IN THE SUPREME COURT OF THE STATE OF NEVADA

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TOYER EDWARDS

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

S.C. CASE NO. 82639

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APPEAL FROM JUDGMENT OF CONVICTION
EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JUDGE CARLI KIERNY, PRESIDING

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APPELLANT'S APPENDIX TO THE OPENING BRIEF
VOLUME IV

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ATTORNEY FOR APPELLANT
CHRISTOPHER R. ORAM, ESQ.
Attorney at Law
Nevada Bar No. 004349
520 S. Fourth Street, 2nd Floor
Las Vegas, Nevada 89101
Telephone: (702) 384-5563

ATTORNEY FOR RESPONDENT
STEVE WOLFSON
District Attorney
Nevada Bar No. 001565
200 Lewis Avenue
Las Vegas, Nevada 89101

AARON FORD
Nevada Attorney General
Nevada Bar No. 0003926
100 North Carson Street
Carson City, Nevada 89701-4717

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

IN THE SUPREME COURT OF NEVADA

TOYER EDWARDS Appellant, vs. THE STATE OF NEVADA, Respondent.	CASE NO. 82639

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CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

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CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

CERTIFICATE OF SERVICE

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AARON FORD
Nevada Attorney General

STEVE WOLFSON
Chief Deputy District Attorney

CHRISTOPHER R. ORAM, ESQ.

BY:

/s/ Nancy Medina
An Employee of Christopher R. Oram, Esq.

CHRISTOPHER R. ORAM, LTD.
520 SOUTH 4TH STREET | SECOND FLOOR
LAS VEGAS, NEVADA 89101
TEL. 702.384-5563 | FAX. 702.974-0623

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DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff(s), vs. TOYER EDWARDS, Defendant(s).	Case No. C-17-324805-1 Department XXI

BEFORE THE HONORABLE MARK B. BAILUS,
DISTRICT COURT JUDGE

THURSDAY, MARCH 1, 2018

TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL – DAY 4 of 5

APPEARANCES:
For the Plaintiff(s): EKATERINA DERJAVINA, ESQ.
MICHAEL DICKERSON, ESQ.
Deputy District Attorneys

For the Defendant(s): ELAINE ODEH, ESQ.
SHANA S. BROUWERS, ESQ.
Deputy Public Defenders

RECORDED BY: ROBIN PAGE, COURT RECORDER

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LAS VEGAS, NEVADA, THURSDAY, MARCH 1, 2018

[Proceeding commenced at 1:43 p.m.]

[Outside the presence of the jury.]

THE COURT: This is continuation of the case of State of Nevada versus Toyer Edwards, Case Number C324805. Let the record reflect presence of counsel for the State, counsel for the defendant, and the defendant.

Are we ready to proceed forward, counsel?

MS. DERJAVINA: Yes, Your Honor, but --

MS. BROUWERS: Just a very brief housekeeping matter. Defense has proposed Exhibits A through F. And it's my understanding that the State's not objecting to A through F. We also have a proposed G that they're not willing to stipulate to, but for purposes of just keeping the evidence moving, if we could just make it noted for the record that Defense Exhibits A through F are stipulated to.

THE COURT: Is that correct, State?

MS. DERJAVINA: That's correct, Your Honor.

THE COURT: Exhibits A -- Defense Proposed Exhibits A through F will be admitted.

MS. BROUWERS: Thank you, Your Honor.

THE COURT: Pursuant to stipulation.

[Defendant's Exhibit Numbers A through F admitted.]

MS. DERJAVINA: Thank you.

MS. ODEH: Thank you.

Judge, one other matter that we just want to make a record. Mr. Edwards is still wearing the same ripped pants with the broken fly. Our -- my investigator did take clothes over to the jail two days ago. And for some unknown reason, he's not getting dressed in them. I don't know if the Court can --

THE COURT: Do we have a representative from the Clark County Detention Center?

CORRECTIONS OFFICER: Yes, Your Honor.

THE COURT: Two days ago whoever was in court, apparently the Defense investigator has brought over a different pair of pants for Mr. Edwards. I asked that person to look in -- to see if she could locate them and provide them to Mr. Edwards. I'm going to make the same request of you.

Do you know where he dropped them off, counsel?

MS. ODEH: I have a receipt. I can --

THE COURT: On the break can you show them the receipt --

MS. ODEH: Yes.

THE COURT: -- and maybe they can assist you in locating the clothing.

MS. ODEH: Yes.

CORRECTIONS OFFICER: Your Honor, I asked Mr. Edwards if he mentioned it to the officer that dressed him out, that he has the same pants. He said he didn't bother.

THE DEFENDANT: I talked to him. It's been three days.

CORRECTIONS OFFICER: Because we have different officers changing them.

THE COURT: Okay. Will you be sure --

MS. ODEH: I can give it to them now.

CORRECTIONS OFFICER: Yes, that's good.

MS. ODEH: Do you want it now?

THE COURT: And, apparently, be sure that you advise your client to tell the officer who provides him with the clothing that there is another pair of pants that he would prefer to wear.

MS. ODEH: Okay.

