

IN THE SUPREME COURT OF THE STATE OF NEVADA

RYAN WILLIAMS,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Appeal from a Judgment of Conviction in Case Number CR20-0630B
The Second Judicial District Court of the State of Nevada
The Honorable Kathleen M. Drakulich, District Judge

JOINT APPENDIX VOLUME THREE

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4 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

5 IN AND FOR THE COUNTY OF WASHOE

6 HONORABLE KATHLEEN DRAKULICH, DISTRICT JUDGE

7 -o0o-

8 THE STATE OF NEVADA, Case No. CR20-0630A

9 Plaintiff,

10 vs. Dept No. 1

ADRIANNA MARIE NORMAN,

11 Defendant.

12 THE STATE OF NEVADA, /

Case No. CR20-0630B

13 Plaintiff,

14 vs. Dept No. 1

RYAN WILLIAMS,

15 Defendant.

16 /

17

18 VOLUME I

19 TRANSCRIPT OF PROCEEDINGS

20 JURY TRIAL - DAY 5

21 APRIL 16, 2021

22 RENO, NEVADA

23

24 REPORTED BY: CORRIE L. WOLDEN, NV CSR #194, RPR, CP

25 JOB NO. 746605

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E X H I B I T S

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NUMBERDESCRIPTIONMARKEDADMITTED

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Exhibit 71

Photo - Norman

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Exhibit 73

Map - Bob & Lucy's

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Immediate Vicinity

Exhibit 74

Map - Overall Sparks

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Exhibit 75

Map - Bob & Lucey's area

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Exhibit 76

Map - North of I-80

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Exhibit 77

Map - South of I-80

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Exhibit 78

Map - Glendale & Kleppe

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8

area

Exhibit 79

Map - McCarran & Stanford

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9

area

Exhibit 80

Map - I80 East of Prater

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Exhibit 103

Loeschner Dash Cam Edit

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Exhibit 104

McNeely Body Camera Edit

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Exhibit 105

McNeely Body Camera Edit

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Exhibit 113

Dispatch Log

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Exhibit 114

Photo - Williams in B&L

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Exhibit 115

Photo - Williams in B&L

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Exhibit 116

Photo - Williams in B&L

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Exhibit 117

Photo - Williams in B&L

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Exhibit 118

Photo - Norman Entering

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B&L

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Exhibit 170

Photo - Bob & Lucy's

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Exhibit 171

Photo - Bob & Lucy's

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Exhibit 172

Photo - Bob & Lucy's

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Exhibit 173

Photo - Bob & Lucy's

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Exhibit 174

Photo - Bob & Lucy's

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Exhibit 175

Photo - Bob & Lucy's

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Exhibit 176

Photo - Bob & Lucy's

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Exhibit 177

Photo - Bob & Lucy's

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Exhibit 178

Photo - Bob & Lucy's

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Exhibit 216

Webster Surveillance

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Report

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1 RENO, NEVADA, FRIDAY, APRIL 16, 2021, 7:51 A.M.

2 -o0o-

3 (Whereupon the following proceedings
4 were outside the presence of the jury.)

5 THE COURT: We are on the record in chambers.

6 Show the presence of Ms. Luck, the Dept 1's court clerk,
7 Ms. Davies, the law clerk, Mr. Picker and Ms. Rosenthal on
8 behalf of Ms. Norman, Ms. Grosenick and Ms. Hickman on
9 behalf of Mr. Williams, and Mr. Prengaman for the State of
10 Nevada.

11 Counsel, first question for you, Mr. Sims I assume
12 may take the stand today. Has there been a certified prior
13 conviction, a certified, excuse me, Judgment of Conviction
14 in CR20-0862, which is the drug charge?

15 MR. PRENGAMAN: Yes.

16 THE COURT: Has there? Okay. I'm assuming
17 everybody has a copy of the Judgment of Conviction.
18 Mr. Prengaman, your office took the case, so you are not
19 going to have any issues with regard to that?

20 MR. PRENGAMAN: No.

21 THE COURT: I went back and looked at the orders
22 the Court issued. What about the 2004 felony escape? The
23 Court left that open for the parties to establish that
24 parole or probation was either ongoing or less than 10 years
25 from today?

1 MS. HICKMAN: No.

2 THE COURT: No, that will not be introduced?

3 MS. HICKMAN: Will not be.

4 THE COURT: A reminder that today, this afternoon
5 after we let the jury go, we have a hearing outside the
6 presence of the jury in the courtroom related to the jury
7 call, or the jail calls.

8 Okay. Mr. Prengaman, before Mr. Sims testifies, I
9 will give a prior bad act admonition to the jury regarding
10 the testimony of Mr. Sims related to Mr. Williams'
11 possession of a gun on a date prior to the events of
12 February 22nd, 2020.

13 Counsel, yesterday this Court and the parties
14 participated in an extensive discussion based on an issue
15 raised by the state, namely when and whether Mr. Williams
16 and Ms. Norman may be required to and/or asked to remove
17 their masks for purposes of identification by a witness.

18 After a lengthy discussion yesterday, after a
19 lengthy discussion yesterday and a review of several
20 possible ways of addressing the concerns of the parties,
21 this Court ruled that the parties could participate from
22 their tables without masks behind the Plexiglas shield.
23 This included the defendants without masks.

24 Having gone through my notes related to
25 yesterday's hearing and having reviewed the Sargent case

1 relied upon by counsel Picker, this Court is revising its
2 ruling this morning. All counsel and both defendants will
3 wear masks when seated at their tables.

4 When the state calls a witness who is asked to
5 identify Ms. Norman or Mr. Williams, if they are able to do
6 that while the defendants are wearing their masks, that
7 identification will suffice for the record. If the witness
8 indicates they cannot identify Ms. Norman or Mr. Williams or
9 be certain of that identification without seeing the
10 defendants' entire face, the defendants will be asked to
11 lower their masks to allow the witness to see their face.

12 By analogy, if the defendant were to bury their
13 hand, excuse me, bury their face in their hands while seated
14 at counsel table making it impossible for a witness to make
15 an identification, the Court would order the defendant to
16 look up so that the witness could review their face
17 unobstructed.

18 The masks that are being worn by the defendants
19 and all parties to this case are for the purposes of health
20 and safety. They will not be used to obscure the
21 defendants' faces for purposes of identification.

22 Lastly, and unrelated to the issue of
23 identification of Norman and Williams or whether or not they
24 are going to wear masks, if counsel elects to make a
25 presentation from counsel table, counsel, you must continue

1 to wear your mask.

2 The only exception to counsel removing their masks
3 is if they participate from the podium and it is enclosed on
4 three sides with the Plexiglas. This is in compliance with
5 the Court's November 2nd, 2020 Second Judicial District
6 Court plan for resuming jury trials during the COVID-19
7 pandemic. Thank you. We are going to start in about five
8 minutes.

9 MR. PICKER: Your Honor, as well you need to
10 address, then, if you are going to give an instruction, a
11 prior bad acts instruction prior to Mr. Sims' testimony, you
12 also need to address our request for a limiting
13 instruction --

14 THE COURT: I'm sorry, I can't hear you,
15 Mr. Picker. I also need to address --

16 MR. PICKER: Our request for a limiting
17 instruction, Your Honor, regarding that gun and that
18 incident, which while Ms. Norman may have been present, that
19 gun was not in her possession.

20 THE COURT: I don't remember you asking for a
21 limiting instruction. You are asking for a limiting
22 instruction that says at the prior, related to the prior
23 incident, the only other incident where Mr. Sims was
24 introduced to Mr. Williams, you want a limiting instruction
25 that says and at that time there is no evidence that

1 Ms. Norman was in possession of that weapon?

2 MR. PICKER: Correct, Your Honor.

3 THE COURT: Okay. Got it.

4 MR. PICKER: That was included in our Supplemental
5 Trial Statement just so the record is clear.

6 THE COURT: Thank you. Go ahead, Mr. Prengaman.

7 MR. PRENGAMAN: Judge, I would oppose that. It's
8 generally admissible. If it qualifies as a prior act, it's
9 generally admissible. It's not hearsay that's admissible
10 against one party; for instance, where there is a basis for
11 limiting -- For instance, we have discussed certain
12 statements by one defendant that may not for hearsay reasons
13 be admissible against another defendant. That would be
14 appropriate for a limiting instruction; ladies and
15 gentlemen, you may consider this statement only against one
16 defendant and not the other.

17 This is generally admissible. When something
18 comes in as a prior bad act, it's limited in the scope of
19 consideration, i.e., not for character purposes, but there
20 is no limitation on its use by the jury.

21 THE COURT: I agree with Mr. Prengaman.
22 Mr. Picker, you are free to ask a witness while he is
23 testifying on that day did you ever see my client in
24 possession of that handgun. I agree, what I'm doing by
25 giving that limiting instruction is presupposing what the

1 witness will testify to. You can ask those questions on
2 cross-examination of Mr. Sims.

3 Mr. Prengaman raises another interesting issue,
4 because I have ruled on the fact that Ms. Norman's e-mails
5 will be admitted against her, but they will not be admitted
6 against Mr. Williams, and I'm willing to give a limiting
7 instruction as to that when Mr. Sims, when Mr. Sims
8 testifies. I would give the prior bad act instruction as to
9 the weapon and a limiting instruction as to Ms. Norman's
10 e-mails not being used against Mr. Williams.

11 MR. PICKER: In our Supplemental Trial Statement,
12 Your Honor, we asked for three different occasions for a
13 limiting instruction. I'm going to ask that you rule on
14 those now.

15 THE COURT: Okay. Let me pull out my supplement.
16 Counsel, give me a few minutes, please. Give me a few
17 minutes, please.

18 MS. HICKMAN: Your Honor, while we are doing this,
19 so we don't have to come back, I would ask that you give the
20 Tavares instruction at the time that the evidence is
21 elicited, not at the beginning of the testimony.

22 THE COURT: You want me to wait until such time as
23 Mr. -- with regard to which, the prior bad act or the
24 limited?

25 MS. HICKMAN: The prior bad act, the Tavares

1 instruction.

2 THE COURT: Right. So as soon as -- Mr. Prengaman
3 would have to inform the Court when he is about to ask
4 questions with regard to his testimony.

5 MS. HICKMAN: Right.

6 THE COURT: I'm fine doing that.

7 MS. HICKMAN: Thank you.

8 MS. GROSENICK: And, Your Honor, I have been
9 working on an instruction regarding using evidence against
10 one defendant and not the other, but if you already have one
11 that you want to use, that should be okay. Do you want me
12 to send you what I have?

13 THE COURT: Mine is pretty simple, but, yes, go
14 ahead and send us what you have and I will take a look at
15 it.

16 MS. GROSENICK: Okay.

17 THE COURT: All right. The order of witnesses
18 this morning. We had Slattery and we have Webster on the
19 stand. Who is next?

20 MR. PRENGAMAN: So depending on some scheduling,
21 so I have told defense counsel my order, but so it will
22 either be Sergeant McNeely or David Cole, and then I plan to
23 proceed with Officer Loeschner, Chambers, and then
24 potentially Mr. Sims.

25 THE COURT: Okay. So we have about three or four

1 witnesses in front of Sims. Okay. Mr. Picker, I will do it
2 at the first break this morning, sir, since Sims won't be
3 testifying right away.

4 MR. PRENGAMAN: And, Your Honor, may I be heard on
5 those?

6 THE COURT: On the Supplemental, yeah, we will do
7 something outside the presence on the issues raised in
8 Mr. Picker's Supplemental Trial Statement.

9 MR. PRENGAMAN: For the limiting instruction, yes.

10 THE COURT: Okay.

11 MS. HICKMAN: Just to plan for later in the day,
12 are we breaking at 2:30 to let Ms. Holt go get her vaccine?

13 THE COURT: Yes. Thanks, everyone.

14 MR. PRENGAMAN: May I, Judge, just --

15 THE COURT: Yes. Mr. Picker, wait.

16 MR. PRENGAMAN: Just to raise something I intended
17 to ask, when we break for lunch, I just wanted to ask if you
18 would be willing to give us like 40 minutes for lunch.

19 THE COURT: We will --

20 MR. PRENGAMAN: The half hour breaks we have had
21 so far are just --

22 THE COURT: Yeah. And the reason we are doing it
23 is because the jurors are not leaving the courthouse for
24 lunch like they typically do. We are letting them go so
25 much earlier, but we will do a 45 minute lunch.

1 MR. PRENGAMAN: Thank you.

2

3 (Whereupon a break was taken from 8:01 a.m. to 8:14 a.m.)

4

5 THE COURT: Ladies and gentlemen, welcome back.

6 Mr. Prengaman.

7 MR. PRENGAMAN: Your Honor, the state will recall

8 Mike Slattery. I'm sorry, Mr. Webster.

9 THE COURT: Witness Webster, please.

10

11 CHRISTOPHER WEBSTER,

12 called as a witness, having been previously sworn,

13 testified as follows:

14

15 DIRECT EXAMINATION RESUMED

16 BY MR. PRENGAMAN:

17 Q Good morning, Mr. Webster.

18 A Good morning.

19 Q Mr. Webster, when we left off yesterday, I was

20 asking you about some of the camera views inside Bob &

21 Lucy's on Oddie Boulevard. I'm going to show you again

22 Exhibit 167. And I believe you told us yesterday that this,

23 that we are looking here at an aerial photograph that shows

24 the building of Bob & Lucy's on Oddie Boulevard?

25 A Correct.

1 Q I'm going to show you what we marked for
2 identification as Exhibit 73 and are you able to see it from
3 there?

4 A Yes.

5 Q And do you generally recognize that as -- do you
6 generally recognize the area shown there?

7 A Yes.

8 Q And does that show generally not only the building
9 but sort of the area of the streets around Bob & Lucy's?

10 A Yes, sir.

11 Q Is that generally like a, and, again, not to a
12 particular day, but generally speaking in terms of location
13 of the streets, the building, is that accurate?

14 A Yes, sir.

15 MR. PRENGAMAN: I move for the admission of 73,
16 Your Honor.

17 THE COURT: Ms. Hickman?

18 MS. HICKMAN: No objection.

19 THE COURT: Ms. Rosenthal?

20 MS. ROSENTHAL: No objection.

21 THE COURT: 70 is in.

22 MR. PRENGAMAN: Thank you, Your Honor.

23 MS. ROSENTHAL: Your Honor, I believe it was 73.

24 THE COURT: 73. Thank you, Ms. Rosenthal. 73.

25

1 (Exhibit Number 73 was admitted into evidence.)

2

3 BY MR. PRENGAMAN:

4 Q And so, Mr. Webster, looking at the Exhibit 73,
5 Bob & Lucy's is accurately labeled; is that right?

6 A Correct.

7 Q Okay. And so as we are looking at the photo, can
8 you tell us on the side here the sort of white, what is this
9 on the side of the building?

10 A Honestly, I have no idea. I never really
11 researched it.

12 Q Okay. But as we are looking at it, we can tell
13 that up is north, correct?

14 A Yes. I can use that white building as a landmark
15 to know that that way is west.

16 Q That's what I was going to ask you next. So then
17 going back to Exhibit 167, do we have this oriented
18 correctly?

19 A No, sir.

20 Q Okay.

21 A Now it is oriented correctly. Up is north. Down
22 is south.

23 Q Okay. So now I would like to go to Exhibit 1, and
24 I'm going to the channel 1 inside folder and I'm opening the
25 first file and I'm pausing it one second in. And,

1 Mr. Webster, in the upper left-hand corner do you see the
2 date and time stamp for the footage?

3 A Yes, sir.

4 Q And do you see it indicates this is February 22nd,
5 2020, Saturday, at about 5:49 AM and 38 seconds?

6 A Yes, sir.

7 Q And as you told us yesterday, that's accurate,
8 correct?

9 A Yes, sir.

10 Q And now what area of the business are we looking
11 at? What area is captured by camera 1 inside?

12 A This appears to be the entryway on the north end
13 of the building.

14 Q So now switching back to Exhibit 167, now if you
15 press on that monitor on that screen, you can draw. You can
16 make an X. Are you able to show us, again, not, maybe not
17 pinpoint precision but generally where that would correspond
18 on sort of the layout?

19 A I believe it will be about right there.

20 Q Okay. And so if I were to put, on that little
21 raised portion, if I were to put a number 1, that would show
22 generally where that corresponds inside, correct?

23 A Yes.

24 Q And so if I put a 1 right here, that's going to be
25 accurate?

1 A Yes, sir.

2 Q So I now placed a 1. Is that generally accurate
3 as to where that camera would capture?

4 A Close enough.

5 Q Okay. I'm going back to Exhibit 1. Now I'm going
6 to channel 1 outside. Now, pausing at the beginning, so
7 7 seconds in, what are we looking at here? What area is
8 camera 1 outside capturing?

9 A I believe this is on the north end of -- no, this
10 is the southwest end. Can I see the overhead again?

11 Q Yes.

12 A I believe that one would be down here.

13 Q Okay. Now moving to channel 2, what area are we
14 looking at now?

15 A I believe that one is right next to the previous
16 camera just looking in the other direction.

17 Q And if you could indicate for us generally where
18 that would be?

19 A I think it's going to be right around here.

20 Q Now, I'm going to channel 3 and pause it. What
21 area is channel 3?

22 A This is going to be on the north end of the
23 building looking towards the corner of Rock and Oddie.

24 Q And so switching back to Exhibit 167, could you
25 indicate for us where that would be?

1 A Right there.

2 Q Now, moving to, I'm going to go to the channel 4
3 outside camera and again pause it at the very beginning of
4 that camera view of that file. Can you tell us what area
5 channel 4 outside is capturing?

6 A It is going to be right next to the previous
7 camera, but looking in the other direction.

8 Q And so as we are, as we go back to Exhibit 167,
9 can you indicate for us where that would be?

10 A Right about here.

11 Q And so now for 4 outside and 3, if I were to put a
12 3 and 4 in those areas where you put an X, that would
13 indicate sort of the camera view looking out; is that fair?

14 A Yes.

15 Q Let me do that. And so would it be accurate to
16 put 3 about here in terms of what you indicated?

17 A Closer, a little closer to the parking lot.

18 Q Okay. Why don't you, if you would just indicate
19 it for me and I will --

20 A About right there.

21 Q So that would be 3. And then if you could
22 indicate where 4 would be.

23 A Pretty much right next to it.

24 Q Does that appear generally accurate?

25 A Yes, sir.

1 Q Now I'm going to channel 4 inside. Can you please
2 tell us what area of the tavern channel 4 inside is
3 capturing?

4 A Almost directly in the middle of the tavern
5 looking north, towards the northwest.

6 Q And now those doors that we are looking at, have
7 we seen that in any of the other camera views we have seen
8 so far?

9 A Yes. I believe it was camera 1. This is a
10 further back shot outside of the atrium looking at both
11 doors.

12 Q And so if you could again indicate on the building
13 itself generally where that camera 4 inside would be
14 located?

15 A Almost directly in the middle of the tavern.

16 Q And if you could just give me a dot, I will
17 indicate it.

18 A I would put it right about there.

19 Q Okay. Right about here?

20 A Close enough.

21 Q And then, again, it would be looking towards where
22 the 1 is?

23 A Yes, sir.

24 Q Those doors that we are looking at here, and back
25 to channel 1 inside, that's the interior sort of that

1 breezeway we were looking at in the prior photo?

2 A Yes, sir.

3 Q I'm going to channel 5. And stopping at the
4 opening frame of channel 5 at 1 second in, this is labeled
5 Rock North, correct?

6 A Correct.

7 Q And, again, going back to 167, can you tell us
8 generally what that is looking towards?

9 A I believe that's going to be on the east side of
10 the building looking northeast.

11 Q And you indicated a dot right there approximately
12 where that camera would be located?

13 A I believe that's about where it is.

14 Q That would be approximately correct?

15 A Yes, it is.

16 Q Now, I'm going to, pausing again at the open
17 frame, this camera view is labeled Rock South?

18 A Yes.

19 Q And what area, general area, does this capture?

20 A Again, this is going to be on the east side of the
21 building, fairly close to camera 5, but looking towards the
22 southeast instead of the northeast.

23 Q Is that about right where I placed the 6?

24 A Yes, sir.

25 Q Now, moving to channel 7 inside and stopping at

1 the opening frame. Can you please tell us what are we
2 looking at? What area of the tavern is being captured?

3 A This appears to be the northeast corner of the
4 tavern looking towards the southwest. Right here is the
5 south entryway north.

6 Q And how about the north, can you see any area or
7 can you indicate for us where in this view the entryway for
8 the north door would be?

9 A The north would be around here.

10 Q And so the breezeway that we looked at in camera 1
11 inside, would that be generally where you would go to enter
12 the doors to go in and out through that breezeway?

13 A Yes.

14 Q Now, going back to 167 would you please indicate
15 again generally where that camera would be located?

16 A I believe it would be right around there.

17 Q So if I put it right around here would that be
18 accurate?

19 A Yes, sir.

20 Q I'm going to channel 7 outside. And for the
21 record, stopping at the open frame 1 second in, this camera
22 view is labeled West Side South View?

23 A Yes.

24 Q And going back to Exhibit 167, I will ask you to
25 indicate again generally where that camera would be.

1 A That will be over here between the main building
2 and that white building looking towards the south.

3 Q So if I put this right here that would be
4 generally accurate?

5 A Yes, sir.

6 Q Now, going to channel 8 inside, stopping at the
7 opening frame, can you tell us what area of the casino is
8 captured or the tavern is captured in camera view 8?

9 A This is going to be on the main floor in the
10 northwest corridor of the main floor looking towards the
11 southwest.

12 Q So when we go back to 167, what I would like to
13 ask you to do is just sort of give us an outline circle or
14 just give us an outline of the part of the casino that this
15 view is capturing and then I will ask you the location of
16 that camera. So looking at 167, can you just circle or give
17 us an indication of the area that camera captures?

18 A I believe it's going to be right around there.

19 Q Where the camera is located?

20 A I'm sorry?

21 Q Where the camera is located or the view?

22 A Well, that's where the camera is located. The
23 view would be something along those lines.

24 Q Okay. Perfect. Thank you.

25 So have I placed the 8 generally?

1 A That's pretty close.

2 Q Now I'm moving to camera 8 outside. And pausing
3 at the opening view of that file, this camera view is
4 labeled West Side North View?

5 A Yes, sir.

6 Q And going back to Exhibit 167, can you tell us
7 what area or generally where that camera would be located
8 and where it would be looking?

9 A It's going to be extremely close to camera 7 again
10 between the white building and the main building, but this
11 time looking towards north.

12 Q So does that 8 generally show the location of the
13 8 outside camera?

14 A Yes, sir.

15 Q Now, going to channel 9 and pausing at the opening
16 frame, can you tell us what area of the tavern we are
17 looking at here?

18 A This is the southeast corner looking towards the
19 northwest. Right here is the north corridor.

20 Q Okay. And looking at 167 again, can you tell us
21 or give us an indication as you have before where that
22 number 9 camera would generally be located?

23 A I believe it would be right around there.

24 Q Does that look about right?

25 A Yes.

1 Q So I placed a 9 near where you have that dot. And
2 then could you, as you did before, could you show us sort of
3 the view or viewpoints of what that would be capturing?

4 A Somewhere along those lines.

5 Q Okay. Now going to channel 10 and pausing at the
6 opening frame of view camera 10 of the first file of the
7 channel 10 folder, what area of the tavern are we looking
8 at?

9 A This appears to be the southwest corner of the
10 main floor looking towards the northeast.

11 Q Now, are there any landmarks we have seen in prior
12 camera views that you can point out for us here?

13 A Well, there is the ticket redemption kiosk right
14 here that we have seen in other shots. It's hard to make
15 out, but I know what I'm looking for.

16 Q And is there something else that that kiosk would
17 be located nearby?

18 A I'm sorry?

19 Q Is that kiosk located nearby something else that
20 we have seen before?

21 A The entire floor.

22 Q Now back to 167. Can you show us where that
23 camera 10 would be located?

24 A It's going to be right around there.

25 Q So I placed a 10 where that dot is. Does that

1 look about right?

2 A Yes, sir.

3 Q And then, again, can you show us generally the
4 view, the field of view from it?

5 A Something along those lines.

6 Q Mr. Webster, I'm going to show you now what we
7 marked for identification as Exhibits 114, 115, 116, 117,
8 and 118.

9 MS. HICKMAN: Just the top one?

10 MR. PRENGAMAN: 114 through 118.

11 MS. HICKMAN: Okay.

12 BY MR. PRENGAMAN:

13 Q What I'm going to do is just ask you to look, I'm
14 going to hand them to you and let you look through them, and
15 then when you have looked at each one please let me know.

16 A Okay.

17 Q First of all, are those still photographs from
18 footage that appears on both Exhibit 1, what you described
19 as the raw footage, and then Exhibit 2, the composite?

20 A Yes, sir.

21 Q And do those photographs depict two of the
22 individuals that you were asked to look for with the police?
23 In other words, two of the individuals you were sort of
24 trying to track through the camera views as you compiled the
25 footage?

1 A Yes, sir.

2 MR. PRENGAMAN: Your Honor, I move for the
3 admission of Exhibits 114 through 118.

4 THE COURT: Ms. Hickman?

5 MS. HICKMAN: No objection.

6 THE COURT: I'm sorry?

7 MS. HICKMAN: No objection.

8 THE COURT: Ms. Rosenthal.

9 MS. ROSENTHAL: No objection.

10 THE COURT: 114, 15, 16, 17, and 18 are all in.

11 MR. PRENGAMAN: Thank you, Your Honor.

12

13 (Exhibit Numbers 114 - 118 were admitted into evidence.)

14

15 BY MR. PRENGAMAN:

16 Q Mr. Webster, I'm going to show you first 114, and
17 this is one of the individuals?

18 A Yes, sir.

19 Q Okay. And, again, when we look at this, this is
20 that camera number 1 view, that sort of breezeway?

21 A Yes, sir.

22 Q And then I'm just going to go to Exhibit 118, and
23 is that another one of the individuals you were asked to
24 look for?

25 A I honestly can't tell for sure.

1 Q Is that because, is it easier to see in the photo
2 when I handed it to you than it is on the screen?

3 A It's also been over a year ago at this point.

4 Q Okay.

5 A My memory is not as good as it could be.

6 Q Fair enough. And then just going back to 167,
7 again, that vestibule would be --

8 A Right around here.

9 Q Right here. Thank you.

10 Thank you, Mr. Webster. I have no further
11 questions at this time.

12 THE COURT: Thank you, Mr. Prengaman.

13 Ms. Hickman.

14

15 CROSS EXAMINATION

16 BY MS. HICKMAN:

17 Q Good morning. Mr. Webster, I want to start by
18 talking to you just a little bit about generally Bob &
19 Lucy's, okay?

20 A Okay.

21 Q So you said that it was sort of like a tavern
22 casino, right?

23 A Correct.

24 Q So there is part of that establishment that has
25 slot machines, right?

1 A Yes.

2 Q And then there is the part that has the bar,
3 correct?

4 A Yes.

5 Q And then they are divided by kind of a center
6 divider that goes down the middle, right?

7 A Yes, ma'am.

8 Q Okay. And when Mr. Prengaman just went through
9 all of these different camera angles, it's fair to say that
10 there is more cameras at Bob & Lucy's than are shown here,
11 correct?

12 A Correct.

13 Q There are cameras that capture that bar area,
14 right?

15 A Yes.

16 Q How many cameras are there in that bar area?

17 A I believe there is four.

18 Q Okay.

19 A But without looking at the system, I can't
20 remember for sure.

21 Q Okay. I'm going to go back to Exhibit 1.

22 A Okay.

23 Q Sorry, the computer is frozen.

24 Okay. So I'm going to make this as big as I can.

25 Okay. So you can see the files are different than they were

1 with Mr. Prengaman, right? You can see the actual like file
2 folder and then it is open, right?

3 A Yes.

4 Q So I want to start with channel 1 inside and I'm
5 going to open up the file that ends in 5:49:56, okay?

6 A Okay.

7 Q And those numbers indicate the time where that
8 starts, correct?

9 A Yes. If you read them from left to right, it
10 indicates 2020, the year.

11 Q Sorry.

12 A 02 the month, 22 the date, and then a military
13 time code at the end.

14 Q Okay. So opening up that file, you can see up at
15 the top up here that there is the date, which is
16 February 22nd, 2020, right?

17 A Correct.

18 Q And it starts at 5:50 in the morning, correct?

19 A Correct.

20 Q Okay. And then there are multiple files for each
21 camera, because you can only pull it out in chunks, correct?

22 A Correct.

23 Q Okay. So this one is 21 minutes and 44 seconds
24 long, correct?

25 A Yes.

1 Q So if we go to the very end of this chunk, it gets
2 us to 6:11 in the morning, correct?

3 A Yes.

4 Q Okay. And so then we would go to the next one
5 which tells us it starts at 6:10, correct?

6 A Yes.

7 Q And so when we play that one, that one is only a
8 minute and 16 seconds long, correct?

9 A Correct.

10 Q So that would take us to, if we go to the very end
11 of it, 6:11 and 41. And I don't know, what is that last
12 number?

13 A Seconds.

14 Q Oh, 6:11:41. Thank you. I don't know why I was
15 having such a hard time with that. And then the next one
16 starts at 6:11:41, correct?

17 A Correct.

18 Q And this one is 2 minutes and 44 seconds, correct?

19 A Correct.

20 Q And so if we go to the end of that one, that takes
21 us to about 6:14, correct?

22 A Correct.

23 Q And so the last file that you have for channel 1,
24 which is in that vestibule, is 18 minutes and 56 seconds
25 long, correct?

1 A Yes, ma'am.

2 Q So it starts at 6:11, right, and 44 seconds?

3 A Yes, ma'am.

4 Q And then when you get to the very end of it, it's

5 6:30 and 25 seconds, correct?

6 A Still got about 13 seconds left to play, but as of

7 where you stopped, yes.

8 Q Okay. So if I go 13 more seconds, that gets us

9 to --

10 A About 6:30 and 38 seconds.

11 Q Okay. And I will just play that through. So it

12 doesn't get us to 6:31, correct?

13 A No, ma'am.

14 Q And looking at Exhibit 1 and all of the files that

15 are here for channel 1 inside that vestibule, the last time

16 captured is 6:30, correct?

17 A It would appear to be.

18 Q And these are the files that you gave to that

19 deputy or detective that you talked to, correct?

20 A Yes, ma'am.

21 Q And these are the files that that deputy or

22 detective told you were relevant for the investigation in

23 this case, correct?

24 A Yes, ma'am.

25 Q And now I want to go to channel 1 outside, okay?

1 And this starts at 6:06 and 41 seconds, correct?

2 A Yes, ma'am.

3 Q And it's 38 minutes and 47 seconds long, correct?

4 A Yes, ma'am.

5 Q So explain to me why the inside cameras are in

6 smaller chunks than the outside cameras?

7 A If I could, I would. I didn't design the system.

8 Q Okay. So it's just based on the system?

9 A Yes, ma'am.

10 Q So for the inside cameras you couldn't pull

11 38 minutes and 47 seconds into one chunk?

12 A I have no idea how our system decides where to

13 break it down in chunks.

14 Q Okay. So this camera, which is channel 1, and

15 it's the southwest camera outside, if I play it to the end

16 it goes to about 6:45 and 18 seconds, and there is a couple

17 seconds left there, so maybe let's say 6:45 and 20 something

18 seconds.

19 A Okay.

20 Q Do you agree with that?

21 A Close enough.

22 Q Okay. Because, most importantly, if you look at

23 the top up here at the time it says 6:45, correct?

24 A Yes, ma'am.

25 Q So that's about 15 minutes later than the last

1 clip that you and the detective determined relevant to be
2 turned over in this case, correct?

3 A Yes, ma'am.

4 Q And I have a question about something you
5 testified to yesterday. You said all of these cameras are
6 accurate within 2 to 3 minutes, right?

7 A Correct.

8 Q My question is, is it within 2 to 3 minutes of
9 each other or are they all on the same time and it's 2 to 3
10 minutes to your cell phone?

11 A The inside and outside are on separate DVRs but I
12 do my best to make sure that they are within 2 to 3, both
13 within 2 to 3 minutes of my phone.

14 Q Okay. So the timestamps inside, so if it says
15 6:30 on an inside camera, that same time, it would be the
16 same on the outside camera?

17 A It should be.

18 Q Okay. And in reviewing this surveillance footage,
19 did you notice any differences?

20 A Maybe a couple seconds.

21 Q Okay. Now, I'm going to open the file that says
22 channel 4 inside and I'm going to open up that first file
23 that says, that ends in 5:49:56. And, again, that's the
24 time it starts at, correct?

25 A Yes, ma'am.

1 Q Okay. I'm going to pause it right here just at
2 the beginning, I think. One second has gone by. So as we
3 were looking at this, we see this door right here, correct?

4 A Yes.

5 Q And then to the left of it is the bar, correct?

6 A Correct.

7 Q And that's the bar that I'm talking about that we
8 don't have any camera views of, correct?

9 A Correct.

10 Q We don't have any views that show anything beyond
11 sort of this wall with the red car photo on it, correct?

12 A Correct.

13 Q And I wanted to ask you just an initial question,
14 do you know the security guard that works at Bob & Lucy's?

15 A I don't. He comes in late at night and leaves
16 before I ever get there, so.

17 Q Okay. So you wouldn't recognize him if he was in
18 this shot?

19 A I would recognize his frame, his overall build,
20 but I don't really know who he is.

21 Q Okay. Let me ask you this, do you see this man
22 who is sort of standing with his foot perched on a chair?

23 A Yes.

24 Q And if I play this starting at one second and you
25 see him move, do you recognize him as the security guard?

1 A Honestly, with his back to the camera, I can't be
2 100 percent sure.

3 Q Okay. So still talking about this view that we
4 are looking at in channel 4, so if you were to walk through
5 that door and walk towards me, on this same wall where there
6 is this red car picture, is there a bathroom that would be
7 next?

