

IN THE SUPREME COURT OF THE STATE OF NEVADA

RANDALL LEE DAHL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal from a Judgment of Conviction in Case Number CR15-0747
The Second Judicial District Court of the State of Nevada
The Honorable Scott N. Freeman, District Judge

JOINT APPENDIX VOLUME THREE

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6 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 THE HONORABLE SCOTT FREEMAN, DISTRICT JUDGE

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STATE OF NEVADA,

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Case No. CR15-0747

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Dept. No. 9

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Plaintiff,

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vs.

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TRANSCRIPT OF PROCEEDINGS

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RANDALL LEE DAHL,

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Defendant.

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JURY TRIAL - DAY 3
JUNE 9, 2021, RENO, NEVADA

17

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The Defendant:

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EXAMINATION

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For the State:

THE WITNESS: DR. PIOTR KUBICZEK

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1 RENO, NEVADA; WEDNESDAY, JUNE 9, 2021; 8:00 A.M.

2 ---o0o---

3
4 THE COURT: Thank you again for being so
5 prompt and being on time to get started, thank you so
6 much. We're prepared to proceed.

7 I see the presence of the jury and the
8 defense, the defense team and the prosecution.

9 Mr. Stralla, call your next witness.

10 MR. STRALLA: Thank you, your Honor. Dr.
11 Kubiczek.

12 THE COURT: Bailiff.

13 THE COURT: Step forward and be sworn.

14 DR. PIOTR KUBICZEK,
15 called as a witness herein, being first
16 duly sworn, was examined and testified
17 as follows:

18
19 THE COURT: Thank you. Please take the
20 witness stand, Doctor. Please make yourself
21 comfortable. I'm going to know you're comfortable
22 because you're going to tell me your first and last
23 name, spell your last name for the record. And, sir,
24 you are welcome to take your mask off in the courtroom.

1 THE WITNESS: Thank you.

2 THE COURT: It's COVID protected. Welcome.

3 THE WITNESS: Thank you.

4 THE COURT: Mr. Stralla.

5 MR. STRALLA: Doctor --

6 THE COURT: Wait a second. I need to get your
7 first and last name.

8 THE WITNESS: Okay. My first name is Dr.
9 Piotr, P-i-o-t-r, Kubiczek, K-u-b-i-c-z-e-k.

10 THE COURT: Thank you.

11 DIRECT EXAMINATION

12 BY MR. STRALLA:

13 Q Good morning, Doctor.

14 A Good morning.

15 Q What is your occupation, sir?

16 A I'm a forensic pathologist. Currently I'm
17 the -- I hold the position of the first Deputy Chief
18 Medical Examiner in West Virginia, Charleston, West
19 children.

20 Q How long have you worked there?

21 A About four years now.

22 Q And where did you work prior to that?

23 A Before that I worked in Washoe County, Office
24 of Medical Examiner, Chief Medical Examiner and Coroner,

1 and also in Clark County, Nevada.

2 Q So you indicated you're a forensic
3 pathologist?

4 A Yes, I am forensic pathologist.

5 Q And what was your education that you received
6 to gain that position?

7 A First I completed my medical school at
8 medical university in Warsaw, Poland. And then I
9 completed my postgraduate residency in pathology and was
10 at Ball Memorial Hospital in Muncie, Indiana,
11 M-u-n-c-i-e, Indiana. Then I completed a year of
12 specialized training forensic pathology which was a
13 fellowship at Montgomery County Coroner's Office,
14 Dayton, Ohio. And then I qualified in and I passed my
15 board examinations in anatomic pathology and forensic
16 pathology.

17 Q All right. And do you have teaching
18 experience as a forensic pathologist?

19 A Yes. I teach medical students from Marshall
20 University, that's in Huntington, West Virginia, and
21 then I also teach medical students from University of
22 West Virginia, Morgantown, West Virginia.

23 Q When you were here in the Northern Nevada
24 area did you do some teaching also?

1 A Mostly there was some students, medical
2 students involved here in Reno and in Las Vegas, Clark
3 County Coroner's Office over there.

4 Q Okay. Do you have any certifications or
5 licensures with regard to your profession?

6 A Yes. I'm board certified for anatomic
7 pathology and forensic pathology which is board
8 certification done by the American Board of Pathology
9 based in Tampa, Florida. Then I'm licensed to practice
10 medicine in Nevada and in West Virginia and in Maryland.

11 Q How do you get a board certification in
12 forensic pathology?

13 A First you have to complete all the required
14 medical education. And then you have to complete
15 appropriate medical school. You have to complete many
16 years of training in pathology, pathology residence and
17 fellowship. And then you apply, basically, for the
18 board certification, and your credentials are reviewed
19 by American Board of Pathology. Then you are allowed to
20 take the board examinations. Then after you pass the
21 board examinations, the board decides if you are board
22 certified.

23 Q And how long have you been certified?

24 A Oh. Very long. I don't remember exactly

1 what the dates.

2 Q Can you explain to the jury what forensic
3 pathology is?

4 A Maybe first I will start with just general
5 information about pathology. Pathology is basically
6 medical science, medical specialty that is occupied
7 starting various diseases, including tumors and
8 inflammation, and now the forensic pathology is
9 subspecialty of pathology. We started that separately,
10 in great detail, and this is the study of injuries,
11 types of injuries, sudden deaths. And we apply all this
12 knowledge at the court of law.

13 Q All right. Have you testified with regard to
14 forensic pathology?

15 A Yes.

16 Q Approximately how many times?

17 A By now it's more than a couple hundred times.

18 Q All right. And have you been recognized as
19 an expert witness in the area of forensic pathology?

20 A Yes.

21 Q In this court, the Second Judicial District
22 Court in Nevada?

23 A Probably. I did district courts in Nevada,
24 throughout Nevada, basically.

1 Q How many times have you testified in this
2 building?

3 A Many, many times. I don't remember the
4 number.

5 Q Okay. Several times?

6 A At least.

7 Q In front of a jury?

8 A Yes, in front of the jury.

9 Q Now, as a pathologist, forensic pathologist,
10 part of your duties are to examine a body; is that
11 correct?

12 A Yes.

13 Q A deceased body? And also known as an
14 autopsy?

15 A Yes.

16 Q And can you generally describe how an autopsy
17 takes place, what you do?

18 A Basically autopsy is the ultimate physical
19 examination where we study the surface of the body,
20 deceased body, and we study cavities inside the
21 decedent's body to determine if there's an actual
22 disease or any injury present. Then we based on our
23 findings and based on other additional studies, we order
24 -- determine cause and manner of death.

1 Q Okay. When you were working here in Reno,
2 were you working here in 2014?

3 A Yes.

4 Q In December of that year?

5 A Yes.

6 Q Now, where was your office location?

7 A At the time it was the old office building, I
8 think it was 10 Kirman, right across the Renown
9 hospital.

10 Q Okay. So that's where the bodies are brought
11 when you perform your autopsies?

12 A Yes.

13 Q Now, when you first get a body, how does it
14 come to you, in what condition?

15 A When the body is sent to our office, is in a
16 body bag. And the body bag is, basically, big plastic
17 bag which is sealed with a special seal with a number.
18 And the body's brought to our office and then placed in
19 the cooler. And later on it's decided during the
20 morning meeting who will perform the autopsy in the
21 particular cases.

22 Q Now, do you do -- once the body bag's open
23 what's your first procedure?

24 A So when the body is first opened, I mean,

1 when the body bag is first opened, we take multiple
2 photographs. And the body is -- is undressed some
3 clothing or not, depending how the person was found, and
4 then so we document everything by photographs. And then
5 we undress the body. We take the x-rays. Then we clean
6 the body, and we retake all the photographs at this time
7 with a clean body. Obviously, it's much easier to see
8 injuries when somebody -- when they had blood removed
9 from their body surface.

10 And then after that -- before, actually we
11 start undressing and cleaning we obviously collect the
12 evidence, such as swabs from the mouth, nose, fingernail
13 scrapings, we check if there's some tissue present
14 underneath the fingernails, so after completion all of
15 those tasks, we initiate our autopsy.

16 Q All right. Now, when you observed the
17 outside or the external portion of the body what are you
18 looking for?

19 A So when we look outside of the body on the
20 skin surface we look for the evidence of injuries, and
21 as we say we look for evidence of natural diseases.

22 Q Okay. So you look for contusions or bruises?

23 A Yes. We look at contusions, bruises are
24 blunt force injuries, for example. It's a type of

1 injuries you see on the body surface, blunt force
2 injuries are inflicted by blunt objects like, for
3 example, a fist or surface of the floor or the wall, it
4 could be some solid, round object, too, so those are
5 blunt objects and that inflicted blunt force injuries,
6 and then we have a basic three types of blunt force
7 injuries. Contusions, bruising, abrasions, scrapings of
8 the skin surface, and then lacerations, which is a
9 disruption or tearing of the skin and tissues.

10 Q So you're looking for those sort of things?

11 A Yes.

12 Q All right. And you said earlier that you
13 take x-rays of the body?

14 A Yes, we do take x-rays.

15 Q What is the purpose of that?

16 A We take x-rays of the body before we start
17 the autopsy to look for evidence of some also injuries,
18 skeletal injuries and injuries present in the skeletal
19 system. And then we also look for evidence of some
20 foreign material present within the body such as metal
21 objects, such as bullets or some orthopaedic metal
22 equipment.

23 Q Broken bones?

24 A Of course, broken bones, yes.

1 Q Now, after you do the x-rays and the external
2 examination, and that's when the internal examination is
3 done?

4 A So first I look at the body surface. I
5 document all the injuries present on the body surface.
6 I measure them, I describe them -- I describe their
7 location. Then after finishing the description of the
8 external injuries or diseases, we open the inner
9 cavities, body cavities, and then I examine inside the
10 body cavities. We look at the organs, again, I find
11 disease or I find injuries I document everything by
12 photographs, and I measure them and I describe them in
13 my report.

14 Also we are collecting samples, additional
15 samples inside the decedent's body, collecting samples
16 for postmortum testing, toxicology testing. I preserve
17 some other representative small pieces of organs in case
18 if we need to look at the organs on the microscope. So
19 that's what we call an examination.

20 Q So you said, Doctor, that you also take blood
21 samples?

22 A Yes, we do.

23 Q And what are those -- what is the purpose of
24 those?

1 A We take the blood samples to send them out
2 for toxicology testing.

3 Q What's that? What's toxicology?

4 A Toxicology testing is basically just a
5 separate kind of field in forensics. They test body
6 fluids and tissues, so on, the blood, tissue, they test
7 liver, brain, they test blood and other tissues for
8 presence or absence of different types of alcohols and
9 other drugs or toxins.

10 Q Okay. And you indicated that you also take
11 -- sometimes send out samples of tissue or organs?

12 A Yes, I do.

13 Q What about the brain, if there's some injury
14 to the brain is that sometimes sent out?

15 A Yes.

16 Q And why do you do that?

17 A In case if I notice during my autopsy after
18 opening the body cavities I notice, for example, the
19 brain has some injuries or the spinal cord has some also
20 injuries, I sometimes choose to consult
21 neuropathologist. Neuropathologist is a pathologist
22 that specializes just study neuro system, nervous
23 system, brain, spinal cord, peripheral nerves. And they
24 have specialty clinics that we don't have in our office.

1 They have specialty clinics that they can utilize to
2 study in great detail the brain, and they can actually
3 -- the neuropathologist can determine the various -- if
4 there is -- their injuries on the cellular level, the
5 very, very detailed level within the brain. This is the
6 reason why I send those samples, those organs like brain
7 and spinal cord to send to neuropathologist so they can
8 perform all kinds of additional testing and tell me what
9 kind of injuries they are within the brain, the spinal
10 cord.

11 Q Doctor, so is it part of your job as a
12 forensic pathologist to give an opinion or to determine
13 a cause of death?

14 A Yes.

15 Q Okay. Now, if you send out a brain or you
16 send out the toxicology, do you wait until you get those
17 reports back before you make a final determination or
18 render an opinion as to the cause of death?

19 A Yes, of course.

20 Q I want to direct your attention to December
21 10th, 2014, and ask if you recall performing an autopsy
22 on a person identified as John Gardner?

23 A Yes.

24 Q Okay. And this is kind of backing up a

1 little bit but is -- when you receive a body before you
2 do an autopsy is that body measured and weighed also?

3 A Yes, we always measure and weigh the body at
4 the time of our examination.

5 Q What was the height and weight of Mr.
6 Gardner?

7 A Mr. Gardner's weight was 115 pounds and his
8 height was 65 inches at the time of our examination.

9 Q Now, when the body bag was opened on Mr.
10 Gardner, what did you notice with regard to the injuries
11 to him?

12 A I notice he did have extensive blunt force
13 injuries involving his neck -- his head, neck, also
14 upper extremities, and there were also some injuries
15 present in his lower extremities.

16 Q All right. And then he was cleaned up as the
17 protocol is, or procedure, washed up?

18 A Yes. After first documenting everything
19 before, taking clothing off and before cleaning, we
20 again take off the clothing and we clean the body and we
21 again document all the injuries of the body.

22 Q All right, Doctor, I'm going to go ahead and
23 show you a series of photographs of the autopsy
24 performed on John Gardner, they've already been admitted

1 into evidence, and have you explain how you performed
2 the autopsy and what you saw by using these photographs.

3 A Yes.

4 Q I'm going to show you State's Exhibit 5A --
5 excuse me, Exhibit 5A. Let me zoom it out a little bit.
6 Do you recognize that photograph, Doctor?

7 A Yes.

8 Q And what is that?

9 A This is photograph of that we took after we
10 opened the body bag. You can see here he seems still
11 wearing some clothing and he also wears paper bags on
12 his hands. Usually the investigators protect the hands
13 at the death scene so to protect the evidence, so they
14 put actually paper body bags around the hands so we can
15 remove those body bags during our examination, then
16 collect the evidence that is present on the body
17 surface.

18 Q Doctor, you indicated in your testimony just
19 now that you noticed contusions to the neck area?

20 A Yes.

21 Q Can you go ahead and circle that on your
22 screen? You have to push down on it and make a circle.

23 A Yes. So there were contusions are the
24 bruises present on the body surface, especially around

1 the head and neck. And on the right side of the neck,
2 you can see here (indicating) contusion or bruising,
3 this is large area of bruising, and this is caused by
4 blunt object of the hand or face to some other blunt
5 object.

6 Q Can that be caused, Doctor, by being pressed
7 down upon, too, on a hard object?

8 A Yes, it can be.

9 Q Now, you also noticed just below that there
10 is a -- I'll go ahead and circle this one. A stream of
11 liquid?

12 A Yes. This is basically dry blood present on
13 the decedent's neck and upper chest.

14 Q All right. And it's flowing downward towards
15 his torso?

16 A Yes.

17 Q Okay. I'm going to show you 5 B, and ask you
18 to describe that photograph.

19 A This is up-close photograph of decedent's
20 face, actually, the right side of his face. You can see
21 here that around his right -- right ear (indicating).
22 Monitor is not cooperating.

23 Q Yeah, it's hard to use.

24 A Around the right ear you have a contusion, or

1 bruising --

2 Q Okay.

3 A -- extensive swelling. This area
4 (indicating) is purple, then also surrounding this area
5 (indicating) there is also extensive area of -- of --

6 Q Doctor, is that consistent with several blows
7 to the face with a fist?

8 A There is at least one blow. I can say there
9 is at least one blow to the side of the face.

10 Q But it could be several also --

11 MR. LESLIE: Objection. Asked and answered.

12 THE COURT: Overruled.

13 BY MR. STRALLA:

14 Q Okay. Now, I'm looking up here, Doctor, I'll
15 circle this, and it looks like there's an indent or a
16 deformation to his forehead? Now, you x-rayed Mr.
17 Gardner's body?

18 A Yes.

19 Q And what were the results of that x-ray?

20 A Well, here (indicating) we have on the right
21 side of the forehead you can see also contusion,
22 bruising. And also there are some scrapes in this area
23 (indicating), just to make sure that you can see that.

24 The decedent had surgery prior. This was

1 craniotomy. This is surgery involving opening his skull
2 in case of the injury to the skull or injury to the
3 brain, neurosurgeon opens the skull to repair the
4 injury. And then this area (indicating), if it's big
5 enough, gets replaced with metal plate. And this is
6 what happened in Mr. Gardner's case. He had injury of
7 his forehead, injury of his frontal bone. Frontal bone
8 is the bone that underlines the forehead, and he had
9 injury of that area and so he had the surgery done and
10 parts of his frontal bone was replaced by metal plate.
11 This is why you see here looks like a bump in this area
12 (indicating).

13 Q Now, Doctor, there's been evidence in this
14 case that Mr. Gardner was involved in a traffic accident
15 where he was struck as a pedestrian approximately two
16 months prior to this homicide case. Is that injury
17 consistent with that time period?

18 A Yes.

19 Q I'm going to show you 5E. And before I ask
20 you photographs about that -- or questions about that
21 photograph, did the x-ray show any other type of objects
22 in his body other than the plate in his skull?

23 A Yes, there were other metal orthopaedic
24 devices inside his body, inside his bones.

1 Q Where were they?

2 A They were basically in his left lower leg and
3 his right and left shoulder.

4 Q So what was in his left lower leg?

5 A Basically he had plates, metal plates and
6 screws. The orthopaedic metallic devices are placed
7 inside the body to secure the bones that were fractured
8 and those fractures can not heal very well without
9 additional support, so the orthopaedic surgeon basically
10 in very complex fractures, they can place rolls or
11 plates or screws inside the bones so the bones heal much
12 better and in correct way, so Mr. Gardner had multiple
13 -- many of his metallic orthopaedic devices.

14 Q So he had one in his leg, right?

15 A Yes. He had one in his left lower leg. And
16 he had left shoulder -- to be precise, he had left
17 clavicle fixed with screws. And then he had also some
18 metallic orthopaedic devices in his right shoulder, to
19 be precise in the right scapula.

20 Q Okay. So he had at least four -- or he had
21 four areas of his body that had orthopaedic metal in
22 him?

23 A Yes.

24 Q And are those also all consistent with him

1 being involved in a car versus pedestrian accident
2 approximately two months earlier?

3 A Yes.

4 Q Now, going back to the photograph, and I'll
5 go ahead and circle this, Doctor. Is this (indicating)
6 the area that you were describing where the orthopaedic
7 device is in his leg?

8 A Yes. This is actually -- this longitudinal
9 here (indicating) scar is his healing surgical incision,
10 indicating there was orthopaedic surgery done on this
11 part of his body.

12 Q Was that bone -- is -- is that the tibia?

13 A Yes. It's left tibia.

14 Q Now --

15 A Again, fibula, actually.

16 Q Fibula. Was that bone healed?

17 A On the left side, I mean, it was healing. It
18 takes long time for those bones to heal, especially in
19 adults. Children, of course, heal very fast, but in
20 case of adults those fractures, complex fractures can
21 heal a long time. And they may -- that is why they need
22 additional support from those orthopaedic devices and it
23 takes long time to do that.

24 Q Now, an injury like that on his left leg,

1 would that have cause -- and the condition it was in,
2 would that have caused Mr. Gardner to have difficulty
3 walking?