MR. DICKERSON: And, Your Honor, if I could -- by no means am I belittling the issue here. I just would ask for the record that Your Honor make a record of what you see of his pants and that it's not readily apparent when he's standing here right now that the side seam is open or unsewn or that the fly is broken.

THE COURT: Okay. From the Court's perspective, at this point, Mr. Edwards has been predominantly seated, even when he's standing, from my perspective, you cannot readily see a tear in his pants or that his fly is inoperable.

Is that satisfactory, State?

MR. DICKERSON: That's all the State asks for. Thank you, Your Honor.

THE COURT: Thank you, counsel.

Can I bring the jury in?

1 MS. DERJAVINA: Yes, Your Honor.
2 [Jury reconvened at 1:48 p.m.]
3 THE COURT: Let the record reflect the presence of
4 counsel for the State, counsel for the defendant, and the defendant.
5 Will the parties stipulate to the presence of the jury?
6 MS. DERJAVINA: Yes, Your Honor.
7 MS. BROUWERS: Yes, Your Honor.
8 THE COURT: Counsel for the defendant, why don't you
9 bring the witness in.
10 Are you prepared to go forward with cross-examination?
11 MS. BROUWERS: Yes, Your Honor.
12 THE COURT: Sir, I would remind you you are still under
13 oath.
14 THE WITNESS: Yes, sir.
15 THE COURT: You may proceed.
16 MS. BROUWERS: Thank you, Your Honor.
17 **CHASE LOVATO**,
18 [having been previously called as a witness and first duly
19 reaffirmed, testified as follows:]
20 **CROSS-EXAMINATION**
21 BY MS. BROUWERS:
22 Q Good afternoon, sir. Welcome back. All right. Okay. I'm
23 going to be referencing some of the stuff you testified to yesterday,
24 then I've got some new questions for you as well. Okay?
25 All right. So you mentioned that you're not currently

1 employed by Global Security Concepts; is that correct?
2 A No.
3 Q Okay. And you're employed by Caesars?
4 A Yes, I am.
5 Q Okay. When did you stop working for Global Securities
6 Concept?
7 A Around a year into the position.
8 Q Okay. So --
9 A More accurately, October 9th.
10 Q Okay. October 9th of last year?
11 A Of 2017.
12 Q 2017. Okay.
13 What was the circumstance that caused you to leave that
14 position?
15 A Better employment.
16 Q Fair enough. Better money?
17 A Yes.
18 Q All right. So when was your -- roughly, when was your
19 start date with Global Security position -- or Concepts?
20 A I cannot recall at the moment.
21 Q Okay. Do you remember what month and what year? Or
22 at least what season, what year?
23 A Around February of 2017.
24 Q Okay. Let me put it like this: By the time that the incident
25 that you're here to testify about today happened, how long had you

been employed by Global Security Concepts?

A About six months.

Q Six months? Okay. Had you been -- have you -- had you been stationed at the Hawaiian Marketplace that whole time?

A Yes.

Q Okay. And did you ever work anywhere else for Global Concepts?

A After the stabbing, yes.

Q Okay. So after this incident, where did you work?

A On Sahara and Decatur.

Q Okay. Was that another business?

A It was still Global Security Concepts, but it was just a different site.

Q Okay. And so going back to when you were first hired by Global Securities Concepts, I want to talk a little bit about the -- about kind of the training you got. Did you receive training?

A No.

Q You received no training?

A Not for handcuffing or mace.

Q Okay. You received no training for handcuffing or mace?

A No.

Q Okay. Did you receive any training at all?

A On-site training, yes.

Q Okay. So there was never a time when you had to go sit with an instructor and the instructor said, This is what we do when

this happens, this is what we do when that happens?

A No.

Q Okay. Basically, it was you pass your drug test, they give you a badge and send you on your merry way?

A The manager would shadow you for about a month.

Q Okay.

A It's our supervisor.

Q Okay. I'm going to --

MS. BROUWERS: If I could approach your clerk?

THE COURT: Yes.

BY MS. BROUWERS:

Q I'm going to show you what's been marked as Defense Proposed Exhibit G. I --

THE COURT: And for the record --

MS. BROUWERS: Sorry.

THE COURT: -- Defendant's Proposed Exhibits A through F have been admitted pursuant to stipulation.

MS. BROUWERS: Thank you, Your Honor. I appreciate that.

BY MS. BROUWERS:

Q So this is what's been marked as Defense Proposed Exhibit G. Can you just take a look at that for a second?

A [Witness complies.]

Q You don't need to read the whole thing, but if you do want to, you certainly can. Thank you.

1 Do you recognize this document?
2 A No, I do not.
3 Q Okay. But it does say it comes from Global --
4 MR. DICKERSON: Objection.
5 MS. DERJAVINA: Yes.
6 BY MS. BROUWERS:
7 Q You don't recognize that document?
8 A I do not recall it.
9 Q Okay. And you never received a training manual of any
10 kind?
11 A I do not recall.
12 Q Okay. So you don't know whether or not you may have
13 received some kind of training manual?
14 A At this point, I don't recall.
15 Q Okay. Did you receive any kind of training manual when
16 you went to Caesars and was employed by them?
17 A Yes.
18 Q Okay. All right. But fair to say, prior to this incident, you
19 did not receive any training concerning how to handcuff someone
20 properly?
21 A Yes.
22 Q And you did not receive any training on how and -- how --
23 I'm sorry -- did not receive any training on how or when mace
24 should be used?
25 A Affirmative.