8 A Yeah. There is a bathroom right around the corner
9 here about 10 feet down the wall.

10 Q Okay. So if you walk through the opening down
11 towards the bar, the bathroom is directly across from the
12 bar?

13 A Yes, ma'am.

14 Q Okay. And so if we played this clip to the end of
15 it, we get to about 6:14 in the morning, correct?

16 A Correct.

17 Q And then the middle clip of that channel 4 inside
18 is, again, about 18 minutes, correct?

19 A Yes, ma'am.

20 Q And that one starts at 6:10, correct?

21 A Correct.

22 Q And I paused this at about 6:28 and 37 seconds.
23 Do you see that?

24 A Yes, ma'am.

25 Q Okay. So when we are looking at this angle, you

1 can see two people in the foreground, correct?

2 A Correct.

3 Q And this is video you watched with the detective,
4 correct?

5 A Yes, ma'am.

6 Q And so you know that this person standing here
7 with his arm against the wall is a person that you
8 identified as being a victim, correct?

9 A I believe so, but I can't be 100 percent. Like I
10 told -- I'm sorry, I'm horrible with names.

11 Q Mr. Prengaman.

12 A It's been over a year, so, I mean, it's difficult
13 to bring back to memory.

14 Q Okay. But, to the best of your recollection, that
15 could be him?

16 A Yes, ma'am.

17 Q Okay. And then can you see that there is somebody
18 leaning against the wall, that he has his arm kind of in
19 front of him as he is leaning on that wall?

20 A Yes.

21 Q Do you know if that is one of the people that you
22 identified as being someone who you needed to watch in this
23 film?

24 A I believe so, but I'm not 100 percent.

25 Q Okay. So, to the best of your recollection, it

1 may be, but you can't say 100 percent?

2 A Yes, ma'am.

3 Q Okay. And if we play this file that starts at
4 6:10 and 25 seconds to the end, it gets us to about 6:28 in
5 the morning, correct?

6 A Yes, ma'am.

7 Q All right. And at 6:28 in the morning, you still
8 see those two people actually inside Bob & Lucy's, correct?

9 A Yes, ma'am.

10 Q Okay. And then I want to go to the last clip
11 under channel 4 inside, which ends with 6:28:47, and so at
12 6:28 and 50 seconds those two people are still in Bob &
13 Lucy's, correct?

14 A Yes, ma'am.

15 Q That person still has his arm up against the wall,
16 right?

17 A Yes, ma'am.

18 Q If we go to the end of this, and I'm going to
19 pause it at 1:47, so it's a minute and 50 seconds long and
20 I'm pausing it at 1:47 in.

21 A Okay.

22 Q So a minute and 47 seconds into this last clip, it
23 is 6:30 in the morning, correct?

24 A Yes, ma'am.

25 Q And these two people are still in Bob & Lucy's,

1 right?

2 A Yes, ma'am.

3 Q And so if we add the 3 seconds that are left on
4 this clip, that gets us all the way to 6:30 and 39 seconds,
5 correct?

6 A Thereabouts.

7 Q And that's the last video for channel 4 inside,
8 correct?

9 A Yes, ma'am.

10 Q Okay. So I want to ask you about the report that
11 you filled out, which is a Surveillance Daily Report. Are
12 you familiar with that?

13 A Yes, ma'am.

14 Q And you filled that out in this case, correct?

15 A Yes, ma'am.

16 Q And you filled it out on February 22nd, 2020,
17 right?

18 A Yes, ma'am.

19 Q And you filled it out before or after you watched
20 this video?

21 A I filled it out as I watched the video.

22 Q As you watched it with the detective?

23 A Yes, ma'am.

24 Q Okay. One of the questions that I want to ask you
25 about -- well, let me go back. Internal camera 6, do you

1 understand where that would be?

2 A If I could see a shot of it I would, but just
3 going off internal camera 6, no, I'm not sure.

4 Q Okay. And it's fair to say as you look at this
5 file from the state, not from the state, excuse me, that
6 Mr. Prengaman played for you, you see one file that's
7 labeled channel 6, correct?

8 A Yes, ma'am.

9 Q And when we open that, that's clearly not inside,
10 correct?

11 A No, that's in the parking lot.

12 Q Okay. So on this video there is no channel 6
13 inside, correct?

14 A Correct.

15 Q But on the Surveillance Daily Report that you
16 filled out, you specifically referenced internal camera 6 at
17 a time of 6:32, correct?

18 A If I can't see it, I'm not sure.

19 Q Okay.

20 MS. HICKMAN: And, Judge, I want to ask your
21 preference, do you want everything shown to the witness
22 marked or can I just show it to him and keep it? What do
23 you prefer?

24 THE COURT: Is this an issue of refreshing his
25 recollection?

1 MS. HICKMAN: No, I'm impeaching him.

2 THE COURT: Okay. Yes, then I want it marked as
3 an exhibit. Ms. Hickman, do all counsel have a copy?

4 MS. HICKMAN: It's Bate stamped, yes.

5 THE COURT: Thank you.

6 THE CLERK: Marked for identification as
7 Exhibit 216.

8 (Exhibit Number 216 was marked for identification.)

9

10 BY MS. HICKMAN:

11 Q So, Mr. Webster, I'm handing you what has been
12 marked as Exhibit 216 and this is the Surveillance Report
13 that you filled out as you watched this video with the
14 detectives, correct?

15 A Yes, ma'am.

16 Q Okay. And so when you look at the second page of
17 that, you can see that you put different camera angles,
18 correct?

19 A Yes, ma'am.

20 Q And the time stamp, right?

21 A Yes, ma'am.

22 Q Okay. And do you see on there where it says
23 channel 6 internal view?

24 A Internal cam 6, 6:32 yes.

25 Q And you noted something relevant to this video,

1 correct?

2 A Yes. "Victim goes through kitchen area."

3 Q Okay. And it's fair to say none of the internal
4 video that's on that file goes beyond 6:30, correct?

5 A Yes, ma'am.

6 Q Okay. So we have nothing past 6:30?

7 A Correct.

8 Q Okay. So whatever you viewed with the detective
9 that you put in your Surveillance Report was not deemed
10 relevant enough to turn over?

11 A I gave the detective the footage that he
12 requested.

13 Q Okay. So if it's not in the file that you gave
14 him, he didn't request it?

15 A Correct.

16 Q Okay. Can I have that back?

17 So my next question for you about this is the next
18 two entries under internal cam 6, which is internal cam 1
19 and the number at the time is 6:34 and 6:35, do you remember
20 that?

21 A May I see the report again?

22 Q Yeah. I'm going to show you again Exhibit 216.

23 A Okay. Where am I looking?

24 Q So under where it says internal camera 6, the next
25 line says internal camera 1, correct?

1 A Yes, ma'am.

2 Q And that's that angle that we see of the
3 vestibule, correct?

4 A Yes, ma'am.

5 Q And that is -- hang onto that. I will be right
6 back. So internal camera 1 are the same, is the same view
7 that we see in Exhibit 115, correct?

8 A Yes, ma'am.

9 Q And it's that vestibule, correct?

10 A Yes, ma'am.

11 Q And so while you watched this with the detective,
12 you noted that there were things happening at 6:34 and 6:35,
13 correct?

14 A Yes, ma'am.

15 Q On video, right?

16 A Yes, ma'am.

17 Q But a detective did not request that?

18 A Correct.

19 Q Thank you. I will take that back from you.

20 And you testified in a previous hearing in this
21 case, correct?

22 A Yes, ma'am.

23 Q And you testified at that hearing that all of this
24 video is saved for approximately 90 days, correct?

25 A Yes, ma'am.

1 Q Do you know whether or not that is actually true?

2 A I want to say it's true.

3 Q Okay.

4 A But I don't control when the system deletes old
5 files. I know at this point it's definitely gone.

6 Q Okay. So some of the inside cameras, not some of
7 them, all of them start at, and I'm looking at channel 9,
8 5:49:56, correct?

9 A I believe so.

10 Q Okay. How much effort would it have taken to
11 include a chunk that started at 5:00 a.m. as opposed to
12 5:49?

13 A It would have taken extra time to get the video
14 from the DVR unit, but beyond that no difficulty.

15 Q And how much extra time above and beyond the time
16 already invested in getting the videos here?

17 A I don't follow.

18 Q So how much time did it take you to get the videos
19 that we have looked at today onto a flash drive to give to
20 the detective?

21 A Off the top of my head, I don't remember.

22 Q Okay. But it wouldn't have been a significant
23 amount of effort to have started at 5:00 as opposed to 5:49?

24 A No, just extra time for the DVR unit to process.

25 Q Okay. So I'm showing you channel 9 inside and

1 that starts at 5:49:56 seconds, correct?

2 A Yes, ma'am.

3 Q And in the middle there is a person sitting at a
4 slot machine; do you see that?

5 A Yes, ma'am.

6 Q Do you recognize that as the same person who is
7 leaning his hand up against that wall at about 6:30?

8 A It looks like it could be the same person.

9 Q Okay. To the best of your recollection did you
10 watch any video when that person entered Bob & Lucy's on
11 February 22nd?

12 A I don't remember watching any video of an entry.

13 THE COURT: Ms. Hickman, is this an appropriate
14 time to take about a 15-minute break?

15 MS. HICKMAN: I just have a couple more questions.

16 THE COURT: Okay.

17 MS. HICKMAN: I lost my train of thought.

18 BY MS. HICKMAN:

19 Q So you met with the detective February 22nd,
20 correct?

21 A Yes, ma'am.

22 Q At no point did anybody from the Sparks Police
23 Department on February 22nd, 23rd, 24th, all the way until
24 today ever come to you and ask for additional footage?

25 A No, ma'am.

1 MS. HICKMAN: I have no further questions.

2 THE COURT: Thank you, Ms. Hickman.

3 Ladies and gentlemen of the jury, we will be in
4 recess for about 15 minutes. Hang on. Thank you.

5 Ladies and gentlemen, during this recess you are
6 not to converse among yourselves or with anyone else on any
7 subject connected with the trial or by phone, e-mail, text,
8 internet or other means.

9 You are not to read, watch or listen to any report
10 or any commentary on the trial or any person connected with
11 the trial by any medium of information, including without
12 limitation the internet, newspapers, television, and radio.

13 You are not to do any independent research or
14 investigation, such as consulting dictionaries, using the
15 internet or otherwise investigate the case on your own, and
16 you are not to form or express any opinion on any subject
17 connected with the trial until it is finally submitted to
18 you. Thank you.

19

20 (Whereupon a break was taken from 9:16 a.m. to 9:38 a.m.)

21

22 THE COURT: Ms. Rosenthal.

23 MS. ROSENTHAL: Thank you, Your Honor.

24

25 ///

1

CROSS EXAMINATION

2 BY MS ROSENTHAL:

3 Q Mr. Webster, you were not present at Bob & Lucy's
4 at the time of the recording; is that correct?

5 A Correct.

6 Q Do you recall what time you did arrive at that
7 location that morning?

8 A I believe I got there around 7:00.

9 Q And so when Ms. Hickman went through the videos
10 and they all ended at 6:30, it's fair to say you were not
11 there?

12 A Correct.

13 Q And so you did not see any of the events that are
14 seen on video in person?

15 A No, ma'am.

16 Q And you indicated with Ms. Hickman that the DVR
17 for the internal and external cameras are separate?

18 A Correct.

19 Q And that it is your goal to have them within
20 3 minutes of your phone?

21 A Correct.

22 Q So it's safe to say that the internal and external
23 could be up to 6 minutes apart, correct?

24 A I don't think that's fair, because I set them at
25 the same time, so if there is any variance it should be the

1 same variance on both DVRs.

2 Q So they would either both be early or both be
3 late?

4 A Correct.

5 Q And just as Mr. Prengaman did, I'm going to show
6 you some exhibits which have been marked for identification
7 as Exhibits 170 through 178 and I would ask if you recognize
8 these. Please let me know when you are done and I will
9 collect them from you.

10 A Okay.

11 Q And do you recognize these to be still shots of
12 the video that was admitted previously?

13 A Yes, ma'am.

14 MS. ROSENTHAL: Your Honor, I would ask for the
15 admission of Exhibits 170 through 178.

16 THE COURT: Thank you. Mr. Prengaman?

17 MR. PRENGAMAN: No objection.

18 THE COURT: Ms. Hickman?

19 MS. HICKMAN: No objection.

20 THE COURT: 170 through 178 are in.

21

22 (Exhibit Numbers 170 - 178 were admitted into evidence.)

23

24 BY MS. ROSENTHAL:

25 Q Mr. Webster, do you recall looking at your

1 Surveillance Report a little bit ago?

2 A Yes, ma'am.

3 Q And Ms. Hickman specifically pointed out some
4 inputs that were beyond the time frame of the video; is that
5 correct?

6 A Yes, ma'am.

7 Q Do you recall what you saw on video that was past
8 the 6:30 time frame?

9 A The victim going out the side entrance on the west
10 end of the building and the cops showing up.

11 Q Was there any time where a female exited after the
12 6:30 hour?

13 A Off the top of my head, I can't remember. I
14 believe I marked something down about a female exiting a
15 vehicle and attempting to enter and then returning to the
16 vehicle.

17 MS. ROSENTHAL: Your Honor, I would like to again
18 show Mr. Webster Exhibit 216.

19 THE COURT: 216 is his report?

20 MS. ROSENTHAL: Yes, ma'am.

21 THE COURT: Counsel, you marked it. You didn't
22 offer it. Would you like to offer that for admission?

23 MS. HICKMAN: No.

24 BY MS. ROSENTHAL:

25 Q Mr. Webster, I'm showing you page 2 of your

1 report, specifically the lines after, related to the
2 internal camera but the internal camera number 1 after the
3 6:30 hour. Could you please tell us what you wrote as far
4 as what you saw on the video?

5 A Internal camera 6, 6:32, "Victim goes through
6 kitchen area." Internal camera 1, 6:34, "Police lights can
7 be seen through door. Female suspect goes outside."
8 Internal camera 1, 6:35, "Female suspect attempts to reenter
9 tavern."

10 Q Thank you. I will take that back from you.

11 Mr. Webster, it's fair to say that you went
12 through all of the channels with Mr. Prengaman and we do not
13 see the camera that would show what you indicated as the
14 victim leaving through that door; is that correct?

15 A I don't believe there is footage of the inside,
16 but I believe there is footage on the west side of the
17 building outside of him exiting the building.

18 Q But it's fair to say that there would be video of
19 him doing that, you just did not provide it, correct?

20 A Correct.

21 Q And did you watch the surveillance for the first
22 time with an officer?

23 A Yes.

24 Q Okay. And did you watch it all the way through
25 before you were instructed as to what was requested?

1 A I can't remember that far back. I know I made my
2 notes as I was watching it the first time. Generally how I
3 do my reports, I will watch the footage and then use my
4 notes to go back and record the footage.

5 Q So in your Surveillance Reports are those notes
6 your notes or the officer's notes?

7 A The report is all mine.

8 MS. ROSENTHAL: I have no further questions of
9 this witness.

10 THE COURT: Thank you, Ms. Rosenthal.

11 Mr. Prengaman, redirect.

12 MR. PRENGAMAN: Thank you, Your Honor.

13

14 REDIRECT EXAMINATION

15 BY MR. PRENGAMAN:

16 Q Mr. Webster, I'm going to go back to Exhibit 167,
17 and moments ago you were talking about part of your report
18 where you indicated, "Victim goes through kitchen area."
19 Looking at Exhibit 167, could you show us where the kitchen
20 area would be located?

21 A I believe it will be in this area.

22 Q And where would the door be that you recall seeing
23 the victim exit?

24 A Over in this general area.

25 Q Okay. And then the doors that you, again, going

1 to the parts of your report you were just asked about,
2 "Police lights can be seen through door." Internal cam 1,
3 6:34, "Police lights can be seen through door. Female
4 suspect goes outside."

5 THE COURT: Mr. Prengaman, I will have you ask
6 that question again and slow down and project a little
7 better.

8 BY MR. PRENGAMAN:

9 Q So, Mr. Webster, going back to your report, so the
10 two lines that I wanted to ask you about are the entries
11 where you note the following. Internal cam 1, 6:34, "Police
12 lights can be seen through door. Female suspect goes
13 outside." Next line, internal cam 1, 6:35, "Female suspect
14 attempts to reenter tavern."

15 Showing you Exhibit 118, is that the area or the
16 doors that you were referring to in that location?

17 A Yes, sir.

18 Q Okay. I'm going back to Exhibit Number 1. I have
19 opened the first file and channel number 4 folder. Now,
20 Mr. Webster, looking at this view, are you able to show us
21 again by drawing on that screen where would the kitchen area
22 that you saw the victim run out of be located?

23 A The kitchen area would be over that direction.

24 Q So where would one access it? Would it be near
25 where the bar is or back behind the bar?

1 A He would go to the end of the bar and then go
2 right. There is an open doorway that goes into the kitchen
3 area. If you turn, I'm trying to remember the layout, if
4 you turn left from that doorway and then left again, walk
5 about 5 to 10 feet and then go right, there is a door on the
6 west of the building that leads to the outside that can only
7 be open from inside the building.

8 Q And so when you indicate in your report, "Victim
9 goes through kitchen area," that's before you indicate the
10 police lights can be seen through the doors?

11 A Yes, sir.

12 MR. PRENGAMAN: Thank you very much, Mr. Webster.
13 No further questions.

14 THE COURT: Ms. Hickman?

15 MS. HICKMAN: Thank you.

16

17 RE CROSS EXAMINATION

18 BY MS. HICKMAN:

19 Q Starting off where Mr. Prengaman just finished,
20 looking at Exhibit 1, this first file folder with camera 4,
21 we can see the bar, correct?

22 A Yes, ma'am.

23 Q Where are the cameras located in the bar area?

24 A Obviously, this one right here. I believe there
25 is another camera right here that looks in that general

1 direction.

2 Q That looks towards the bar?

3 A Yes, ma'am.

4 Q And so that camera is above that door?

5 A Yes, ma'am.

6 Q Okay.

7 A There is a camera, you can't see it from this

8 angle, but there is a camera above the cash register and

9 computer on the west end of the bar --

10 Q Okay.

11 A -- that looks fairly well straight down.

12 Q Okay. So at the cash register?

13 A Yes, ma'am.

14 Q Okay.

15 A But you can also see the doorway to the kitchen

16 area from that camera.

17 Q Okay.

18 A And there is, I believe there is another camera

19 fairly close to that one that shows the general layout of

20 the bar in this direction.

21 Q Okay. So talking about all of those cameras in

22 that bar area, if anything were to occur past this wall that

23 we can see with the bar, those four cameras would pick it

24 up, correct?

25 A Likely.

1 Q And it's fair to say the notes that you make don't
2 detail every single thing, excuse me, every single thing
3 that happened relevant to the incident that you are here
4 about, correct?

5 A If it's in the notes, it's relevant to what
6 happened.

7 Q Right. But you didn't write like a narrative?

8 A Oh, no.

9 Q Okay. Because you were writing notes to remind
10 yourself of what to go back to record, correct?

11 A Yes, ma'am.

12 Q Okay. So when you were making those notes to
13 yourself with the detective did you or did you not view
14 cameras over the bar?

15 A I think I may have watched the two cameras that
16 are over on the west end.

17 Q Uh-huh.

18 A But like I said a couple times already, it's been
19 over a year. I can't remember exactly everything that I
20 looked at.

21 Q Okay. But in looking at your report, you did not
22 make any notes about those cameras, correct?

23 A Correct.

24 MS. HICKMAN: I have no further questions.

25 THE COURT: Thank you, Ms. Hickman.

1 Ms. Rosenthal.

2 MS. ROSENTHAL: Thank you, Your Honor. Just a
3 couple of follow up.

4

5 RECROSS EXAMINATION

6 BY MS. ROSENTHAL:

7 Q Mr. Webster, your report where it indicated that a
8 female attempts to reenter building from that camera angle,
9 you indicated on direct or in questioning from Mr. Prengaman
10 that would be this view as you see here in Exhibit 118,
11 correct?

12 A Correct.

13 Q And there is video or was video of her attempting
14 to reenter, correct?

15 A Correct.

16 Q And it was not provided?

17 A I don't believe so.

18 Q Because as we went through, the video ended at
19 6:30 and some seconds, correct?

20 A Correct.

21 Q And your report indicated that this happened
22 around 6:35?

23 A Yes, ma'am.

24 Q And is the bar area connected to the kitchen?

25 A Through a single doorway, yes.

1 Q And is there a camera that captures that kitchen
2 area?

3 A No, ma'am.

4 MS. ROSENTHAL: Nothing further, Your Honor.

5 THE COURT: Thank you, Ms. Rosenthal.

6 Mr. Webster, thank you very much, sir. You are
7 excused.

8 Mr. Prengaman.

9 MR. PRENGAMAN: Thank you, Your Honor. The state
10 will call Officer Loeschner.

11 THE CLERK: Please raise your right hand.

12

13

PETER LOESCHNER,

14 called as a witness, having been duly sworn,

15 testified as follows:

16

17

DIRECT EXAMINATION

18 BY MR. PRENGAMAN:

19 Q Good morning.

20 A Good morning.

21 Q Could you please tell us your name and spell your
22 last name for the court reporter.

23 A Yes. My name is Peter Loeschner.

24 THE COURT: Officer, you and I have the same
25 microphone and it works really well if you lean into it or

1 hold it up.

2 THE WITNESS: Yes, Your Honor.

3 MS. HICKMAN: Your Honor, sorry, before we get
4 started, can we quickly approach?

5 THE COURT: Yes.

6 (Whereupon the following bench conference
7 was outside the presence of the jury.)

8 THE COURT: Ms. Hickman.

9 MS. HICKMAN: The only thing I would ask is
10 that --

11 THE COURT: Move your mic closer.

12 MS. HICKMAN: -- when the witnesses are testifying
13 that the Court offer to let them take their masks off. Can
14 anyone else hear me?

15 THE COURT: Yes.

16 MS. HICKMAN: Okay. Perfect. That the witnesses
17 be offered to take their masks off, and if they are
18 uncomfortable with that they be given a face shield so we
19 can see their faces when they are testifying.

20 THE COURT: The thing is the Washoe County
21 protocol I referred to earlier in the morning allows
22 witnesses to draw their masks down.

23 MS. HICKMAN: That's what I'm saying, give them
24 the option to drop their mask down or they can wear a face
25 shield so their faces can be seen.

1 THE COURT: I will do that.

2 Mr. Prengaman, I can't hear you, sir.

3 MS. HICKMAN: Can we step around the corner?

4 THE COURT: We can, but the court reporter needs
5 to hear us.

6 MR. PRENGAMAN: Okay. Sorry, Judge, I couldn't
7 hear a thing.

8 THE COURT: Ms. Hickman is saying can the witness
9 be told, and I did tell witness Webster this yesterday and
10 Mr. Slattery, can the witness in this case and throughout
11 the case be told they can draw down their mask to testify,
12 and if they are not comfortable to do that we will provide
13 them a face shield so every witness' face can be seen by
14 counsel. I think it is a reasonable request.

15 MR. PRENGAMAN: Is that consistent with the --

16 THE COURT: Yes. One of the things I did add, it
17 is consistent with the November 2020 jury trial plan in
18 COVID-19 terms that's been adopted by the Court.

19 MR. PRENGAMAN: I have no objection.

20 THE COURT: Mr. Picker?

21 MR. PICKER: No objection.

22 THE COURT: Let's do that. Thanks, everyone.

23

24 (Whereupon the following proceedings
25 were in the presence of the jury.)

1 THE COURT: Officer Loeschner, you can draw down
2 your mask while you testify. If you are not comfortable, we
3 will provide you a face shield. Would you like a field
4 shield?

5 THE WITNESS: No, this is fine. Thank you.

6 THE COURT: You are so welcome.

7 Mr. Prengaman, why don't you begin at the
8 beginning.

9 BY MR. PRENGAMAN:

10 Q Good morning. Could you please state your name
11 and spell your last name for the court reporter.

12 A Yes. My name is Peter Loeschner. My last name is
13 spelled L-O-E-S-C-H-N-E-R.

14 Q And what do you do for a living?

15 A I work for the Sparks Police Department and I'm
16 currently a detective.

17 Q You are a sworn peace officer?

18 A Yes, I am.

19 Q And how long have you been assigned to the
20 Detective Division?

21 A I have been assigned to the Detective Division
22 since fall of last year.

23 Q Back in February, and specifically on
24 February 22nd, or Saturday, February 22nd, 2020, what was
25 your assignment?

1 A I was assigned to the Patrol Division as a patrol
2 officer.

3 Q And just generally did you have a particular shift
4 that you were working back then?

5 A Yes. I was working day shift for all of that
6 time.

7 Q And what hours roughly or specifically, if you can
8 recall?

9 A 6:00 a.m. to 4:00 p.m. were my hours.

10 Q And back on that Saturday morning of February
11 22nd, did you respond to a call for service around
12 6:30 a.m.?

13 A Yes, I did.

14 Q And do you recall where you were when you -- Well,
15 first of all, where was the call for service asking the
16 police to respond?

17 A The call for service was for an incident that was
18 occurring at Bob & Lucy's in the area of Oddie and Rock
19 Boulevard.

20 Q And do you recall where you were when you heard
21 that call for service?

22 A Yes. I was in the briefing room, which is
23 downstairs in the headquarters.

24 Q So you were actually at the Sparks Police
25 Department?

1 A Yes.

2 Q And did you respond?

3 A Yes, I did.

4 Q And in terms of how to then form your further
5 actions, what was the nature of the call?

6 A I can remember that the call was involving two
7 individuals that were threatening another individual and
8 they were armed with a weapon.

9 Q And so when you responded, you drove a police car,
10 correct?

11 A Correct.

12 Q Can you just generally describe what type of
13 vehicle it was and the markings that identify it as a police
14 car?

15 A Yes. I drive a marked police car. It has Sparks
16 Police Department markings, insignia on the side of the
17 vehicle. It also has a light bar on top with emergency
18 lights and other equipment.

19 Q With regard to the emergency lights, that's sort
20 of the classic red and blue lights, right?

21 A Yes, that's correct.

22 Q And was that vehicle equipped with what I would
23 colloquially call a dash cam?

24 A Yes, that's correct.

25 Q Or some type of video recording equipment?

1 A Yes, it was.

2 Q Can you please describe for us how that was
3 situated and how it generally operates?

4 A Well, the vehicle has typically two cameras. One
5 is mounted near the windshield and will capture whatever is
6 occurring in front of the vehicle, and another camera
7 typically is mounted in order to capture what is occurring
8 in the back seat in case there is a prisoner onboard.

9 Q And with regard to the camera mounts in front that
10 captures the front view, does that swivel or move?

11 A I'm sorry, what was that?

12 Q Does that camera swivel or move around or is it
13 fixed to one particular vantage?

14 A They are mounted so that they are fixed.

15 Q So it's just one view straight ahead?

16 A That's correct.

17 Q In terms of what you can see when you are driving
18 the car, would it be fair to say that your field of vision
19 is much better than what the camera captures?

20 A Yes. My field of vision would probably be a bit
21 wider, but it would capture very similar.

22 Q And how were you, how were you dressed that
23 morning?

24 A I was dressed in a patrol uniform, which would be
25 a dark blue uniform, obviously, with a badge and gun belt

1 and an outer carrier, which would have other equipment that
2 I would be carrying.

3 Q Okay. And so now describe your response. You go
4 to respond to that call and describe what happens.

5 A Well, due to the nature of the call, the response
6 was a bit elevated to begin with, and while I was responding
7 I can remember there being radio traffic that somebody was
8 running, and when that happened I activated my emergency
9 lights and siren in order to respond Code 3.

10 Q And what does that mean?

11 A Code 3 means obviously with lights and sirens, and
12 that's in order to drive a patrol vehicle faster than you
13 normally would in order to expedite your response.

14 Q And when you are responding Code 3 like that with
15 lights and sirens, what does the law say? What does the law
16 obligate citizens on the road to do?

17 A To pull over in order to allow the police vehicle
18 to continue.

19 Q And did that occur as you were responding to the
20 call?

21 A Off the top of my head, I don't recall.

22 Q And when you talk about going Code 3, that's to
23 get to Bob & Lucy's?

24 A Correct.

25 Q Describe what happens as you begin to arrive or

1 you get to the area where Bob & Lucy's is.

2 A I can remember going down Prater, and for some
3 particular reason my emergency lights and siren went out. I
4 was under the impression it was some kind of electrical
5 failure or some kind of technical failure with the vehicle;
6 however, because of the nature of the call I continued to
7 respond in an expeditious manner.

8 And I can remember approaching on Oddie before
9 making a left turn onto Rock, and I saw what looked like two
10 to three marked police cars that were positioned in a way
11 that looked like they were trying to stop a white pickup
12 truck in the parking lot, and I saw the pickup truck driving
13 away from the officers and I was under the impression that
14 the pickup truck was trying to flee.

15 Q And what about that situation made you think that?

16 A I remember there being radio traffic during this
17 time, and an officer was yelling stop, and I could tell by
18 the tone of his voice that it sounded like he was yelling
19 and under stress. And then after I saw the vehicle fleeing,
20 it appeared to be fleeing rather quickly and so I
21 immediately gave chase to that vehicle.

22 Q And so you got behind in your patrol car?

23 A Yes, that's correct. There was a turn onto the
24 frontage road, which is just on the north side of Bob &
25 Lucy's, and there is a curb that I ended up driving over in

1 order to get behind the vehicle as quickly as possible.

2 I remember the officers that were trying to stop
3 the vehicle were, it looked like they were running to get
4 back into their vehicle, so there was a period of time when
5 they weren't able to give chase to the vehicle because they
6 were outside of their own cars.

7 Q Describe what happened next.

8 A So I ended up being able to get behind the
9 vehicle. I called for other units to take my position
10 because my emergency lights and siren were down. I ended up
11 giving chase to the vehicle down Rock Boulevard at a rather
12 high rate of speed.

13 I would estimate the speeds to be at least
14 60 miles an hour or higher. The speed limit in that zone is
15 30 miles an hour. There is a mixture of businesses and
16 residences along the area.

17 We continued down Rock Boulevard and ended up
18 traveling through a red light at a high rate of speed at the
19 intersection of Rock, and we continued down Rock and I
20 followed the vehicle as it made a left turn onto Hymer. I
21 continued to follow the vehicle down Hymer.

22 Q And, Detective, let me stop you there. So when
23 you, as you began pursuing the vehicle -- describe the
24 vehicle.

25 A The vehicle was a white pickup truck. It was a

1 Chevy Silverado extended cab.

2 Q And were there other police cars following you?

3 A They were; however, I was under the impression
4 that they weren't close enough to take over because of how
5 long it took for those officers to get back to their vehicle
6 and give chase.

7 Q Okay. And so these -- up to the point where you
8 seen the truck turn onto Hymer, none of the other police
9 cars were able to take over your position right behind the
10 truck?

11 A That's correct.

12 Q Could you tell whether the police car behind you
13 had their lights and sirens activated?

14 A I can remember based on the radio traffic and I
15 could hear the sirens as the other officers were calling out
16 the speed and the directions of where I was chasing the
17 vehicle and I could hear the sirens going off, so I knew at
18 least their sirens were on.

19 Q And, Detective, speaking about that, when you are
20 talking about the radio traffic are you talking about other
21 officers describing the events that they are witnessing as
22 it's happening or right after?

23 A Yes.

24 Q So then you have, you were telling us that you
25 watched the truck turn onto Hymer, and please describe what

1 happened next.

2 A So the vehicle continued eastbound on Hymer and it
3 began to drive in the area of Western Metals, and there is a
4 building on the north side of the road and I was under the
5 impression that there was a dead end and there was not an
6 alleyway behind it.

7 I knew that the other officers were following, and
8 I elected to slow down and direct other officers to cover
9 the exits, the other exits of that property, because I was
10 under the impression that they were going to flee on foot
11 and I didn't want to rush back there knowing that the
12 individuals were said to be armed.

13 Q Describe what happened then.

14 A After that happened, the vehicle, I saw it go up
15 and over some kind of a dirt mound and it went behind the
16 building where there was an alley unbeknownst to me and
17 officers continued to give chase to the vehicle. I got back
18 in my vehicle and drove eastbound down Hymer and I was
19 involved in a collision and was no longer involved in the
20 pursuit or the case after that.

21 Q And briefly describe that, please.

22 A So I was driving, I was driving westbound down
23 Hymer and I attempted to make a left turn in order to
24 continue the pursuit, because the vehicle was at that point
25 driving eastbound and I wasn't able to completely make a

1 turn. I was under the impression I was the last vehicle,
2 but there was another officer behind me when I went to turn
3 around and that other officer ran into my vehicle.

4 Q And so you both just stopped right there?

5 A We stopped right there.

6 Q Detective, I'm going to show you Exhibits 73
7 through 78. I'm going to hand you a series of these photos
8 and I'm going to ask you to look at each one and let me know
9 when you have had a chance to do that.

10 A Okay. Thank you. Okay. I have had a chance to
11 look at them.

12 Q And, Detective, do you recognize those as aerial
13 photos depicting various areas of Sparks?

14 A Yes, I do.

15 Q And do those, a number of those photos include the
16 areas where you pursued the white truck that you described
17 for us moments ago?

18 A Yes, that's correct.

19 Q And now I'm not asking you if these photos are
20 accurate as of a particular day, but do they generally show
21 the area of Sparks in terms of the relationship of the
22 buildings and streets and are they accurately labeled in
23 terms of the streets that are around Hymer?

24 A Yes.

25 MR. PRENGAMAN: Your Honor, I believe 73 is

1 already admitted. Is that correct?

2 THE CLERK: Yes.

3 MR. PRENGAMAN: I would move for the admission of
4 74 through 78.

5 MS. GROSENICK: No objection, sorry.

6 MS. ROSENTHAL: No objection.

7 THE COURT: Thank you. 74 through 78 are in. 73
8 has already been admitted.

9 MR. PRENGAMAN: Thank you, Your Honor.

10

11 (Exhibit Numbers 74 - 78 were admitted into evidence.)

12

13 BY MR. PRENGAMAN:

14 Q And then, Detective, I want to show you Exhibit 79
15 and 80 and ask you to take a look at them and same question.

16 A Okay. I'm familiar.

17 Q And so, again, do those, are those aerial
18 photographs that show areas of Sparks?

19 A Yes.

20 Q And, again, not to a particular day, but do they
21 generally show accurately those areas in relationship to
22 buildings, streets, and are the streets accurately labeled?

