

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

2
3
4 **THOMAS CARRILLO,**

5 **Petitioner,**

6 **vs.**

7 **THE FIRST JUDICIAL DISTRICT**
8 **COURT OF THE STATE OF NEVADA,**
9 **IN AND FOR CARSON CITY; AND**
10 **THE HONORABLE JAMES E. WILSON,**
11 **Respondents,**

12 **And**

13 **THE STATE OF NEVADA,**

14 **Real Party in Interest.**

Electronically Filed
Case No. Dec 02 2021 03:49 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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17 **APPENDIX TO PETITION FOR WRIT OF MANDAMUS/PROHIBITION**

18
19 **FIRST JUDICIAL DISTRICT COURT, CARSON CITY**

20 **KARIN L. KREIZENBECK**
21 **Nevada State Public Defender**

22 **SALLY S. DESOTO**
23 **Chief Appellate Deputy**
24 **Bar I.D. No. 8790**
25 **511 E. Robinson St**
26 **Carson City, NV 89701**
27 **(775) 684-1080**
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2021 AUG -9 PM 4: 17

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IN THE FIRST JUDICIAL DISTRICT COURT OF STATE OF NEVADA
IN AND FOR CARSON CITY

THOMAS CARRILLO,

Petitioner,

vs.

Case No.: 21 CR 00158 1B

THE STATE OF NEVADA,

Dept. No.: II

Respondent.

PRETRIAL PETITION FOR WRIT OF HABEAS CORPUS

TO: The HONORABLE JUDGE of the First Judicial District Court
Of the State of Nevada, in and for Carson City

This Petition from the Office of the Nevada State Public Defender, by and
through KARIN L. KREIZENBECK, Nevada State Public Defender, and CHARLES H.
ODGERS, Chief Deputy State Public Defender, attorneys for THOMAS CARRILLO
Petitioner, respectfully shows:

1 1. In compliance with NRS 34.700, the Defendant, THOMAS CARRILLO,
2 waived the 60- day limitation for bringing the accused to trial at his arraignment held on
3 July 13, 2021.

4
5 2. CHARLES H. ODGERS is a duly qualified, practicing licensed attorney in
6 the State of Nevada, and is duly appointed as Chief Deputy in the Office of the Nevada
7 State Public Defender, and has been appointed to represent the Petitioner THOMAS
8 CARRILLO.

9
10 3. Counsel makes application herein on behalf of the Petitioner for a Writ of
11 Habeas Corpus. The petitioner is currently being held in the custody of the Sheriff of
12 Carson City on charges alleged in the Criminal Information filed on July 12, 2021 that
13 the Petitioner committed the crimes of:

14 Count I: BATTERY THAT CONSTITUTES DOMESTIC VIOLENCE,
15 COMMITTED BY STRANGULATION, a category C felony as
16 defined by NRS 33.018, NRS 200.485; and
17

18 Count II: BATTERY THAT CONSTITUTES DOMESTIC VIOLENCE WITH
19 PRIOR FELONY, A category B Felony as defined by NRS 33.018,
20 NRS 200.481, and NRS 200.485(3).;

21
22 4. Specifically, to Count I, that "the Defendant . . . did, by means of
23 strangulation, willfully and unlawfully use force or violence upon his spouse or former
24 spouse, a person to whom he is related by blood or marriage, a person with whom he
25 currently has or once had a dating relationship, and/or a person whom he has a child in
26 common, in the manner following: that Defendant did pin and/or hold Echo Harrison, his
27 girlfriend, to the ground with his hands on her neck and or throat, covering her nose or
28

1 mouth and/or applying pressure to her neck in such a manner as to intentionally impede
2 the normal breathing or circulation of the blood in a manner that creates a risk of death
3 or substantial bodily harm. . . ." The State did not prove probable cause by slight or
4 marginal evidence that strangulation occurred.
5

6 5. As to Count II, the State failed to present sufficient evidence that a prior
7 felony conviction existed.

8 6. No other Petition for Writ of Habeas Corpus has been filed on behalf of
9 said Petitioner.
10

11 WHEREFORE, Petitioner prays this Honorable Court make an Order
12 directing the Court Clerk to issue a Writ of Habeas Corpus directing the said Sheriff of
13 Storey County, Nevada, to bring the above-named Petitioner before Your Honor, and
14 set aside Counts I and II of the Criminal Information due to lack of probable cause.
15

16 Dated this 9th day of August, 2021.

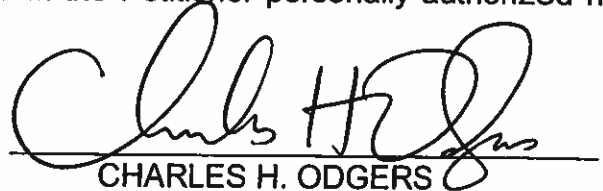
17 KARIN L. KREIZENBECK
18 Nevada State Public Defender

19 By: 

20 CHARLES H. ODGERS
21 Chief Trial Deputy Public Defender
22 511 East Robinson Street, Suite 1
23 Carson City, Nevada 89701
24 (775) 684-1080
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VERIFICATION

Under the penalty of perjury, the undersigned declares that he is the appointed attorney of record for the Petitioner named in the foregoing Petition and knows the contents thereof; that the pleading is true of his own knowledge except as to those matters stated on information and belief, and as to such matters he believes them to be true. Further, the undersigned verifies that the Petitioner personally authorized him to commence the action on his behalf.



CHARLES H. ODGERS
Chief Trial Deputy Public Defender
511 East Robinson Street, Suite 1
Carson City, Nevada 89701
(775) 684-1080

1 **POINTS AND AUTHORITIES**

2
3 **I. Procedural History**

4 On June 20 21, Petitioner THOMAS CARRILLO proceeded to a preliminary
5 examination under Criminal Complaint charging the following:

6
7 Count I: BATTERY THAT CONSTITUTES DOMESTIC VIOLENCE,
8 COMMITTED BY STRANGULATION, a category C felony as
9 defined by NRS 33.018, NRS 200.485; and

10 Count II: OBSTRUCTING A PUBLIC OFFICER: a misdemeanor as
11 defined by NRS 197.190.
12

13 During the preliminary hearing, the State decided that it would also pursue a
14 charge of BATTERY THAT CONSTITUTES DOMESTIC VIOLENCE WITH PRIOR
15 FELONY, a category B Felony as defined by NRS 33.018, NRS 200.481 and NRS
16 200.485(3).
17

18 After the preliminary hearing, the Petitioner was bound over to the District Court
19 on both domestic violence counts. The Criminal Complaint is attached as Exhibit A.
20 The Criminal Information is attached as Exhibit B.

21 The Petitioner was arraigned on July 13, 2021, before this Court by the Criminal
22 Information filed on July 12, 2021 and pleaded not guilty to all counts. The Petitioner
23 waived his right to a speedy trial. The jury trial is scheduled to begin January 24, 2022.
24

25 **II. Legal Argument**

26 **SUMMARY OF ARGUMENT:**

27 1. The State failed to present probable cause by slight or marginal evidence
28 of strangulation and a prior felony conviction of domestic violence.

1 **1. THE STATE FAILED TO PRESENT PROBABLE CAUSE BY SLIGHT**
2 **OR MARGINAL EVIDENCE OF STRANGULATION.**

3 According to NRS 200.481 (1)(i), strangulation means "intentionally impeding the
4 normal breathing or circulation of the blood by applying pressure on the throat or neck
5 or by blocking the nose or mouth of another person in a manner that creates a risk of
6 death or substantial bodily harm."
7

8 At the preliminary examination in this case, witness Helen Kenton testified that
9 on June 12, 2021, she was in her apartment and she heard a loud scuffle. Preliminary
10 hearing transcripts, June 30, 2021, at p. 6:19-8:24.¹ Kenton opened up the front door
11 and she saw a man who she identified as Petitioner, with his girlfriend down on the
12 ground with his hand around her throat. PT at 8:16-9:23. The girlfriend was saying "I
13 had your back" while he had his hand on her neck. PT at 11:17-24.
14

15 On cross-examination, Kenton testified that the girlfriend, Ms. Harrison, was
16 talking but not yelling or screaming. PT at 26:7-18. And that Harrison was talking to
17 Petitioner the entire time. PT at 29:16-18. Kenton testified that Petitioner was holding
18 the neck with his thumb on one side and his fingers on the other. PT at 29:12-14.
19 Kenton testified that, from personal experience, she did not remember being able to
20 speak when she was being choked. PT at 35:18-21. She said when she was choked
21 by an abusive husband, it was challenging to speak, and when she had been able to
22 speak, her voice sounded like pleading. PT at 35:23-36:7.
23

24 She testified that when she saw Petitioner's hand on Harrison's neck, it was not
25 consistent with her experience of being choked, but the pleading voice was consistent.
26
27
28

¹ Hereinafter "PT."

1 PT at 36. But Harrison did not have difficulties speaking as Kenton had experienced
2 when she herself was choked. PT 36:23-37:7.

3 Kevin Patterson testified that on June 12th or 13th, 2021, he was getting off work
4 at about 10:30 p.m. and he heard screaming and crying. PT at 39:1-40:18. He walked
5 outside and he saw Petitioner holding down a female on the concrete by her throat. PT
6 at 41:2-4. Patterson testified that Petitioner's right hand was over the female's throat.
7 PT at 42:8-10. The female was attempting to push him off her but not necessarily
8 attempting to get up from the concrete. PT at 44:18-45:1.

9 Patterson testified that during the time that Petitioner was holding the female
10 down, she was screaming at him, which was why he came out to see what was
11 happening in the first place. PT:6-9. She was screaming at Petitioner the entire time,
12 and then when Patterson had verbal contact with Petitioner, the female made contact
13 with Patterson and asked him not to get involved or call the police. PT at 55:10-19.
14 Patterson testified that she was crying and her voice was full of tears and her body
15 language seemed scared. PT at 55:22-24.

16 Echo Harrison testified that on June 12, 2021, she got really drunk, that she does
17 not usually drink because she's "not very good at it." 61:2-5, 63:11-15. She testified
18 that she was black-out drunk and was being an "ass." PT at 64:1-7. Harrison testified
19 that they had been "day drinking," had started in the morning, and she did not stop until
20 she fell asleep. PT at 64:11-13.

21 Defense counsel asked Harrison about her raspy voice, and she admitted that
22 she smoked a lot of cigarettes and used Zinc pouches which mess with her throat. PT
23 at 70:17-23. She agreed that her raspy voice was normal. PT at 71:4-6. After waking
24

1 up after June 12, 2021, Harrison did not experience with any bruising on her neck or
2 difficulty with breathing or talking. PT at 71:7-11.

3 Sergeant David Legros testified that on June 12, 2021, was patrolling when he
4 saw another deputy with a female and he stopped to assist in the investigation. PT at
5 75:23-76:2. He testified that the female was uncooperative, intoxicated and emotional.
6 PT at 76:13-14. Legros asked the female if she was okay and if she needed to be
7 checked out and the female lifted her chin. PT at 77:15-19. When she lifted her chin,
8 Legros did not see any pronounced injuries. PT at 77:24-78:3.

9 Legros testified that in his training with domestic violence and strangulation,
10 some indicators of strangulation are petechial, losing bowel or urinary control, or
11 blacking out. PT at 78:10-13. He noticed while speaking with the female that her voice
12 was raspy, which is sometimes caused by getting hit in the throat or being choked. PT
13 at 78:16-18. He stated that he had been hit in the throat previously and it makes you
14 cough, it's uncomfortable, and it's tough to vocalize. PT at 78:21-24. Legros testified
15 that the female's name was Echo Harrison. PT at 79:9-10. He asked Harrison if she
16 had any injuries to her throat because of her raspy voice, which is common when
17 people are choked or have injury to the throat. PT at 80:4-7. Harrison denied being
18 assaulted or having any injury to the throat. PT at 80:10-11.

19 Although Legros initially testified that there were several witnesses who verified
20 that Petitioner was strangling Harrison or had his hands on her neck, PT at 102:23-24,
21 he later admitted that he heard those statements from others and not firsthand. PT at
22 112:2-11.

1 Legros admitted that he did not see redness of the throat, that Harrison did not
2 have petechial or hemorrhaging in either eye, and Harrison had not defecated or
3 urinated on herself. PT at 110:11-12, 112:17-113:4. Legros admitted that he had no
4 evidence that Harrison's airway was blocked in any form. PT at 123:4-6. Legros
5 admitted that he had no evidence that Harrison's carotid arteries were blocked or
6 inhibited blood flow in any way, shape or form. PT at 122:24-123:3.

8 Pursuant to NRS 171.206: "If from the evidence it appears to the magistrate that
9 there is probable cause to believe that an offense has been committed and that the
10 defendant has committed it, the magistrate shall forthwith hold the defendant to answer
11 in the district court; otherwise the magistrate shall discharge the defendant." The
12 Nevada Supreme Court has held that a suspect may not be bound over for trial unless
13 the State demonstrates probable cause that the suspect committed the charged crime.
14 *Sheriff v. Richardson*, 103 Nev. 180, 734 P.2d 735 (1987). Probable cause to support a
15 criminal charge "may be based on slight, even 'marginal' evidence, . . . because it does
16 not involve a determination of the guilt or innocence of an accused." *Sheriff v. Hodes*,
17 96 Nev. 184, 186, 606 P.2d 178, 180 (1980) (citations omitted). "To commit an accused
18 for trial, the State is not required to negate all inferences which might explain his
19 conduct, but only to present enough evidence to support a reasonable inference that the
20 accused committed the offense." *Kinsey v. Sheriff*, 87 Nev. 361, 363, 487 P.2d 340, 341
21 (1971).

22 The state failed to prove probable cause at the preliminary hearing in the present
23 case. Neither Kenton nor Patterson testified that Petitioner was strangling or choking
24 Harrison. Kenton testified that Petitioner had his hand around Harrison's throat but that

1 Harrison never stopped talking and that it was not the same as when she had been
2 strangled in her own past experience with an abusive husband. Patterson testified that
3 Patterson was holding Harrison down by the neck. He also testified that Harrison
4 screamed at Petitioner the entire time, except when she turned and spoke to him.
5 Legros testified that there were no injuries or indicators of strangulation except for
6 Harrison talking in a raspy voice, which was the natural sound to her voice, and that she
7 lifted her chin.
8

9 The State argued that Petitioner may not have impeded Harrison's breathing, but
10 quite possibly impeded blood by applying compression to the carotid artery. The State
11 failed to prove this as well. Compression to the carotid artery results in
12 unconsciousness in 10 to 15 seconds. See e.g. *Hill v. Williams*, 2021 U.S. Dist. LEXIS
13 135788, 2021 WL 3082363 [https://www.mussenhealth.us/carbon-monoxide/deaths-](https://www.mussenhealth.us/carbon-monoxide/deaths-from-choke-or-carotid-holds.html#:~:text=If%20properly%20applied%2C%20the%20compression%20of%20th,e%20carotid,approximately%2010,20%20sec%2C%20without%20any%20serious%20side%20effects.)
14 [from-choke-or-carotid](https://www.mussenhealth.us/carbon-monoxide/deaths-from-choke-or-carotid-holds.html#:~:text=If%20properly%20applied%2C%20the%20compression%20of%20th,e%20carotid,approximately%2010,20%20sec%2C%20without%20any%20serious%20side%20effects.)
15 [holds.html#:~:text=If%20properly%20applied%2C%20the%20compression%20of%20th](https://www.mussenhealth.us/carbon-monoxide/deaths-from-choke-or-carotid-holds.html#:~:text=If%20properly%20applied%2C%20the%20compression%20of%20th,e%20carotid,approximately%2010,20%20sec%2C%20without%20any%20serious%20side%20effects.)
16 [e%20carotid,approximately%2010](https://www.mussenhealth.us/carbon-monoxide/deaths-from-choke-or-carotid-holds.html#:~:text=If%20properly%20applied%2C%20the%20compression%20of%20th,e%20carotid,approximately%2010,20%20sec%2C%20without%20any%20serious%20side%20effects.)
17 [20%20sec%2C%20without%20any%20serious%20side%20effects.](https://www.mussenhealth.us/carbon-monoxide/deaths-from-choke-or-carotid-holds.html#:~:text=If%20properly%20applied%2C%20the%20compression%20of%20th,e%20carotid,approximately%2010,20%20sec%2C%20without%20any%20serious%20side%20effects.) (Exhibit D).
18
19

20 The State failed to show that Harrison was unconscious for any amount of time
21 or that Harrison's breathing or blood flow was impeded by compression. Thus, there
22 was no probable cause proven that Petitioner strangled Harrison.
23

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1 **2. THE STATE FAILED TO PRESENT PROBABLE CAUSE AND NOTICE**
2 **THAT PETITIONER HAD A PRIOR FELONY DOMESTIC VIOLENCE**
3 **CONVICTION.**
4

5 For enhancement by prior convictions, the State is required to "show" the facts
6 concerning a prior offense at the preliminary examination. *Parsons v. State*, 116 Nev.
7 928, 935, 10 P.3d 836, 840-41 (2000) Using hearsay statements to "show" a prior
8 conviction is insufficient.

9 In the present case, during the preliminary hearing the prosecutor sought to
10 introduce hearsay testimony by Legros of a prior conviction for felony domestic violence
11 to show the prior conviction. Defense counsel objected because Legros's testimony
12 was based on his viewing of Petitioner's priors on NCIC which often has errors.
13 Additionally, the State did not produce a copy of the NCIC. PT at 82:2-102:16.
14

15 Because the State produced unreliable evidence of Petitioner's prior conviction at
16 the preliminary examination, probable cause was not established. *See e.g. People v.*
17 *Thoma*, 58 Cal. Rptr. 3d 855 (Cal. Ct. App. 2007) (officer's testimony insufficient to
18 determine bodily injury enhancement of prior conviction at preliminary hearing).
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III. Conclusion

Because the State failed to present sufficient probable cause at the preliminary hearing, this Court should hold that Petitioner should not have been bound over on the two felony charges.

Dated this 9th day of August, 2021.

KARIN L. KREIZENBECK
Nevada State Public Defender

By: 

CHARLES H. ODGERS
Chief Trial Deputy Public Defender
511 East Robinson Street, Suite 1
Carson City, Nevada 89701
(775) 684-1080

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CERTIFICATE OF SERVICE

I certify that I am an employee of the office of the Nevada State Public
Defender and that on the date shown below, I served a copy of the foregoing PETITION
FOR WRIT OF HABEAS CORPUS by either preparing for hand-delivery, facsimile,
and/or email a true and correct copy thereof addressed to:

JASON WOODBURY
CARSON CITY DISTRICT ATTORNEY
855 E. MUSSER ST., STE. 2030
CARSON CITY, NV 89701

Dated this 8th day of August, 2021.

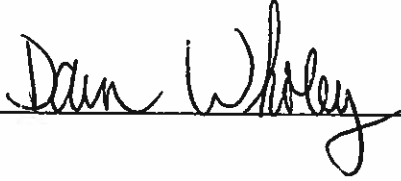
SIGNED: 

EXHIBIT A

Case No. 21 CR 00866 1C

Dept. No. II

2021 JUN 16 AM 9:32

IN THE JUSTICE COURT OF CARSON TOWNSHIP
IN AND FOR CARSON CITY, STATE OF NEVADA

STATE OF NEVADA,

Plaintiff,

v.

THOMAS CARRILLO,

Defendant.

CRIMINAL COMPLAINT

SARAH E. WHITE, Deputy District Attorney for Carson City, Nevada, complains and declares, upon information, belief and/or personal knowledge, that THOMAS CARRILLO, the Defendant, above-named, at Carson Township, in Carson City, State of Nevada, has committed the crimes of **BATTERY THAT CONSTITUTES DOMESTIC VIOLENCE, COMMITTED BY STRANGULATION**, a category C Felony as defined by NRS 33.018, NRS 200.485 and NRS 200.481 (Count I) and **OBSTRUCTING A PUBLIC OFFICER**, a Misdemeanor as defined by NRS 197.190 (Count II), in the manner following:

Count I

**BATTERY THAT CONSTITUTES DOMESTIC VIOLENCE, COMMITTED BY
STRANGULATION**

("C" Felony – NRS 33.018, NRS 200.485 and NRS 200.481)

That the Defendant, Thomas Carrillo, on or about June 12, 2021, at Carson Township, in Carson City, State of Nevada, did, by means of strangulation, willfully and unlawfully use force or violence upon his spouse or former spouse, a person to whom he is related by blood

1 or marriage, a person with whom he currently has or once had a dating relationship, and/or a
2 person with whom he has a child in common, in the manner following: that Defendant did pin
3 and/or hold Echo Harrison to the ground with his hands on her neck and/or throat, covering
4 her nose or mouth and/or applying pressure to her neck in such a manner as to intentionally
5 impede the normal breathing or circulation of the blood in a manner that creates a risk of
6 death or substantial bodily harm, all of which occurred at or near 1400 North Carson Street
7 #105, Carson City, Nevada.

8 **Count II**

9 **OBSTRUCTING A PUBLIC OFFICER**

10 **(Misdemeanor – NRS 197.190)**

11 That the Defendant, Thomas Carrillo, on or about June 12, 2021, at Carson Township,
12 in Carson City, State of Nevada, did willfully and unlawfully, after due notice, refuse or
13 neglect to make or furnish any statement, report or information lawfully required of the
14 person by any public officer, and/or did, in such statement, report or information make any
15 willfully untrue, misleading or exaggerated statement, and/or did otherwise hinder, delay, or
16 obstruct a public officer in the discharge of his official duties, in the manner following: the
17 Defendant did refuse to identify himself to law enforcement and/or did refuse to provide
18 information regarding his relationship to Echo Harrison during the course of a lawful
19 investigation, all of which occurred at or near 1400 North Carson Street #105, Carson City,
20 Nevada.

21 All of which is contrary to the form of the Statutes in such cases made and provided
22 and against the peace and dignity of the State of Nevada. Said Complainant declares under
23 penalty of perjury under the law of the State of Nevada that the foregoing is true and correct
24 and prays that the Defendant may be dealt with according to law.

25 DATED this 16th day of June, 2021.

26 
27 SARAH E. WHITE
28 Deputy District Attorney

EXHIBIT B

REC'D & FILED

2021 JUL 12 PM 2: 15

AUBREY ROWLATT
CLERK

BY S. BARAJAS
DEPUTY

JASON D. WOODBURY
DISTRICT ATTORNEY
Nevada Bar No. 6870
885 E. Musser Street, Suite 2030
Carson City, NV 89701
(775) 887-2072
Attorney for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

STATE OF NEVADA,
Plaintiff,

v.

Raymond
THOMAS CARRILLO,
PCN #NVCCSO6012162C,
Defendant.

Case No. 21 CR 00158 1B

Dept. No. II

CRIMINAL INFORMATION

STATE OF NEVADA }
CARSON CITY }:ss

JASON D. WOODBURY, District Attorney in and for Carson City, State of Nevada, by SARAH E. WHITE, Deputy District Attorney, in the name and by the authority of the State of Nevada, informs the Court that THOMAS *Raymond* CARRILLO, the Defendant, above-named, on or about the 12th day of June, 2021, and before the filing of this Information, at Carson Township, in Carson City, State of Nevada, has committed the crimes of **BATTERY THAT CONSTITUTES DOMESTIC VIOLENCE, COMMITTED BY STRANGULATION**, a category C Felony as defined by NRS 33.018, NRS 200.485 and NRS 200.481 (Count I) and **BATTERY THAT**

1 **CONSTITUTES DOMESTIC VIOLENCE WITH PRIOR FELONY**, a category B
2 Felony as defined by NRS 33.018, NRS 200.481 and NRS 200.485(3) (Count II), in
3 the manner following:

4 **Count I**

5 **BATTERY THAT CONSTITUTES DOMESTIC VIOLENCE, COMMITTED BY**
6 **STRANGULATION**

7 **("C" Felony – NRS 33.018, NRS 200.485 and NRS 200.481)**

8 That the Defendant, Thomas ^{Raymond} Carrillo, on or about June 12, 2021, did, by
9 means of strangulation, willfully and unlawfully use force or violence upon his spouse
10 or former spouse, a person to whom he is related by blood or marriage, a person
11 with whom he currently has or once had a dating relationship, and/or a person with
12 whom he has a child in common, in the manner following: that Defendant did pin
13 and/or hold Echo Harrison, his girlfriend, to the ground with his hands on her neck
14 and/or throat, covering her nose or mouth and/or applying pressure to her neck in
15 such a manner as to intentionally impede the normal breathing or circulation of the
16 blood in a manner that creates a risk of death or substantial bodily harm, all of which
17 occurred at or near 1400 North Carson Street, Carson City, Nevada.

18 **Count II**

19 **BATTERY THAT CONSTITUTES DOMESTIC VIOLENCE WITH PRIOR FELONY**

20 **("B" Felony – NRS 33.018, NRS 200.481 and NRS 200.485(3))**

21 That the Defendant, Thomas ^{Raymond} Carrillo, on or about June 12, 2021, did willfully
22 and unlawfully use force or violence upon the person of his spouse, former spouse,
23 any other person to whom he is related by blood or marriage, a person with whom
24 he is or was actually residing, a person with whom he has had or is having a dating
25 relationship, and/or a person with whom he has a child in common, in the manner

1 following: the Defendant did pick up Echo Harrison, his girlfriend, and/or did hold his
2 hands around her throat and/or did otherwise grab, hold, or strike her, all of which
3 occurred at or near 1400 North Carson Street, Carson City, Nevada.

4 FURTHER, as a matter solely for enhancement of sentence and not for
5 consideration by the trier of fact, it is alleged that the Defendant has been previously
6 convicted of felony that constitutes domestic violence, in the manner following, to wit:
7 the Defendant was arrested on or about September 28, 2018, and convicted of
8 Domestic Battery by Strangulation, a felony, on or about February 3, 2019, by the
9 Second Judicial District Court in and for the State of Nevada.

10 All of which is contrary to the form of the Statutes in such cases made and
11 provided and against the peace and dignity of the State of Nevada.