1 Q Okay. Thank you.
2 And, actually, I wanted to talk to you about the mace
3 really quickly. You -- I'm going to use your phrase, you called it
4 your personal mace; do you remember calling it that?
5 A Yes.
6 Q Okay. And can you clarify for me again why you called it
7 your personal mace?
8 A It was the mace I kept on my at all times in case I ever
9 needed to use it. It was -- even if I was off the clock on the way
10 home, that was my mace I could use in self-defense.
11 Q Okay. At any point prior to this, understanding that you
12 never received job training concerning the use of mace, have you
13 ever received any other kind of training concerning the use of
14 mace?
15 A No.
16 Q Okay. Have you ever previously deployed your mace?
17 A No.
18 Q Okay. This was the first time you've ever deployed mace?
19 A Yes.
20 Q Okay. And you actually had a little bit of trouble with
21 getting it to work the first time, right?
22 A Yes.
23 Q Okay. So going back to this particular shift, you said that
24 you had been working -- this is -- you were working a double?
25 A Yes.

1 Q So you'd just gotten off the graveyard?
2 A Affirmative.
3 Q And you were starting the morning shift?
4 A Affirmative.
5 Q Which ordinarily starts at 6:00 a.m.?
6 A Yes.
7 Q And you saw -- what you testified to was that you saw
8 Mr. Edwards sleeping in front of the DJ's Taco stand
9 about 6:30 a.m.; is that right?
10 A I first saw him at the beginning of the shift sitting down in
11 the chair. I did not know if he was sleeping at the time.
12 Q Okay. So at the beginning of your shift,
13 meaning 6:00 a.m.?
14 A Yes.
15 Q Okay. I --
16 MS. BROUWERS: Would you mind if I -- Court's
17 indulgence.
18 Thank you for bearing with me for just a moment.
19 [Pause in proceedings.]
20 [Video played.]
21 BY MS. BROUWERS:
22 Q Okay. You were shown this video on direct examination
23 too; is that correct?
24 MS. DERJAVINA: Objection. Your Honor, I don't believe
25 this witness was shown this specific video.

1 MS. BROUWERS: I apologize. I'll withdraw that one. I'm
2 sorry.
3 BY MS. BROUWERS:
4 Q But do you recognize this general area?
5 A Yes, I do.
6 Q Okay. And what is that?
7 A That would be the common walkway for Hawaiian
8 Marketplace.
9 Q Okay.
10 A Next to DJ Tacos and Evening Call.
11 Q Okay. And do you recognize anyone in that video -- or in
12 this video still?
13 A Yes.
14 Q Who do you recognize?
15 A The Black male adult standing or walking towards what
16 looks like DJ Tacos and Evening Call.
17 Q Okay. And you recognize that person to be?
18 A Mr. Toyer.
19 Q Okay. And it looks like he's walking from the right side of
20 the screen to the left side of the screen; is that fair to say?
21 A Yes.
22 Q Okay. Do you -- just if you know, do you know what
23 direction that is, north, south, east, west?
24 A That would be heading east.
25 Q Heading east, okay. And so we can see, in the upper

1 right-hand corner, that's -- we can kind of -- it's kind of faded, but
2 we can see the Strip; is that right?
3 A Yes. That direction is southbound on the Strip.
4 Q Correct. This is a southbound view of the Strip and so up
5 in that upper right-hand corner are Strip properties, correct?
6 A Yes.
7 Q Okay. And so fair to say he appears to be walking from
8 the street side towards inside towards where the marketplace is,
9 correct?
10 A Yes.
11 Q Okay. Can you tell me, for the reference of the timestamp
12 and the date, can you tell me what those are?
13 A 6/18/2017, Sunday morning at 6:39.
14 Q Okay. 6:39, fair to say in the morning?
15 A Yes. From the video, yes.
16 Q Okay. And I'm going to go ahead and let that play.
17 [Video played.]
18 Q And what is it you see Mr. Edwards doing?
19 A Walking towards DJ's Taco.
20 Q And DJ's Taco is the place where you saw him sitting?
21 A Yes.
22 Q Okay.
23 [Video played.]
24 Q Had you seen him anywhere else on the property before
25 that?

1 A No.
2 Q Okay. So when you said the beginning of your shift
3 was 6:00 a.m. is when you saw him, you actually saw him closer
4 to 6:39; is that fair to say?
5 A I don't know if all the clocks on the cameras are correct
6 with the times we're using.
7 Q Okay. And then how long did you wait before you tried to
8 wake Mr. Edwards up?
9 A Around 30 minutes.
10 Q Around 30 minutes?
11 A Yes.
12 Q Okay. From the time you first noticed him?
13 A Yes.
14 Q And you hadn't noticed him anywhere else on property?
15 A No.
16 Q Okay. You only noticed him sitting in front of that taco
17 stand?
18 A Yes.
19 Q Okay. Why did you wait 30 minutes?
20 A So I can conduct the first -- the beginning shift's patrol
21 and give him the time to leave on his own.
22 Q Okay. Did you have any understanding about whether
23 someone was allowed to be there for 30 minutes without being
24 asked to leave?
25 A Yes.