4 A It's possible, yes. I mean, I haven't seen
5 him --

6 Q Right.

7 A -- ambulating so I can not really evaluate
8 patient without seeing him --

9 Q No, I understand.

10 A -- while he was alive, so.

11 Q He had a wheelchair. Is that consistent with
12 someone that had a hard time walking?

13 A Yes, that's consistent.

14 Q Okay. Now I'm going to circle this area --
15 actually, I have a better photograph -- well, before I
16 get to, that I'll circle this area here (indicating),
17 Doctor. Below the kneecap, can you see that?

18 A Yes.

19 Q I'll focus in a little bit. Clear that.

20 And what -- how would you describe that?

21 A We can see here on the -- on the -- see on
22 right knee there's some contusion, some bruising. And
23 this is -- this area is -- you can see dry blood present
24 in the circle indicated by the district attorney.

1 Q Does that area appear to maybe be a --
2 MR. LESLIE: Objection, leading.
3 MR. STRALLA: He is an expert witness.
4 THE COURT: It's overruled.
5 BY MR. STRALLA:
6 Q Does that area appear that this could be a
7 burn type of -- for example, a carpet burn if someone
8 were drug across carpet or a rough surface?
9 A This will be rather -- I see contusions --
10 Q Okay. All right.
11 A -- bruising.
12 Q I'll move on. Let me show you 5 F. Do you
13 recognize that? When it comes in focus.
14 A This is upside down. Could you --
15 Q Yeah, I'll turn it around.
16 A Can I see -- may I see -- sorry, may I see
17 the scale?
18 Q Yeah, sure. Want me to turn it around now?
19 A Yeah. Usually they -- this is up-close
20 photograph of what seems the left arm.
21 Q That's the forearm or is it the leg? Let me
22 go back to 5E. Here's 5E.
23 A Oh, oh, yes, this is up close. Sorry.
24 Q That's all right.

1 A When photographs get very close, it's very
2 difficult to recognize body parts, but --

3 Q And I'll put back up, 5 F.

4 A So anyway, this is up-close photograph of the
5 decedent's left low leg with left knee. The scale, the
6 ruler we always put in photographs always has the case
7 number, and numbers show the direction to the head. So
8 when you have up-close photograph like this, by looking
9 at the numbers, you know that the head is northward,
10 northwest, it's up.

11 Q Okay.

12 A So this -- this helps us to orient the
13 photographs, especially the ones that are very up close
14 and you don't know what's up, what's down.

15 Q So this is a picture of that left leg?

16 A Yes.

17 Q Or excuse me, Doctor.

18 A Left leg.

19 Q I'm going to circle this area. Can you tell
20 what that is, that little dark metallic-looking object?

21 A I mean, I can only say this is part of the
22 healing -- part of the healing longitudinal, um, --
23 longitudinal scar.

24 Q Are sometimes staples used to keep an

1 incision together?

2 A Yes.

3 Q Okay.

4 A Of course, surgical staples.

5 Q Are these -- can you tell if that's a
6 surgical staple or not? I can show you the photo, it's
7 easier to look at it if I hand it to you.

8 A It's -- it's easier to, you know, for me to
9 recognize it that might be bring this to me.

10 MR. STRALLA: If I may approach, your Honor?

11 THE WITNESS: I have my eye glasses, so.

12 BY MR. STRALLA:

13 Q Here you go, Doctor.

14 A Sorry. Can I not say --

15 Q That's all right. So --

16 A Sorry.

17 Q -- if the evidence were to show that, show
18 that the deceased indicated he had staples in his leg --

19 A Yeah.

20 Q -- would that be consistent?

21 A Oh, of course.

22 Q I'm going to move on to 5 G. And what's that
23 photograph depict, Doctor?

24 A This is photograph, up-close photograph of

1 decedent's right shoulder. Again, you can see the
2 scale, the numbers are pointing to the head, of course.
3 And here (indicating) on the right shoulder proximal
4 aspect of right arm you can see healing and scar,
5 longitudinal scar. You see he did have orthopaedic --
6 orthopaedic surgery done on his right shoulder.

7 Q And that was some type of orthopaedic device
8 underneath the scar?

9 A Yes.

10 Q Okay. I'm going to show you 5 H. Recognize
11 that, Doctor?

12 A Yes. This is up-close photograph of
13 decedent's face and left, predominantly left aspect of
14 his upper torso.

15 Q All right.

16 A Because here (indicating) this is done --
17 this photograph was taken before his body was fully
18 cleaned, so you can see here (indicating) still dry
19 blood present in his face, and different areas, here's
20 the blood going down his neck to the chest. And then
21 he's -- this here (indicating), the area of the healing
22 surgery, orthopaedic surgery that was done a couple
23 months before his demise.

24 Q Okay. Now, before I move on to the next

1 photograph, you indicated, Doctor, that there were
2 x-rays done of Mr. Gardner's body?

3 A Yes.

4 Q Were there any fractured bones in his body?

5 A I mean, I did see fractures of left ribs on
6 seven, eight.

7 Q I'll put this one back up. I'll put 5 H back
8 up. Does that photograph show the area where there was
9 fractures?

10 A There will be here (indicating), this area.

11 Q Now, looking at this photograph, Doctor, it
12 appears -- let me clear this -- in this area here
13 (indicating), there's a little bit of discoloration; is
14 that correct?

15 A Yes.

16 Q And is that consistent with an area of
17 fractures?

18 A This could be -- I mean, bruising or -- yes,
19 it could be related to the -- to those fractures.

20 Q So the coloring in that location is where the
21 fractures were located?

22 A Yes.

23 Q Okay. I'm going to show you 5 I. Do you
24 recognize that photograph, Doctor?

1 A Yes. This is up-close photograph of
2 decedent's right hand and right forearm. Again, you can
3 see the scale with the numbers pointing to the head.
4 And then -- so on the surface of the hand and the
5 surface of the forehead -- the forearm, you can see
6 bruises, or bruising, contusions otherwise, and then you
7 can see abrasions or scrapes of the skin present
8 predominantly here (indicating) on the right forearm.

9 Q Now, Doctor, this area here (indicating), and
10 you correct me if I'm wrong, it looks like there's some
11 kind of a surgical scar there also?

12 A Yes.

13 Q Okay. So there was at least that's another
14 portion of Mr. Gardner's body where surgery was
15 performed based on your training and experience?

16 A Yes.

17 Q So you have the head, both shoulders, the
18 left leg, and I guess that's the right forearm?

19 A Yes.

20 Q Now, with regard to this, looking at this
21 area here (indicating), the back of his right hand, it's
22 purple and blue and there's blood on the outside, what
23 is that?

24 A Those are contusions, multiple, many

1 contusions, bruises.

2 Q Okay. How are contusions caused?

3 A Contusions are caused by blunt objects.

4 Q Okay.

5 A Meaning that the -- the contusions are
6 created by impact of blunt objects.

7 Q So you can create a contusion on the back of
8 your hand by striking something?

9 A Yes.

10 Q Can you also cause a contusion, can it be
11 caused on the back of your hand by blocking something
12 that's striking you?

13 A Yes, of course.

14 Q Such as a fist?

15 A Could be, yes.

16 Q I'm going to move on to the head area of Mr.
17 Gardner. And I'm going to show you 5 J. This is a --
18 do you recognize this photograph?

19 A Yes.

20 Q And can you describe the significance of this
21 photograph, Doctor?

22 A So this type of photograph is called
23 identification photograph. We take this photograph for
24 every decedent that goes through our office, basically

1 shows the decedent's face and neck.

2 Also, in this particular case it shows the
3 multiple injuries he had on his face and neck. And so
4 you can see here that he had -- and this is very
5 important, especially in this case because the cause of
6 death is related to these injuries that are present on
7 his face and neck. So what we can see here, there's
8 this very -- right periocular ecchymosis or contusion.
9 This is also surrounded by contusions of the right
10 temple, right cheek, then there are contusions of the
11 forehead, the purple/red areas, these are contusions,
12 then there are scrapes, some abrasions of decedent's
13 forehead predominantly on the right side. Then you can
14 see also contusion of decedent's nose. The nose was
15 intact, I checked, he didn't have broken nose, it was
16 only the contusion bruising of his nose.

17 Q I didn't hear. Nose wasn't broken?

18 A Was not broken.

19 Q Okay.

20 A But there was contusion of the nose, so there
21 was impact to the nose --

22 Q All right.

23 A -- also.

24 Q What about the lips there (indicating),

1 Doctor?

2 A Yes. The lips, the upper and lower lip had
3 also contusions, bruises. And also inside, in the
4 surface that he was -- is facing the teeth there were
5 lacerations.

6 Q I'll --

7 A Tearing of the tissue.

8 Q Excuse me, Doctor, I'll go ahead and I'll
9 have those photographs in a minute so I just want to go
10 on just what we see on the surface here.

11 A All right.

12 Q Going down from the mouth to the chin, is
13 that a contusion on the chin?

14 A So we have -- yes. We have contusion, the
15 purple, purple, light purple area, that's the contusion.
16 Also, what's important we see here on the chin, both
17 cheeks and the forehead, when you look closely you can
18 see lots of very small hemorrhages. They call that
19 petechiae, petechial, petechial hemorrhages.

20 Q What is petechiae hemorrhage?

21 A So those are very tiny hemorrhages present on
22 the decedent's face, and actually also eyes. So this is
23 -- this relates directly to cause of death.

24 Q Let's kind of go over this slow. What's a

1 hemorrhage?

2 A So hemorrhage is basically spilling blood
3 outside of the vessel, and this can be caused by result
4 of injury, or it can be caused by increased pressure of
5 blood inside small vessels. Small vessels burst, and
6 the blood spills over into the skin underneath the skin.

7 Q So there were no -- now, you said you saw
8 petechial hemorrhage on his face?

9 A Yes.

10 Q And we'll go through it, I have photographs,
11 but you didn't see anything externally that was causing
12 those hemorrhages?

13 A No.

14 Q Okay. So they would have been caused
15 internally.

16 A I mean --

17 Q By pressure.

18 A They are caused by internal -- internal
19 mechanism.

20 Q Okay. Now, going further down underneath the
21 chin, it looks like underneath his chin, this area here
22 (indicating)? I didn't quite get it, but under here
23 (indicating), there's an area there that doesn't have
24 the discoloration as the chin and below that area?

1 A Yes.

2 Q Okay. So that -- what does that indicate to
3 you, Doctor?

4 A It's basically the head was at one point
5 forward compressing this area so the blood was removed
6 by.

7 Q Now, below that area, and I'll go ahead and
8 circle that?

9 A Yes.

10 Q How would you describe that area?

11 A This is contusion. This is contusion of the
12 neck, bruising of the neck.

13 Q And that's the area that was caused or that
14 area that was blunt force trauma to that area?

15 A Yes.

16 Q And it's consistently across the whole neck
17 at that point?

18 A And it's predominantly on the right side.

19 Q Okay. But there's discoloration on, I'd say,
20 at least three-quarters of the neck?

21 A Yes.

22 Q And is that consistent with that area of the
23 neck being compressed against a hard object?

24 A Yes.

1 Q Okay. Such as the edge of a bath tub?

2 A Yes, imparted by edge of something. Imparted
3 by edge of object. Not sure.

4 Q All right. I'm going to show you 5 L, and
5 have you explain the significance of this photograph,
6 Doctor.

7 A So this is up-close photograph of decedent's
8 face. You can see here (indicating), of course, again,
9 contusions, the bruising around his right eye, there's
10 bruising on his nose. There's some bruising of his
11 right cheek and right forehead. And the photograph is
12 up close with special lighting to show those minute,
13 very small hemorrhages on the skin surface. Again, they
14 were present on the forehead. When you look closely
15 here (indicating), you can see, like, the hemorrhage is
16 like dots present on the --

17 Q That's petechiae you were referring to?

18 A Petechiae, exactly. That's the name.
19 Petechiae.

20 Q Go ahead and hit all the petechiae spots that
21 you see on this photograph, please, Doctor.

22 A So when we look very closely, they are those
23 red dots. Very, very small. And those are hemorrhages
24 with the areas of very small bleeding.

1 Q What causes those again, Doctor?

2 A This is caused by compression of the neck,
3 which is related to decedent's death.

4 Q 5 N, Doctor?

5 A Yes. So this is even closer photograph of
6 decedent's face. And you can see here (indicating)
7 there's this left cheek underneath left eye. And again,
8 you can see those really tiny -- little tiny
9 hemorrhages.

10 Q Of the blood vessels. Am I saying that
11 right?

12 A Yes.

13 Q Let me show you this one.

14 A And they're present on both cheeks. You can
15 see them better on the left because there's not much
16 bruising on the left side. But they are present on both
17 cheeks, they're also present on the forehead, they are
18 present on the conjunctiva, lining inside the eyes.

19 Q So Doctor, when someone's neck is compressed,
20 and there's petechiae in the face, can you also get
21 petechiae in the eyeballs?

22 A Yes. Of course.

23 Q Did you see that in this case?

24 A Yes. I saw petechiae present on the

1 conjunctiva. Conjunctiva is a lining that covers inside
2 your eyelids and covers the eyeballs.

3 Q Now --

4 A So I could see the small petechiae in the
5 eyes.

6 Q Okay, Doctor, I have some photographs of
7 that, I'm showing you 5 O. Can you describe that
8 photograph, please?

9 A Yes. So this is up-close photograph of
10 decedent's left eye. And we can see here (indicating)
11 some -- again, this lighting shows really nicely the
12 petechiae around the eye, real tiny hemorrhages,
13 petechiae on the forehead, around the left eye. And
14 then you can see also hemorrhages, bleeding, inside his
15 sclera. That's the eye whites.

16 Q That's the white of your eye?

17 A Yeah. So we can see those. And then you can
18 see also very much smaller petechiae present on the
19 surface of the eye. And also there were petechiae
20 present inside the eye lids on both sides.

21 Q And those are also, Doctor, caused by
22 compression of the neck?

23 A That is correct.

24 Q I'm going to show you the next photograph, 5

1 P. What does that photograph depict, Doctor?

2 A This is photograph of the up-close photograph
3 of the decedent's right eye, which has large area of
4 bruising. But also, this photograph shows a opening of
5 the right eye that there is hemorrhage, the bleeding
6 inside the sclera of the right eye, the white of the
7 white eye, and also we show there was some of petechiae
8 also on the skin so on the right eye.

9 Q All right. I'm going to show you 5 Q. Do
10 you recognize that photograph, Doctor?

11 A Yes.

12 Q And what does that depict?

13 A This is up-close photograph of decedent's
14 mouth. And again, you can see the scale, scale it
15 points to the tip of the head. So here (indicating) you
16 have upper lip, beneath, of course, lower lip, you can
17 see here (indicating) some teeth in the middle of the
18 picture. And then you can see those dark red areas of
19 contusions, bruising, those are large areas of
20 contusions o both lips, upper and lower. And then here
21 (indicating), also you can see -- you can see this area
22 on the upper lip which is the laceration, meaning
23 disruption of the skin surface.

24 Q Okay. So it would be blunt force trauma such

1 as getting a fist in the mouth that could cause this?

2 A Yes.

3 Q And I'll show you the lower lip. That's
4 Exhibit 5R. Do you recognize that, Doctor?

5 A Yes.

6 Q And what does that depict?

7 A This is -- let me see. This is photograph of
8 the -- up-close photograph, again, of the decedent's
9 mouth. And here (indicating) we are showing the inside
10 of decedent's lower lip. And you can see again dark
11 purple areas of contusions.

12 Q All right. So I'm going to put back up 5 J,
13 and ask you, Doctor, so -- and I'll circle. There is a
14 contusion around this area. Correct?

15 A Yes.

16 Q There is a contusion on the nose?

17 A Yes.

18 Q Contusion around the mouth and chin?

19 A Yes.

20 Q And blunt or contusion on the neck?

21 A Yes.

22 Q So that's four separate areas of contusion?

23 A Yeah.

24 Q And is it consistent that the areas of

1 contusion on the face could have been caused by several
2 blows to the face?

3 A At least one.

4 Q Okay. And the neck area could have been
5 caused by compression to that area?

6 A Yes.

7 MR. STRALLA: Court's indulgence, I have to
8 reboot this thing. I didn't print out a copy of
9 questions. Sorry about that.

10 BY MR. STRALLA:

11 Q Now, what is asphyxia?

12 A Asphyxia is a state of not enough of oxygen
13 in the tissues, the brain, asphyxia, it's general --
14 it's one of the causes of death in cases if there's not
15 enough oxygen flowing to brain.

16 Q Can asphyxia cause death?

17 A Of course, yes.

18 Q Okay. And describe -- is it -- how the blood
19 flow works in the neck, could you explain that?

20 A I mean asphyxia in general the few types of
21 asphyxia first. The one that we are dealing here this
22 case, it's a case where the blood flow with oxygen is
23 obstructed and stopped, and asphyxia arises inside the
24 brain. Our brain is very sensitive organ when it comes

1 to not enough oxygen blowing to it so it get damaged
2 very easily if there is not enough oxygen or even short
3 time.

4 Q How --

5 A So --

6 Q Go ahead.

7 A So now the main vessels that provides blood
8 flow to our brain are located on both our neck. It's we
9 have two carotid arteries that bring the oxygenated
10 blood to brain from heart and lungs. And then we have
11 next to them two jugular veins. Jugular veins are veins
12 that drain blood from our head, from our brain back to
13 heart and to -- back to lungs. And whether those are --
14 and those are major vessels on the lateral, meaning the
15 sides of the neck. When there is a compression of the
16 neck, first we have jugular veins being obstructed or
17 compressed. Because the veins are very soft vessels
18 it's very easy to compress them and stop the.

19 Q So Doctor, just so I can go through this.
20 When the veins are compressed the blood can't come
21 through it or go out of it?

22 A When the -- well, neck is compressed, first,
23 the veins are being compressed because they are thin and
24 easy to become compressed. So the blood flows to the

1 brain, to the head, through carotid arteries, which are
2 arteries, meaning they're thicker than veins, and much
3 -- it takes much more force to compress them and stop
4 the flowing blood, so there is first compression of
5 blood -- compression of the neck, then the blood flows
6 inside the brain inside the head, but it stops draining
7 back. So what happens is basically you have build up of
8 blood pressure inside the head, inside those also small,
9 very small capillary vessels inside our skin. Those
10 small vessels are not created to handle so big increases
11 in blood pressure, so they burst. And this is why we
12 get petechial hemorrhages, this type of hemorrhage. So
13 somebody compresses the neck, first the blood, the flow
14 drains, draining from the head stops, and then the
15 pressure continues, then the blood with oxygen stops
16 flowing inside the brain.

17 Q So I heard you say, Doctor, that it takes
18 more compression to close or block an artery than it
19 does a vein?

20 A Yes.

21 Q Okay. And if someone were to compress a neck
22 so that there was no blood coming in or going out, that
23 causes asphyxia?