12 DATED this 12th day of July, 2021.

13 JASON D. WOODBURY
14 District Attorney

15 By: 

16 SARAH E. WHITE
17 Deputy District Attorney
18 Nevada Bar No. 14643
19
20
21
22
23
24
25

1 The following are the names of such witnesses for the State of Nevada as are
2 known to me at the time of filing this Information:

3 Sgt. David Legros 1400 N Carson ST #105
4 Carson City Sheriffs Office Carson City, NV 89703
5 911 E. Musser Street
6 Carson City, NV 89701

7 Jose Nunez 5702
8 Carson City Sheriffs Office
9 911 E. Musser Street
10 Carson City, NV 89701

11 Paul Robbins 5727
12 Carson City Sheriffs Office
13 911 E. Musser Street
14 Carson City, NV 89701

15 CCSO Dispatch Center
16 4645 Snyder Avenue
17 Carson City, NV 89701

18 Kevin Harold Patterson
19 1400 N Carson St #107
20 Carson City, NV 89701

21 Carson Tahoe Hospital
22 1600 Medical Parkway
23 Carson City, NV 89706

24 Richard Rehbein
25 3651 Desatoya Drive
Carson City, NV 89701

Roundhouse Inn
1400 North Carson Street
Carson City, NV 89703

Helen Kenton
200 James Court #63
Mound House, NV 89706

Echo Harrison

EXHIBIT C

CERTIFIED
COPY

1 Case No. 21 CR 00866 1C

2 Department II

3
4 IN THE JUSTICE COURT OF THE STATE OF NEVADA

5 IN AND FOR CARSON CITY

6 BEFORE KRISTIN LUIS, JUSTICE OF THE PEACE

7
8 STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 THOMAS CARRILLO,

12 Defendant.

13 _____/

14 JAVS CD-ROM TRANSCRIPT OF PROCEEDINGS

15 PRELIMINARY HEARING

16 WEDNESDAY, JUNE 30, 2021

17 CARSON CITY, NEVADA

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24 Transcribed by:

Shellie Loomis, RPR

CAPITOL REPORTERS (775) 882-5322

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APPEARANCES:

For the State: Sarah White,
Deputy District Attorney
Carson City, Nevada

For the Defendant: Charles Odgers,
Deputy Public Defender
Carson City, Nevada

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1 CARSON CITY, NEVADA, WEDNESDAY, JUNE 30, 2021, P.M. SESSION

2 -o0o-

3
4 THE COURT: We're on the record. Today is
5 Wednesday, June 30, 2021. This is the time set in the case
6 involving Thomas Carrillo, 21 CR 866 1C. And Mr. Carrillo is
7 present in custody with his attorney, Mr. Odgers. Miss white
8 is here on behalf of the State.

9 This is the time set for a preliminary hearing in
10 this case on a charge of battery that constitutes domestic
11 violence committed by strangulation, a category C felony, as
12 well as obstructing a public officer, a misdemeanor.

13 How are we proceeding today?

14 MR. ODGERS: Your Honor, we're proceeding on a
15 preliminary hearing. I am not prepared to go forward on a
16 trial. That wasn't on calendar for today.

17 MS. WHITE: That's correct, Your Honor.

18 THE COURT: The preliminary hearing is scheduled,
19 that's fine. It's just those are the charges in the
20 complaint, and we can --

21 MR. ODGERS: I understand.

22 THE COURT: -- we can set the trial for a later
23 date if that's what the parties want to do.

24 MR. ODGERS: That would be my preference, Your

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1 Honor.

2 THE COURT: Are you okay with that, Miss white?

3 MS. WHITE: I'm okay with that, yes, Your Honor.

4 MR. ODGERS: I'm not ready to proceed on the
5 obstructing, that wasn't what I was prepping for.

6 THE COURT: Okay. All right. How many witnesses
7 does the State have on the domestic battery strangulation
8 charge?

9 MS. WHITE: I have five witnesses, Your Honor,
10 and their names are Helen Kenton, Kevin Patterson, Echo
11 Harrison, Deputy Paul Robbins, and Sergeant David Legros.

12 THE COURT: All right. Can all the named
13 witnesses please stand. Raise your right hand for me.

14 (Prospective witnesses sworn.)

15 THE COURT: Thank you. Okay. I think I heard
16 from everybody now. All right. Who's your first witness,
17 Miss white?

18 MR. ODGERS: Your Honor, we invoke.

19 THE COURT: Okay.

20 MS. WHITE: And first, Your Honor, I would call
21 Ms. Helen Kenton to the stand.

22 THE COURT: All right. So the Rule of Exclusion
23 has been invoked. That means when you're not in court
24 testifying and you're out in the hallway, don't discuss this

1 case or anything about this case with each other.
2 You can talk about the weather or something else.
3 Mr. Legros always has good stories, but not about this case,
4 until you're discharged from this case. All right. All
5 right.
6 Miss Kenton?
7 MS. WHITE: Yes.
8 THE COURT: Miss Kenton, come on up. You're
9 going to come right up here to the stand with the microphone
10 and enter on that side.
11 When you're up there, you can take your mask off,
12 please. I'm going to ask you to please state your full name.
13 THE WITNESS: Helen Kenton.
14 THE COURT: How do you spell your last name,
15 please?
16 THE WITNESS: K-E-N-T-O-N.
17 THE COURT: Okay. Miss white?
18 MS. WHITE: Thank you.
19 HELEN KENTON,
20 called as a witness on behalf of the
21 STATE, was duly sworn and
22 testified as follows:
23
24

DIRECT EXAMINATION

BY MS. WHITE:

Q. Thank you, Miss Kenton. Do you live in Carson City?

A. Yes, I do.

Q. And did you live in Carson City on June 12th of this year?

A. Yes, I did.

Q. Where in Carson City do you live?

A. 1400 North Carson, Number 111. It's the Roundhouse Inn.

MR. ODGERS: And, Your Honor, I --

THE COURT: What was that address one more time?

THE WITNESS: 1400 North Carson Street, Number 111. It's the Roundhouse Inn.

THE COURT: Okay.

MR. ODGERS: Can we ask the witness to pull the microphone closer to her?

THE COURT: If you could, yes, speak into that microphone.

MR. ODGERS: With the air conditioning going, it's --

THE COURT: Maybe we need to get Mr. Odgers one of those hearing devices.

1 MR. ODGERS: That's what it is.
2 THE COURT: Speak up as best you can.
3 THE WITNESS: Okay.
4 THE COURT: We've got a recording of this, it's
5 really important.
6 THE WITNESS: All right.
7 THE COURT: For all of our record purposes. So,
8 thank you.
9 THE WITNESS: Um-hum.
10 BY MS. WHITE:
11 Q. Were you at your house on the evening of
12 June 12th, 2021?
13 A. Yes.
14 Q. And did anything unusual happen that night?
15 A. I was in my apartment and I heard a noise. I
16 opened up the front door and seen him with the -- with his
17 girlfriend down on the ground with his hand around her throat.
18 Q. Okay. So I'm going to ask a couple clarifying
19 questions.
20 You said you heard a noise, what kind of noise?
21 A. Like a scuffle.
22 Q. Was it a loud scuffle?
23 A. It was pretty loud, if I could hear it over my
24 air conditioning and my TV.

1 Q. Were you watching TV that night?
2 A. Yes, I was.
3 Q. And was your air conditioning running?
4 A. Oh, yes.
5 Q. And when you went outside, you said you saw him.
6 Who is this person that you're referencing?
7 A. This man over here.
8 Q. Okay.
9 A. Thomas.
10 Q. Someone you see in the courtroom today?
11 A. Yes.
12 Q. And you pointed over, over to the table next to
13 me?
14 A. Um-hum.
15 Q. Could you just clarify so we know exactly which
16 gentleman that you're talking about, something that he's
17 wearing?
18 A. The jail suit, the striped suit.
19 Q. Okay. And can you identify that as the same man
20 even with the face mask on?
21 A. Yes.
22 THE COURT: The record will reflect the
23 identification.
24 Go ahead.

1 MS. WHITE: Thank you, Your Honor.
2 BY MS. WHITE:
3 Q. And you say you saw him with his hand on his
4 girlfriend's neck; is that right?
5 A. Correct.
6 Q. Where were they?
7 A. In front of their apartment outside.
8 Q. Was that another apartment at the Roundhouse Inn?
9 A. Yes.
10 Q. Approximately, how far away was that from your
11 apartment? Was that another apartment at the Roundhouse Inn?
12 A. Yes.
13 Q. Approximately, how far away was that from your
14 apartment?
15 A. Two. Two apartments over, catty corner.
16 Q. And, did you just see --
17 MR. ODGERS: Objection, leading.
18 MS. WHITE: I don't believe the question I'm
19 going to ask is a leading question.
20 THE COURT: All right.
21 MS. WHITE: It's to further --
22 THE COURT: Go ahead and finish asking.
23 MS. WHITE: Thank you.
24 THE COURT: And we'll see if Mr. Odgers maintains

1 the objection. Let her finish the question.
2 MS. WHITE: Okay.
3 THE COURT: Don't answer until I rule on it.
4 Okay.
5 MS. WHITE: And I can start it a little
6 differently.
7 BY MS. WHITE:
8 Q. You said you saw his hand on her neck. Was it
9 one hand or two hands?
10 MR. ODGERS: Objection, leading.
11 THE COURT: Overruled. Go ahead.
12 THE WITNESS: One.
13 BY MS. WHITE:
14 Q. Did you see what he was doing with his other
15 hand?
16 A. No.
17 Q. When you stepped outside, did you hear anything?
18 A. Just her saying that I had your back.
19 MR. ODGERS: I'm sorry, her said what?
20 THE WITNESS: She said she had his back.
21 BY MS. WHITE:
22 Q. Did she say that while his hand was on her neck
23 or after?
24 A. While her hand -- while his hand was on her neck.

1 Q. Okay. Thank you. And was anyone else outside?
2 A. There was all kinds of people outside, because
3 there was such a loud scuffle.
4 MR. ODGERS: Objection, speculation, lack of
5 foundation.
6 THE COURT: We'll strike the other parts, but
7 lots of people outside will stand.
8 Go ahead.
9 MS. WHITE: Okay. Thank you.
10 MR. ODGERS: Thank you.
11 BY MS. WHITE:
12 Q. Did you recognize any of the other people who
13 were outside?
14 A. Yes, I did.
15 Q. And who were they?
16 A. One was Kat. There was a couple upstairs named
17 Jacob and Neecee.
18 MR. ODGERS: Jacob and who?
19 THE WITNESS: Neecee. And their neighbor was out
20 which her name is Kaylee.
21 BY MS. WHITE:
22 Q. When you say, "their neighbor", do you mean
23 Thomas's neighbor?
24 A. Meaning -- uh-huh.

1 Q. Okay. And is Kat also known as Kevin Peterson
2 (sic.).

3 A. Yes.

4 Q. Okay. Did you speak with Kat?

5 A. Not until after I walked away from them, because
6 I was trying to break it up.

7 Q. Okay. So, what did you do then to try and break
8 it up?

9 A. I walked over, I said: We don't do this. This
10 isn't right. And he -- he told me to step back, it was none
11 of my business.

12 Q. What did you do then?

13 A. I said it is my business when it's outside on the
14 sidewalk.

15 Q. When you walked up and he said to step back, what
16 was he doing?

17 A. He had his hand around her throat.

18 Q. That entire time?

19 A. Yes.

20 Q. And then what happened?

21 A. And when they finally -- when he finally did let
22 her get up on the ground, she was still saying: I had your
23 back. He walked across the parking lot. And I believe she
24 went inside. And I turned around and I talked to Kevin.

1 Q. Where did she go inside?

2 A. Into her apartment.

3 Q. Do you know what that apartment number is?

4 A. No.

5 Q. Okay. And after you were then talking with Kevin
6 or Kat, what happened?

7 A. I turned around and I -- we both said it wasn't
8 right for this to be going on, and as far as we knew, it had
9 broken up.

10 MR. ODGERS: Pardon me, I'm going to object as to
11 hearsay on what Kevin or Kat, I'm not sure who.

12 THE COURT: Right now, I'm going to ask you Miss
13 Kenton to only talk about what you said.

14 THE WITNESS: Um-hum.

15 THE COURT: Or what you said at the scene, unless
16 the DA asks a specific question and it's approved by the
17 Court; okay?

18 THE WITNESS: Okay.

19 THE COURT: All right, go ahead.

20 MS. WHITE: Okay.

21 BY MS. WHITE:

22 Q. So, while you and Kat were talking, what happened
23 next?

24 MR. ODGERS: And just for clarification, you've

1 used the term Kevin and Kat interchangeably. Is that the same
2 person?

3 MS. WHITE: Yes. Previously I asked if Kat also
4 goes by Kevin Peterson (sic.), and the witness had indicated
5 yes.

6 THE COURT: I heard that.

7 MR. ODGERS: Could you stick with one name or the
8 other?

9 THE COURT: I heard that.

10 MR. ODGERS: Well, I heard that, Your Honor, I'm
11 just trying to make sure the record is clear and I would
12 prefer the State to refer to that witness as one or the other
13 instead of making it sound like there's two different people
14 having two different conversations. That's -- and I'm not
15 trying to make a speaking objection.

16 MS. WHITE: That's fine, Your Honor. I'll
17 clarify. Miss Kenton, moving forward when we're referring to
18 Kevin Peterson and/or Kat, it's my understanding that Kevin
19 prefers to go by Kat, so we'll refer to Kevin as Kat.

20 THE WITNESS: Okay.

21 BY MS. WHITE:

22 Q. Okay. So while you and Kat were speaking, what
23 happened next?

24 A. As far as I knew, it was over, so I went back

1 into my apartment.

2 Q. And what happened once you were back in your
3 apartment?

4 A. I heard another loud noise and Kat had come to
5 knock on my door and say that they were fighting inside the
6 apartment.

7 MR. ODGERS: Objection, hearsay. Move to strike.

8 MS. WHITE: Your Honor, I would ask that the
9 court not consider that for the truth of the matter, but for
10 the effect on the listener.

11 MR. ODGERS: Then there's no reason for her to
12 testify. She needs to indicate that somebody came to the door
13 as a result of that she did whatever. The State uses this,
14 not for the truth of the matter asserted --

15 THE COURT: I'm going to let her proceed, and
16 we'll come back to it if it doesn't lead to the next step.
17 I'm not considering it for the truth of the matter asserted.

18 MR. ODGERS: It shouldn't even be in the record,
19 Your Honor.

20 THE COURT: Okay.

21 MR. ODGERS: If it's not for the truth of the
22 matter asserted --

23 THE COURT: -- okay, I heard --

24 MR. ODGERS: -- why put it on the record --

1 THE COURT: -- I heard your argument.
2 Go ahead.
3 MS. WHITE: Thank you.
4 BY MS. WHITE:
5 Q. Based on that information, what did you do?
6 A. I went to -- I came out of my apartment, walked
7 over towards the apartment that they have and there was
8 children in the apartment, like six children.
9 Q. When you say, "the apartment that they have", do
10 you mean Thomas and his girlfriend?
11 A. Yes.
12 Q. Was the door open?
13 A. Yes.
14 Q. And what else did you see inside besides the
15 children?
16 A. His mother and her boyfriend were trying to get
17 the children out of the apartment so that they didn't have to
18 see what was going on.
19 Q. Did you see Thomas in the apartment?
20 A. Yes.
21 Q. What was he doing?
22 A. He was arguing with her.
23 Q. He was arguing with who?
24 A. His girlfriend.

1 Q. Okay. What was he saying?
2 A. I'm not sure. I just --
3 Q. Okay.
4 A. I was more worried about the children.
5 Q. What was his tone of voice like?
6 A. It was very deep.
7 Q. Okay.
8 MR. ODGERS: Very what?
9 THE WITNESS: Deep.
10 BY MS. WHITE:
11 Q. Was there any emotion behind it, anger?
12 A. Anger.
13 Q. Okay. And what did you do next?
14 A. We were getting the children out to the parking
15 lot so that they could go with the mother's boyfriend and her
16 and we just made sure the kids were getting out of there. I
17 didn't -- the mother's boyfriend had told us to call the
18 police --
19 MR. ODGERS: Objection.
20 THE WITNESS: -- because he was getting out of
21 control.
22 MR. ODGERS: Hearsay, move to strike.
23 THE COURT: Miss White.
24 MS. WHITE: That's fine, Your Honor. I can ask

1 about that another way.

2 THE COURT: Okay. It will be stricken.

3 BY MS. WHITE:

4 Q. At any point, did you contact the police?

5 A. No, I did not until they got there, then they
6 contacted me.

7 Q. Okay. To your knowledge -- well, let me
8 rephrase.

9 Do you know who contacted the police?

10 A. Yes, I do.

11 Q. Who was that?

12 A. That was Kat.

13 Q. Did you tell Kat to contact the police?

14 A. The mother's boyfriend told us to.

15 MR. ODGERS: Objection, Your Honor, hearsay,
16 again. She's testifying to what somebody else told her.

17 THE COURT: Miss White.

18 MS. WHITE: That's fine, Your Honor. I don't
19 think that's important.

20 THE COURT: Okay. It will be stricken.

21 Go ahead.

22 BY MS. WHITE:

23 Q. And did the police then, in fact, arrive?

24 A. Yes, they did.

1 Q. Did you speak with them?

2 A. Yes, I did.

3 Q. What did you tell them?

4 A. I let them know what had happened and what I seen
5 outside and I went back in my apartment.

6 Q. When you say with them outside, again, just to
7 clarify since it's all being recorded?

8 A. With him and his girlfriend.

9 Q. Okay. With Thomas and his girlfriend?

10 THE COURT: With "him" being the Defendant?

11 THE WITNESS: Yes.

12 THE COURT: Thank you.

13 BY MS. WHITE:

14 Q. At any point, did you speak with Thomas or his
15 girlfriend?

16 A. Just when he had his hand around her neck, that's
17 the only time.

18 Q. Okay. Not again after that?

19 A. No.

20 Q. When the police arrived, was Thomas in his
21 apartment?

22 A. I have no idea.

23 Q. Okay.

24 A. They asked me if I knew where he was. I did not.

1 Q. Okay.

2 MS. WHITE: I have no further questions. I would
3 pass this witness.

4 THE COURT: Mr. Odgers.

5 MR. ODGERS: Thank you.

6 CROSS-EXAMINATION

7 BY MR. ODGERS:

8 Q. All right. You keep referring to somebody as the
9 girlfriend. Who's the person that you believe is the
10 girlfriend?

11 A. I believe her name is Echo, which I'm just now
12 learning.

13 Q. So, what leads you to believe that Echo and
14 Thomas are boyfriend/girlfriend?

15 A. They live together. They have a baby together.

16 Q. And how do you know they have a baby together?

17 A. I was told they did.

18 Q. Okay. So you have no personal knowledge?

19 A. No.

20 Q. Okay. So, you don't know whether or not they're
21 actually having sexual relations or if they're just roommates;
22 right?

23 A. No.

24 Q. Okay.

1 MR. ODGERS: Your Honor, I would move to strike
2 on foundational issues, her terminology of Miss Echo as the
3 girlfriend of Thomas.

4 THE COURT: Miss White?

5 MS. WHITE: If I could follow up with a few
6 questions?

7 THE COURT: We'll leave it for now. We'll come
8 back to it.

9 Go ahead.

10 MS. WHITE: Okay.

11 BY MR. ODGERS:

12 Q. You indicate that you were watching TV. What
13 time of night was this or day was this that this incident
14 happened?

15 A. It was late evening, early morning.

16 Q. What time?

17 A. Maybe about 12:30, between 12:30 and 1:30.

18 Q. The incident started between 12:30 and 1:30, or
19 law enforcement arrived at 1:30, or --

20 A. It started between then.

21 Q. It started between 12:30 and 1:30?

22 A. Um-hum.

23 Q. You don't know for sure?

24 A. I'm not exactly sure what time it was.

1 Q. Do you work, ma'am?
2 A. No, I'm a homemaker.
3 Q. Okay.
4 A. And a grandmother.
5 Q. What time did you wake up on December 12th, 2021?
6 A. Probably about 8 o'clock that morning.
7 Q. And you stayed awake until this incident?
8 A. Yes.
9 Q. Okay. Were you drinking?
10 A. No.
11 Q. Do you use marijuana?
12 A. No.
13 Q. Okay. You wear glasses?
14 A. Yes, I do.
15 Q. Were you wearing glasses that night?
16 A. Yes, I wear them all the time.
17 Q. I'm sorry?
18 A. I wear them all the time except for when I'm
19 sleeping or in the shower.
20 Q. Okay. Now, describe the apartment complex or the
21 house that you called it, I didn't get the name, so I
22 apologize?
23 A. It's the Roundhouse Inn, and it's like an L
24 shape.

1 Q. So it's an L shape?
2 A. Um-hum.
3 Q. Yes?
4 A. Yes.
5 Q. Now, are there -- you indicated in your testimony
6 that there's at least two levels?
7 A. Yes.
8 Q. Is this -- the second level, is there a patio or
9 walkway on the outside of the apartment?
10 A. It's a walkway on the outside of the apartment to
11 the apartment.
12 Q. Okay. And in that cover, are there lights like
13 there are in the ceiling here, or what's the lighting like?
14 A. Like this.
15 Q. So, it has recessed type lights?
16 A. Um-hum.
17 Q. Yes?
18 A. Yes, it's very lit up.
19 Q. And just so you know, when you say uh-huh or
20 huh-uh, I'm not trying --
21 A. No, I understand.
22 Q. -- trick you, I just need to make sure whether I
23 know it's a yes or a no?
24 THE COURT: It doesn't translate well on our --

1 THE WITNESS: -- I understand --

2 THE COURT: -- recording.

3 MR. ODGERS: Okay.

4 BY MR. ODGERS:

5 Q. So it has recessed lighting?

6 A. Yes.

7 Q. If you had to estimate the distance between your
8 apartment and where you saw the incident, can you using the
9 courtroom identify distance between where you are and where
10 the incident may have occurred?

11 A. Like from me to the corner of where it adjoins
12 behind her.

13 Q. Okay. So at the corner of the jury box?

14 A. Yes.

15 Q. Okay. If I said that was approximately 20 feet,
16 would you --

17 A. I agree.

18 Q. And the incident where this was occurring, was it
19 on concrete, was it on dirt?

20 A. Concrete.

21 Q. And the incident where the place where this
22 alleged incident occurred, was there any direct light over the
23 top of where they were?

24 A. Yes.

1 Q. Was it directly over? Was it just ambient light?

2 A. No, it was directly over them.

3 Q. Okay. Now, you indicated that you went over to
4 where my client was supposedly choking Miss Echo; is that
5 correct?

6 A. Correct.

7 Q. And was Miss Echo talking?

8 A. Yes, she was.

9 Q. She was talking?

10 A. Um-hum.

11 Q. Was she yelling?

12 A. No.

13 Q. Screaming?

14 A. No.

15 Q. Okay. But she was talking?

16 A. Yes.

17 Q. Was she talking angrily, was she talking calmly?

18 A. Upset.

19 Q. And I think your testimony was she said something
20 to the effect of "I have your back"?

21 A. Yes.

22 Q. Now, you don't know what precipitated this event;
23 is that correct?

24 A. No.

1 Q. You didn't see that?

2 A. No.

3 Q. You didn't hear that?

4 A. No.

5 Q. Now, you indicated that you went to, I use the
6 term to break up the fight, I think that was a direct quote,
7 but if it's not, I apologize.

8 What did you mean by you went to break up the
9 fight?

10 A. To try to stop it.

11 Q. I mean, did you try to put hands on, or were
12 you --

13 A. -- no --

14 Q. -- trying to --

15 A. I walked up and said very calmly, "we don't do
16 that".

17 Q. Ma'am, I apologize, I know you think we're having
18 a conversation, I'm trying to keep this conversational, but
19 please allow me to get my entire question out and I'll let you
20 get your entire answer out; okay?

21 A. Um-hum, yes.

22 Q. Thank you.

23 So, when you walked over there, were you trying
24 to do like a verbal judo, trying to de-escalate the situation?

1 A. Yes, verbally, yes.

2 Q. Okay. Not that you were trying to put your hands
3 on?

4 A. No.

5 Q. And physically break people up?

6 A. No.

7 Q. Okay. I just want to make sure we're clear on
8 what terms you mean.

9 You indicated that there were quote all kinds of
10 people outside end quote and then you went and listed I think
11 four people.

12 Was that all the people that you saw in that
13 location?

14 A. That's about what I seen myself personally.

15 Q. Okay. So when you say, "all kinds of people
16 outside", it was just the four witnesses?

17 A. No, there was probably more.

18 Q. Okay. These are the --

19 A. -- but I couldn't tell you all their names,
20 because I don't know all their names.

21 Q. Okay. Now, you indicated I think on separate
22 occasions that my client quote has a hand around her throat?

23 A. Yes.

24 Q. Okay. I need to be very clear, because words

1 have meaning.

2 When you say he had his hand around her throat?

3 A. Um-hum.

4 Q. What exactly did you mean?

5 A. He was standing over her with his hand on her
6 throat like this, (indicating).

7 Q. So, it was on her throat?

8 A. Yes.

9 Q. Not around her throat?

10 A. Well, it went around her throat. She -- it's the
11 thumb was on one side and his fingers on the other.

12 Q. Okay. So when you say, "around the throat", you
13 mean the thumb was on one side?

14 A. And fingers on the other.

15 Q. And fingers on the other.

16 And again, Miss Echo was talking to him through
17 this entire time?

18 A. Yes.

19 Q. And you said that my client was quote standing
20 over her?

21 A. Yes.

22 Q. When you mean standing over her, was he standing
23 up and she was lying down or she was sitting down?

24 A. Correct. She was lying down on the ground.

1 Q. And which hand did you see my client use to place
2 on her throat?

3 A. I believe it was his right hand.

4 Q. You then said you went into your apartment and
5 you heard another noise?

6 A. No, Kat knocked on my door.

7 Q. Oh, Kat knocked on your door, not that you heard
8 another noise?

9 A. No, Kat knocked on my door.

10 Q. And when Kat knocked on your door, that's when
11 you heard the other noise?

12 A. Yes.

13 Q. And that's when you came out of your apartment
14 and you observed my client, Echo and apparently my client's
15 mom and boyfriend in the apartment?

16 A. Yes.

17 Q. And I believe you testified you have no idea what
18 was being said?

19 A. I have no idea.

20 Q. And you then assisted grandma or my client's mom,
21 I don't know if she's a grandmother or not, my client's mom
22 take the six children and put them in a car?