1 Q Okay. What was your understanding?
2 A That you can stay on property, it's fine, but you cannot be
3 sleeping on property.
4 Q Okay. With respect to the -- to a 30 -- any kind
5 of 30-minute window, though, did you have any --
6 A That was just more for me to do my patrol. But it took 30
7 minutes.
8 Q Okay. So you didn't have any kind of understanding if it
9 was okay to be there for 30 minutes or not?
10 A No.
11 Q Okay. Do you recall testifying at a preliminary hearing for
12 this case?
13 A Yes.
14 Q When you testified at that preliminary --
15 MS. DERJAVINA: And, objection, Your Honor. If we may
16 approach?
17 [Bench conference transcribed as follows.]
18 THE COURT: Okay.
19 MS. DERJAVINA: So part of the transcript that he was
20 talking about with [indiscernible] under the law [indiscernible]
21 trespass [indiscernible]. So our objection is that the legal
22 conclusion that he's testifying to.
23 THE COURT: Okay. I'm not understanding. She hasn't
24 asked a question yet.
25 MS. DERJAVINA: Just like -- I know the part that she's

1 going to be asking about.
2 MS. BROUWERS: What I'm asking is what his
3 understanding was. I actually have no idea if that's a law.
4 MS. DERJAVINA: Up until --
5 THE COURT: Okay. But I think -- again, without hearing a
6 question, if her question is going to be what is your understanding
7 that a person can remain on property, is that objectionable to you?
8 MR. DICKERSON: If the question is didn't you testify at
9 the preliminary hearing under the law a person could be on
10 property?
11 MS. BROUWERS: I'm not asking him to tell me what the
12 law is. I'm asking if his understanding was that you were allowed --
13 THE COURT: All right. Well, here's my problem, counsel.
14 I've reviewed your jury instructions. We haven't settled instructions
15 yet. But you have several instructions dealing with what
16 trespassing is and what it is not.
17 MR. DICKERSON: This is actually in regards to loitering.
18 And we haven't asked him to define loitering and so --
19 THE COURT: Okay. But my question is, again, I don't
20 know what the question is. You're asking me to make a supposition
21 here. And my concern is dealing with her questioning of him of
22 what his understanding of trespassing is and not allowing it. And
23 then your request that I give instructions regarding trespassing. In
24 other words, I will have limited her cross-examination pursuant to
25 your objection, then if I -- and I'm not saying I will or will not give

1 those instructions -- then I am giving instructions on what
2 trespassing is after limiting her cross-examination on that exact
3 issue.
4 MS. DERJAVINA: But the final generalized understanding
5 is -- it's just the way she was asking that there be -- they probably
6 should be asking him was what are we [indiscernible] the law is.
7 That's our concern, based on --
8 MS. BROUWERS: All I'm asking is at that time, what was
9 your understanding of how long people were allowed to be on
10 property?
11 MS. DERJAVINA: She's asking --
12 MS. BROUWERS: And at the preliminary hearing, he
13 said -- he just now said, I don't know. And what he testified to at a
14 preliminary hearing was I thought -- well, basically, in a nutshell,
15 was I thought I needed to give him 30 minutes.
16 THE COURT: All right. Well, again, I'm not going to limit
17 her cross-examination at this point.
18 MS. DERJAVINA: Okay.
19 MS. BROUWERS: Thank you.
20 THE COURT: Thank you.
21 [End of bench conference.]
22 MS. BROUWERS: Okay. And, counsel, for reference, I am
23 looking at page --
24 MS. DERJAVINA: I have the page.
25 MS. BROUWERS: You have it? Okay. Thank you.

1 MS. DERJAVINA: Thank you.
2 BY MS. BROUWERS:
3 Q All right. So you testified just a moment ago that the only
4 reason you waited 30 minutes was because that's how long your
5 patrol took, right?
6 A That, and again, if he was to move and I would give him
7 the leeway of time.
8 Q Okay. And then my follow-up question to that was did
9 you have any kind of understanding at that time about whether
10 someone was allowed to be on property for 30 minutes before you
11 could ask him to leave?
12 A Yes.
13 Q Okay. So you did have that understanding?
14 A No, you did ask that, yes.
15 Q Okay. Thank you for clarifying. I want it to be clear.
16 All right. And you testified just a moment ago that you
17 didn't have any kind of understanding about whether or not you
18 needed to wait 30 minutes in order to let someone to go -- or in
19 order that someone to go?
20 A Correct.
21 Q Okay. And you testified at a preliminary hearing in this
22 case?
23 A Yes.
24 Q Okay. At that preliminary hearing, you took an oath
25 similar to the oath that you took -- actually, identical to the oath that

