

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

Electronically Filed
Apr 28 2022 11:45 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

THE STATE OF NEVADA,

Plaintiff,

vs.

MARC PAUL SCHACHTER,

Defendant.

Sup. Ct. Case No. 84547

Case No. CR14-1044

Dept. 4

RECORD ON APPEAL

VOLUME 6 OF 10

DOCUMENTS

APPELLANT

Marc Schachter #91445
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RESPONDENT

Washoe County District
Attorney's Office
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Criminal

Case Title:

STATE VS. MARC PAUL SCHACHTER (D4)

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SCHACHTER

JENNIFER L. LUNT, ESQ. for MARC PAUL
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NEVADA

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4185

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE CONNIE J. STEINHEIMER, DISTRICT JUDGE

--o0o--

THE STATE OF NEVADA,

Plaintiff,

Case No. CR14-1044

vs.

Dept. No. 4

MARC P. SCHACHTER,

Defendant.

/
ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

Monday, September 22, 2014

APPEARANCES:

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Reno, Nevada

The Defendant:

MARC P. SCHACHTER

Reported by:

EVELYN J. STUBBS, CCR #356

1 RENO, NEVADA; MONDAY, SEPTEMBER 22, 2014; 9:58 A.M.

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3
4 THE COURT: This is the time set for trial. Do we have
5 any preliminary matters?

6 MR. BOGALE: Yes, Your Honor.

7 THE COURT: Okay. Go ahead.

8 MR. BOGALE: As you might notice Cheryl Wilson is here
9 accompanying for the trial. She wasn't at the evidentiary
10 hearing or any other proceedings. She's here now as a second
11 chair. So I just want to apprise the court of that.

12 The State has given the defendant a copy of a proposed
13 second amended information. The only amendment the State is
14 interested in adding here is on page two at line 13. Inserting
15 the word, "petit" in between commit and larceny. And we're doing
16 that because the statute actually reads, the statute under which
17 we charged Mr. Schachter reads in 205.060, subsection five, the
18 crime of burglary does not include the act of entering a
19 commercial establishment during business hours with the intent to
20 commit petit larceny.

21 And then it has two qualifiers. So just to be specific
22 we wanted to add the word, "petit". I spoke to Mr. Hylin about
23 this, standby counsel. He doesn't seem to have a problem.
24 Mr. Schachter hasn't notified me of any objection to it either.

1 So that's the first matter I want to bring up.

2 THE COURT: I don't have in front of me what you're
3 talking about. So I will --

4 Okay. So you want to bleed in the language at the end
5 of that charge?

6 MR. BOGALE: That's my second point I wanted to get,
7 but I just wanted to cover the line 13 addition first.

8 THE COURT: Why don't you give me a copy of your
9 amended information. You've given Mr. Schachter a copy?

10 MR. BOGALE: Yes.

11 THE COURT: Why don't you approach the Court and let us
12 see what your looking at.

13 Is this an amended information or second amended?

14 MR. BOGALE: It's a second amended.

15 THE COURT: Okay. Okay. So I see what's your second.

16 MR. BOGALE: Okay. So the second point is regarding
17 the specific statutory provision under which the State is
18 proceeding here at trial, which is subsection five of 205.060.
19 It appears, it's the state's position that it appears to require
20 as an element of the offense that if the defendant enters a
21 commercial establishment with the intent to commit a petit
22 larceny, it's not burglary unless they are -- he has been
23 previously convicted two or more times of comitting petit larceny
24 or of a felony.

1 Now that's what's alleged in the Information. The jury
2 instructions the State has provided include an instruction on
3 that specific statutory provision.

4 The State has been talking to appellant at the office
5 for the last few days. We don't like this law. It doesn't, we
6 think it's a poorly written law and it's our position that it
7 actually requires proving up either two of petit larcenies from
8 the last seven years or a felony to convict on burglary of
9 entering a commercial establishment with the intent to commit
10 petit theft. So based on the State's reading of that statute the
11 State want to ask the Court how you intended on proceeding
12 whether. You like, I see three options one a stipulation that
13 the defendant has been convicted of a felony, two, a bifurcated
14 trial to some extent where we submits to the jury all of the
15 elements of an ordinary burglary, entering a commercial
16 establishment with the intent to commit petit theft. If they say
17 they have found those facts, come back out and sort of second
18 phase, admit the prior certified copy, and then send them back
19 in. Sort of like an ex-felon in possession of a firearm.

20 The third would be just to try it to the jury. That
21 would be the third option.

22 And so depending on Your Honor's view of the statute,
23 whether you believe it's an element of the offense or a
24 sentencing issue, then you know, the State will make a decision

1 on how it wants to proceed on that count.

2 But I just wanted to bring that up to the Court and see
3 what you thought of it.

4 THE COURT: Okay. Mr. Schachter.

5 MR. SCHACHTER: Well, I'm of the mind that this is an
6 element there for that section five, it's unconstitutional in
7 that it would ask the jury to rule on the conviction as an
8 element of the crime. And that would be highly prejudicial to
9 me. You're asking them to either say it's not a burglary,
10 because it's an open commercial establishment, and the intent was
11 petit larceny, that's not a burglary. And then you would have to
12 come back and say it is a burglary, based on another set of
13 information. So what would they sign on the verdict sheet, was
14 it a burglary or not.

15 The State is alleging that I entered an open commercial
16 establishment with the intent to commit petit larceny. And by
17 definition that's not a burglary, it's only when you add the
18 conviction that it makes it a burglary. So either that statute
19 to me is unconstitutional or the fact that they want to use the
20 conviction is so prejudicial and they haven't asked for a
21 Petrocelli hearing or any other hearing to determine the prior
22 conviction. And to me it's too late now to argue that.

23 So I don't know, but I had given it some thought when
24 they charged it like that reading the jury instructions, but I

1 don't understand how they can get the conviction in, in front of
2 the jury and not be highly prejudicial to me. That's my problem.

3 THE COURT: Okay.

4 MR. BOGALE: The State actually alleged the prior. And
5 that's what Your Honor asked me about. We've alleged the prior
6 in this amended information and the second amended information.
7 Whether the statute is unconstitutional or not I believe is an
8 issue that the defendant should have raised with pretrial motion
9 if he believes it was unconstitutional. He was improperly
10 advised that that was the provision under which the state was
11 charging him.

12 And the State doesn't disagree that it's a poorly
13 written law. That's why we staffed it with appellant at our
14 office. We're just trying to do the right thing to make sure
15 that there's no prejudice to the defendant. And so I just wanted
16 to get, I guess, Your Honor's take on it to see how you wanted to
17 proceed.

18 THE COURT: I would have preferred this case not go to
19 trial. It hasn't been a very clean case, and there's lots of
20 issues in this matter. Lots. And it does not appear the kind of
21 case that we should have people in our community spending their
22 time on, to be really frank here. And I can't understand why you
23 all haven't been able to resolve this case short of all these
24 people that are waiting downstairs to hear this case and they're

1 going to have to hear this case for two or three days. It
2 doesn't make sense to me. And this is not the case I would want
3 to go to the supreme court on. Given the issues, it's not the
4 kind of thing you want to test the statute on. So, but I assume
5 there's been no last minute negotiations or resolution of this
6 case?

7 MR. SCHACHTER: They haven't made any offers, Your
8 Honor.

9 THE COURT: Okay.

10 MR. BOGALE: The State made an offer to Jim Leslie last
11 week. I believe he communicated it to the defendant.

12 MR. SCHACHTER: No, he didn't.

13 THE COURT: You didn't get that offer?

14 MR. SCHACHTER: Not at all.

15 THE COURT: Mr. Leslie didn't tell you what the offer
16 was?

17 MR. SCHACHTER: No or that there was even an offer.

18 THE COURT: Okay. We will take a short recess.

19 MR. HYLIN: We'll talk for a minute.

20 THE COURT: Talk a minute. We'll be in recess.

21 (Recess taken)

22 THE COURT: Thank you. Please be seated. Okay
23 Mr. Schachter, did you have get the offer conveyed to you now?

24 MR. SCHACHTER: I did, Your Honor.

1 THE COURT: Okay. And you wish to proceed?

2 MR. SCHACHTER: Yes. I made a counteroffer and it's
3 not happening.

4 THE COURT: Okay. All right. What we're going to do
5 then, with regard to -- have you filed in the second amended
6 information?

7 MR. BOGALE: No. The State has not filed it in yet.

8 THE COURT: You want to file it in, right?

9 MR. BOGALE: Well, the State has thought about this,
10 Your Honor, and it might be a cleaner record here if Count II is
11 dismissed, and so the State, after consulting with its colleagues
12 will now move to dismiss Count II, now.

13 THE COURT: Okay.

14 MR. BOGALE: You don't have to do it now. We can do it
15 after.

16 THE COURT: We can do it now.

17 THE COURT: So the amended information you're moving to
18 dismiss Count II?

19 MR. BOGALE: Yes.

20 THE COURT: Okay. Any objection?

21 MR. SCHACHTER: No, Your Honor.

22 THE COURT: Count II is dismissed. So we will proceed
23 on the amended information. Count I, which is attempted robbery,
24 and then if the defendant is convicted of Count I, Count III will

1 become an issue with regard to the habitual criminal.

2 MR. BOGALE: Would Your Honor like the State to submit
3 a second amended information to renumber Count III to Count II
4 now?

5 THE COURT: No. You don't have to do that now. For
6 purposes of the jury instructions with regard to the charging
7 you're just on Count I, and it doesn't matter that Count II has
8 been dismissed for purposes of sentencing, which is the only time
9 that Count III would come into play.

10 Any objection, Mr. Schachter?

11 MR. SCHACHTER: No, that's fine, Your Honor.

12 THE COURT: Okay. So that being done, we will move
13 into the jury voir dire.

14 MR. SCHACHTER: Your Honor. I had a couple of house
15 cleaning.

16 THE COURT: Go ahead.

17 MR. SCHACHTER: There was also a motion to dismiss on
18 the delays that you had taken arguments for at the end of the
19 last hearing right before the 6:00 o'clock, we left just as to
20 the delay. It wasn't mentioned in your order, but since it was a
21 separate motion, I just wanted to make sure.

22 THE COURT: On what delay? I'm sorry.

23 MR. SCHACHTER: The prejudicial delay for me not being
24 able to recover the video. The video had run out at 60 days.

1 Walmart had said that they lost that video at 60 days. I put a
2 motion in to dismiss on the grounds of prejudicial delay, on the
3 grounds that I was delayed the ability to get the investigator in
4 a timely manner and that caused me to lose out on the evidence of
5 the video of me walking in.

6 THE COURT: Okay. And that wasn't covered in the
7 written motion?

8 MR. SCHACHTER: No, it's not mentioned at all.

9 THE COURT: The Court is going to deny that motion
10 because it was your, the delay was caused if at all if there was
11 a delay, it was caused by your request for self-representation.
12 And you did that at justice court even after the judge canvassed
13 you and again here.

14 So any delay that was caused in hiring the investigator
15 was caused by your self-representation and refusing the
16 representation that was offered to you from the public defender.

17 Ultimately the public defender is standby counsel. I
18 appointed them at your first appearance here and also they did
19 provide an investigator to you, but I think by then the
20 preliminary hearing self-representation had caused the issue.

21 So I'm going to deny that motion as being caused by
22 yourself and not by the State.

23 MR. SCHACHTER: Okay. One more issue.

24 THE COURT: Yes, go ahead.

1 MR. SCHACHTER: I received a redacted jury profile. I
2 think that that's --

3 THE COURT: I don't know what you received. What do
4 you mean redacted?

5 MR. HYLIN: Your Honor.

6 THE COURT: Can you help here, Mr. Hylin.

7 MR. HYLIN: Would you like me to explain, Your Honor?

8 THE COURT: Yes, please.

9 MR. HYLIN: They have all the names, addresses and some
10 contact information on there, so to opt for the safer thing, I
11 know that the jury commissioner is very, very sensitive about
12 giving out that information. As a matter of fact we have to hand
13 in all their items after the, trial so there's know loose copies
14 floating around there. So we redacted some of the personal
15 addresses and contact information.

16 THE COURT: Telephone numbers and addresses.

17 MR. HYLIN: Yes. So any contact information from
18 Mr. Schachter's copy. Now I have an unredacted set here if you
19 would prefer that.

20 THE COURT: So but the name and the profession and all
21 of that --

22 MR. HYLIN: All of that stuff is still on
23 Mr. Schachter's copy.

24 THE COURT: Yes, Mr. Schachter?

1 MR. SCHACHTER: But not the individual places of
2 employment. The occupation, the generic occupation, but not the
3 individual. Also not -- I'm not looking for the whole birthday,
4 but I don't want to ask, especially female jurors their age.

5 THE COURT: You don't get that on there anymore, do
6 you?

7 MR. SCHACHTER: They have the date of birth on there.
8 It's redacted. You can imagine that for -- to me there's a huge
9 difference between somebody who works at a coffee house like
10 Starbucks as opposed to Java across the street.

11 THE COURT: Really, there's a difference?

12 MR. SCHACHTER: To me, yes.

13 THE COURT: Okay.

14 MR. SCHACHTER: As far as seeking a jury. And the same
15 with addresses, I got the ZIP code, but within a Zip code,
16 there's a huge difference between somebody who owns their home
17 and somebody who is at a weekly motel, as far as who I want.

18 THE COURT: Well, I'm not going to give you their
19 addresses. I don't think that's necessary. And I'm not going to
20 do that. I will have the jury that comes up here notify us of
21 their profession, where they work, if they were working. We
22 don't always even have that so, because it doesn't always tell us
23 where they're actually working, sometimes it's a P.O. Box. I
24 don't know where they're working.

1 So the information you think you want isn't even always
2 there. But I am going to go ahead and have them tell us when
3 they come up where they're employed and the general area of
4 Washoe County they reside in should help you a little bit.

5 MR. SCHACHTER: I still -- I wanted to just put it on
6 the record, not necessarily for you to do anything in particular.
7 We're here now doing it. It was more for the record for
8 appellant purposes for you to make a decision.

9 THE COURT: Well, I don't see any -- there's no
10 Constitutional Right to even have a questionnaire. So we could
11 have just said no questionnaire in this case. So that we could
12 have done so nobody got a questionnaire.

13 And I guess if have another self-represented defendant,
14 I'll do that so we don't even run the risk of it. But you can
15 imagine how jurors don't like their personal phone number out
16 there. And I know Mr. Schachter you wouldn't do that. I don't
17 have any doubt that you would be fine with all that, but I
18 understand why Mr. Hylin's office redacted them.

19 MR. SCHACHTER: I understand too, Your Honor. It's the
20 issue I have is that the equal protection, the equal opportunity.
21 I mean Mr. Bogale is not going to need that information, because
22 he already has that information.

23 THE COURT: But the jury doesn't know that.

24 MR. SCHACHTER: But the how old a particular juror is

1 or where they work at or where they're precise address is is not
2 redacted on his. So it's not level.

3 THE COURT: Isn't there a question if you own or rent
4 your home?

5 MR. SCHACHTER: Not on the one --

6 MR. HYLIN: Not anymore.

7 THE COURT: It used to be one there.

8 MR. BOGALE: Not that I'm aware of, Your Honor.

9 THE COURT: Okay. All right. So Mr. Hylin, why don't
10 we do this, why don't you get your unredacted out. And then if
11 when the jury comes up into the jury box go ahead and hand those
12 so that Mr. Schachter can look at those. Give you a little
13 something to do Mr. Hylin. Sorry about that.

14 MR. HYLIN: That's fine, Your Honor.

15 THE COURT: Then you will take them back. That way we
16 can make sure they don't go to the jail. That's I think is the
17 issue, that we don't want them in the jail.

18 So Mr. Hylin will give them to you as we go. Now,
19 anything else?

20 MR. SCHACHTER: Two things about the evidence as it
21 pertains back to your order denying my motion to dismiss. I
22 would ask the Court to consider suppressing both the photo
23 pursuant to the best evidence code and NRS 52385 and also the
24 single video clip that is it labeled RXOTC of the eight video

1 clips that are on the disk. In that they are not a true
2 representation of what happened and because the findings of your
3 order denying the motion to dismiss that they are or could have
4 been -- they were material and could have been exculpatory, that
5 the best evidence would have been either the whole video as the
6 video and as to the photo the actual items.

7 THE COURT: I don't -- are there screen shots that are
8 labeled RX something?

9 MR. BOGALE: The files on the disks have names. And
10 one is RX I think OTC Walmart additional letters.

11 THE COURT: And what is that?

12 MR. BOGALE: I believe that's an, and I could be wrong
13 I believe it's a picture of the video camera shot from the
14 pharmacy towards the health and beauty section.

