT: Yeah, I know. We're working on it.  
24 Please state your name and spell your last name.

1 THE WITNESS: Dean Pinkham. P-I-N-K-H-A-M.  
2 THE COURT: Thank you. Go ahead, Mr. Roche.  
3 DIRECT EXAMINATION  
4 BY MR. ROCHE:  
5 Q. Officer Pinkham, I'm sure that we can probably  
6 tell from looking at you, but where are you employed?  
7 A. I'm employed with the Elko County Police  
8 Department.  
9 Q. And how long have you worked there?  
10 A. Approximately a year and two months.  
11 Q. Did you become involved in assisting in a traffic  
12 stop on August 22nd of last year?  
13 A. I did.  
14 Q. Do you recall how that came about?  
15 A. It was a traffic stop. Officer Taylor initiated  
16 it I believe for a license plate light out.  
17 Q. And how did you become involved?  
18 A. I assisted with the search of the vehicle.  
19 Q. How did you become aware of the stop?  
20 A. Over the police radio.  
21 Q. They just asked for anyone to come assist?  
22 A. Yes, sir.  
23 Q. And then you volunteered I guess?  
24 A. Yes, I did.

1 on the passenger side.  
2 Q. Did you have anything specifically you were  
3 looking for during that search?  
4 A. Officer Taylor's canine alerted to the odor of a  
5 controlled substance, so we were looking for the controlled  
6 substance in the vehicle.  
7 Q. Did you locate any?  
8 A. I did.  
9 Q. Where did you find those?  
10 A. I found that in a light blue backpack that was on  
11 the floor board behind the passenger seat.  
12 Q. And can you tell us a little bit about that space  
13 that you found it in? How much space was there?  
14 A. Not a lot. I, maybe a foot or two, maybe.  
15 Q. And do you recall where in that space the  
16 backpack was?  
17 A. It was just on the floor board in between where  
18 someone's legs would be sitting in the vehicle.  
19 Q. Was it near one side or the other was it in the  
20 middle; do you recall?  
21 A. It was on the passenger side. So the right side  
22 of the vehicle.  
23 Q. Okay. And typically in a vehicle in the back  
24 there's a little lump in the middle?

1 Q. What did you observe when you got there?  
2 A. I observed a four door white vehicle over on  
3 Fourth and Court.  
4 Q. Do you recall what time of day this was?  
5 A. I believe it was early morning, approximately  
6 2 o'clock in the morning.  
7 Q. When you arrived there, what did you do.  
8 A. I was advised by Officer Taylor to, he hadn't pat  
9 down Nicholas Dunn yet, and he asked me to do that.  
10 Q. Do you know the purpose for that, what was the  
11 purpose for that (indiscernible)?  
12 A. It's to locate any possible weapons. The outside  
13 of the clothing, not invasive to go inside the pockets.  
14 Q. Did you locate anything during the pat down?  
15 A. Not that I recall.  
16 Q. After you conducted the pat down, you say -- you  
17 pronounced it Mr. Dunn?  
18 A. Dunn, yes, sir.  
19 Q. What did you do next?  
20 A. I assisted with a search of the vehicle.  
21 Q. How did that occur, I guess (indiscernible)  
22 search?  
23 A. I started at the passenger front side of the  
24 vehicle and worked my way towards the back seat of the vehicle

1 A. Okay.  
2 Q. And then the outside doors. Do you recall in  
3 that space between the middle of the vehicle and the outside  
4 door, do you have any recollection of where that backpack was?  
5 A. I would say it was more on the right side of the  
6 vehicle and than on the left side of it.  
7 Q. Toward the passenger side?  
8 A. Toward the passenger side, yes.  
9 Q. So you found a backpack, what did you see when  
10 you opened that backpack?  
11 A. I did.  
12 Q. And what did you observe when you opened it?  
13 A. I observed a pink eyeglass case.  
14 Q. And where was the pink eyeglasses case in the  
15 backpack?  
16 A. It was in the biggest portion of the backpack, so  
17 the top portion of the backpack in its pocket.  
18 Q. And was it on the very top of the backpack?  
19 A. I couldn't recall. I would say it was in there,  
20 but I couldn't tell if it was, it wasn't at the bottom of -- I  
21 did have to move anything around to get to it.  
22 Q. Okay.  
23 MR. ROCHE: May I approach the --  
24 THE COURT: Yes.

1  
2 BY MR. ROCHE:  
3 Q. I show you what's been marked and admitted as  
4 State's Exhibit 1. Do you recognize that?  
5 A. I do.  
6 Q. And how do you recognize it?  
7 A. This is the pink eyeglass case that I found in  
8 the backpack.  
9 Q. During your search of the backpack, did you open  
10 up that pink eyeglasses case?  
11 A. I did.  
12 Q. And what did you find inside?  
13 A. I located a plastic baggy that had a white  
14 crystalline substance in it. I also located a circular  
15 container that had a clear lid that I observed another small  
16 baggy in there that had a white crystalline substance in it as  
17 well. Suspected both substances to be methamphetamine.  
18 Q. I'm going to show you what's been marked  
19 previously and admitted as State's Exhibits 9, 10 and 11.  
20 Do you recognize those?  
21 A. I do.  
22 Q. Are those the items you just described?  
23 A. They are.  
24 Q. What did you do with those items when you found

1 State's Exhibits 5 and 6.  
2 Do you recognize those?  
3 A. I do.  
4 Q. And those are receipts that you just talked  
5 about?  
6 A. They are.  
7 Q. Are those true and accurate depictions of what  
8 you observed on August 22nd, 2019?  
9 A. Yes, they are.  
10 Q. And what did you do with the receipts that you  
11 found?  
12 A. Advised Taylor of their location and where I  
13 found them and he seized them for evidence.  
14 Q. Now, have you seen them since that night?  
15 A. No, sir.  
16 MR. ROCHE: I apologize, I am putting these over  
17 there.  
18 THE COURT: That's okay.  
19 BY MR. ROCHE:  
20 Q. Did you find anything else of significance after  
21 you searched in that backpack?  
22 A. Other than what I've already stated, no.  
23 Q. And anything else in the vehicle that was  
24 significant to you?

1 them?  
2 A. I advised Officer Taylor that I located them and  
3 where I located them at.  
4 Q. And what happened to those items after you  
5 notified Officer Taylor?  
6 A. He seized them as evidence.  
7 Q. Did you ever see those items again after that?  
8 A. No, sir.  
9 Q. Did you find anything else of significance inside  
10 the backpack?  
11 A. I did.  
12 Q. What did you find?  
13 A. I also located numerous receipts that had Sarah  
14 Gravelle's name on them as well as some that did not have her  
15 name on them. And that's it.  
16 Q. And did those other receipts have somebody else's  
17 name on them?  
18 A. No, sir.  
19 Q. They just didn't have any name on them?  
20 A. Correct.  
21 Q. Okay.  
22 MR. ROCHE: I apologize. Court's indulgence.  
23 BY MR. ROCHE:  
24 Q. Showing you what has previously been admitted as

1 A. No.  
2 Q. Okay. And all the evidence that you found that  
3 you discussed you gave to Officer Taylor?  
4 A. That is correct.  
5 MR. ROCHE: I pass the witness, Your Honor.  
6 THE COURT: Cross-examination.  
7 CROSS-EXAMINATION  
8 BY MR. LEAMON:  
9 Q. Officer Pinkham, so when you arrived on the  
10 scene, you assisted on the pat down of Mr. Dunn; correct?  
11 A. That's correct.  
12 Q. And that was initially to search for weapons?  
13 A. That's correct.  
14 Q. You didn't find any weapons; right?  
15 A. Not that I can recall, no.  
16 Q. Now sometimes during a pat down, would it be fair  
17 to say you find other items of contraband, things that are  
18 immediately apparent like drug paraphernalia, pipes, stuff  
19 like that?  
20 A. If you can identify them without moving them in  
21 the pocket, yes.  
22 Q. And have you been able to do that before?  
23 A. Yes.  
24 Q. Okay. And so if any of these items were present

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1 on Mr. Dunn's person, you could potentially seized them had  
2 they been present; right?  
3 A. Correct.  
4 Q. But based on your pat down at least in regards to  
5 what was immediately apparent, you didn't feel any meth pipes  
6 or anything like that; correct?  
7 A. That's correct.  
8 Q. Okay. So you then assisted in searching the  
9 vehicle. And not getting into what Officer Taylor  
10 specifically said to you, but had you been made a wear of Mr.  
11 Dunn had made some erratic movements when the stop was  
12 initiated?  
13 A. No, I did not.  
14 Q. So Officer Taylor didn't tell you anything  
15 regarding just suspicious activity by Mr. Dunn, why he -- you  
16 were being called out to assist in the first place, nothing  
17 like that?  
18 A. He -- he told me -- he advised me that when with  
19 the -- if I recall correctly, the dog had already alerted on  
20 the vehicle when I arrived. So he advised me of that, but I  
21 don't recall him telling me anything about Nick Dunn reaching  
22 around the vehicle or anything like that.  
23 Q. Okay. So when you found the backpack, it was on  
24 the rear passenger floor board; is that correct?

1 A. That's correct. I don't know the exact date, but  
2 yes.  
3 Q. In that area?  
4 A. It was recent.  
5 Q. You went on to arrest him that day; correct?  
6 A. Yes, I did.  
7 Q. Now, part of it was because there was an  
8 outstanding warrant, that's what initially drew your attention  
9 to him; correct?  
10 A. Yes.  
11 Q. But you did a search of his person in regards to  
12 arresting him on the warrant; right?  
13 A. I did.  
14 Q. Did you find anything of note when you searched  
15 Mr. Dunn pursuant to that arrest?  
16 A. I did.  
17 Q. What did you find?  
18 A. I located a, an eyeglass case on his packet.  
19 Q. What was inside of that glass case?  
20 A. It was suspected methamphetamine.  
21 Q. And where was the methamphetamine found in this  
22 case?  
23 A. Was inside the eyeglass case.  
24 MR. LEAMON: Nothing further.

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1 A. That's correct.  
2 Q. And the eyeglasses case was located in the top of  
3 the biggest compartment on that?  
4 A. Yes.  
5 Q. In the backpack?  
6 And you didn't have to manipulate any items in  
7 the pack back or anything like that to get to the eyeglasses  
8 case; correct?  
9 A. That's correct.  
10 Q. You didn't have to dig around or anything like  
11 that, it was just there?  
12 A. Correct.  
13 Q. And this might seem like a simply question, but  
14 you don't know how the eyeglasses case got to where it was at;  
15 right?  
16 A. Correct.  
17 Q. You didn't see anybody put it in there or  
18 anything like that?  
19 A. I did not.  
20 Q. Now, you have recently had contact with Mr. Dunn;  
21 correct?  
22 A. Correct.  
23 Q. You had contact with him January 24th of this  
24 year; is that correct?

1 THE COURT: Redirect.  
2 REDIRECT EXAMINATION  
3 BY MR. ROCHE:  
4 Q. Are you sure that it was methamphetamine that was  
5 located?  
6 A. It tested presumptive positive on a NIK test,  
7 yes.  
8 Q. And would it refresh your recollection -- did you  
9 prepare a report of declaration of probable cause in that  
10 case?  
11 A. I did.  
12 Q. Would reviewing that refresh your recollection  
13 about what substance was found?  
14 A. Yes.  
15 MR. ROCHE: May I approach, Your Honor?  
16 THE COURT: Go ahead.  
17 MR. ROCHE: I don't know which exhibit you marked  
18 it as.  
19 MR. LEAMON: Defense A.  
20 BY MR. ROCHE:  
21 Q. Showing what's been marked as --  
22 MR. ROCHE: Let's get the actual one.  
23 MR. LEAMON: Your Honor, at this point --  
24 THE COURT: Don't look at it yet.

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1 MR. LEAMON: Counsel is trying to refresh Officer  
2 Pinkham's recollection. I don't think that he ever said that  
3 he couldn't remember. I don't know what was done here.  
4 THE COURT: Mr. Roche?  
5 BY MR. ROCHE:  
6 Q. If someone was to present to you that it was  
7 possibly heroin that was found; would that be accurate?  
8 A. It could be, yes.  
9 Q. Do you know for sure whether it was heroin or  
10 methamphetamine?  
11 A. Not that I can recall, no.  
12 Q. Would it refresh your recollection to review your  
13 report that you prepared?  
14 A. Yes.  
15 THE COURT: Now you can look at it.  
16 BY MR. ROCHE:  
17 Q. After you've reviewed that, let us know?  
18 A. Okay. I reviewed it.  
19 Q. Does that refresh your recollection?  
20 A. It does.  
21 Q. What substance did you find when you arrested  
22 him?  
23 A. It was heroin.  
24 Q. How many times have you come in contact with Mr.

1 THE COURT: Any follow up on that, Mr. Leamon?  
2 MR. LEAMON: No, Your Honor.  
3 THE COURT: Are there any jury questions for this  
4 witness?  
5 Do either of you need this witness retained?  
6 MR. ROCHE: No, Your Honor.  
7 MR. LEAMON: No, Your Honor.  
8 THE COURT: Okay. You are excused from further  
9 attendance at this trial. You cannot discuss your testimony  
10 with anyone other than the attorneys.  
11 THE WITNESS: Yes, Your Honor.  
12 THE COURT: Thank you. Next witness, Mr. Roche.  
13 MR. ROCHE: Your Honor, the State would recall  
14 Joshua Taylor. And if I may --  
15 THE COURT: All right.  
16 MR. ROCHE: -- before Officer Taylor testifies,  
17 can we have a side bar?  
18 THE COURT: Yes.  
19 (Side bar conference.)  
20 MR. LEAMON: So based on your ruling, obviously  
21 the State (indiscernible) coming in. In regards to the -- the  
22 prior use of methamphetamine, I'm just trying to figure out  
23 was that ruling that it was not a bad act at all.  
24 The reason I'm asking is we considered whether or

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1 Dunn?  
2 A. Numerous.  
3 Q. Do you have any kind of rough estimate.  
4 A. Including when I worked in the jail?  
5 Q. In total in your life?  
6 A. I would say at least ten plus.  
7 Q. Have you ever seen Mr. Dunn wearing eyeglasses?  
8 A. I have not.  
9 Q. Are you aware of whether he wears eyeglasses?  
10 A. I am not aware, no.  
11 Q. Did you see the Defendant on the night of  
12 August 22nd last year?  
13 A. I did.  
14 Q. Was she wearing eyeglasses at that time?  
15 A. Yes, she was.  
16 MR. ROCHE: I'll pass the witness, Your Honor.  
17 THE COURT: Recross.  
18 MR. LEAMON: Nothing based on that, Your Honor.  
19 THE COURT: Was the section of the backpack where  
20 you found the eyeglasses case, was it closed or unzipped?  
21 THE WITNESS: It was closed.  
22 THE COURT: Thank you. Do you have any followup  
23 on that, Mr. Roche?  
24 MR. ROCHE: I don't, Your Honor.

1 not a limiting instruction should be issued, but I believe the  
2 State offered it for her ability to recognize methamphetamine  
3 as the relevance, because as I had previously argued, that  
4 relevance is conditioned on the bad act being true. But so  
5 we're just wondering whether or not a limiting instruction  
6 would be proper.  
7 But if it's not a bad act, I don't think that  
8 you're allowed to give a limiting instruction.  
9 THE COURT: The use of the methamphetamine is a  
10 bad act, but the statement is not. It's just a statement. If  
11 you stipulate to the Court giving a limiting instruction, I  
12 can, but otherwise I don't think I can.  
13 MR. ROCHE: I think you can just ask him if you  
14 would prefer of whether he has any knowledge of whether she  
15 actually (indiscernible) going to take (indiscernible) know  
16 that she (indiscernible) just that she said.  
17 MR. LEAMON: Okay. So, I probably will just  
18 renew my objection for the record by the questions asked just  
19 based on relevance, the prior bad argument that was made  
20 earlier. We'll move on.  
21 THE COURT: Sure. Now, Pinkham didn't say he  
22 found the marijuana pipe.  
23 Is he the one that found the pipe.  
24 MR. ROCHE: I think Taylor found it.

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1 THE COURT: Okay. Because that's --  
2 MR. ROCHE: -- that's why I had --  
3 THE COURT: -- in her statement as well.  
4 MR. LEAMON: Okay.  
5 THE COURT: Okay.  
6 (Side bar conference concluded.)  
7 JOSHUA TAYLOR,  
8 recalled as a witness on behalf of the  
9 STATE, was previously duly sworn and  
10 testified as follows:  
11 THE COURT: If you could have a seat, you are  
12 still under oath.  
13 Go ahead, Mr. Roche.  
14 DIRECT EXAMINATION CONTINUED  
15 BY MR. ROCHE:  
16 Q. Officer Taylor, we heard testimony from you  
17 yesterday about a traffic stop that occurred on August 22nd,  
18 2018.  
19 During that traffic stop, did you have any  
20 conversations with the Defendant, Ms. Gravelle?  
21 A. I did.  
22 Q. What was the nature of those conversations? Take  
23 us back to the initial stop when you approached on the  
24 passenger side, we'll start there.

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1 Did you have any conversations with her at that  
2 point?  
3 A. Very minimal. That was basic traffic stop stuff  
4 at the passenger side.  
5 Q. When you say, "basic traffic stop stuff", what  
6 are you referring to?  
7 A. Asking for insurance, driver's license,  
8 registration. Small questions like hey, where are you guys  
9 coming from? Where are you going? Just kind of friendly  
10 small talk.  
11 Q. Were you given an explanation of where they were  
12 going or where they were coming from?  
13 A. Not that I recall.  
14 Q. And you said yesterday when you testified, you  
15 went back to your approached on the driver's side. At that  
16 point, when you spoke with the Defendant, did you have a  
17 conversation with her?  
18 A. Yes.  
19 Q. What was your conversation about.  
20 A. I asked if she knew what Mr. Dunn was doing next  
21 to his seat, because he had told me he was messing with his  
22 seat belt. She told me what he was doing next to the seat she  
23 didn't know.  
24 I asked if she had ever used methamphetamine

1 before, and she admitted that she used methamphetamine --  
2 MR. LEAMON: Your Honor, at this point, I'm  
3 renewing the objection based on this being prior bad act  
4 evidence and not being relevant.  
5 THE COURT: The Court overrules the objection.  
6 BY MR. ROCHE:  
7 Q. You may answer the question.  
8 A. Yeah, she admitted that she had used  
9 methamphetamine the Friday prior, so just a couple days prior.  
10 She was friends with Mr. Dunn and she had just had been a user  
11 of methamphetamine.  
12 Q. What else did you talk, if anything, what else  
13 did you talk about during your conversation?  
14 A. I asked if there would be anything illegal in the  
15 vehicle as far as controlled substances, methamphetamine, I  
16 usually use the word narcotics and try to be very specific.  
17 I was told that she knew she shouldn't have  
18 anything illegal in the vehicle because she had just cleaned  
19 it out from a trip to California.  
20 Q. Did that statement have any significance to you?  
21 A. It does, because in my experience, people who  
22 don't use narcotics will say they won't give an explanation on  
23 why there shouldn't be anything in the vehicle because they  
24 cleaned it out. They say, no, there's nothing in the vehicle.

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1 Furthermore, California is a known source  
2 state --  
3 MR. LEAMON: I'm going to object as, at this  
4 point, Your Honor, I believe he's testifying to Miss  
5 Gravelle's state of mind when she made the comments why she  
6 did what she did, and I don't believe he has any foundation  
7 for that.  
8 He has no knowledge of what Ms. Gravelle was  
9 thinking when she made those statements.  
10 THE COURT: Mr. Roche.  
11 MR. ROCHE: I believe he's testifying on what to  
12 his state of mind based on the interpretation of the  
13 (indiscernible) responses, certainly not what she was  
14 thinking.  
15 MR. LEAMON: And, Your Honor, in response to  
16 that, Officer Taylor's state of mind would not be relevant.  
17 It does not make any question of fact more or less probable.  
18 THE COURT: The objection is sustained. The  
19 officer's state of mind regarding her statement is not  
20 relevant. It's simply his speculation.  
21 The jury will not consider his speculation on  
22 what she was thinking when she made that statement.  
23 BY MR. ROCHE:  
24 Q. What happened next after that part of the

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1 conversation?  
2 A. I asked to search the vehicle.  
3 Q. And what was her response?  
4 A. Initially was yes, and then quickly reverted to  
5 no. And then started asking me what would happen if she told  
6 me no, I couldn't search the vehicle.  
7 Q. Yesterday I believe you testified that during  
8 your interactions with Ms. Gravelle, there was a point in time  
9 when she became nervous.  
10 When was that in relation to this part of the  
11 conversation?  
12 A. When I started asking about anything illegal in  
13 the vehicle or and her methamphetamine use.  
14 Q. So, you just testified that she asked you what  
15 would happen if she said no. Did the conversation progress  
16 from there?  
17 A. I told her I respect her right to say no to  
18 consent search of the vehicle she you know she has every right  
19 to say that. She wanted to know what my next step would be.  
20 I was just trying to keep it there, telling her if you don't  
21 want me it search the vehicle based on your consent that's  
22 fine.  
23 Bun then I asked her to get out of her vehicle.  
24 Q. Did you have any further conversations with her

1 ask about a marijuana pipe.  
2 Q. And then yesterday you already testified about  
3 your dog sniff of the vehicle and the subsequent search.  
4 Did you find anything in that subsequent search  
5 that made in relation to those previous statements that we  
6 just talked about?  
7 A. I found the marijuana pipe, yes.  
8 Q. And where did you find it?  
9 A. In the side pouch of the backpack where the Juicy  
10 eyeglasses came from.  
11 Q. How did you come to find that?  
12 A. I just kind of found it in the pouch. It was in  
13 that same backpack, and so I pulled it out and asked Miss  
14 Gravelle if it was hers.  
15 Q. Did you initially find the backpack?  
16 A. I didn't, not that I recall.  
17 Q. So do you know who found the backpack?  
18 A. Officer Pinkham.  
19 Q. After he found the backpack, how did you come  
20 over there to be (indiscernible) observation?  
21 A. I believe I just went through the other side  
22 because it was in the back kind of poked my head through,  
23 looked through some of that side pouch.  
24 Q. Did you do anything with that marijuana pipe when

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1 after that point in time?  
2 A. During that conversation, somewhere around there,  
3 she did admit to a marijuana pipe in the vehicle.  
4 Q. And in your experience, I mean, is marijuana  
5 illegal at this point in time?  
6 A. No.  
7 Q. Is anything that would you would typically expect  
8 someone to tell you during a traffic stop?  
9 A. It's actually quite common whether they'll tell  
10 me about knives, or marijuana pipes, in a lot of traffic stops  
11 and a lot of searches, it's in my eyes what's shown as like  
12 distractionary (sic.) oh, like I have this, if you want this,  
13 or I have that if you want that, just trying to keep me from  
14 finding the actual --  
15 MR. LEAMON: I'm going to object again to Ms.  
16 Gravelle's state of mind.  
17 THE COURT: The objection is overruled. The  
18 officer is testifying about his general experience, not what  
19 Miss Gravelle's state of mind was. So to be considered only  
20 for that experience, his general experience.  
21 BY MR. ROCHE:  
22 Q. Did you ask Ms. Gravelle whether she had a  
23 marijuana pipe?  
24 A. She freely said that statement to me. I didn't