24 A Yes, that causes asphyxia.

1 Q Now, how long does it take to kill somebody
2 by asphyxia?

3 A Okay. So it takes a few minutes, some
4 sources say it's about four minutes of continuous
5 pressure, continuous pressure of the neck, both sides,
6 to kill a person. So some sources in general say it
7 takes few minutes. But some sources say it's about four
8 minutes to cause that by continuous pressure of the
9 neck.

10 Q It's more than ten seconds.

11 A Yes.

12 Q It's more than 30 seconds.

13 A Yes.

14 Q More than one minute.

15 A Yes.

16 Q Of continuous pressure.

17 A Yes.

18 Q And when someone is being asphyxiated and
19 they pass away, they die, will there body become limp or
20 will they stop moving?

21 A Yes. They -- they start to show that after
22 10 to 15 minutes of compression of the neck, a person
23 becomes unconscious.

24 Q Okay?

1 A After 10 to 15 seconds.

2 Q Now, you also examined the brain of Mr.

3 Gardner?

4 A Yes.

5 Q All right. And what did you notice with
6 regard to -- I'm not showing those photographs today,
7 but what did -- so how is the brain examined? Explain
8 that.

9 A So when I examined the head first, outside I
10 notice as is shown multiple contusions, bruises because
11 area of several areas of impact. So I open the head,
12 and open the skull. And I saw on the brain surface that
13 there was hemorrhage, bleeding, there was subarachnoid
14 bleeding, there is subdural bleeding, so many types of
15 bleeding present in the brain surface.

16 Q So there's bleeding inside the brain cavity
17 of Mr. Gardner?

18 A Yes. So when I saw that, I realized that
19 obviously there is injury, there are injuries of the
20 brain, so I preserve the brain in Formalin with the
21 spinal cord, and I send them to our neuropathologist to
22 perform.

23 Q Okay. Backing up a little bit, Doctor. Did
24 you also examine the neck area after it was cut open?

1 A Yes.

2 Q What did you observe there?

3 A On outside as, again, I showed on pictures
4 you saw contusions. You saw contusion, bruising on the
5 neck outside of the skin surface. After I open this
6 area (indicating), I saw hemorrhage, bleeding within the
7 both sides of soft tissues. The right and left side.

8 Q Excuse me, Doctor. I'm going to show you
9 again 5 J and direct you to show the jury what area
10 underneath the skin you saw the hemorrhaging.

11 A So usually what we do, we open the body in
12 Y-shape incision. And then we deflect the skin towards
13 the face. And then we can examine inside, inside the
14 neck, so we see -- I saw the bleeding, hemorrhage within
15 the muscles on both sides of the neck. I saw bleeding
16 within the soft tissues, within both sides of the neck.
17 Also I saw bleeding within the larynx, larynx, voice
18 box, on the right side.

19 Q How would you describe the bleeding -- I'm
20 not a doctor, but is it minor, moderate, major, how
21 would you describe it?

22 A I mean, this is normally you would describe
23 moderate.

24 Q Okay. But --

1 A It's not, like, hemorrhage caused by bleeding
2 caused by cutting an artery which is catastrophic severe
3 bleeding.

4 Q But this is injury that's caused by blunt
5 force trauma or compression?

6 A Yes. This is caused by compression of the
7 neck.

8 Q And are these injuries consistent with a
9 choking or asphyxiation?

10 A This is consistent with a type of
11 strangulation, meaning compression of the neck by hands
12 or and other objects that eventually causes loss of
13 oxygen flowing through brain and causes death.

14 Q So you indicated, going back to the brain,
15 you sent the brain out. Who did you send that to?

16 A I sent it to Dr. Bennet Omalu. He was our
17 neuropathologist.

18 Q And then did you also send the blood sample
19 out?

20 A Yes.

21 Q So at this point, you didn't make a
22 determination of cause of death or write an opinion or
23 write your protocol; is that correct?

24 A Yes. At that time I only described and

1 documented all the injuries I saw myself, and I was
2 waiting for other results, for other diagnostic test
3 results to come back so I can determine cause and manner
4 of death.

5 Q Okay. And that's the protocol you use in
6 these type of cases?

7 A Yes.

8 Q All right. Did you receive those reports
9 back?

10 A Yes.

11 Q And did they contribute to your opinion of
12 cause of death in this case? .

13 A Yes.

14 Q What were the findings of Dr. Omalu that you
15 relied upon in making your opinion?

16 A He determined that there was -- there were
17 injuries of the brain and -- but they were mild, meaning
18 that directly did not contribute to decedent's death.
19 So he did have -- the decedent had injuries, traumatic
20 injuries of the brain, however, they were not
21 significant enough to cause the death.

22 Q And so that contributed to your basis of your
23 opinion, that report?

24 A Yes.

1 Q Now, also the toxicology, did you get that
2 back?

3 A Yes.

4 Q And did Mr. Gardner have any type of
5 substances in his blood that caused you concern?

6 A Yes.

7 Q And could you go ahead and tell the jury
8 about that?

9 A So he did have methamphetamine in his system,
10 and also very small amount of alcohol, ethanol.

11 Q Okay. So he didn't have very much alcohol in
12 his system?

13 A No.

14 Q Now, after you received these reports back,
15 and based upon your autopsy and your experience in this
16 case and your experience as a doctor, were you able to
17 render opinion as to cause of death?

18 A Yes.

19 Q And what was that?

20 A The cause of death was asphyxia due to
21 traumatic compression of the neck.

22 Q All right.

23 A With other significant condition, traumatic
24 injuries of the brain.

1 MR. STRALLA: All right. No further
2 questions.

3 THE COURT: Thank you. Cross-examination.

4 MR. LESLIE: Thank you, your Honor.

5 CROSS-EXAMINATION

6 BY MR. LESLIE:

7 Q Good morning, Doctor.

8 A Good morning, sir.

9 Q Doctor, if I understand correctly, as a
10 forensic pathologist your task is to determine the cause
11 and manner of death; is that correct?

12 A Most of our cases, yes, we determine cause
13 and manner of death.

14 Q Okay. Can you give us an idea of what the
15 difference is between cause of death and manner of
16 death?

17 A Cause of death is basically --

18 MR. STRALLA: I'll get it. I was going to
19 take the photo off, your Honor.

20 MR. LESLIE: Apologize --

21 THE WITNESS: Sorry. The cause of death is a
22 factor that, basically, causes decedent's death. And
23 they are gunshot wound of the head. This could be
24 compression of the neck. This could be heart attack.

1 This could be bleeding inside the stomach, so those are
2 the causes of death.

3 And then -- so this is -- this could be
4 natural. This could be necessitated with injuries. Now
5 manner of this is how person dies, this is the really
6 the -- some people describe as administrative category,
7 meaning it has different rules how we arrive with manner
8 of death. And there are only really five types of
9 manners of death. So we can natural death, for example,
10 pneumonia is natural death. Then you have accident.
11 You have accident when somebody dies in car crash. Then
12 you have suicide. That's another manner of death.
13 Manner of death is suicide, someone shoots themselves or
14 hangs themselves or poisons themselves.

15 Then you have homicides. Homicide in our
16 meaning, forensic pathology terminology or the medical
17 legal terminology is base -- is basically death caused
18 by actions of other. So we are not preoccupied with
19 intent, intent or any other things that actually our
20 attorneys opine about. We -- my profession, homicide is
21 simply death caused by actions of other.

22 Q In this case, Doctor, if I may interrupt, in
23 this case when you conducted the autopsy did you
24 understand this to be a homicide investigation?

1 A Yes, of course.

2 Q And you understood that partly because there
3 were two detectives that were present at the autopsy
4 with you.

5 A Usually it goes beyond that because then I
6 see the injuries --

7 Q I was asking you in this case --

8 A Yes.

9 Q -- if there were two detectives with you at
10 the autopsy in this case.

11 A Yes, there were.

12 Q Okay. Did you have an occasion to review
13 your autopsy report before appearing here and
14 testifying?

15 A Yes.

16 Q Okay. When did you review that?

17 A For last ten days or so, and especially now
18 today because I was flying so, of course, I like to
19 review the reports.

20 Q So you looked at it in the last ten days and
21 you looked at it today as well.

22 A Correct. Yes.

23 Q And did that to refresh your recollection
24 about what your findings were and how you arrived at

1 those findings.

2 A Yes, of course.

3 Q And we agree that the autopsy report, the
4 written report itself acknowledges there were two
5 detectives present at the autopsy when you conducted the
6 autopsy and did the examination you have described.

7 A I mean, actually, there was detective and an
8 FIS who's a technician, actually.

9 Q Okay.

10 A She's not detective. She wasn't -- she
11 retired.

12 Q So there were police officers there with you
13 at the autopsy when you conducted the autopsy.

14 A Yes.

15 Q You write a written autopsy report for a
16 number of reasons. Is that true?

17 A Yes.

18 Q You write an autopsy report in order to
19 refresh your recollection weeks, months or years later
20 when you testify at a jury trial.

21 A That's one of the reasons, yes.

22 Q You write a written autopsy report so that
23 attorneys in the case can review it and have an idea of
24 what you concluded and how you concluded that.

1 A Yes.

2 Q You write an autopsy report in the event that
3 with the passage of time you become unavailable to
4 provide testimony or explanation.

5 A Yes.

6 Q Or with enough passage of time in case you
7 happen to pass away between the time of the autopsy
8 report and the time that the case goes to trial.

9 A Yes.

10 Q This case is six, seven years old. Correct?

11 A Yes.

12 Q Okay. Now, when you write the autopsy
13 report, it's important to be accurate and truthful in
14 that written report.

15 A Yes, of course.

16 Q That is so that you later can rely on that
17 report. Correct?

18 A Yes.

19 Q And it's so that other people in the judicial
20 system can rely on that report.

21 A Yes, of course.

22 Q And that's one of the reasons that you may
23 farm out or send out body parts or blood samples in
24 order to arrive at a conclusion that is -- that you're

1 comfortable with and that you can put into that autopsy
2 report. Correct?

3 A Yes.

4 Q It is not unusual for there to be some lag of
5 time between the day that you're conducting the physical
6 autopsy with detectives present and the time that you
7 end up signing that written autopsy report.

8 A Yes.

9 Q And that happened in this case.

10 A Yes.

11 Q You conducted the initial autopsy on December
12 10th of 2014.

13 A Yes.

14 Q And that's when you were present at the
15 medical examiner's office and facility and took a look
16 at the body of Mr. Gardner.

17 A I performed the autopsy, yes.

18 Q All right. And at that time do you recall
19 indicating to one of the detectives that you weren't
20 sure what the cause of death was and you wanted to see
21 what additional reports might indicate.

22 A I don't recall -- I don't remember that. It
23 was seven years ago, so.

24 Q But in any event, you did not arrive at a

1 final conclusion as to the cause and manner of death
2 until your written autopsy report, and then you signed
3 that.

4 A Yes.

5 Q Okay. And that written autopsy report was
6 approximately 11 months later; is that correct?

7 A Yes.

8 Q Toward the end of the year 2015.

9 A Yes.

10 Q You indicated in the autopsy report a
11 specific date and time of death; is that correct?

12 A Specific date?

13 Q Have you reviewed your written report called
14 autopsy --

15 A Yes.

16 Q -- protocol? Okay. And that autopsy
17 protocol indicates the name John Gardner, the man we're
18 talking about.

19 A That's correct, yes.

20 Q Okay. And it indicates date of death.
21 Correct?

22 A The autopsy report? Demographics part, yes.

23 Q That's the autopsy report you reviewed today.

24 A Today, yesterday, before yesterday, yes, sir.

1 Q Okay. All right. And so that autopsy report
2 that you reviewed over the last ten days and today
3 indicates date of death of December 10th, 2014; is that
4 correct?

5 A Yes.

6 Q Okay. And the time of the death is indicated
7 6:58 a.m. Correct?

8 A I don't remember the time.

9 Q Would it help to see a copy of your report?

10 A Yes, sir.

11 MR. LESLIE: May I approach, your Honor?

12 THE COURT: Please.

13 BY MR. LESLIE:

14 Q I'm going to hand you a copy.

15 A Thank you, sir.

16 Q That's not stapled so just be careful. Does
17 that appear to be a copy of your autopsy report?

18 A Yes, it is.

19 Q Does that indicate at the top of the report
20 the date of death?

21 A Yes.

22 Q Of 12-10-2014?

23 A That's correct.

24 Q And it indicates time of 6:58 a.m.?

1 A That's correct.

2 MR. LESLIE: Okay. May I approach, your
3 Honor?

4 THE COURT: Are you going to continue to
5 inquire about the report in this line of questioning?

6 MR. LESLIE: I'll let him keep it.

7 THE COURT: I was going to say let him keep
8 it, that way you don't have to keep moving back and
9 forth.

10 MR. LESLIE: That's fine.

11 BY MR. LESLIE:

12 Q And Doctor, at any time you don't recall and
13 you need to review your report?

14 A Okay.

15 Q Could you just tell us that you're doing
16 that?

17 A Of course, yes.

18 Q Okay. So if you want, could you please set
19 that down and we'll go ahead and continue talking and
20 then if you need it, it will be right there.

21 A Yes.

22 Q The date of the autopsy was that same day,
23 December 10th; is that correct?

24 A Yes.

1 Q And the time that you conducted the autopsy
2 was about 10:45 in the morning.

3 A Yes.

4 Q Okay. Now, this autopsy report that you just
5 looked at was signed by you later at the end of 2015.

6 A Yes.

7 Q Correct?

8 A Yes.

9 Q And that's after you had reviewed the brain
10 report.

11 A After I reviewed the brain report. After I
12 reviewed the toxicology report.

13 Q So Doctor --

14 A After I discussed --

15 Q Doctor, I don't mean to be disrespectful but
16 I asked you if you had signed that report after
17 reviewing the brain report.

18 A Yes.

19 Q Okay. And you also signed it after you had
20 reviewed the toxicology report.

21 A Yes.

22 Q Okay. Would it be fair to say that you had
23 ten or 11 months in which to think about what the time
24 and date of death in this case was?

1 A Would you be more specific in the question?

2 Q You initially conducted the autopsy
3 examination on December 10th of 2014, correct?

4 A Yes.

5 Q And you did not sign your final autopsy
6 report until 10 or 11 months later at the end of 2015.
7 Correct?

8 A Yes.

9 Q Okay. You had that amount of time to think
10 about the date and time of death in this case.

11 A Well, yes.

12 Q You testified about petechiae?

13 A Yes.

14 Q The little blood vessels that indicate --
15 that indicate a rupture of the blood vessel. Correct?

16 A Yes. This is bleeding from small blood
17 vessels, yes.

18 Q Did you undertake as part of your ten-month
19 process of preparing and finalizing the autopsy report
20 in this case to determine the time that the petechiae
21 occurred in John Gardner?

22 A We don't do this in our procedures.

23 Q So you can tell us the petechiae was there.

24 A Yes.

1 Q But you can not tell us when that occurred.

2 A No.

3 Q You indicated that Mr. Gardner had been in a
4 car accident a couple of months before. Correct?

5 A Yes.

6 Q And there's no dispute about that.

7 A No.

8 Q Okay. He had injuries in his head region, I
9 think you mentioned a surgical plate?

10 A Yes.

11 Q Okay. He had injuries to his arms or hands?

12 A Yes.

13 Q He had injuries to his legs.

14 A Yes.

15 Q And these were all significant injuries.

16 A Yes.

17 Q Those were treated with, it appears to be,
18 surgical intervention.

19 A Yes.

20 Q Were you able -- how did you arrive at
21 concluding the date or time that those injuries had
22 occurred? Or were you able to do that?

23 A I was just -- the date of his accident was
24 October 25th and so, basically, about two months before

1 his death. So this is why I knew that there were
2 injuries.

3 Q So you had outside information, so to speak,
4 that indicated those injuries were a couple months old,
5 and they appeared to be consistent with that outside
6 information.

7 A Yes.

8 Q Okay. You indicated he had some -- some
9 fractured ribs, I think number seven and eight.

10 A Yes.

11 Q Did you undertake to determine the time or
12 the date that those fractures to those ribs occurred?

13 A They were fresh. Unfortunately, we can not
14 show those photographs here, but they appear to be
15 perimortem around time of death. And I have photograph
16 documenting their appearance, actually.

17 Q But we don't have them here.

18 A No.

19 Q Okay. And I take it that you concluded that
20 they were fresh breaks by virtue of -- did you cut him
21 open and examine him?

22 A Yes. This is part of our examination.

23 Q Did you x-ray them?

24 A Yes.

1 Q Could Mr. Gardner walk?

2 A I know he had problems with ambulation, but I
3 can not say exactly how he ambulated.

4 Q And ambulation is?

5 A Walking.

6 Q Thank you. Am I ambulating now?

7 A Yes, sir. Very well.

8 Q So when you say he's capable of ambulation,
9 he can walk.

10 A Yes.

11 Q If somebody said that in the couple of days
12 before his death he was capable of walking when he
13 wanted to, would that be believable to you?

14 A I mean, it's speculation. I haven't seen him

15 --

16 MR. STRALLA: Objection. He gave you the
17 reason right there, Judge.

18 THE COURT: He did. Sustained.

19 BY MR. LESLIE:

20 Q So he could walk is your conclusion.

21 MR. STRALLA: Same question.

22 THE COURT: Sustained.

23 MR. STRALLA: Objection.

24 THE COURT: He said it's speculation.

1 Sustained.

2 BY MR. LESLIE:

3 Q You examined the face bones to see if they'd
4 been fractured.

5 A Yes.

6 Q And they were not.

7 A No.

8 Q Correct. You examined the neck region -- is
9 there a bone in the neck?

10 A Yes, there is bone in the neck.

11 Q Is there a bone called the hyoid?

12 A Yes, there is bone called hyoid bone.

13 Q And can you demonstrate by pointing to your
14 own neck, indicate for the jury about where the hyoid
15 bone is?

16 A It is here (indicating). It's upper part of
17 our neck, skull, wishbone. It's called wishbone.

18 Q Is that about the region of the neck that in
19 a case of strangulation it would not surprise you if
20 force had been applied?

21 A Yes.

22 Q Okay. With a hyoid -- the hyoid bone in this
23 case was not broken --

24 A No.

1 Q -- it was intact.

2 A It was intact.

3 Q You indicated when Mr. Stralla was asking
4 questions that one of the -- that you farmed out blood
5 samples and you received back a toxicology report.

6 A Yes.

7 Q And you indicated that there was alcohol and
8 methamphetamine in John Gardner's blood.

9 A Yes.

10 Q I heard you acknowledge that there was
11 methamphetamine, but I didn't hear you quantify how
12 much.

13 A Um, the thing is that I'm not forensic
14 toxicologist, so I can only give the results of the --
15 results of the toxicology testing and I can not really
16 go into much of the discussion about testing of those
17 samples.

