

IN THE SUPRME COURT OF THE STATE OF NEVADA

DARWYN ROSS YOWELL,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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Elizabeth A. Brown
Clerk of Supreme Court

JOINT APPENDIX TO APPELLANT'S OPENING BRIEF VOL IV

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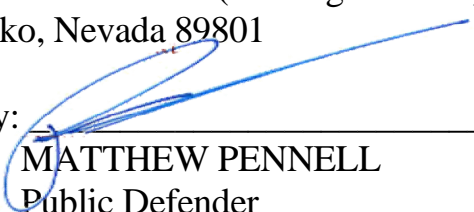
Elko County
Public Defender

1 The Appellant, DARWYN ROSS YOWELL, by his attorney,
2 MATTHEW PENNELL, of the Elko County Public Defender's Office, and
3
4 Respondent, THE STATE OF NEVADA, by its attorney, CHAD B.
5 THOMPSON, appends herewith the following exhibits in support of the Joint
6
7 Appendix:

8	1. Criminal Complaint filed June 15, 2020.....	1-8
9		
10	2. Criminal Information filed August 21, 2020.....	11-15
11		
12	3. Judgement of Conviction filed September 13, 2021.....	112-114
13	4. Memorandum of Temporary Assignment filed March 21, 2021...	108
14	5. Motion for Guidance from the Court filed Dec 1, 2021.....	105-107
15	6. Motion to Transmit Marked Exhibit.....	967-969
16		
17	7. Notice of Appeal filed September 28, 2021.....	115-116
18	8. Order Binding Over filed August 18, 2020	9-10
19		
20	9. Order for Commitment filed June 17, 2021.....	109-111
21	10. Order to Transmit Marked Exhibit.....	970
22		
23	11. Pretrial Order filed November 10, 2021.....	100-104
24	12. Transcript of Preliminary Hearing filed September 25, 2020...	16-99
25	13. Transcript of Trial Volume 1 filed November 18, 2021.....	117-367
26	14. Transcript of Trial Volume 2 Filed November 18, 2021...	368-669
27	15. Transcript of Trial Volume 3 Filed November 18, 2021...	670-857
28	16. Transcript of Trial Volume 4 Filed Nov 18, 2021.....	858-966


1 RESPECTFULLY SUBMITTED this 31st day of January, 2022.

2
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1 CERTIFICATE OF SERVICE BY ELECTRONIC FILING

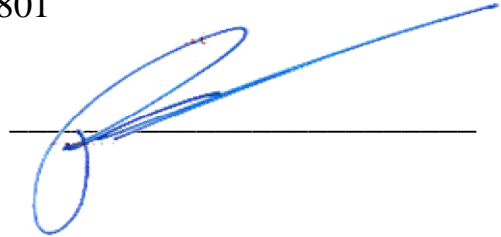
2 I hereby certify, pursuant to the provisions of NRAP 25, that I am an
3 employee of the Elko County Public Defender's Office, and that on the
4 _____ day of 31ST January 2022, I electronically filed a copy of the
5 foregoing, Appendix to Appellant's Fast Track Statement, and the following
6 parties have consented to receive electronic filings in this matter:

7 CLERK OF THE SUPREME COURT
8 Supreme Court Building
9 201 S Carson Street
10 Carson City, NV 89701-4702

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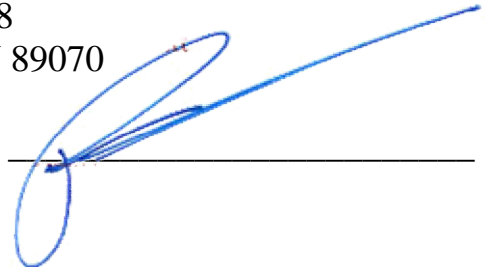


30 CERTIFICATE OF MAILING

31 I hereby certify, pursuant to the provisions of NRAP 25, that I am an
32 employee of the Elko County Public Defender's Office, and that on the 31ST
33 day of January, 2022, I mailed and postage prepaid, a copy of the foregoing
34 Appendix to Appellant's Fast Track Statement to the following:

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37 P.O. Box 208
38 Indian Springs NV 89070

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ELKO CO DISTRICT COURT

IN THE FOURTH JUDICIAL DISTRICT COURT
 OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF ELKO,
 BEFORE THE HONORABLE MASON SIMONS, DISTRICT JUDGE

-oOo-

 STATE OF NEVADA,

Plaintiff,

Case No. DC-CR-20-159

V.

Dept. No. 3

DARWYN ROSS YOWELL,

Defendant.

COPY

Transcript of Proceedings

Jury Trial

Volume III

June 16, 2021

Elko, Nevada

Transcribed By: Julie Rowan - (775) 745-2327

A P P E A R A N C E S

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-oOo-

I N D E X

WITNESSES ON BEHALF OF THE PLAINTIFF:	<u>Page</u>
DOUGLAS HOLLADAY	
Direct by Mr. Thompson.....	8
Witness excused.....	11
CALVERN WILLIAMS	
Direct by Mr. Thompson.....	12
Cross by Mr. Pennell.....	43
Jury Questions.....	54
CALVERN WILLIAMS	
Direct by Mr. Thompson.....	55
Cross by Mr. Pennell.....	56
Witness retained.....	59
WITNESSES ON BEHALF OF THE DEFENSE:	
DARWYN ROSS YOWELL	
Direct by Mr. Pennell.....	65
Cross by Mr. Thompson.....	106
Redirect by Mr. Pennell.....	155
Jury Questions.....	165
Witness excused.....	166

INDEX - CONTINUED

EXHIBITS:

Admitted

PX-2	DVD-Body Cam	21
PX-3	DVD-Body Cam	29
PX-5	DVD-Body Cam	32
PX-6	DVD-Body Cam	33
PX-7	DVD-Body Cam	10
PX-62	Statement	7
PX-63	Statement	10

1 JUNE 16, 2021, ELKO, NEVADA

2 .-oOo-

3 THE COURT: Okay, the time is 9:06 a.m., the
4 date is June 16th, 2021. We're back on the record in
5 Case DC-CR-20-159. This is the State of Nevada versus
6 Darwyn Ross Yowell. Mr. Yowell is present along with
7 counsel, Mr. Pennell. Mr. Thompson is here from the
8 District Attorney's Office. We're convened outside the
9 presence of the jury.

10 Anything we need to address before we bring
11 the jury in?

12 MR. THOMPSON: Just to kind of give the Court
13 a heads-up of where we're headed, I did forget one thing
14 with Deputy Bear yesterday, but I talked to Mr. Pennell.
15 There was a written statement that he took from the
16 Defendant at the same time he took the photographs. I'm
17 going to admit that first.

18 And then we'll go into Deputy Holladay, who's
19 very brief. He's on night shift. It's a little out of
20 order for me, but I want to get him to bed, and then
21 we'll be finishing up likely with Sergeant Williams. We
22 will be watching a fair amount of video today. So if
23 the Court does see people dozing off or something like
24 that, maybe we need a break.

25 MR. PENNELL: Yeah.

1 THE COURT: We did have that problem late in
2 the afternoon yesterday. There were a couple of people
3 that were looking fatigued.

4 MR. THOMPSON: Yeah.

5 THE COURT: And I was feeling a little tired
6 myself. So, yeah, we may -- we'll take a break if I see
7 -- and certainly alert me if -- of the need for a break
8 if you notice anything like that, and I don't notice it.

9 Okay. Anything else?

10 MR. THOMPSON: No.

11 THE COURT: Anything else, Mr. Pennell?

12 MR. PENNELL: No, that's -- I just wanted to
13 know how we want to maybe introduce this witness
14 statement because as far as the manner, I don't think,
15 to me, it matters. So if we -- even before we have the
16 first witness come in, we can just describe what it is
17 and stipulate to having it admitted and then call the
18 first witness. And I did show the statement to
19 Mr. Yowell just to absolutely make sure that this was
20 his statement, and there wasn't any problem in that
21 regard. So I don't think there's any further issues for
22 us.

23 THE COURT: Okay. We can certainly proceed
24 along those lines. Okay, if you'll all please rise,
25 we'll go ahead and bring in the jury.

1 (Whereupon, the jury entered the courtroom)

2 THE COURT: Okay, court is back in session.
3 Please be seated.

4 The time is 9:09 a.m., the date, June 16th,
5 2021. We're back on the record in Case DC-CR-20-159.
6 This is the State of Nevada versus Darwyn Ross Yowell.
7 Mr. Yowell is present, along with counsel, Mr. Pennell.
8 Mr. Thompson is here from the District Attorney's
9 Office.

10 Do the parties stipulate to the presence of
11 the jurors and alternates?

12 MR. THOMPSON: Yes.

13 MR. PENNELL: Yes, Your Honor.

14 THE COURT: Okay. Mr. Thompson.

15 MR. THOMPSON: Judge, we have a stipulation
16 with regards to Exhibit 62. Deputy Bear was on -- he's
17 on night shifts, and so in my haste yesterday, I forgot
18 to ask him about Exhibit 62. He would have testified
19 that it's a voluntary written statement by the
20 Defendant, Darwyn Yowell, that he took from him at the
21 same time he took the photographs. And we have
22 stipulated to its admissibility.

23 THE COURT: Okay. And that's Exhibit what
24 number again?

25 MR. THOMPSON: 62.

1 THE COURT: Mr. Pennell, did you wish to be
2 heard?

3 MR. PENNELL: That's correct, Your Honor.

4 THE COURT: Okay. Exhibit 62 will be
5 admitted at this time pursuant to a stipulation of the
6 parties.

7 (Whereupon, Plaintiff's Exhibit 62 admitted)

8 THE COURT: Next witness, Mr. Thompson.

9 MR. THOMPSON: It would be Deputy Holladay.

10 THE COURT: Deputy Holladay.

11 Deputy Holladay, come on in if you would.
12 Please face the court clerk and raise your right hand to
13 be sworn.

14 THE CLERK: Do you solemnly swear that the
15 testimony you're about to give in this matter is the
16 truth, the whole truth, and nothing but the truth, so
17 help you God?

18 MR. HOLLADAY: Yes.

19 THE COURT: Come on up here if you would.
20 Have a seat. Okay, please state your full name and
21 spell your first and last name for the record, please.

22 THE WITNESS: Douglas Ryan Holladay;
23 D-O-U-G-L-A-S, H-O-L-L-A-D-A-Y.

24 THE COURT: Thank you. Go ahead,
25 Mr. Thompson.

DOUGLAS HOLLADAY

(Sworn as a witness, testified as follows)

DIRECT EXAMINATION

BY MR. THOMPSON:

Q. And what is your occupation?

A. I'm a deputy with the Elko County Sheriff's Office.

Q. I'm going to direct your attention to May 14th of 2021. Did you have contact with an individual by the name of Darwyn Yowell on that day?

A. Yes, I did.

Q. And is the individual that you understand to be Darwyn Yowell, is he in the courtroom with us today?

A. Yes, he is.

Q. Would you state where he's seated and describe what he's wearing.

A. He's seated next to Mr. Pennell, and he's wearing a black suit.

MR. THOMPSON: May the record reflect the identification of the Defendant.

THE COURT: The record will so reflect.

BY MR. THOMPSON:

Q. And did Mr. Yowell actually reach out to you to talk to you?

A. Yes, he did.

Q. And did he want to report something to you?

1 A. Yes, he did.

2 Q. Did you give him the opportunity to do that?

3 A. Yes, I did. I provided him a witness statement.

4 Q. Okay. Showing you Exhibit 63, do you recognize
5 that?

6 A. Yes, I do.

7 Q. What is that?

8 A. That's the witness statement Yowell -- I provided
9 Yowell, and he gave back to me.

10 Q. Okay. That's the actual one or just a true and
11 exact copy of it?

12 A. That's -- yeah, it is.

13 Q. Okay.

14 MR. THOMPSON: We'll offer Exhibit 63.

15 MR. PENNELL: He said, yeah, that is. Is it
16 the original or a true and exact copy?

17 THE COURT: Which of the two is it? Is it --
18 is it the original? Is that the original, or is that a
19 copy?

20 THE WITNESS: That's a copy of the original.

21 BY MR. THOMPSON:

22 Q. But is it a true and exact copy?

23 A. Yes.

24 THE COURT: Okay.

25 MR. PENNELL: No opposition, Your Honor.

1 THE COURT: Okay. That exhibit will be
2 admitted. What exhibit number is it again?

3 MR. THOMPSON: 63.

4 THE COURT: 63 will be admitted at this time.
5 (Whereupon, Plaintiff's Exhibit 63 admitted)

6 BY MR. THOMPSON:

7 Q. Okay. And were you wearing a body camera when you
8 met with him?

9 A. Yes, I was.

10 Q. And did that record your entire interaction with
11 him?

12 A. Yes, it did.

13 MR. THOMPSON: And we have Exhibit 7, which
14 is that body camera. We're going to offer it at this
15 time.

16 THE COURT: Any objection?

17 MR. PENNELL: No, Your Honor.

18 THE COURT: Exhibit 7 will be admitted
19 without objection.

20 (Whereupon, Plaintiff's Exhibit 7 admitted)

21 MR. THOMPSON: And this has both audio and
22 video.

23 THE COURT: Okay.

24 MR. THOMPSON: It's going really slow.

25 THE COURT: Is it playing in the Windows

1 Media Player?

2 MR. THOMPSON: Huh. Maybe I'll try the other
3 one then. That's better.

4 THE COURT: There we go.

5 (Whereupon, DVD played)

6 MR. THOMPSON: Is that the end of it? It
7 looks like it was, okay. Did you need this?

8 BY MR. THOMPSON:

9 Q. So you said this was about a month ago. Do you
10 remember what time of day it was that you met with him?

11 A. I believe it was approximately 8:00 o'clock in the
12 evening.

13 MR. THOMPSON: I don't have anything else for
14 the deputy.

15 THE COURT: Cross-examination, Mr. Pennell.

16 MR. PENNELL: No, Your Honor, I'll let Deputy
17 Holladay go get some sleep. So he can be excused.

18 THE COURT: Did any members of the jury have
19 any questions that they wanted posed to this particular
20 witness? If so, please raise your hand. I'm not seeing
21 any hands raised.

22 We'll go ahead and excuse you at this time.
23 Thank you, sir.

24 MR. HOLLADAY: Thank you.

25 THE COURT: Mr. Thompson.

1 MR. THOMPSON: Sergeant Calvern Williams.

2 THE COURT: Step on through that gate there
3 if you would. Please face the court clerk and raise
4 your right hand to be sworn.

5 THE CLERK: Do you solemnly swear that the
6 testimony you're about to give in this matter is the
7 truth, the whole truth, and nothing but the truth, so
8 help you God?

9 MR. WILLIAMS: I do.

10 THE COURT: Go ahead and have a seat right
11 there if you would. Please state your full name and
12 spell your first and last name for the record, please.

13 THE WITNESS: Calvern Williams;
14 C-A-L-V-E-R-N, W-I-L-L-I-A-M-S.

15 THE COURT: Thank you. Go ahead,
16 Mr. Thompson.

17 CALVERN WILLIAMS

18 (Sworn as a witness, testified as follows)

19 DIRECT EXAMINATION

20 BY MR. THOMPSON:

21 Q. What is your occupation?

22 A. I'm a sergeant with the Elko County Sheriff's
23 Office.

24 Q. How long have you been with the Sheriff's Office?

25 A. I've been with the Sheriff's Office for about six

1 years, seven years, I think, something like that.

2 Q. Okay. And prior to that, were you in law
3 enforcement as well?

4 A. I worked for the Nevada Department of Corrections.

5 Q. For how many years?

6 A. About a year.

7 Q. I'm sorry?

8 A. About a year.

9 Q. A year, okay. Is that like a prison guard?

10 A. Yes, it's a correction officer.

11 Q. Okay. And I want to direct your attention to
12 June 5th of 2020. Were you working on that particular
13 day?

14 A. I was.

15 Q. And what was the shift you were working?

16 A. I was working the night shift, starting at 6:00 p.m.
17 and going until 6:00 a.m.

18 Q. And as far as the Elko County Sheriff's Office, do
19 you have like beats assigned to you when you go out and
20 do your shift?

21 A. Yes, as far as that particular night, I was assigned
22 to the Spring Creek area, Elko area, Ryndon, and Osino.

23 Q. Now, did you get a call from dispatch to head out to
24 the Jiggs Highway at some point?

25 A. I did.

- 1 Q. What time was that?
- 2 A. It was approximately 2120 hours.
- 3 Q. And in laymen's terms, 2120?
- 4 A. 9:20 p.m.
- 5 Q. And just for purposes of your state of mind, what
- 6 was the information you had going out there?
- 7 A. The call came out as a domestic disturbance where a
- 8 female had suffered injuries.
- 9 Q. Did any other deputies respond with you?
- 10 A. I had Deputy Brenda Cortez with me.
- 11 Q. Who got there first?
- 12 A. Deputy Cortez arrived shortly before I did.
- 13 Q. And as soon as you got there, what did you do first?
- 14 A. I made contact with a female in the back of a maroon
- 15 SUV.
- 16 Q. And did you know who that female was?
- 17 A. Right off the bat, no. I did ask her what her name
- 18 was, and she told me it was Jean Ortega.
- 19 Q. Okay. Do you know Jean Ortega?
- 20 A. I do. I'm familiar with her. I've interacted with
- 21 her at the Elko County Jail.
- 22 Q. Okay. But on this night, did you recognize her?
- 23 A. I did not.
- 24 Q. And why was that?
- 25 A. She had a -- her face was covered in blood. She had

1 massive facial swelling, lacerations under both eyes,
2 both eyes were swollen shut with a blue-ish tinge to
3 them. I didn't recognize her because of the injuries to
4 her face.

5 Q. Okay. And what was her demeanor like as you were
6 talking to her?

7 A. Jean was crying. I remember I asked her at one
8 point if I knew her, and she told me that she couldn't
9 see so she wasn't sure if I knew her or not.

10 Q. Did she appear to be upset?

11 A. Yes, she was upset. She was crying.

12 Q. All right. And were you wearing your body camera
13 when you interacted with her?

14 A. I was.

15 Q. And did it record your interview with her?

16 A. It did.

17 MR. THOMPSON: We have what's been marked as
18 State's Exhibit 2. We'd like to -- it is that
19 interview. We'd like to offer that at this time.

20 THE COURT: Any objection to the admission of
21 Exhibit 2?

22 MR. PENNELL: I'd like to have a sidebar if
23 we could briefly, Your Honor.

24 THE COURT: Okay.

25 (Whereupon, sidebar conference on the record)

1 MR. PENNELL: It's my understanding that
2 you're not -- it wasn't made in the entirety of the
3 original video.

4 MR. THOMPSON: Correct. It's actually quite
5 short. I think it's about seven minutes.

6 MR. PENNELL: I'm not trying to make your
7 argument for you, but I'd just like to understand,
8 (indiscernible)?

9 MR. THOMPSON: Yes. Yes.

10 MR. PENNELL: But what Williams is saying the
11 jury should not consider it for the truth of the matter
12 asserted. We don't have any context and response to
13 (indiscernible)?

14 MR. THOMPSON: No. Oh, for Williams'
15 statements?

16 MR. PENNELL: He starts saying stuff.

17 MR. THOMPSON: Right, he just gets
18 confrontational.

19 MR. PENNELL: Okay. And so -- I think the
20 jury needs to be instructed that this is not a
21 representation of the entirety of the video.

22 MR. THOMPSON: That it's a redacted portion
23 of the video?

24 THE COURT: There's a redacted video
25 instruction that we could include in the instructions.

1 Do you want to have some instruction about that now?

2 MR. PENNELL: I think they should at least be
3 notified and also that they're not to consider Williams'
4 statements for the truth of the matter asserted, but
5 merely to the context to Jean Ortega.

6 THE COURT: Sounds good.

7 MR. THOMPSON: I'm just trying to keep -- he
8 does repeat back what she says and then she affirms it.
9 So, I mean, it's going to be a little confusing for them
10 because if she says something, and he says is that what
11 she said, and then she says yes --

12 MR. PENNELL: I understand. You're just --
13 this is the appropriate -- I think the jury should be
14 instructed on it so at least they know.

15 MR. THOMPSON: As long as they understand
16 that her answer is -- that adopt his statements, and I
17 think that is. If we could just (indiscernible), if
18 there's an instruction with regards to this.

19 MR. PENNELL: So just so I'm clear, Your
20 Honor, do you know (indiscernible) requesting, or is it
21 still confusing?

22 THE COURT: Well, what you -- so we can have
23 Mr. Thompson make a record at the beginning --

24 MR. PENNELL: Sure.

25 THE COURT: -- that this is a redacted

1 portion of the video. This is not the whole video.

2 MR. PENNELL: Sure.

3 THE COURT: And then I'm still trying to
4 understand exactly what you're wanting me to instruct on
5 related to his statements.

6 MR. PENNELL: That the jury's not supposed to
7 consider it for the truth of the matter asserted because
8 Mr. Thompson is only showing them to the context to the
9 statements that actually are admissible, which would be
10 excited utterance (indiscernible).

11 MR. THOMPSON: But I guess part of that is,
12 though, some of his questions -- well, they're
13 questions.

14 MR. PENNELL: (Indiscernible)

15 MR. THOMPSON: No, but she's adopting the
16 statement when she says yes. So if he says, is this
17 what you said, and she says yes, she adopted that
18 statement, and so she's incorporated it as her own.

19 THE COURT: It becomes her own statement.

20 MR. THOMPSON: Yeah.

21 MR. PENNELL: Okay.

22 MR. THOMPSON: And so it becomes her
23 statement at that point in time. The other thing is is
24 when it's a question, questions aren't necessarily --
25 there's no truth to the matter asserted.

1 THE COURT: He's inquiring as to what --

2 MR. THOMPSON: Yeah.

3 THE COURT: -- the statement --

4 MR. THOMPSON: So it's not necessarily the
5 statement.

6 MR. PENNELL: Well, I think under certain
7 circumstances, it could be (indiscernible) for sure.

8 MR. THOMPSON: It could be.

9 MR. PENNELL: Yeah, I understand what you're
10 getting at. Okay.

11 THE COURT: So do you feel there's still a
12 need for an instruction of some kind?

13 MR. PENNELL: For just -- first of all, that
14 this is a redacted version (indiscernible).

15 MR. THOMPSON: Yeah.

16 THE COURT: We can just have Mr. Thompson
17 make a record of that --

18 MR. PENNELL: Sure.

19 THE COURT: -- when he goes to have that
20 played.

21 MR. PENNELL: Okay.

22 THE COURT: Anything else?

23 MR. PENNELL: No, I think (indiscernible).

24 We can reserve the rest of this for argument and
25 instructions, written instructions when the time comes

1 for that.

2 THE COURT: Okay.

3 MR. PENNELL: Is that what you're asking us
4 to do, Your Honor?

5 THE COURT: That sounds good to me.

6 MR. PENNELL: Okay.

7 THE COURT: Okay.

8 (Whereupon, sidebar conference concluded)

9 THE COURT: Okay, Mr. Thompson.

10 MR. THOMPSON: Just to clarify, Your Honor,
11 Exhibit 2 is a redacted portion of his body camera.
12 It's just the limited portion of the interview with
13 Sergeant Williams and Jean Ortega in the back of the
14 video -- or of the back of the SUV.

15 THE COURT: I would assume the original video
16 was rather lengthy so you just redacted one small
17 portion from the video?

18 MR. THOMPSON: Yes, it's quite lengthy, his
19 entire time at the scene talking to other people,
20 emergency personnel, other deputies, things like that.

21 THE COURT: Okay. Please proceed. You had
22 not objected to the admission of that particular
23 exhibit?

24 MR. PENNELL: Well, I think we should maybe
25 play it first. Are you trying to admit it now, or are

1 you --

2 MR. THOMPSON: Yes, I was going to play it.

3 MR. PENNELL: Okay. So you're laying the
4 foundation first before trying to admit it?

5 MR. THOMPSON: Normally, you admit it before
6 you play it. So that's why I'm offering it.

7 MR. PENNELL: Okay. I think we discussed
8 that at length, Your Honor, and so there's no objection
9 based on what the parties have come to an agreement on.

10 THE COURT: Okay. And that's exhibit number?

11 MR. THOMPSON: 2.

12 THE COURT: 2 will be admitted at this time.

13 (Whereupon, Plaintiff's Exhibit 2 admitted)

14 MR. THOMPSON: And this has audio and video.

15 THE COURT: Okay. And we did restart the
16 computer. Hopefully, that will resolve our buffering
17 problems. No guarantees but...

18 (Whereupon, DVD played)

19 BY MR. THOMPSON:

20 Q. I'm going to pause it there, and it looks like we've
21 jumped ahead in time, and she's now in the back of the
22 ambulance? Can you see that?

23 A. I cannot see -- I can see ambulance personnel. I
24 can't see if she's in the ambulance though.

25 Q. Okay. I guess I need to clarify this. We have --

1 where was it? Well, maybe not. All right, so I just
2 jumped ahead there. So on the top right hand of the
3 screen, you'll notice -- is that your -- what was that
4 on the top right-hand side of the screen?

5 A. You've got the date, time in Zulu Time, and you've
6 also got the body camera serial number. There's a water
7 mark.

8 Q. I'm sorry, the body camera serial number?

9 A. Serial number.

10 Q. I interrupted you there. Zulu Time, is that the UTC
11 time, like Greenwich Time or something?

12 A. You know what, I'm not really sure what Zulu Time
13 is. I don't know if anybody is.

14 Q. All right. But it's not the actual time of the
15 incident?

16 A. It is not, no.

17 Q. But it's something that all your body cameras are
18 linked to?

19 A. Yes.

20 Q. Okay. So in looking at that, it says 4:41:29, and
21 then it kind of jumped ahead about a minute it looks
22 like to 42:31?

23 A. Okay.

24 Q. Okay. Is that -- is that what it shows?

25 A. It does show 42:31.

1 Q. All right. And so was Jean transported to the back
2 of the -- to the ambulance in the interim?

3 A. Yes.

4 Q. Okay. Did you -- did she make statements there as
5 well while she's in the back of the ambulance?

6 A. When I made contact with her in the back of the
7 ambulance, we had a conversation about -- if I remember
8 correctly, I asked her if it was Darwyn Yowell junior or
9 senior, but she told me that she believed there was only
10 one Darwyn Yowell, and I think it was my mistake because
11 I was confusing Darwyn with Casey at that time.

12 Q. Okay. But you had your body camera while you were
13 talking to her --

14 A. Yes.

15 Q. -- in the back of the ambulance as well?

16 MR. THOMPSON: Okay. We'll play that forward
17 from here. We're at 2:30 on -- just for the record,
18 we're at 2:30 on the --

19 THE COURT: On the video?

20 MR. THOMPSON: -- on the CD itself.

21 (Whereupon, DVD played)

22 BY MR. THOMPSON:

23 Q. Okay. So was that all of your interaction with her
24 there at the scene?

25 A. At the scene, yes.

1 Q. Okay. Now, was she transported to the hospital?

2 A. She was.

3 Q. And did you go and talk to her again there?

4 A. I did.

5 Q. And you had your body camera running there as well?

6 A. Yes, sir.

7 Q. Did it capture that interview?

8 A. It did.

9 MR. THOMPSON: We have Exhibit 3, which is
10 the interview at the hospital. We'd offer that at this
11 time.

12 THE COURT: Mr. Pennell, any objection?

13 MR. PENNELL: If we could have a brief
14 sidebar again, Your Honor.

15 THE COURT: Sure.

16 (Whereupon, sidebar conference on the record)

17 MR. PENNELL: So at this point, we're playing
18 it for what purpose? (Indiscernible)

19 MR. THOMPSON: So it's a prior inconsistent
20 statement. She testified that she had absolutely zero
21 memory of this interview with Deputy Williams at the
22 hospital, and she said that watching the video would
23 have no effect on helping refresh her memory whatsoever.

24 MR. PENNELL: Refreshing her memory based on
25 not remembering the interview, but there -- based on my

1 review of this body camera, she did, in fact, remember
2 and testify to several things in there so it's sort of a
3 mishmash of admissible and inadmissible with hearsay
4 (indiscernible).

5 MR. THOMPSON: Well --

6 THE COURT: During her prior testimony, she
7 didn't mention remembering anything about the hospital
8 interview at all.

9 MR. THOMPSON: Correct. She has no memory
10 whatsoever talking to him at the hospital. Now, on the
11 flip side, she still -- this is soon after. So that can
12 still -- qualifies under the excited utterance and the
13 present sense impression exception because she's still
14 describing her event soon after it happened. She's
15 still under the stress of the event (indiscernible),
16 which still qualifies under those hearsay exceptions, as
17 well as the prior inconsistent because she said she has
18 no memory of --

19 MR. PENNELL: Right.

20 MR. THOMPSON: -- making any of these
21 statements.

22 MR. PENNELL: It was three grounds you're --
23 entered as (indiscernible) prior -- present sense
24 impression, excited utterance, and then prior
25 inconsistent statement.

1 MR. THOMPSON: And then there's a fourth
2 where you could say because of your attack on her for
3 her credibility of prior consistent statement.

4 MR. PENNELL: Oh, rehabilitation?

5 MR. THOMPSON: Correct.

6 MR. PENNELL: Okay. So let me just go
7 through this. Present sense impression has to be
8 someone's describing an event that happens, but I don't
9 see how that exception applies to -- if someone was
10 saying Chad -- someone (indiscernible) statement, and I
11 said, Chad Thompson is (indiscernible).

12 MR. THOMPSON: That's actually not what it
13 says.

14 MR. PENNELL: But that's correct. Excited
15 utterance, she actually seems to have a pretty calm
16 demeanor, and she's actually subdued to the hospital.
17 They gave her some medication. So I don't think
18 (indiscernible) prior inconsistent statement. Like I
19 said, there's an (indiscernible) what she did testify.
20 I'm just -- based on what I remember her testimony
21 (indiscernible). (Indiscernible) so I'm asking the
22 Court not to admit it, or alternatively, instruct the
23 jury to not consider it for rehabilitating her
24 testimony.

25 THE COURT: Mr. Thompson.

1 MR. THOMPSON: So the prior -- or the present
2 sense impression says describing an event soon after it
3 happened. It includes that particular -- that is in the
4 statute. It's not just while watching it, and other
5 than taken to the hospital, she's still -- she describes
6 herself as still being in pain. She's going in and out
7 of consciousness actually. She's still under the
8 effects of the (indiscernible) at this time. So I still
9 think it qualifies.

10 THE COURT: I think it does qualify as a
11 present sense impression. What were the other -- other
12 --

13 MR. THOMPSON: Excited utterance is also
14 because she's still under the effects --

15 THE COURT: Stress of the event.

16 MR. THOMPSON: Sure.

17 THE COURT: I think it also qualifies under
18 that exception and -- what were three and four?

19 MR. THOMPSON: Inconsistent and consistent
20 statements.

21 MR. PENNELL: And rehabilitation, right?

22 MR. THOMPSON: Well, that's the consistent
23 statement.

24 THE COURT: Okay. Well, previously she said
25 she -- my recollection is she said she had no memory of

1 any interview at the hospital. She said she remembers
2 waking up later on, something to that effect, when she
3 was in Utah I think is what she said. So I think it
4 does qualify under that and the final one with the
5 rehabilitation question.

6 And what was the argument on the
7 rehabilitation question?

8 MR. PENNELL: Well, I guess, like I said,
9 it's sort of that there is --

10 THE COURT: You think that one's fine Mr. --

11 MR. PENNELL: (Indiscernible) mix in
12 admissible and inadmissible hearsay based on the
13 arguments that I've made. The two prior rulings you
14 made basically wipe that out, but as far as my
15 (indiscernible) argument is that some of these things
16 should have been testified to so it's not bolstering --
17 or it's bolstering rather than --

18 THE COURT: Rehabilitating.

19 MR. PENNELL: -- rehabilitating, and some of
20 these statements she did testify to so they're not
21 inconsistent with her testimony that she actually gave
22 under oath subject to cross-examination.

23 THE COURT: Well, I think that -- she
24 basically said there was no memory of this interview
25 ever even happening, right. She didn't recall it ever

1 happening. She didn't remember anything about this --
2 this period of time, from the time she was taken away in
3 the ambulance to waking up in Utah. So I think I've
4 ruled on everything.

5 MR. PENNELL: Sure.

6 THE COURT: Anything else that I need to
7 address?

8 MR. PENNELL: No, Your Honor. I think we can
9 just move forward without readdressing this. I think
10 we've already made a record if that's -- if you feel
11 that's appropriate. That way, we can just keep things
12 going.

13 THE COURT: Let's go. Sound good.

14 (Whereupon, sidebar conference concluded)

15 THE COURT: Okay. So you had moved for the
16 admission of this exhibit, which was Exhibit what?

17 MR. THOMPSON: 3.

18 THE COURT: 3. And the objection, other than
19 what's already been gone over on the record?

20 MR. PENNELL: No, Your Honor, that would be
21 it.

22 THE COURT: So Exhibit 3 is admitted at this
23 time.

24 (Whereupon, Plaintiff's Exhibit 3 admitted)

25 (Whereupon, DVD played)

1 BY MR. THOMPSON:

2 Q. I just wanted to show at the very beginning, if we
3 could, what's the UTC time that shows up there?

4 A. I see 05:41 and 3 seconds.

5 Q. Okay. And do you remember what it was on the last
6 video? Are we like an hour later, or where are we at?

7 A. We are about an hour later is where I think we were
8 at, so like 4:41.

9 Q. Now, after interviewing her at the hospital, it was
10 getting pretty close to the end of your shift?

11 A. It was.

12 Q. Okay. Did you have anything else that you did with
13 the case after that?

14 A. I was dispatched to contact Dustin -- Dr. Justin
15 Sempsrott from the ER.

16 Q. Okay. Other than talking to him, do you remember
17 anything else you did?

18 A. I created a probable cause sheet and left it at the
19 jail for -- in the event any law enforcement officer
20 came into contact with Darwyn Yowell.

21 Q. Okay. Did you continue to look for him throughout
22 the rest of your shift?

23 A. Throughout -- after we left the scene at Jiggs, we
24 did not attempt to look for Darwyn. We went to the
25 border of the Lee Reservation, and we didn't go onto the

1 reservation, so.

2 Q. Okay. But as far as where you could go --

3 A. Yeah.

4 Q. -- you didn't find him anywhere?

5 A. Huh-huh, no.

6 Q. All right. Now, at some point in time when you
7 came back on shift the next day, did you learn that
8 Mr. Yowell had been arrested?

9 A. Yes, sir.

10 Q. And did you go down and interview him at the jail?

11 A. I did.

12 Q. And did you read him his Miranda rights?

13 A. I did.

14 Q. Did he agree to speak with you?

15 A. He did.

16 Q. Did you have your body camera on?

17 A. I did.

18 Q. And that took place on June 6th?

19 A. It did.

20 MR. THOMPSON: And we have what's marked as
21 Exhibit 5, which is that interview. We'd offer that at
22 this time.

23 THE COURT: Any objection?

24 MR. PENNELL: I'll submit it to your
25 discretion, Your Honor.

1 THE COURT: Exhibit 5 will be admitted at
2 this time.

3 (Whereupon, Plaintiff's Exhibit 5 admitted)

4 (Whereupon, DVD played)

5 BY MR. THOMPSON:

6 Q. Was that the entire interview on that day?

7 A. Yes, sir.

8 Q. And did you receive word about a week later that
9 Mr. Yowell wanted to talk to you yet again?

10 A. Yes, I think this was on June 13. Obviously, the
11 call from jail staff that Darwyn wanted me to come out
12 and take some photographs of a bruise he had developed.

13 Q. Okay. And did he talk with you again?

14 A. Yes, he did.

15 Q. And you Mirandized him again?

16 A. I did.

17 MR. THOMPSON: We're going to offer
18 Exhibit 6, which is --

19 BY MR. THOMPSON:

20 Q. Well, you were wearing your body camera again?

21 A. Yes, sir.

22 Q. All right. And it recorded that interview as well?

23 A. Yes, sir.

24 MR. THOMPSON: We have Exhibit 6, which is
25 the interview on the 13th of June. We're going to offer

1 that at this time.

2 THE COURT: Any objection?

3 MR. PENNELL: I'll submit it to your
4 discretion, Your Honor.

5 THE COURT: That exhibit will be admitted at
6 this time.

7 Go ahead.

8 (Whereupon, Plaintiff's Exhibit 6 admitted)

9 (Whereupon, DVD played)

10 THE COURT: Mr. Thompson, why don't we pause
11 it here. I just want to make sure everyone stays
12 energetic. So let's -- let's take a break here, and
13 then we'll pick up and finish up the remainder of the
14 video after the recess.

15 I need to admonish the jury as follows prior
16 to this recess: Please do not converse amongst
17 yourselves or with anyone else on any subject connected
18 with the trial. Do not read, watch, or listen to any
19 report of or commentary on the trial or any person
20 connected with the trial by any medium of information,
21 including, without limitation, newspapers, television,
22 radio, and the Internet. Do not form or express any
23 opinion on any subject connected with the trial until
24 the cause is finally submitted to you.

25 You may not use any electronic device or

1 media such as the telephone, a cell phone, smartphone,
2 iPhone, BlackBerry or computer, the Internet, any
3 Internet service, any texts, or instant messaging
4 service, any Internet chat room, blog, or website, such
5 as Facebook, Myspace, LinkedIn, YouTube, or Twitter to
6 communicate to anyone any information about this case
7 until I accept your verdict.

8 In other words, you cannot talk to anyone on
9 the phone, correspond with anyone, or electronically
10 communicate with anyone about this case.

11 All rise. We'll go ahead and take a
12 15-minute recess. Just reconvene in the jury room when
13 you're ready.

14 (Whereupon, court recessed)

15 THE COURT: Court is back in session. Please
16 be seated.

17 The time is 10:49 a.m., the date is
18 June 16th, 2021. We're back on the record, Case
19 DC-CR-20-159, State of Nevada versus Darwyn Ross Yowell.
20 The Defendant is present, along with counsel,
21 Mr. Pennell. Mr. Thompson is here from the District
22 Attorney's Office. We're convened outside the presence
23 of the jury.

24 I did have one issue I wanted to address just
25 briefly outside the presence of the jury. While we were

1 on a break, apparently, Juror No. 7 alerted the bailiff
2 that now that he saw Deputy Williams in person, he
3 realized that he did know Deputy Williams. I guess
4 there was an issue of a noise complaint or something to
5 that effect.

6 THE BAILIFF: I believe it was his neighbor's
7 dog and that he completed a witness statement through --

8 THE COURT: There was an issue regarding this
9 neighbor's dog. He had contacted the authorities, and
10 there was an officer who arrived to take a statement,
11 and I believe it was Deputy Williams. That's the extent
12 of his knowledge of Deputy Williams, but now that he saw
13 him in person, he realized that he did know this person.

14 Would anyone care to individually voir dire
15 the juror, or you're okay with the disclosure that's
16 been made?

17 MR. PENNELL: I think if we just ask the
18 juror did this interaction somehow -- now is that going
19 to inherently credit or discredit the sergeant's
20 testimony, which I assume the answer will be no, but I'd
21 prefer to just get that on the record.

22 MR. THOMPSON: I would suggest that as well,
23 just put it on the record.

24 THE COURT: Okay. Let's go ahead and just
25 bring in Juror No. 7, which I believe is Jared Moffitt.

1 MR. THOMPSON: Maybe have the sergeant --

2 THE COURT: We'll have you step out briefly.

3 THE WITNESS: Okay.

4 THE COURT: Mr. Moffitt, come on in here if
5 you would. If you will please face the court clerk and
6 raise your right hand to be sworn.

7 THE CLERK: Do you solemnly swear that the
8 testimony you're about to give in this matter is the
9 truth, the whole truth, and nothing but the truth, so
10 help you God?

11 MR. MOFFITT: I do.

12 THE COURT: Go ahead and have a seat right
13 there if you would. Okay, Mr. Moffitt, I believe on --
14 during the recess, you alerted the bailiff that you had
15 had a prior interaction with Deputy Williams; is that
16 right?

17 MR. MOFFITT: Correct.

18 THE COURT: Can you just explain on the
19 record what --

20 MR. MOFFITT: Probably a couple weeks ago, I
21 had -- my neighbors took off and their dog barked for
22 like three days straight so I called it in. He came to
23 my house. I wrote up a -- you know, a statement.
24 That's the only way I know, so.

25 THE COURT: Okay.

1 MR. MOFFITT: I just -- when he came in, I
2 recognized him, but I didn't recognize the names when
3 you had them posted --

4 THE COURT: Uh-huh.

5 MR. MOFFITT: -- so. But, you know, once I
6 saw his face, I recognized him.

7 THE COURT: Very well. And would anything
8 about that interaction --

9 MR. MOFFITT: No.

10 THE COURT: -- you had with him prevent you
11 from being able to be fair and impartial?

12 MR. MOFFITT: No. I just -- once I saw him,
13 I figured, you know, I don't know how, you know, how the
14 court system works. I just wanted to make sure that
15 you're aware that one of the individuals that you had on
16 the computer screen, I had --

17 THE COURT: You had interacted with him
18 before.

19 MR. MOFFITT: -- I recognize.

20 THE COURT: Okay. Do you want to ask him any
21 questions, Mr. Thompson?

22 MR. THOMPSON: I don't.

23 THE COURT: Mr. Pennell.

24 MR. PENNELL: So this is -- your interaction
25 with Sergeant Williams is not going to somehow credit

1 his testimony? You're not going to give him extra
2 credit?