15 THE COURT: Okay. With this motion to dismiss Count
16 II, are you still going to be using all the same videos?

17 MR. BOGALE: I intend on using all of them, yes, Your
18 Honor.

19 THE COURT: Okay.

20 MR. SCHACHTER: There's also case law, it's Arcadian
21 versus State 122 Nevada 109.

22 THE COURT: And it says what?

23 MR. SCHACHTER: Excuse me?

24 THE COURT: And it says what?

1 MR. SCHACHTER: They're talking about just the
2 background of the case. It was a robbery/homicide and they had
3 pulled video from the hard drive and made a composite video of
4 the whole thing. It was one of those where there was like four
5 screens and video and then one, and the Court said it would have
6 been better had the State called an ADT technician to testify to
7 the authenticity. Okay. This would have been the better course
8 to establish foundationally between the digital video
9 surveillance recording and the first videotape. The surveillance
10 system hard drive was in the police custody and the defense had
11 access to it and could have investigated it, had they had any
12 concerns regarding the original digital recording or how it was
13 down loaded. The detective testified to this and the creation of
14 the composite video. That's really not what I wanted.

15 The relevant -- okay. Excuse me, Your Honor. There's
16 no evidence suggesting that the composite videotape was
17 inaccurate or that any relevant or exculpatory information had
18 been deleted from it or that the modification adversely affected
19 or obscured the content. And that your order sustaining it.

20 We -- there was exculpatory video that was left out of
21 the whole bigger picture of the video -- of the disk that the
22 State wants to introduce. Me coming into the door and me without
23 the backpack or selecting the backpack off the shelf. So the one
24 video file is stand alone, is not representative of what happened

1 whereas the other ones are just me in the store with the items.
2 So I don't have any problem. They are actually more exculpatory
3 than incriminating. The only one file is where I am choosing an
4 item and place it in a cart. It's not representative of what
5 happened five minutes later.

6 THE COURT: So I'm going to deny your motion on the
7 best evidence rule. I think that I -- it is true that a picture
8 is not as good as the physical evidence, but I don't think it
9 rises to the level of suppression of a picture nor of the RXO 27
10 or RO2C. So I'm going to deny those motions.

11 Now let's move into -- couple of things. Counsel, I
12 don't anticipate this taking a long time today and tomorrow, and
13 so you need to move forthwith with regard to modifying your jury
14 instructions. And obviously there would not be one on burglary,
15 which is easy, we can pull that out. Of more concern to me is
16 the instruction with regard to the Indictment, the charging
17 document. So we need to clean that up.

18 We're going to bring the jury in in just a few minutes.
19 When we do that, I want to go over a couple of things. One is
20 that you both provided me with trial statements. It's my
21 understanding that the electronic equipment is for using for both
22 defense and the prosecutor, so the request on the part of the
23 defense to use that equipment is granted. It was my
24 understanding that that was the arrangement.

1 With regard to the proposed voir dire, what I will do
2 is I will tell you at this time which questions I will find
3 improper if someone objected to them and if they were objected
4 to, that I would sustain an objection and not let the question be
5 asked. And that would be in the nine series for the State. I
6 would sustain an objection if the questions BC, D, were asked.
7 In addition, I would sustain an objection as to sub I, the Court
8 will instruct as to the difference between direct and
9 circumstantial evidence, and I would not want that done through a
10 voir dire question.

11 J, which is a juror having trouble with definitions or
12 legal concepts, I would not allow that question if someone
13 objected.

14 I think I would object -- I would sustain an objection
15 to K, because I think it's a comment on the burden of proof.

16 MR. BOGALE: That's K.

17 THE COURT: K. L, would be appropriate and M would be
18 appropriate, if I do not cover them, because I ask that neither
19 side cover ground that I have already asked. Although even
20 though I asked the question with regard to burden of proof and
21 presumption of innocence. I do allow both sides to ask
22 additional questions in that area.

23 In regard to the defense, if the question were to be
24 asked our law -- I'm sorry, are low prices for everyday items

1 more important than customer service, I would sustain the
2 objection. I think that's argument. Should the State be
3 spending more money on new prison construction or loan money on
4 rehabilitation programs, I would sustain an objection to that.

5 And how do you feel about gun control laws, I would
6 sustain the objection as to that. The first part is the right to
7 own a gun and to bear arms is important to you, I would allow
8 that question, but the second part I would sustain an objection.

9 What publications do you subscribe to, I would sustain
10 an objection that's overly burdensome. However, I would allow
11 for a question with regard to favorite web site. And how do you
12 feel about new universal health care law. I would sustain an
13 objection. I think that's too far afield for the issue before
14 us. So if there were to be an objection as to those questions it
15 would be sustained.

16 I give you this information because most people don't
17 want to ask a question if the judge is going to sustain an
18 objection, so I like to give you advance notice.

19 So that being said, I think we're ready for the jury to
20 come back. I want to just preliminarily go over the process.
21 And Mr. Hylin I'm sure you probably already told Mr. Schachter
22 how we pick a jury and how we do this.

23 Mr. Schachter, you're welcome of course to continually
24 ask Mr. Hylin if you have any questions. What will go through we

1 will pool the first group off people and I think it's going to be
2 23. And fill these all in. And then I will ask questions and I
3 will let the State ask questions and you ask questions. And then
4 when we're all done asking questions, we will, if nobody has been
5 excused for cause, a legal reason, not just we don't like them or
6 not somebody we think would be our best choice once, we have 23
7 that are all okay for legal reasons, then the bailiff is going to
8 take them down the hall to another room and you all will have
9 exercise your peremptory challenges here in the courtroom on the
10 record, but the jurors will be in the -- in a different area.
11 When they come back in, we will tell them who's selected. And we
12 will start with opening statements.

13 It's 20 minutes to 11:00, so we may not be able to get
14 opening statements before lunch. My hope would be that we can
15 actually get this jury before the lunch hour. And I will go to
16 about 12:15 if you're kind of close to picking the jury,
17 otherwise after that we'll take our recess. Is there any
18 questions?

19 MR. BOGALE: Just one, Your Honor. It's my
20 understanding that trial statements now will be exchanged and
21 filed. Would it be possible for the State get a filed copy of
22 each?

23 THE COURT: We do open them after, as we start the jury
24 trial. So the clerk will get to it. Did you -- and

1 Mr. Schachter gets a copy too.

2 Did you serve him?

3 MR. BOGALE: It was my understanding that the parties
4 submit them to the Court confidentially and then on the morning
5 of trial they are filed and exchanged.

6 THE COURT: They are. Okay. We'll make sure that that
7 happens for you.

8 The clerk has asked me a question. She's going to read
9 the amended information. And the AKA is a spelling issue, not an
10 actual AKA, so she would normally only read the first name, the
11 first full time and not the also known as name with a different
12 spelling.

13 MR. BOGALE: That's fine, Your Honor.

14 MR. HYLIN: That's fine.

15 THE COURT: Okay. And then she will read Miss Clerk,
16 why don't you just put into the record. You don't have to read
17 it just tell me.

18 THE CLERK: Just so you know the amended information, I
19 will start here at in the Second Judicial District Court, I will
20 do gown, I will read the case title with the case number, I will
21 go from, then read amended information, read all the way through
22 Count I, after Count I, I will skip Count II and Count III, and I
23 will pick up on page four, where it says all of which is contrary
24 to the form. I will read all the way through to the last word

1 attorney, which is district attorney. I will not read his bar
2 number. I will just read district attorney. And then at the end
3 I will say to which the defendant previously entered a plea of
4 not guilty.

5 THE COURT: Any other changes?

6 MR. BOGALE: Just to advise the Court and the clerk.
7 The second misspelled name is also on line 20. So if you wanted
8 to --

9 THE CLERK: I see it. Thank you very much.

10 MR. BOGALE: Thank you.

11 THE COURT: Okay. So we are ready to bring the jury
12 panel up. Does anybody need to use the facilities now before we
13 get the jury panel in here, because like I said we'll go until
14 about 12:15.

15 Court's in recess.

16 (Jury voir dire)

17 (Jury panel sworn.)

18 THE CLERK: In the Second Judicial District Court in
19 the State of Nevada in and for the County of Washoe, the State of
20 Nevada, Plaintiff, versus Marc Paul Schachter, Defendant, Case
21 No. CR 14-1044, department number four. Amended information:
22 Richard A Gammick, deputy -- I'm sorry. Richard A Gammick,
23 district attorney, within and for the County of Washoe, state of
24 Nevada, in the name and by the authority of the State of Nevada,

1 informs the above-entitled court that Marc Paul Schachter, the
2 defendant above named, has committed the crime of Count I,
3 attempted robbery, a violation of NRS 193.330, being an attempt
4 to violate NRS 200.380 a felony in the manner following: That
5 the said defendant, Marc Paul Schachter on or about the 9th day
6 of June, 2013, and before the filing of this Information and
7 within the County of Washoe, State of Nevada, did willfully and
8 unlawfully attempt to rob loss prevention personal at Walmart
9 located at 5260 West Seventh Street with the use of force and
10 violence in that the defendant used physical force upon said
11 person to retain property he had just stolen from said location
12 in order to facilitate his escape, all of which is contrary to
13 the form of the statute in such case made and provided and
14 against the peace and the dignity of the State of Nevada.
15 Richard A Gammick, district attorney, Washoe County, Nevada by
16 Zelalem Bogale, Deputy District Attorney, to which the defendant
17 previously entered a plea of not guilty.

18 THE COURT: So ladies and gentlemen that is what the
19 case is going to be about and what our trial will be about. I'm
20 going to let you go to lunch now. And you're going to come back
21 1:30. That's just a little bit over an hour. You may need to do
22 some business and at 1:30 you'll begin hearing the case by
23 opening statements and then evidence.

24 We will continue until about ten minutes to five this

1 afternoon, but there will be one break in the middle of the day
2 around 3:00, 3:30, around in there depending and how it works
3 out, and you'll be able to use the jury room. But like I said if
4 you need something other than water, coffee or tea bring it from
5 home or outside when you come back. The bailiff will be giving
6 you badges that will say juror, and she'll go over a couple of
7 things before you leave. Now I'm going to give you an in
8 admonition. I have it to you earlier. I'll give to you at all
9 the breaks, and I want you to seriously remember that this
10 applies to your personal communication devices, your use of the
11 Internet, your use of computers. There have been several
12 mistrials in this district because jurors didn't listen to the
13 admonition. They ignored it, and blogs and Facebook and Internet
14 communications are easily figured out. And if that happens, then
15 we have to start all over.

16 So that's why you kind of are getting a little bit of a
17 lecture, even though you haven't done anything. We want to make
18 sure we don't have an issue.

19 So remember the admonition is that you may not discuss
20 the case with anyone amongst yourselves or anyone else. You may
21 form or express any opinion about the ultimate outcome of this
22 matter. You may not allow anyone to speak of the case to you or
23 in any way attempt to influence you with regard to it. You may
24 not listen to, view or read any news media or any other accounts

1 regarding this case. You may not make any independent
2 investigation or inquiry, including looking on the Internet,
3 Google searches, et cetera, into the facts and circumstances
4 surrounding this case. And you may not at any point report
5 anything you learned to any of the other jurors, but tell us what
6 you've done.

7 I'll see you after lunch. You may step into the jury
8 room at this time. Thank you.

9 (Jury excused)

10 (Outside the presence of the jury)

11 THE COURT: You may be seated. So counsel if you will
12 and Mr. Schachter if you'll return to the jury information to the
13 clerk, she'll take care of that for you. And is there anything
14 else that we need to talk about before we start with opening
15 statements?

16 MR. BOGALE: Nothing from the State, Your Honor, thank
17 you.

18 THE COURT: Mr. Schachter, do you have anything?

19 MR. SCHACHTER: No. I was just thinking -- no, Your
20 Honor.

21 THE COURT: Are you going to make an opening statement
22 or do you want to reserve it until later or do you know?

23 MR. SCHACHTER: Can I decide later at the end of his
24 statement?

1 THE COURT: Absolutely. And I will ask you then. And
2 it will be in front of the jury.

3 MR. SCHACHTER: Thank you, Your Honor.

4 THE COURT: And give you that opportunity.

5 If there's nothing further for the today or for this
6 morning we will see you back again a few minutes before 1:30.
7 Court's in recess.

8 (Lunch recess taken.)
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1 AFTERNOON SESSION

2 --o0o--

3 (Hearing held outside the presence of the jury.)

4
5 THE COURT: I asked for a hearing outside the presence
6 of the jury, because the State provided the Court with a jury
7 instruction that would be given preliminarily at the beginning
8 the case, and we had not made a record about how you felt about
9 that, Mr. Schachter. So this would be the time to give the
10 instruction if we were to give it. And you got a copy of that.

11 MR. SCHACHTER: I did this morning, Your Honor.

12 THE COURT: The one that the State provided was from
13 the State of Connecticut. There also are instructions that are
14 very similar from the State of California from the 8th Circuit
15 and the 4th Circuit.

16 So did you see the one from Connecticut?

17 MR. SCHACHTER: No, I did not, Your Honor.

18 THE COURT: Do you have a copy?

19 MR. BOGALE: I don't believe I do, Your Honor.

20 THE COURT: Mr. Hylin, would you approach.

21 Go ahead and hand you a copy of the instruction as
22 provided by the State.

23 MR. SCHACHTER: There's no objection to that, Your
24 Honor.

1 THE COURT: Would you like that given?

2 MR. SCHACHTER: Please.

3 THE COURT: Okay. All right. So we will give that now
4 before we do opening statements. And is there anything else that
5 we haven't resolved?

6 The rule of exclusion it was invoked during some of the
7 pretrial. Do you all agree that the rule of exclusion is still
8 invoked?

9 MR. SCHACHTER: Yes, Your Honor.

10 MR. BOGALE: Yes, Your Honor.

11 MR. SCHACHTER: And to one point. Can we admonish
12 Detective Reed not to use the rope, the repeat offender.

13 THE COURT: When he describes what his job is?

14 MR. SCHACHTER: Exactly.

15 THE COURT: I think that's an appropriate motion in
16 limine and I'll grant that. It will probably be your
17 responsibility to tell him he's a detective, not a repeat
18 offender detective.

19 MR. BOGALE: I understand, Your Honor.

20 MR. SCHACHTER: Thank you.

21 THE COURT: The clerk told me that there was an exhibit
22 marked that appears to be a picture from something that happened
23 at the jail. And I didn't know if you plan to use that exhibit,
24 Tiburon, it's Exhibit 10.

1 MR. SCHACHTER: I object.

2 MR. BOGALE: Yes, Your Honor, it's a print out from the
3 Tiburon system.

4 THE COURT: Does that indicate that the defendant is in
5 custody?

6 MR. BOGALE: I'll have to look at the exhibit, Your
7 Honor.

8 THE COURT: Go look.

9 MR. BOGALE: Yes, it does. It has jail ID on there and
10 it has a number in that box.

11 THE COURT: Well, then you're telling the jury that the
12 defendant is in custody, aren't you?

13 MR. BOGALE: I initially marked the exhibit just so I
14 could mark everything that I planned on using, if I do use it, we
15 can redact that portion or I may not use it, about if I do I will
16 certainly remove any reference to him being in custody.

17 The purpose of the exhibit, Your Honor, is that he came
18 in a certain cash, that was the reason.

19 THE COURT: I understand that but a cleaner way, when a
20 person is in custody, would be to call the witness who can say
21 that when he was stopped, arrested, he had this much money on
22 him. You want to make it clear, you don't want to leave the jury
23 with the impression that he's still in custody.

24 MR. BOGALE: Your Honor, as case works you can refresh

1 recollection with a ham sandwich. I was interested in using this
2 to refresh the officer's recollection that booked him in. That
3 was the State's intention.

4 THE COURT: Then do not present it to the jury without
5 a hearing outside the presence of the jury. And then also
6 Exhibit 11, and we don't have to deal with that right now, I
7 don't think, but I don't want that discussed or presented to the
8 jury, unless there's a hearing outside the presence of the jury.

9 MR. BOGALE: No problem, Your Honor.

10 THE COURT: All right. Anything further?

11 Then let's bring the jury in.

12 Counsel will you stipulate to the presence of the jury.

13 MR. BOGALE: Yes, Your Honor.

14 THE COURT: Mr. Schachter.

15 MR. SCHACHTER: Yes, Your Honor.

16 THE COURT: Thank you. You may be seated.

17 Good afternoon ladies and gentlemen of the jury.

18 Before we proceed with what's going to happen next, I'd like to
19 read to you a specific jury instruction. And it's what we've
20 been talking about today during jury selection, but I just want
21 to make sure that you are aware of it and understand it.