18 Q But you had that toxicology report.

19 A Yes, sir.

20 Q And that toxicology report showed that John
21 Gardner had methamphetamine.

22 A Yes.

23 Q And showed how much.

24 A Yes.

1 Q Okay. And didn't it say that he had 920
2 nanograms per milliliter of methamphetamine in his
3 blood?

4 A I don't remember his number.

5 Q Would seeing -- would seeing the toxicology
6 report review your -- refresh your recollection?

7 A Yes.

8 MR. LESLIE: May I approach?

9 THE COURT: You may.

10 BY MR. LESLIE:

11 Q I'll show you that --

12 A Thank you.

13 Q -- tox report. I'll give you just a minute
14 to take a look at that.

15 A Yes

16 Q Is that the toxicology report?

17 A Yes, it is.

18 Q And it indicates positive finding for
19 methamphetamine 920 nanograms per milliliter.

20 A Yes.

21 Q So that's the amount of methamphetamine that
22 he had in his blood.

23 A Yes.

24 Q Do you have any dispute with the contents of

1 the toxicology report?

2 A No.

3 Q So you would have no dispute with the
4 reference comment that indicates methamphetamine is an
5 abused substance because of its stimulatory effects.

6 A No. Which exactly paragraph are you reading?

7 Q Page 2.

8 A Okay. Page 2?

9 Q You see down towards the bottom under
10 reference comments it talks about methamphetamine,
11 number 3?

12 A Yes.

13 Q Okay. You don't dispute the lab on that.

14 A No.

15 Q All right. And you don't dispute when they
16 say that a peak blood con -- well, you don't dispute
17 when they say that blood levels of 200 to 600 nanograms
18 per milliliter have been reported in methamphetamine
19 abusers who exhibited violent and irrational behavior,
20 you don't dispute that.

21 A No.

22 Q Moving over to alcohol, I heard you say that
23 Mr. Gardner had a small amount of alcohol --

24 A Yes.

1 Q -- in his system. And I heard the
2 prosecutor say back to you so he didn't have much
3 alcohol in him. Do you recall that?

4 A Yes.

5 Q Okay. And he had alcohol of .058, on page 1
6 there; is that correct?

7 A Yes. That's correct.

8 Q And that's grams per a hundred milliliters.

9 A Yes.

10 Q Okay. Did you examine any blood samples from
11 anybody else in this case?

12 A No.

13 Q From the defendant?

14 A No. It's outside of my jurisdiction doing
15 that.

16 Q So that's -- I was just thinking about that.
17 So do you mean that you're here to talk to us about the
18 cause of death from a forensic pathology perspective.
19 Yes?

20 A Yes.

21 Q You're not here to talk about the manner of
22 death, which is our domain, the judicial system.

23 A This varies from jurisdiction to
24 jurisdiction.

1 Q But you're not here to -- when you're
2 characterizing a case as manner of death, do you get any
3 input from the detectives in the case?

4 A Manner of death is formulated based on our
5 toxic reports.

6 Q But it's outside your jurisdiction, correct?

7 A No, no. And investigations. Depending on
8 jurisdiction, forensics pathologists, medical examiners
9 can determine the manner of death. Some jurisdictions,
10 for example, the place where I work right now, I now
11 stopped determine manner of death.

12 But in Nevada, because here you have both
13 medical examiner/coroner's system, coroners are
14 responsible for determining manner of death very often.
15 You go to Churchill County or Elko you have coroner over
16 there and the forensics pathologist just determines
17 cause of death. And then coroner determines manner of
18 death, how a person dies. But here in Washoe County, we
19 have combined jurisdiction of medical examiner and
20 coroner, then we determine the cause and manner of death
21 in Washoe County, but you go outside, then other
22 counties have different rules.

23 Q Okay. But we're in Washoe County. Would you
24 agree?

1 A Yes.

2 Q Okay. And you're here in your capacity as a
3 former medical examiner for Washoe County testifying
4 about a Washoe County case.

5 A Yes.

6 MR. LESLIE: All right. Your Honor, may I
7 approach to receive my documents?

8 THE COURT: Sure.

9 THE WITNESS: Yes, sir.

10 MR. LESLIE: Thank you, Doctor. I have no
11 further questions.

12 THE COURT: Thank you. Any redirect, Mr.
13 Stralla?

14 MR. STRALLA: Thank you, your Honor.

15 REDIRECT EXAMINATION

16 BY MR. STRALLA:

17 Q I'll just kind of start where Mr. Leslie left
18 off. So in Washoe County you can talk about the cause
19 of death. Correct?

20 A Yes.

21 Q And in this case the cause of death was
22 asphyxiation?

23 A Asphyxia.

24 Q It's hard for me say. Asphyxia? And then

1 the manner of death was compression to the neck?

2 A Manner of death is homicide.

3 Q Homicide.

4 A Yes.

5 Q Okay. And that -- and when you look at
6 manner of death you're also looking at -- you can look
7 at what or hear, listen to what a detective tells you
8 happened or hear details of the case to see if the
9 injuries are consistent with that information?

10 A Yes.

11 Q I'm going to show you a photograph.

12 Now, Doctor, in this case there was -- there's
13 been evidence that Mr. Gardner was placed on a bathtub
14 with his head --

15 MR. LESLIE: Objection. Exceeds the scope of
16 cross.

17 THE COURT: Overruled.

18 BY MR. STRALLA:

19 Q There was evidence that Mr. Gardner was
20 placed on a bathtub by the defendant with his head
21 hanging over the edge of the bathtub?

22 A Yes.

23 Q All right. I'll show you what's been
24 admitted in evidence as 2L Do you see that photograph?

1 A Yes.

2 Q Now, you see this area here (indicating), I
3 guess it's the edge of the tub?

4 A Yes.

5 Q Is that area consistent, Doctor, with an area
6 that a head or a neck could be compressed against?

7 A Yes.

8 Q That could cause death?

9 A Yes.

10 Q And in fact, Doctor, there's blood dripping
11 down the side of that bathtub?

12 A Yes.

13 Q And there was bleeding from -- and I'm
14 showing you 5 J, Mr. Gardner's face, there was dried
15 blood on his face when you first looked at his body?

16 A Yes.

17 Q And going back to 2 L, that's consistent with
18 the head being towards -- on the outside of that tub and
19 the body on the inside of that tub being compressed
20 against that edge. Is that correct, Doctor?

21 A I mean, the edge can be used as a blunt
22 force, as a blunt object to cause the injuries.

23 Q Now I'm going to show you 2 N, this
24 photograph, where it appears there's pooling of blood at

1 the bottom of those drips on the bathtub?

2 A Yes.

3 Q And would that be consistent with the head
4 hanging over the edge of that bathtub and bleeding
5 towards that direction?

6 A This -- this perfectly level area, yes.

7 Q So that bathtub could have been an implement
8 used to kill Mr. Gardner; is that correct, Doctor?

9 A Yes, it could be.

10 Q Now, Mr. Leslie asked you questions about the
11 alcohol level?

12 A Yes.

13 Q Now, Doctor, I didn't ask you this but I want
14 you to give your best guess how many autopsies you've
15 performed in your career.

16 A Well, by now it's more than 6,000.

17 Q All right. Have you performed autopsies
18 where the cause of death was alcohol poisoning, I guess,
19 is a better term?

20 A Alcohol intoxication, yes.

21 Q All right. And what levels do you usually
22 see that at, generally?

23 A It depends if we are dealing with alcoholic
24 or not. Usually people who abuse alcohol have high

1 tolerance to alcohol, so their concentrations in alcohol
2 intoxication cases are much higher than average
3 population. But if concentration is higher than 0.4,
4 0.4, then definitely this is death caused by alcohol
5 intoxication.

6 Q So when we're saying 0.4, is that .04 or 0.4?
7 Okay.

8 A 0.4, not like in this case, 0.05.

9 Q Okay. So -- and this isn't even as high as
10 the legal -- you can legally drive at this level.
11 Correct?

12 A Yes.

13 Q Because it's .08 in Nevada.

14 A 0.08, that's the legal limit.

15 Q Okay. Now, the defendant -- excuse me, Mr.
16 Gardner also had methamphetamine in his blood?

17 A Yes?

18 Q And you reviewed the toxicology report?

19 A Yes.

20 Q And did that change your opinion as to the
21 cause of death in this case?

22 A No.

23 Q The hyoid bone?

24 A Yes.

1 Q I think you said it's the wish bone.

2 A Yes.

3 Q I learned something today, thank you. But is
4 it unusual for the hyoid bone not to be fractured when
5 someone can die from neck compression?

6 A No. I mean, it may fracture or it may not.
7 Depends on the struggle. It depends on the person.

8 Q It also could depends on the object that's
9 being pressed on the neck and if it's being impacted on
10 the hyoid bone; is that correct?

11 A Yes, that's correct.

12 Q Because on your neck in the back of your neck
13 your spine's back there too, correct?

14 A Yes.

15 Q And you didn't see any fractures to that
16 area, did you?

17 A No.

18 Q Okay. And in your experience do you see
19 cases where there are absolutely no fractures in the
20 neck area but someone's died by compression in the neck?

21 A Yes.

22 Q And that's your finding in this case?

23 A I mean, I did see injuries inside the neck
24 and the other findings, but.

1 Q And Mr. Leslie asked you about the ribs.

2 Correct?

3 A Yes.

4 Q And he said we don't have the photos, but we
5 do have the photos but we chose not to use them; isn't
6 that correct, Doctor?

7 A Yes.

8 MR. LESLIE: Objection, your Honor. Not in
9 evidence.

10 BY MR. STRALLA:

11 Q Well, Doctor, let me ask you this.

12 THE COURT: That's sustained. Go ahead.

13 MR. LESLIE: Thank you.

14 BY MR. STRALLA:

15 Q Okay. I asked you to provide me photos you
16 would like to use in your testimony or explain your
17 findings to the jury; is that correct?

18 A Yes.

19 Q And you didn't provide the rib photos, did
20 you?

21 A No.

22 Q And why was that?

23 A Because they -- those injuries are not really
24 contributing to his death.

1 Q But they were fresh injuries you said?

2 A Yes, they were fresh. You can see the
3 bleeding around those areas of fractures.

4 Q And those photos are taken after the body's
5 been cut open --

6 A Yes.

7 Q -- correct? Now, also you talked about
8 injuries to the defendant's -- or excuse me, Mr.
9 Gardner's brain?

10 A Yes.

11 Q And you chose not to use those photos either,
12 did you?

13 A No.

14 Q And why was that?

15 A Um, sometimes defendants object or problems
16 --

17 Q Okay.

18 A -- with the presentation of this material.

19 Q And to you, this is your job, doing
20 autopsies.

21 A Yes.

22 Q But for every-day people they don't see a
23 brain or a body that's been opened up; isn't that
24 correct?

1 A That's correct.

2 Q Okay. Now --

3 A I didn't want to use prejudicial photos.

4 Q Okay.

5 A Yes.

6 Q Now, you used the term I think -- now, if I
7 said this wrong, correct me, perimortem?

8 A Yes.

9 Q What does that mean?

10 A Perimortem is basically a time around death.
11 And you can see that if there is injury like a fracture
12 or laceration of the skin, tearing of the skin, if you
13 see bleeding there, that means the person had to be
14 still alive or in process of dying to have those changes
15 of bleeding inside the cavity, so this way I can say oh,
16 this is perimortem, around time of death.

17 Q So the petechiae in this case, were those
18 perimortem type of injuries?

19 A Yes.

20 Q Was the contusions around the face perimortem
21 injuries?

22 A Yes, around time of death.

23 Q How about the ribs?

24 A Yes.

1 Q How about the brain bleeds?

2 A Um, the subarachnoid hemorrhage, the one type
3 of hemorrhage, bleeding on top of the brain surface was
4 acute, meaning around time of death. However, there was
5 this subdural hematoma, which is another type of
6 bleeding on the brain, that most likely related to
7 injuries he suffered during the motor vehicle collision.

8 Q Okay. But according to the report that you
9 received from Dr. Omalu --

10 A Yes.

11 Q That wasn't the cause of death?

12 A No.

13 Q Okay. Now, you had the brain sent to Dr.
14 Omalu, correct?

15 A Yes.

16 Q And do you remember when you got the report
17 back?

18 A I mean, I don't remember exact date.

19 Q If I were to hand you a copy of his report
20 that you relied upon would that help refresh your
21 memory?

22 A Yes.

23 MR. STRALLA: May I approach, your Honor?

24 (Short pause.)

1 THE COURT: Yes.

2 BY MR. STRALLA:

3 Q Okay. So when did you receive the report
4 back from Dr. Omalu?

5 A Well, I can only say that it was signed on
6 March 13th, 2015.

7 Q Okay.

8 A But I don't see the receiving date on the
9 report.

10 Q Okay. All right. Thanks, Doctor.

11 A It could be later after signing.

12 Q Okay. So you didn't get the report back for
13 at least four months after the autopsy in the case?

14 A At least, yes.

15 Q And during those four months were you also
16 doing other autopsies?

17 A Multiple autopsies, yes.

18 Q That's your daily job, autopsies?

19 A Yes, it is.

20 Q And you have to write autopsy protocols on
21 all those cases?

22 A Yes, all of them.

23 Q And so is it unusual for it to take some time
24 to get your final autopsy report finished?

1 A Yes.

2 Q It is unusual or not?

3 A It's not unusual, it takes very long time,
4 especially on cases like this which are very difficult,
5 there are so many findings.

6 Q There was all -- that brings up a good point.
7 There was all types of injuries in this case. Correct?

8 A Yes.

9 Q And so it -- to be detailed it took time to
10 put the final report together?

11 A Yes.

12 Q Okay. Now, Mr. Leslie asked you questions
13 about the time of death that's listed on your autopsy
14 protocol?

15 A Yes.

16 Q Are you the person that determines time of
17 death?

18 A No.

19 Q Who does that?

20 A It's usually deputy coroner or other person
21 legally entitled to pronounce death, you in the field.

22 Q Do you remember who the medical examiner
23 investigator was in this case?

24 A I think it was Mr. Mike Bergman.

1 Q Okay. There was evidence in this case that
2 he pronounced death when he saw the body at 6:58 a.m. on
3 December 10th, 2014. So would that be the information
4 on your autopsy protocol?

5 A Yeah.

6 Q Okay. So you're not the one who's saying
7 that he died -- that Mr. Gardner died on the 10th.
8 Correct?

9 A No.

10 Q Now, there's evidence in this case from the
11 defendant himself that the -- that Mr. Gardner was --

12 MR. LESLIE: Objection. Argument.

13 MR. STRALLA: I haven't finished my question.

14 THE COURT: No. Overruled.

15 BY MR. STRALLA:

16 Q There's evidence in this case from the
17 defendant's own words that Mr. Gardner was unconscious
18 or dead in his room on the 9th. Would the findings in
19 your case be consistent with that?

20 A I mean, I can only determine the cause -- you
21 know, cause and manner of death.

22 Q Okay.

23 A And I don't know.

24 Q All right. So you, obviously, weren't there,

1 didn't investigate the case other than the autopsy in
2 the case.

3 A Of course.

4 Q Now, Mr. Leslie asked you a bunch of
5 questions about detectives being there during the
6 autopsy?

7 A One detective, one FIS.

8 Q Okay. One's from FIS?

9 A Information, yeah.

10 Q Did they tell you what to do on your autopsy?

11 A No.

12 Q They're there to observe?

13 A There to observe or tell me some new details
14 about the case or collect evidence from us after we
15 collect evidence from the surface of the body. They
16 also take some photographs themselves of the case.

17 Q But you're the one that makes the
18 determination and the cause of death based upon your
19 findings, your experience, and your knowledge. Correct?

20 A Yes.

21 Q And they had nothing to do with that; is that
22 correct?

23 A No.

24 Q You indicated, I'm almost done, that this was

1 a death by homicide. That's the manner of death?

2 A I mean, it was death by asphyxia.

3 Q Asphyxia?

4 A Manner of death was homicide meaning death
5 caused by actions of others.

6 Q All right. And compressing someone's neck
7 for up to four minutes so they can't breathe and they
8 die, that would be fit within those parameters --

9 A Yes.

10 Q -- is that correct?

11 MR. STRALLA: No further questions.

12 THE COURT: Recross.

13 MR. LESLIE: Thank you.

14 RECROSS-EXAMINATION

15 BY MR. LESLIE:

16 Q So what date and hour did Mr. Gardner
17 actually pass from us and die?

18 MR. STRALLA: Objection, your Honor. He
19 already asked -- he said he couldn't say.

20 THE COURT: Well, we'll wait to hear that
21 answer again. Overruled.

22 BY MR. LESLIE:

23 Q Can you answer it?

24 A I can not tell.

1 Q Fair enough. Prosecutor asked you about
2 alcohol?

3 A Yes.

4 Q And said a .056, that's not even a .08, he
5 can drive. Do you remember that?

6 A Yes.

7 Q Can you drive legally on the roads of Nevada
8 with 920 nanograms per milliliters of methamphetamine in
9 your system?

10 A No.

11 Q You say the ribs were broken fresh or recent.

12 A Perimortem, around time of death, yes.

13 Q Okay. You acknowledge that you and Mr.
14 Stralla communicated in preparation for trial, which
15 happens, you prepare, and that there was a discussion of
16 of what do you need to show what your findings were and
17 what you're gonna testify about. And you guys discussed
18 that.

19 A Yes.

20 Q Okay. And we don't have the x-rays here with
21 us today.

22 A No.

23 Q We don't have the photos of broken ribs with
24 us here today.

1 MR. STRALLA: Your Honor, I'll object. I have
2 them if he wants them.

3 THE COURT: I'm going to overrule the
4 objection. You may continue.

5 MR. LESLIE: Okay.

6 THE COURT: And try to confine your arguments
7 on objections just the objection, please. Go ahead.

8 MR. LESLIE: All right. Fair enough. We'll
9 leave it at that.

10 THE WITNESS: Okay.

11 MR. LESLIE: No further questions.

12 THE COURT: Thank you for your testimony.
13 Have a safe trip back to West Virginia and you are
14 excused.

15 THE WITNESS: Thank you.

16 THE COURT: Thank you. Please call your next
17 witness, please, Mr. Stralla.

18 MR. STRALLA: Your Honor, with that, make sure
19 I have all the exhibits. I had a couple marked this
20 morning but I'm not going to move for admission. The
21 State would rest its case.

22 THE COURT: The State's resting their case,
23 Ladies and Gentlemen, that's the portion of the case
24 where I'm going to have you take your half hour recess

1 at this time. Reason being is we're going to come back,
2 and as indicated to you in the beginning of this case,
3 the defense may, if they so chose, to put on a case, but
4 they don't have to. I'll find that out in the break,
5 and make this case move as smoothly as possible for you,
6 but at this point the State has rested. That's why I'm
7 going to read you the recess admonishment's so important
8 at this point because we're going to take our morning
9 recess.

10 During this recess it's your duty not to
11 converse amongst yourselves or with anyone else on any
12 subject connected with the trial, or to read, watch or
13 listen to any report of or commentary on the trial by
14 any person connected with the trial, or by any medium of
15 information, including without limitation, newspaper,
16 television, internet, smart phones, radio.

17 Do not form or express an opinion on any
18 subject connected with this case until it is finally
19 submitted to you and the presentation of the evidence
20 and arguments are concluded.

21 So I'll see you at 10:30. Thank you very much
22 for your patience so far and everybody rise for the
23 jury.

24 (Jury leaves courtroom.)