1 you took in this courtroom?
2 A Yes.
3 Q And you promised to tell the truth?
4 A Yes.
5 Q Just like you promised to tell the truth in this courtroom?
6 A Yes.
7 Q Okay. I'm going to show you your statement from the
8 preliminary hearing. I'm going to ask you to look at lines 6 through
9 let's say 8.
10 So in answer to the question about how much time, what
11 was your response, or your understanding of how much time you
12 had to give them?
13 A I thought he would leave 30 minutes, which is, by law, he
14 is not loitering until 30 minutes on property.
15 MS. DERJAVINA: And, objection, Your Honor. That's
16 improper legal conclusion.
17 MS. BROUWERS: Your Honor, I'm not asking him to
18 make a legal conclusion --
19 THE COURT: All right.
20 MS. BROUWERS: -- I'm just asking for his understanding
21 at that time.
22 THE COURT: Ask him that question.
23 MS. BROUWERS: Okay.
24 BY MS. BROUWERS:
25 Q Was it your understanding at the time that you had to give

1 someone 30 minutes before you could ask them to leave?
2 A Yes.
3 Q Okay.
4 MS. DERJAVINA: And, Your Honor, Motion to Strike that.
5 I think you -- our objection was previously sustained.
6 MS. BROUWERS: And, Your Honor, I believe you said I
7 could ask that question. Just simply as to his understanding.
8 THE COURT: I'll allow the question -- I'll allow the answer
9 to the question that -- what was your understanding. He was
10 allowed -- I'll allow that answer to stand.
11 Was there a previous -- that was the question you had an
12 objection to; is that correct, counsel?
13 MS. DERJAVINA: Correct, Your Honor.
14 THE COURT: I'll allow it as to his understanding.
15 MS. BROUWERS: That's all I'm asking.
16 THE COURT: And I would -- counsel approach.
17 [Bench conference transcribed as follows.]
18 MS. BROUWERS: I'm moving off of it, I'm not asking
19 anymore.
20 THE COURT: No, that's fine. I don't need to do a
21 cautionary instruction, that that's not what the law is. Because, I
22 mean, in other words, it's just his understanding, counsel.
23 MS. BROUWERS: Uh-huh.
24 MR. DICKERSON: Right. The part that we objected to was
25 just them saying under the law.

1 THE COURT: I understand. But that's just his
2 understanding of what the law is. People have understandings all
3 the time. So, again, I don't need to do any type of instruction,
4 limiting instruction; is that correct?
5 MR. DICKERSON: Well, we would ask that they instruct --
6 that you were going to instruct them on the law and that this
7 witness isn't to make any conclusions about the law.
8 MS. BROUWERS: That's fine with me.
9 THE COURT: Okay. Can I --
10 MS. BROUWERS: I don't mind that at all. Yeah.
11 THE COURT: All right.
12 MR. DICKERSON: [Indiscernible.]
13 THE COURT: I'll do that as a limiting instruction.
14 MR. DICKERSON: Great. Thank you.
15 THE COURT: Thank you.
16 [End of bench conference.]
17 THE COURT: Ladies and gentlemen, at the end of this
18 case, I will instruct you as to what the law is. Is that understood?
19 Thank you.
20 MS. BROUWERS: Thank you very much.
21 BY MS. BROUWERS:
22 Q Okay. So in your recollection, though, you gave him 30
23 minutes before you asked him to go?
24 A Yes.
25 Q Okay. This is, again, from State's Exhibit 3, which has

1 been admitted by stipulation, if I can get it to work.
2 [Video played.]
3 Q Okay. Can you give me the date and the timestamp for
4 this video, sir?
5 A 6/18/2017, Sunday at 6:55 in the morning.
6 Q Okay. And do you recognize anyone in this video?
7 A Yes. I recognize people in this video.
8 Q Okay. Who do you recognize?
9 A Myself in the neon green shirt.
10 Q Uh-huh.
11 A My supervisor, William Allison, in the white shirt, and
12 Mr. Toyer laying down in the bottom right-hand corner on the chair.
13 Q Okay. And this is the same area in front of DJ's that we
14 were talking about before, just a different angle, right?
15 A Yes.
16 Q Okay. And so this is 6:55?
17 A Yes.
18 Q And you saw him sit down in the other video at 6:39,
19 roughly?
20 A Based off the timestamp for the video, yes.
21 Q Okay. So you didn't give him 30 minutes.
22 A No. I have -- I did.
23 Q Prior to the incident that we're here to discuss today, had
24 you ever seen Mr. Edwards at the Hawaiian Marketplace on any
25 dates prior?

1 A No.
2 Q Okay. So it was your intention to ask Mr. Edwards to
3 leave the property because, to your understanding, he was
4 sleeping, correct?
5 A Yes.
6 Q Okay. You don't want people sleeping on the property?
7 A Yes.
8 Q Generally, what kind of people do you see sleeping on the
9 property?
10 MS. DERJAVINA: Objection. Relevance.
11 MS. BROUWERS: Your Honor, this has to do with his
12 motivation to make -- ask him to leave.
13 THE COURT: All right. Overruled.
14 BY MS. BROUWERS:
15 Q Generally, what kind of people do you see -- do you
16 encounter sleeping on property?
17 A There's no general of, like, sleepers. They come in all
18 shapes and forms.
19 Q Okay. Do you see a lot of homeless people at the
20 Hawaiian Marketplace?
21 A Yes.
22 Q Do you see them sleeping on property?
23 A Yes.
24 Q Okay. And you generally ask those people to leave?
25 A Yes.