1 you found it?  
2 A. I removed it from the backpack and showed it to  
3 Miss Gravelle and asked her if it was her marijuana pipe that  
4 she was talking about.  
5 Q. And what was her response?  
6 A. She told me it was hers.  
7 Q. Did you have any further conversation with Miss  
8 Gravelle at all after that?  
9 A. Not that I can recall.  
10 Q. During the search of the backpack, did you I  
11 mean -- you testified yesterday during the pat down search you  
12 found an object (indiscernible) search of (indiscernible); is  
13 that correct?  
14 A. Yes.  
15 Q. What was that object?  
16 A. It was the white cap for the plunger end of the  
17 hypodermic device.  
18 Q. And did you find anything related to that during  
19 your search of the backpack?  
20 A. In that eyeglasses case there is the orange cap  
21 end.  
22 Q. And I apologize if we already covered that  
23 yesterday.  
24 How many times during your law enforcement



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1 experience have you come in contact with Mr. Nicholas Dunn?  
2 A. Around ten times with Mr. Dunn.  
3 Q. Have you ever seen him wearing eye glasses?  
4 A. Not once.  
5 Q. How many times have you come in contact with the  
6 Defendant?  
7 A. At this time, one or two times.  
8 Q. During those interactions with her was she  
9 wearing eye glasses?  
10 A. Every time.  
11 Q. I'd like to go back to when you first initially  
12 approached the vehicle. You testified yesterday that you  
13 observed some movements made by Mr. Dunn or Dunn  
14 (pronouncing). We don't have a particular pronunciation yet  
15 for that (indiscernible).  
16 I'd like you to go into more detail about that.  
17 What exactly did you see?  
18 A. So I really see pretty good silhouette from  
19 behind when I pulled him over from my lights, the vehicle and  
20 the untinted windows.  
21 I kind of look over the shoulder a little bit  
22 back and forth and I could see the left hand on the body like  
23 shoulders really dip down below to the side I guess, the side  
24 of the seat, the side of his leg, that area underneath the

1 asked her about consent to search the vehicle?  
2 A. No.  
3 Q. Okay. What did you testify to?  
4 A. The about her methamphetamine use, that's when.  
5 Q. Okay. That's when she became nervous?  
6 A. Yes, sir.  
7 Q. Okay. Do you remember having a preliminary  
8 hearing in this case?  
9 A. I do.  
10 Q. Okay. Do you remember me asked you questions  
11 about this?  
12 A. I don't recall at this time.  
13 Q. Okay. Okay. Well at preliminary hearing and  
14 correct me if I'm incorrect I stated you stated that Miss  
15 Gravelle was stuttering acting nervous and shaking when she  
16 was talking to you about consent to search the vehicle.  
17 Do you remember replying no not specifically,  
18 just that. Does that sound correct?  
19 A. Somewhat, yes, sir.  
20 Q. And then I said well, I and then you cut me off  
21 and said answer our whole conversation. Does that sound  
22 correct?  
23 A. Yeah, that sounds about correct.  
24 Q. So she was nervous she was nervous throughout the

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1 seat itself.  
2 It was down to the side.  
3 Q. Is it possible when you observed him that he was  
4 reaching behind the seat with his left hand?  
5 A. In between the bucket style seats and the center  
6 counsel sole that they had right there, I think it would have  
7 had to be an up and over to get behind and not a down to get  
8 underneath and fish all the way down behind it.  
9 Q. And how clear was your view of him during this  
10 incident?  
11 A. I was a vehicle behind him and my head lights and  
12 let and blue lights were illuminating the inside of the  
13 vehicle.  
14 Q. So did he ever make a movement that suggested he  
15 was reaching behind the seat?  
16 A. No.  
17 Q. That you observed?  
18 A. I fully believed underneath the seat.  
19 MR. ROCHE: I pass the witness, Your Honor.  
20 THE COURT: Cross-examination.  
21 CROSS-EXAMINATION  
22 BY MR. LEAMON:  
23 Q. Yes. I first want to direct your attention -- so  
24 you just testified that Miss Gravelle became nervous when you

1 entire counter?  
2 A. Yeah, and like I said when she started to become  
3 nervous it was about the methamphetamine use and then the rest  
4 of the conversation was nervous.  
5 Q. But you previously said our whole conversation,  
6 that's what you testified to at the preliminary hearing?  
7 A. And on that conversation, yes, sir.  
8 Q. Now you made a report in this case?  
9 A. Yes.  
10 Q. And so in the academy they teach you to be  
11 thorough as you can on that report; right?  
12 A. They do their best, years.  
13 Q. Okay. And in regard to, maybe not the  
14 declaration of probable cause, but your narrative, you got all  
15 the time you need to fill that out; right?  
16 A. Not, not necessarily, no, sir.  
17 Q. But you don't fill it out on the scene the  
18 narrative?  
19 A. Oh, no, sir.  
20 Q. You go back to what I'm assuming the station and  
21 fill out the narrative?  
22 A. That or on the in car on GT.  
23 Q. Okay. Now, don't you think Miss Gravelle being  
24 nervous is something that you would list on that narrative if

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1 it was true?  
2 A. Yeah, times I do, sometimes I don't.  
3 MR. LEAMON: Permission to approach the  
4 witnesses, Your Honor?  
5 THE COURT: Go ahead.  
6 BY MR. LEAMON:  
7 Q. I'd like to show you what's been previously  
8 marked as State's Exhibit 15 and I would like you to review  
9 this and tell me if you see anything in this report to  
10 indicate that Miss Gravelle was nervous?  
11 A. Okay. Not that I can find, sir.  
12 Q. Thank you.  
13 A. You're welcome.  
14 Q. So I would like to move back to the initial stop.  
15 Where exactly they were traveling up Idaho when you initially  
16 saw that the license plate light was out?  
17 A. Yes, sir.  
18 Q. How long did you follow them before you initiated  
19 your lights?  
20 A. Maybe a block or two, I don't recall following  
21 very long.  
22 Q. Okay. And the couple blocks that you followed  
23 them, you didn't have your lights lit up at that point;  
24 correct?

1 A. Yes, sir.  
2 Q. And you saw him moving his left hand to the side  
3 of the seat; right?  
4 A. It was more of his left arm and shoulder hike  
5 down to his left side.  
6 Q. Okay. So he was moving his shoulder down?  
7 A. Yeah, the left side on the side.  
8 Q. Now that was just speculation when were you  
9 claiming that he couldn't reach behind him without making a  
10 motion and I guess for the record my left arm kind of going up  
11 and over?  
12 A. Just because of that center console is there that  
13 comes up past the seat itself.  
14 Q. But you don't know if he could have kind of  
15 squeezed his arm back there; right?  
16 A. I don't know.  
17 Q. Okay. Now you testified earlier regarding the  
18 white plunger cap found on Miss Gravelle's person.  
19 Now, you can't say you never found a needle in  
20 this case; correct?  
21 A. Not that I recall, no, sir.  
22 Q. And you would have noted it if you had; right?  
23 A. Dependent on where it was found and if it had  
24 residue in it, yes, sir.

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1 A. Not my red and blue lights I had.  
2 Q. Just your headlights?  
3 A. Yes, sir.  
4 Q. How much of a distance was between the two cars?  
5 A. I don't recall exactly.  
6 Q. Okay. I mean, do you, not anything exact, were  
7 you right up on their bumper?  
8 Were you a couple car length back just kind of a  
9 general estimate?  
10 A. Within a couple car lengths, I could still see.  
11 Q. And so you don't know whether or not they noticed  
12 you behind them; correct?  
13 A. Correct.  
14 Q. So how long after you initiated your over head  
15 lights did it take them to come to a stop?  
16 A. I don't know how long that block is. As we were  
17 turning north on to, I'm drawing a blank on the street's name.  
18 Off of Idaho street through that turn going north and then so  
19 Fourth Street, that's Fourth Street.  
20 And then had my lights on coming to a slow stop  
21 and then coming to Court Street. So I guess about a northern  
22 block.  
23 Q. Okay. Now you previously stated that Mr. Dunn  
24 was a pretty tall individual; right?

1 Q. And a needle has not been introduced in any of  
2 the exhibits you've seen today; correct?  
3 A. Correct.  
4 Q. And so you can't say whether or not that white  
5 cap or the orange cap belonged to the same needle or matched;  
6 right?  
7 A. No, sir, I don't know if they belonged to the  
8 same one.  
9 Q. And there's no marks indicating on the needle or  
10 on the cap of the plunger that they're even from the same  
11 company or anything like that, you didn't know whether they  
12 were in the same brand or anything like that?  
13 A. I don't know of any marks that I'm aware on caps.  
14 Q. I don't know the answer to this question. Are  
15 you a drug recognition expert?  
16 A. No, sir.  
17 Q. Have you taken any training though on recognizing  
18 the general signs of somebody under the influence of  
19 methamphetamine?  
20 A. Yes, sir.  
21 Q. And in your duties as an officer have you ran  
22 across people who were later confirmed to be under the  
23 influence of methamphetamine?  
24 A. Yes, sir.

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1 Q. And you didn't see any of those signs present on  
2 Miss Gravelle; correct?  
3 A. Not that I can recall, no, sir.  
4 Q. And you would have noted in your report if you  
5 believed she was under the influence of a controlled  
6 substance; correct?  
7 A. Yes, I would. Well, I --  
8 Q. You didn't make her do field sobriety tests or  
9 anything like that you might do if you suspect somebody of  
10 operating a motor vehicle under the influence of a controlled  
11 substance; correct?  
12 A. Correct.  
13 Q. Now this might sound like an obvious question,  
14 but you never saw how the eye glasses case got in the  
15 backpack; correct?  
16 A. No, sir.  
17 MR. LEAMON: Nothing further, Your Honor.  
18 THE COURT: Redirect.  
19 MR. ROCHE: Just briefly.  
20 REDIRECT EXAMINATION  
21 BY MR. ROCHE:  
22 Q. You were asked on your cross-examination about  
23 your preliminary hearing testimony about Miss Gravelle being  
24 nervous in your conversation?

1 THE COURT: Are there any jury questions for this  
2 witness?  
3 Do either of you need this witness retained?  
4 MR. ROCHE: No, Your Honor.  
5 MR. LEAMON: No, Your Honor.  
6 THE COURT: You are excused from further  
7 attendance at this trial. Do not discuss the testimony with  
8 anyone other than the attorneys.  
9 THE WITNESS: Yes, ma'am.  
10 THE COURT: Okay. Your next witness, Mr. Roche?  
11 MR. ROCHE: Your Honor, the State will call  
12 Brandin Smith next.  
13 THE COURT: Please raise your right hand. Thank  
14 you.  
15 BRANDIN SMITH,  
16 called as a witness on behalf of the  
17 STATE, was duly sworn and  
18 testified as follows:  
19 THE COURT: Please state and spell your first and  
20 last names.  
21 THE WITNESS: Brandin Smith. B-R-A-N-D-I-N. The  
22 last is Smith. S-M-I-T-H.  
23 THE COURT: Thank you. Go ahead, Mr. Roche.  
24

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1 A. Yes, sir.  
2 Q. And it's your recollection that you testified  
3 that she was nervous throughout that conversation?  
4 A. On that second approach, yes, sir.  
5 Q. When you specify that second approach, you're  
6 distinguishing from when you first approached on the passenger  
7 side of the vehicle?  
8 A. Yeah, that's two different conversations.  
9 Q. So she became nervous when you started your  
10 second conversation?  
11 A. Yes, sir.  
12 Q. And what was the first thing that up started  
13 talking about in that second conversation?  
14 A. The very first thing was thinking the thing about  
15 Nicholas Dunn what did she think he was doing kind of putting  
16 his hand down there how she knew him and started asking her  
17 about narcotic questions.  
18 Q. And is that about the same time that she became  
19 nervous?  
20 A. Yes, sir.  
21 MR. ROCHE: I have no further questions, Your  
22 Honor.  
23 THE COURT: Recross?  
24 MR. LEAMON: No, Your Honor.

1 DIRECT EXAMINATION  
2 BY MR. ROCHE:  
3 Q. Miss Smith, where are you employed?  
4 A. Elko County Police Department for the City.  
5 Q. Sorry. What's your job there?  
6 A. I'm the evidence technician.  
7 Q. And so what is your, what are your job duties as  
8 part of that job?  
9 A. After the officers have taken into evidence, I  
10 process it and warehouse it.  
11 Q. Do you have any specific responsibilities with  
12 respect to narcotics that are taken into evidence?  
13 A. I do the same as every piece of property. I  
14 warehouse it, if it's requested by the District Attorney's  
15 office, I send it to the Washoe Crime Lab.  
16 Q. And when you send evidence to the Washoe Crime  
17 Lab, do you do anything on the evidence to document on the  
18 evidence on how you handled it?  
19 A. There's a Washoe County Crime Lab request form  
20 that I fill out and then I also scan it into our computer that  
21 I'm sending it to the Washoe Crime Lab and then I do certified  
22 U.S. mail.  
23 Q. And after you have send something by certified  
24 U.S. mail, do you do anything else with that evidence?

1 A. They process it and then I -- they send me back  
2 the Green receipt from the certified mail. And I file it in  
3 our property forms. And then once they're finished with,  
4 they'll send it back to us after they're done testing.  
5 Q. Now if you have a specific piece of evidence that  
6 has been sent for testing, is there anything on the actual  
7 evidence bag that you would be able to determine whether or  
8 not you mailed that out for testing?  
9 A. There's a label that is already created by the  
10 officer and I scan it in. Then there's also a chain of  
11 custody that we sign every time that it's left the vault or  
12 come into the vault.  
13 Q. I hand you what has previously been marked as  
14 State's Exhibits 2 and 3 and previously admitted.  
15 Do know look familiar to you?  
16 A. Yes.  
17 Q. Is there any way for you to determine whether or  
18 not you mailed those items off for testing?  
19 A. There's another seal because it's been opened and  
20 they sign and date it. And then on the back, there's a Washoe  
21 County Sheriff's Office label that they create for their vault  
22 and their warehousing to show that it has been there in their  
23 custody.  
24 This one has been tested because they opened it.

1 A. Yes.  
2 Q. And tell us what it is?  
3 A. State's Exhibit 2 is that -- it was mailed out on  
4 12/3. They received it on 12/3/18. I received it back on  
5 1/14/19 and I brought it over on 2/7/19.  
6 Q. So from what you can tell, that sample was sent  
7 to the crime lab but they didn't test this one, they just  
8 returned it to you and you gave it to the evidence clerk?  
9 A. That one was I believe was tested.  
10 Q. Oh, this is one?  
11 A. Second.  
12 Q. All right?  
13 A. That's the one that was.  
14 Q. And so the other one, State's Exhibit 3 that you  
15 -- just to make sure it was accurate, this exhibit here,  
16 State's Exhibit 3, you're testifying that that was mailed to  
17 the Washoe County Crime Lab, but was not tested?  
18 A. Correct.  
19 Q. And they mailed it back to you and you gave it to  
20 the clerk?  
21 A. Correct, yes.  
22 MR. ROCHE: I have no further questions for this  
23 witness, Your Honor.  
24 THE COURT: Cross-examination?

1 And this one they did not open.  
2 Q. Can you specify for us which one was tested and  
3 which one wasn't?  
4 A. This one was opened and then they'll send back a  
5 their test results and then this one has not been reopened.  
6 Q. So for the record, I want to indicate that the  
7 one that she's saying isn't opened is State's Exhibit 2.  
8 And the one that has not been opened is been  
9 marked as State's Exhibit 3; is that correct?  
10 A. Correct.  
11 Q. And is there any way for you to determine whether  
12 you mailed those off for testing?  
13 A. It would be a Washoe crime receipt or crime  
14 request form.  
15 Q. So you don't put your name or initials on the?  
16 A. I sign here that I took it in and then they sign  
17 that they received it for a certified mail on 12, 3. And then  
18 I sign that I received it back are from them on 1/14/19 and  
19 then I brought it over to the clerk on 2/7/19.  
20 THE COURT: Which Exhibit was that on?  
21 THE WITNESS: Three.  
22 THE COURT: Thank you.  
23 BY MR. ROCHE:  
24 Q. Could you review State's Exhibit 2?

1 MR. LEAMON: No questions, Your Honor.  
2 THE COURT: Are there any jury questions for this  
3 witness?  
4 Do either of you need this witness retained?  
5 MR. ROCHE: No, Your Honor.  
6 MR. LEAMON: No, Your Honor.  
7 THE COURT: Miss Smith, you're excused from  
8 further attendance at this trial. You cannot discuss your  
9 testimony with anyone other than the attorneys. Thank you.  
10 Well, I think the next witness is probably going  
11 to be a little bit lengthy, Mr. Roche; is that correct?  
12 MR. ROCHE: He'll be a little longer than this  
13 witness. It shouldn't take very long.  
14 THE COURT: I was thinking maybe we should take  
15 our morning recess.  
16 MR. ROCHE: That would probably be good.  
17 THE COURT: All right. Before we recess, the  
18 jury is admonished as follows:  
19 You're not to converse amongst yourselves or with  
20 anyone else on any subject connected with this trial. Do not  
21 read, watch, listen to any report of the trial or commentary  
22 on the trial or to any person connected with the trial.  
23 This includes any medium of information,  
24 including, without limitation, newspapers, television, radio

1 and internet.

2 Do not form or express any opinion on any subject  
3 connected with this trial until the case is finally submitted  
4 to you.

5 Do not visit the alleged scene or conduct any  
6 independent research, investigations or experiments concerning  
7 this matter prior to or during your deliberations. A  
8 violation of these admonishments may result in a mistrial.

9 We'll be in recess for 20 minutes.

10 (Recess.)

11 THE COURT: You may be seated. The record will  
12 reflect the presence of the Defendant and counsel. Counsel,  
13 will you stipulate to the presence of the jury?

14 MR. ROCHE: Yes, Your Honor.

15 MR. LEAMON: Yes, Your Honor.

16 THE COURT: Your next witness, Mr. Roche.

17 MR. ROCHE: The State's next witness is Brad  
18 Taylor.

19 BRAD TAYLOR,  
20 called as a witness on behalf of the  
21 STATE, was duly sworn and  
22 testified as follows:

23 THE COURT: Please state your name and spell your  
24 last name.

1 section.

2 Q. What kind of training have you received in order  
3 to do that?

4 A. Besides my degree, while I was at Mount Union, I  
5 completed an internship at the Canton (indiscernible) county  
6 crime County crime lab in Canton, Ohio.

7 I got my first job at the Allegheny County Crime  
8 Lab in Pittsburgh (indiscernible) that's a forensic  
9 (indiscernible) controlled substances. After a year, I  
10 accepted a position at the Canton Stark County Crime Lab in  
11 Canton and I worked there for 15 years, prior to coming to the  
12 Washoe County Sheriff's Office.

13 At all those agencies, I -- excuse me, all those  
14 agencies, I received in service training and I've also had  
15 specialized training in controlled substance from, from  
16 agencies such as the Midwestern Association of Forensics  
17 Scientists, the USDA and the Federal Bureau of Investigations.

18 Q. Have you testified in this state previously as an  
19 expert witness?

20 A. I have.

21 Q. How many times?

22 A. In Nevada?

23 Q. Yes?

24 A. At this point, probably a couple dozen.

1 THE WITNESS: My name is Brad Taylor.  
2 T-A-Y-L-O-R.

3 THE COURT: Thank you. Go ahead, Mr. Roche.  
4 DIRECT EXAMINATION

5 BY MR. ROCHE:

6 Q. Mr. Taylor, how are you presently employed?

7 A. Can you repeat that?

8 Q. Are you presently employed?

9 A. I am.

10 Q. And where do you work?

11 A. I work at the Washoe County Sheriff's Office,  
12 forensic science division which is the crime lab.

13 Q. And how long have you worked there?

14 A. I've been at the Washoe County Sheriff's Office  
15 for over five years.

16 Q. What kind of education do you have?

17 A. I have a Bachelor's Degree, a bachelor of science  
18 major in chemistry with a minor in biology from Mount Union  
19 college, it's in (indiscernible) Ohio.

20 Q. And what is your job in the forensic science  
21 division?

22 A. My duties at the crime lab are to analyze  
23 submitted substances for the presence of controlled  
24 substances, and I also do some work in the breath/alcohol

1 Q. And do you recall what counties that you  
2 testified in?

3 THE COURT: Excuse me, just a minute, Mr. Roche,  
4 will you keep your voice up? We're having trouble getting you  
5 on the recording.

6 MR. ROCHE: I apologize, and I'll move this  
7 closer.

8 THE COURT: Thank you.

9 MR. ROCHE: I'm still a little sick, so I'm not  
10 as voistrous (sic.) as usual.

11 BY MR. ROCHE:

12 Q. Can you repeat that? What counties have you  
13 testified as an expert?

14 A. The district courts, I've testified in for this  
15 work is the First, Second, Third, Fourth, Sixth, Seventh,  
16 Tenth and Eleventh.

17 MR. ROCHE: Your Honor, the State would ask that  
18 he be permitted to testify as an expert regarding the  
19 identification of testing in controlled substances.