23 A Yes.

24 MR. PRENGAMAN: I move for the admission of 79 and
25 80.

1 THE COURT: Ms. Grosenick?
2 MS. GROSENICK: No objection.
3 THE COURT: Ms. Rosenthal?
4 MS. ROSENTHAL: No objection.
5 THE COURT: Mr. Prengaman, those are 79 and 80?
6 MR. PRENGAMAN: Yes, Your Honor.
7 THE COURT: Those are in.
8 MR. PRENGAMAN: Thank you.

9
10 (Exhibit Numbers 79 - 80 were admitted into evidence.)
11

12 BY MR. PRENGAMAN:

13 Q Officer, I'm sorry, Detective, looking at
14 Exhibit 73, do you recognize this as the area around Bob &
15 Lucy's?

16 A Yes, I do.

17 Q And is this area that we are looking at here in
18 Sparks, Washoe County, Nevada?

19 A Yes, it is.

20 Q And looking at this photograph, can you, are you
21 able to show us in terms of your response initially heading
22 towards Bob & Lucy's from which direction would you have
23 been approaching that morning before you saw the truck?

24 A I was approaching from the east, so I came from
25 Oddie to the east.

1 Q Now, if you, if you can press on that -- you can
2 press on that screen in front of you and it will draw.

3 A Certainly.

4 Q Can you show us, so you talked about when you
5 initially approached the Bob & Lucy's establishment you saw
6 a number of police cars?

7 A Yes.

8 Q Can you show us on this aerial photograph
9 generally where those vehicles were?

10 A Yes.

11 Q And where was the white truck, the white Chevrolet
12 truck when you first saw it?

13 A I don't know exactly which space it was in, but I
14 believe it was approximately right there.

15 Q Okay. And then can you show us when you saw --
16 And the officers that you saw outside of the vehicles, were
17 they, as you were looking at them did they appear to be
18 associated with those three police cars?

19 A Yes.

20 Q Okay. And are you able to describe for us where
21 those officers were in relation to their cars?

22 A I can remember there being an officer at least one
23 outside of the vehicle, the first vehicle. I'm not sure
24 where the other ones were.

25 Q Okay. And now can you show us by drawing the path

1 of the truck when you saw it leave?

2 A Sure. The vehicle, I believe it backed up and
3 then ended up fleeing this way, this exit.

4 Q And then from where you were at that point, can
5 you show us how you proceeded?

6 A Yes. From where I, how I entered the parking lot?

7 Q Yes, please.

8 A So I entered from Oddie across the street, came
9 onto the frontage road, and that's when I first saw what was
10 going on. And I remember taking a curb, I'm not sure
11 exactly where, but I took the curb because the vehicle was
12 already exiting the parking lot and I followed.

13 Q Okay. Showing you now Exhibit 74, and just to
14 orient us, can you show us where Bob & Lucy's Tavern would
15 generally be?

16 A Yes.

17 Q And now you, I believe you said -- Well, how did
18 the truck, what street did the truck get on when it left
19 Bob & Lucy's parking lot?

20 A It was on Rock Boulevard traveling southbound.

21 Q Can you show us generally the path that the truck
22 took and you followed?

23 A Yes. I believe right here.

24 Q Okay. And then showing Exhibit 77, do you see the
25 area where you described sort of where the truck went back

1 behind the buildings?

2 A Yes, I do.

3 Q Can you show us, if you can, the path that you
4 took to get there and then where you observed the truck?

5 A Absolutely. There was a cul-de-sac right here and
6 that's where the vehicle went northbound and behind the
7 building.

8 Q And that would be generally the area where your
9 involvement in that pursuit ended?

10 A Yes, yes.

11 Q Okay. And did you have -- when you were pursuing
12 the truck was your dash camera activated?

13 A Yes, it was.

14 Q Now, can you describe for us how the dash cameras,
15 that dash camera equipment on those police vehicles for the
16 Sparks Police Department, how are they operated in terms of
17 when do they get activated?

18 A They are activated when the emergency equipment is
19 activated, so when you turn your emergency lights all the
20 way on, it will activate the camera in the front of the
21 vehicle.

22 Q And does it, does it record sound as well as the
23 field of vision?

24 A It does; however, there is typically a 30 second,
25 it will begin recording 30 seconds before activation and

1 that 30 second period of time does not have an audio
2 recording, so the audio begins at a time when the camera is
3 activated, in this case by the emergency lights.

4 Q Detective, I'm going to show you what we marked
5 for identification as Exhibit 103. Could you please take a
6 look at that exhibit and tell me if you recognize it.

7 A Yes, I recognize it.

8 Q Have you viewed the contents of that flash drive
9 before?

10 A I have.

11 Q And does that contain a portion of the dash cam
12 footage recorded by your police vehicle when you were
13 pursuing the truck?

14 A Yes, it does.

15 Q And it's not the entirety of the footage; is that
16 correct?

17 A Correct.

18 Q Is it limited to just before you arrive at Bob &
19 Lucy's and then once you have lost the truck?

20 A That's correct.

21 MR. PRENGAMAN: I will move for the admission of
22 103, Your Honor.

23 THE COURT: Ms. Grosenick?

24 MS. GROSENICK: No objection.

25 THE COURT: Ms. Rosenthal?

1 MS. ROSENTHAL: Thank you, Your Honor. Just one
2 follow-up question.

3

4 VOIR DIRE EXAMINATION

5 BY MS. ROSENTHAL:

6 Q Detective Loeschner, did you edit that?

7 A No, I didn't.

8 Q Do you know who did?

9 A I don't believe anybody edited it.

10 Q And you indicated that you watched this video?

11 A Yes.

12 Q And --

13 A Well, let me be clear. I believe that it was
14 shortened, if you will, so it's not going to show the entire
15 footage, but in terms of the footage itself it is, it is the
16 correct footage unedited, if that makes sense.

17 Q Do you know who did the clipping of it?

18 A No, I don't.

19 Q And is it fair to say it's simply cut on front
20 and/or back and not pieced together in the middle?

21 A That's correct.

22 MS. ROSENTHAL: No objection, Your Honor.

23 THE COURT: Thank you. Exhibit 100 is in.

24 MR. PRENGAMAN: Thank you, Your Honor.

25 MS. ROSENTHAL: Your Honor, I believe it is 103.

1 THE COURT: Yes, 103. Thank you.

2

3 (Exhibit Number 103 was admitted into evidence.)

4

5 DIRECT EXAMINATION RESUMED

6 BY MR. PRENGAMAN:

7 Q Now, Detective, I'm playing Exhibit 103 and I have
8 stopped it at 3 seconds in. Could you please orient us what
9 field of view -- where is your car at this point?

10 A So at this point, I'm traveling westbound on Oddie
11 Boulevard, and I believe this next light is going to be 12th
12 Street and the light following that would be Rock. At this
13 point, my emergency equipment was not working and so that's
14 why I'm passing this vehicle on the right side rather than
15 traveling on the left side, because my lights were not
16 working at this point. I was still traveling rather quickly
17 because of the nature of the call.

18 Q And then, Detective, in the upper right hand
19 corner of the footage, we see a stamp with some information
20 on it. Does that include the date and the time?

21 A Yes. It has the date and the time, and the time
22 listed is Universal Time. That's my understanding.

23 Q Okay. And so when you were responding to the
24 call, you told us earlier but approximately what time did
25 you respond?

1 A I responded about 6:30 in the morning.

2 Q Okay. And so the Universal Time reflected here
3 has to be adjusted and it's shown in Military Time; is that
4 right?

5 A That's correct.

6 Q Okay. So according to this, it would be 14:34.
7 In Military Time, what would 14:34 hours be?

8 A That would be 2:34 p.m.

9 Q And it wasn't 2:34 p.m.?

10 A That's correct.

11 Q That's the standardized time stamp that all of the
12 police dash cameras for the Sparks Police Department
13 utilize?

14 A That's my understanding.

15 Q And so if you adjust that back, would it be
16 accurate to say this is approximately 6:34 a.m.?

17 A Yes, that's correct.

18 Q Now, stopping at 18 seconds into the footage, and
19 at the time stamp 14:34:21, where are you and what just
20 happened?

21 A So I'm approaching the intersection of Oddie
22 Boulevard and Rock Boulevard, and what I heard on the radio
23 sounded like an officer in stress stating, you know, to stop
24 twice. And as we approached the intersection, I could see
25 the three police cars I mentioned earlier oriented in a way

1 that it appears that they were doing what I would call a
2 high risk stop, and that's what I was seeing as I was
3 approaching the intersection.

4 Q And now, Detective, as we are looking with this
5 paused view are you able to see Bob & Lucy's?

6 A Yes.

7 Q Would you please circle that for us so we can see
8 where it is?

9 A Yes.

10 Q And then can you please circle the general area
11 where you see the police cars?

12 A Yes.

13 Q Now, stopping it at 37 seconds in, the time stamp
14 14:34:40, what street are you on now?

15 A We exited the parking lot and now we are on Rock
16 Boulevard traveling south.

17 Q Now, Detective, I'm stopping at 1 minute and
18 12 seconds in, and it's kind of obvious, but can you show us
19 where that white truck is you are following?

20 A Yes, sir.

21 Q And are you able to tell us the intersection that
22 the truck just passed through?

23 A Where the green lights are would be Rock and
24 C Street.

25 Q And now stopping at 1 minute and 38 seconds in,

1 Detective, what street did the truck just turn onto?

2 A It just turned onto Hymer.

3 Q And the crash that you mentioned occurred just
4 after that?

5 A That's correct.

6 Q And so that ended your portion of the pursuit?

7 A That's correct.

8 Q Now, at one point towards the end of the footage,
9 we heard another officer talk about your equipment is
10 working. Did something happen with regard to your emergency
11 equipment?

12 A I believe when I keyed up my microphone for my
13 radio, we have handheld radios and when you depress the
14 radio to speak, right when I did that the equipment started
15 back up, so that's what made me think that there was some
16 kind of electrical problem with my particular vehicle for
17 that day.

18 MR. PRENGAMAN: Thank you, Detective. I have no
19 further questions at this time, Your Honor.

20 THE COURT: Thank you, Mr. Prengaman.

21 Ms. Hickman or Ms. Grosenick.

22 MS. GROSENICK: May I kindly ask the Court to turn
23 down my microphone. I'm number 2.

24

25 ///

1 CROSS EXAMINATION

2 BY MS. GROSENICK:

3 Q I'm going to show you what has already been
4 admitted as 103. For the record, I am playing from the
5 beginning of Exhibit 103. I'm pausing at 17 seconds into
6 the video.

7 Now, Officer, you indicated or, Detective, you
8 indicated that the first thing you could see was the three
9 police cars parked in front of Bob & Lucy's, correct?

10 A I believe I said that, yes.

11 Q And that's what you can see in this screen shot,
12 correct?

13 A Correct.

14 Q And can you circle those cars?

15 A Sure.

16 Q You can see the officer standing outside of the
17 cars, correct?

18 A Yeah. I can see one officer standing outside of
19 the Chevy Tahoe closest.

20 Q And as you drew closer you could see the others?

21 A Yes. I wasn't looking at them directly, but when
22 I watched the video I could see them.

23 Q Okay. So as you are approaching, you see three
24 police cars?

25 A (Nods head.)

1 Q Correct?

2 A Correct.

3 Q I'm sorry, you have to answer out loud for the
4 record.

5 A Sure.

6 Q Thank you. You see three officers standing
7 outside of their vehicles?

8 A Yes.

9 Q None of those three police vehicles have red and
10 blue lights on?

11 A (Nods head.)

12 Q Can you answer out loud?

13 A Correct.

14 Q None of those three vehicles have sirens on?

15 A Correct.

16 Q I'm going to play 103 from 17 seconds. I'm
17 pausing at 19 seconds. We just heard someone yell stop,
18 correct?

19 A Correct.

20 Q And you heard that over your radio?

21 A Correct.

22 Q So you could not hear with your own ears outside
23 of the vehicle?

24 A That's correct.

25 Q I'm playing from 19 seconds in. Okay. I'm

1 pausing at 37 seconds, and here we see that you are the lead
2 car in the chase?

3 A That's correct.

4 Q And that's because the other officers had to get
5 back into their vehicles?

6 A That's correct.

7 Q But at that time you know there is at least four
8 police vehicles in the area, including yours?

9 A Correct, at least. I know there were additional
10 officers responding, but I'm not sure where they were at
11 this point in time.

12 Q Okay. And at this time your lights and sirens are
13 still not working?

14 A That's correct.

15 Q Before we go further in the video, I do want to
16 just clarify something about that time stamp in the top
17 right corner. That is Universal Time, correct?

18 A That's my understanding.

19 Q And that's a Standard Time used throughout the
20 world?

21 A That's my understanding of what it is.

22 Q Okay. Is it your understanding that you have to
23 subtract roughly 8 hours in order to get the actual time?

24 A Yes, that's what this reflects.

25 Q Okay. And so any of this body camera video or

1 dash cam video from this day, if we take that top right
2 corner, 14:34:40 and subtract 8 hours, we have an accurate
3 time stamp, correct?

4 A I would say for this video, absolutely.

5 Q Okay. I'm playing again from 37 seconds in. I'm
6 going to pause it here at 1 minute and 1 second in. And,
7 Officer, you at this point still do not have on lights and
8 sirens?

9 A That's correct.

10 Q You are several yards behind the suspect's
11 vehicle?

12 A I would say absolutely.

13 Q And there were not vehicles behind you that were
14 close enough to take over as the lead car?

15 A That's correct.

16 Q And that proved to be true until Hymer?

17 A Yes.

18 Q Playing from 1 minute and 1 second.

19 Now, the suspect's vehicle is the one on the right
20 in our view, correct?

21 A Yes.

22 Q There is another car next to it?

23 A Yes.

24 Q On the left?

25 A (Nods head).

1 Q And the suspect vehicle applies the brakes a
2 couple of times as it passes that vehicle?
3 A Yes.
4 Q I'm playing from 1:05.
5 Pausing at 1 minute and 12 seconds, the suspect's
6 vehicle goes through that light?
7 A Yes.
8 Q That light is green?
9 A Yes.
10 Q And you see the brakes go on --
11 A Yes.
12 Q -- as the suspect vehicle passes what appears to
13 be a motorhome trailer?
14 A Okay.
15 Q Starting from 1 minute 12 seconds.
16 Pausing at 1 minute, 18 seconds. Suspect vehicle
17 ran that red light?
18 A Yes.
19 Q So did you?
20 A Yes.
21 Q No red and blue lights on?
22 A Correct.
23 Q No siren?
24 A Correct.
25 Q Playing from 1:18.

1 Pausing at 1 minute and 27 seconds, suspect
2 vehicle puts on his left turn signal?
3 A Yes.
4 Q And it has not reached the intersection?
5 A Yes.
6 Q Pausing at 1 minute and 35 seconds, the suspect's
7 vehicle turned left there?
8 A Yes.
9 Q And that's on Hymer?
10 A Correct.
11 Q And it initially was turning into the oncoming
12 traffic lane?
13 A Correct.
14 Q But then it corrected into the correct lane of
15 travel?
16 A Okay.
17 Q It didn't?
18 A No, I said okay.
19 Q Can you say yes or no?
20 A Yes.
21 Q Okay. So to be clear, it did correct into the
22 correct lane of travel?
23 A Yes.
24 Q Stopping at 1:57, your lights turned back on?
25 A That's correct.

1 Q Your red and blue lights?

2 A Yes.

3 Q Okay. And so for the first 1 minute and 40

4 seconds of this chase, you did not have your lights and

5 sirens on?

6 A That's correct.

7 Q Now, at this point other police vehicles had

8 caught up to you in the chase?

9 A Yes.

10 Q And do you recall how many were there?

11 A Several. I don't know exactly how many.

12 Q At least three?

13 A Absolutely.

14 Q At least four?

15 A I think so.

16 Q Now, here we are, we are at Western Metals?

17 A Yes.

18 Q And this is where you believed that there would

19 not be a back exit for the vehicle?

20 A That's correct.

21 Q And so you called for other units to block the

22 exits?

23 A Correct.

24 Q But the suspect's vehicle left the parking lot by

25 driving behind the building?

1 A That's correct.

2 Q And as the other vehicles gave chase to that one,
3 you were intending to give chase as well?

4 A Yes.

5 Q However, your vehicle collided with Officer
6 Arulanantham's vehicle?

7 A Yes.

8 Q And both police vehicles were damaged?

9 A Correct.

10 Q To the point that neither of you could give chase?

11 A That's correct.

12 MS. GROSENICK: I will pass the witness,
13 Your Honor.

14 THE COURT: Thank you, Ms. Grosenick.
15 Ms. Rosenthal.

16 MS. ROSENTHAL: Thank you.

17

18 CROSS EXAMINATION

19 BY MS. ROSENTHAL:

20 Q Mr. Loeschner, at any time were you close enough
21 to see how many occupants were in the suspect's vehicle?

22 A I don't recall being able to see that.

23 MS. ROSENTHAL: I have no further questions.

24 THE COURT: Thank you, Ms. Rosenthal.

25 Mr. Prengaman.

1 MR. PRENGAMAN: Thank you, Your Honor.

2

3 REDIRECT EXAMINATION

4 BY MR. PRENGAMAN:

5 Q So, Detective, I have gone back to about
6 41 seconds into the exhibit --

7 THE DEPUTY: Your Honor, I'm sorry, but, counsel,
8 you do not have these two TV's on.

9 THE COURT: Thanks, Deputy. There we go.
10 Go ahead, Mr. Prengaman.

11 MR. PRENGAMAN: Thank you, Your Honor.

12 BY MR. PRENGAMAN:

13 Q Detective, can you see the footage on your monitor
14 there?

15 A Yes, I can.

16 Q It's at about 41 seconds into the footage, sort of
17 to the beginning part of the pursuit, and you were
18 questioned about following and asking another unit to take
19 over?

20 A Yes.

21 Q Now, you told us some of the reasons that that was
22 difficult?

23 A Yes.

24 Q Having to do with the other officers getting back
25 in their vehicles?

1 A Yes.

2 Q Your uncertainty about where other police units
3 were responding?

4 A Yes.

5 Q When other units started to catch up, was there a
6 point where you could, in addition to hearing the sirens as
7 you earlier described, did you actually see them in your
8 rearview mirror?

9 A I don't recall, because I was so focused on what
10 was going on in front of me, I don't recall looking at them
11 in my mirrors during the pursuit.

12 Q Was the speed of the truck that you were following
13 a factor in terms of someone else being able to take over?

14 A Yes.

15 Q How so?

16 A I can remember driving as fast as I possibly
17 could, and I knew that based on the amount of time it took
18 for the other officers to get back to their cars that they
19 would have a hard time catching up to me being that they are
20 utilizing, at least one of them is driving a Tahoe, so it
21 wasn't going to be any faster than the vehicle I had, so I
22 knew it would be difficult if we were going to continue to
23 drive as fast as we were driving.

24 Q So they not only would have to drive as fast, they
25 would have to drive even faster in order to take over your

1 position?

2 A Correct.

3 Q And in terms of you talked about the truck driving
4 at a fast speed as you can see in the video, we can hear
5 your acceleration, was there -- what was the point when the
6 truck sort of slowed down and the other units started
7 catching up?

8 A That was from when I turned, the left turn onto
9 Hymer, that's when speeds decreased significantly.

10 Q I'm going to move to about a minute and
11 48 seconds. Now, Detective, I paused at 2 minutes and
12 7 seconds in, and you were asked about the number of police
13 cars that were behind you. Is it fair to say that we can
14 see a number of them depicted in this footage?

15 A Yes.

16 Q And from what you can, and I'm not asking about
17 what was happening to you back then, but what you can see on
18 the footage now, can you see now that those units have their
19 lights and sirens activated?

20 A Yes, I can.

21 Q You can see and hear that?

22 A Yes.

23 Q And as we watch, my question is as we continue to
24 watch from 2 minutes and 7 seconds in are you able at some
25 point to see the truck?

1 A Yes.

2 Q And were you able to see it?

3 A Yes, I could faintly see it.

4 Q Okay. What I would like to do is back it up just
5 a couple seconds, and if you could circle the area and
6 please make it a big circle so we know where you see the
7 truck?

8 A Would you like me to circle it right now?

9 Q Please. I'm going to back it up. If you would as
10 we watch, I'm going to back up to 2 minutes, 11 seconds, and
11 when you see it, you let us know. Just say I see it.

12 A Okay. I see it.

13 Q And does it pass multiple police cars?

14 A Yes.

15 Q And my question is not necessarily as you recall
16 it back then, but as you see it now did the truck pass by
17 multiple police cars with lights and sirens activated?

18 A That's what it looks like.

19 Q And then I paused the footage at 2 minutes and
20 16 seconds in. Now, is there a police car directly ahead of
21 you in your field of vision?

22 A Yes.

23 Q And just by way of comparison was the police car
24 that you were driving, did it appear similar in terms of the
25 markings that we can see on that car?

1 A Yes. I was driving a Chevrolet Tahoe and the
2 markings are very similar.

3 Q In terms of the Sparks Police and the insignias we
4 see on these other cars, yours was marked similar?

5 A Yes, they are uniform.

6 MR. PRENGAMAN: Thank you, Detective.

7 THE COURT: Ms. Grosenick.

8 MS. GROSENICK: Just briefly.

9

10 RECROSS EXAMINATION

11 BY MS. GROSENICK:

12 Q Detective, when you are following the suspect's
13 vehicle for a minute and 40 seconds, you had the option to
14 call off the chase?

15 A Yes, I did.

16 Q But you did not do so?

17 A That's correct.

18 MS. GROSENICK: No further questions.

19 THE COURT: Thank you, Ms. Grosenick.

20 Ms. Rosenthal.

21 MS. ROSENTHAL: Nothing, Your Honor.

22 THE COURT: Thank you so much.

23 Deputy Loeschner, thank you and you are excused.

24 THE WITNESS: Thank you.

25 THE COURT: Mr. Prengaman, your next witness.

1 MR. PRENGAMAN: Your Honor, the state would call
2 Sergeant McNeely.

3 PATRICK MCNEELY,
4 called as a witness, having been duly sworn,
5 testified as follows:

6
7 THE COURT: If you would like a face shield in
8 lieu of a mask, you are welcome to. You and I have the same
9 mic. The closer you get, the better it is.

10 Mr. Prengaman.

11 MR. PRENGAMAN: Thank you, Your Honor.

12

13 DIRECT EXAMINATION

14 BY MR. PRENGAMAN:

15 Q Good morning.

16 A Good morning.

17 Q Could you please tell us your name and then spell
18 your first and last for our court reporter.

19 A Patrick McNeely, P-A-T-R-I-C-K M-c-N-E-E-L-Y.

20 Q And what is your occupation?

21 A I'm a sergeant with the Sparks Police Department.

22 Q You are a sworn peace officer?

23 A Yes.

24 Q How long have you, how long have you been a
25 sergeant?

1 A Two years.

2 Q And just very generally what are your duties with
3 the Sparks Police Department at this time?

4 A Supervise the patrol officers and make sure that
5 they are generally --

6 MS. HICKMAN: I'm sorry, I couldn't hear.

7 THE COURT: Little closer to the microphone.

8 THE WITNESS: Sorry.

9 BY MR. PRENGAMAN:

10 Q If you could repeat that last part.

11 A Generally supervise the officers in their jobs.

12 Q And how long have you served the City of Sparks in
13 any capacity as a police officer?

14 A I was a police officer for 16 years prior to being
15 sergeant, so 18 years total.

16 Q Sergeant, taking you back to February 22nd of last
17 year, 2020, on that Saturday were you on duty?

18 A Yes, I was.

19 Q And what shift were you working?

20 A Graveyard.

21 Q And what hours was that?

22 A I worked, I believe at the time it was a 12 hour
23 shift, so 8:00 p.m. to 8:00 a.m.

24 Q And that day how were you dressed for duty?

25 A I was in a patrol uniform.

1 Q Can you just generally describe what does that
2 look like, what markings identify you specifically?

3 A It's a Navy blue uniform with a badge, name tag,
4 sergeant stripes on shoulders, State of Nevada patch on the
5 shoulders, and a duty belt with all of my gear.

6 Q And at that time were you equipped with a body
7 worn camera?

8 A Yes, I was.

9 Q And can you please describe that body worn camera
10 system in terms of how you wear it and how it is activated?

11 A Yeah. I wear mine in the middle of my chest and I
12 have to push a button to turn it on.

13 Q So would it be accurate there is no event that
14 automatically triggers the camera turning on?

15 A Only if you turn on your emergency lights in your
16 car or you activate your Taser.

17 Q And otherwise it has to be manually activated?

18 A That's correct.

19 Q Just before 6:26 a.m. on that Saturday morning on
20 February 22nd did you hear a call for service?

21 A Yes, I did.

22 Q And was that call for service to the Bob & Lucy's
23 at 1515 Oddie Boulevard?

24 A Yes, it was.

25 Q And in terms of how it then formed your further

1 actions, what was the nature of the call?

2 A Initially, dispatch told us there were subjects
3 inside of Bob & Lucy's with a gun and they were threatening
4 each other.

5 Q And did you respond, did you get in a police car
6 and drive towards Bob & Lucy's?

7 A Yes. I drove to Bob & Lucy's and asked on the
8 radio for officers to meet me at Commerce, which is just,
9 it's a street just west of Bob & Lucy's so that I can
10 coordinate the approach to the business.

11 Q Sergeant, I'm going to show you what we have
12 admitted in evidence as Exhibit 75.

13 A Okay.

14 Q Do you recognize the area here?

15 A Yes, I do.

16 Q And is Bob & Lucy's accurately labeled?

17 A Yes, it is.

18 Q Looking at Exhibit 75 are you able to show us
19 generally the area on Commerce that you were just testifying
20 about?

21 A Yeah. I initially stopped about right there.

22 Q And if you press on that monitor, it should make a
23 marking, and kind of circle the area, if you would.

24 A Okay.

25 Q And what was the purpose of not driving directly

1 up to Bob & Lucy's and instead meeting there?

2 A Generally, on gun calls or violent calls I try to
3 direct the police officers so we know walking into the scene
4 or covering certain areas generally where they are so we
5 don't have crossfire issues or things of that nature.

6 Q And in terms of you responding or driving out to
7 the call, what were you driving that morning?

8 A A marked patrol supervisor vehicle, so it's marked
9 in every way. The patrol vehicle would have the Sparks
10 Police emblems on the side; however, it's a flat top so it
11 doesn't have the lights on top, because it's a supervisor
12 vehicle, so it is not as marked, I guess.

13 Q In terms of the lights and sirens, the overhead
14 lights are located somewhere else on your vehicle?

15 A That's correct. It would be in the visor and the
16 back headrest type of area or just above.

17 Q Were the other officers that responded with you to
18 that area of Commerce also driving marked Sparks Police
19 patrol units?

20 A Yes, they were.

21 Q And were theirs more, I guess, classic with a
22 light bar on top?

23 A That's correct.

24 Q As you were arriving in the area that you
25 indicated before, did you see anything unusual out of the

1 ordinary?

2 A Yes. As I arrived, I believe I got out of my
3 vehicle to meet with other officers that had arrived at the
4 same time. As soon as I got into my vehicle to start our
5 approach, a black male ran in the area of Bob & Lucy's and
6 across Commerce, so I drove my car to where he was and told
7 him to stop.

8 Q And can you describe his demeanor?

9 A When he was running, he was running what I can
10 tell as fast as he could to get away from the area, and then
11 when I first contacted him he was frantic and out of breath
12 and seemed to be scared.

13 Q What did you do?

14 A I immediately got out of the car and started
15 asking him what was going on. I asked him to sit on the
16 sidewalk, because at that point I didn't know who he was, if
17 he was a victim or a possible suspect. So I directed him to
18 sit on the curb. I immediately determined that he was the
19 person that was likely the victim of this call.

20 Q Can you show us on the exhibit, if you would,
21 generally sort of if you could draw a line or indicate for
22 us sort of the path of where you saw him then?

23 A Yes. So it was essentially kind of this direction
24 right here.

25 Q And if you can, if you are able to locate it on

1 this diagram, about where was he when you very first saw
2 him?

3 A I believe probably as soon as he ran from this
4 area of the building where I could actually field of sight.

5 Q Now, you have drawn the little circle to show us
6 where you were. How many police cars do you recall being
7 there approximately or as best you can recall?

8 A When I first arrived, two other officers pulled up
9 behind me and then immediately something came out over the
10 radio that made them go towards Bob & Lucy's.

11 Q So at this point were you the only car there?

12 A After he ran in front of me, yes, that's correct,
13 I ended up by myself with him.

14 Q Did you, did you ask him what happened --

15 A Yes.

16 Q -- and try to get some information out of him
17 about what was going on?

18 A Yes, that's correct.

19 Q And describe -- and was he able to give you some
20 information?

21 A Yes, he was.

22 Q Describe his demeanor as you were speaking to him.

23 A He was still out of breath and still seemed to be
24 scared about what was happening, and he was pointing towards
25 Bob & Lucy's and saying people -- I can't remember exact

1 words, something to the effect that, "The people with the
2 guns are over there."

3 MR. PICKER: Objection, Your Honor; hearsay.

4 THE COURT: I'm sorry?

5 MR. PICKER: Objection, Your Honor; hearsay.

6 THE COURT: Mr. Prengaman.

7 MR. PRENGAMAN: Your Honor, I would offer it as an
8 excited utterance.

9 THE COURT: Ask the question again. Avoid
10 statements offered by other individuals.

11 MR. PRENGAMAN: Your Honor, I would -- may I offer
12 it as an excited utterance and present-sense impression.

13 THE COURT: Ask the officer a couple more
14 questions, please, to establish that assumption.

15 BY MR. PRENGAMAN:

16 Q So you talked about his demeanor, let me ask that.
17 Describe his demeanor as you are trying to get information
18 from him?

19 A He appeared out of breath and he was scared.

20 Q And then in terms of the questions you were asking
21 him, were you asking him about things that had just occurred
22 at Bob & Lucy's?

23 A Yes. I was trying to establish what crime had
24 occurred and the officer safety issues that we were facing.

25 Q And in terms of your questions, was one of your

1 initial questions what happened?

2 A Yes.

3 Q Or words to that effect?

4 A Yes, it was.

5 Q And was he -- when he was speaking to you did it
6 appear that he was describing to you things that had just
7 happened to him just prior to his contact with you?

8 A Yes, it did.

9 MR. PRENGAMAN: I would offer, based on his
10 demeanor, Your Honor, I would offer based on his demeanor as
11 an excited utterance statement made under stress in an
12 event. Additionally, as a present-sense impression; in
13 other words, he is describing something that just happened,
14 either contemporaneously or immediately thereafter.

15 THE COURT: Thank you, Mr. Prengaman.

16 Mr. Picker, do you still have any objection?

17 MR. PICKER: I do, Your Honor, and I have
18 additional questions for this witness.

19 THE COURT: Excuse me?

20 MR. PICKER: I have additional questions for this
21 witness on voir dire.

22 THE COURT: Go ahead.

23 MR. PICKER: Thank you.

24

25

VOIR DIRE EXAMINATION

1

2 BY MR. PICKER:

3 Q Mr. McNeely, from the time you received a call
4 over your radio to respond to Bob & Lucy's and the time you
5 met with this individual, how much time had elapsed?

6 A From the initial call to arrival, no more than
7 five minutes I would guess.

8 Q So there had been five minutes that had elapsed?

9 A Possibly, depending on where I drove from town. I
10 don't recall that specifically. I just remember the time
11 frame after I had arrived.

12 Q And do you know how long before you got the call
13 that some events may have happened within Bob & Lucy's?

14 A At that time I do not, no.

15 Q So you don't know how many minutes elapsed. In
16 addition, when you met with this individual, you said he
17 appeared scared?

18 A Yes.

19 Q Do you know whether he was scared of police
20 officers or something else; do you know?

21 A I assumed it was from wherever he was running
22 from.

23 Q You assumed that, but you did not know?

24 A Yeah. I couldn't get inside of his head to know
25 that, no.

1 Q Okay. And you still don't?

2 A I imagine it's from what he described to me.

3 Q And he was able to coherently, he wasn't
4 talking -- let me rephrase that. He wasn't talking in
5 fragments of sentences or just throwing out words. He was
6 listening to your questions, he was answering your
7 questions, and he was answering directly to your questions;
8 is that correct?

9 A I asked him a general question about what happened
10 and then he gave a lot of information. I was trying to
11 write down some of it.

12 Q And then you were able to specifically ask him
13 certain parts of that, correct?

14 A Yeah. I believe I asked him questions that he
15 actually had already answered several times.

16 Q Okay. And he was able to understand those
17 questions and he was able to answer those in complete
18 sentences?

19 A Yes, I believe so.

20 MR. PICKER: Your Honor, I would still object.

21 THE COURT: The statements are admitted pursuant
22 to both exceptions to the hearsay rule, both excited
23 utterance and present-sense impression.

24 Mr. Prengaman.

25 MR. PRENGAMAN: Thank you, Your Honor.

1 DIRECT EXAMINATION RESUMED

2 BY MR. PRENGAMAN:

3 Q Sergeant, when you asked what happened, what did
4 this individual describe?

5 A He described that he was at a machine in Bob &
6 Lucy's, that a former roommate he named Adrian came in and
7 was demanding money from him and that she had a nickel
8 plated handgun.

9 Q Did he talk about any property having been taken
10 from him in the course of that?

11 A Yes, he did.

12 Q What did he describe to you?

13 A I initially didn't report it in my written report,
14 but from watching my body camera I observed, or I heard that
15 he had said that they took a slot machine printout for what
16 money was in the machine and that he had also stated
17 something when I asked him for his ID that they had taken
18 his wallet as well.

19 Q Was he -- so no ID. Did he tell you his name?

20 A Yes, he told me his name.

21 Q What did he tell you?

22 A Steven Sims.

23 Q Now, in terms of getting basic information while
24 he was talking to you, did you put some of that information
25 out over the radios for the other police officers?