22 The defendant has decided to represent himself at this
23 trial rather than being represented by an attorney. He has a
24 Constitutional Right to do so. His decision to proceed without

1 an attorney has no bearing on whether he is guilty or not guilty,
2 and you're not to draw any inference favorable or unfavorable to
3 the defendant for the exercise of his right to represent himself.
4 Carl Hylin an attorney will be seated at the counsel table with
5 the defendant. The defendant may at any time consult with
6 Mr. Hylin about his defense.

7 Now we are at the stage in the proceedings when the
8 attorneys and the defendant acting as his own attorney may make
9 their opening statement. The law provides that the State, the
10 deputy district attorney may make his opening statement first,
11 then the defense can make an opening statement or reserve their
12 statement until later.

13 Counsel, are you ready to proceed?

14 MR. BOGALE: Yes, I am, Your Honor.

15 THE COURT: Go ahead.

16 MR. BOGALE: May it please the Court.

17 THE COURT: Yes.

18 (Opening statement by the State.)

19 THE COURT: Ladies and gentlemen of the jury, the
20 defense may now make an opening statement or reserve it until the
21 end of the State's case.

22 MR. SCHACHTER: Thank you, Your Honor. I'd like to
23 make an opening statement.

24 THE COURT: You may do so.

1 (Opening statement by Mr. Schachter)

2 THE COURT: Thank you. Now the State will call your
3 first witness.

4 MR. BOGALE: State calls Alex Monroy.

5 (Witness sworn)

6 THE CLERK: Thank you. Please be seated at the witness
7 stand.

8 THE COURT: Did you want to use the podium?

9 MR. BOGALE: Yes.

10 THE COURT: Let's move back a little bit, make sure
11 you're not blocking Mr. Schachter's view of the jury.

12 MR. BOGALE: Do you want me to move back here?

13 THE COURT: Back between either place.

14

15 ALEJANDRO MONROY,
16 called as a witness by the plaintiff herein,
17 being first duly sworn, was examined
18 and testified as follows:

19

20 DIRECT EXAMINATION

21 BY MR. BOGALE:

22 Q Good afternoon.

23 A Hello.

24 Q Go ahead and state your name and spell your last name

1 for the Court reporter.

2 A Alejandro Monroy, M-O-N-R-O-Y.

3 Q And Alejandro, do you commonly go by Alex?

4 A Yes.

5 Q Where do you work, Alex?

6 A Walmart store.

7 THE COURT: Mr. Monroy.

8 BY MR. BOGALE:

9 Q Okay. Mr. Monroy, where do you work?

10 A I work at Walmart store on Kietzke.

11 Q And how long have you been with Walmart?

12 A Almost a year.

13 Q What's your current position?

14 A Asset protection associate.

15 Q Have you ever held any other positions at Walmart?

16 A No, I have not.

17 Q Have you always been at the Kietzke store?

18 A No.

19 Q Where which other stores have you been?

20 A I worked at the store on Mae Anne, the Seventh Street
21 store.

22 Q Okay. Is that store 3254?

23 A Yes, it is.

24 Q On the corner of Seventh Street?

1 A And McCarran.

2 Q And McCarran. Go ahead and briefly describe to the
3 jury what asset protection is.

4 A Basically we are the associates that walk through the
5 store, plain clothed, looking for safety issues and also
6 surveilling for shoplifters.

7 Q What sort of resources do you as an asset protection
8 associate at Walmart have to fulfill the mission of loss
9 prevention or asset protection?

10 A Mostly we just use our eyes. We have training to help
11 us see suspicious activity and as well as cameras.

12 Q So what sort of training do you have to complete to
13 become an asset protection associate?

14 A We go per store policy. We have a lot of computer
15 based training as well as walking with a seasoned asset
16 protection officer or associate who helps us identify suspicious
17 activity in the real world.

18 Q So when you're walking with a senior asset protection
19 associate is that associate pointing out things to look for?

20 A Yes.

21 Q What sorts of things are you trained to detect?

22 A Looking around nervously, walking around with an empty
23 bag or an empty Walmart bag, shopping erratically, not really
24 looking at what you're taking, just putting things in carts or in

1 bags, things of that sort.

2 Q And why is that suspicious behavior?

3 A Because normally when someone goes shopping they might
4 know exactly what it is they're going to get, but you always tend
5 to look at packaging, not just grab a package and throw it in
6 your cart.

7 Q So when someone like a subject is suspected of
8 shoplifting at your store what do you do?

9 A I basically stand back from a safe distance so I'm not
10 noticed and watch their behavior, watch what they do while
11 they're shopping.

12 Q Let me direct your attention to June 9th of this year.
13 A little over three months ago, I guess. Were you working at the
14 Seventh Street store?

15 A Yes, I was.

16 Q As an asset protection associate?

17 A Yes, I was.

18 Q Were there other associates working that day with you?

19 A Yes, there was.

20 Q How many?

21 A One.

22 Q So there was just two of you?

23 A Yes.

24 Q Covering the entire store?

1 A Correct.

2 Q Okay. Now did you observe an individual that day
3 inside Walmart that caught your attention?

4 A Yes, I did.

5 Q Why did it catch your attention?

6 A The way he walked past me and looked at me. You can
7 sometimes tell when a person is looking for us, those of us that
8 do asset protection, they will just kind of look at you in not a
9 normal way or like a hi or in passing.

10 Q Now this initial this initial observation happened
11 inside the store?

12 A Yes, it did.

13 Q You do not conduct surveillance outside the store?

14 A No, I do not.

15 Q So what was kind of going through your mind when you
16 were observing this person?

17 A I just thought I would follow just to see if there was
18 nipping suspicious that he might continue doing.

19 Q Do you recall where you initially began observing this
20 individual?

21 A Initially it was, we crossed paths in the aisle way in
22 front of the pharmacy.

23 MR. BOGALE: Your Honor may I approach the witness.

24 THE COURT: You may.

1 MR. SCHACHTER: I object to that one.

2 THE COURT: May I see what you're approaching the
3 witness with.

4 MR. BOGALE: Exhibit 7.

5 THE COURT: You may approach.

6 BY LEFT1:

7 Q Mr. Monroy I'm going to show you what's been mark as
8 Exhibit 7 in this case. Can you take a look at that?

9 A (Witness complies.)

10 Q Have you had a chance to look at that?

11 A Yes, I have.

12 Q Do you recognize that?

13 A Yes, I do.

14 Q What is it?

15 A It's the overview layout of the store 3254.

16 Q Your Honor may I retrieve the exhibit from Mr. Ron Roy?

17 THE COURT: Yes.

18 BY LEFT1:

19 Q How do you know what this is?

20 A I worked the store for nine months almost, so I had a
21 very good understanding of the layout.

22 Q Your Honor state moves to admit Exhibit 7?

23 MR. SCHACHTER: Objection.

24 THE COURT: Grounds.

1 MR. SCHACHTER: That is a generic it is not of the
2 specific store. Here's the layout of the specific store.

3 MR. BOGALE: Your Honor.

4 MR. SCHACHTER: There are section that are different on
5 that one then.

6 THE COURT: Well, I'm going to let you exam the witness
7 on that.

8 MR. SCHACHTER: Okay.

9 THE COURT: But I'm going to allow the diagram based on
10 the witness's testimony to be admitted overruled.

11 MR. BOGALE: Thank you, Your Honor. May I publish.
12 You.

13 THE COURT: You may.

14 BY MR. BOGALE:

15 Q All right. I'm going to put up Exhibit 7 on the screen
16 up there. Okay. Just to help you explain how you kind of went
17 through the store. You just testified that you originally began
18 observing the defendant near the pharmacy; is that correct.

19 A Correct.

20 Q Is this the pharmacy right here?

21 A Yes, it is.

22 Q And is that near the entrance and exit?

23 A Yes, it is.

24 Q Okay. And just to be clear, the pharmacy is this blue

1 box marked pharmacy?

2 A Correct.

3 Q Next to the red arrows one pointing up one pointing
4 down?

5 A Yes.

6 Q Now, when you first observed this individual, does the
7 individual have a cart?

8 A Yes, he does.

9 Q Okay. Does this individual?

10 THE COURT: Did you need the exhibit still up?

11 MR. BOGALE: I want to keep it up, I want to show as he
12 travels through the store.

13 THE COURT: And I appreciate if you have the witness
14 show, not you.

15 MR. BOGALE: Okay.

16 THE COURT: Thank you.

17 BY MR. BOGALE:

18 Q Did he have any bag?

19 A No.

20 Q Did he have a backpack on?

21 A No.

22 Q So he just had Al cart?

23 A Correct.

24 Q How close or far away were you from this individual?

1 A At the time that we crossed paths?

2 Q Yes?

3 A Three to five feet.

4 Q Okay. Do you see that individual here in the courtroom
5 today?

6 A Yes, I do.

7 Q Can you please point at him and describe an article of
8 cheating that he's wearing?

9 A It's the gentlemen with the blue blazer, gray shirt and
10 blue tie.

11 MR. BOGALE: Your Honor, may the record reflect
12 identification of the of this witness?

13 THE COURT: Record will so reflect.

14 MR. BOGALE: Thank you, Your Honor.

15 BY MR. BOGALE:

16 Q Now are you familiar with each department at Walmart
17 and the items located in each department?

18 A Yes, I am.

19 Q Let's go through each department as you surveilled this
20 person. So you start in the pharmacy. And if you could just
21 point to the jury how it proceeds on the screen up there that
22 would be helpful. So when he leaves the pharmacy where does he
23 go?

24 A He is heading in this direction.

1 Q Okay.

2 A And turns up towards our tire and lube suppress
3 department.

4 Q And the tire lube express is that the box marked TLE in
5 the top right?

6 A Correct.

7 Q So what happens next?

8 A Next he comes into this section of TLE, which is the
9 automotive section and on the back wall there we have a shelving
10 where he selects the backpack.

11 Q What do he do with the backpack?

12 A Puts it in the cart.

13 Q What happens next?

14 A Next he comes back down towards the health and beauty
15 pharmacy section where he comes into the section over here and
16 starts looking at heating pads.

17 Q Just to be clear you've been pointing now towards the
18 bottom right?

19 A Correct. I'm trying to find.

20 Q Exhibit 7 and there are three blue boxes there one from
21 left to right one is marked impulse ones OTC1 is health and
22 beauty?

23 A Correct.

24 Q Okay. And what is he doing in this area?

1 A He is looking at box of heating pads.

2 MR. BOGALE: Your Honor, may I approach the clerk?

3 THE COURT: You may. You can sit down, sir.

4 THE WITNESS: Thank you, Your Honor.

5 THE CLERK: Exhibit 16 marked. 16 marked marked.

6 (Exhibit 16 was marked for identification.)

7 MR. BOGALE: Thank you.

8 Your Honor may I approach the witness?

9 THE COURT: Yes.

10 BY MR. BOGALE:

11 Q Okay. Mr. Monroy, I'm going to show you what's been
12 mark as Exhibit 16. Do you recognize that?

13 A Yes, I do.

14 Q What is it?

15 A It is a burned copy of the investigation that we did on
16 Mr. Schachter that day.

17 Q And what is that disk have on it?

18 A It has Mr. Schachter in certain areas of the store
19 where the surveillance cameras were able to capture him.

20 Q Okay. So there are video files on that?

21 A Yes.

22 Q And how do you know that?

23 A I know because I burned the CD.

24 Q Okay. Can I take it back from you?

1 A Absolutely.

2 Q Thank you. Your Honor, the State moves to admit
3 Exhibit 16?

4 MR. SCHACHTER: Objection.

5 THE COURT: Ladies and gentlemen of the jury I think
6 we're going to take a little hearing outside of your presence for
7 a few minutes, and during this break remember the admonition I've
8 given you at all of the breaks.

9 (Admonition given.)

10 Please go into the jury room for just a few minutes.

11 THE COURT: What is your objection?

12 MR. SCHACHTER: The foundation, Your Honor. During the
13 testimony last week you said that the witness, Mr. Monroy said
14 that he didn't burn any new video. That the video that was taken
15 off the Walmart hard drive was all done by Ms. Young. He didn't
16 add anything new to that disk. He just made another copy of the
17 one that Ms. Young had already made.

18 THE COURT: He just told me he burned the copy from the
19 record in there. Did you want to voir dire the witness?

20 MR. SCHACHTER: Yes, that would be fine.

21 THE COURT: Okay. Why don't you go ahead and ask the
22 witness a question.

23 BY MR. SCHACHTER:

24 Q The videos that are on that file are the same exact

1 video that Ms. Young burned on June 10th?

2 A I do not know what Ms. Anna young burned on the 10th.

3 Q Do we want to show all the ones. Do we want to go
4 through that, Your Honor?

5 THE COURT: Have you seen this exhibit before?

6 Is this a brand-new exhibit that you just brought
7 today.

8 MR. BOGALE: No, Your Honor it's the actual burned copy
9 that Mr. Monroy gave to me. Mr. Schachter submitted two copies
10 essentially of the same video files to Your Honor at the
11 evidentiary hearing.

12 THE COURT: Why aren't you using the ones we've already
13 seen. Because they haven't been marked and admitted. They
14 weren't mashed. They were marked as AB, C and did, the trial
15 exhibits are marked in numerical fashion.

16 They're still here you still have control of them. I
17 just, yes, I think Mr. Schachter has a right to see what you just
18 marked outside the presence of the jury, before it's played for
19 the jury. So if he has an objection to it he can voice it.

20 We've already seen the other exhibits that were marked and we
21 have had extensive hearings on them and they were his discovery.

22 So if this is an exact replica of what was previously
23 marked as A or B or whatever, then why don't you just use that
24 exhibit, you can have it marked again or use the A number and do

1 it.

2 Otherwise, yes, Mr. Schachter is correct, we do need to
3 play it outside the presence of the jury.

4 MR. BOGALE: The issue is it's foundation, Your Honor,
5 Ms. Young burned those and now they're trying to use the same
6 video.

7 THE COURT: Well, he just said he burned it.

8 MR. SCHACHTER: From the ones that Ms. Young bushed off
9 the hard drive.

10 THE COURT: I don't think so, Mr. Schachter. That's
11 not the way I understood the testimony.

12 MR. BOGALE: Your Honor, the point of the State
13 offering this exhibit today is because this is the one he
14 actually burned. Exhibits A and B were submitted by the
15 defendant, those were copies that were discovered to him. And I
16 don't know if Alex can authenticate those. He didn't burn those.
17 Alex actually burned this one.

18 THE COURT: Use his last name. We don't use first
19 names for witnesses. You keep using his first name. Please use
20 last names.

21 Sir, where did you get this from?

22 THE WITNESS: I burned it at the Walmart.

23 THE COURT: And you burned it off of what?

24 THE WITNESS: The hard drive.

1 THE COURT: Okay. The hard dive you told us about
2 before that was saved.

3 THE WITNESS: Okay.

4 THE COURT: The foundation objection is overruled, but
5 play it and make sure it matches the discovery you gave him. You
6 don't play something in court in a jury trial that the defense
7 has never seen. That's just not proper.

8 MR. BOGALE: Your Honor, respectfully, I believe the
9 defendant has seen the files on this video. He may not have seen
10 this exact disk.

11 THE COURT: And so you play it in front of the jury.
12 What if he you're wrong. What if he says no. That box there, I
13 didn't see it. Then we have a mistrial. So that's why you use
14 the same exhibit, the one that you burned the files of off should
15 have gone to him as a copy and that's what should have been in
16 the evidentiary hearing. But we're here, you've got it, so play
17 it.

18 MR. BOGALE: Shall I just start playing then?

19 THE COURT: Well, how do you have them organized?

20 I can't see the screen.

21 MR. BOGALE: They're organized the same way they are on
22 disk A and B.

23 MR. SCHACHTER: If I can make it a quicker and easier,
24 if I can just look and ask him which ones to play. Then that

1 would --

2 THE COURT: Go ahead.

3 (Discussion held off the record.)

4 MR. SCHACHTER: To me these are not newly burned files
5 these are files from Ms. Young. The date is 6-10, the ones that
6 Ms. Young burned for Detective Reed the following day.

7 THE COURT: The date that data is saved on to a hard
8 drive is recorded. That is different than burning a CD. Burning
9 a CD is a copy from the hard drive. So the hard drive should not
10 change. It shouldn't change from the date that it's created. We
11 don't have the Walmart hard dive here. We have a disk that has
12 been what we hear burned. Which is just like making a Xerox
13 copy. The Xerox copy may have been made today or yesterday, but
14 the copy of the document that was created on the 10th.