20 THE COURT: Mr. Leamon, do you want to be heard  
21 on that?

22 MR. LEAMON: No, Your Honor.

23 THE COURT: The witness may testify.

24 BY MR. ROCHE:

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1 Q. So please tell us generally the process for how  
2 the crime lab processes samples that it receives from  
3 agencies?  
4 A. As far as receipt of the evidence?  
5 Q. Yeah.  
6 A. As evidence comes into the crime lab to be  
7 (indiscernible) or delivered in person. When it comes to the  
8 laboratory, it is initially checked in to evidence we our  
9 evidence technician that is then stored in our evidence room  
10 until it needs to be analyzed.  
11 Part of the process of checking in the evidence  
12 includes ensuring the evidence is sealed and giving it an  
13 exhibit bar code and a unique identifier, a forensic lab  
14 number that we use to track the evidence throughout the lab as  
15 it's analyzed.  
16 Q. So what's the purpose of that bar code?  
17 A. It's to give us a unique identifier. Agencies  
18 tend to have their own case numbers which is their unique  
19 identifier, but once it's in the laboratory, we give it our  
20 own.  
21 And the bar code can be scanned as it's moved  
22 from a (indiscernible) location or person to person keeping  
23 the chain of custody.  
24 Q. So, are there any steps taken to make sure that

1 number is that that you were looking at?  
2 THE WITNESS: That was Exhibit 2.  
3 THE COURT: Thank you.  
4 Go ahead, Mr. Roche.  
5 BY MR. ROCHE:  
6 Q. And I think if you look at Exhibit 3, are you  
7 able to determine whether the crime lab received that sample  
8 for testing as well?  
9 A. Yes, it does. And I also received it, but did  
10 not analyze it.  
11 Q. Is there a reason why you did not analyze that  
12 sample?  
13 A. Yes.  
14 Q. And can you tell us what that reason was?  
15 A. We have a best evidence policy in controlled  
16 substance to analyze to the charges available. Based on the  
17 weight of the substances, we look for trafficking charges  
18 initially.  
19 And if it's below trafficking charges such as  
20 possession charges, we would analyze single exhibits because  
21 additional analysis would not be added to the charge.  
22 Q. Did you consult anyone when you made that  
23 decision?  
24 A. I did check in with yourself prior to make sure

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1 samples aren't mixed up or lost during your (indiscernible)?  
2 A. The evidence is checked to see if it's sealed  
3 when it comes in. And then the bar code associates it with a  
4 location.  
5 And because it's all electronic as it's entered  
6 into the system we know what's at the lab and what's not at  
7 the lab and where it should be. So it does help  
8 (indiscernible) access and checked.  
9 Q. I'm going to show you what's been previously  
10 admitted as State's Exhibits 2 and 3. Can you determine from  
11 looking at those whether or not you performed testing on those  
12 samples?  
13 A. I can.  
14 Q. And how are you able to determine that?  
15 A. As far as actual analysis I did, I can tell  
16 because I, there's a seal associated where I sealed it up with  
17 my initials and date of seal.  
18 There's also, I can see underneath the Elko  
19 County Police Department's bar code, the bar code that I put  
20 on the evidence after I was done analyzing it as well as my  
21 initials on the bag and the seal inside of the bag that I  
22 analyzed.  
23 Q. Now when you receive a --  
24 THE COURT: Excuse me, Mr. Roche, what exhibit

1 there weren't any extra circumstances that would require the  
2 need for the analysis, maybe a different location or some  
3 other concern with that item.  
4 Q. Now, when you received an item in the mail or in  
5 person from an agency, do you generally have an idea of what  
6 kind of tests you're going to perform?  
7 A. Well, depending on the evidence, I do have -- I  
8 have quite a bit of variety of analyses I can do.  
9 And then based on the form of the substance I  
10 see, I can choose my tools for from my tool box there. So I  
11 have an idea, it just depends on once I get into the samples  
12 what I will do.  
13 Q. Did you make a decision when you received these  
14 samples of what tests you were going to perform?  
15 A. Well, I work in the controlled substance section,  
16 so my job would be to analyze it for controlled substances and  
17 then once I actually opened the evidence, I then decided which  
18 way I would make that analysis.  
19 Q. And what kind of tests did you perform in this  
20 case?  
21 A. In this case, on the sample I analyzed, I did a  
22 preliminary color test, followed by confirmatory instrumental  
23 analysis, called (indiscernible) DIR which gives me structural  
24 information that I can compare to known reference materials

1 for identification.  
2 Q. So let's start with that first testing that you  
3 mentioned, the color test. Can you tell about how that test  
4 works and what you have to do and then what it tells you?  
5 A. So the color test is very similar to what  
6 officers can use out in the field for field testing of  
7 substances. It's chemicals, and in this case, the chemical  
8 reagent that I performed, the color test was called a Marquis,  
9 applied Marquis reagent.  
10 It's a combination of sulfuric acid and  
11 formaldehyde. You take a small amount of the sample, put it  
12 into a small well and then put the chemicals on it and observe  
13 the color reactions that happen at each addition.  
14 And from that information, you can get an idea if  
15 a substance might be present in what was being analyzed. It's  
16 a preliminary, because if a substance has similar structures,  
17 they can react in a similar manner.  
18 So this gives us an idea based on what we're  
19 visually seeing, the commonality of that drug, what might be  
20 present. It gives me an idea of where I may want to go to  
21 confirm that that substance in the lab as well.  
22 Q. So you perform that test on the sample?  
23 A. I did.  
24 Q. And what were the results?

1 A. I did, based on the combination of both the  
2 visual, looking at the physical form, the preliminary color  
3 tests, supported with the presence of possible  
4 methamphetamine.  
5 And then the FTIR confirmed the structural  
6 information that I needed to make an identification.  
7 Q. Did you do anything to try and determine the  
8 amount of the substance that was present?  
9 A. As part of the analysis, as far as let me clarify  
10 that? Do you know want to know total weight or quantification  
11 of the drug in the substance.  
12 Q. Just the total weight?  
13 A. Yeah. So as part of our normal analysis, prior  
14 to any physical analysis going forward, when we're before we  
15 do that, we will weigh the substance, we'll take it out of the  
16 packaging.  
17 MR. LEAMON: I'm going to object at this point,  
18 Your Honor. I don't think the weight itself has any  
19 relevance. This isn't a trafficking case, so it doesn't make  
20 any fact more likely than not.  
21 THE COURT: Mr. Roche?  
22 MR. ROCHE: Your Honor, it's just simply offered  
23 for informational purposes, it's not -- it's not an element of  
24 the (indiscernible) that's why (indiscernible).

1 A. The results were an effervescence during the  
2 initial sulfuric acid analyzed or indicia of and then when  
3 formaldehyde was added, it flashed orange and that would be  
4 consistent with methamphetamines or amphetamines and this type  
5 of crystalline substance would be consistent with the  
6 structure which is an a viewing of methamphetamine as well.  
7 Q. So based on the results of that preliminary test,  
8 what did you decide to do next?  
9 A. I decided to move forward and confirm possible  
10 controlled substance using the FTIR that I mentioned earlier.  
11 This allows me to take a small amount of the substance  
12 dissolve it re-crystallize it, back on a little plate that I  
13 put under an infrared light.  
14 The infrared light will be absorbed at different  
15 bonds within the substance at different wavelengths, and  
16 because each substance is unique in structure, the -- the  
17 pattern of infrared absorption will be unique to a substance  
18 as well.  
19 I did that with a sample, compared it to our  
20 reference library of substances that we also ran on this  
21 instrument and came up that there was methamphetamine  
22 identified within that crystalline substance.  
23 Q. At that point, were you confident that had you  
24 identified the substance?

1 THE COURT: The objection is sustained.  
2 BY MR. ROCHE:  
3 Q. After you performed that test, what did you do  
4 with the sample?  
5 A. After the final instrumental analysis, I then  
6 packaged the substance back in the condition that it's in  
7 here. That consists of me placing it into a laboratory  
8 Ziploc, initialing that bag so I can acknowledge that I've  
9 added that back to the packaging. And then also putting seals  
10 in barcode labels on the evidence prior to sealing it.  
11 Q. Did you do anything to document your findings  
12 after you do the testing?  
13 A. I do. I actually have a work station right where  
14 I'm doing the analysis, and I'm recording the results of each  
15 analysis I'm performing them.  
16 So as part of the normal process I do take notes,  
17 digital notes of the analysis being performed.  
18 Q. Do you provide any of those results, who did you  
19 provide those results to, I guess?  
20 A. Can you repeat that?  
21 Q. To whom do you provide the results after you  
22 complete the testing?  
23 A. Oh, after I complete the analysis, I generate a  
24 report and that report gets distributed by our front office to

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1 agencies, the submitting agency as well as if there's an a  
2 district attorney's office involved in the case as well.  
3 Q. You testified that this State's Exhibit Number 2  
4 is the one that you tested?  
5 A. It is.  
6 Q. How confident are you that the substance that you  
7 tested that's in that envelope contained methamphetamine?  
8 A. A hundred percent.  
9 MR. ROCHE: I'll pass the witness, Your Honor.  
10 THE COURT: Cross-examination.  
11 CROSS-EXAMINATION  
12 BY MR. LEAMON:  
13 Q. So you only tested the State's Exhibit 2; is that  
14 correct?  
15 A. That is correct.  
16 Q. And you based that off of this in part your  
17 consideration with the district attorney.  
18 Do you receive, I guess, the charging documents,  
19 declaration of probable cause? Do you get any paperwork like  
20 that when you get the substance?  
21 A. I don't usually, but there is a form on the exam  
22 submission form that's submitted. There is a charge space  
23 that can be filled out.  
24 That's not always the charge that moves forward,

1 withdrawal the question.  
2 But you can't say Exhibit 3 is methamphetamine?  
3 A. I did not analyze it, so I cannot speak to what  
4 it may contain.  
5 Q. Okay. So I wanted to talk about the first test  
6 that you did. And this is the one where I guess the suspected  
7 methamphetamine changes colors; correct?  
8 A. That's correct.  
9 Q. Now, do you -- and I -- I'm interested myself in  
10 the process, so does a computer make that determination or is  
11 it something that you kind of eyeball based on the color?  
12 A. That's strictly a visual observation that I am  
13 making based on the chemicals added.  
14 Q. So really the only testing in my personal, I am  
15 familiar with, again a tower guard in which I got the test the  
16 PH in every now and then.  
17 So the way I have to do that I have to get a  
18 scoop and then there's I guess some solvent that I put in  
19 there, you put a couple drops in and it changes colors.  
20 Is this similar to that?  
21 A. Yeah, it could be, it could be related that way.  
22 It's our colors are usually pretty intense as far as the  
23 reaction, but similar.  
24 Q. Okay. So -- okay. That's where I was going with

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1 but it is an indication of the possible charges based on the  
2 case when it's submitted to us.  
3 Q. Now, and I guess the decision to only test one of  
4 the samples was because they were found in relatively the same  
5 location; correct?  
6 A. The initial decision was the -- the weight, total  
7 weight of the drug and then that's our lab policy. And then  
8 the fact that I was not given any other information that would  
9 indicate that the drugs would -- would be additive because of  
10 location or where it was found, yes.  
11 Q. So you're assuming both samples are coming from  
12 the same source; correct?  
13 A. I did not assume that, that's why I reached out  
14 to make sure.  
15 Q. So were you ever informed that while in the same  
16 general location the two samples were found in somewhat  
17 different containers?  
18 A. I do not recall.  
19 Q. So you can't say for certain whether or not a  
20 sample whether Exhibit 3 is, in fact, methamphetamine;  
21 correct?  
22 A. The third Exhibit? No, I did not analyze that.  
23 Q. So hypothetically, if one person placed an item  
24 into the eye glasses case, that one was tested by the -- I

1 that. So it's easy to tell whether or not it's a controlled  
2 substance or not. It's not like when I'm trying to make a  
3 determination whether this is 6 versus 6.5 on the PH scale.  
4 A. So the color test, to educate the courts, the  
5 color test is preliminary. So really all I'm looking is does  
6 a give a color reaction. And what is that color reaction.  
7 And that color reaction can be indicative of a  
8 possible controlled substance, but it still has to be moved  
9 forward to an instrumentation that would be a structural  
10 information.  
11 Q. And that would be the FTIR test; correct?  
12 A. That is the test I used.  
13 Q. Okay. So when you're doing this test, I know you  
14 also said that you worked with, I guess, with the alcohol  
15 division too.  
16 I know when alcohol is tested, at least in blood  
17 there's multiple samples being tested at the same time.  
18 Is it the same way with controlled substances?  
19 A. Can you clarify that?  
20 Q. Right, okay. So in the context of my  
21 understanding of when blood is being tested for alcohol  
22 content.  
23 A. Um-hum.  
24 Q. They get the vials, they put it in thing, they



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1 put it, they test maybe a hundred at a time. The vials are  
2 heated, often rotated and then there's gas that comes out and  
3 that gas is what is tested.  
4 But there's multiple blood samples being  
5 testified at the same time. I'm asking with methamphetamine  
6 is it similar? Are there multiples being tested at the same  
7 time?  
8 A. You mean at one time?  
9 Q. Yes?  
10 A. This -- this process is manual.  
11 Q. Okay.  
12 A. So, I have to -- I have to analyze one exhibit at  
13 a time.  
14 Q. Okay. Now, in regards to storage, are there  
15 specific guidelines of how the items to be stored while it's a  
16 waiting testing?  
17 A. Yes is the simple answer.  
18 Q. So can you tell us some more about that, about  
19 the conditions that it has to be kept in?  
20 A. For a substance like this, solid dose drugs, it  
21 just has to be stored sealed on the shelf. While it's waiting  
22 analysis, that's -- there's no conditions that I feel would  
23 compromise that.  
24 Q. So temperature, for example, wouldn't compromise

1 image on, on a screen that I'm looking at.  
2 And when it's finalized, then do a library search  
3 comparison of known reference materials that I've also  
4 analyzed on that instrument and then based on those matches, I  
5 then make my identification.  
6 Q. I'd like to talk about the process by which you  
7 handle the substance after you take it out of storage. So are  
8 you testing the substance on surfaces, do you test on the same  
9 surface every time I guess is what I'm asking?  
10 A. Yes, I have one work station.  
11 Q. Okay.  
12 MR. LEAMON: Nothing further, Your Honor.  
13 THE COURT: Redirect.  
14 MR. ROCHE: Well, just briefly.  
15 REDIRECT EXAMINATION  
16 BY MR. ROCHE:  
17 Q. You test them in the same work station, do you do  
18 anything to take precautions to make sure that samples don't  
19 contaminate the other samples that you are testing?  
20 A. Yes.  
21 Q. What do you do?  
22 A. After each sample is analyzed, I wipe down the  
23 work station with solvent to dissolve anything, residues that  
24 might have been on that. Generally, the surface itself that's

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1 it in the solid warm?  
2 A. Not unless it was extremely hot.  
3 Q. What do you consider extremely hot?  
4 A. Flame hot.  
5 Q. Okay. Now, I guess in your average work day, how  
6 many samples would you say you test in a day?  
7 A. I'll spread that out more towards a month,  
8 because it's --  
9 Q. Okay?  
10 A. -- my job's so much paperwork, so I have to do  
11 that. I do -- I analyze anywhere from 40 to 80 exhibits a  
12 month.  
13 Q. So while understanding you have to do paperwork,  
14 that would be one to two a day, maybe three?  
15 A. Yeah, that, that's a good average, yeah.  
16 Q. Okay. Now, you test the substance is it for the  
17 FTIR test at least. So as part of that a computer printout,  
18 can you go into that a little more detail?  
19 What specifically do you have to analyze? Are  
20 you analyzing, I guess, what the computer is showing, or are  
21 you looking at the actual structure of the substance?  
22 A. So the instrument is -- has computer interface,  
23 software interface as most things do these days. So whenever  
24 the infrared analysis is going on that is translated to an

1 not come in contact with the bulk of the drug, only maybe  
2 residues falling off.  
3 It's because as part of the process of -- of  
4 weighing the sample, I have to put it, I put it on a weighing  
5 paper, a weighing boat, put it on the balance, it stays in  
6 that or on that.  
7 As I select my sample for the color testing and  
8 for the, for the other instrumental analysis, those samples  
9 are then you know transferred to individual tubes or wells.  
10 So the sample itself does not, does not sit on my  
11 work station. It sits on a barrier, and that barrier is  
12 disposable, so I just throw it (indiscernible) way in between  
13 each sample.  
14 MR. ROCHE: I have no further questions, Your  
15 Honor.  
16 THE COURT: Recross?  
17 MR. LEAMON: No, Your Honor.  
18 THE COURT: Are there any jury questions for this  
19 witness?  
20 Do either of you need this witness retained?  
21 MR. ROCHE: No, Your Honor.  
22 MR. LEAMON: No, Your Honor.  
23 THE COURT: You're excused from further  
24 attendance from this trial. The bailiff will take that.

1 Thank you. Please do not discuss your testimony with anyone  
2 other than the attorneys.  
3 THE WITNESS: Okay.  
4 THE COURT: You're excused. Thank you. Your  
5 next witness, Mr. Roche.  
6 MR. ROCHE: Your Honor, the State has no further  
7 witnesses and rests at this time.  
8 THE COURT: We are getting near the end of the  
9 trial, so what we're going to do now is take our lunch recess.  
10 It's going to be a long recess. This will be the time when  
11 the attorneys and I meet and I decide which jury instructions  
12 you will be given. So I would like you all to be back at  
13 3 o'clock.  
14 Before we recess, the jury is admonished as  
15 follows. Do not converse amongst yourselves or with anyone on  
16 any subject connected with this trial. Do not read, watch or  
17 listen to any report of the trial or commentary on the trial  
18 or to any person connected with the trial.  
19 This includes any medium of information,  
20 including without limitation, newspapers, television, radio  
21 and internet.  
22 Do not form or express any opinion on any subject  
23 connected with this trial until the case is finally submitted  
24 to you.

1 Do not visit the alleged scene or conduct any  
2 independent research, investigations or experiments concerning  
3 this matter prior to or during your deliberations. A  
4 violation of these admonishments may result in a mistrial.  
5 We're in recess.  
6 (Recess.)  
7 THE COURT: You may be seated. The Defendant and  
8 counsel are present. We're outside the presence of the jury.  
9 Miss Gravelle, I need you to stand, please.  
10 THE DEFENDANT: (Complies.)  
11 THE COURT: I'm going to advise you about your  
12 rights regarding whether you testify.  
13 You have the right under the constitution of the  
14 United States and the constitution of the State of Nevada not  
15 to be compelled to testify in this case.  
16 Do you understand that right?  
17 THE DEFENDANT: Yes, Your Honor.  
18 THE COURT: You may, if you wish, give up that  
19 right, take the witness stand and testify. If you do so, you  
20 will be subject to cross-examination by the prosecutor.  
21 Do you understand that?  
22 THE DEFENDANT: Yes, Your Honor.  
23 THE COURT: Anything you say if you take the  
24 stand whether on direct examination or cross-examination would

1 be the subject of fair comment by the District Attorney when  
2 he makes his closing argument to the jury.  
3 Do you understand that?  
4 THE DEFENDANT: Yes, Your Honor.  
5 THE COURT: If you choose to testify, I'm aware  
6 that you have two prior felony convictions. And those are  
7 within the last ten years, so the prosecutor would be able to  
8 ask you about whether you are a convicted felon.  
9 Do you understand that?  
10 THE DEFENDANT: Yes, Your Honor.  
11 THE COURT: If you admit that you are, that's the  
12 end of that. But if you deny that you are, then the  
13 prosecutor would be able to offer into evidence certified  
14 copies of your two prior convictions.  
15 Do you understand that?  
16 THE DEFENDANT: Yes, Your Honor.  
17 THE COURT: The jury could take those convictions  
18 into consideration in determining your credibility.  
19 Do you understand that?  
20 THE DEFENDANT: Yes, Your Honor.  
21 THE COURT: If you choose not to testify, the  
22 district attorney cannot comment on the fact that you did not  
23 testify.  
24 Do you understand that?

1 THE DEFENDANT: Yes, Your Honor.  
2 THE COURT: If your attorney requests it and you  
3 have not testified, I will instruct the jury that they cannot  
4 consider your failure to testify in any way.  
5 Do you understand that?  
6 THE DEFENDANT: Yes, Your Honor.  
7 THE COURT: Do you have any questions about these  
8 rights that I've explained to you?  
9 THE DEFENDANT: No, Your Honor.  
10 THE COURT: I don't want to know what your  
11 decision is, but I want to know if you have discussed the  
12 various options with your attorney, including the pros and  
13 cons of testifying or not testifying?  
14 THE DEFENDANT: I have.  
15 THE COURT: Have you had ample time to discuss  
16 that issue with him and to make your decision?  
17 THE DEFENDANT: Yes, Your Honor.  
18 THE COURT: Are you comfortable that you have  
19 made that decision after having discussed that with your  
20 attorney and considered it and that it's the right decision?  
21 THE DEFENDANT: Yes, Your Honor.  
22 THE COURT: All right. Thank you. That's all I  
23 have. You may be seated.  
24 All right. What we're going to do now is we'll

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1 take our lunch break, but I want counsel to remain here in the  
2 courtroom for a little bit. Angie is getting the jury  
3 instructions organized. She'll give you those to look over on  
4 the lunch hour. I have not seen them, the version now. I've  
5 looked at them a couple of times, but this final version I  
6 have not seen. So I will be looking at those over the lunch  
7 hour.  
8 I want the two of you back and 1:30 to settle  
9 jury instructions. So take a look at those, they may not  
10 include everything you both offered, so you want to bring with  
11 you additional instructions that you might want to offer that  
12 aren't in that packet.  
13 All right. I'll see you back here at 1:30.  
14 Please stay and get your copies.  
15 (Recess.)  
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1 ELKO, NEVADA, THURSDAY, FEBRUARY 20, 2019, P.M. SESSION  
2 -o0o-  
3  
4 THE COURT: You may be seated. Counsel are  
5 present. The Defendant is not present.  
6 Is she waiving her presence at this portion?  
7 MR. LEAMON: She is, Your Honor.  
8 THE COURT: We're outside the presence of the  
9 jury.  
10 Counsel, you've now had a chance to look at what  
11 at this point is the final draft. So we'll start going  
12 through those and then I'll ask if you have any others to  
13 offer. So we'll start with instruction number three.  
14 Is there any objection to number three?  
15 MR. ROCHE: No, Your Honor.  
16 MR. LEAMON: No, Your Honor.  
17 THE COURT: Number four, the elements of  
18 possession. Any objection?  
19 MR. ROCHE: The State doesn't have any.  
20 MR. LEAMON: No, Your Honor.  
21 THE COURT: Number five, any objection?  
22 MR. ROCHE: No.  
23 MR. LEAMON: No.  
24 THE COURT: Number six, any objection?

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1 MR. ROCHE: No.  
2 MR. LEAMON: No.  
3 THE COURT: Number seven the reasonable doubt  
4 instruction, any objection?  
5 MR. ROCHE: No.  
6 MR. LEAMON: No.  
7 THE COURT: Number eight, presumption of  
8 innocence, any objection?  
9 MR. ROCHE: No.  
10 MR. LEAMON: No.  
11 THE COURT: Number nine, any objection?  
12 MR. ROCHE: No.  
13 MR. LEAMON: No.  
14 THE COURT: Number ten, any objection?  
15 MR. LEAMON: No.  
16 THE COURT: Number 11, there were some  
17 instructions submitted on actual and constructive possess.  
18 This is one that's given in the Eighth Judicial District and  
19 that's the one I've included.  
20 Any objection to that?  
21 MR. ROCHE: No.  
22 MR. LEAMON: No.  
23 THE COURT: Number 12, I believe there was  
24 something similar offered by you, Mr. Leamon. The instruction

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1 you offered included language that was not supported by the  
2 case. This is the instruction the Court has prepared.  
3 Any objection?  
4 MR. LEAMON: No.  
5 MR. ROCHE: I don't have any objection either.  
6 THE COURT: Number 13, intent maybe proven by  
7 circumstantial evidence, any objection?  
8 MR. LEAMON: No.  
9 MR. ROCHE: No.  
10 THE COURT: Number 14, any objection?  
11 MR. ROCHE: No.  
12 MR. LEAMON: No.  
13 THE COURT: Number 15, any objection?  
14 MR. ROCHE: No.  
15 MR. LEAMON: No.  
16 THE COURT: Number 16 is the definition of  
17 admission or confession, any objection?  
18 MR. ROCHE: No.  
19 MR. LEAMON: No.  
20 THE COURT: Number 17, this is the mandatory  
21 instruction I was talking to you both about when there are  
22 statements of the Defendant that have been admitted. This is  
23 taken directly from the Nevada Supreme Court case.  
24 Any objection?