1 A Yes. I had heard over the radio that the officers
2 were in pursuit of the white pickup truck and I wanted to
3 put out over the air that the person is possibly armed. I
4 wanted them to be aware of the possibility of the person
5 having a firearm for their safety mostly.

6 Q And, Sergeant, at some point while you were in the
7 initial period of time when you were talking to Mr. Sims,
8 did some vehicle go by?

9 A Yes.

10 Q Describe that, please.

11 A It was a white pickup truck. It was on Rock
12 Boulevard heading southbound going past Commerce, and then I
13 believe several patrol cars, like four of them went by as
14 well.

15 Q And looking at the exhibit, again, Exhibit 75, on
16 the monitor, can you show us generally where that would have
17 occurred?

18 A Yes.

19 Q Okay. And from where you were standing with
20 Mr. Sims and you were speaking to him was he still seated on
21 the curb as you had directed him?

22 A Yes. Do you want me to mark that?

23 Q If you can, if you are able to show us.

24 A Roughly on the sidewalk right here.

25 Q Okay. And so when the car went by did that prompt

1 any response from Mr. Sims?

2 MR. PICKER: Your Honor, this is the subject of my
3 request this morning for a limiting instruction.

4 THE COURT: Mr. Prengaman.

5 MR. PRENGAMAN: My response is the same,
6 Your Honor, generally admissible under the exception --

7 THE COURT: Let's do this. We are coming up on
8 the time for a break anyway. It's been an hour and a half.
9 Let's take about a 15 minute break.

10 Before we do that, ladies and gentlemen, during
11 this break you must not discuss or communicate with anyone,
12 including fellow jurors, in any way regarding the case or
13 its merits, either by voice, phone, e-mail, text, internet
14 or other means of communication or social media.

15 You must not read, watch or listen to any news or
16 media accounts or commentary about the case. You must not
17 do any research, such as consulting dictionaries, using the
18 internet, or using reference materials.

19 You must not make any investigation, test a theory
20 of the case, recreate any aspect of the case, or in any
21 other way investigate or learn about the case on your own,
22 and you must not form or express any opinion regarding the
23 case until it is submitted to you. Thank you.

24

25 (Whereupon a break was taken from 11:14 a.m. to 11:21 a.m.)

1 (Whereupon the following proceedings
2 were outside the presence of the jury.)

3 THE COURT: The record should reflect these
4 proceedings are being heard outside the presence of the
5 jury. The purpose of this hearing outside the presence of
6 the jury is to discuss the statements apparently that
7 Mr. Sims may have made to Officer McNeely.

8 Counsel says, Mr. Picker says this is the subject
9 of a document that he filed. I'm assuming you are talking
10 about the Supplemental Trial Statement filed on the 12th in
11 this case. The only -- it's on unnumbered page 3 of that
12 document.

13 It starts at the bottom of page 2, the heading is
14 Steven Sims' Statements Immediately After Fleeing Bob &
15 Lucy's. It's not clear to the Court on line 15, page 3
16 where it says, "If the Court finds the statements admissible
17 as an excited utterance, the statements should not be
18 admitted against Defendant Norman because she is not
19 identified by Sims as being in the automobile that was
20 fleeing the scene."

21 It wasn't clear to me until this morning when
22 Officer McNeely was testifying what it was you were actually
23 talking about, because the pleading doesn't provide much
24 reference to the Court, nor did it provide exactly what the
25 statement is, but I glean now from the pleading what the

1 issue is.

2 MS. HICKMAN: Your Honor, could I ask you to speak
3 up.

4 THE COURT: Can you hear me better if I just talk?

5 MS. HICKMAN: Yeah, I think that might be better.

6 THE COURT: It wasn't clear to me until just now
7 what the pleading is talking about, because the pleading
8 doesn't have the statement in it. It eludes to the fact
9 that a statement may have been made about the occupants in
10 the vehicle.

11 So, Mr. Prengaman, what will the -- and I want to
12 make it clear that that section of the pleading only refers
13 to one statement and it's apparently the statement that
14 Officer McNeely is about to talk about, so what will he say?

15 MR. PRENGAMAN: So I anticipate he is going to
16 say, it's on the body cam as well, which I anticipate moving
17 into evidence, but as the truck drives by he says that's
18 them, so that's them. Basically, he points to and says
19 that's them, they are the ones. And McNeely says do they
20 have guns, and he says yes.

21 So, essentially, and I'm not pretending to have a
22 verbatim from memory, but that's essentially what it is.
23 The truck drives by. So then these are separate, what I
24 would say are separate present-sense impressions, excited
25 utterance separate and apart from the ones the Court has

1 already ruled on, because as they are talking the truck
2 drives by and Sims says that's them. He looks and says
3 that's them, so I expect that is what Sergeant McNeely is
4 going to testify to.

5 THE COURT: Mr. Prengaman, Ms. Norman was, in
6 fact, not in the truck; is that correct?

7 MR. PRENGAMAN: Correct.

8 THE COURT: Is that clearly established later at
9 some point in this case?

10 MR. PRENGAMAN: Oh, absolutely, Your Honor. In
11 fact, Sergeant McNeely in the course of my further
12 examination of him is going to say that after the truck
13 leaves the scene, he encounters, he actually encounters
14 Ms. Norman in the sort of back area as he is walking, as he
15 directs -- So shortly after this encounter, I expect him to
16 testify that he directs Sims to go wait at Bob & Lucy's,
17 because he is going to have some other officer go and talk
18 to him and get more detail from him.

19 As Mr. Sims is going back crossing the parking
20 lot, he sees Ms. Norman, and Sergeant McNeely will testify
21 he then sees and encounters Ms. Norman, and so it will be
22 established very shortly that she is not in the truck,
23 because she is at the scene.

24 THE COURT: Okay. Mr. Picker.

25 MR. PICKER: Thank you, Your Honor. As we know,

1 the statement is on page 3 and it identified the statement,
2 which is at line 19, which is that Mr. Sims then does say,
3 "The guys with the guns are back there," and then
4 immediately says, "There they go."

5 THE COURT: Okay.

6 MR. PICKER: Because in his testimony at prelim,
7 he did say that he saw specifically the two males in the
8 vehicle and did not see Ms. Norman in the vehicle.

9 THE COURT: Correct.

10 MR. PICKER: So clearly, again, that's why the
11 limiting instruction --

12 THE COURT: Okay. Mr. Picker, I want to make
13 something clear about the pleading. The pleading says at
14 line 15, "If the Court," this is the first place in the
15 pleading that I see where the context of any statement comes
16 out. "If the Court finds the statements, plural, admissible
17 as an excited utterance, the statements should not be
18 admitted against Defendant Norman, because she is not
19 identified by Sims as being in the automobile that was
20 fleeing the scene."

21 "The Court should give the jury a limiting
22 instruction indicating that the statements are not
23 admissible as to Defendant Norman. Sims, according to the
24 state, pointed back towards Bob & Lucy's while saying
25 something to the effect that, 'The guys with the guns are

1 back there,' and then identifying the occupants of the
2 vehicle as it drives by."

3 Now, it's confusing to me the statement that
4 whether -- are there two statements here? Is it, "The guys
5 with the guns are back there" is something he independently
6 said to Officer McNeely separate and apart from the
7 statement that was made as the vehicle drives by?

8 MR. PICKER: They are almost one after another.
9 They are two separate statements, but they come almost
10 immediately.

11 THE COURT: Okay.

12 MR. PICKER: And they were referred to in the
13 state's trial statement. That's why I didn't go into more
14 detail than what is in here. The first statement is, "The
15 guys with the guns are back there," and then it is, "There
16 they go" as they drive by.

17 THE COURT: Okay.

18 MR. PICKER: Those statements are very close in
19 time to each other.

20 THE COURT: All right. Okay. And both of those
21 you are seeking to have excluded?

22 MR. PICKER: Well, Your Honor, you already ruled
23 that one of them comes in as an excited utterance and that
24 I'm asking for a limiting instruction since you are
25 admitting it.

1 THE COURT: Are we talking about the statements
2 that have already come in on your objection?

3 MR. PICKER: Well, they are about to come in. One
4 had already come in and actually I objected as to hearsay as
5 to any of this. You then overruled that objection saying it
6 was an excited utterance.

7 THE COURT: Only as to the statements that Officer
8 McNeely has already put into the record, but not as to the
9 two statements. The statements that he has already put into
10 the record you raised this morning on the record, but the
11 statements that are in your pleading are not now.

12 MR. PICKER: Your Honor, I'm unclear, because I
13 objected before he ever said anything about what Mr. Sims
14 said. I objected to all of what Mr. Sims said. You then --
15 and that was my argument, is that it was hearsay -- you then
16 ruled that everything Mr. Sims said was an excited
17 utterance. If we are revisiting that, I'm more than happy
18 to revisit it as to those two statements.

19 THE COURT: The statements that came in pursuant
20 to your objection that were admitted are to the effect of a
21 former roommate he named Adrian, a nickel plated handgun,
22 took the slot machine ticket, and he was asked for his ID
23 and told McNeely that his wallet was also taken. Those are
24 the statements that were the subject of your objection this
25 morning. Then -- go ahead.

1 MR. PICKER: I have to disagree with Your Honor.
2 Before any of those statements came in, I objected to all of
3 Mr. Sims' statements, recounting anything coming in through
4 this witness. I objected to everything Mr. Sims said being
5 repeated by Mr. McNeely.

6 THE COURT: Okay. And now we have gotten to the
7 point we are addressing directly the two statements relating
8 to your pleading, "The guys with the guns are back there,"
9 and a reference to who might be in the vehicle.

10 All right. Okay. Mr. Picker, with regard to
11 those statements, Mr. Prengaman has already made his
12 argument. With regard to those statements is your argument
13 the same?

14 MR. PICKER: It is the same. Yes, it is the same.

15 MR. PRENGAMAN: Except I would say, Your Honor, if
16 I may.

17 THE COURT: Go ahead.

18 MR. PRENGAMAN: So what happened, so I think I
19 have addressed it except for the limited instruction part.

20 THE COURT: Say it again.

21 MR. PRENGAMAN: I think I have addressed them
22 except for the argument that there should be a limited
23 instruction.

24 THE COURT: Okay. Again, for some reason you are
25 not coming through clearly.

1 MR. PRENGAMAN: Your Honor, I think I addressed
2 them in terms of the excited utterance and present-sense
3 impression. I don't believe I have, unless the Court is
4 going to rule, I'm just asking because I haven't addressed
5 his request for a limiting instruction for the statements
6 about the car going by. We did in chambers briefly, but,
7 again, I don't want to belabor it if the Court is going to
8 rule, but I will address that if the Court would allow me.

9 THE COURT: You would address it if I'm inclined
10 to give a limiting instruction?

11 MR. PRENGAMAN: I want to address his argument if
12 a limiting instruction should be given if they are admitted,
13 because I don't think there should be any limited
14 instruction if they qualify. I mean, in brief, in a
15 nutshell --

16 THE COURT: Okay. Here is my ruling. With both,
17 with regard to both statements, "The guys with the guns are
18 back there" and with regard to the statement that Mr. Sims
19 gave, the exact one which I don't have, but apparently
20 identifies the occupants of the vehicle that drives by, both
21 arguments, the first, "The guys with the guns are back
22 there" is an excited utterance pursuant to NRS 51.095. "A
23 statement relating to a startling event or condition made
24 while the declarant was under the stress of excitement
25 caused by the event or condition."

1 And the other is the statement about the
2 individuals who might occupy the truck as it drives by is a
3 present-sense impression under 51.085, "A statement
4 describing or explaining an event or a condition made while
5 the declarant was perceiving the event or condition, or
6 immediately thereafter."

7 And Mr. Prengaman has made it very clear that
8 Officer McNeely is going to shortly establish that
9 Ms. Norman was, in fact, not there.

10 Okay. We can bring the jury back in.

11 THE DEPUTY: Your Honor, permission to bring the
12 witness in first.

13 THE COURT: Yes, please.

14

15 (Whereupon the following proceedings
16 were in the presence of the jury.)

17 THE COURT: Mr. Prengaman.

18 MR. PRENGAMAN: Thank you, Your Honor.

19 BY MR. PRENGAMAN:

20 Q Sergeant, before the break I was asking you about
21 the point in time when you said you saw the truck drive by
22 followed by police cars?

23 A Yes.

24 Q You indicated for us on Exhibit 75 how close the
25 truck and the pursuing police cars drove past you where you

1 and Mr. Sims were situated?

2 A Yes.

3 Q Now, my question to you is when that truck passed
4 by did Mr. Sims at some point go back or were you able to
5 see him look in the direction of the truck and the police
6 cars?

7 A I know that I looked in the direction of the
8 police cars and because of the noise I believe he did, too.

9 Q And at that point or shortly after that point did
10 he make any statement referring to the truck?

11 A I don't recall his exact words, but I believe he
12 indicated that that's, "There they go," or something to that
13 effect.

14 Q Now, you told us earlier you put some information
15 out over the radio to the other units?

16 A Yes.

17 Q At some point do you give Mr. Sims some direction?

18 A Yes. I directed him to go back to Bob & Lucy's
19 just to -- because I didn't know if there was any victims or
20 witnesses or anything else over there, so I was going to go
21 back there with him. I was essentially alone at that point,
22 and so I directed him to walk back to Bob & Lucy's.

23 Q Did he do that at that point?

24 A Yes, he did.

25 Q And then what did you do as he began, as Mr. Sims

1 began walking back to Bob & Lucy's?

2 A As we were walking back, he started kind of
3 frantically pointing kind of behind me as we were walking
4 together saying, "That's her, she had the gun," something to
5 that effect.

6 Q And you looked in the direction he was pointing?

7 A Yes, I did.

8 Q And describe what happened next.

9 A I saw a black female adult walking towards us, and
10 she was yelling at Mr. Sims, and because he said, "That's
11 the one, she has the gun," I approached her and for my
12 safety placed her in handcuffs.

13 Q Now, as you indicated, you said she was talking,
14 or how would you describe the interaction with Mr. Sims?

15 A She was yelling things at him like, "Why did you
16 to this?" I believe something to the effect of, "Why did
17 you call the police," or something like that.

18 Q And did they continue to engage? In other words,
19 did she continue to speak to Mr. Sims as you are putting her
20 in handcuffs?

21 A Yes. I was trying to make sure that they didn't,
22 you know, get into some sort of physical altercation, so I
23 was telling him to go inside, and she continued yelling at
24 him, and I told her just, you know, stop.

25 Q Okay. Now, that woman that pointed out Mr. Sims

1 that you placed in handcuffs, do you see her in the
2 courtroom today?

3 A Yes, I do.

4 Q And for the record can you please indicate where
5 you see the person and the clothing being worn by that
6 person?

7 A She is at the, for me it would be the first
8 defense table. She is wearing a black coat and a red
9 blouse.

10 Q And can you describe the person that she -- to her
11 immediate right?

12 A A female wearing a striped coat and black blouse.

13 Q And is there -- now, is the woman you identified,
14 is she wearing a mask?

15 A Yes, she is.

16 Q Are you able to positively -- let me ask it this
17 way. Are you positive that that's her even though she is
18 wearing a mask?

19 A Yes, I am.

20 MR. PRENGAMAN: Your Honor, may the record reflect
21 the identification of Defendant Adrianna Norman?

22 THE COURT: It does.

23 MR. PRENGAMAN: Thank you.

24 BY MR. PRENGAMAN:

25 Q Now, Sergeant, during your encounter with Mr. Sims

1 and Ms. Norman was your body camera activated?

2 A Yes, it was.

3 Q And did it capture the statements Ms. Norman made
4 to Mr. Sims? You described some. Did it capture that, the
5 statements that she made to Mr. Sims?

6 A Yes, it did.

7 Q Did she, in the course of that exchange, did she
8 talk about an accusation that she had against Mr. Sims for
9 having stolen something?

10 A Yes. She made a statement about an Xbox that she
11 believed he had taken from her son.

12 Q I'm going to start by showing you, I'm going to
13 show you two ultimately, but I'm going to start with
14 Exhibit 105. Would you please examine that exhibit and tell
15 me if you recognize it?

16 A Yes, I do.

17 Q You have had an opportunity to view the contents
18 of that flash drive before?

19 A Yes, I have.

20 Q And does that flash drive contain a segment of
21 your body camera footage from that day that you are
22 testifying about?

23 A Yes, it does.

24 Q And does that particular footage show just the,
25 your encounter with Ms. Norman and the exchange that she had

1 with Mr. Sims that you just had testified about?

2 A Yes, it does.

3 Q And does it begin approximately where Mr. Sims,
4 about or just after Mr. Sims has pointed her out and then
5 sort of where you sort of break the conversation and
6 indicate that Mr. Sims should go back to Bob & Lucy's?

7 A Yes, it does.

8 Q So that's the segment that is contained on that
9 flash drive?

10 A That's correct.

11 MR. PRENGAMAN: Your Honor, I move for the
12 admission of Exhibit 105.

13 THE COURT: Ms. Hickman.

14 MS. HICKMAN: No objection.

15 THE COURT: Mr. Picker.

16 MR. PICKER: No objection.

17 THE COURT: Thank you. 105, Mr. Prengaman?

18 MR. PRENGAMAN: Yes, Your Honor.

19 THE COURT: 105 is admitted.

20

21 (Exhibit Number 105 was admitted into evidence.)

22

23 MS. HICKMAN: I would object to playing it,

24 however.

25 THE COURT: Ms. Hickman, a little louder.

1 MS. HICKMAN: It is cumulative. He just elicited
2 all of the statements through Sergeant McNeely and so to now
3 play it is cumulative.

4 THE COURT: Do you have an objection?

5 MS. HICKMAN: No, I know -- sorry. I don't object
6 to its admission at this point. I object to playing it at
7 this point because it is now cumulative.

8 THE COURT: Mr. Picker?

9 MR. PICKER: I will join in the objection.

10 THE COURT: Objection is overruled.

11 Go ahead, Mr. Prengaman.

12 MR. PRENGAMAN: Thank you.

13 BY MR. PRENGAMAN:

14 Q Sergeant, I'm pausing the footage on Exhibit 105
15 at 5 seconds in and I'm going to ask you to orient us. And
16 so as we are looking here, do we just see you get out of
17 your car?

18 A Yes.

19 Q What is the vantage or what are we looking at in
20 the footage here?

21 A In front of me is Bob & Lucy's, and I'm coming
22 across that kind of back way you could walk from where we
23 were at on Commerce towards Bob & Lucy's.

24 Q I'm just going to briefly go back to Exhibit 75
25 and ask you to point out where this would correspond on that

1 aerial photograph.

2 A Okay. Approximately where my patrol car is,
3 somewhere in this area right here. I don't see the Dumpster
4 on the photo, but it is somewhere right in there.

5 Q Okay. And as we look at this photo, directly
6 above that you could see the building of Bob & Lucy's which
7 you indicated you see in the background of the footage?

8 A That's correct.

9 Q Pausing at 18 seconds in, who is the individual
10 that we are looking at right now?

11 A That is Steven Sims.

12 Q I'm pausing it at 54 seconds in. The woman that
13 we just saw that you are engaged with, is that the Defendant
14 Ms. Norman that you just identified a few minutes ago?

15 A Yes, it is.

16 Q Sergeant, did you then take ultimately Ms. Norman
17 to your patrol car to wait?

18 A Yes, I did.

19 Q And was she ultimately transported to the Sparks
20 Police Department?

21 A Yes, she was.

22 Q Now, with regard to your interaction with Mr. Sims
23 that you described previously, was that captured on your
24 body camera?

25 A Yes, it was.

1 Q And when I say previous, I mean those statements
2 that he made to you when you first encountered him and had
3 him sit on the curb that you told us about?

4 A That's correct.

5 Q And have you seen Exhibit 104 before?

6 A Yes, I have.

7 Q And have you had an opportunity to see the
8 contents of Exhibit 4?

9 A Yes, I have.

10 Q I'm sorry if I said 4. I was referring to 104.

11 A 104, yes.

12 Q And does that exhibit contain again an edit, a
13 clip of your body camera footage that captures that
14 encounter with Mr. Sims as he is sitting there on the road
15 right after you first saw him?

16 A Yes, it does.

17 Q Does it include the statements that he made
18 about -- well, let me back up. Can you hear the lights and
19 sirens as the white truck goes by on that particular
20 footage?

21 A Yes, you can.

22 Q Can you hear the statement he makes about the
23 truck "that's them" or words to that effect "that's them"?

24 A Yes.

25 Q And then the other statements that you mentioned,

1 the description of what happened to him at Bob & Lucy's?

2 A That's correct.

3 MR. PRENGAMAN: Your Honor, I would move for the
4 admission of Exhibit 104.

5 THE COURT: Ms. Hickman.

6 MS. HICKMAN: Objection; cumulative.

7 THE COURT: Thank you. Mr. Picker.

8 MR. PICKER: I will raise all of my prior
9 objections, Your Honor.

10 THE COURT: Thank you. Objection overruled.

11 Go ahead, Mr. Prengaman.

12 MR. PRENGAMAN: I'm sorry, Your Honor, it is
13 admitted?

14 THE COURT: Yes, 104 is admitted.

15 MR. PRENGAMAN: Thank you.

16

17 (Exhibit Number 104 was admitted into evidence.)

18

19 BY MR. PRENGAMAN:

20 Q Now, Sergeant, I'm going to just go back to, for
21 the time being I'm going to go back to your encounter with
22 Ms. Norman we just observed. We saw you direct Mr. Sims
23 back to Bob & Lucy's. Did you assign another officer a
24 little bit later on to go speak with Mr. Sims?

25 A Yes. Officer Allen I asked to go do a more

1 thorough interview with Steve Sims.

2 Q What did you do, so once you had Ms. Norman in
3 your car waiting, what was sort of the next steps that you
4 undertook? I'm not going to ask you for the content of any
5 communications, just outline for us what you did.

6 A Once I had her in the car, Officer Allen was on
7 the scene, and I believe I just communicated with a
8 lieutenant or something like that.

9 Q Okay. And at some point did you, and, again, I'm
10 not going to ask you to repeat the contents of any
11 communications, but did you learn some information that
12 prompted you to do a search around the area of Bob & Lucy's?

13 A The information I had was that she, that
14 Ms. Norman possibly had a firearm.

15 Q And that's what we just heard from Mr. Sims on the
16 footage. Is that, that's where that came from?

17 A That's correct.

18 Q Okay.

19 A I believe from what I could tell, Ms. Norman had
20 left Bob & Lucy's, but I wasn't sure where she went, so I
21 went walking around the area that I thought she may have
22 gone and made sure there was not an outstanding firearm that
23 somebody else might come upon or something like that.

24 Q And if you recall did you, was it just you or did
25 you have assistance from another officer or officers?

1 A There was another officer that walked around with
2 me.

3 Q Okay. And now I'm going to go back to Exhibit 75
4 and ask you just to show us again the general area. I'm not
5 going to ask you exact, but just give us the general idea of
6 the area where you and the other officer searched.

7 A So we looked around this area that I thought she
8 may have walked around.

9 Q And did you, did you find any guns?

10 A No, we did not.

11 Q Did you find anything that you thought even seemed
12 like it could be relevant?

13 A I don't recall finding anything of interest.

14 Q And then, again, I'm not going to ask you for the
15 contents of any communications, but ultimately did you go
16 back to the Sparks Police Department and basically brief
17 detectives on the information that you had from the scene?

18 A Yes, I did.

19 Q Sergeant, I'm going to show you what we've marked
20 for identification as Exhibit 71. Could you just look at
21 that photograph?

22 A Yes.

23 Q Do you recognize that person depicted there?

24 A Yes. It's Ms. Norman.

25 Q And does that photograph depict her as she

1 appeared back on February 22nd when you had contact with
2 her?

3 A Yes.

4 MR. PRENGAMAN: I would move for the admission of
5 Exhibit 71.

6 THE COURT: Ms. Hickman, Exhibit 71?

7 MS. HICKMAN: I don't have any objection to that.

8 THE COURT: Mr. Picker?

9 MR. PICKER: No objection.

10 THE COURT: 71 is admitted.

11 MR. PRENGAMAN: Thank you.

12

13 (Exhibit Number 71 was admitted into evidence.)

14

15 MR. PRENGAMAN: Thank you, Sergeant. I have no
16 further questions at this time.

17 THE COURT: Ms. Hickman, Ms. Grosenick.

18 MS. HICKMAN: Thank you, Your Honor.

19

20 CROSS EXAMINATION

21 BY MS. HICKMAN:

22 Q Sergeant McNeely, good morning.

23 A Yes.

24 Q So February 22nd, 2020, you were a sergeant at
25 that time, correct?

1 A That's right.

2 Q So can you explain to me a little bit about the

3 rankings in the Sparks Police Department?

4 A Sure.

5 Q Who is above a sergeant?

6 A A lieutenant.

7 Q And then who is below?

8 A A patrol officer.

9 Q What about a detective?

10 A It's a special assignment for a patrol officer, so

11 it's not a rank above. It's a special assignment, so but

12 they do direct patrol officers, so it's quasi above.

13 Q Okay. So when this call comes in from Bob &

14 Lucy's, officers from the Sparks Police Department respond,

15 correct?

16 A Yes.

17 Q And you are the highest ranking person who

18 responds, correct?

19 A At that time, correct.

20 Q Okay. So the call comes in at about 6:26 in the

21 morning, right?

22 A Yes.

23 Q And that comes in as threats with a gun, right?

24 A Yes.

25 Q And while dispatch is on the call with the

1 reporting person, they are giving information over the radio
2 to you and the other officers, correct?

3 A I don't know what order. Sometimes calls come in
4 and they get their information and then they broadcast to
5 us, so I don't know that they are giving it, giving it, and
6 still giving it necessarily.

7 Q Sure. You don't know if it's simultaneous, but
8 when dispatch is giving you information about the nature of
9 the call, that's coming from the 911 call?

10 A That's correct.

11 Q Okay. So in this case, the person who called 911,
12 it's broadcast to you, and I'm just going to say you,
13 because you are the one I'm talking to, but it is over the
14 radio?

15 A Yes.

16 Q That the reporting person hasn't seen a gun,
17 correct?

18 A I couldn't understand you.

19 Q It is broadcast that the reporting person did not
20 see a gun, correct?

21 A I don't recall if the reporting person said that.
22 I just know that dispatch told us that there was guns
23 involved.

24 Q Okay. And I'm going to approach you with what has
25 been marked as Exhibit 113. And you are familiar with a CAD

1 log, correct? C-A-D log?

2 A Yes.

3 Q I'm showing you 113. That is that dispatch log
4 that essentially shows information that was broadcast
5 regarding this incident, right?

6 A Yes, it is.

7 Q And when you look at that, you can see that there
8 is certain numbers over to the left side of the paper,
9 correct?

10 A The number, or the times?

11 Q There is the times and then there is the number
12 that indicates which officer gives the information; do you
13 see that?

14 A Well, the log shows when the officer was
15 dispatched. Is that what you are referring to?

16 Q Can I see it? Thank you. So, for example, you
17 testified that you indicated that people should rally prior
18 to going to Bob & Lucy's, correct?

19 A Yes.

20 Q Okay. So I will show you page 2 of that. At
21 6:30:25 you will see, "101 Comment: Rally prior." Is that
22 you?

23 A Yes.

24 Q Okay. So when there is a number 101, that
25 indicates it's coming from you that's being broadcast,

1 correct?

2 A Generally, I would say that is most of the time
3 accurate.

4 Q Okay. Well, if you look at that and see where 101
5 is on the side, does that confirm, sorry, does that confirm
6 what you remember doing in this case?

7 A Yes. The two that I'm looking at, "Rally prior"
8 and, "Meet around the corner at Commerce."

9 Q Okay.

10 A I said those things, yes.

11 Q Okay. So the initial question that I asked you is
12 that it was broadcast that the reporting party didn't see a
13 gun, correct?

14 A That's what you told me.

15 Q And you said you didn't know, right?

16 A All I know is what dispatch told me at the time.

17 Q Okay. Can I see that? I want to show you at
18 6:34:41 the call -- well, actually, you are familiar with
19 113, correct? You have seen it?

20 A I don't remember.

21 Q Do you recognize what it is?

22 A Yes.

23 Q You recognize it as dispatch logs, correct?

24 A Correct.

25 Q To the best of your knowledge does this appear to

1 be a fair and accurate copy of those logs?

2 A I can only say that generally speaking it's
3 probably accurate, but dispatch gets overwhelmed and they
4 can type, often actually they type somebody's number and put
5 a comment next to it, which is not necessarily accurate.

6 So you would have to listen to the voices,
7 identify them as the patrol officer with the number that
8 they were that day, so if I was 101 you would hear my voice
9 saying those things, so it's definitely not one of those
10 things that's 100 percent.

11 Q Sure. Okay. I understand that. So I'm going to
12 show you at 6:34:41, and I want you to read what it says and
13 tell me if that refreshes your recollection.

14 MR. PRENGAMAN: Well, Your Honor, I will stipulate
15 that that document can come into evidence if it's offered,
16 but if it's something that this witness has never heard
17 before, I would object to refresh his recollection.

18 THE COURT: Ms. Hickman?

19 MS. HICKMAN: I would offer it in evidence.

20 THE COURT: Mr. Picker, any objection?
21 Ms. Rosenthal? Exhibit 113.

22 MR. PICKER: No, Your Honor.

23 THE COURT: It's admitted.

24

25 (Exhibit Number 113 was admitted into evidence.)

1 BY MS. HICKMAN:

2 Q So looking at Exhibit 113, 6:34:41.

3 A 6:34:26?

4 Q Is it 26 or 41? Let me see, sorry, 41. Do you
5 see where it says, "Reporting party did not see any
6 weapons"?

7 A Yes.

8 Q Okay. That was my question, sorry.

9 A So that -- yeah.

10 Q I will take that back.

11 So you and I believe you said two other patrol
12 cars rallied to that Commerce location, correct?

13 A Yeah, initially when I first arrived two officers.

14 Q And then they left to go to Bob & Lucy's?

15 A Yes. As soon as Mr. Sims ran out in front of me,
16 I believe, to the best of my recollection, an officer said
17 the truck was still out front of Bob & Lucy's.

18 Q Okay.

19 A The suspect vehicle.

20 Q And when you and the two other vehicles met at
21 Commerce, you didn't go there Code 3, meaning lights and
22 sirens, correct?

23 A I don't recall. I don't believe I did. The
24 officers generally for a robbery call or a gun call or
25 anything of that nature would respond Code 3; however, when

1 you get closer to the area, so you don't alert a potential
2 suspect to your presence, you turn your lights and siren off
3 just before arrival so they don't, obviously, so you can
4 actually catch them.

5 Q Okay. And to be clear, at this time this is not a
6 robbery call, right?

7 A Not initially, no.

8 Q Okay. It's back to the gun, correct?

9 A The gun was the, yeah, a gun or Assault With a
10 Deadly Weapon or something of that nature was what I
11 understood at the time when I first went there.

12 Q Okay. So the officers may have gone lights and
13 sirens to the Commerce Street rally point, but then when
14 they approached Bob & Lucy's they wouldn't have lights and
15 sirens on, right?

16 A I don't believe they did on this particular
17 situation, but I'm not positive.

18 Q Okay. And what you see is Mr. Sims running,
19 correct?

20 A Yes.

21 Q And you have contact with him, right?

22 A Yes.

23 Q And you have him sit on the ground?

24 A Yes.

25 Q Or on the curb, right?

1 A Correct.

2 Q And you start asking him questions, right?

3 A Yes.

4 Q Okay. So from the time you made contact with
5 Mr. Sims to when you get back to the station with the
6 detectives and you tell them what you know --

7 A Yes.

8 Q -- how long is that time period?

9 A From initial contact going there, I would only be
10 estimating, but 45 minutes to an hour total, something like
11 that.

12 Q Okay. You meet with detective --

13 A It --

14 Q I'm sorry, go ahead.

15 A It could be less.

16 Q Okay.

17 A It's hard to know without looking at the log at
18 when I left and that kind of thing.

19 Q But you meet with detectives after the car
20 accident has happened on the freeway, correct?

21 A Yes.

22 Q And after you meet with detectives, what is your
23 involvement in the case?

24 A The detectives took over the case and at that
25 point I went back -- I worked graveyard that night, so I had

1 to write the report and I was pretty much done with the case
2 at that point, as far as my involvement.

3 Q Okay. So I want to show you what has been
4 admitted as Exhibit 104, and this is your body camera,
5 correct?

6 A That's correct.

7 Q So this is what you are wearing in the middle of
8 your chest?

9 A That's correct.

10 Q And it doesn't start playing right away because
11 there is about a 30 second delay, right?

12 A I --

13 Q Not playing the audio?

14 A That's right, 30 second delay after activation.

15 Q All right. So I'm going to start and I'm going to
16 hit play and it's at 1 second. Okay. Now, I'm going to
17 pause it at 13 seconds. And this person sitting on the curb
18 is Steve Sims, correct?

19 A Steven Sims, yes.

20 Q Okay. You don't know his name at that time,
21 right?

22 A No.

23 Q But that's the person you seen running, right?

24 A That's correct.

25 Q Okay. So I paused it again at 16 seconds. Did

1 you hear yourself say, "What happened?"

2 A Yes.

3 Q Okay. Before that were you able to hear what
4 dispatch said about an address?

5 A About a what?

6 Q An address. Address, A-D-D-R-E-S-S, address.

7 A I don't recall that.

8 Q Okay. So what I'm going to do is I'm going to
9 back this up a little bit and I'm going to let it play
10 through what dispatch says and that's what I want you to pay
11 attention to, okay?

12 A Okay.

13 Q I'm going to start it at 13 seconds. Okay. I'm
14 going to pause it at 19 seconds. Did you hear her say
15 something about an address and then the words
16 Dianne Williams?

17 A I just heard it just now, yes.

18 Q Okay. So you heard that come out over the radio
19 prior to any conversation you had with Steve Sims, right?

20 A So the only thing I can explain is that you can
21 hear it here, but I definitely did not hear it when I was
22 trying to focus on Mr. Sims.