15 Now if your objection is this witness didn't create the
16 original data saved in a Walmart hard drive, then that objection
17 is overruled. This witness can testify that this is a duplicate
18 of what he observed on the day in question and where he got it
19 from.

20 So I'm going to overrule your objection. The question
21 is what you had in discovery. Is it all the same?

22 MR. SCHACHTER: Yes, Your Honor. As to the video, yes.

23 THE COURT: Okay. All right.

24 MR. SCHACHTER: Can I continue voir dire on this issue

1 or are we done with this issue?

2 THE COURT: Well, if you have another question for the
3 witness, go ahead.

4 BY MR. SCHACHTER:

5 Q The video that you burned were saved, were the exact
6 same once that Ms. Young burned on the 10th, correct?

7 A As far as I know.

8 Q Well did you personally select these specific video
9 from the entire hard drive?

10 A I'm sorry I'm not understanding.

11 Q Did you have complete access to all the video from the
12 9th when you decided to burn these same particular videos that
13 Ms. Young had already burned?

14 A Ms. Young saved an investigation on the hard drive of
15 the computer. That's what I burned.

16 Q So it's the copy of the ones that Ms. Young burned or
17 saved from the hard drive; is that correct?

18 A I'm sorry, Your Honor. I'm really not understanding
19 the question.

20 THE COURT: Okay.

21 BY MR. SCHACHTER:

22 Q This disk that you burned is the exact, sorry. The
23 files that Ms. Young saved for the investigation.

24 A Yes.

1 Q Are the ones that are on this disk, correct?

2 A Correct.

3 Q There's nothing new, you didn't burn anything new, you
4 didn't pull any new video files from the Walmart hard drive?

5 A I did not.

6 THE COURT: Okay. Anything further?

7 MR. SCHACHTER: No, Your Honor.

8 THE COURT: Okay. Then do we just have the -- the
9 table of contents up, is that what's showing?

10 MR. BOGALE: Yes.

11 THE COURT: Okay. Then we'll bring the jury back in.
12 Objection overruled.

13 (Presence of the jury.)

14 THE COURT: Counsel, do you stipulate to the presence
15 of the jury --

16 MR. BOGALE: Yes, Your Honor.

17 THE COURT: Mr. Schachter?

18 MR. SCHACHTER: Yes, Your Honor.

19 THE COURT: Exhibit 7 is admitted. Counsel, you may
20 proceed. Exhibit 7 is up on the board, correct?

21 I'm sorry 16, not seven. Exhibit 16 is admitted.

22 BY MR. BOGALE:

23 Q Before I show you Exhibit 16, Mr. Monroy, I just want
24 to back up a little bit. Is the Walmart on seventh and McCarran

1 is that located in Washoe County?

2 A Yes, it is.

3 Q Okay. And now I'm going to play some video files from
4 Exhibit 16 okay.

5 A Okay.

6 Q This is file RX space space OTC okay.

7 THE COURT: Do you have need lights off?

8 MR. BOGALE: Sure, Your Honor. Thank you.

9 BY MR. BOGALE:

10 Q Having a some trouble playing this, Mr. Monroy, just
11 one moment. Let's just use the diagram for now and I'll talk
12 about the video in a moment.

13 Okay. So you testified earlier you first observed him
14 near the pharmacy; is that correct?

15 A Correct.

16 Q The defendant next went to automotive?

17 A Correct.

18 Q And came back down to the health and beauty section?

19 A Correct.

20 Q What did you see him doing in the health and beauty
21 section?

22 A He began looking a heating pad, electric heating pad.

23 Q And if you could again stand up Mr. Monroy and point
24 roughly where he is and where you were when you were observing

1 him.

2 A He would have been right in here. And I would have
3 been up in here.

4 Q So you're pointing the defendant was in the impulse
5 section there?

6 A Correct.

7 Q And you were toward the home management section?

8 A Correct.

9 Q Okay. And about how far away way?

10 A Approximately 30 feet.

11 Q Okay. What does the defendant select in the impulse
12 selection if he selects anything?

13 A He does. He selects one of the heating pads.

14 Q Okay. What happens next?

15 A After he selects the heating pad he goes toward the
16 back and makes his way towards the OTC section.

17 THE COURT: Can you speak up us a little?

18 THE WITNESS: Yes, I can.

19 THE COURT: Thank you.

20 BY MR. BOGALE:

21 Q And just for the jury's edification what does OTC stand
22 for?

23 A Over-the-counter.

24 Q What does he do there?

1 A There he's looking at icy hot electric pads.

2 Q Okay. And what does he do with that? Does he grab
3 one, does he not?

4 A Yes, he grabs one and begins looking at the box.

5 Q Does he select any other items?

6 A He does select that particular electric pad.

7 Q And what does he do with that pad?

8 A He puts it in the cart.

9 Q What did he do with the heating pad?

10 A Also placed it in the cart.

11 Q Where did he go next?

12 A Next he then goes toward the back aisles, makes his way
13 toward the health and beauty where he begins to look at hair dye.

14 Q What does he do with the hair dye?

15 A He actually selects two box of hair dye.

16 Q What does he do with those two boxes?

17 A Places them in the cart as well.

18 Q Where does he go next?

19 A Next he makes his way over here into the toy
20 department.

21 Q Okay.

22 A And just off to the side here there are actually aisles
23 for our seasonal section.

24 Q Just for the jury's edification you're pointing to the

1 toy section above health and beauty?

2 A Correct.

3 Q And you said there were some aisles on the right side
4 of the toy section?

5 A Yes, right in here.

6 Q And you referred to that as the seasonal department?

7 A Correct.

8 Q What's in seasonal?

9 A Well, it depends on the time. In the summertime, pools
10 and garden accessories; in Christmastime this will have
11 Christmas.

12 Q It's seasonal?

13 A Correct.

14 Q What does he do in the seasonal department?

15 A He actually goes into the first aisle of the seasonal
16 department and actually beginning opening the packaging, taking
17 what he selected out looking at it inspecting it.

18 Q And just roughly I know that's kinds of a rough diagram
19 point where the defendant is on the screen and point to where you
20 are.

21 A The aisles actually run perpendicular here.

22 Q Okay.

23 A He was in the very first aisle, and I was at the end
24 cap watching from the side.

1 Q Were you trying to hide?

2 A Yes.

3 Q About how far away way were you from the defendant when
4 you were observing him in the seasonal department?

5 A No more than five to seven feet.

6 Q Okay. So you say he opened some of the items what does
7 he do with him?

8 A He just in inspects them puts them back in the box.

9 Q Okay. What does he do next?

10 A After he puts everything back in the boxes he proceeds
11 to put the selected items inside of the backpack.

12 Q And that's the backpack you saw him grab in automotive
13 and place in his cart?

14 A Correct.

15 Q So is he placing the items in the backpack while the
16 backpack is still in the cart?

17 A Yes.

18 Q Which items does he place in the backpack?

19 A The heating pad, the electric pad and one of the hair
20 dyes.

21 Q You said he had two hair dyes, right?

22 A Yes.

23 Q What does he do with the other one?

24 A Leave it in the cart.

1 Q Okay. What happens next?

2 A He proceeds to pick up the backpack, place it on his
3 shoulder, picks up the hair dye and proceeds out to our outdoor
4 living section.

5 Q And that's the section in the very bottom right of
6 Exhibit 7?

7 A Correct.

8 Q What does he do with the cart?

9 A Leaves it in the aisle.

10 Q Okay. So he has the backpack on his shoulder, the
11 heating pad and the icy hot pad inside the backpack?

12 A Correct.

13 Q And he has another package of hair dye in his hand?

14 A Correct.

15 Q Okay. Do you ever make eye contact with him?

16 A We did, yes.

17 Q Where did you make eye contact?

18 A After he goes into the outdoor living section, there is
19 a sliding glass door right in there that I came around, because
20 when we apprehend customers who try shoplift out of the outdoor
21 living we actually have to get in front of them in a very tight
22 area. So I have to be sure to be close enough to get in front of
23 them before they leave.

24 So I was coming around after he went through the doors

1 to see exactly where he was going. And as I peeked around he was
2 actually coming back.

3 Q So do you know if the defendant every went through
4 those doors?

5 A Through the first doors, yes.

6 Q Through the first sliding doors?

7 A Yes, he did.

8 Q Okay. He where does that take him?

9 A That takes him into the actual lawn and garden area.

10 Q So he actually goes out the sliding glass doors, at
11 which point you said you tried to come around?

12 A Correct.

13 Q To see him?

14 A To see where he was going.

15 Q And is that when you make eye contact with him?

16 A Yes.

17 Q Okay. What does he do after you make eye contact?

18 A He turns around, goes back down towards the exit where
19 he stops at the cashier.

20 Q Okay. So just to be clear, I'm going to -- you said
21 there's a sliding glass door, sort of, if you extend the white
22 line outdoor living between outdoor living there's kind of a door
23 there?

24 A Yes, right in there, indicating.

1 Q And where is the cashier?

2 A The cashier is located down in this area right here.

3 Q Okay.

4 A Towards the exit.

5 Q Okay. So he goes towards the cashier. Does he stop
6 anywhere first?

7 A Not that I saw, because once we made eye contact I
8 actually retreated in hopes that he wouldn't catch on that I was
9 watching.

10 Q Okay. Well you're in plain clothes then, correct?

11 A Correct.

12 Q How would he know you're loss prevention?

13 A People get an idea if they see a certain person, you
14 know, watching them extensively.

15 Q Okay. So what happens next?

16 A Next he does approach the cashier where he pays for one
17 of the hair dyes and another item that I didn't see. She places
18 it in the bag and he proceeds to leave.

19 Q And as he proceeds to leave, does he still have the
20 backpack on his shoulder?

21 A Yes, he does.

22 Q What happens, does he ultimately leave?

23 A Yes, he does.

24 Q Okay. So by leave, I mean does he walk out of the last

1 exit of the store?

2 A Correct.

3 Q Is there an exit depicted there on the screen or can
4 you point one out?

5 A It is right here, there's another sliding glass door.

6 Q So he walks out that door with this backpack?

7 A Correct.

8 Q Did you ever see him take items out of the backpack?

9 A No.

10 Q After he put them in?

11 A No.

12 Q Okay. So what happens when he leaves the store?

13 A When he leaves the store, I go out in front of him to
14 confront him about the items.

15 Q Okay. What do you say to him?

16 A I attempt to identify myself as asset protection.

17 Q Now you say you attempted to identify yourself. You
18 weren't' able to identify yourself?

19 A Not fully no.

20 Q Why not?

21 A As soon as I got in front of him to identify myself, he
22 pushed.

23 Q He pushed you?

24 A He pushed me.

1 Q With his hands?

2 A Yes.

3 Q Where did he push you?

4 A Right here.

5 Q In your chest?

6 A The chest.

7 Q Okay. What did you do in response to that?

8 A I hold my ground, attempt again to identify myself.

9 Q So after he pushes you, you're still identifying
10 yourself?

11 A Yes.

12 Q Do you recall saying anything to him?

13 A Yes.

14 Q Besides that?

15 A I did remember telling him that I just wanted to talk
16 about the items in the backpack.

17 Q Okay. What did he say in response?

18 A He doesn't have anything.

19 Q Did you ask him to come inside?

20 A Yes, I did.

21 Q Did he come inside?

22 A No.

23 Q What happens next, does he try to keep walking away or
24 does he stop?

1 A No, he continues to attempt to push past me.

2 Q So what are doing now, are you trying to keep him on
3 the premises, are you going to let him go?

4 A I'm attempting to keep him on the premises.

5 Q And why is that?

6 A Because he has our items and I'd like them back.

7 Q Now did, you said he pushed you, did you use physical
8 force against him before he pushed you at all?

9 A I did not.

10 Q Did you threaten him, did you threaten to use force
11 against him?

12 A No.

13 Q So what happens next?

14 A We continue this altercation, continued pushing. When
15 he pushes, I do not push back, I do not. Fall completely back.
16 And we continue this for about four to five minutes while we're
17 attempting to contact the police.

18 Q And at some point did you gain possession of the
19 backpack?

20 A Yes, I did.

21 Q How did that happen?

22 A In one of the attempts of him to push me, the backpack
23 actually slid off of his shoulder and into my arm where I grabbed
24 it.

1 Q Do most subjects behave this way when they're
2 confronted by you?

3 A No.

4 Q What do most do?

5 A The majority actually comply.

6 Q By comply?

7 A They come back in the store and follow us to our
8 security office.

9 Q Did he ever tell you he came in with the backpack?

10 A No.

11 Q Did he ever tell you the backpack was his backpack?

12 A At the very, very end, once the police had arrived I
13 heard that I guess he told the police that the backpack was his.
14 And I said no.

15 Q So you heard him tell the police but he never told you?

16 A Not me specifically, no.

17 Q Now, was he ultimately successful if trying to get away
18 with the bag?

19 A No, he was not.

20 Q Okay. What happened to the bag?

21 A The backpack.

22 Q At the scene. So you grabbed it. It came into your
23 possession what did you do with it?

24 A After the police arrived we took it back to our

1 security office, where I had the items taken to customer service
2 by a supervisor to have the items scanned and get a total of what
3 he had stolen.

4 THE COURT: Are you sure that are you finished with the
5 diagram so he can sit back down.

6 MR. BOGALE: Yes, Your Honor.

7 THE COURT: You can sit back down.

8 THE WITNESS: Thank you.

9 MR. BOGALE: Court's indulgence.

10 BY MR. BOGALE:

11 Q I'm going to show you Mr. Monroy -- Your Honor may I
12 approach the witness?

13 THE COURT: Yes.

14 MR. SCHACHTER: Objection, Your Honor.

15 THE COURT: Why don't you show -- did you show --
16 Okay. You want to approach the witness?

17 MR. BOGALE: Yes, please.

18 THE COURT: With what?

19 MR. BOGALE: With what's been marked as Exhibit 8.

20 THE COURT: First off, he's just approaching let's see
21 what happens with that.

22 You may approach.

23 BY MR. BOGALE:

24 Q Mr. Monroy, I'm going to show you what's been marked as

1 Exhibit 8. Can you take a look at that and tell me when you've
2 had a chance to review it?

3 A Yes.

4 Q Do you recognize that?

5 A Yes, I do.

6 Q What is it?

7 A It is a copy of the training receipt obtained with the
8 items inside of the backpack and the backpack itself.

9 Q And how do you know that?

10 MR. SCHACHTER: Objection.

11 THE COURT: Overruled.

12 How do you know what it is?

13 THE WITNESS: Because this is the copy that I made when
14 the training receipt came back from the service desk.

15 THE COURT: Why don't you go through this a little more
16 clearly. You don't have to approach. Just ask him. I don't
17 know anything about Walmart. Okay.

18 You're not -- it's not -- I don't understand what this
19 is.

20 BY MR. BOGALE:

21 Q How do you know that's a Walmart training receipt is
22 there an identifier on there?

23 A Yes it states invalid receipt training.

24 Q Is there a date on there?

1 A Yes, there is.

2 Q What does it say?

3 A 6-9-14.

4 Q And does that mean June 9th, 2014?

5 A Correct.

6 Q And are there items listed on the receipt?

7 A Yes, there are.

8 Q What are the items on the receipt?

9 A There are four items, icy hot, heating pad, hair color,
10 backpack.

11 Q Okay. And do those items on that receipt correspond to
12 the items you ended up gaining possession of a the confrontation
13 with the defendant?

14 A Yes.

15 Q And was that training receipt, you call it, made in the
16 ordinary course of business?

17 A Yes.

18 Q Do you make those when you apprehend shoplifters?

19 THE COURT: You are leading. And Mr. Schachter has a
20 right to object or not. Are you objecting to his leading?

21 MR. SCHACHTER: Exactly, to the leading and the
22 foundations of where the training receipt -- who made the
23 training receipt.

24 THE COURT: All right. I'm going to sustain the

1 objection.

2 BY MR. BOGALE:

3 Q Do you know who actually --

4 THE COURT: Why don't you -- go ahead. Never mind.

5 I'm sorry I didn't mean to interrupt you.

6 MR. BOGALE: That's okay. Your Honor.

7 BY MR. BOGALE:

8 Q You testified previously that that's a copy?

9 A Correct.

10 Q And it contains -- it's a copy of a training receipt?

11 A Yes.

12 Q What are training receipts used for at Walmart?

13 A Training receipts are generally used for training
14 purposes of cashiers, so that they don't actually have to handle
15 any cash in case mistakes are made. We also use them for
16 collecting how much an amount of stolen property is when we do
17 apprehensions.