23 A. I didn't help her. Her boyfriend was taking the
24 kids out to the car.

1 Q. Okay. The boyfriend was taking kids out?
2 A. Yes. The mom was still in the apartment.
3 Q. And you were helping the boyfriend take the kids
4 out?
5 A. Yes.
6 Q. And just so I'm clear, it's my client's mother's
7 boyfriend?
8 A. Yes.
9 Q. You indicated that you thought my client was
10 speaking in a quote deep voice?
11 A. Deep, angry voice.
12 Q. What do you mean by deep, angry voice? Was he
13 yelling? Was he speaking quietly?
14 A. No, it wasn't quietly and it wasn't quite
15 yelling. It was more than a normal, quiet voice.
16 Q. Well, you have a quiet voice. Louder --
17 A. It was louder than me.
18 Q. Final question. Do you have any idea how long
19 Echo and Thomas have lived in that apartment?
20 A. Probably about two months.
21 Q. So they're fairly new?
22 A. Yes.
23 Q. You don't know them from before.
24 A. I know him from before.

1 Q. You know Thomas from before?

2 A. Yes.

3 Q. Was he living there before she moved in or did
4 they move in together?

5 A. They moved in together this time, but he used to
6 live there with his mother.

7 Q. Okay. I lied, one more.

8 Did Thomas ever tell you that he had a child in
9 common with Echo?

10 A. Yes.

11 Q. And when did he tell you that?

12 A. When he first moved in.

13 MR. ODGERS: Thank you, ma'am.

14 THE COURT: So does that take care of the
15 relationship aspect that you had objected to before?

16 MR. ODGERS: It deals with one part of it. I do
17 have an issue relative to the definition of girlfriend, Your
18 Honor.

19 THE COURT: Okay. All right. Miss White?

20 MS. WHITE: Thank you, Your Honor.

21 **REDIRECT EXAMINATION**

22 BY MS. WHITE:

23 Q. I have a couple of follow up questions about what
24 was happening when Thomas's arm or hand was around Echo's

1 neck.

2 You said she was lying on the ground; is that
3 right?

4 A. Correct.

5 Q. And did it appear she was at any point trying to
6 get up?

7 MR. ODGERS: Objection, leading.

8 THE COURT: Overruled. Go ahead.

9 MS. WHITE: Thank you.

10 BY MS. WHITE:

11 Q. Did it appear at any time that she was trying to
12 get up?

13 A. Yes.

14 MR. ODGERS: Again, leading, Your Honor. Move to
15 strike.

16 MS. WHITE: And, Your Honor.

17 MR. ODGERS: She is suggesting.

18 MS. WHITE: That is not a leading question.

19 THE COURT: It's going to be overruled. It's not
20 a leading question. A yes or no question is not a leading
21 question.

22 Go ahead.

23 BY MS. WHITE:

24 Q. What was she doing that indicated to you she was

1 trying to get up?

2 A. She was trying to get his hand off her neck.

3 Q. How so?

4 A. She had her hands trying to push it off.

5 Q. And you indicated she was talking the entire
6 time. Was she talking the entire time that you were there or
7 what did you mean by that?

8 A. She would every like couple seconds or minutes,
9 however it was -- went by quickly, say that I had your back.

10 Q. What did it sound like when she said, "I have
11 your back"?

12 A. I'm not exactly sure what it sounded like, except
13 maybe she had his back on an argument or something, I don't
14 know.

15 Q. Okay. Let me rephrase.

16 Was it -- was what she was saying broken, did it
17 sound like there was pressure on her neck --

18 MR. ODGERS: Objection.

19 MS. WHITE: -- was it clear --

20 MR. ODGERS: Speculation, lack of foundation,
21 leading.

22 THE COURT: Miss White?

23 MS. WHITE: I could lay some foundation.

24 THE COURT: You want to rephrase the question?

1 MS. WHITE: Okay.

2 THE COURT: Go ahead.

3 BY MS. WHITE:

4 Q. When she would say, "I have your back", how did
5 it -- how did it sound?

6 A. Like she was trying to -- trying to plead her
7 case, I guess is how I want to put it.

8 Q. Okay. Was it quiet or loud?

9 A. It was mediocre.

10 Q. Did you have any reason to believe it was hard
11 for her to speak?

12 MR. ODGERS: Objection, lack of foundation.

13 THE COURT: Sustained.

14 BY MS. WHITE:

15 Q. In your experience, have you ever seen some one
16 be choked, whether in personal life on TV?

17 A. Yes, I have.

18 Q. Have you experienced people speaking when they're
19 being choked? Again, whether in personal life, on TV?

20 A. No, I don't remember speaking when I was being
21 choked from my experience.

22 Q. So, you personally have experience being choked?

23 A. Yes, I had an abusive husband.

24 Q. When you were choked, was it challenging for you

1 to speak?

2 A. Yes.

3 Q. Did you ever try to speak when being choked?

4 A. Yes.

5 Q. And did your voice sound different in those
6 moments when you weren't being choked?

7 A. Like I was pleading.

8 MR. ODGERS: Like you were what?

9 THE WITNESS: Pleading.

10 BY MS. WHITE:

11 Q. And in this instance, when you saw Thomas with
12 his hand on Echo's neck, was it consistent with your
13 experience in being choked?

14 A. No.

15 Q. Okay. Was her voice consistent with that?

16 A. Yes.

17 Q. Her voice was consistent with your experience?

18 A. Yes.

19 MS. WHITE: I have no further questions.

20 THE COURT: Mr. Odgers?

21 **RE CROSS-EXAMINATION**

22 BY MR. ODGERS:

23 Q. One question, ma'am, and I'm sorry you suffered
24 through a abusive relationship. When you were asked the

1 question whether or not Miss Echo's voice was consistent with
2 yours when were you pleading with your ex, that was -- you
3 meant it was consistent with pleading with him?

4 A. Correct.

5 Q. As opposed to she wasn't having difficulties
6 speaking?

7 A. Correct.

8 MR. ODGERS: Nothing further, Judge.

9 THE COURT: Is this witness free to go?

10 MS. WHITE: Yes, Your Honor, she can be excused.

11 THE COURT: All right. Thank you, Miss Kenton,
12 you're excused.

13 THE WITNESS: Thank you.

14 THE COURT: Don't talk to any witnesses who still
15 have to testify; all right.

16 THE WITNESS: Yes, ma'am.

17 THE COURT: Thank you.

18 Your next witness?

19 MS. WHITE: Next, Your Honor, I would call Kevin
20 Patterson.

21 THE COURT: Right over here to the witness stand
22 where the microphone is. You're going to go right over to
23 that side there.

24 All right. Once you're seated, you can remove

1 your mask. Do me a favor, please state your full name and
2 spell your last name for the record.

3 THE WITNESS: Kevin Patterson.
4 P-A-T-T-E-R-S-O-N.

5 THE COURT: All right. Go ahead, Miss White.

6 MS. WHITE: Okay. Thank you.

7 MR. ODGERS: Your Honor, before we start, can we
8 have Mr. Patterson slide closer to the microphone, please?

9 THE COURT: Yes.

10 MR. ODGERS: He speaks very softly. I just
11 barely heard that.

12 THE COURT: I just want to make sure, Kevin, that
13 if we have got somebody in the back row, they can hear you.
14 We've got a recording system going. It's important that we
15 hear your testimony.

16 Your testimony is important in this case. Both
17 attorneys are going to ask you questions. I need you to
18 answer as audibly as can you for both of them. Okay?

19 THE WITNESS: I understand.

20 THE COURT: All right, thank you. Go ahead, Miss
21 White.

22 MS. WHITE: Thank you, Your Honor.
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KEVIN PATTERSON,
called as a witness on behalf of the
STATE; was duly sworn and
testified as follows:

DIRECT EXAMINATION

BY MS. WHITE:

Q. Kevin, do you also go by Kat?

A. I do.

Q. Do you prefer to go by Kat?

A. I do.

Q. And do you live in Carson City?

A. I do.

Q. Did you on June 12th of 2021?

A. Yes, I did.

Q. Where in Carson City?

A. I lived at 1400 North Carson Street.

Q. Is that an apartment complex?

A. It's the stay motel/hotel.

Q. What's the --

THE COURT: It's the what?

THE WITNESS: It's a -- like a pay by month
hotel. It's a -- basically a hotel, but you pay monthly,
so --

1 BY MS. WHITE:

2 Q. Okay. And what's the name of that hotel?

3 A. Roundhouse Inn.

4 Q. Were you at your house at the Roundhouse Inn on
5 June 12th, 2021?

6 A. I was.

7 Q. And did anything out of the ordinary occur?

8 A. In the morning of the following, it did. Not so
9 much on the 12th there, the 11th, I'm not sure which, because
10 it was over night that the incident happened. So, I'm not
11 sure if it's considered the 12th or the 13th.

12 Q. Okay. Approximately what time was it?

13 A. About 1:15 or 1:30 in the morning.

14 Q. And you referred to it as, "the incident". What
15 was the incident?

16 A. So I was just getting off of work about 10:30, 11
17 is when I get home and I was getting ready for bed when I
18 heard screaming and crying.

19 I wasn't entirely sure at the time what it was,
20 but I left my room to see what it was, because I do feel that
21 we kind of protect ourselves there and we look after each
22 other. If someone is in danger, we want to help out or at
23 least do what we can before we get cops involved.

24 Q. And then after you walked outside, what did you

1 see?

2 A. I saw a gentleman, at the time I only knew him as
3 Tom, holding down a female that I did not know by the throat
4 on the concrete.

5 Q. Do you see Tom in court today?

6 A. I do.

7 Q. Could you please identify where he's sitting and
8 something he's wearing?

9 A. He is sitting next to the gentleman over there in
10 the gray and black jump suit.

11 Q. Okay.

12 MS. WHITE: I'd ask for identification.

13 THE COURT: And can you recognize him with the
14 mask on?

15 THE WITNESS: Yes, I can.

16 THE COURT: The record will reflect the
17 identification.

18 Go ahead.

19 MS. WHITE: Thank you.

20 BY MS. WHITE:

21 Q. You said Tom was holding a female down by the
22 neck. Can you describe that a little more?

23 A. So I walked out and all I see is him over her
24 holding her down by her throat and him looking like he's going

1 to swing and hit her.

2 So at the time of the incident, me and my
3 neighbor came out and we're like, dude, don't this, this is
4 not going to go good for you.

5 Q. What's your -- I'm sorry, what's your neighbor's
6 name?

7 A. Helen Kenton.

8 Q. Did you see which hand Tom had on the female's
9 throat?

10 A. Correct. His right hand was over her throat.

11 Q. And --

12 A. And his left was pulled back to strike him --
13 her.

14 Q. Okay. And you approached Tom?

15 A. Not like up close and like handshake, but I did
16 approach the area. I got within about 25 feet of him because
17 I didn't want to get too involved like up close because if
18 he's -- I don't know him, so I don't know if he has violence
19 issues, or has been drinking or anything like that. So I
20 don't want to get too close and be on the reciprocating end of
21 it.

22 Q. Okay. So what happened when you approached at
23 that distance?

24 A. He kind of looked up at us and told us to back

1 off, nothing's going on, it's not our concern, just go back
2 inside and leave us alone.

3 Q. What did you say?

4 A. I said, honestly, it's a concern for all of us if
5 you're here because we all live here, we're all neighbors.

6 Q. Did you hear the female say anything?

7 A. She replied and said --

8 MR. ODGERS: Objection, hearsay.

9 THE WITNESS: "Don't get involved".

10 Say what?

11 MS. WHITE: That's fine, Your Honor. Can I
12 proceed? I have no issue with that being stricken.

13 THE COURT: Fine. It will be stricken.

14 BY MS. WHITE:

15 Q. What happened after you were speaking with him?

16 A. He just kept making comments saying: Don't get
17 involved. This doesn't concern you. Go back inside, leave us
18 alone just repetitively.

19 Q. What did you do?

20 A. So, at this time, I -- like we're going to call
21 the cops because we can't have this here, you need to leave
22 her alone, you need to get off of her.

23 And he insisted that it doesn't concern us and we
24 needed to leave.

1 Q. While you were there, did it appear that she was
2 trying to get up?

3 A. No and yes. She was trying to like get up to
4 like fight him off, but she wasn't trying to get off the
5 concrete.

6 When he finally did release her, she laid on the
7 concrete for a good 15, 20 minutes it seemed like.

8 MR. ODGERS: 15 to 20?

9 THE WITNESS: It seemed like it. It may have
10 only been five. I lost track of his time she was on the
11 concrete laying down.

12 MR. ODGERS: I can't -- I didn't understand what
13 increment you were saying.

14 THE COURT: Minutes.

15 THE WITNESS: Minutes.

16 THE COURT: Minutes.

17 BY MS. WHITE:

18 Q. What was she doing physically that made it look
19 like you said she was trying to -- I can't remember exactly
20 what you said, but not necessarily get up off the concrete,
21 but --

22 A. Just push him off, push her -- like get him away
23 from her, like so she could talk to him or whatever. She just
24 could not have him over her, like he was just get away from

1 me, pushing him away.

2 Q. Okay. Her body language was like get away from
3 me?

4 A. Correct.

5 Q. Okay. And after he let her go, what did you do?

6 A. We then assumed he was going inside to get his
7 stuff and leave and she just laid there, so we kind of just
8 watched the situation.

9 We didn't approach, we didn't do anything,
10 because we weren't sure what entirely was going on all the
11 time.

12 And the next thing we know his, I guess his mom's
13 boyfriend, I don't know the situation there, but he, Chris was
14 telling us we need to get the cops involved because he has to
15 get the kids out of the room.

16 MR. ODGERS: Objection, hearsay. Move to strike.

17 THE COURT: Miss white?

18 MS. WHITE: I'll back up, Your Honor.

19 THE COURT: Okay. Stricken.

20 BY MS. WHITE:

21 Q. So, it sounds like after he let the female go,
22 you went back about your business, is that what --

23 A. I stood outside my door just to make sure --

24 Q. Okay.

1 A. -- nothing more consisted, but yes.
2 Q. You did not go back inside your home?
3 A. No.
4 Q. And you saw other people arrive?
5 A. Correct.
6 Q. How many other people?
7 A. There was two individuals in another vehicle as
8 well as Helen was also standing there, came out of her room.
9 Q. Okay.
10 A. Because she went in to tell her partner --
11 MR. ODGERS: Objection, hearsay.
12 THE WITNESS: -- that --
13 BY MS. WHITE:
14 Q. Helen had gone back inside her apartment?
15 A. To tell him whatever and then came back out.
16 Q. Okay. And --
17 THE COURT: (Indiscernible). Go ahead.
18 BY MS. WHITE:
19 Q. So, Helen and two other people arrived, and one
20 of those people you identified as Chris; is that correct?
21 A. Correct.
22 Q. Okay. And what happened when Chris and this
23 other person then arrived?
24 A. They asked us to get the cops.

1 MR. ODGERS: Objection.
2 THE WITNESS: To get the kids out.
3 MR. ODGERS: Hearsay.
4 THE COURT: Hold on. So, here's what I need to
5 you understand. When the DA is asking you a question, you're
6 okay to testify about what you said or what you saw, but when
7 it comes to something another person said, whether it was to
8 you or that you heard, that's a hearsay issue. And unless
9 there's a specific exception that lets it come in, hold up,
10 okay.
11 THE WITNESS: I understand, Your Honor.
12 MS. WHITE: Okay. And, Your Honor, specifically
13 for this comment to call the police, I would ask that that be
14 entered for the effect on the listener and not the truth of
15 the matter.
16 THE COURT: You're going to have to reask the
17 question, because I don't remember what it was.
18 MS. WHITE: Okay.
19 THE COURT: Go ahead.
20 BY MS. WHITE:
21 Q. So what happened when Chris and the other person
22 arrived?
23 A. So, again, Chris came up and said: Can you call
24 the cops so I can get the kids out of the room.

1 Q. And did you call the police?

2 A. At that time, I said, yes, not a problem. I then
3 called the cops and waited for them to respond.

4 Q. Did the cops respond?

5 A. About five, 10 minutes later, yes.

6 Q. When the cops responded, did you see the
7 Defendant in his apartment?

8 A. No. They were already, as far as I could tell,
9 inside the apartment completely on their own, both him and the
10 female.

11 Q. Had you seen them go back inside the apartment
12 prior to the police arriving?

13 A. Prior to the police arrival, yes.

14 Q. Was the door shut or open, or do you know?

15 A. It was closed.

16 Q. Did you speak with the police when they arrived?

17 A. Yes, I did.

18 Q. And what did you tell them?

19 A. I told them what I had seen with them holding her
20 down by her throat and that they had both retreated into the
21 room and that it sounds like there's violence inside the room,
22 but I can't verify because the door was closed and the blinds
23 were drawn.

24 Q. What did you see the police do then?

1 A. The police then -- the officer on site decided to
2 knock on the door and he proceeded to do so two or three times
3 before there was, as we could tell, movement inside. We
4 couldn't verify by what, though.

5 Q. Did you see the Defendant walk out of the room?

6 A. No.

7 Q. The next time you saw the Defendant, where was
8 he?

9 A. Outside the complex on Carson Street headed
10 north.

11 Q. Did you ever see him exit the apartment from the
12 front door to go that direction?

13 A. No.

14 Q. Were you able to provide law enforcement with a
15 description of the female?

16 A. To --

17 Q. Do you recall?

18 A. I can recall the approximately what she was
19 wearing, but I can't give it more than that, because I wasn't
20 so much on the female as the incident itself.

21 Q. Okay.

22 MS. WHITE: I have no further questions. I would
23 pass this witness.

24 THE COURT: Mr. Odgers?

1 MR. ODGERS: Thank you.

2 **CROSS-EXAMINATION**

3 BY MR. ODGERS:

4 Q. Mr. Patterson, I mean no disrespect, but I -- and
5 the court in this way or where the -- I believe the law
6 requires me to refer to you by your legal name, so I mean no
7 disrespect by that?

8 A. I understand.

9 Q. I just need to make sure the record is clear;
10 okay?

11 A. I do understand.

12 Q. All right. I've never been to the Roundhouse
13 Inn. I believe that's what you called it?

14 A. Yes, sir.

15 Q. But I understand it's a two story?

16 A. Yes, it is.

17 Q. Are you on the bottom or the upper tier?

18 A. The bottom.

19 Q. And on the bottom tier, there's a deck above
20 outside the doors; is that correct?

21 A. Yes, there is.

22 Q. That way people can walk back and forth?

23 A. Yes, there is.

24 Q. What's the lighting like underneath that deck?

1 A. Was is that?
2 Q. What kind of light?
3 A. They're all built into the walkway.
4 Q. Kind of like what we have in the courtroom?
5 A. Yeah.
6 Q. The recessed lights?
7 A. They're all canned lights that are built in five
8 to 10 feet apart.
9 Q. Okay. The incident where, and just for the
10 record, I believe it was the morning of the 12th based on a
11 police report, how far away from your door was the incident?
12 A. About 20, 25 feet.
13 Q. So when you said that you approached, what did
14 you do? Did you just step out your door and --
15 A. I walked maybe like three to five feet towards
16 them.
17 Q. Okay.
18 A. So I was maybe 15 to 20 by the time I was
19 approaching the incident.
20 Q. Okay.
21 A. But I didn't get closer than that.
22 Q. Sir, earlier when you said you were about
23 25 feet; that's not correct?
24 A. It is when I first walked out my door, it is

1 correct.

2 Q. All right.

3 A. I know that's the measurement because of the
4 concrete sizes.

5 Q. Cool. At least we know how the measurement goes.

6 The incident where it occurred, did it occur in
7 the parking lot or did it occur on the sidewalk?

8 A. On the sidewalk.

9 Q. So right underneath that walkway?

10 A. Correct. I -- it might have been half out under
11 the walkway, because the walkway only takes up half the
12 sidewalk on the bottom.

13 Q. Okay.

14 A. But they were still on the sidewalk, but as far
15 as under that patio, they may have been half out, half under.

16 Q. Understood. Did you see the start of the
17 incident?

18 A. No, I did not.

19 Q. Did you hear the start of the incident?

20 A. No, I did not.

21 Q. Do you have any personal knowledge as to Tom's
22 relationship with the woman?

23 A. I do not, Your Honor.

24 Q. That's Your Honor, I'm not --

1 A. I'm sorry, Your Honor.
2 THE COURT: It's okay.
3 MR. ODGERS: I understand you're nervous, it's
4 okay.
5 THE WITNESS: Not so much nervous as cold. It's
6 a little chilly in here.
7 MR. ODGERS: Oh, all right.
8 BY MR. ODGERS:
9 Q. So you have no personal knowledge of what their
10 relationship is?
11 A. No.
12 Q. How many doors down on the incident is your
13 apartment?
14 A. It's two doors down.
15 Q. Are you good with north, south, east and west?
16 A. Yes, I am.
17 Q. So if we go from where the incident occurred,
18 would you be north, south, east or west?
19 A. West.
20 Q. Now, you gave a description where you said you
21 observed my client standing over her?
22 A. Correct.
23 Q. Is that correct?
24 A. Yes, it is.

1 Q. When you say, "standing", do you mean literally
2 standing up?
3 A. He was like hovering over her, holding her down.
4 And when he released her, he like stood over her for --
5 Q. Okay.
6 A. -- three to five --
7 Q. We're going to break this in pieces; okay?
8 A. Not a problem.
9 Q. So, initially when you observed it, he was still
10 on both feet?
11 A. No.
12 Q. Okay.
13 A. When I first walked out, he was on his knees
14 holding her down.
15 Q. On both knees?
16 A. Yes.
17 Q. Okay. And he was holding her down?
18 A. Correct.
19 Q. Was his butt on her?
20 A. No. He was on the side of the her.
21 Q. He was to the side of her?
22 A. Correct.
23 Q. So he wasn't straddling?
24 A. No.

1 Q. Okay. What side was he on?
2 A. He was to her right side.
3 Q. And I believe you testified that it was his right
4 hand that you observed?
5 A. Correct.
6 Q. Now, during the time that he was kneeling down
7 next to her, was she talking to him, yelling at him?
8 A. Screaming at him, and that's why I came out of my
9 room.
10 Q. Was she screaming at him the entire time?
11 A. The entire time I came out, yes, until I actually
12 made contact and said something.
13 Q. Okay. So from the time you heard the noise to
14 the time you said something to Tom, she was screaming?
15 A. Yes.
16 Q. After you had had contact with Tom, did she
17 continue to talk to him, yell at him?
18 A. She made contact to me and asked me not to get
19 involved or call the cops.
20 Q. Okay. So she talked to you?
21 A. Correct.
22 Q. In a normal voice like we're talking, or what --
23 A. No. She was crying, full of tears. She was very
24 -- seemed scared by body language.

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1 Q. Okay. And then at some point you said that my
2 client stood up over her, and I'm using the term, "over",
3 because I want to know what you mean?

4 A. So, he stood up and like kind of backed away for
5 a second like I thought he was leaving, and then he actually
6 stood over, like straddle --

7 Q. Okay.

8 A. -- standing over her.

9 Q. And while he was straddling her, was she talking,
10 yelling, screaming?

11 A. She stopped talking to me and started talking to
12 him, but I don't know how much he did or didn't hear.

13 Q. Okay. At one point you were testifying that --
14 I'm a little confused. So I'm asking, at some point after he
15 stood up and was straddling her, he backed off; correct?

16 A. Yes.

17 Q. And then you said she laid on the ground for what
18 you thought was anywhere from five to 20 minutes?

19 A. Yeah. It could -- you know, it could have been
20 just a few seconds, but with the incident, it seemed to like
21 go on forever.

22 Q. You were a little stressed?

23 A. Not so much stressed as surprised that it was
24 going on again, because unfortunately, my complex has a

1 reputation of this behavior.

2 Q. Got you. So you don't really know how long it
3 was, but it seemed like an eternity for you?

4 A. Correct.

5 Q. And when he stood up, or when he backed off,
6 could you see where he went?

7 A. He stood at the window, yelling at Chris.

8 Q. Hold on a second. Was Chris already in the
9 house?

10 A. No. Outside.

11 Q. Okay. This is where I'm kind of confused, okay.
12 So, the woman's on the ground for that --

13 A. Um-hum.

14 Q. -- indeterminate period of time. And my client,
15 I'm asking what happened after he backed off from my client,
16 where did he go?

17 A. As far as I could tell, he did go back into the
18 room.

19 Q. But he walked into the room?

20 A. Yes, he was talking with Chris. I don't know the
21 conversation they had.

22 Q. Was -- so, Chris was already on site?

23 A. Correct. That's when Chris got there is when he
24 stood up and backed off.

1 Q. Oh, when Chris got there?

2 A. Correct. And they talked for a minute or two and

3 then he went back into his room and Chris then asked me to

4 call the cops, that's where that came into play.

5 Q. Okay. And then at some point, the woman went

6 into that same apartment?

7 A. Correct.

8 Q. And then I think you said you heard what you

9 thought was sounds like violence?

10 A. Correct. I heard screaming, things sounded like

11 they were breaking, I couldn't tell you, because the door was

12 closed.

13 Q. Did you walk over to see that the door was shut?

14 A. No. I could see the door from my room, because

15 we only are two doors down.

16 Q. Okay.

17 A. So I can see their door open or close from my

18 room.

19 Q. So you step out two or three steps from your

20 door?

21 A. Correct.

22 Q. You can see down and see that the door is shut?

23 A. Correct.

24 Q. But you had no idea what was actually going on?

1 A. No, Your Honor, I did not.

2 Q. From the time the incident started until law
3 enforcement arrived, did you ever go back into your apartment?

4 A. No.

5 Q. You stayed outside the entire time?

6 A. Yes.

7 Q. At some point, did Chris along with Helen move
8 the children to the car?

9 A. Helen tried, but the kids were not -- did not
10 want to go, so Chris ended up having to move them all
11 individually.

12 Q. So Chris carried them one individually, one by
13 one?

14 A. Yeah, they tried as a group but it didn't work
15 out. So Chris had to do it individually.

16 Q. And I believe you testified that you never saw
17 Tom or the woman leave the apartment?

18 A. No, I did not.

19 Q. But at some point, you said you saw Tom walking
20 on Carson Street northbound?

21 A. That is after the police arrived he was out on
22 Carson Street walking northbound. He walked right we by the
23 driveway, I actually pointed him to the officer and said there
24 he is.

1 Q. Okay.

2 MR. ODGERS: I appreciate your honesty. I'm

3 sorry it's cold in here, I appreciate being chilly.

4 THE WITNESS: It's all good.

5 MR. ODGERS: Pass the witness, Your Honor.

6 THE COURT: Miss White?

7 MS. WHITE: I have no questions, Your Honor.

8 THE COURT: All right. This witness can be

9 excused?

10 MS. WHITE: He can, yeah.

11 THE COURT: Thank you for your testimony.

12 THE WITNESS: Thank you.

13 THE COURT: You're excused. Please don't discuss

14 your testimony with anybody else until this concludes; okay?