1 THE COURT: All right. We're outside the
2 presence. Mr. Leslie, what's the news?

3 MR. LESLIE: Your Honor, I need to check on a
4 couple of things. I do want to have one last discussion
5 with my client about trial strategy. Your Honor, this
6 case has been pending for six years, just as a reminder.

7 THE COURT: That's my point.

8 MR. LESLIE: I think my point is the
9 underlying cause of that and so I'd like to have a final
10 conversation with my client, see where our path is
11 taking us. And I do have Dr. Piasecki supposedly
12 sitting out in the hallway. And I want to do some
13 checking with both of them and see where we go.

14 THE COURT: All right. So just an additional
15 conversation with Mr. Dahl to recap for the record on
16 trial strategy in terms of what your next -- what your
17 -- defense presentation would be. And then depending on
18 that conversation you may or may not call Dr. Piasecki
19 or is Dr. Piasecki a for sure at this point from a trial
20 strategy or is it still a moving target so to speak?

21 MR. LESLIE: It's moving target based on a
22 couple of variables.

23 THE COURT: All right. That's fair.

24 MR. LESLIE: It won't take long to

1 investigate, but I do want to check.

2 THE COURT: Use the half an hour. Are there
3 any other housekeeping matters we need to deal with
4 before we come back?

5 MR. LESLIE: No.

6 THE COURT: Okay. Very good. What I'll to is
7 I'll come back at 25 after outside the presence and you
8 could let me know what your -- you can announce what
9 your position is at that point and we'll react
10 accordingly. Fair enough?

11 MR. LESLIE: Yes.

12 THE COURT: Objection, Mr. Stralla?

13 MR. STRALLA: That's great.

14 THE COURT: Very good. See you back at 25
15 after. Thank you everyone.

16 (Short break.)

17 THE COURT: All right. We're back on the
18 record in CR15-0747, State versus Dahl. Mr. Leslie.

19 MR. LESLIE: Your Honor, after final
20 consultation with my client it is my belief that he's
21 electing not to testify in this case. We will rest the
22 case and move forward to our --

23 THE COURT: Dr. Piasecki will not be called
24 either?

1 MR. LESLIE: That is correct.

2 THE COURT: All right. All right then. Let
3 me think that through for just a moment. All right.
4 I'd like to go through -- we're going to leave the jury
5 out right now because we would be normally at a position
6 where we do have the instructions settled. So what I
7 need to do is take a little more time. Ms. law clerk?
8 I need original and one, two, three of the instructions
9 that I've put them together. There will be no
10 additional instructions, I'll provide those to you all.
11 I'm going to number them, we're going to leave the jury
12 out, write the number down, I'll give you a number copy
13 for argument and then I'll bring them back, do
14 instructions, and then closing arguments. Everybody
15 comfortable with that process?

16 MR. STRALLA: That's fine, your Honor. I have
17 to go print a couple things in preparation.

18 THE COURT: Perfectly fine. I'll remain on
19 the bench while we get these copies and we'll do this
20 together. All right?

21 MR. LESLIE: Your Honor? Logistically are we
22 going to have lunch before coming back?

23 THE COURT: I wasn't planning on it because
24 this was their break, and we're -- because of the

1 current status of the case we continue on so the answer
2 is no.

3 MR. LESLIE: That's fine. I just wanted to
4 know a good faith --

5 THE COURT: That is the break.

6 MR. STRALLA: Can I go across the street and
7 print that?

8 THE COURT: It takes just a few moments to get
9 the copies of the instructions. I'm going to bring them
10 back then, I'm going to number them in your presence --

11 MR. STRALLA: Okay.

12 THE COURT: -- you'll have those, then we
13 bring the jury back. I'll read the instructions and go
14 into closings.

15 MR. STRALLA: All right. I'll go do that
16 right now.

17 THE COURT: All right. Sounds good.

18 (Short pause.)

19 THE COURT: All right. We're on the record in
20 State versus Dahl, CR15-0747. Counsel, is counsel
21 familiar with the Court's proposed jury instructions 1
22 through 34?

23 MR. STRALLA: Yes, your Honor.

24 MR. LESLIE: Yes, your Honor.

1 THE COURT: Does the State object to the
2 giving of any of those instructions?

3 MR. STRALLA: No, your Honor.

4 THE COURT: Does the State have any additional
5 instructions to propose?

6 MR. STRALLA: No, your Honor.

7 THE COURT: Thank you. Does the defense
8 object to the giving of any of those instructions?

9 MR. LESLIE: No, your Honor.

10 THE COURT: And does the defense have any
11 additional instructions to propose?

12 MR. LESLIE: No, your Honor.

13 THE COURT: Thank you very much. All right.
14 Please bring in the jury. Let's all rise with our masks
15 on for the jury.

16 (Jury returns to the courtroom.)

17 THE COURT: Again, thank you for your patience,
18 Ladies and Gentlemen, as we move the case along as
19 smoothly as we can for you under the circumstances.
20 Thank you.

21 Mr. Leslie, will the defense be presenting any
22 defense evidence?

23 MR. LESLIE: Your Honor, we've examined the
24 case and we will not. We will rest and proceed.

1 THE COURT: Very good. Ladies and Gentlemen,
2 the defense has indicated they've rested. As a
3 consequence OF the status and process of the case now is
4 that I'll be reading to you these carefully prepared
5 jury instructions on the law.

6 At the conclusion of my presentation to you on
7 the jury instructions on the law, the lawyers will have
8 an opportunity to do their closing arguments and I'll
9 address that during my presentation to you. The closing
10 arguments will be from both sides where they want to
11 emphasize to you the points of the case that they want
12 you to consider. All right.

13 (Jury instructions read.)

14 THE COURT: Have I read those instructions
15 correctly, Mr. Stralla?

16 MR. STRALLA: Yes. Thank you, your Honor.

17 THE COURT: Have I read those instructions
18 correctly, Mr. Leslie?

19 MR. LESLIE: Yes, your Honor.

20 THE COURT: Thank you very much. All right.
21 Ladies and Gentlemen, as I indicated to you, we're now
22 at the point where we're going to hear closing
23 arguments. This is the time when the lawyers emphasize
24 to you the points that they want you to emphasize.

1 Because Mr. Stralla has the burden of proof as the
2 prosecution, he gets to begin the arguments and he gets
3 to close the arguments. Mr. Stralla.

4 MR. STRALLA: Yes, your Honor. I need a
5 moment to set up if you don't mind. Does the Court have
6 an easel available? That's all right.

7 THE COURT: I'm not aware of one.

8 MR. STRALLA: That's all right.

9 THE COURT: I'm sorry, Mr. Stralla.

10 MR. STRALLA: I can adapt, Judge.

11 THE COURT: Deputy Teralak, do you have one in
12 the back?

13 COURT CLERK: Yes, your Honor.

14 THE COURT: Thank you very much.

15 MR. STRALLA: We moved a little more quickly
16 than I thought, so.

17 THE COURT: Thank you, Deputy.

18 MR. STRALLA: Thank you. I want to thank each
19 and every one of you on behalf of the State of Nevada
20 for your service as a juror. It's one of the most
21 important duties and tasks we have as citizens and I
22 appreciate your attention. It hasn't been a long trial
23 which has been good but, obviously, it's an important
24 trial.

1 It's an important trial not only for the
2 defendant, but for the people of the State of Nevada
3 also. And finally, it's an important trial for John
4 Gardner, the man whose life was maliciously taken by the
5 violent hands of the defendant, as sad and painful a
6 life Mr. Gardner probably was leading.

7 This trial was short, but it was certainly
8 filled with sadness. You heard about two destitute men
9 whose lives revolved around getting drunk and wandering
10 downtown Reno area. People in such a situation are at
11 risk. John Gardner had been struck by a car a couple of
12 months previously and suffered serious injuries.

13 Believe Dr. Kubiczek said he had plates in both
14 shoulders and a rod in a leg and plate on his forehead
15 in his skull, and it forced Mr. Gardner, from what we
16 know of him, to have to use a wheelchair to get around.
17 And, in fact, the defendant said this. It hurt to walk.

18 We don't know too much about John Gardner and,
19 obviously, didn't hear from him, but we do know one
20 thing about him. That he was a human being, who
21 apparently craved human companionship and wandered
22 downtown Reno despite his poor condition.

23 It's equally as hard to hear about the
24 defendant. I don't know about equally, but it is hard

1 to hear about the defendant who destroyed his life with
2 the bottle, who had a good job, and then ended up losing
3 it all. It's hard to see and imagine how difficult it
4 was to survive that way, homeless, on the streets of
5 Reno, and he, too, like Mr. Gardner, was a man who
6 wanted companionship and whose generosity was he would
7 share his room with other individuals that were in his
8 dire situation.

9 And a few days before the killing of John
10 Gardner, he had been generous to some guy named Glenn, I
11 called him Greg on opening statement. Glenn, who had
12 taken advantage of the defendant's generosity, wouldn't
13 leave his room, and I'm not gonna go through detail
14 about what he did there but it was pretty bad, and the
15 defendant, obviously, was still mad about being taken
16 advantage of and being disrespected. And the man I'm
17 talking about, of course, is the defendant.

18 But make no mistake about it. This case is
19 not about the defendant's impoverished and difficult
20 life. This case is about the choices he made to take
21 John Gardner's life, those dark choices to murder John
22 Gardner with his own two hands. This case, plain and
23 simple, is about holding the defendant accountable for
24 what he did with those hands, and the choices he made.

1 That's why we're here.

2 Everyone here in this courtroom has a job. My
3 job representing the people of the State of Nevada is to
4 present the evidence to you as the jury, in relation to
5 the crime the defendant is charged with and to prove the
6 case.

7 The defendant's job, or the defense job,
8 defense attorney's job is to create reasonable doubt and
9 protect their client, the defendant. The judge's job is
10 to administer this trial, make sure it's fair, make
11 rulings on evidence, instruct you on the law.

12 But the most important job of all is your job.
13 Because what you say and what your decision is is the
14 truth of this case. Now, it's your turn, it's gonna be
15 your turn to do your job and make justice happen for
16 John Gardner, and the people of this community who say
17 you can't just cold-bloodedly murder somebody and get
18 away with it. What you say will be the truth in this
19 case.

20 I worked for an old attorney years ago, back
21 in a building across the street, his name was Mills
22 Lane, and he was a great prosecutor and a judge, I think
23 he was a judge in Department 9 here before Judge
24 Freeman. And he once told me that a jury is never

1 wrong. And I was like a young guy just out of law
2 school and I was really? I could name a few cases where
3 I thought the jury was totally wrong, but the more I
4 thought about it, he was exactly right because what you
5 say, that is the truth of the case. And the truth of
6 the case supported by all the evidence in this case is
7 that John Gardner was murdered by the defendant on that
8 cold December night in that small little dingy room at
9 the Flamingo. Your verdict will be the final statement
10 of the truth, whatever you say is what's right. And
11 that's what Mills Lane was talking about.

12 I once read something that Mark Twain said,
13 and he said the truth is mighty and shall prevail. The
14 sad part is it just ain't so. And I guess he was a
15 little bit of a pessimist, but the evidence in this case
16 will lead you to the truth.

17 Now I'm going to show you one of the
18 instructions. And this is Instruction, I believe,
19 Number 21. Kind of hard to read from there but I don't
20 want to get too close, I can't these days. But it's the
21 elements of the crime of murder. Now, you've heard
22 several times over the last few days that it's the
23 burden of proof of the State through me to prove the
24 elements of the crime of murder. Now, it's kind of a

1 legal term but it's really nothing fancy or too
2 complicated. This is what was needed to be proved
3 through the evidence to establish the crime murder.

4 One, was it the defendant? There's absolutely
5 no doubt it was the defendant that killed John Gardner.
6 This isn't a who-done-it like I told you in the
7 beginning. This is a why-done-it. It's not a
8 who-done-it. That's been established.

9 When did it happen? On December 9th, 2014.
10 Now, Mr. Leslie asked Dr. Kubiczek the date of death,
11 but we know he was dead on the 9th, not only through the
12 words of the defendant himself, he wheeled him up, dead,
13 to the Reno Events Center. Red flag, the security
14 officer said he was not moving. Mr. Bergman, the
15 medical examiner, cold to the touch. Officer Hoyt, he
16 was dead when he rolled him up.

17 In fact, the defendant said during one of his
18 interviews that he went back into the bathroom, I guess,
19 several times, and at one point he couldn't -- he wanted
20 to get him out so he had to put clothes on him and his
21 body was stiff and cold. Stiff. Dead. So we know he
22 died on the 9th. That's been proven.

23 Did it occur in Washoe County, Nevada? We all
24 know that's true. That's been proven.

1 Did the defendant do it willfully, unlawfully?
2 He, himself, admitted he did it, that he struck -- he
3 struck John Gardner in the head several times. He
4 wouldn't admit that he choked him or asphyxiated him as
5 Dr. Kubiczek puts it. But we know from his testimony,
6 Dr. Kubiczek's testimony, that it takes approximately
7 four minutes of consistent pressure to the neck to kill
8 somebody. That is willful and unlawful.

9 And did this occur with malice aforethought
10 either express or implied? And the best evidence, in my
11 opinion, of this are the photographs. And I'll go
12 through a few of them with you. That's malice. That's
13 with the intent to harm, to hurt, to kill.

14 The defendant himself said he struck the
15 victim, I think he said he hit him three times with a
16 right, once with a left, and maybe once more with a
17 right. But you can see from that poor man's face that
18 he was battered. And, in fact, you can see from this
19 photograph (indicating) that John Gardner put up that
20 hand to try to block those blows, and they were still --
21 he was raining blows upon this man's face, on his head,
22 the head that had a plate in its skull.

23 But you heard from Dr. Kubiczek that although
24 this was a contributing factor, the death came in a more

1 sinister fashion. I'm showing you 5 J, and you'll get
2 to take all those photos with you, the little thumb
3 drives if you want to watch them.

4 This death happened in a more sinister
5 fashion. The area I'm circling is the neck. The
6 compression of that neck that took up to four solid
7 minutes with either hands pushing or a forearm leaning
8 on the 113-pound broken-down little man, John Gardner,
9 on the edge of that bathtub. That's what killed him.
10 Four minutes. And I'll talk about that again in a
11 second. That is malice. Those photos show malice. Let
12 me show you one more. One more. Exhibit 2L, right
13 there (indicating). That's evidence of the defendants
14 -- or excuse me, Mr. Gardner's head hanging over that
15 bathtub and being crushed with that hard porcelain, and
16 with the defendant's arm or hands or body on top of him,
17 until the very life left Mr. Gardner's body.

18 The evidence has proven that this occurred
19 with malice aforethought, either express, express means
20 I'm gonna kill you, I'm gonna choke you to death, you
21 hear some evidence. You didn't hear any of that because
22 the only thing we know about what happened in that room,
23 the only witness that's here is the defendant. Live
24 witness. But John Gardner's the witness who was in that

1 room, too, even though he's dead, because his body is a
2 witness. And malice can be implied. And when you look
3 at those photographs of the beating he took, and the
4 trauma to his neck, that is an implication, that is
5 implied that he had a murderous intent to do that to
6 another human being. So that's been proven.

7 And finally, he killed John Gardner. Dr.
8 Kubiczek put that to rest today. That was the cause of
9 death. And, in fact, the defendant himself said that
10 John Gardner died after the beating he gave him. But he
11 didn't tell you about the choking. He didn't tell you
12 about -- or he didn't tell the police about the choking.
13 He didn't tell the police about the broken ribs because
14 you know why? Because when they confronted him, they
15 knew -- he knew he'd been caught, he knew about the
16 bruising around the face, that's stuff that he couldn't
17 deny on the outside. But he didn't know that they could
18 see what was underneath that neck and those broken ribs.
19 How did he get broken ribs? Because he beat him more
20 than just to the face. Kicked him around, punched him
21 around. And then finally choked the life out of him.

22 And on the malice portion, this happened right
23 after John Gardner started teasing him according to the
24 defendant calling him a fagot, and bringing up an issue

1 with him that still sensitive about this guy Glenn that
2 threw his underwear against the wall after he made a
3 mess. And he even said -- if you watch that interview,
4 every time he talks about it even in the interview with
5 Detective Maher, he gets more animated, it makes him mad
6 and angry.

7 And he was tired that night of being taken
8 advantage of and being disrespected. He said it in the
9 interview why didn't he just leave? Well, the defendant
10 really wanted that little broken-down man to leave. He
11 was strong enough to kill him the way he did. He
12 probably could have thrown him out door, knocked him,
13 thrown him out, and we wouldn't even be here today. But
14 he made a choice to kill him. He made a choice to feel
15 that life leave his body as he pressed that little neck
16 against that bathtub. Yeah, he killed him. And he did
17 it premeditatedly, deliberately, and willfully.

18 Now, there's some other instructions, and I'll
19 just go through them real quickly. This one I showed
20 you is a blow-up of 21. 22. Clear that. Is that it
21 defines malice as the judge read to you and I just went
22 that so I don't need to say too much about that.

23 I'll go to this. Murder is divided into two
24 degrees, first degree and second degree. First degree

1 murder has to establish a willful, deliberate and
2 premeditated murder. Murder of the second degree is all
3 other kinds of murder.

4 Now, the thought to murder someone could be as
5 quick for first degree as successive thoughts in the
6 mind. I underlined that. So think about that. The
7 defendant, as the evidence showed, if you take him at
8 his word that he gave to Detective Maher, little Mr.
9 Gardner pushed him, teased him, was being nasty to him,
10 and was pushing towards him, he said "I don't like
11 people pushing me around". Those were his words. "I
12 don't like people pushing me around. So I punched him
13 in the face." So he punches him in the face, and then
14 he says he knocked him unconscious and then lays him
15 over the tub. Well, you heard from Dr. Kubiczek how
16 long it takes for someone to die when they're
17 asphyxiated.

18 Let's do a little exercise. I'm looking at my
19 watch right now, and it says it's 11:32.

20 (Short pause.)

21 And while this time elapses, we're probably a
22 minute right now, not even that, think of the defendant
23 compressing his neck, or choking him during this period
24 of time. How many thoughts go through a mind for four

1 minutes. No thought of I'm going to let him up and let
2 him live.

3 I won't go the four minutes, but his only
4 thought was I'm holding him down until he dies. That
5 was his only thought. That is premeditation, and that's
6 what makes this case first degree murder.

7 And what was the defendant's frame of mind
8 when he was doing this? He said he snapped, didn't like
9 being pushed around. He lost it. Well, he had control
10 during that period of time. And this guy that called
11 him a fagot, push -- was pushing on him, like he said,
12 he was never gonna do it again, no one was gonna do this
13 to him again. No one.