18 Q So is a copy of a training receipt placed in an asset
19 protection file if you create a file for a subject?

20 A Yes, we actually keep the original.

21 Q Again the purpose of it is?

22 A To get an amount.

23 Q Okay.

24 A Of stolen property or attempted stolen property.

1 Q Now is there an amount on that copy?

2 A Yes, there is.

3 Q What's the amount?

4 A 9961.

5 Q Is that 99?

6 MR. SCHACHTER: Objection, Your Honor.

7 THE COURT: Sustained.

8 The exhibit has not been admitted.

9 MR. BOGALE: The State moves to admit Exhibit 8 Your
10 Honor.

11 MR. SCHACHTER: Objection, Your Honor.

12 THE COURT: I'm going to sustain the objection.

13 MR. BOGALE: What's the basis of the objection?

14 THE COURT: His objection is foundation.

15 I'm going to sustain it on the grounds of relevance.
16 You haven't established any relevance.

17 MR. BOGALE: Your Honor --

18 THE COURT: Ladies and gentlemen of the jury, we're
19 going to take a hearing outside the presence of the jury. During
20 this break do not discuss the case amongst yourselves or with
21 anyone else or any anyway attempt to influence you with regards
22 to it. Do not listen to review or listen to news media accounts
23 or any other accounts regarding this case should there be any.
24 Do not allow -- do not make any independent investigation or

1 inquire into any of the facts or circumstances surrounding this
2 case. Should any person attempt to influence you with regard to
3 this, please report it to the bailiff immediately.

4 Go ahead and go into the jury room at this time. Thank
5 you.

6 (Hearing outside the presents of the jury.)

7 THE COURT: The clerk tells me that you still have
8 Exhibit 16, and seven. So I just want to remind you when the
9 exhibits are marked return them to the clerk when you're through
10 using them.

11 MR. BOGALE: Okay.

12 THE COURT: Now I have told Mr. Schachter before not to
13 argue with me, and I've stopped him, and you started to argue
14 with me, Mr. Bogale, and because we can't do a bench conference
15 of any kind, we have to send the jury out. So that's what we're
16 going to have to do. But don't argue with me. You can ask for a
17 hearing outside the presence of the jury. That's fine.

18 The problem with this exhibit that I'm having is I
19 don't have a clue why a training receipt is relevant here.
20 You've not established what it is. Now I'm guessing. I can
21 guess that he took the items and he gave them to somebody and
22 that somebody took them somewhere else and he scanned them and
23 ran a register tape and came out with a tape to figure out value
24 you which I'm not sure has any relevance here and that you're

1 putting that in here. But you haven't done that. You've not
2 established that. So I'm guessing that we can get to the point
3 where he said he dropped it off somewhere. Where did you say you
4 dropped it?

5 THE WITNESS: Anna took to to customer service. New
6 person, I didn't know about so we're going to take a recess and
7 you're going to figure out what this is, because I'm not getting
8 it. So I'm sustaining his objection. Now if it's relevant, you
9 can tell me when we come back in after our break, we'll take a
10 break for the Court reporter we will take a break for staff, and
11 we will be back on the record in about 15 minutes, and then you
12 can tell me why this is relevant and then we'll bring the jury
13 back in and you can establish your foundation, if you can. Okay?

14 MR. BOGALE: Thank you, Your Honor.

15 THE COURT: Okay. Court's in recess.

16 Recess taken.

17 THE COURT: Okay. Counsel, are we going to start over
18 or --

19 MR. BOGALE: Your Honor, I'd like to make an offer of
20 proof on two points regarding the training receipt, one as to
21 relevance and one as to authentication.

22 THE COURT: Okay.

23 MR. BOGALE: I'll start with relevance. The actual
24 precise amounts, there's no precise amount for the robbery

1 statute of the property stolen, but we do have to establish some
2 value, to the point of me admitting to admit the training receipt
3 was to show that the items Mr. Schachter walked out of Walmart
4 with had some value.

5 And this is according to Nevada Supreme Court case law
6 Williams versus State at 93 Nevada 805, it's 1987 case I cited it
7 in the jury instructions. Crime of robbery is not in any degree
8 dependent on the amount or value of property taken, the crime of
9 robbery is committed even though the property is taken of slight
10 value.

11 So the State needs that as we have to establish some
12 value, so that was the relevance of the training receipt.

13 THE COURT: Do you understand how the word training
14 receipt as no common knowledge. In other words, if I sitting
15 here, the word training receipt doesn't mean anything to me. And
16 you have failed to connect the property that was taken to the
17 Xerox copy of a training receipt. You have not connected that.

18 MR. BOGALE: During the examination Mr. Monroy, Your
19 Honor, before we took a break Mr. Monroy, I believe testified
20 that once the items were in his possession he took them to his
21 office, and he called her his supervisor, but he said his
22 supervisor took the items to customer service to get a training
23 receipt to establish the value of them. That was his testimony.

24 THE COURT: I didn't hear that testimony.

1 MR. BOGALE: That's what he testified to.

2 THE COURT: Did you check that?

3 MR. BOGALE: Yes, Your Honor.

4 THE COURT: Okay.

5 MR. BOGALE: And so --

6 THE COURT: And it's Anna, the supervisor?

7 MR. BOGALE: She's not, she is his colleague, but I
8 think he referred to her as his supervisor.

9 THE COURT: So who is Anna, that he just said did it?

10 MR. BOGALE: His colleague, his asset protection
11 associate colleague.

12 THE COURT: Okay. Since I did not hear it we're going
13 to have to start over. Okay. And we're going to have to connect
14 all the dots to it.

15 MR. BOGALE: No problem, Your Honor.

16 THE COURT: Now Mr. Schachter.

17 MR. SCHACHTER: Again, Anna, who is on the witness
18 list, doesn't appear to be here. So I have a foundation argument
19 that Anna, like the video, she's not here to testify what exactly
20 she did and admitted the training receipt of or how she got
21 possession of the property from Mr. Monroy.

22 THE COURT: Okay.

23 MR. BOGALE: Authentication, Your Honor, requires a
24 person with knowledge. That's what the NRS states that to say it

1 is, what the proponent claims it is.

2 Now if he identifies this as a training receipt, he has
3 knowledge of it being a training receipt.

4 THE COURT: But it's only relevant if this is a copy of
5 the receipt that was made from the property that he recovered.
6 So that's the only way it's relevant, right?

7 MR. BOGALE: Yes, Your Honor.

8 THE COURT: So the objection that there is, he can't
9 testify that this in fact is the receipt that was created from
10 the property. That's the objection, that he is he testifying to
11 what someone else did.

12 MR. BOGALE: I understand the objection, Your Honor,
13 the State's offer of proof in response to that is that in
14 conducting the investigation, Mr. Monroy directed his colleague
15 to go get a training receipt, because a training receipt is
16 commonly created.

17 THE COURT: I'm going to sustain the objection. I want
18 the witness here. I don't see why you should be able to, if he
19 didn't see them doing it, and if he didn't see the property being
20 scanned or whatever, why not bring the witness. They're on the
21 witness list. I don't know see why we shouldn't. So I'm going
22 to go ahead and sustain his objection to the foundation.

23 But you can put on what he did with it. You know, we
24 can get to the point of getting this, but I'm not going to admit

1 it and I'm not going to let you talk about it until it's
2 admitted.

3 MR. BOGALE: Okay. That's fine.

4 THE COURT: All right. Now. Anything else? Any other
5 exhibit issues.

6 Did we get 16 working?

7 MR. BOGALE: 16 is working now Your Honor, yes.

8 THE COURT: Yes. Did you want to confer with
9 Mr. Hylin?

10 MR. SCHACHTER: Yes, if I could.

11 THE COURT: Go ahead.

12 MR. SCHACHTER: We were just talking about admonishing
13 the jury to disregard all the previous testimony about the
14 training receipt.

15 THE COURT: You mean about the contents of training
16 receipt. Okay. I'm just going to tell the jury to start over,
17 because it seems to be confusing to me, and I'll tell them it was
18 confusing to me, because I didn't hear apparently what was said.
19 So we'll bring the jury in.

20 (Jury entering the courtroom.)

21 THE COURT: Counsel, stipulates to the presence of the
22 jury?

23 MR. BOGALE: Yes, Your Honor.

24 THE COURT: Mr. Schachter?

1 MR. SCHACHTER: Yes, Your Honor.

2 THE COURT: Please be seated.

3 THE CLERK: Exhibit 17 was marked during the recess.

4 THE COURT: Ladies and gentlemen of the jury we're
5 going to start over. There was some confusion about what was
6 being offered or not offered. So we're going to start all over
7 with Exhibit 8. And I ask at this time if you just disregard
8 anything you heard and we'll start over.

9 55 Your Honor, at what point in my notes am I going to
10 start disregarding?

11 THE COURT: Go back to when someone said, look at
12 Exhibit 8. Draw a little line in everything you put out there
13 and look at Exhibit 8. Put a little line, that's what I would do
14 on mine. Just line it out. You may hear it all over again exact
15 same I don't know, but disregard the other stuff you heard and
16 we're going to start fresh.

17 BY MR. BOGALE:

18 Q Okay. Mr. Monroy let's starts fresh okay?

19 A Okay.

20 Q Once the defendant is subdued and the police arrive,
21 what do you do with the backpack and the items inside the
22 backpack?

23 A I take them back to the security office.

24 Q What do you do next?

1 A I pull them out to make sure that everything is in
2 there and then I have my colleague Anna, take it to a customer
3 service manager to obtain a training receipt.

4 Q Now did you check all the pockets in the backpack?

5 A Yes.

6 Q Did you find anything in there?

7 A No.

8 Q Did you find like a driver's license in there?

9 A No.

10 Q Did you find any credit cards in there?

11 A No.

12 Q All you found were the items, the four items that you
13 talked about earlier?

14 A Correct.

15 Q Were there any tags on the backpack?

16 A Yes, there was.

17 Q Where were the tax?

18 A The tag is on the inside the backpack.

19 Q Is that a tag that's usually on a new item?

20 A It is on a lot of the newer items yes, in case the
21 outside tag is taken off, it falls off, woke still scan the item
22 without having to go search for a like item.

23 Q What condition was the backpack in?

24 A New.

1 Q Did you take a photo of the items?

2 A Yes, I did.

3 MR. BOGALE: Your Honor, may I approach the witness?

4 THE COURT: With what exhibit.

5 MR. BOGALE: Exhibit No. 17.

6 THE COURT: All right.

7 BY MR. BOGALE:

8 Q Mr. Monroy, I'm gob to show you what is he been marked
9 as Exhibit No. 17. Will you take a look at that, please?

10 A Yes.

11 Q Have you had a chance to look at that?

12 A Yes, I have.

13 Q What is that?

14 A That is a picture of the items taken along with the
15 training receipt.

16 Q And did you take that photograph?

17 A Yes, I did.

18 Q And why did you take that photograph?

19 A We take it as proof of evidence.

20 Q For Walmart's internal investigation?

21 A Correct.

22 Q Your Honor, the State moves to admit Exhibit 17.

23 MR. SCHACHTER: I still object on the grounds that
24 we've already discussed, Your Honor.

1 THE COURT: Objection overruled. Exhibit 17 is
2 admitted.

3 (Exhibit 17 was admitted into evidence.)

4 BY MR. BOGALE:

5 Q May I retrieve it, Your Honor?

6 THE COURT: Yes.

7 MR. BOGALE: May I publish this, Your Honor?

8 THE WITNESS: You.

9 THE COURT: You may.

10 BY MR. BOGALE:

11 Q Showing you what's been marked and admitted as
12 Exhibit 17, sir, you took this photograph?

13 A Yes, I did.

14 Q And is there a date stamp on there?

15 A Yes, there is.

16 Q What is the date say?

17 A June 8th the 2014.

18 Q Okay. And could you just point out to the jury, what
19 is in this photograph.

20 A Have to point it out.

21 Q Sure if you don't mind?

22 A We have here the heating pad that was selected the icy,
23 hot electric pads, the hair dye and the backpack.

24 Q Okay. And there is also a piece of paper on, what is

1 that a bench?

2 A Yes.

3 Q What is 2456-piece of paper?

4 A That piece of paper is it the training receipt.

5 Q Now could you just please explain to the jury what a
6 training receipt is?

7 THE COURT: You can sit back down.

8 THE WITNESS: After training receipt is a receipt that
9 we request from our consider as I was manager to get a value for
10 the items that were taken that wouldn't put a till over or short,
11 because it's not a real transaction.

12 BY MR. BOGALE:

13 Q Have you ever created one?

14 A Myself?

15 Q Yes.

16 A No.

17 Q Okay. Are they commonly used by you in your
18 investigations?

19 A Yes.

20 Q And that's to a show that the value of the items that
21 were taken?

22 A Correct.

23 Q Okay. And before I take this exhibit down, does this
24 photograph accurately depict what you saw that day?

1 A Yes.

2 Q Okay. What happened to those items?

3 A Those items were taken back to customer service to be
4 restocked for sale.

5 Q Restocked or sale?

6 A Yes.

7 Q What does that mean?

8 A Basically we just put them back on the shelf so a
9 customer can buy them.

10 Q Do you do that with -- do you only do that with new
11 items?

12 A We do that with all the items that around destroyed in
13 some way.

14 Q And these items weren't destroyed in any way?

15 A No, they were not.

16 Q They were placed back on the shelf for sale?

17 A Yes, they were.

18 Q Now previously I had attempted to play a video for you.
19 I believe we fixed those technical problems. So I'm going to go
20 ahead and show you what's been marked and admitted as Exhibit 16.
21 Okay. And I'll just play the feels for you and you tell me what
22 the files are showing.

23 A Okay.

24 Q I'm going to show you start with file RX space space

1 OTC okay.

2 A Okay.

3 Q And as the video place just tell me what you see.

4 A That is our over-the-counter section. Have
5 Mr. Schachter up in the upper right coming into the center of the
6 screen now in the back.

7 Q So that's him at the stop of the screen there?

8 A Correct.

9 Q And that him coming down the aisle right now?

10 A Yes, it is.

11 Q And where are you while all of this is happening?

12 A I am, want me to stand up.

13 Q Sure.

14 THE WITNESS: If I have me this is actually backwards
15 from the diagram. I am r will you down in this area in and I'll
16 across the way looking in.

17 BY MR. BOGALE:

18 Q You can sit back DNA. And about how far away way are
19 you from him?

20 A 30 feet.

21 Q But you're visually seeing him with your own eyes?

22 A Yes.

23 Q Okay.

24 A There Mr. Schachter selects Icy Hot electric relief

1 pad.

2 Q Okay. And just for the record that's at about one
3 minute into this file of the did he just selected another item
4 what is that?

5 A Looks to be the same item.

6 MR. SCHACHTER: Objection, Your Honor. Can we let the
7 video just speak for itself?

8 THE COURT: Leading. Sustained.

9 BY MR. BOGALE:

10 Q Now is this of video and fair and accurate portrayal of
11 what you personally observed?

12 A Yes, it is.

13 Q Okay. And there's a time on there. What is
14 approximately the time on this?

15 A 1132:00 a.m.

16 Q And is that time correspond to the time you personally
17 observed him?

18 A Yes, it does.

19 Q Okay. I'm going to pause it right there. At 1144 and
20 5 seconds. What did Mr. Schachter just grab?

21 A He grabbed one of the Icy Hot elective relief pads
22 again.

23 Q Okay. Just going to pause it at 1134 and 34. What's
24 in his cart at this time?

1 A The backpack he selected in automotive.

2 Q Okay. Now has Mr. Schachter exited the picture?

3 A Right behind the educational background cap.

4 Q Did he have something on him?

5 A Yes, he selected the icy hot electric relief pads.

6 Q And a what did he do?

7 A Placed them in the cart.

8 Q Okay. Okay. I'm going to show you now file RX space
9 POS?

10 Now walk us through this video. What dozens did show?

11 A This is showing our profile of our pharmacy department
12 are and Mr. Schachter in the upper right corner is looking at
13 heating pads.

14 Q I'm going to pause it it's not a great video, but can
15 you point to the jury where Mr. Schachter is in the video?

16 A Yes. There's Mr. Schachter's head right there.

17 Q Now we just watched a video. Is this another video of
18 him in this the same aisle?

19 A This is actually a different aisle.

20 Q Where were you approximately?

21 A Again, same general area. Now the diagram is turned
22 sideways. And I am over in this corner looking at him this way.