1 Q They're undesirables to have at the business.
2 A Yes.
3 Q So when you first approached him, he wasn't responsive
4 when you were asking -- when you were asking him to wake up,
5 correct?
6 A Negative. No. No.
7 Q No, he was not responsive?
8 A No, he was not responsive.
9 Q Okay. And I believe you testified that you whistled; did
10 you whistle at him?
11 A Yes.
12 Q Okay. How loud did you whistle?
13 A I whistled from far away and it was very loud.
14 Q Okay. You're a good whistler, I'm not. So when you say
15 from far away, how far away were you?
16 A About from the entrance of our Hawaiian Marketplace
17 indoor structure, so about, like, 30 meters away.
18 Q 30 meters away --
19 A I was yelling at him and trying to make contact.
20 Q Okay. So from 30 meters away, you whistled and he was
21 not responsive to that whistle from 30 meters away?
22 A No.
23 Q Okay.
24 A I kept doing that until I approached him very closely.
25 Q Okay. He still doesn't wake up?

1 A No.
2 Q Pretty deep sleep?
3 A Yes.
4 Q Okay. And then when he first woke up, it was your
5 testimony that he initially indicated he didn't want to leave?
6 A First thing he said was, Go get security over here.
7 Q Okay. So he didn't recognize immediately that you were
8 security?
9 A I don't think so.
10 Q Okay. You don't think he knew?
11 A No, no. I do think he knew. But I don't think that was -- I
12 thought he knew that we were security, because it is very hard to
13 not see our shirts and recognize us immediately.
14 Q Okay. But what he -- what you testified he said to you
15 was, Go get security?
16 A Yes.
17 Q Okay. So I'm going to show you another video. I'm going
18 to pause it and ask you a couple of questions.
19 And while I'm doing that, sir, how tall are you?
20 A Around 6-flat.
21 Q Six --
22 A 6 feet.
23 Q -- foot?
24 A 6 feet.
25 Q Okay. And is Mr. Allison, is he similarly -- similar height

1 to you?
2 A Might be an inch taller.
3 Q Okay. And then at this time, so around June 18th of 2017,
4 how much did you weigh?
5 A Around 210.
6 Q Okay. Do you work out?
7 A Here and there.
8 Q Okay. How old are you, sir?
9 A At this point or now?
10 Q Back then. Thank you for clarifying.
11 A Approximately 21 years old.
12 [Video played.]
13 Q Okay. And just once again, do you recognize this area?
14 A Yes.
15 Q Okay. And what's -- what area is this?
16 A That is behind Evening Call, facing DJ's Tacos.
17 Q Okay. So it's that same table that we've been talking
18 about in front of DJ's Tacos?
19 A Yes.
20 Q Okay. And Mr. Edwards is there?
21 A Yes.
22 Q Okay. So I'm going to ask you to watch this video for a
23 moment, and I'm going to stop you when I've got a question.
24 [Video played.]
25 Q Okay. That's yourself and Mr. Allison?

1 A Yes.
2 Q Okay. You both have coffee in your hands?
3 A Yes.
4 Q Okay.
5 [Video played.]
6 Q Okay. So at this point, he's only kind of stirred a little bit;
7 fair to say? Mr. --
8 A Can you repeat the question, please?
9 Q Thank you. I'll use the correct name.
10 So at this point in the video, Mr. Edwards has only kind of
11 started to stir just a little bit?
12 A He has responded to us a couple of times.
13 Q Okay. So he's responsive at this point?
14 A Yes.
15 Q You're putting your coffee down?
16 A Yes.
17 [Video played.]
18 Q And you're still talking to him?
19 A Yes.
20 Q Okay. And he's still not really moving, right?
21 A [No audible response.]
22 Q Sir, you have to answer out loud. And he's still not really
23 moving, correct?
24 A No.
25 Q I'm not correct?

1 A No, he's not moving that much at all.
2 Q Thank you.
3 [Video played.]
4 Q Now Mr. Allison's put down his coffee?
5 A Yes.
6 Q Okay. And what do you -- well, let me see if I can back up
7 so we can review that. I'm going to back up a little bit to catch a
8 moment.
9 Now, what is it that you're doing with your hands?
10 A I pulled out a pair of handcuffs.
11 Q Pulled out a pair of handcuffs? Okay. Those handcuffs
12 that you've not received any training on how to use?
13 A Affirmative.
14 [Video played.]
15 Q Okay. Now you're pulling something else out, right?
16 A [No audible response.]
17 Q Did you also pull out something else?
18 A I missed that.
19 Q Okay. I can back it up, that's not a problem.
20 Handcuffs. We may be able to catch it from another
21 angle. But you did ultimately pull out your mace as well, correct?
22 A Yes.
23 Q That mace that you never received any training on how to
24 use?
25 A Yes.

1 Q That mace that you've never deployed before this
2 incident?
3 A Yes.
4 [Video played.]
5 Q Okay. And at that point, Mr. Edwards gets up and he
6 starts to kind of walk off to the side, right?
7 A Yes.
8 Q Okay. I -- he actually indicated to you that he was going to
9 get up and leave.
10 MS. DERJAVINA: Objection. Hearsay.
11 BY MS. BROUWERS:
12 Q Did you have any --
13 THE COURT: Wait a minute.
14 MS. BROUWERS: I'm sorry.
15 THE COURT: What was your question?
16 MS. BROUWERS: My question had been he indicated
17 he -- that Mr. Edwards had indicated he was going to leave. I can
18 rephrase.
19 THE COURT: Okay. Counsel approach.
20 MS. BROUWERS: Yes, absolutely.
21 THE WITNESS: Can I get some water, please?
22 THE COURT: Sure.
23 THE WITNESS: Thank you.
24 [Bench conference transcribed as follows.]
25 THE COURT: I don't understand your objection.