15 THE WITNESS: I understand.

16 THE COURT: Thank you.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: Your next witness?

19 MS. WHITE: Next, Your Honor, I would call Echo

20 Harrison.

21 MR. ODGERS: Call who?

22 MS. WHITE: Echo.

23 THE COURT: All right. You were previously

24 sworn. What I need you to do right now is tell me your full

1 name.

2 THE WITNESS: Excuse me. , Echo Harrison.

3 THE COURT: Okay. And Miss Harrison, can you
4 spell your last name for me?

5 THE WITNESS: H-A-R-R-I-S-O-N.

6 THE COURT: Okay. I am going to need to you
7 testify in to that microphone, so pull it close to you. You
8 can leave your mask off while you testify.

9 Miss White, go ahead.

10 MS. WHITE: Thank you.

11 Echo HARRISON,
12 called as a witness on behalf of the
13 STATE, was duly sworn and
14 testified as follows:

15 **DIRECT EXAMINATION**

16 BY MS. WHITE:

17 Q. Miss Harrison, do you live in Carson City?

18 A. Yes, I do.

19 Q. Where is that?

20 A. 1400 North Carson Street, Apartment 105.

21 Q. How long have you been living there?

22 A. Oh, goodness, I think we're going on three months
23 now.

24 Q. So were you living there earlier this month,

1 around June 12th, June 11th, June 12th?

2 A. Yes.

3 Q. Did you live with anyone at that time?

4 A. Yeah, my kids.

5 Q. How many kids?

6 A. Two.

7 MR. ODGERS: I'm sorry, how many?

8 THE WITNESS: Two.

9 BY MS. WHITE:

10 Q. Are they your children?

11 A. One is.

12 Q. At any point, did you live with Thomas Carrillo
13 in that apartment?

14 A. We did -- we did have a home together. He was in
15 between his mom's and mine, my place.

16 Q. And has that been the case for the entirety of
17 these last three months or a specific time when he was living
18 with you?

19 A. The whole time.

20 Q. Okay.

21 THE COURT: So the whole time what, he lived back
22 and forth between you and your mom's house.

23 THE WITNESS: Yeah, he's not on my lease.

24 THE COURT: Okay.

1 MS. WHITE: Okay.

2 BY MS. WHITE:

3 Q. How do you know Thomas?

4 A. I met Thomas when I was 13 years old, and we were

5 like little sweethearts, and then we split up and it wasn't

6 like -- it was just I went into foster care, got split up and

7 life has always just kind of brought us back together.

8 Q. And are you guys back together now or were you on

9 June 12th?

10 A. Yes, I am with Thomas.

11 Q. And I keep going back to June 12th. Did

12 something happen that day that brings you to court today?

13 A. That was the day of all of this crap, right?

14 Fucking, I got drunk and I don't usually get drunk, because

15 I'm not very good at it. If you'll excuse me.

16 Q. Um-hum.

17 Are there tissues up there?

18 THE COURT: We can get some. We can grab some.

19 MS. WHITE: I have some too.

20 THE WITNESS: As I was saying, I'm not very good

21 at being drunk, and so I chose not to be an alcoholic. I

22 thought I could have a good time and I started being an ass.

23 And then after that, everything kind of blurs out.

24 I went to smoke a cigarette and it kind of goes

1 in and out the whole time, but I know I was being an ass.

2 BY MS. WHITE:

3 Q. And you can take your time in answering
4 questions. I know it's hard to go back to that night. But
5 when you say, "it goes in and out", what are you talking
6 about?

7 A. I was blackout drunk.

8 Q. Okay. So is that your memory that goes in and
9 out?

10 A. Um-hum.

11 Q. When did you start drinking?

12 A. Oh, goodness, I was day drinking. We started in
13 the morning and I didn't stop until -- until I fell asleep.

14 Q. Do you know what time that was?

15 A. No.

16 Q. Okay.

17 A. I have --

18 Q. Was it after midnight?

19 A. Most likely, yeah.

20 Q. Okay. And you said, "we". Do you mean you and
21 Thomas, or were there more people with you drinking?

22 A. It was just me and Thomas.

23 Q. Where were you day drinking?

24 A. At our home.

1 Q. Okay. Did you stay at your home and -- when you
2 continued drinking, or did you go to a bar or a casino or
3 somewhere else?

4 A. Oh, hell no. I probably would have been in more
5 trouble than I am now. Oh, goodness. I would be sitting up
6 there too.

7 Q. So you just stayed at home?

8 A. Yeah.

9 Q. Okay.

10 A. I become --

11 THE COURT: There's not a question pending.
12 Don't -- wait until a question is pending.

13 THE WITNESS: Okay good.

14 THE COURT: (Indiscernible).

15 BY MS. WHITE:

16 Q. And you said you started being an ass. About, if
17 you can remember, what time did that happen was that or about
18 what time did you start behaving that way?

19 A. Being an ass?

20 Q. Um-hum.

21 THE COURT: And you've explained that a couple of
22 times. I'm going to ask you to describe it without using that
23 language, all right.

24 THE WITNESS: Yes, Your Honor.

1 THE COURT: Go ahead.

2 THE WITNESS: See, I was drinking in the sun all
3 day, so I'm guessing it was probably around the time the sun
4 started going down, because everything seemed like it was okay
5 until then. And then that's when I start -- memory is a
6 little blurry from that.

7 BY MS. WHITE:

8 Q. Okay. And to kind of -- I guess, can you just
9 explain what you mean by that? What were you doing or what
10 were you saying?

11 A. When I say my memory was blurry, that means I
12 don't remember what I was doing or saying.

13 Q. Okay. And let me rephrase. And I'm going to use
14 the phrase again when you said you started being an ass. What
15 do you mean by that? What was your behavior, or what did you
16 start doing?

17 A. I -- I know I was yelling a lot. I'm pretty sure
18 I put my hands on Thomas.

19 Q. Were you yelling at Thomas or someone else?

20 A. It all -- well, it started from -- there was some
21 obscene guys when we walked to the store.

22 THE COURT: There was some what?

23 THE WITNESS: Obscene. And they were being quite
24 rude, and then for some reason, that got everything just -- I

1 don't know, I guess it got my adrenaline pumping or whatever,
2 and it kind of went down hill from there.

3 BY MS. WHITE:

4 Q. When you walked to the store, was that before or
5 after the sun went down?

6 A. I think it was around the time that -- it was
7 like evening.

8 Q. And what store did you go to?

9 A. I don't even -- is it Chevron or Shell.

10 Q. Is it within walking distance from your house?

11 A. It is.

12 Q. Okay. And why did you go to the store?

13 A. To get more alcohol.

14 Q. And then after being at the store, did you go
15 back then to your apartment?

16 A. I do believe so. I woke up in my apartment.

17 Q. So you said you remember you might have put hands
18 on Thomas. Did he at any point while were you yelling or
19 acting out put hands on you?

20 A. I don't remember any of that. I -- I have
21 nothing negative to say about him.

22 Q. Okay. Did you at any point -- or let me ask this
23 differently.

24 At any time were there over people at your

1 apartment that night?

2 A. Yeah. To pick up my kids before we started
3 drinking.

4 Q. And who was that that came to pick up the kids?

5 A. Tom's mom.

6 Q. Was there anyone else?

7 A. The rest of the kids.

8 Q. Okay. Was his mom's boyfriend there also?

9 A. I do believe so.

10 Q. And you said that was before you started
11 drinking. So was that -- what time of day was that?

12 A. It was in the morning.

13 Q. Okay. What was it that you were yelling at
14 Thomas about once you got back from the gas station?

15 A. Oh, I don't know, probably anything and
16 everything. That's why I don't drink.

17 Q. You said there were some obscene guys, and did
18 that cause an argument between you and Thomas?

19 A. I don't think that caused an argument. I mean, I
20 was -- I have a quick tongue, so I started yelling at the guy.

21 Q. That guy at the gas station?

22 A. And it may have been, I don't know. It's -- go
23 ahead.

24 Q. Okay. When you and Thomas got back then after

1 going to the gas station, what did you -- what specifically
2 did you do?

3 A. What specifically did I do?

4 Q. Um-hum.

5 A. I couldn't tell you.

6 Q. Do you remember where you were in your apartment?

7 A. Well, yeah, there's only one room.

8 Q. Okay. Do you remember if you were sitting on the
9 bed or watching TV or anything like that?

10 A. Oh, I don't know. I was drinking, so there was
11 probably music playing or cartoons. I like to watch cartoons.

12 Q. Okay. At any point do you recall your argument
13 leading outside of the room?

14 A. I don't, but apparently other people do.

15 Q. Do you remember on this night speaking with any
16 neighbors about it?

17 A. No. I don't talk to my neighbors.

18 Q. Did you talk to your neighbors that night?

19 A. No.

20 Q. Did they talk to you?

21 A. I don't know. If they did, I was probably I just
22 moved to walk away from them.

23 MR. ODGERS: I didn't hear what she said.

24 THE COURT: If they did, she would just walk away

1 from them.

2 BY MS. WHITE:

3 Q. At any point that night, did you speak with
4 police?

5 A. I don't remember talking to the cops.

6 Q. And just to clarify, this might kind of like a
7 silly question, but you and Thomas are in a dating
8 relationship; is that fair to say?

9 A. Yes.

10 Q. Okay.

11 MS. WHITE: I have no further questions. I would
12 pass this witness.

13 THE COURT: Mr. Odgers?

14 MR. ODGERS: Thank you.

15 **CROSS-EXAMINATION**

16 BY MR. ODGERS:

17 Q. This is going to sound like an odd question, I
18 don't mean it to, but your voice pretty raspy? I mean, not --
19 you know what I'm saying?

20 A. Um-hum.

21 Q. Is it always like that?

22 A. It is. I smoke a lot and I use these like Zinc
23 pouches and they fuck up my throat, so apparently --

24 THE COURT: I was going to watch your language.

1 THE WITNESS: Excuse me language. They mess up
2 my throat.

3 BY MR. ODGERS:

4 Q. Okay. So, the raspiness that you're talking with
5 today, that's normal?

6 A. Yes.

7 Q. After June 12th, did you -- once you sobered up,
8 did you wake up with any bruising on your neck?

9 A. Nothing.

10 Q. Any difficulty breathing or talking?

11 A. Not at all.

12 Q. It's clear you care a lot for Thomas; is that
13 correct?

14 A. I do.

15 Q. Would you care enough to lie for him?

16 A. No.

17 Q. So if, in fact, he had choked you, you would sit
18 here in court and tell the Judge that; wouldn't you?

19 A. Yes, I would.

20 Q. If I understand your testimony correctly, you
21 have no recollection of what you and Thomas may have been
22 arguing about that night?

23 A. Yeah, I have no clue.

24 Q. Do you know whether or not you initiated physical

1 contact with him in a negative way that night?

2 A. I think I may have.

3 Q. But you're not sure?

4 MS. WHITE: I'll object to that, Your honor,
5 that's speculation. The witness indicated she doesn't recall
6 very well, and now she's saying she thinks she may have.

7 THE WITNESS: Well, I said --

8 MR. ODGERS: Hold on.

9 THE COURT: Do you know or do you not know?

10 THE WITNESS: There was --

11 THE COURT: Do you know or do you not know? Yes
12 or no?

13 THE WITNESS: Okay. I don't know clearly.

14 MR. ODGERS: And, Your Honor, there was a
15 clarifying question that Miss white had asked and she had
16 given the same response.

17 THE COURT: And I just asked my clarifying
18 question and she said: No, she doesn't no.

19 MR. ODGERS: Correct.

20 THE COURT: Okay.

21 MR. ODGERS: That's all I was trying to get to
22 was a definitive yes or no.

23 I don't know have anything further.

24 THE COURT: Miss White.

1 MS. WHITE: I have no further questions.
2 THE COURT: Okay. Is this witness free to go.
3 MS. WHITE: Yes, she can be excused.
4 THE COURT: You're free to leave, Miss Harrison.
5 Please don't discuss your testimony with any other witnesses.
6 Thank you.
7 Your next witness?
8 MS. WHITE: Your Honor, if I could actually
9 request a brief five-minute recess before calling the next
10 witness?
11 THE COURT: Okay. We'll take a five-minute
12 recess.
13 MS. WHITE: Thank you.
14 (Recess.)
15 THE COURT: All right. We're back on the record
16 in Case 21 CR 866 1C, in the matter of Thomas Carrillo.
17 And, Miss White, your next witness?
18 MS. WHITE: Your Honor, next, I would call
19 Sergeant Legros to the stand, please.
20 THE COURT: Sergeant Legros, over here to the
21 witness stand on the left. When you get there, you can remove
22 your mask.
23 Please state your full name -- did I swear you
24 in?

1 THE WITNESS: Oh, I'm sorry.

2 THE COURT: You're still under oath. Have a
3 seat.

4 THE WITNESS: Okay.

5 THE COURT: Please state your full name, spell
6 your last name for the record.

7 THE WITNESS: David Legros. The spelling of the
8 last is L-E-G-R-O-S.

9 THE COURT: All right. Miss White, go ahead.

10 MS. WHITE: Thank you.

11 SERGEANT DAVID LEGROS,
12 called as a witness on behalf of the
13 STATE, was duly sworn and
14 testified as follows:

15 **DIRECT EXAMINATION**

16 BY MS. WHITE:

17 Q. Sergeant Legros, how are you employed?

18 A. I am a sergeant with the Carson City Sheriff's
19 Office currently assigned to the patrol division.

20 Q. How long have you held that position?

21 A. 2017.

22 Q. And prior to that, what was your role?

23 A. I started working for the Carson City Sheriff's
24 Office in 2000. From there, I went from patrol to detectives

1 for 13 years, and in 2017, I was promoted to sergeant.

2 Q. Okay. And did you receive training for those
3 positions?

4 A. Yes, ma'am.

5 Q. Could you describe that, please?

6 A. I've received various trainings ranging from
7 child abuse cases, to crime scene investigations, to domestic
8 battery investigations, to homicide investigations, narcotic
9 investigations and continual yearly training in all.

10 Q. And specific to domestic battery investigations,
11 what are you trained to look for when investigating a domestic
12 battery?

13 A. Obviously, physical signs. Behavior of the
14 victim or victims, and just prior history, and then most
15 importantly witnesses. Witnesses are always a big help when
16 investigating a domestic battery type investigations.

17 Q. And as a sergeant on patrol, do you still respond
18 at times to calls from dispatch?

19 A. Yes, ma'am.

20 Q. Did you respond to a call on June 12th of 2021?

21 A. Yes, ma'am.

22 Q. What was the nature of that call?

23 A. It started off as a domestic battery
24 investigation. And as I was out and about, I observed Deputy

1 Zout with a female subject, and I stopped by to evaluate the
2 situation and assist in the investigation.

3 Q. Where was it that you saw the deputies with the
4 female?

5 A. It was the intersection of William and Carson,
6 right there I think at the Extra Mile gas station.

7 Q. Okay. In Carson City?

8 A. Yes, ma'am.

9 Q. And what did do then when you saw the deputies
10 with this female?

11 A. I saw the deputy, I believe it was Deputy
12 Robbins, I think Deputy Nunez, I'm certain Deputy Robbins was
13 on the scene. He was speaking with the female. She was
14 uncooperative at the time and intoxicated and very emotional.

15 At that time, I tried to calm her down.

16 MR. ODGERS: Uncooperative?

17 THE WITNESS: Intoxicated.

18 MR. ODGERS: Okay.

19 THE WITNESS: I tried to calm her down and
20 develop a rapport with her and ascertain the facts of the
21 investigation.

22 BY MS. WHITE:

23 Q. When you say, "she was emotional", could you
24 describe that a little bit more in detail?

1 A. She was sitting down on the park bench. She was
2 just crying and not wanting to cooperate with questions asked
3 by deputies.

4 Q. What was she doing that made you believe she was
5 not wanting to cooperate?

6 A. She was kind of verbal and using a lot of
7 profanity and just kind of as far as her emotions, up and down
8 and just no better way to describe it, she just did not want
9 to cooperate.

10 Q. Okay. Did you speak with her?

11 A. I did.

12 Q. And what did you speak with her about?

13 A. I introduced myself and I figured the best way to
14 kind of see what was going on prior to going too far, I wanted
15 to make she sure she did haven't any injuries. And I asked
16 her if she was okay, if she needed to be checked out.

17 Q. And what did she do in response to that?

18 A. She asked me if I could check her out and lifted
19 up her chin exposing her neck to me.

20 Q. Did you ask her to lift up her chin?

21 A. I did not.

22 Q. Did you ask to see her neck?

23 A. No. I merely asked for -- to see her injuries.

24 Q. And when she lifted up her chin, what did you

1 see?

2 A. You know, I saw, if I remember correctly, really
3 nothing too pronounced, but like I said, she did when I asked
4 if she needed treatment, she immediately lifted up her chin to
5 the sky, if you will, exposing her neck.

6 Q. Do you have training or experience specific to
7 domestic batteries involving strangulation?

8 A. I've had -- yes, ma'am, yes, ma'am.

9 Q. How so?

10 A. Basically just signs associated with petechia,
11 losing control of your bowels, urinary tract system, blacking
12 out, it kind of indicates signs of strangulation or
13 suffocation.

14 Q. Did you notice anything in this instance that was
15 consistent with your training and experience in --

16 A. I found while speaking with her, her voice was
17 very raspy kind of -- sometimes caused by getting hit in the
18 throat or being choked.

19 Q. Had you heard raspy voices consistent with what
20 you experienced in this case in prior investigations?

21 A. I mean, I would have to -- I could probably pull
22 off my own experience as far as being hit in the throat, it
23 takes awhile. You cough, it's uncomfortable, it's tough to
24 vocalize.

1 Q. And?
2 A. Kind of scratchy.
3 Q. Okay. And were those signs that you noticed when
4 speaking with the victim in this case?
5 A. I did.
6 Q. Were you able to identify her?
7 A. I was.
8 Q. And what was her name?
9 A. Her name was Echo, and I believe the last name
10 was Harrison.
11 Q. Did you ask her about what you observed?
12 A. I explained to her that I was told by deputies
13 that she --
14 MR. ODGERS: Objection, hearsay.
15 THE COURT: Miss White.
16 MR. ODGERS: He's going to testify to what he was
17 told.
18 THE COURT: I know. But, Miss White.
19 MS. WHITE: Right.
20 THE COURT: Your response?
21 MR. ODGERS: I would say this isn't being
22 admitted for the truth of the matter of what was told to
23 Sergeant Legros, but what he was then relaying to the victim,
24 to Echo.

1 THE COURT: All right. The objection is
2 overruled.

3 Go ahead.

4 THE WITNESS: I asked her if she had any type of
5 injuries to her throat and brought up the fact that she had a
6 very raspy voice which is quite common when people are choked
7 or have injury to the throat.

8 BY MS. WHITE:

9 Q. Then after speaking with her, what did you do?

10 A. At that time, she denied being assaulted or any
11 type of injury to the throat. And shortly after that, I
12 contacted a witness who actually approached the scene that was
13 familiar with the incident.

14 Q. And did that witness give you any information to
15 assist in your investigation?

16 A. Yes, ma'am.

17 Q. What was that information?

18 A. He advised prior knowledge of the two, and -- of
19 Mr. Carrillo and Miss Harrison. He basically advised while
20 there, he witnessed Mr. Carrillo grab her around the waste and
21 start tackling her.

22 At that time, he witnessed multiple incidents
23 prior and he said he walked away and took care of the kids
24 involved.

1 Q. Was Mr. Carrillo -- well, let me rephrase that.

2 Did you contact Mr. Carrillo at any point?

3 A. I went with Deputy Robbins and we attempted to
4 contact with him in the back of his patrol car.

5 Q. Do you see Mr. Carrillo in court today?

6 A. I do.

7 Q. Could you please identify where he's sitting and
8 something he's wearing?

9 A. He's the gentleman in black and whites with
10 chains around his ankles, yellow -- or excuse me, orange
11 sandals, white socks and pulled back hair.

12 THE COURT: The record will reflect the
13 identification of the Defendant.

14 MS. WHITE: Thank you.

15 BY MS. WHITE:

16 Q. Did you at any point run a criminal history for
17 Mr. Carrillo?

18 A. I did.

19 MR. ODGERS: Objection, relevance.

20 MS. WHITE: Your Honor, earlier Sergeant Legros
21 indicated that as part of his training and experience when
22 investigating a domestic battery, looking at somebody's
23 history is something that he does.

24 THE COURT: What's the relevance for this

1 particular charge in the preliminary hearing today?

2 MS. WHITE: I guess, Your Honor, at this point --
3 at any point leading up to binding a case over, the State can
4 add a charge. I would like to add a charge in this case that
5 would make the criminal history relevant.

6 THE COURT: In what way? Explain?

7 MS. WHITE: I would like to add an additional
8 count of domestic battery with a prior felony conviction.

9 THE COURT: And that's the only reason that this
10 information is being elicited?

11 MS. WHITE: That's correct.

12 MR. ODGERS: And, Your Honor, my question is if
13 the State was planning on making such an amendment that we
14 haven't done anything to prepare for that. And if the State
15 knew about the prior conviction, it didn't include it in the
16 discovery, it didn't put me on any type of notice to be able
17 to be prepared to do that cross-examination, number one.

18 Number two, anything that Sergeant Legros would
19 be testifying to would be purely hearsay because it's being
20 conveyed by somebody else.

21 And if Miss White has a prior conviction for
22 domestic, she hasn't produced it which is a requirement for
23 her to do in order to get that charge.

24 THE COURT: Miss White?

1 MS. WHITE: I guess to address the first issue of
2 discovery, the defense has been provided with everything we
3 have included, a printed criminal history or an electronic
4 copy of the criminal history for this Defendant.

5 Additionally, I do not have a certified copy of
6 the prior conviction which is why it has not been provided to
7 defense.

8 However, Sergeant Legros himself personally ran a
9 criminal history on this Defendant and his knowledge of that
10 is acceptable, not as hearsay under the public record and
11 government record exceptions to hearsay.

12 MR. ODGERS: I would argue that that's not a
13 correct statement, because, again, without getting -- getting
14 the Court upset with me, one of the elements of proving at the
15 prelim is the actual prior conviction, just like if you're
16 going to file charges for felony DUI, you have to produce the
17 other conviction supporting that particular charge. It's an
18 element of this charge that she wants to add.

19 So, Sergeant Legros, as competent as he may be,
20 doesn't qualify as a quote unquote certified copy of a prior
21 conviction.

22 MS. WHITE: And, Your Honor, he doesn't qualify
23 as a certified copy, however, he can testify to his knowledge
24 about the criminal history in this case that he obtained

1 through a government record, a public record, and that's an
2 exception to the hearsay which would be, which would be the
3 objection that this would be otherwise hearsay.

4 THE COURT: I think from my practice and
5 experience in the past, Fax copies of prior convictions have
6 been allowed in for purposes of preliminary hearing.

7 I'm not sure about having a witness testify as to
8 what they know on a criminal history without having some type
9 of evidence relating to that criminal conviction is
10 sufficient.

11 I know for purposes of a preliminary hearing,
12 it's slight or marginal evidence, that's where I'm at.

13 MS. WHITE: Okay. Just a moment, Your Honor.

14 THE COURT: If you want to have somebody research
15 that and provide some law on it, I'm happy to let you do that.

16 MS. WHITE: And I apologize, could you explain
17 again the Court's understanding of the Faxed information as
18 opposed to the testimony from the witness?

19 THE COURT: I think in the past, it's been my
20 experience that the Justice Court has accepted as sufficient
21 proof of a prior conviction for purposes of binding over a
22 case, a Faxed copy of a criminal conviction, or emailed as
23 opposed to the certified original.

24 And I don't recall if that was with agreement

1 between counsel or just that's the burden of proof slight or
2 marginal evidence in that the prior conviction is really
3 something that's proved up at the time of sentencing, because
4 it's a prior, but there still has to be some evidence of that
5 in order for that felony charge to be established.

6 MS. WHITE: And that would be the conviction from
7 the jurisdiction? That's what, the judgment of conviction?

8 THE COURT: Right.

9 MS. WHITE: Okay. So, is it the Court's position
10 then that it is hearsay, the dispatch information?

11 THE COURT: Well, I mean, we don't have the
12 information. The challenge I guess I have is twofold, and I
13 understand you're saying that, you know, it's based upon
14 government records we don't have in front of us, and so I
15 don't know if he's testifying from memory or what he saw, but
16 sometimes they're not even always accurate.

17 So that's -- that's my issue and my concern, I
18 guess. So it's kind of a combination of things for me.

19 MS. WHITE: Okay. I guess with that in mind, I
20 know it's 4:46, could I request a brief recess?

21 MR. ODGERS: Your Honor, we took a 30-minute
22 recess.

23 THE COURT: Right.

24 MR. ODGERS: If Miss White was going to do

1 that --

2 THE COURT: I'll willing to take another recess,
3 Mr. Odgers.

4 (Recess.)

5 THE COURT: All right. We're back on the record
6 in case 21 CR 866 1C, in the matter of Thomas Carrillo, who is
7 present, again with his attorney, Mr. Odgers.

8 All right. Miss White, we took a recess. Are
9 you ready to proceed?

10 MS. WHITE: I am, Your Honor.

11 THE COURT: Go ahead.

12 MS. WHITE: And still at this point, I would
13 amend the Complaint to include a charge of a domestic battery
14 with a prior felony conviction.

15 The Defense initial objection to my question as
16 to whether or not Sergeant Legros reviewed criminal history
17 was that it was irrelevant.

18 Now, having added that charge, I would argue that
19 it is relevant and ask to proceed.

20 MR. ODGERS: Do we have a copy of the prior?
21 Again, we need to have something to establish there's a --

22 MS. WHITE: No.

23 MR. ODGERS: -- prior felony conviction.

24 MS. WHITE: But the objection was relevance.

1 THE COURT: Okay. The relevance objection is
2 overruled.

3 MR. ODGERS: Your Honor, if I -- if I may, if
4 she's going to amend the Complaint.

5 THE COURT: Yeah.

6 MR. ODGERS: Then put the amendment on the record
7 right now so that I can properly cross-examine Sergeant Legros
8 on what he does or doesn't know on top of what I'm going to do
9 relative to his investigation.

10 THE COURT: Okay.

11 MR. ODGERS: So, I'd like to know exactly what
12 the amended is.

13 THE COURT: What would be --

14 MS. WHITE: Okay.

15 THE COURT: -- the amended be, Miss White?

16 MS. WHITE: The amendment is for domestic battery
17 with a prior felony conviction of domestic battery by
18 strangulation.