23 Q Okay. You can sit down. And approximately how far
24 away from him?

1 A About 30 feet.

2 Q Now, just in terms of sequence, was this before or
3 after he select icy hat pads that we see in the previous file?

4 A This is before.

5 Q Okay. So he does what he does in the file we just saw
6 and then after that?

7 A Goes directly to the electric icy hot pads.

8 Q Now I'm going to show you file called parking lot space
9 M. And first tell me does this have a date on it?

10 A Yes, it does.

11 Q What's that date?

12 A June 9th, 2014.

13 Q Does it have a time on it?

14 A Yes, it does.

15 Q What's the time?

16 A 1149 am.

17 Q Okay. And where is this camera?

18 A This is in the parking lot on one of the light poles
19 facing towards the garden center exit.

20 Q So in terms of just to situate ourselves, where is
21 Seventh Street?

22 A Seventh Street is to the right.

23 Q Now what's happening towards the top of this video?

24 A That is when I came out to confront Mr. Schachter.

1 Q Okay. I see three people there?

2 A Yes.

3 Q Who is the thirds person?

4 A That's myself, Mr. Schachter and my associate Anna.

5 Q And I know there's no audio and I know you testified a
6 little bit previously. Just briefly describe what's happening.

7 A Basically I'm attempting to get Mr. Schachter to comply
8 and return with me to the security office and talks about the
9 items that he's taken that he's not paid for.

10 Q If you could, again stand up and point at on the screen
11 who in represent himself Mr. Schachter who you are and where the
12 associate is. Try to keep them all until order.

13 A This is Mr. Schachter, this is myself, and this is
14 Anna.

15 Q So from left to right on the screen it does, the
16 defendant, you and then your colleague?

17 A Correct.

18 Q Now what's going on right there?

19 A Mr. Schachter is attempting to run past me and push me
20 out of the way.

21 MR. SCHACHTER: Objection.

22 THE COURT: Sustained as to what the intent of the
23 person was.

24 BY MR. BOGALE:

1 Q I asked what he was doing.

2 THE COURT: And he said Mr. Schachter -- counsel, I'm
3 sustaining the objection.

4 MR. BOGALE: Okay. That's fine.

5 BY MR. BOGALE:

6 Q Now you kind of lose yourself there, but which way do
7 you guys appear to be moving?

8 A We are moving north towards Seventh Street.

9 Q And can you to the best of your knowledge, again stand
10 up and point again where you and Mr. Schachter are?

11 A That's Mr. Schachter that's myself and my colleague.

12 Q Okay. And just for the record that's at or what time
13 is that at on the time stamp?

14 A It is 1151 am.

15 Q Could you see the backpack in this video?

16 A Yes.

17 Q What happened to the backpack?

18 A The backpack transferred from Mr. Schachter's
19 possession to mine.

20 Q And did that just happen?

21 A Yeah, maybe just a little just a few second before
22 that.

23 Q I'm going to rewind just a little, so you can point
24 out. So much show holding the backpack now?

1 A I am.

2 Q Okay. And that's at about what time?

3 A 1151 am.

4 Q Is Mr. Schachter still pushing being you?

5 A Yes, he is.

6 Q Now you testified earlier that Mr. Schachter pushed you
7 in the chest?

8 A Yes.

9 Q Did you did he physically touch you in any way?

10 A Yes, he did.

11 Q What else did he do?

12 A He grabbed my throat at one point, grabbed my thumb
13 attempting to pull it back, I don't know with what intention, but
14 pulling it back.

15 Q I'm now going to show you it's roof top cam. And is
16 there a date and this as well?

17 A Yes, there is.

18 Q What's the date?

19 A June 9th, 2013.

20 Q Is there a time on this too?

21 A Yes, there is.

22 Q What's the time?

23 A 11:50 a.m..

24 Q Okay. Just for a moment again show the jury who is who

1 here.

2 A Absolutely.

3 Q Where is the defendant where are you?

4 A This is Mr. Schachter, and this is me.

5 Q Okay. And is there a street in this video?

6 A Yes, there is.

7 Q And what street is it when where is it on the video?

8 A It's at the top of the screen right here and that is
9 Seventh Street.

10 Q Okay. So what are you trying to do at this point?

11 A I'm attempting to keep Mr. Schachter on the property.

12 Q This might sound like a stupid question, but why are
13 you trying to keep him on the property?

14 A I'm attempting to keep him there to take him to the
15 security office and have the police come.

16 Q Can you see you or the defendant right now?

17 A Hidden behind this tree.

18 Q Okay. And I know there's no audio on this video, do
19 you recall if the defendant was saying anything to you if you
20 were saying anything to him at this point?

21 A I don't remember.

22 Q So you guys don't seem to be moving at all. Now, just
23 where are you and where's the defendant?

24 A I believe that is me and the defendant right here.

1 Q Okay. And why are you just standing right there?

2 A At this point Mr. Schachter stopped pushing me.

3 Q Okay. Okay. So something happened there what was
4 that?

5 A Mr. Schachter ran and I attempted to keep myself in
6 front him.

7 Q What time was that at about?

8 A 11:55 a.m.

9 Q Did he physically engage you again?

10 A Yes, he did.

11 Q What's happening now?

12 MR. SCHACHTER: Objection, Your Honor. The video
13 speaks for itself.

14 MR. BOGALE: The video --

15 THE COURT: Counsel, I can't see the video, so I'm not
16 sure what you wanted the witness to talk about. Did you want the
17 witness to explain something?

18 BY MR. BOGALE:

19 Q Yes. The video is not great it's not high definition
20 or zoomed in. I just wanted Mr. Monroy to explain to the jury
21 what exactly what is happens, because he's present.

22 THE COURT: The video would speak for itself. If you
23 want to stop it at some point and ask a question, you may do so,
24 otherwise just go ahead and play it.

1 MR. BOGALE: Okay.

2 BY MR. BOGALE:

3 Q I have a question, Mr. Monroy, what just happened after
4 the defendant left the grassy area?

5 A He attempted to run by, so I attempted to stay in front
6 of him again.

7 MR. SCHACHTER: Again, objection.

8 THE COURT: It's sustained to the characterization of
9 what the defendant attempted to do. He can say what he did in
10 relation to the defendant.

11 BY MR. BOGALE:

12 Q Just tell me what you did in relation to the defendant.

13 A I ran alongside him.

14 Q What was your intend?

15 A Keeping him on the property.

16 Q What's the time right now, I just paused it?

17 A 11:56 a.m..

18 Q And the seconds?

19 A 47.

20 Q Describe for the jury what just happened there on the
21 screen?

22 A The police arrived.

23 Q Did you call the police?

24 A I attempted to, I was not able to.

1 Q Why is that?

2 A My phone was knocked out of my hand.

3 Q Who knocked your phone out of your hand?

4 A Mr. Schachter.

5 Q Mr. Monroy did you give the police a written statement?

6 A Yes, I did.

7 Q If I showed you that statement, would it refresh your
8 recollection your as to whether you called the police?

9 A Yes, it would.

10 MR. BOGALE: Your Honor.

11 THE COURT: Do you have that marked.

12 MR. BOGALE: No, I do not. I can.

13 THE CLERK: Exhibit 18 marked.

14 (Exhibit 18 was marked for identification.)

15 MR. BOGALE: Your Honor, may I approach the witness?

16 THE COURT: You may.

17 BY MR. BOGALE:

18 Q Mr. Monroy, I'm going to show you what's been MARKED as
19 Exhibit 18. If you could just read to yourself, not out loud,
20 the last few lines there.

21 A Okay.

22 Q Of a chance to review that?

23 A Yes, I did.

24 Q After reviewing that do you know who called the police?

1 A Yes, I do. It was my colleague Anna Young.

2 Q Was she depicted on this video?

3 A Yes, she was.

4 Q Take that back. Okay. Did you suffer any injuries
5 from this altercation, Mr. Monroy?

6 A Other than a sore thumb, no.

7 Q Did this incident add vertically impact your employment
8 at Walmart?

9 A No it did not.

10 Q Still employed there?

11 A Yes, I am.

12 Q Do most subjects that you're surveying behave this way
13 as we've seen on the video when confronted by you?

14 A No, they do not.

15 Q What do most do?

16 A They most comply and follow me back to the security
17 office.

18 Q Do most people fight?

19 A No.

20 MR. BOGALE: Court's indulgence for one moment.

21 THE COURT: Go ahead.

22 MR. BOGALE: No further questions at this time, Your
23 Honor. Thank you.

24 THE COURT: Cross-examination.

1 MR. SCHACHTER: Your Honor, am I going to be allowed to
2 stand or do you want me to do it from the desk?

3 THE COURT: You can stand in you'd like. Do you want
4 the podium?

5 MR. SCHACHTER: No. No.

6 Can we give the witness --

7 THE COURT: Mr. Hylin will retrieve anything you need
8 to retrieve. Number 18, the statement that was just admitted.

9 Do you want to look at that?

10 MR. SCHACHTER: I want to give it to the witness.

11 THE COURT: Mr. Hylin, will you assist with that?

12 MR. HYLIN: Sure.

13 May I approach?

14 THE COURT: Yes.

15 CROSS-EXAMINATION

16 BY MR. SCHACHTER:

17 Q Mr. Monroy, that's the statement you gave to the
18 police?

19 A Yes, it is.

20 Q And you personally typed this?

21 A Yes, I did.

22 THE COURT: And I just want to remind you, sir, that it
23 has not been admitted into evidence.

24 MR. SCHACHTER: Oh, I don't have any objection to it.

1 THE COURT: Did you want to offer it?

2 MR. SCHACHTER: Yes, please.

3 THE COURT: Any objection?

4 MR. BOGALE: No objection, Your Honor.

5 THE COURT: Exhibit 18 is admitted.

6 (Exhibit 18 was admitted into evidence.)

7 BY MR. SCHACHTER:

8 Q And so at the top it says involvement, do you see that?

9 A Yes.

10 Q And you marked complainant?

11 A Correct.

12 Q What does that mean?

13 A I am filing a complaint.

14 Q Okay. You filed it. So you weren't the victim and you
15 weren't the witness, the two boxes below it are victim and
16 witness, correct?

17 A Correct.

18 Q And you didn't mark either of those boxes?

19 A Correct.

20 Q So you didn't consider yourself a victim or a witness
21 just the complainant, correct?

22 A Yes.

23 Q Would you read, would you read the statements it's
24 short. Would you read it for the jury, the whole statement.

1 A Absolutely. On June 9, on 9 June 2014 at approximately
2 1140 hours while working asset protection --

3 THE COURT: You better slow up, the Court reporter is
4 having a hard time.

5 THE WITNESS: Okay. Sorry. On nine, June, 2014 at
6 approximately 1140 hours, while working as asset protection for
7 Walmart store number 3254, I, associate, asset protection
8 associate A P.A. Alex Monroy observed a male later identified as
9 Marc Schachter in the automotive department looking around
10 nervously. I then observed Schachter collecting a backpack and
11 placing it in his cart. Schachter then proceeded to the health
12 and beauty department where he selected a heating pad, icy hot
13 pads and a package of hair dye, then went to the seasonal
14 department where he concealed all of the merchandise in the
15 backpack.

16 Schachter then passed all points of sale and exited
17 through the garden center doors. At approximately 1149 hours I
18 stopped Schachter along with APA Anna Young as my witness. I
19 introduced myself as Walmart asset protection and Schachter
20 proceeded to aggressively push, shove and elbow me in an attempt
21 to get past me. APA Anna Young called the Reno Police
22 Department.

23 At approximately 1200 hours Officer Daniels, badge
24 No. 9464 arrived. Once inside the asset protection office the

1 merchandise was recovered and take to customer service by APA
2 Anna Young to obtain a training receipt.

3 The value of the merchandise was totaled at 99.61.

4 Dated June 9th, 2014, at 1232 hours, number of pages one signed
5 by me.

6 BY MR. SCHACHTER:

7 Q Let's start again. The first statement, on June 9,
8 2014, at approximately 1140 hours.

9 A Yes.

10 Q How did you arrive at that time in your statement?

11 A It was an approximate.

12 Q Were you watching the video where looking at your
13 watch?

14 A It was an approximate time remembering when the last
15 time I looked at my watch was and approximately how much time had
16 passed.

17 Q Do you remember watching the video of me labeled RXOTC?

18 A Yes.

19 Q Do you remember what the time was?

20 A 1130.

21 Q So that's different from the 1140 that you began
22 surveillance, according to your statement, correct?

23 A Correct.

24 MR. SCHACHTER: Can we play the video versus 1 A A.

1 THE COURT: Is that -- you're playing the exhibit.

2 MR. BOGALE: 16.

3 THE COURT: 16.

4 MR. SCHACHTER: Thank you, Your Honor.

5 AAGM on the front.

6 BY MR. SCHACHTER:

7 Q Could you describe where that is in the store?

8 A That is in front of the pharmacy.

9 Q And the time?

10 A 11:28 a.m..

11 Q And can you show the jury where I am?

12 A Yes. Right there.

13 Q Yeah, if you will stop it. You can let it go.

14 THE COURT: He said you could continue.

15 BY MR. SCHACHTER:

16 Q And did I have anything in the cart, do you remember?

17 A Right there?

18 Q Yes.

19 A Uh-huh. Yeah.

20 Q What was in the cart?

21 A Backpack.

22 Q At 1128?

23 A Yes.

24 Q But on your statement -- you can go ahead and start it

1 up again. On your statement again you say that that you began
2 around 1140?

3 A Approximately.

4 Q And sometime after that you watched, you observed me
5 select the backpack from the shelf, right?

6 A Yes.

7 Q But this is 1128?

8 A Yes, it is.

9 Q POS in the garden center. PC, portable POS. And just
10 pause it. Can you explain what that video is?

11 A This is the camera that is above the cash register in
12 the garden center.

13 Q And what is happening?

14 A You're paying for some items.

15 Q And the POS portable stands for?

16 A It's portable.

17 Q But what is the POS?

18 A Point of sale.

19 Q So when you say in your statement that Schachter then
20 passed all points of sale and exited to the garden center?

21 A Yes.

22 Q Did I pass that point of sale?

23 A Yes.

24 Q Did I stop?

1 A Not yet.

2 Q Did I stop. Okay. In reference to your statement --

3 A Yes, you did pass the last point of sale.

4 Q Okay. So you're connotation in the statement wasn't
5 that I passed without paying, right, just that I physically
6 passed that point of sale; is that correct?

7 A I'm sorry?

8 Q When you say in your statement that Schachter then
9 passed all points of sale and exited through the garden center --

10 A Yes.

11 Q -- are you saying that I passed, I literally walked
12 past it or I walked past without paying, I didn't stop, I don't
13 understand?

14 A I'm saying that you passed all points of sale with the
15 merchandise in the backpack and the backpack without paying for
16 it, yes.

17 Q Okay. When you first saw me was it in the automotive
18 or was it is in pharmacy?

19 A It was in front of pharmacy going towards the garden
20 center, TLE area.

21 Q And did I already have the backpack there or not?

22 A No.

23 Q Was there any video available of that, in other words,
24 we just saw video of me coming back?

1 A Yes.

2 Q Was there any video of me going the other way, you
3 originally testified that you saw me in front of pharmacy and
4 then walk toward automotive, correct?

5 A Correct.

6 Q So that video, and at that time I didn't have the
7 backpack correct?

8 A Correct.

9 Q Okay. So did you collect video of that?

10 A Is no.

11 Q Why?

12 A I did not collect the video.

13 Q You did not collect any of this video?

14 A No.

15 Q Did you -- is that normal procedure?

16 A What do you mean.

17 Q As an asset protection officer that is involved in
18 criminal cases, and you're the one testifying to these
19 allegations, is that normal procedure for asset protection
20 officer not to have collect the video of the crime that you're
21 alleging?

22 A No, I do not always collect video.

23 Q Did somebody else collect video?

24 A I'm assuming, yes.

1 Q And who was that?

2 A I'm assuming APA Anna young.

3 Q You're assuming?

4 A I was not there.

5 Q But you were there on June 9th all this of happened the
6 since dent?

7 A Yes, I was.

8 Q Okay. To your knowledge is there any video available
9 for the jury to see that shows me without the backpack?

10 A Not that I'm aware of.

11 Q How about video of me walking in the store?

12 A Not that I'm aware of.

13 Q Is that normal? When a person denies stealing
14 something and they say that they came into the store with it, is
15 it normal asset protection or Walmart policy not to pull the
16 video of the person walking in the store?

17 MR. BOGALE: Objection, Your Honor assumes facts not in
18 evidence.

19 THE COURT: The statements about whatever you may or
20 may not being alleging is sustained, the normal. The question
21 with regard to selecting video when the person walks into the
22 store, that can stand, if that was normal procedure.