3 MR. MOFFITT: No.

4 MR. PENNELL: And it's also not going to
5 discredit his testimony?

6 MR. MOFFITT: No, indifferent.

7 THE COURT: Okay.

8 MR. PENNELL: I think we're fine, Your Honor.

9 THE COURT: Perfect. You can go ahead and
10 step down.

11 MR. MOFFITT: All right, thank you.

12 THE COURT: Thank you very much.

13 Anything else we need to address before we
14 get back underway?

15 MR. THOMPSON: Not for the State.

16 MR. PENNELL: I don't believe so, Your Honor.

17 THE COURT: Okay. If you'll all please rise,
18 we'll go ahead and get -- bring the jury back in.

19 (Whereupon, the jury entered the courtroom)

20 THE COURT: Court is back in session. Please
21 be seated.

22 The time is 10:54 a.m., the date, June 16th,
23 2021. We're on the record in Case DC-CR-20-159, the
24 State of Nevada, Plaintiff, versus Darwyn Ross Yowell,
25 Defendant. The Defendant is present, along with his

1 counsel, Mr. Pennell. Mr. Thompson is here from the
2 District Attorney's Office.

3 Do the parties stipulate to the presence of
4 the jurors and alternates?

5 MR. THOMPSON: Yes.

6 MR. PENNELL: Yes, Your Honor.

7 THE COURT: We had taken a break in the
8 middle of playing the video. We do still have a deputy
9 -- Sergeant Williams present on the stand. I'll remind
10 you that you were previously sworn, and you're still
11 under oath.

12 THE WITNESS: Yes, Your Honor.

13 THE COURT: And Mr. Thompson, do you want to
14 pick up with the playing of the video?

15 MR. THOMPSON: Yeah. I think I'll take it
16 back about a minute.

17 THE COURT: Okay.

18 MR. THOMPSON: Just to jog our memories. So
19 it's stopped at 17:40 on the lower left-hand number or
20 4:44:45 on the upper right-hand corner number. We'll
21 just go back. 16:42 sounds as good as any. We'll start
22 there.

23 (Whereupon, DVD played)

24 MR. THOMPSON: Can I turn the lights on?
25 I'll get it.

1 BY MR. THOMPSON:

2 Q. Okay. So that was your interview with Mr. Yowell?

3 A. Yes, sir.

4 Q. Just a few points of clarification. Mr. Yowell, of
5 course, referenced the bite mark on his -- on his bicep.
6 And in your report, you say that Mr. Darwyn Yowell
7 showed me what appeared to be a bite mark. I mean, did
8 you look at it really closely, this bite mark?

9 A. I looked at it, and he told me that Jean bit him,
10 so.

11 Q. Okay. Did you look for teeth marks or anything?

12 A. I didn't see any teeth marks. I just -- he said
13 that's where Jean bit him, so. It looked like a wound.
14 I'm not sure if it was a bite mark or not, but he said,
15 this is where she bit me so I recorded it as appeared as
16 a bite mark.

17 Q. When you're interviewing somebody, I mean, is your
18 goal just to allow them to tell their story?

19 A. I allow them to tell their story and then I ask
20 clarifying questions once -- once they're done.

21 Q. Okay. But the juror or anybody shouldn't be reading
22 any of your statements as far as an adoption of believe
23 or anything like that --

24 A. No.

25 Q. -- one way or the other?

1 A. No.

2 Q. Now, when you were out on the scene, you had a
3 chance to look at the car?

4 A. Yes.

5 Q. And you described it in your report as the interior
6 of the vehicle was in disarray?

7 A. Yes.

8 Q. What do you mean by that?

9 A. I just mean there was a lot of stuff in there. I
10 mean, normally, if you have a vehicle, you keep it
11 clean. There was some stuff in there that looks like
12 maybe either somebody was living in the vehicle, or
13 there was a lot of movement in the vehicle. There was
14 just a lot of stuff all over the place in the interior
15 of the vehicle.

16 Q. And you spoke with the driver of the SUV that Jean
17 was sitting in?

18 A. I did.

19 Q. Okay. And you were the lead investigator on the
20 case, I guess, or the lead officer on the case?

21 A. Yes.

22 Q. Why was that?

23 A. You know, it didn't really -- it wasn't really
24 planned. We both showed up on-scene, and I was just the
25 first person to interview Jean so I just went with it.

1 Q. And then we understand that Detective Stake got
2 involved, Detective Sergeant Stake.

3 A. Yes.

4 Q. It doesn't just turn over to a detective when
5 something like that happens to the case?

6 A. Not typically with domestics. We -- just based on
7 the substantial bodily harm, I think the decision was
8 made to call Detective Stake out just in the event that
9 there was another level of investigation that needed to
10 be completed that we were not capable of doing.

11 Q. Okay. And Mr. Yowell brings up a lot of different
12 cameras.

13 A. Uh-huh.

14 Q. I mean, the video camera here, video camera there.
15 Did you make any efforts to search for any of those?

16 A. I did not.

17 Q. Any particular reason why?

18 A. During a domestic battery incident, I'm charged by
19 statute to determine who the primary physical aggressor
20 is. Based on the statements from both -- both
21 Mr. Yowell and Ms. Ortega and the injuries that both
22 individuals sustained, I was able to determine the
23 primary physical aggressor based on that.

24 Q. So you didn't feel it was necessary?

25 A. No, I did not.

1 Q. Okay.

2 MR. THOMPSON: I don't have anything else for
3 Sergeant Williams.

4 THE COURT: Cross-examination, Mr. Pennell.

5 CROSS-EXAMINATION

6 BY MR. PENNELL:

7 Q. Your first interview with Darwyn, you woke him out
8 of a dead sleep?

9 A. I -- I'm not sure if he was sleeping or not. I know
10 he was laying down with a blanket covered. He did seem
11 groggy when I began speaking with him.

12 Q. So his mannerisms appeared as if he had been
13 sleeping?

14 A. He could have been, yes.

15 Q. And as he was speaking to you, he said something
16 like I'm tired, correct?

17 A. I'm not sure if he did or not.

18 Q. Okay. And did he appear, based on how he looked and
19 how he was talking to you, that he had just woken up?

20 A. Yeah, he could have, yes.

21 Q. And I believe the description you said was groggy?

22 A. Yes.

23 Q. What do you mean by that?

24 A. Generally when you -- you first open your eyes in
25 the morning, you -- you know, you're not completely back

1 in this -- I don't know how to explain it. You're
2 groggy, you're not fully awake yet, I guess.

3 Q. Just not completely coherent?

4 A. Yeah.

5 Q. Not totally lucid?

6 A. (No audible response)

7 Q. You might have some difficulty articulating your
8 thoughts?

9 A. You could.

10 Q. The second interview, Darwyn was awake? He wasn't
11 woken out of a dead sleep?

12 A. No, he was not.

13 Q. And he appeared not to be groggy?

14 A. Correct.

15 Q. And he appeared to be able to articulate his
16 thoughts?

17 A. Yes.

18 Q. And you asked him to tell his story multiple times?

19 A. Yes.

20 Q. Now, based on that second interview, according to
21 Darwyn, you learned that there were two separate
22 attacks, or at least two distinct sets of attacks?

23 A. You know, that was one of the conflicting things
24 that -- the reason I asked for the retelling of the
25 story several times. I had injuries that weren't

1 consistent with the story that I was given in the first
2 interview.

3 Q. The interview where he was woken up out of a dead
4 sleep?

5 A. Yeah.

6 Q. Okay.

7 A. And in the second interview, based on the first
8 interview where Darwyn stated that he was attacked 50 to
9 20 times and he would dot Jean back every time Jean
10 attacked him, once, again, the injuries on the left side
11 of his body just wasn't making sense with that.

12 Q. During the first interview?

13 A. Yeah. I mean, even in the second interview, the
14 reason I was having him clarify it is because I still
15 had injuries on the left side of his body, but at that
16 point, he was the driver until we got the story a little
17 bit clearer, and then he started -- he stated that it
18 began in the passenger seat, and then they switched once
19 her eyes got swollen, and she couldn't see.

20 Q. Okay. Well, based on that, wouldn't the injuries be
21 consistent with that story once you clarified it?

22 A. Once I clarified it, yes.

23 Q. Okay. So the physical injuries, at least in terms
24 of what you understood by Darwyn Yowell's account, were
25 consistent with the story that he was telling you at

1 that point?

2 A. At that point, yes.

3 Q. Okay. Now, Darwyn was cooperative with you for
4 these interviews?

5 A. Yes.

6 Q. And it seemed that he was taking great pains to
7 protect the privacy of Jean. Did you get that
8 impression?

9 A. As far as?

10 Q. He was trying to withhold information that he
11 thought was private to her?

12 A. I don't think I came to that conclusion, no.

13 Q. Okay. But didn't you hear Darwyn say something to
14 that effect?

15 A. As far as -- you're going to have to clarify, sir.

16 Q. That's fine. Now, you stated that you did the PC
17 sheet for Darwyn's arrest?

18 A. Yes.

19 Q. And you did that how soon after you left the
20 hospital?

21 A. I'm not sure how soon. I'm required to complete it
22 before I complete my shift.

23 Q. Do you recall roughly when you completed your shift?

24 A. I ended my shift at 6:00 p.m. -- or 6:00 a.m. that
25 morning.

1 Q. 6:00 a.m. And so to your understanding -- and if
2 you don't know just simply say you don't know, but based
3 on your investigation, cooperation of other law
4 enforcement, Darwyn was arrested shortly after that or
5 within a couple hours?

6 A. I do not know what time he was arrested, no.

7 Q. Okay. But you developed your PC sheet to arrest
8 Darwyn before you spoke to Darwyn?

9 A. Yes.

10 Q. And you determined who the primary physical
11 aggressor was before you spoke to Darwyn?

12 A. Yes.

13 Q. And you only got Jean's side of the story before you
14 spoke to Darwyn?

15 A. Yes.

16 Q. Now, that was the reason why you didn't get these
17 videos that you were told about is because you already
18 determined who the primary aggressor was?

19 A. I wasn't told about the videos until I interviewed
20 Darwyn.

21 Q. But I believe your testimony, and correct me if I'm
22 wrong, was that you didn't pursue getting these videos
23 because you had already determined that Jean was not the
24 primary aggressor?

25 A. I did not get the videos because they were not

1 relevant. I had already determined who my primary
2 physical aggressor was.

3 Q. And they were not relevant for what reason?

4 A. Well, the -- the short amount of time -- because
5 Darwyn said they were there for two or three minutes or
6 just a few minutes. That few minutes, in my opinion,
7 did not -- would not determine if Darwyn was not the
8 primary physical aggressor within those few minutes that
9 may have been captured on that video.

10 Q. I mean, if an attack only lasts a few seconds, does
11 that mean that that's a few seconds of video, if it was
12 captured, it's not relevant?

13 A. Well, my decision is based on the injuries to Jean
14 and the lack of...

15 Q. But even after you got Darwyn's half of the story,
16 you decided you were not going to pursue getting these
17 videos?

18 A. Yes.

19 Q. And you took no steps to obtain those videos?

20 A. I did not.

21 Q. Including getting someone else to obtain those
22 videos or look into it?

23 A. I did not.

24 Q. Isn't it true that several months later the
25 Prosecutor asked you to go and see if you could obtain

1 these videos?

2 A. I did not, no.

3 Q. Okay. Now, you already talked about you were
4 getting these clarifying questions in your second
5 interview with Darwyn. This is after you'd already
6 filed your initial report?

7 A. Yes.

8 Q. And were you aware of whether or not Darwyn was
9 arrested on what you forwarded as the charges?

10 A. I'm sorry?

11 Q. So I guess I should clarify that. Mr. Yowell would
12 be arrested, at least initially, on what the charges you
13 thought would be appropriate in the probable cause
14 sheet; is that right?

15 A. Yes.

16 Q. And so you were aware, at least, or safe to assume
17 that those were the charges Mr. Yowell was arrested on?

18 A. Yes.

19 Q. Do you know if formal charges had been filed through
20 a complaint by the Prosecutor at that point?

21 A. I'm not sure -- at that point, I'm not sure of the
22 formal charges that had been filed as yet.

23 Q. But at that point, you were already committed to
24 Jean's side of the story?

25 A. I wasn't committed to Jean's side of the story. I

1 was committed to the facts that I got.

2 Q. And so when you were asking clarifying questions,
3 that wasn't to try and bolster your investigation
4 against Mr. Yowell?

5 A. No, that was to clarify the inconsistencies between
6 the injuries and the statements.

7 Q. Okay. But why did you -- once you got the
8 information that would clarify that, why did you ask
9 more clarifying questions?

10 A. As far as -- what clarifying questions are you
11 referring to?

12 Q. The injuries or the events that happened.

13 A. I suppose I'm confused.

14 Q. So you, at some point, were able to reconcile the
15 physical injuries and Darwyn's story without assuming
16 any truth about that, but you were able to at least
17 reconcile the story and the injuries at some point?

18 A. Yes.

19 Q. But yet you continued to ask these clarifying
20 questions at that point?

21 A. Okay. I suppose you're going to have to tell me
22 which clarifying questions I continued to ask.

23 Q. Well, I guess, there was so many that I can't really
24 tell you exactly which one --

25 A. Okay.

1 Q. -- but...

2 A. I'm willing to tell you which -- why I asked the
3 ones I asked if you can tell me which ones they are.

4 Q. Okay. And were you aware of any of the items that
5 were seized in the hotel room?

6 A. No.

7 Q. You were the lead investigator at this point?

8 A. Yes.

9 Q. What would Detective Stake's role be then?

10 A. I'm not sure what Detective Stake was doing on his
11 end of the investigation.

12 Q. Do you -- are you aware of what he did throughout
13 the process of the investigation?

14 A. I am not.

15 Q. So you didn't know about phones in the hotel room
16 until sometime later?

17 A. No. As a matter of fact, I didn't know about phones
18 in the hotel room until I was asked to take them over to
19 the Clerk's Office.

20 Q. When was that?

21 A. Last week.

22 Q. Okay. And I just wanted to finish with this. You
23 asked multiple times if Jean told Darwyn -- if she said
24 stop or let me out or I don't want to go to Lee.

25 A. Uh-huh.

1 Q. And Darwyn told you no, he didn't hear her say that,
2 or you said -- is that correct?

3 A. He told me that he could not remember.

4 Q. Okay. And then you asked him again --

5 A. Yes.

6 Q. -- that same question, and his response was the
7 same?

8 A. He said he did not know.

9 Q. So his response was the same?

10 A. Yes.

11 Q. And you asked him again.

12 A. Yes.

13 Q. And his response was the same?

14 A. Yes.

15 MR. PENNELL: I have no further questions,
16 Your Honor.

17 THE COURT: Redirect, Mr. Thompson.

18 MR. THOMPSON: Nothing based on that.

19 THE COURT: Did any member of the jury write
20 down a question they want to pose to this particular
21 witness? If so, please raise your hand. We do have one
22 written down.

23 (Whereupon, sidebar conference on the record)

24 THE COURT: The question from Juror No. 8:
25 Were there others present expressing or supporting that

1 Jean was a victim by Darwyn, that Darwyn was aggressive
2 or dangerous with you? Has Mr. or Mrs. Green?

3 MR. PENNELL: I think Mr. and Mrs. Green
4 would be the only possible eyewitnesses in this
5 circumstance, and we both heard her testify to these
6 facts where -- Ms. Green said he was swaggering and
7 being aggressive, and he was being -- had his hands up
8 or something. So I don't think there's any further --
9 and he would also be speculating about what someone else
10 saw. I don't know how he would answer that.

11 THE COURT: I guess just ask: Is there some
12 other witness out there that hasn't -- that we're not
13 aware of who supported this notion that -- that Jean
14 was, in fact, the victim?

15 MR. PENNELL: What if you clarified the
16 question and you said: Other than Mr. Green and
17 Mrs. Green, were there any other eyewitnesses to any of
18 these events?

19 THE COURT: That you're aware of.

20 MR. PENNELL: Yeah.

21 MR. THOMPSON: That's fine. We can clean up
22 a smidge.

23 THE COURT: Okay. Okay.

24 (Whereupon, sidebar conference concluded)

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JURY QUESTIONS

BY THE COURT:

Q. Okay. We do have a question from Juror No. 8. We're going to present this in a slightly reworded fashion. Other than Mr. and Mrs. Green, the folks in the maroon Suburban on 228, were there any other individuals that you're aware of that were eyewitnesses to any of the events that occurred between Jean and Mr. Yowell?

A. Not that I'm aware of.

THE COURT: Any follow-up questions, Mr. Thompson?

MR. THOMPSON: No.

THE COURT: Any follow-up questions?

MR. PENNELL: No, Your Honor.

THE COURT: Okay. Did either party wish this witness to be retained, or can he be excused at this time?

MR. THOMPSON: I forgot to ask him one question so I'll recall him here really quickly.

THE COURT: Okay. Go ahead.

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1 CALVERN WILLIAMS

2 (Recalled and previously sworn as a witness,
3 testified as follows)

4 DIRECT EXAMINATION

5 BY MR. THOMPSON:

6 Q. Sergeant Williams, when he was showing you the
7 injuries on his left side, did you get a chance to look
8 at his right side as well, Darwyn Yowell's right side?

9 A. Are we talking about the first or second interview?

10 Q. Either one?

11 A. I did. He was sitting right in front of me, and he
12 would turn left and right, and I could see both sides of
13 his face.

14 Q. Did he have any injuries on his right-hand side?

15 A. No.

16 Q. From head to toe basically?

17 A. I did not see any injuries on the right-hand side.

18 Q. Did he ever indicate any injuries to his penis?

19 A. No.

20 Q. He did tell you that she was hitting him while he
21 was driving, though, didn't he?

22 A. Yes.

23 Q. But there were no injuries as a result of that?

24 A. Not that I could see.

25 Q. Okay.

1 MR. THOMPSON: I don't have anything else.

2 THE COURT: Any follow-up on that,

3 Mr. Pennell?

4 CROSS-EXAMINATION

5 BY MR. PENNELL:

6 Q. You did recognize some injuries?

7 A. Yes.

8 Q. Those were scratches?

9 A. Yes.

10 Q. And that was on his face?

11 A. Yes.

12 Q. And that was on the left side of his face?

13 A. Yes.

14 Q. And that was during the first interview?

15 A. Yes.

16 Q. And the second interview?

17 A. Yes.

18 Q. Now, he was wearing a shirt in the first interview,
19 correct?

20 A. Yes.

21 Q. But Mr. Darwyn Yowell did show you his left arm?

22 A. Yes.

23 Q. Tricep area?

24 A. Yes.

25 Q. You saw an injury?

1 A. Yes.

2 Q. Appeared to be two wounds vertically oriented? If
3 his arm was down like this so his hands -- his fingers
4 are facing the ground. Did it appear that these were
5 two vertical wounds on his tricep?

6 A. It appeared it was one wound.

7 Q. Okay. But you did see that on his arm?

8 A. Yes.

9 Q. And you saw all those same injuries during your
10 second interview?

11 A. Yes.

12 MR. PENNELL: I don't have any further
13 questions, Your Honor.

14 THE COURT: Anything else, Mr. Thompson?

15 MR. THOMPSON: No.

16 THE COURT: Any other questions from the
17 jurors? We have another one apparently. Okay.

18 (Whereupon, sidebar conference on the record)

19 THE COURT: The question from Juror No. 13:
20 If Darwyn sustained no physical damage while driving,
21 then how could potential videos prove aggressor even if
22 they were captured?

23 MR. PENNELL: What?

24 THE COURT: If Darwyn sustained no physical
25 damage while driving, then how could the potential

1 videos prove aggressor even if they were captured? I
2 guess he's asking what would be the usefulness of these
3 videos anyway if he didn't sustain any injuries while --
4 while he was driving.

5 MR. PENNELL: It seems kind of like a
6 rhetorical question, and it's also -- if it's a
7 rhetorical question, it's a speculative question. So I
8 think you should not ask it on the grounds of
9 speculation.

10 MR. THOMPSON: (Indiscernible)

11 MR. PENNELL: He's asking for a hypothetical,
12 which is -- a classic example is a question that
13 requires some speculation.

14 MR. THOMPSON: (Indiscernible)

15 THE COURT: Okay. We won't ask it.

16 (Whereupon, sidebar conference concluded)

17 THE COURT: Okay. There was a question from
18 Juror No. 13. There were -- this particular question is
19 not allowed under the rules of evidence so I'm not going
20 to allow this particular question to be asked.

21 Did either party wish -- wish this witness to
22 be retained, or can he be excused at this time?

23 MR. THOMPSON: We'll retain him.

24 THE COURT: Okay. Just make sure that you
25 provided your phone number to Mr. Thompson. Are you

1 okay with him leaving the building?

2 MR. THOMPSON: Yes.

3 THE COURT: Okay. Just make sure that you
4 provide your phone number to Mr. Thompson. You
5 technically have been retained, but you can leave the
6 building if you'd like. Just make sure you do not
7 discuss any of your testimony with any of the other
8 witnesses.

9 MR. WILLIAMS: Okay.

10 THE COURT: Okay. You can step down, thank
11 you.

12 MR. WILLIAMS: Thank you, sir.

13 THE COURT: Anyone else to call,
14 Mr. Thompson?

15 MR. THOMPSON: Not right now. I wonder if we
16 could break for lunch. I want to check and make sure
17 everything's good with the clerk and then --

18 THE COURT: Okay, very well. Then we're
19 going to go ahead then and break for lunch at this time.
20 I do need to admonish the jury as follows:

21 During this recess, please do not converse
22 amongst yourselves or with anyone else on any subject
23 connected with the trial. Do not read, watch, or listen
24 to any report of or commentary on the trial or any
25 person connected with the trial by any medium of

1 information, including, without limitation, newspapers,
2 television, radio, and the Internet. Do not form or
3 express any opinion on any subject connected with the
4 trial until the cause is finally submitted to you.

5 You may not use any electronic device or
6 media such as the telephone, a cell phone, smartphone,
7 iPhone, BlackBerry or computer, the Internet, any
8 Internet service, any texts or instant messaging
9 service, any Internet chat room, blog, or website, such
10 as Facebook, Myspace, LinkedIn, YouTube, or Twitter to
11 communicate to anyone any information about this case
12 until I accept your verdict.

13 In other words, you cannot talk to anyone on
14 the phone, correspond with anyone, or electronically
15 communicate with anyone about this case.

16 We'll reconvene at 1:00 o'clock so please be
17 in the jury room just a few minutes before 1:00, and
18 we'll try to get started right at 1:00 o'clock, okay.

19 All rise. You're excused, please leave your
20 --

21 (Whereupon, court recessed)

22 THE COURT: Court is back in session. Please
23 be seated.

24 The time, 1:08 p.m., the date June 16th,
25 2021. We're back on the record in Case DC-CR-20-159.

1 This is State of Nevada versus Darwyn Ross Yowell.
2 Mr. Yowell is present along with counsel, Mr. Pennell.
3 Mr. Thompson is here from the District Attorney's
4 Office. We're convened outside the presence of the
5 jury.

6 Anything we need to address before we get
7 underway?

8 MR. PENNELL: No, not necessarily, Your
9 Honor. I was going to potentially admit a photograph,
10 but I think I don't need to at this point.

11 THE COURT: Okay. Was the State intending on
12 calling anyone else?

13 MR. THOMPSON: No. So I'm going to rest so I
14 don't know if you want to do a canvass of the Defendant
15 now.

16 THE COURT: Is your client prepared to go
17 forward with the canvass at this time, about his right
18 to testify?

19 MR. PENNELL: Yes, Your Honor.

20 THE COURT: Okay. Mr. Yowell, if you'll
21 please stand. Mr. Yowell, under the Constitution of the
22 United States and under the Constitution of the State of
23 Nevada, you cannot be compelled to testify in this case.

24 Do you understand that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: You may, at your own request,
2 give up this right and take the witness stand and
3 testify. If you do, you'll be subject to
4 cross-examination by the Chief Deputy District Attorney
5 and anything that you may say, whether on direct or
6 cross-examination, will be the subject of fair comment
7 with the Chief Deputy District Attorney speaks to the
8 jury in his final argument.

9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: If you choose not to testify, the
12 Court will not permit the Chief Deputy District Attorney
13 to make any comments to the jury because you have not
14 testified.

15 Do you understand that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: If you elect not to testify, the
18 Court will instruct the jury, but only if your attorney
19 specifically requests it, as follows: The law does not
20 compel a defendant in a criminal case to take the stand
21 and testify and no presumption may be raised and no
22 inference of any kind may be drawn from the failure of a
23 defendant to testify.

24 Do you have any questions about these rights?

25 THE DEFENDANT: No, Your Honor.

1 THE COURT: You are further advised that if
2 you have any felony conviction in more than ten years
3 that has not elapsed from the date you have been
4 convicted or discharged from prison, parole, or
5 probation, whichever is later, and the Defense has not
6 sought to preclude that coming before the jury, and you
7 elect to take the stand and testify, the Chief Deputy
8 District Attorney, in the presence of the jury, may be
9 permitted to ask you the following: Have you been
10 convicted of a felony, what was that felony, and when
11 did it happen, however no details may be gone into.

12 Do you understand all of that?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Keeping all that in mind, is it
15 your decision to -- to remain silent or to give up that
16 right to remain silent and to provide testimony at this
17 time?

18 THE DEFENDANT: I'd like to provide
19 testimony, Your Honor.

20 THE COURT: Okay. Anything else that we need
21 to address at this point before we bring them back in?

22 MR. PENNELL: No, Your Honor.

23 MR. THOMPSON: No.

24 THE COURT: Okay, have a seat, thank you.

25 Okay, we'll go ahead and bring in the jury.

1 Please stand.

2 (Whereupon, the jury entered the courtroom)

3 THE COURT: Court is back in session. Please
4 be seated.

5 The time is 1:12 p.m., the date, June 16th,
6 2021. We're back on the record in Case DC-CR-20-159,
7 the State of Nevada versus Darwyn Ross Yowell.
8 Mr. Yowell is present, along with counsel, Mr. Pennell.
9 Mr. Thompson is present from the District Attorney's
10 Office.

11 Do the parties stipulate to the presence of
12 the jurors and alternates?

13 MR. PENNELL: Yes, Your Honor.

14 MR. THOMPSON: Yes.

15 THE COURT: Okay. Mr. Thompson, did you have
16 anyone else to call?

17 MR. THOMPSON: No, the State rests its case.

18 THE COURT: Thank you. We've now arrived at
19 the Defense case-in-chief. Did the Defense have
20 anything to present?

21 MR. PENNELL: We did, Your Honor. We are
22 going to call to the stand Mr. Darwyn Yowell.

23 THE COURT: Mr. Yowell, if you'll come up to
24 the stand, please, but before you do so, please face the
25 court clerk and raise your right hand to be sworn.

1 THE CLERK: Do you solemnly swear that the
2 testimony you're about to give in this matter is the
3 truth, the whole truth, and nothing but the truth, so
4 help you God?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. Come over here to the
7 witness stand if you would. Just pull on that door. It
8 will pull open. There you go. Have a seat.

9 Please state your name and spell your first
10 and last name for the record, please.

11 THE DEFENDANT: My name is Darwyn Ross
12 Yowell; D-A-R-W-Y-N, Y-O-W-E-L-L.

13 THE COURT: Thank you. Go ahead,
14 Mr. Pennell.

15 DARWYN ROSS YOWELL

16 (Sworn as a witness, testified as follows)

17 DIRECT EXAMINATION

18 BY MR. PENNELL:

19 Q. Darwyn, in terms of how it's related to this case,
20 could you just briefly introduce your background, who
21 you are.

22 A. I'm born and raised around here. I spent a little
23 time in the Army, and I basically work at my
24 grandfather's ranch. I've done numerous other positions
25 around town. I just got back from job searching in

1 Portland and LA and came back to secure the custody of
2 my children.

3 Q. So part of that background is -- does that involve a
4 relationship with Jean Ortega?

5 A. For the last nine years, yes.

6 Q. Could you give me an idea about what that
7 relationship was.

8 A. On again/off again. She's been incarcerated for
9 three of those nine years.

10 Q. Okay. And so how long have you known Ms. Ortega?

11 A. I've known her all my life, but we've only been
12 intimate for nine years.

13 Q. So would you say that you know her well or not?

14 A. Yeah, probably better than anybody.

15 Q. I want to bring you back to 2020. Were you in
16 contact with Jean at the beginning of that year?

17 A. January during the playoffs is when we first made
18 contact. During the playoffs, January 2020, yeah,
19 January 2020.

20 Q. And where were you living at that time?

21 A. My grandmother's house.

22 Q. Where is that?

23 A. Lee, Nevada.

24 Q. And did you and Jean live together at all throughout
25 2020?

1 A. No, she -- she had recently been paroled out of
2 prison, and she was staying with her mother.

3 Q. Were you -- I believe we already heard some evidence
4 to this effect, but at some point, were you living in a
5 hotel with Jean?

6 A. Jean was kicked out by her mom. Her mom kicked her
7 out. They were working together, and then her mom
8 caught us together. I don't know caught. You know,
9 we've been together for so long. And she kicked Jean
10 out, and so Jean -- Jean didn't have anywhere else to
11 go. This was right at the beginning of COVID-19, the
12 COVID-19 epidemic.

13 The Department of Motor Vehicles was closed, and she
14 had recently purchased a car from her father that needed
15 to be registered. The State office was closed. The
16 State DMV was closed. She was adamant about following
17 the law, and so she -- she did not want the vehicle
18 moved at all until it was completely registered because
19 she was on some -- the conditions of her parole are
20 super strict. She's on the strictest parole a person
21 probably could be on.

22 She has specific instructions. She's -- she has
23 restricted movement. She's not to be --

24 MR. THOMPSON: I'm going to object to the
25 narrative nature of this response, and I don't think

1 it's responding to his question.

2 THE COURT: Mr. Pennell.

3 MR. PENNELL: I can just get it back on track
4 with another question, Your Honor.

5 THE COURT: Okay. Why don't you bring it
6 back on track.

7 BY MR. PENNELL:

8 Q. So you were staying -- were you staying at a hotel
9 for an extended number of days?

10 A. Yes.

11 Q. And that was around May and June of 2020 or not?

12 A. I came to town Easter, the beginning of April, April
13 -- the beginning of April to see my children, and me and
14 Jean were staying at her mom's until her mom kicked her
15 out. Then we checked into a motel room. It's the
16 beginning of the pandemic. I believe it was about one
17 week before the George Floyd stuff happened. There was
18 a lot of chaos in -- there was a lot of chaos. People
19 were rioting. People were rioting at that time.

20 Q. Okay. Were you looking for work while you were in
21 Elko?

22 A. Always, yes -- yes, sir.

23 Q. What were you doing to look for work?

24 A. Filling out applications. I had secured
25 applications from Home Depot all the way to Stockmen's

1 and was working my way down to Albertsons. I had set up
2 interviews with Home Depot, Walmart, and attended
3 another interview at Raley's and had about 14 other
4 applications in.

5 Q. And I think on one of the (indiscernible), you
6 talked about running heavy equipment; is that right?

7 A. Yes. Yes.

8 Q. And where was it that you would run the heavy
9 equipment?

10 A. Well, I've been running heavy equipment at the ranch
11 my whole life. I did a little time in the Army, the
12 field artillery, MLRS.

13 Q. What did -- when you speak of the ranch, what are
14 you referring to?

15 A. My grandfather's ranch, the Yowell ranch out in the
16 South Fork/Lee/Jiggs area.

17 Q. And would that be your normal work?

18 A. Yes. Yes, yes. Yes, sir.

19 Q. Is that permanent or seasonal work?

20 A. It's -- it's my -- well, Raymond had gotten out of
21 the cow business -- this is my grandfather -- and he --
22 my uncle runs the business now. And I'm an as-needed
23 basis until open feed in the wintertime, to help them
24 put up the hay in the summertime, drag fields and such
25 during the spring, aerate.

1 Q. Okay. So you were -- you talked about -- were you
2 aware that Jean was in prison previously that year or
3 the year before?

4 A. My relationship with Jean ended one year before --
5 before she stabbed her father. She came out to see me
6 during Thanksgiving. We discussed maybe getting back
7 together right -- I didn't talk to her until the
8 New Year. At New Year's I talked to her. Two months
9 later she stabbed her father 12 times.

10 Q. But you were aware of that event?

11 A. Yes. Yes, I was fully aware of that.

12 Q. Okay.

13 A. It devastated me.

14 Q. And were you aware that Jean was incarcerated for
15 that?

16 A. One moment. Could you repeat the question, please.

17 Q. Were you aware that she -- that Jean was
18 incarcerated for that?

19 A. Yes.

20 Q. Okay. So really I'm just trying to make sure you
21 did or didn't know about it, not whether you were a
22 witness, okay.

23 A. Yes, she had been incarcerated for it. They -- she
24 was awaiting sentencing in Parr Boulevard. She was
25 charged with attempted murder.

1 Q. Were you aware of when Jean was released from
2 prison?

3 A. No. No, I was not.

4 Q. When did you become aware of that if at all?

5 A. January 2020. I -- they update the cases. You can
6 look at them from the Internet every so often. She had
7 a clemency hearing about being mental -- they found her
8 competent to stand trial. She --

9 MR. THOMPSON: I'm going to object. I think
10 we've got a lack of personal knowledge there. Now he's
11 just --

12 THE COURT: Mr. Pennell.

13 MR. THOMPSON: Hearsay.

14 MR. PENNELL: Yeah, I'm just trying to figure
15 out what he's aware of, not necessarily the truth of the
16 matter asserted, Your Honor. So I can just redirect the
17 question.

18 THE COURT: Let's move the question in a
19 different direction.

20 BY MR. PENNELL:

21 Q. Was it that you were -- I guess you said the
22 playoffs. Was that when you first met Jean after --

23 A. Yeah, yes.

24 Q. -- her release?

25 A. Yes, the playoffs.

1 Q. And did you have discussions with Jean about her
2 time in prison?

3 A. We had agreed to stay away from each other for a --
4 she said she was on prison -- or she just got out of
5 prison. She had a new boyfriend. She was dating
6 somebody else.

7 Q. But you were aware that she was released from
8 prison?

9 A. Yes, sir.

10 Q. Okay. And based on your discussions with her and
11 anything else, any other information you came into, were
12 you aware or not if Jean was on parole at that time?

13 A. Yes.

14 Q. Okay. Now, just -- I only want to know for your
15 statement of belief rather than the truth. Were you
16 aware of Jean's terms of parole?

17 A. While staying at the -- the Elko Motel, we first
18 checked into the Elko Motel, the Government was in
19 crisis mode. They actually sent a Government employee
20 to check on all the --

21 MR. THOMPSON: I'm going to object as it
22 being nonresponsive. I don't know why we're going into
23 this. It's very simple: Were you aware of her terms of
24 parole?

25 THE COURT: Mr. --

1 MR. PENNELL: I think I can --

2 THE WITNESS: Yes, yes. Yes, I was aware --
3 Jean --

4 THE COURT: I'm going to sustain the
5 objection. Why don't you restate the question,
6 Mr. Pennell.

7 BY MR. PENNELL:

8 Q. So you were talking about this government official
9 coming to your hotel. Was that part of how you became
10 aware of her parole terms?

11 A. Jean -- at that point, Jean had -- Jean has to have
12 approved -- you have to be approved. They have to pass
13 a background check. Jean's not allowed to see friends.
14 She's not allowed to see family. You have to pass a
15 background check. You have to be a non-felon. Jean
16 said I was her husband and that she was going out to
17 live with me and that I was allowed to -- Jean was
18 successfully paroled under my care and supervision to my
19 grandmother's residence, AC30 Box No. 4, Spring Creek,
20 Nevada.

21 Q. Okay. Well, did you learn all this information with
22 this encounter with this government official that came
23 to the Elko Motel?

24 A. Jean didn't want me talking to him, but he -- he had
25 stated that she needed to -- he forbid her to be in

1 motel rooms.

2 MR. THOMPSON: I'm going to object to
3 hearsay.

4 MR. PENNELL: Your Honor, I tried to get to
5 this earlier about -- the state of mind exception is not
6 -- I'm not trying to show that this is, in fact, true,
7 the terms of her parole, but simply what the Defendant's
8 state of mind was. And I think it fits squarely into
9 that because it's a belief, and if the Court wants to
10 instruct the jury that they're only to consider it for
11 that purpose, I think that's fine.

12 But also, later on, it will go in terms of
13 effect on the listener, or at least probably Mr. Yowell
14 is the listener in terms of certain actions he engaged
15 in. So I believe for that reason, it's appropriate and
16 admissible.

17 THE COURT: Mr. Thompson.

18 MR. THOMPSON: Then I guess the question is,
19 was she -- was he aware of them, and now he's going off
20 and listing them. So is it -- do we need --

21 THE WITNESS: Yes, I was --

22 THE COURT: Hold on just a second.

23 THE WITNESS: Oh, sorry, sorry.

24 MR. THOMPSON: Do we really need to -- do we
25 really need to get into all of the list of all of the

1 different qualifications or at least conditions of
2 probation?

3 THE COURT: Anything else, Mr. Pennell?

4 MR. PENNELL: I was just wanting to possibly
5 say yes or no. I mean, I know it's hard. He's not a
6 professional witness so I'm just trying to get him to
7 that point, Your Honor. So I can ask him the question
8 again, but that's --

9 THE COURT: Why don't you restate the
10 question. Let's see if we can get an appropriate
11 response.

12 MR. PENNELL: Okay.

13 BY MR. PENNELL:

14 Q. So, Mr. Yowell, were you aware, or at least based on
15 your belief, of the terms of Jean's parole?

16 A. Yes.

17 Q. Okay. Now, just to explain why you acted certain
18 ways, I want to know what did you believe were the terms
19 of those parole -- the parole terms were?

20 A. Due to the violent nature of what Jean was charged
21 with, she had certain -- she has restricted movement.
22 She was then ordered by the Government employee that she
23 was no longer allowed in motel rooms, that she had to
24 vacate the premises due to a search -- search and
25 seizure issue that, you know, you could switch hotel

1 rooms, that she's not, you know, subject to -- she's
2 subject to search and seizure so she needed a permanent
3 residence. She chose my grandmother's house as a
4 residence.

5 Also, she's not allowed in bars or casinos. The
6 only places Jean is allowed to go -- she has restricted
7 movement. She's -- because of the nature of the crime.
8 She's allowed to go to home, work, school, church, and
9 the grocery store. Those are the only places Jean is
10 allowed to go.

11 Q. Were you aware of any other terms?

12 A. Abstain from alcohol and drugs. She had an active
13 commitment to a mental health facility. She was to seek
14 drug -- drug treatment. She was in counseling and --
15 okay, let's see. She was also to be indoors before
16 dark. She had to -- no contact with law enforcement, no
17 contact with Harvey Jim (phonetic), the victim, and
18 approve -- if you -- you had to be approved to talk to
19 her. You had to pass a background check to be near her.

20 MR. THOMPSON: I --

21 BY MR. PENNELL:

22 Q. So did you have to take a background -- did you have
23 to -- actually have to do a background check?

24 THE COURT: Mr. Thompson, what did you have?

25 MR. THOMPSON: Just for clarification, that

1 all again is just for purposes of state of mind? It's
2 not for the truth of the matter asserted.

3 THE COURT: Is that correct, Mr. Pennell?

4 MR. PENNELL: Yes, Your Honor.

5 THE COURT: Okay. Go ahead.

6 BY MR. PENNELL:

7 Q. You mentioned a background check.

8 A. Yes.

9 Q. Why did you have to do a background check?

10 A. To prove that I was a non-felon, a non-violent
11 history to -- I had no criminal background, that I was
12 who -- you know, I mean, who I -- you know, responsible
13 -- responsible citizen that she could successfully
14 parole to.

15 Q. Okay.

16 A. Her and her mother --

17 Q. But you -- just a second.

18 A. Okay.

19 Q. Did you get confirmation about the results of this
20 background check?

21 A. Yes, I was -- Jean was successfully paroled to my
22 care and supervision.

23 Q. Okay. And you received this information how?

24 A. Via text message.

25 Q. Okay.

1 A. Jean's cell phone.

2 Q. Now, were you aware of any medical issues that Jean
3 had --

4 A. Yes.

5 Q. -- around June of last year?

6 A. Yes. I -- she --

7 Q. What were those?

8 A. Well, I mean, Jean does have a confidentiality, but
9 I was -- I'm privy to that information on Jean. She's
10 diagnosed as bipolar. She has PTSD. She's
11 schizophrenic. She suffers from hallucinations. She
12 sees things. She hears things.

13 Q. Were you aware of any prescription --

14 MR. THOMPSON: And I assume this is all for
15 state of mind as well?

16 THE COURT: Mr. Pennell.

17 MR. PENNELL: Well, I could do some follow-up
18 questions.

19 MR. THOMPSON: Well --

20 BY MR. PENNELL:

21 Q. Now, how are you --

22 MR. THOMPSON: -- if it's not for state of
23 mind, then I'm going to object and say he's got no
24 knowledge of that. I want to see how he knows this
25 stuff. We've had no testimony that she's schizophrenic

1 at all. All of a sudden -- he's unqualified to give
2 that type of a diagnosis or conclusion there.

3 THE COURT: Mr. Pennell.

4 MR. PENNELL: Aside from that one, there's
5 been evidence to support all the rest, Your Honor. I
6 was going to ask Mr. Yowell how he became aware of that.
7 So that would be establishing the personal knowledge.

8 THE COURT: Anything else Mr. Thompson?

9 THE WITNESS: She --

10 THE COURT: Hold on just a second, just wait.

11 THE WITNESS: Oh, sorry.

12 THE COURT: Anything else, Mr. Thompson?

13 MR. THOMPSON: So I know we've had evidence
14 of it. I mean, we ask him and see what his knowledge is
15 and see if it's sufficient.