23 Q That's not my question.

24 A Okay.

25 Q My question is that is said on the radio before

1 anything happens between you and Mr. Sims, correct?

2 A Yes.

3 Q Okay. And I'm going to approach you again with

4 Exhibit 113. Actually, before I do that, I want to play

5 this just a little bit more. Okay. So starting at

6 19 seconds. Okay. So I paused it at 26 seconds. You also

7 heard prior to anything coming from Mr. Sims that there is a

8 female suspect still inside, correct?

9 A I did hear it on the video, but I definitely did
10 not realize that when I was talking to Mr. Sims.

11 Q Understood. But that comes out before you talk to
12 him, right?

13 A Yes.

14 Q And that refers to a female suspect still inside
15 at Bob & Lucy's, right?

16 A That's correct.

17 Q So when you are talking to Mr. Sims, he never
18 tells you at this point -- well, he doesn't tell you how
19 long the conversation between him and the person he has
20 identified as Adrianna was, correct?

21 A Not at that time, no.

22 Q Right. All he told you is that a girl came in,
23 what her name was, that she had a gun, right?

24 A Correct.

25 Q And he tells you, "The dude cashed my ticket out.

1 He took my ticket." Right?

2 A Yes.

3 Q Okay. So when you asked him what happened, he
4 said someone took a ticket, right?

5 A Yes.

6 Q But he does not initially tell you that his wallet
7 was taken, correct?

8 A Correct.

9 Q Okay. And he doesn't tell you that his wallet was
10 taken until you ask him for his ID, correct?

11 A Correct.

12 Q And at the time you say, "Do you have your ID,
13 sir?" He says, "No, I do not. He grabbed my fucking
14 wallet," correct?

15 A Something to that effect, yes.

16 Q But you don't ever see him look for his wallet on
17 himself, correct?

18 A No, I did not.

19 Q He doesn't reach into any pockets, right?

20 A No.

21 Q And we can see him in Exhibit 104. He has got a
22 jacket on, right?

23 A Yes.

24 Q And do you remember what kind of pants he was
25 wearing?

1 A Sitting at this angle, I don't recall off the top
2 of my head without seeing it. I believe they were jeans,
3 but --

4 Q And if they were jeans they would have pockets in
5 them, correct?

6 A Most jeans do.

7 Q And at the time you see him, he is running, right?

8 A Yes.

9 Q And you stop him and sit him down?

10 A Yes.

11 Q Okay. And so with the initial information he
12 gives you, you broadcast information to the officers that
13 are chasing the white truck, right?

14 A That's correct.

15 Q And the first information you broadcast is it's
16 going to be, it's an attempted robbery with a pistol, right?

17 A I don't know if I said pistol, but I said
18 attempted robbery, I know that.

19 Q Okay.

20 A I believe I said prior to that that somebody in
21 the truck might have a gun or something to that effect.

22 Q Okay. I'm going to hit play at 26 seconds. I'm
23 going to pause it at 45 seconds. So before I get to that
24 question, I want to put a pin in whether or not you
25 broadcast it's an attempted robbery with a pistol. He is

1 giving you information about how he knows Adrianna, correct?

2 A Yes.

3 Q Where she is from, right?

4 A Yes.

5 Q And he also gives you information about he was
6 sitting there playing the game, right?

7 A Yes.

8 Q I'm going to hit play again at 46 seconds.

9 A I can't hear it.

10 THE COURT: The audio is not loud enough.

11 MS. HICKMAN: I think it's because the audio only
12 plays through the media cart. Let me turn it up.

13 THE COURT: Ms. Hickman, if you want everything
14 that you played thus far to be heard, you should start over.

15 MS. HICKMAN: Okay.

16 THE COURT: And if you want to borrow my
17 microphone to hold it up to the media player, you can do
18 that as well.

19 MS. HICKMAN: So I turned it up. Let me try and
20 see if this is better.

21 BY MS. HICKMAN:

22 Q I'm going to hit play at 13 seconds. I'm going to
23 pause it at 18 seconds and that's where it says address
24 Dianne Williams. Were you able to hear that better?

25 A Yes. I could hear it the first time, but just

1 barely.

2 Q Was it better this time?

3 A Yes.

4 Q Okay. I'm going to hit play at 18 seconds. And
5 then I'm going to pause it at 26, and that's where you hear
6 female entering or female suspect currently inside, right?

7 A Yes.

8 Q Okay. And then I'm going to hit play again at
9 26 seconds. The first thing he is telling you --

10 THE COURT: Ms. Hickman, it's still hard to hear.
11 Why don't you borrow a microphone and see if you can't hold
12 it up to that.

13 MS. HICKMAN: I still have got some room. I just
14 didn't want to blast it too much. I'm up to a hundred. You
15 tell me.

16 THE COURT: Back it up to 19 seconds.

17 MS. HICKMAN: I'm at 18 seconds.

18 THE COURT: Caution to everyone that this could be
19 loud.

20 MS. HICKMAN: Is that any better?

21 THE COURT: Better?

22 THE WITNESS: I can hear it.

23 THE COURT: Yes.

24 THE WITNESS: I can hear dispatch a lot better
25 than I can hear him.

1 BY MS. HICKMAN:

2 Q But that's because the dispatcher is closer,
3 right?

4 A Right. My body cam is here and my radio is
5 probably right next to it.

6 Q Okay. But you heard him talk about he is at
7 Bob & Lucy's. He is playing a game. His roommate is the
8 bartender. The roommate was right here and he points
9 somewhere behind him, right?

10 A Yes.

11 Q I'm going to play it again at 33 seconds. I'm
12 stopping at 1 minute. At this point, he really hasn't said
13 anything that happened, right?

14 A Not much at that time, no.

15 Q Right. He is telling you how he knows this girl
16 named Adrianna?

17 A Correct.

18 Q And he was in Winnemucca building a house, right?

19 A Yes.

20 Q I will start it again at 1 minute. Okay. So I'm
21 stopping it at 1:06. You interrupt him actually and say,
22 "Do they have a gun," right?

23 A Correct.

24 Q And you don't have to ask it twice, right?

25 A Yeah. I was trying to get the information out to

1 the patrol officers.

2 Q Okay. I'm going to start it at 1:06. Okay. And
3 so then at 1:15, that is where I paused it, you have
4 broadcast out to them, "The person I'm with says they are
5 armed." Right?

6 A Yes.

7 Q And he has identified the people in the truck as
8 the people who are involved, right?

9 A From, yeah, from what I can tell, yes.

10 Q I'm starting again at 1:15. So I paused it at
11 1:39. He says, "She comes in there talking about, um, um,
12 give me some money. She wants money." Right?

13 A Yes.

14 Q And then he says, "The dude cashed my ticket out,"
15 right?

16 A Correct.

17 Q So he says, "She asked for money." He said, "I
18 don't have any money," and then, "The dude cashed my ticket
19 out." Right?

20 A Yes.

21 Q I'm going to play at 1:39. So at 1:58 is where I
22 paused it. He says he talked to his roommate behind the
23 bar, correct?

24 A Yes.

25 Q So it's fair to say this is the first conversation

1 with Mr. Sims, correct?

2 A The first what?

3 Q Conversation anyone from Sparks Police on this day
4 has had with Mr. Sims, right?

5 A As far as I know, yes.

6 Q And 2 minutes into that contact he has told you
7 that he has done something with somebody behind the bar at
8 Bob & Lucy's, right?

9 A Yes.

10 Q All right. I'm playing it at 1:58. So pausing at
11 2:05, you asked, "Did he point the gun at you?" Right?

12 A Yes.

13 Q And he says, "She just pulled it out." Right?

14 A Correct.

15 Q So at 2:05 I'm going to play it again. Stopping
16 at 2:42, he tells you the name of three other people that
17 are in that bar right now, right?

18 A Yes.

19 Q The bartender, somebody named Tino, and I think he
20 said John, right?

21 A I couldn't quite make it out, but possibly.

22 Q Okay. But he gives a third name, right?

23 A Yes.

24 Q Starting again at 2:42. I will pause it right
25 there at 3:35. Did you hear him say, "I have never seen the

1 two dudes who were with her"?

2 A Yes.

3 Q Starting again at 3:35. I'm going to pause it.

4 He said something about, "If I had my phone, I could look it
5 up on Facebook," right?

6 A I will have to --

7 Q Do you want me to go back?

8 A Yeah. I couldn't quite make that out. I'm trying
9 to listen. I'm hearing the radio.

10 Q It's hard.

11 A That was part of my problem the whole time.

12 Q It's hard, but I want to tell you to listen to
13 that statement, what he says about his phone and look it up
14 on Facebook.

15 A Okay.

16 Q Let me go back, I'm sorry. I'm pausing at 3:42.
17 Did you hear it?

18 A Yes. He said, "I can look it up on Facebook."

19 Q Something about his phone, right?

20 A Yes. Well, Facebook, probably his phone.

21 Q Okay. And while you are having contact with him
22 sitting here, did you see him have his phone?

23 A I don't recall if I did or not. If it's on the
24 video, I'm sure that would be accurate.

25 Q Okay. I'm asking do you have any recollection of

1 it?

2 A I don't.

3 Q Okay. I will hit that again at 3:42. I'm
4 stopping it at 4 minutes. So while he had just told you, "I
5 have never seen the two dudes who were with her," he is now
6 saying he does know one of them, right?

7 A It sounds like he has either heard of them or
8 knows who he is somehow.

9 Q Okay. I'm going to hit play again at 4 minutes.
10 So stopping at 4:07, that is you talking into your radio,
11 right?

12 A That's correct.

13 Q And you say, "I'm out with the victim. It's
14 attempted robbery with a pistol," correct?

15 A With a -- yes.

16 Q Okay. And so that is based on the information
17 that Mr. Sims has given to you up to that point, correct?

18 A Correct.

19 Q And twice he has told you that one of the males
20 cashed out his ticket, correct?

21 A Yeah. Aside from watching the video, I didn't
22 recall that when I was taking my notes, so I didn't put that
23 piece together, because I was focusing on the cash, I guess.
24 So that ticket obviously would have made the robbery
25 completed, not attempted, but at that moment thinking,

1 trying to manage or listen to the pursuit and everything
2 else, those two things didn't connect for me at that moment
3 until I watched the video later.

4 Q Okay. But I want to ask you a couple things. He,
5 being Mr. Sims, has clearly said that the female had a gun,
6 correct?

7 A Yes.

8 Q And she showed it to him, right?

9 A Yes.

10 Q He specifically said she showed it to him when you
11 said did she point it at you, or did he point it at you,
12 right?

13 A Yes.

14 Q And at no time has he said that either of the two
15 males had a firearm, right?

16 A At this point, I don't recall him saying that.

17 Q Okay. Well, as we just listened to it?

18 A Right.

19 Q And as we listened to it, he hasn't said anything
20 about a wallet, right?

21 A Not up to this point.

22 Q And this is 4 minutes into your contact with him,
23 correct?

24 A Yes.

25 Q I'm looking down here at the bottom.

1 A Correct.

2 Q Okay. So I'm going to hit play again at 4:07.

3 I'm going to pause it at 17 seconds. That's when you ask

4 him, "Do you have your ID, sir?" Right?

5 A Yes.

6 Q And he is looking at something, right?

7 A Yes.

8 Q It looked to be his phone potentially?

9 A Correct.

10 Q So when you say, "Do you have your ID, sir," he

11 says almost immediately, "No, I do not," correct?

12 A Yes.

13 Q He doesn't look for it in any way, right?

14 A It doesn't appear that he does, no.

15 Q I'm going to hit play at 4:17. So it's not

16 until -- 4:21 is where I paused that. You have asked him to

17 give you his ID, and without looking for it he says, "No, I

18 do not have an ID. He grabbed my fucking wallet." Right?

19 A Yes.

20 Q So that's the first time he mentioned the wallet,

21 right?

22 A Correct.

23 Q I will play it again at 4:21. All right. So

24 that's at 4:28 I paused it, and that's where you put it out

25 over the radio, it's actually going to be a robbery, they

1 have his wallet?

2 A Correct.

3 Q So I'm going to approach again with Exhibit 113,
4 and I'm going to show you page 3 of that. At the very top
5 line under number 101, I want you to tell me the time and
6 what information was broadcast?

7 A It says the time was 06:38:15, "101 Comment:
8 Going to be a robb," short for robbery. "They have his
9 wallet."

10 Q Okay. So at 6:38:15 you broadcast that
11 information, correct?

12 A Yes.

13 Q Okay. And looking at this log at 6 minutes,
14 sorry, 6:38:44 the information that comes from the officers
15 following the white truck is, "Turning right on Kleppe,"
16 correct?

17 A I don't know.

18 Q Go ahead and look and tell me.

19 A 06:39:22, 211 says, "Northbound Kleppe."

20 Q So that indicates where they are on that chase,
21 correct?

22 A Yes.

23 Q Okay. I will take that back. So at the point
24 that you broadcast it's going to be a robbery, you have the
25 name Adrianna, correct?

1 A Yes.

2 Q You have that she is from Winnemucca?

3 A Yes.

4 Q You've heard now today broadcast an address and
5 Dianne Williams over the radio, correct?

6 A Yes, I heard it.

7 Q Okay. And you heard that one of the guys in the
8 truck according to Mr. Sims is an Indian guy, may have been
9 her boyfriend, and maybe comes from Carson City, correct?

10 A I heard the Carson City part. I don't know about
11 the Indian male part, or I didn't hear that necessarily just
12 now.

13 Q Okay. And Mr. Prengaman asked you on direct after
14 you got this information from Mr. Sims and you had told him
15 to go back to Bob & Lucy's, he asked you what did you do; do
16 you remember that?

17 A He asked me what he could do?

18 Q Sorry, what did you do? After you talked to
19 Mr. Sims, what did you do?

20 A I got in my car and started driving to the parking
21 lot adjacent to Bob & Lucy's.

22 Q And in your car you made a phone call, correct?

23 A That's correct.

24 Q And who did you, who did you call?

25 A I believe Lieutenant Patton.

1 Q Okay. And Lieutenant Patton is higher in rank
2 than you, correct?

3 A That's correct.

4 Q Okay. So you call Lieutenant Patton and you make
5 a call regarding the chase, correct?

6 A Yes.

7 Q And you have heard the information coming over the
8 radio, correct?

9 A Parts of it, because I was really paying attention
10 to Mr. Sims.

11 Q Okay. You heard how fast they are going, correct?

12 A At that time I heard bits and pieces, yes.

13 Q Okay. And at that time the phone call that you
14 make, what you say is they are going really fast, let's shut
15 it down, correct?

16 A Yes.

17 Q And that is before you go back to Bob & Lucy's to
18 meet, not to meet, but where you find Adrianna Norman,
19 correct?

20 A Correct.

21 Q I now want to show you 105. Actually, before I do
22 that, I'm going to approach you with Exhibit 78. Well,
23 actually, I can do it this way. I'm going to show you
24 Exhibit 78, and on this map can you show me where Kleppe
25 Lane is? Let me help you. Do you see it right here?

1 A Yes.

2 Q And that's after you said, "It's going to be a
3 robbery. They have his wallet." That's the next entry on
4 that CAD Log about where the chase is, correct?

5 A Without knowing the cross street, I can't say that
6 what you circled is where it's at. Kleppe goes all the way
7 down to Greg Street just before Sparks Boulevard.

8 Q Okay. And this is Greg Street right here
9 underneath it?

10 A Correct.

11 Q Okay. So now you have talked to Mr. Sims, you
12 made the phone call about how fast people are going and that
13 it should be, the chase should be shut down, and now you are
14 back at Bob & Lucy's, okay?

15 A Okay.

16 Q I'm going to start this at 1 second at the
17 beginning. So I'm stopping at 19 seconds. Mr. Sims walks
18 up to you, points and says, "That's the one who pulled the
19 gun on me," correct?

20 A Correct.

21 Q Pointing at, pointing Ms. Norman out to you,
22 right?

23 A That's right.

24 Q I will press play at 19 seconds. And when she is
25 asking him, "Why would you do that," Mr. Sims responds, "You

1 came into a store with three guns." Correct?

2 A The video and the audio, I wasn't -- I was paying
3 attention to what she was saying. I couldn't really make
4 out what he said, but if you say that, or if you want to
5 play it again, I don't know.

6 Q So let me play it again, or let me play it
7 starting at 57 seconds. I'm starting at 51 seconds. I
8 apologize, I hit the wrong time. He said, "Why did I do
9 what," there, okay?

10 A Okay.

11 Q I will play it again at 1 minute. Okay. So I'm
12 stopping at 1:10. Did you hear him there about the guns?

13 A My hearing is not the best.

14 Q It's --

15 A And with the echo and everything --

16 MS. HICKMAN: Is there a way to turn that speaker
17 off so we don't have an echo?

18 THE DEPUTY: Would you like to try it now?

19 BY MS. HICKMAN:

20 Q Yeah. I'm going to start it at 1:12. So she
21 says, "I am coming there with three guns," right?

22 A I can hear her say, "I didn't have any gun."

23 Q Okay. Then I'm going to back it up and I'm going
24 to ask you to pay attention to him and then what she
25 responds, okay?

1 A I will try.

2 Q I will start it at 1:09. Did you hear her?

3 A I can hear her.

4 Q You heard her?

5 A Yes.

6 Q And she said, "I didn't have three guns," right?

7 A Yes.

8 Q I'm going to start it again at 1:13. I'm pausing
9 it at 1:44. What does he say when he rounds that corner and
10 he turns back? Did you hear it?

11 A Not really.

12 Q Does he say, "Hey, I tried to talk to you"?

13 A Yes.

14 Q So after this, other officers from the Sparks
15 Police Department show up, right?

16 A Yes.

17 Q And one of those is Officer Allen, correct?

18 A Yes.

19 Q And you direct Officer Allen to do a more detailed
20 interview of Mr. Sims, right?

21 A That's correct.

22 Q And before you have Officer Allen go do that more
23 detailed interview with Mr. Sims, you give him some
24 information about the information you have, correct?

25 A Yes.

1 Q And you and Officer Allen go into Bob & Lucy's
2 together, right?

3 A I believe so, yes.

4 Q And one of the things that you are looking for
5 when you go into Bob & Lucy's is some independent
6 information about what happened in there, correct?

7 A Correct.

8 Q Information from somebody like the bartender or
9 the video to confirm if Mr. Sims is a victim or not,
10 correct?

11 A Yes, that would be the reason to go find
12 witnesses.

13 Q And you testified that you walked around looking
14 for a gun based on what Mr. Sims said, correct?

15 A Yes.

16 Q In the course of your employment with Sparks
17 Police Department and your involvement in this case, did you
18 ever learn whether or not a wallet was found?

19 MR. PRENGAMAN: Objection; beyond his personal
20 knowledge.

21 THE COURT: Ms. Hickman, the objection is beyond
22 the witness' personal knowledge.

23 MS. HICKMAN: I'm asking if he has personal
24 knowledge.

25 MR. PRENGAMAN: And hearsay.

1 THE COURT: And hearsay.

2 MS. HICKMAN: Well, I'm not offering it for the
3 truth of the matter asserted. I'm asking if he knows.

4 THE COURT: Go ahead. Objection is overruled. Go
5 ahead.

6 MR. PRENGAMAN: I'm also objecting on relevance.
7 Whether he knows it or not is irrelevant.

8 THE COURT: I think the question is whether or
9 not -- Ms. Hickman, is the question whether or not the
10 witness ever found the wallet?

11 MS. HICKMAN: Whether or not he knows if the
12 wallet was ever found.

13 THE COURT: Okay. As part of the evidence in the
14 case?

15 MS. HICKMAN: Correct.

16 THE COURT: That's fine. Go ahead and ask him.

17 THE WITNESS: I don't recall anything about the
18 wallet being found.

19 BY MS. HICKMAN:

20 Q Okay. And so knowing that, it's fair to say that
21 you never looked within Bob & Lucy's and where you contacted
22 Mr. Sims to see if a wallet was dropped when he was running,
23 correct?

24 A I was at the time looking for a gun through that
25 area. That was my primary concern. If I had seen a wallet,

1 I obviously would have addressed it, but I did not see a
2 wallet either that I can recall.

3 Q Okay. So the answer is no, right?

4 A I did not find a wallet, no.

5 Q And you didn't look for a wallet?

6 A I was not looking for a wallet.

7 Q And while you were back at Bob & Lucy's, you got
8 some information from the bartender, Mr. Cole, correct?

9 A I briefly spoke with him, yes.

10 Q Okay. And that kind of ties up everything you did
11 in this case, right?

12 A It does.

13 Q But when you were back at Bob & Lucy's, the car
14 accident had already occurred, correct?

15 A That's correct.

16 MS. HICKMAN: I have no further questions.

17 THE COURT: Thank you, Ms. Hickman.

18 Counsel, it's about 12:47. I suggest now we take
19 a lunch break.

20 Ladies and gentlemen, we are going to take a lunch
21 break until 1:30 or thereabouts. During this break, you
22 must not discuss or communicate with anyone, including your
23 fellow jurors, in any way regarding the case or its merits,
24 either by voice, phone, e-mail, text or internet or other
25 means of communication or social media.

1 You must not read, watch or listen to any news or
2 media accounts or commentary about the case. You must not
3 do any research, such as consulting dictionaries, using the
4 internet or using reference materials.

5 You must not make any investigation, test a theory
6 of the case, recreate any aspect of the case, or in any way
7 investigate or learn about the case on your own, and you may
8 not form or express any opinion regarding the case until
9 it's submitted to you. We will see you after the break.
10 Thanks.

11

12 (Whereupon a break was taken from 12:48 p.m. to 1:35 p.m.)

13

14 THE COURT: Mr. Picker or Ms. Rosenthal.

15 Mr. Picker, can you hold on one minute? I forgot
16 my glasses.

17 CROSS EXAMINATION

18 BY MR. PICKER:

19 Q Good afternoon. Let me -- I just have a few
20 things to discuss from the other attorneys just to make sure
21 that I understand. Now, the report that you got that led
22 you to go to Bob & Lucy's that day was that there were
23 persons with guns threatening each other inside; is that
24 correct?

25 A That's the initial information I heard, yes.

1 Q And then you came across this gentleman that you
2 described as being frantic, and out of breath, and he
3 appeared to be scared, correct?

4 A Yes.

5 Q You had a discussion with him, and there were a
6 few things that you discussed and I want to make sure I
7 understand them. He told you this girl, her name was
8 Adrianna, she was from Winnemucca, and he didn't know her
9 last name, correct?

10 A Correct.

11 Q And then you asked if they had a gun; do you
12 recall that?

13 A Yes.

14 Q Okay. And that was as the pickup and the police
15 cars were going by, wasn't it?

16 A Yes.

17 Q Okay. And so Mr. Sims, he said, "Yes, they are
18 armed. They have a gun."

19 A Correct.

20 Q And so what you called in was, "I'm with a guy
21 that says they are all armed." Do you recall saying that?

22 A I don't recall saying they were all armed. I
23 believe my best recollection is that I said, "They have a
24 gun," or something to that effect. I don't remember saying
25 they all were armed.

1 Q And do you remember radio traffic regarding the
2 fact that the female was still inside, referring to Bob &
3 Lucy's?

4 A Only after I heard the video today and reviewing
5 it prior to my testimony.

6 Q Okay. So you did, you know that is not what --
7 You know that is what was on the radio, but you don't
8 remember hearing it at the time?

9 A Right. I was trying to listen to Mr. Sims and
10 focus on what he was telling me, so the radio traffic -- I
11 would have reacted very differently had I known a suspect
12 was still on scene.

13 Q Okay. And, in fact, you said, "What happened,"
14 and finally, as you discussed earlier, he did get around to
15 telling you what happened, and his comment was basically, or
16 his statement was, "She comes in their, bro, she pulls out
17 this 9 millimeter, and talking about give me some money."
18 Do you remember that being his words?

19 A Yes, or something very similar to that.

20 Q Okay. So you asked, "So she is trying to rob
21 people in there?"

22 A Correct.

23 Q And he said, "Yeah."

24 A Yes.

25 Q You then asked him a little bit later on, "Did she

1 point the gun at you?" Do you recall that?

2 A Yes.

3 Q And he basically said, "She pulled it out. She
4 pulled out this chrome, looked like a .45 or something."
5 Now, earlier he said it was a 9 millimeter and now he says
6 it's a .45, correct?

7 A I don't recall exact words for that. I don't
8 remember 9 millimeter or a .45.

9 Q But you do remember him saying, "I'm thinking they
10 are going to start shooting in there. I just came out the
11 back door"?

12 A Without watching the video for those specific
13 words, I couldn't say. That sounds correct.

14 Q Okay. And at some point while you were still
15 across the street from Bob & Lucy's where you first met up
16 with Mr. Sims --

17 A Yes.

18 Q -- he made the comment, he asked you a question,
19 "I didn't see that girl in the car. Is she still in there?"
20 Do you recall him asking you that?

21 A Only when I watched the video. As I said, I was
22 trying to multitask. I didn't hear him at the time when I
23 was speaking to him say that. I did hear it after the fact
24 and I don't believe it was in my report him saying that.

25 Q But he did say that?

1 A Yes.

2 Q You do agree he did tell you that?

3 A Correct. There is a lot of things that are on the
4 video obviously that I did not recall at that time or write
5 down or anything else.

6 Q So when, so let me -- Mr. Sims you assume sees the
7 vehicle at the same time you see the vehicle going by?

8 A Correct.

9 Q And then based on his comment that you now agree
10 he said to you, "I didn't see the girl in the car, is she
11 still in there," would you then understand that Ms. Norman
12 was not in the vehicle?

13 A I did not know at the time. I assumed that she
14 was in the truck at that moment. Otherwise, like I said, I
15 would have reacted differently being there by myself with a
16 possibly armed suspect nearby.

17 I think later in the video I was kind of confused,
18 or when he first told me she was there, you know, he was
19 pointing to her, I was like who, or something to that
20 effect. I was surprised she was there. I had no knowledge
21 that she might be there prior to that.

22 Q And so let me ask you about that. There is a
23 couple points within the radio traffic that is Exhibit 113
24 where there are messages that she is still, the female
25 suspect is still inside. There was a couple of times where

1 that came over the radio traffic; do you recall that?

2 A I did not hear it at the time while I was on
3 scene, no.

4 Q Okay. But you understand that to be the case now?

5 A Oh, yes, yes. I remember watching the video
6 thinking, oh, wow, that was said over the radio. It's loud
7 and clear on the video, but when you are trying to multitask
8 and listen to somebody speak over the radio, being Mr. Sims
9 trying to understand what he is saying, and then also listen
10 to the officers in the pursuit, I didn't hear, you know,
11 probably half of what was said.

12 Q And before you met up with Mr. Sims, or maybe just
13 before you met up with Mr. Sims, do you recall radio traffic
14 saying that he was still, that the supposed victim was still
15 hiding in the business, that he was hiding in the back?

16 A I recall something about that, yes.

17 Q Okay. That turned out to be untrue because he
18 came running up to where you were?

19 A Right. He came running from the direction of the
20 business, yes.

21 Q Now, do you recall, while you were still across
22 the street from Bob & Lucy's, do you recall asking him again
23 what kind of gun it was?

24 A Yeah. I was trying to get a better description of
25 it.

1 Q And he said, described it as a big chrome,
2 automatic, shiny, nickel-plated, nice looking; do you recall
3 that?

4 A I remember all of that but the word nice.

5 Q Okay. And that supposedly she took it out in
6 front of the camera saying "It's real" to you?

7 A I don't know anything about being said in front of
8 the cameras, but I remember him saying he showed it to her,
9 or she showed it to him.

10 Q Okay. And then so you asked specifically if she
11 threatened you, "Did she threaten you asking you for money?"

12 A I recall asking something like that, yes.

13 Q And Mr. Sims said, "Yeah"?

14 A Yes.

15 Q Then when -- well, let me show you this. This is
16 Exhibit 105 again. Do you recall seeing this?

17 A Yes.

18 Q And this is the part where you have told Mr. Sims
19 to go back to Bob & Lucy's, and he has now turned around
20 from Bob & Lucy's and is walking back towards you?

21 A Yes.

22 Q At that point you are asking, "Is she inside
23 here?" Basically, you are asking him if she is in Bob &
24 Lucy's; is that right?

25 A Yes, or, "Was she inside here," I think is what I

1 said first. I might have said, "Is she in here?"

2 Q Okay. And at this point, Mr. Sims is walking up
3 to you?

4 A Correct.

5 Q He is not running?

6 A No.

7 Q He is not out of breath?

8 A Not at this point, no.

9 Q He is not frantic?

10 A No.

11 Q He doesn't show any signs of being scared?

12 A Not at that point, no.

13 Q And at that point he says to her, he says to you,
14 "That's her. That's the one that pulled the gun on me"?

15 A Correct.

16 Q Okay. And then you were going back and forth, I
17 believe, on cross-examination where Mr. Sims responds to
18 Ms. Norman and says, "You come into the store with three
19 guns." Do you recall those questions?

20 A Yes.

21 Q And you couldn't hear that clearly?

22 A Not great, no.

23 Q Okay. Now, I know this is going to seem a little
24 bit repetitive, but I represent Ms. Norman, so we need to go
25 through some of these things.

1 A Yes, sir.

2 Q Now, after Ms. Norman is put into handcuffs and
3 put into your police car --

4 A Yes.

5 Q -- you start the search of the area?

6 A No. My patrol car is a supervisor's vehicle so it
7 doesn't have a cage, so I waited for Officer Allen to
8 arrive, and then I don't recall if I put her into my car
9 without watching the video or if I put her into Officer
10 Allen's car.

11 Q Okay. At some point, you put her into a Sparks
12 Police vehicle?

13 A Yes.

14 Q And you start searching the area?

15 A I believe another officer may have arrived so he
16 could keep an eye on her, but I'm not positive about that,
17 but then, yes, sometime after she was placed in the squad
18 car, I searched the area.

19 Q And you are looking for specifically a firearm?

20 A Correct.

21 Q But in your training as an officer, you are to
22 look for anything you think might be relevant to the case?

23 A Yes, if you see something that would be relevant,
24 yes.

25 Q Okay. So in your search of that area that you

1 outlined for the jury, you didn't find anything of any
2 value, anything you thought was of value?

3 A Correct.

4 Q Let me go back for just a second. While you were
5 talking to Mr. Sims across the street from Bob & Lucy's,
6 which is Exhibit 104, you asked him for his identification
7 and he said, "He grabbed my fucking wallet." Do you recall
8 that?

9 A Yes.

10 Q Okay. And you asked, "The guy in the truck?" And
11 he responded with, "Yes." Is that correct?

12 A Yes.

13 Q Okay. So at that point, you also knew he was
14 identifying a guy in the truck?

15 A Correct.

16 Q And he never said the guy with the girl in the
17 truck?

18 A I don't know exact words that were spoken, but
19 that sounds correct.

20 Q Okay. At no point during the initial part with
21 Mr. Sims and the scene where we see here in Exhibit 105 did
22 he ever say that Adrianna Norman was in the truck that left
23 the area, right?

24 A He never said that.

25 Q Now, as we saw in Exhibit 105, in just a few

1 seconds I will have it on the screen here, Ms. Norman walks
2 towards you?

3 A After I called her over, yes. She was walking
4 that direction and I told her to come to me.

5 Q Okay. She was already walking in that direction
6 and then you called her directly over to you?

7 A Correct.

8 Q She wasn't running away?

9 A Not at that point, no.

10 Q Was she running away at any point?

11 A No.

12 Q Okay. I just want to make sure we are clear. She
13 was never running away, as far as you know?

14 A No, not from me.

15 Q Okay. And you don't know if she was running away
16 from anybody?

17 A No. I didn't know where she went prior to that.

18 Q Okay. She was cooperative with you?

19 A Yes.

20 Q Okay.

21 A On the video she is kind of pulling away when she
22 is yelling at Mr. Sims, and I tell her don't do anything
23 crazy or something to that effect. So I had to hold onto
24 her hands pretty tight at that point, but it was passive
25 resistance, if you will.

1 Q Basically, she is reacting to Mr. Sims, not really
2 to you?

3 A Sure.

4 Q Does that sound fair?

5 A Sure.

6 Q Okay. And after you handcuffed her did you search
7 her for weapons?

8 A Yeah. I believe I pat searched her around her
9 waist and her, around her waist basically is what I remember
10 doing.

11 Q Okay. And you didn't find any weapons?

12 A No.

13 Q You didn't find a wallet?

14 A A wallet, no.

15 Q Okay. Did you, at any time during the course of
16 your part of the investigation, did you watch the
17 surveillance videos from Bob & Lucy's?

18 A I did not.

19 Q Have you ever watched them?

20 A I don't believe I have.

21 Q Okay. Have you ever been made aware of Sims'
22 testimony at the preliminary examination?

23 MR. PRENGAMAN: Objection; calls for hearsay and
24 relevance.

25 MR. PICKER: It is not hearsay. It's a sworn

1 statement under oath in a prior proceeding and is being used
2 to question some of the things that Mr. Sims told this
3 gentleman.

4 THE COURT: Mr. Prengaman.

5 MR. PRENGAMAN: Your Honor, the witness is
6 testifying and I believe that's what the statute says, if
7 the witness is testifying and, again, relevance, what's the
8 relevancy of his testimony in a different proceeding to this
9 officer's state of mind, especially given his role in the
10 investigation.

11 THE COURT: Mr. Picker.

12 MR. PICKER: Your Honor, had he known some of this
13 information, it may have changed the course of his
14 investigation.

15 THE COURT: Mr. Picker, I didn't hear that.

16 MR. PICKER: If he had known some of the
17 information that came out of the preliminary hearing, it
18 might have changed the course of his investigation since he
19 was the ranking officer on the scene.

20 THE COURT: Except that the preliminary hearing
21 came well after the investigation --

22 MR. PICKER: That's correct, Your Honor.

23 THE COURT: Let me finish. It was not possible
24 for him to know that, so how could it be relevant?

25 MR. PICKER: Your Honor, if he finds out that that

1 information he was given on that day was untrue, that's what
2 I'm asking. Had he known that information on that day was
3 untrue, would that have changed the course of his
4 investigation.