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<p>1 MR. ROCHE: No.</p> <p>2 MR. LEAMON: No.</p> <p>3 THE COURT: Number 18, intent statements, any</p> <p>4 objection?</p> <p>5 MR. ROCHE: No.</p> <p>6 MR. LEAMON: No.</p> <p>7 THE COURT: Number 19, witness willfully false,</p> <p>8 any objection?</p> <p>9 MR. LEAMON: No.</p> <p>10 THE COURT: Number 20, I think this is one</p> <p>11 offered by you, Mr. Leamon?</p> <p>12 Any objection to this instruction?</p> <p>13 MR. LEAMON: No.</p> <p>14 MR. ROCHE: No.</p> <p>15 THE COURT: Number 21, this is the expert witness</p> <p>16 instruction that's taken right from the statute.</p> <p>17 Any objection?</p> <p>18 MR. LEAMON: No.</p> <p>19 THE COURT: No?</p> <p>20 MR. ROCHE: No.</p> <p>21 THE COURT: Number 22, any objection?</p> <p>22 MR. LEAMON: No.</p> <p>23 MR. ROCHE: No.</p> <p>24 THE COURT: Number 23 motive, any objection?</p>	<p>1 included as well, because it talks about knowledge which it</p> <p>2 looks like 12 does not.</p> <p>3 THE COURT: All right. I'm going to include it,</p> <p>4 but this now become number, 27 will now be number 13.</p> <p>5 MR. LEAMON: Okay.</p> <p>6 THE COURT: So they're close together. If you</p> <p>7 want to make a strong objection to that you can, Mr. Roche,</p> <p>8 I'll consider it.</p> <p>9 MR. ROCHE: No, I'm not.</p> <p>10 THE COURT: All right.</p> <p>11 MR. ROCHE: I think it's accurate</p> <p>12 (indiscernible).</p> <p>13 THE COURT: It's pretty similar.</p> <p>14 Number 28, that's up to you, Mr. Leamon, if you</p> <p>15 want that to be given?</p> <p>16 MR. LEAMON: I would.</p> <p>17 THE COURT: Okay. That's in. Number 29, any</p> <p>18 objection?</p> <p>19 MR. ROCHE: No.</p> <p>20 MR. LEAMON: Nope.</p> <p>21 THE COURT: Number 30, any objection?</p> <p>22 MR. LEAMON: No.</p> <p>23 THE COURT: Number 31 any objection?</p> <p>24 MR. LEAMON: No.</p>
Page 177	Page 179
<p>1 MR. ROCHE: No.</p> <p>2 MR. LEAMON: No.</p> <p>3 THE COURT: Number 24, any objection?</p> <p>4 MR. LEAMON: No.</p> <p>5 MR. ROCHE: No.</p> <p>6 THE COURT: Number 25, this is offered by one of</p> <p>7 the attorneys, I don't remember which one of you maybe both of</p> <p>8 you.</p> <p>9 Is there any objection to this?</p> <p>10 MR. LEAMON: No.</p> <p>11 MR. ROCHE: No.</p> <p>12 THE COURT: Number 26, any objection?</p> <p>13 MR. LEAMON: No.</p> <p>14 MR. ROCHE: No.</p> <p>15 THE COURT: Number 27, this is offered by one of</p> <p>16 you, maybe Mr. Leamon.</p> <p>17 Any objection to this instruction?</p> <p>18 MR. ROCHE: I don't object to the content. I</p> <p>19 think it's just very similar to number 12. Number 12 talks</p> <p>20 about mere presence and mere association (indiscernible)</p> <p>21 concept. It's basically a mere presence instruction. It's</p> <p>22 slightly -- worded differently, I guess.</p> <p>23 THE COURT: Okay. Let me look at it.</p> <p>24 MR. LEAMON: And I would prefer this one be</p>	<p>1 THE COURT: Number 32, any objection?</p> <p>2 MR. LEAMON: No.</p> <p>3 MR. ROCHE: No.</p> <p>4 THE COURT: Number 33, any objection?</p> <p>5 MR. ROCHE: No.</p> <p>6 MR. LEAMON: No.</p> <p>7 THE COURT: Number 34, any objection?</p> <p>8 MR. ROCHE: No.</p> <p>9 MR. LEAMON: No.</p> <p>10 THE COURT: Number 35, any objection.</p> <p>11 MR. LEAMON: No.</p> <p>12 MR. ROCHE: No.</p> <p>13 THE COURT: My final copy, Angie, did not have</p> <p>14 the verdict form.</p> <p>15 Do you both have the verdict form?</p> <p>16 MR. LEAMON: We don't.</p> <p>17 THE COURT: It's the (indiscernible) submitted.</p> <p>18 It's the same as the draft that you took home at lunch, or</p> <p>19 back to your offices.</p> <p>20 Does that look okay to both of you?</p> <p>21 MR. ROCHE: Yeah, the one that I saw -- yeah.</p> <p>22 THE COURT: One you've already seen. We didn't</p> <p>23 make any changes.</p> <p>24 MR. ROCHE: Yeah.</p>

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1 THE COURT: All right. So, Mr. Roche, do you  
2 have any other instructions to propose?  
3 MR. ROCHE: No.  
4 THE COURT: Mr. Leamon, do you have any other  
5 instructions to propose?  
6 MR. LEAMON: Just the one the two interpretations  
7 of evidence citing Bells and the State. I think it was the  
8 first one that I proffered from the instructions that I  
9 submitted. Basically, the case law that I looked at.  
10 THE COURT: Just let me find it first. I have  
11 mixed all of these things up.  
12 Do you have a copy with you?  
13 MR. LEAMON: I do.  
14 THE COURT: All right. Mr. Leamon, or excuse me,  
15 Mr. Roche, do you know which one he's talking about?  
16 MR. ROCHE: I do.  
17 MR. LEAMON: And the case law I found, it's  
18 optional as long as the reasonable doubt instruction is  
19 included, this is not required, but they have approved the  
20 language basically saying it can go either way.  
21 THE COURT: Mr. Roche?  
22 MR. ROCHE: Your Honor, I have to on to the  
23 instruction because I think it's not true. It says if he can  
24 draw two or more reasonable conclusions from circumstantial

1 Instruction number 14, that's most similar to  
2 this one, but neither Crane, nor Biels talked about  
3 circumstantial evidence, just those instructions just talked  
4 about evidence that the jury could conclude either way, not  
5 just circumstantial evidence.  
6 And Biels said that, I'm getting the language  
7 directly, it's not error to refuse to give the instruction if  
8 the jury is properly instructed regarding reasonable doubt.  
9 So I am not going to give this instruction.  
10 Do you need your copy back and make another copy  
11 for the court file?  
12 MR. LEAMON: I've got one.  
13 THE COURT: You're okay, if we put this --  
14 MR. LEAMON: Yes.  
15 THE COURT: -- in the court file?  
16 Do you have any more, Mr. Leamon?  
17 MR. LEAMON: I don't believe so. I did have a  
18 number of witnesses instruction, but I believe that's probably  
19 countered by the fact that the defense does not have to put on  
20 the evidence. I think if we have something (indiscernible) so  
21 I am fine with the instructions as are.  
22 THE COURT: Okay. What we'll do then is get the  
23 instructions into final form, get you each a copy. For the  
24 record, the Defendant is now in the room. We'll get you each

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1 evidence and one of those (indiscernible) the other guilty you  
2 must accept the one that points to innocence. I don't think  
3 they have to do that.  
4 I think they can find that they both are proven  
5 beyond a reasonable doubt and not make a decision that not one  
6 of those circumstances is not true.  
7 So it's kind of redundant and the case law is  
8 clear that as long as they're adequately or correctly  
9 instructed on reasonable doubt then that instruction doesn't  
10 need to be given and so I would ask that not be given.  
11 THE COURT: Mr. Leamon?  
12 MR. LEAMON: I do think that it's proper. I  
13 guess it kind of goes a little bit more in depth into  
14 reasonable doubt.  
15 Basically if there's two reasonable inferences  
16 that can be drawn, one points to innocence, that's pretty much  
17 reasonable doubt. And I think that's why they say it's  
18 optional if a reasonable doubt instruction is included.  
19 THE COURT: I'm looking at my copy of the case.  
20 I've got it here somewhere. I read Biels and I also read a  
21 case called Crane v. State, C-R-A-N-E. 88 Nevada 684 and it  
22 might have been cited in Biels, maybe that's why I read it.  
23 In the Crane case, there was some instructions on  
24 circumstantial evidence similar to the one I'm going to give.

1 a copy.  
2 We'll get the jury back in here. I will ask you  
3 if you have any evidence to present, Mr. Leamon, and I'm  
4 assuming at this point you do not; is that correct?  
5 MR. LEAMON: Correct.  
6 THE COURT: You can rest your case and I will go  
7 right into jury instructions and then you two, I assume, are  
8 prepared to make closing arguments?  
9 MR. ROCHE: Yes.  
10 MR. LEAMON: Yes.  
11 THE COURT: All right. Then as soon as we get  
12 these prepared, we'll get the jury in here.  
13 You may be seated. The record will reflect the  
14 presence of the Defendant and counsel.  
15 Counsel, will you stipulate to the presence of  
16 the jury?  
17 MR. LEAMON: Yes, Your Honor.  
18 MR. ROCHE: Yes, Your Honor.  
19 THE COURT: Mr. Leamon, do you have any evidence  
20 to present?  
21 MR. LEAMON: We do not, Your Honor. We  
22 (indiscernible).  
23 THE COURT: The record will reflect that the  
24 Defendant has rested its case in chief. At this point, the

1 evidentiary portion of the trial is closed and I will give to  
2 you the jury instructions. These instructions are quite  
3 complicated, some are really lengthy, some are no more than  
4 one sentence.

5 I wish I could do it a little more informally,  
6 but nearly every word is important, so I need to read these to  
7 you verbatim.

8 If you feel that I have said something different  
9 than what is in the written instructions and you will have  
10 those when you go back in the jury room, you need to rely on  
11 the written instructions, not what I may have said. We'll  
12 have several copies back there for you.

13 Instructions number 1 and 2 have already been  
14 given, so I'll start with instruction number 3. This is a  
15 prosecution by the State of Nevada against the Defendant,  
16 Sarah Elizabeth Gravelle.

17 The Criminal Information, omitting formal parts,  
18 reads as follows:

19 Count I, possession of a controlled substance, a  
20 category E felony, as defined by NRS 453.336. That the  
21 Defendant did unlawfully and knowingly or intentionally  
22 possess actually or constructively methamphetamine, a  
23 controlled substance.

24 To the crime, the Defendant has entered a plea of

1 weighty affairs of life.

2 If the minds of the jurors after the entire  
3 comparison and consideration of all the evidence are in such a  
4 condition that they can say they feel an abiding conviction of  
5 the truth of the charge, there is not a reasonable doubt.

6 Doubt to be reasonable must be actual, not mere  
7 possibility or speculation.

8 Instruction number 8. Every person charged with  
9 a commission of a crime shall be presumed innocent until the  
10 contrary is proved by contrary evidence beyond a reasonable  
11 doubt.

12 This is a presumption of law with which the  
13 Defendant is clothed and it abides with the Defendant  
14 throughout the entire trial of the case until it is overcome  
15 by competent evidence sufficient in your minds to establish  
16 the Defendant's guilt as to the crime charged.

17 In determining the guilt or innocence of the  
18 Defendant, it is not necessary that she establish innocence.  
19 But it is sufficient in order to warrant an acquittal if a  
20 reasonable doubt exists in your minds as to guilt and it makes  
21 no difference whether the reasonable doubt thus created exists  
22 or is established from the evidence produced object the part  
23 of the State or that produced on the part of the Defendant or  
24 from the lack of evidence or its unreliability or weight.

1 not guilty. Upon the issue thus joined, the burden is on the  
2 State of Nevada to prove her guilty of the crime charged  
3 beyond a reasonable doubt.

4 Instruction number 4. In order to find the  
5 Defendant guilty of the charged offense of possession of a  
6 controlled substance, the jury must conclude that each of the  
7 following elements has been proven beyond a reasonable doubt.

8 One, that the Defendant, two, knowingly or  
9 intentionally, three, possessed either actually or  
10 constructively, four, a controlled substance or any mixture  
11 which contains any such controlled substance.

12 The failure to prove any element beyond a  
13 reasonable doubt must result in a verdict of not guilty of  
14 this charge.

15 Instruction number 5. To warrant a conviction of  
16 any crime, the Defendant must be proven guilty beyond a  
17 reasonable doubt of each and every element of the crime. The  
18 failure to prove any element of a crime beyond a reasonable  
19 doubt must result in a verdict of not guilty of that crime.

20 Instruction number 6. Methamphetamine is a  
21 controlled substance which is listed in Schedule I.

22 Instruction number 7. A reasonable doubt is one  
23 based on reason. It is not a mere possible doubt, but is such  
24 a doubt as would govern or control a person in the more

1 Instruction number 9. In every crime or public  
2 offense, there must exist a union or joint operation of act  
3 and intention.

4 Instruction number 10. Intention is manifested  
5 by the circumstances connected with the perpetration of the  
6 offense and the sound mind and discretion of the person  
7 accused.

8 Instruction number 11. The law recognizes two  
9 kinds of possession. Actual possession and constructive  
10 possession. A person who knowingly has direct physical  
11 control over a thing at a given time is then in actual  
12 possession of it.

13 A person who all though not in actual possession,  
14 knowingly has both the power and the intention at a given time  
15 to exercise dominion or control over a thing, either directly  
16 or through a person or another persons, is then in  
17 constructive possession of it.

18 The law also recognizes that possession may sole  
19 or joint. If one person has possession of a thing, possession  
20 is sole. If two or more persons share actual or constructive  
21 possession of a thing, possession is joint.

22 You may find that the element of possession as  
23 that term is used in these instructions is present. If you  
24 find beyond a reasonable doubt, that a Defendant had actual or

1 constructive possession, either alone or jointly with others.  
2 Instruction number 12. Mere presence in the area  
3 where the narcotic is discovered or mere association with the  
4 person who does control the drug or the property where it is  
5 located is insufficient to support a finding of possession.

6 Instruction number 13. You may not infer that  
7 the Defendant is guilty of participating in criminal conduct  
8 merely from the fact that she was present at the time the  
9 crime was being committed and had knowledge that it was being  
10 committed.

11 Instruction number 14. Intent maybe proven by  
12 circumstantial evidence. It rarely can be established by any  
13 other means. While witnesses may see and hear and thus be  
14 able to give direct evidence of what a Defendant does or fails  
15 to do, there can be no eyewitness account of a state of mind  
16 which with the acts were done or omitted. But what a  
17 Defendant does or fails to do may indicate intent or lack of  
18 intent to commit the offense charged.

19 In determining the issue as to intent, the jury  
20 is entitled to consider any statements made and acts done or  
21 omitted by the accused and all facts and circumstances in  
22 evidence which may aid determination of state of mind.

23 Instruction number 15. The Defendant's knowledge  
24 of the nature of the controlled substance in this case maybe

1 that part which you find to be true.

2 Instruction number 18. The fact that the Court  
3 has admitted into evidence the alleged confession or admission  
4 of a Defendant does not bind the jury to accept the Court's  
5 conclusion and the jury, before it may take the confession or  
6 admission into consideration, must for itself find whether or  
7 not it was a voluntary confession or admission.

8 If the jury concludes that a confession or  
9 admission was not made voluntarily, it is the duty of the jury  
10 to entirely disregard the same and not consider it for any  
11 purpose.

12 Instruction number 19. You have heard evidence  
13 that a witness made statements on an earlier occasion which  
14 counsel argues are inconsistent with his or her trial  
15 testimony.

16 If you find that the witness made earlier  
17 statements that conflict with his or her trial testimony, you  
18 may consider that fact in deciding how much of his or her  
19 trial testimony, if any, to believe.

20 In making this determination, you may consider  
21 whether the witness purposely made a false statement or  
22 whether it was an innocent mistake, whether the inconsistency  
23 concerns an important fact, or whether it had to do with a  
24 small detail.

1 shown by circumstantial evidence and reasonably drawn  
2 inferences.

3 Instruction number 16. Possession of a  
4 controlled substance is a specific intent crime. Specific  
5 intent means the intent or act of disease to accomplish a  
6 precise criminal active or forbidden objective, not merely an  
7 intent to do an act.

8 Instruction number 17. A statement made by the  
9 Defendant over than at this trial maybe an admission or a  
10 confession.

11 An admission is a statement by the Defendant  
12 which by itself is not sufficient to warrant an inference of  
13 guilt, but which tends to prove guilt when considered with the  
14 rest of the evidence.

15 A confession is a statement by the Defendant  
16 which discloses intentional participation in the criminal act  
17 for which she is on trial and which discloses guilt of that  
18 crime.

19 You are the exclusive judges as to whether an  
20 admission or a confession was made by the Defendant. And if  
21 so, whether such statement is true in whole or in part.

22 If you should find that any such statement is  
23 entirely untrue, you must reject it.

24 If you find it is true in part, you may consider

1 Whether the witness had an explanation for the  
2 inconsistency and whether that explanation appealed to your  
3 common sense.

4 It is exclusively your duty based on all the  
5 evidence and your own good judgment to determine whether the  
6 prior statements were inconsistent.

7 If you find that a witness made prior  
8 inconsistent statements, it is your duty to determine how  
9 much, if any, weight to be given to the inconsistent  
10 statements.

11 Evidence that at some other time a witness made a  
12 statement or statements that is or are inconsistent with his  
13 or her testimony in this trial maybe considered by you for not  
14 only the purpose of testing the credibility of the witness but  
15 also as evidence of the truth of the facts as stated by the  
16 witness on that former occasion.

17 Instruction number 20. A witness willfully false  
18 in one material part of his or her testimony is to be  
19 distrusted in others.

20 You may reject the whole testimony of a witness  
21 who willfully has testified falsely as to a material point  
22 unless from all the evidence you shall believe the probability  
23 of truth favors his or her testimony and other particulars.

24 However, discrepancies in the testimony of a

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1 witness or between his or her testimony and that of others if  
2 there were any, do not necessarily mean that the witness  
3 should be discredited.  
4 Failure of recollection is not uncommon. It is a  
5 fact also that two persons witnessing an incident or a  
6 transaction often will see or hear it differently.  
7 Whether a discrepancy pertains to a fact of  
8 importance or only a trivial detail should be considered in  
9 weighing its significance.  
10 Instruction number 21, you have heard the  
11 testimony of a law enforcement official. The fact that a  
12 witness maybe employed as a law enforcement official does not  
13 mean by that his testimony is necessarily deserving of or more  
14 or less consideration or greater or lesser weight than that of  
15 an ordinary witness.  
16 At the same time, it is legitimate for Defense  
17 counsel to try to attack the credibility of a law enforcement  
18 witness on the grounds that his testimony maybe colored by a  
19 personal or professional interest in the out come of the case.  
20 It is your decision after reviewing all the  
21 evidence whether to accept the testimony of the law  
22 enforcement witness and to give to that testimony whatever  
23 weight if any you find it deserves.  
24 Instruction number 22. A person is qualified to

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1 testify as an expert if he has special knowledge, skill,  
2 experience, training or education sufficient to qualify him as  
3 an expert on the subject to which his testimony relates.  
4 Duly qualified experts may give their opinions on  
5 question in controversy at a trial.  
6 To assist you in deciding such questions, you may  
7 consider the opinion with the reasons given for it, if any, by  
8 the expert who gives the opinion.  
9 You may also consider the qualifications and  
10 credibility of the expert. You are not bound to accept an  
11 expert opinion as conclusive, but should give it the weight to  
12 which you find it to be entitled. You may disregard any such  
13 opinion if you find it to be unreasonable.  
14 Instruction number 23. It is not necessary to  
15 call as witnesses all persons who may have been present at any  
16 of the events disclosed by the evidence or who may appear to  
17 have some knowledge of these events or to produce all objects  
18 or documents mentioned or suggested by the evidence.  
19 Instruction number 24. Motive is not an element  
20 of the crime charged and need not be shown. However, you may  
21 consider motive or lack of motive as a circumstance in this  
22 case.  
23 Presence of motive may tend to establish guilt.  
24 Absence of motive may tend to establish innocence. You will

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1 there for give its presence or absence as the case maybe the  
2 weight to which you find it to be entitled.  
3 Instruction number 25. Except as authorized by  
4 law, it is unlawful for any person to possess a controlled  
5 substance.  
6 Instruction number 26. The amount of a  
7 controlled substance needed to sustain a conviction of a  
8 person for the offense of possession of a controlled substance  
9 is that amount necessary for identification as a controlled  
10 substance by a witness qualified to make such an  
11 identification.  
12 Instruction number 27. You are here to determine  
13 the guilt or lack of guilt of the Defendant from the evidence  
14 in the case. You are not called upon to return a verdict as  
15 to the guilt or lack of guilt of any other person.  
16 So, if the evidence in the case convinces you  
17 beyond a reasonable doubt of the guilt of the Defendant you  
18 should so find even though you may believe one or more persons  
19 are also guilty.  
20 Instruction number 28. It is the constitutional  
21 right of the Defendant in a criminal trial that she may not be  
22 compelled to testify. Thus the decision as to whether she  
23 should testify is left to the Defendant acting with the advice  
24 and assistance of her attorney.

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1 You must not draw any inferences or conclusions  
2 from the fact that she does not testify, nor, should this fact  
3 be discussed by you or enter into your deliberations in any  
4 way.  
5 Instruction number 29. It is your duty as jurors  
6 to consult with one another and to deliberate with a view of  
7 reaching an agreement.  
8 If you can do so without violence to your  
9 individual judgment, you each must decide the case for  
10 yourself, but should do so only after consideration of the  
11 case with your fellow jurors. And you should not hesitate to  
12 change an opinion if you become convinced that it is  
13 erroneous.  
14 However, you should not be influenced to vote in  
15 any way on any question submitted to you by the single fact  
16 that a majority of the jurors or any of them favor such a  
17 decision.  
18 In other words, you should not surrender your  
19 honest convictions concerning the effect or weight of the  
20 evidence for the mere purpose of returning a verdict or solely  
21 because of the opinion of the other jurors.  
22 Instruction number 30. You are further  
23 instructed that you should also keep in mind the importance of  
24 the parties of the results of your deliberations, and be just



1 to the Defendant as well as to the State of Nevada.  
2 Both the State and the Defendant have a right  
3 that you determine and they do so and demand and expect that  
4 you will carefully and dispassionately weigh and consider the  
5 law of the evidence of the case and give each a conscientious  
6 judgment and that you will reach a verdict that will be just  
7 to both sides, regardless of what the consequences maybe.

8 Instruction number 31. If during your  
9 deliberation you should desire to be further informed on any  
10 point of law or hear again portions of the testimony, you  
11 must reduce your request to writing signed by the foreperson.

12 The officer will then return you to court where  
13 the information sought will be given to you in the presence of  
14 and after notice to the State and the Defendant and counsel.