23 THE WITNESS: I could not say.

24 BY MR. SCHACHTER:

1 Q Why could you not say?

2 A It's very rare instances where we have to collect
3 video.

4 Q How many cameras are in this particular Walmart?

5 A Approximately 220.

6 Q And what percentage of the store is covered in that 220
7 cameras?

8 A I could not say.

9 Q What is the purpose of the surveillance cameras?

10 A The main purpose is for safety issues and any time we
11 might need any evidence of anything, safety, a trip a fall,
12 customer safety.

13 Q But not toward theft or --

14 A That is not their primary use, no.

15 Q But all the normal exits and entrances are videotaped,
16 correct?

17 A Yes, they are.

18 Q Other than these videos that are on this disk that you
19 burned, were there any other video of me in the store on that
20 day?

21 A Any other video as in collected in the investigation.

22 Q Or any video, either that specifically pulled for the
23 investigation or that you saw?

24 A None that I saw and again the reason for not collecting

1 any other videos.

2 MR. SCHACHTER: I mean that's the best video you have
3 to show the crime is that what you're saying is that what you're
4 saying.

5 THE WITNESS: Yes.

6 BY MR. BOGALE:

7 Q Okay. Until your written statement again, you state
8 that at approximately 1149 I stopped Schachter along with APA
9 Anna young as my witness?

10 A Correct.

11 Q Did you think you were going to need witness?

12 A We're required to have a witness.

13 Q Always?

14 A Always.

15 Q And a witness as to what?

16 A As to what occurred and the confrontation.

17 Q And as to your knowledge did she make a statement, a
18 written statement?

19 A I am not aware.

20 Q Did the, when the police arrived and they originally
21 came and did the investigation, did they ask you for this, for a
22 written statement?

23 A Yes.

24 Q Okay. Do you know if they asked Ms. Young for a

1 statement?

2 A I do not know.

3 Q Okay. Just one moment, Your Honor.

4 Was there anything else in the basket other than the
5 backpack when you first saw me select the backpack?

6 MR. BOGALE: Your Honor, just a point of clarification,
7 does the defendant mean the cart when he says the basket?

8 MR. SCHACHTER: Yes, the shopping cart.

9 THE WITNESS: Not that I recall.

10 BY MR. SCHACHTER:

11 Q So when you first saw me select the backpack I was
12 pushing the basket, correct?

13 A Yes.

14 Q But you don't recall if there was anything else in the
15 basket; is that right?

16 A Correct.

17 Q There could have been though?

18 A I'm sure there could have.

19 Q Let's play the RXOTC again.

20 MR. SCHACHTER: Stop it right there.

21 BY MR. SCHACHTER:

22 Q So in the cart right there?

23 A There's a backpack.

24 Q And is there anything else in the cart right there?

1 A There's a heating pad.

2 Q Anything else?

3 A Nothing else I can see.

4 Q So you remember the heating pad, but you don't remember
5 whether there was anything else in the cart?

6 A No.

7 Q In the basket yourself you can see that there's
8 backpack and you can see that there's something else in the
9 basket there?

10 A Yes.

11 Q But you don't know what it is other than the backpack?

12 A I know there's backpack and the heating pad.

13 Q No, just in the basket part?

14 A Just in the basket part.

15 Q Play it a little further.

16 Okay. Stop it. Let's go to AAGM front, it's a better
17 shot. Keep it going. Yeah.

18 I'm sorry I can't get to it quite. Back it up. It's
19 rights when I come in. Right there. So you still can't see it.

20 This is before you allege that I took the heating pad,
21 correct?

22 A Correct.

23 Q Okay. So and can you see inside the basket part?

24 A Yes, I can.

1 Q What is in there?

2 A Can I get up.

3 Q I'm sorry?

4 A Can I go look?

5 THE COURT: Go ahead.

6 THE WITNESS: I really can't tell.

7 BY MR. SCHACHTER:

8 Q Okay. Now you say, back to your written statement.

9 You said that after selecting -- proceeded to health and beauty
10 at this department where he selected a heating pad, icy hot pad
11 and A package of hair dye, correct?

12 A Correct.

13 Q But you just testified that it was two of boxes of hair
14 dye.

15 A Correct?

16 Q Was this a misrepresentation are you changing your
17 testimony, which one?

18 A It's a recollection at the time.

19 Q So your recollection now is better than your
20 recollection 20 minutes after the incident?

21 A Yes.

22 Q Do you have a reason is that normal. Is that normal
23 for you to be more certain of something today than a half-hour
24 after the alleged incident or after the incident?

1 A I wouldn't say it's normal, no.

2 Q You don't have any memory issues or head injuries or
3 anything like that?

4 A Nope.

5 Q Back to your statement. You said you introduced myself
6 as a Walmart asset protection. But in your testimony today you
7 said you never got the chance, you only attempted?

8 A Well, I did finally get it out.

9 Q When was that?

10 A After you pushed me a couple times.

11 Q So you were able to identify yourself?

12 A Yes.

13 Q You didn't testify to that earlier okay. There's also
14 no mention about you calling 911; is that correct in your
15 statement?

16 A Correct, because I did not call.

17 Q You never made the call?

18 A I did not.

19 Q Do you know if I made the call?

20 A I am not aware if you made the call.

21 Q Do you know if Anna made the call?

22 A I'm aware that Anna made the call, yes.

23 Q But you don't know if she did?

24 A I do not.

1 Q Okay.

2 MR. SCHACHTER: Exhibit No. 7, the store layout.

3 THE COURT: Okay. You want to show that to the jury?

4 MR. SCHACHTER: Yes, I do.

5 THE COURT: Thank you, Mr. Bogale, for your assistance.

6 MR. BOGALE: No problem.

7 BY MR. SCHACHTER

8 Q And you testified this is an accurate rendering of the
9 store?

10 A Approximately, yes.

11 Q Approximately?

12 A It's very similar.

13 Q Okay. And would you get up and show where you say
14 seasonal was?

15 A Yes. Right in here.

16 Q And so is that outside or inside right there?

17 A That is inside.

18 Q And would you read what it says between jewelry and
19 home management on the diagram, below stationary and books?

20 A It says seasonal.

21 Q Is seasonal there or where it says outdoor living or
22 both?

23 A Seasonal is wherever they put it at the time. It can
24 be moved.

1 Q So then this is not an accurate diagram of as it was on
2 June 9th?

3 A It is not exact.

4 Q You testified earlier that you watched me open the
5 boxes; is that correct?

6 A Correct.

7 Q Can we get the photo marked as an exhibit, and show it
8 to the witness.

9 Exhibit 17, can we show it to the witness, Your Honor?

10 THE COURT: You may.

11 BY MR. SCHACHTER

12 Q And are you saying those boxes are open is that your
13 testimony?

14 A Right now they're closed.

15 Q They're closed. But you said I opened them. Is that
16 your testimony?

17 A Yes, I did.

18 Q But you also testified that you returned them to stock
19 because they were in like mint condition?

20 A Yes.

21 Q So were they open or were they in like mint condition?

22 A They why until like mint condition, you did not use
23 them.

24 Q Were you saying that they were open or not?

1 A They were opened, not used.

2 Q So they went back on the shelf as new?

3 A Correct.

4 Q And is that normal procedure?

5 A Yes, it is.

6 Q In Mr. Bogale's opening he said the backpack is flat.

7 Could you explain that?

8 A No, I could not.

9 Q So was he not telling the truth?

10 A I was not there when he said whatever it is he said.

11 Q Oh, I'm sorry. I didn't know. I forgot?

12 THE COURT: Go ahead.

13 MR. SCHACHTER: I don't know I can even can I get one
14 minute, please.

15 THE COURT: You may.

16 BY MR. SCHACHTER:

17 Q The backpack that you allege that I stole, how was that
18 displayed in the store?

19 A Laying down.

20 Q Flat?

21 A Yes.

22 Q Okay. But there's -- did you see any video or do you
23 know of any video where it is flat like that? Duped what I'm
24 saying?

1 A No I'm sorry.

2 Q The video that we've all scenes the backpack is dropped
3 out, it's open, correct?

4 A Okay.

5 Q Like it is in the picture right?

6 A Yeah.

7 Q That's not flat. That's open. So was there any video
8 where it's flat like in new condition?

9 A Not that I'm aware of.

10 Q Any video that you're aware of where the there's tags
11 on it or any other new -- any video you're aware of where the
12 backpack looks new from the shelf, flat with tags, any of that?

13 A No.

14 Q And this is how it's sold, again you testified this is
15 in like new condition, right?

16 A Yes, it is.

17 Q But like new so flat and with the original tags on it,
18 correct?

19 A No, not necessarily.

20 Q Okay. Why. Explain if you can?

21 A If I am selecting a backpack I may open it fluff it,
22 see what fits, see what doesn't, and put it back on the shelf.

23 Q Is that what you're saying occurred here today on the
24 9th?

1 A I haven't said.

2 Q Was the backpack that I selected was it flat or was it
3 puffed up like that?

4 A I can't say I recall.

5 Q Was Ms. Young on the floor with you as a witness to the
6 alleged theft?

7 A You selecting?

8 Q Yes.

9 A No.

10 Q Where was she?

11 A I am not aware.

12 Q So when you say she was a witness only to the
13 confrontation outside, correct?

14 A Correct.

15 Q I think that's all Your Honor.

16 THE COURT: Redirect.

17 MR. BOGALE: Yes, Your Honor.

18 THE COURT: Okay.

19 BY MR. BOGALE:

20 Q Mr. Monroy, the statement you made in this case has
21 approximately 1140, is that correct?

22 A Yes.

23 Q When you started observing Mr. Schachter?

24 A Yes.

1 Q Okay. Are you always looking at your watch on the
2 floor?

3 A No.

4 Q Always looking at your cell phone?

5 A No.

6 Q Do you know exactly what time it is all the time?

7 A I do not.

8 Q Is that why you wrote the word approximately in your
9 statement?

10 A Yes, it is.

11 Q Now, about the video, or the absence of video. Did the
12 defendant ever ask you for video showing him without the bag in
13 the store?

14 A Yes.

15 Q When did he ask you for that?

16 A Approximately August 15th.

17 Q Okay.

18 MR. SCHACHTER: Objection, Your Honor.

19 MR. BOGALE: Basis.

20 MR. SCHACHTER: I never asked.

21 THE WITNESS: His investigator asked in his Stead.

22 THE COURT: Okay.

23 BY MR. BOGALE:

24 Q And what date was that again?

1 A Around August 15th.

2 Q And were you able to provide him with that video?

3 A I was not.

4 Q Not?

5 A The video that is actually stored in our main hard
6 drive only lasts, is there for only 60 days. And then it purges
7 from the system.

8 Q So to your knowledge was the request for video from the
9 defendant, his investigator outside of that 60 days?

10 A Yes, it was.

11 Q Do you have control over that video being erased after
12 60 days?

13 A I do not.

14 Q Is that store policy or something?

15 A That is a corporate policy.

16 Q A corporate policy. Did the defendant ever ask you for
17 video of him entering the store?

18 A The defendant personally.

19 Q The defendant or his team?

20 A Yes.

21 Q And when was that?

22 A Around August 15th.

23 Q And could you provide that to him?

24 A I coo not.

1 Q Why is that?

2 A Because the video had purged.

3 Q Now in terms of the layout that we showed you, showing
4 you what's been marked and admitted as Exhibit 7. You testify
5 it's not an exact replica of the store on Seventh Street?

6 A Correct.

7 Q Is it close enough to explain how the defendant in a
8 gated through the store?

9 A Yes, it is.

10 Q Did the automotive section on Exhibit 7 where it is in
11 the store?

12 A Yes, it is.

13 Q Is the health and duty session on Exhibit 7 where it is
14 in the store?

15 A Yes, it is.

16 Q Is the OTC section the same?

17 A Yes.

18 Q And the outdoor living is that where it is in Seventh
19 Street?

20 A Yes.

21 Q And you testified the seasonal department was in the
22 outdoor area?

23 A Correct.

24 Q Regardless of the flatness or you know, the flatness of

1 the bag was the bag new?

2 A Yes, it was.

3 Q How could you tell it was new?

4 A There was no scuffs, it didn't look like a backpack
5 that had been used.

6 Q Could you tell if it had been paid for?

7 A I could not.

8 Q Could you tell that -- well, you saw it him grab it off
9 the shelf, is that correct?

10 A Yes.

11 Q This might sound stupid, but are items on your shelves
12 things that people have already paid for?

13 A No.

14 Q Those are unpaid items?

15 A Correct.

16 Q Now just explain to the jury very briefly about the
17 discrepancy about difference in amounts of hair dye from one to
18 your statement to two?

19 A Basically in my statement I focus on items that were
20 actually stolen or attempted to be stolen, not on items that were
21 paid for.

22 MR. BOGALE: No further questions, Your Honor. Thank
23 you.

24 THE COURT: Okay. Thank you. Anything further?

1 MR. SCHACHTER: Just a couple.

2 BY MR. SCHACHTER

3 Q If you at the same time you said at approximately 1149.
4 Further down?

5 A Yes.

6 Q So that was a guess that's a pretty 1149 is a pretty
7 succinct time?

8 A Yes.

9 Q Was it an approximation how? Did you come out at 1149
10 on your statement? You said you weren't looking at a watch. You
11 weren't looking at your telephone for the 1140.

12 A Yes.

13 Q But how do you come about 1149 time?

14 A Because then I did look.

15 Q In terms of the video, just in terms of common sense,
16 if somebody alleges that he didn't steal something, you would not
17 normally pull video of the person walking in?

18 A No.

19 Q Okay. That's all.

20 THE COURT: Okay.

21 May this witness be excused?

22 MR. BOGALE: Yes, Your Honor he may.

23 MR. SCHACHTER: Pending recall.

24 THE COURT: You are excused. You may step down, but

1 you have to stay in touch.

2 THE WITNESS: All right.

3 THE COURT: Yes would you crop it off here as you walk
4 by that would be helpful. Thank you.

5 You may call your next witness.

6 MR. BOGALE: State calls Matthew Hand, Your Honor.

7 THE BAILIFF: Go ahead and stand right here. Face the
8 clerk.

9 Witness sworn.

10 THE COURT: Thank you. Please be seated at the witness
11 stand.

12 You may proceed.

13 MR. BOGALE: Thank you, Your Honor.

14 BY MR. BOGALE:

15 Q Good afternoon.

16 A Hi.

17 Q Can you please state your name and spell your last name
18 for the Court reporter.

19 A Matthew Hand, H-A-N-D.

20 Q Mr. Hand, where are you employed?

21 A I'm at the smart styles in the Walmart.

22 Q And which Walmart is that?

23 A The Mae Anne and Seventh Street wheel.

24 Q Is that store number 3254?

1 A 3356 I believe.

2 Q Is that here in Washoe County?

3 A Um-hum.

4 Q And what's the, you said smart styles, what is that?

5 A It's a hair salon in the Walmart.

6 Q Okay. And what do you do there?

7 A I am a stylist.

8 Q How long have you worked there?

9 A About a year.

10 Q In the salon?

11 A Um-hum.

12 Q Let me direct your attention to June 9th, 2014,
13 approximately around 11:45 or so. Were you working at Walmart
14 that day?

15 A Yeah.

16 Q Okay. What was your shift?

17 A I believe I was in 10 to 5.

18 Q Okay. And at some point did you leave and come back to
19 work or did you stay at work the whole day?

20 A I was at work all day.

21 Q Okay. Do you recall seeing an altercation out in the
22 parking lot?

23 A Yes.

24 Q When did you see that?

1 A On my way to work.

2 Q Okay. So were you driving into the parking lot?

3 A Yes.

4 Q What kind of car do you drive?

5 A At the time I drove an 8000 black Lincoln LS.

6 Q Is that a sedan?

7 A Yes.

8 Q Two doors four doors?

9 A Four door.

10 Q And what did you see when you drove into the parking
11 lot?

12 A When I first pulled in I just saw two men alter
13 indicating. And then when I looked around I had recognized one
14 of them.

15 Q How did you recognize one of them to be Alex?

16 A The security guard from Walmart.

17 Q Is that Alex Monroy?

18 A Yes.

19 Q And by security guard you mean asset protection?

20 A Loss prevention.

21 Q Loss prevention and he was in like a physical
22 confrontation?

23 A They were like bumping shoulders, so a little bit I
24 would suppose.

1 Q And was he bumping shoulders with of another man?

2 A Um-hum.

3 Q Do you see that man here in the courtroom today?

4 A Yes.

5 Q Could you for the jury just point at him and describe
6 an article of clothing he's wearing?

7 A Blue jacket.

8 Q Your Honor, may the record reflect identification of
9 the defendant by this witness?

10 THE COURT: The record will so reflect.

11 MR. BOGALE: Thank you.

12 BY MR. BOGALE:

13 Q Now, when you saw the altercation what did you do until
14 your car?

15 A I looped around, and I pulled back up to the front to
16 another lane and asked Alex if anyone had called the police.