5 THE COURT: Go ahead and ask a hypothetical
6 question.

7 MR. PICKER: Thank you.

8 BY MR. PICKER:

9 Q Hypothetically, Mr. McNeely, if you found out that
10 Mr. Sims -- wait a minute -- Ms. Norman never threatened
11 Mr. Sims, would that have changed the course of your
12 investigation?

13 A You are talking about as I was finding out
14 everything initially if I knew?

15 Q If you knew that when he told you that she
16 threatened him and that was not true, would that have raised
17 some questions in your investigation?

18 MR. PRENGAMAN: I will object; calls for
19 speculation.

20 THE COURT: The question, again, Mr. Picker.

21 MR. PICKER: Your Honor, could I have it read
22 back?

23 THE COURT: Yes, please.

24 (The question was read by the reporter.)

25

1 THE COURT: Mr. Prengaman, you said it calls for
2 speculation?

3 MR. PRENGAMAN: Yes, Your Honor.

4 THE COURT: Mr. Picker.

5 MR. PICKER: Your Honor, it goes directly to if he
6 found out something that was told to him was untrue,
7 hypothetically would that have changed his investigation.

8 THE COURT: I will allow the witness to answer
9 that question.

10 THE WITNESS: Yeah, if I had information somehow
11 ahead of time, of course, I would have confronted that
12 information by somehow, you know, of course.

13 BY MR. PICKER:

14 Q Hypothetically, if you knew that Mr. Sims had
15 stood over Ms. Norman in the bar and was prepared to hit her
16 and that that was what he was going to do, would that have
17 changed your investigation?

18 A I don't know that it would have changed my
19 investigation. If I knew that, I would have asked him. You
20 know, if I saw the video or knew what happened, I would have
21 questioned him about what about this, of course.

22 Q Hypothetically, if you knew that Mr. Sims, or that
23 Ms. Norman never asked Mr. Sims for money in the whole
24 course of their conversation would that have changed your
25 investigation?

1 A From my investigation asking Mr. Sims questions?

2 Q Yes.

3 A Yes, if I knew different information, of course, I
4 would ask different questions.

5 Q Okay. If you, hypothetically, if you were aware
6 that Mr. Sims had told Ms. Norman he had a gun before she
7 ever showed him a gun would that have changed the course of
8 your investigation?

9 MR. PRENGAMAN: Your Honor, I'm going to object on
10 relevance and speculation. Changing his investigation, it
11 has no bearing on the issue.

12 THE COURT: Mr. Picker, the initial question that
13 you asked him before in the hypothetical was allowed, but I
14 agree with Mr. Prengaman, at this point it is leading down a
15 speculative path about things that did not happen, because
16 the witness did not have that information at the time. I
17 don't see the relevance.

18 BY MR. PICKER:

19 Q If you found out information, if you had
20 information that day that contradicted some of the things
21 that Mr. Sims was telling you, how would that have changed
22 your approach with Mr. Sims?

23 MR. PRENGAMAN: Again, objection; relevance,
24 speculation, because it's too vague and speculative.

25 THE COURT: Mr. Picker.

1 MR. PICKER: Well, Your Honor, I'm stuck with
2 being vague because I'm being told I can't be specific,
3 so --

4 THE COURT: No, no, it's not that you can't be
5 specific. It's just that this has gone way down the
6 calls-for-speculation path. The first question I allowed,
7 but now you are asking this witness to hypothecate about
8 something that did not happen and could not have happened,
9 so I'm going to sustain the objection.

10 BY MR. PICKER:

11 Q After you placed Ms. Norman in a Sparks Police
12 Department vehicle, you then went into Bob & Lucy's; is that
13 correct?

14 A Yes.

15 Q And you continued the investigation of the
16 situation at least for some period of time?

17 A Yes.

18 Q Did you ever, did you ever get any information
19 that confirmed -- well, I will rephrase.

20 Did you ever get any information that there had
21 been yelling in this confrontation or discussion between
22 Ms. Norman and Mr. Sims?

23 MR. PRENGAMAN: Objection; calls for hearsay.

24 THE COURT: The question again, Mr. Picker?

25 MR. PICKER: Can we have it read back?

1 (The question was read by the reporter.)

2

3 THE COURT: Mr. Prengaman's objection is it calls
4 for hearsay.

5 MR. PICKER: Thank you, Your Honor. I'm not
6 offering it for the truth of the matter. I'm offering it
7 for what led to the next part of his investigation.

8 THE COURT: Mr. Prengaman.

9 MR. PRENGAMAN: Well, then if it's not for the
10 truth, then it is irrelevant, so I object on relevance.

11 THE COURT: All right. What I hear Mr. Picker
12 saying is it's the effect on the hearer, effect on the
13 listener.

14 MR. PICKER: That's correct, Your Honor.

15 THE COURT: Okay. Go ahead, Mr. Prengaman.

16 MR. PRENGAMAN: Your Honor, I object. What's the
17 relevance? In other words, what effect did it have is
18 irrelevant.

19 THE COURT: All right. Even though there is an
20 exception to the hearsay rule, Mr. Picker, it has to be
21 relevant. How is it relevant?

22 MR. PICKER: It is relevant, Your Honor, because
23 it determines what the next thing is that Mr. McNeely does
24 in the course of his investigation.

25 THE COURT: I don't see how the two are tied.

1 MR. PICKER: Your Honor, I can only go so far
2 being handcuffed.

3 THE COURT: It's not handcuffing you, Mr. Picker.
4 It has got to be relevant.

5 MR. PICKER: I disagree, Your Honor.

6 BY MR. PICKER:

7 Q Did you talk to other people within the bar?

8 A Yes.

9 Q Did you list any of those people as witnesses?

10 A Yes.

11 Q Did they provide any information that corroborated
12 any part of Mr. Sims' story?

13 MR. PRENGAMAN: Objection; calls for hearsay.

14 MR. PICKER: This goes directly to the relevance
15 of how Mr. Sims is able to be questioned.

16 THE COURT: It does call for hearsay, Mr. Picker.
17 I thought the next question you were going to ask was in
18 response to what you heard, what did you do.

19 MR. PICKER: Well, that would be the next
20 question.

21 THE COURT: Ask it.

22 BY MR. PICKER:

23 Q In response to what you heard from those people in
24 the bar, what did you do?

25 A I don't recall exactly. I know I talked to a

1 witness there and the bartender witness. After that I
2 believe I may have directed other officers to -- at that
3 point I think I directed Officer Allen to conduct an
4 interview with Mr. Sims.

5 I'm not sure of the exact order of that. At some
6 point we did go search for the possible gun that was in the
7 area maybe. I'm not sure exactly what you are referring to
8 what I did.

9 Q Let me make it very, very specific. Did you
10 specifically tell Mr. Allen any information that you
11 obtained from any of those people in the bar?

12 MR. PRENGAMAN: Objection; relevance.

13 THE COURT: Well, I will allow it. Mr. Picker, go
14 ahead.

15 Sergeant Mr. McNeely, you can answer the question.
16 Not what you told them, but did you tell, did you convey to
17 Officer Allen, Mr. Picker, right, the question is did you
18 convey to Officer Allen what other people told you?

19 MR. PICKER: That's correct, Your Honor.

20 THE WITNESS: I'm sure I did, yeah. That would be
21 just normal course of doing business.

22 BY MR. PICKER:

23 Q What did you tell him to ask about?

24 MR. PRENGAMAN: Again, objection; relevance, calls
25 for hearsay as it, as it relates to this witness' conduct.

1 It may have affected what Officer Allen did, but certainly
2 not this witness.

3 THE COURT: I think it's permissible to ask the
4 witness in response to what he heard what did he ask Officer
5 Allen to do, as long as he is not conveying what the
6 witnesses told him.

7 THE WITNESS: I don't recall what I spoke to him
8 about viewing the video, or I don't know that, I don't
9 believe that was in my report necessarily, so I don't recall
10 sitting right now what I conveyed to him. I'm sure I gave
11 him information about what I found out and gave him some
12 direction regarding questions that either he has or
13 answered.

14 BY MR. PICKER:

15 Q Among the information you gave Mr. Allen, were you
16 asking him to test Sims' credibility as to --

17 THE COURT: Ask it again, Mr. Picker.

18 BY MR. PICKER:

19 Q Were you asking Mr. Allen to test Sims'
20 credibility as to those events that you had just learned of?

21 A I don't recall using the word credibility. I may
22 have asked him to confirm what the witnesses were saying.
23 I'm sure I asked him to get the video and talk to the people
24 there, but I don't recall, I may have if it's on video, but
25 I don't recall asking him to test his credibility

1 specifically like that, but I don't recall my words without
2 seeing it.

3 Q At that point when you are conveying information
4 to Mr. Allen before he goes and interviews Mr. Sims, or
5 during his interview with Mr. Sims, did you yourself have
6 any questions about the credibility of the information Sims
7 was giving to you?

8 MR. PRENGAMAN: Again, objection; relevance.

9 THE COURT: Well, I will allow it. I think it's
10 relevant what he did in response to what Mr. Sims told him
11 and whether or not there was a credibility issue.

12 Go ahead.

13 THE WITNESS: At that point, I didn't know what
14 had happened, so talking to witnesses from my best
15 recollection I don't recall having a concern about that. I
16 wanted to confirm facts that he had given me, so I wanted to
17 investigate and find out the truth of the matter, of course.
18 BY MR. PICKER:

19 Q Did you interview Ms. Norman prior to the time you
20 put her in the patrol vehicle?

21 A Yes, briefly.

22 Q I'm not asking for specifics from Ms. Norman, but
23 did she convey to you --

24 MR. PRENGAMAN: Objection; hearsay, Your Honor,
25 clear hearsay, content based.

1 MR. PICKER: Your Honor, it goes to, again, the
2 next part of the investigation. It is in very general
3 terms. I'm not asking for any hearsay.

4 THE COURT: Deputy Wood, can we excuse the jury,
5 please?

6 THE DEPUTY: Yes, Your Honor.

7 THE COURT: Thank you.

8

9 (Whereupon the following proceedings
10 were outside the presence of the jury.)

11 THE COURT: Mr. Picker, Mr. Prengaman has lodged
12 an objection here with regard to right now the statements
13 that are in the record with regard to your client that are
14 on Exhibit 105, which you had no objection to. Now you
15 are -- and it was offered by the state. Now you are going
16 to have a witness testify about his interview, brief as it
17 was, but his interview with Ms. Norman, is that where you
18 are headed?

19 MR. PICKER: I'm not going to ask him a question,
20 I'm not asking him any questions about specifically what she
21 said. All I want to know is did she tell him her version of
22 the story. That's the only question I was going to ask,
23 Your Honor, and under NRS 47.120 it's a completion of a
24 recorded statement. We only have part of the statement so
25 far. Under 47.120 I will --

1 THE COURT: Mr. Picker, the question would be did
2 my client tell you her version of the story?

3 MR. PICKER: Yes.

4 THE COURT: Okay. Mr. Prengaman.

5 MR. PRENGAMAN: Your Honor, that is, again, it's
6 content based. It is the content of a communication. Now,
7 he may say it's not specific, but it's still content based.
8 It is still saying that, yes, she did convey something and
9 it's hearsay. He cannot admit his own client's statements
10 in any form, any content base.

11 THE COURT: Mr. Prengaman, you are suggesting that
12 the fact that she -- He has already asked the witness, asked
13 the witness did you interview her, and you didn't object to
14 that, and the witness said, yes, I interviewed her. Help me
15 understand the difference between the fact that now it's in
16 the record that the witness interviewed her and the
17 statement did she give you her version of the story.

18 MR. PRENGAMAN: Because the fact of an interview
19 says nothing about content. It says nothing. So I would,
20 if any Judge in the Second Judicial District would sustain
21 my objection to that, which I have routinely made, I would
22 keep making it. But what I hear is it's not content based.
23 This says nothing. It's just a fact. It doesn't say if she
24 participated. It doesn't say if she moved her right to
25 silence. It says nothing. She just did it and it says

1 nothing about the content.

2 Mr. Picker's question is content based. He is
3 asking for this witness to say whether or not she said
4 something about, about what happened and that is content
5 based.

6 THE COURT: You don't think the fact that he has
7 already interviewed her, that the inference with regard to
8 interviewing her is that whatever she said was not content
9 based?

10 MR. PRENGAMAN: Well, no. I'm saying there is no
11 inference about what the content was. Now there is.
12 Mr. Picker can't directly ask what did she tell you, and he
13 can't indirectly get the content and it is, that has to do
14 with the content. The fact of the interview says nothing
15 about content and what can a jury infer from that.

16 THE COURT: All right. Thank you. Mr. Picker.

17 MR. PICKER: Your Honor, under NRS 47 --

18 THE COURT: Your microphone.

19 MR. PICKER: Under NRS 47.120, the rule of
20 completeness, if a party introduces any part of a writing or
21 a recorded statement, then the opposing party can require
22 that the remainder of that be introduced.

23 If we want to do that, I will have the total
24 unedited interview by this witness with my client
25 introduced. That's not what I'm asking to do, nor is it

1 what I'm seeking.

2 All I'm seeking to do is I asked initially was she
3 cooperative? This is all part of it. Did she, did she
4 answer your questions? I'm not going to ask what the
5 answers were. Did she answer your questions? Did she tell
6 you her version of the story? That's it. That's as far as
7 we are going to go.

8 MR. PRENGAMAN: If I may, Your Honor, on the rule
9 of completeness.

10 THE COURT: Okay. This is what 47.120 says, "When
11 any part of a writing or recorded statement is introduced by
12 a party, the party may be required at that time to introduce
13 any other part of it which is relevant to the part
14 introduced, and any party may introduce any other relevant
15 parts."

16 So the first part of that doesn't apply here,
17 because 105 was introduced by the state, and that would be
18 the party may be required at that time to introduce any
19 other part of it, so that doesn't apply.

20 What applies is the second piece. I can't say it
21 applies, but what may apply is the second piece that says,
22 "Any party may introduce any other relevant parts." This is
23 not a writing, nor is it a recorded statement, so I don't
24 think 47.120 applies, number one.

25 Number two, I'm very mindful of the fact that

1 statements of someone in Ms. Norman's position that were
2 made by her cannot be introduced by her if she does not
3 intend to ultimately testify, and in this case I agree with
4 Mr. Prengaman her version of the events is akin to a
5 statement and as a result of that I'm not going to allow the
6 question.

7 Counsel, just for the record, it's 2:14. We have
8 about another 15 minutes before we let this jury go for the
9 day.

10 (Whereupon the following proceedings.
11 were in the presence of the jury.)

12 THE COURT: Mr. Picker.

13 BY MR. PICKER:

14 Q Mr. McNeely, when you interviewed Ms. Norman, was
15 your body cam recording that interview?

16 A Yes.

17 Q So anything you would have asked her and anything
18 she would have said would have been recorded?

19 A Yes.

20 Q Did you ask her questions?

21 MR. PRENGAMAN: Objection; relevance.

22 MR. PICKER: Goes directly, Your Honor, to the
23 level of cooperation. Does not ask her anything in
24 particular and wouldn't be hearsay. That's asking him --

25 THE COURT: Mr. Picker, I will allow it.

1 BY MR. PICKER:

2 Q Mr. McNeely, did you ask her questions?

3 A Yes.

4 Q Did she answer those questions?

5 MR. PRENGAMAN: Objection; relevance.

6 THE COURT: Same. Objection overruled.

7 Go ahead, Mr. Picker.

8 THE WITNESS: Yes.

9 BY MR. PICKER:

10 Q Was it a really short interview, a minute or two,
11 or was it longer?

12 MR. PRENGAMAN: Objection; relevance.

13 THE COURT: What is the relevance?

14 MR. PICKER: It goes to the extent of any
15 cooperation, was it a short period or a long period?

16 THE COURT: He said she answered the questions. I
17 agree, doesn't matter short or long. Next question.
18 Sustained.

19 MR. PICKER: With that, Your Honor, nothing.

20 THE COURT: Is that all you have, Mr. Picker?

21 MR. PICKER: I'm sorry, Your Honor?

22 THE COURT: That's it?

23 MR. PICKER: I said I was done, Your Honor.

24 THE COURT: Thank you. Mr. Prengaman.

25 MR. PRENGAMAN: Thank you.

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REDIRECT EXAMINATION

BY MR. PRENGAMAN:

Q Sergeant, in your over a decade of police work would you say you frequently responded to crime scenes?

A Yes, I have.

Q And have you frequently spoken to people who had either been victims of crimes or involving crimes and who have experienced traumatic events?

MR. PICKER: Objection; relevance.

MS. HICKMAN: Objection; relevance.

THE COURT: Mr. Prengaman.

MR. PRENGAMAN: It goes to the questions about Mr. Williams' counsel's questions about Mr. Sims' inconsistencies in his statements. For instance, that he was questioned about Mr. Sims saying I want to have you know there is two guys and then shortly after saying --

THE COURT: Mr. Prengaman, no, no, no, not a substantive objection, please.

MR. PRENGAMAN: Oh, sorry, I apologize.

THE COURT: I'm going to sustain the objection. Ask the direct question to the witness about this case.

BY MR. PRENGAMAN:

Q Sergeant, in your experience is it uncommon, is it common or uncommon for individuals like Mr. Sims to be choppy in their statements?

1 MS. HICKMAN: Objection.

2 MR. PICKER: Objection; relevance.

3 THE COURT: Mr. Prengaman, there is a relevance
4 objection.

5 MR. PRENGAMAN: It's relevant again because he was
6 questioned about the consistency of Mr. Sims' statements
7 given to this witness.

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

9 BY MR. PRENGAMAN:

10 Q Sergeant, you were asked about the wallet?

11 A Yes.

12 Q Do you recall those questions? And you were asked
13 to your knowledge was the wallet ever located. To your
14 knowledge was a gun ever located during the pursuit by the
15 police?

16 MR. PICKER: Objection as to hearsay.

17 MR. PRENGAMAN: To your knowledge, Your Honor, is
18 saying --

19 THE COURT: I'm sorry, the question was was the
20 gun ever located?

21 MR. PRENGAMAN: Right, to his knowledge. The same
22 question that was asked previously about the wallet.

23 MR. PICKER: Your Honor, this witness, there has
24 been no foundation that he was part of the search of a
25 vehicle or anything else, so for him to have gotten that

1 knowledge would be hearsay.

2 THE COURT: I agree, Mr. Picker.

3 Mr. Prengaman, based on his investigation that he
4 conducted as part of this case is the proper question
5 regarding that.

6 BY MR. PRENGAMAN:

7 Q Sergeant, you were asked a number of questions
8 about the information --

9 MS. HICKMAN: I'm sorry, what was the last thing
10 you said?

11 THE COURT: Mr. Prengaman, start again.

12 BY MR. PRENGAMAN:

13 Q Sergeant, you were asked a number of questions
14 about the information you had in hand when you were talking
15 to dispatch. Do you recall those questions?

16 A Yes.

17 Q I believe you said, you were being questioned at
18 one point about the wallet and I believe you said something
19 to the effect of given the fact that Mr. Sims reported the
20 ticket was taken, it didn't matter for a robbery; do you
21 recall that?

22 A Correct. If I had known at the time or recognized
23 at the time that he had told me that the ticket had been
24 taken or that they had taken his wallet, either one would
25 constitute a robbery.

1 MS. HICKMAN: I'm going to object to that. He is
2 coming to a legal conclusion about that it would be a
3 robbery.

4 THE COURT: That did call -- Actually, I don't
5 think the question called for a legal conclusion. I think
6 the answer responded with a legal conclusion. So, ladies
7 and gentlemen of the jury, that answer on behalf of this
8 witness is stricken.

9 Mr. Prengaman, go ahead.

10 BY MR. PRENGAMAN:

11 Q Let me ask it this way, Sergeant. For purposes of
12 robbery does it matter if the property is a wallet or a
13 ticket?

14 MS. HICKMAN: Objection; that also calls for a
15 legal conclusion.

16 THE COURT: Mr. Prengaman.

17 MR. PRENGAMAN: It doesn't call for a legal
18 conclusion. It calls for, it calls for -- that doesn't call
19 for a legal conclusion. I'm not asking whether a robbery
20 was committed. I'm simply asking him for --

21 THE COURT: No. I agree with Ms. Hickman.
22 Sustained.

23 BY MR. PRENGAMAN:

24 Q Sergeant, what constraints does the law of the
25 State of Nevada place on the Sparks Police Department's

1 abilities to pursue a suspect?

2 A There are no constraints for an arrest. It only
3 requires that if you are in pursuit that you have your
4 audible siren and your visual lights, so lights and siren on
5 to constitute the crime.

6 Q So, I'm sorry, will you please say that last part
7 again?

8 A Yeah. There are no constraints on the police when
9 or when they cannot pursue. The only constraint is that if
10 you are in pursuit, for it to be a crime you have to have
11 lights and siren on.

12 Q And so you were, you were shown the dispatch log;
13 do you recall that?

14 A Yes.

15 Q And you were asked about the initial information
16 that was presented about the threats of a weapon?

17 A Correct.

18 Q And so in terms of what the law allows, the law in
19 the State of Nevada what it allows, does it matter if the
20 crime is violent or not?

21 A It does not.

22 Q Does it matter if the crime is assault with a
23 deadly weapon or robbery or some other type?

24 A It does not.

25 MR. PRENGAMAN: Thank you, Sergeant. I have no

1 further questions.

2 THE COURT: Thank you.

3 Ms. Hickman, limited to the questions that
4 Mr. Prengaman asked on redirect.

5 MS. HICKMAN: Your Honor, I would like to take up
6 one matter outside the presence of the jury before I
7 redirect Sergeant McNeely.

8 THE COURT: I'm sorry?

9 MS. HICKMAN: I would like to take up one issue
10 outside the presence of the jury before I redirect.

11 THE COURT: Let's do this, ladies and gentlemen.
12 It's 2:24. The Court had anticipated ending this day at
13 2:30 and letting the jury go at 2:30 this afternoon, so I'm
14 going to do that now.

15 We will reconvene Monday morning at 8:00 a.m.
16 Please be here at 7:40, 7:45 so we can start promptly at
17 8:00 a.m.

18 Over this weekend recess, you must not discuss or
19 communicate with anyone, including fellow jurors, in any way
20 regarding the case or its merits, either by phone, voice,
21 e-mail, text, internet, or other means of communication or
22 social media.

23 You may not read, watch or listen to any news or
24 media accounts or commentary about the case. You may not do
25 any research, such as consulting dictionaries, using the

1 internet, or using reference materials, and you may not make
2 any investigation, test a theory of the case, recreate any
3 aspect of the case, or in any other way investigate or learn
4 about the case on your own, and you may not form or express
5 any opinion regarding the case until it is submitted to you.

6 Deputy Wood, I'm going to remain, so if you will
7 remove the jury.

8 Ladies and gentlemen, please enjoy your weekend.
9 Thank you for your time and attention this week.

10

11 (Whereupon the following proceedings
12 were outside the presence of the jury.)

13 THE COURT: All right. Ms. Hickman, let's begin
14 with your outside the presence. Actually, I'm going to
15 excuse the witness for the weekend as well. Sergeant, we
16 will see you back here at 8:00 Monday morning.

17 Ms. Hickman, give me just a minute, please.

18 Okay. Ms. Hickman, go ahead.

19 MS. HICKMAN: Thank you, Your Honor. Based on the
20 question that the state asked Sergeant McNeely, I don't know
21 the exact wording, but are there any laws in the State of
22 Nevada that pertain to the Sparks Police Department
23 regarding a pursuit and then an answer was given by the
24 witness.

25 At this point, I do believe the state has opened

1 the door to allow us to cross-examine this witness or other
2 witnesses on the policies and procedures of the Sparks
3 Police Department regarding vehicle pursuits.

4 THE COURT: Mr. Picker, are you joining in on
5 this?

6 MR. PICKER: Absolutely, Your Honor.

7 THE COURT: Okay. Ms. Hickman, anything else in
8 substance regarding this?

9 MS. HICKMAN: The other, well, so there is another
10 piece and if you combine it with the questions asked of the
11 first witness, Officer -- sorry, I'm going to say his name
12 wrong, Losner.

13 THE COURT: Loeschner.

14 MS. HICKMAN: Loeschner. It's because I have it
15 wrong in my head, and so every time I try to think of it I
16 can't.

17 There were questions of him asked by the state
18 about why he would continue to pursue the white truck even
19 knowing that other people wouldn't catch up with him, and so
20 I think those two questions in combination have opened the
21 door by asking both of these officers questions about
22 vehicle pursuits and why they would do certain things and
23 what the laws of Nevada would do have opened that door.

24 THE COURT: Okay. Mr. Prengaman.

25 MR. PRENGAMAN: Your Honor, starting with Officer

1 Loeschner, those questions were I believe on redirect and
2 they were responsive to the questions asked on
3 cross-examination; for instance, about why he continued to
4 pursue without his lights and siren. They did not, they
5 were not based on policy. I didn't ask him what the
6 policies hold.

7 In that moment, in other words, obviously not
8 repeating my questions, but the thrust of my questions were
9 again responsive to that issue raised why did you continue
10 to pursue this car, this truck without your lights and
11 sirens.

12 The response to that were my questions along the
13 lines of what were the facts and circumstances that faced
14 you or precluded you or made it, made you continue or the
15 inability basically for the other units to come and take
16 over, and he responded and talked about the speed. You
17 recall I asked about the speed, and he said, well, yes,
18 because the units behind me couldn't catch up, so I had to
19 continue to follow. None of that opened the door to policy.

20 My question now is not policy based. The entire
21 thrust, or not, or I shouldn't say the entire, but much of
22 the thrust of the defense cross-examination of Sergeant
23 McNeely is directed to the implication that the Sparks
24 Police should not have pursued the defendant.

25 They asked about information they knew; again, did

1 you have an address you could have gone to, you could have
2 found out after? Much of the questioning was directed to
3 that implication.

4 My simple, again, my question to Sergeant McNeely
5 was not based on policy. It's based on the law. And them
6 having opened that question, the jury is entitled to know
7 what constraints the law of the State of Nevada, in other
8 words, was this an illegal pursuit, because that's the
9 implication that's being drawn by the defense. That's
10 directly responsive. The answer is, no, it's not.

11 The police, regardless of the issues raised by the
12 defense, the police are entitled to pursue. It doesn't talk
13 about their policies, just the law of the State of Nevada,
14 so I am not broaching policy and asking about policy, none
15 of that. The door is not open.

16 THE COURT: Ms. Hickman, it is your motion. You
17 get the last word.

18 MS. HICKMAN: I'm responding to that in a couple
19 ways. First, the argument isn't that this is an unlawful
20 pursuit. I don't think that that is a fair characterization
21 of what this is. Potentially unnecessary, potentially
22 prolonged, but in your ruling you specifically said that the
23 policies and procedures are not relevant.

24 And now that the state has introduced the laws of
25 Nevada, that there is nothing constraining you about

1 pursuits, the policies of the Sparks Police Department
2 become relevant on cross-examination. There was nothing
3 limiting us from cross-examining officers on conduct and
4 that is what we have done. We cross-examined them on their
5 conduct.

6 We have not at any point said this was an illegal
7 pursuit. We have not at any point said that they did not
8 have the legal authority to pursue. What we have asked
9 questions about implied that it was unnecessary.

10 They knew who these people were. They had an
11 address. They could have stopped the pursuit at any time
12 and still apprehended the people that they were looking at
13 as suspects. That is an entirely different issue than the
14 state's question that opens the door to policies and
15 procedures.

16 THE COURT: Counsel, I view the issue -- First of
17 all, let me make a record of what counsel are talking about
18 in terms of my prior ruling.

19 In this case on March 22nd of 2021, this Court
20 issued an order granting the state's Motion in Limine
21 regarding reference to evidence regarding vehicle pursuit
22 policy, and this had everything to do with and exclusively
23 to do with a memorandum in policy that is, that was issued
24 by Sparks Police regarding a policy they had developed in
25 order to make a pursuit.

1 In this Court's mind what has happened here today
2 is completely separate and apart from what that order
3 addressed. The order is specific beginning at page 8, line
4 10 about this Court's rationale, and the rationale is based
5 on what the parties were seeking with regard to introducing
6 the Policy and Memorandum of the Sparks Police Department.

7 To give you an example, again, I do this
8 ultimately simply because the entire contents of the order
9 speak for itself with regard to the issues that were raised
10 by the defense. An example of what the order was based on,
11 line 22, page 8, "Therefore, even assuming that the SPD
12 officers violated the policy, Mr. Williams has failed to
13 offer any argument demonstrating how such violations would
14 relieve Mr. Williams of liability based on the facts of this
15 case."

16 It is a very different issue. Mr. Prengaman was
17 careful to say the law of the State of Nevada, and he
18 clarified the NRS, are there restraints regarding pursuits
19 related to lights and siren for it to be a crime.

20 And with regard to, that was the Court's
21 paraphrase of a question he asked Mr. McNeely and that was,
22 according to Mr. Prengaman, questions that he was asking as
23 a result of what the state -- or what the defense had asked
24 Officer McNeely.

25 In fact, Counsel Hickman, you even asked him about

1 a call he made to Lieutenant Patton about whether or not,
2 the quote I have is, "They are going really fast. Let's
3 shut this down." You asked him about that.

4 I think based upon the limited reference that
5 Mr. Prengaman made to the NRS regarding questions that were
6 asked of McNeely and Loeschner, he was entitled to address
7 whether or not they, the officers had done something they
8 were permitted to do with regard to the use of lights and
9 sirens or their conduct in this case unrelated to the very
10 specific issues that were raised with respect to the
11 Memorandum and Policy in the Sparks Police Department.

12 And it's my ruling the door has not been opened,
13 and the order that I issued that I previously referred to is
14 in place and the parties are to abide by that order until
15 the rest of this case unless this issue comes up again and
16 I'm persuaded otherwise. Thank you.

17 We will resume, we are not going anywhere, but we
18 will resume Monday morning. Ms. Hickman, you will take up
19 your recross examination of Officer McNeely and then,
20 Mr. Picker, I will go to you and we will continue from
21 there.

22 Now, Mr. Prengaman, if you wouldn't mind making a
23 record, please, of those witnesses that you expect to call
24 on Monday for counsel, please.

25 MR. PRENGAMAN: Well, Your Honor, I will tell you

1 I'm going to continue on, so the witnesses I intend to call
2 are Officer Chambers, I intend to call David Cole, and I
3 intend to call Mr. Sims. Beyond that I actually, I was
4 going to revisit the scheduling, so I'm not in a position to
5 tell beyond that for Monday.

6 THE COURT: But I'm assuming Chambers, Cole, and
7 Sims are going to take up a fair amount of Monday.

8 Mr. Prengaman, if for some reason you reassess and
9 make a decision that there is a witness that follows Sims
10 over the weekend, because you think you are going to call
11 that witness on Monday, I want you to reach out to counsel.
12 I know you have their e-mails. They are entitled to be told
13 over the weekend who the witnesses are going to be. Do you
14 understand?

15 MR. PRENGAMAN: I do.

16 MS. HICKMAN: Sorry, Your Honor, just going back
17 to the Policies and Procedures, just for the record, those
18 have been marked, but obviously not admitted as Exhibit 192,
19 so the Policies and Procedures that I am talking about are
20 marked and are here. That's all I wanted to say.

21 THE COURT: I knew that they had been marked.
22 Thank you.

23 MS. HICKMAN: Okay.

24 THE COURT: Thank you for making a record of which
25 ones they are.

1 Counsel, I want to move right into the two issues
2 that we had slated this hearing for this afternoon, so I'm
3 going to grab my pleadings off my desk.

4 The first thing we are going to take up is the
5 notice that was filed and the joinder of that notice; the
6 notice filed by Ms. Hickman and Ms. Grosenick, joinder by
7 Rosenthal and Picker related to a number of exhibits that
8 are photographs of things that were taken in Defendant
9 Williams' car, and we are going to follow that up with a
10 hearing on the jail calls. Okay. Let me grab my things.

11 (Whereupon a break was taken at 2:40 p.m.)

12 (See Volume II for the completion of the proceedings.)

13 -o0o-

1

2 STATE OF NEVADA)
3 WASHOE COUNTY) ss.

4 I, CORRIE L. WOLDEN, an Official Reporter of the
5 Second Judicial District Court of the State of Nevada, in
6 and for Washoe County, DO HEREBY CERTIFY;

7 That I am not a relative, employee or independent
8 contractor of counsel to any of the parties; or a relative,
9 employee or independent contractor of the parties involved
10 in the proceeding, or a person financially interested in the
11 proceeding;

12 That I was present in Department No. 1 of the
13 above-entitled Court on April 16, 2021, and took verbatim
14 stenotype notes of the proceedings had upon the matter
15 captioned within, and thereafter transcribed them into
16 typewriting as herein appears;

17 That the foregoing transcript, consisting of pages 1
18 through 202, is a full, true and correct transcription of my
19 stenotype notes of said proceedings.

20 DATED: At Reno, Nevada, this 3rd day of September,
21 2021.

22

23 The document to which this certificate is
24 attached is a full, true and correct copy of the
original on file and of record in my office.

25 By: ALICIA L. LERUD, Clerk of the Second
Judicial District Court, in and for the County of
Washoe.

/s/Corrie L. Wolden

CORRIE L. WOLDEN
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8 SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

9 IN AND FOR THE COUNTY OF WASHOE

10 HONORABLE KATHLEEN M. DRAKULICH, DISTRICT JUDGE

11 STATE OF NEVADA,

12 Plaintiff,

Case No. CR20-0630A

Case No. CR20-0630B

13 vs.

Dept. No. 1

14 ADRIANNA NORMAN and RYAN
15 WILLIAMS,

Defendants.

16 TRANSCRIPT OF PROCEEDINGS

17 TRIAL - DAY 5 - VOLUME II

18 Friday, April 16, 2021

19 Reno, Nevada

20
21
22
23
24 Reported by:

LORI URMSTON, CCR #51

APPEARANCES:

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FOR THE DEFENDANT
ADRIANNA NORMAN:

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1 RENO, NEVADA; FRIDAY, APRIL 16, 2021; 3:00 P.M.