16 THE COURT: Okay. I'll let you lay some
17 additional foundation, Mr. Pennell.

18 MR. PENNELL: Thank you.

19 BY MR. PENNELL:

20 Q. So Darwyn, how are you aware of these medical issues
21 that you were trying to describe?

22 A. Upon being paroled from prison, you're given a
23 parole packet. Part of your parole packet is a mental
24 health evaluation. All that information was in the
25 mental health evaluation. It's why she had -- she also

1 had an active mental health commitment --

2 Q. Okay. Did you --

3 A. -- and she was to attend counseling.

4 Q. Okay, hold on.

5 A. Mental health counseling.

6 Q. Did you ever review this mental health evaluation?

7 A. Yes.

8 Q. Okay.

9 MR. THOMPSON: So then, again, it would be
10 purposes of his state of mind, not for the truth of the
11 matter asserted because that's clearly hearsay material,
12 Your Honor, he's referencing. It's not personal
13 knowledge.

14 THE COURT: Is that correct, Mr. Pennell?

15 MR. PENNELL: Well, it is establishing his
16 personal knowledge about his belief so that's what I am
17 getting at, Your Honor, yes.

18 THE COURT: But the use of this information
19 is for state of mind purposes or what?

20 MR. PENNELL: As far as the diagnoses, Your
21 Honor? Is that what we're getting at?

22 MR. THOMPSON: Yes.

23 MR. PENNELL: Yes, Your Honor, there is
24 corroborating evidence otherwise, yes.

25 THE COURT: So the Court will permit it for

1 that limited purpose, and it will be considered only for
2 that limited purpose.

3 BY MR. PENNELL:

4 Q. Now, were you aware of whether or not Jean took
5 prescription medications for any of these issues?

6 A. Yes.

7 Q. Okay. And how were you aware of that?

8 A. We have the same medical provider, and I -- she had
9 a -- eight prescription pills -- eight different types
10 of prescription bottles that she -- she has to take.

11 Q. How did you know she had eight?

12 A. Because I counted them.

13 Q. Where?

14 A. At the motel.

15 Q. Okay. And did you ever watch Jean take these
16 medications?

17 A. Every night. It was part of my job to make sure she
18 took her medication.

19 Q. Okay.

20 A. I also do the same thing for my grandmother.

21 Q. Now, were you successful in getting employment in
22 Elko like you had hoped?

23 A. We hung around long enough to be informed that I was
24 not hired for the position.

25 Q. Okay. So --

1 A. At Raley's, Raley's supermarket.

2 Q. You had spent about a month looking for work. Is
3 that accurate or not?

4 A. From Easter to June 5th.

5 Q. And that, based on what you know, that was when
6 there were a lot of COVID-19 restrictions?

7 A. The government guidelines came into effect that you
8 were to stay at home -- stay at home, mask -- wear a
9 mask, social distancing guidelines were -- guidelines,
10 the guidelines were placed into effect.

11 Q. Okay. So wouldn't you --

12 A. Oh, they were starting to relax the restriction --
13 no. No, never mind. There was rioting in the streets.
14 It was pandemonium. People --

15 Q. All right, Darwyn, just hold on. I know you're
16 nervous, but just --

17 A. Okay.

18 Q. -- don't get ahead of yourself, okay.

19 At that point in time when you weren't able to find
20 employment, what is it that you wanted to do?

21 A. I help put up the hay at my grandfather's ranch so
22 it'd be -- this is the start of hay season. Also, I
23 have a niece who graduated -- this being graduation
24 weekend, I have a niece who graduated, and we were
25 supposed to attend her graduation party.

1 Me and Jean had purchased presents. We bought her a
2 t-shirt. We bought her a graduation card. We were
3 going to put some money in there. We were going to talk
4 to her mother to see if she really needed anything for
5 school. Jean actually had a -- Jean had a lot of money.

6 Q. Okay. So where was this hay you needed to put up?

7 A. My grandfather has a hundred acres out there in Lee,
8 Nevada.

9 Q. Okay. So it was Lee?

10 A. Yes, sir.

11 Q. And where was this graduation party supposed to be?

12 A. My grandmother's house. We were -- well, it -- we
13 were just supposed to find out information. It being
14 the COVID-19, the COVID-19 graduates were -- they -- I
15 didn't know if they were going to have a graduation or
16 not. My tribe -- all I seen was -- they brought them
17 around on a float. They threw some candy. They had to
18 stay socially distanced.

19 Q. Okay. Darwyn, where was this party with your
20 understanding? Where was it going to be?

21 A. My grandmother's residence.

22 Q. And where was -- what city was that in?

23 A. Lee, Nevada.

24 Q. Okay. Now, did you have transportation back to Lee?

25 A. Understandably being Jean.

1 Q. Okay. Did you have any other way to get back to
2 Lee?

3 A. My mother has a ride and also my cousin. Ariana's
4 mother, Conita (phonetic), has a ride as well.

5 Q. So did you make any efforts to have someone else
6 take you back to Lee?

7 A. We were in constant contact. My mother was working
8 that week and actually had come into -- come in for a
9 day or two.

10 Q. So did you make any efforts to try and get a ride
11 home other than with Jean?

12 A. I told my cousin I would jump in with her just to
13 save gas money, and Jean said, you don't have to. I'll
14 give you a ride home.

15 Q. About when was that?

16 A. The beginning of June. Well, okay, they have a pot
17 shop that just opened up. It was -- I believe the Elko
18 Indian Colony has a marijuana sales store or something
19 opening up --

20 Q. Okay. All I needed was the beginning of June. It's
21 okay.

22 A. Yeah, June, June 1st.

23 Q. Now, I want to talk to you more specifically about
24 June 5th, 2020, okay. Where were you staying at that
25 time?

- 1 A. Jean had kicked me out for two days, and she had --
2 what do you call that when you get a motel room --
3 registered in a new motel room so she -- she -- I was
4 staying at my friend's house, and I told her can I --
5 you're going to give me that ride home? She picked me
6 up, took me to her hotel room. We went to sleep, and
7 then she -- we were supposed to leave the next day.
- 8 Q. Okay. So after you went to sleep, you probably woke
9 up?
- 10 A. Yeah.
- 11 Q. Okay. And were you and Jean together the whole day
12 or did you spend time apart?
- 13 A. We slept all day. We slept all day. We -- we slept
14 all day together.
- 15 Q. Okay. Did Jean ever leave for work?
- 16 A. Jean had to work with her mom at 7:00 p.m. --
- 17 Q. Okay.
- 18 A. -- 7:00 in the evening.
- 19 Q. Okay. And were you at the room by yourself?
- 20 A. I had been cooped up in the hotel for over 30 days.
21 The casinos had just relaxed their COVID-19 guidelines,
22 and I -- I asked her if I could go put a dollar in the
23 machines because it was just -- just for something to do
24 beside being -- waiting in a motel room.
- 25 Q. Okay. But did you go back to the hotel room?

1 A. Yes.

2 Q. And were you alone in the hotel room?

3 A. On the way back, yeah, I purchased one beer and was
4 sitting in the hotel room drinking a beer.

5 Q. Okay. And did Jean ever come back at some point?

6 A. Yes, Jean came back at approximately 6:15, 6:00 --
7 or 7:15, 7:30. Jean was home early.

8 Q. And what happened next?

9 A. She stated that she didn't have to work that day and
10 that she was happy that she had gotten off. She saw me
11 drinking a can of beer. She didn't say -- she didn't
12 say any word or anything. She grabbed the beer out of
13 the my hand, and she started drinking it (witness makes
14 sound). It was in a tall can like the --

15 Q. And so --

16 A. She started drinking it (witness makes sound).

17 Q. What happened after that?

18 A. I looked at Jean funny. This was her first alcohol
19 since being released from prison, so. And due to the
20 violent nature of what she was released on, I didn't
21 want to deal with any insanity type of issues so I -- I
22 asked her if she took her medication.

23 Q. And what was the effect on her as far as what
24 happened next?

25 A. She said, oh, that's a good idea, and so she got all

1 of her pills, and it was a little amount of pills like
2 that high. So, I mean, this is probably -- she has
3 eight different types of medication. She had started
4 some new medication that week. She had took a big 'ol
5 -- a big 'ol mountain of pills like that and drank the
6 rest of the beer.

7 Q. Okay. And I believe you said that the intention of
8 you and Jean was this -- from the day before, the next
9 day was to go back to Lee?

10 A. Yes.

11 Q. Okay. So what happened next? Did you go to Lee, or
12 did something else happen?

13 A. Jean stated she wanted to get high off of
14 methamphetamine.

15 Q. Okay. So what happened after that?

16 A. Jean tried to purchase methamphetamine.

17 Q. Whereabouts were that? You don't have to --

18 A. The Indian Colony up top.

19 Q. Okay. So did you leave the hotel room?

20 A. Yes. Yeah, we went up top. She tried to purchase
21 methamphetamine.

22 Q. Okay. What were you doing when that was happening?

23 A. We were told to wait 45 minutes and come back.

24 Q. Okay. Why did you agree to go up there with her?

25 A. Because I just thought, you know -- well, we were

1 going to go home the next day anyway. She had done such
2 a great job being on parole or whatever, I figured give
3 her a little bit of freedom. She'd been incarcerated
4 for a really long time. She was taking UA's, and she
5 was doing everything she was supposed to be doing. I
6 actually respected her judgment at that point.

7 Q. So you were told to come back?

8 A. Yes.

9 Q. Okay. So what -- did you leave? What did you do
10 next?

11 A. I showed her where my children lived, and I'm like
12 look, getting high, this isn't going to work out. My
13 live's headed in a new direction. I'm trying to get my
14 children back. You can get high or whatever, but this
15 -- the main direction we're going in is getting my
16 children back. We never made it back up there.

17 Q. This conversation about the children, how -- how
18 soon in time was that to when the violence started?

19 A. It was during the 45-minute wait. We were told to
20 wait 45 minutes.

21 Q. But how long -- how much time, if you can give an
22 estimate, between this conversation about your children
23 and when the violence occurred?

24 A. Within 15 minutes.

25 Q. Okay. So who's driving the car at this point in

1 time?

2 A. Jean Ortega.

3 Q. And do you recall where she went?

4 A. She had made a loop around -- she had made a loop
5 around the lower Colony and was headed back up towards
6 the top Colony.

7 Q. And what were you doing at this time?

8 A. Watching a Mariah Carey video.

9 Q. Do you know approximately where you were in the City
10 of Elko at that point?

11 A. Crossing 5th Street right in front of Shears, right
12 in front of the lower Colony. We were crossing
13 5th Street. I looked up. I noticed no vehicles around.
14 Went back to watching the video.

15 Q. And what happened next?

16 A. Jean struck me in my face as hard as she could.

17 Q. Do you have any -- was there anything at all that
18 prompted that in your mind?

19 A. No.

20 Q. What happened after that?

21 A. I flailed. I -- it knocked the cell phone from --
22 the cell phone from my hands, and I threw counterpunch.

23 Q. Okay. What happened after that?

24 A. Jean pulled over.

25 Q. And what happened after that?

1 A. Jean continued to assault me.

2 Q. How so?

3 A. Barrages of punches.

4 Q. And you were sitting where?

5 A. The passenger seat.

6 Q. And was this a pretty stressful event for you?

7 A. Yes, she hit me 30 to 50 times.

8 Q. Okay. Did you yell anything at Jean?

9 A. Please stop hitting me, stop hitting me. Don't hit
10 me no more. The whole time she was hitting me like
11 this, I was tucked and covered like this. She would
12 flail and keep hitting me, keep hitting me, keep hitting
13 me. She would get winded (witness makes sound), and she
14 -- she went at it again until she got winded again
15 (witness makes sound), and she -- she became angry. She
16 couldn't connect with my face due to my stance like
17 this. She started raking my face. She struck me in the
18 throat and in the genitals, and she continued to hit me
19 30 to 50 times.

20 After being hit 30 to 50 times, I started to black
21 out. I was actually starting to lose consciousness from
22 being hit so many times. I actually was starting to
23 black out. My vision was starting to go dim, dim, dim,
24 dim, and as I was saying that --

25 Q. Darwyn, let me just ask you a follow-up question.

1 Did you do anything to try and stop Jean at that point?

2 A. Yes. At that point, I grabbed her arms and I said,
3 what the -- you need to -- you need to stop hitting me.
4 Stop hitting me. I -- I grabbed her like this and --
5 like this with one arm, my left arm. I said stop
6 hitting me --

7 Q. And what --

8 A. -- or else, you know, I'm going to start hitting
9 you.

10 Q. What happened next?

11 A. She bit my arm.

12 Q. Can you describe that in more detail?

13 A. She took a bite -- a big chunk of my arm like this
14 and clamped down like a -- a Pit Bull style of attack.
15 She clamped and locked onto my arm.

16 Q. What arm was that?

17 A. The left arm.

18 Q. What was going through your mind when that was
19 happening?

20 A. Jean, please quit biting me. Stop biting me. Quit
21 biting me. I'm going to hit you. I flexed like this.
22 I flexed like that. Her teeth came a little bit off and
23 were starting to loosen up. I tried to pry her face off
24 of my arm like that, tried to pry her face off of my
25 arm, and I said, will you please quit biting me. And I

1 could start to feel her K-9 sink into my -- sink into
2 bicep, and I was -- I could feel my flesh ripping,
3 ripping open like a zombie movie, like -- like a zombie
4 move is the only way I can explain it.

5 Q. So what happened at that point?

6 A. I asked her if she would quit -- quit biting me, and
7 she started -- I don't know if she was shaking her head
8 no, like no, I won't quit biting you, or she was just
9 trying to rip the flesh from my arm.

10 Q. What was she doing?

11 A. Like a Pit Bull, shaking on my arm like that trying
12 to rip a piece of flesh loose.

13 Q. And so what did you do at that point?

14 A. I struck Jean.

15 Q. And in that moment, were you scared?

16 A. Yes, terrified.

17 Q. And were you thinking clearly?

18 A. No. No, it -- you can't -- like it just kicked in.

19 Q. And so was it kind of like instinct?

20 A. Yes.

21 Q. Okay. And what happened after you hit her?

22 A. I thought she would pop loose. I said, I'm going to
23 hit you. I'm going to hit you. You better let go, or
24 I'm going to hit you, and bang, I hit her like that. I
25 thought she would pop loose, but Jean had bit too hard.

1 And everybody -- I mean, you guys are the jury. I'm
2 going to talk to you like you guys are, you know, my
3 peers. I thought one punch like that would pop it
4 loose, but it didn't.

5 I had -- everybody thinks you get a full strike in.
6 You can only get half or maybe even -- due to where she
7 was positioned at, I could only get strikes in like
8 this, basically, just like this. And I had to hit her
9 7 to 12 times before she finally popped loose. She
10 finally popped loose after --

11 Q. Okay.

12 A. She finally popped loose after 7, 12 strikes.

13 Q. And --

14 A. I didn't count. I --

15 Q. Okay.

16 A. -- had to get her off of me.

17 THE COURT: Wait until he asks you a
18 question.

19 BY MR. PENNELL:

20 Q. So did Jean eventually let go with her teeth?

21 A. Eventually, my skin pinched to -- to a point to
22 where she had -- I have approximately eight -- she had
23 the full -- the full -- four of her top -- her front
24 teeth, the incisors, and then the four bottom teeth.
25 Jean has a distinct crooked bottom little tooth right

1 there. She's got a little twist in it, and it's forever
2 scarred on my arm right here.

3 Q. So going back, did Jean eventually let go of her
4 bite?

5 A. Yes. Yes --

6 Q. Okay.

7 A. -- she eventually -- she eventually, she popped
8 loose.

9 Q. Okay. Did you look at your arm at that point?

10 A. Just the little once-over, like ahhhhh, you know. I
11 didn't -- and, you know, you just -- if you're hit, you
12 don't even care. You're just like ahhhhh, and then I --
13 I was -- I became -- you know, I was angry. I was
14 angry.

15 Q. Well, what happened after she let go?

16 A. Jean was struck blind. Her eye socket -- or eye
17 orbital socket started to swell. She could not see.
18 She could not see. From this point up, she was starting
19 to swell from right here in her face.

20 THE COURT: From her upper lip upwards?

21 THE WITNESS: Yes, Your Honor.

22 BY MR. PENNELL:

23 Q. Now, what happened after you saw that, the
24 interaction with you two?

25 A. I asked her if she wanted to contact law

1 enforcement.

2 Q. And what happened next?

3 A. Jean instructed she didn't want to contact law
4 enforcement. She stated I'm on parole. I don't want to
5 -- I don't want the cops here. You're going to have to
6 drive. You're going to have to get me out of here.

7 Q. And so what did the two of you do?

8 A. I agreed -- I agreed with -- I agreed with Jean. I
9 said, well, you're going do have to let me in, you know,
10 in the driver's seat. She says, okay. So she says,
11 well, you're going to have to, you know, get -- we
12 switched vehicles. She said we switched like this, but
13 I was angry with Jean.

14 THE COURT: Well, hold on. You said you
15 switched vehicles?

16 THE WITNESS: No, we switched -- she wanted
17 to switch positions from passenger -- she said we
18 switched like this inside of the car, but what actually
19 happened, Jean exited -- exited the driver's side and
20 used the car for a crutch and left a bloody palm print
21 on the trunk because I wouldn't help her. I would not
22 help her. I was angry with Jean. And she was like,
23 you're not going to help me? And I said no, I don't
24 want to help you. I'm mad at you.

25 So I jumped in the driver's seat. She worked

1 her way around the car and then -- the door was locked.
2 The door was locked. The door was locked. She said,
3 let me in. I said, okay, I got to find the -- I was
4 frazzled. And she has the number. She controls all the
5 stuff, and so she has a lock thing. One of them locks
6 the front doors. So she got in that way. She let
7 herself in the vehicle, and she said, okay, time to
8 drive. Get -- she's like, drive.

9 I was like, well, I'm only -- I'll take you
10 to jail or I'm going home. I don't want to go to your
11 motel room. You're not allowed in motel rooms. You
12 know, I'll take you to jail. Do you want to go to jail,
13 or do you want to go home? She said -- she didn't say
14 anything. She was angry. She was angry.

15 BY MR. PENNELL:

16 Q. Okay. So give me just a second, Darwyn. I'm not
17 trying to pick on you. I know your nervous, but just
18 try and keep your questions [sic] to what I'm asking
19 you, okay.

20 A. Okay.

21 Q. All right. And so you only -- did you mean -- let
22 me make sure I have it right. You were -- agreed to
23 drive but only if it was to go to Lee?

24 A. Yes. Yes, I don't have a driver's license. I don't
25 drive. That's one thing about me is I don't drive. Let

1 me see, oh, she's not allowed in her motel rooms, and me
2 being in town for as long as I was, my niece
3 graduating --

4 Q. Okay. So did you, in fact, drive the car?

5 A. Yeah. Well, not until we agreed on a destination.
6 She said, fine, get me -- pardon my French -- get me the
7 F word out of here --

8 Q. Okay. And so what did --

9 A. -- drive.

10 Q. Did you, in fact, start driving?

11 A. Yes.

12 Q. Okay.

13 A. She implied consent, drive to Lee. I made her say
14 it too. I said, well, do you want to drive to Lee? She
15 shook her head, yes. And I said, well, would you please
16 say, drive to Lee. She said, yes, drive to Lee. I want
17 to go home.

18 Q. And where did you drive from there?

19 A. Mountain City Highway. Mountain City Highway. I
20 ended up on Mountain City Highway and to right there in
21 front of the jail -- is that that -- yeah, Mountain City
22 Highway right in front of the jail. Jean had a motel
23 room at the American Inn one block away, but due to
24 Jean's parole and her conduct, I -- and then the jail
25 being right there, I said, you know, no more motel rooms

1 for you. You've had enough.

2 Q. Okay. So Darwyn, you were driving in that area?

3 A. Yes. She attacked me again at that point.

4 Q. Where was that?

5 A. Right there at the Mountain City Highway, Mountain
6 City Highway and Idaho Street, Idaho Street.

7 Q. So were you moving or were you sitting at an
8 intersection?

9 A. We were at a -- we were at a stoplight.

10 Q. So the car was stopped?

11 A. Yeah.

12 Q. And did Jean try and get out at that point?

13 A. No. No, she started striking me.

14 Q. Did you at any point in time lock the car doors?

15 A. No. No, she has -- she can operate all of that
16 stuff from over there as well. She's got a -- she could
17 unlock the door and get out.

18 Q. So what did you do in response to her hitting you at
19 this intersection?

20 A. Just put up with it until the light turned green.

21 Q. Okay. And what did you do after that?

22 A. Drove straight to the Elko County Jail.

23 Q. Did you drive into the parking lot?

24 A. No. No, I braked at the jail, and I said, well,
25 we're here at the jail. And then she said, all right,

1 I'll calm down. Go to Lee, just go. Go to Lee. Go.
2 Go to Lee. She did not want to be questioned,
3 interviewed or -- she didn't want the authorities
4 involved, and that was -- and then I had hit the brakes,
5 and the vehicle behind me went (witness makes sound)
6 like that, and so I -- I kept going after -- she started
7 to calm down.

8 Q. So explain to the jury why you didn't just stop at
9 the jail right there considering what was happening?

10 A. I love Jean. I've known her for a number of years.
11 I -- she was -- she just was barely paroled that week to
12 me. I thought it was my duty to help her because I love
13 her.

14 Q. Did you start driving again?

15 A. Yes, I hooked a right at the Errecart Bridge and
16 popped out, I believe, it's 12 street, and hit all the
17 way to -- no, no, it's the one right by Roy's and around
18 like that to Lamoille. Is it --

19 Q. Were you driving towards the --

20 A. The Summit, towards the Summit.

21 Q. Okay. That's what I was getting at. You were
22 driving towards the Summit?

23 A. Yes.

24 Q. Okay. So did you drive over the Summit?

25 A. Yes. I drive like an old man. That's what people

1 say about me. I drive super slow.

2 Q. So --

3 A. And so I was driving slow all the way over the
4 Summit making sure that I -- that I drove safely and was
5 obeying all traffic regulations. I was -- I had my
6 seatbelt on. Jean did not have a seatbelt on.

7 Q. Okay. Darwyn, it's okay. You're nervous, but let's
8 just stick to the question, okay. So you're going over
9 the Summit.

10 A. Yes.

11 Q. What route were you taking from there?

12 A. A right at Khoury's intersection.

13 Q. Okay. What happened at that point?

14 A. Jean had calmed down. She had calmed down all the
15 way to the light. She said, could you speed up? Could
16 you go 65? You're only going 40 miles an hour. She
17 knew how fast I was going. She said, could you speed up
18 and go 65. My face hurts, you know. I want first aid.
19 I want first aid. So I was going to go get her some
20 first aid. And so she, could you please speed up. And
21 I was like, okay. I understand. You're hurt. So I
22 went the, you know -- so I sped up to 65 miles an hour.

23 Q. Okay. What direction were you going?

24 A. Towards Lee/Jiggs.

25 Q. Okay. And what happened next?

1 A. While going 65 miles an hour, I was intently gazing
2 on the road. Jean, again, struck me in the face as hard
3 as she could.

4 Q. And what happened?

5 A. I swerved and almost wrecked. I recovered and took
6 a deep breath, looked at Jean, and hit her.

7 Q. Okay. Now, what happened next as far as the two of
8 you driving towards Lee?

9 A. Jean attacked me three or four more times. I just
10 put up with it. She -- she wasn't really causing any
11 more damage. She was complaining. She started talking.
12 She became hysterical. She stated that she was going to
13 have -- she was going to kill me. She was going to have
14 her brother Mikey kill me. She was going to have her
15 brother Jay kill me. She was going to have gang members
16 kill me. She was going to kill me herself. She was
17 going to kill herself.

18 Q. And then so where approximately was all that
19 happening?

20 A. In the passenger seat on the way towards Lee.

21 Q. Okay. So being more specific, about where on the
22 road was this if you can tell me.

23 A. I'm not too sure. It was dark out. It was dark
24 out.

25 Q. Okay.

1 A. I --

2 Q. Well, when you talked about almost wrecking, was
3 this, or was it not, the accident you were referring to
4 when you spoke to the Greens?

5 A. No. No. I -- I just blamed it on Jean's mental.
6 She had started new medication two days prior before
7 that.

8 Q. Okay. So you kept driving?

9 A. Yeah.

10 Q. Okay. And what's the next significant thing that
11 happened?

12 A. She stated she wanted a cigarette, that she would
13 calm down.

14 Q. And so what happened at that point?

15 A. I thought it would be a good idea if we both calmed
16 down and both smoked a cigarette.

17 Q. So did Jean go to get cigarettes, or did she pull
18 one out of her pocket?

19 A. Had he had a carton -- a carton of cigarettes in her
20 trunk, a carton of Newports.

21 Q. Okay. Could you explain to me why there was blood
22 in the back seat?

23 A. She became hysterical again and stated that she was
24 looking for a tire iron. She was going to bash my head
25 in with it, and she started digging around, and she --

1 it'd been -- we had been stopped for maybe five, five
2 minutes, ten minutes, fifteen minutes. I'm not too
3 sure. My adrenalin was kicking.

4 Q. And what's the next significant thing that happened?

5 A. She said, I can't find the cigarettes. We were
6 yelling at each other. We were arguing, and I was
7 telling her to get back up front. Who cares, you know.
8 We'll just wait until, you know, we get back home, and
9 she said, fine. So she jumped back in the front seat.

10 Q. And what happened after that?

11 A. She grabbed the keys from the ignition and bailed
12 down Highway S-228. It's 228.

13 Q. And so what did you do --

14 A. She ran back down the highway.

15 Q. What did you do in response to that?

16 A. She ran, and there was a car coming. There was a
17 car coming. She -- I believe she probably heard the car
18 coming. So there was a car coming. She ran and flopped
19 right down in the middle of the highway. I said, oh,
20 crap, you know, they're going -- some people drive
21 pretty fast on that road. Those who know that road, who
22 lived out there, some people drive fast. Some people
23 drive slow. We're a rural community.

24 So she -- she flopped down in the middle of the
25 highway, but there was road kill on this highway all the

1 time, rabbits, coyotes, deer --

2 Q. Okay.

3 A. -- even deer.

4 Q. So --

5 A. I was afraid she was going to get --

6 THE COURT: Hold on. Hold on, let him ask
7 you a question.

8 THE WITNESS: Okay, sorry.

9 BY MR. PENNELL:

10 Q. Darwyn, did you eventually go back to the car?

11 A. I was afraid she was going to be struck so I exited
12 the vehicle and started flagging down the vehicle with
13 my arms like this. I was at the driver -- the driver
14 door approaching the -- down the lane, approaching her
15 so she would not get hit. She was on -- more to the
16 median of the passenger towards the passenger front
17 light maybe so I was worried -- and it was a big truck,
18 I think, or something, and it was coming towards us. I
19 was afraid she was going to get hit so I started
20 flagging my arms down like that and like, whoa, whoa,
21 whoa, whoa, whoa. And -- so she wouldn't get hit.

22 Q. Okay. Did you -- this car stop or --

23 A. Yeah, the vehicle stopped.

24 Q. Did you speak to the people in --

25 A. Yes. Yes.

1 Q. And what did you do after that?

2 A. I informed the gentleman that we had an accident.

3 Q. And then what did you do after that?

4 A. Was -- was -- Jean recovered. Jean stood up, and
5 she fell over, and so she got back up, and she's like,
6 help me, help me, help me. He's beating me or
7 something, and he even made me drink beer.

8 Q. So what was going through your mind at that point?

9 A. That Jean was going to try and lie her way out of a
10 parole violation and that I was going to be
11 incarcerated.

12 Q. So what did you do?

13 A. I turned around. I turned around and turned --
14 walked back towards the vehicle. I hit the hazards. I
15 believe I either hit the hazards or I hit the -- I
16 believe I hit the hazards or I hit the brake light or I
17 -- I tried to, you know, hit kind of a woopy light. I
18 tried to illuminate the scene a little bit and grabbed
19 her purse. My wallet was inside. And then walked home.
20 Jean had been financially -- physically irresponsible.
21 She came into --

22 Q. Okay --

23 A. -- \$10,000.

24 Q. -- hold on --

25 A. Okay.

1 Q. -- just a second, okay. So do you own a shotgun,
2 Darwyn?

3 A. No.

4 Q. And remind me, is it your grandma's property or your
5 grandfather's property --

6 A. Yes.

7 Q. -- where the travel trailer was?

8 A. My grandmother's property.

9 Q. Is there a shotgun at your grandmother's property?

10 A. No. My brother is -- no, my brother wasn't home at
11 that point in time. No, there were no firearms on the
12 premises.

13 Q. Okay. One thing I assume the jury is wondering is
14 why -- why did you stay in this car with Jean this whole
15 time if she was attacking you?

16 A. Because I care about Jean and love her very much. I
17 didn't want to see her go back to prison.

18 MR. PENNELL: I don't have any further
19 questions, Your Honor.

20 THE COURT: Cross-examination, Mr. Thompson.

21 CROSS-EXAMINATION

22 BY MR. THOMPSON:

23 Q. There's a lot to unpack there, Mr. Yowell. I'm
24 wondering why you didn't tell this to Sergeant Williams
25 when you had the chance on two occasions?

1 A. He never asked.

2 Q. He asked you what happened, didn't he?

3 A. Yeah. Yes. Oh, I was -- there's respect to her
4 privacy and, you know, like I just considered it a
5 mental freak out.

6 Q. So you didn't tell him about the drugs or the
7 methamphetamine or all that stuff --

8 A. No, I didn't want to see --

9 Q. -- out of respecting her privacy?

10 A. I didn't want to see Jean violated on parole.

11 Q. This is all because you didn't want to see her
12 violated on parole?

13 A. Yes.

14 Q. Even though you were really mad at her after she --

15 A. Yeah.

16 Q. -- bit you?

17 A. Yes, I was mad at her, but I don't want to see her
18 locked up.

19 Q. So you talked to Deputy Williams, or it was Deputy
20 Williams at the time, the very next day, right?

21 A. Yes.

22 Q. And then you talked to him a week later?

23 A. Yes.

24 Q. And then you talked to Nick Stake at the car?

25 A. Yes, nine months later or something like that.

1 Q. Yeah, nine months later or eight months later,
2 somewhere in there.

3 A. Yeah.

4 Q. It was in January, right?

5 A. Yes.

6 Q. Okay. Your phone was not found in the car?

7 A. Okay.

8 Q. When you went there with Detective Stake, there was
9 no phone in the car, right?

10 A. Yeah. I -- it had -- Jean must have grabbed it.

11 Q. But there was no phone in the car when you went
12 there with Detective Stake?

13 A. Yeah, Jean must have grabbed it.

14 Q. That's what you expect?

15 A. I -- either the cops grabbed it or Jean grabbed it.

16 Q. And then you talked to Deputy Holladay again just
17 about a month ago, right?

18 A. Yes.

19 Q. And yet, a lot of this stuff you've told us today,
20 you didn't tell any of those guys.

21 A. Yes, I -- I -- you know, it -- it's -- it feels --
22 it feels good getting it off my chest. You know,
23 filling out the -- filling out the forms, you can only
24 fill out so much. There's little nuances and stuff like
25 that. I -- and I don't even know, you know, what I

1 mean. This is new to me. I've never been in nothing
2 like this.

3 Q. But Sergeant Williams didn't have you fill out any
4 forms, though?

5 A. I filled out two forms for Sergeant Williams, I
6 believe -- or no, no, no, only one form and then he just
7 conducted an interview.

8 Q. Isn't the only form you filled out was for Deputy
9 Bear when he took the pictures of you when you were
10 booked?

11 A. I filled out three -- three forms. It's all logged
12 into evidence.

13 Q. Okay. Let's have a look at those. Showing
14 Exhibit 62 and 63, do you recognize those?

15 A. Yes.

16 Q. That's your handwriting?

17 A. Yes.

18 Q. All right. If you notice at the bottom of it, I
19 believe it's -- remember that back there, excuse me --
20 62, who's the deputy who signed that there at the
21 bottom?

22 A. Deputy Bear.

23 Q. Okay. So that was Deputy Bear?

24 A. Yeah. Yes.

25 Q. All right. Is there another one?

1 A. Deputy Williams.

2 Q. Which exhibit is that?

3 A. Oh, I'm not too sure. I'm sorry, I'm not too sure.

4 They signed it at the bottom, you know.

5 Q. You think there's another one out there?

6 A. I don't know all the cops' names. I've barely

7 spoken to the guards.

8 Q. Do you remember talking to Sergeant Williams this

9 morning, and did we discuss any paper that you had

10 filled out for him?

11 A. Yes.

12 Q. We did?

13 A. Yes.

14 Q. That we filled out -- or that you filled out for

15 him?

16 A. All I know is I've done two interviews with Calvern.

17 Q. Okay. Now, so you cared for Jean, right?

18 A. Yes, she was under my care and supervision. She was

19 successfully paroled to me and my house.

20 Q. Like you were the somewhat quasi parole officer for

21 her or what?

22 A. No, that was -- just under my care and supervision

23 as her husband.

24 Q. So you're married?

25 A. Yes -- well, that's what she told the parole

1 officer. We had got a Justice of the Peace marriage.

2 I'm not too sure. Jean's bipolar. She's --

3 Q. Well, hang on --

4 THE COURT: Hold on --

5 MR. THOMPSON: -- I didn't ask about what
6 Jean's mental health was.

7 THE COURT: -- wait for the question, okay.

8 THE WITNESS: Okay.

9 BY MR. THOMPSON:

10 Q. Are you married?

11 A. According to the Justice of the Peace, yes, we are.

12 Q. Which Justice of the Peace did you go to?

13 A. The one here in Elko.

14 Q. Who was it?

15 A. Kacin, I believe.

16 Q. Okay.

17 A. Maybe Molly Leddie. I'm not too sure. It was
18 March 9th.

19 Q. Of what year?

20 A. 2016 or something.

21 Q. Okay. So you actually are married to Jean?

22 A. Yes. Yes, believe it or not, yes.

23 Q. All right. And so you were willing to be in charge
24 of her and take care of her?

25 A. Yes.

1 Q. And yet you brought a beer back to the hotel knowing
2 she can't have beer?

3 A. Yes.

4 Q. Didn't you think that that would be a temptation for
5 her if you brought a beer back?

6 A. I didn't -- I thought I would have it killed by the
7 hour she would be back. I thought she was going to be
8 gone for one hour so I -- I was trying to tie one on.

9 Q. You were just trying to chug it real quick?

10 A. Yeah. Yeah.

11 Q. I see. And so how much of it did you drink?

12 A. Barely that much.

13 Q. Barely anything?

14 A. About three sips, yes.

15 Q. And it was just a single beer?

16 A. Single malt beverage, yeah, a tall can.

17 Q. A what?

18 A. A single malt beverage, tall can. I think it's
19 24 ounces.

20 Q. Twenty-four ounces, okay. And so you drank eight
21 ounces of it?

22 A. I would say maybe six ounces.

23 Q. Six ounces, okay. And then you're saying she just
24 came in and took it and just started chugging it?

25 A. Yes.

1 Q. Did she say anything before that?

2 A. No, not one word.

3 Q. And you let her have it?

4 A. She grabbed it out of my hand.

5 Q. You didn't try and keep it from her and say, hey --

6 A. No.

7 Q. -- I care about you? I love you. You're not
8 allowed to have this?

9 A. No.

10 Q. Why not?

11 A. Her demeanor.

12 Q. I thought you said she was happy when she came home?

13 A. She had it to her lips and was chugging before she
14 even -- I even had a chance to say anything.

15 Q. It was that fast of her taking the beer and chugging
16 it?

17 A. Yeah.

18 Q. Okay. You didn't try and stop her while she was
19 chugging it?

20 A. What was I to do, strike her? You know, I -- she
21 had it to her lips and was fully chugging. I thought
22 she --

23 Q. And she --

24 A. She didn't stop. She actually took a healthy chug.
25 It was her first drink since being out of prison.

1 Q. Did you laugh at it?

2 A. No. No, I didn't laugh. I became -- okay, then I
3 became concerned. I said, did you -- I didn't want to
4 deal with any kind of mental episode. I asked her if
5 she wanted to take -- if she took her pills that day.
6 Her pills normally put her to sleep.

7 Q. Hang on, hang on, hang on, hang on. So you didn't
8 want her to have a mental episode --

9 A. No.

10 Q. -- but you still let her drink the beer?

11 A. No, no mental episode. She takes a handful of pills
12 and goes to sleep every night. So I asked her --
13 because I thought she was just going to drink a beer and
14 take her pills and go to sleep.

15 Q. So most medications, you're not supposed to drink
16 alcohol with them, right?

17 A. Yes.

18 Q. You know that.

19 A. Yes.

20 Q. You knew that --

21 A. Yes.

22 Q. -- because you care for her. Why did you let her
23 take the medications?

24 A. Because due to Jean's psychosis.

25 Q. Why did you even bring up the medications?

1 A. Because I -- it just force of -- I did not want to
2 deal with any of this crazy shit, pardon my language. I
3 didn't want to deal with any of her mental -- a mental
4 episode so I told her make sure you take your pills,
5 pardon my French.

6 Q. And she drank those with the beer?

7 A. Yes.

8 Q. And you had no problem with that?

9 A. I thought she was going to go to sleep.

10 Q. Didn't you say that you were like, hey, have some
11 freedom? Because then after that, she wanted meth,
12 right?

13 A. Yeah.

14 Q. So you were happy to see her have some freedom.

15 A. We were -- our time in town was wrapping up. She
16 had done, what I assumed, a well job. So I decided --
17 she seemed like she knew what she was doing. There was
18 no stopping Jean. Jean had \$10,000. She wasn't
19 listening to anything I had to say.

20 Q. So you weren't really caring for her then is what
21 you're saying?

22 A. She became in control of her own actions. I can't
23 -- what am I going to say, you know? If I -- I could
24 throw her under the bus right there and then, but she
25 had \$10,000. She became pompous.

1 Q. She became pompous when she had the beer --

2 A. Yes.

3 Q. -- and her meds?

4 A. Yes. She had more money than she knew what to do
5 with. She quit listening to me. She had quit.

6 Q. Did that make you mad that she had more money than
7 you did?

8 A. No.

9 Q. What was the job for Raley's that you didn't get?

10 A. You know what, I am not sure, just regular employee
11 at Raley's.

12 Q. Like a sales clerk or a stocker or what?

13 A. I believe stocker.

14 Q. Yeah.

15 A. They asked me if I knew how to run a forklift. I
16 do.

17 Q. You weren't frustrated with not being able to get a
18 job?

19 A. No.

20 Q. You weren't frustrated with her because she had all
21 this money?

22 A. No. She had mentioned purchasing some birthday
23 gifts for my children and giving my grandma a little bit
24 of money for putting the trailer on the place. She was
25 going -- because it was time for Jean to stop being

1 selfish and, you know, break a little bit of bread.

2 Q. Help you out?

3 A. Help my grandmother out, help my children out.

4 Q. So --

5 A. I'm fine. I'm happy.

6 Q. -- was the argument over money that she kicked you

7 out then?

8 A. No. No.

9 Q. Before you went to -- was it Rick's house you went

10 to?

11 A. Yeah.

12 Q. So what was the argument over when she kicked you

13 out?

14 A. Her just going -- oh, her mother had called her.

15 Her mother called her, and Jean became upset.

16 Q. At you?

17 A. No.

18 Q. Then why did she kick you out?

19 A. Because I pried and asked her about why her mother

20 called her. Her mother had called her stating you

21 better be careful Jean, pardon my French here, but

22 niggers are on their way. This is when the black people

23 were rioting.

24 Q. And that's why she kicked you out?

25 A. Jean was uncomfortable stating that her mom was

1 racist.

2 Q. And that's why she kicked you out?

3 A. Yes.

4 Q. What does that have to do with you?

5 A. Jean doesn't handle stress very well.

6 Q. And so you caused her stress, therefore, she kicked
7 you out?

8 A. No. No.

9 Q. I'm just not following why she kicked you out.

10 A. She became -- she became embarrassed that her mother
11 was racist, and she didn't want -- she didn't want to
12 deal with it so she threatened divorce.

13 Q. Oh. Oh, she --

14 A. And so I --

15 Q. She had threatened you with divorce papers because
16 of her mother?

17 A. Yes. This is Jean's regular nature. She overreacts
18 to everything.

19 Q. Okay. And --

20 A. She's bipolar, schizophrenic.

21 Q. We've got that.

22 A. Okay.

23 Q. Appreciate you volunteering that about every ten
24 seconds. If you would just answer my questions that
25 would be better, though.

1 So the way it ended is she said I want a divorce,
2 and she kicked you out, and you went over to Rick's
3 place?

4 A. Yeah. I had no other place to go. I had no money.

5 Q. Where is Rick's place at?

6 A. In the -- in the top Colony.

7 Q. Did you have to walk there?

8 A. Yeah.

9 Q. The top colony. That would be --

10 A. The upper Colony.

11 Q. From the American Inn, that's a good jaunt then?

12 A. It's from the Elko Motel.

13 Q. A couple miles, three miles?

14 A. Jean had switched hotels. Jean is not allowed in
15 hotels.

16 Q. Okay. My question was: How far is where Rick's
17 house to where the hotel was?

18 A. About a mile or two from the Elko Motel.

19 Q. And you just walked there?

20 A. Yeah. I used to be a soldier. I could hoof it.

21 Q. And how were you two communicating to get back
22 together again?

23 A. I asked her for a ride home.

24 Q. Home being what?

25 A. Lee, Nevada.

1 Q. And when did you ask her that?

2 A. June 4th or -- June 4th.

3 Q. So you asked her for a ride home?

4 A. Yes.

5 Q. This wasn't a plan to go back to the graduation
6 party?

7 A. No, I had stated I want to go home. I don't care
8 what -- you know, I really don't care what you do just
9 drop me off home. We got a graduation gift. You don't
10 have to be there. Just dump me off.