14 Now, when you're considering whether it's
15 first degree or second degree murder, I will remind you
16 that the defense in their opening statement, Ms.
17 Bradley, said "This isn't murder in the first degree",
18 that's what she said. I wrote it down. Notice she
19 didn't say this wasn't murder. Because it is. She
20 didn't say it wasn't manslaughter, or was manslaughter,
21 she just said "this wasn't murder in the first degree".
22 No denial this is a murder so you have to decide whether
23 this is a first or second degree murder. First degree
24 murder you have to have specific intent to kill that

1 individual. Well, you had at least a few minutes of
2 specific intent to kill John Gardner, to form that
3 intent. It's been proven. If you don't believe that he
4 thought about it, then it's second degree murder. But
5 you can't say his actions weren't intentional, the
6 beating, what he did, he even said they were intentional
7 but he wouldn't talking about the choking part. The
8 reason he wouldn't do that is that's how he knew, that's
9 what he knew he had done and he was most ashamed of and
10 was wrong. He knew that's what he did to kill Mr.
11 Gardner.

12 Instruction Number 31 talks about motive. It
13 says "Motive is not an element of the crime charged and
14 need not be shown." But people always ask and seen a
15 lot of murders in my job. Why'd he do it? Why would
16 someone do that. And this instruction talks about if
17 there is a motive that could be evidence to show that
18 they committed a crime, or if there isn't motive that
19 they might not have -- evidence that they didn't do the
20 crime.

21 Well, you saw -- you heard and saw the
22 evidence in this case that the defendant was tired,
23 again, of being disrespected, taken advantage of. Here
24 he is, he rents a room, he has enough money apparently

1 to rent a little room in the Flamingo. And it's getting
2 time of year in Reno, middle of October, where if you're
3 living out on the streets, that's not a good place to
4 get drunk. It's cold. It's dangerous. It's darker
5 earlier. So he has this room. And he takes this Glenn
6 guy in, and he gets disrespected and burned. And in a
7 couple days or a few days later Mr. Gardner comes in,
8 and the same scenario's about to take place and he's not
9 gonna put up with it. So he had motive. His motive is
10 no one's taking advantage of me anymore. Enough is
11 enough.

12 Briefly I'll go through the witnesses in --
13 I'm not even going to go through too much of it, but
14 Detective Maher, you saw the interview, you have it,
15 take it back and look at it. He was more than fair with
16 the defendant, gave him a chance to tell his story. But
17 what the defendant said really isn't as important as
18 what he didn't say. He didn't say anything about
19 choking the victim, as we saw the evidence clearly
20 shows. Didn't talk about breaking his ribs. And, in
21 fact, when he was first confronted, when they first went
22 to that Flamingo, the cops, or the detectives went
23 there, what's the first thing they said to him. You
24 know some guy in a wheelchair? No, they first said you

1 know what I'm doing here? The defendant goes no, I
2 don't know what you're doing here. You know some guy in
3 a wheelchair? No. Then they kind of probe him a little
4 more. Yeah, yeah, I know some guy, John, yeah, he was
5 here drinking, but he left last night at 8:00 and never
6 came back. Being deceptive. Then what does he say?
7 They say well, yeah, we got him on video, we got you on
8 video wheeling him up to the events center. The
9 defendant knew he couldn't deny it at that point. Yeah,
10 you're wearing the same red jacket, bald spot. Well,
11 yeah. Then he tells the story that we've all heard
12 about how he was disrespected and he punched him and
13 found him unconscious and came back.

14 And you're gonna hear from the defense that
15 these guys were, you know, falling-down drunk. Well,
16 first of all, you heard Mr. Gardner, yeah, he had some
17 meth in him. Was it the cause of his death? Probably
18 why he was acting irrational, have no doubt that
19 probably did happen. Wasn't drunk. He had some alcohol
20 in him.

21 But the defendant, if he was so stinking drunk
22 as they're gonna say, he was able to coherently make up
23 excuses and try to be deceptive with the detectives. He
24 was able to give details about what happened. He was

1 able to answer questions, had no problem.

2 In fact, these are -- Detective Maher's a
3 seasoned police officer. He noticed no signs of
4 intoxication. And when they went down to the station it
5 was the same way. So if he was so darn drunk like he --
6 the defense may claim, then how was he able to do
7 everything that he did.

8 And you'll notice one thing that's kind an
9 interesting little point on the case is on one of the
10 photographs you can look at it, it's of the room, it
11 shows outside the door, there's a dumpster right outside
12 his door. In fact, Renee Armstrong testified to that.
13 But did he throw those -- first he washed the clothes to
14 try to get rid of evidence, and then did he just toss it
15 in the dumpster? No, he wanted to get those away from
16 his place. He didn't want to get caught, because he
17 knew he had done wrong. And where does he take -- you
18 look at the video of the events center. You will see on
19 the last portion of the video, it's kind of long but
20 it's at the five-minute mark, if you put it at
21 five-minute mark, that's when you see the defendant
22 wheeling up the dead body of John Gardner up to Pavilion
23 A, and then he goes and then comes back, goes and comes
24 back, I think it's three or four times. What's the

1 defendant thinking during this? Well, I wonder if
2 anybody sees me. I wonder what's going on, is this a
3 good place to leave him? Maybe someone will think he
4 just died here, or someone else beat him up. He just
5 leaves him there. He didn't go to the apartment manager
6 and call the cops and say he did something. He didn't
7 do anything. He wanted to get away with this and he
8 knew that he couldn't when he was confronted with the
9 video evidence. And then the evidence in the room, the
10 detectives see the blood all over the place. He didn't
11 do too much of a job cleaning that up, or hadn't had
12 time to finish that up. So at that point Detective
13 Maher said hey, this isn't good, you're Mirandized,
14 you're going down to the station. You're under arrest.

15 John Gardner, like I previously indicated to
16 you, can't testify here today. But he does, he really
17 does. His body testifies to you, and the reck the
18 defendant left of it.

19 Now, when you decide this case, verdict -- or
20 excuse me, Jury Instruction Number 30 talks about the
21 analysis you make in determining. You start with first
22 degree murder. If you all agree to that, you just sign
23 that verdict guilty, and you're done. If you can't all
24 agree to that, but you all agree it's a murder, then you

1 look at second degree murder and the definition. If
2 half of you believe it's first and half of you believe
3 it's second and you can't come to a determination, he's
4 still guilty of murder and then you would have to find
5 him guilty of second degree murder.

6 MR. LESLIE: Objection, your Honor. That's a
7 misstatement of the instructions. The requirement is
8 unanimity.

9 THE COURT: Sustained.

10 MR. LESLIE: Thank you.

11 MR. STRALLA: Okay. Well, I'm glad he
12 objected, actually, because this case is clearly first
13 degree murder. Clearly. So sign that guilty verdict on
14 this first degree murder, and your job is done, if you
15 unanimously agree to that. And the evidence will take
16 you there. The evidence will take you there. But don't
17 ever forget the defense in their opening statement
18 didn't deny this was a murder.

19 Now, Ms. Bradley indicated to you in her
20 opening statement also that the defendant is cloaked in
21 innocence. And that's the way it is in every trial,
22 that's the way our system is, you're presumed innocent
23 until proven guilty.

24 But when you hear the evidence in a case, it's

1 that evidence that pulls that cloak off that person
2 presumed innocence, and what's underneath that cloak, in
3 this case a man guilty of first degree murder. That's
4 what the evidence showed.

5 A jury is a powerful thing. It's a voice to
6 the people and it will be truth of this case. And I ask
7 you to consider all the evidence fairly for both the
8 State and the defense, and for Mr. Gardner, and the
9 people of this state, and do the right thing using your
10 common sense, and find the man guilty, the defendant, of
11 first degree murder, which is holding him responsible
12 and accountable for what he did, nothing more, nothing
13 less. Thank you.

14 THE COURT: Thank you, Mr. Stralla. Do you
15 need a moment or two to set up?

16 Ladies and gentlemen, we're just going to take
17 a ten-minute recess while the defense sets up their
18 closing argument to breathe and stretch, we'll see you
19 back here in ten minutes and just remember this. Gonna
20 take a short recess before the defense makes their
21 closing argument.

22 During this recess it's your duty not to
23 converse amongst yourself or with anyone else on any
24 subject connected to trial, or read, watch or listen to

1 any report of or commentary on the trial, by any person
2 connected with the trial, by any medium of information
3 including, without limitation, newspaper, television,
4 internet, smart phones, radio.

5 You're not to form or express an opinion on
6 any subject connected with this case until I submit it
7 to you and the arguments are concluded.

8 The arguments are not concluded yet. We're
9 going to have the defense argument in ten minutes.

10 All rise for the jury.

11 Outside the presence. I'll see you back here
12 at noon.

13 (Short break.)

14 THE COURT: I note the presence of all of our
15 jurors, the prosecution, the defense, defense team.

16 Mr. Leslie, your closing argument.

17 MR. LESLIE: Thank you, your Honor. Randall
18 Dahl didn't mean to kill anyone. Those were the opening
19 words of our opening statement by Ms. Bradley. And
20 they're the opening words of our closing argument
21 because we believe that the evidence shows that to be
22 true. Randall Dahl didn't mean to kill anyone.

23 I have notes about what I'm going to go
24 through. This first part, Ms. Bradley and I went over

1 this in detail, and I'd like to get it right so I'm
2 going to read this to you. The rest of the time I'll be
3 looking at my notes as I need them.

4 The death of John Gardner is a tragedy, an
5 incredible tragedy as Dahl told Detective Maher. But he
6 didn't mean for it to happen. The death of John Gardner
7 was an unintended consequence of a lash and impulsive
8 reaction that Dahl had, while intoxicated, to being
9 pushed and hit and called a name that has no rightful
10 place in this world.

11 No words justify killing. But not every
12 killing is a first degree murder. Nothing that we do or
13 say, and no verdict returned by you will bring Mr.
14 Gardner back.

15 Yes, the courtroom is a place of justice for
16 the dead. But it is also a place of proportionate
17 justice and accountability for the living. The law
18 presented to you in the form of the jury instructions
19 affirms that not every homicide, not every killing of a
20 human being by another cries out for a verdict of first
21 degree murder.

22 The law gives options to reflect the
23 uniqueness of each case. Your responsibility in this
24 case is to return a verdict that fairly reflects the

1 case.

2 I read that verbatim, and I mentioned that Ms.
3 Bradley and I worked on that together because we wanted
4 you to know the perspective that we have on this case.
5 We acknowledge the death of John Gardner. But we also
6 acknowledge that we're here to determine the outcome of
7 what happened on December 9th, 2014.

8 So what happened? In Dahl's own words, he
9 lost it. He snapped. And the next morning he was
10 shocked and panicked. Because he had not intended to
11 kill John the night before. Once he realized he was
12 dead, as he told Detective Maher, he knew that that
13 knock on the door would be coming. But as he told
14 Detective Maher, I knew the knock on the door was coming
15 but I didn't mean for all that to happen.

16 Detective Maher was very clear in that
17 interview about something that is critical to your clear
18 understanding of this case, and where this verdict
19 should land, what your verdict should be. You'll have
20 the tape, you can look at it again, but remember when
21 Detective Maher said "So you knew he was dead the next
22 morning when you wheeled him to the Reno Events Center".

23 "Yes" was the answer.

24 "Did you know he was dead the night before?"

1 "No."

2 Ladies and Gentlemen, at the beginning of this
3 trial Ms. Bradley voir dired and asked you about
4 criminal cases and defendants testifying or not
5 testifying. You've got a jury instruction in the packet
6 that's real clear. You don't hold it against him. You
7 don't let it enter into your deliberations. But I have
8 a question for you. What would be more convincing and
9 helpful to you in determining the appropriate verdict in
10 this case? Years later, the testimony of somebody who's
11 had six years to dwell upon the case? Or what they said
12 to the police then and there, before lawyers, before
13 reflection, before the passage of time gave them the
14 opportunity to think ahead of how testimony in court
15 would go.

16 For persuasive value, I suggest to you that
17 what he said then and there, the very next day, to the
18 police, after being told you don't have to talk to us,
19 you can have a lawyer present, do you want to talk to
20 us? Yes. I suggest to you that you have Dahl's story
21 in that videotape and you have everything you need to
22 decide the right outcome of this case.

23 So let's go back to that night. And I want to
24 ask a few questions and think through this with you. If

1 Dahl had intended that night at eight p.m. when the fist
2 fight happened, if he had intended to kill Gardner does
3 it make sense that he didn't finish the job. If the
4 State is right that he had set his heart upon that
5 course of action and had that murderous intent, does it
6 make sense that he didn't finish it then and there.

7 We know that Dahl didn't clean up, try to hide
8 things, wheeled John's body to the events center until
9 the next morning. The jury instructions are clear that
10 the intent has to exist at or before the time of the act
11 of killing, not after. If it's after, it's not murder.
12 I don't want to be gross. I don't want to be offensive,
13 but it's not murder, for example, if somebody does
14 something that they didn't mean for it to cause the
15 death of another person, but later upon reflection,
16 they're happy with the outcome. That's still not
17 murder. It's a little sick and grotesque but it's not
18 murder. The intent required in this case must come
19 before or at the time of the act that causes the death.
20 Dahl was clear to the police that he never intended
21 Gardner to die. So it's not even that kind of gross
22 example I give of somebody doing something later, it
23 turns out that person died and they think well, that's
24 actually something I'm pleased with as it turns out. He

1 was clear with the police I never meant for any of that
2 to happen. I never meant for him to die. I didn't even
3 know he was dead that night, at 8:00.

4 And we know when he wheeled him to the events
5 center because we have that street surveillance
6 videotape. We know -- your recollection controls, not
7 mine, but my notes reflected that the fella, Flagg, I
8 think it was, that talked about the video and confirmed
9 the video, that it was about five or six in the morning.
10 And remember he said the date was off because we didn't
11 do the daylight savings or whatever. But about five or
12 six in the morning, remember that Dahl said back at 8:00
13 the night before I didn't even know he was dead. So
14 think about it. If he intended at 8:00 on the night of
15 the 9th that he's gonna kill Gardner, as the D.A.
16 describes, why would he let him live. Why didn't he
17 clean up then? Why didn't we see the videotape at 8:00
18 or 9:00, give him a couple hours to think about what to
19 do now that he's killed him. How about midnight? Less
20 foot traffic downtown. How about two or three in the
21 morning? It doesn't happen until five or six in the
22 next morning which is consistent with what Dahl told the
23 police back when they were admitting he didn't even have
24 to talk to him.

1 It may be that Dahl was angry when he started
2 punching. It may be that he was offended by that word
3 fagot, but being pushed or hit, pushed toward the
4 bathtub, being made fun of. Anger is not specific
5 intent to kill. And I think you understand that
6 punching somebody in anger in the moment but not
7 intending to kill them is not a murderous act.

8 Couple things about Dahl telling the police I
9 didn't know he was dead at 8:00 the night before when
10 the fight happened. How can that be? The room is
11 small. The bathroom is small. Can we believe Dahl when
12 he says that he didn't even realize at the time that he
13 was dead? Keep in mind that he never intended to kill
14 him in the first place. Keep in mind they were both
15 drunk and drinking, Gardner was using methamphetamine.
16 We don't have any evidence of what was going on with
17 Dahl regarding that but we know they were both drinking
18 and intoxicated, the detective confirms that.

19 The State's presentation throughout assumes
20 that and embraces that fact. Detective Maher, in fact,
21 said they were both intoxicated. You know, as we kind
22 of suggested in the opening their fellowship or their
23 association with each other started at that bus
24 terminal, over cigarettes and beer, and it ended at 8:00

1 Tuesday night on the 9th in an alcohol-induced fog with
2 a flurry of pushes and hits and rash drunken behavior by
3 both men. It's not hard to understand why Dahl wouldn't
4 think he was dead. He wasn't trying to kill him. He
5 was drunk and intoxicated. And as he told the police, I
6 figured he'd wake up, so I draped him over the bathtub.

7 I agree with Mr. Stralla that it's a sad life
8 that these men were leading. I think it's a commentary
9 on that sad life and where Dahl had been for years after
10 drinking himself out of that San Francisco job. I think
11 it's a commentary of the mind set and the lifestyle that
12 after two days of drinking, and a fist fight, even if
13 it's a one-sided fist fight, draping him over the
14 bathtub and figuring he'd wake up. Ladies and
15 gentlemen, that's not a stretch, given what we know
16 about the environment about how these guys were living,
17 what they'd been doing for the last two days.

18 So we have about a seven, eight, nine-hour
19 delay between the 8:00 fight that night and the next
20 morning at five or six when Dahl is wheeling Gardner to
21 the events center. And again, if he meant at the time,
22 at 8:00 that night to kill, why didn't he clean up? Why
23 didn't he try to wash the clothes? Why didn't he try to
24 throw stuff in garbage cans? And why didn't he wheel

1 Gardner at that time? Because, as he told the police,
2 he didn't even know he was dead, and he didn't do any of
3 that until the next morning when he realized the
4 consequence of what had happened the night before and
5 what he had done lashing out, panicked and shocked, and
6 you'll see those words. You'll remember those words
7 from that videotape.

8 If the State is trying to diminish the impact
9 of intoxication in this case, I mean, the State
10 acknowledges both these guys were drinking, both these
11 guys were leading, you know, a sad lifestyle and so
12 forth, but if you hear in closing arguments to any
13 degree that the State is trying to downplay intoxication
14 on Dahl's part, ask yourself why.

15 And the answer is Jury Instruction Number 26.
16 I get one chance to talk to you guys, and I know it's
17 been a short trial, but I get one chance and I don't get
18 the last word. So forgive me if I go in a little more
19 detail a little slower than you might like. But this is
20 instruction 26. And the top part says that -- and I'm
21 going to read it and comment as we go. "No acts
22 committed by a person while in a state of voluntary
23 intoxication" -- drinking is voluntary intoxication.
24 We're not talking about somebody who gets slipped

1 something. We're talking about Randall Dahl and John
2 Gardner drinking for two days -- "Shall be deemed less
3 criminal by reason of the person's condition, but
4 whenever the actual existence of a particular purpose,
5 motive or intent is a necessary element to constitute a
6 particular species or degree of crime, intoxication may
7 be taken into account by you in determining the
8 existence of the purpose, motive or intent."

9 And so how is that applicable here? Don't
10 downplay alcohol's contribution to what happened.
11 Because this jury instruction says it is highly relevant
12 when a particular purpose, motive or intent is part of
13 the crime. And the way it applies is that second
14 paragraph there. First degree murder is a specific
15 intent crime. Second degree murder and manslaughter are
16 not, as they don't require particular purpose, motive or
17 intent.

18 What does that mean? That means in line 11
19 that "Voluntary intoxication, if established, may be
20 considered in determining specific intent element of
21 first degree murder. But it's not a defense to
22 voluntary intoxication."

23 Okay? So black and white, why is alcohol an
24 issue? Why is the defense bringing it out? Why might

1 the State want to downplay that? Because it's very
2 clear on the law, it's not just you guys as jurors
3 saying just how we're going to decide the case because
4 we think it's appropriate. The law as it comes to you
5 in the jury instructions is clear that it's relevant to
6 the charge of first degree murder. Because the common
7 sense is if you're intoxicated, you may not be thinking
8 the specific way that the law requires, if that's the
9 crime that we're going to attach to your behavior.