15 Play backs of testimony are time consuming and  
16 are not encouraged unless you deem it an exhibit necessity.  
17 Should you desire a play back, you must carefully describe the  
18 testimony to be played back so that the Court report recorder  
19 can arrange her notes. Remember the Court is not at liberty  
20 to supplement the evidence.

21 Instruction number 32. The Court has already  
22 instructed that you are made the sole judges of the testimony  
23 and of the weight to be given the same.

24 In determining questions of fact presented in

1 dated by your foreperson, you will return all verdict forms to  
2 the court.

3 Instructions number 1 through 35, given this 20th  
4 day of February, 2019, and I am signing the jury instructions  
5 as Nancy Porter, District Judge.

6 Mr. Roche, you may present your closing argument.

7 MR. ROCHE: Ladies and gentlemen, the Judge has  
8 just read you the jury instructions. They will govern the  
9 decision that you're going to make. And you will have them  
10 with you as you deliberate with one another.

11 I don't want to take a whole lot of time right  
12 now. I'm just going to briefly touch on a few of those  
13 instructions and before you adjourn.

14 The first instruction I want to talk about is  
15 instruction number four, and that instruction sets forth the  
16 elements that the State of Nevada has to prove beyond a  
17 reasonable doubt in order to find the Defendant guilty.

18 You've been instructed that in this case, the  
19 State has to prove that this Defendant knowingly or  
20 intentionally possessed either actively or actually or  
21 constructively a controlled substance.

22 Some of the elements are not really in dispute in  
23 this trial. Officers Taylor and Pinkham both testified that  
24 Sarah Gravelle was driving the vehicle that they stopped and

1 this case, you should be governed solely by the evidence  
2 introduced and admitted before you.

3 You are to bring to the consideration of the  
4 evidence before you your every day common sense and judgment  
5 as reasonable men and women.

6 Instruction number 33. Statements by the  
7 attorneys during the trial are not evidence. However, if the  
8 attorneys had stipulated or agreed to a fact as stated to you  
9 by the Judge, you must regard that fact or facts as proven.

10 Instruction number 34. Possible verdicts are set  
11 forth in the verdict form which you will receive. If you all  
12 have agreed upon your verdict the foreperson shall sign the  
13 verdict form and notify the bailiff.

14 Instruction number 35. Ladies and gentlemen, it  
15 takes 12 or all of your number to agree upon your verdict in  
16 this matter.

17 When you have agreed upon your verdict, you will  
18 have the verdict agreed upon signed by the foreperson and  
19 returned to the court.

20 In determining whether the Defendant is guilty or  
21 not guilty of the charge against her, you will follow the  
22 evidence and the law.

23 You will choose your own foreperson and when you  
24 have agreed upon your verdict and your verdict is signed and

1 Nicholas Dunn was a passenger and so her identity is really  
2 not an issue.

3 You heard from Brad Taylor that he performed  
4 testing on the white baggy of crystalline substance found in  
5 the vehicle and that he's a hundred percent certain that it  
6 was methamphetamine. I don't expect there to be much dispute  
7 about the fact that the substance in the baggy was  
8 methamphetamine.

9 And you have jury instruction number six which  
10 states explicitly that methamphetamine is a Schedule I  
11 controlled substance. So I don't think there's going to be  
12 much dispute about that fact.

13 So the issue you have to decide in this case is  
14 whether the Defendant, Sarah Gravelle, knowingly or  
15 intentionally possessed methamphetamine and she can do that  
16 actually or constructively and the State would assert that  
17 we've proven that beyond a reasonable doubt.

18 And jury instruction number 11 talks about  
19 possession. Possession can be actual or it can be  
20 constructive and in this case the drugs were not found on Ms.  
21 Gravelle's person. She wasn't carrying them or holding them.  
22 And so we're not asserting that she actually possessed them,  
23 the State asserts that she constructively possessed the  
24 controlled substance in this case.

1 They were found in a pink eyeglass case in the  
2 backpack on of the floor of her vehicle that she was driving  
3 and the assertion is going to be made that they weren't hers,  
4 they were Mr. Dunn's.

5 So how do we know that these drugs were hers and  
6 they were not her passenger's. There's going to be several  
7 things that inform that decision. It was her vehicle. She  
8 was the only person in the vehicle who wears eyeglasses. The  
9 eyeglasses case was pink and I don't want to be  
10 stereo-typically gender stereo type, I have a pink tie on, but  
11 that's just one of many factors to consider whose eyeglass  
12 case was that.

13 There was a plunger out of a syringe that was  
14 found on her person and the needle cap from the syringe was  
15 found with the drugs.

16 There were multiple receipts in the backpack with  
17 her name on them. This were no receipts found in the backpack  
18 with anyone else's name on them other than hers.

19 There was a marijuana pipe found in the backpack,  
20 there's nothing wrong with that, it's not illegal. But  
21 Officer Taylor asked her whose is this and she said it was  
22 hers. So items that belong to Ms. Gravelle and no one else  
23 were found in the backpack.

24 And so based on those, you could reasonably

1 Mr. Dunn (indiscernible) testimony was also a known user of  
2 narcotics.

3 So the State submits that the facts that I just  
4 went over are clear that the drugs belong to Mrs. Gravelle,  
5 Ms. Gravelle they were in her backpack with her possessions.

6 But if you're not convinced of that fact, it's  
7 also possible that both parties in the vehicle had  
8 constructive possession of those drugs. You think about the  
9 circumstances of the offense, it's possible that they were out  
10 together with the intention of possessing or using those  
11 narcotics.

12 Her mere presence with somebody else possessing  
13 narcotics is not sufficient to sustain a conviction, but  
14 that's not what we have in this case. We have most the  
15 evidence suggesting that it's her narcotics and it's possible  
16 that they were his as well.

17 Even if that's true, jury instruction number 27  
18 will explain to you that if you believe someone else might be  
19 guilty, that doesn't stop you from finding this Defendant  
20 guilty beyond a reasonable doubt and so it's possible on the  
21 jury instruction on possession will tell you about joint  
22 possession, constructive possession doesn't have to be sole,  
23 it can also be sole.

24 The State must also prove that the drugs were

1 conclude that that was her backpack and the contents of the  
2 backpack belonged to her.

3 Now, there's going to probably be some argument  
4 that when Mr. Dunn was fishing around in the passenger seat of  
5 the vehicle during the initial traffic stop that he maybe  
6 planted those drugs or placed them there.

7 So what facts are there that would lead you to  
8 know that's not the case. There were several. Officer Taylor  
9 testified he was in plain view of him when he approached the  
10 vehicle and he saw when those movements were made and Mr. Dunn  
11 was reaching with his left-hand next to his seat, possibly  
12 underneath his own seat but not behind him or over the console  
13 in the middle to get into the backpack in the back.

14 The other facts that were testified to were that  
15 that backpack was closed. The eyeglasses case was closed.  
16 And inside that eyeglasses case there was a Ziploc baggy that  
17 was tested and proved to be methamphetamine.

18 There's also a small container, you'll have  
19 pictures of that with you in the jury room that also contain a  
20 small white baggy that was NIK tested and presumed to be  
21 positive for methamphetamine.

22 Moreover, Ms. Gravelle and Mr. Dunn were  
23 traveling in a vehicle together at 2 o'clock in the morning  
24 and Miss Gravelle admitted to being a user of methamphetamine.

1 possessed knowingly and intentionally so they weren't just  
2 there accidentally or the Defendant didn't have them and not  
3 know what they were.

4 In addition to the fact as we already talked  
5 about, but they were tucked away in her personal property with  
6 her personal items. We have the fact that she admitted that  
7 she was a user of methamphetamine. She knew what it was. She  
8 had used it not that long before and you heard Officer  
9 Taylor's testimony about when that topic came up in that  
10 conversation her behavior changed she became nervous. She  
11 started stuttering, she began bouncing her knee. She started  
12 exhibiting signs she was nervous because of the conversation  
13 she was having with Officer Taylor.

14 Based on that, we know that, you know that she  
15 was aware of the contents of her own possession. Those drugs  
16 weren't there by accident she knew they were this. She  
17 intentionally had constructive possession of methamphetamine.  
18 That's the elements necessary for a conviction in this case.

19 She also offered up some irrelevant information.  
20 She volunteered the information that she had a marijuana pipe  
21 which isn't relevant to anything she was asked suggesting that  
22 she was attempting to distract Officer Taylor from getting to  
23 the heart of the matter and finding out what she already knew  
24 was which is that there was methamphetamine in her possession

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1 in the vehicle that she was driving.  
2 Jury instruction number 14 will state that intent  
3 is rarely proven by direct evidence. No one can read your  
4 mind, tell you what you were thinking, you look at the  
5 circumstances of what was happening and you infer from those  
6 circumstances what somebody's intent was.  
7 Based on the facts this case, you can reasonably  
8 infer she knew that methamphetamine was there and she  
9 possessed it intentionally.  
10 So in conclusion, I just want to submit that the  
11 State has proven (indiscernible) evidence at this trial that  
12 beyond a reasonable doubt that Miss Sarah Gravelle had  
13 methamphetamine in her constructive possession and she did so  
14 knowingly and intensionally and so we would ask you to find  
15 her guilty of the charge in this case.  
16 THE COURT: Mr. Leamon, you may make your closing  
17 argument.  
18 MR. LEAMON: Thank you. So the State has not met  
19 the burden in this case. The State has to prove each and  
20 every element of this crime beyond a reasonable doubt. That  
21 is the highest burden we have in the law and they have not  
22 done so.  
23 And it's also important to remember it's the  
24 State's burden to prove this case. It's not Miss Gravelle's

1 They presented -- their expert testified I don't  
2 know what this is. And he's the one that's qualified to make  
3 that determination. He's the one that went to school. He's  
4 the one that runs the scientific test. This item was not  
5 tested for whatever reason.  
6 But, really the heart of this case goes to  
7 questions, questions that have not been answered. First and  
8 foremost, the biggest question that has not been answered is  
9 what was Mr. Dunn doing when that stop happened.  
10 We heard Officer Taylor testify that he probably  
11 followed the vehicle a couple of blocks before he initiated  
12 the stop. This is night, it's 2 o'clock in the morning. So  
13 we do know that Mr. Dunn recognized that there was an officer  
14 a few car length back.  
15 And then when Officer Taylor testified when they  
16 did come to a top he saw Mr. Dunn making erratic movements  
17 with his left-hand enough to where Officer Taylor testified I  
18 was worried he could have been stashing something.  
19 Now, what could he have been stashing? And he  
20 specifically asked whether anything of evidentiary value was  
21 found on Mr. Dunn's person. They did not find any weapons on  
22 Mr. Dunn when they patted him down. They did not find any  
23 drug paraphernalia, anything like that.  
24 I asked him, did you take special care to note to

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1 burden to prove that she's innocent of the charges. It's the  
2 State's burden to prove each and every element has been met  
3 beyond a reasonable doubt.  
4 So I want to kind of start off with where the  
5 State left off. They were talking about how both parties  
6 could possibly be in possession of this. And some of the  
7 drugs were Mr. Dunn's, Dunns's (pronouncing), maybe some were  
8 Ms. Gravelle's if you were to believe that presumption, which  
9 we don't necessarily, we'll get into that part in a minute,  
10 but if that were the case, the State has not proven that they  
11 actually both substances were methamphetamine.  
12 We had Brad Taylor get up here, and for whatever  
13 reason they only decided to test one of the substances, and  
14 the State's expert got up here and said in regards to I  
15 believe it was Exhibit 3, I did not test that. I cannot say  
16 one way or another whether this item was, in fact,  
17 methamphetamine.  
18 So for the State's last argument that they both  
19 possessed it, we don't know that both items were  
20 methamphetamine. They were packaged in different packages. I  
21 believe one was in a baggy, one was in a tin. If you believe  
22 the State's argument then there is a big doubt as to  
23 whether or not that item in the other container was  
24 methamphetamine.

1 search the area where Mr. Dunn was sitting because he was  
2 making those movements. Did you specifically check out that  
3 area because there was suspicious activity around that. They  
4 said they did and they didn't find anything that area.  
5 So we have a big unanswered question what was Mr.  
6 Dunn doing? And the State has not provided evidence of what  
7 he was doing and it's the State's burden to make this case.  
8 They could have called Mr. Dunn as a witness. He's in the  
9 Elko County jail right now. Now, it's the State's decision  
10 who they want to call to testify.  
11 They could have called him up here to testify and  
12 he could have said, yes, they were mine, yes. They were Miss  
13 Gravelle's, but we don't because the State did not call him.  
14 The State didn't do a lot of things in this case.  
15 I asked did you try to fingerprint anything  
16 involved in this case. They said, no. They have that  
17 capability they admitted. I asked them why. They said on  
18 simple possession cases we don't do this, essentially saying  
19 it's not important that we do this. Well, it's important to  
20 Miss Gravelle.  
21 They also could have tested the evidence for DNA.  
22 They said they have that capability. They chose not to do it.  
23 Had they done to so, presumably we would have known who  
24 handled that eyeglasses case, we would have known if it was

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1 Mr. Dunn, we could have known if it's Miss Gravelle. They did  
2 don't that. It wasn't important enough to do that. It's  
3 important to Miss Gravelle.  
4 So what do we know about Nicholas Dunn from the  
5 State's testimony they elicited Officer Taylor testified he is  
6 a known methamphetamine user. Now apparently he also uses  
7 heroin. But Officer Taylor testifies one, he's a known  
8 methamphetamine user. What else do we know? From Officer  
9 Pinkham's testimony, we know he keeps his drugs in an  
10 eyeglasses case. He was arrested just a few weeks ago, they  
11 searched him low and behold they find drugs in his eyeglasses  
12 case. Where were the drugs found in this case? In an  
13 eyeglasses case.  
14 We know he was making erratic movements with his  
15 left hand. Now, the State has submitted that Officer Taylor  
16 can see each and everything and knows whether or not he could  
17 get to the backpack or not, but I asked Officer Taylor, you  
18 know, is this speculation or do you know for sure whether or  
19 not he could have got to that. And he said it was  
20 speculation, that he would have had to go away -- go over the  
21 top. He doesn't know whether or not he could have got to it  
22 some other way.  
23 Where were the eyeglasses found, in the top of  
24 the backpack. So if somebody was stashing them there, that's

1 either directly or through another person or persons is then  
2 in constructive possession of it.  
3 We've had no evidence that Miss Gravelle had any  
4 intention to exercise control over this issue. And the State  
5 has made a big deal of the fact that Miss Gravelle was  
6 apparently nervous during this encounter.  
7 Well, one I asked Officer Taylor about his  
8 report. He wrote a report directly after this happened and no  
9 where I had him read the report and he confirmed no where in  
10 that report did it mention that Miss Gravelle was nervous at  
11 any time. So why did we just now hear about that? Why was  
12 that fact not his report if she was nervous.  
13 Instruction 13. You may not infer that the  
14 Defendant is guilty of participating in criminal conduct  
15 merely from the fact that she was present at the time that the  
16 crime was being committed and had knowledge that it was being  
17 committed.  
18 So that leaves open the possibility that maybe  
19 Miss Gravelle saw what Mr. Dunn was doing. So maybe she knew  
20 what he was doing and knew that there were drugs in her  
21 backpack, but they were Mr. Dunn's drugs so that could account  
22 for her being nervous, we don't know.  
23 But it's the State's burden to answer these  
24 questions, it's not Miss Gravelle's and just because she

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1 naturally where they would be at the top.  
2 Officer Pinkham testified I did not have to dig  
3 around the backpack to find them. They were right there in  
4 the top part of the biggest compartment. So we have  
5 unanswered questions here.  
6 Like I said, I think it's very important that  
7 Officer Taylor used the term stash, because that's what we  
8 believe happened in this case.  
9 We believe that Mr. Dunn saw law enforcement  
10 behind him, decided to stash his drugs and put them in the  
11 closest place where he could hide them and that's in that  
12 backpack, and that's why he was making the movements that he  
13 was making when Officer Taylor stopped him.  
14 Like I said, nothing was found on his person,  
15 nothing was found in the vicinity of where he was at. So what  
16 was he doing if not trying to put up his narcotics which we  
17 know he's a user of.  
18 So when you go in to deliberate, there's a couple  
19 of important instructions that I would like you to consider.  
20 First is the constructive possession, 11. It states that  
21 possession maybe sole or joint.  
22 But it says a person who all though not in actual  
23 possession knowingly has the power and the intention at a  
24 given time to exercise dominion and control over a thing

1 associates with a known drug user, the instructions state that  
2 you cannot use that to infer that she is guilty of this.  
3 So we think that the State has not answered all  
4 of these questions and there's a reasonable doubt that Mr.  
5 Dunn was the one who had these drugs and he was stashing these  
6 drugs and that is what he was doing.  
7 That's the one question that the State has never  
8 been able to answer what was Mr. Dunn doing and we conclude,  
9 we believe that establishes reasonable doubt which would  
10 require you to find Miss Gravelle not guilty.  
11 Thank you.  
12 THE COURT: Mr. Roche, you may make your final  
13 argument.  
14 MR. ROCHE: There's been a lot that was just said  
15 about Mr. Dunn and what he was doing because no contraband was  
16 found on him. But the testimony at trial was that he was  
17 subjected to a pat down search for weapons.  
18 He was not subject to an intensive search on his  
19 person for the possession of narcotics or drugs, so who knows  
20 he might have had drugs on his person. He wasn't -- a pat  
21 down search doesn't find drugs.  
22 It's a pat down on the outside of someone's  
23 clothing to determine if they are in possession of a weapon  
24 and you heard that from Officer Taylor and Officer Pinkham.

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1 So that isn't really the State's burden to prove  
2 what Mr. Dunn was doing. We don't know what he was doing. We  
3 do know Officer Taylor kept him in close observation the  
4 entire time he approached the vehicle and none of the  
5 movements were consistent with reaching behind his seat and  
6 planting evidence in a backpack.

7 And that's particularly, you look at that fact in  
8 combination with the actual contents of that backpack and you  
9 can rid yourself of any speculation about what are those drugs  
10 might have come. The jury instructions that you received tell  
11 you to use your common sense and you're allowed to use your  
12 common sense.

13 In that backpack, there were receipts with Miss  
14 Gravelle's name on them, you'll have them in the jury room.  
15 You'll have the photographs of those receipts and you'll also  
16 have the actual receipts them self in an evidence bag where  
17 you can look at them. Her name was found in the backpack,  
18 that's pretty damning.

19 Not only that, the marijuana pipe that she stated  
20 herself was hers was found in the backpack. And it was her  
21 vehicle. And she, there was some comment made about how there  
22 was no evidence that she had intent to exercise control over  
23 that backpack because that's not true.

24 The State has listed up all the evidence all the

1 evidence in front of you at there trial that that's the case.  
2 Use your common sense. Consider all the evidence that was  
3 presented to you and review the evidence that you will have  
4 with you in the jury room of all those items that were found  
5 in the backpack.

6 Not a single item in that backpack has been  
7 presented to you that Officer Taylor nor Pinkham found  
8 anything that had Nicholas Dunn's name on it in the backpack  
9 to him and they found multiple items in that backpack that  
10 tied possession of that backpack to Miss Gravelle, the driver  
11 of the vehicle in question.

12 So we would ask you again to find her guilty  
13 beyond a reasonable doubt of possession, constructive  
14 possession of methamphetamine.

15 Thank you.

16 THE COURT: Bailiff and law clerk will come  
17 forward and take an oath.

18 (Sworn.)

19 THE COURT: Thank you. From now on, the jury  
20 will be in the custody of the bailiff and the law clerk. The  
21 alternate will wait outside the jury room and will not  
22 participate in deliberations unless she is needed to replace a  
23 juror.

24 If you need any assistance from the court please

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1 evidence that shows her intent. It was her backpack. It was  
2 her possessions her items were in there. Items that she told  
3 the officers were hers were in that backpack.

4 There was a question asked and I'm sorry, they go  
5 why do we just hear about her being nervous? We didn't just  
6 hear about her being nervous. Officer Taylor was  
7 cross-examined about his testimony at the preliminary hearing  
8 where he also talked about her being nervous.

9 The fact that he didn't note it in his initial  
10 report does not mean by that this is the first time we're  
11 hearing about her behavior.

12 He was cross-examined at a previous hearing by  
13 this same attorney and asked about her nervous necessary and  
14 he read part of that transcript of the hearing to Officer  
15 Taylor on the stand and you heard that exchange.

16 He has testified every time he has testified that  
17 the Defendant acted nervous when they started discussing her  
18 prior use of methamphetamine and whether there were narcotics  
19 in the vehicle.

20 And that goes to show circumstantial evidence of  
21 her intent and knowledge that she was in constructive  
22 possession of methamphetamine.

23 She was nervous, the defense speculates because  
24 she knew what Mr. Dunn had done. But there's simply no

1 notify the bailiff who will notify me and I will in turn  
2 notify counsel.

3 You will have the original form of verdict and  
4 jury instructions. I will need those back. When you reach a  
5 decision your original verdict must be signed and dated by  
6 your foreperson. The Court will be in recess a waiting the  
7 verdict of the jury.

8 (Recess.)

9 THE COURT: You may be seated. The Defendant and  
10 counsel are present. We are outside the presence of the jury.  
11 The jury went out almost two hours ago. After they had been  
12 out maybe an hour, they provided a question to the Court that  
13 said why was Exhibit Number 8 not presented in court?

14 Are the jurors able to see photo number eight?

15 And it's signed by the foreperson, dated today's  
16 date.

17 That note came back to me with the exhibit list  
18 that the clerk had been keeping through out the trial. It  
19 says, Plaintiff's exhibits, Daniel M. Rausch, number 1987 and  
20 it has all of the exhibits that were marked by the State.  
21 I'll also (indiscernible) Defendant's exhibits, Phillip  
22 Leamon, number 18 and number six.

23 So it has the list of all the exhibits that the  
24 clerk marked and it indicates which ones were admitted.

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1 Exhibit Number 8 was never offered or admitted. It says,  
2 photo items from eyeglass case.

3 The attorneys and I were discussing how to deal  
4 with this. The law clerk was doing research and discovered  
5 Winiarz, W-I-N-I-A-R-Z versus State. While we were all  
6 looking that over and deciding what to do, the jury informed  
7 the bailiff that they had reached a verdict.

8 Counsel and I have been discussing how to  
9 proceed, and the attorneys I believe have agreed that they  
10 would like to go ahead with the verdict and then consider  
11 their options afterward on how to proceed.

12 Is that what you want to do, Mr. Roche?

13 MR. ROCHE: Yes, Your Honor.

14 THE COURT: Is that what you want to do, Mr.  
15 Leamon?

16 MR. LEAMON: Yes, Your Honor.

17 THE COURT: What I'm going to do then is I'm  
18 going to have the clerk include this list of exhibits that the  
19 jury had in the record, along with the jury question that I  
20 never responded to, that will be part of the record.

21 We will go ahead and take the verdict. I will  
22 excuse the jury and then after that, the two of you can decide  
23 on whether you wish to file any written motions or how you  
24 want to proceed.