11 Q. But it wasn't for the graduation party?

12 A. Jean at this time has started to rebel. She quit
13 listening to me and she --

14 Q. My question, sir, was --

15 A. I know.

16 Q. -- when you asked for the ride home, it was not for
17 the graduation party. You just wanted --

18 A. Yeah.

19 Q. -- to get home?

20 A. Yeah. No. No, I was trying to get home to see my
21 niece's graduation.

22 Q. Oh, it is for the graduation party?

23 A. Yes, sir. It was graduation weekend.

24 Q. But I thought that Jean was going to go to that with
25 you?

1 A. Jean is -- Jean had become 51/50. She's bipolar.
2 She hit me at this point.

3 Q. 51/50, please define that term.

4 A. Section 8, mental. She's --

5 Q. 51/50, Section 8 what? What is that?

6 A. Jean is mentally handicapped.

7 Q. According to you?

8 A. According to her psychiatrist and her psychologist.

9 Q. And you know all this because?

10 A. I've seen her mental health evaluations.

11 Q. You read all of her stuff?

12 A. Yes, I'm privy to that information.

13 Q. Because you're taking care of her?

14 A. Yes.

15 Q. So you had talked to her on the 4th --

16 A. Yes.

17 Q. -- about going home?

18 A. Yes.

19 Q. And you're at Rick's house?

20 A. Yes.

21 Q. And you're sure that it wasn't the 5th that you went
22 and -- that she went and picked you up from Rick's
23 house?

24 A. No, we went to sleep. She'd gotten a new room. We
25 just went to bed. She said I'll take you in the

1 morning.

2 Q. So --

3 A. We overslept.

4 Q. Hang on. So the 4th she came up to Rick's house and
5 picked you up?

6 A. Yes.

7 Q. In the car?

8 A. Yes.

9 Q. No issues?

10 A. No issues.

11 Q. No more talk of divorce or anything like that?

12 A. No more talk of divorce, no.

13 Q. You go back to the American Inn now?

14 A. The American Inn, yes, room number 1.

15 Q. Room number 1?

16 A. Yes.

17 Q. Is the night of the 4th?

18 A. Yes.

19 Q. When did you guys move to room 28?

20 A. She was in room 28 two or three weeks prior. She's
21 confused on the room number.

22 Q. So the police officers are confused on the room
23 number too?

24 A. No, she stated room 28 after she was, you know --
25 she had stayed in that room before, but she had reserved

1 a room under room 1.

2 Q. That wasn't her stuff in the room that we saw in the
3 pictures?

4 A. Yeah, that's room number 1. Room 28 is further
5 down.

6 Q. Oh, so the pictures that we saw of the American Inn
7 from Detective Stake, those are room number 1?

8 A. Yeah, that's room number 1, sir.

9 Q. I see, okay. And so you spent the night in room
10 number 1 --

11 A. Yes.

12 Q. -- no issues?

13 A. No issues. Oh, well, she bit my penis.

14 Q. On the 4th?

15 A. Yes -- no, on the morning of the 5th.

16 Q. The morning of the 5th?

17 A. Yes, she bit my penis.

18 Q. And she was angry at you and bit your penis?

19 A. I don't know. I just chop it up to -- it left a
20 scar.

21 Q. What was going on that she bit your penis? What
22 happened?

23 A. Oral sex.

24 Q. And she didn't want to have oral sex?

25 A. I don't know. I guess that since she had just

1 gotten out of prison, maybe she was doing it wrong or
2 something.

3 Q. She was doing it wrong?

4 A. She bit my penis, yeah.

5 Q. It wasn't you doing it wrong?

6 A. No.

7 Q. So that was in the morning of the 5th?

8 A. Yeah.

9 Q. And she wasn't up -- well, okay, so that's the
10 morning. And then she didn't have to go to work until
11 7:00 you said.

12 A. Yeah, we slept all day.

13 Q. You slept all day?

14 A. Yeah, all day.

15 Q. Why? Why so tired?

16 A. She takes medication. She's always tired.

17 Q. Well, what about you, though? You're not working so
18 you're not tired from work?

19 A. After two days of being, you know, just drove and
20 just driving and wondering what the heck I'm going to
21 do, it upset -- it upsets your biorhythm when you don't
22 know what to do or you don't have nowhere to stay and
23 you're inconveniencing friends.

24 Your friend's looking at you like, you know, what
25 are you going to do, dude? Are you trying -- you know,

1 I'm over here with my woman, you know. So he was -- you
2 know, it -- he was happy -- he was happy -- it was --
3 you know, we parted ways.

4 Q. So it was a stress sleep --

5 A. Yeah, I --

6 Q. -- for you?

7 You were just exhausted from --

8 A. Once you switch places to sleep, you really can't
9 sleep. It's unnerving.

10 Q. Okay. So you -- you needed to sleep all day. She
11 slept all day, and she had work at 7:00?

12 A. Yeah, 7:00 o'clock.

13 Q. Where did she work?

14 A. She works with her mom cleaning tribal buildings.

15 Q. And so where does that happen though?

16 A. This was a sort of somber occasion. Her mom had
17 kicked her out. They had worked together. They hadn't
18 talked for a month, and so her mom was basically just
19 trying her out again, and then her mom told her that she
20 didn't need her, so.

21 Q. So this was her first time back working with her mom
22 --

23 A. Yeah.

24 Q. -- in how long?

25 A. Yes. She had texted me that she was going to have

1 dinner with her mom, and I had asked her if she would
2 pray. And with that, I hoped that I would get a plate
3 of food while I was drinking a beer.

4 Q. So did they -- if she didn't work, did she not --

5 A. She came home early. She was home in 15 minutes
6 after that.

7 Q. So she didn't go to dinner with her mom?

8 A. No, she didn't eat at all. She must not have ate at
9 all because she didn't say I had this for dinner. She
10 came right in, seen the beer, and grabbed it, and just
11 started chugging it. If I would have slapped the beer
12 out of her hand or --

13 Q. So --

14 A. -- there was no (witness makes sound).

15 Q. Well, hang on, hang on. So you said this was a
16 somber occasion.

17 A. Her talking to her mom again. Her mom had kicked
18 her out, and so she needed to find a new place to parole
19 to so she asked me. Me being me, I had to pass a
20 background check and do all this stuff.

21 Q. We're talking about -- the somber occasion is her
22 going back to work with her mom?

23 A. Yeah. Yeah. Yes, sir.

24 Q. All right, okay. And was she excited to reconcile
25 with you?

1 A. Yeah, I was excited too. I was like, hey, she got a
2 job before me. I was happy for her.

3 Q. Okay. But then the job didn't work out, she didn't
4 have dinner with her mom, and yet, she came home happy?

5 A. She came home and grabbed the beer out of my hand
6 and started drinking. I --

7 Q. You said she was --

8 A. It's -- I don't know her state of mind. She came
9 in, took one step, grabbed the beer, and just started
10 chugging. I couldn't see the look on her face besides
11 this (witness makes sound). It was her first drink
12 since being out of prison so she took a healthy swallow.
13 Maybe --

14 Q. Didn't you say she was --

15 A. -- I would say -- dare to say chug.

16 Q. -- happy?

17 A. She started chugging it. She started chugging a
18 beer.

19 Q. Sir, if you would answer my question. Didn't you
20 say she was happy when she came home, and she didn't
21 have to work?

22 A. After she had put -- after she had taken her
23 medication, set the beer down, she had seemed -- she had
24 seemed happy.

25 Q. Ah. So it was --

1 A. Due to -- I don't know if this was due to her not
2 being working, not being let off early. I assumed it
3 was her not having to work that day.

4 Q. So now she's happy after she has the beer and the
5 prescription pills is what you're saying?

6 A. I made sure she took her prescription pills, yes.

7 Q. Okay, but she was happy after that then?

8 A. Yeah. Yeah, she was happy. She said -- I was
9 listening to Keith Sweat. She was happy. That's one of
10 her favorite artists.

11 Q. Okay. And so who brought up the meth, going to get
12 meth?

13 A. She did.

14 Q. She brought it up?

15 A. I had no money, sir.

16 Q. How soon after she chugs the beer and has these
17 prescription pills does she bring up the meth?

18 A. Immediately.

19 Q. Immediately?

20 A. Immediately.

21 Q. She just, I want some meth now, and she's ready to
22 go?

23 A. Yep.

24 Q. Okay. And you guys knew where to go get that?

25 A. Yeah.

- 1 Q. Did you set it up, or did she set it up?
- 2 A. She set it up.
- 3 Q. Cell phones?
- 4 A. No.
- 5 Q. No?
- 6 A. No.
- 7 Q. You what, call them?
- 8 A. Hand-to-hand.
- 9 Q. Hand-to-hand?
- 10 A. She handed somebody 20 bucks.
- 11 Q. Okay. But I was going to say the -- the setting up,
- 12 meaning you have to call the dealer first, right?
- 13 A. No. No.
- 14 Q. No?
- 15 A. No.
- 16 Q. You just show up and knock on the door?
- 17 A. Yeah.
- 18 Q. That's what you guys did?
- 19 A. Yeah, just showed up.
- 20 Q. Did you go with her to the door?
- 21 A. Yeah.
- 22 Q. I see. And they worked out everything right there?
- 23 A. Yeah.
- 24 Q. Were you part of that transaction?
- 25 A. No, not my money.

1 Q. You didn't say a doggone thing?

2 A. No. No.

3 Q. But you were taking care of Jean.

4 A. Yeah.

5 Q. You're perfectly fine with this.

6 A. (No audible answer)

7 Q. Even though she had just gulped down all these pills
8 and the beer, you thought this would be okay?

9 A. There was no stopping Jean. I had -- she was told
10 to wait 45 minutes. During that 45-minute wait, I had
11 -- I had expressed to her how serious it was for her to
12 quit.

13 Q. Now, you previously said that you thought it was a
14 good thing. She's been doing good. Let her do some
15 meth. That's not so bad right now. She's been doing
16 good on parole, right?

17 A. Yes, she'd been doing good. She'd been following
18 her parole adamantly, vehemently. She didn't even want
19 to drive out to Lee without proper registration. So her
20 letting her hair down a little bit, I thought was
21 healthy. She had \$10,000 as well. I thought she
22 deserved to have some fun.

23 Q. And meth's fun?

24 A. I guess. I don't know. You'd have to ask humanity.

25 Q. So you were -- what time was this, the trip up for

1 the meth?

2 A. 7:30, 8:00 o'clock.

3 Q. Okay.

4 A. 7:30, right immediately --

5 Q. What time were you supposed to get out to the
6 graduation party?

7 A. There was no set time. It was just graduation and
8 everything.

9 Q. Was there really a party date then?

10 A. My niece was graduating that weekend.

11 Q. So there wasn't really a party set aside then?

12 A. My niece was graduating that weekend. There was a
13 party somewhere. Her father lives in town. She
14 graduated from Spring Creek High School. So somewhere
15 in the midst, we were supposed to give her presents.

16 Q. But there wasn't like, hey, come to my graduation
17 party at 7:00 o'clock on the 5th of June?

18 A. We -- me -- excuse me. No. No, there wasn't a
19 date. Invitations weren't sent out. It was a very
20 highly unusual time for our country and our family and
21 COVID-19 regulations, if there was even going to be a
22 graduation, where were the graduates going to go, what
23 were they're going to do. There was a lot of confusion
24 at this time.

25 Q. Okay.

1 A. A lot of confusion.

2 Q. But the plan still was to go out --

3 A. People were rioting in the street. It was --

4 Q. All right.

5 A. -- pandemonium.

6 Q. So this plan was still to go out to Lee, right?

7 A. Yeah. Yes.

8 Q. Is this after the meth?

9 A. We discussed earlier that day. I didn't get a job.

10 Time to go home.

11 Q. Okay.

12 A. She says I have the room for one more night, you

13 know. I figured she'd get high all night. Go home the

14 next day, but since her conduct, she bit me and struck

15 me all over my face --

16 Q. All right hold on, hold on. We'll get there, I

17 promise.

18 A. Okay.

19 Q. So you're telling me that the plan was still to go

20 out to Lee?

21 A. Yes.

22 Q. And she's supposed to give you a ride, right?

23 A. Yes.

24 Q. She's supposed to drive you out there?

25 A. Yes.

1 Q. She's drinking beer, doing prescription drugs, and
2 now doing meth, and the plan is still to go out to Lee?

3 A. She was going to call it in for a night and then
4 maybe drive in the morning.

5 Q. So --

6 A. She had the room reserved for another day.

7 Q. So the plan changed. We're not going to Lee
8 anymore.

9 A. We -- there -- it's really newly with this woman. I
10 had been waiting for a ride over a month at this point
11 wearing the same underwear. She's bipolar, sir. If she
12 says one thing --

13 Q. Again, you've said that.

14 A. -- and she does another?

15 Q. There's no question pending. So you go to the -- is
16 it the lower Colony then where your kids live?

17 A. Snob hill.

18 Q. What is --

19 A. 3182 College Court Way.

20 Q. I'm sorry, say that again.

21 A. 3182 College Court Way.

22 Q. That is snob hill?

23 A. The local residents know it as snob hill.

24 Q. And that's where your kids live?

25 A. That's where the foster parents live, yes.

1 Q. I see. And so this was the time that you chose
2 after she had been drinking beer for the first time in
3 who knows how long and having prescription meds and is
4 waiting on meth, that's the time that you chose to drive
5 by your kids' place and say this is where our future is?

6 A. I -- I had a serious discussion with Jean and her
7 drug abuse and alcohol consumption.

8 Q. While she's using it --

9 A. While she's doing it.

10 Q. -- you had a serious discussion?

11 A. Yes.

12 Q. How serious of a discussion was that if she's high?

13 A. She's waiting 45 minutes. I'm trying to get her to
14 say no.

15 Q. Oh, so now you're trying to get her to say no to
16 this stuff?

17 A. Yes.

18 Q. Instead of have the freedom and have a little fun?

19 A. I figured what the heck. Have you ever tried
20 telling somebody with \$10,000 what to do? They don't
21 listen at all.

22 Q. So is it the drugs that are a problem or the money
23 that's the problem?

24 A. Drugs, money, and alcohol, even the sex.

25 Q. The sex is a problem too?

1 A. Yes, sir.

2 Q. Because she doesn't know how to do it right? Is
3 that what you said?

4 A. I'm not too sure. She bit my penis. I don't know.

5 Q. Okay.

6 A. Wherever you want to file that. I don't know.

7 Q. So it's during these 45 minutes while you're waiting
8 that she drives over by Shears, the Shears --

9 A. She was crossing 5th Street, the tree street right
10 in front of Shears. I'm not too sure what street it is.
11 It's a tree street.

12 Q. And there's a church, a big church there on the
13 corner too?

14 A. First Presbyterian -- First Presbyterian Church --

15 Q. Okay.

16 A. -- and Shears.

17 Q. And she's driving. Not doing anything erratic with
18 her driving at that time?

19 A. I looked up, made sure -- I looked, no -- no
20 vehicles are coming.

21 Q. Well, my question was: She was driving well? She
22 was not driving erratically?

23 A. Yeah, she drove fine. It's all fine.

24 Q. Okay. And you're watching Mariah Carey in the front
25 seat?

- 1 A. Yes, sir.
- 2 Q. And then she just hauls off and whacks you?
- 3 A. She hit me with a hot one, yes, sir, hard enough to
- 4 -- she left a scar. I have a scar on the inside of my
- 5 cheek. My face swelled up like this after a month in
- 6 jail. It had become infected. I have -- I have a scar
- 7 on the inside of my mouth from the first strike.
- 8 Q. And it all swelled up that big?
- 9 A. After being infected, yes.
- 10 Q. Now, do we have pictures of that?
- 11 A. The jail does, yes.
- 12 Q. They do?
- 13 A. Yes, sir.
- 14 Q. Did you see anybody testify about that here?
- 15 A. You have to ask the jail. The jail has a nurse.
- 16 Q. Hum.
- 17 A. It's in their little kiosk system, but since I've
- 18 been incarcerated for a year, they've switched systems.
- 19 You'd have to ask Lieutenant Silva. You can't get
- 20 nothing out of these guys.
- 21 Q. Ah. So which hand did she hit you with a hot one?
- 22 A. I'm not too sure. I didn't see it coming. I was
- 23 intently like this trying not to piss her off and do
- 24 anything to Jean.
- 25 Q. So you have no idea how she hit you. You just know

1 she hit you?

2 A. Yes.

3 Q. Did you get a black eye?

4 A. No, it hit me in the top part of my molar right
5 here, scarred the inside of my cheek. It later became
6 infected.

7 Q. You didn't tell that to Sergeant Williams, did you?

8 A. No, I told it to -- this is after the fact.

9 Q. Well, this is all after the fact. I mean, all these
10 interviews occurred after the fact. You never told
11 anybody about this scar.

12 A. After the swelling, it reached the point to where it
13 was a mouth infection.

14 Q. You didn't tell him on the 13th.

15 A. It took me a minute to put the two and two together.
16 I thought it was just -- because after -- they take your
17 toothpaste away, and I just thought maybe it was just a
18 mouth infection, and it, you know, being a different
19 brand of toothpaste, but, no, it's actually from the
20 strike, the first strike.

21 Q. But you had a whole week before you saw Sergeant
22 Williams again, and you didn't mention it the second
23 time.

24 A. It didn't become swollen for over a month, sir.

25 Q. But didn't it cut it immediately?

- 1 A. Yes.
- 2 Q. Why didn't you tell him about it?
- 3 A. It was on the inside of the mouth. I don't know.
- 4 Q. It doesn't matter where it is. Why wouldn't you
- 5 tell him about it?
- 6 A. It's just a wound inside your mouth. I --
- 7 Q. All right. So she hit you the one time with this
- 8 hot one, and what's your response?
- 9 A. I flailed.
- 10 Q. You flailed. You dropped your phone.
- 11 A. Yeah, to say the least.
- 12 Q. Okay. And you flailed meaning you lifted your arms
- 13 up and just flung them out?
- 14 A. I didn't know if we got struck by a car or what
- 15 happened. I thought we maybe got hit. I braced and
- 16 ended up strike connecting with her.
- 17 Q. And you hit her?
- 18 A. Yeah.
- 19 Q. You hit her when that happened?
- 20 A. Yes, sir.
- 21 Q. Where?
- 22 A. Right after she hit me.
- 23 Q. Where did you hit her?
- 24 A. In the face.
- 25 Q. What part of her face?

1 A. I'm not too sure. I didn't really see. It was a
2 counterpunch like -- just like this. I braced, and it
3 connected with her. I didn't know what happened.

4 Q. Oh, so it was a counterpunch?

5 A. Like this.

6 Q. All right. And then what happened after the
7 counterpunch?

8 A. Jean hit me with three barrages of punches.

9 Q. Three barrages. What's a barrage?

10 A. It's probably ten strikes, enough to get winded.

11 Q. So she hit you with ten strikes and then took a
12 break?

13 A. (Witness indicating)

14 Q. You look like you're -- just for the record, I'm
15 doing this. It looks like you're pedaling a bicycle
16 with your arms. Is that about right?

17 A. (Witness indicating). (Witness makes sound).

18 Q. And now you're huffing and puffing.

19 A. (Witness indicating). (Witness makes sound).

20 (Witness indicating). (Witness makes sound). And then
21 I finally restrained her.

22 Q. Okay.

23 A. That's from --

24 Q. Where --

25 A. There is cameras around. That's for you. That's

1 exactly what happened.

2 Q. Where did you get struck when she's doing these
3 barrages?

4 A. The whole left side of my face. I got in as close
5 as to the passenger window like this the whole time.

6 Q. And they hit your left bicep or your right -- or
7 your left shoulder or your arm?

8 A. The whole left side of my body, sir.

9 Q. The whole left side of your body?

10 A. My testicles, my throat. Jean became angry. She
11 couldn't connect with my face because of my -- like that
12 so she raked my face like this after throwing that many
13 punches. I didn't count. It was 20, 30, up to 50
14 strikes.

15 Q. Why didn't you tell this to the officers when they
16 interviewed you?

17 A. I did.

18 Q. You did?

19 A. Yes, sir.

20 Q. Just like you've described it for us today?

21 A. No, I said very minimal because of the seriousness
22 of the allegation. I thought maybe I should lawyer up,
23 but I'd tell them that I was injured. But I still
24 cooperated with law enforcement. I talked to Calvern.

25 Q. Okay. So she does that on three different

1 occasions?

2 A. Yes.

3 Q. And then you said you grabbed her and held her and
4 stopped her with two hands, right?

5 A. I caught one of her hands and forced it back like
6 that, forced her back like that. Jean is a big woman.
7 She's 250 -- 2, 300 pounds. She's a big woman. I
8 grabbed her by her hand like that and pushed -- put her
9 arm back over there like that --

10 Q. Okay. So --

11 A. -- and told her stop hitting me.

12 Q. That's one of your arms, right?

13 A. Yeah, she --

14 Q. Her left arm is what you're using?

15 A. -- had fair warning. I warned her three times to
16 quit hitting me, three times to quit biting me before I
17 struck her.

18 Q. You didn't use your right arm too to hold her back?

19 A. No. No, no, no, but it was intimidating, like --

20 Q. Oh.

21 A. -- trying to tell her to stop. Would you please --

22 Q. I see, so you held her --

23 A. -- stop hitting me.

24 Q. -- with your left arm and then your right arm was
25 cocked and ready to hit her?

1 A. Yeah.

2 Q. I see.

3 A. Yeah, you better quit hitting me.

4 Q. I see, okay. And so you've got her in this type of

5 a position --

6 A. Yeah.

7 Q. -- holding her back --

8 A. Uh-huh.

9 Q. -- am I right?

10 And you're sitting in the passenger seat?

11 A. Yeah.

12 Q. She's sitting in the driver's seat?

13 A. Yeah.

14 Q. Your car is stopped at some point, right?

15 A. The car is pulled over, yes.

16 Q. When did she stop the car?

17 A. Right in front of Shears.

18 Q. When?

19 A. Before all this altercation happened.

20 Q. Okay. After the first hot one?

21 A. After the first hot one. After the first

22 altercation.

23 Q. She slugged you and slammed on the brakes?

24 A. Yes. Yes, sir.

25 Q. And you're right in front of Shears?

- 1 A. Yes, sir.
- 2 Q. Okay. So you're stopped right there in that
3 position, and then what's the next thing that happens?
- 4 A. Fifty punches by Jean Ortega.
- 5 Q. I'm sorry, we're after the 50 punches. So when
6 you're holding her back --
- 7 A. I'm holding her arm like this --
- 8 Q. -- and telling her to stop --
- 9 A. -- telling her to stop --
- 10 Q. And you've got the other one cocked?
- 11 A. I will hit you if you don't -- if you don't -- I
12 will freaking nail you, you know. I will punch you --
- 13 Q. Yep.
- 14 A. -- with full force.
- 15 Q. Okay.
- 16 A. Jean clamped onto my arm.
- 17 Q. That's when she bit you?
- 18 A. That's when she bit me, sir.
- 19 Q. So you're sitting in the passenger's seat. You
20 reach across to her. You've got your arm fully extended
21 --
- 22 A. Yeah.
- 23 Q. -- and you're holding her arm --
- 24 A. Yeah.
- 25 Q. -- and her head gets to the back of your bicep --

1 A. She's twisted like this.

2 Q. -- that is now up against the couch, right -- or up
3 against the seat?

4 A. Yeah.

5 Q. How does she get there?

6 A. I grabbed her, forced her to quit hitting me.

7 Q. How did her head get all the way up here if you're
8 holding her back?

9 A. Oh, I had her left arm -- or her right arm. I had
10 her right arm like this, and she was like this, and then
11 she -- she bit me just like freaking the -- what is the
12 zombie movies, the Walking Dead maybe.

13 Q. I don't know. So she was able to reach your arm
14 that's up against the seat and bite you?

15 A. It was in front of her face like that. It was in
16 front of her face like that. I became very adamant, and
17 I was starting to black out from her attacks. My vision
18 was starting to go blurry. I had -- I was forced to do
19 something or be knocked unconscious.

20 Q. And then she hung on like a Pit Bull is what it
21 sounds like.

22 A. Yes, sir. I have eight teeth marks -- I have ten
23 teeth marks, her canine impressions and eight teeth
24 marks. I believe if you look at some of the photos,
25 you'll see a striation, a striation in the -- the --

1 while I was getting -- trying to get her to let loose,
2 the -- I'm not too sure what it's called. The end --
3 you know when you floss -- you guys know when you floss
4 --

5 Q. All right, hold on, hold on, sir. So my question
6 was: She held on like a Pit Bull?

7 A. Yes.

8 Q. I mean, basically, she just hung on --

9 A. Yes, sir.

10 Q. -- right?

11 A. Yeah.

12 Q. Okay. And that's when you hit her and hit her and
13 hit her really, really hard?

14 A. No, I didn't hit her, but, yeah, the little lines
15 that are right here when you floss --

16 Q. Okay. I'm not asking about the tooth right now.

17 A. Okay.

18 Q. So while she's biting you is when you hit her really
19 hard?

20 A. I asked -- I warned her three times to quit biting
21 me. Please quit biting me. I flexed. I tried to pry
22 her arm -- or her face off of my arm. I said, stop
23 hitting me. Stop hit -- or stop biting me. Please -- I
24 -- please quit biting me. Stop biting me. Stop biting
25 me, or I'm going to -- or I'm going to hit you. I don't

1 know if she -- if she's saying no --

2 Q. Okay, hold on. So you did end up hitting her really
3 hard?

4 A. Yes. Yes. I don't know if she was saying no --

5 Q. And you caused this brain bleed that she suffered?

6 A. I -- there's no --

7 MR. PENNELL: Objection, that would require
8 him to speculate, Your Honor.

9 THE COURT: Mr. Thompson.

10 MR. PENNELL: This is a matter of causation,
11 a legal term.

12 MR. THOMPSON: I can rephrase it.

13 THE COURT: Okay, go ahead.

14 BY MR. THOMPSON:

15 Q. You caused the injuries to Jean?

16 A. She became physically --

17 Q. My question was --

18 A. Oh, yes.

19 Q. -- did you cause the injuries to Jean?

20 A. Yes, sir. I punched her --

21 Q. She didn't have any injuries on her --

22 A. -- 7 to 12 times in the face, yes.

23 Q. She didn't have any injuries on her before this
24 night?

25 A. No.

1 Q. Okay. So what sent her to the hospital, that was
2 you hitting her?

3 A. Yes.

4 Q. All right. So you were able to hit her with that
5 much force to cause a brain bleed, but you weren't able
6 to get her off of you?

7 MR. PENNELL: Objection, we just went over
8 this, Your Honor. He's talking about causation and the
9 brain bleed.

10 MR. THOMPSON: Well, we just laid that
11 foundation that she was not injured at all. We have it
12 in the record now of what her injuries are.

13 THE COURT: I'm going to overrule the
14 objection.

15 BY MR. THOMPSON:

16 Q. So you were able to use that much force to cause
17 that kind of damage do her, and yet, you couldn't get
18 her teeth off of your bicep?

19 A. I believe you stated once before that it's not like
20 the movies. We've all seen the Walking Dead. We've all
21 seen a zombie movie. Maybe some of our kids played
22 Resident Evil 4. You know, we've all seen -- maybe some
23 of you guys have seen, I'm not too sure, I believe it's
24 Zombie Apocalypse style movie. This wasn't like the
25 movies. While she was --

1 Q. So you're saying you weren't strong enough to do it?
2 Is that what you're saying?

3 A. While --

4 THE COURT: Answer the question, please.

5 BY MR. THOMPSON:

6 Q. Are you saying you weren't strong enough to get her
7 head off?

8 A. Yes.

9 Q. You couldn't do it?

10 A. Yes, I was -- yes, I was not strong enough to get
11 her head loose. The physical -- the actual physical --

12 THE COURT: Hold on, there's no question.

13 Wait until he asks you a question.

14 THE WITNESS: Okay.

15 BY MR. THOMPSON:

16 Q. All right.

17 A. Agreed. Agreed. I concur. I wasn't strong enough
18 to get her off of my arm.

19 Q. So you told Sergeant Williams that every time she
20 hit you, you dotted her back, right?

21 A. That was to the -- to the ride home. I was
22 referring to that attack.

23 Q. That's what you were talking about?

24 A. Yes.

25 Q. Didn't you in the interview say that she hit you 20

1 to 50 times and every time she hit you, you hit her
2 back?

3 A. No, that was a misstatement by me.

4 Q. But you did say it?

5 A. Yes, I did say it.

6 Q. You're just saying that's not what happened, though?

7 A. That's not what happened, no.

8 Q. Okay.

9 A. We're giving a blow-by-blow account now.

10 Q. Well, why didn't you give him a blow-by-blow when
11 you had the chance?

12 A. Because he was leading the -- he was leading -- he
13 was asking the questions, not me.

14 Q. Didn't he just ask you what happened?

15 A. Yeah, but we didn't go blow for blow. Now we're
16 going blow for blow if that makes sense to you, to the
17 jury panel.

18 Q. Okay. So then you said you were angry at this
19 point. Once all this ends or you're able to hit her and
20 she comes off, and she gets off your bicep, you're angry
21 with her at this point. She can't see out of her eyes,
22 right?

23 A. She was struck blind, yes.

24 Q. Okay. And you're still angry at her, though?

25 A. No.

1 Q. You weren't?

2 A. No.

3 Q. I thought you said that you were angry with her?

4 A. I wouldn't help her to the passenger side. She

5 asked me for help. I didn't want -- I didn't help her.

6 Q. Because you were angry with her?

7 A. Yeah, I thought she should, you know, as punishment,

8 find her own, you know, way to the passenger side

9 vehicle and let herself in.

10 Q. Okay. And then --

11 A. She just bit me and hit me 50 times, dude.

12 Q. Okay. And then you get in the driver's seat with

13 this same woman and drive off with her?

14 A. Yes.

15 Q. Why didn't you just walk away?

16 A. I live 32 miles out of town.

17 Q. Rick's house is only a mile away.

18 A. Rick's house is not my house.

19 Q. Wouldn't Rick help you out though?

20 A. Negative.

21 Q. He would not help you?

22 A. I -- negative. Yeah, Rick's house is not my house.

23 I have my own house.

24 Q. So in your mind, it's like I've got to get out to

25 Lee?

1 A. Thirty-two miles is too far to walk.

2 Q. To heck with this lady, I got to get out to Lee?

3 A. She told her parole officer that's where she was
4 staying. I told her, I'll take you to jail, or I'll
5 take you home.

6 Q. She didn't have to go out there right then, though.
7 You guys could stay in the hotel until you finished your
8 nights there?

9 A. Jean's not allowed in hotel rooms.

10 Q. She was in a hotel room with you.

11 A. I put my foot down at that point. I mean, she --
12 when I took over, she left me with the options --

13 Q. Sir, wasn't she --

14 A. -- of going to go --

15 Q. -- in a hotel room with you?

16 A. -- pick up meth or go into the hotel room --

17 THE COURT: Hold on.

18 THE WITNESS: -- to drink. I chose --

19 THE COURT: Mr. Yowell --

20 THE WITNESS: -- the option, the safe option

21 --

22 THE COURT: Mr. Yowell --

23 THE WITNESS: -- of going home.

24 THE COURT: -- just wait until he poses --

25 THE WITNESS: I did the right thing.

1 THE COURT: -- a question then answer it,
2 okay.

3 THE WITNESS: I did the right thing.

4 BY MR. THOMPSON:

5 Q. You did the right thing by helping her get meth and
6 taking care of her?

7 A. By not completing her drug transaction, by not
8 letting her choose alcohol anymore, there were a couple
9 more beers in the fridge --

10 Q. So you did the right thing by --

11 A. -- and going straight home.

12 Q. All right. Mr. Yowell, weren't you guys arguing
13 about your ex?

14 A. No.

15 Q. No argument there at all?

16 A. No argument at all.

17 Q. Even though --

18 A. What ex?

19 Q. -- you had argued about the divorce a couple days
20 prior?

21 A. What ex, sir? I have -- I have a number of ex's.
22 What ex? She never stated what ex. She's making it up.
23 She's lying. She's being facetious.

24 Q. Weren't you upset with her? She's the one with the
25 money?

- 1 A. Negative.
- 2 Q. She's the one with the car?
- 3 A. Negative.
- 4 Q. She's the one who gets you where you got to go?
- 5 A. Negative.
- 6 Q. That didn't strike at your manhood a little bit?
- 7 A. No.
- 8 Q. Didn't you get angry with her and just whack her?
- 9 A. No.
- 10 Q. Because of the argument?
- 11 A. No.
- 12 Q. And then you hit her and hit her and hit her again?
- 13 A. She was chewing on me while I hit her.
- 14 Q. And didn't you hurt her so bad that she couldn't
- 15 see?
- 16 A. She was struck blind, yes.
- 17 Q. And then you took her in the car, and you were just
- 18 fed up with her. You told her, I am taking you out to
- 19 Lee, and I'm going to kill you. Didn't you tell her
- 20 that?
- 21 A. No.
- 22 Q. That you're going to get a shotgun and take her out
- 23 to the dog shed at your dad's ranch or your grandpa's
- 24 ranch, and you're going to kill her?
- 25 A. No.

1 Q. Wasn't your plan thwarted by the Greens by luck?

2 A. No.

3 Q. Wasn't your plan thwarted by Jean when she got you
4 to stop in the middle of the road?

5 A. No.

6 Q. Let's talk about that. You're saying you stopped
7 for a cigarette, right?

8 A. Yes. I thought it would be a good idea for both of
9 us to calm down.

10 Q. In the center of NRS -- or of Highway 228?

11 A. There's no traffic on that road. There's very
12 little traffic on that road.

13 Q. You stopped in the middle of the road, right?

14 A. I stopped on the driver's side, the right-hand side.

15 Q. For a cigarette?

16 A. Yes.

17 Q. And you said --

18 A. Actually --

19 Q. You said Jean got out and ran down the road.

20 A. -- I had taken -- I had started to -- started to
21 pull away. Jean slammed the vehicle in park and grabbed
22 the keys and jumped out.

23 Q. You said Jean ran down the road, right?

24 A. And flopped in the middle of the highway, yes.

25 Q. She ran and she flopped?

1 A. Yes, sir.

2 Q. She was in no condition to run anywhere, wasn't she?

3 A. That's what she did.

4 MR. PENNELL: This is calling for
5 speculation, Your Honor.

6 MR. THOMPSON: He was with her.

7 THE COURT: I'm going to overrule the
8 objection.

9 BY MR. THOMPSON:

10 Q. Didn't she end up falling out of the car?

11 A. No, she was flopped -- she had flopped down on the
12 highway.

13 MR. THOMPSON: I'm done, Judge.

14 THE COURT: Redirect, Mr. Pennell.

15 REDIRECT EXAMINATION

16 BY MR. PENNELL:

17 Q. Just going with that stuff, Darwyn, how far can you
18 see down the road?

19 A. I don't know, a hundred feet.

20 Q. How far can you see cars coming on that section of
21 road where you were pulled over?

22 A. I don't have eyes in the back of my head. They
23 approached from behind. I could hear them, though.

24 Q. Well, I'm just saying generally --

25 A. I could hear a vehicle approaching.

1 Q. How far could you see down the road just generally?

2 A. Rephrase the question.

3 Q. Could you see pretty far down the road or not?

4 A. Yeah, of course.

5 Q. Okay.

6 A. Of course. I could see. That's the only reason I
7 was driving.

8 Q. Okay. If you had to get back in your car if a car
9 was coming, you would have enough time to move it over
10 to the side of the road or not?

11 A. No -- I --

12 Q. Okay.

13 A. -- just walked away. I knew she was going to lie.

14 Q. Okay. So I want to go back to your discussions with
15 the police officers. None of them ever voluntarily came
16 to see you to get your side of the story. Is that right
17 or wrong?

18 A. Calvern Williams did at first. He woke me up -- no,
19 no, no, they left me in the -- the -- they left me in
20 the drunk tank. They asked me what date it was. It was
21 D-Day, June 6th, 2020.

22 Q. Okay.

23 A. That's -- that was my response.

24 Q. But did you have to make -- be proactive to even get
25 the police officers to speak to you?

1 A. Yes. Yes, I had to wait a long time to talk to the
2 cops. They -- they said that the -- the person doing
3 the investigation would be in shortly.

4 Q. Because the Prosecutor kept going over why didn't
5 you get their attention? Why didn't you tell them this?
6 But you actually had to make all these efforts --

7 A. Yes, I had --

8 Q. -- so you could see them?

9 MR. THOMPSON: I'm going to object. I never
10 asked why didn't you get their attention.

11 THE COURT: Mr. Pennell.

12 MR. PENNELL: I think --

13 MR. THOMPSON: I never asked that.

14 THE COURT: -- it may not be a literal
15 recitation of what he said, but I think it's a fair
16 paraphrase of what he said.

17 MR. THOMPSON: I don't think that it is. Why
18 didn't you tell the officers is what I asked him. I
19 never asked why didn't you get their attention.

20 THE COURT: Why don't you rephrase the
21 question, Mr. Pennell.

22 BY MR. PENNELL:

23 Q. Why didn't you tell the officers or why -- did you
24 ever try and get their attention?

25 A. I cooperated fully with law enforcement.

1 Q. Now, you said something, 51/50, Section 8. Is that
2 a military term?

3 A. Section 8 is a military term. 51/50, I believe, is
4 a civilian term for mentally impaired.

5 Q. Okay. And --

6 A. Jean's mentally disabled.

7 Q. Hold on --

8 MR. THOMPSON: Objection. It's
9 nonresponsive.

10 THE COURT: Mr. Pennell.

11 MR. PENNELL: I'll just ask another question,
12 Your Honor.

13 THE COURT: Sustained. I'm actually -- we've
14 been going at this for quite some time. I think we're
15 going to take a break at this point in time. So --

16 MR. PENNELL: That's fine, Your Honor, if you
17 want to, but I can assure you if I have enough control
18 --

19 THE COURT: You're almost finished?

20 MR. PENNELL: -- over it, it should be short,
21 but if you want to take a break, I understand.

22 THE COURT: We're approaching two hours.

23 MR. PENNELL: Okay.

24 THE COURT: I just want to make sure we have
25 the attention of the jurors. Let's go ahead and take a

1 break.

2 Please do not converse amongst yourselves or
3 with anyone else on any subject connected with the
4 trial. Do not read, watch, or listen to any report of
5 or commentary on the trial or any person connected with
6 the trial by any medium of information, including,
7 without limitation, newspapers, television, radio, and
8 the Internet. Do not form or express any opinion on any
9 subject connected with the trial until the cause is
10 finally submitted to you.

11 You may not use any electronic device or
12 media such as the telephone, a cell phone, smartphone,
13 iPhone, BlackBerry or computer, the Internet, any
14 Internet service, any texts or instant messaging
15 service, any Internet chat room, blog, or website, such
16 as Facebook, Myspace, LinkedIn, YouTube, or Twitter to
17 communicate to anyone any information about this case
18 until I accept your verdict.

19 In other words, you cannot talk to anyone on
20 the phone, correspond with anyone, or electronically
21 communicate with anyone about this case.

22 All rise. We'll go ahead and take a
23 ten-minute --

24 (Whereupon, court recessed)

25 THE COURT: Court is back in session. Please

1 be seated.

2 The time is 3:05 p.m., the date is June 16th,
3 2021. We're back on the record in Case DC-CR-20-159,
4 the State of Nevada versus Darwyn Ross Yowell.
5 Mr. Yowell present, along with counsel, Mr. Pennell.
6 Mr. Thompson is here from the District Attorney's
7 Office. We're convened outside the presence of the
8 jury.

9 Anything we need to address before we bring
10 the jury back in.

11 MR. THOMPSON: Not for me.

12 MR. PENNELL: No, Your Honor.

13 THE COURT: Okay, all rise, please.

14 (Whereupon, the jury entered the courtroom)

15 THE COURT: Court is back in session. Please
16 be seated. It's 3:07 p.m., June 16th, 2021. We're back
17 on the record in Case DC-CR-20-159, the State of Nevada
18 versus Darwyn Ross Yowell. The Defendant is present,
19 along with his counsel, Mr. Pennell. Mr. Thompson is
20 here from the District Attorney's Office.

21 Do the parties stipulate to the presence of
22 the jurors and alternates?

23 MR. THOMPSON: Yes.

24 MR. PENNELL: Yes, Your Honor.

25 THE COURT: I believe we were in the middle

1 of redirect with Mr. Yowell. If you'll please come back
2 up to the stand, please.

3 Go ahead and have a seat. I'll remind you
4 that you were previously sworn, and you're still under
5 oath.

6 Go ahead, Mr. Pennell.

7 MR. PENNELL: Thank you.

8 BY MR. PENNELL:

9 Q. Darwyn, you've admitted that you maybe made a
10 mistake when you told Deputy Williams about the punching
11 or the barrage; is that right? I believe that's what
12 Mr. Thompson was looking for.

13 A. Yeah, I'm not that great of a story teller or --

14 Q. Well, is that correct? You made some kind of
15 mistake there is what you're saying?

16 A. Yeah. I'm not perfect.

17 Q. Okay. Was that during the first interview you had
18 with Sergeant Williams?

19 A. It wasn't a mistake with the barrage of punches.

20 Q. Okay.

21 A. It was a mistake with a punch-for-punch account.

22 Q. Okay. But was it -- was that during --

23 A. If I hit Jean 50 times, she would be --

24 Q. Darwyn, was that during the first interview when you
25 made that mistake?

1 A. I'm not too sure, but it wasn't the barrage of
2 punches.

3 Q. Okay.

4 A. It was we hit each other like -- no, it's not a
5 mistake on the barrage. It's a mistake, that's it.

6 Q. Now, I want to talk to you a little bit --

7 A. If I hit her every time she hit me --

8 Q. Just hold on. Darwyn, I know you want to tell your
9 story, but just hold on, okay. So I wanted to talk to
10 you more about Jean's personality and kind of what we'd
11 gone into on cross-examination. Is Jean someone that's
12 pardon to persuade?