10 Let's think about it another way. Let's think
11 about it in terms of a weapon: A gun, a knife, a club,
12 an alcohol bottle. It would be different if Dahl got
13 pushed and hit or just pushed, got called the slur, that
14 F word, got made fun of, and then he went and got a gun.
15 It would be different, even with alcohol, even with
16 intoxication. Or if he went and got a knife, or if he
17 went in that small room and got a vodka bottle and came
18 back, didn't have to be a big journey, a couple of steps
19 to get something, a step to get something, even just
20 where you are in reaching for this implement, that would
21 be different even with alcohol. Because somebody like
22 Mr. Stralla could get up and say even with the
23 intoxication he had the thought process, he weighed the
24 consequences, he thought about a course of action, and

1 he deliberately and premeditated decided to reach for
2 that weapon, take that few steps to get that weapon, and
3 then come back.

4 And Ladies and Gentlemen of the Jury, in that
5 scenario that shows the deliberation with the
6 premeditation, that specific intent to kill. Okay?
7 Maybe, but there's no weapon in this case. So what does
8 that mean? What that does is that supports our view of
9 the case that this was a rash, impulsive reaction by a
10 person who was intoxicated and who was reacting, not
11 responding, but reacting to that offense and to that
12 attack. Dahl could have grabbed a bottle. Could have,
13 it was there. Didn't. Reacted impulsely and rashly in
14 the moment.

15 So what about Dahl's reaction or response, how
16 he handled himself the next day when he was confronted
17 by the police. He fudged. That when the knock came,
18 whatever hour that was, and the police introduced
19 themselves, he didn't know anything about nothing. They
20 had to press a bit. We've got videotape. Is that
21 blood? Nice red pants. Seen those before. You sure
22 you don't have something you want to talk to us about?

23 Detective Maher pointed out that he had to
24 press a bit. He had to follow up a bit, that Dahl

1 originally fudged. Ladies and Gentlemen, I'm not gonna
2 deny that. I'm not gonna justify it, but I'm going to
3 ask you to think for a moment, with your common sense
4 and your life experience, is it consistent with human
5 nature? Do people sometimes try to fudge and try to get
6 out of something? I would acknowledge that. But what I
7 would ask you to consider is that it took all of 15
8 minutes top end, according to Detective Maher, for him
9 to say -- to come clean and to tell the police what
10 happened.

11 And you'll learn that I mean, imagine, that's
12 15 minutes from the original knock, hi, I'm Detective
13 Maher, this is Detective Jay Brouker, we're here about
14 such and such. I'm not gonna try to shrink this down to
15 just a couple of minutes and make Dahl some saint that
16 looked for somebody to tell, you know, what had
17 happened. He fudged at the beginning, but it only took
18 15 minutes to get to the chase. And then after that
19 he's Mirandized. You don't have to talk to us. Now we
20 really want to talk to you, you don't have to talk to
21 us, you can have a lawyer here. That's fine. Can we
22 check the place out? Go ahead. Consent to search.
23 We're going to handcuff you. We're going to put you in
24 a vehicle. We're going to transport you for 20,

1 30-minute drive to get up there and get situated. We're
2 going to put you in an interview room, we're gonna
3 remind you of your Miranda rights. You sure you want to
4 talk? Yeah, I want to talk. 15 minutes of fudging,
5 maybe less. But he opened up and told his side, before
6 lawyers, before jury, before a courtroom got involved.

7 And Ladies and Gentlemen, I suggest that his
8 rendition can be trusted, not because it's coming from
9 him, not because he fessed up early, but because the
10 other evidence in this case like that surveillance video
11 footage from the street backs up what he says. It lines
12 up with it.

13 In fact, a number of things line up with what
14 he told the police on the videotape of his interview.
15 The street surveillance video backed it up. I didn't
16 know he was dead that night. The next morning -- by the
17 way, he stopped drinking at 8:00 after this happened.
18 So it shouldn't be any surprise that by what was it,
19 7:30 or so that they encountered him, 8:00 that they
20 were interviewing him, whatever it was, he's had hours
21 of not drinking to sober up. So please don't buy into
22 the idea that he was not intoxicated back at 8:00 the
23 night before, based on what he was fine eight hours
24 later when he was giving an interview. He had stopped

1 drinking. But what he told the police was I didn't even
2 know he was dead until the next morning and then I
3 panicked, I was shocked. I tried to wash the clothes.
4 I tried throwing them away. Remember they were soaking
5 wet when they pulled them out of that garbage can on the
6 street, the police? I wheeled him? Oh, okay. The
7 videotape shows he did that about five or six in the
8 morning. Yeah. But you had to know he was dead the
9 night before. I didn't. Now, remember, if that's what
10 he was intending to do that night at 8:00? Why does the
11 clock go all the way around to five or six the next
12 morning when he finally gets around to trying to cover
13 his tracks.

14 So the clothing was found the way he
15 described. The vodka bottle was in the room the way he
16 described. He's a vodka drinker. You'll remember one
17 of the photos Mr. Stralla asked is that a vodka bottle
18 right there? It is. You can look at it. Renee
19 Anderson? If I got that name wrong, I'm sorry, the lady
20 that took the photos, she didn't want to go above and
21 beyond what Mr. Stralla was trying to get out of her,
22 but you saw the photo and you saw the KA. There were
23 bottles in there, like Dahl told to the police.

24 Dahl described physical injuries. Dahl

1 described punching. I can't remember the sequence, but
2 one punch, two punch, whatever it was, four, five
3 punches, a number of punches. And you saw the medical
4 examiner's testimony that's consistent with what Dahl
5 told the police the very next morning when he was
6 interviewed.

7 Dahl told the police about Gardner having a
8 wheelchair, having some injuries, having been in a car
9 accident. I think that Dahl told the police it had been
10 years before, but he also said, you know, I was
11 intoxicated, I don't remember exactly. But it was a
12 couple months before. So maybe some fuzzy details here
13 and there, but the big picture? This guy had been
14 severely injured in a car crash, Dahl told the police
15 that, and we see that that's the case. Those are all
16 independent confirmations of what Dahl told the police.

17 The medical examiner's testimony, the last
18 witness, lines up with what Dahl told the police. So
19 here's another big controversy about time of death,
20 okay? We made a point. Time of death, you had 10, 11
21 months to think about time of death, Dr. Kubiczek. He
22 had all those reports to rely on, he had time for
23 reflection, your autopsy report is important, you rely
24 on it, other people in the system rely on it. Time of

1 death the next morning, 6:52, 6:58 a.m., whatever it
2 was, let's call it seven a.m. That's the official time
3 of death. And I asked him really the punch line to that
4 whole back and forth about well, were you trying to
5 determine time of death? Well, no, it's somebody else
6 that determines time of death? And well, you couldn't
7 tell time of death, and I just go by what the paramedic
8 or whoever reported to him was the time of death. But
9 the punch line is can you tell us? Remember my punch
10 line, can you tell us when he died? No. I can tell you
11 what the official time of death is, and the official
12 time of death is when the cops rolled up at seven a.m.
13 and found the guy dead. But we don't know from the
14 testimony in the trial, we don't know beyond a
15 reasonable doubt when Gardner died. So it's a punch
16 line on that.

17 Dahl said he didn't know the night before that
18 he was dead. Wasn't intending to kill him, didn't know
19 he was dead, didn't panic in shock and try to clean up
20 after himself and peel away the evidence until the next
21 morning at five or six a.m. It supports, and it lines
22 up with what Dahl says. And that's the important point
23 of that.

24 So Dahl's words, Dahl's actions, Dahl's

1 intoxication, they all line up. So Mr. Stralla's
2 correct that we were explicit in opening statement this
3 is not a first degree murder case. And Mr. Stralla was
4 also explicit in saying, if I took it down right, if you
5 don't believe he thought about it it's second degree.

6 I didn't hear much from Mr. Stralla about the
7 two forms of manslaughter. So we're here to decide the
8 appropriate verdict. It's not first degree murder if
9 intoxication creates a reasonable doubt in your mind
10 about whether Dahl had that specific intent, not the
11 intent to punch, not the intention to get back at
12 somebody calling him a pretty poor name to call anybody,
13 not the intent to shut him up, not mere anger. What I'm
14 doing, my intent is to kill, and that is beyond my
15 intent to knock his block, or to shut that disrespectful
16 mouth. It's more than that.

17 Alcohol intoxication has a direct impact on
18 whether you can be convinced beyond a reasonable doubt
19 that that specific intent was there. And remember, when
20 you look at the jury instructions, you don't eyeball
21 this thing. All of you must agree, unanimously, as to
22 the level of responsibility. All of you must be
23 convinced beyond a reasonable doubt, and you'll see in
24 the reasonable doubt instruction that means you have an

1 abiding conviction of the truth, abiding is an
2 old-fashion word, has duration, has a steadiness to it,
3 I'm convinced, and I'm not wavering. You gotta be that
4 convinced that it really was first degree murder and
5 that he really did have that intent. And alcohol
6 intoxication is more consistent with a rash, impulsive
7 reaction. And we're going to look at that in the jury
8 instructions briefly.

9 But even if you -- even if you want to set
10 aside the alcohol, even if you want to look at this and
11 say, I'm not buying the intoxication, he's still
12 responsible for drinking, that's why it's called
13 voluntary intoxication. So nobody's asking you for a
14 pass because he was drunk. Nobody's saying that
15 somebody was drunk, you know, he can't be held
16 responsible. What the law does say in the jury
17 instruction is it's not that level of responsibility.

18 But if you want to throw intoxication out. If
19 you ever -- for the sake of argument let's look at the
20 definition of first degree murder itself, or one of the
21 jury instructions. Murder itself. Do it this way, I'll
22 get screwed up. So this is 25. It says -- two pages,
23 that's the first, that's the second, that's my little 25
24 when we blasted through and numbered them. So this is

1 an important instruction. Can you guys see that? So
2 I'm going to talk through this a little bit.

3 "Murder of the first degree is murder which is
4 perpetrated by means of any kind of willful, deliberate,
5 and premeditated killing." Now, I underlined the next
6 three words, all three elements, willfulness,
7 deliberation and premeditation. They can be there if
8 you want. Is that what it says? All three elements
9 must, and I underlined that word, mandatory, be proven
10 beyond a reasonable doubt, like I was telling you
11 before, before an accused can be convicted of first
12 degree murder.

13 And then I underlined those three words so I
14 can talk about them briefly. Willfulness, deliberation,
15 and it says willfulness is, deliberation is, so I want
16 to look at that. Willfulness is the intent to kill.
17 Now, I've talked about how he didn't intend to kill him
18 that night at 8:00. I've talked about how he didn't
19 even know he was dead. I've talked about alcohol
20 intoxication. I've talked about intoxicated or not.
21 Grabbing a weapon would certainly make a better case for
22 that intent, as opposed to a reaction with your hands
23 that got this started with punches. So even if you
24 think he intended to kill him back at the time at 8:00

1 that night, that's one element here that has to be
2 proven beyond a reasonable doubt.

3 And Mr. Stralla was right, I mean, it says it
4 right there, there need be -- right here where I'm
5 starting "There need be no appreciable space of time
6 between the formation of the intent to kill and the act
7 of kill". Totally agree with that. It can be fast.
8 "But even if there's an intent to kill, it's not first
9 degree murder if either deliberation or premeditation
10 isn't there, isn't proven to your satisfaction beyond a
11 reasonable doubt." So that you have an abiding
12 conviction that that is what it is. And so let's talk
13 through this. "Deliberation is the process of
14 determining upon a course of action to kill as a result
15 of thought, including weighing the reasons for and
16 against, and considering the consequences of the
17 action." There's a lot going on there. Even if there's
18 willfulness, you still have to have deliberation. And
19 that's a process, it can happen fast, but it's a process
20 in the mind of determining, I'm determined that here's
21 what I'm gonna do, upon a course of action to kill. And
22 it has to be the result of that thought, that thinking
23 it through, weighing the consequences, and considering
24 the outcome, weighing the pros and cons. Does that

1 sound like a rash impulsive reaction? It goes on in
2 line 13 "So deliberate determination may be arrived at
3 in a short period of time. But in all cases the
4 determination must not be formed in passion, or informed
5 in passion, it must be carried out after there has been
6 time for the passion to subside and deliberation to
7 occur." Look, you have to be intending with a cool
8 head, so to speak, even if you're angry, to do what you
9 do, for there to be deliberation. That passion language
10 might make a little more sense in a voluntary
11 manslaughter case. Typical example is you walk in, you
12 see your spouse with somebody else because you got home
13 early. There's a passion that can take over in the
14 human mind that you're not gonna be held accountable for
15 at the level of any form of murder, and that might be
16 something different.

17 But that's not the point of where we're going
18 with this. The point here is this next sentence. "It
19 is critical to your understanding of what you should do
20 in this case." It says that "A mere unconsidered and
21 rash impulse is not deliberate, even though it includes
22 the intent to kill." So if you're up at the first one,
23 you have got willfulness, let's say that you -- let's
24 throw out that he didn't even know, didn't even intend

1 to kill him at 8:00 the night before. Let's just set
2 aside this issue of intoxication and how that jury
3 instruction, the other one, can impact that decision on
4 first degree murder. Even if you have that intent to
5 kill, if this was rash and impulsive, then it's not
6 first degree murder because there's not that
7 deliberation.

8 And this instruction right here, if you came
9 back, and after this trial you ran into a family member
10 or a friend or somebody on the street or at work, and
11 they said why didn't you vote for first degree murder?
12 Dude killed him. You could point to that instruction
13 and say it was rash, it was impulsive, it was a
14 reaction, and that's not first degree murder because
15 that's what the law says.

16 I'm not going to go through all these
17 instructions in this amount of detail but this is an
18 important one to your understanding.

19 So the next thing is premeditation. It's a
20 little different than deliberation. But it's one of
21 those three that have to be there beyond a reasonable
22 doubt. It's "A design, a determination to kill
23 distinctly formed in the mind by the time of the
24 killing, at or before". And it talks about the delay,

1 and I'll just read it so that you can see that I'm being
2 complete. "Premeditation, need not be a day or an hour
3 or even a minute, it can be like, Mr. Stralla was
4 pointing out "as instantaneous as successive thoughts of
5 the mind". It can be that quick. But it has to be
6 there.

7 "For if the jury believes from the evidence
8 that the act constituted the killing has been preceded
9 by, and has been the result of premeditation, no matter
10 how rapidly the act follows the premeditation, it's
11 premeditated." The law doesn't undertake -- this next
12 sentence basically says the law is not gonna try to tell
13 you what you need as a time. The law's not going to
14 tell you it's hours, minutes, seconds, or microseconds.
15 The time will vary with different individuals and under
16 various circumstances. "The true test is not the
17 duration of time but the extent of the reflection. A
18 cold, calculated judgment and decision may be arrived at
19 in a short period of time." The cold, calculated
20 decision that the State says constitutes first degree
21 murder. But again, if it's an unconsidered -- what is
22 unconsidered mean? Well, what are you doing under that
23 definition of deliberate when you're weighing the
24 reasons for and against and you're considering the

1 consequences? You're considering. So what this says is
2 mere unconsidered, you're not balancing, thinking
3 through, you're not weighing pros and cons. "Rash
4 impulse, even though includes an intent to kill", again,
5 that language is not deliberation and premeditation as
6 will fix an unlawful killing as murder of the first
7 degree.

8 So thank you for being patient as I go through
9 this instruction in detail, but I think you see the
10 point. The law is clear that if any one of these three,
11 willful, deliberate, or premeditation is not there
12 beyond a reasonable doubt, if you don't have an abiding
13 conviction, a durable, lasting conviction in your heart
14 on the evidence that it's true, that all three of those
15 are there beyond a reasonable doubt in this case, you
16 can't convict of first degree murder. And you can look
17 anybody in the eye, including yourself, and say I did
18 that based on the law. I did my job as a juror and as a
19 representative of the community.

20 I'm going to show you two more instructions,
21 and then I'm going to wrap. Talk to you a moment about
22 deliberation. The little Post-It I put deliberate-jury,
23 not the kind of deliberation we were just talking about.
24 This is you guys deliberating in the jury room. It's

1 Instruction 33, for those of you that like to look at
2 them later. So what's your duty in this case? What are
3 you here for? I want to point out -- before I read this
4 I want to have you think about group, and I want to have
5 you think about individuals. And you guys are 12
6 individuals. "It's your duty as jurors to consult with
7 one another and to deliberate, with a view of reaching
8 agreement, if you can do so without violence to your
9 individual judgment."

10 You're 12 people. There is no duty to return
11 a verdict or a specific verdict. Your duty is to
12 deliberate and to vote in accordance with your
13 conscience, your individual judgment. You each must
14 decide the case for yourself, but you should do so only
15 after consideration of the case with your fellow jurors.

16 You know, some of you are talkative, and some
17 of you may not be. I know all of you sat through the
18 same trial that everybody else on the jury panel sat
19 through. I know all of you paid attention. I know all
20 of you heard the same evidence. But you're each
21 individuals. When you deliberate, some of your group
22 may be expressive and not shy. And that's great. Some
23 of you may not be the kind that are those outgoing
24 people that like to -- to express yourself and explain

1 yourself and back up why you're voting the way you're
2 voting. You're not required to give speeches. You're
3 not required to be as talkative or interactive as
4 anybody else in the group. You're required to make your
5 own individual judgment. It is perfectly valid to say I
6 sat through the same trial you did. I'd ask you to
7 respect my vote. And that is that. You all paid
8 attention. You are all entitled to that respect during
9 the deliberation process. If there's disagreement you
10 are not required to mount an argument. Nobody can be in
11 there and say explain yourself. Tell me why you
12 disagree with me. You need to understand that you all
13 sat through the same trial and each of your votes, for
14 or against, whatever is being discussed, is perfectly
15 valid and supported by this jury instruction.

16 That's why I objected in closing argument to
17 that point about half of you can think it's this, half
18 of you can think it's this. We're gonna get to the
19 unanimity requirement everybody has to agree before you
20 sign off on a particular verdict. So in the interest of
21 completeness, "You must each decide the case for
22 yourself, after, only after consideration of the case
23 with your fellow jurors, you should not hesitate to
24 change an opinion when convinced it's erroneous." But

1 you don't have to change your vote if you're not
2 convinced.

3 "However, you should not be influenced to vote
4 in any way on any question submitted to you by the
5 single fact that a majority of the voters, or any of
6 them, favor such a decision." I think we just talked
7 about that. In other words, you should not surrender
8 your honest conviction concerning the effect or evidence
9 for the mere purpose of returning a verdict or solely
10 because of the opinion of other jurors. Nobody can tell
11 you how to vote. And nobody can make you change your
12 vote. You have no duty to come back with a specific
13 verdict. Now, that's the preface for the introduction
14 to the next instruction that I want to talk to you
15 about.

16 This is a two-pager, Number 30, I'd like to
17 show you guys on my fancy PowerPoint. So this is what
18 we call the step down. Not gonna read the whole thing,
19 but it says look, you have a charge of open murder.
20 That includes all four options. So open murder, that
21 word open, open murder means it could be first degree
22 murder or second degree murder, as Mr. Stralla pointed
23 out, if you don't think he thought about it, it could be
24 the forms of manslaughter which is voluntary

1 manslaughter, involuntary manslaughter. And what this
2 instruction says is you don't call a 50/50 split, like
3 when I popped up and objected. Well, we're split, so
4 let's call it good on one -- on the verdict.