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1 Okay. So I will step out. Let's see, nope,  
2 we're all in here when the jury comes in. So we'll just go  
3 ahead and wait.

4 Would you go get the jury, please? The  
5 foreperson should have the jury instructions packet in his  
6 hand. So this will be just normal taking of the verdict.  
7 Okay.

8 You may be seated. The record will reflect the  
9 presence of counsel and the Defendant. You all seem like  
10 you're a little warm. I'll let you know that this Court does  
11 not control the temperature in that room.

12 That actually years ago was the District  
13 Attorney's office and now it's our jury room and part of the  
14 old District Attorney's office is Judge Kacin's chambers,  
15 that's where the thermostat is. So sorry you were a little  
16 bit warm, but that's out of my control.

17 When a verdict is returned, we are required to  
18 take an actual roll call in order to ensure for the record  
19 that the people whom were sworn to try the case are the same  
20 persons that returned the verdict. We are not asking for your  
21 verdict. You simply as your name is called need to respond,  
22 here.

23 Miss Clerk, please call the roll of the jurors.

24 THE CLERK: Jeffrey S. Cummins.

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1 A JUROR: Here.

2 THE CLERK: Brian Glen Iverson?

3 A JUROR: Here.

4 THE CLERK: Arthur Craig Doescher?

5 A JUROR: Here.

6 THE CLERK: Teresa Thomas?

7 A JUROR: Here.

8 THE CLERK: Jesse Dylan Graham.

9 A JUROR: Here.

10 THE CLERK: LeAnn Free.

11 A JUROR: Here.

12 THE CLERK: Kimberly Kehoe.

13 A JUROR: Here.

14 THE CLERK: Jody Smith Tiske.

15 A JUROR: Here.

16 THE CLERK: Dora Beatrice Torres?

17 A JUROR: Here.

18 THE CLERK: Jacob Carpenter.

19 A JUROR: Here.

20 THE CLERK: Bradley John Frandsen.

21 A JUROR: Here.

22 THE CLERK: Jannette L. Ritchie.

23 A JUROR: Here.

24 THE COURT: Thank you. Ladies and gentlemen,

1 which of you has been selected as foreperson.

2 THE FOREPERSON: I am.

3 THE COURT: The question I'm about to ask will be  
4 answered by the foreperson only and that answer will be simply  
5 yes or no.

6 Have you reached a verdict?

7 THE FOREPERSON: Yes.

8 THE COURT: The foreperson will hand the verdict  
9 to a bailiff who will in turn hand it to the Court.

10 The clerk will now record the verdict of the jury  
11 into the minutes of the Court.

12 Excuse me, the clerk will read the verdict.

13 THE CLERK: Case Number CR-FP-18-7207, Department  
14 Number I. In the District Court of the Fourth Judicial  
15 District in and for the county of Elko, State of Nevada, the  
16 State of Nevada, Plaintiff versus Sarah Elizabeth Gravelle,  
17 Defendant.

18 Verdict. We the jury duly impanelled to try the  
19 Defendant, Sarah Elizabeth Gravelle, do hereby find the  
20 Defendant as to Count I, possession of a controlled substance  
21 guilty.

22 Dated this 20th day of February, 2019, signed  
23 foreperson, Bradley John Frandsen.

24 THE COURT: Ladies and gentlemen, is this your

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1 true verdict as rendered?  
2 JURY PANEL: (Group yes.)  
3 THE COURT: Before the verdict is recorded, do  
4 either of the attorneys request that the jury be polled?  
5 MR. ROCHE: The State does not.  
6 MR. LEAMON: No, Your Honor.  
7 THE COURT: The clerk will now record the verdict  
8 of the jury into the minutes of the court.  
9 I want to thank you all for your participation  
10 here. All though it's only been a couple of days, I know that  
11 it's not easy to sit in judgment of someone and there were  
12 quite a few hours when you had idle time. I assure you, the  
13 attorneys and I were working during that time on this case.  
14 You are excused from this trial, you can now  
15 discuss your -- well, I don't know, counsel, do you want me to  
16 still have them not speak to anyone considering the  
17 circumstances?  
18 MR. LEAMON: I believe so, Your Honor.  
19 THE COURT: I know this is tough. You can tell  
20 other people the verdict, but you cannot discuss anything  
21 beyond that at this point.  
22 After you leave the courthouse, one of the  
23 attorneys might want to talk to you about your deliberations.  
24 At this point, you cannot do that.

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1 If a time comes when you can speak about this  
2 case, you will receive notification from the court. So I will  
3 excuse you at this point.  
4 Thank you all for your participation. You are  
5 free to leave the courthouse.  
6 You first this time. Go ahead.  
7 THE BAILIFF: Ladies and gentlemen, please retire  
8 to the jury room, I'll meet you there.  
9 A JUROR: It's locked.  
10 THE BAILIFF: Oh, it's locked.  
11 THE COURT: You can be seated. I need you to get  
12 them out and close that door, please.  
13 (Jury exited the courtroom.)  
14 THE COURT: Normally when a Defendant is found  
15 guilty, I have the Defendant remanded to the custody of the  
16 Elko County sheriff. This is an unusual situation, so I will  
17 hear arguments on that.  
18 Start with you, Mr. Roche. Do you want her to be  
19 remanded?  
20 MR. ROCHE: No, Your Honor. Even if she had been  
21 found not guilty, I don't think the State would be, have  
22 (indiscernible) remanded to the custody of the sheriff.  
23 She's made her court appearances and she could  
24 certainly remain out pending sentencing if this were

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1 (indiscernible). So under these circumstances  
2 (indiscernible), vacated (indiscernible) ask (indiscernible).  
3 THE COURT: Thank you. I'm assuming that's fine  
4 with you, Mr. Leamon.  
5 MR. LEAMON: Yes, (indiscernible).  
6 THE COURT: Miss Gravelle, are you out on bail?  
7 THE DEFENDANT: Yes.  
8 THE COURT: Were you released on bail.  
9 THE DEFENDANT: Yes.  
10 THE COURT: All right. That bail bond will  
11 continue in effect. I'm sure your attorney has discussed with  
12 you the unusual circumstances.  
13 THE DEFENDANT: Yes, Your Honor.  
14 THE COURT: That we're presented with here today.  
15 So whatever conditions were imposed on you for bail are still  
16 imposed on you. You need to make sure that you stay in touch  
17 with Mr. Leamon.  
18 There will certainly be further proceedings in  
19 this case, so you've got to stay in touch with him as the  
20 attorneys figure out what their next move is and then I will  
21 be making further decisions.  
22 THE DEFENDANT: Okay.  
23 THE COURT: Is there anything further today?  
24 MR. ROCHE: No, Your Honor.

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1 MR. LEAMON: No, Your Honor.  
2 THE COURT: All right. Thank you. We're  
3 adjourned.  
4 (Proceedings concluded.)  
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1 STATE OF NEVADA, )  
2 CARSON CITY. ) ss.

3

4 I, SHELLIE LOOMIS, do hereby certify:

5 That on February 20, 2019, a trial was held in the  
6 within-entitled matter in the Fourth Judicial District Court,  
7 State of Nevada;

8 That said trial was recorded on JAVS CD-ROM, and  
9 said JAVS CD-ROM was delivered to me for transcription;

10 That the foregoing ROUGH DRAFT TRANSCRIPT,  
11 consisting of pages 1 through 152, is a full, true and correct  
12 transcript of said recorded JAVS CD-ROM performed to the best  
13 of my ability under the circumstances.

14

15 Dated at Carson City, Nevada, this 14th day of  
16 December, 2021.

17

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19 //Shellie Loomis//  
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ELKO CO DISTRICT COURT

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

**In The Matter Of:**  
*THE STATE OF NEVADA v.*  
*SARAH ELIZABETH GRAVELLE*

COPY

*June 27, 2019*

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1 IN THE FOURTH JUDICIAL DISTRICT COURT  
2 IN AND FOR THE COUNTY OF ELKO, STATE OF NEVADA  
3 THE HONORABLE NANCY PORTER, DISTRICT JUDGE  
4 -oOo-  
5 THE STATE OF NEVADA, )  
6 Plaintiff, ) Case No. CR-FP-18-7207  
7 vs. ) Dept. No. I  
8 SARAH ELIZABETH GRAVELLE, )  
9 Defendant. )

10  
11 ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS  
12 HEARING  
13 THURSDAY, JUNE 27, 2019  
14 ELKO, NEVADA  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24 Transcribed by: Shellie Loomis, RPR

1 ELKO, NEVADA, THURSDAY, JUNE 27, 2019  
2 -oOo-  
3  
4 THE COURT: You may be seated. This is Case  
5 Number CR-FP-18-7207, the State of Nevada versus Sarah  
6 Elizabeth Gravelle.  
7 Miss Gravelle is not present. Her attorney Mr.  
8 Leamon is present. Mr. Roche is here on behalf of the State.  
9 Mr. Leamon, are you waiving Ms. Gravelle's  
10 appearance?  
11 MR. LEAMON: Yes, Your Honor.  
12 THE COURT: This is the time set for a hearing on  
13 the Defendant's motion for mistrial or in the alternative,  
14 motion to set aside verdict. We have the jurors here from  
15 that trial.  
16 This is your reward for being willing to serve on  
17 a jury. As I think you all understand, there was something  
18 that kind of went wrong because I told you at the end of the  
19 trial that you couldn't discuss this case with anyone.  
20 So what we're going to do is we're going to bring  
21 you each in here one at a time and ask each of you some  
22 questions. You cannot discuss with the other jurors what  
23 those questions were or what your answers were.  
24 So we'll have to go through that process one at a

1 APPEARANCES:  
2  
3 For the State: Elko County District Attorney's Office  
4 By: Daniel Roche,  
5 Deputy District Attorney  
6  
7 For the Defendant: Elko County Public Defender  
8 By: Phillip Leamon,  
9 Deputy Public Defender  
10  
11  
12  
13  
14  
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24

1 time while we're talking to one of the jurors. The rest of  
2 you will have to wait outside. This really shouldn't take  
3 very long. There should just be a few questions for each of  
4 you.  
5 Counsel, who did you want to call first?  
6 MR. ROCHE: I honestly have no preference  
7 whatsoever on the order we do it, so --  
8 THE COURT: I didn't look for my juror list.  
9 MR. ROCHE: I have a (indiscernible) schedule. I  
10 have a seating chart I think from trial.  
11 THE COURT: That would be great.  
12 MR. ROCHE: May I approach?  
13 THE COURT: Yes. Thank you. All right. We'll  
14 start with Jeffrey couple minutes, will the rest of you please  
15 wait outside until you are called in.  
16 Please come forward, Mr. Couple minutes.  
17 THE CLERK: Raise your right hand please.  
18 JEFFREY SCOTT CUMMINS,  
19 called as a witness in this matter,  
20 having been first duly sworn,  
21 testified as follows:  
22 EXAMINATION  
23 THE COURT: Please state and spell your name.  
24 A JUROR: Jeffrey Scott Cummins. J-E-F-F-R-E-Y.

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1 S-C-O-T. C-U-M-M-I-N-S.  
2 THE COURT: There was an exhibit list that was  
3 inadvertently sent back to the jury room with the exhibits.  
4 Did the jurors discuss the exhibit list?  
5 A JUROR: Not that I remember.  
6 THE COURT: There was a request to see a  
7 photograph that was on that list.  
8 Do you remember talking about that?  
9 A JUROR: Yes.  
10 THE COURT: And what was the discussion?  
11 A JUROR: I believe the photograph was of an  
12 eyeglass case we were trying to determine maybe if we could  
13 see what was inside of it.  
14 THE COURT: Was there any other discussion about  
15 that?  
16 A JUROR: Not that I remember.  
17 THE COURT: Do you know what the acronym JOC  
18 stands for?  
19 A JUROR: No.  
20 THE COURT: What impact, if any, did that exhibit  
21 list have on your verdict?  
22 A JUROR: My personal?  
23 THE COURT: Yes.  
24 A JUROR: None.

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1 THE COURT: Was there any discussion about  
2 anything else on that list that impacted the verdict as a  
3 whole?  
4 A JUROR: Not that I know of.  
5 THE COURT: In your deliberations, was it your  
6 impression that the jurors viewed this as a close case?  
7 A JUROR: No.  
8 THE COURT: On the exhibit list were a couple of  
9 case numbers that started with the number CR.  
10 Do you know what that means?  
11 A JUROR: No.  
12 THE COURT: Did anybody mention if they knew what  
13 it meant?  
14 A JUROR: No, not that I remember.  
15 THE COURT: Each day there are a list of that  
16 day's court hearings posted outside this courtroom and outside  
17 the courtroom across the hall.  
18 Did you read those lists at any time during your  
19 jury service?  
20 A JUROR: No.  
21 THE COURT: At the conclusion of the trial, I  
22 admonished the jurors not to talk to anyone about the trial.  
23 Did you talk to the district attorney about this  
24 trial?

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1 A JUROR: No.  
2 THE COURT: Do you have any questions, Mr.  
3 Leamon?  
4 EXAMINATION  
5 BY MR. LEAMON:  
6 Q. Did you personally read the exhibit list?  
7 A. Not that I remember. I remember looking at the  
8 exhibits, but --  
9 Q. Do you remember who brought up the issue of the  
10 missing photograph?  
11 A. I don't know that we decided there was a missing  
12 photograph, just that it wasn't provided.  
13 MR. LEAMON: Nothing further, Your Honor.  
14 THE COURT: Any questions, Mr. Roche?  
15 MR. ROCHE: No, Your Honor.  
16 THE COURT: Do either of you have any objection  
17 to this witness being excused?  
18 MR. LEAMON: No, Your Honor.  
19 MR. ROCHE: No, Your Honor.  
20 THE COURT: Thank you Mr. Cummins, you're free to  
21 go.  
22 A JUROR: Okay. Can I leave the courthouse?  
23 THE COURT: You can, you're done.  
24 A JUROR: Thank you.

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1 THE COURT: The benefit to being juror number  
2 one.  
3 Bailiff, will you bring Brian I've very son.  
4 BRIAN GLEN IVERSON,  
5 called as a witness in this matter,  
6 having been first duly sworn,  
7 testified as follows:  
8 EXAMINATION  
9 THE COURT: Please state and spell your name.  
10 A JUROR: Brian Glen Iverson. B-R-I-A-N.  
11 G-L-E-N. I-V-E-R-S-O-N.  
12 THE COURT: Thank you. When you and the jurors  
13 were deliberating, there was an exhibit list that was  
14 inadvertently sent back in the jury room.  
15 Did you and the other jurors discuss that exhibit  
16 list?  
17 A JUROR: Yes.  
18 THE COURT: Can you tell me about those  
19 discussions?  
20 A JUROR: From what I can recall, we were just  
21 going through the list of what had been shown in court and the  
22 evidence that we were supposed to used in our deliberations.  
23 I don't recall the exact items on that list.  
24 THE COURT: Do you recall that there was a



1 request sent out to see a photograph?  
2 A JUROR: Yes.  
3 THE COURT: What do you remember about that?  
4 A JUROR: It was something that we had talked  
5 about that I don't know if it was mentioned in court or we  
6 thought, well, let's ask if we can get that. But then we  
7 never got it, and before we even got it, we came to our  
8 decision without that.  
9 THE COURT: What impact, if any, did that have on  
10 the verdict?  
11 A JUROR: None.  
12 THE COURT: Did the jurors view this as a close  
13 case?  
14 A JUROR: I would say no. There -- should I  
15 expand upon that?  
16 THE COURT: Sure.  
17 A JUROR: There was two or three people leaning  
18 one way, and after we deliberated for a while, then they came  
19 to the same conclusion as everybody else.  
20 THE COURT: Do you know what the acronym JOC  
21 means?  
22 A JUROR: No, not right now I don't.  
23 THE COURT: You said, "right now".  
24 A JUROR: Well, I'm just trying to think, it

1 Attorney, Tyler Ingram after the trial of this case?  
2 A JUROR: No.  
3 THE COURT: Mr. Leamon, do you have any  
4 questions?  
5 EXAMINATION  
6 BY MR. LEAMON:  
7 Q. Did you personally read the exhibit list?  
8 A. Yes.  
9 Q. Okay. Now when you read it, did you read it to  
10 yourself or did one person like read it out loud to the entire  
11 group?  
12 A. No, I just read it to myself.  
13 Q. Okay.  
14 A. I believe it was just passed around the room.  
15 Q. Okay.  
16 MR. LEAMON: Nothing further, Your Honor.  
17 THE COURT: Any questions, Mr. Roche?  
18 MR. ROCHE: No, your Honor.  
19 THE COURT: Any objection to excusing Mr.  
20 Iverson?  
21 MR. LEAMON: No, Your Honor.  
22 MR. ROCHE: No, Your Honor.  
23 THE COURT: You are free to leave, Mr. Iverson.  
24 Thank you.

1 sounds familiar, but I can't think of what it means.  
2 THE COURT: Okay.  
3 A JUROR: What does it mean?  
4 THE COURT: Judgment of conviction.  
5 A JUROR: Oh, no.  
6 THE COURT: It's lawyer lingo.  
7 A JUROR: Okay. That's not what I thought.  
8 THE COURT: Okay. What did you think?  
9 A JUROR: I was trying to think, I mean --  
10 THE COURT: I'm just curious.  
11 A JUROR: Yeah, I don't know.  
12 THE COURT: Okay.  
13 A JUROR: Because you hear all the different  
14 descriptions, I was trying to think what JOC stand for.  
15 THE COURT: Do you know what the letters CR mean  
16 in a case number?  
17 A JUROR: No.  
18 THE COURT: Every day there are lists posted  
19 outside this courtroom and the courtroom across the hall with  
20 all the hearings that would be heard that day.  
21 Did you happen to read either of those lists  
22 during your jury service?  
23 A JUROR: No.  
24 THE COURT: Did you talk to the District

1 A JUROR: All right.  
2 THE COURT: The courthouse, everything.  
3 A JUROR: All right. Have a good day.  
4 THE COURT: Thank you. You too. Arthur  
5 Doescher. Does anybody remember who the foreperson was?  
6 MR. ROCHE: I was just was trying to remember and  
7 I couldn't.  
8 MR. LEAMON: Thomas, something Thomas.  
9 THE COURT: Teresa --  
10 THE CLERK: Jesse --  
11 THE COURT: Who is it? No. Bradley John  
12 Frandsen.  
13 MR. LEAMON: I had Teresa Thomas as number four.  
14 That's what my notes say.  
15 ARTHUR CRAIG DOESCHER,  
16 called as a witness in this matter,  
17 having been first duly sworn,  
18 testified as follows:  
19 EXAMINATION  
20 THE COURT: Please state and spell your name.  
21 A JUROR: Arthur Craig Doescher. It's  
22 D-O-E-S-C-H-E-R.  
23 THE COURT: Thank you. When the jury went back  
24 to deliberate in this case, there was a list of exhibits that

1 was inadvertently sent back to the jury room.  
2 Did you see that list?  
3 A JUROR: Yes.  
4 THE COURT: Did the jurors discuss the exhibits  
5 on that list?  
6 A JUROR: Yes.  
7 THE COURT: Can you tell me about those  
8 discussions?  
9 A JUROR: There was some talk about the glasses  
10 case and the substances that were found in it and that they  
11 were together, two of them together and wondered if they were  
12 pulled from the same source.  
13 There was some discrepancy as far as a name on  
14 the glasses case for some reason, I remember that. I don't  
15 really recall what, it was just a name on the --  
16 THE COURT: Juicy Couture, I think.  
17 A JUROR: What's that?  
18 THE COURT: Juicy Couture.  
19 A JUROR: Yeah.  
20 THE COURT: Is my recollection.  
21 The jurors asked to see a photograph that was on  
22 that list but had not been admitted into evidence.  
23 Do you recall that?  
24 A JUROR: No, I don't.

1 down the road and just to be quiet about it. I don't really  
2 recall anything other than that.  
3 THE COURT: Okay. Maybe you and you are thinking  
4 of these words in a different meaning.  
5 Was there a struggle over whether the State had  
6 proven its case beyond a reasonable doubt?  
7 A JUROR: There was discussion about that.  
8 THE COURT: In your mind, were you concerned  
9 about whether the State had proven the Defendant guilty beyond  
10 a reasonable doubt?  
11 A JUROR: No.  
12 THE COURT: Do you know what the letters CR mean  
13 in a case number?  
14 A JUROR: Court records.  
15 THE COURT: I guess.  
16 A JUROR: It's what it was.  
17 THE COURT: Each day there was a list of hearings  
18 posted outside this courtroom and the courtroom across the  
19 hall.  
20 Did you read either of those lists during your  
21 jury service?  
22 A JUROR: Not that I recall.  
23 THE COURT: Did you talk to the District  
24 Attorney, Tyler Ingram about this case after the trial?