13 A. You have to ask Jean.

14 Q. Okay. Is she a person that's hard to control?

15 A. Jean's bipolar.

16 Q. Okay. Is Jean someone --

17 A. She says things and does another.

18 THE COURT: Hold on. Mr. Pennell is trying
19 to ask you a question.

20 BY MR. PENNELL:

21 Q. Is she hard to control?

22 A. Yes.

23 Q. Okay. Is she hard to convince to do anything?

24 A. Yes.

25 Q. Especially if she has her mind set on it?

1 A. Yes.

2 Q. And she's an adult?

3 A. Yes, technically.

4 Q. And so you don't have any legal control over what
5 she does?

6 A. Yes.

7 Q. Okay. And I wanted to talk to you about when she
8 was biting your arm. You testified that you made some
9 threats and you raised your arm to stop or you would hit
10 her?

11 A. I didn't make a threat. I raised my arm. My arm
12 was cocked back.

13 Q. Okay. Now, the Prosecutor asked you why didn't you
14 push her arm or push her face off of your arm while she
15 was biting it. Can you explain --

16 A. Because it hurt.

17 Q. -- why didn't you push her head away while she was
18 clamped down around your arm?

19 A. Because it hurt.

20 Q. Were you worried that you would be damaged more?

21 A. I thought she would let go.

22 Q. Okay.

23 MR. PENNELL: I don't have any further
24 questions, Your Honor.

25 THE COURT: Recross.

1 MR. THOMPSON: I don't have anything else for
2 him.

3 THE COURT: Did any member of the jury write
4 down a question they wanted posed to this particular
5 witness? If so, please raise your hand. I think we
6 have a couple. Make sure they're on a clean piece of
7 paper. Write your juror number at the top. Tear those
8 out and pass those to Carlos, and he'll bring them up to
9 the front.

10 (Whereupon, sidebar conference on the record)

11 THE COURT: Question from Juror No. 14:
12 There were two cell phones found in the hotel room. Are
13 one of those phones yours?

14 MR. PENNELL: Sure.

15 MR. THOMPSON: Sure.

16 MR. PENNELL: Hopefully, he'll just answer
17 though.

18 THE COURT: Did you have any beer slash drugs
19 while you were gambling prior to coming back to the
20 room, or was approximately six ounces all you had
21 consumed?

22 MR. THOMPSON: That's fine.

23 MR. PENNELL: Yeah, that's fine.

24 THE COURT: Okay.

25 (Whereupon, sidebar conference concluded)

1 THE COURT: Okay. We have two juror
2 questions.

3 JUROR QUESTIONS

4 BY THE COURT:

5 Q. The first is from Juror Number 14. Mr. Yowell,
6 there were two cell phones found in the hotel room. Are
7 one of those phones yours?

8 A. I am not too sure. I have one cell phone, yes.
9 Jean has three cell phones. I had one cell phone.

10 Q. Was one of those cell phones yours?

11 A. One cell phone may be mine. I'm not too sure. It
12 may have even been on Jean's phone.

13 Q. Okay. Question from Juror No. 7: Did you have any
14 beers or drugs while you were gambling prior to coming
15 back to the room, or was approximately six ounces all
16 you had consumed?

17 A. Six ounces was all I had consumed.

18 THE COURT: Any follow-up questions,
19 Mr. Thompson?

20 MR. THOMPSON: No.

21 THE COURT: Follow-up questions, Mr. Pennell?

22 MR. PENNELL: No, thank you.

23 THE COURT: Okay. You can step down, sir,
24 thank you.

25 Does the Defense have anyone else to call?

1 MR. PENNELL: No, Your Honor, we rest our
2 case.

3 THE COURT: Did the State have any rebuttal
4 case to present?

5 MR. THOMPSON: No.

6 THE COURT: Ladies and gentlemen of the jury,
7 before the case may be argued by counsel and submitted
8 to you for your deliberation, it is necessary that the
9 Court and counsel meet outside the presence of the jury
10 for the purpose of settling the instructions that will
11 be given to you about the law that is applicable to this
12 case. We will attempt to expedite this process as much
13 as possible, but this process is usually a fairly
14 lengthy process. It could take a couple hours or more.

15 But this is an extremely critical stage of
16 this proceeding, and both counsel and myself ask that
17 you bear with us during this delay. My thought is given
18 that we're at 3:00 o'clock at present, we will go ahead
19 and release you until tomorrow morning, and we will work
20 on getting these jury instructions all settled and taken
21 care of. And then when we arrive back in the morning,
22 we give you the jury instructions and allow closing
23 argument at that time, and then the case will be
24 submitted to you for your deliberations.

25 So at this time, we're going to go ahead and

1 release you for the evening. I do need to admonish you
2 as follows before the recess:

3 Please do not converse amongst yourselves or
4 with anyone else on any subject connected with the
5 trial. Do not read, watch, or listen to any report of
6 or commentary on the trial or any person connected with
7 the trial by any medium of information, including,
8 without limitation, newspapers, television, radio, and
9 the Internet. Do not form or express any opinion on any
10 subject connected with the trial until the cause is
11 finally submitted to you.

12 You may not use any electronic device or
13 media such as the telephone, a cell phone, smartphone,
14 iPhone, BlackBerry or computer, the Internet, any
15 Internet service, any texts or instant messaging
16 service, any Internet chat room, blog, or website, such
17 as Facebook, Myspace, LinkedIn, YouTube, or Twitter to
18 communicate to anyone any information about this case
19 until I accept your verdict.

20 In other words, you cannot talk to anyone on
21 the phone, correspond with anyone, or electronically
22 communicate with anyone about this case.

23 All rise.

24 Please reconvene in the jury room by 9:00
25 o'clock tomorrow. Please leave your jury notebooks

1 here.

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WHEREUPON, the proceedings were adjourned to the

4

following day, TO WIT: June 17, 2021

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C E R T I F I C A T I O N

I, JULIE ROWAN, do hereby certify:

That on June 16, 2021, a jury trial was held in the within-entitled matter in the Fourth Judicial District Court, Department 3, within the State of Nevada, in and for the County of Elko;

That said hearing was recorded on a recording system, and said recording was delivered to me for transcription;

That the foregoing transcript, consisting of pages 1 through 169, is a full, true, and correct transcript of said recording performed to the best of my ability.

Dated this 16th day of November, 2021.


Julie Rowan

\$	140:13, 148:25 2016 [1] - 111:20 2020 [9] - 13:12, 66:15, 66:18, 66:19, 66:25, 68:11, 71:5, 84:24, 156:21 2021 [14] - 1:20, 4:1, 4:4, 6:5, 8:8, 34:18, 38:23, 60:25, 64:6, 160:3, 160:16, 168:4, 169:4, 169:15 21 [1] - 3:3 2120 [2] - 14:2, 14:3 228 [3] - 54:6, 103:12, 154:10 24 [1] - 112:19 250 [1] - 141:7 28 [4] - 122:19, 122:20, 122:24, 123:4 29 [1] - 3:3 2:30 [2] - 23:17, 23:18 2nd [1] - 2:4	5	8:00 [2] - 11:11, 131:2	26:22, 61:9 Admitted [1] - 3:2 admitted [17] - 5:17, 7:5, 7:7, 10:2, 10:4, 10:5, 10:18, 10:20, 21:12, 21:13, 29:22, 29:24, 32:1, 32:3, 33:5, 33:8, 161:9 admonish [3] - 33:15, 59:20, 167:1 adopt [1] - 17:16 adopted [1] - 18:17 adopting [1] - 18:15 adoption [1] - 40:22 adrenalin [1] - 103:3 adult [1] - 163:2 advised [1] - 63:1 aerate [1] - 69:25 affirms [1] - 17:8 afraid [3] - 104:5, 104:11, 104:19 afternoon [1] - 5:2 again/off [1] - 66:8 aggressive [2] - 53:1, 53:7 aggressor [9] - 42:19, 42:23, 47:11, 47:18, 47:24, 48:2, 48:8, 57:21, 58:1 ago [3] - 11:9, 36:20, 108:17 agree [2] - 31:14, 87:24 agreed [8] - 72:3, 95:8, 96:22, 97:5, 148:17 agreement [1] - 21:9 ahead [27] - 5:25, 7:24, 11:22, 12:10, 12:15, 21:21, 22:2, 22:21, 33:7, 34:11, 35:24, 36:12, 38:9, 38:18, 54:21, 59:19, 63:25, 65:13, 77:5, 82:18, 146:13, 158:25, 159:22, 161:3, 161:6, 166:18, 166:25 ahhhhhh [2] - 94:10, 94:12 aid [3] - 100:18, 100:19, 100:20 Albertsons [1] - 69:1 alcohol [6] - 76:12, 86:18, 114:16, 134:7, 134:24, 152:8 alert [1] - 5:7 alerted [2] - 35:1, 36:14 allegation [1] - 140:22
\$10,000 [5] - 105:23, 115:18, 115:25, 130:21, 134:20		5 [3] - 31:21, 32:1, 32:3 50 [9] - 45:8, 90:7, 90:19, 90:20, 140:13, 143:5, 149:1, 150:11, 161:23 51/50 [5] - 121:1, 121:3, 121:5, 158:1, 158:3 54 [1] - 2:16 540 [1] - 2:4 55 [1] - 2:18 56 [1] - 2:18 571 [1] - 2:7 59 [1] - 2:19 5th [11] - 13:12, 82:4, 84:24, 89:11, 89:13, 121:21, 123:15, 123:16, 124:7, 131:17, 135:9	9	9:00 [1] - 167:24 9:06 [1] - 4:3 9:09 [1] - 6:4 9:20 [1] - 14:4 9th [1] - 111:18
'ol [2] - 87:4, 87:5			A	a.m [7] - 4:3, 6:4, 13:17, 34:17, 38:22, 46:24, 47:1 ability [1] - 169:14 able [12] - 37:11, 42:22, 44:15, 50:14, 50:16, 82:19, 116:17, 144:13, 147:4, 147:5, 147:16, 149:19 absolutely [2] - 5:19, 24:20 abstain [1] - 76:12 abuse [1] - 134:7 AC30 [1] - 73:19 accept [4] - 34:7, 60:12, 159:18, 167:19 accident [2] - 102:3, 105:2 according [4] - 44:20, 111:11, 121:7, 121:8 account [3] - 45:24, 149:9, 161:21 accurate [1] - 82:3 acres [1] - 83:7 acted [1] - 75:17 actions [2] - 74:14, 115:22 active [2] - 76:12, 80:1 actual [3] - 9:10, 22:14, 148:11 adamant [2] - 67:16, 144:16 adamantly [1] - 130:18 additional [1] - 79:17 address [7] - 4:10, 29:7, 34:24, 38:13, 61:6, 63:21, 160:9 adjourned [1] - 168:3 admissibility [1] - 6:22 admissible [4] - 18:9, 25:3, 28:12, 74:16 admission [3] - 15:20, 20:22, 29:16 admit [6] - 4:17, 20:25, 21:4, 21:5,
0				
05:41 [1] - 30:4				
1		6		
1 [8] - 122:14, 122:15, 123:1, 123:4, 123:7, 123:8, 123:10, 169:12 10 [2] - 3:5, 3:6 106 [1] - 2:22 10:49 [1] - 34:17 10:54 [1] - 38:22 11 [1] - 2:14 12 [6] - 2:15, 70:9, 93:9, 93:12, 99:16, 146:22 13 [3] - 32:10, 57:19, 58:18 13th [2] - 32:25, 137:14 14 [3] - 69:3, 164:11, 165:5 14th [1] - 8:7 15 [2] - 88:24, 126:5 15-minute [1] - 34:12 155 [1] - 2:23 16 [3] - 1:20, 4:1, 169:4 165 [1] - 2:23 166 [1] - 2:24 169 [1] - 169:12 16:42 [1] - 39:21 16th [9] - 4:4, 6:4, 34:18, 38:22, 60:24, 64:5, 160:2, 160:16, 169:15 17 [1] - 168:4 17:40 [1] - 39:19 1:00 [3] - 60:16, 60:17, 60:18 1:08 [1] - 60:24 1:12 [1] - 64:5 1st [1] - 84:22	3 [8] - 1:12, 24:9, 29:17, 29:18, 29:22, 29:24, 30:4, 169:6 30 [5] - 85:20, 90:7, 90:19, 90:20, 140:13 300 [1] - 141:7 3182 [2] - 133:19, 133:21 32 [2] - 3:4, 150:16 33 [1] - 3:4 3:00 [1] - 166:18 3:05 [1] - 160:2 3:07 [1] - 160:16	6 [3] - 32:18, 32:24, 33:8 62 [7] - 6:16, 6:18, 6:25, 7:4, 7:7, 109:14, 109:20 63 [6] - 9:4, 9:14, 10:3, 10:4, 10:5, 109:14 65 [5] - 2:22, 100:16, 100:18, 100:22, 101:1 6:00 [6] - 13:16, 13:17, 46:24, 47:1, 86:6 6:15 [1] - 86:6 6th [2] - 31:18, 156:21		
	3	7		
		7 [10] - 3:5, 10:13, 10:18, 10:20, 35:1, 35:25, 93:9, 93:12, 146:22, 165:13 745-2327 [1] - 1:24 775 [1] - 1:24 7:00 [6] - 85:16, 85:18, 124:11, 125:11, 125:12, 131:17 7:15 [1] - 86:7 7:30 [3] - 86:7, 131:2, 131:4		
	4	8		
	4 [2] - 73:19, 147:22 40 [1] - 100:16 42:31 [2] - 22:22, 22:25 43 [1] - 2:16 45 [5] - 87:23, 88:20, 130:10, 134:13, 135:7 45-minute [2] - 88:19, 130:10 4:41 [1] - 30:8 4:41:29 [1] - 22:20 4:44:45 [1] - 39:20 4th [6] - 120:2, 121:15, 122:4, 122:17, 123:14	8 [7] - 2:13, 52:24, 54:3, 121:4, 121:5, 158:1, 158:3 89801 [2] - 2:4, 2:7		
2				
2 [7] - 15:18, 15:21, 20:11, 21:11, 21:12, 21:13, 141:7 20 [4] - 45:9, 129:10,				

<p>allow [4] - 40:18, 40:19, 58:20, 166:22</p> <p>allowed [14] - 58:19, 73:13, 73:14, 73:17, 75:23, 76:5, 76:6, 76:8, 76:10, 96:11, 97:1, 113:8, 119:14, 151:9</p> <p>almost [3] - 101:5, 102:2, 158:19</p> <p>alone [1] - 86:2</p> <p>altercation [2] - 142:19, 142:22</p> <p>alternates [4] - 6:11, 39:4, 64:12, 160:22</p> <p>alternatively [1] - 26:22</p> <p>ambulance [8] - 21:22, 21:23, 21:24, 23:2, 23:5, 23:7, 23:15, 29:3</p> <p>American [5] - 97:23, 119:11, 122:13, 122:14, 123:6</p> <p>amount [3] - 4:22, 48:4, 87:1</p> <p>AND [1] - 1:5</p> <p>angry [15] - 90:15, 94:13, 94:14, 95:13, 95:22, 96:14, 123:18, 140:10, 149:18, 149:20, 149:24, 150:3, 150:6, 153:8</p> <p>answer [9] - 17:16, 35:20, 53:10, 118:24, 127:19, 130:6, 148:4, 152:1, 164:16</p> <p>anyway [2] - 58:3, 88:1</p> <p>apart [1] - 85:12</p> <p>Apocalypse [1] - 147:24</p> <p>appear [3] - 15:10, 43:18, 57:4</p> <p>appeared [7] - 40:7, 40:15, 43:12, 44:13, 44:15, 57:2, 57:6</p> <p>applicable [1] - 166:11</p> <p>applications [3] - 68:24, 68:25, 69:4</p> <p>applies [1] - 26:9</p> <p>appreciate [1] - 118:23</p> <p>approached [1] - 155:23</p> <p>approaching [4] - 104:14, 155:25,</p>	<p>158:22</p> <p>appropriate [5] - 17:13, 29:11, 49:13, 74:15, 75:10</p> <p>approve [1] - 76:18</p> <p>approved [3] - 73:12, 76:18</p> <p>April [3] - 68:12, 68:13</p> <p>area [5] - 13:22, 56:23, 69:16, 98:2</p> <p>argued [2] - 152:19, 166:7</p> <p>arguing [2] - 103:6, 152:12</p> <p>argument [11] - 16:7, 19:24, 28:6, 28:15, 62:8, 117:6, 117:12, 152:15, 152:16, 153:10, 166:23</p> <p>arguments [1] - 28:13</p> <p>Ariana's [1] - 84:3</p> <p>arm [40] - 56:21, 57:3, 57:7, 91:5, 91:11, 91:13, 91:15, 91:16, 91:17, 91:24, 91:25, 92:9, 92:11, 94:2, 94:9, 140:7, 141:9, 141:14, 141:18, 141:24, 143:7, 143:16, 143:20, 143:23, 144:9, 144:10, 144:13, 145:22, 148:18, 163:8, 163:9, 163:11, 163:14, 163:18</p> <p>arms [6] - 91:2, 104:13, 104:20, 138:12, 139:16, 141:12</p> <p>Army [2] - 65:23, 69:11</p> <p>arrest [2] - 46:17, 47:7</p> <p>arrested [6] - 31:8, 47:4, 47:6, 49:9, 49:12, 49:17</p> <p>arrive [1] - 166:21</p> <p>arrived [3] - 14:12, 35:10, 64:18</p> <p>articulate [1] - 44:15</p> <p>articulating [1] - 44:7</p> <p>artillery [1] - 69:12</p> <p>artists [1] - 128:10</p> <p>as-needed [1] - 69:22</p> <p>aside [2] - 79:4, 131:11</p> <p>assault [1] - 90:1</p> <p>asserted [7] - 16:12, 17:4, 18:7, 18:25, 71:16, 77:2, 80:11</p>	<p>assigned [2] - 13:19, 13:21</p> <p>assume [5] - 20:15, 35:20, 49:16, 78:14, 106:13</p> <p>assumed [2] - 115:16, 128:2</p> <p>assuming [1] - 50:15</p> <p>assure [1] - 158:17</p> <p>ate [1] - 126:8</p> <p>attack [4] - 26:2, 48:10, 91:14, 148:22</p> <p>attacked [4] - 45:8, 45:10, 98:3, 101:9</p> <p>attacking [1] - 106:15</p> <p>attacks [3] - 44:22, 144:17</p> <p>attempt [2] - 30:24, 166:12</p> <p>attempted [1] - 70:25</p> <p>attend [2] - 80:3, 82:25</p> <p>attended [1] - 69:2</p> <p>attention [7] - 8:7, 13:11, 157:5, 157:10, 157:19, 157:24, 158:25</p> <p>attorney [1] - 62:18</p> <p>Attorney [4] - 62:4, 62:7, 62:12, 63:8</p> <p>Attorney's [9] - 2:3, 4:8, 6:8, 34:22, 39:2, 61:3, 64:9, 160:6, 160:20</p> <p>audible [2] - 44:6, 130:6</p> <p>audio [2] - 10:21, 21:14</p> <p>authorities [2] - 35:9, 99:3</p> <p>awaiting [1] - 70:24</p> <p>awake [2] - 44:2, 44:10</p> <p>aware [32] - 37:15, 49:8, 49:16, 51:4, 51:12, 53:13, 53:19, 54:7, 54:10, 70:2, 70:10, 70:11, 70:14, 70:17, 71:1, 71:4, 71:15, 72:7, 72:12, 72:16, 72:23, 73:2, 73:10, 74:19, 75:14, 76:11, 78:2, 78:13, 79:6, 79:20, 81:4, 81:7</p>	<p>73:15, 76:19, 76:22, 76:23, 77:7, 77:9, 77:11, 77:20, 126:20</p> <p>bad [2] - 130:15, 153:14</p> <p>balled [1] - 103:11</p> <p>balliff [2] - 35:1, 36:14</p> <p>BAILIFF [1] - 35:6</p> <p>bang [1] - 92:24</p> <p>barely [4] - 99:11, 110:6, 112:12, 112:13</p> <p>barked [1] - 36:21</p> <p>barrage [5] - 139:9, 161:11, 161:19, 162:1, 162:5</p> <p>barrages [4] - 90:3, 139:8, 139:9, 140:3</p> <p>bars [1] - 76:5</p> <p>based [18] - 21:9, 24:24, 24:25, 26:20, 28:12, 42:6, 42:20, 42:23, 43:18, 44:20, 45:7, 45:20, 47:2, 48:13, 52:18, 72:10, 75:14, 82:5</p> <p>bash [1] - 102:24</p> <p>basis [1] - 69:23</p> <p>bat [1] - 14:17</p> <p>battery [1] - 42:18</p> <p>bear [1] - 166:17</p> <p>Bear [5] - 4:14, 6:16, 109:9, 109:22, 109:23</p> <p>beating [1] - 105:6</p> <p>beats [1] - 13:19</p> <p>became [18] - 73:9, 79:6, 90:15, 94:13, 101:12, 102:23, 114:2, 114:3, 115:22, 115:25, 116:1, 117:15, 118:10, 137:5, 140:10, 144:16, 146:16</p> <p>become [4] - 71:4, 121:1, 136:6, 137:24</p> <p>becomes [2] - 18:19, 18:22</p> <p>bed [2] - 4:20, 121:25</p> <p>beer [28] - 86:3, 86:4, 86:11, 86:12, 87:6, 105:7, 112:1, 112:2, 112:5, 112:15, 113:15, 114:10, 114:13, 115:6, 116:1, 126:3, 126:10, 126:11, 127:5, 127:9, 127:18, 127:23,</p>	<p>128:4, 128:16, 130:8, 133:1, 134:2, 164:18</p> <p>beers [2] - 152:9, 165:14</p> <p>began [2] - 43:11, 45:18</p> <p>beginning [9] - 17:23, 30:2, 66:16, 67:11, 68:12, 68:13, 68:16, 84:16, 84:20</p> <p>BEHALF [2] - 2:12, 2:20</p> <p>behind [2] - 99:5, 155:23</p> <p>belief [4] - 72:15, 74:9, 75:15, 80:16</p> <p>beside [1] - 85:24</p> <p>best [1] - 169:13</p> <p>better [6] - 11:3, 66:14, 92:23, 117:21, 118:25, 142:3</p> <p>between [3] - 50:5, 54:8, 88:22</p> <p>beverage [2] - 112:16, 112:18</p> <p>bicep [6] - 40:5, 92:2, 140:6, 143:25, 147:18, 149:20</p> <p>bicycle [1] - 139:15</p> <p>big [8] - 87:4, 87:5, 91:13, 104:17, 135:12, 136:8, 141:6, 141:7</p> <p>biorythm [1] - 124:21</p> <p>bipolar [6] - 78:10, 111:2, 118:20, 121:1, 133:11, 162:15</p> <p>birthday [1] - 116:22</p> <p>bit [26] - 40:9, 40:13, 40:15, 45:17, 88:3, 91:11, 91:22, 92:25, 105:18, 107:16, 116:23, 117:1, 123:13, 123:17, 123:18, 123:21, 124:4, 130:20, 132:14, 135:4, 143:17, 143:18, 144:11, 150:11, 153:6, 162:6</p> <p>bite [8] - 40:5, 40:7, 40:8, 40:14, 40:16, 91:13, 94:4, 144:14</p> <p>biting [16] - 91:20, 91:21, 91:25, 92:6, 92:8, 141:16, 145:18, 145:20,</p>
B				
<p>background [12] - 65:20, 66:3, 73:13,</p>				

<p>145:21, 145:23, 145:24, 163:8, 163:15 black [6] - 8:17, 90:20, 90:23, 117:22, 137:3, 144:17 BlackBerry [4] - 34:2, 60:7, 159:13, 167:14 blamed [1] - 102:5 blanket [1] - 43:10 bleed [3] - 146:5, 147:5, 147:9 blind [3] - 94:16, 149:23, 153:16 block [1] - 97:23 blog [4] - 34:4, 60:9, 159:15, 167:16 blood [2] - 14:25, 102:21 bloody [1] - 95:20 blow [8] - 149:9, 149:10, 149:15, 149:16 blow-by-blow [2] - 149:9, 149:10 blue [1] - 15:2 blue-ish [1] - 15:2 blurry [1] - 144:18 bodily [1] - 42:7 Body [5] - 3:3, 3:3, 3:4, 3:4, 3:5 body [16] - 10:7, 10:14, 15:12, 20:11, 22:6, 22:8, 22:17, 23:12, 24:5, 25:1, 31:16, 32:20, 45:11, 45:15, 140:8, 140:9 bolster [1] - 50:3 bolstering [2] - 28:16, 28:17 booked [1] - 109:10 border [1] - 30:25 born [1] - 65:22 bottles [1] - 81:10 bottom [5] - 93:24, 93:25, 109:18, 109:21, 110:4 bought [2] - 83:1, 83:2 Boulevard [1] - 70:24 Box [1] - 73:19 boyfriend [1] - 72:5 braced [2] - 138:15, 139:2 brain [3] - 146:5, 147:5, 147:9 brake [1] - 105:16 braked [1] - 98:24 brakes [2] - 99:4, 142:23 brand [1] - 137:19</p>	<p>bread [1] - 117:1 break [13] - 4:24, 5:6, 5:7, 33:12, 35:1, 39:7, 59:16, 59:19, 117:1, 139:12, 158:15, 158:21, 159:1 breath [1] - 101:6 Brenda [1] - 14:10 Bridge [1] - 99:15 brief [2] - 4:19, 24:13 briefly [4] - 15:23, 34:25, 36:2, 65:20 bring [12] - 4:10, 5:25, 35:25, 38:18, 63:21, 63:25, 66:15, 68:5, 114:25, 128:17, 160:9, 164:8 brings [1] - 42:11 brother [4] - 101:14, 101:15, 106:10 brought [5] - 83:16, 112:1, 112:5, 128:11, 128:14 bruise [1] - 32:12 bucks [1] - 129:10 buffering [1] - 21:16 building [2] - 59:1, 59:6 buildings [1] - 125:14 Bull [4] - 91:14, 92:11, 144:20, 145:6 bus [1] - 115:24 business [2] - 69:21, 69:22 but.. [2] - 21:17, 51:1 BY [43] - 8:4, 8:21, 9:21, 10:6, 11:8, 12:20, 21:19, 23:22, 30:1, 32:5, 32:19, 40:1, 43:6, 54:2, 55:5, 56:5, 65:18, 68:7, 71:20, 73:7, 75:13, 76:21, 77:6, 78:20, 79:19, 81:3, 93:19, 94:22, 96:15, 104:9, 106:22, 111:9, 146:14, 147:15, 148:5, 148:15, 152:4, 155:9, 155:16, 157:22, 161:8, 162:20, 165:4</p>	<p>2:17, 12:14, 12:17, 55:1 Calvern [5] - 12:1, 12:13, 110:16, 140:24, 156:18 Cam [5] - 3:3, 3:3, 3:4, 3:4, 3:5 camera [13] - 10:7, 10:14, 15:12, 20:11, 22:6, 22:8, 23:12, 24:5, 25:1, 31:16, 32:20, 42:14 cameras [3] - 22:17, 42:12, 139:25 candy [1] - 83:17 canine [1] - 144:23 cannot [5] - 21:23, 34:8, 60:13, 61:23, 159:19, 167:20 canvass [2] - 61:14, 61:17 capable [1] - 42:10 capture [1] - 24:7 captured [4] - 48:9, 48:12, 57:22, 58:1 car [30] - 41:3, 67:14, 88:25, 95:18, 95:20, 96:1, 97:4, 98:10, 98:14, 103:16, 103:17, 103:18, 104:10, 104:22, 106:14, 107:24, 108:6, 108:9, 108:11, 122:7, 138:14, 142:14, 142:15, 142:16, 153:2, 153:17, 155:10, 156:8 card [1] - 83:2 care [16] - 35:14, 73:18, 77:22, 94:12, 106:16, 110:18, 110:22, 111:24, 113:7, 114:22, 120:7, 120:8, 121:13, 130:3, 152:6, 166:21 cared [1] - 110:17 careful [1] - 117:21 cares [1] - 103:7 Carey [2] - 89:8, 135:24 carling [1] - 115:20 Carlos [1] - 164:8 cars [1] - 155:20 carton [3] - 102:19, 102:20 Case [9] - 1:11, 4:5, 6:5, 34:18, 38:23, 60:25, 64:6, 160:3,</p>	<p>160:17 case [22] - 30:13, 34:6, 34:10, 41:20, 42:5, 60:11, 60:15, 61:23, 62:20, 64:17, 64:19, 65:19, 159:17, 159:21, 166:2, 166:4, 166:7, 166:12, 166:23, 167:18, 167:22 case-in-chief [1] - 64:19 cases [1] - 71:5 Casey [1] - 23:11 casinos [2] - 76:5, 85:21 caught [3] - 67:8, 141:5 causation [2] - 146:10, 147:8 caused [3] - 118:6, 146:5, 146:15 causing [1] - 101:10 CD [1] - 23:20 cell [15] - 34:1, 60:6, 78:1, 89:21, 89:22, 129:3, 159:12, 164:12, 165:6, 165:8, 165:9, 165:10, 165:11, 167:13 center [1] - 154:10 certain [4] - 19:6, 74:14, 75:17, 75:21 certainly [2] - 5:7, 5:23 certify [1] - 169:3 Chad [3] - 2:2, 26:10, 26:11 chance [5] - 41:3, 55:7, 106:25, 113:14, 149:11 changed [1] - 133:7 chaos [2] - 68:18 charge [1] - 111:23 charged [3] - 42:18, 70:25, 75:20 charges [5] - 49:9, 49:12, 49:17, 49:19, 49:22 chat [4] - 34:4, 60:9, 159:15, 167:16 check [10] - 59:16, 72:20, 73:13, 73:15, 76:19, 76:23, 77:7, 77:9, 77:20, 126:20 checked [2] - 68:15, 72:18 cheek [2] - 136:5, 137:5</p>	<p>chest [1] - 108:22 chewing [1] - 153:13 chief [1] - 64:19 Chief [4] - 62:4, 62:7, 62:12, 63:7 children [9] - 66:2, 68:13, 88:11, 88:14, 88:16, 88:17, 88:22, 116:23, 117:3 choose [2] - 62:11, 152:8 chop [1] - 123:19 chose [4] - 76:3, 134:1, 134:4, 151:18 chug [3] - 112:9, 113:24, 127:15 chugging [9] - 112:24, 113:13, 113:15, 113:19, 113:21, 126:11, 127:10, 127:17 chugs [1] - 128:16 chunk [1] - 91:13 church [3] - 76:8, 135:12 Church [1] - 135:14 cigarette [4] - 102:12, 102:16, 154:7, 154:15 cigarettes [3] - 102:17, 102:19, 103:5 circumstance [1] - 53:5 circumstances [1] - 19:7 citizen [1] - 77:13 City [7] - 89:9, 97:19, 97:20, 97:21, 98:5, 98:6 city [1] - 83:22 civilian [1] - 158:4 clamped [4] - 91:14, 91:15, 143:16, 163:18 clarification [2] - 40:4, 76:25 clarified [3] - 45:21, 45:22, 53:15 clarify [7] - 20:10, 21:25, 45:14, 46:15, 49:11, 50:5, 50:8 clarifying [7] - 40:20, 49:4, 50:2, 50:9, 50:10, 50:19, 50:22 classic [1] - 58:12 clean [3] - 41:11, 53:21, 164:6 cleaning [1] - 125:14 clear [1] - 17:19</p>
	<p>C</p> <p>calm [5] - 26:15, 99:1, 99:7, 102:13, 154:9 calmed [3] - 100:14, 102:15 CALVERN [5] - 2:15,</p>			

<p>clearer [1] - 45:17 clearly [2] - 80:11, 92:17 clemency [1] - 71:7 clerk [6] - 7:12, 12:3, 36:5, 59:17, 64:25, 116:12 CLERK [4] - 7:14, 12:5, 36:7, 65:1 Clerk's [1] - 51:19 client [1] - 61:16 close [2] - 30:10, 140:4 closed [3] - 67:13, 67:15, 67:16 closely [1] - 40:8 closing [1] - 166:22 cocked [3] - 141:25, 143:10, 163:12 coherent [1] - 44:3 College [2] - 133:19, 133:21 Colony [8] - 84:18, 87:18, 89:5, 89:6, 89:12, 119:6, 119:10, 133:16 colony [1] - 119:9 coming [13] - 63:6, 73:9, 103:16, 103:17, 103:18, 104:18, 135:20, 136:22, 155:20, 156:9, 164:19, 165:14 comment [1] - 62:6 commentary [4] - 33:19, 59:24, 159:5, 167:6 comments [1] - 62:13 commitment [2] - 76:13, 80:1 committed [3] - 49:23, 49:25, 50:1 communicate [8] - 34:6, 34:10, 60:11, 60:15, 159:17, 159:21, 167:18, 167:22 communicating [1] - 119:21 community [1] - 103:23 compel [1] - 62:20 compelled [1] - 61:23 competent [1] - 71:8 complaining [1] - 101:11 complaint [2] - 35:4, 49:20 complete [2] - 46:21,</p>	<p>46:22 completed [3] - 35:7, 42:10, 46:23 completely [3] - 43:25, 44:3, 67:18 completing [1] - 152:7 computer [6] - 21:16, 34:2, 37:16, 60:7, 159:13, 167:14 concerned [1] - 114:3 concluded [5] - 20:8, 29:14, 53:24, 58:16, 164:25 conclusion [3] - 46:12, 79:2 concur [1] - 148:17 condition [1] - 155:2 conditions [2] - 67:19, 75:1 conduct [2] - 97:24, 132:14 conducted [1] - 109:7 conference [10] - 15:25, 20:8, 24:16, 29:14, 52:23, 53:24, 57:18, 58:16, 164:10, 164:25 confidentiality [1] - 78:8 confirmation [1] - 77:19 conflicting [1] - 44:23 confrontational [1] - 16:18 confused [3] - 50:13, 122:21, 122:22 confusing [3] - 17:9, 17:21, 23:11 confusion [2] - 131:23, 132:1 Conita [1] - 84:4 connect [2] - 90:16, 140:11 connected [13] - 33:17, 33:20, 33:23, 59:23, 59:25, 60:3, 139:3, 159:3, 159:5, 159:9, 167:4, 167:6, 167:10 connecting [1] - 138:16 consciousness [2] - 27:7, 90:21 consent [1] - 97:13 consider [5] - 16:11, 17:3, 18:7, 26:23, 74:10 considered [2] - 81:1, 107:4 considering [1] - 99:9</p>	<p>consistent [6] - 26:3, 27:19, 27:22, 45:1, 45:21, 45:25 consisting [1] - 169:11 constant [1] - 84:7 Constitution [2] - 61:21, 61:22 consumed [3] - 164:21, 165:16, 165:17 consumption [1] - 134:7 contact [12] - 8:8, 14:14, 23:6, 30:14, 30:20, 66:16, 66:18, 76:16, 76:17, 84:7, 94:25, 95:3 contacted [1] - 35:9 context [3] - 16:12, 17:5, 18:8 continue [1] - 30:21 continued [4] - 50:19, 50:22, 90:1, 90:18 CONTINUED [1] - 3:1 control [5] - 115:22, 158:17, 162:14, 162:21, 163:4 controls [1] - 96:4 convened [4] - 4:8, 34:22, 61:4, 160:7 conversation [3] - 23:7, 88:17, 88:22 converse [4] - 33:16, 59:21, 159:2, 167:3 convicted [2] - 63:4, 63:10 conviction [1] - 63:2 convince [1] - 162:23 cooped [1] - 85:20 cooperated [2] - 140:24, 157:25 cooperation [1] - 47:3 cooperative [1] - 46:3 cops [3] - 95:5, 108:15, 157:2 cops' [1] - 110:6 copy [5] - 9:11, 9:16, 9:19, 9:20, 9:22 corner [2] - 39:20, 135:13 correct [15] - 7:3, 16:4, 25:9, 26:5, 26:14, 36:17, 43:16, 44:14, 47:21, 52:2, 56:19, 77:3, 80:14, 161:14, 169:12 correction [1] - 13:10 Corrections [1] - 13:4 correctly [1] - 23:8</p>	<p>correspond [4] - 34:9, 60:14, 159:20, 167:21 corroborating [1] - 80:24 Cortez [2] - 14:10, 14:12 couch [1] - 144:2 counsel [11] - 4:7, 6:7, 34:20, 39:1, 61:2, 64:8, 160:5, 160:19, 166:7, 166:9, 166:16 counseling [3] - 76:14, 80:3, 80:5 count [2] - 93:14, 140:13 counted [1] - 81:12 counterpunch [4] - 89:22, 139:2, 139:4, 139:7 country [1] - 131:20 COUNTY [1] - 1:5 County [8] - 2:3, 2:6, 8:6, 12:22, 13:18, 14:21, 98:22, 169:7 couple [8] - 5:2, 36:20, 47:5, 119:13, 152:8, 152:19, 164:6, 166:14 course [3] - 40:5, 156:4, 156:6 COURT [205] - 1:4, 4:3, 5:1, 5:5, 5:11, 5:23, 6:2, 6:14, 6:23, 7:1, 7:4, 7:8, 7:10, 7:19, 7:24, 8:20, 9:17, 9:24, 10:1, 10:4, 10:16, 10:18, 10:23, 10:25, 11:4, 11:15, 11:18, 11:25, 12:2, 12:10, 12:15, 15:20, 15:24, 16:24, 17:6, 17:22, 17:25, 18:3, 18:19, 19:1, 19:3, 19:11, 19:16, 19:19, 19:22, 20:2, 20:5, 20:7, 20:9, 20:15, 20:21, 21:10, 21:12, 21:15, 23:19, 24:12, 24:15, 25:6, 26:25, 27:10, 27:15, 27:17, 27:24, 28:10, 28:18, 28:23, 29:6, 29:13, 29:15, 29:18, 29:22, 31:23, 32:1, 33:2, 33:5, 33:10, 34:15, 35:8, 35:24, 36:2, 36:4, 36:12, 36:18, 36:25, 37:4, 37:7, 37:10, 37:17,</p>	<p>37:20, 37:23, 38:7, 38:9, 38:12, 38:17, 38:20, 39:7, 39:13, 39:17, 43:4, 52:17, 52:19, 52:24, 53:11, 53:19, 53:23, 54:2, 54:11, 54:14, 54:16, 54:21, 56:2, 57:14, 57:16, 57:19, 57:24, 58:15, 58:17, 58:24, 59:3, 59:10, 59:13, 59:18, 60:22, 61:11, 61:16, 61:20, 62:1, 62:11, 62:17, 63:1, 63:14, 63:20, 63:24, 64:3, 64:15, 64:18, 64:23, 65:6, 65:13, 68:2, 68:5, 71:12, 71:18, 72:25, 73:4, 74:17, 74:22, 75:3, 75:9, 76:24, 77:3, 77:5, 78:16, 79:3, 79:8, 79:10, 79:12, 79:16, 80:14, 80:18, 80:25, 93:17, 94:20, 95:14, 104:6, 106:20, 111:4, 111:7, 146:9, 146:13, 147:13, 148:4, 148:12, 151:17, 151:19, 151:22, 151:24, 152:1, 155:7, 155:14, 157:11, 157:14, 157:20, 158:10, 158:13, 158:19, 158:22, 158:24, 159:25, 160:13, 160:15, 160:25, 162:18, 163:25, 164:3, 164:11, 164:18, 164:24, 165:1, 165:4, 165:18, 165:21, 165:23, 166:3, 166:6 court [15] - 6:2, 7:12, 12:3, 34:14, 34:15, 36:5, 37:14, 38:20, 60:21, 60:22, 64:3, 64:25, 159:24, 159:25, 160:15 Court [12] - 2:4, 4:12, 4:23, 26:22, 62:12, 62:18, 74:9, 80:25, 133:19, 133:21, 166:9, 169:6 courtroom [5] - 6:1, 8:12, 38:19, 64:2, 160:14 cousin [2] - 84:3,</p>
---	---	---	--	--