5 If you return a verdict, it has to be agreed
6 to by all 12. It's signed by one as your foreman, but
7 you will you have to all agree. And what this says is
8 you go down through the steps, you step down through the
9 four forms of homicide. Homicide is the killing of
10 another human being, homicide. And you start with first
11 degree. You should first examine the evidence as it
12 applies to first.

13 If -- now, how do you come back with a vote
14 for first degree murder? If you unanimous, agree 50/50?
15 No. If you unanimously agree, kind of agree? No. If
16 you unanimously agree beyond any reasonable doubt, have
17 that abiding conviction, this is what it is, the
18 conscience is clear, then you can sign that first degree
19 murder charge, but if you guys deliberate, it doesn't
20 have to be a marathon, it's not a test of endurance, if
21 you start at the top and you can't agree on that first
22 level, and you can't get that unanimous agreement, you
23 feel comfortable going on to second, you go to second.
24 And then the test is the same. If you can't unanimously

1 agree beyond a reasonable doubt that the defendant is
2 guilty of murder in the first degree, you should examine
3 second degree. And you just run down through those four
4 options.

5 And you'll notice that at each step of those
6 four options in Instruction Number 30 for note takers,
7 you don't sign a verdict and come back. You don't knock
8 on the door and say bailiff, we're done, if you don't
9 all agree. If you get in there and you can't all agree
10 on something, it's not an endurance test. If you feel
11 like you've given it a fair shake, you sat through the
12 same trial that everybody else did, you expressed
13 yourself as much as you feel comfortable, we can't reach
14 a verdict on that.

15 Now, if it was one decision, then we'd be
16 talking about look, if you can't reach a unanimous
17 verdict you knock on the door and say we're done, we're
18 broke, we can't do it. But this is different because
19 you've got that --

20 MR. STRALLA: I'm going to object, your Honor,
21 this is --

22 THE COURT: I'm going to sustain the
23 objection, this line.

24 MR. LESLIE: In this case, if you don't agree

1 on first degree murder, you move on to the next level.

2 And now about that. Mr. Stralla in his first
3 closing argument said when Ms. Bradley made some
4 comments in opening statement and so forth, Mr. Stralla
5 made some comments in his opening statements that Dahl
6 broke this guy's ribs in that flurry of anger. Do you
7 remember that? Didn't just punch him in the face, broke
8 his ribs. Not part of the car crash accident, not part
9 of the surgical intervention, not part of the plate in
10 the head, not part of the scarring on the legs that he
11 got from that accident. The State told you in opening
12 statement that Randall Dahl, in addition to beating
13 Gardner in the face, beat him and broke his ribs.

14 Medical Examiner Kubiczek came in and said
15 yeah, I saw the broken ribs, that was the last 7 and 8.
16 You remember that line of questioning, it was just a
17 couple hours ago. It was fresh. We talked about it. I
18 reviewed this report over the last ten days and I
19 certainly reviewed it today. Not part of the car crash.
20 It was fresh. And remember, I talked with the
21 prosecution in anticipation of testifying about what I
22 need, what I want to present. I opened him up and
23 looked at those ribs that I say are fresh. I x-rayed
24 those ribs that I say are fresh. Prosecutor jumped up,

1 I've got the photos, want to see them? Have you seen
2 them?

3 MR. STRALLA: Objection, your Honor. That was
4 a sustained objection, shouldn't be bringing that up in
5 front of the jury. That's been ruled upon.

6 THE COURT: Sustained. Move forward.

7 MR. LESLIE: What do you expect in a homicide
8 case when the State comes to you and says we believe
9 this case deserves first degree verdict? What do you
10 expect? Do you expect them to fulfill their promises?
11 Do you expect them to prove what they said they were
12 gonna prove? Do you expect that if they say this is
13 first degree murder, because here's what he did and
14 here's what he did, and here's what he did, do you
15 expect them to back that up?

16 The State says that this was a cold-blooded
17 murder, and that Dahl made some dark decisions that
18 evening. This was a rash, impulsive reaction. I'm not
19 justifying it, but I'm asking you to see it for what it
20 really is.

21 We ask for a fair, honest, proportionate
22 decision from you. And it's all we ask. Thank you.

23 THE COURT: Thank you, Mr. Leslie. Mr.
24 Stralla, the State's final summation, please.

1 MR. STRALLA: Thank you, your Honor. After
2 listening to Mr. Leslie one thing struck me that he and
3 Mr. Dahl, the defendant, have one thing in common. For
4 the last hour Mr. Leslie's been talking to you, and he
5 never mentioned once the injuries to the neck and
6 throat, just like Mr. Dahl didn't mention any of that
7 stuff to Detective Maher. And the reason that was
8 avoided by the defense and avoided by the defendant is
9 because that is the evidence of first degree murder, a
10 choking the very life out of John Gardner. That's why
11 they don't want to talk about that. Because that's
12 really what the case is about.

13 Being a jury is an honor, it's a privilege as
14 a citizen, and it's a hard job. But it's something we
15 all take seriously and I know you all are gonna work
16 hard in there to do the right thing in this case. And
17 the right thing in this case is to find the man,
18 defendant guilty of what he did, which is first degree
19 murder.

20 Think of those four minutes. I'm not gonna go
21 through that again, but four minutes to kill somebody.
22 That's a deliberate, willful, premeditated action.
23 Those are the elements of first degree murder.

24 Mr. Leslie throws out there what I call a red

1 herring. He wants you to look at something that really
2 doesn't matter. We don't know when he died. Well, we
3 know he died in that room, no doubt about that. And we
4 know who killed him. That's why we're here. That's why
5 we're here. And that's what the evidence proved in this
6 case and what we're looking at.

7 Mr. Leslie says the defendant was truthful
8 when he was confronted eventually. Really, was he? He
9 minimized what he did. He minimized those broken ribs.
10 Just because you weren't shown rib photos doesn't mean
11 they weren't fresh broken rib that occurred at the time
12 of the death that Dr. Kubiczek said. It didn't happen
13 two months earlier. It was because of the beating he
14 took on December 9th.

15 Mr. Leslie says he didn't grab for a weapon.
16 Well, I'm gonna show you the weapons in this case.
17 There was two weapons. Hard to believe, but that was a
18 weapon in this case, the edge of that bathtub. That was
19 the weapon the defendant used to compress John Gardner's
20 neck and push the very life out of him.

21 I think you all know that I'm gonna show you
22 the other weapon. Weapons. That would be these.
23 Exhibit 3L. The swollen and cut and bruised murderous
24 hands of the defendant. That's the weapons in this

1 case. He didn't need to grab a plastic vodka bottle.
2 Those are hands of rage. That's the weapons in this
3 case.

4 Now, Mr. Leslie brought up some points about
5 well, Mr. -- the defendant didn't know he was dead 'til
6 the next morning. Well, that's not what the testimony
7 showed in the case. He told Detective Maher that he
8 kept going in the bathroom to check because he'd known
9 he'd done something wrong. If that's true, if you're
10 gonna believe what the defendant said, when the defense
11 calls him a fudger, wasn't telling the truth.

12 People generally lie for two reasons. One is
13 to make themselves look good when they brag, tell
14 fishtails or stuff like that. Or to keep -- get
15 themselves out of trouble. The defendant was being
16 deceptive with the police to keep himself out of
17 trouble. And Mr. Leslie asked that you believe him?
18 What you can believe is the evidence in this case. You
19 can believe John Gardner's body in that crushed neck.
20 You can believe his face beaten to a pulp. You can
21 believe those broken ribs. And you can believe those
22 scene photos that showed where the life was taken from
23 him, that's what you can believe.

24 The defendant, what other stuff did he do to

1 deceive? He waited 'til the next morning, still dark,
2 pushed it by the events center, looked around to see if
3 anybody saw him, he went up there three or four times,
4 threw the clothes -- after he had washed them from
5 blood, threw them away from his place so they wouldn't
6 be found there, even though there was a dumpster right
7 outside his door. And, again, I'm kinda beating a dead
8 horse but's that's probably not a good analogy in a
9 murder trial, but he never said a word about choking or
10 asphyxiating John Gardner, never said a word about that;
11 still being deceptive even though he did speak with the
12 police.

13 Jim Leslie said there was some type of fight?
14 Well, if that was a fight, it wasn't much of one. The
15 defendant had no injuries on his person other than the
16 injuries he inflicted himself. Yeah, John Gardner had
17 some injuries on his hand, too, putting it up in front
18 of his face to try to block those blows. Four or five
19 blows? I think not. Use your common sense which is in
20 the best jury instruction of all. Use your common
21 sense. He beat the hell out of him. And then choked
22 the life out of him.

23 This case is more about what the defendant
24 didn't say than what he said. If you as a jury don't

1 believe that the defendant had murderous intent when he
2 choked the life out of John Gardner, then don't waste
3 your time, find him not guilty. But to do that, you
4 would have to ignore all the evidence in this case and
5 basically say it doesn't mean anything. But I know
6 you're not gonna do that. You're gonna do what's right,
7 and hold him accountable for what he did to this little
8 113 or 115 pound broken-down man, John Gardner, that
9 night. Hold him responsible. Find him guilty of first
10 degree murder because that's exactly what he did,
11 nothing more, nothing less. Thank you.

12 THE COURT: Thank you, Mr. Stralla. Ladies
13 and Gentlemen, we've reached another phase of jury
14 trial. I'm going to give you the case for your
15 deliberations. At this point I'm going to swear in my
16 deputy, please?

17 COURT CLERK: Please raise your right hand.

18 (Deputy sworn in to take charge of the jury.)

19 THE COURT: Thank you very much, Deputy.
20 Ladies and Gentlemen, as I give the case to you, you may
21 now talk with one another. You may now form and express
22 opinions. You may now share those opinions with your
23 fellow jurors. You must come to a unanimous verdict,
24 that means each one of you must agree.

1 There's always a difficult time in every jury
2 trial that falls on my responsibility. That you'll note
3 that during the arguments of counsel, and maybe you've
4 seen it on TV we always talk about 12 jurors. Well,
5 there's actually 14 of you sitting in the box. And the
6 reason there's 14 of you sitting in the box is because
7 we have alternates. Alternate jurors, unfortunately or
8 fortunately have to hear all the evidence, but unless
9 someone becomes sick or infirm of the first 12, the
10 alternates do not get 2340 vote. In fact, I'm going to
11 temporarily excuse the alternates at this time, there
12 were two of you, that heard the evidence and you don't
13 get to vote nor deliberate unless someone gets sick or
14 infirmed. So my admonition of not discussing the case,
15 not having an opinion still is effective to those two
16 alternates because if, in fact, someone does get sick of
17 the first 12, and an alternate needs to be brought back
18 you will begin the deliberations all over again from the
19 point where that person got sick and start fresh.

20 So I'm sorry to say but this case the
21 alternates were Mr. Pacaldo and Mr. Ochoa, so you're
22 excused at this time. You're going to give your phone
23 numbers to the deputy, stay in touch, we'll be in touch
24 with you should a verdict be reached, but you're excused

1 temporarily at this time. Thank you.

2 (Alternate jurors are excused from the
3 courtroom.)

4 So Ladies and Gentlemen, you are the 12, good
5 luck today. There is no time limit on your
6 deliberations as I give the case to you, the next time
7 I'll see you is when you reach a verdict or contact us
8 in some manner. That being said, again, it is now time
9 for your decision, and we will wait your call.

10 All rise for the jury.

11 (Jury leaves the courtroom to deliberate.)

12 THE COURT: We're outside the presence.
13 Please be seated.

14 I want to say, comment on the record excellent
15 work by all the attorneys. Mr. Dahl, I don't know what
16 the verdict's going to be, but I'll share with -- you
17 may be seated. I'll share with you that no matter what,
18 you got your money's worth from your defense team. It
19 was an excellent job on your behalf.

20 Mr. Stralla, way to go out as your last jury
21 trial from the Washoe County District Attorney's Office.
22 Excellent work by everyone, and I just want to say that
23 under the circumstances this trial was told like the
24 story it should be. I wish it was a time when the

1 courtroom could have been packed with young lawyers to
2 see how a case should be tried. Well done by everyone
3 no matter what the verdict is.

4 In Department 9, as you may know, I don't like
5 you to be too far away. If there is any questions I
6 like to get the questions answered so they can continue
7 with their deliberation, and I hate make the jury wait
8 if they've got a question because it's holding them from
9 continued deliberation. So please be available and come
10 over as soon as you hear from the court that we need you
11 over here for a question, or if there is a verdict,
12 please don't make the jury wait. I really would
13 appreciate that. Thank you very much for your excellent
14 work.

15 We'll wait for the call for the jury.

16 Ms. Bradley, if I could see you on an
17 unrelated matter in Chambers, I appreciate that. Mr.
18 Leslie.

19 MR. LESLIE: Your Honor, who's the contact
20 point that we give numbers to to come back?

21 THE COURT: You give it to Deputy Teralak
22 who's not here, but Deputy Teralak and also Bri will get
23 those from Deputy Teralak.

24 MR. LESLIE: All right.

1 THE COURT: Thank you very much. We'll be in
2 recess.

3 (In recess.)

4 THE COURT: It's my understanding we have a
5 verdict. Mr. Stralla, in the event that the verdict is
6 something that you argue for, do you have the
7 stipulation prepared if we need that?

8 MR. STRALLA: I don't have one prepared. We
9 had one prepared.

10 THE COURT: I'm not saying that's going to --
11 I just want to make sure because I need to know at some
12 point if I'll discharging the jury or bringing them back
13 so I don't need it now, I just need to know if there's a
14 physical document around somewhere.

15 MR. STRALLA: No. We could put one together
16 quickly if we need to.

17 THE COURT: Okay. We'll just cross that
18 bridge when we come back. Typically I've had those, but
19 that's the only reason I asked the question. Thank you.
20 No problem.

21 Let's bring the jury in.

22 (Jury returns to the courtroom.)

23 THE COURT: Deputy Teralak, it's my
24 understanding we have a verdict; is that correct?

1 DEPUTY TERALAK: Yes, your Honor.

2 THE COURT: All right. I always try to see
3 who's carrying the paperwork when I hear there's a
4 verdict, it looked like it was you, Ms. Johnson.

5 JUROR JOHNSON: Yes.

6 THE COURT: Are you the foreman?

7 JUROR JOHNSON: I am.

8 THE COURT: Thank you very much. Let the
9 record reflect the presence of the defendant, his
10 attorney, Deputy District Attorney for the State, all 12
11 members of the jury, Ms. Johnson is the foreman.

12 Ms. Johnson, has the jury reached a verdict?

13 JUROR JOHNSON: We have, your Honor.

14 THE COURT: Thank you. Would you please hand
15 the verdict forms to the bailiff?

16 COURT CLERK: Thank you.

17 THE COURT: Thank you. Will the defendant
18 please rise?

19 The clerk will now read the verdict out loud.

20 COURT CLERK: In the Second Judicial District
21 Court of the State of Nevada, in and for the County of
22 Washoe. The State of Nevada, Plaintiff, versus Randall
23 Lee Dahl, Defendant, case number CR15-0747, Department
24 Number 9.

1 Verdict, we the jury, in the above-entitled
2 matter, find the defendant, Randall Lee Dahl, guilty of
3 Second-Degree Murder, dated this 9th day of June, 2021.
4 Jillian Anderson -- oh, excuse me, Jillian Johnson,
5 Foreperson.

6 THE COURT: Thank you very much. Before the
7 verdict is recorded do either of the parties desire to
8 have the jury polled?

9 MR. LESLIE: No, your Honor.

10 MR. STRALLA: No, your Honor, that's fine.

11 THE COURT: Thank you. The clerk will now
12 record the verdict in the minutes of the Court.

13 Ladies and Gentlemen, as you know, the right
14 to trial by jury is one of our basic and fundamental
15 constitutional guarantees. I firmly believe in this
16 right, that is the right of every person accused of
17 crime to be judged by a fair and impartial jury. You
18 must have jurors, an unfortunate jury service is
19 something that many persons shirk from, they do not wish
20 to become involved. That's why I'm so pleased that you
21 12 men and women have been willing to give up your
22 valuable time. You've been most attentive and most
23 conscientious. On behalf of counsel, the parties, and
24 Department 9 Second Judicial District Court, I wish to

1 thank you for the careful deliberation which you gave
2 this case.

3 The question may now arise as to whether you
4 may now talk to other persons regarding this matter. I
5 advise you that you may, if you wish, talk to other
6 persons and discuss your deliberation which you gave in
7 this case. You're not required to do so, however. And
8 if any person persists in discussing this case after
9 you've indicated you do not wish to do so, or raise
10 objection as to your result, or as to how you
11 deliberated, you report that fact directly to me.

12 Now I would like to thank you for your
13 service, and you are excused with the thanks of the
14 Court.

15 All rise for the jury.

16 (Jury is released and leaves courtroom.)

17 THE COURT: We're outside of the presence. At
18 this point we need to set a date for sentencing and I
19 will have your client communicate and cooperate with the
20 Division of Parole and Probation, please.

21 Mr. Leslie, I'll have you organize that date,
22 please, sir?

23 COURT CLERK: Yes, your Honor. August 4th, at
24 nine a.m.

1 THE COURT: Very good. We'll see you back
2 here then.

3 Was there anything further, Mr. Stralla?

4 MR. STRALLA: That's fine, Judge.

5 THE COURT: Thank you. Anything further, Mr.
6 Leslie?

7 MR. LESLIE: No, your Honor.

8 THE COURT: Ms. Bradley.

9 MS. BRADLEY: No, your Honor.

10 THE COURT: We'll see you back here then.
11 We'll be in recess.

12 (Proceedings continued until August 4, 2021,
13 at 9:00 a.m.)

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1 STATE OF NEVADA)

2 COUNTY OF WASHOE)

3 I, JULIE ANN KERNAN, official reporter of
4 the Second Judicial District Court of the State of
5 Nevada, in and for the County of Washoe, do hereby
6 certify:

7 That as such reporter I was present in
8 Department No. 9 of the above court on Wednesday, June
9 9, 2021, at the hour of 8:00 a.m. of said day, and I
10 then and there took verbatim stenotype notes of the
11 proceedings had and testimony given therein upon the
12 Jury Trial of the case of STATE OF NEVADA, Plaintiff,
13 vs. RANDALL LEE DAHL, Defendant, Case No. CR15-0747.

14 That the foregoing transcript, consisting of
15 pages numbered 1 through 155, both inclusive, is a full,
16 true and correct transcript of my said stenotype notes,
17 so taken as aforesaid, and is a full, true and correct
18 statement of the proceedings of the above-entitled
19 action to the best of my knowledge, skill and ability.

20
21 DATED: At Reno, Nevada, this 26th day of October, 2021.

22 /s/ Julie Ann Kernan

23 JULIE ANN KERNAN, CCR #427
24

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 27th day of January 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Jennifer P. Noble, Chief Appellate Deputy,
Washoe County District Attorney

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Randall Lee Dahl (#1247561)
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

John Reese Petty
Washoe County Public Defender's Office