2 --o0o--

3 THE COURT: Okay. Counsel, let's start with this.
4 Last night the defense, Mr. Williams' counsel, filed a
5 document entitled Notice of Objection to State's
6 Proposed Exhibits and Memorandum of Points and
7 Authority. That was joined by counsel for Ms. Norman
8 yesterday evening in a Joinder in Co-defendant Ryan
9 Williams' Notice of Objection to State's Proposed
10 Exhibits. The memorandum of points and authorities and
11 the joinder pertain to State's proposed Exhibits 17,
12 36, 38, 39, 40, 41, 44, 46, 47, 48, 49, 61, 64 and 65.

13 Mr. Prengaman, let's start here. Is the State
14 going to introduce all of these exhibits during the
15 course of this trial or attempt to?

16 MR. PRENGAMAN: Yes, Your Honor.

17 THE COURT: You are. Okay. All right. Thank you.
18 All right. All on the table now.

19 MR. PRENGAMAN: Although I have not seen that
20 pleading yet.

21 THE COURT: You've not seen these pleadings?

22 MR. PRENGAMAN: No. I was informed earlier that
23 they were filed. I was here at 7:30. I didn't see
24 that they were filed. I was informed by the clerk that

1 something had been filed. For some reason -- I tried
2 to access it on my equipment here, but for some reason
3 it won't let me download it, so I haven't had a chance
4 to read the pleadings.

5 MS. HICKMAN: Can we have Mr. Prengaman turn his
6 microphone on?

7 THE COURT: Yeah, turn your microphone back on.

8 Mr. Prengaman is saying he got here at 7:30 this
9 morning, these were filed too late last night, he was
10 not able to access them on his computer today.

11 Mr. Prengaman, I will take a few minutes off the
12 record and see if we can't provide you copies of those
13 two documents so you can take a look at them and review
14 them. They're pretty basic. The joinder is just that,
15 a joinder, but the effect of the notice -- I want you
16 to be able to review it. Don't accept my
17 representation, but it's effectively they're not
18 relevant, they are prejudicial. I think the relevance
19 is the big issue in this case. And because some of
20 them display weapons they're highly prejudicial. Okay?

21 MR. PRENGAMAN: Okay.

22 THE COURT: And so we're going to see if we
23 can't --

24 Ms. Clerk, can we get him some copies?

1 THE CLERK: Yes, your Honor.

2 THE COURT: We'll be off the record, counsel, until
3 Mr. Prengaman informs the Court that he's ready.

4 (A recess was taken.)

5 THE COURT: Okay. We're going to begin here.

6 Mr. Prengaman, you had an opportunity to review the
7 notice and the joinder?

8 MR. PRENGAMAN: Yes, Your Honor.

9 THE COURT: Okay. I'm going to start with
10 Ms. Hickman and Mr. Picker. Anything to add to these
11 pleadings before Mr. Prengaman weighs in?

12 MS. GROSENICK: Thank you, Your Honor. We just
13 want to make sure that you see the exhibits prior to
14 making a ruling.

15 THE COURT: I want you to know I've looked at every
16 one of them very carefully, and I do have some
17 questions for Mr. Prengaman about them as a result.
18 Yes, I've looked at all of them. In fact,
19 Ms. Grosenick, I've looked at them.

20 Mr. Prengaman, have you been able to view them?

21 MR. PRENGAMAN: I'm sorry?

22 THE COURT: I had the clerk pull them. She's
23 holding on to them for purposes of this hearing. Would
24 you like to look at the exhibits that are set forth in

1 counsel's pleading?

2 MR. PRENGAMAN: I've had a chance to briefly look
3 at them.

4 THE COURT: Do you need more time?

5 MR. PRENGAMAN: I don't think so.

6 THE COURT: Okay. All right. Ms. Grosenick, I've
7 looked at all of them, yes.

8 MS. GROSENICK: Thank you, Your Honor.

9 THE COURT: Mr. Picker, Ms. Rosenthal.

10 MR. PICKER: Your Honor, I just want to make sure
11 that you understood our position is joinder because of
12 Ms. Norman's presence in that vehicle creates the same
13 inference. Thank you, Your Honor.

14 THE COURT: I get it. Yes, thank you.

15 Mr. Prengaman, opposition.

16 MR. PRENGAMAN: Yes, Your Honor.

17 THE COURT: Go ahead.

18 MR. PRENGAMAN: So in terms of --

19 THE COURT: Let me stop you there, Mr. Prengaman.
20 In giving us your remarks would you inform this Court,
21 please, as to Exhibits 38 and 39 and 48 and 49. One of
22 the issues raised in the pleading is whether or not the
23 State has determined that that caliber of bullet
24 actually fits the gun that was recovered in this case.

1 So if you could include an answer to that question
2 during your remarks.

3 MR. PRENGAMAN: Your Honor, they're all 9mm.

4 THE COURT: So those are 9mm?

5 MR. PRENGAMAN: Yes, Your Honor. And I dispute
6 that I have to show that it fits the gun. I would
7 submit --

8 THE COURT: I didn't hear that.

9 MR. PRENGAMAN: I would dispute that I have to show
10 that it fits the gun. However, it does. They're all
11 9mm ammunition.

12 So is that where the Court wants me to start? Do
13 you want me to start there?

14 THE COURT: I want -- thank you for answering that
15 question. Go ahead with whatever you were prepared to
16 say.

17 MR. PRENGAMAN: Your Honor, in terms of prior bad
18 acts, I submit these are not prior acts. This is
19 res gestae. This is -- these two defendants and
20 Mr. Zane Kelly showed up at this scene in this truck
21 with the contents in this truck. I have specifically
22 alleged that they -- that part of the -- that it's a
23 conspiracy, aiding and abetting, in other words,
24 they're working together.

1 And part of the allegations is verbally they
2 entered with a specific intent to commit assault,
3 battery, coercion, kidnapping. I believe I have
4 evidence that they were trying to get Mr. Sims outside
5 the building.

6 In fact, the testimony -- there's evidence that
7 specifically Mr. Williams, "We're going for a ride.
8 Let's go," specific reference to the truck that was
9 parked outside the building.

10 So it is relevant to the intent, because the
11 contents of the truck, specifically the weapons, are
12 relevant, because they do allow, again, minimal --
13 although the relevant standard is very low, but it
14 allows the inference that they intended to get him
15 outside to go for a ride in order to do him harm as
16 payback for this debt. I think the facts and
17 circumstances support that and that's the relevance.

18 Again, it's not another bad act. It didn't happen
19 on another day or in a remote location. This is part
20 of the instrumentality of the crimes that are alleged
21 in this case, specifically because Mr. Williams
22 referenced going for a ride.

23 Now, with regard to -- and the presence of weapons
24 again allows the inference that one of the things they

1 were going to do is harm Mr. Sims. But I don't have to
2 prove it. I don't have to prove it beyond a reasonable
3 doubt. It just has to allow -- it has to be -- it has
4 to have some bearing on those issues.

5 Now, with regard to the ammunition, the evidence is
6 that this -- the testimony and evidence is essentially
7 that Ms. Norman entered with that gun, which we know is
8 the 9mm, that we see Mr. Williams knows she's armed.
9 We see him in the breezeway reach in and take that gun
10 and put it in the front of his sweatshirt. He puts it
11 in the front pocket of his sweatshirt.

12 The fact that he has a 9mm bullet in his pocket of
13 his jeans is -- again, it's not another bad act. It's
14 relevant because of the conspiracy theory and the fact
15 that he -- number one, I have evidence that he knows
16 there's a gun. And part of what the State has to prove
17 in this case is both the deadly weapon and the
18 associated charges, the defendant knew about the weapon
19 and that his co-defendant was using it.

20 So it has bearing on his knowledge because he's got
21 a 9mm, same caliber as that gun, in his own pocket
22 which allows the inference that he again knew about it
23 and was more involved than simply -- again, it's not
24 just Ms. Norman, but it allows the inference that he's

1 more involved and knowledgeable about that gun.

2 And it allows the inference that he may have
3 knowledge and potentially provided it to her by virtue
4 of the fact that again he knows exactly where it is, he
5 reaches in and pulls it out and takes it with him. And
6 when he leaves we find that gun inside the truck
7 underneath the driver's seat.

8 So it's relevant for knowledge, it's relevant for
9 intent, it's relevant evidence of aiding and abetting
10 and conspiracy.

11 With regard to the facts, so exhibits -- and,
12 again, 47 and 48, I'm not really -- I don't
13 necessarily -- it's news to me that there might be
14 shotgun pellets. I didn't see any. Those are relevant
15 because they show the location where that bullet was
16 found undisturbed which is always relevant, the place
17 that the bullet was found.

18 So there was a third bullet -- or not the third
19 bullet, the second bullet that was not associated with
20 the pistol is found right where you see in those
21 photographs. That's how they found it when they opened
22 the truck to search it. And that's what those photos
23 are relevant to show is where that is.

24 Now, it's on the driver's side. And, again, I

1 don't have to prove conclusively that -- I know you
2 could argue that it could have moved around, but that
3 doesn't defeat the relevance and admissibility of again
4 another 9mm bullet on the driver's side of that truck
5 which similarly supports the inferences of the bullet
6 was in the pocket. So those are not offered for
7 anything other than they show the position of that
8 bullet, where it was found.

9 Exhibit 49 is simply holding -- a closeup showing,
10 displaying the --

11 THE COURT: One second. I just want to be looking
12 at them, counsel.

13 MS. HICKMAN: I can put them up here so everyone
14 can see them.

15 THE COURT: Why don't I look at them while
16 Mr. Prengaman is going through his argument and then
17 you can put them up.

18 MS. HICKMAN: No, that's fine.

19 THE COURT: Okay, Mr. Prengaman, go ahead.

20 MR. PRENGAMAN: And then with regard to Exhibit 61,
21 that is indicia, it has the defendant Williams' name on
22 it. It is relevant because again you have a truck that
23 contains a number of things, including weapons,
24 including the 9mm bullet. And that supports the

1 inference that he's the driver and that he has control
2 of the truck. And that is further evidence linking the
3 contents to him, both the weapons to him. So indicia
4 of occupancy and ownership supports that inference and
5 that's what that is offered for.

6 I guess theoretically you could crop that, but
7 it is highly -- I would submit it has very great
8 probative value in terms of the dominion and control of
9 the items in the truck for the purposes I previously
10 described.

11 Exhibit 64 is relevant to identity. I submit that
12 the hats, the two hats that were located inside the
13 truck, are relevant to show identity, to show that
14 these are the same men wearing the same clothing you
15 see on the surveillance video.

16 And I think that addresses all of those unless I
17 missed any.

18 THE COURT: Okay. Mr. Prengaman, I want to go
19 through and make sure I understand what you said about
20 64.

21 MR. PRENGAMAN: I'm sorry?

22 THE COURT: 64 is the picture of a red baseball cap
23 that says California Republic on it. Again, your
24 argument with regard to 64.

1 MR. PRENGAMAN: That's relevant to identity. That
2 is one of the hats that is in -- that's the hat that's
3 Zane Kelly was wearing in the video. And the black hat
4 was the one in the surveillance footage when he
5 initially enters on that surveillance footage at Bob &
6 Lucy's of showing him in the breezeway coming in and
7 out of the casino.

8 THE COURT: Which one has the black hat in it?

9 MR. PRENGAMAN: That is the hat -- so Exhibit 43 is
10 the black hat and that's the one worn by Mr. Williams
11 in the surveillance footage.

12 THE COURT: Ms. Lux, I don't have 43.

13 MR. PRENGAMAN: So they didn't object to that one,
14 Your Honor.

15 THE COURT: Oh, they didn't. Okay. All right.

16 MR. PRENGAMAN: But it's a similar photograph
17 showing the black hat found in the truck.

18 THE COURT: Mr. Prengaman, if I might, I note 38 is
19 the picture of the bullet in the pants pocket. 39 is a
20 picture it looks like of a forensic analyst or
21 somebody, a police officer, I don't know who, holding
22 the slug. And the same is true with regard to 48 and
23 49. I see 48 in the truck. But 49 is the picture of
24 someone holding with a blue glove on the slug. And is

1 this just for purposes of showing the closeup?

2 MR. PRENGAMAN: Yes, Your Honor. The caliber is
3 the same caliber as, again, a 9mm caliber.

4 THE COURT: Okay.

5 MR. PRENGAMAN: So, yes, that's what those photos
6 are depicting.

7 THE COURT: And so 38 and 39 go together?

8 MR. PRENGAMAN: Yes.

9 THE COURT: And 48 and 49 go together?

10 MR. PRENGAMAN: Yes, Your Honor. 47 and 48.

11 THE COURT: 47 too.

12 All right. Mr. Prengaman, thank you. Yes, go
13 ahead.

14 MR. PRENGAMAN: And then the only thing, Your
15 Honor, that I think -- I just saw 36. So 36 is the
16 knife that is on Mr. Williams' waist. That is actually
17 on his waist. You can see it on the body cam footage.
18 And I'm sorry, but I just wanted to -- is the Court
19 able to see 36?

20 THE COURT: I can see -- I think the better picture
21 is 17, but, yes, I can see 36 also.

22 MR. PRENGAMAN: So 36 is the clothing collected at
23 the scene after it was removed from the defendant. And
24 so he does have that knife. I assume that's what the

1 objection to 36 is is that it displays the knife in the
2 bag unless there's some other objection to it. But if
3 that's the objection, it is again relevant. He's got
4 that -- that's a weapon that he has on his person and
5 you can see that on the body cam footage when he is
6 removed from the truck. And that's something the
7 police took off of his person and later collected it.
8 And again it's relevant as a weapon for the reasons
9 I've stated.

10 THE COURT: Okay. Thank you.

11 Ms. Grosenick, do you want the photos?

12 MS. GROSENICK: No, Your Honor. Would you like for
13 me to display them?

14 THE COURT: Say again.

15 MS. GROSENICK: I didn't know if you would like for
16 me to display them.

17 THE COURT: No. Thank you. Go ahead.

18 MS. GROSENICK: Thank you, Your Honor. I would
19 like to start with 36. No. I'd like to start with 64
20 and 61.

21 THE COURT: Okay.

22 MS. GROSENICK: 61 is the drawing regarding
23 paraphernalia. The State indicates that this
24 photograph is relevant to establish indicia inside the

1 vehicle, but that does appear to be drug paraphernalia,
2 and it can be redacted out of that photograph while
3 still leaving the information that the State wants to
4 introduce. And so it's not clear to me why that is not
5 an option.

6 The same for 64, the red hat that has the axe
7 handle in it. You know, without 65 there's less
8 context to what that is, but it does -- just looking at
9 it on its own, it does look like the handle of
10 something that could be sharp. And again that could be
11 redacted out of that exhibit.

12 Turning to the exhibits containing photos of
13 knives, axes, razorblades, sharp things, the State
14 argues that those are res gestae. However, that's an
15 extremely narrow exception. And this is from Weber
16 versus State, 121 Nevada 554, at page 570, 2005, and
17 Bellon versus State, B-e-l-l-o-n, 121 Nevada 436, also
18 2005.

19 And the Nevada Supreme Court has held that this
20 statute refers to the witness's ability to describe and
21 not explain a charged crime. The court did not need
22 these exhibits in order to describe the allegations in
23 this case. If there was a piece of duct tape in the
24 vehicle would the State be permitted to show a photo of

1 that and argue that they were going to put it across
2 the witness's mouth? I don't think so. This is far
3 too speculative.

4 In this case Mr. Sims was asked at preliminary
5 hearing under oath whether he ever saw a knife and his
6 answer was no. So there will be no evidence that a
7 knife was used in the commission of any of the crimes
8 in this case. That's also reflected by the fact that
9 the State took all references to knives out of its
10 charging document in between justice court and this
11 court. And I believe that the Fifth Amended Criminal
12 Complaint that I refer to in my notice is part of the
13 court's record already.

14 Now, knives and weapons or other bullets from guns
15 or, you know, knives that are not alleged to be part of
16 this offense are absolutely other act evidence. And I
17 have supportive case law that holds the same. These
18 should have been -- if the State wanted to produce
19 those, especially in light of taking them out of the
20 charging document, they should have been the subject of
21 a pretrial motion to admit so we don't have objections
22 in the middle of trial.

23 Regardless, I think when we look in total at what
24 it is, the substance -- or the risk of unfair prejudice

1 here is extreme compared to the probative value. There
2 is no evidence that Mr. Williams had that knife on his
3 belt when he was inside of Bob & Lucy's. The State
4 will not be able to make that connection.

5 And so for all of those reasons, Your Honor, I am
6 asking you to exclude all the photos of knives or other
7 sharp objects unless they need to be redacted and take
8 those things out if there's other relevant evidence in
9 those exhibits. They're not -- if the purpose of those
10 exhibits is to show Mr. Williams is in possession of a
11 knife, they aren't relevant and extremely prejudicial
12 and unfairly so.

13 I do want to let the Court know that Exhibit 47
14 does show that bullet, but then I objected to the
15 pellets in the doorway. I think those are BB pellets,
16 not shotgun pellets, but I argue that that is -- again,
17 they're not relevant to this case. There's no evidence
18 that a pellet gun was found or used in the commission
19 of the offense. And under Nevada law a pellet gun or a
20 BB gun can be defined as a deadly weapon under our NRS.

21 THE COURT: Ms. Grosenick, address 38, 39 and 48
22 and 49 now that Mr. Prengaman has confirmed for the
23 Court that they're the same caliber ammunition as the
24 gun that was recovered in this case.

1 MS. GROSENICK: So as to those, I would just say
2 that the State needs to lay that foundation, but if
3 they can lay the foundation that it's the type of
4 ammunition that goes to the gun that was retrieved,
5 then we are unlikely to object to that.

6 MR. PRENGAMAN: And just for the record, Your
7 Honor, that is information they've had in the forensic
8 report. It's clearly explained in the report that it
9 is the same.

10 THE COURT: Mr. Prengaman, thank you.

11 Ms. Grosenick, anything else?

12 MS. GROSENICK: No, Your Honor. Thank you.

13 THE COURT: Mr. Picker, Ms. Rosenthal.

14 MR. PICKER: Thank you, Your Honor. We would join.
15 And looking at NRS 48.035, sub 3, once the State has
16 invoked res gestae, really the question does not even
17 come down to whether it's prejudicial or probative, it
18 comes down to whether the story can be told without
19 this imaging information or damaging photos. So it's a
20 much more narrow analysis. And that cites State v.
21 Shea, 111 Nevada. 894 is the relevant page number.

22 In looking at the Nevada Supreme Court's ruling,
23 once that doctrine has been invoked, it is up to this
24 Court to determine whether it's necessary to tell the

1 story. I would suggest, especially as it deals with
2 Ms. Norman, all of these items, possibly the 9mm
3 bullets on 38, 39, 47, 48 and 49, are ones that we
4 would acquiesce to, but as to the knives and the other
5 sharp objects, there seems to be no reason for it.

6 Exhibit 61, the drawing on a piece of paper that
7 has the owner of the vehicle, that has nothing to do
8 with Ms. Norman. Again, if Your Honor decides to bring
9 it in, we would be asking for a limiting instruction as
10 to that document -- or to that photograph, because it
11 doesn't reflect anything on Ms. Norman and should not
12 be used by the jury.

13 Finally, as to 64, the red hat, the identification
14 would appear to be irrelevant, because as we know Zane
15 Kelly was never charged in this case and he's not
16 sitting here. So whether that's his hat or not really
17 is irrelevant to the case. The identifications of
18 Mr. Williams and Ms. Norman, those are the only people
19 involved here. So having that hat would seem to be
20 irrelevant and would basically be misleading to the
21 jury that it belongs to somebody involved in this case
22 when it doesn't. It is not part of the story that
23 needs to be told. It's not part and parcel of a piece
24 of evidence that is necessary to tell the story.

1 In that narrow focus of telling the story, knives
2 are not important, hats are not important and that
3 drawing is not important. It is not necessary for the
4 State to use it to tell the story in this case.

5 I did want to -- I'm going to repeat myself just
6 briefly. The reason is because once the State invokes
7 that theory of res gestae, they open themselves up to
8 that very narrow focus under the law. And the Nevada
9 Supreme Court has been very, very specific that it must
10 be construed narrowly. Thank you.

11 THE COURT: Okay. All right. Counsel, this is how
12 I see the issues with regards to the photographs.
13 First lets start with the res gestae. The story in
14 this case is that Mr. Sims met Mr. Williams at some
15 point in December of 2019. Mr. Williams either wore or
16 displayed or was around weapons that day. That
17 transferred into statements that Mr. Sims says
18 Mr. Williams made on February 22nd, 2020.

19 The weapon in this case, the issue in this case
20 about fear, about whatever the parties have asserted
21 related to -- and principally the State related to a
22 crime in this case is the gun. And accordingly with
23 regard to res gestae, Exhibits 36, 40, 41, 44, 46, 65
24 and 17 and 64 are not -- cannot be admitted.

1 Specifically, I not only think it's outside the res
2 gestae argument, I agree with counsel for Williams,
3 even if these were relevant, and I don't know that
4 they're even relevant, I think the prejudicial value
5 here -- or the probative value is outweighed by the
6 prejudicial value.

7 The issue here is the gun, what was -- what does
8 Mr. Sims say he was afraid -- what is the history of
9 his relationship with Mr. Williams. It's the gun. And
10 so for that reason the exhibits that I just enumerated,
11 I don't think -- I think the relevance is questionable.
12 And even if they were relevant, I think that
13 prejudicial -- or the probative value is highly
14 outweighed by the prejudicial effect.

15 Now, with regard to Exhibit No. 61 which is the
16 Bank of America Your Replacement Card is Here and it's
17 got Mr. Williams' name and address on that, I think
18 this is relevant. And I don't think there's -- that
19 the probative value would be outweighed by the
20 prejudicial effect of introducing this provided the
21 State can find a way to redact what appears to be
22 paraphernalia, a pipe of some kind, on that document.
23 And that would either be just bifurcating it right down
24 the middle or finding a way to wipe that out. So I

1 think 61 is relevant and can be offered by the State
2 and provided proper foundation is laid may be admitted,
3 but the pipe has to come out.

4 With regard to 47, 48 and 49, given Mr. Prengaman's
5 statements about the fact that these are -- that this
6 is 9mm ammunition and that the gun in this case is 9mm,
7 which is undisputed by the defense, these are coming in
8 provided proper foundation is laid and no other
9 objections are raised that would prevent them from
10 coming in.

11 With regard to the BBs that are in the -- it looks
12 like the doorjamb -- I'll confess I had a tough time
13 finding these based on the pleadings, but in an
14 abundance of caution, because it's been raised by the
15 defense, 47 will come in, but, Mr. Prengaman, that
16 piece of the doorjamb has to be edited out. And I
17 don't think 47 and 48 are duplicative, because I think
18 47 provides perspective and then 48 is just a closeup
19 and then 49 shows the caliber.

20 The same goes for 38 and 39. Provided proper
21 foundation is laid that these are in fact Mr. Williams'
22 pants and that the round was pulled from those pants
23 and that it's 9mm, those can come in as well and any
24 other foundational issues that need to be laid by the

1 State.

2 Now, with regard to the red baseball cap which is
3 64, I have said that's out. Now, if Mr. Kelly
4 testifies and the State has some -- during the course
5 of his testimony an issue comes up that would make this
6 relevant, then Mr. Prengaman is free to offer it when
7 Mr. Kelly is on the stand. Because I don't think
8 there's any doubt he was in the truck. Is there,
9 Mr. Prengaman? Aren't officers going to testify that
10 when they got to the truck Mr. Kelly was in it after
11 the accident?

12 MR. PRENGAMAN: Yes, Your Honor. And the issue I
13 would say is not so much in the truck, but he's the
14 same guy on the video involved with these defendants in
15 committing the crimes.

16 THE COURT: That's the nexus you want to draw is
17 that this is what Mr. Kelly -- this is what the
18 individual who's seen on the video -- okay. My
19 ruling -- now that I understand better the nexus, my
20 ruling on 64 is different. If you're going to use 64
21 to demonstrate a nexus between the person who was in
22 the gaming property other than Ms. Norman or
23 Mr. Williams and that that person was Mr. Kelly and he
24 ended up in the truck with Mr. Williams, then 64

1 provided proper foundation is laid can come in. But to
2 Ms. Grosenick's point, I want you to take out the axe
3 handle. Okay?

4 MR. PRENGAMAN: Your Honor, if I may. You went
5 kind of fast on those ones, especially initially. I
6 would ask you to go through those again, what's out.
7 You were going to --

8 THE COURT: No. Based on the list that was set
9 forth in defendant's notice, Mr. Williams' notice that
10 was filed with this court, the ones that are not coming
11 in are 36, 40, 41, 44, 46, 65 and 17. And the others,
12 provided proper foundation is laid with the redactions
13 that the Court has specified, can be offered by the
14 State.

15 MR. PRENGAMAN: If I may, Your Honor. On 47 I'm
16 not sure I follow the -- I'm not sure how -- when you
17 said the doorjamb, what part of it are you talking
18 about?

19 THE COURT: Take a look at 47. Right here,
20 Mr. Prengaman, it looks like buckshot from a shotgun
21 shell.

22 MR. PRENGAMAN: But you don't see it in 48?

23 THE COURT: You don't see it in 48. You can just
24 offer 48. 48 is too close to see it, but you can just

1 offer 48 and dispense with 47. But if you want to show
2 some perspective, because I think 47 is a good
3 depiction of where exactly it was found in the truck,
4 but the buckshot that's in the doorjamb needs to come
5 out. All right.

6 MS. GROSENICK: Your Honor, may I clarify as well?
7 The other part of what we would be objecting is to
8 testimony about whether Mr. Williams had a knife on him
9 when he was located --

10 THE COURT: I did not -- I'm sorry. A little
11 slower. Testimony about whether Mr. Williams --

12 MS. GROSENICK: -- was in possession of a knife
13 when he was pulled out of the car or knives that were
14 found inside the vehicle. You know, the objection is
15 not just to the photos, it would be the testimony or
16 video evidence related to that.

17 THE COURT: Mr. Prengaman.

18 MR. PRENGAMAN: Your Honor, one thing that they
19 want to impeach Mr. Sims about is he saw a black handle
20 on the waist. And this is a black handle on the waist.
21 This is a black knife on his waist. I dispute the fact
22 I can't show or link it to being inside. He's inside
23 the casino. You see him go outside. He's sitting in
24 the truck. And then he flees from the police in such a

1 short time that I submit absolutely supports the
2 inference that it's through his belt on -- which it is.
3 You can see it on the body cam footage. If it's
4 through his belt, it's unlikely that he went out in
5 that short time and undid his belt and put that knife
6 on his hip.

7 And so I would submit that it does have relevance
8 for that reason. They want to impeach Mr. Sims for
9 claiming to see a black handle, again, lifting up and
10 seeing a black handle. While it may not be the handle
11 of a gun, it's still a black handle that I can argue
12 allows the inference that somebody in that stressful
13 situation could have mistaken for a gun.

14 MS. GROSENICK: And I would like an opportunity to
15 address that.

16 THE COURT: Just a minute. I just want to grab a
17 photo.

18 Mr. Prengaman, let's display 17. This is a
19 picture. It appears to be -- I can't tell for sure,
20 because there's no face, but it looks like this would
21 be Mr. Williams lying on the ground. He appears to be
22 lying on his right side, left side up, and that's --
23 and a knife that's on his -- looks like his left
24 waistband.

1 MR. PRENGAMAN: I think it's his right.

2 THE COURT: Oh, he's on -- he's facedown in this
3 picture. That would be on his right side.

4 MR. PRENGAMAN: Yes.

5 THE COURT: And that is a black handle.

6 MR. PRENGAMAN: Yes. And that -- and I think
7 you'll see in the footage it's -- as you can see, the
8 sheath is through -- it's on his -- it's through his
9 belt. That's how it's attached.

10 THE COURT: This is important, Ms. Grosenick,
11 because I know that the parties based on pretrial
12 motions and what I've read that the parties intend to
13 impeach related to whether or not Mr. Williams was in
14 possession of the gun.

15 MS. GROSENICK: Right. And I will make an offer of
16 proof that in Bob & Lucy's video you will not be able
17 to see Mr. Williams' waistband or a knife. I also will
18 direct the Court to page 353 of the preliminary hearing
19 transcript in which I believe Ms. Hickman was crossing
20 Mr. Sims. She says --

21 THE COURT: A little louder.

22 MS. GROSENICK: Sorry, Judge.

23 THE COURT: When you put your head down it's hard
24 to hear.

1 MS. GROSENICK: How's that?

2 THE COURT: Good.

3 MS. GROSENICK: Ms. Hickman says --

4 THE COURT: Page of the preliminary hearing
5 transcript?

6 MS. GROSENICK: 353.

7 THE COURT: Okay.

8 MS. GROSENICK: "So when you say he showed you a
9 firearm in his waistband, you didn't actually see a
10 firearm?"

11 "ANSWER: No."

12 "QUESTION: You just assumed there was one?"

13 "ANSWER: Right."

14 This is moving on to page 354.

15 "QUESTION: You didn't see anything in his
16 waistband; correct?"

17 "ANSWER: No."

18 "QUESTION: You didn't see a knife?"

19 "ANSWER: No."

20 "QUESTION: You didn't see a black handle?"

21 "ANSWER: No, ma'am."

22 "QUESTION: So when you told Officer Allen that you
23 saw a black-handled gun, that was not true; correct?"

24 "ANSWER: Did I tell him that? That was in my

1 statement?"

2 And so Steven Sims completely denied ever seeing
3 anything on Mr. Williams under oath at preliminary
4 hearing. He says he never saw a knife. And he also
5 states under oath that he never saw Mr. Williams'
6 waistband at all. So I object to the State's
7 characterization of there being a possibility of a
8 knife on him inside Bob & Lucy's. We can look at the
9 video right now. You'll never see Mr. Williams'
10 waistband in that video.

11 THE COURT: Mr. Prengaman.

12 MR. PRENGAMAN: Your Honor, so he did tell the
13 police that he saw a black handle of a gun. And,
14 again, his testimony, I'm not denying it is what it is,
15 but it doesn't stop me -- I'm not limited to arguing
16 inferences based on his testimony. I can argue
17 inferences from anything.

18 So I could, for instance, argue that in this
19 stressful situation confronted with a weapon that he
20 mistook a knife -- a black handle for a gun. I mean, I
21 could argue that inference even if he denies seeing it.
22 I could draw the inference that -- he told the police
23 the day this happened black handle. And on
24 Mr. Williams' hip when he's pulled out of that truck

1 that he got in and he was not in for very long before
2 he fled the scene, there's a black-handled knife on his
3 hip.

4 THE COURT: This is what I'm going to do with 17.
5 Except for this last argument Ms. Grosenick has raised,
6 Mr. Prengaman has responded to, I'm going to withhold
7 my ruling on Exhibit 17 related to what Mr. Sims may or
8 may not have seen or what he testifies to until he
9 testifies. Okay. Let's wait and see what he says.

10 Mr. Prengaman, you can renew your request to have
11 the photograph admitted at that time based on what the
12 testimony is.

13 Okay. Ms. Hickman.

14 MS. HICKMAN: Your Honor, based on that ruling, the
15 only thing I would ask is that if Mr. Sims has now made
16 an inconsistent statement with his preliminary hearing
17 testimony to Mr. Prengaman or to any employee of his
18 office that that be discovered to us. So if
19 Mr. Prengaman knows that Steve Sims is going to come in
20 here and say, "Well, no, now I think it was a knife,"
21 and he's said that to him, those inconsistent
22 statements have to be discovered.

23 THE COURT: Mr. Prengaman.

24 MR. PRENGAMAN: There aren't any.

1 THE COURT: There aren't any?

2 MR. PRENGAMAN: No, I'm not aware of any. I don't
3 know what she's talking about.

4 THE COURT: There aren't any.

5 MS. HICKMAN: Okay. Thank you.

6 THE COURT: All right. Thank you.

7 Okay. Let's turn now to the jail calls.

8 Mr. Prengaman, you have a trial statement that's
9 filed that's got some references to jail calls, but
10 then when Mr. Williams filed his response to your trial
11 statement, in fact, the jail calls set forth on page 7
12 of the response are -- they're quite lengthy, and so
13 I'm unclear about what it is the State is seeking to
14 admit. So let's figure that out first.

15 Is it -- do you have Ms. Grosenick's, Ms. Hickman's
16 response to the trial statement filed April 12, 2021?

17 MR. PRENGAMAN: I don't think I have that with me
18 in here. I thought I did, but I don't.

19 THE COURT: Counsel, I have not written anything on
20 my copy. Is there any objection to me handing my
21 version of this? It has no marks on it at all.

22 Okay. Mr. Prengaman.

23 MR. PRENGAMAN: I've seen it, Your Honor. I think
24 we have a dispute on exactly what he says on there. I

1 think the context -- so they're arguing that he says
2 "hoping I don't get." I submit if we listen to it you
3 hear him say, "I'm hoping to get." And that's
4 consistent with the rest of the context, because he
5 goes on to say -- he uses foul language, but he says,
6 "Basically I'm screwed. I've seen the evidence. I'm
7 screwed. I'm looking at like 30 years." So that's
8 consistent with a client hoping to get an eight to
9 twenty.

10 THE COURT: Let me ask you. The --

11 MR. PRENGAMAN: And I can certainly play the call,
12 Your Honor.

13 THE COURT: Look at your pleading, your trial
14 statement at page 25. Okay. Take a look at what
15 you've got there between lines 2 and 15 and then take a
16 look at what counsel has in their response to your
17 trial statement in the document I gave you. They're
18 quite different.

19 You've got a lot of -- you've got a lot of breaks
20 here. What is it that you're -- I want to know what it
21 is you're proposing to admit before I have the parties
22 argue whether or not it should be admitted.

23 MR. PRENGAMAN: Well, I've already edited it, so if
24 you want I can just play the exhibit.

1 THE COURT: Let's do that. Let's play it.

2 MS. HICKMAN: And, Your Honor, for the purposes of
3 the hearing I have the full one as well. Maybe we
4 should mark that too.