1 THE COURT: Did that your discussion the glasses  
2 case and the exhibit list and those things have any impact on  
3 the verdict?  
4 A JUROR: No.  
5 THE COURT: I guess a better question might be  
6 did the fact that you didn't have this photograph I referred  
7 to have any impact on the verdict?  
8 A JUROR: I don't believe so.  
9 THE COURT: Do you know what the acronym JOC  
10 stands for?  
11 A JUROR: What was that?  
12 THE COURT: JOC?  
13 A JUROR: No, I don't.  
14 THE COURT: Did the jurors view this as a close  
15 case?  
16 A JUROR: Yes.  
17 THE COURT: Did that exhibit list have any impact  
18 on your verdict?  
19 A JUROR: No.  
20 THE COURT: I'm going to go back to my last  
21 question. So the jurors did view this as close case.  
22 Can you tell me some more about that?  
23 A JUROR: We were told not to discuss it with  
24 anyone and that there might be some discrepancies later on

1 A JUROR: No.  
2 THE COURT: Any questions, Mr. Leamon?  
3 EXAMINATION  
4 BY MR. LEAMON:  
5 Q. Did you personally read the exhibit list  
6 yourself?  
7 A. I saw it, yeah, I read it.  
8 Q. Okay.  
9 MR. LEAMON: Nothing further.  
10 THE COURT: Any questions, Mr. Roche.  
11 MR. ROCHE: No.  
12 THE COURT: Any objection to this witness being  
13 excused?  
14 MR. ROCHE: No.  
15 MR. LEAMON: No, Your Honor.  
16 THE COURT: Thank you. You are free to leave the  
17 courthouse. Teresa Thomas.  
18 THE CLERK: I confirmed with my notes that number  
19 11 was the foreperson.  
20 THE COURT: Yes. I just confirmed on the verdict  
21 form. It was number 11 that was the foreperson.  
22  
23  
24

1 TERESA THOMAS,  
2 called as a witness in this matter,  
3 having been first duly sworn,  
4 testified as follows:  
5 EXAMINATION  
6 THE COURT: Please state and spell your name.  
7 A JUROR: Teresa Thomas. T-E-R-E-S-A.  
8 T-H-O-M-A-S.  
9 THE COURT: Thank you. When the jurors were sent  
10 back to deliberate, an exhibit list was inadvertently sent  
11 back with you.  
12 Do you recall the jurors discussing that list?  
13 A JUROR: Yes.  
14 THE COURT: And what were the discussions about?  
15 A JUROR: Which parts of the list we had as  
16 evidence and which parts were not there.  
17 THE COURT: And what was the general discussion  
18 about the things that you did not have?  
19 A JUROR: I don't recall a lot of discussion  
20 about the things that we did not have.  
21 THE COURT: There was a note sent out to the  
22 court asking to see a photograph that was on that list.  
23 Do you remember that?  
24 A JUROR: Oh, you mean from the juror we

1 A JUROR: Well, I guess I would think of it as a  
2 closed case, because I think we were all in all in agreement  
3 we felt confident in our decision and, I mean, I think we all  
4 thought that it was just done once we give our decision, we've  
5 closed. I don't know that's what a closed case is, but in my  
6 mind --  
7 THE COURT: Well, I think I need to ask this in a  
8 different way, because the last juror took it that way when I  
9 said it too. What I meant by close case --  
10 A JUROR: Oh, close.  
11 THE COURT: Like a close call.  
12 A JUROR: Oh, I thought you said "closed".  
13 THE COURT: Yes, I think that's what he thought I  
14 said too.  
15 A JUROR: Oh, I see.  
16 THE COURT: Close in whether the State had proven  
17 her guilty beyond a reasonable doubt.  
18 A JUROR: Was it a close case?  
19 THE COURT: Um-hum.  
20 A JUROR: No. I would say no.  
21 THE COURT: There are no wrong answers here.  
22 You're not in any trouble.  
23 A JUROR: That's my opinion, no.  
24 THE COURT: Do you know what the letters CR mean

1 requested?  
2 THE COURT: Yes.  
3 A JUROR: Yes.  
4 THE COURT: Why did you want to see that  
5 photograph?  
6 A JUROR: Oh boy, I'm just thinking, this has  
7 been a while.  
8 THE COURT: Sure.  
9 A JUROR: I remember us requesting it, but then  
10 after the fact it was taking such a long time, we had all kind  
11 of determined that we really weren't going to need it in the  
12 end any way. But I don't remember the specifics as to why we  
13 wanted to see it. Sorry.  
14 THE COURT: Did the fact that you did not have  
15 that photograph that was on the exhibit list have any impact  
16 on the verdict?  
17 A JUROR: No.  
18 THE COURT: Do you know what the acronym JOC  
19 means?  
20 A JUROR: No.  
21 THE COURT: Did the jurors view this as a close  
22 case?  
23 A JUROR: Yes.  
24 THE COURT: Tell me about that?

1 in a case number?  
2 A JUROR: I do not.  
3 THE COURT: Each day there is a list posted  
4 outside each of the two courtrooms on this floor with a list  
5 of the hearings that will be held that day.  
6 Did you happen to read either of those lists  
7 while you were here for jury service?  
8 A JUROR: No.  
9 THE COURT: Probably only lawyers find those at  
10 all interesting.  
11 After the trial, did you talk to the district  
12 attorney about the trial?  
13 A JUROR: No.  
14 THE COURT: Any questions, Mr. Leamon?  
15 EXAMINATION  
16 BY MR. LEAMON:  
17 Q. Did you personally read the exhibit list?  
18 A. Yes.  
19 Q. Do you remember reading about cases in the  
20 exhibit list?  
21 A. Do you mean cases and things that hold other  
22 items or cases in court cases? Or cases like eyeglass cases,  
23 backpacks, wallets.  
24 Q. Okay. So I'm reading from the exhibit list. So

1 13 and 14 read certified JOC for Case CR-FP-11-0469. And then  
2 number 14 reads certified JOC for Case 315-CR-00055.  
3 What in your opinion did that mean when you read  
4 it?  
5 A. Nothing. It's gibberish to me, I don't know what  
6 all those letters and numbers mean.  
7 MR. LEAMON: Nothing further.  
8 THE COURT: Any questions, Mr. Roche.  
9 MR. ROCHE: No, Your Honor.  
10 THE COURT: Thank you, Miss Thomas, you are free  
11 to leave the courthouse.  
12 A JUROR: Thank you.  
13 THE COURT: Jesse Graham.  
14 JESSE GRAHAM,  
15 called as a witness in this matter,  
16 having been first duly sworn,  
17 testified as follows:  
18 EXAMINATION  
19 THE COURT: Please state and spell your name.  
20 A JUROR: Jess Graham. J-E-S-S-E. G-R-A-H-A-M.  
21 THE COURT: When the jurors went back to  
22 deliberate there was an exhibit list that was inadvertently  
23 sent back with you.  
24 Did the jurors discuss that list?

1 guilty?  
2 A JUROR: Not from my standpoint. We discussed  
3 the verdict and we went through some different scenarios, but  
4 I wouldn't say it was a close call.  
5 THE COURT: Do you know what the letters CR mean  
6 in a case number?  
7 A JUROR: I do not.  
8 THE COURT: Each day there are, there's a list  
9 posted outside this courtroom and a list posted outside the  
10 courtroom across the hall with the cases that the court is  
11 going to hear that day.  
12 Did you happen to read either of those lists when  
13 you were here for jury duty?  
14 A JUROR: No.  
15 THE COURT: After the trial was over, did you  
16 discuss this case with the District Attorney, Tyler Ingram?  
17 A JUROR: I did see him at a birthday party a --  
18 a time after and I know him from previously meeting him, but I  
19 said that I was a juror, and he asked what case.  
20 And I said it was a possession case or something.  
21 That was pretty much it. Just in, I think so -- talking.  
22 Talking -- (indiscernible).  
23 THE COURT: Small talk maybe.  
24 A JUROR: Small talk, that's what I meant.

1 A JUROR: I do not specifically remember a  
2 discussion. I do remember a list of items.  
3 THE COURT: Tell me what you remember about that?  
4 A JUROR: My recollection is the list was what we  
5 had seen presented in court.  
6 THE COURT: There was a request sent out to me  
7 that the jurors be allowed to see a photograph that was on the  
8 exhibit list that you didn't have back with you in the jury  
9 room.  
10 Do you recall anything about that?  
11 A JUROR: That would have been maybe the contents  
12 of the eyeglasses case.  
13 THE COURT: What impact, if any, did the fact  
14 that did you not have that photograph but it was on that list  
15 have on your verdict?  
16 A JUROR: No impact.  
17 THE COURT: Do you know what the acronym JOC  
18 stands for?  
19 A JUROR: Can you repeat the question?  
20 THE COURT: Do you know what the letters JOC  
21 stand for?  
22 A JUROR: I do not.  
23 THE COURT: When were you deliberating, did the  
24 jurors view your verdict as a close call on whether she was

1 THE COURT: Okay. During the trial, before the  
2 case was given to you for deliberations, did you discuss the  
3 case with anyone?  
4 A JUROR: You asked during the trial?  
5 THE COURT: Yes.  
6 A JUROR: I did not.  
7 THE COURT: Mr. Leamon, any questions on that?  
8 EXAMINATION  
9 BY MR. LEAMON:  
10 Q. Did you personally read the exhibit list?  
11 A. The list that I was questioned on?  
12 Q. Correct?  
13 A. Yes, I believe I looked it over. We passed the  
14 items around the table.  
15 Q. Okay. And with regards to a couple of exhibits  
16 on the exhibit list, it says, it references case, Case  
17 CR-FP-11-0469, for example.  
18 What would that mean to you?  
19 A. I honestly don't know.  
20 Q. Okay.  
21 MR. LEAMON: Nothing further.  
22 THE COURT: Any questions, Mr. Roche?  
23 MR. ROCHE: No, Your Honor.  
24 THE COURT: Any objection to excusing Mr. Graham?

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1 MR. ROCHE: No, Your Honor.  
2 MR. LEAMON: No, Your Honor.  
3 THE COURT: Thank you, Mr. Graham, you may leave  
4 the courthouse.  
5 A JUROR: Thank you.  
6 THE COURT: Next is lien free.  
7 MR. ROCHE: Miss of oh Miss freed is the one who  
8 (indiscernible).  
9 THE COURT: She's not here.  
10 MR. ROCHE: (Indiscernible).  
11 THE COURT: Yes she is.  
12 MR. ROCHE: She made it.  
13 JANNETTE RITCHIE,  
14 called as a witness in this matter,  
15 having been first duly sworn,  
16 testified as follows:  
17 EXAMINATION  
18 THE COURT: Please state and spell your name.  
19 A JUROR: Jannette Ritchie. J-A-N-N-E-T-T-E.  
20 R-I-T-C-H-I-E.  
21 THE COURT: When the jurors went back to the jury  
22 room to deliberate, there was an exhibit list inadvertently  
23 sent back into the jury room.  
24 Do you recall that list?

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1 A JUROR: I remember a list, yes.  
2 THE COURT: Did the jurors discuss it?  
3 A JUROR: I think so.  
4 THE COURT: What do you remember about those  
5 discussions?  
6 A JUROR: I don't remember a lot about it.  
7 THE COURT: Do you remember anything about it?  
8 A JUROR: Not that I can recall at this time.  
9 THE COURT: There was a request sent to me that  
10 the jurors wanted to see a photograph that was on the exhibit  
11 list but was not in the jury room.  
12 Do you remember anything about that?  
13 A JUROR: Yeah.  
14 THE COURT: What can you remember about that.  
15 A JUROR: I think we asked why we couldn't see  
16 that evidence.  
17 THE COURT: Did that have any impact on your  
18 deliberations that you knew that photograph existed that you  
19 did not have it?  
20 A JUROR: No.  
21 THE COURT: Do you know what the letters JOC  
22 stand for?  
23 A JUROR: No.  
24 THE COURT: When you were all deliberating, did

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1 the jurors view this as a close call whether the State had  
2 proven the Defendant guilty beyond a reasonable doubt?  
3 A JUROR: No.  
4 THE COURT: Do you know what the letters CR mean  
5 in a case number?  
6 A JUROR: No.  
7 THE COURT: Each day there is a list posted  
8 outside this courtroom and the courtroom across the hall that  
9 are the hearings that are going to be heard that day.  
10 When you were here for jury duty, did you ever  
11 read one of those lists?  
12 A JUROR: I just did.  
13 THE COURT: Okay. Was there anything on there  
14 that meant anything to you?  
15 A JUROR: No.  
16 THE COURT: When you were here for jury duty, you  
17 didn't?  
18 A JUROR: I might have, I can't remember.  
19 THE COURT: Is there anything that stands out to  
20 you if you did read those lists?  
21 A JUROR: No.  
22 THE COURT: No. Okay. Mr. Leamon, any  
23 questions?  
24

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1 EXAMINATION  
2 BY MR. LEAMON:  
3 Q. Did you personally read the exhibit list?  
4 A. I think I looked over it.  
5 Q. Okay. And so you sent a letter, the jury as a  
6 whole sent a question back to the Judge asking why you  
7 couldn't see the evidence.  
8 Did you assume that everything on that list  
9 existed in some form or another?  
10 A. Yeah.  
11 Q. So some of the items listed on the exhibit list,  
12 number 13, for example, says: Certified JOC for Case  
13 CR-FP-11-0469, in that context, what do you think case means?  
14 A. A case would probably be like what we're doing  
15 now.  
16 Q. Okay.  
17 A. Some type of case.  
18 MR. LEAMON: Nothing further.  
19 THE COURT: Any questions, Mr. Roche?  
20 EXAMINATION  
21 BY MR. ROCHE:  
22 Q. Do you recall seeing that on the exhibit list?  
23 A. No.  
24 Q. Is that what you just read (indiscernible)?

1 A. No.  
2 MR. ROCHE: No further questions.  
3 THE COURT: Anything on that, Mr. Leamon?  
4 MR. LEAMON: No, Your Honor.  
5 THE COURT: Can this witness be excused?  
6 MR. ROCHE: Yes.  
7 MR. LEAMON: Yes, Your Honor.  
8 THE COURT: Thank you. You are free to leave the  
9 courthouse.  
10 A JUROR: Thank you.  
11 THE COURT: You (indiscernible) didn't think of  
12 it. He did it. We're going to take that out of his pay  
13 check.  
14 Let's try Kimberly Kehoe.  
15 KIMBERLY KEHOE,  
16 called as a witness in this matter,  
17 having been first duly sworn,  
18 testified as follows:  
19 EXAMINATION  
20 THE COURT: Please state and spell your name.  
21 A JUROR: Kimberly Kehoe. K-E-H-O-E.  
22 THE COURT: And your first name. Would you spell  
23 that, please?  
24 A JUROR: K-I-M-B-E-R-L-Y.

1 outside this courtroom and outside the courtroom across the  
2 hall of the hearings that will be held that day.  
3 When you were here for jury service, did you read  
4 either of those lists?  
5 A JUROR: No, I didn't.  
6 THE COURT: Mr. Leamon, any questions?  
7 EXAMINATION  
8 BY MR. LEAMON:  
9 Q. Do you remember if you personally read the  
10 exhibit list?  
11 A. No, I did not.  
12 Q. Okay.  
13 THE COURT: You don't remember or you didn't read  
14 it?  
15 A JUROR: I don't remember.  
16 MR. LEAMON: Nothing further.  
17 THE COURT: Any questions, Mr. Roche?  
18 MR. ROCHE: No, Your Honor.  
19 THE COURT: Any objection to this witnesses being  
20 excused?  
21 MR. ROCHE: No.  
22 MR. LEAMON: No, Your Honor.  
23 THE COURT: Thank you. You're free to leave the  
24 courtroom.

1 THE COURT: Thank you. When the jurors went back  
2 to the jury room to deliberate there was an exhibit list  
3 inadvertently sent back.  
4 Do you remember seeing an exhibit list.  
5 A JUROR: I don't know recall exactly what it  
6 was. There was some papers in some plastic bags.  
7 THE COURT: Did you see any kind of list of any  
8 items?  
9 A JUROR: I don't recall.  
10 THE COURT: There was a note sent out to me  
11 asking to see a photograph.  
12 Do you remember anything about that?  
13 A JUROR: No, I do not.  
14 THE COURT: Do you know what the letters JOC  
15 stand for?  
16 A JUROR: No, I don't.  
17 THE COURT: When the jurors were deliberating,  
18 was it your impression that whether the State had proven the  
19 Defendant guilty beyond a reasonable doubt was a close call?  
20 A JUROR: No.  
21 THE COURT: Do you know what the letters CR in a  
22 case number mean?  
23 A JUROR: No.  
24 THE COURT: Each day there is a list posted

1 Jody Smith Tiske.  
2 You didn't subpoena the alternate, did you?  
3 MR. ROCHE: No.  
4 JODY SMITH TISKE,  
5 called as a witness in this matter,  
6 having been first duly sworn,  
7 testified as follows:  
8 EXAMINATION  
9 THE COURT: Please state and spell your name.  
10 A JUROR: Jody Smith Tiske. First name, J-O-D-Y.  
11 Last name, S-M-I-T-H, space T-I-S-K-E.  
12 THE COURT: When the jurors went to the jury room  
13 to deliberate, there was a jury list that was inadvertently  
14 sent into the jury room.  
15 Do you recall that?  
16 A JUROR: I do recall it.  
17 THE COURT: Did you read that list?  
18 A JUROR: I did.  
19 THE COURT: What if anything on there stood out  
20 to you?  
21 A JUROR: Primarily the glasses case with the  
22 drug in it.  
23 THE COURT: Why was that significant?  
24 A JUROR: Basically it was what the case was

1 about, that was the primary, the primary evidence that was  
2 being presented.

3 THE COURT: I received a note from your  
4 foreperson asking to see a photograph that was on that list.  
5 Do you remember any discussion about that?

6 A JUROR: Vaguely, yeah.

7 THE COURT: What do you remember about that?

8 A JUROR: I just remembered that the photographs  
9 were more explanatory so it was an agreed that we would, you  
10 know, seeing a picture would be easier I guess to understand  
11 what it is that we were looking at, deliberating.

12 THE COURT: Did the fact that that photo was on  
13 the exhibit list and that you didn't see it have any impact on  
14 your verdict?

15 A JUROR: It didn't.

16 THE COURT: Do you know what the letters JOC  
17 stand for?

18 A JUROR: I don't. Not off the top of my head.

19 THE COURT: When the jurors were deliberating,  
20 was it your impression that the jurors saw your verdict as a  
21 close call?

22 A JUROR: My verdict?

23 THE COURT: Yours or the jury as a whole?

24 A JUROR: No.

1 A. I don't.

2 Q. One of the things listed on the exhibit list is  
3 certified JOC for Case CR-FP-11-0469 in that context.

4 What do you think case means?

5 A. I really --

6 Q. If anything?

7 A. -- it does yeah, I'm --

8 Q. Okay.

9 A. I'm -- no.

10 Q. That's fine.

11 A. No, I don't.

12 MR. LEAMON: Nothing further.

13 THE COURT: Any questions, Mr. Roche?

14 MR. ROCHE: No, Your Honor.

15 THE COURT: Thank you. You may leave the  
16 courthouse.

17 A JUROR: Okay. Thank you.

18 THE COURT: Next is Dora Torres.

19 DORA TORRES,  
20 called as a witness in this matter,  
21 having been first duly sworn,  
22 testified as follows:  
23  
24

1 THE COURT: Do you know what the letters CR in a  
2 case number mean?

3 A JUROR: I don't.

4 THE COURT: Each day there is a list posted  
5 outside the two courtrooms on this floor app of hearings that  
6 are going to be heard that day.

7 When you were here for jury duty, did you happen  
8 to read either of those lists?

9 A JUROR: I did not.

10 THE COURT: Any questions, Mr. Leamon?

11 EXAMINATION

12 BY MR. LEAMON:

13 Q. When you were read the list, did you assume that  
14 everything on that list existed in some form or another?

15 A. I did. I assumed.

16 Q. Okay.

17 A. That it was part of a --

18 Q. And so when you were reading the list, you were  
19 talking about this photograph, but there were quite a few  
20 other things missing.

21 Do you remember talking about any of the other  
22 things that were missing?

23 A. I really don't.

24 Q. Okay.

1 EXAMINATION

2 THE COURT: This will be painless. Will you  
3 please state and spell your name.

4 A JUROR: Dora Torres.

5 THE COURT: Can you spell to for me.

6 A JUROR: D-O-R-A. T-O-R-R-E-S.

7 THE COURT: When the jurors went back to the jury  
8 room to deliberate, a list was sent back there with you of  
9 exhibits.

10 Do you recall that list?

11 A JUROR: Yeah.

12 THE COURT: Did the jurors discuss it?

13 A JUROR: Yes.

14 THE COURT: What was discussed?

15 A JUROR: I was (indiscernible) tell you, it was  
16 plastic bag with evidence.

17 THE COURT: Um-hum.

18 A JUROR: (Indiscernible).

19 THE COURT: You need to speak up a little bit.

20 A JUROR: Pictures.

21 THE COURT: Okay. What did you discuss about the  
22 pictures?

23 A JUROR: I don't remember.

24 THE COURT: There was a request sent out to me to

1 see one of the pictures.  
2 Do you remember that?  
3 A JUROR: I don't remember.  
4 THE COURT: You don't remember.  
5 A JUROR: Exactly.  
6 THE COURT: Okay. Do you know what the letters  
7 JOC stand for?  
8 A JUROR: JOC, no.  
9 THE COURT: When you and the jurors were  
10 deliberating, did you think it was a tough decision on whether  
11 she had been proven guilty beyond a reasonable doubt?  
12 A JUROR: I did, yeah, it was tough.  
13 THE COURT: It was tough, why was that?  
14 A JUROR: Because (indiscernible) everybody  
15 deserves a second chance in life.  
16 THE COURT: Are you satisfied with your verdict  
17 of guilty?  
18 A JUROR: Not really.  
19 THE COURT: The verdict was unanimous. So at  
20 some point, you must have said you felt she was guilty; is  
21 that right?  
22 A JUROR: Yeah, I do.  
23 THE COURT: Did you feel that anybody was  
24 pressuring you to make that decision?

1 what it was. I think --  
2 THE COURT: Do you know what the letters CR mean  
3 in a case number?  
4 A JUROR: CR?  
5 THE COURT: Um-hum.  
6 A JUROR: I don't know.  
7 THE COURT: Each day outside the courtroom,  
8 there's a list of the cases that are going to be heard that  
9 day outside this courtroom and the one across the hall.  
10 When you were here serving on the jury, did you  
11 ever read either of those lists?  
12 A JUROR: No, I don't remember.  
13 THE COURT: And it seems to me that English is  
14 not your first language; is that correct?  
15 A JUROR: It's not, yes.  
16 THE COURT: Was there anything that went on in  
17 the trial that you didn't understand?  
18 A JUROR: No.  
19 THE COURT: Mr. Leamon, any questions?  
20 MR. LEAMON: Yes.  
21 EXAMINATION  
22 BY MR. LEAMON:  
23 Q. I know this has been a long time so it's probably  
24 hard to remember specifics. But you've been asked questions

1 A JUROR: No, not at all.  
2 THE COURT: So, if you had to do it again today,  
3 with the evidence you had, would you still vote guilty?  
4 A JUROR: Yes.  
5 THE COURT: So I think what you're telling me is  
6 was just a hard thing to do to sit in judgment of another  
7 person?  
8 A JUROR: Yes, it was.  
9 THE COURT: I understand that.  
10 Did that list of exhibits have any impact on the  
11 verdict?  
12 A JUROR: Yes.  
13 THE COURT: And what was that?  
14 A JUROR: It was evidence, pictures.  
15 THE COURT: There were anything on the exhibit  
16 list that you did not have in the jury room.  
17 Was there a discussion about that?  
18 A JUROR: I don't remember.  
19 THE COURT: Did the fact that you didn't have all  
20 of those things in the jury room affect your decision?  
21 A JUROR: I Guess.  
22 THE COURT: And how was that?  
23 A JUROR: It was -- something was (indiscernible)  
24 we were talking about all the jurors, but I don't remember

1 about whether this was a close case and whether it was a tough  
2 case to decide.  
3 So if you can remember back to the trial, there  
4 was discussion about maybe the drugs belong to another person.  
5 Do you remember that argument being made at the  
6 trial?  
7 A. What was the question again?  
8 Q. So do you remember this argument about that  
9 perhaps the drugs belonged not to Miss Gravelle, but to  
10 somebody else?  
11 A. Yes, I remember that.  
12 Q. Do you remember that being discussed in the jury  
13 room?  
14 A. Yes.  
15 Q. Did anybody yourself included thing that the  
16 drugs could have belonged to another person?  
17 A. Yes, it could be.  
18 Q. Okay.  
19 A. I don't know.  
20 MR. LEAMON: Thank you. Nothing further.  
21 THE COURT: Mr. Roche, any questions?  
22 EXAMINATION  
23 BY MR. ROCHE:  
24 Q. There's been some questions about whether the



1 list of exhibits affected the verdict, and it sounded to me  
2 like there might have been some confusion, because whenever  
3 you were asked you would talk about the bags that had the  
4 evidence and the photographs.  
5 Did the white piece of paper with the list on it  
6 affect your verdict, or was it the actual evidence that you  
7 considered? Or both?  
8 A. I think both.  
9 Q. In what way did the white piece of paper with the  
10 list on it affect your verdict?  
11 A. I think it was a picture of something that -- but  
12 I don't remember what it was. It was a picture we compared, I  
13 think it was. It was a case with sunglasses or something like  
14 that, but it's kind of like a different color, or I don't  
15 know, it was weird to me. But I don't know.  
16 It was like, because (indiscernible) of the --  
17 I'm a photographer, you know, and we were comparing the  
18 pictures and in the light and it was kind of, I don't know,  
19 kind of different to me, both pictures and it's what I  
20 remember.  
21 Q. You remember talking comparing a picture with the  
22 actual item?  
23 A. I think so, or an item or I don't -- with another  
24 picture, I don't really remember.