1 MS. DERJAVINA: She's asking what did the defendant tell
2 you, that the defendant stated, it's hearsay.
3 THE COURT: It's Defendant's statement, a party
4 admission. Why is it hearsay?
5 MR. DICKERSON: Party opponent.
6 MS. DERJAVINA: No, it's a party -- we can elicit it, but
7 they can't elicit the defendant's statements.
8 MR. DICKERSON: He'd have to testify.
9 MS. BROUWERS: I can ask it a different way.
10 MS. DERJAVINA: If I disagree with you --
11 THE COURT: I'm still not understanding your objection.
12 But just restate the --
13 MS. BROUWERS: That's fine. No problem.
14 THE COURT: Rephrase the question.
15 MS. BROUWERS: Okay. Not a problem.
16 [End of bench conference.]
17 BY MS. BROUWERS:
18 Q So as we looked at the video just a couple moments ago,
19 he had started to stand up and kind of move off to the side, right?
20 A Yes.
21 Q Okay. Did you have any understanding of whether he was
22 going to be complying with your request for him to go?
23 A No, he was not.
24 Q Okay. Again, you did -- you do recall having testified at a
25 preliminary hearing in this stage -- or in this case? Yes?

A Yes. Yes. And can I ask when that was?

Q You can ask when that was. And I can tell you when that was. That was on July 5th, 2017. Does that refresh your recollection about when this happened? About when the preliminary hearing happened?

A Not really.

Q But you do recall having testified?

A Yes.

Q Okay. And if I -- if the parties can all agree that that testimony happened on February 5th -- I'm sorry, not February 5th -- July 5th, fair to say that was closer in time to this incident than now is?

A Yes.

Q And as we kind of went through before, when you testified at that preliminary hearing, you were under oath?

A Yes.

Q You promised to tell the truth?

A Yes.

Q And that, again, was closer in time than today's date is, closer in time to the incident?

A Yes.

Q Okay.

MS. BROUWERS: Court's very brief indulgence.

[Pause in proceedings.]

Q So when he is standing -- when he's standing up and

1 moving off to the side, that's the direction he would have to go if he
2 was going to leave, correct?
3 A Yes.
4 Q Okay. And I can back it up for you if you need to see it
5 again, but in that video, Mr. Allison kind of tracks his movements
6 and goes with him, right?
7 A Yes. He is going to conduct a citizen's arrest.
8 Q Okay. And you do that as well, you follow him?
9 A Yes.
10 Q Okay. And by him, I mean, you actually follow both
11 Mr. Allison and Mr. Edwards?
12 A Yes.
13 Q You move in that same direction as him?
14 A Yes.
15 Q So Mr. Edwards is moving in the direction that he would
16 need to move in order to leave the property, which is consistent
17 with what you were asking him to do.
18 A Yes.
19 Q Okay. And yourself and Mr. Allison went in that same
20 direction as opposed to letting him go?
21 A Yes, we were conducting a citizen's arrest.
22 Q Okay. My question was you went in that direction as
23 opposed to simply letting him go?
24 A Yes.
25 Q Okay. Understanding that you testified that you didn't

1 receive any training for your position prior to starting it, did you at
2 any point subsequent to this incident receive any training
3 concerning deescalation policies?
4 MS. DERJAVINA: And objection, Your Honor. Relevance
5 to after the incident.
6 THE COURT: Overruled.
7 THE WITNESS: Can you repeat the question?
8 BY MS. BROUWERS:
9 Q Understanding that you didn't receive any training prior to
10 starting your position at Global Securities Concepts, did you
11 subsequent or after this incident receive training concerning
12 deescalation policies?
13 A No.
14 Q No training?
15 A No training.
16 Q Didn't have to go to any meetings?
17 A Not on deescalation.
18 Q Okay. Did you have to have any meetings concerning this
19 incident at your work?
20 A It was not brought up.
21 Q Did you have --
22 A Not with me personally.
23 Q Okay. So you never ever met with anyone from your
24 company to talk about this incident?
25 A Yes. But it was not in the nature of deescalation.