19 THE COURT: So, say that again?

20 MS. WHITE: It would be domestic battery with a
21 prior felony conviction. The prior known conviction is
22 domestic battery by strangulation, conviction date of
23 February 3rd, 2019, from Washoe County.

24 MR. ODGERS: Do we have an arrest date?

1 MS. WHITE: An arrest date of September 28th,
2 2018, from Washoe County Sheriff's Office.

3 THE COURT: So the arrest date was
4 September 28th, 2018, and conviction date of what?

5 MS. WHITE: A conviction date of February 3rd,
6 2019.

7 MR. ODGERS: And which statute are you going
8 under?

9 MS. WHITE: And that I just have to pull up.
10 200.481.

11 MR. ODGERS: Pardon?

12 MS. WHITE: 200.481.

13 THE COURT: 200.481.

14 MS. WHITE: Right, but I don't know what the
15 subsection is.

16 THE COURT: Okay.

17 MS. WHITE: That I have to look up. 200.485,
18 subsection 3.

19 MR. ODGERS: Is this an and, or in the
20 alternative?

21 MS. WHITE: It's an and. 200.481 is the
22 definition of battery. I guess, also NRS 33.018 which is the
23 domestic relationship. And then 485, subsection 3 is the
24 penalty.

1 THE COURT: So your position is under 200.453.
2 MS. WHITE: Yes.
3 THE COURT: The prior was a felony that
4 constitutes domestic violence?
5 MS. WHITE: Correct.
6 THE COURT: Or.
7 MS. WHITE: 3(a). A felony that constitutes
8 domestic violence pursuant to 33.01(a).
9 THE COURT: Okay.
10 MS. WHITE: So each of those statutes.
11 MR. ODGERS: And, again, in order to establish
12 the prior, do we have a copy of the prior conviction?
13 THE COURT: Miss White?
14 MS. WHITE: I do not, but I believe the evidence
15 I have is sufficient to bind over to preliminary hearing and I
16 would just ask the defense put forward what the objection is.
17 MR. ODGERS: The objection is that it's an
18 element that you have to prove. You have to prove the prior.
19 You have to establish by slight or marginal evidence, and
20 again, not challenging Sergeant Legros, but if this were a
21 felony DUI trial -- prelim, you would have to produce the two
22 prior misdemeanor convictions that elevate it to an
23 enhancement.
24 In this case, you want to charge a new charge,

1 one of the things you have to prove to prove the allegation is
2 there's an effective prior felony conviction.

3 If we don't have it, then we're waiting our time.

4 MS. WHITE: And I agree we do have to prove the
5 prior felony conviction, but as defense stated it's by slight
6 or marginal evidence and probable cause which certainly can be
7 proven by sergeant Legros's testimony as to what he reviewed
8 from a government record and a public record, that even under
9 -- and I'm going back to hearsay even though there isn't much
10 of a hearsay objection, I would assume that's the only reason
11 that wouldn't be admissible.

12 Under the -- under the -- for lack of a better
13 word, catchall exception to hearsay, that there's really the
14 general exception.

15 There's no reason to doubt the voracity of this
16 criminal history that's put in by NCIC that Sergeant Legros's,
17 I can lay more of a foundation, but that he's trained to
18 review and look over and use as often a determination of
19 probable cause when making an arrest on scene.

20 They certainly don't need a certified prior to
21 make a probable cause determination when making an arrest.

22 THE COURT: Mr. Odgers?

23 MR. ODGERS: Your Honor, I understand Miss White
24 is struggling and trying to get this bound over. I know that

1 she wants my client bound over.

2 The problem is, and again it has nothing to do
3 with Sergeant Legros, but you want him to testify about a
4 document that he read based on information that was put into
5 the system by somebody he doesn't know.

6 I can ask Sergeant Legros one question and I
7 think clear this up.

8 Sergeant Legros, do you have any personal
9 knowledge that my client was previously convicted of a felony
10 of domestic violence? Personal knowledge?

11 THE WITNESS: Personal knowledge, no, sir.

12 MR. ODGERS: Okay. He doesn't have personal
13 knowledge. Everything he's going to testify to, Your Honor,
14 is hearsay. The document itself is hearsay.

15 We don't even have the document in evidence in
16 order for the Court to look at it. And we all know that NCIC
17 is not correct. That's why you can't use it in court to
18 establish criminal liability.

19 You can consider it and we talk about it when
20 we're doing sentencing about what the sentencing might show,
21 what the NCIC might show, but the Defendant has a right to
22 object to that and the Defendant has a right to challenge
23 that.

24 In this particular case, I see no difference.

1 MS. WHITE: And, Your Honor, again --

2 MR. ODGERS: Excuse me. I see no difference
3 between this charge of a domestic violence with a prior
4 felony.

5 And one of the elements to that is establishing
6 the presence of a prior felony in order to elevate or to add
7 an additional charge.

8 It's not like Miss White just found out about
9 this today. She knew. She had the NCIC. She produced the
10 NCIC. It's not like she didn't know until 4:45 today and this
11 is a last minute scramble, and my client is entitled to have
12 the Court find probable cause based upon evidence other than
13 somebody's tertiary, third level hearsay, because it's third
14 level because somebody else input it into NCIC. And assuming
15 they input it correctly, then Sergeant Legros had to read it
16 and then based on that, he has to testify.

17 That's double-layered hearsay, Your Honor. And
18 it doesn't meet the elemental charge, element requirement of
19 the charge.

20 THE COURT: Miss White.

21 MS. WHITE: And, again, Your Honor, I think the
22 hearsay exception applies. If not for a government record,
23 then a public record. And if not, the general exception to
24 hearsay. The purpose for not admitting something under a

1 hearsay rule is because the voracity can be questioned.

2 In this case, there's a system by which the NCIC
3 accepts convictions and arrests and puts that information into
4 its system and provides that to law enforcement when
5 requested.

6 There's no reason to question the voracity of
7 that system which is essentially the underlying reasoning
8 behind the government record and the public record exceptions
9 and the general exception.

10 I would put to the court that this isn't hearsay.
11 That this is information, as I indicated previously, law
12 enforcement often uses when making a probable cause
13 determination.

14 If we were at trial and I was proving this matter
15 beyond a reasonable doubt, I would completely agree with Mr.
16 Odgers that beyond a reasonable doubt, I would need something
17 additional.

18 However, at a probable cause hearing where I need
19 to prove by slight or marginal evidence that the Defendant has
20 a prior felony conviction, the NCIC information is more than
21 sufficient.

22 And Sergeant Legros is trained to review that
23 information, to testify about that information and to read
24 criminal histories to help him make a determination whenever

1 he's on scene investigating a crime.

2 THE COURT: When did you find out about this
3 prior?

4 MS. WHITE: Theoretically, I had the criminal
5 history from the beginning. However, admittedly, I didn't
6 realize that I could add a charge for a domestic battery with
7 a prior felony conviction until after both of my -- well,
8 actually until after Echo Harrison had testified. I wished
9 that weren't the case, but it is.

10 THE COURT: Was the criminal history provided to
11 Mr. Odgers?

12 MS. WHITE: It was. And I checked that before
13 making my amendment, and I can give the Court the exact date
14 that it was provided.

15 MR. ODGERS: And I'll stipulate that I have it,
16 Your Honor. That doesn't alleviate my objection.

17 THE COURT: I understand.

18 MS. WHITE: And I guess I would just respond
19 again, that I don't believe that this is a valid hearsay
20 objection, that there are multiple ways in which the State can
21 overcome hearsay in this matter.

22 MR. ODGERS: And, Your Honor, again, Miss White
23 is missing the true issue which is you have to have proof, not
24 just somebody's statement about what they read.

1 THE COURT: Okay.

2 MS. WHITE: Proof that --

3 THE COURT: I'm going to allow the testimony in
4 and I'll make a decision on that.

5 So, go ahead, Miss White.

6 MS. WHITE: Thank you, Your Honor. And I know
7 Mr. Odgers indicated he has it, but just because I brought it
8 up, I'll put on the record that we provided the criminal
9 history on June 23rd.

10 THE COURT: Okay. Go ahead.

11 BY MS. WHITE:

12 Q. So, Sergeant Legros, did you run a criminal
13 history regarding Mr. Carrillo?

14 A. Yes, ma'am.

15 MR. ODGERS: And, Your Honor, just so I'm clear
16 on the record, I'm going to have a standing objection to this
17 entire line of questioning.

18 THE COURT: I understand.

19 MR. ODGERS: So I don't have to keep
20 interrupting.

21 THE COURT: (Indiscernible).

22 MS. WHITE: Okay.

23 BY MS. WHITE:

24 Q. Are you trained in running criminal histories?

1 A. Yes, ma'am.

2 Q. Could you describe that training?

3 A. Basically, it's more household, if you will. You
4 run a criminal history, you maintain the integrity of it, not
5 sharing it with outside company or anybody not associated with
6 the investigation.

7 That being said, you look for prior convictions,
8 not only prior arrests, but the conviction being the main
9 part. Many times you have the arrest, but you don't initially
10 have the conviction. So essentially, you're looking for
11 convictions.

12 Q. And do you use prior convictions throughout the
13 course of your work when making determinations about whether
14 or not to make an arrest?

15 A. They're very important as far as the level of
16 whether it be domestic battery or DUI, things of that nature,
17 the more the arrest and convictions, the higher the charge
18 will be. It could move it from a misdemeanor to a felony.

19 Q. Did you see anything in Mr. Carrillo's history
20 that would elevate the charge that you were investigating in
21 this case?

22 MR. ODGERS: Objection, on the -- I do have an
23 objection on foundation, there's not been established a look
24 at the NCIC in this particular case.

1 Miss White has indicated that, but Sergeant
2 Legros has not.

3 THE COURT: You can clarify.

4 MS. WHITE: Yes.

5 BY MS. WHITE:

6 Q. So you indicated you did run a criminal history?

7 A. Yes.

8 Q. Against Mr. Carrillo.

9 A. Yes.

10 Q. How did you do that?

11 A. I contacted my dispatch and I requested a
12 criminal history of Mr. Carrillo and had them Fax it to me.

13 Q. And so you --

14 MR. ODGERS: I'm sorry, they what to you?

15 MS. WHITE: Fax.

16 THE WITNESS: Faxed, yes, sir.

17 BY MS. WHITE:

18 Q. So, you had a hard copy of the criminal history?

19 A. Yes, ma'am.

20 Q. And did you review that hard copy?

21 A. Yes, ma'am.

22 Q. And in your review of that criminal history, did
23 you see Mr. Carrillo's name anywhere?

24 A. I did.

1 Q. And just for the record, you're aware of his full
2 name?

3 A. I believe it's -- I apologize, Thomas Carrillo.
4 I apologize, I don't know his --

5 Q. Okay?

6 A. (Indiscernible). I believe his date of birth was
7 '89, that's about all I can --

8 Q. Okay. And do you provide a name and date of
9 birth when asking for a criminal history?

10 A. Yes, ma'am.

11 Q. And you did that in this case?

12 A. Yes, ma'am. It's associated with the case
13 number, that ways it's tracked by the FBI.

14 Q. Okay. And did you provide the case number as
15 well when you ran the criminal history?

16 A. Yes, ma'am.

17 Q. And then in review of that printed history, did
18 you see anything that would elevate the crime you were
19 investigating in this case?

20 A. Yes, ma'am, I did.

21 Q. And what was that?

22 A. It showed a -- an arrest and a conviction of
23 domestic battery strangulation, I apologize.

24 Q. Do you know what level of crime that is?

1 A. If I remember correctly, it was a felony
2 indicated on the NCIC.

3 Q. And do you recall what county?

4 A. Washoe County.

5 Q. And that's in Nevada?

6 A. Yes, ma'am.

7 Q. Do you recall the year of the conviction?

8 A. I believe the conviction was '19 and the arrest
9 was in '18.

10 Q. And then just to confirm that was all involving
11 Thomas Carrillo?

12 A. Yes, ma'am.

13 Q. With the same date of birth?

14 A. Yes, ma'am.

15 Q. Okay. Is there anything else you did with
16 regards to the investigation in this case?

17 A. Not that I haven't reported to you, no, ma'am.

18 Q. Okay.

19 MS. WHITE: At this time, I have no further
20 questions, I pass the witness.

21 THE COURT: Mr. Odgers.

22 MR. ODGERS: Where to start.

23

24

CROSS-EXAMINATION

BY MR. ODGERS:

Q. How many years have you been on the force?

A. Since 1997, sir.

Q. Since 1997?

A. Yes, sir.

Q. So you got more than 20 years?

A. Yes, sir.

Q. And you were trained with the Nevada POST academy?

A. I trained with two different agencies.

Q. Which agencies, please?

A. Mississippi, per our POST, and Nevada POST.

Q. And in both of those academies, they taught you how to how to write reports; right?

A. Yes, sir.

Q. And as a sergeant, aren't you supposed to write a report when you're doing an investigation?

A. Yes, sir.

Q. Did you write a report in this case?

A. Yes, sir.

Q. You did. And you provided that to the DA?

A. Yes, sir.

Q. And the DA's provided that to me?

1 A. I believe so.
2 Q. Found it.
3 So, when did you run the NCIC?
4 A. I ran that today earlier.
5 Q. Oh, today?
6 A. Yes, sir.
7 Q. You ran it today?
8 A. Yes, sir.
9 Q. Not when you were in the field?
10 A. No, sir.
11 Q. Not when you did any of that arresting in the
12 field?
13 A. No, sir. I thought it was done by Deputy
14 Robbins. It was not.
15 Q. Oh?
16 THE COURT: Mr. Odgers, can you just ask the
17 questions, please.
18 MR. ODGERS: I am, Your Honor.
19 THE COURT: Without --
20 MR. ODGERS: -- without the commentary.
21 THE COURT: I would appreciate it, or the tone.
22 Thank you.
23 BY MR. ODGERS:
24 Q. Do you know what month or the year that Mr.

1 Carrillo was arrested in Washoe County for the alleged prior
2 conviction?

3 A. I know the year, I don't know the month off the
4 top of my head, sir.

5 Q. Do you know the date?

6 A. No, sir.

7 Q. How about for the conviction?

8 A. I could tell you it was in '19.

9 Q. Okay. But you don't know the month or the day?

10 A. No, sir.

11 Q. And you don't have a copy of the prior
12 conviction?

13 A. Not on me, no, sir.

14 Q. All right. So, you didn't run the NCIC as part
15 of your probable cause to arrest my client on June 12th?

16 A. No, I didn't.

17 Q. All right. Now, you testified earlier that you
18 yourself had been the victim of somebody hitting you in the
19 throat?

20 A. That's correct.

21 Q. Is there any allegation in this case that my
22 client hit the alleged victim in the throat?

23 A. Yes. Several witnesses verified that he was
24 strangling her, had his hands around her neck.

1 Q. Okay. Words have meaning; right, sergeant? I
2 asked you very specifically whether or not --

3 MS. WHITE: I object as to argumentative.

4 MR. ODGERS: -- if there was any --

5 THE COURT: Just, Mr. Odgers, just ask the
6 question.

7 MR. ODGERS: I did, Your Honor.

8 THE COURT: I know. We don't need to get into a
9 debate. Just ask the question.

10 BY MR. ODGERS:

11 Q. Did anybody say that my client hit Miss Harrison
12 in the throat, use the word "hit"?

13 A. No, I think strangled was the word used.

14 Q. Okay. And, in fact, they testified that they --
15 she -- the entire time he had his hand on her neck?

16 MS. WHITE: Objection, Your Honor. The deputy
17 doesn't know what they testified to.

18 MR. ODGERS: Excuse me, then lay the foundation,
19 please.

20 BY MR. ODGERS:

21 Q. That during the entire time she was able to talk
22 and scream. Would that be consistent with somebody who is
23 being choked or strangled?

24 A. When available, absolutely.

1 Q. When available, what do you mean?

2 A. When -- when people lighten up on the grip,
3 absolutely people scream and they yell in between, absolutely.

4 Q. What is your understanding of what strangulation
5 requires?

6 A. My apology, if you can reword the question
7 please.

8 Q. Yeah. What is your understanding --

9 A. -- when somebody --

10 Q. -- of what strangulation requires?

11 A. When somebody places their hands around
12 somebody's throat and squeezing the air and the blood, not
13 allowing blood or air to the brain.

14 Q. Okay. Not allowing blood or air to the brain;
15 right?

16 A. If I can clarify.

17 Q. And that's based on your training; right?

18 A. If I can clarify.

19 Q. Hold on. Is that based on your training?

20 A. Absolutely.

21 Q. Okay. And so when somebody places their hand on
22 the throat, they have to cut off the airway, and/or blood
23 flow; correct?

24 A. Um-hum.

1 Q. And when they do that, if somebody cuts off the
2 air flow?

3 A. Um-hum.

4 Q. It takes quite a bit of force; doesn't it?

5 A. I think it would vary on the victim itself and
6 the strength of the assailant.

7 Q. Okay. It requires more than me just putting my
8 hand on the shoulder as if I'm saying hello; correct?

9 MS. WHITE: Objection.

10 THE WITNESS: Well, the shoulder is a different
11 area from the neck, sir.

12 BY MR. ODGERS:

13 Q. So if I put my hand on my neck like this,
14 (indicating) right now --

15 MS. WHITE: Objection, this calls for
16 speculation.

17 MR. ODGERS: It does not, Your Honor. He's
18 testifying --

19 THE COURT: Okay. Stop. I don't want to have an
20 argument here. I just want you to ask the questions that you
21 need to ask.

22 MR. ODGERS: I'm trying to, Your Honor.

23 THE COURT: The objection is overruled.

24

1 BY MR. ODGERS:

2 Q. It requires force. It can't just be sitting on
3 the throat; correct? The hand needs to do something to block
4 the airway or the blood flow?

5 A. Of course.

6 Q. Correct?

7 A. Correct.

8 Q. And so when you block the blood flow or air flow,
9 you look for petechia in the eyes; correct?

10 A. That's not correct necessarily.

11 Q. Oh, you don't. You just testified --

12 A. If you can let me clarify. It doesn't
13 immediately occur. It's something that occurs afterwards.

14 Q. Okay. How long --

15 A. -- immediate reaction.

16 It could vary.

17 Q. Did you go back and check with the alleged victim
18 to see if she had any petechia at any point between June 12th
19 and today?

20 A. I did not, sir. She was very uncooperative.

21 Q. What -- so, what actual evidence do you have that
22 my client quote strangled end quote Echo Harrison. She denied
23 it; correct?

24 A. Parts.

1 Q. She denied it?

2 A. She actually showed me her neck, verifying that's
3 where her injuries were, sir.

4 Q. Did she tell you she was not choked?

5 A. She denied any type of abuse by your client.

6 Q. Okay. So she denied being choked; correct?

7 A. She denied any abuse by your client.

8 MR. ODGERS: Your Honor, would you please
9 instruct the witness to answer the question I'm asking. I
10 know he's trying to save his case, but I asked a very specific
11 question about whether or not she denied being choked.

12 THE COURT: I think the answer of she denied any
13 abuse by your client is an answer. Being choked is abuse or
14 physical harm, so that's how I'm taking it.

15 Go ahead.

16 MR. ODGERS: Okay.

17 BY MR. ODGERS:

18 Q. Did she indicate that he hit her in the throat?

19 A. Again, she -- when I asked to -- she needed
20 treatment and she asked if I could treat her, she lifted her
21 neck up indicating non verbally that's where her injury was.

22 Q. Or that's your interpretation?

23 A. Well, she didn't lift up her elbow or anything
24 like that. It was right here, sir, (indicating).

1 Q. Sow how many actual domestic violence
2 strangulations have you personally investigated?

3 A. Sir, I'd have to research that.

4 Q. How many? Give me an estimate.

5 A. I don't feel comfortable giving you an answer,
6 sir.

7 Q. More than one?

8 MS. WHITE: Objection, Your Honor, this is
9 argumentative and has been asked and answered.

10 THE COURT: Overruled. You can try to provide an
11 estimate.

12 BY MR. ODGERS:

13 Q. More than one?

14 THE COURT: Was it more than one?

15 THE WITNESS: Actually, it was more than one.

16 BY MR. ODGERS:

17 Q. More than five?

18 A. Again, I feel -- I don't want to give an answer,
19 because I'd have to research it, sir.

20 Q. Here's the problem, Sergeant. Miss White put you
21 up there and asked you about your training and experience when
22 it comes to domestic violence investigations and specifically
23 with strangulation. So, now I'm trying to qualify that.

24 A. Um-hum.

1 Q. Okay. So you have an estimate in your mind of
2 how many you did. I'm entitled to that estimate.

3 Please provide me the estimate of how many you
4 think you've done in your career?

5 MS. WHITE: I'm going to object, again, Your
6 Honor. Again, this is argumentative. Sergeant Legros said
7 he's not comfortable making an estimate without doing some
8 research. He's under oath. He doesn't want to testify to
9 something that's not true.

10 MR. ODGERS: And an estimate -- sorry, I thought
11 you were done.

12 MS. WHITE: And Mr. Odgers asked how many
13 investigations he personally handled. I don't know if that's
14 being interpreted as in a sergeant capacity, as a lead case
15 officer, as an assisting officer.

16 There are many different instances in which
17 Sergeant Legros could have taken part in an investigation of
18 this nature without actually himself personally investigating
19 it.

20 I think it's an overly broad question.

21 THE COURT: I'm going to sustain the objection at
22 this point in time.

23 Go ahead with your next question.

24 MR. ODGERS: So then we're establishing that

1 Sergeant Legros doesn't have any training and experience as it
2 relates to this?

3 THE COURT: What we're establishing is he said
4 he's not comfortable giving an estimate. It's been one or
5 more, but he's not sure how many. So move along.

6 MR. ODGERS: All right.

7 BY MR. ODGERS:

8 Q. So, in the unknown number of domestic violences
9 that, strangulations that you've investigated, have all of
10 them had the same signs and symptoms?

11 A. Well, some have various -- have raspy voice, or
12 as I said earlier, they can urinate or defecate themselves.

13 Q. Was there any evidence that Miss Harrison
14 urinated or defecated herself?

15 A. No, sir.

16 Q. Okay. So we can strike those two off; right?

17 A. The only -- the only thing I observed from her
18 was the fact that she showed me her neck and she had a raspy
19 voice.

20 Q. And if she normally has a raspy voice, that would
21 indicate that maybe she wasn't strangled?

22 A. I'm not going to say it would negate the fact
23 that it was reported she was strangled, but it could
24 definitely.

1 BY MR. ODGERS:

2 Q. Isn't it true that the two witnesses -- did you
3 talk to them?

4 A. I did not, no, sir.

5 Q. You don't have any personal knowledge of what
6 they said then?

7 A. I was passed that information when I was talking
8 with her, yes, sir.

9 Q. So your knowledge is based on hearsay; correct?
10 A statement made by somebody else not in your presence to you?

11 A. That's correct, yes, sir.

12 Q. So, you don't have any knowledge what the alleged
13 witnesses testified or told law enforcement?

14 A. I don't know what they testified to, no, sir.

15 Q. Okay. That makes more sense. Thank you.

16 A. You're welcome.

17 Q. Did you see any redness on the throat?

18 A. I didn't see it, no, sir.

19 Q. Did you take pictures?

20 A. I did not. I believe Deputy Nunez took pictures.

21 Q. So, I just want to make sure that I have what
22 your actual observations were. You didn't see any redness on
23 the throat?

24 A. I did not, no, sir.

1 Q. And, in fact, they didn't use the term strangled
2 when they talked to you?

3 A. Or choked, I apologize.

4 Q. Let's use correct terminology; right?

5 MS. WHITE: Objection, Your Honor, that was
6 uncalled for.

7 MR. ODGERS: Your Honor, he testified earlier.

8 THE COURT: Mr. Odgers, here's the thing. You
9 have a tendency in your questioning when you get frustrated to
10 get very condescending.

11 If it's going to continue that way, we'll take a
12 break on this case until tomorrow. I'm not wanting to do
13 that, but I'm not going to keep going along this road.

14 So if you can ask your questions without the
15 condescending tone, I would appreciate it.

16 MR. ODGERS: I understand, Your Honor.

17 THE COURT: Thank you.

18 MR. ODGERS: My issue is the change in testimony
19 from Miss White asked him the question from choking to when I
20 asked the question to strangulation. So I'm just trying to
21 get which one it is.

22 THE COURT: That's fine and I think you can do
23 that with an appropriate tone.

24

1 Q. You didn't see any petechial?
2 A. No, sir.
3 Q. Hemorrhaging in either eye; correct?
4 A. No, sir.
5 Q. And your observations were that she had a raspy
6 voice?
7 A. Yeah.
8 Q. And that she lifted her chin up?
9 A. She -- when I asked her if she wanted, needed any
10 type of treatment and asked -- I apologize for not having the
11 specific words, but I asked if she needed treatment. She
12 immediately lifted up -- for her injuries, and she lifted up
13 her chin exposing her neck to me.
14 Q. Did she -- you just put your hand to her neck, to
15 your neck, pardon me. Did she do that as well?
16 A. I, you know, sir, I don't want to testify to
17 that. I don't know that she did. I can't recall.
18 Q. Okay.
19 A. All right.
20 Q. And is that what you meant by you saw, when you
21 testified you saw nothing pronounced when you testified
22 earlier with Miss White?
23 A. If you're asking if I saw any redness or any
24 marks on her neck, I didn't, no, sir.

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1 Q. No, I apologize. I'm trying to get clarification
2 on something you testified to when Miss White asked you the
3 question.

4 A. Uh-huh.

5 Q. Your testimony was quote, "you saw nothing
6 pronounced", end quote. I'm just trying to make sure I have
7 what you meant by nothing pronounced?

8 A. Yeah, I couldn't see any injuries on her neck,
9 no, sir.

10 Q. Are people that are intoxicated always willing to
11 talk to law enforcement?

12 A. What -- it basically depends on the person, what
13 they're involved in at that time.

14 Q. Well, you indicated that Miss Harrison was
15 extremely intoxicated, extremely uncooperative and extremely
16 emotional?

17 A. That would be correct, yes, sir.

18 Q. And so I'm just -- I'm trying to look at those.
19 Do people that are extremely intoxicated, do they always want
20 to talk to law enforcement?

21 A. I mean, that's --

22 Q. Sometimes? Sometimes not?

23 A. That would be about right, yes, sir.

24 Q. I know it's a loaded question.

1 How about people that are emotional, that had an
2 argument with their husband or girlfriend or somebody else and
3 they're emotional, do they necessarily want to talk to law
4 enforcement every time?