5 THE COURT: Let's do that.

6 Mr. Prengaman, is yours not the full jail call,
7 it's been redacted?

8 MR. PRENGAMAN: Yes, Your Honor, for obvious
9 reasons.

10 THE COURT: Counsel, we're going to start with
11 this. Barring something that isn't currently in the
12 bounds of the law or rational thinking, references to
13 eight to twenty or any reference to a jail term is not
14 coming in. It's discussing the sentence in this case.
15 We've already had this conversation.

16 MR. PRENGAMAN: Well, your Honor, it goes to guilty
17 knowledge. We have somebody that is saying, "I hope, I
18 hope I get." Guilty knowledge, I mean, that is high,
19 high probative value. What could be higher? It's
20 tantamount to an admission.

21 THE COURT: Let me listen to what you want to
22 admit, Mr. Prengaman.

23 THE CLERK: Your Honor, for clerk clarification
24 would you like me to mark the phone call?

1 THE COURT: Yes.

2 THE CLERK: Marked for identification No. 217.

3 (Exhibit 217 was marked.)

4 MS. HICKMAN: That's just the one call that we
5 dispute what's said. I didn't mark the other ones,
6 because I don't have a dispute about what was said.

7 THE COURT: Mr. Prengaman, right now what I'm
8 looking for is the full content, whether it's one call
9 or two calls, the full content of what it is the State
10 is proposing to use.

11 MR. PRENGAMAN: And that would be this, so Exhibit
12 165, Your Honor.

13 (Exhibit 165 was played.)

14 THE COURT: I'm sorry. I can't make heads or tails
15 of it.

16 MR. PRENGAMAN: I hit the maximum sound. That's
17 the -- you can't hear it, Your Honor, or it's just --

18 THE COURT: Let me have, if I could, Mr. Prengaman,
19 my copy of counsel's response back. Maybe I can follow
20 it easier --

21 MS. HICKMAN: Your Honor, it may be easier if
22 you -- and I know you probably don't want to sit that
23 close to us, but the speaker is here and it's facing us
24 and so it's really clear right here.

1 THE COURT: Okay.

2 MS. HICKMAN: It's just pointing away from you.

3 And we can move to that side of the courtroom.

4 THE COURT: No, that's all right. I'll come around
5 and stand behind you. It's okay. We both need to hear
6 it.

7 (Exhibit 165 was played.)

8 MS. HICKMAN: That's all for this one. The one
9 that I have is the full. So that's the edited version.

10 THE COURT: There's a reference in the
11 transcript -- or not the transcript, but in the
12 pleading about "Stuff just gets to you in here." I'm
13 paraphrasing now. "And then you are in your cell by
14 yourself, so you're just like trying to read, like
15 reading books."

16 MR. PRENGAMAN: I edited that out because it's a
17 reference to custody. I was trying to take out the
18 references to custody.

19 THE COURT: Okay. All right. So is this the sum
20 and substance of everything related to jail calls in
21 this case?

22 MR. PRENGAMAN: There's a second call that I am
23 seeking to admit. For this call, yes.

24 THE COURT: Okay. Go ahead.

1 MR. PRENGAMAN: And I submit which is different, is
2 different than what the defense has put in the
3 pleading. And I don't want to argue unless the
4 Court -- do you want me to argue or just play it again
5 for you?

6 THE COURT: No, what I'm saying is what you just
7 played word for word is in the pleading.

8 MS. HICKMAN: No, it's not, Judge. It's not. So
9 what --

10 THE COURT: Oh, I see.

11 MS. HICKMAN: I have it in color what is -- and so
12 I can send this to everybody.

13 THE COURT: But here's the thing. I get that there
14 might be a much more complete transcription, but what
15 Mr. Prengaman is seeking to get in is just what's in
16 the pleading.

17 MS. HICKMAN: Right.

18 THE COURT: Okay.

19 MS. HICKMAN: But the part that I put in the
20 pleading has some references that are not in this.

21 THE COURT: Right.

22 MS. HICKMAN: I mean, I just put them in there to
23 give context to the statements, not because I think
24 they're admissible, but I think it gives some context

1 to those statements. And so I wanted the Court to have
2 all of it to determine, because I do not agree that he
3 said, "I hope I get an eight to twenty." I hear him
4 say, "I hope I don't get" -- let me see.

5 MR. PRENGAMAN: And I would submit it's "I hope I
6 only get, I only get an eight to twenty."

7 THE COURT: Can you play it again?

8 MS. HICKMAN: Yeah.

9 (Exhibit 165 was played.)

10 THE COURT: Start it over again.

11 (Exhibit 165 was played.)

12 THE COURT: Okay. All right. So --

13 MR. PRENGAMAN: If I may, Judge. So it's the
14 defendant's statement. So starting from that basic
15 premise, the defendant's statements are admissible.
16 They're his statement. So to overcome that, the
17 prejudicial value has to outweigh significantly the
18 probative value, that he says on there -- I submit he
19 says on there --

20 (The court reporter interrupted.)

21 MR. PRENGAMAN: Even if the defense has lied about
22 the exhibit, I don't think they are, but even if they
23 are, it's the defendant's statement. And, again, it
24 comes in unless the prejudice vastly outweighs the

1 probative value.

2 He says on there, "I hope I only get an eight to
3 twenty," which is consistent with the rest of the
4 content which is I'm looking at twenty to thirty and
5 I'm hoping to get -- he says -- that's not exactly
6 verbatim, but he says, "I'm hoping to get. I just want
7 to get to prison." So that's an admission, Your Honor.
8 It's an admission of his guilty knowledge.

9 He acknowledges, I would submit, that he's going to
10 prison, so he knows he's guilty. He acknowledges that
11 he wants less time which is, again, guilty knowledge
12 that he's guilty. He's hoping to get less than what
13 he's looking at.

14 And then he goes on to say he wants to get out of
15 it, which I submit he says, "This was no accident. I
16 didn't mean to hit the guy."

17 Even if the defense is right, and I think I'm right
18 about what he says, even if they're right, that's still
19 relevant because it's knowledge that he hit him and it
20 still goes to malice and malignant recklessness.

21 The malice goes from malignant recklessness, so
22 general intent, all the way up to an intentional crime.
23 But to prove any of the malice crimes in this case I
24 only have to show malignant recklessness. And saying

1 that I submit goes to malignant recklessness. He says,
2 "I hit him. I didn't mean to do it," but he
3 acknowledges that he did it. So, again, that is vastly
4 probative. It's tantamount to an admission that he's
5 guilty, particularly with regard to the driving
6 charges.

7 THE COURT: Okay. Counsel, thank you.

8 Counsel Hickman, first your argument -- let me get
9 up here. First your argument about the admission of
10 the calls and then alternatively your argument about
11 the content of the redacted call that counsel is
12 proposing to admit.

13 MS. HICKMAN: So when you listen to that phone
14 call, the things that Mr. Williams is saying, whether
15 or not he's saying, "I hope I don't get an eight to
16 twenty," or, "I hope I only get an eight to twenty,"
17 eight to twenty doesn't make sense. What does that
18 mean? "I hope I get an eight to twenty," the jury is
19 not going to know what that means unless somebody
20 explains it to them.

21 And that is something that cannot be explained
22 given the rules that the penalties should not come in.
23 Otherwise what does it mean? It would be the same as
24 saying, "I hope I get an A to Z." What does that mean

1 unless you know the potential penalty for driving under
2 the influence resulting in death?

3 And if it's not explained, the State is then free
4 to use it in a way that is -- well, in really any way.
5 And it could be used in a way where it's potentially
6 very misleading, because if the State wants to argue
7 that this is some admission of guilt, it is only really
8 an admission of guilt as to the driving event.

9 And really the eight to twenty could refer to two
10 offenses. It could refer to the eluding resulting in
11 death, but I believe later in this call he talks about
12 the eluding only carrying a one to six. I think that's
13 this call.

14 THE COURT: But that's not what counsel is
15 proposing.

16 MS. HICKMAN: No, but I think the context matters.
17 But a DUI resulting in death, obviously the maximum
18 penalty is the eight to twenty years. And so if it's a
19 guilty consciousness or evidence of guilty knowledge,
20 it is only evidence of guilty knowledge as to DUI
21 resulting in death.

22 In addition, the other statement that he makes
23 about punishment which is "I'm looking at least twenty
24 to thirty years" is wrong. He's looking at way more

1 than twenty to thirty years. And so that is just
2 wrong. So I think that there's a couple of issues
3 there, that it's incorrect, that it then becomes
4 misleading to the jury to say he's only looking at
5 twenty to thirty years on all these crimes and he's
6 hoping to only get an eight to twenty which means that
7 he's guilty of something, because it's all just -- it's
8 pulled out of context. It doesn't make sense without
9 knowing what the penalties carry. Twenty to thirty
10 years is not a potential penalty for anything here.

11 If we're talking about a murder, he's looking at a
12 minimum of twenty years. If he's talking about a
13 robbery, obviously that carries a maximum of twenty
14 years plus a deadly weapon enhancement. So there's too
15 much that's incorrect about those times.

16 Further, the statement about -- I'm going to
17 reference the parties to page 7, lines 25 through 26.
18 They're italicized. It says, "I want out of this
19 bullshit but like, fuck, I gotta fucking face my
20 consequences. Like that shit was on accident, you
21 know, like that dude was innocent and didn't deserve to
22 die, like, fuck, it wasn't like I fucking meant to hit
23 him or anything."

24 That is him talking about the incident. And then

1 if you listen to the rest of the jail phone calls, he
2 transitions when he says, "But like damn, like shit be
3 getting to you in here, and then you are just in a cell
4 by yourself, so you're just like trying to read, like
5 reading books and shit."

6 And from there him and his mom talk about how hard
7 it is to be in the infirmary. You don't know when
8 you're going to be locked down. You don't know who's
9 in there. There are people who are yelling. There's
10 one pay phone.

11 And so the way that it ends, it ends on an
12 inflection that goes up, but that is not related back
13 to that last statement, it's him transitioning to "Damn
14 like shit be getting to you in here."

15 And so it is also not evidence of malignant
16 recklessness to say that he admitted to hitting this
17 person. And that's what he does here. Right? And he
18 does it in a way that says it was an accident. "That
19 day was an accident. He didn't deserve to die. It
20 wasn't like I meant to hit him or anything." That's
21 what he says.

22 That's not evidence of malignant recklessness.
23 That's evidence of it being an accident, that he didn't
24 want to hit that guy, that that was an accident. He

1 acknowledges that he did it. I don't think, though,
2 that there is a legitimate question in this case that
3 Mr. Williams was not the driver of that vehicle. It's
4 not a question. I mean, I know the State has to prove
5 it, but they don't need this statement.

6 And obviously I know the State can prove their case
7 any way they want, but then you need to look at whether
8 the statement becomes more prejudicial than probative.
9 Because what is it probative of? Him being the driver?
10 Because we have video of him being pulled out of the
11 driver's seat. We're going to have a REMSA person who
12 comes in and says he admitted to it.

13 And so that is sort of a backdoor way to get this
14 call in and then to mischaracterize in my opinion what
15 is said and to say that wasn't an accident when that's
16 not what it means, especially if you look at the
17 context of the call.

18 I do agree to a certain extent that there are maybe
19 portions of that that are admitted like, "I'm just
20 ready to get to prison," but I don't know -- I mean, if
21 the State wants that to come in, I guess. I don't
22 know. But what is it is probative of? Because it
23 can't be admitted that "I'm ready to get to prison" is
24 proof of guilty knowledge as to robbery, as to

1 attempted robbery, as to burglary with a deadly weapon,
2 as to murder when in the context that it's made he's
3 talking about something different.

4 And that's the problem with some of these jail
5 phone calls is that they are very casual conversations.
6 They are very -- they switch back and forth from how
7 are you, what's going on, let's talk about my case.
8 And so if you try to edit out all of that context to
9 get to the part that is potentially probative, you lose
10 the value and you lose the reality of his statements to
11 the point that they are so edited that they become
12 misleading. And so that is my issue with that jail
13 phone call.

14 And I don't know if you want me to go to the second
15 phone call. I have less of an objection as to its
16 actual admissibility assuming all the foundation is
17 laid, but I do think that it opens the doors for the
18 Sparks Police Department and to be able to review
19 policy.

20 THE COURT: Okay. That's the first jail call.
21 Ms. Hickman, thank you so much.

22 MR. PRENGAMAN: As the proponent, Your Honor, may I
23 respond to some of that? Much of that --

24 THE COURT: It's her motion. She will get the last

1 word. If you want to add on to it -- if you want to
2 add on to your argument, Mr. Prengaman, go ahead, but
3 I'm going to give her another shot if you do.

4 MR. PRENGAMAN: I do, because, again, I think --
5 again, we're not arguing a prior bad act. The burden
6 is not on me. All the burden on me is to show minimal
7 relevance. I've got a clear hearsay exception. So
8 there is no argument this is not the defendant's
9 statement which is relevant. And the argument that the
10 jury is going to be confused is not true, because the
11 jury is going to be instructed not to consider penalty.

12 The jury doesn't know the sentencing structure, nor
13 should they be advised of it. What they're going to
14 hear is "I'm looking at more, I'm hoping to get less."
15 And that's an admission, that is "I'm guilty." So it's
16 not confusing.

17 And Ms. Hickman's as a lawyer who is familiar with
18 the sentencing structure can make an argument that he's
19 wrong about it. The jury -- that's not something that
20 the jury is going to understand or appreciate. So it's
21 not unfair in that sense.

22 Again, the jury -- this is like a limiting
23 instruction situation where you are going to instruct
24 the jury you can't consider penalty or punishment. And

1 you could do that here too and say you shall not
2 consider that in deciding guilt or not guilt. But the
3 point of that is he is saying, "I'm looking at more,
4 I'm hoping to get less," and that's part of his
5 admission, and "I just want to get to prison." That's
6 an admission of guilt.

7 And, again, I'm not limited in arguing the
8 inferences that Ms. Hickman says. I can argue any
9 clear inference. And the defense in their case can
10 respond to any relevant evidence how they choose and
11 make any arguments that they want. They can submit
12 other evidence. But this is not out of context.

13 The balance of the call that she talked about, the
14 discussion about the rest of it, it doesn't distort. I
15 mean, I didn't distort the meaning of what he said.
16 And nor is the meaning -- nor does that balance have
17 any reflection really on the meaning of what he said.
18 It is just what he said.

19 "I'm looking at a lot of time. I'm hoping I get
20 less. I'm ready to get to prison. That was no
21 accident."

22 And, again, that's what he says and that's
23 consistent with the context. "That shit was no
24 accident."

1 THE COURT: Actually he says it was -- the way the
2 transcript reads says, "That was on accident." Is
3 there a dispute about what the --

4 MR. PRENGAMAN: Absolutely, Judge. I mean, that's
5 just Ms. Hickman's version of it. There's no
6 independent transcription here. That's her transcript
7 or her transcription of it just like mine is. When you
8 listen to that, the content of what he said makes
9 sense -- what I hear -- and, again, I can totally argue
10 what I hear. Just the fact that she disputes that --
11 if I have a fair argument that's relevant, she can
12 argue that that's not what he says, but that shouldn't
13 defeat the admissibility of it.

14 But the context is he says, "That shit was no
15 accident. I mean, I didn't mean to hit him." Right.
16 That's the context. And so the context is, yeah, he's
17 saying, "That was no accident. I didn't mean to hit
18 him," but he's basically saying driving up there --
19 again, in the context of the case that's guilty
20 knowledge, that it wasn't -- it wasn't an accident. "I
21 mean, I didn't mean to hit the guy." That's really
22 what he's saying. But in any --

23 MS. HICKMAN: Sorry. I'm having a hard time
24 hearing what is all being said. Can you just slow down

1 a little bit?

2 THE COURT: Just slow down a little bit.

3 MR. PRENGAMAN: I'll slow down.

4 And so the context there is "That shit was no
5 accident and I didn't mean to hit him." And that is
6 relevant beyond the DUI. I mean, anything that is
7 relevant to the DUI, to the driving is relevant to --
8 the reckless driving is relevant to the eluding which
9 is also relevant ultimately to the murder, because that
10 flight from the scene is part of that. So any
11 admission of guilty knowledge that is relevant to that
12 is relevant I would submit to those other charges, so
13 murder on down.

14 THE COURT: Thanks, Mr. Prengaman.

15 Ms. Hickman, it's your motion. You have the last
16 word.

17 MS. HICKMAN: Your Honor, I agree with
18 Mr. Prengaman that this is my version. This is my
19 transcription. I did this. But there is a legitimate
20 dispute about what is said in that jail phone call.
21 And it would be incredibly unfair for a statement to
22 come in and Mr. Prengaman to say, "I hear 'That shit
23 was no accident'" when looking just at the context of
24 the call it doesn't make sense to say, "Like that shit

1 was no accident. You know, like that dude was innocent
2 and didn't deserve to die, but, fuck, it wasn't like I
3 fucking meant to hit him or anything."

4 Why would he start that sentence by saying
5 basically, "I did this on purpose, but that dude was
6 innocent and didn't deserve to die, but, fuck, it
7 wasn't like I fucking meant to hit him." Those are
8 inconsistent statements in there. What is consistent
9 is "That shit was on accident."

10 And then the State's argument that just because
11 it's relevant he doesn't have to show anything else is
12 patently untrue. It still has to be more probative
13 than it is prejudicial. And what is this probative of?
14 Him saying it's an accident, what is that probative of?
15 And it is not as simple as the State saying that
16 Mr. Williams said, "I'm looking at more. I'm hoping I
17 get less time," because if that's what was said, it
18 would absolutely be a different situation.

19 But that's not what's said. He doesn't say, "I
20 hope I get an eight to twenty because I'm looking at
21 twenty to thirty years."

22 He said, "I don't know. I'm hoping things go good
23 for me, like hoping I don't get an eight to twenty,
24 shit, or like, I don't know, we'll see how things go in

1 a year."

2 I mean, there's -- I'm not going to read it,
3 because I wrote it for you up there, but there's a
4 significant amount of conversation between "hoping I
5 don't get an eight to twenty" and "I'm looking at least
6 twenty to thirty years." And I think it's even more --
7 there's an even more difference that the jury is not
8 going to hear in the unedited call, because he's
9 talking about "I'll probably be up here for a year and
10 then hit the yard as long" -- and I couldn't tell --
11 "as long as I make bail." I'm not sure if that's what
12 he actually said there, but that's what I think he
13 said. "Because that's how long this case is gonna
14 take, about a year with sentencing."

15 I mean, there's a lot of conversation between those
16 two that doesn't make it boil down to simply "I'm
17 looking at a lot of time and I hope I get less." I
18 just don't think that that is a reasonable conclusion
19 from the statements that would make it admissible. And
20 I agree there may be relevant portions to this, but
21 just because it's relevant doesn't mean it comes in.
22 It doesn't mean that the Court doesn't still have to do
23 a balancing test between whether it is more prejudicial
24 than it is probative.

1 And before we even get there, there has to be some
2 resolution about what is said. If the State can
3 legitimately argue that he says, "That was no accident.
4 That dude didn't deserve to die. He was innocent. And
5 I didn't mean to hit him," because that doesn't make
6 sense, it wouldn't be fair to allow that if the Court
7 does not agree that there is a potential that that is
8 what is said.

9 THE COURT: Okay. Ms. Hickman, thank you so much.

10 Mr. Prengaman, the second call. I'm coming down to
11 listen to it.

12 MR. PRENGAMAN: Your Honor, it's Exhibit 166.

13 (Exhibit 166 played.)

14 THE COURT: Okay. Ms. Hickman.

15 MS. HICKMAN: Your Honor, I think that this call is
16 significantly clearer than the last one. The statement
17 is "I was just listening to Zane. Zane's like -- Zane
18 was the one who said -- he said go up the -- he's
19 all -- he's like you've got to make danger for
20 other people. He's all so that's when they'll quit
21 following us and he's all we can get away."

22 And the argument is that while this is likely
23 admissible, assuming the foundation is going to get
24 laid, that statement really mirrors that vehicle

1 pursuit policy.

2 And what that policy really goes to, which is
3 really detailed in the response, is that the officers
4 have to consider the potential for injury to a third
5 person when making decisions to initiate a pursuit.
6 They can't duplicate the reckless or hazardous driving
7 patterns of the fleeing vehicle nor shall they pursue a
8 fleeing vehicle the wrong way on a freeway onramp or on
9 a freeway and officers must terminate a pursuit when
10 the danger created by the pursuit clearly outweighs the
11 necessity for the immediate apprehension of the suspect
12 or it creates a clear and unreasonable danger to human
13 life.

14 And that's that policy that I referenced earlier
15 today that is marked. But the State wants to put this
16 in to show that there is an intent to kill, that the
17 intent was to be so dangerous as to kill somebody. But
18 what the intent is if you look at it in combination
19 with the policy is to drive in a way that would force
20 them to terminate their pursuit pursuant to their own
21 policy.

22 And so I think that if the call is relevant to the
23 state of mind as argued by Mr. Prengaman, then the
24 inverse should also be allowed. We should be able to

1 present the evidence through cross-examination, through
2 presentation of our own witnesses of how that driving
3 could end the pursuit and really cut against the
4 State's argument.

5 THE COURT: Mr. Prengaman.

6 MR. PRENGAMAN: Your Honor, as stated earlier, the
7 standard that it has to be more probative than
8 prejudicial, that's not true. What we're talking about
9 again is fundamental relevance. And any prejudice
10 unfair -- there's a lot of fair prejudice here in this
11 call as with the last one. Any prejudice has to
12 substantially -- unfair prejudice has to substantially
13 outweigh. So it's not the other way around, the
14 probative value outweighs prejudice. If the probative
15 value and unfair prejudice are equal, it comes in. The
16 unfair prejudice has to substantially outweigh, and it
17 simply does not.

18 This has nothing to do with the Sparks policy.
19 This is the defendant talking about his state of mind
20 at the time of the crime. And what he is saying is --
21 and he says exactly what I assume the video shows from
22 leaving the scene. He puts himself right there in
23 front.

24 The defense has been trying to imply in their

1 opening statement that there's a possibility he didn't
2 know that the police were behind him, that even today
3 they question, well, were the lights and sirens of
4 those police cars on. No, they weren't. He says in
5 this call I knew they were there. He sees the cops
6 arrive. So he admits, number one, that he was sitting
7 out front of the tavern. He knew the police were
8 there. He drove away instead. So that's, again, high
9 probative value.

10 He then talks about going onto the freeway. And,
11 again, the defense is trying to portray it as an
12 accident. The questions asked of Mr. Slattery
13 yesterday, you could see all the questioning about
14 could you really see the freeway, could you see the
15 oncoming traffic. He says right here, "Zane told me to
16 make danger for other people, and I did it."

17 I'm not limited in the inferences I can argue, but
18 I can certainly argue that's malignant recklessness,
19 that somebody according to him told him to make danger
20 for other people. That is malignant recklessness. And
21 then he said, "That's what I did." That's essentially
22 what he's saying. And then, bam, that happened.

23 So this has nothing to do with the Sparks policy.
24 This is his state of mind at the time. So that's just

1 to try to bootstrap a door-opening argument. This is
2 miles apart. This isn't the Sparks Police. This is
3 the defendant in a car with his cohort leaving the
4 scene.

5 And so there's nothing -- there's no discussion
6 about the policy. It doesn't implicate the policy.
7 All it implicates is fair prejudice, his state of mind,
8 that when he drove up on that ramp it was intentional
9 to try to create danger so the police wouldn't follow
10 him. That has significant probative value. There's no
11 unfair prejudice that significantly outweighs that
12 probative value and it does not open the door.

13 THE COURT: Okay. Ms. Hickman, anything else?

14 MS. HICKMAN: Yes, Your Honor. I'm not arguing
15 that it's not relevant. I agree it is relevant. The
16 argument is whether or not if this statement comes in
17 do we get to argue pursuant to the police policy that
18 this is a true statement, if it is dangerous for other
19 people they can stop following him. Because here's how
20 it can go, right, is they play this and then the
21 inference is you got to make it dangerous for other
22 people so they'll quit following you.

23 And then it would be a fair question to say,
24 Officer So-and-So, when there is danger to other

1 people, is there a policy or not? Right? If there's
2 danger created to other people, when do you determine
3 whether or not to stop a chase?

4 And the officer if we aren't talking about the
5 policy will just say when I decide to. Right? And
6 then the follow-up says, well, you are governed by
7 certain policies and procedures. And it is not clear
8 100 percent you must terminate at this time in that
9 policy, but it is fair cross-examination to go through
10 that policy and say the considerations for initiating a
11 pursuit, the considerations of when it is too
12 dangerous, that you shall not duplicate the reckless or
13 hazardous driving patterns of the fleeing vehicle.
14 That is in their policy. That is a time that you can
15 terminate that chase because it becomes too dangerous.
16 And then you can't follow them onto the freeway.
17 That's part of your policy because it is so dangerous.

18 And so I do think it is tied in, because I think it
19 is a fair question to ask all of these officers when do
20 you terminate a pursuit, when have you been trained to
21 terminate a pursuit. And if they all say what is in
22 their policy, that's fine, I don't need to bring up the
23 policy. Right? But if they say something different,
24 there's no way for me to tie that to them without the

1 policy.

2 THE COURT: Okay. Let's start with the second
3 call. This is how I see it. Counsel is not objecting
4 on the grounds of relevance. I also did not hear
5 anything about probative value being outweighed by
6 substantial prejudice. So what it comes down to is
7 this issue regarding whether or not letting in a jail
8 call such as this opens the door to the Sparks Police
9 Department vehicle pursuit policy that provides certain
10 things with regard to officer pursuit. Here's the way
11 it goes.

12 The fact that there is a very coincidentally
13 similar statement made by Zane Kelly in the truck as he
14 and Mr. Williams were driving away from police officers
15 in this case does not open the door to any questioning
16 of any witness, whether a Sparks Police officer or any
17 other law enforcement in this case or for that matter
18 any other witness in this case, whether or not this
19 statement mirrors, has any effect on, is closely tied
20 to or even addresses the existence of the Sparks Police
21 Department vehicle pursuit policy.

22 So seeing that there's no other objection to this,
23 this call, Mr. Prengaman, if you lay the proper
24 foundation and the Court is persuaded that any other

1 objections to it are overruled to the extent that
2 they're made, this may be offered by you and
3 potentially admitted depending on what happens at the
4 time you offer it.

5 With regard to the first call, counsel, I'm going
6 to need a day. I'll get you my decision just as
7 quickly as I can on that, but I want to listen to the
8 exhibit that you played again before I make my
9 decision.

10 Okay. So that's everything that was on my list.

11 Mr. Prengaman, is there anything else to bring
12 before the Court this afternoon?

13 MR. PRENGAMAN: Not this afternoon, Your Honor.
14 Thank you.

15 THE COURT: Ms. Hickman.

16 MS. HICKMAN: Your Honor, I do have one other
17 issue, and it has to do with the courtroom setup. When
18 witnesses are testifying and we are showing video, the
19 last four jurors, I can't see their numbers here, are
20 turning all the way around to watch this TV. It is
21 Juror 6, Juror 12, Juror 9 and Juror 15. And they are
22 turning all the way around so that their back is to the
23 witness to watch this TV. And I think that that
24 creates a situation that prevents them from applying

1 one of the jury instructions which is that they have to
2 be able to consider the conduct and the manner of a
3 witness upon the stand.

4 THE COURT: Okay. I do want to note that for the
5 limited period of time that the exhibits are being
6 shown or that videos were being shown, I was watching
7 this and the jurors were making the transition to the
8 witness when the witness testified. And so I didn't
9 see a problem with it, but you've raised it and I want
10 to address it.

11 You see the picture over there of the old Mapes
12 Hotel on the wall? What if we put the monitor closer
13 to Mr. Picker in that area so the jurors along the same
14 line of sight have the video and the witness in their
15 view?

16 MS. HICKMAN: I think that would be a better spot.

17 THE COURT: Okay. Mr. Picker, Ms. Rosenthal.

18 MR. PICKER: That would be great, Your Honor.

19 THE COURT: Okay. Deputy Wood, can you do that?

20 DEPUTY WOOD: Yes, Your Honor. A suggestion. That
21 is going to push out our ropes closer to the defense
22 tables. Are they okay with that?

23 THE COURT: Let's do it as minimally as we can. I
24 prefer not to have that happen. If it's too close to

1 those jurors there -- I'm talking about having it
2 almost flush with the wall or just barely canted toward
3 the jurors. If we can move one juror's seat and make
4 it happen as opposed to moving the barriers, I would
5 prefer that, but if IT could work on that this weekend
6 I would appreciate it.

7 DEPUTY WOOD: Yes, Your Honor, I'll let IT know.

8 THE COURT: Thank you so much.

9 Okay. Ms. Hickman, anything else on your list?

10 MS. HICKMAN: No, Your Honor.

11 THE COURT: Mr. Picker.

12 MR. PICKER: Thank you. Just one thing, Your
13 Honor. As you're making your decision on the
14 admissibility of the two jail calls we also -- as
15 you're considering those two, we also in our
16 supplemental trial statement addressed that as to a
17 limiting instruction or limiting instructions as they
18 relate to the jail calls.

19 THE COURT: I understand.

20 MR. PICKER: So we would ask that you rule on that
21 as the same time that you rule --

22 THE COURT: I will do that.

23 MR. PICKER: -- on the admissibility.

24 THE COURT: For reference, since we've been doing

1 this, Mr. Picker actually makes the request in the
2 supplement at --

3 MR. PICKER: It was the last section of our trial
4 statement, Your Honor.

5 THE COURT: It was. It was. You're right.

6 MR. PRENGAMAN: Your Honor, the State doesn't
7 object to that. I don't think it's a Bruton issue.
8 The issue is simply -- in the State's opinion it should
9 be simply a hearsay issue, but I think they're entitled
10 to a limiting instruction.

11 THE COURT: Mr. Picker, can I count on you to
12 propose something?

13 MR. PICKER: Your Honor, I proposed one for you.
14 It's at the end of that section.

15 THE COURT: I don't have all the pleadings. I did
16 not bring your supplements to the bench, so I
17 apologize.

18 MR. PICKER: No problem. And I unfortunately cited
19 it as CALJIC. Unfortunately that dates me quite a bit,
20 because that's the old format. It's now called
21 CALCRIM. We propose a specific one based on the
22 language of that, because the Nevada pattern jury
23 instructions haven't been --

24 THE COURT: They have not. Thank you so much.

1 Okay. And I hear no objection from the State with
2 respect to that. So we'll take care of that,
3 Mr. Picker. Thank you.

4 MR. PRENGAMAN: Your Honor, with regard to a
5 limiting instruction I would --

6 THE COURT: I'm sorry, Mr. Prengaman. You said
7 with the regard to the limiting instruction?

8 MR. PRENGAMAN: I have no objection to a limiting
9 instruction. I didn't want the Court to go back and
10 have to weigh that. I agree that they're entitled.
11 Obviously I may -- I might have some disagreement or
12 not with the language, the language of the instruction.
13 That's the difference in the State's view. I just
14 don't know what the Court's law clerk to think I'm
15 agreeing to whatever language.

16 THE COURT: Counsel, with regard to all of the
17 instructions in this case, whether they're limiting or
18 they're standard instructions, whether they've been
19 offered and stipulated to or offered and objected to, I
20 want you to be aware of something. As I feel this case
21 winding down in terms of presentation of the evidence,
22 and I don't know when that will be, but as that starts
23 to happen, I want to make you aware of the fact that
24 it's not my practice when we still have evidence to

1 discuss in a case to release the jury for purposes of
2 doing jury instructions. It's more my practice to let
3 the jury go and to require the parties to remain with
4 the Court for as many hours as it takes to try and
5 resolve jury instructions.

6 I don't anticipate we're going to be able to do
7 this in one evening or one late afternoon between maybe
8 3:00 and 6 p.m. So I just want to make you aware of
9 the fact that I do not use court time.

10 Now, it's different if we finish on a Tuesday of
11 the third week hypothetically. Just as an example, if
12 we finished on that Tuesday and we wanted to give the
13 jury time off on Wednesday, I mean, that's different if
14 we're not running it up against the deadline in this
15 case. Otherwise I want you to plan -- if we are, I
16 want you to plan on spending time after hours with me
17 on those jury instructions. Okay?

18 Thanks, everyone.

19 And, counsel, with regard to that, Mr. Williams and
20 Ms. Norman, to the extent we're going through jury
21 instructions, it is permissible provided you've fully
22 advised them of what the process involves for them to
23 waive your participation in the jury instructions
24 deliberations with the Court.

1 Okay. Thanks, everyone.

2 (The proceedings were adjourned at 4:26 p.m.)

3 --o0o--

1 STATE OF NEVADA)
2) ss.
3 COUNTY OF WASHOE)

4 I, LORI URMSTON, Certified Court Reporter, in and
5 for the State of Nevada, do hereby certify:

6 That the foregoing proceedings were taken by me
7 at the time and place therein set forth; that the
8 proceedings were recorded stenographically by me and
9 thereafter transcribed via computer under my
10 supervision; that the foregoing is a full, true and
11 correct transcription of the proceedings to the best
12 of my knowledge, skill and ability.

13 I further certify that I am not a relative nor an
14 employee of any attorney or any of the parties, nor am
15 I financially or otherwise interested in this action.

16 I declare under penalty of perjury under the laws
17 of the State of Nevada that the foregoing statements
18 are true and correct.

19 DATED: At Reno, Nevada, this 2nd day of
20 September, 2021.

21
22 LORI URMSTON, CCR #51

23
24 _____
LORI URMSTON, CCR #51

The document to which this certificate is
attached is a full, true and correct copy of the
original on file and of record in my office.

By: ALICIA L. LERUD, Clerk of the Second
Judicial District Court, in and for the County of
Washoe. 66

CERTIFICATE OF SERVICE

I hereby certify that this document was filed electronically with the Nevada Supreme Court on the 11th day of January 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage pre-paid, addressed to:

Ryan Williams (#96845)
Northern Nevada Correctional Center
P.O. Box 7000
Carson City, Nevada 89702

John Reese Petty
Washoe County Public Defender's Office