1 JACOB CARPENTER,  
2 called as a witness in this matter,  
3 having been first duly sworn,  
4 testified as follows:  
5 EXAMINATION  
6 THE COURT: Please state and spell your name.  
7 A JUROR: Jacob Carpenter. J-A-C-O-B.  
8 C-A-R-P-E-N-T-E-R.  
9 THE COURT: When you and the jurors were sent  
10 back to the jury room to deliberate, an exhibit list was  
11 inadvertently sent back with you.  
12 Do you remember seeing that list?  
13 A JUROR: Yes.  
14 THE COURT: Did you and the other jurors discuss  
15 that list?  
16 A JUROR: Yes.  
17 THE COURT: What was the discussion about?  
18 A JUROR: From what I recall, it was just what  
19 was on the exhibit list and that was about it.  
20 THE COURT: Is there anything about what was on  
21 the exhibit list that stood out to you?  
22 A JUROR: At this point, no, I don't remember  
23 anything on the exhibit list.  
24 THE COURT: There was a request sent to me asking

1 Q. Was the fact that there was a picture that was  
2 not there a factor in designed whether or not the Defendant  
3 was (indiscernible)?  
4 A. I don't know.  
5 Q. You stated that you remember arguing, discussing  
6 the argument that the drugs may have belonged to someone else.  
7 Was the verdict based on your decision that the  
8 drugs were possessed by the Defendant?  
9 A. My decision? My -- my personal.  
10 Q. Yes?  
11 A. I don't know. (Indiscernible).  
12 Q. What did you base your decision on?  
13 A. It was all the evidence and everybody was talking  
14 about yeah, this is pretty tough, but she must be guilty.  
15 MR. ROCHE: No further questions, Your Honor.  
16 THE COURT: Anything on that, Mr. Leamon?  
17 MR. LEAMON: No, Your Honor.  
18 THE COURT: Thank you. You may leave the  
19 courthouse.  
20 A JUROR: Thank you.  
21 THE COURT: Jacob Carpenter.  
22  
23  
24

1 to see a photograph that was on the exhibit list that you all  
2 did not back in the jury room.  
3 Do you remember that?  
4 A JUROR: No.  
5 THE COURT: What impact, if any, did the list  
6 have on your verdict?  
7 A JUROR: None.  
8 THE COURT: Do you know what the letters JOC  
9 stand for?  
10 A JUROR: No.  
11 THE COURT: When you were all deliberating, did  
12 you or the other jurors view it as a close call whether the  
13 State has proven the Defendant guilty beyond a reasonable  
14 doubt?  
15 A JUROR: No.  
16 THE COURT: Do you know what the letters CR in a  
17 case number mean?  
18 A. No.  
19 THE COURT: Each day there are lists posted  
20 outside of this courtroom and the courtroom across the hall of  
21 the cases that will be heard that day.  
22 When you were here for jury duty, did you read  
23 any of those lists?  
24 A JUROR: No.

1 THE COURT: All right. Mr. Leamon, any  
2 questions.  
3 EXAMINATION  
4 BY MR. LEAMON:  
5 Q. Do you personally remember reading the exhibit  
6 list?  
7 A. I remember reading it, yeah, but I couldn't tell  
8 you what's on it.  
9 Q. Yeah, I understand. It's been quite a while  
10 since we were at trial.  
11 So was it your assumption that everything listed  
12 on the exhibit list, I mean everything listed on the exhibit  
13 list, I know this sounds weird, existed that these were all  
14 things that were related to the case?  
15 A. I assume they were related to the case, because  
16 they were on the exhibit list. Beyond that, nothing.  
17 Q. Okay. And I know there's not a lot talk about  
18 the photographs but do you, and I know it's been a long time,  
19 but do you remember discussing all of the items and I guess,  
20 did the jury as whole go one by one through the exhibit list  
21 and kind of discuss each item or do you remember?  
22 A. The only thing that I can remember off of that is  
23 we discussed the glasses case, beyond that I don't remember  
24 any pictures or anything like that.

1 MR. LEAMON: Okay. No further questions.  
2 THE COURT: Any questions, Mr. Roche?  
3 MR. ROCHE: No, Your Honor.  
4 THE COURT: Thank you, Mr. Carpenter, you may  
5 leave the courthouse.  
6 A JUROR: Thank you.  
7 THE COURT: Brad Frandsen.  
8 BRAD FRANDSEN,  
9 called as a witness in this matter,  
10 having been first duly sworn,  
11 testified as follows:  
12 EXAMINATION  
13 THE COURT: Please state and spell your name.  
14 A JUROR: Brad Frandsen. B-R-A-D.  
15 F-R-A-N-D-S-E-N.  
16 THE COURT: You were the foreperson of this jury;  
17 correct?  
18 A JUROR: Yes, ma'am.  
19 THE COURT: My questions really has nothing to do  
20 with what we're doing here, I'm just curious. How did you  
21 come to be the foreperson?  
22 A JUROR: Volunteered.  
23 THE COURT: I often wondered if people  
24 volunteered or got drafted or how that really happens.

1 A JUROR: The rest of them looked scared, I  
2 figured it was two words at the most, so --  
3 THE COURT: Okay.  
4 A JUROR: Even in my side is I could volunteer to  
5 say one or the other.  
6 THE COURT: Okay, all right. I appreciate you  
7 being the foreperson.  
8 You sent out a letter to me asking to see an item  
9 that was sent back in the courtroom or back to the jury room.  
10 Do you remember that?  
11 A JUROR: Yes.  
12 THE COURT: Did you, you must have read that  
13 list?  
14 A JUROR: Yeah. We just wanted to see what was  
15 inside the bag fully. After it was taped closed, as a group,  
16 we were just kind of curious as to what was inside.  
17 And then shortly after, they decided to  
18 deliberate. I'm not really sure we asked the question and  
19 then decided we were good right afterwards.  
20 THE COURT: All right. That list had other items  
21 on it. Did you discuss anything else on the list other than  
22 the photograph you wanted to see?  
23 A JUROR: Just the photograph and the bag with  
24 the eye glasses case I do believe was on there as well.

1 THE COURT: Did you realize that there were items  
2 on that list that you did not have in the jury room?  
3 A JUROR: No. Not that I recall.  
4 THE COURT: What impact, if any, did that list  
5 have on your verdict?  
6 A JUROR: Mine personally, it didn't -- none of  
7 that mattered. From what we saw in the room here was where I  
8 made my decision.  
9 THE COURT: Did it seem to have affected  
10 anybody's decision that there are items that you didn't have?  
11 A JUROR: No. Second set, they deliberated  
12 quickly after. I mean, it was more of a curious question in  
13 my opinion than it was anything. Just I think we thought that  
14 it was odd that we didn't get to see everything as fully as,  
15 you know, they might show on a TV show, I suppose, from how it  
16 works here in the court, I guess.  
17 THE COURT: It's a lot more fun on TV.  
18 Do you know what the letters JOC stand for?  
19 A JUROR: No.  
20 THE COURT: When the jurors were deliberating,  
21 did it seem to you that this case was a close call on whether  
22 the Defendant had been proven guilty beyond a reasonable  
23 doubt?  
24 A JUROR: No. I mean, there was plenty of

1 discussion on both sides of both what we all thought, I don't  
2 think so. It was pretty cut and dry on what we thought.  
3 THE COURT: Do you know what the letters CR in a  
4 case number mean?  
5 A JUROR: No.  
6 THE COURT: Each day there is a list posted  
7 outside this courtroom and the one across the hall of the  
8 cases that the court is going to hear that day.  
9 When were you here for your jury service, did you  
10 read either of those lists?  
11 A JUROR: No, I did not.  
12 THE COURT: Any questions, Mr. Leamon?  
13 MR. LEAMON: No, Your Honor.  
14 THE COURT: Any questions, Mr. Roche?  
15 MR. ROCHE: No, Your Honor.  
16 THE COURT: Thank you, Mr. Frandsen. You may  
17 leave the courtroom.  
18 A JUROR: Thank you.  
19 THE COURT: I think that's everybody anybody else  
20 out there.  
21 THE BAILIFF: There is not.  
22 THE COURT: All right. Argument, Mr. Leamon?  
23 MR. LEAMON: Yes, Your Honor. Looking at this  
24 case, I first kind of want to discuss the standard of review,

1 they looked at how the California Supreme Court had handled  
2 these kind of cases before, and they approved of language that  
3 came from California that essentially there's a presumption of  
4 prejudice and there is evidence of -- not admitted at trial is  
5 brought into the jury room.  
6 So using the framework of that analysis, and  
7 applying it to this case, I think it does require a mistrial.  
8 So the first questioned is, did the jury receive  
9 evidence not admitted in trial. And I think that's an  
10 undoubted yes. I don't think we would be here if we didn't  
11 think that the jury had received evidence.  
12 Now, did they receive physical evidence that was  
13 not admitted? Did she receive the actual photographs, no.  
14 But they did learn of the pieces, existence of these items and  
15 testimony and I kind of liken it to testimony.  
16 You know they didn't physically see the item, but  
17 they learned about it the same way somebody would learn about  
18 something through testifying and that's what this exhibit list  
19 did clue them in on the existence of these things that were  
20 not admitted at trial. So I think the first step of the  
21 analysis is complete.  
22 So then we have to go see whether or not the  
23 State proved beyond a reasonable doubt that no prejudice  
24 occurred, and like I said, in these type of situations

1 and part of the reason for that is in rereading my motion  
2 today and rereading the State's opposition and rereading the  
3 Winiarz case, this is a very tough standard of review for the  
4 State to overcome.  
5 And I know there's a lot of talk about the  
6 Winiarz factors. And I think the way the opinion is written,  
7 because most of it is talking about three these three factors,  
8 but really those are factors for an appellate court.  
9 The trial court, the decision they have to make  
10 is first if the jury is allowed to consider evidence not  
11 admitted at trial. And if they are, a new trial must be  
12 granted and listened to piers beyond a reasonable doubt that  
13 no prejudice has resulted. So in my mind, that means there's  
14 kind of a two-part analysis and kind of a burden shifting.  
15 First we have to determine whether or not  
16 evidence the jury was presented with evidence and not admitted  
17 at trial. If that's the case, I believe the burden then would  
18 shift on the State to show that beyond a reasonable doubt that  
19 no prejudice resulted as a result of the jury considering the  
20 inadmissible evidence. And I think Winiarz is probably the  
21 case most on point in Nevada law dealing with the unique  
22 scenario like we have here.  
23 Furthermore, Winiarz goes on to state that these  
24 kind of cases are difficult and that in examining prejudice,

1 prejudice is presumed and I don't think they can meet that  
2 burden.  
3 And looking at it, I think what a close case  
4 meant to people. I think that kind of meant something  
5 different to everybody else, but to me, I think the person  
6 probably most candid on the issue was Miss Torres.  
7 First she said it was tough. Then Your Honor  
8 asked was it tough because of the evidence or just was it a  
9 personal decision, you know, just to convict somebody is a  
10 tough decision. And then she said, yeah, it's tough to  
11 convict somebody.  
12 But then I followed up, you know, was there  
13 discussion, you know, to try to remember back to the trial,  
14 you know there was evidence that there was another person in  
15 the car and who the drugs could have belonged to.  
16 And I asked her, you know, do you believe that  
17 those could have been his drugs, and she said, yeah, it could  
18 have.  
19 I mean, to me, that sounded like a reasonable  
20 doubt, but I think that certainly weighs in the favor of this  
21 being a close case. But again, those are the Court's job is  
22 to determine whether the State proved the case beyond a  
23 reasonable doubt and those other Winiarz factors, I think they  
24 are informative, but they're not dispositive of the case that

1 would be if Your Honor did not declare a mistrial.  
2 That's the standard of the review of the Supreme  
3 Court or the Court of Appeal appeals is using whether to  
4 determine whether this Court erred in not granting a mistrial.

5 And I think I myself got caught up in that  
6 language, because that's the majority of the opinion talking  
7 about these factors.

8 Going back to the argument, there was  
9 (indiscernible) motion. Most of these -- nobody knew what CR  
10 meant and no one knew what JOC meant, but at least one person,  
11 and I don't think everybody was asked, but at least one  
12 person, I asked her what a case meant, and she said she  
13 assumed it was a case like what's going on today which is  
14 correct.

15 So there's evidence that in almost everybody  
16 admitted that they read it too. So, they have not -- they're  
17 put on notice of having knowledge and they said they read it,  
18 so they read that part of it too.

19 They might not have necessarily all of it -- put  
20 it together, they saw a case and at least one person knew what  
21 case meant and that was a big part of Miss Gravelle's decision  
22 not to testify is to keep out any notice of prior convictions.  
23 She had prior felony convictions used to impeach had she  
24 testified.

1 And at the very least, the jury, at least one  
2 person understood that there was a case, that this meant case  
3 and she said that she read the exhibit list.

4 And then also going to whether or not the case  
5 proved -- or the State proved its case beyond a reasonable  
6 doubt. In Nevada, jury decisions in criminal cases have to be  
7 unanimous.

8 And we did not hear from Miss Free. We don't  
9 know what her answers would have been. We don't know whether  
10 or not this would have affected, and I'm sure the State is  
11 going to say, you know, this testimony is repetitive at some  
12 point, but every person is different.

13 Every person had a different view on how close  
14 the case was and we don't know why Miss Free's was and she's  
15 one out of 12. I mean, that's a significant part of the jury  
16 and we don't know what she had to say about this.

17 And it's the State's burden to, if the -- Your  
18 Honor finds that there was evidence presented to the jury that  
19 was not admitted at trial, then it's the State's burden to  
20 prove beyond a reasonable doubt that it's not prejudice. And  
21 we don't even have all the jurors testified.

22 So I don't know how they can overcome that burden  
23 when we haven't talked to 1, 12th of the jury. So given this  
24 high burden, we do believe a mistrial is appropriate.

1 And also in going back to the presumption of  
2 prejudice, this is almost similar to the Winiarz case. In the  
3 Winiarz case, every single one of the jurors was polled and  
4 they said that inadmissible, they said the evidence that was  
5 not admitted at trial had no influence on their decision.

6 But the Winiarz case reversed in spite of that  
7 testimony and I think they understand the difficulty of  
8 talking about these things. A lot of time has passed, some  
9 peoples' memories were a little bit fuzzy and that what's to  
10 be expected this was, you know, I think we're at about four  
11 months old in February.

12 But just so -- just because the answers were  
13 given, similar answers seem to be given in the Winiarz case  
14 and they still found that the Court erred in not granting a  
15 mistrial.

16 So we do believe a mistrial is appropriate in  
17 this case and that's what we would ask Your Honor to do.

18 THE COURT: Mr. Roche?

19 MR. ROCHE: Your Honor, the State's position is  
20 pretty well stated in our opposition to the motion. The only  
21 issue was that at the time that the motion was drafted, the  
22 State represented that we have no evidence that the Court --  
23 the jurors considered any of this or thought any of this about  
24 this that, and now we've heard from 11 of the 12 jurors who

1 all stated (indiscernible) they don't know what a JOC is.  
2 They don't know what a CR is. But the evidence elicited  
3 impact their verdict.

4 The only juror that the defense is harping on is  
5 the juror who speaks English as a second language. And  
6 clearly there was some language barrier which was frustrating.  
7 But every juror who speaks English as a first language was  
8 pretty blunt and clear that it didn't impact the verdict  
9 whatsoever. None of them said it was a close case except  
10 possibly that juror who I tried to get more information from  
11 and wasn't able to.

12 But, that's not the point. This isn't a hearing  
13 at which the defense gets to challenge whether the evidence  
14 proved their client (indiscernible). That is not what this  
15 hearing is about.

16 This hearing is about whether or not there was  
17 inadmissible evidence presented to the jury and whether that  
18 prejudiced the verdict. It's quite clear that that didn't  
19 occur.

20 An undoubted yes that there's a list of exhibits  
21 that nobody saw. They only had the evidence. The quote that  
22 this is similar to the Winiarz case is ridiculous, because  
23 that was a murder trial where the jury received copies of  
24 notes that showed that a previous jury had found that

1 Defendant guilty of first degree murder.  
2 This is so far from that that it's ludicrous to  
3 even make an argument that this is like Winiarz. The Winiarz  
4 doctrine weigh very heavily against a mistrial. This is a  
5 least serious felony that's that someone can stand trial for.  
6 It was not a close case.

7 The one thing that the Ms. Beatrice Torres stated  
8 that hey, it might have belonged to Mr. Dunn, it might have.  
9 The State's argument was joint possession. It doesn't matter  
10 whether he possessed those drugs. They could both possess  
11 those drugs. They were -- that's one of the arguments. It's  
12 not precluding them finding her guilty beyond a reasonable  
13 doubt for one juror to say, hey, he might have had possession  
14 of those drugs.

15 I think the arguments and the application of  
16 Winiarz is pretty well addressed. I don't want to belabor the  
17 point. Basically the State was just here to see what these  
18 jurors would say, and every single one of them unanimously  
19 said that they list -- the jury list identifying her prior  
20 convictions, they had no clue what that was.

21 There's been no argument presented about the  
22 weight of the drugs. I think that was pretty well addressed  
23 in the State's response. There's no prejudice from seeing the  
24 net weight of the drugs when they were given the gross weights

1 MR. ROCHE: I'm not sure what the argument's  
2 going to be. She was asked specifically is there anything  
3 that happened at trial that she didn't understand, and she  
4 said no. And when she was critical about her verdict. The  
5 questions that were asked were pointed, and she stated it was  
6 a tough decision because everybody deserves a second chance in  
7 life.

8 And then when she was asked a followup question,  
9 she quite clearly said she was guilty. She wasn't pressured  
10 to (indiscernible) guilty verdict, and if she had to do it  
11 again today, she would still find the Defendant guilty.

12 And was asked whether there was an issue that she  
13 didn't understand and she stated, no, she did understand what  
14 happened at trial. I don't think there's much an issue there.  
15 And if there is, it has not been raised.

16 Thank you.

17 THE COURT: All right. Mr. Leamon, you get the  
18 final argument and I also want it hear your argument about her  
19 English ability.

20 MR. LEAMON: Obviously I think it was a concern.  
21 I didn't expect this issue to come up today. I mean, I think  
22 our interactions were fairly limited in voir dire. I don't  
23 remember specifically if she was asked whether or not English  
24 was her first or second language or not.

1 and they received those as (indiscernible). And the only  
2 other possibility is the fact that a picture that was not  
3 provided to them that was listed.

4 So they knew a picture existed, but they didn't  
5 know what they had. But they had other pictures of the items  
6 that were testified to were taken from that eyeglasses case.  
7 The officers testified that (indiscernible) I found a item in  
8 an eyeglasses, they found this and this and this.

9 They had an eyeglasses case in an envelope, they  
10 were able to hear what was in it. And they had pictures of  
11 the items that were relevant that were found in the eyeglasses  
12 case. So the fact that there was a picture they didn't see,  
13 they all testified that, in fact, (indiscernible).  
14 (Indiscernible) assert that the motion should be denied.

15 THE COURT: There's an issue that came up during  
16 the hearing that kind of surprised me that was Miss Torres'  
17 English language ability, and of course, that's not been  
18 raised in any motion because I expect the two of you didn't  
19 realize that might --

20 MR. LEAMON: That's correct.

21 THE COURT: -- have been an issue, and that does  
22 concern me.

23 So, Mr. Roche, I'm give you a minute or two to  
24 argue that if you want.

1 I can't remember off the top of my head if  
2 something that I wouldn't mind doing more research on, but it  
3 was concerning how some of the conflicting answers that they  
4 got from her, how we had to redirect her several times, and  
5 some of the answers she gave were kind of concerning.

6 It concerns me whether or not she would be  
7 willing to, you know, speak up if you know she really did  
8 believe that those glasses could have belonged to Mr. Dunn.

9 I don't know, given her difficult potential  
10 difficulties with English, whether she would feel comfortable  
11 to be in a position to say how do we know that these --  
12 Mr. Dunn didn't put those there. She said it could be. We  
13 didn't ask any followup questions or joint possession or  
14 anything like that she clearly said, yeah, it could have been  
15 his.

16 Which like I said I think to me sounds a lot like  
17 doubt, and so I do have concerns whether or not you know any  
18 issues with her grasp or her English language skills would  
19 have made her uncomfortable about asserting that position in a  
20 room of 11 other people who I'm sure had their own opinions.  
21 So that's my concerns with that.

22 Like I said I don't remember specifically what  
23 was asked of her on voir dire. My memory of some parts of the  
24 case are fuzzy as well and not being able to look at the

1 transcript at this moment.

2 Going back to the motion itself, I think both our  
3 points are pretty well hammered into the ground between our  
4 initial argument and the motions. But I would say that the  
5 State said all of the people testified to this, you know, or  
6 the case wasn't close or that this had no impact on the  
7 decision.

8 That's not true, because we did not hear from  
9 Miss Free and that's one-twelfth of the jury. We don't know  
10 what she say. We can't assume. It's the State's burden to  
11 prove this beyond a reasonable doubt if Your Honor finds that  
12 the things on the exhibit list do constitute evidence.

13 So I think that's an major factor and the State  
14 not proving prejudice beyond a reasonable doubt, because you  
15 don't know what one-twelfth of the jury thought about this  
16 issue.

17 THE COURT: All right. I will take it under  
18 advisement and get you a decision as soon as I can.

19 Thank you.

20 MR. LEAMON: Thank you.

21 (Proceedings concluded.)

22

23

24

1 STATE OF NEVADA, )  
2 CARSON CITY. ) ss.

3

4 I, SHELLIE LOOMIS, do hereby certify:

5 That on June 27, 2019, a hearing was held in the  
6 within-entitled matter in the Fourth Judicial District Court,  
7 State of Nevada;

8 That said hearing was recorded on JAVS CD-ROM, and  
9 said JAVS CD-ROM was delivered to me for transcription;

10 That the foregoing ROUGH DRAFT TRANSCRIPT,  
11 consisting of pages 1 through 61, is a full, true and correct  
12 transcript of said recorded JAVS CD-ROM performed to the best  
13 of my ability under the circumstances.

14

15 Dated at Carson City, Nevada, this 14th day of  
16 December, 2021.

17

18

19 //Shellie Loomis//  
20 Shellie Loomis, RPR

21

22

23

24

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