5 MS. WHITE: I'm going to object to this line of
6 questioning also, Your Honor. I think it's overly broad and
7 speculative.

8 THE COURT: Mr. Odgers?

9 MR. ODGERS: I'm just trying -- he gave three
10 very distinctive definitions. I'm trying to figure out why
11 this is important as to this particular person as opposed to
12 anybody else and what it goes to. I'm just trying to figure
13 this part out.

14 THE COURT: Go ahead.

15 BY MR. ODGERS:

16 Q. Based on your experience, are people that are
17 emotional, do they always want to talk to you or sometimes
18 want to talk to you, and not you, but law enforcement in
19 general, based on your experience?

20 A. Again, a lot of times the -- if I may clarify,
21 our role is to calm them down to have them speak with us. A
22 lot of times you have to calm people down to make sense of a
23 situation.

24 Q. Were you able to calm her down?

1 A. It was -- at the end, I was able to calm her down
2 enough to have her show me where she needed treatment. Any
3 time after that, it was touch and go, if you will. Her
4 behavior was up and down.

5 Q. And she denied needing treatment; correct?

6 A. Yes, she denied treatment.

7 Q. And you didn't call EMS to come down and check on
8 her?

9 A. She refused treatment, she didn't want it.

10 Q. So, I know I kind of hit on this before. I just
11 want to make sure I'm clear.

12 You have no information that Miss Harrison was
13 hit in the throat; is that correct?

14 A. I think that was just -- if I may clarify, that
15 was my explanation as to being able to tell you, or tell the
16 courts what it feels like to be -- to receive injury to your
17 throat.

18 Q. Okay.

19 A. To answer your question, I did not receive
20 information that she was hit.

21 Q. Thank you.

22 A. I received information that she was choked slash
23 strangled.

24 Q. And your observation was her voice was raspy and

1 so you're making the assumption that maybe she was hit or
2 choked; correct?

3 A. It coincided with the fact with the information
4 given to us at the time, yes, sir.

5 Q. And, in fact, the information, I think you
6 testified to earlier was that two witnesses indicated that he
7 had grabbed her around the waste and tackled her?

8 A. No, sir.

9 Q. So, I misunderstood what you testified to?

10 A. No, sir. It was one witness came up behind me
11 after I was talking with her and he explained that he
12 witnessed your client grabbed her around the waste.

13 Q. Okay.

14 A. This was I think like a third witness.

15 Q. So, it wasn't -- was it any of the two that you
16 saw, or three that you saw testify today?

17 A. I didn't see any of them outside. And, again, I
18 had no contact --

19 Q. Okay.

20 A. -- with the witnesses, so I don't know their --

21 Q. Do you know who that witness was?

22 A. I believe it was Richard, it's indicated in my
23 report, that I had spoken --

24 Q. Would that be Richard Rehbein?

1 A. That's correct, yes, sir.

2 Q. Rehbein, something like that. R-E-H-B-E-I-N?

3 A. Sure.

4 Q. I'm -- I just want to make sure, I'm going from

5 your report?

6 A. Yes.

7 Q. Okay.

8 A. It's indicated on my report. It should be the

9 only witness I listed in my report.

10 Q. Did you take field notes?

11 A. No, sir.

12 Q. Did you watch your body cam when did you your

13 report?

14 A. No, sir.

15 Q. And it was your understanding from that gentleman

16 that the only thing he saw him, Thomas grabbing the -- Miss

17 Harrison by the waste?

18 A. Around the waste, yes, sir.

19 Q. And I think you said tackle her?

20 A. Something of that nature, yeah. He -- well, he

21 started turning as soon as he saw that, because he didn't want

22 to see it.

23 Q. Was it his statement, tackle, or your

24 interpretation that yes, he used the term tackle?

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1 A. I would have to review my footage, sir.

2 Q. You would have to review your --

3 A. My camera footage. But he had indicated that he

4 had grabbed her around the waste.

5 Q. So in your report you said that they were quote

6 "wrestling" --

7 A. From what.

8 Q. End quote.

9 Would that be what you meant by tackling?

10 A. I was just going off the testimony of Mr.

11 Rehbein, or --

12 Q. Statement?

13 A. Yeah.

14 Q. The statement of Mr. Rehbein, Rehbein?

15 A. He kind of indicated that they were wrestling,

16 but then clarified that he saw her, saw him when he first

17 started to grab her --

18 Q. Okay.

19 A. -- around the waste.

20 Q. Why did you contact dispatch today to look at the

21 NCIC?

22 A. So just to verify that he had that previous

23 conviction.

24 Q. Based on what?

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1 A. For the charging.
2 Q. Who asked you to do it?
3 A. The DA did.
4 Q. Okay. And you said you received a Fax copy of
5 the NCIC?
6 A. That's correct.
7 Q. A hard copy?
8 A. Yes, sir.
9 Q. And you have it with you?
10 A. Yes, sir. Well, I don't have it.
11 Q. I'm sorry?
12 A. I provided it to the DA.
13 Q. Okay. So, you gave it to the DA?
14 A. Yes, sir.
15 MR. ODGERS: Sergeant Legros, thank you, very
16 much your service. Sorry, I've been a pain.
17 THE WITNESS: No worries.
18 THE COURT: Miss White, any questions?
19 MS. WHITE: I only have a couple.
20 THE COURT: Okay.
21 **REDIRECT EXAMINATION**
22 BY MS. WHITE:
23 Q. Sergeant, you wanted to clarify what were you
24 saying about whether or not someone can speak when they're

1 being strangled.

2 Could you provide that clarification?

3 A. Yes, ma'am. What I was alluding to was just
4 because somebody's blood and air is being controlled by the
5 flow, by hands around the neck, people aren't just going to
6 sit there and let you do this.

7 Generally speaking, they're going to move around,
8 fight and flail, allowing certain loss of grip, therefore
9 being able to yell or scream or shout. That's what I was
10 trying to clarify earlier.

11 Q. And based on your training and experience, if --
12 then if that stress were to be lightened up, someone would be
13 able to speak?

14 A. Yes, ma'am.

15 Q. Okay. You also wanted to clarify what were you
16 saying about some people being either intoxicated or being too
17 emotional to cooperate with law enforcement.

18 Could you expand on that?

19 A. Well, essentially, sometimes when people are a
20 combination of emotions of being intoxicated, they don't want
21 to cooperate with law enforcement in fear of getting in
22 trouble themselves, or getting somebody else in trouble,
23 therefore, they won't cooperate with law enforcement.

24 MS. WHITE: I have no further questions.

1 MR. ODGERS: I have one.

2 THE COURT: Go ahead.

3 MR. ODGERS: If I may.

4 **RECROSS-EXAMINATION**

5 BY MR. ODGERS:

6 Q. You said when people are struggling or flailing
7 around, that -- and you used two hands to indicate
8 strangulation; remember just doing that?

9 A. Um-hum.

10 Q. Yes?

11 A. Yes, sir.

12 Q. Okay. And you said that when they struggle and
13 flail, that sometimes it will loosen the grip and as a result
14 sometimes they can yell?

15 A. Um-hum.

16 Q. Correct?

17 A. Yes, sir.

18 Q. What if they're yelling the entire time?

19 A. If that fact would indicate to me that obviously
20 their airway is not restricted, but their carotid arteries
21 could be restricted.

22 Q. Could be?

23 A. Yes, sir.

24 Q. And do you have any evidence that in this case

1 that Echo Harrison's carotid arteries were blocked or
2 inhibited blood flow in any way, shape or form?

3 A. I do not, no, sir.

4 Q. And do you have any evidence in this case that
5 Echo Harrison's airway was blocked in any form?

6 A. No, sir.

7 MR. ODGERS: Thank you.

8 THE WITNESS: You're welcome.

9 THE COURT: That's all.

10 MR. ODGERS: That's it, Your Honor. Thank you.

11 THE COURT: Thank you, Sergeant Legros for your
12 testimony. You're excused.

13 Any other witnesses, Miss White?

14 MS. WHITE: No, Your Honor.

15 THE COURT: Okay. All right. Argument?

16 MS. WHITE: I assume the Defense doesn't have
17 any.

18 THE COURT: Do you plan to present any witnesses,
19 Mr. Odgers?

20 MR. ODGERS: I'm sorry, Your Honor.

21 THE COURT: Do you plan to present any witness
22 evidence or any evidence?

23 MR. ODGERS: No, ma'am.

24 THE COURT: Okay. Argument.

1 MS. WHITE: Your Honor, I'd argue that the State
2 has put forward slight or marginal evidence as required to
3 bind over the counts, both of battery that constitutes
4 domestic violence committed by strangulation, and battery that
5 constitutes domestic violence with a prior felony conviction.

6 Regarding the first, domestic battery that
7 constitutes -- or domestic battery by way of strangulation.
8 Two different witnesses testified to the Court that they saw
9 the Defendant with his right hand on the victim's neck, Echo
10 Harrison's neck.

11 It was so severe to them that they got involved,
12 actually approached the Defendant and made statements to him
13 about what was going on. Ultimately contacted law enforcement
14 and shared that same information with the police.

15 While there was testimony that Echo was at
16 various points screaming, speaking, making statements,
17 Sergeant Legros testified that in his training and experience,
18 people sometimes can speak while they're being choked or while
19 they're being strangled.

20 As he indicated, people don't just allow another
21 individual to do that to them, they try to prevent that
22 behavior from occurring, because it's dangerous.

23 And in this case, both independent witnesses
24 indicated that they saw Echo Harrison trying to ward off the

1 Defendant either by pushing him with her hands, or in either
2 case, trying to get up and get out of the situation.

3 Obviously, she was fighting.

4 And the statute for strangulation indicates that
5 pressure must be applied in such a manner as to intentionally
6 impede a normal breathing or circulation of the blood in a
7 manner that creates a risk of death or substantial bodily harm
8 obviously in a manner that is extremely frightening and would
9 cause anyone to be put in such a position to be fighting
10 ultimately for their life.

11 And I think there's testimony today that shows
12 Echo Harrison was fighting and attempting to get the Defendant
13 off of her, doing so because he had his hand on her neck,
14 restricting either her airway or blood flow.

15 Sergeant Legros also testified based on his
16 training and experience, that perhaps if someone's speaking,
17 their airway isn't restricted, but that doesn't mean by that
18 their blood flow is not.

19 In either instance, the victim was placed in a
20 position where the Defendant's hand was on her throat and was
21 so much pressure that it was holding her on to the ground and
22 she was unable to get up despite two independent witnesses
23 indicating that they saw her attempting to do so.

24 I would argue that common sense indicates that is

1 a restriction of either her airway or her blood flow just
2 based on the pressure that would be applied.

3 Regarding the count that was added today, battery
4 that constitutes domestic violence with a prior felony
5 conviction. There was argument put to the Court about whether
6 or not the prior conviction was admissible through testimony
7 provided by Sergeant Legros.

8 And, again, I would put to the Court, that it is
9 admissible, it overcomes any hearsay objection either as a
10 public record or as a government record or under the general
11 hearsay exception.

12 Again, as argued, the purpose for keeping
13 evidence out for hearsay purposes is because of a lack of
14 validity or truthfulness.

15 However, the government record under NRS 51.155
16 and the general exception, 51.315 both provide exceptions to
17 hearsay because these are elements of a written statement or a
18 spoken -- well, I guess in either case, and in this case, a
19 written statement that does not have its validity challenged.
20 It's not input for the purpose of necessarily litigation.
21 It's a record that's kept in the normal course.

22 Additionally, it's a record that's kept for
23 multiple reasons, not just litigation. One reason is when law
24 enforcement is pursuing an investigation in determining how to

1 charge a crime, whether or not a higher level crime has been
2 committed.

3 Sergeant Legros was asked to run a criminal
4 history in this case, reviewed it which he often does on
5 scene. He's trained to do so. And provided information to
6 the Court that the Defendant did have a prior felony
7 conviction for domestic battery by strangulation, an arrest in
8 2018 and a conviction in 2019 out of Washoe County, Nevada.

9 Defense made arguments that this doesn't reach
10 the standard, it's not proven. And I would argue that perhaps
11 not beyond a reasonable doubt, but certainly, certainly for
12 the purpose of a probable cause hearing.

13 Again, when law enforcement in any other case, to
14 make an analogy, for example, making a felony arrest as
15 opposed to a misdemeanor arrest for a DUI or domestic battery
16 or any such enhancable crime, law enforcement doesn't have to
17 obtain a certified prior in order to do so.

18 They can make a probable cause arrest based on
19 reviewing an NCIC history. And that's exactly what was
20 provided to the Court today. A review from law enforcement of
21 an NCIC history.

22 If the Court does have a question about Sergeant
23 Legros's information as compared to a certified prior, I would
24 argue that that only goes to the weight of the evidence and

1 not the admissibility. And the weight is still such that it
2 bypasses the probable cause standard of slight or marginal
3 evidence.

4 And with that, I would argue to the Court that
5 the State has put forward more than enough evidence to prove
6 by slight or marginal evidence that the Defendant committed
7 battery by way of strangulation and the Defendant committed
8 domestic battery with a prior felony conviction, again, out of
9 Washoe County for domestic battery by strangulation.

10 And with that, I would submit.

11 MR. ODGERS: Your Honor, on the amended charge,
12 unlike what Miss White is arguing, we're not in the field of
13 making a determination between whether or not it should be a
14 misdemeanor charge or a felony charge.

15 And the reason it's not, Your Honor, is quite
16 simple, law enforcement makes the arrest, but the State makes
17 the determination as to what to charge.

18 And in order to do that, the State collects those
19 prior convictions to support the allegation of a misdemeanor
20 domestic violence to a felony domestic violence.

21 If there were a domestic violence, third, the
22 State would be obligated as a part of its job to produce to
23 the Court two prior misdemeanor convictions within seven years
24 in order to elevate it to a felony conviction -- excuse me, to

1 a felony charge.

2 I agree with the Court's analysis earlier, yes,
3 they still have to prove it at sentencing, but you're the gate
4 keeper, Your Honor. The purpose is probable cause to believe
5 that my client did something and that the State has put
6 forward evidence to support that.

7 Miss White wants to rely on the fact that NCIC is
8 a governmental document. Okay. Where is the NCIC, Your
9 Honor? You don't have it. It wasn't introduced. So you have
10 somebody testifying from a document, it's hearsay.

11 The governmental record exception allows this
12 document as a governmental record to be introduced over
13 hearsay. It doesn't allowed somebody to read it and then
14 testify to it and say well, it's a governmental record he's
15 testifying from.

16 I beat the -- beat that issue to a dead horse,
17 Your Honor. I don't even believe the State has met slight or
18 marginal evidence that is necessary to elevate the -- or to
19 add the new charge.

20 I also find it interesting that it was only after
21 the first three witnesses testified that the State now
22 scrambles to try and find a prior conviction.

23 Your Honor, what did the witnesses say on Count
24 I? Helen testified that the entire time that my client was

1 standing next to or kneeling next to Miss Harrison, that she
2 was screaming, yelling and talking. That she did try and get
3 up.

4 But at no time did you hear Helen say that the
5 Miss Harrison's blood flow was blocked or that her air flow
6 had been blocked. And the statute makes pretty clear, 200.481
7 (1), subsection (9) (I).

8 "Strangulation means intentional impeding the
9 normal breathing or circulation of the blood by applying
10 pressure to the throat or neck or by blocking the nose or
11 mouth of another person in a manner that creates a risk of
12 death or substantial bodily harm".

13 Helen testified she was a victim of domestic
14 violence. And that the voice she heard was the same voice she
15 did when she was talking to her husband as he was beating her
16 and abusing her.

17 But in no time did she say that Miss Harrison
18 lost consciousness, said, stop choking me, said anything that
19 would indicate that there was a problem with the breathing or
20 the blood flow.

21 Likewise, Mr. Patterson, the same way. I
22 specifically asked the question. He heard Miss Harrison
23 yelling. His term was yelling the entire time. He didn't see
24 any blocking of the airway or blocking -- impeding of the

1 blood flow to the neck. Nobody testified that he put his hand
2 over her mouth or nose.

3 The victim herself can't recall anything, yet I
4 guarantee the Court that if there was any type of injury to
5 the neck, that would have been State's Exhibit Number A.

6 Why aren't you seeing State's Exhibit Number A,
7 because as Sergeant Legros said, there's no indicia at all
8 that any type of strangulation occurred. None.

9 His opinion was well, she went like this,
10 (indicating). For all we know, she was trying to get him to
11 look at her chin, we don't know. Because she didn't point to
12 wherever it where she was allegedly injured.

13 We have Sergeant Legros's opinion, but if he
14 thought that she had been strangled or that there was
15 substantial bodily harm likely or that death was likely, then
16 why not call EMS and have her evaluated. Why? Because she
17 wasn't strangled, Your Honor. There's no evidence of
18 strangulation.

19 Interestingly, you heard Miss Harrison testify
20 today, you heard her raspy voice, you heard her tell in very
21 inappropriate terms why her voice is the way it is. She
22 smokes too much, she does stuff it messes with her throat.

23 Where is the body cam to show her speaking that
24 day to compare what you saw today to what happened on

1 June 12th. Why? Because she talks the exact same way. Her
2 voice has nothing to do with the strangulation.

3 All we have is Sergeant Legros telling you in his
4 opinion that this is a possibility. It's not a guarantee. He
5 didn't see petechia. He didn't see any type of indicia of red
6 marks on the neck. Nobody went back to see her afterwards to
7 see if she had any type of injuries to the neck. So I asked
8 the question: Did she have any? She said no.

9 The situation is bad and I'll guarantee you that
10 based on what you heard that that's bad, but it doesn't rise
11 to the level and did the State meet probable cause to believe
12 that a strangulation occurred. I would say based on the
13 evidence, Your Honor, no.

14 You can put your hand on somebody's chest or
15 somebody's throat without strangling them, because, again,
16 strangulation requires blocking of the airway, blocking of the
17 air flow. There's no evidence of that. No physical evidence.
18 No forensic evidence. Nobody's even -- can testify with any
19 level of certainty that that ever happened.

20 So, I'm going to ask you not to bind over on
21 either charge.

22 THE COURT: Miss White?

23 MS. WHITE: Your Honor, first with respect to the
24 strangulation, again, I would argue that we did provide slight

1 or marginal evidence that there was strangulation in this
2 case.

3 Again, common sense tells anyone that if someone
4 has their hand on another person's neck to the point that that
5 person cannot get up from a laying down position on the ground
6 and is actively fighting the person's whose hand is on their
7 neck, common sense says that an airway or a blood flow is
8 being restricted.

9 This isn't as Mr. Odgers indicated just someone
10 placing their hand on a neck or a shoulder. This is someone
11 being held down with such force that they can't get up. That
12 they're screaming and saying things, indicating that they'll
13 back up the abuser.

14 Sergeant Legros also found it very interesting
15 and consistent with someone who had been strangled when asking
16 Miss Harrison if she needed any treatment that she simply
17 lifted up her head. He said she was extremely intoxicated,
18 extremely emotional, extremely uncooperative.

19 I'd argue she wasn't really thinking. She wasn't
20 in a clear state of mind, and yet, when asked if she needed
21 treatment, she still lifted up her head to expose her neck.

22 With regard to the domestic battery and the prior
23 felony conviction, Defense argues that officers can make an
24 arrest based on NCIC, but the Carson City District Attorney's

1 Office needs more, needs that certified prior in order to
2 prove, interestingly, the exact same standard probable cause.

3 But I would argue the reason that we often put
4 forward the certified prior rather than make this argument in
5 similar cases is to avoid this exact argument. To avoid
6 taking the time that we've taken to address the hearsay,
7 because we have a certified prior.

8 But that doesn't preclude us from moving forward
9 without a certified prior in this case or in any similar case.
10 The NCIC printout is not hearsay. There's no reason that
11 Sergeant Legros can't testify to what he reviewed.

12 Based on his training and experience, he laid a
13 clear foundation for understanding how to do so and being able
14 to read that record.

15 Again, it's -- it has an indicia reliability that
16 law enforcement uses every single day when they make an
17 arrest, when they make an arrest based on probable cause, the
18 exact same standard that the state has to prove today.

19 There's no reason that we would need something
20 more when trying to meet that exact same standard of probable
21 cause.

22 As indicated the certified prior eliminates the
23 need for this argument, saves the Court time, saves Defense
24 counsel time. It saves the State time, but it doesn't

1 preclude us from making the same argument.

2 THE COURT: All right. For the record, as both
3 the attorneys know, but Mr. Carrillo so you understand, this
4 is a probable cause hearing, the preliminary hearing. The
5 burden of proof is slide slight or marginal evidence that a
6 crime was committed and that it was committed by you.

7 I know the DA moved to amend to add a charge of
8 domestic battery with a prior felony conviction. That would
9 be what count, Miss White?

10 MS. WHITE: I guess that would be Count III.

11 THE COURT: Okay. The first count is the
12 domestic battery by strangulation. I'm aware in terms of
13 statutory requirements what's required to prove that charge.

14 We're not here today to prove it beyond a
15 reasonable doubt. With the witness testimony that I have, I'm
16 going to make a finding that there's sufficient evidence to
17 bind this case over for preliminary hearing on that, or past
18 the preliminary hearing for that charge to be addressed at the
19 felony level.

20 So, that will be up to a jury to decide, Mr.
21 Carrillo. Your attorney raised some good questions in terms
22 of to what extent was the airway cut off, was it cut off.

23 I've got evidence from two witnesses that your
24 hand was over the alleged victim's neck, one finger on one

1 side, the other finger's on the other side holding her down.
2 To what extent that cut off the airway, consistently, I don't
3 know for sure.

4 But for purposes of what I have to make a
5 determination on today, slight or marginal evidence that the
6 crime of domestic battery strangulation occurred, I find that
7 there's sufficient evidence for that.

8 With regard to the amended charge of domestic
9 battery with a prior felony conviction, that being the
10 domestic battery strangulation, the State has the ability to
11 amend their charging document up to the conclusion of the
12 preliminary hearing, and Miss White I believe put on the
13 record the arrest date, conviction date, the jurisdiction.

14 Again, the burden of proof is slight or marginal
15 evidence, this is a probable cause (indiscernible) with the
16 State, 116 Nevada 298.

17 What that case indicates for purposes of a
18 preliminary hearing, the State's burden for prior convictions
19 is to show evidence concerning a prior conviction.

20 Proof of the prior conviction is not required at
21 the preliminary examination, nor is it required at the time of
22 a jury trial. It's a sentencing enhancement.

23 The goal is to make sure you're on notice of the
24 dates of the arrests, conviction and jurisdiction out of which

1 this conviction was obtained which was provided today in
2 court, and the rest of it is not to be proven. On the
3 (indiscernible) element of the charge, it's a notice issue.

4 So based upon that, I'm going to bind you over on
5 that charge as well.

6 We'll set this matter for a misdemeanor trial on
7 the obstructing charge.

8 When do we want to do that, Mr. Odgers?

9 MR. ODGERS: My calendar is going to be horrible,
10 Judge.

11 THE COURT: Well, I'm not sure if you want to --
12 I'm not sure where the parties stand on if they want to do
13 that before or after this is set, or we can set it out.

14 MR. ODGERS: I think we're probably going to need
15 to set it out, Your Honor, because the Court knows, I go in to
16 a two-week jury trial here starting August 2nd and then to a
17 one week and then back into another three-week Rigg trial in
18 September.

19 THE COURT: Miss White?

20 Is there anybody else that can handle the
21 obstructing misdemeanor charge?

22 MR. ODGERS: Maybe.

23 THE COURT: Okay.

24 MR. ODGERS: We typically try and keep vertical

1 representation on that.

2 THE COURT: I appreciate that, but --

3 MR. ODGERS: This is -- (indiscernible). The
4 obstructing is not Mr. Carrillo's most important issue right
5 now.

6 THE COURT: I understand.

7 MS. WHITE: And, Your Honor, at Defense's
8 earliest convenience, I don't have any objections to setting
9 it out.

10 THE COURT: Are you all right going into
11 September? When is your trial in September?

12 MR. ODGERS: I want to say it's right near the
13 end of it, I don't remember it off the top of my head, I
14 wasn't prepared to do that today.

15 I think I have the first week or two, it's the --
16 it's the case that you had to disqualify yourself from. So
17 that's -- I have a lot of work to do on it.

18 THE COURT: So you think it's the end of
19 September?

20 MR. ODGERS: Yeah, I believe I start second, the
21 third week of September and it goes for three weeks.

22 THE COURT: Miss White, do you want to go in
23 October, or do you want to --

24 MR. ODGERS: Your Honor, if the Court wants to

1 put it in the first two weeks, I mean --

2 THE COURT: First two weeks --

3 MR. ODGERS: -- I can work with --

4 THE COURT: -- of September.

5 MR. ODGERS: I can work with your clerk to look
6 at my calendar when I have it in front of me, that would be
7 more beneficial than us trying to figure it out sitting right
8 here right now.

9 MS. WHITE: That's fine with me, Your Honor.

10 THE COURT: Are you all right with that?
11 (Indiscernible) desk. We just don't want it to fall through
12 the cracks, that's the issue trying to get a court date,
13 but --

14 MR. ODGERS: I mean, if you want to set a date
15 today, we can -- I can -- I'll get it when I get back to the
16 office, and I'll look through my -- because I get all the
17 resets and I'll look at my calendar, if there's an issue, I'll
18 let your clerk know.

19 THE COURT: Well, can the two of you get back to
20 Vanessa tomorrow?

21 MR. ODGERS: Yeah.

22 MS. WHITE: Yes.

23 THE COURT: Okay. All right. So, Mr. Carrillo,
24 you're bound over to the First Judicial District Court for

1 arraignment on July 13th, 2021, at 9:00 a.m.. That will be in
2 Department II in front of Judge Wilson.

3 So, Tuesday, July 13th, 2021, 9:00 a.m.

4 Understand?

5 THE DEFENDANT: (No audible response.)

6 MR. ODGERS: Oh, Your Honor, I apologize, no, I
7 won't be able to get back to your clerk tomorrow morning.

8 THE COURT: Well, tomorrow during the day, yes.
9 When can you get back to her?

10 MR. ODGERS: I've got a settlement conference
11 tomorrow afternoon in District Court. Can I do it Friday
12 morning, Your Honor? I'll be over here with you all Friday
13 morning any way. I won't forget tomorrow.

14 THE COURT: Tomorrow is her last day here.

15 MR. ODGERS: Oh.

16 THE COURT: So she can give it to Tanya and have
17 Tanya handle it, yes, or we can --

18 MR. ODGERS: What I'll do is I'll look at my
19 calendar when I get in at 7:30 before and then I'll send it
20 over to you.