84:12 covered [3] - 14:25, 43:10, 90:11 COVID-19 [7] - 67:11, 67:12, 82:6, 83:14, 85:21, 131:21 cow [1] - 69:21 coyotes [1] - 104:1 crap [1] - 103:20 crazy [1] - 115:2 created [1] - 30:18 credibility [1] - 26:3 credit [3] - 35:19, 37:25, 38:2 Creek [3] - 13:22, 73:19, 131:14 crime [1] - 76:7 criminal [2] - 62:20, 77:11 crisis [1] - 72:19 critical [1] - 166:15 crooked [1] - 93:25 Cross [3] - 2:16, 2:18, 2:22 CROSS [3] - 43:5, 56:4, 106:21 cross [7] - 11:15, 28:22, 43:4, 62:4, 62:6, 106:20, 162:11 CROSS- EXAMINATION [3] - 43:5, 56:4, 106:21 cross-examination [7] - 11:15, 28:22, 43:4, 62:4, 62:6, 106:20, 162:11 crossing [3] - 89:11, 89:12, 135:9 crutch [1] - 95:20 crying [2] - 15:7, 15:11 custody [1] - 66:1 cut [1] - 137:25	23:10, 23:11, 30:20, 30:24, 32:11, 34:19, 38:24, 40:6, 43:7, 44:10, 44:21, 45:8, 45:24, 46:3, 46:13, 47:4, 47:8, 47:11, 47:14, 47:20, 48:5, 48:7, 49:5, 49:8, 51:23, 52:1, 53:1, 55:8, 56:21, 57:20, 57:24, 61:1, 64:7, 64:22, 65:11, 65:19, 79:20, 82:15, 83:19, 90:25, 96:16, 98:2, 100:7, 104:10, 106:2, 155:17, 160:4, 160:18, 161:9, 161:24, 162:8 Darwyn's [3] - 46:17, 48:15, 50:15 date [12] - 4:4, 6:4, 22:5, 34:17, 38:22, 60:24, 63:3, 64:5, 131:9, 131:19, 156:20, 160:2 Dated [1] - 169:15 dating [1] - 72:5 days [7] - 36:22, 68:9, 85:1, 85:20, 102:6, 124:19, 152:19 DC-CR-20-159 [9] - 1:11, 4:5, 6:5, 34:19, 38:23, 60:25, 64:6, 160:3, 160:17 Dead [2] - 144:12, 147:20 dead [3] - 43:8, 44:11, 45:3 deal [5] - 86:21, 114:4, 115:2, 115:3, 118:12 dealer [1] - 129:12 decided [2] - 48:16, 115:16 decision [3] - 42:7, 48:13, 63:15 deep [1] - 101:6 deer [2] - 104:1, 104:3 defendant [3] - 1:14, 62:20, 62:23 DEFENDANT [8] - 61:25, 62:10, 62:16, 62:25, 63:13, 63:18, 65:5, 65:11 Defendant [9] - 2:5, 4:16, 6:20, 8:19, 34:20, 38:25, 61:14, 160:18 Defendant's [1] - 74:7 Defender's [1] - 2:6 DEFENSE [1] - 2:20	Defense [4] - 63:5, 64:19, 165:25 define [1] - 121:3 delay [1] - 166:17 deliberation [1] - 166:8 deliberations [1] - 166:24 delivered [1] - 169:9 demeanor [3] - 15:5, 26:16, 113:11 Department [3] - 13:4, 67:13, 169:6 Depot [2] - 68:25, 69:2 Dept [1] - 1:12 deputies [2] - 14:9, 20:20 Deputy [26] - 4:14, 4:18, 6:16, 7:9, 7:10, 7:11, 11:16, 14:10, 24:21, 35:2, 35:3, 35:11, 35:12, 36:15, 62:4, 62:7, 62:12, 63:7, 107:19, 108:16, 109:8, 109:22, 109:23, 110:1, 161:10 deputy [5] - 8:6, 11:14, 14:12, 39:8, 109:20 describe [4] - 5:16, 8:14, 79:21, 91:12 described [2] - 41:5, 140:20 describes [1] - 27:5 describing [3] - 25:14, 26:8, 27:2 description [1] - 43:21 deserved [1] - 130:22 destination [1] - 97:5 detail [1] - 91:12 details [1] - 63:11 Detective [8] - 42:1, 42:2, 42:8, 51:9, 51:10, 108:8, 108:12, 123:7 detective [1] - 42:4 determine [3] - 42:19, 42:22, 48:7 determined [4] - 47:10, 47:18, 47:23, 48:1 devastated [1] - 70:13 developed [2] - 32:12, 47:7 device [4] - 33:25, 60:5, 159:11, 167:12 diagnosed [1] - 78:10 diagnoses [1] - 80:20 diagnosis [1] - 79:2	different [7] - 42:11, 71:19, 75:1, 81:9, 87:3, 137:18, 140:25 difficulty [1] - 44:7 digging [1] - 102:25 dim [4] - 90:23, 90:24 dinner [4] - 126:1, 126:7, 126:9, 127:4 dire [1] - 35:14 DIRECT [4] - 8:3, 12:19, 55:4, 65:17 Direct [4] - 2:13, 2:15, 2:18, 2:22 direct [3] - 8:7, 13:11, 62:5 direction [4] - 71:19, 88:13, 88:15, 100:23 disabled [1] - 158:6 disarray [1] - 41:6 discharged [1] - 63:4 disclosure [1] - 35:15 discredit [2] - 35:19, 38:5 discretion [2] - 31:25, 33:4 discuss [2] - 59:7, 110:9 discussed [3] - 21:7, 70:6, 132:9 discussion [3] - 134:6, 134:10, 134:12 discussions [3] - 72:1, 72:10, 156:14 dispatch [1] - 13:23 dispatched [1] - 30:14 distanced [1] - 83:18 distancing [1] - 82:9 distinct [2] - 44:22, 93:25 DISTRICT [2] - 1:4, 1:6 District [14] - 2:3, 4:8, 6:8, 34:21, 39:2, 61:3, 62:4, 62:7, 62:12, 63:8, 64:9, 160:6, 160:20, 169:6 disturbance [1] - 14:7 divorce [6] - 118:12, 118:15, 119:1, 122:11, 122:12, 152:19 DMV [1] - 67:16 dog [4] - 35:7, 35:9, 36:21, 153:23 doggone [1] - 130:1 dollar [1] - 85:22 domestic [2] - 14:7, 42:18 domestics [1] - 42:6 done [6] - 40:20,	65:24, 88:1, 110:16, 115:16, 155:13 door [8] - 65:7, 96:1, 96:2, 98:17, 104:14, 129:16, 129:20 doors [2] - 96:6, 98:14 dot [1] - 45:9 dotted [1] - 148:20 Douglas [1] - 7:22 DOUGLAS [3] - 2:13, 7:23, 8:1 down [37] - 31:10, 38:10, 43:10, 52:20, 52:22, 57:3, 59:10, 69:1, 91:14, 99:1, 99:7, 100:14, 102:13, 102:16, 103:12, 103:14, 103:19, 103:24, 104:12, 104:14, 104:20, 123:5, 127:23, 130:7, 130:20, 151:11, 154:9, 154:19, 154:23, 155:11, 155:18, 156:1, 156:3, 163:18, 164:4, 165:23 dozing [1] - 4:23 Dr [1] - 30:14 drag [1] - 69:24 drank [3] - 87:5, 112:20, 115:6 drawn [1] - 62:22 drink [8] - 105:7, 112:11, 113:25, 114:10, 114:13, 114:15, 127:11, 151:18 drinking [8] - 86:4, 86:11, 86:13, 86:16, 126:3, 127:6, 133:1, 134:2 drive [25] - 95:6, 96:8, 96:23, 96:25, 97:4, 97:9, 97:13, 97:14, 97:16, 97:18, 98:23, 99:24, 99:25, 100:1, 103:20, 103:22, 103:23, 130:19, 132:24, 133:4, 134:4, 150:13 driver [4] - 41:16, 45:16, 104:13 driver's [7] - 95:10, 95:19, 95:25, 96:24, 142:12, 150:12, 154:14 drives [1] - 135:8 driving [19] - 55:21,
--	--	---	---	---

<p>57:20, 57:25, 58:4, 88:25, 97:10, 98:2, 99:14, 99:19, 99:22, 100:3, 101:8, 102:8, 124:20, 135:17, 135:18, 135:21, 135:22, 156:7</p> <p>drop [1] - 120:9</p> <p>dropped [1] - 138:10</p> <p>drove [4] - 98:22, 100:4, 124:19, 135:23</p> <p>drug [4] - 76:14, 134:7, 152:7</p> <p>drugs [7] - 76:12, 107:6, 133:1, 134:22, 134:24, 164:18, 165:14</p> <p>drunk [1] - 156:20</p> <p>dude [2] - 124:25, 150:11</p> <p>due [9] - 75:20, 75:24, 86:19, 90:16, 93:6, 97:23, 114:24, 128:1</p> <p>dump [1] - 120:10</p> <p>during [18] - 25:6, 36:14, 42:18, 45:12, 56:14, 57:9, 59:21, 66:17, 66:18, 69:25, 70:6, 88:19, 130:10, 135:7, 161:17, 161:22, 161:24, 166:17</p> <p>Dustin [1] - 30:14</p> <p>duty [1] - 99:12</p> <p>DVD [12] - 3:3, 3:3, 3:4, 3:4, 3:5, 11:5, 21:18, 23:21, 29:25, 32:4, 33:9, 39:23</p> <p>DVD-Body [5] - 3:3, 3:3, 3:4, 3:4, 3:5</p>	<p>either [6] - 41:12, 54:16, 55:10, 58:21, 105:15, 108:15</p> <p>elapsed [1] - 63:3</p> <p>elect [2] - 62:17, 63:7</p> <p>electronic [4] - 33:25, 60:5, 159:11, 167:12</p> <p>electronically [4] - 34:9, 60:14, 159:20, 167:21</p> <p>ELKO [2] - 1:5, 4:1</p> <p>elko [1] - 1:21</p> <p>Elko [21] - 2:3, 2:4, 2:6, 2:7, 8:6, 12:22, 13:18, 13:22, 14:21, 68:21, 72:17, 72:18, 73:23, 81:22, 84:17, 89:10, 98:22, 111:13, 119:12, 119:18, 169:7</p> <p>embarrassed [1] - 118:10</p> <p>emergency [1] - 20:20</p> <p>employee [3] - 72:19, 75:22, 116:10</p> <p>employment [2] - 81:21, 82:20</p> <p>encounter [1] - 73:22</p> <p>end [6] - 11:6, 30:10, 51:11, 145:2, 146:2, 155:10</p> <p>ended [5] - 46:24, 70:4, 97:20, 119:1, 138:16</p> <p>ends [1] - 149:19</p> <p>energetic [1] - 33:12</p> <p>enforcement [8] - 13:3, 30:19, 47:4, 76:16, 95:1, 95:4, 140:24, 157:25</p> <p>engaged [1] - 74:14</p> <p>entered [5] - 6:1, 25:23, 38:19, 64:2, 160:14</p> <p>entire [3] - 10:10, 20:19, 32:6</p> <p>entirety [2] - 16:2, 16:21</p> <p>entitled [1] - 169:5</p> <p>epidemic [1] - 67:12</p> <p>episode [4] - 114:4, 114:8, 114:11, 115:4</p> <p>equipment [3] - 69:6, 69:9, 69:10</p> <p>ER [1] - 30:15</p> <p>erratic [1] - 135:17</p> <p>erratically [1] - 135:22</p> <p>Errecart [1] - 99:15</p> <p>especially [1] - 162:25</p> <p>Esq [2] - 2:2, 2:5</p>	<p>establishing [2] - 79:7, 80:15</p> <p>estimate [1] - 88:22</p> <p>evaluation [3] - 79:24, 79:25, 80:6</p> <p>evaluations [1] - 121:10</p> <p>evening [3] - 11:12, 85:18, 167:1</p> <p>event [9] - 25:14, 25:15, 26:8, 27:2, 27:15, 30:19, 42:8, 70:10, 90:6</p> <p>events [3] - 50:12, 53:18, 54:8</p> <p>eventually [6] - 93:20, 93:21, 94:3, 94:7, 104:10</p> <p>evidence [6] - 58:19, 67:3, 79:5, 79:13, 80:24, 109:12</p> <p>Evil [1] - 147:22</p> <p>ex [5] - 152:13, 152:18, 152:21, 152:22</p> <p>ex's [1] - 152:21</p> <p>exact [3] - 9:11, 9:16, 9:22</p> <p>exactly [3] - 18:4, 50:24, 140:1</p> <p>EXAMINATION [8] - 8:3, 12:19, 43:5, 55:4, 56:4, 65:17, 106:21, 155:15</p> <p>examination [7] - 11:15, 28:22, 43:4, 62:4, 62:6, 106:20, 162:11</p> <p>example [1] - 58:12</p> <p>exception [4] - 25:13, 26:9, 27:18, 74:5</p> <p>exceptions [1] - 25:16</p> <p>excited [7] - 18:10, 25:12, 25:24, 26:14, 27:13, 126:24, 127:1</p> <p>excuse [3] - 11:22, 109:19, 131:18</p> <p>excused [4] - 11:17, 54:17, 58:22, 60:19</p> <p>excused..... [2] - 2:14, 2:24</p> <p>exhausted [1] - 125:7</p> <p>exhibit [8] - 10:1, 10:2, 10:18, 20:23, 21:10, 29:16, 33:5, 110:2</p> <p>Exhibit [25] - 6:16, 6:18, 6:23, 7:4, 7:7, 9:4, 9:14, 10:5, 10:13, 10:20, 15:18,</p>	<p>15:21, 20:11, 21:13, 24:9, 29:16, 29:22, 29:24, 31:21, 32:1, 32:3, 32:18, 32:24, 33:8, 109:14</p> <p>EXHIBITS [1] - 3:2</p> <p>exited [3] - 95:19, 104:11</p> <p>expect [1] - 108:14</p> <p>expedite [1] - 166:12</p> <p>explain [7] - 36:18, 44:1, 75:17, 92:4, 99:8, 102:21, 163:15</p> <p>express [4] - 33:22, 60:3, 159:8, 167:9</p> <p>expressed [1] - 130:11</p> <p>expressing [1] - 52:25</p> <p>extended [2] - 68:9, 143:20</p> <p>extent [1] - 35:11</p> <p>extra [1] - 38:1</p> <p>extremely [1] - 166:15</p> <p>eye [3] - 94:16, 137:3</p> <p>eyes [6] - 15:1, 15:2, 43:24, 45:19, 149:21, 155:22</p> <p>eyewitnesses [3] - 53:4, 53:17, 54:7</p>	<p>62:6, 141:15, 157:15</p> <p>fairly [1] - 166:13</p> <p>falling [1] - 155:10</p> <p>familiar [1] - 14:20</p> <p>family [2] - 73:14, 131:20</p> <p>far [18] - 5:14, 13:18, 13:21, 28:14, 31:2, 40:22, 46:9, 46:15, 50:10, 80:20, 86:23, 101:7, 119:16, 151:1, 155:17, 155:20, 156:1, 156:3</p> <p>fashion [1] - 54:5</p> <p>fast [4] - 100:17, 103:21, 103:22, 113:15</p> <p>father [4] - 67:14, 70:5, 70:9, 131:13</p> <p>fatigued [1] - 5:3</p> <p>favorite [1] - 128:10</p> <p>fed [1] - 153:18</p> <p>feed [1] - 69:23</p> <p>feet [1] - 155:19</p> <p>fell [1] - 105:5</p> <p>felon [2] - 73:15, 77:10</p> <p>felony [3] - 63:2, 63:10</p> <p>female [3] - 14:8, 14:14, 14:16</p> <p>few [7] - 40:4, 48:6, 48:8, 48:10, 48:11, 60:17</p> <p>field [1] - 69:12</p> <p>fields [1] - 69:24</p> <p>fifteen [1] - 103:2</p> <p>fifty [1] - 143:4</p> <p>figure [1] - 71:14</p> <p>figured [4] - 37:13, 88:2, 132:13, 134:19</p> <p>file [1] - 135:6</p> <p>filed [3] - 49:6, 49:19, 49:22</p> <p>fill [2] - 108:24, 109:3</p> <p>filled [6] - 109:5, 109:8, 109:11, 110:10, 110:14</p> <p>filling [3] - 68:24, 108:23</p> <p>final [2] - 28:4, 62:8</p> <p>finally [8] - 33:24, 60:4, 93:9, 93:10, 93:12, 139:21, 159:10, 167:11</p> <p>financially [1] - 105:20</p> <p>fine [14] - 28:10, 38:8, 46:16, 53:21, 74:11, 97:6, 103:9, 117:5, 130:5, 135:23, 158:16, 164:22,</p>
---	--	--	--	--

<p>164:23 fingers [1] - 57:3 finish [2] - 33:13, 51:22 finished [2] - 151:7, 158:19 finishing [1] - 4:21 firearms [1] - 106:11 First [1] - 135:14 first [42] - 4:17, 5:16, 5:18, 7:21, 12:12, 14:11, 14:13, 19:13, 20:25, 21:4, 41:25, 43:7, 43:24, 45:1, 45:7, 45:12, 55:9, 56:14, 56:18, 65:9, 66:17, 71:22, 72:17, 86:18, 100:18, 100:19, 100:20, 113:25, 125:21, 127:11, 129:12, 134:2, 135:14, 136:7, 137:20, 142:20, 142:21, 156:18, 161:17, 161:24, 165:5 fits [1] - 74:8 five [2] - 103:1 flagging [2] - 104:12, 104:20 flail [1] - 90:12 failed [4] - 89:21, 138:9, 138:10, 138:12 flesh [3] - 92:2, 92:9, 92:12 flexed [3] - 91:21, 91:22, 145:21 flip [1] - 25:11 float [1] - 83:17 Floor [1] - 2:4 flopped [6] - 103:18, 103:24, 154:24, 154:25, 155:11 floss [3] - 145:3, 145:15 Floyd [1] - 68:17 flung [1] - 138:13 folks [1] - 54:5 follow [7] - 54:11, 54:14, 56:2, 78:17, 90:25, 165:18, 165:21 follow-up [7] - 54:11, 54:14, 56:2, 78:17, 90:25, 165:18, 165:21 following [6] - 63:9, 67:16, 118:9, 130:17, 168:4</p>	<p>follows [8] - 8:2, 12:18, 33:15, 55:3, 59:20, 62:19, 65:16, 167:2 food [1] - 126:3 foot [1] - 151:11 FOR [1] - 1:5 forbid [1] - 73:25 force [4] - 115:1, 143:14, 147:5, 147:16 forced [4] - 141:5, 141:6, 144:6, 144:18 foregoing [1] - 169:11 forever [1] - 94:1 forget [1] - 4:13 forgot [2] - 6:17, 54:19 Fork/Lee/Jiggs [1] - 69:16 forklift [1] - 116:15 form [6] - 33:22, 60:2, 109:6, 109:8, 159:8, 167:9 formal [2] - 49:19, 49:22 forms [4] - 108:23, 109:4, 109:5, 109:11 forward [3] - 23:16, 29:9, 61:17 forwarded [1] - 49:9 foster [1] - 133:25 foundation [3] - 21:4, 79:17, 147:11 four [5] - 27:18, 93:23, 93:24, 101:9, 112:20 FOURTH [1] - 1:4 Fourth [1] - 169:5 fourth [1] - 26:1 frazzled [1] - 96:4 freak [1] - 107:5 freaking [2] - 143:12, 144:11 freedom [4] - 88:3, 115:11, 115:14, 134:18 French [3] - 97:6, 115:5, 117:21 fridge [1] - 152:9 friend's [2] - 85:4, 124:24 friends [2] - 73:13, 124:23 front [17] - 55:11, 89:11, 89:12, 93:23, 96:6, 97:21, 97:22, 103:7, 103:9, 104:16, 135:10, 135:24, 142:17, 142:25, 144:15, 144:16, 164:9</p>	<p>frustrated [2] - 116:17, 116:20 full [7] - 7:20, 12:11, 93:5, 93:23, 143:14, 169:12 fully [5] - 44:2, 70:11, 113:21, 143:20, 157:25 fun [3] - 130:22, 130:23, 134:18 funny [1] - 86:18 future [1] - 134:5</p> <p style="text-align: center;">G</p> <p>gambling [2] - 164:19, 165:14 gang [1] - 101:15 gas [1] - 84:13 gate [1] - 12:2 gazing [1] - 101:1 generally [3] - 43:24, 155:24, 156:1 genitals [1] - 90:18 gentleman [1] - 105:2 gentlemen [1] - 166:6 George [1] - 68:17 gift [1] - 120:9 gifts [1] - 116:23 given [4] - 45:1, 79:22, 166:11, 166:17 goal [1] - 40:18 God [4] - 7:17, 12:8, 36:10, 65:4 Government [3] - 72:18, 72:19, 75:22 government [3] - 73:8, 73:22, 82:7 grabbed [17] - 86:12, 91:2, 91:4, 103:11, 105:18, 108:10, 108:13, 108:15, 113:4, 126:10, 127:5, 127:9, 141:3, 141:8, 144:6, 154:21 graduated [3] - 82:23, 82:24, 131:14 graduates [2] - 83:14, 131:22 graduating [3] - 97:3, 131:10, 131:12 graduation [16] - 82:23, 82:25, 83:2, 83:11, 83:15, 120:5, 120:9, 120:11, 120:17, 120:21, 120:22, 120:23, 131:6, 131:7, 131:16, 131:22 grandfather [2] -</p>	<p>69:21, 83:7 grandfather's [4] - 65:24, 69:15, 82:21, 106:5 grandma [1] - 116:23 grandma's [1] - 106:4 grandmother [2] - 81:20, 117:3 grandmother's [7] - 66:21, 73:19, 76:3, 83:12, 83:21, 106:8, 106:9 grandpa's [1] - 153:23 great [3] - 46:6, 88:2, 161:13 green [5] - 53:2, 53:3, 53:17, 54:5, 98:20 Green [2] - 53:6, 53:16 Greens [2] - 102:4, 154:1 Greenwich [1] - 22:11 grocery [1] - 76:9 groggy [4] - 43:11, 43:21, 44:2, 44:13 ground [1] - 57:4 grounds [2] - 25:22, 58:8 guarantees [1] - 21:17 guard [1] - 13:9 guards [1] - 110:7 guess [14] - 18:11, 21:25, 28:8, 35:3, 41:20, 44:2, 49:11, 50:23, 53:11, 58:2, 71:21, 74:18, 123:25, 130:24 guidelines [5] - 82:7, 82:9, 82:10, 85:21 gulp [1] - 130:7 guys [11] - 93:1, 93:2, 108:20, 122:19, 128:24, 129:18, 136:20, 145:3, 147:23, 151:7, 152:12</p> <p style="text-align: center;">H</p> <p>H-O-L-L-A-D-A-Y [1] - 7:23 hair [1] - 130:20 half [2] - 48:15, 93:6 hallucinations [1] - 78:11 hand [24] - 7:12, 11:20, 12:4, 22:2, 22:4, 36:6, 39:19, 39:20, 52:21, 55:14, 55:17, 64:25, 86:13, 113:4, 126:12,</p>	<p>127:5, 129:8, 129:9, 136:21, 141:8, 154:14, 164:5 hand-to-hand [2] - 129:8, 129:9 handed [1] - 129:10 handful [1] - 114:11 handicapped [1] - 121:6 handle [1] - 118:5 hands [6] - 11:21, 53:7, 57:3, 89:22, 141:4, 141:5 handwriting [1] - 109:16 hang [8] - 111:3, 114:7, 122:4, 126:15 happy [15] - 86:10, 113:12, 115:14, 117:5, 125:2, 127:2, 127:4, 127:16, 127:20, 127:24, 128:4, 128:7, 128:8, 128:9 hard [11] - 75:5, 89:16, 92:25, 101:2, 136:3, 145:13, 145:19, 146:3, 162:14, 162:21, 162:23 harm [1] - 42:7 Harvey [1] - 76:17 haste [1] - 6:17 hauls [1] - 136:2 hay [4] - 69:24, 82:21, 82:22, 83:6 hazards [3] - 105:14, 105:15, 105:16 head [11] - 13:23, 55:16, 92:7, 97:15, 102:24, 143:25, 144:7, 148:7, 148:11, 155:22, 163:17 headed [3] - 4:13, 88:13, 89:5 heads [1] - 4:13 heads-up [1] - 4:13 health [8] - 76:13, 79:24, 79:25, 80:1, 80:5, 80:6, 111:6, 121:10 healthy [3] - 113:24, 127:12, 130:21 hear [4] - 46:13, 52:1, 155:23, 155:25 heard [4] - 7:2, 53:5, 67:3, 103:17 hearing [2] - 71:7, 169:8 hears [1] - 78:12</p>
--	--	---	--	---

<p>hearsay [6] - 25:3, 25:16, 28:12, 71:13, 74:3, 80:11</p> <p>heavy [3] - 69:6, 69:8, 69:10</p> <p>heck [3] - 124:20, 134:19, 151:2</p> <p>held [4] - 141:3, 141:22, 145:6, 169:4</p> <p>help [22] - 7:17, 12:8, 36:10, 65:4, 69:23, 82:21, 95:21, 95:22, 95:23, 95:24, 99:12, 105:6, 117:2, 117:3, 150:4, 150:5, 150:19, 150:21</p> <p>helping [2] - 24:23, 152:5</p> <p>hereby [1] - 169:3</p> <p>herself [5] - 27:6, 96:7, 101:16, 101:17, 150:9</p> <p>high [6] - 87:2, 87:13, 88:12, 88:14, 132:13, 134:12</p> <p>High [1] - 131:14</p> <p>highly [1] - 131:20</p> <p>highway [6] - 103:14, 103:19, 103:25, 154:24, 155:12</p> <p>Highway [9] - 13:24, 97:19, 97:20, 97:22, 98:5, 98:6, 103:12, 154:10</p> <p>hill [3] - 133:17, 133:22, 133:23</p> <p>hired [1] - 81:24</p> <p>history [1] - 77:11</p> <p>hit [65] - 90:7, 90:9, 90:18, 90:20, 90:22, 91:21, 92:21, 92:23, 92:24, 93:8, 94:11, 99:4, 99:16, 101:6, 104:15, 104:19, 104:21, 105:14, 105:15, 105:16, 105:17, 121:2, 136:3, 136:21, 136:25, 137:1, 137:4, 138:7, 138:15, 138:17, 138:19, 138:22, 138:23, 139:8, 139:11, 140:6, 141:25, 143:11, 145:12, 145:13, 145:14, 145:18, 145:23, 145:25, 147:4, 148:20, 148:25, 149:1,</p>	<p>149:19, 150:11, 153:12, 153:13, 161:23, 162:4, 162:7, 163:9</p> <p>hitting [20] - 55:20, 90:9, 90:10, 90:12, 91:3, 91:4, 91:6, 91:8, 98:18, 141:11, 141:16, 141:23, 142:3, 144:6, 145:23, 146:2, 147:2</p> <p>hold [21] - 74:22, 79:10, 80:4, 82:15, 95:14, 104:6, 105:24, 111:4, 132:16, 141:18, 145:5, 146:2, 148:12, 151:17, 158:7, 162:8, 162:9, 162:18</p> <p>holding [5] - 142:7, 143:6, 143:7, 143:23, 144:8</p> <p>HOLLADAY [4] - 2:13, 7:18, 8:1, 11:24</p> <p>Holladay [7] - 4:18, 7:9, 7:10, 7:11, 7:22, 11:17, 108:16</p> <p>Home [2] - 68:25, 69:2</p> <p>home [35] - 76:8, 82:8, 84:11, 84:14, 85:5, 86:7, 88:1, 96:10, 96:13, 97:17, 103:8, 105:19, 106:10, 113:12, 119:23, 119:24, 120:3, 120:7, 120:9, 120:16, 120:19, 120:20, 121:17, 126:5, 127:4, 127:5, 127:20, 132:10, 132:13, 148:21, 151:5, 151:23, 152:11</p> <p>Honor [54] - 6:13, 7:3, 9:25, 10:17, 11:16, 15:23, 17:20, 20:4, 20:10, 21:8, 24:14, 29:8, 29:20, 31:25, 33:4, 38:8, 38:16, 39:6, 39:12, 52:16, 54:15, 57:13, 61:9, 61:19, 61:25, 62:10, 62:16, 62:25, 63:13, 63:19, 63:22, 64:13, 64:21, 68:4, 71:16, 74:4, 75:7, 77:4, 79:5, 80:12, 80:17, 80:21, 80:23, 94:21, 106:19, 146:8,</p>	<p>147:8, 155:5, 158:12, 158:16, 160:12, 160:24, 163:24, 166:1</p> <p>HONORABLE [1] - 1:6</p> <p>hoof [1] - 119:20</p> <p>hooked [1] - 99:15</p> <p>hoped [2] - 81:22, 126:2</p> <p>hopefully [2] - 21:16, 164:16</p> <p>hospital [11] - 24:1, 24:10, 24:22, 25:7, 25:10, 26:16, 27:5, 28:1, 30:9, 46:20, 147:1</p> <p>hot [5] - 136:3, 136:21, 138:8, 142:20, 142:21</p> <p>hotel [22] - 51:5, 51:15, 51:18, 67:5, 68:8, 73:9, 75:25, 85:6, 85:20, 85:25, 86:2, 86:4, 87:19, 112:1, 119:17, 151:7, 151:9, 151:10, 151:15, 151:16, 164:12, 165:6</p> <p>hotels [2] - 119:14, 119:15</p> <p>hour [7] - 30:6, 30:7, 100:16, 100:22, 101:1, 112:7, 112:8</p> <p>hours [4] - 14:2, 47:5, 158:22, 166:14</p> <p>house [17] - 36:23, 66:21, 76:3, 83:12, 85:4, 110:19, 117:9, 119:17, 121:19, 121:23, 122:4, 150:17, 150:18, 150:22, 150:23</p> <p>huffing [1] - 139:18</p> <p>huh-huh [1] - 31:5</p> <p>hum [1] - 136:16</p> <p>humanity [1] - 130:24</p> <p>hundred [2] - 83:7, 155:19</p> <p>hung [3] - 81:23, 144:20, 145:8</p> <p>hurt [4] - 100:21, 153:14, 163:16, 163:19</p> <p>hurts [1] - 100:18</p> <p>husband [2] - 73:16, 110:23</p> <p>hypothetical [1] - 58:11</p> <p>hysterical [2] -</p>	<p>101:12, 102:23</p> <p>I</p> <p>Idaho [3] - 2:7, 98:6</p> <p>Idea [5] - 66:6, 86:25, 102:15, 136:25, 154:8</p> <p>Identification [1] - 8:19</p> <p>Ignition [1] - 103:11</p> <p>Ill [1] - 1:19</p> <p>Illuminate [1] - 105:18</p> <p>Immediately [5] - 128:18, 128:19, 128:20, 131:4, 137:25</p> <p>Impaired [1] - 158:4</p> <p>Impartial [1] - 37:11</p> <p>Implied [1] - 97:13</p> <p>Impression [6] - 25:13, 25:24, 26:7, 27:2, 27:11, 46:8</p> <p>Impressions [1] - 144:23</p> <p>IN [2] - 1:4, 1:5</p> <p>Inadmissible [2] - 25:3, 28:12</p> <p>Incarcerated [7] - 66:8, 70:14, 70:18, 70:23, 88:3, 105:11, 136:18</p> <p>Incident [2] - 22:15, 42:18</p> <p>Inclisors [1] - 93:24</p> <p>Include [1] - 16:25</p> <p>Includes [1] - 27:3</p> <p>Including [5] - 33:21, 48:21, 60:1, 159:6, 167:7</p> <p>Inconsistencies [1] - 50:5</p> <p>Inconsistent [6] - 24:19, 25:17, 25:25, 26:18, 27:19, 28:21</p> <p>Inconveniencing [1] - 124:23</p> <p>Incorporated [1] - 18:18</p> <p>INDEX [1] - 3:1</p> <p>Indian [2] - 84:18, 87:18</p> <p>Indicate [1] - 55:18</p> <p>Indicating [1] - 139:13</p> <p>Indicating [3] - 139:17, 139:19, 139:20</p> <p>Indifferent [1] - 38:6</p> <p>Indiscernible [2] - 24:18, 58:14</p>	<p>Indiscernible [17] - 16:8, 16:13, 17:17, 17:20, 18:14, 19:7, 25:15, 25:23, 26:10, 26:18, 26:19, 26:21, 27:8, 28:11, 28:15, 58:10, 69:5</p> <p>Indiscernible [6] - 18:10, 19:14, 19:23, 25:4, 26:11, 26:21</p> <p>Individual [2] - 8:8, 8:11</p> <p>Individually [1] - 35:14</p> <p>Individuals [3] - 37:15, 42:22, 54:7</p> <p>Indoors [1] - 76:15</p> <p>Infected [3] - 136:6, 136:9, 137:6</p> <p>Infection [2] - 137:13, 137:18</p> <p>Inference [1] - 62:22</p> <p>Information [19] - 14:6, 33:20, 34:6, 46:10, 50:8, 60:1, 60:11, 72:11, 73:21, 77:23, 78:9, 79:24, 80:18, 83:13, 121:12, 159:6, 159:17, 167:7, 167:18</p> <p>Informed [2] - 81:23, 105:2</p> <p>Inherently [1] - 35:19</p> <p>Initial [1] - 49:6</p> <p>Injured [2] - 140:23, 147:11</p> <p>Injuries [26] - 14:8, 15:3, 42:21, 44:25, 45:10, 45:15, 45:20, 45:23, 48:13, 50:6, 50:12, 50:15, 50:17, 55:7, 55:14, 55:17, 55:18, 55:23, 56:6, 57:9, 58:3, 146:15, 146:19, 146:21, 146:23, 147:12</p> <p>injury [1] - 56:25</p> <p>Inn [5] - 97:23, 119:11, 122:13, 122:14, 123:6</p> <p>Inquiring [1] - 19:1</p> <p>Insanity [1] - 86:21</p> <p>Inside [7] - 95:18, 105:19, 136:4, 136:7, 137:5, 138:3, 138:6</p> <p>Instant [4] - 34:3, 60:8, 159:14, 167:15</p> <p>Instead [1] - 134:18</p>
---	--	--	--	--

<p>instinct [1] - 92:19</p> <p>instruct [4] - 18:4, 26:22, 62:18, 74:10</p> <p>instructed [3] - 16:20, 17:14, 95:3</p> <p>instruction [4] - 16:25, 17:1, 17:18, 19:12</p> <p>instructions [7] - 16:25, 19:25, 67:22, 166:10, 166:20, 166:22</p> <p>intending [1] - 61:11</p> <p>intention [1] - 87:7</p> <p>intently [2] - 101:1, 136:23</p> <p>Interacted [3] - 14:20, 15:13, 37:17</p> <p>interaction [7] - 10:10, 23:23, 35:18, 36:15, 37:8, 37:24, 94:24</p> <p>interim [1] - 23:2</p> <p>Interior [2] - 41:5, 41:14</p> <p>Internet [17] - 33:22, 34:2, 34:3, 34:4, 60:2, 60:7, 60:8, 60:9, 71:6, 159:8, 159:13, 159:14, 159:15, 167:9, 167:14, 167:15, 167:16</p> <p>Interrupted [1] - 22:10</p> <p>Intersection [3] - 98:8, 98:19, 100:12</p> <p>interview [37] - 15:15, 15:19, 20:12, 24:7, 24:10, 24:21, 24:25, 25:8, 28:1, 28:24, 31:10, 31:21, 32:6, 32:22, 32:25, 40:2, 41:25, 43:7, 44:10, 44:20, 45:2, 45:3, 45:7, 45:8, 45:12, 45:13, 49:5, 55:9, 56:14, 56:16, 56:18, 57:10, 69:3, 109:7, 148:25, 161:17, 161:24</p> <p>interviewed [3] - 47:19, 99:3, 140:16</p> <p>interviewing [2] - 30:9, 40:17</p> <p>interviews [4] - 46:4, 69:2, 110:16, 137:10</p> <p>intimate [1] - 66:12</p> <p>Intimldating [1] - 141:19</p> <p>introduce [2] - 5:13, 65:20</p>	<p>Investigation [8] - 42:9, 47:3, 50:3, 51:11, 51:13, 157:3</p> <p>Investigator [2] - 41:19, 51:7</p> <p>Invitations [1] - 131:19</p> <p>involve [1] - 66:3</p> <p>Involved [2] - 42:2, 99:4</p> <p>iPhone [4] - 34:2, 60:7, 159:13, 167:14</p> <p>Iron [1] - 102:24</p> <p>Irresponsible [1] - 105:20</p> <p>ish [1] - 15:2</p> <p>Issue [4] - 34:24, 35:4, 35:8, 75:25</p> <p>Issues [9] - 5:21, 78:2, 79:20, 81:5, 86:21, 122:9, 122:10, 123:12, 123:13</p> <p>It'd [2] - 82:22, 103:1</p> <p>Items [1] - 51:4</p> <p>Itself [1] - 23:20</p>	<p>86:6, 86:7, 86:18, 87:8, 87:13, 87:16, 89:2, 89:16, 89:24, 90:1, 90:8, 91:1, 91:20, 92:14, 92:25, 93:20, 93:25, 94:3, 94:16, 95:3, 95:8, 95:13, 95:19, 95:22, 97:22, 98:12, 99:10, 100:6, 100:14, 101:2, 101:6, 101:9, 102:17, 105:4, 105:9, 105:20, 106:14, 106:16, 107:10, 108:10, 108:13, 108:15, 110:17, 111:21, 115:18, 116:25, 117:15, 117:21, 117:25, 118:5, 119:14, 120:12, 120:24, 121:1, 121:6, 130:3, 130:9, 134:6, 136:24, 139:8, 140:10, 141:6, 143:4, 143:16, 146:15, 146:19, 154:3, 154:19, 154:21, 154:23, 161:23, 162:11, 162:13, 162:16, 165:9</p> <p>Jean's [18] - 47:13, 49:24, 49:25, 72:16, 73:13, 75:15, 78:1, 97:24, 102:5, 111:2, 111:6, 114:24, 118:17, 151:9, 158:6, 162:10, 162:15, 165:12</p> <p>Jiggs [2] - 13:24, 30:23</p> <p>Jim [1] - 76:17</p> <p>Job [9] - 65:25, 81:17, 88:2, 115:16, 116:9, 116:18, 127:2, 127:3, 132:9</p> <p>Jog [1] - 39:18</p> <p>Judge [1] - 155:13</p> <p>Judge [1] - 6:15</p> <p>JUDGE [1] - 1:6</p> <p>Judgment [1] - 88:6</p> <p>Judicial [1] - 169:5</p> <p>JUDICIAL [1] - 1:4</p> <p>JULIE [1] - 169:3</p> <p>Julie [2] - 1:24, 169:17</p> <p>Jump [1] - 84:12</p> <p>Jumped [6] - 21:21, 22:2, 22:21, 95:25, 103:9, 154:22</p>	<p>JUNE [1] - 4:1</p> <p>June [27] - 1:20, 4:4, 6:4, 13:12, 31:18, 32:10, 32:25, 34:18, 38:22, 60:24, 64:5, 68:11, 78:5, 82:4, 84:16, 84:20, 84:22, 84:24, 120:2, 131:17, 156:21, 160:2, 160:16, 168:4, 169:4</p> <p>Junior [1] - 23:8</p> <p>Juror [9] - 35:1, 35:25, 52:24, 54:3, 57:19, 58:18, 164:11, 165:5, 165:13</p> <p>JUROR [1] - 165:3</p> <p>Juror [5] - 35:15, 35:18, 40:21, 164:7, 165:1</p> <p>Jurors [6] - 6:11, 39:4, 57:17, 64:12, 158:25, 160:22</p> <p>JURY [1] - 54:1</p> <p>Jury [3] - 1:18, 2:16, 2:23</p> <p>Jury [42] - 4:9, 4:11, 5:25, 6:1, 11:18, 16:11, 16:20, 17:13, 26:23, 33:15, 34:12, 34:23, 34:25, 38:18, 38:19, 52:19, 59:20, 60:17, 61:5, 62:8, 62:13, 62:18, 63:6, 63:8, 63:25, 64:2, 74:10, 93:1, 99:8, 106:13, 149:17, 160:8, 160:10, 160:14, 164:3, 166:6, 166:9, 166:20, 166:22, 167:24, 167:25, 169:4</p> <p>Jury's [1] - 18:6</p> <p>Justice [3] - 111:1, 111:11, 111:12</p> <p>Justin [1] - 30:14</p>	<p>Khoury's [1] - 100:12</p> <p>Kick [1] - 117:18</p> <p>kicked [15] - 67:6, 67:9, 68:14, 85:1, 92:18, 117:6, 117:12, 117:24, 118:2, 118:6, 118:9, 119:2, 125:17, 126:17</p> <p>kickling [1] - 103:3</p> <p>kids [3] - 133:16, 133:24, 147:21</p> <p>kids' [1] - 134:5</p> <p>Kill [9] - 101:13, 101:14, 101:15, 101:16, 101:17, 103:25, 153:19, 153:24</p> <p>Killed [1] - 112:6</p> <p>Kind [11] - 4:12, 19:12, 22:21, 58:5, 62:22, 92:19, 105:17, 114:4, 147:17, 161:14, 162:10</p> <p>Kiosk [1] - 136:17</p> <p>knock [1] - 129:16</p> <p>knocked [2] - 89:21, 144:19</p> <p>knowing [1] - 112:1</p> <p>knowledge [7] - 35:12, 71:10, 78:24, 79:7, 79:14, 80:13, 80:16</p> <p>known [3] - 66:10, 66:11, 99:10</p> <p>knows [2] - 78:24, 134:3</p>
J				
<p>jail [17] - 30:19, 31:10, 32:11, 96:10, 96:12, 97:21, 97:22, 97:24, 98:24, 98:25, 99:9, 136:6, 136:11, 136:15, 151:4</p> <p>Jail [2] - 14:21, 98:22</p> <p>January [5] - 66:17, 66:18, 66:19, 71:5, 108:4</p> <p>Jared [1] - 35:25</p> <p>jaunt [1] - 119:11</p> <p>Jay [1] - 101:15</p> <p>Jean [142] - 14:18, 14:19, 15:7, 17:5, 20:13, 23:1, 40:9, 40:13, 41:16, 41:25, 45:9, 46:7, 47:23, 48:13, 51:23, 53:1, 53:13, 54:8, 66:4, 66:16, 66:24, 67:5, 67:6, 67:9, 67:10, 68:14, 70:2, 70:4, 70:14, 70:17, 71:1, 71:22, 72:1, 72:12, 73:3, 73:11, 73:15, 73:17, 73:24, 75:20, 76:6, 76:9, 77:21, 78:2, 78:8, 78:9, 81:4, 81:15, 83:1, 83:5, 83:25, 84:11, 84:13, 85:1, 85:11, 85:15, 85:16, 86:5,</p>				
K				
<p>K-9 [1] - 92:1</p> <p>Kacin [1] - 111:15</p> <p>keep [8] - 17:7, 29:11, 41:10, 90:12, 96:18, 113:5</p> <p>keeping [1] - 63:14</p> <p>Kelth [1] - 128:9</p> <p>kept [3] - 99:6, 102:8, 157:4</p> <p>keys [2] - 103:11, 154:22</p>				
L				
<p>LA [1] - 66:1</p> <p>lacerations [1] - 15:1</p> <p>lack [2] - 48:14, 71:10</p> <p>ladies [1] - 166:6</p> <p>lady [1] - 151:2</p> <p>laid [1] - 147:10</p> <p>Lamolle [1] - 99:18</p> <p>lane [1] - 104:14</p> <p>language [1] - 115:2</p> <p>last [7] - 7:21, 12:12, 30:5, 51:21, 65:10, 66:5, 78:5</p> <p>lasts [1] - 48:10</p> <p>late [1] - 5:1</p> <p>laugh [2] - 114:1, 114:2</p> <p>law [11] - 13:2, 30:19, 47:3, 62:19, 67:17, 76:16, 94:25, 95:3, 140:24, 157:25,</p>				