17 Q So you were still in your car?

18 A Yes.

19 Q You had your car window down?

20 A Yeah.

21 Q And you had asked Alex if anyone called the police?

22 A Yes.

23 Q What did he say?

24 A He said, no and he asked me to and that's was when I

1 did.

2 Q And did you call the police?

3 A Um-hum.

4 Q I'm going to show you what's been marked and admitted
5 as Exhibit 16 in this case. Okay?

6 A Okay.

7 Q Showing you file oh, sorry. I'm showing a file on
8 Exhibit 16 that's entitled parking lot cam. Do you recognize
9 what's depicted in this video?

10 A Yeah.

11 Q What is it?

12 A This would be the Walmart parking lot.

13 Q Okay. And which wall March is this?

14 A This is the Walmart that I work apartment the Seventh
15 Street.

16 Q Okay. I'm going to pause the video right here. At --
17 well, is there a date on this video?

18 A 6-9-2014.

19 Q Okay. And is there a time as well?

20 A 1150.

21 Q And how many seconds?

22 A 14 seconds.

23 Q Okay. And do you see you're car in this video?

24 A Yeah.

1 Q Where, if you could just stand up please and point to
2 the jury right there the black car?

3 A Yes.

4 Q Okay. So that's you in the car?

5 A Yes.

6 Q And what's going through your head right now?

7 A I believe that that was when I asked him if anyone had
8 called the police.

9 Q Okay.

10 MR. SCHACHTER: Objection, Your Honor. Hearsay what
11 Monroy may or may not have said.

12 THE COURT: Overruled.

13 BY MR. BOGALE:

14 Q Okay. I'm going to pause it here. Could you tell the
15 jury what time is on the video right now?

16 A 1151 and 21 seconds.

17 Q Okay. Do you see your car in this video?

18 A Yes.

19 Q Where is it?

20 A Off to the far right.

21 Q Could you please point it out for the jury.

22 Thanks. Okay. Okay. So that's your car in the top
23 right of the video.

24 A Yes.

1 Q And why did you park there?

2 A That was when I had looped around, I believe I was on
3 my phone at the time. I had already dialed and I was just
4 waiting.

5 Q You had already dialed who?

6 A The police.

7 Q Were you talking to the police?

8 A Yeah, is I was talking to the operator.

9 Q Okay. And what were you observing?

10 A I was just kind of watching to make sure everyone was
11 okay that there was know further altercation.

12 Q How was the defendant behaving while you were watching
13 from your car?

14 A Panicked.

15 Q How was Alex behaving?

16 A Kind of the same, you know, flustered.

17 Q Now based on knowing Alex working there at the store
18 and his position, what did you think was happening?

19 A I knew that at the time that he was trying to stop
20 someone, because we had seen it time and time again.

21 Q You had seen what?

22 A Him follow thieves out of the store and stomach them in
23 the same kind of way same manner.

24 Q So you've seen Alex trying to stop people in the

1 parking lot?

2 A Yes.

3 Q Or and?

4 A Not in the parking lot or in the store.

5 Q In the store?

6 A Yes.

7 Q And why did you think he was doing that in this case?

8 A I assumed it was a three of or.

9 MR. SCHACHTER: Objection, Your Honor to assuming.

10 THE COURT: Sustained.

11 BY MR. BOGALE:

12 Q What did you do next?

13 A I waited until the police came. And when they showed
14 up I went to work. I pulled away.

15 Q Did you talk to the police?

16 A No.

17 MR. BOGALE: No further questions at this time, Your
18 Honor.

19 THE COURT: Okay.

20 MR. BOGALE: Thank you, Your Honor.

21 THE COURT: Cross-examination.

22 MR. SCHACHTER: Can we get the, I forgot he said the
23 one that I marked today. The CD of the 911 calls.

24 THE COURT: Yes, sure.

1 THE CLERK: That's Exhibit 14.

2 MR. SCHACHTER: This is.

3 MR. BOGALE: Your Honor, I would object to the
4 admission of Exhibit 14 on the --

5 THE COURT: Okay. I'm going to ask that you step down
6 and come back tomorrow morning. We'll need you back tomorrow
7 morning at 9:30.

8 THE WITNESS: Okay. So you can step down and go ahead
9 and go on out.

10 Ladies and gentlemen of the jury this is a good time
11 for us to let you go home for the evening. And I'm going to have
12 you come back tomorrow morning at 9:30 we'll start hearing
13 testimony again at that time. While I can't tell you for sure
14 what's going to happen tomorrow. I don't know if he'll get the
15 case to you tomorrow afternoon. I'll have a better idea in the
16 morning. You will be to leave for lunch I'm sure tomorrow. The
17 only question is whether or not we really go quicker than we have
18 today and we would get the case to you tomorrow afternoon.

19 If that have happens, once you begin deliberating you
20 can't communicate with anyone. So what happens when you start
21 communicating -- or when you start deliberating we take your cell
22 phone, there is a phone number for you to tell your family
23 members who may need to contact you to contact you through our
24 office and the bailiff and my staff and myself are all here while

1 you're deliberating, but you won't be able to communicate.

2 So if you have some urgent thing you need to do have
3 tomorrow evening, you should tell the bailiff just so we can work
4 around your personal circumstances. However, at this rate I
5 suspect you won't be deliberating until Wednesday, but I'll have
6 a better idea tomorrow morning.

7 Now that's the best I can I have you in terms of the
8 schedule, but tomorrow we will start at 9:30 with you we'll go
9 into the lunch hour. We'll take an hour lunch somewhere around
10 the noon hour. And we'll go again until close to 5:00 o'clock if
11 you're not deliberating. If you're deliberating, we'll go later.

12 33 do we report right out here?

13 THE COURT: When you come in the morning, I'm going to
14 ask that you come directly to the jury room. Deputy Butler will
15 have the coffee made, and the door unlocked for you. So when you
16 go into the jury room, just stay there. Don't go and come into
17 the jury room. Make yourself comfortable. Bring something, a
18 book or something with you when you come, just in case we don't
19 get started with you at 9:30. I promise you we'll all be in here
20 but sometimes it takes a little bit of time before we can get you
21 into the courtroom. And if you need anything from home bring it.

22 Now remember during of this evening's recess that I'm
23 going to give you this admonition. Please remember what I told
24 you about the reason why you can't talk about this even to your

1 family members and why you can't describe testimony to people,
2 even to your closest family members. Remember what the reasoning
3 for that is. I think it always helps to follow a rule if you
4 know why the rule is there. And remember that when I say you
5 can't speak of this case I mean not only verbally, but in
6 writing, through social media or any kind of texting or Facebook
7 or anything like that.

8 In addition, when I say you cannot make any independent
9 investigation, please remember that includes looking on Google as
10 to what the crime is, as to the facts and circumstances
11 surrounding these allegations or anything like that.

12 In addition, you may not go to the Walmart store, you
13 may not go to any Walmart store and make any independent
14 investigation as to any of the circumstances surrounding it. So
15 I'm ordering you now to stay away from Walmart until the case is
16 over.

17 So during to break do not discuss the case amongst
18 yourselves or with any other person, do not form or express any
19 opinion about the outcome of this matter until it is submitted to
20 you for your decision. Do not allow anyone to speak of the case
21 to you or in any manner attempt to influence you with regard to
22 it. Should any person make such an attempt, report it to the
23 bailiff immediately. Do not make any independent investigation
24 or inquiry or go look at anything for yourself during the course

1 of this trial.

2 We will see you back tomorrow morning at 9:30. You may
3 step out. Thank you.

4 Jury excused for the evening.

5 Okay. Counsel, go ahead and have a seat for just a
6 minute. We have some proposed jury instructions from the State,
7 and it's my understanding you sent via email those instructions.
8 So the typographical errors that we found was a gender neutrality
9 issue, we've resolved. The only thing we were unable to resolve,
10 because I did not want my staff doing it, is the new instruction
11 with regard to the amended information and the striking of Count
12 II. So that and the reciting of the Information, which was I
13 think was about four in your packet.

14 MR. BOGALE: Yes, Your Honor. I think that's right.

15 THE COURT: And then we have -- I've also pulled all of
16 the burglary instructions out of the packet. And I do not have
17 any instructions from you, Mr. Schachter. Do you have anything
18 to submit yet?

19 MR. SCHACHTER: Yes, Your Honor. Based on the order
20 denying the motion, there's going to be no lost evidence
21 during --

22 THE COURT: Assumptions, is that what you're asking?

23 MR. SCHACHTER: Yes.

24 THE COURT: Right.

1 MR. HYLIN: We only have one to offer, Your Honor.

2 THE COURT: Okay.

3 MR. HYLIN: And I thought I had duplicate, but the
4 instruction with the authority cited therein, but it's for
5 Crawford versus State 121 Nevada 744, 2005.

6 MR. BOGALE: Mr. Hylin, can you give me that citation.

7 MR. HYLIN: Sure. Crawford versus State 121 Nevada
8 744, 2005. It's a section of that case that deals with negative
9 instructions.

10 THE COURT: Okay. And so I'll review this as it
11 relates and so can the State.

12 What I wanted to ask you about was how many more
13 witnesses you think you're going to have?

14 MR. BOGALE: Including Matthew Hand, Your Honor?

15 THE COURT: Yes.

16 MR. BOGALE: 1, 2, 3 --

17 THE COURT: Okay.

18 MR. BOGALE: -- more.

19 THE COURT: Three more. And Mr. Schachter are you
20 thinking that you're going to testify, have you made your mind up
21 yet?

22 MR. SCHACHTER: No, I haven't made my mind up but I do
23 have one witness, the store manager. Mr. Yoder.

24 THE COURT: Okay. And he's on the witness list,

1 correct?

2 MR. SCHACHTER: Correct, Your Honor.

3 THE COURT: And is he under subpoena?

4 MR. SCHACHTER: He is.

5 THE COURT: When was he supposed to check in.

6 MR. HYLIN: We have him on call. I was going to have
7 my investigator call and tell him when the time comes.

8 THE COURT: So you're coordinating.

9 MR. HYLIN: Yes.

10 THE COURT: Now that being said I think that this case
11 will be close to going, if not possible to go to the jury
12 tomorrow, but unless we actually are finished at a reasonable
13 time, I'd rather wait and do it on Wednesday morning. I don't
14 know how late we're allowed to stay anymore at night.

15 Do you know, Ms. Wilson, how late juries are
16 deliberating?

17 MS. WILSON: I don't know if they're staying late
18 anymore.

19 MR. HYLIN: The last two of trials I've done, we're
20 Weir out of here by five. So I'm presuming they are still the
21 same.

22 THE COURT: We can stay I think until the building
23 closes at eight, or something like that, but I don't see any
24 reason unless you all see burning need to go to the jury

1 tomorrow.

2 MR. BOGALE: The last jury trial we did about a month
3 ago with senior judge Manoukian we stayed until about
4 8:00 o'clock.

5 THE COURT: Let's see how it goes tomorrow, but we may
6 not go tomorrow afternoon. We may go on witness morning. But
7 you should be prepared to do your closing arguments just in case
8 is it goes a little quicker than we expect.

9 And Mr. Schachter if you choose to testify, you have an
10 absolute right to testify at the trial or not. If you choose not
11 to the testify the facts that you do not testify cannot be
12 mentioned or used against you in any way and you're entitled to a
13 jury instruction if you request it. But you have to request it.

14 MR. SCHACHTER: Right.

15 THE COURT: If you do testify, once you start
16 testifying you must continue testifying. You just can't give
17 your version and then refuse to answer questions for the State.
18 Do you understand all of that?

19 MR. SCHACHTER: Yes, Your Honor.

20 THE COURT: Now if you were to decide to testify you'd
21 have to coordinate with Mr. Hylin, because he'd have to help you
22 by asking whatever questions you want him to ask you. Because
23 you can't sit there and go, Mr. Schachter what is your name.

24 MR. SCHACHTER: What about the possibility of just

1 reading a statement.

2 THE COURT: Well, you have a right of allocation if you
3 are found guilty and you're sentenced. You can read a statement
4 under oath, if there's nothing in the statement that's going to
5 be objectionable. It's however you decide to do it.

6 If you to do it that way you're still subject to
7 cross-examination on any subject matter once you begin reading
8 your statement.

9 MR. SCHACHTER: But regarding the statement they
10 couldn't cross on just the statement itself, they'd be free.

11 THE COURT: Yeah, they'd be free to ask you anything
12 including about your prior. So, yes, once you start testifying
13 you can't say well, I didn't talk about that. A little different
14 rule than some other witnesses.

15 MR. HYLIN: As far as if he chooses not to testify,
16 does the Court have its own instruction?

17 THE COURT: I don't have one, but the State has the
18 stalk. I think if you'll email that to us that will make it
19 easier than me having to find it.

20 MR. BOGALE: Of course, Your Honor.

21 THE COURT: Then we will have it here and the clerk
22 will have it for you, but you have to request it.

23 MR. SCHACHTER: Okay.

24 THE COURT: Anything else?

1 Oh. The why don't we go ahead and make the record with
2 regard. Well, it's after five. So tomorrow morning we can make
3 the record on the 911 call. So I think we have asked this
4 Mr. Schachter be here at 8:30. I was thinking maybe, I want to
5 make sure that the jury gets in here by 930. I don't think if
6 there's anything else that we're going to have to deal with other
7 than the 911 call.

8 MR. SCHACHTER: It might be a little quicker if I knew
9 what witnesses he plans on calling on the witness list so I'm be
10 more prepared.

11 THE COURT: Okay. Which witnesses?

12 MR. BOGALE: Continuing with Matthew Hand and then
13 officer Terry West from RPD, and potentially Deputy Keisha Ellis
14 from the jail.

15 THE COURT: Okay. And is that it?

16 MR. BOGALE: Right now Your Honor that's it.

17 THE COURT: Okay.

18 MR. SCHACHTER: Just one more thing about discovery,
19 any new discovery I told Mr. Bogale there's an issue with
20 discovery at the jail and so.

21 THE COURT: You don't think you're getting it?

22 MR. SCHACHTER: They told me that they're only going to
23 notify cocounsel. Their word. If I get discovery.

24 THE COURT: You mean the jail will have only tell --

1 MR. SCHACHTER: They feel that they're not obligated to
2 tell me when they get certain discovery. I have the grievance,
3 if you want to look at it.

4 THE COURT: Have you disclosed anything?

5 MR. BOGALE: Just for your sake, Your Honor, we haven't
6 not disclosed anything. All of this stuff that we are
7 discovering to Mr. Schachter is being personally handed off by my
8 investigator Michelle base, so she's hand delivering all the
9 discovery to the defendant at the jail.

10 THE COURT: What do you have that you got from the jail
11 saying they weren't giving it to you?

12 MR. SCHACHTER: It's a grievance, Your Honor. Do you
13 want to see it?

14 THE COURT: Mr. Hylin -- are you still giving duplicate
15 discovery to the Public Defender's Office?

16 Mr. Hylin has your office gotten anything new?

17 MR. HYLIN: Not that I don't believe that Mr. Schachter
18 doesn't have currently.

19 THE COURT: Can you double check on that.

20 MR. HYLIN: Maybe we should compare.

21 THE COURT: That would probably be helpful.

22 MR. HYLIN: If I may approach.

23 THE COURT: Yes. I just want to make sure that he does
24 have all the discovery.

1 Can I have the clerk mark this? It says inmate
2 grievance form. And I'm not sure --

3 MR. SCHACHTER: This came about as a result of the 911
4 calls, Your Honor.

5 THE COURT: I'll go ahead and have the clerk mark this,
6 just so we have it in the record.

7 THE CLERK: Exhibit 19 marked.

8 MR. BOGALE: Your Honor, can the State inspect that
9 before it's marked.

10 THE COURT: Absolutely we're going to take a recess and
11 figure out, maybe Mr. Hylin may want to read it and figure out
12 what it is. And then we'll talk about it tomorrow morning.
13 We'll probably not be here on the record until about 8:45, but I
14 know it takes a while for Mr. Schachter to get prepared for court
15 and everything. So we're asking that he be here by 8:30.

16 Okay. And to we'll be in recess until tomorrow
17 morning.

18 MR. BOGALE: Should the State be here tomorrow at 8:45,
19 Your Honor?

20 THE COURT: Yes. Be here by 8:45.

21 Anything further?

22 MR. BOGALE: No, Your Honor.

23 THE COURT: Thank you. Court's in recess.

24 (Proceedings Continued to Tuesday, September 23, 2014)