21 THE COURT: If you and Miss White can email and
22 email Vanessa, that will be great.

23 MR. ODGERS: I'll do the best I can, Your Honor.

24 THE COURT: Okay.

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MR. ODGERS: Thank you, Your Honor.

THE COURT: All right. Thank you.

(Proceeding concluded at 5:57 p.m.)

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

4 I, SHELLIE LOOMIS, do hereby certify:

5 That on June 30, 2021, a preliminary hearing was
6 held in the within-entitled matter at the Carson City Justice
7 Court, State of Nevada;

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

11 That the foregoing transcript, consisting of pages 1
12 through 141, is a full, true and correct transcript of said
13 recorded JAVS CD-ROM performed to the best of my ability.

14
15 Dated at Carson City, Nevada, this 25th day of
16 July, 2021?

17
18
19 //Shellie Loomis//
20 Shellie Loomis
21
22
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EXHIBIT D

Deaths from Choke or Carotid Holds

Last Updated on Tue, 06 Jul 2021 | Carbon Monoxide

Neck holds are used by law enforcement agencies to subdue violent individuals. Rarely, one will encounter a death alleged to have occurred due to application of either a choke hold or a carotid sleeper hold.³⁸⁻⁴¹ These terms are often used interchangeably, but, in fact, refer to two different holds whose purpose is to produce transient cerebral ischemia and unconsciousness. Neither involves use of a mechanical implement. Rather, the arm and forearm are used to compress the neck, producing cerebral ischemia and unconsciousness. Occasionally, a baton, large metal flashlight, or some other device, will be used to compress the neck. The authors have seen a number of deaths involving use of such instruments. In such cases, there is usually extensive hemorrhage in the neck and fractures of the hyoid or larynx.

With choke (bar arm) holds, the forearm is placed straight across the front of the neck. The free hand grips the wrist, pulling it back, collapsing the airway and displacing the tongue rearward, which occludes the hypopharynx. Incapacitation is caused by collapse of the airway and the carotid arteries with resultant decrease in the supply of oxygen to the brain. Compression of the carotid arteries is the prime mechanism for loss of consciousness. If too much force is used, there could be fracture of the larynx or hyoid. In two cases reported by Reay and Eisele and in a case seen by the authors, there were unilateral fractures of the greater cornu of the thyroid cartilage.³⁸ Both of Reay and Eisele's cases had fractures on the left side of the neck, the right forearm was across the neck and the left hand was used to pull it backward. Thus, pressure was eccentrically transferred to the neck, predominantly to the left side. In the case seen by the authors, the left forearm was across the neck and the fractures were on the right side of the neck. The authors' case also had a fracture of the hyoid bone on the same side. Following loss of consciousness, the chokehold is released and the victim should regain consciousness within 30 sec. There should be no permanent sequelae. Obviously, if the choke hold is maintained for too long, death will ensue, and one now has a case of manual strangulation.

In the carotid sleeper hold, symmetrical force is applied by the forearm and upper arm to the front of the neck such that there is compression of only the carotid arteries and jugular veins and not the trachea. The arm is placed about the neck with the antecubital fossa or crook of the arm centered at the midline of the neck. The free hand grips the wrist of the other arm and pulls it backward, creating a pincher effect. This produces transient cerebral ischemia. The carotid sleeper hold impedes blood flow in the carotid arteries by pressure exerted on both sides of the neck by the pincher effect of the arm and forearm. If properly applied, the compression of the carotid arteries will cause loss of consciousness in approximately 10-15 sec. On relaxation of the hold, cerebral blood flow will be restored and consciousness will return in approximately 10-20 sec, without any serious side effects. Experiments by Reay and Holloway demonstrated that,

during application of the carotid sleeper hold, blood flow is decreased an average of 85% to the head.³⁹ The range in five subjects was 82 to 96%. The time to minimum blood flow averaged 6 sec (range 3.2 to 7.2 sec).

In theory, the carotid sleeper hold will cause rapid unconsciousness without injury to the individual. Unfortunately, in violently struggling individuals, a carotid sleeper hold can easily and unintentionally be converted into a choke hold, as the individual twists and turns to break the hold.

Maintenance of the pressure in a carotid sleeper hold, after loss of consciousness, becomes manual strangulation and, if continued long enough, will cause death. One would not expect trauma to the structures of the neck in such an instance. The compression of the carotid arteries, with resultant decreased cerebral blood flow, can theoretically precipitate a stroke in an individual with atherosclerotic disease of the carotid or cerebral vasculature. The pressure can cause dislodgment of atherosclerotic material with a stroke caused by an embolus. Blood flow to the brain is from both the carotid and the vertebral arteries. If the vertebral arteries have impaired blood flow due to atherosclerosis, then occlusion of the carotid arteries can threaten an already compromised circulation, resulting in thrombosis or stroke.

Both choke and carotid sleeper holds are safe if properly used, though the latter is the safer of the two. In weighing how much force is acceptable in a situation, one must realize that any action involving force always has the potential of producing severe injury and death.

<https://www.mussenhealth.us/carbon-monoxide/deaths-from-choke-or-carotid-holds.html#:~:text=If%20properly%20applied%2C%20the%20compression%20of%20the%20carotid,approximately%2010-20%20sec%2C%20without%20any%20serious%20side%20effects.>



REC'D & FILED

2021 SEP 24 PM 4:28

AUDREY BOWEN
CLERK

BY  DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

-o0o-

THOMAS CARRILLO,

Petitioner,

vs.

THE STATE OF NEVADA,

Respondent.

CASE NO. 21 CR 00158 1B

DEPT. 2


ORDER FOR ISSUANCE OF WRIT OF HABEAS CORPUS

The Court has reviewed Petitioner's Pretrial Petition for Writ of Habeas Corpus, filed August 9, 2021. It appears that the writ ought to issue under NRS 34.390(1).

IT IS ORDERED that a writ of habeas corpus be issued and directed to the Sheriff of Carson City, commanding him to produce the Petitioner, Thomas Carrillo, before this Court on **November 16 2021, at 9:00 a.m.** and return the cause of the Petitioner's restraint.

IT IS FURTHER ORDERED that the Carson City District Attorney's Office shall file and serve upon Thomas Carrillo or his counsel by **November 5, 2021** a Return as required by NRS 34.430 and a Points and Authorities responding to the Petition for Writ of Habeas Corpus and the Points and Authorities in Support thereof.

September 24, 2021.


James E. Wilson Jr.
District Judge


1
2 **CERTIFICATE OF SERVICE**

3 I certify that I am an employee of the First Judicial District Court of Nevada; that
4 on September 24, 2021, I served a copy of this document by placing a true copy
5 in an envelope addressed to:

6 Charles H. Odgers, Esq.
7 Nevada State Public Defender's Office
8 511 E. Robinson St. Ste. 1
9 Carson City, NV 89701
10 (via clerk's office mail bin)

Garrit Pruyt, Esq.
Office of the District Attorney
885 E. Musser St.
Carson City, NV 89701
(via clerk's office mail bin)

11 the envelope sealed and then deposited in the Court's central mailing basket in the Court
12 Clerk's Office for delivery to the United States Post Office at 1111 South Roop Street,
13 Carson City, Nevada for mailing.

14 
15 Billie Shadron
16 Judicial Assistant
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JASON D. WOODBURY
DISTRICT ATTORNEY
Nevada Bar No. 6870
885 E. Musser Street, Suite 2030
Carson City, NV 89701
(775) 887-2072
Attorney for Plaintiff

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

THOMAS CARRILLO,
Petitioner,
v.
STATE OF NEVADA,
Respondent.

Case No. 21 CR 00158 1B
Dept. No. II

RETURN AND ANSWER TO PETITIONER'S PRETRIAL PETITION FOR WRIT OF
HABEAS CORPUS

COMES NOW, the Respondent, STATE OF NEVADA, by and through
counsel, JASON D. WOODBURY, District Attorney and Sarah E. White, Deputy
District Attorney in and for Carson City, State of Nevada, and herein enters its
RETURN AND ANSWER TO PETITIONER'S PRETRIAL PETITION FOR WRIT OF
HABEAS CORPUS in the above-captioned case wherein the Petitioner above-named
is represented by Counsel, Charles Odgers, Esq.

Petitioner is under the Respondent's power through the First Judicial District
Court by way of Criminal Information filed on July 12, 2021, in which Petitioner is
charged with one count of Battery that Constitutes Domestic Violence, Committed by

Office of the District Attorney
Carson City, Nevada
635 East Musser St., Suite 2030, Carson City, Nevada 89701
Tel: (775) 887-2072 Fax: (775) 887-2129

1 Strangulation, a Category C Felony as defined by NRS 33.018, NRS 200.485, and
2 NRS 200.481 (Count I), and one count of Battery that Constitutes Domestic Violence
3 with a Prior Felony, as defined by NRS 33.018, NRS 200.485(3), and NRS 200.481
4 (Count II).

5 Petitioner filed a Writ of Habeas Corpus, claiming unlawful imprisonment in the
6 Carson City Jail to answer to both counts, arguing there was not sufficient evidence
7 presented at the preliminary examination to establish probable cause for the charges.
8 However, Petitioner is lawfully detained, and prosecution is proper for all counts
9 charged. Respondent has probable cause to hold Petitioner to answer for both
10 counts, as sufficient evidence was presented at the preliminary hearing that the
11 Petitioner committed the crime of Domestic Battery by Strangulation, and there was
12 sufficient evidence presented regarding a prior felony conviction.

13 This Return and Answer is based upon the points and authorities presented
14 below, as well as all documents and transcripts prepared in Carson City Justice Court
15 Case number 21 CR 00866 1C.

16 DATED this 30th day of September, 2021.

17 JASON D. WOODBURY
18 District Attorney

19 By: 
20

21 SARAH E. WHITE
22 Deputy District Attorney
23 Nevada Bar No. 14643
24
25

I. PROCEDURAL HISTORY

Petitioner, Thomas Carrillo, was arrested on June 12, 2021 and subsequently charged by way of Criminal Complaint with the charge of Battery that Constitutes Domestic Violence, Committed by Strangulation, a category C felony, and Obstructing a Public Officer, a misdemeanor. The matter proceeded to a preliminary hearing on June 30, 2021, during which the State added a charge of Battery that Constitutes Domestic Violence with a Prior Felony, a category B felony. The Justice Court bound over both felony charges to the First Judicial District Court. On July 12, 2021, the State filed a Criminal Information charging Petitioner with each count as follows: Battery that Constitutes Domestic Violence, Committed by Strangulation, a category C felony as defined by NRS 33.018, NRS 200.485, and NRS 200.481 (Count I) and Battery that Constitutes Domestic Violence with Prior Felony, a category B felony as defined by NRS 33.018, NRS 200.485(3), and NRS 200.481 (Count II). The matter is currently set for jury trial to commence on January 24, 2022.

On August 9, 2021, Petitioner filed a Pretrial Petition for Writ of Habeas Corpus alleging Count I of the Criminal Information was not adequately proven at the preliminary hearing, claiming the State did not present the requisite probable cause, and alleging Count II of the Criminal Information was not properly bound over based upon insufficient evidence that a prior felony conviction exists. The State now files its Return and Answer to Petitioner's Writ, as there is probable cause and sufficient evidence to proceed on both counts.

II. FACTUAL HISTORY

On June 12, 2021, Helen Kenton was in her home when she heard a noise, which she described as a "pretty loud" scuffle. *Preliminary Hearing Transcript (PHT)*, Justice Court Case Number 21 CR 00866 1C, *State of Nevada v. Thomas Carrillo*,

1 June 30, 2021, at 8:15-24. Kenton then opened her front door to find Petitioner with
2 his hand around the throat of his girlfriend, Echo Harrison. PHT 8:15-17, 10:3-5, 63:4-
3 10. At the preliminary hearing in this case, Kenton testified that the Petitioner was
4 specifically "standing over [Harrison] with his hand on her throat"; that his hand "went
5 around her throat. She – it's the thumb was on one side and his fingers on the other."
6 PHT 29:5-11. Kenton testified that while the Petitioner's hand was on Harrison's
7 neck, she could hear Harrison state that she "had his back." PHT 11:19-24.

8 Kenton testified that she approached the Petitioner and tried to "break it up,"
9 but the Petitioner held his hand around Harrison's throat the entire time. PHT 13:5-
10 19. Kenton testified that she also observed Harrison "trying to get his hand off her
11 neck," and trying to get up from where she was held lying on the ground. PHT 34:1-4.
12 While she was present, Kenton heard Harrison talking the entire time, "every like
13 couple seconds or minutes." PHT 34:5-10. During her testimony, Kenton stated that
14 she had personally been choked in a prior abusive relationship unrelated to this
15 incident; Kenton testified that based upon her personal experience, Harrison's voice
16 was consistent with Kenton's own experience in being choked. PHT 36:11-19.

17 Helen Kenton was not the only witness to this incident; a second individual,
18 Kevin Patterson, also referred to as "Kat," was also present. At the preliminary
19 hearing, Patterson testified he saw the Petitioner "holding down [Echo Harrison] by
20 the throat on the concrete." PHT 41:2-4. The Petitioner, based upon Patterson's
21 observations, was "hovering over her, holding her down." PHT 54:3-5. Patterson
22 testified that he approached the Petitioner and observed Echo Harrison "trying to like
23 get up to like fight him off, but she wasn't trying to get off the concrete. When he
24 finally did release her, she laid on the concrete." PHT 44:3-7. Patterson stated that
25 Harrison was "screaming at [the Petitioner] the entire time" Patterson was present.

1 PHT 55:6-12.

2 Echo Harrison was also present at the preliminary hearing and testified to her
3 memory of the incident. Harrison indicated that she and the Petitioner were drinking
4 from the morning until "most likely" after midnight. PHT 64:11-19. Harrison also
5 stated that her "memory is a little blurry" and that she didn't "remember what [she]
6 was doing or saying." PHT 66:5-12.

7 After witnesses observed the Petitioner put his hand around Harrison's neck,
8 the Carson City Sheriff's Office was called on scene to respond to the incident.
9 Specifically, Sergeant David Legros of the Carson City Sheriff's Office arrived to
10 "evaluate the situation and assist in the investigation." PHT 76:1-2. Sergeant Legros
11 initially spoke with Harrison and observed her to be "uncooperative ... intoxicated and
12 very emotional." PHT 76:13-14. Sergeant Legros asked Harrison "if she was okay"
13 and asked "to see her injuries," to which she "asked me if I could check her out and
14 lifted up her chin exposing her neck to me," thereby "verifying that's where her
15 injuries were." PHT 77:13-23 and PHT107:1-3. Sergeant Legros never specifically
16 asked to see Harrison's neck, yet Harrison "immediately lifted up her chin to the sky,
17 if you will, exposing her neck," and "indicating non-verbally that's where her injury
18 was." PHT 78:3-5 and PHT 107:18-22.

19 Not only had Sergeant Legros spoken to Harrison, but he also received
20 information that multiple witnesses on scene "verified" that the Petitioner "choked
21 slash strangled" Harrison and "had his hands around her neck." PHT 102:21-24; PHT
22 111:1-3; and PHT 116:22-23.

23 Sergeant Legros also testified that, based on his approximately 24 years of
24 experience as a law enforcement officer, somebody who is being choked or strangled
25 is able to talk and scream the entire time "when available." PHT 100:4-8 and 103:21-

1 24. He stated, "[J]ust because someone's blood and air is being controlled by the
2 flow, by hands around the neck, people aren't just going to sit there and let you do
3 this. Generally speaking, they're going to move around, fight and flail, allowing certain
4 loss of grip, therefore being able to scream or shout." PHT 121:2-10. Furthermore,
5 Sergeant Legros testified that even if a person's airway was not restricted when
6 being choked, "their carotid arteries could be restricted." PHT 122:19-21.

7 Sergeant Legros also testified regarding physical evidence that might be
8 present when someone has been strangled, including the presence of petechiae.
9 Sergeant Legros testified that while strangulation may cause petechiae, "it doesn't
10 immediately occur. It's something that occurs afterwards" and varies from person-to-
11 person. PHT 106:8-20. Sergeant Legros also stated that he did not know whether
12 petechia occurred to Harrison afterwards in this case because "she was very
13 uncooperative." PHT 106:17-20.

14 Subsequent to his investigation, Sergeant Legros ran a criminal history against
15 the Petitioner. PHT 95:12-14. He testified that, generally, it's "very important" to
16 review prior convictions when making an arrest to determine whether the initial
17 charge will reflect either a misdemeanor or a felony based on potential
18 enhancements. PHT 96:15-18. Sergeant Legros testified that he ran a criminal
19 history against the Petitioner by contacting dispatch and requesting a criminal history,
20 which was then faxed directly to him. PHT 97:6-15. Sergeant Legros testified he
21 obtains criminal histories by providing dispatch with a name, date of birth, and case
22 number tracked by the FBI—the same information he provided to dispatch to obtain
23 the Petitioner's criminal history. PHT 98:8-16. Sergeant Legros reviewed the faxed
24 copy and determined that the Petitioner had previously been convicted of the felony
25 charge of domestic battery strangulation from Washoe County in 2019 arising from

1 an arrest in 2018. PHT 98:17-99:12. Sergeant Legros testified to the arrest and
2 conviction; additionally, counsel stipulated that a copy of the Petitioner's criminal
3 history had previously been provided to defense counsel pursuant to a discovery
4 request.

5 III. ARGUMENT

6 a. The Justice Court properly bound over Count I, Domestic Battery by 7 Strangulation, to the District Court as there was sufficient evidence to 8 support a finding of probable cause presented at preliminary hearing.

9 At a preliminary hearing, the State has a burden to show "probable cause to
10 believe that an offense has been committed and that the defendant has committed
11 it." *Sheriff v. Dhadda*, 115 Nev. 175, 180, 980 P.2d 1062, 1065 (1999); NRS 171.206;
12 *Graves v. Sheriff*, 88 Nev. 436, 439, 498 P.2d 1324, 1326 (1972)). "Probable cause
13 requires presenting only slight or marginal evidence to support a reasonable
14 inference that the accused committed the offense," as it is not a determination of the
15 guilt or innocence of the accused. *Sheriff v. Milton*, 109 Nev. 412, 414, 851 P.2d 417,
16 418 (1993). At a preliminary hearing, the State does not carry the burden of negating
17 innocent explanations for the crimes charged, but rather only must establish facts
18 leading to a reasonable inference that the accused committed the crimes. See
19 *Graves*, 88 Nev. at 439, 498 P.2d at 1326.

20 Although there may be room for doubt, a court is required to weigh evidence
21 toward guilt when making a finding of probable cause. *Id.* Consequently, when
22 evaluating the probable cause determination of a lower court, "a reviewing court
23 should assume the truth of the state's evidence and all reasonable inferences from it
24 in a light most favorable to the state." *Dhadda*, 115 Nev. at 180, 980 P.2d at 1065.
25 As long as an inference of criminal activity *could* be drawn from evidence presented
at a preliminary hearing, it is "proper for the magistrate to draw it, and leave to the

1 trier of fact in district court the determination of guilt or innocence." *Graves*, 88 Nev.
2 at 440, 498 P.2d at 1327 (citing to *Miner v. Lamb*, 86 Nev. 54, 464 P.2d 451 (1970)
3 and *Azbill v. State*, 84 Nev. 345, 440 P.2d 1014 (1968)(Finding an indictment "will not
4 be set aside if there is some rational ground for assuming the possibility that the
5 offense charged has been committed and the accused is guilty of it").

6 In this instant case, the State presented more than sufficient evidence—
7 required by law to be only slight or marginal—to show a reasonable inference that the
8 Petitioner committed the offense of Domestic Battery by Strangulation as alleged in
9 Count I. The State produced two independent witnesses, who both individually stated
10 that they personally observed the Petitioner standing over Echo Harrison with his
11 hand on her neck, holding her to the ground. Kenton testified the Petitioner's hand
12 was on Harrison's neck with a thumb on one side and his other four fingers on the
13 other side, thereby placing his hand not only on, but "around" Harrison's neck.
14 Patterson testified that the Petitioner held Harrison by the throat even despite her
15 attempts to get up and to "fight him off." Assuming the truth of the State's evidence,
16 and weighing the evidence toward guilt, the eyewitness testimony alone provided at
17 least slight or marginal evidence that the Petitioner committed domestic battery
18 against Harrison by strangling her.

19 Notwithstanding, the State not only produced eyewitness testimony from third-
20 party witnesses, but also presented testimony from an experienced sergeant,
21 Sergeant Legros, employed in law enforcement for approximately 24 years with
22 significant training regarding strangulation and domestic battery investigations.
23 Sergeant Legros, through his testimony, presented evidence that Harrison indicated
24 she had injury to her neck. Sergeant Legros's testimony was consistent with
25 eyewitness testimony that Petitioner strangled Harrison, and, taken together, the

1 testimony sufficiently established a reasonable inference that Petitioner committed
2 Domestic Battery by Strangulation.

3 The Petitioner argues that the State failed to present slight or marginal
4 evidence of strangulation because (1) witnesses testified Harrison was screaming
5 and never lost consciousness; and (2) Sergeant Legros did not see any injuries or
6 indicators of strangulation on Harrison except that she lifted her chin. But the State
7 does not carry the burden of negating any of the issues raised by the Petitioner; the
8 State is only required at a preliminary hearing to present evidence showing an
9 inference of criminal activity could be drawn. Based on the evidence presented, an
10 inference, if not more, *could* be drawn that the Petitioner committed Domestic
11 Battery by Strangulation; therefore, it must be left to the trier of fact in district court to
12 determine whether the Petitioner's arguments negate a finding of guilt beyond a
13 reasonable doubt. Nonetheless, the State did present evidence at the preliminary
14 hearing to negate each issue raised by the Petitioner.

15 First, the Petitioner argues the State did not produce evidence to support a
16 reasonable inference that Harrison was strangled because Harrison was screaming.
17 However, the State presented sufficient evidence to negate this notion. Pursuant to
18 NRS 481.200(1)(l), "strangulation" is defined as "intentionally impeding the normal
19 breathing or circulation of the blood by applying pressure on the throat or neck or by
20 blocking the nose or mouth of another person in a manner that creates a risk of death
21 or substantial bodily harm." Evidence was presented that the Petitioner held his hand
22 around Harrison's neck, pinning her to the ground despite her efforts to "fight him off."
23 This fact alone presents an inference that the Petitioner applied pressure to
24 Harrison's throat or neck in order to hold her on the ground, and also that the
25 Petitioner's actions created a risk of death or substantial bodily harm by wrapping his

1 hand around Harrison's neck and applying enough force to prevent her from getting
2 up.

3 Sergeant Legros testified based upon his extensive experience that somebody
4 who is being choked or strangled would possibly be able to talk and scream the
5 entire time. Strangulation is defined as impeding either normal breathing or the
6 circulation of blood, and Sergeant Legros testified that even if a person's airway was
7 not restricted when being choked, "their carotid arteries could be restricted." Thus,
8 even if Harrison's breathing wasn't restricted, thereby affording her the opportunity to
9 scream or talk while being choked, the circulation of her blood could nonetheless
10 have been restricted. And the restriction of normal blood flow undisputedly creates a
11 risk of substantial bodily harm or death.

12 Additionally, the Petitioner argues the State did not produce evidence to
13 support a reasonable inference that Harrison was strangled because Harrison did not
14 lose consciousness. However, Nevada law does not define strangulation as a loss of
15 consciousness, nor does the law dictate any length of time during which a person
16 must be strangled for a behavior to constitute strangulation. The Petitioner states in
17 his Writ that "compression to the carotid artery results in unconsciousness in 10 to 15
18 seconds." *Writ of Habeas Corpus*, 10:12-13. However, testimony was presented that
19 Harrison was actively moving and attempting to fight the Petitioner off her while being
20 strangled. Sergeant Legros confirmed Harrison's behavior is typical, stating that
21 when people are strangled, they "aren't just going to sit there and let you do this.
22 Generally speaking, they're going to move around, fight and flail, allowing certain loss
23 of grip," thereby potentially allowing air and/or blood flow to resume intermittently.
24 While no testimony indicated Harrison lost consciousness, and while testimony was
25 consistent that Harrison screamed or spoke while being strangled, these facts do not

1 negate evidence inferring the Petitioner committed Domestic Battery by
2 Strangulation.

3 Second, the Petitioner argues that Sergeant Legros did not see any injuries or
4 indicators of strangulation on Harrison with the exception that she lifted her chin.
5 While Sergeant Legros did not see any visible injuries on scene, he testified that one
6 particular injury, petechiae, "doesn't immediately occur. It's something that occurs
7 afterwards" and varies from person-to-person. However, Sergeant Legros was
8 unable to meet with Harrison afterwards to check for this visible injury because
9 Harrison was "very uncooperative." While no other physically visible injuries existed,
10 the State presented sufficient evidence by way of eyewitness testimony and
11 Harrison's behavior indicating her neck was injured, to, at the very least, infer the
12 Petitioner committed Domestic Battery by Strangulation.

13 Based upon the evidence presented, the Justice Court properly found there
14 was sufficient evidence to support a finding of probable cause that the Petitioner
15 committed the crime charge in Count I of the Criminal Complaint: Battery that
16 Constitutes Domestic Violence, Committed by Strangulation.

17
18 **b. The Justice Court properly bound over Count II¹, as the State properly
showed the prior felony offense at the preliminary examination.**

19 The Petitioner argues that the State improperly showed the facts constituting
20 the Petitioner's prior felony offense from Washoe County, Nevada, for Domestic
21 Battery Committed by Strangulation (hereinafter "the prior"), claiming the state failed
22 to establish probable cause regarding the prior. However, the Petitioner is mistaken
23 regarding the State's burden at a preliminary hearing regarding an enhanced crime.
24 The Nevada Supreme Court thoroughly addressed the State's requirement when
25

¹ Count II pursuant to the Criminal Information and Count III pursuant to the Criminal Complaint.

1 presenting prior convictions at a preliminary hearing for enhancement purposes in
2 *Parsons v. State*, 116 Nev. 928, 10 P.3d 836 (2000), indicating the State need only
3 put the accused on notice of the prior conviction.