166:11 lawyer [1] - 140:22 lay [1] - 79:16 laying [2] - 21:3, 43:10 laymen's [1] - 14:3 lead [3] - 41:19, 41:20, 51:7 leading [2] - 149:12 learn [2] - 31:7, 73:21 learned [1] - 44:21 least [11] - 17:2, 17:14, 44:22, 45:23, 49:12, 49:16, 50:16, 74:13, 75:1, 75:14, 138:11 leave [7] - 59:5, 60:19, 85:7, 85:15, 87:19, 88:9, 167:25 leaving [1] - 59:1 Leddie [1] - 111:17 Lee [30] - 30:25, 51:24, 66:23, 83:7, 83:9, 83:23, 83:24, 84:2, 84:6, 87:9, 87:11, 96:23, 97:13, 97:14, 97:16, 99:1, 99:2, 101:8, 101:20, 119:25, 130:19, 132:6, 132:20, 133:2, 133:7, 150:25, 151:2, 153:19 Lee/Jiggs [1] - 100:24 left [26] - 30:18, 30:23, 39:19, 45:10, 45:15, 46:19, 55:7, 55:12, 56:12, 56:21, 91:5, 91:17, 95:20, 123:19, 136:4, 140:4, 140:6, 140:7, 140:8, 140:9, 141:14, 141:24, 144:9, 151:12, 156:19 left-hand [1] - 39:19 legal [2] - 146:11, 163:4 length [1] - 21:8 lengthy [3] - 20:16, 20:18, 166:14 letting [2] - 130:20, 152:8 level [1] - 42:9 license [1] - 96:24 lie [2] - 105:9, 156:13 Lieutenant [1] - 136:19 life [2] - 66:11, 69:11 lifted [1] - 138:12 light [5] - 98:20,	100:15, 104:17, 105:16, 105:17 lights [1] - 39:24 likely [1] - 4:21 limitation [4] - 33:21, 60:1, 159:7, 167:8 limited [3] - 20:12, 81:1, 81:2 lines [2] - 5:24, 145:14 linked [1] - 22:18 LinkedIn [4] - 34:5, 60:10, 159:16, 167:17 lip [1] - 94:20 lips [2] - 113:13, 113:21 list [1] - 74:25 listen [5] - 33:18, 59:23, 134:21, 159:4, 167:5 listener [2] - 74:13, 74:14 listening [4] - 115:19, 116:5, 120:13, 128:9 listing [1] - 74:20 literal [1] - 157:14 live [5] - 66:24, 73:17, 133:16, 133:24, 133:25, 150:16 live's [1] - 88:13 lived [2] - 88:11, 103:22 lives [1] - 131:13 living [3] - 41:12, 66:20, 67:4 local [1] - 133:23 lock [2] - 96:5, 98:14 locked [5] - 91:15, 96:1, 96:2, 107:18 locks [1] - 96:5 logged [1] - 109:11 look [15] - 30:21, 30:24, 40:8, 40:11, 41:3, 48:22, 55:7, 68:23, 71:6, 88:12, 94:9, 109:13, 127:10, 139:14, 144:24 looked [8] - 40:9, 40:13, 43:18, 86:18, 89:13, 101:6, 135:19 looking [7] - 5:3, 22:20, 68:20, 82:2, 102:24, 124:24, 161:12 looks [5] - 11:7, 21:20, 22:21, 41:11, 139:15 loop [2] - 89:4 loose [10] - 92:12, 92:22, 92:25, 93:4,	93:9, 93:10, 93:12, 94:8, 145:1, 148:11 loosen [1] - 91:23 lose [1] - 90:21 love [4] - 99:10, 99:12, 106:16, 113:7 lower [4] - 39:19, 89:5, 89:12, 133:16 lucid [1] - 44:5 luck [1] - 154:1 lunch [2] - 59:16, 59:19 lying [1] - 152:23 M ma'am [1] - 65:5 machines [1] - 85:23 mad [4] - 95:24, 107:14, 107:17, 116:6 main [1] - 88:15 malt [2] - 112:16, 112:18 man [1] - 99:25 manhood [1] - 153:6 manner [1] - 5:14 mannerisms [1] - 43:12 March [1] - 111:18 Mariah [2] - 89:8, 135:24 marijuana [1] - 84:18 mark [6] - 22:7, 40:5, 40:7, 40:8, 40:14, 40:16 marked [2] - 15:17, 31:20 marks [5] - 40:11, 40:12, 144:22, 144:23, 144:24 maroon [2] - 14:14, 54:6 marriage [1] - 111:1 married [3] - 110:24, 111:10, 111:21 mask [2] - 82:8, 82:9 MASON [1] - 1:6 massive [1] - 15:1 material [1] - 80:11 matter [15] - 7:15, 12:6, 16:11, 17:4, 18:7, 18:25, 36:8, 51:17, 65:2, 71:16, 77:2, 80:11, 138:4, 146:10, 169:5 matters [1] - 5:15 Matthew [1] - 2:5 mean [22] - 17:9, 40:7, 40:17, 41:8, 41:9,	41:10, 42:14, 43:23, 45:13, 48:10, 48:11, 75:5, 77:12, 78:8, 79:14, 87:2, 93:1, 96:21, 109:1, 137:9, 145:8, 151:11 meaning [2] - 129:12, 138:12 Media [1] - 11:1 media [4] - 34:1, 60:6, 159:12, 167:13 median [1] - 104:16 medical [3] - 78:2, 79:20, 81:8 medication [8] - 26:17, 81:18, 86:22, 87:3, 87:4, 102:6, 124:16, 127:23 medications [5] - 81:5, 81:16, 114:15, 114:23, 114:25 medium [4] - 33:20, 59:25, 159:6, 167:7 meds [2] - 116:3, 134:3 meet [1] - 166:9 member [2] - 52:19, 164:3 members [2] - 11:18, 101:15 memories [1] - 39:18 memory [7] - 24:21, 24:23, 24:24, 25:9, 25:18, 27:25, 28:24 mental [17] - 71:7, 76:13, 79:23, 79:25, 80:1, 80:5, 80:6, 102:5, 107:5, 111:6, 114:4, 114:8, 114:11, 115:3, 121:4, 121:10 mentally [3] - 121:6, 158:4, 158:6 mention [2] - 25:7, 137:22 mentioned [2] - 77:7, 116:22 merely [1] - 17:5 message [1] - 77:24 messagIng [4] - 34:3, 60:8, 159:14, 167:15 met [3] - 10:8, 11:10, 71:22 meth [12] - 115:11, 128:11, 128:12, 128:17, 128:21, 130:15, 131:1, 132:8, 133:2, 134:4, 151:16, 152:5 meth's [1] - 130:23	methamphetamine [4] - 87:14, 87:16, 87:21, 107:7 middle [7] - 39:8, 103:19, 103:24, 154:4, 154:13, 154:24, 160:25 midst [1] - 131:15 might [1] - 44:7 Mikey [1] - 101:14 mile [2] - 119:18, 150:17 miles [7] - 100:16, 100:22, 101:1, 119:13, 150:16, 151:1 military [2] - 158:2, 158:3 mind [16] - 14:5, 63:14, 74:5, 74:8, 77:1, 78:15, 78:23, 80:10, 80:19, 82:13, 89:18, 91:18, 105:8, 127:8, 150:24, 162:25 mine [1] - 165:11 minimal [1] - 140:21 minute [4] - 22:21, 39:16, 137:15, 159:23 minutes [16] - 16:5, 48:5, 48:6, 48:8, 60:17, 87:23, 88:20, 88:24, 103:2, 126:5, 130:10, 134:13, 135:7 Miranda [1] - 31:12 Mirandized [1] - 32:15 mishmash [1] - 25:3 misstatement [1] - 149:3 mistake [8] - 23:10, 161:10, 161:15, 161:19, 161:21, 161:25, 162:5 mix [1] - 28:11 MLRS [1] - 69:12 mode [1] - 72:19 Moffitt [3] - 35:25, 36:4, 36:13 MOFFITT [11] - 36:11, 36:17, 36:20, 37:1, 37:5, 37:9, 37:12, 37:19, 38:3, 38:6, 38:11 molar [1] - 137:4 Molly [1] - 111:17 mom [17] - 67:6, 67:7, 68:14, 85:16, 117:25, 125:14,
---	--	---	---	---

<p>125:16, 125:18, 125:19, 125:21, 126:1, 126:7, 126:17, 126:22, 127:4</p> <p>mom's [1] - 68:14</p> <p>moment [2] - 70:16, 92:15</p> <p>money [14] - 83:3, 83:5, 84:13, 116:4, 116:6, 116:21, 116:24, 117:6, 119:4, 128:15, 129:25, 134:22, 134:24, 152:25</p> <p>month [7] - 11:9, 82:2, 108:17, 125:18, 133:10, 136:5, 137:24</p> <p>months [5] - 48:24, 70:8, 107:25, 108:1</p> <p>morning [11] - 43:25, 46:25, 110:9, 122:1, 123:15, 123:16, 124:7, 124:10, 133:4, 166:19, 166:21</p> <p>most [1] - 114:15</p> <p>motel [12] - 68:15, 74:1, 75:23, 81:14, 85:2, 85:3, 85:24, 96:11, 97:1, 97:22, 97:25</p> <p>Motel [5] - 72:17, 72:18, 73:23, 119:12, 119:18</p> <p>mother [12] - 67:2, 77:16, 83:4, 84:3, 84:4, 84:7, 117:14, 117:15, 117:19, 117:20, 118:10, 118:16</p> <p>Motor [1] - 67:13</p> <p>Mountain [5] - 97:19, 97:20, 97:21, 98:5</p> <p>mountain [1] - 87:5</p> <p>mouth [5] - 136:7, 137:13, 137:18, 138:3, 138:6</p> <p>move [5] - 29:9, 71:18, 92:4, 122:19, 156:9</p> <p>moved [2] - 29:15, 67:18</p> <p>movement [4] - 41:13, 67:23, 75:21, 76:7</p> <p>movie [3] - 92:3, 147:21, 147:24</p> <p>movies [3] - 144:12, 147:20, 147:25</p> <p>moving [1] - 98:7</p>	<p>MR [272] - 4:12, 4:25, 5:4, 5:10, 5:12, 6:12, 6:13, 6:15, 6:25, 7:3, 7:9, 7:18, 8:4, 8:18, 8:21, 9:14, 9:15, 9:21, 9:25, 10:3, 10:6, 10:13, 10:17, 10:21, 10:24, 11:2, 11:6, 11:8, 11:13, 11:16, 11:24, 12:1, 12:9, 12:20, 15:17, 15:22, 16:1, 16:4, 16:6, 16:9, 16:10, 16:14, 16:16, 16:17, 16:19, 16:22, 17:2, 17:7, 17:12, 17:15, 17:19, 17:24, 18:2, 18:6, 18:11, 18:14, 18:15, 18:20, 18:21, 18:22, 19:2, 19:4, 19:6, 19:8, 19:9, 19:13, 19:15, 19:18, 19:21, 19:23, 20:3, 20:6, 20:10, 20:18, 20:24, 21:2, 21:3, 21:5, 21:7, 21:11, 21:14, 21:19, 23:16, 23:20, 23:22, 24:9, 24:13, 24:17, 24:19, 24:24, 25:5, 25:9, 25:19, 25:20, 25:22, 26:1, 26:4, 26:5, 26:6, 26:12, 26:14, 27:1, 27:13, 27:16, 27:19, 27:21, 27:22, 28:8, 28:11, 28:19, 29:5, 29:8, 29:17, 29:20, 30:1, 31:20, 31:24, 32:5, 32:17, 32:19, 32:24, 33:3, 35:17, 35:22, 36:1, 36:11, 36:17, 36:20, 37:1, 37:5, 37:9, 37:12, 37:19, 37:22, 37:24, 38:3, 38:4, 38:6, 38:8, 38:11, 38:15, 38:16, 39:5, 39:6, 39:15, 39:18, 39:24, 40:1, 43:2, 43:6, 52:15, 52:18, 53:3, 53:15, 53:20, 53:21, 54:13, 54:15, 54:19, 55:5, 56:1, 56:5, 57:12, 57:15, 57:23, 58:5, 58:10, 58:11, 58:14, 58:23, 59:2, 59:9, 59:12, 59:15, 61:8, 61:13, 61:19, 63:22, 63:23, 64:13, 64:14, 64:17, 64:21, 65:18, 67:24,</p>	<p>68:3, 68:7, 71:9, 71:13, 71:14, 71:20, 72:21, 73:1, 73:7, 74:2, 74:4, 74:18, 74:24, 75:4, 75:12, 75:13, 76:20, 76:21, 76:25, 77:4, 77:6, 78:14, 78:17, 78:19, 78:20, 78:22, 79:4, 79:13, 79:18, 79:19, 80:9, 80:15, 80:20, 80:22, 80:23, 81:3, 93:19, 94:22, 96:15, 104:9, 106:18, 106:22, 111:5, 111:9, 146:7, 146:10, 146:12, 146:14, 147:7, 147:10, 147:15, 148:5, 148:15, 152:4, 155:4, 155:6, 155:9, 155:13, 155:16, 157:9, 157:12, 157:13, 157:17, 157:22, 158:8, 158:11, 158:16, 158:20, 158:23, 160:11, 160:12, 160:23, 160:24, 161:7, 161:8, 162:20, 163:23, 164:1, 164:14, 164:15, 164:16, 164:22, 164:23, 165:20, 165:22, 166:1, 166:5</p> <p>multiple [2] - 44:18, 51:23</p> <p>murder [1] - 70:25</p> <p>must [3] - 108:10, 108:13, 126:8</p> <p>Myspace [4] - 34:5, 60:10, 159:16, 167:17</p>	<p>71:15</p> <p>necessary [2] - 42:24, 166:8</p> <p>need [21] - 4:10, 4:24, 5:7, 11:7, 19:12, 21:25, 29:6, 33:15, 38:13, 59:20, 61:6, 61:10, 63:20, 74:20, 74:24, 74:25, 91:3, 125:20, 160:9, 167:1</p> <p>needed [10] - 42:9, 67:14, 69:22, 73:25, 76:2, 83:4, 83:6, 84:20, 125:10, 126:18</p> <p>needs [1] - 16:20</p> <p>negative [5] - 150:20, 150:22, 153:1, 153:3, 153:5</p> <p>neighbor's [2] - 35:6, 35:9</p> <p>neighbors [1] - 36:21</p> <p>nervous [3] - 82:16, 96:17, 100:7</p> <p>NEVADA [3] - 1:5, 1:10, 4:1</p> <p>Nevada [17] - 1:21, 4:5, 6:6, 13:4, 34:19, 38:24, 61:1, 61:23, 64:7, 66:23, 73:20, 83:8, 83:23, 119:25, 160:4, 160:17, 169:7</p> <p>never [9] - 82:13, 88:16, 107:1, 109:1, 137:10, 152:22, 157:9, 157:13, 157:19</p> <p>New [2] - 70:8</p> <p>new [8] - 72:5, 85:3, 87:4, 88:13, 102:6, 109:1, 121:24, 126:18</p> <p>newly [1] - 133:9</p> <p>Newports [1] - 102:20</p> <p>newspapers [4] - 33:21, 60:1, 159:7, 167:8</p> <p>next [20] - 7:8, 8:16, 31:7, 85:7, 86:8, 86:24, 87:8, 87:11, 88:1, 88:10, 89:15, 91:10, 95:2, 100:25, 101:7, 102:10, 103:4, 107:20, 132:14, 143:3</p> <p>Nick [1] - 107:24</p> <p>niece [5] - 82:23, 82:24, 97:2, 131:10, 131:12</p> <p>niece's [1] - 120:21</p>	<p>niggers [1] - 117:22</p> <p>night [13] - 4:19, 6:17, 13:16, 13:21, 14:22, 81:17, 114:12, 122:17, 123:9, 132:12, 132:13, 133:3, 146:24</p> <p>nights [1] - 151:8</p> <p>nlne [5] - 66:5, 66:9, 66:12, 107:25, 108:1</p> <p>noise [1] - 35:4</p> <p>non [3] - 73:15, 77:10</p> <p>non-felon [2] - 73:15, 77:10</p> <p>non-violent [1] - 77:10</p> <p>none [1] - 156:15</p> <p>nonresponsive [2] - 72:22, 158:9</p> <p>normal [1] - 69:17</p> <p>normally [3] - 21:5, 41:10, 114:6</p> <p>notebooks [1] - 167:25</p> <p>nothing [7] - 7:16, 12:7, 36:9, 52:18, 65:3, 109:1, 136:20</p> <p>notice [4] - 5:8, 22:3, 109:18</p> <p>noticed [1] - 89:13</p> <p>notified [1] - 17:3</p> <p>notion [1] - 53:13</p> <p>November [1] - 169:15</p> <p>nowhere [1] - 124:22</p> <p>NRS [1] - 154:10</p> <p>nuances [1] - 108:24</p> <p>number [23] - 6:24, 10:2, 21:10, 22:6, 22:8, 22:9, 39:19, 39:20, 58:25, 59:4, 68:9, 96:4, 99:10, 122:14, 122:15, 122:21, 122:23, 123:4, 123:7, 123:8, 123:10, 152:21, 164:7</p> <p>Number [1] - 165:5</p> <p>numerous [1] - 65:24</p> <p>nurse [1] - 136:15</p> <p>NV [2] - 2:4, 2:7</p>
N				
<p>nail [1] - 143:12</p> <p>name [9] - 7:20, 7:21, 8:9, 12:11, 12:12, 14:17, 65:9, 65:10, 65:11</p> <p>names [2] - 37:2, 110:6</p> <p>narrative [1] - 67:25</p> <p>nature [5] - 67:25, 75:20, 76:7, 86:20, 118:17</p> <p>near [1] - 76:19</p> <p>necessarily [4] - 18:24, 19:4, 61:8,</p>				
O				
<p>o'clock [8] - 11:11, 60:16, 60:18, 125:12, 131:2, 131:17, 166:18, 167:25</p> <p>oath [3] - 28:22, 39:11, 161:5</p> <p>obeying [1] - 100:5</p>				

<p>object [6] - 67:24, 71:9, 72:21, 74:2, 78:23, 157:9</p> <p>objected [1] - 20:22</p> <p>objection [14] - 10:16, 10:19, 15:20, 21:8, 24:12, 29:18, 31:23, 33:2, 73:5, 146:7, 147:7, 147:14, 155:8, 158:8</p> <p>obtain [3] - 48:19, 48:21, 48:25</p> <p>obviously [1] - 32:10</p> <p>occasion [3] - 125:16, 126:16, 126:21</p> <p>occasions [2] - 106:25, 141:1</p> <p>occupation [2] - 8:5, 12:21</p> <p>occurred [3] - 54:8, 88:23, 137:10</p> <p>OF [6] - 1:5, 1:10, 2:12, 2:20</p> <p>of.. [1] - 48:14</p> <p>offer [7] - 9:14, 10:14, 15:19, 24:10, 31:21, 32:17, 32:25</p> <p>offering [1] - 21:6</p> <p>Office [16] - 2:3, 2:6, 4:8, 6:9, 8:6, 12:23, 12:24, 12:25, 13:18, 34:22, 39:2, 51:19, 61:4, 64:10, 160:7, 160:20</p> <p>office [1] - 67:15</p> <p>officer [7] - 13:10, 30:19, 35:10, 41:20, 110:20, 111:1, 151:3</p> <p>officers [6] - 122:22, 140:15, 156:15, 156:25, 157:18, 157:23</p> <p>official [2] - 73:8, 73:22</p> <p>often [1] - 71:6</p> <p>old [1] - 99:25</p> <p>ON [2] - 2:12, 2:20</p> <p>on-scene [1] - 41:24</p> <p>once [13] - 37:5, 37:12, 40:20, 45:10, 45:18, 45:21, 45:22, 50:7, 94:10, 125:8, 147:19, 149:19</p> <p>once-over [1] - 94:10</p> <p>one [60] - 4:13, 9:10, 11:3, 15:7, 20:16, 23:10, 28:4, 34:24, 37:15, 40:25, 44:23, 50:24, 52:21, 54:19, 55:10, 57:6, 57:17,</p>	<p>68:16, 69:5, 70:4, 70:16, 79:4, 86:3, 91:5, 93:3, 96:5, 96:25, 97:23, 99:17, 102:18, 106:13, 109:6, 109:25, 110:5, 111:13, 112:8, 113:2, 127:9, 128:9, 132:12, 133:12, 136:3, 136:21, 138:7, 138:8, 141:5, 141:12, 142:20, 142:21, 143:10, 152:24, 153:2, 153:4, 164:13, 165:7, 165:8, 165:9, 165:10, 165:11</p> <p>one's [1] - 28:10</p> <p>ones [2] - 51:3</p> <p>oOo [3] - 1:7, 2:9, 4:2</p> <p>open [4] - 43:24, 65:8, 69:23, 92:3</p> <p>opened [1] - 84:17</p> <p>opening [1] - 84:19</p> <p>operate [1] - 98:15</p> <p>opinion [5] - 33:23, 48:6, 60:3, 159:8, 167:9</p> <p>opportunity [1] - 9:2</p> <p>opposition [1] - 9:25</p> <p>option [2] - 151:20</p> <p>options [1] - 151:12</p> <p>oral [2] - 123:23, 123:24</p> <p>orbital [1] - 94:17</p> <p>order [1] - 4:20</p> <p>ordered [1] - 75:22</p> <p>oriented [1] - 57:2</p> <p>original [6] - 9:16, 9:18, 9:20, 16:3, 20:15</p> <p>Ortega [9] - 14:18, 14:19, 17:5, 20:13, 42:21, 66:4, 66:10, 89:2, 143:4</p> <p>Osino [1] - 13:22</p> <p>otherwise [1] - 80:24</p> <p>ounces [8] - 112:19, 112:20, 112:21, 112:22, 112:23, 164:20, 165:15, 165:17</p> <p>outside [6] - 4:8, 34:22, 34:25, 61:4, 160:7, 166:9</p> <p>overreacts [1] - 118:17</p> <p>overrule [2] - 147:13, 155:7</p>	<p>overslept [1] - 122:3</p> <p>own [7] - 18:18, 18:19, 62:1, 106:1, 115:22, 150:8, 150:23</p> <p style="text-align: center;">P</p> <p>p.m [8] - 13:16, 14:4, 46:24, 60:24, 64:5, 85:16, 160:2, 160:16</p> <p>packet [2] - 79:23</p> <p>Page [1] - 2:12</p> <p>pages [1] - 169:12</p> <p>pain [1] - 27:6</p> <p>pains [1] - 46:6</p> <p>palm [1] - 95:20</p> <p>pandemic [1] - 68:16</p> <p>pandemonium [2] - 82:14, 132:5</p> <p>panel [1] - 149:17</p> <p>paper [2] - 110:9, 164:7</p> <p>papers [1] - 118:15</p> <p>paraphrase [1] - 157:16</p> <p>pardon [5] - 97:6, 115:2, 115:5, 117:21, 162:12</p> <p>parents [1] - 133:25</p> <p>park [1] - 154:21</p> <p>parking [1] - 98:23</p> <p>parole [26] - 63:4, 67:19, 67:20, 72:12, 72:16, 72:24, 73:10, 74:7, 75:15, 75:19, 77:14, 79:23, 88:2, 95:4, 97:24, 105:10, 107:10, 107:12, 110:20, 110:25, 126:18, 130:16, 130:18, 151:3</p> <p>paroled [6] - 67:1, 73:18, 77:21, 79:22, 99:11, 110:19</p> <p>Parr [1] - 70:24</p> <p>part [8] - 18:11, 66:3, 73:9, 79:23, 81:17, 129:24, 137:4, 138:25</p> <p>parted [1] - 125:3</p> <p>particular [10] - 11:19, 13:12, 13:21, 20:22, 27:3, 42:17, 52:20, 58:18, 58:20, 164:4</p> <p>parties [6] - 6:10, 7:6, 21:9, 39:3, 64:11, 160:21</p> <p>party [14] - 54:16, 58:21, 82:25, 83:11, 83:19, 120:6,</p>	<p>120:11, 120:17, 120:22, 131:6, 131:9, 131:11, 131:13, 131:17</p> <p>pass [5] - 73:12, 73:14, 76:19, 126:19, 164:8</p> <p>passenger [10] - 45:18, 90:5, 95:17, 101:20, 104:16, 140:5, 142:10, 150:4, 150:8</p> <p>passenger's [1] - 143:19</p> <p>pause [2] - 21:20, 33:10</p> <p>PC [2] - 46:16, 47:7</p> <p>Peace [3] - 111:1, 111:11, 111:12</p> <p>pedaling [1] - 139:15</p> <p>peers [1] - 93:3</p> <p>pending [1] - 133:15</p> <p>penis [7] - 55:18, 123:13, 123:17, 123:18, 123:21, 124:4, 135:4</p> <p>Pennell [35] - 2:5, 4:7, 4:14, 5:11, 6:7, 7:1, 8:16, 11:15, 24:12, 34:21, 37:23, 39:1, 43:4, 56:3, 61:2, 64:8, 65:14, 68:2, 71:12, 73:6, 75:3, 77:3, 78:16, 79:3, 79:17, 80:14, 155:14, 157:11, 157:21, 158:10, 160:5, 160:19, 161:6, 162:18, 165:21</p> <p>PENNELL [122] - 4:25, 5:12, 6:13, 7:3, 9:15, 9:25, 10:17, 11:16, 15:22, 16:1, 16:6, 16:10, 16:16, 16:19, 17:2, 17:12, 17:19, 17:24, 18:2, 18:6, 18:14, 18:21, 19:6, 19:9, 19:13, 19:18, 19:21, 19:23, 20:3, 20:6, 20:24, 21:3, 21:7, 24:13, 24:17, 24:24, 25:19, 25:22, 26:4, 26:6, 26:14, 27:21, 28:8, 28:11, 28:19, 29:5, 29:8, 29:20, 31:24, 33:3, 35:17, 37:24, 38:4, 38:8, 38:16, 39:6, 43:6, 52:15, 53:3,</p>	<p>53:15, 53:20, 54:15, 56:5, 57:12, 57:23, 58:5, 58:11, 61:8, 61:19, 63:22, 64:13, 64:21, 65:18, 68:3, 68:7, 71:14, 71:20, 73:1, 73:7, 74:4, 75:4, 75:12, 75:13, 76:21, 77:4, 77:6, 78:17, 78:20, 79:4, 79:18, 79:19, 80:15, 80:20, 80:23, 81:3, 93:19, 94:22, 96:15, 104:9, 106:18, 146:7, 146:10, 147:7, 155:4, 155:16, 157:12, 157:22, 158:11, 158:16, 158:20, 158:23, 160:12, 160:24, 161:7, 161:8, 162:20, 163:23, 164:14, 164:16, 164:23, 165:22, 166:1</p> <p>Pennell..... [1] - 2:23</p> <p>Pennell..... [1] - 2:22</p> <p>Pennell..... [2] - 2:16, 2:18</p> <p>people [13] - 4:23, 5:2, 20:19, 68:18, 68:19, 82:14, 99:25, 103:20, 103:22, 104:24, 117:22, 132:3</p> <p>perfect [2] - 38:9, 161:16</p> <p>perfectly [1] - 130:5</p> <p>performed [1] - 169:13</p> <p>period [1] - 29:2</p> <p>permanent [2] - 69:19, 76:2</p> <p>permit [2] - 62:12, 80:25</p> <p>permitted [1] - 63:9</p> <p>person [11] - 33:19, 35:2, 35:13, 41:25, 59:25, 67:20, 157:2, 159:5, 162:14, 167:6</p> <p>personal [4] - 71:10, 79:7, 80:12, 80:16</p> <p>personality [1] - 162:10</p> <p>personnel [2] - 20:20, 21:23</p> <p>persuade [1] - 162:12</p> <p>phone [21] - 34:1,</p>
---	--	---	--	--

<p>34:9, 58:25, 59:4, 60:6, 60:14, 78:1, 89:21, 89:22, 108:6, 108:9, 108:11, 138:10, 159:12, 159:20, 165:8, 165:9, 165:11, 165:12, 167:13, 167:21</p> <p>phones [9] - 51:15, 51:17, 129:3, 164:12, 164:13, 165:6, 165:7, 165:9, 165:10</p> <p>phonetic [2] - 76:17, 84:4</p> <p>photograph [1] - 61:9</p> <p>photographs [3] - 4:16, 6:21, 32:12</p> <p>photos [1] - 144:24</p> <p>physical [11] - 42:19, 42:23, 45:23, 47:10, 48:2, 48:8, 50:15, 57:20, 57:24, 148:11</p> <p>physically [2] - 105:20, 146:16</p> <p>pick [4] - 33:13, 39:14, 96:17, 151:16</p> <p>picked [3] - 85:5, 121:22, 122:5</p> <p>pictures [4] - 109:9, 123:3, 123:6, 136:10</p> <p>piece [2] - 92:12, 164:6</p> <p>pills [13] - 81:9, 87:1, 87:5, 114:5, 114:6, 114:11, 114:14, 115:4, 128:5, 128:6, 128:17, 130:7</p> <p>pinched [1] - 93:21</p> <p>piss [1] - 136:23</p> <p>Pit [4] - 91:14, 92:11, 144:20, 145:6</p> <p>place [8] - 31:18, 41:14, 116:24, 119:3, 119:4, 119:5, 126:18, 134:5</p> <p>placed [1] - 82:10</p> <p>places [3] - 76:6, 76:9, 125:8</p> <p>PLAINTIFF [1] - 2:12</p> <p>Plaintiff [3] - 1:11, 2:2, 38:24</p> <p>Plaintiff's [7] - 7:7, 10:5, 10:20, 21:13, 29:24, 32:3, 33:8</p> <p>plan [8] - 120:5, 132:2, 132:6, 132:19, 133:2, 133:7, 154:1, 154:3</p>	<p>planned [1] - 41:24</p> <p>plate [1] - 126:2</p> <p>play [4] - 20:25, 21:2, 21:6, 23:16</p> <p>played [3] - 11:5, 19:20, 21:18, 23:21, 29:25, 32:4, 33:9, 39:23, 147:21</p> <p>Player [1] - 11:1</p> <p>playing [4] - 10:25, 24:17, 39:8, 39:14</p> <p>playoffs [4] - 66:17, 66:18, 71:22, 71:25</p> <p>pocket [1] - 102:18</p> <p>point [47] - 13:24, 15:8, 18:23, 24:17, 31:6, 45:16, 46:1, 46:2, 49:20, 49:21, 49:23, 50:14, 50:17, 50:20, 51:7, 61:10, 63:21, 67:4, 73:11, 75:7, 82:19, 86:5, 88:6, 88:25, 89:10, 91:1, 91:2, 92:5, 92:13, 93:21, 94:9, 94:18, 98:3, 98:12, 98:14, 100:13, 102:14, 105:8, 106:11, 121:2, 133:10, 137:12, 142:14, 149:19, 149:21, 151:11, 158:15</p> <p>points [1] - 40:4</p> <p>police [3] - 122:22, 156:15, 156:25</p> <p>pompous [2] - 115:25, 116:1</p> <p>pop [3] - 92:22, 92:25, 93:3</p> <p>popped [5] - 93:9, 93:10, 93:12, 94:7, 99:16</p> <p>portion [5] - 16:22, 18:1, 20:11, 20:12, 20:17</p> <p>Portland [1] - 66:1</p> <p>pose [1] - 52:20</p> <p>posed [2] - 11:19, 164:4</p> <p>poses [1] - 151:24</p> <p>position [3] - 81:24, 142:5, 143:3</p> <p>positioned [1] - 93:7</p> <p>positions [2] - 65:24, 95:17</p> <p>possible [2] - 53:4, 166:13</p> <p>possibly [1] - 75:4</p> <p>posted [1] - 37:3</p>	<p>pot [1] - 84:16</p> <p>potential [2] - 57:21, 57:25</p> <p>potentially [1] - 61:9</p> <p>pounds [1] - 141:7</p> <p>pray [1] - 126:2</p> <p>preclude [1] - 63:6</p> <p>prefer [1] - 35:21</p> <p>premises [2] - 75:24, 106:12</p> <p>prepared [1] - 61:16</p> <p>Presbyterian [2] - 135:14</p> <p>prescription [9] - 78:13, 81:5, 81:9, 81:10, 128:5, 128:6, 128:17, 133:1, 134:3</p> <p>presence [11] - 4:9, 6:10, 34:22, 34:25, 39:3, 61:4, 63:8, 64:11, 160:7, 160:21, 166:9</p> <p>present [20] - 4:6, 6:7, 25:13, 25:23, 26:7, 27:1, 27:11, 34:20, 38:25, 39:9, 52:25, 54:4, 61:2, 64:8, 64:9, 64:20, 160:5, 160:18, 166:4, 166:18</p> <p>presents [2] - 83:1, 131:15</p> <p>presumption [1] - 62:21</p> <p>pretty [5] - 26:15, 30:10, 90:6, 103:21, 156:3</p> <p>prevent [1] - 37:10</p> <p>previously [6] - 27:24, 39:10, 55:2, 70:2, 130:13, 161:4</p> <p>pried [1] - 117:19</p> <p>primary [7] - 42:19, 42:23, 47:10, 47:18, 47:24, 48:1, 48:8</p> <p>print [1] - 95:20</p> <p>prison [15] - 13:9, 63:4, 67:2, 70:2, 71:2, 72:2, 72:4, 72:5, 72:8, 79:22, 86:19, 106:17, 113:25, 124:1, 127:12</p> <p>privacy [3] - 46:7, 107:4, 107:9</p> <p>private [1] - 46:11</p> <p>privy [2] - 78:9, 121:12</p> <p>proactive [1] - 156:24</p> <p>probable [2] - 30:18, 49:13</p>	<p>probation [2] - 63:5, 75:2</p> <p>problem [6] - 5:1, 5:20, 115:8, 134:22, 134:23, 134:25</p> <p>problems [1] - 21:17</p> <p>proceed [2] - 5:23, 20:21</p> <p>proceeding [1] - 166:16</p> <p>Proceedings [1] - 1:17</p> <p>proceedings [1] - 168:3</p> <p>process [4] - 51:13, 166:12, 166:13, 166:14</p> <p>professional [1] - 75:6</p> <p>promise [1] - 132:17</p> <p>prompted [1] - 89:18</p> <p>proper [1] - 130:19</p> <p>property [4] - 106:4, 106:5, 106:8, 106:9</p> <p>Prosecutor [4] - 48:25, 49:20, 157:4, 163:13</p> <p>protect [1] - 46:7</p> <p>prove [3] - 57:21, 58:1, 77:10</p> <p>provide [3] - 59:4, 63:16, 63:18</p> <p>provided [3] - 9:3, 9:8, 58:25</p> <p>provider [1] - 81:8</p> <p>pry [3] - 91:23, 91:24, 145:21</p> <p>psychiatrist [1] - 121:8</p> <p>psychologist [1] - 121:8</p> <p>psychosis [1] - 114:24</p> <p>PTSD [1] - 78:10</p> <p>Public [1] - 2:6</p> <p>puffing [1] - 139:18</p> <p>pull [4] - 65:7, 65:8, 102:17, 154:21</p> <p>pulled [3] - 89:24, 142:15, 155:21</p> <p>punch [4] - 93:3, 143:12, 161:21</p> <p>punch-for-punch [1] - 161:21</p> <p>punched [1] - 146:20</p> <p>punches [7] - 90:3, 139:8, 140:13, 143:4, 143:5, 161:19, 162:2</p> <p>punching [1] - 161:10</p> <p>punishment [1] - 150:7</p>	<p>purchase [2] - 87:16, 87:20</p> <p>purchased [3] - 67:14, 83:1, 86:3</p> <p>purchasing [1] - 116:22</p> <p>purpose [5] - 24:18, 74:11, 81:1, 81:2, 166:10</p> <p>purposes [4] - 14:5, 77:1, 80:10, 80:19</p> <p>purse [1] - 105:19</p> <p>pursuant [1] - 7:5</p> <p>pursue [2] - 47:22, 48:16</p> <p>push [3] - 163:14, 163:17</p> <p>pushed [1] - 141:8</p> <p>put [13] - 35:23, 69:24, 82:21, 83:3, 83:6, 85:22, 98:20, 101:10, 114:6, 127:22, 137:15, 141:8, 151:11</p> <p>putting [1] - 116:24</p> <p>PX-2 [1] - 3:3</p> <p>PX-3 [1] - 3:3</p> <p>PX-5 [1] - 3:4</p> <p>PX-6 [1] - 3:4</p> <p>PX-62 [1] - 3:5</p> <p>PX-63 [1] - 3:6</p> <p>PX-7 [1] - 3:5</p>
				<p style="text-align: center;">Q</p> <p>qualifications [1] - 75:1</p> <p>qualifies [4] - 25:12, 25:16, 27:9, 27:17</p> <p>qualify [2] - 27:10, 28:4</p> <p>quasi [1] - 110:20</p> <p>questioned [1] - 99:2</p> <p>QUESTIONS [2] - 54:1, 165:3</p> <p>questions [27] - 11:19, 18:12, 18:13, 18:24, 37:21, 40:20, 49:4, 50:2, 50:9, 50:10, 50:20, 50:22, 52:15, 54:11, 54:14, 57:13, 57:16, 62:24, 78:18, 96:18, 106:19, 118:24, 149:13, 163:24, 165:2, 165:18, 165:21</p> <p>Questions..... [2] - 2:16, 2:23</p> <p>quick [1] - 112:9</p> <p>quickly [1] - 54:20</p>

<p>quilt [17] - 91:20, 91:25, 92:6, 92:8, 116:5, 120:12, 130:12, 141:16, 142:3, 144:6, 145:20, 145:21, 145:24</p> <p>quite [3] - 16:4, 20:18, 158:14</p>	<p>145:18, 146:2</p> <p>reason [7] - 42:17, 44:24, 45:14, 47:16, 48:3, 74:15, 156:6</p> <p>rebel [1] - 120:12</p> <p>rebuttal [1] - 166:3</p> <p>Recalled [1] - 55:2</p> <p>receive [1] - 32:8</p> <p>received [1] - 77:23</p> <p>recently [2] - 67:1, 67:14</p> <p>recess [6] - 33:14, 33:16, 34:12, 36:14, 59:21, 167:2</p> <p>recessed [3] - 34:14, 60:21, 159:24</p> <p>recitation [1] - 157:15</p> <p>recognize [7] - 9:4, 14:22, 15:3, 37:2, 37:19, 56:6, 109:14</p> <p>recognized [2] - 37:2, 37:6</p> <p>recollection [1] - 27:25</p> <p>reconcile [3] - 50:14, 50:17, 126:24</p> <p>reconvene [3] - 34:12, 60:16, 167:24</p> <p>record [30] - 4:4, 6:5, 7:21, 8:18, 8:20, 10:10, 12:12, 15:15, 15:25, 17:23, 19:17, 23:17, 24:16, 29:10, 29:19, 34:18, 35:21, 35:23, 36:19, 38:23, 52:23, 57:18, 60:25, 64:6, 65:10, 139:14, 147:12, 160:3, 160:17, 164:10</p> <p>recorded [3] - 32:22, 40:15, 169:8</p> <p>recording [3] - 169:9, 169:13</p> <p>recovered [2] - 101:5, 105:4</p> <p>recross [1] - 163:25</p> <p>redacted [6] - 16:22, 16:24, 17:25, 19:14, 20:11, 20:16</p> <p>redirect [4] - 52:17, 71:16, 155:14, 161:1</p> <p>Redirect [1] - 2:23</p> <p>REDIRECT [1] - 155:15</p> <p>referenced [1] - 40:5</p> <p>referencing [1] - 80:12</p> <p>referring [4] - 50:11, 69:14, 102:3, 148:22</p> <p>reflect [2] - 8:18, 8:20</p> <p>refresh [1] - 24:23</p>	<p>refreshing [1] - 24:24</p> <p>regard [1] - 5:21</p> <p>regarding [1] - 35:8</p> <p>regards [2] - 6:16, 17:18</p> <p>registered [3] - 67:15, 67:18, 85:3</p> <p>registration [1] - 130:19</p> <p>regular [2] - 116:10, 118:17</p> <p>regulations [2] - 100:5, 131:21</p> <p>rehabilitating [3] - 26:23, 28:18, 28:19</p> <p>rehabilitation [4] - 26:4, 27:21, 28:5, 28:7</p> <p>related [2] - 18:5, 65:19</p> <p>relationship [3] - 66:4, 66:7, 70:4</p> <p>relax [1] - 82:12</p> <p>relaxed [1] - 85:21</p> <p>release [3] - 71:24, 166:19, 167:1</p> <p>released [4] - 71:1, 72:7, 86:19, 86:20</p> <p>relevant [3] - 48:1, 48:3, 48:12</p> <p>remain [2] - 63:15, 63:16</p> <p>remainder [1] - 33:13</p> <p>remember [11] - 11:10, 15:7, 23:7, 25:1, 26:20, 29:1, 30:5, 30:16, 52:3, 109:19, 110:8</p> <p>remembering [2] - 24:25, 25:7</p> <p>remembers [1] - 28:1</p> <p>remind [3] - 39:9, 106:4, 161:3</p> <p>repeat [2] - 17:8, 70:16</p> <p>rephrase [3] - 146:12, 156:2, 157:20</p> <p>report [8] - 8:25, 33:19, 40:6, 41:5, 49:6, 59:24, 159:4, 167:5</p> <p>representation [1] - 16:21</p> <p>request [1] - 62:1</p> <p>requesting [1] - 17:20</p> <p>requests [1] - 62:19</p> <p>require [1] - 146:7</p> <p>required [1] - 46:21</p> <p>requires [1] - 58:13</p> <p>Reservation [1] - 30:25</p>	<p>reservation [1] - 31:1</p> <p>reserve [1] - 19:24</p> <p>reserved [2] - 122:25, 133:6</p> <p>residence [4] - 73:19, 76:3, 76:4, 83:21</p> <p>Resident [1] - 147:22</p> <p>residents [1] - 133:23</p> <p>resolve [1] - 21:16</p> <p>respect [1] - 107:3</p> <p>respected [1] - 88:6</p> <p>respecting [1] - 107:9</p> <p>respond [1] - 14:9</p> <p>responding [1] - 68:1</p> <p>response [11] - 16:12, 44:6, 52:6, 52:9, 52:13, 67:25, 75:11, 98:18, 103:15, 138:8, 156:23</p> <p>responsible [2] - 77:12, 77:13</p> <p>rest [6] - 19:24, 30:22, 61:13, 79:5, 87:6, 166:1</p> <p>restart [1] - 21:15</p> <p>restate [2] - 73:5, 75:9</p> <p>restrained [1] - 139:21</p> <p>restricted [3] - 67:23, 75:21, 76:6</p> <p>restriction [1] - 82:12</p> <p>restrictions [1] - 82:6</p> <p>rests [1] - 64:17</p> <p>result [1] - 55:23</p> <p>results [1] - 77:19</p> <p>retain [1] - 58:23</p> <p>retained [3] - 54:17, 58:22, 59:5</p> <p>retained..... [1] - 2:19</p> <p>retelling [1] - 44:24</p> <p>review [2] - 25:1, 80:6</p> <p>reworded [1] - 54:4</p> <p>rhetorical [2] - 58:6, 58:7</p> <p>Rick [1] - 150:19</p> <p>Rick's [10] - 117:9, 119:2, 119:5, 119:16, 121:19, 121:22, 122:4, 150:17, 150:18, 150:22</p> <p>ride [11] - 84:3, 84:4, 84:10, 84:14, 85:5, 119:23, 120:3, 120:16, 132:22, 133:10, 148:21</p> <p>right-hand [5] - 22:4, 39:20, 55:14, 55:17, 154:14</p>	<p>rights [2] - 31:12, 62:24</p> <p>rioting [5] - 68:19, 82:13, 117:23, 132:3</p> <p>rip [2] - 92:9, 92:12</p> <p>ripping [2] - 92:2, 92:3</p> <p>rise [7] - 5:24, 34:11, 38:17, 60:19, 159:22, 160:13, 167:23</p> <p>road [16] - 101:2, 101:22, 103:21, 103:25, 154:4, 154:11, 154:12, 154:13, 154:19, 154:23, 155:18, 155:21, 156:1, 156:3, 156:10</p> <p>role [1] - 51:9</p> <p>room [48] - 34:4, 34:12, 51:5, 51:15, 51:18, 60:9, 60:17, 68:15, 85:2, 85:3, 85:6, 85:19, 85:24, 85:25, 86:2, 86:4, 87:19, 96:11, 97:23, 121:24, 122:14, 122:15, 122:19, 122:20, 122:21, 122:22, 122:24, 122:25, 123:1, 123:2, 123:4, 123:7, 123:8, 123:9, 132:12, 133:6, 151:10, 151:15, 151:16, 159:15, 164:12, 164:20, 165:6, 165:15, 167:16, 167:24</p> <p>rooms [7] - 74:1, 75:23, 76:1, 96:11, 97:1, 97:25, 151:9</p> <p>ROSS [3] - 1:13, 2:21, 65:15</p> <p>Ross [9] - 4:6, 6:6, 34:19, 38:24, 61:1, 64:7, 65:11, 160:4, 160:18</p> <p>roughly [1] - 46:23</p> <p>route [1] - 100:11</p> <p>ROWAN [1] - 169:3</p> <p>Rowan [2] - 1:24, 169:17</p> <p>Roy's [1] - 99:17</p> <p>ruled [1] - 29:4</p> <p>rules [1] - 58:19</p> <p>rulings [1] - 28:13</p> <p>run [3] - 69:8, 116:15, 155:2</p> <p>running [3] - 24:5,</p>
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69:6, 69:10 runs [1] - 69:22 rural [1] - 103:23 Ryan [1] - 7:22 Ryndon [1] - 13:22	seconds [4] - 30:4, 48:10, 48:11, 118:24 Section [4] - 121:4, 121:5, 158:1, 158:3 section [1] - 155:20 secure [1] - 66:1 secured [1] - 68:24 see [57] - 4:23, 5:6, 15:9, 21:22, 21:23, 21:24, 26:9, 30:4, 40:12, 45:19, 48:25, 55:12, 55:17, 55:24, 57:7, 68:13, 70:5, 73:13, 73:14, 75:10, 76:15, 78:24, 79:14, 79:15, 83:4, 94:17, 94:18, 97:1, 106:17, 107:8, 107:10, 107:11, 107:17, 112:11, 115:14, 120:20, 123:9, 127:10, 129:22, 134:1, 136:14, 136:22, 139:1, 141:22, 142:2, 142:4, 144:25, 149:21, 153:15, 155:18, 155:20, 156:1, 156:3, 156:6, 156:16, 157:8 seeing [1] - 11:20 seek [1] - 76:13 seem [1] - 43:10 sees [1] - 78:12 seized [1] - 51:5 seizure [2] - 75:25, 76:2 selfish [1] - 117:1 Sempstrott [1] - 30:15 senior [1] - 23:9 sense [7] - 25:13, 25:23, 26:7, 27:2, 27:11, 45:11, 149:16 sent [3] - 72:19, 131:19, 147:1 sentencing [1] - 70:24 separate [1] - 44:21 Sergeant [15] - 4:21, 20:13, 37:25, 39:9, 42:2, 43:3, 55:6, 106:24, 109:3, 109:5, 110:8, 137:7, 137:21, 148:19, 161:18 sergeant [3] - 12:1, 12:22, 36:1 sergeant's [1] - 35:19 serial [3] - 22:6, 22:8, 22:9 serious [4] - 130:11,	134:6, 134:10, 134:12 seriousness [1] - 140:21 service [8] - 34:3, 34:4, 60:8, 60:9, 159:14, 159:15, 167:15, 167:16 session [7] - 6:2, 34:15, 38:20, 60:22, 64:3, 159:25, 160:15 set [8] - 69:1, 127:23, 129:1, 129:2, 131:7, 131:11, 162:25 sets [1] - 44:22 setting [1] - 129:11 settled [1] - 166:20 settling [1] - 166:10 seven [2] - 13:1, 16:5 several [3] - 25:2, 44:25, 48:24 sex [4] - 123:23, 123:24, 134:24, 134:25 shaking [2] - 92:7, 92:11 Shears [7] - 89:11, 135:8, 135:10, 135:16, 142:17, 142:25 shed [1] - 153:23 sheet [4] - 30:18, 46:17, 47:7, 49:14 Sheriff's [5] - 8:6, 12:22, 12:24, 12:25, 13:18 shift [10] - 4:19, 13:15, 13:16, 13:20, 30:10, 30:22, 31:7, 46:22, 46:23, 46:24 shifts [1] - 6:17 shirt [2] - 56:18, 83:2 shit [1] - 115:2 shook [1] - 97:15 shop [1] - 84:17 short [3] - 16:5, 48:4, 158:20 shortly [3] - 14:12, 47:4, 157:3 shotgun [3] - 106:1, 106:9, 153:22 shoulder [1] - 140:7 show [6] - 5:18, 22:25, 30:2, 56:21, 74:6, 129:16 showed [4] - 40:7, 41:24, 88:11, 129:19 showing [4] - 9:4, 18:8, 55:6, 109:13 shows [2] - 22:24,	30:3 shut [1] - 15:2 slc [1] - 96:18 side [23] - 22:4, 25:11, 45:10, 45:15, 47:13, 49:24, 49:25, 55:7, 55:8, 55:14, 55:17, 56:12, 95:19, 140:4, 140:8, 140:9, 150:4, 150:8, 154:14, 156:10, 156:16 sidebar [12] - 15:22, 15:25, 20:8, 24:14, 24:16, 29:14, 52:23, 53:24, 57:18, 58:16, 164:10, 164:25 slides [1] - 55:12 signed [2] - 109:20, 110:4 significant [2] - 102:10, 103:4 silent [2] - 63:15, 63:16 Silva [1] - 136:19 SIMONS [1] - 1:6 simple [1] - 72:23 simply [2] - 47:2, 74:7 single [3] - 112:15, 112:16, 112:18 slink [2] - 92:1 slips [1] - 112:14 sitting [8] - 41:17, 55:11, 86:4, 90:4, 98:7, 142:10, 142:12, 143:19 six [8] - 12:25, 112:22, 112:23, 164:20, 165:15, 165:17 skin [1] - 93:21 slammed [2] - 142:23, 154:21 slapped [1] - 126:11 slash [1] - 164:18 sleep [15] - 11:17, 43:8, 44:11, 45:4, 85:6, 85:8, 114:6, 114:12, 114:14, 115:9, 121:24, 125:4, 125:8, 125:9, 125:10 sleeping [2] - 43:9, 43:13 slept [6] - 85:13, 124:12, 124:13, 125:11 slightly [1] - 54:4 slow [4] - 10:24, 100:1, 100:3, 103:23 slugged [1] - 142:23 small [1] - 20:16	smartphone [4] - 34:1, 60:6, 159:12, 167:13 smidge [1] - 53:22 smoked [1] - 102:16 snob [3] - 133:17, 133:22, 133:23 social [1] - 82:9 socially [1] - 83:18 socket [2] - 94:16, 94:17 soldier [1] - 119:20 solemnly [4] - 7:14, 12:5, 36:7, 65:1 somber [3] - 125:16, 126:16, 126:21 someone [7] - 26:9, 26:10, 48:21, 53:9, 84:5, 162:11, 162:16 sometime [1] - 51:16 somewhat [1] - 110:20 somewhere [3] - 108:2, 131:13, 131:14 soon [8] - 14:13, 25:11, 25:14, 27:2, 46:19, 46:21, 88:18, 128:16 sorry [10] - 13:7, 22:8, 49:10, 74:23, 79:11, 104:8, 110:3, 133:20, 143:5 sort [3] - 25:2, 28:9, 125:16 sought [1] - 63:6 sound [4] - 29:13, 90:13, 90:15, 99:5 sound [7] - 86:14, 86:16, 126:14, 127:11, 139:17, 139:19, 139:20 sounds [4] - 17:6, 20:5, 39:21, 144:21 South [1] - 69:16 speaking [2] - 43:11, 43:15 speaks [1] - 62:7 specific [2] - 67:22, 101:21 specifically [2] - 62:19, 84:23 speculate [1] - 146:8 speculating [1] - 53:9 speculation [3] - 58:9, 58:13, 155:5 speculative [1] - 58:7 sped [1] - 100:22 speed [3] - 100:15, 100:17, 100:20
--	--	--	--	--

<p>spell [3] - 7:21, 12:12, 65:9</p> <p>spend [1] - 85:12</p> <p>spent [3] - 65:22, 82:2, 123:9</p> <p>spoken [1] - 110:7</p> <p>spring [1] - 69:25</p> <p>Spring [3] - 13:22, 73:19, 131:14</p> <p>squarely [1] - 74:8</p> <p>stabbed [2] - 70:5, 70:9</p> <p>staff [1] - 32:11</p> <p>stage [1] - 166:15</p> <p>Stake [8] - 42:1, 42:2, 42:8, 51:10, 107:24, 108:8, 108:12, 123:7</p> <p>Stake's [1] - 51:9</p> <p>stance [1] - 90:16</p> <p>stand [11] - 39:9, 61:21, 62:2, 62:20, 63:7, 64:1, 64:22, 64:24, 65:7, 71:8, 161:2</p> <p>start [6] - 39:21, 82:22, 91:8, 92:1, 97:10, 99:14</p> <p>started [26] - 45:17, 60:18, 86:13, 86:16, 87:3, 88:18, 90:17, 90:20, 92:7, 94:17, 98:13, 99:6, 101:11, 102:6, 102:25, 104:12, 104:19, 112:24, 120:12, 126:11, 127:6, 127:9, 127:17, 154:20</p> <p>startling [9] - 13:16, 82:12, 90:21, 90:22, 90:23, 91:23, 94:18, 144:17, 144:18</p> <p>starts [1] - 16:16</p> <p>state [13] - 7:20, 8:14, 12:11, 14:5, 65:9, 74:5, 74:8, 77:1, 78:15, 78:22, 80:10, 80:19, 127:8</p> <p>STATE [2] - 1:5, 1:10</p> <p>State [16] - 4:5, 6:6, 34:19, 38:15, 38:24, 61:1, 61:11, 61:22, 64:7, 64:17, 67:15, 67:16, 160:4, 160:17, 166:3, 169:6</p> <p>State's [1] - 15:18</p> <p>statement [23] - 4:15, 5:14, 5:18, 5:20, 6:19, 9:3, 9:8, 18:16, 18:18, 18:19, 18:23,</p>	<p>19:3, 19:5, 24:20, 25:25, 26:3, 26:10, 26:18, 27:23, 35:7, 35:10, 36:23, 72:15</p> <p>Statement [2] - 3:5, 3:6</p> <p>statements [12] - 16:15, 17:4, 17:16, 18:5, 18:9, 23:4, 25:21, 27:20, 28:20, 40:22, 42:20, 50:6</p> <p>States [1] - 61:22</p> <p>stating [2] - 117:20, 117:25</p> <p>statute [2] - 27:4, 42:19</p> <p>stay [7] - 72:3, 82:8, 83:18, 106:14, 124:22, 151:7</p> <p>stayed [1] - 122:25</p> <p>staying [8] - 67:2, 68:8, 68:14, 72:17, 84:24, 85:4, 151:4</p> <p>stays [1] - 33:11</p> <p>step [6] - 12:2, 36:2, 38:10, 59:10, 127:9, 165:23</p> <p>steps [1] - 48:19</p> <p>stick [1] - 100:8</p> <p>still [24] - 17:21, 18:3, 19:11, 25:11, 25:12, 25:13, 25:15, 25:16, 27:5, 27:6, 27:7, 27:8, 27:14, 39:8, 39:10, 45:14, 114:10, 132:2, 132:6, 132:19, 133:2, 140:23, 149:24, 161:4</p> <p>stipulate [5] - 5:17, 6:10, 39:3, 64:11, 160:21</p> <p>stipulated [1] - 6:22</p> <p>stipulation [2] - 6:15, 7:5</p> <p>stocker [2] - 116:12, 116:13</p> <p>Stockmen's [1] - 68:25</p> <p>stood [1] - 105:4</p> <p>stop [26] - 51:24, 90:9, 91:1, 91:3, 91:4, 91:5, 91:20, 99:8, 104:22, 113:18, 113:24, 116:25, 141:11, 141:21, 141:23, 142:16, 143:8, 143:9, 145:22, 145:23, 145:24, 154:4, 163:9</p>	<p>stoplight [1] - 98:9</p> <p>stopped [10] - 39:19, 98:10, 103:1, 104:23, 141:4, 142:14, 143:2, 154:6, 154:13, 154:14</p> <p>stopping [2] - 115:18, 130:9</p> <p>store [2] - 76:9, 84:18</p> <p>story [17] - 40:18, 40:19, 44:18, 44:25, 45:1, 45:16, 45:21, 45:25, 47:13, 48:15, 49:24, 49:25, 50:15, 50:17, 156:16, 161:13, 162:9</p> <p>straight [3] - 36:22, 98:22, 152:11</p> <p>Street [7] - 2:4, 2:7, 89:11, 89:13, 98:6, 135:9</p> <p>street [5] - 99:16, 132:3, 135:9, 135:10, 135:11</p> <p>streets [1] - 82:13</p> <p>stress [5] - 25:15, 27:15, 118:5, 118:6, 125:4</p> <p>stressful [1] - 90:6</p> <p>strlation [2] - 144:25</p> <p>strict [1] - 67:20</p> <p>strictest [1] - 67:20</p> <p>strike [7] - 93:5, 113:20, 136:7, 137:20, 138:16, 153:6</p> <p>strikes [5] - 93:7, 93:12, 139:10, 139:11, 140:14</p> <p>striking [1] - 98:13</p> <p>strong [4] - 148:1, 148:6, 148:10, 148:17</p> <p>struck [12] - 89:16, 90:17, 92:14, 94:16, 101:2, 104:11, 132:14, 138:14, 140:2, 141:17, 149:23, 153:16</p> <p>stuff [16] - 16:16, 41:9, 41:11, 41:14, 68:17, 78:25, 96:5, 98:16, 107:7, 108:19, 108:24, 121:11, 123:2, 126:20, 134:16, 155:17</p> <p>style [2] - 91:14, 147:24</p> <p>subdued [1] - 26:16</p>	<p>subject [13] - 28:22, 33:17, 33:23, 59:22, 60:3, 62:3, 62:6, 76:1, 76:2, 159:3, 159:9, 167:4, 167:10</p> <p>submit [2] - 31:24, 33:3</p> <p>submitted [6] - 33:24, 60:4, 159:10, 166:7, 166:24, 167:11</p> <p>substantial [1] - 42:7</p> <p>Suburban [1] - 54:6</p> <p>successful [1] - 81:21</p> <p>successfully [4] - 73:18, 77:13, 77:21, 110:19</p> <p>sudden [1] - 79:1</p> <p>suffered [2] - 14:8, 146:5</p> <p>suffers [1] - 78:11</p> <p>sufficient [1] - 79:15</p> <p>suggest [1] - 35:22</p> <p>suit [1] - 8:17</p> <p>summertime [1] - 69:24</p> <p>Summit [6] - 99:20, 99:22, 99:24, 100:4, 100:9</p> <p>super [2] - 67:20, 100:1</p> <p>supermarket [1] - 82:1</p> <p>supervision [4] - 73:18, 77:22, 110:18, 110:22</p> <p>support [1] - 79:5</p> <p>supported [1] - 53:13</p> <p>supporting [1] - 52:25</p> <p>suppose [2] - 50:13, 50:21</p> <p>supposed [11] - 18:6, 82:25, 83:11, 83:13, 85:7, 88:5, 114:15, 131:5, 131:15, 132:22, 132:24</p> <p>sustain [2] - 58:3, 73:4</p> <p>sustained [4] - 42:22, 57:20, 57:24, 158:13</p> <p>SUV [3] - 14:15, 20:14, 41:16</p> <p>swaggering [1] - 53:6</p> <p>swallow [1] - 127:12</p> <p>swear [4] - 7:14, 12:5, 36:7, 65:1</p> <p>Sweat [1] - 128:9</p> <p>swell [2] - 94:17, 94:19</p> <p>swelled [2] - 136:5, 136:8</p> <p>swelling [2] - 15:1,</p>	<p>137:12</p> <p>swerved [1] - 101:5</p> <p>switch [3] - 75:25, 95:17, 125:8</p> <p>switched [8] - 45:18, 95:12, 95:15, 95:16, 95:18, 119:14, 136:18</p> <p>swollen [3] - 15:2, 45:19, 137:24</p> <p>Sworn [3] - 8:2, 12:18, 65:16</p> <p>sworn [7] - 7:13, 12:4, 36:6, 39:10, 55:2, 64:25, 161:4</p> <p>system [3] - 37:14, 136:17, 169:9</p> <p>systems [1] - 136:18</p>
				<p>T</p> <p>t-shirt [1] - 83:2</p> <p>tall [3] - 86:14, 112:16, 112:18</p> <p>tank [1] - 156:20</p> <p>tear [1] - 164:7</p> <p>technically [2] - 59:5, 163:3</p> <p>teeth [10] - 40:11, 40:12, 91:22, 93:20, 93:24, 144:22, 144:23, 147:18</p> <p>telephone [4] - 34:1, 60:6, 159:12, 167:13</p> <p>television [4] - 33:21, 60:2, 159:7, 167:8</p> <p>teller [1] - 161:13</p> <p>temptation [1] - 112:4</p> <p>ten [7] - 63:2, 103:2, 118:23, 139:10, 139:11, 144:22, 159:23</p> <p>ten-minute [1] - 159:23</p> <p>term [5] - 121:3, 146:11, 158:2, 158:3, 158:4</p> <p>terms [13] - 14:3, 45:23, 65:19, 72:16, 72:23, 73:10, 74:7, 74:12, 74:14, 75:15, 75:18, 75:19, 76:11</p> <p>terrified [1] - 92:16</p> <p>testicles [1] - 140:10</p> <p>testified [9] - 6:18, 8:2, 12:18, 24:20, 28:16, 55:3, 62:14, 65:16, 163:8</p> <p>testify [13] - 25:2, 26:19, 28:20, 53:5,</p>

61:18, 61:23, 62:3, 62:11, 62:17, 62:21, 62:23, 63:7, 136:14 testimony [16] - 7:15, 12:6, 25:6, 26:20, 26:24, 28:21, 35:20, 36:8, 38:1, 38:5, 47:21, 59:7, 63:16, 63:19, 65:2, 78:25 text [1] - 77:24 texted [1] - 125:25 texts [4] - 34:3, 60:8, 159:14, 167:15 Thanksgiving [1] - 70:6 THE [243] - 1:4, 1:5, 1:6, 2:12, 2:20, 4:3, 5:1, 5:5, 5:11, 5:23, 6:2, 6:14, 6:23, 7:1, 7:4, 7:8, 7:10, 7:14, 7:19, 7:22, 7:24, 8:20, 9:17, 9:20, 9:24, 10:1, 10:4, 10:16, 10:18, 10:23, 10:25, 11:4, 11:15, 11:18, 11:25, 12:2, 12:5, 12:10, 12:13, 12:15, 15:20, 15:24, 16:24, 17:6, 17:22, 17:25, 18:3, 18:19, 19:1, 19:3, 19:11, 19:16, 19:19, 19:22, 20:2, 20:5, 20:7, 20:9, 20:15, 20:21, 21:10, 21:12, 21:15, 23:19, 24:12, 24:15, 25:6, 26:25, 27:10, 27:15, 27:17, 27:24, 28:10, 28:18, 28:23, 29:6, 29:13, 29:15, 29:18, 29:22, 31:23, 32:1, 33:2, 33:5, 33:10, 34:15, 35:6, 35:8, 35:24, 36:2, 36:3, 36:4, 36:7, 36:12, 36:18, 36:25, 37:4, 37:7, 37:10, 37:17, 37:20, 37:23, 38:7, 38:9, 38:12, 38:17, 38:20, 39:7, 39:12, 39:13, 39:17, 43:4, 52:17, 52:19, 52:24, 53:11, 53:19, 53:23, 54:2, 54:11, 54:14, 54:16, 54:21, 56:2, 57:14, 57:16, 57:19, 57:24, 58:15, 58:17, 58:24, 59:3, 59:10, 59:13, 59:18, 60:22, 61:11, 61:16,	61:20, 61:25, 62:1, 62:10, 62:11, 62:16, 62:17, 62:25, 63:1, 63:13, 63:14, 63:18, 63:20, 63:24, 64:3, 64:15, 64:18, 64:23, 65:1, 65:5, 65:6, 65:11, 65:13, 68:2, 68:5, 71:12, 71:18, 72:25, 73:2, 73:4, 74:17, 74:21, 74:22, 74:23, 75:3, 75:9, 76:24, 77:3, 77:5, 78:16, 79:3, 79:8, 79:9, 79:10, 79:11, 79:12, 79:16, 80:14, 80:18, 80:25, 93:17, 94:20, 94:21, 95:14, 95:16, 104:6, 104:8, 106:20, 111:4, 111:7, 111:8, 146:9, 146:13, 147:13, 148:4, 148:12, 148:14, 151:17, 151:18, 151:19, 151:20, 151:22, 151:23, 151:24, 151:25, 152:1, 152:3, 155:7, 155:14, 157:11, 157:14, 157:20, 158:10, 158:13, 158:19, 158:22, 158:24, 159:25, 160:13, 160:15, 160:25, 162:18, 163:25, 164:3, 164:11, 164:18, 164:24, 165:1, 165:4, 165:18, 165:21, 165:23, 166:3, 166:6 therefore [1] - 118:6 they've [1] - 136:18 thinking [1] - 92:17 thinks [1] - 93:5 Thirty [1] - 151:1 Thirty-two [1] - 151:1 THOMPSON [134] - 4:12, 5:4, 5:10, 6:12, 6:15, 6:25, 7:9, 8:4, 8:18, 8:21, 9:14, 9:21, 10:3, 10:6, 10:13, 10:21, 10:24, 11:2, 11:6, 11:8, 11:13, 12:1, 12:20, 15:17, 16:4, 16:9, 16:14, 16:17, 16:22, 17:7, 17:15, 18:11, 18:15, 18:20, 18:22,	19:2, 19:4, 19:8, 19:15, 20:10, 20:18, 21:2, 21:5, 21:11, 21:14, 21:19, 23:16, 23:20, 23:22, 24:9, 24:19, 25:5, 25:9, 25:20, 26:1, 26:5, 26:12, 27:1, 27:13, 27:16, 27:19, 27:22, 29:17, 30:1, 31:20, 32:5, 32:17, 32:19, 32:24, 35:22, 36:1, 37:22, 38:15, 39:5, 39:15, 39:18, 39:24, 40:1, 43:2, 52:18, 53:21, 54:13, 54:19, 55:5, 56:1, 57:15, 58:10, 58:14, 58:23, 59:2, 59:15, 61:13, 63:23, 64:14, 64:17, 67:24, 71:9, 71:13, 72:21, 74:2, 74:18, 74:24, 76:20, 76:25, 78:14, 78:19, 78:22, 79:13, 80:9, 80:22, 106:22, 111:5, 111:9, 146:12, 146:14, 147:10, 147:15, 148:5, 148:15, 152:4, 155:6, 155:9, 155:13, 157:9, 157:13, 157:17, 158:8, 160:11, 160:23, 164:1, 164:15, 164:22, 165:20, 166:5 Thompson [38] - 2:2, 4:7, 6:8, 6:14, 7:8, 7:25, 11:25, 12:16, 17:23, 18:8, 19:16, 20:9, 26:11, 26:25, 33:10, 34:21, 37:21, 39:1, 39:13, 52:17, 54:12, 57:14, 58:25, 59:4, 59:14, 61:3, 64:9, 64:15, 74:17, 76:24, 79:8, 79:12, 106:20, 146:9, 160:6, 160:19, 161:12, 165:19 Thompson [3] - 2:13, 2:15, 2:18 Thompson [1] - 2:22 thoughts [2] - 44:8, 44:16 threat [1] - 163:11 threatened [2] - 118:12, 118:15	threats [1] - 163:9 three [18] - 25:22, 27:18, 36:22, 48:5, 66:9, 101:9, 109:11, 112:14, 119:13, 122:20, 139:8, 139:9, 140:25, 141:15, 141:16, 145:20, 165:9 threw [2] - 83:17, 89:22 throat [2] - 90:18, 140:10 throughout [4] - 30:21, 30:23, 51:12, 66:24 throw [1] - 115:24 throwing [1] - 140:12 thwarted [2] - 154:1, 154:3 tle [1] - 112:8 tinge [1] - 15:2 tlre [1] - 102:24 tired [5] - 5:5, 43:16, 124:15, 124:16, 124:18 TO [1] - 168:4 today [4] - 4:22, 8:12, 108:19, 140:20 toe [1] - 55:16 together [10] - 66:24, 67:7, 67:8, 67:9, 70:7, 85:11, 85:14, 119:22, 125:17, 137:15 tomorrow [2] - 166:19, 167:25 took [25] - 4:15, 4:16, 6:20, 6:21, 31:18, 36:21, 48:19, 81:4, 81:18, 85:6, 86:22, 87:4, 91:13, 101:5, 109:9, 112:24, 113:24, 114:5, 127:9, 127:12, 128:6, 137:15, 139:11, 151:12, 153:17 tooth [2] - 93:25, 145:16 toothpaste [2] - 137:17, 137:19 top [10] - 22:2, 22:4, 87:18, 87:20, 89:6, 93:23, 119:6, 119:9, 137:4, 164:7 totally [1] - 44:5 towards [10] - 89:5, 99:19, 99:20, 99:22, 100:24, 101:8,	101:20, 104:16, 104:18, 105:14 town [6] - 65:25, 68:12, 97:2, 115:15, 131:13, 150:16 track [2] - 68:3, 68:6 traffic [3] - 100:5, 154:11, 154:12 trailer [2] - 106:7, 116:24 transaction [2] - 129:24, 152:7 Transcribed [1] - 1:24 Trailer [2] - 169:11, 169:13 Transcript [1] - 1:17 transcription [1] - 169:10 transportation [1] - 83:24 transported [2] - 23:1, 24:1 travel [1] - 106:7 treatment [1] - 76:14 tree [2] - 135:9, 135:11 trial [18] - 33:18, 33:19, 33:20, 33:23, 59:23, 59:24, 59:25, 60:4, 71:8, 159:4, 159:5, 159:6, 159:9, 167:5, 167:6, 167:7, 167:10, 169:4 Trial [1] - 1:18 tribal [1] - 125:14 tribe [1] - 83:16 tricep [2] - 56:23, 57:5 tried [9] - 74:4, 87:16, 87:20, 91:23, 91:24, 105:17, 105:18, 134:19, 145:21 trip [1] - 130:25 truck [1] - 104:17 true [6] - 9:10, 9:16, 9:22, 48:24, 74:6, 169:12 trunk [2] - 95:21, 102:20 truth [21] - 7:16, 12:7, 16:11, 17:4, 18:7, 18:25, 36:9, 50:16, 65:3, 71:15, 72:15, 77:2, 80:10 try [11] - 11:2, 50:3, 60:18, 84:10, 91:1, 96:18, 98:12, 105:9, 113:5, 113:18, 157:24 trying [26] - 16:6, 17:7, 18:3, 20:25, 21:4, 46:10, 70:20, 71:14,
---	---	--	--	--

<p>74:6, 75:6, 79:21, 88:13, 92:9, 92:11, 96:17, 112:8, 112:9, 120:20, 124:25, 125:19, 134:13, 134:15, 136:23, 141:21, 145:1, 162:18</p> <p>tucked [1] - 90:11</p> <p>turn [3] - 39:24, 42:4, 55:12</p> <p>turned [4] - 98:20, 105:13</p> <p>twenty [1] - 112:20</p> <p>twenty-four [1] - 112:20</p> <p>twist [1] - 94:1</p> <p>twisted [1] - 144:1</p> <p>Twitter [4] - 34:5, 60:10, 159:16, 167:17</p> <p>two [29] - 9:17, 28:13, 44:21, 44:22, 48:5, 57:2, 57:5, 70:8, 84:9, 85:1, 94:24, 95:7, 101:7, 102:6, 106:25, 109:5, 110:16, 119:18, 119:21, 122:20, 124:19, 137:15, 141:4, 151:1, 158:22, 164:12, 165:1, 165:6</p> <p>type [3] - 79:2, 86:21, 142:4</p> <p>types [2] - 81:9, 87:3</p> <p>typically [1] - 42:6</p>	<p>133:11</p> <p>Unltd [1] - 61:22</p> <p>unlock [1] - 98:17</p> <p>unnerving [1] - 125:9</p> <p>unpack [1] - 106:23</p> <p>unqualified [1] - 79:1</p> <p>unusual [1] - 131:20</p> <p>up [90] - 4:13, 4:21, 7:19, 28:2, 29:3, 30:3, 33:13, 36:23, 39:14, 41:24, 42:11, 43:19, 45:3, 53:7, 53:21, 54:11, 54:14, 56:2, 62:2, 63:15, 64:23, 69:1, 69:24, 78:17, 82:21, 83:6, 84:17, 84:19, 85:6, 85:9, 85:20, 87:18, 87:20, 87:24, 88:16, 89:5, 89:13, 90:25, 91:23, 94:18, 97:20, 98:20, 100:15, 100:17, 100:20, 100:22, 101:10, 103:7, 105:4, 105:5, 107:18, 114:25, 115:15, 121:22, 122:4, 122:5, 123:19, 124:9, 128:11, 128:14, 128:17, 129:1, 129:2, 129:11, 129:16, 129:19, 130:25, 135:19, 136:5, 136:8, 138:13, 138:16, 140:13, 140:22, 144:2, 144:7, 144:14, 146:2, 151:16, 152:22, 153:18, 155:10, 156:18, 161:2, 164:8, 165:18, 165:21</p> <p>update [1] - 71:5</p> <p>upper [3] - 39:20, 94:20, 119:10</p> <p>upset [5] - 15:10, 15:11, 117:15, 124:21, 152:24</p> <p>upsets [1] - 124:21</p> <p>upwards [1] - 94:20</p> <p>usefulness [1] - 58:2</p> <p>Utah [2] - 28:3, 29:3</p> <p>UTC [2] - 22:10, 30:3</p> <p>utterance [5] - 18:10, 25:12, 25:24, 26:15, 27:13</p>	<p>V</p> <p>vacate [1] - 75:24</p> <p>vehemently [1] - 130:18</p> <p>vehicle [15] - 41:6, 41:10, 41:12, 41:13, 41:15, 67:17, 96:7, 99:5, 104:12, 104:23, 105:14, 150:9, 154:21, 155:25</p> <p>Vehicles [1] - 67:13</p> <p>vehicles [4] - 89:13, 95:12, 95:15, 135:20</p> <p>verdict [4] - 34:7, 60:12, 159:18, 167:19</p> <p>version [1] - 19:14</p> <p>versus [8] - 4:5, 6:6, 34:19, 38:24, 61:1, 64:7, 160:4, 160:18</p> <p>vertical [1] - 57:5</p> <p>vertically [1] - 57:2</p> <p>via [1] - 77:24</p> <p>victim [3] - 53:1, 53:14, 76:17</p> <p>video [24] - 4:22, 10:22, 16:3, 16:21, 16:23, 16:24, 18:1, 20:14, 20:15, 20:17, 21:14, 23:19, 24:22, 30:6, 33:14, 39:8, 39:14, 42:14, 48:9, 48:11, 89:8, 89:14</p> <p>videos [11] - 47:17, 47:19, 47:22, 47:25, 48:17, 48:19, 48:22, 49:1, 57:21, 58:1, 58:3</p> <p>violated [2] - 107:10, 107:12</p> <p>violation [1] - 105:10</p> <p>violence [2] - 88:18, 88:23</p> <p>violent [3] - 75:20, 77:10, 86:20</p> <p>vislon [2] - 90:23, 144:17</p> <p>volr [1] - 35:14</p> <p>Volume [1] - 1:19</p> <p>voluntarily [1] - 156:15</p> <p>voluntary [1] - 6:19</p> <p>volunteering [1] - 118:23</p>	<p>wait [12] - 79:10, 87:23, 88:19, 88:20, 93:17, 103:8, 111:7, 130:10, 148:13, 151:24, 157:1</p> <p>waiting [5] - 85:24, 133:10, 134:4, 134:13, 135:7</p> <p>waking [2] - 28:2, 29:3</p> <p>walk [3] - 119:7, 150:15, 151:1</p> <p>walked [4] - 105:14, 105:19, 119:19, 156:13</p> <p>Walking [2] - 144:12, 147:20</p> <p>wallet [1] - 105:19</p> <p>Walmart [1] - 69:2</p> <p>wants [1] - 74:9</p> <p>warned [2] - 141:15, 145:20</p> <p>warning [1] - 141:15</p> <p>watch [5] - 33:18, 59:23, 81:15, 159:4, 167:5</p> <p>watching [6] - 4:22, 24:22, 27:4, 89:8, 89:14, 135:24</p> <p>water [1] - 22:6</p> <p>ways [2] - 75:18, 125:3</p> <p>wear [1] - 82:8</p> <p>wearing [7] - 8:15, 8:16, 10:7, 15:12, 32:20, 56:18, 133:11</p> <p>website [4] - 34:4, 60:9, 159:15, 167:16</p> <p>week [8] - 32:8, 51:21, 68:17, 84:8, 87:4, 99:11, 107:22, 137:21</p> <p>weekend [4] - 82:24, 120:23, 131:10, 131:12</p> <p>weeks [2] - 36:20, 122:20</p> <p>whack [1] - 153:8</p> <p>whacks [1] - 136:2</p> <p>whatsoever [2] - 24:23, 25:10</p> <p>whereabouts [1] - 87:17</p> <p>WHEREUPON [1] - 168:3</p> <p>whichever [1] - 63:5</p> <p>whoa [5] - 104:20, 104:21</p> <p>whole [14] - 7:16, 12:7, 18:1, 36:9, 65:3, 69:11, 85:11,</p>	<p>90:10, 106:14, 137:21, 140:4, 140:5, 140:8, 140:9</p> <p>WILLIAMS [7] - 2:15, 2:17, 12:9, 12:17, 55:1, 59:9, 59:12</p> <p>Williams [28] - 4:21, 12:1, 12:13, 16:10, 20:13, 24:21, 35:2, 35:3, 35:11, 35:12, 36:15, 37:25, 39:9, 43:3, 55:6, 106:24, 107:19, 107:20, 109:3, 109:5, 110:1, 110:8, 137:7, 137:22, 148:19, 156:18, 161:10, 161:18</p> <p>Williams' [2] - 16:14, 17:3</p> <p>willing [2] - 51:2, 111:23</p> <p>winded [3] - 90:13, 90:14, 139:10</p> <p>window [1] - 140:5</p> <p>Windows [1] - 10:25</p> <p>wintertime [1] - 69:23</p> <p>wipe [1] - 28:14</p> <p>wish [4] - 7:1, 54:16, 58:21</p> <p>WIT [1] - 168:4</p> <p>withhold [1] - 46:10</p> <p>within-entitled [1] - 169:5</p> <p>WITNESS [20] - 7:22, 9:20, 12:13, 36:3, 39:12, 73:2, 74:21, 74:23, 79:9, 79:11, 94:21, 95:16, 104:8, 111:8, 148:14, 151:18, 151:20, 151:23, 151:25, 152:3</p> <p>Witness [5] - 2:14, 2:19, 2:24, 139:17, 139:20</p> <p>witness [33] - 5:13, 5:16, 5:18, 7:8, 8:2, 9:3, 9:8, 11:20, 12:18, 35:7, 52:21, 53:12, 54:17, 55:2, 58:21, 62:2, 65:7, 65:16, 70:22, 75:6, 86:13, 86:16, 90:13, 90:15, 99:5, 126:14, 127:11, 139:13, 139:17, 139:19, 139:20, 164:5</p> <p>witnesses [1] - 59:8</p> <p>WITNESSES [2] -</p>
<p>U</p> <p>UA's [1] - 88:4</p> <p>uncle [1] - 69:22</p> <p>uncomfortable [1] - 117:25</p> <p>unconscious [1] - 144:19</p> <p>under [20] - 15:1, 19:6, 25:12, 25:15, 25:16, 27:7, 27:14, 27:17, 28:4, 28:22, 39:11, 58:19, 61:21, 61:22, 73:18, 110:18, 110:22, 115:24, 123:1, 161:4</p> <p>understandably [1] - 83:25</p> <p>understood [1] - 45:24</p> <p>underway [2] - 38:14, 61:7</p> <p>underwear [1] -</p>		<p>W</p> <p>W-I-L-L-I-A-M-S [1] - 12:14</p>		

<p>2:12, 2:20 woke [3] - 43:7, 85:8, 156:18 woken [3] - 43:19, 44:11, 45:3 woman [5] - 125:1, 133:9, 141:6, 141:7, 150:13 wonder [1] - 59:15 wondering [3] - 106:13, 106:24, 124:20 woopy [1] - 105:17 word [4] - 32:8, 86:12, 97:7, 113:2 words [4] - 34:8, 60:13, 159:19, 167:20 works [2] - 37:14, 125:14 worried [2] - 104:17, 163:20 wound [3] - 40:13, 57:6, 138:6 wounds [2] - 57:2, 57:5 wrapping [1] - 115:15 wrecked [1] - 101:5 wrecking [1] - 102:2 write [3] - 52:19, 164:3, 164:7 written [4] - 4:15, 6:19, 19:25, 52:22 wrote [1] - 36:23</p>	<p>YOWELL [3] - 1:13, 2:21, 65:15 Yowell [50] - 4:6, 5:19, 6:6, 6:7, 6:20, 8:9, 8:12, 8:22, 9:8, 9:9, 23:8, 23:10, 30:20, 31:8, 32:9, 34:19, 38:24, 40:2, 40:4, 40:6, 42:11, 42:21, 49:11, 49:17, 50:4, 54:9, 56:21, 61:1, 61:2, 61:20, 61:21, 64:7, 64:8, 64:22, 64:23, 65:12, 69:15, 74:13, 75:14, 79:6, 106:23, 151:19, 151:22, 152:12, 160:4, 160:5, 160:18, 161:1, 165:5 Yowell's [2] - 45:24, 55:8</p>
Z	
<p>zero [1] - 24:20 zombie [4] - 92:3, 144:12, 147:21 Zombie [1] - 147:24 Zulu [3] - 22:5, 22:10, 22:12</p>	
Y	
<p>Y-O-W-E-L-L [1] - 65:12 year [10] - 13:6, 13:8, 13:9, 66:16, 70:2, 70:3, 70:4, 78:5, 111:19, 136:18 Year [1] - 70:8 Year's [1] - 70:8 years [8] - 13:1, 13:5, 63:2, 66:5, 66:9, 66:12, 99:10 yell [1] - 90:8 yelling [1] - 103:6 yesterday [3] - 4:14, 5:2, 6:17 yourself [2] - 82:18, 85:19 yourselves [4] - 33:17, 59:22, 159:2, 167:3 YouTube [4] - 34:5, 60:10, 159:16, 167:17</p>	