4 In *Parsons*, the Court ultimately held that the constitutional validity of a prior
5 conviction "need not be part of the probable cause determination because the prior
6 convictions are not elements" of the offense. *Id.* at 116 Nev. at 934, 10 P.3d at 840.
7 The Court in *Parsons* reviewed this matter as it pertained to prior DUI convictions and
8 based its ruling in part upon the fact that the "offense and sentencing provisions [are]
9 separated into different statutes." *Id.* Similar to the statutes regarding DUI, the
10 statutes regarding Domestic Battery also separate the offense and sentencing
11 provisions into different statutes—NRS 200.481 and NRS 33.018 regulate the
12 offense, and NRS 200.485 regulates the penalties. Therefore, the same analysis in
13 *Parsons* can be applied in this matter.

14 In *Parsons*, the Court held the State was "not required to establish the
15 constitutional validity of a prior ... conviction for enhancement purposes at the
16 preliminary examination state of the criminal proceedings" *Id.* at 116 Nev. at 930, 10
17 P.3d at 837. When prior convictions are not elements of the offense charged, such as
18 for enhancement purposes in DUI or Domestic Battery charges, "an evidentiary
19 evaluation of the prior convictions is not necessary to determine whether the offense
20 has been committed for purposes of a probable cause determination." *Id.* at 116 Nev.
21 at 934, 10 P.3d at 840. However, "the facts concerning a prior offense must be
22 shown at the preliminary examination." *Id.* at 116 Nev. at 934-35, 10 P.3d at 840.
23 Facts of the prior offense are properly shown if "alleged in the complaint" to put the
24 accused on notice of the possible penalties and provide "enough information to
25 challenge the validity of alleged prior convictions." *Id.* Facts are shown when the

1 State provides "the dates of the prior offenses and convictions and the locations
2 where the prior offenses occurred or the courts that entered the prior convictions." *Id.*
3 If these facts are shown at the preliminary examination, they "are sufficient to find
4 probable cause to believe the defendant has committed a felony." *Id.*

5 The Court determined that the State need not present evidence regarding the
6 validity of prior convictions but is only burdened with providing facts necessary to put
7 the accused on notice. *Id.* The Court explained its reasoning was twofold, indicating
8 that: (1) a defendant is entitled to a preliminary examination within 15 days, and if the
9 State is required to provide certified copies of a conviction, the 15-day period might
10 frequently be extended if the State is unable to obtain certified copies in such a short
11 timeframe; as a result, a defendant's period of incarceration before a preliminary
12 examination might often be unnecessarily prolonged; and (2) a jury cannot consider
13 the facts concerning prior convictions when making a determination about guilt or
14 innocence; "thus, an accused is not prejudiced by allowed the State to proceed ...
15 without a determination at the preliminary examination that the prior convictions are
16 constitutionally valid." *Id.* at 116 Nev. at 936-37, 10 P.3d at 841-42.

17 In this matter, during preliminary examination, the State amended the Criminal
18 Complaint to include Count III: Battery Constituting Domestic Violence with a Prior
19 Felony, alleging a prior felony conviction for Domestic Battery by Strangulation with a
20 prior arrest date of September 28, 2018 and a prior conviction date of February 3,
21 2019. The State added Count III pursuant to NRS 33.018, NRS 200.481, and NRS
22 200.485(3)(a). In addition, the State had previously provided the Petitioner with his
23 criminal history through NCIC on June 23, 2021 which also showed the prior.
24 Furthermore, the State provided testimony from Sergeant Legros regarding his
25 review of the prior, which he confirmed through NCIC by providing to dispatch the

1 Petitioner's name, date of birth, and case number tracked by the FBI. The State,
2 therefore, in no less than three ways, provided the Petitioner with the dates of the
3 prior offense and conviction and the location, thus meeting its burden to put the
4 Petitioner on notice and show the Petitioner facts as necessary for enhancement
5 purposes.

6 IV. CONCLUSION

7 The Justice Court properly found probable cause to bind over both counts to
8 the District Court, as the State presented at least slight or marginal evidence to
9 support a reasonable inference that Petitioner committed Battery that Constitutes
10 Domestic Violence, Committed by Strangulation and the State adequately put the
11 Petitioner on notice regarding his prior felony conviction to support the charge of
12 Battery that Constitutes Domestic Violence with Prior Felony. Therefore, the State
13 respectfully requests this Court DENY the Petitioner's Pretrial Writ of Habeas Corpus.

14 DATED this 30th day of September, 2021.


15 JASON D. WOODBURY
16 District Attorney

17 By: 
18 SARAH E. WHITE
19 Deputy District Attorney
20 Nevada Bar No. 14643
21
22
23
24
25

1 **CERTIFICATE OF SERVICE**

2 I certify that I am an employee of the Office of the Carson City District Attorney
3 and that on this 30th day of September, 2021, I caused to be served a copy of the
4 foregoing document, titled: **RETURN AND ANSWER TO PETITIONER'S PRETRIAL**
5 **PETITION FOR WRIT OF HABEAS CORPUS** by faxing and placing in the Public
6 Defender's Box said document addressed to:

7 Charles Odgers, Esq.
8 511 Robinson Street, Suite 1
9 Carson City, Nevada 89701
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A handwritten signature, appearing to read "R. P. King", is written over a horizontal line.

REC'D & FILED

2021 NOV 15 AM 10:13

AUBREY ROWLATT
CLERK

BY *[Signature]* DEPUTY

**In The First Judicial District Court of the State of Nevada
In and for Carson City**

THOMAS CARRILLO,

Petitioner,

Case No.: 21 CR 00158 1B

Dept. No.: II

vs

STATE OF NEVADA,

Respondent.

**NOTICE OF ENTRY OF DECISION OR
ORDER**

PLEASE TAKE NOTICE that on November 12, 2021, the Court entered a decision or order in this matter, a true and correct copy of which is attached to this Notice.

You may appeal to the Supreme Court from the decision or order of this Court. If you wish to appeal, you must file a Notice of Appeal with the Clerk of this Court within 33 days after the date this Notice is mailed to you. This Notice was mailed on November 15, 2021.

DATED this 15th day of November, 2021.

AUBREY ROWLATT, Clerk

By *[Signature]* Deputy

cc: Thomas Carrillo
Charles Odgers, State P.D.
State of Nevada
Jason Woodbury, District Attorney
Aaron Ford, Attorney General

REC'D & FILED

2021 NOV 12 AM 8:19

AUSSEY ROBLATI
CLERK

BY DEPUTY

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR CARSON CITY

THOMAS CARRILLO,

Petitioner,

v.

STATE OF NEVADA,

Respondent.

Case No. 21 CR 00158 1B

Dept. No. II

ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS

This matter was submitted to the Court by Petitioner's *Petition for Writ of Habeas Corpus*. The *Writ* was filed by the Nevada State Public Defender on behalf of Petitioner on August 9, 2021, alleging insufficient evidence was presented at the preliminary hearing to bind over the charges in this case. The State filed its *Return and Answer* on October 1, 2021, contesting Petitioner's argument.

Now, being fully advised of all assertions set forth in the pleadings, this Court hereby DENIES the Writ of Habeas Corpus, affirming the Justice Court's decision to bind over both counts.

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1 **I. FINDINGS OF FACT**

2 On June 12, 2021, Helen Kenton was in her home when she heard a noise,
3 which she described as a "pretty loud" scuffle. *Preliminary Hearing Transcript (PHT)*,
4 Justice Court Case Number 21 CR 00866 1C, *State of Nevada v. Thomas Carrillo*,
5 June 30, 2021, at 8:15-24. Kenton then opened her front door to find the Petitioner
6 with his hand around the throat of his girlfriend, Echo Harrison. PHT 8:15-17, 10:3-5,
7 63:4-10. At the preliminary hearing in this case, Kenton testified that the Petitioner
8 was specific ally "standing over [Harrison] with his hand on her throat"; that his hand
9 "went around her throat. She -- it's the thumb was on one side and his fingers on the
10 other." PHT 29:5-11. Kenton testified that while the Petitioner's hand was on
11 Harrison's neck, she could hear Harrison state that she "had his back." PHT 11:19-
12 24.

13 Kenton testified that she approached the Petition and tried to "break it up," but
14 the Petition held his hand around Harrison's throat the entire time. PHT 13:5-19.
15 Kenton testified that she also observed Harrison "trying to get his hand off her neck,"
16 and trying to get up from where she was held lying on the ground PHT 34:1-4. While
17 she was present, Kenton heard Harrison talking the entire time, "every like couple
18 seconds or minutes." PHT 34:5-10. During her testimony, Kenton stated that she had
19 personally been choked in a prior abusive relationship unrelated to this incident;
20 Kenton testified that based upon her personal experience, Harrison's voice was
21 consistent with Kenton's own experience in being choked. PHT 36:11-19.

22 Helen Kenton was not the only witness to this incident; a second individual,
23 Kevin Patterson, also referred to as "Kat," was also present. At the preliminary
24 hearing, Patterson testified he saw the Petitioner "holding down [Echo Harrison] by
25 the throat on the concrete." PHT 41:2-4. The Petitioner, based upon Patterson's

1 observations, was "hovering over [Harrison], holding her down." PHT 54:3-5.
2 Patterson testified that he approached the Petitioner and observed Harrison "trying to
3 like get up to like fight him off, but she wasn't trying to get off the concrete. When he
4 finally did release her, she laid on the concrete." PHT 44:3-7. Patterson stated that
5 Harrison was "screaming at [the Petitioner] the entire time" Patterson was present.
6 PHT 55:6-12.

7 Echo Harrison was also present at the preliminary hearing and testified to her
8 memory of the incident. Harrison indicated that she and the Petitioner were drinking
9 from the morning until "most likely" after midnight. PHT 64:11-19. Harrison also
10 stated that her "memory is a little blurry" and that she didn't "remember what [she]
11 was doing or saying." PHT 66:5-12.

12 After witnesses observed the Petitioner put his hand around Harrison's neck,
13 the Carson City Sheriff's Office was called to respond to the incident. Specifically,
14 Sergeant David Legros of the Carson City Sheriff's Office arrived to the scene to
15 "evaluate the situation and assist in the investigation." PHT 76:1-2. Sergeant Legros
16 initially spoke with Harrison and observed her to be "uncooperative ... intoxicated
17 and very emotional." PHT 76:13-14. Sergeant Legros asked Harrison "if she was
18 okay" and asked "to see her injuries," to which she "asked [him if he] could check her
19 out and lifted up her chin exposing her neck," thereby "verifying that's where her
20 injuries were." PHT 77:13-23 and 107:1-3. Sergeant Legros never specifically asked
21 to see Harrison's neck, yet Harrison "immediately lifted up her chin to the sky, if you
22 will, exposing her neck," and "indicating non-verbally that's where her injury was."
23 PHT 78:3-5. And 107:18-22.

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1 Not only did Sergeant Legros speak to Harrison, but he also received
2 information that multiple witnesses on scene "verified" that the Petitioner "choked
3 slash strangled" Harrison and "had his hands around her neck." PHT 102:21-24;
4 111:1-3; and 116:22-23.

5 Sergeant Legros also testified that, based upon his approximately 24 years of
6 experience as a law enforcement officer, somebody who is being choked or
7 strangled is able to talk and scream the entire time when the grip on the throat is
8 "lightened". PHT 100:4-8 and 103:21-104:3. He stated, "[J]ust because someone's
9 blood and air is being controlled by the flow, by hands around the neck, people aren't
10 just going to sit there and let you do this. Generally speaking, they're going to move
11 around, fight and flail, allowing certain loss of grip, therefore being able to scream or
12 shout." PHT 121:2-10. Furthermore, Sergeant Legros testified that even if a person's
13 airway was not restricted when being choked, "their carotid arteries could be
14 restricted." PHT 122:19-21.

15 Sergeant Legros also testified regarding physical evidence that might be
16 present when someone has been strangled, including the presence of petechiae.
17 Sergeant Legros testified that while strangulation may cause petechiae, "it doesn't
18 immediately occur. It's something that occurs afterwards" and varies from person-to-
19 person. PHT 106:8-20. Sergeant Legros also stated that he did not know whether
20 petechia occurred to Harrison afterwards in this case because "she was very
21 uncooperative." PHT 106:17-20.

22 Subsequent to his investigation, Sergeant Legros ran a criminal history
23 against the Petitioner. PHT 95:12-14. He testified that, generally, it's "very important"
24 to review prior convictions when making an arrest to determine whether the initial
25 charge will reflect either a misdemeanor or a felony based on potential

1 enhancements. PHT 96:15-18. Sergeant Legros testified that he ran a criminal
2 history against the Petitioner by contacting dispatch and requesting a criminal
3 history, which was then faxed directly to him. PHT 97:6-15. Sergeant Legros testified
4 he obtains criminal histories by providing dispatch with a name, date of birth, and
5 case number tracked by the FBI—the same information he provided to dispatch to
6 obtain the Petitioner's criminal history in this matter. PHT 96:8-16. Sergeant Legros
7 reviewed the faxed copy and determined that the Petitioner had previously been
8 convicted of the felony charge of domestic battery strangulation from Washoe
9 County in 2019 arising from an arrest in 2018. PHT 98:17-99:12. Sergeant Legros
10 testified to the arrest and conviction; additionally, counsel stipulated that a copy of
11 the Petitioner's criminal history had previously been provided to defense counsel
12 pursuant to a discovery request.

13 14 II. CONCLUSIONS OF LAW

15 The Justice Court properly bound over Count I, Domestic Battery by
16 Strangulation, as this Court finds there was sufficient evidence presented at
17 preliminary hearing to support a finding of probable cause. At a preliminary hearing,
18 the State has a burden to show “probable cause to believe that an offense has been
19 committed and that the defendant has committed it.” *Sheriff v. Dhadda*, 115 Nev.
20 175, 180 (1999); NRS 171.206; *Graves v. Sheriff*, 88 Nev. 436, 439 (1972).
21 “Probable cause requires presenting only slight or marginal evidence to support a
22 reasonable inference that the accused committed the offense,” as it is not a
23 determination of the guilt or innocent of the accused. *Sheriff v. Milton*, 109 Nev. 412,
24 414 (1993). At a preliminary hearing, the state does not carry the burden of negating
25 innocent explanations for the crimes charged, but rather only must establish facts

1 leading to a reasonable inference that the accused committed the crimes. See
2 *Graves*, 88 Nev. at 439.

3 Although there may be room for doubt, a court is required to weigh evidence
4 toward guilt when making a finding of probable cause. *Id.* Consequently, when
5 evaluating the probable cause determination of a lower court, “a reviewing court
6 should assume the truth of the state’s evidence and all reasonable inferences from it
7 in a light most favorable to the state.” *Dhadda*, 115 Nev. at 180. As long as an
8 inference of criminal activity **could** be drawn from evidence presented at a
9 preliminary hearing, it is “proper for the magistrate to draw it, and leave to the trier of
10 fact in district court the determination of guilt or innocence.” *Graves*, 88 Nev. at 440
11 (citing to *Miner v. Lamb*, 86 Nev. 54 (1970) and *Azbill v. State*, 84 Nev. 345
12 (1968)(Finding an indictment “will not be set aside if there is some rational ground for
13 assuming the possibility that the offense charged has been committed and the
14 accused is guilty of it”).

15 In this instant case, the State presented more than sufficient evidence—
16 required by law to be only slight or marginal—to show a reasonable inference that
17 the Petitioner committed the offense of Domestic Battery by Strangulation as alleged
18 in Count I. The State produced two independent witnesses, who both individually
19 stated that they personally observed the Petitioner standing over Echo Harrison with
20 his hand on her neck, holding her to the ground. Kenton testified the Petitioner’s
21 hand was on Harrison’s neck with a thumb on one side and his other four fingers on
22 the other side, thereby placing his hand not only on, but “around” Harrison’s neck.
23 Patterson testified tha the Petitioner held Harrison by the throat even despite her
24 attempts to get up and to “fight him off.” Assuming the truth of the State’s evidence,
25 and weighing the evidence toward guilt, the eyewitness testimony alone provided at

1 last slight or marginal evidence that the Petitioner committed domestic battery
2 against Harrison by strangling her.

3 Notwithstanding, the State produced testimony from an experienced sergeant
4 in addition to eyewitness testimony from third-party witnesses. Sergeant Legros
5 testified he has been employed in law enforcement for approximately 24 years with
6 significant training and experience regarding strangulation and domestic battery
7 investigations. Sergeant Legros, through his testimony, presented evidence that
8 Harrison indicated she had injury to her neck by showing her neck to Sergeant
9 Legros when he asked if she was injured. Sergeant Legros's testimony was
10 consistent with the eyewitness testimony that the Petitioner strangled Harrison, and,
11 taken together, testimony sufficiently established a reasonable inference that the
12 Petitioner committed Domestic Battery by Strangulation.

13 The Petitioner argues that the State failed to present slight or marginal
14 evidence of strangulation because (1) witnesses testified Harrison was screaming
15 and never lost consciousness; and (2) Sergeant Legros did not see any injuries or
16 indicators of strangulation, such as petechiae, on Harrison except that she lifted her
17 chin. The State, however, does not carry the burden of negating any of the issues
18 raised by the Petitioner; the State was only required at preliminary hearing to present
19 evidence showing an inference of criminal activity could be drawn. Based upon the
20 evidence presented, an inference, if not more, **could**, easily, be drawn that the
21 Petitioner committed Domestic Battery by Strangulation; therefore, it must be now
22 left to the trier of fact in this Court to determine whether the Petitioner's arguments
23 negate a finding of guilty beyond a reasonable doubt.

24 While the State does not carry the burden of negating the issues raised, the
25 State nonetheless did present evidence at the preliminary hearing to negate each

1 issue raised by the Petitioner. First, the Petitioner argues the State did not produce
2 evidence to support a reasonable inference that Harrison was strangled because
3 Harrison was screaming. However, the State did present sufficient evidence to
4 negate this notion. Pursuant to NRS 481.200(1)(i), "strangulation" is defined as
5 "intentionally impeding the normal breathing or circulation of the blood by applying
6 pressure on the throat or neck or by blocking the nose or mouth of another person in
7 a manner that creates a risk of death or substantial bodily harm." Evidence was
8 presented at the preliminary hearing that the Petitioner held his hand around
9 Harrison's neck, pinning her to the ground despite her efforts to "fight him off." This
10 fact alone presents an inference that the Petitioner applied pressure to Harrison's
11 throat or neck in order to hold her on the ground, and also that the Petitioner's
12 actions created a risk of death or substantial bodily harm by wrapping his hand
13 around Harrison's neck and applying enough force to prevent her from getting up
14 despite her attempts.

15 Sergeant Legros testified based upon his extensive experience that
16 somebody who is being choked or strangled would possibly be able to talk and
17 scream the entire time. Strangulation is defined as impeding either normal breathing
18 or the circulation of blood, and Sergeant Legros testified that even if a person's
19 airway was not restricted when being choked, "their carotid arteries could be
20 restricted." Thus, even if Harrison's breathing was not restricted, thereby affording
21 her the opportunity to scream or talk while being choked, the circulation of her blood
22 could nonetheless have been restricted. And the restriction of normal blood flow
23 undisputedly creates a risk of substantial bodily harm or death.

24 Additionally, the Petitioner argues the State did not produce evidence to
25 support a reasonable inference that Harrison was strangled because Harrison did not

1 lose consciousness, However, Nevada law does not define strangulation as a loss of
2 consciousness, nor does the law dictate any length of time during which a person
3 must be strangled for a behavior to constitute strangulation. The Petitioner states in
4 his Writ that "compression to the carotid artery results in unconsciousness in 10 to
5 15 seconds." *Writ of Habeas Corpus*, 10:12-13. However, testimony was presented
6 that Harrison was actively moving and attempting to fight the Petitioner off her while
7 being strangled. Sergeant Legros confirmed Harrison's behavior is typical, stating
8 that when people are strangled, they "aren't just going to sit there and let you do this.
9 Generally speaking, they're going to move around, fight and flail, allowing certain
10 loss of grip," thereby potentially allowing air and/or blood flow to resume
11 intermittently. While no testimony indicated Harrison lost consciousness, and while
12 testimony was consistent that Harrison screamed or spoke while being strangled,
13 these facts do not negate evidence inferring the Petitioner committed Domestic
14 Battery by Strangulation.

15 Second, the Petitioner argues that Sergeant Legros did not see any injuries or
16 indicators of strangulation on Harrison with the exception that she lifted her chin.
17 While Sergeant Legros did not see any visible injuries on scene, he testified that one
18 particular injury, petechiae, "doesn't immediately occur. It's something that occurs
19 afterwards" and varies from person-to-person. However, Sergeant Legros was
20 unable to meet with Harrison afterwards to check for this visible injury because
21 Harrison was "very uncooperative." While no other physically visible injuries existed,
22 the State presented sufficient evidence by way of eyewitness testimony and
23 Harrison's behavior indicating her neck was injured to, at the very least, infer the
24 Petitioner committed Domestic Battery by Strangulation.

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1 Based upon the evidence presented, the Justice Court properly found there
2 was sufficient evidence to support a finding of probable cause that the Petitioner
3 committed the crime charged in Count I: Battery that Constitutes Domestic Violence,
4 Committed by Strangulation.

5 The Justice Court also properly bound over Count II of the Criminal
6 Information, as the State properly showed the prior felony offense at the preliminary
7 examination. The Petitioner argues that the State improperly showed the facts
8 constituting the Petitioner's prior felony offense from Washoe County, Nevada, for
9 Domestic Battery Committed by Strangulation (hereinafter "the prior"), claiming the
10 State failed to establish probable cause regarding the prior. However, the Petitioner
11 is mistaken regarding the State's burden at a preliminary hearing regarding an
12 enhanced crime. The Nevada Supreme Court thoroughly addressed the State's
13 requirement when presenting prior convictions at a preliminary hearing for
14 enhancement purposes in *Parsons v. State*, 116 Nev. 928 (2000), indicating the
15 State need only put the accused on notice of the prior conviction.

16 In *Parsons*, the Court ultimately held that the constitutional validity of a prior
17 conviction "need not be part of the probable cause determination because the prior
18 convictions are not elements" of the offense. *Id.* at 934. The Court in *Parsons*
19 reviewed this matter as it pertained to prior DUI convictions and based its ruling in
20 part upon the fact that the "offense and sentencing provisions [are] separated into
21 different statutes." *Id.* Similar to the statutes regarding DUI, the statutes regarding
22 Domestic Battery also separate the offense and sentencing provisions into different
23 statutes—NRS 200. 481 and NRS 33.018 regulate the offense, and NRS 200.485
24 regulates the penalties. Therefore, the same analysis in *Parsons* can be applied in
25 this matter.

1 In *Parsons*, the Court held the State was "not required to establish the
2 constitutional validity of a prior ... conviction for enhancement purposes at the
3 preliminary examination state of the criminal proceedings." *Id.* at 930. When prior
4 convictions are not elements of the offense charged, such as for enhancement
5 purposes in DUI or Domestic Battery charges, "an evidentiary evaluation of the prior
6 conviction is not necessary to determine whether the offense has been committed for
7 purposes of a probable cause determination." *Id.* at 934. However, "the facts
8 concerning a prior offense must be shown at the preliminary examination." *Id.* at 934-
9 35. Facts of the prior offense are properly shown if "alleged in the complaint" to put
10 the accused on notice of the possible penalties and provide "enough information to
11 challenge the validity of alleged prior convictions." *Id.* Facts are shown when the
12 State provides "the dates of the prior offenses and convictions and the locations
13 where the prior offenses occurred or the courts that entered the prior convictions." *Id.*
14 If these facts are shown at the preliminary examination, they are "sufficient to find
15 probable cause to believe the defendant has committed a felony." *Id.*

16 The Court determined that the State need not present evidence regarding the
17 validity of prior convictions but is only burdened with providing the facts necessary to
18 put the accused on notice. *Id.* The Court explained its reasoning was twofold,
19 indicating that: (1) a defendant is entitled to a preliminary examination within 15
20 days, and if the State is required to provide certified copies of a conviction, the 15-
21 day period might frequently be extended if the State is unable to obtain certified
22 copies in such a short timeframe; as a result, a defendant's period of incarceration
23 before a preliminary examination might often be unnecessarily prolonged waiting for
24 the certified copies; and (2) a jury cannot consider the facts concerning prior
25 convictions when making a determination about guilt or innocence; thus, "an accused

1 is not prejudiced by allowing the State to proceed ... without a determination at the
2 preliminary examination that the prior convictions are constitutionally valid." *Id.* at 93-
3 37.

4 In this matter, during preliminary examination, the State amended the Criminal
5 Complaint to include an additional Count for Battery Constituting Domestic Violence
6 with a Prior Felony, alleging a prior felony conviction for Domestic Battery by
7 Strangulation with a prior arrest date of September 28, 2018 and a prior conviction
8 date of February 3, 2019. The stated added the charge on the record pursuant to
9 NRS 33.018, NRS 200.481, and NRS 200.485(3)(a). In addition, the State had
10 previously provided the Petitioner with his criminal history through NCIC on June 23,
11 2021, which also showed the prior. Furthermore, the State provide testimony from
12 Sergeant Legros regarding his review of the prior, which he confirmed through NCIC
13 by providing to dispatch the Petitioner's name, date of birth, and case number
14 tracked by the FBI. The State, therefore, in no less than three ways, provided the
15 Petitioner with the dates of the prior offense and conviction and the location, thus
16 meeting its burden to put the Petitioner on notice and show the Petitioner facts as
17 necessary for enhancement purposes.

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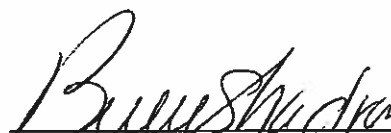
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CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada;
that on the 12 day of November 2021, I served a copy of this document by placing
a true copy in an envelope addressed to:

Sarah E. White, Esq. Office of the District Attorney 885 E. Musser St., Ste 2030 Carson City, NV 89701 (Via Clerk's Office Mail Bin)	Charles E. Odgers, Esq. Office of the Public Defender 511 E. Robinson St., Ste. 1 Carson City, NV 89701 (Via Clerk's Office Mail Bin)
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the envelope sealed and then deposited in the Court's central mailing basket in the
court clerk's office for delivery to the USPS at 1111 South Roop Street, Carson City,
Nevada, for mailing.


Billie Shadron
Judicial Assistant

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AARON FORD
NEVADA ATTORNEY GENERAL

SALLY DESOTO
CHIEF APPELLATE DEPUTY PUBLIC DEFENDER

JASON D. WOODBURY
DISTRICT ATTORNEY

FIRST JUDICIAL DISTRICT COURT
885 E MUSSER ST.
CARSON CITY, NV 89701

DATED this 2nd day of December, 2021.

SIGNED: /s/ Dawn Wholey
Employee of Nevada State Public Defender