1 Q Okay. What was it in the nature of?
2 A Mace training, handcuff training.
3 Q Oh, so after this, you received mace training and handcuff
4 training?
5 A Yes.
6 Q Okay. And nothing was ever discussed with you about
7 deescalating a situation?
8 A No.
9 Q Nothing was ever discussed with you about calling the
10 police when you believe that there's a threat?
11 A Yes.
12 Q Yes, something was said to you about that?
13 A Yes, about calling the police. Yes.
14 Q Okay. So you were told that -- and I want to clarify before
15 and after --
16 MS. DERJAVINA: Objection, Your Honor.
17 MS. BROUWERS: Sorry.
18 MS. DERJAVINA: Hearsay.
19 THE COURT: I'm sorry?
20 MS. DERJAVINA: It's a hearsay. What she's trying to
21 elicit is hearsay.
22 THE COURT: Ask your question.
23 MS. BROUWERS: Well, I think I need to clarify time first
24 before I can do that. Okay.
25 THE COURT: I think you made your objection before the

1 entire question came out. So I'm not ruling on your objection until I
2 hear the entire question.
3 MS. BROUWERS: Okay.
4 BY MS. BROUWERS:
5 Q So with respect to meetings that you had concerning this
6 incident, after the incident happened, you learned that you were
7 supposed to call the police if you believe there was a threatening
8 situation?
9 A There was no meetings between any form of
10 management and me about this incident. What occurred was when
11 my boss got on property, he told me we are going to just call Metro
12 from now on for your safety.
13 Q Okay. Because you, of course, yourself are not law
14 enforcement?
15 A I am not.
16 Q Okay. And your job has titles like lieutenant and --
17 A Sergeant.
18 Q -- stuff like that -- sergeant?
19 A Yes.
20 Q Okay. Those aren't terms that mean something like the
21 military, that's more of a rank in your own kind of company, right?
22 A It's a chain of command that we go through.
23 Q A chain of command that you go through. Okay.
24 So I'm going to show you a different angle.
25 [Video played.]

1 Q Okay. And this is kind of a -- just a different angle of what
2 we just looked at. I just -- I -- you just put your coffee cup down?
3 A Yes.
4 Q Okay. And we had discussed that from the other video as
5 well.
6 A Yes.
7 Q And for the record, can you tell me the date and time on
8 this?
9 A 6/18/2017, Sunday at 6:56 in the morning.
10 Q Okay. Thank you for that.
11 [Video played.]
12 Q Okay. And for the record, if you could tell me the date and
13 time on this one?
14 A 6/18/2017, Sunday at 6:56 in the morning.
15 Q Okay. So just mere seconds after the one that we just
16 watched, just a -- an -- just a separate clip, right?
17 A Yes.
18 Q Okay.
19 [Video played.]
20 Q Mr. Allison puts down his coffee as well, correct?
21 A Yes.
22 Q And you've now pulled out your handcuffs?
23 A Yes.
24 Q Those handcuffs that you have not received training on
25 how to use?

1 A Yes.
2 Q This is showing you that mace -- or, I'm sorry, this is
3 showing you pulling out the mace?
4 A Yes.
5 Q That mace that, once again, you have not been trained to
6 use prior to this incident?
7 A Yes.
8 Q That you've never deployed prior to this incident?
9 A I have not.
10 [Video played.]
11 Q Kind of jangling those handcuffs around?
12 A No, I'm fidgeting. I'm a fidgeter.
13 Q You're a fidgeter?
14 A Yep.
15 Q Okay. Are they making any kind of sounds?
16 A I'm telling him to remove his hand out of his pocket or
17 he'll be maced.
18 Q Okay. I think possibly you didn't understand my question.
19 Were the handcuffs making any kind of sounds?
20 A No.
21 Q Okay. Those metal handcuffs don't make sounds?
22 A I wasn't clicking them together.
23 Q Okay.
24 [Video played.]
25 Q Now, on direct examination, you testified that when you

1 taught Mr. Allison that you had kind of whispered to him that, you
2 know, you thought he -- you thought that Mr. Edwards was armed,
3 right?
4 A What I said was, He has a knife.
5 Q Okay. And you testified that you kind of said it quietly?
6 A Yes.
7 Q Okay. How quietly?
8 A Around a whisper.
9 Q Around a whisper?
10 A Yes.
11 Q And then you also testified during direct examination that
12 kind of throughout all this, you were saying, Take your hands out of
13 your -- you know, take your hands out of your pocket, right?
14 A Yes.
15 Q Okay. How loudly were you saying that? In what kind
16 of --
17 A Very sternly. It was not too loud, because there were still
18 witnesses in the area.
19 Q Can you go ahead and say it to me the way -- in the same
20 tone of voice, in the same volume that you said it to him?
21 A Sir, you need to remove your hands out of your pocket or
22 you will be maced.
23 Q Okay. And you repeated that a few times?
24 A Yes.
25 Q At that volume?

1 A Yes.
2 Q Okay. Fair to say during all of this, Mr. Edwards was kind
3 of loud?
4 A Yes.
5 Q Okay. Also fair to say that during all of this, most of his
6 attention was directed to Mr. Allison?
7 A Yes.
8 Q Okay. He wasn't directing too much of his conversation to
9 you?
10 A No, he was not.
11 Q And he was shouting? Mr. Edwards was shouting?
12 A Wasn't shouting, but he did have a high tone of voice.
13 Q Okay. He was louder than you, for example?
14 A Yes.
15 Q Was Mr. Allison -- how loud was Mr. Allison, to your
16 recollection?
17 A He was about matching his tone.
18 Q Okay. So he was loud too?
19 A Yes.
20 Q Louder than you?
21 A Yes.
22 Q Okay.
23 [Video played.]
24 Q Okay. And that's when he stands up and kind of walks
25 kind of a little bit backwards and to the side, yes?

1 A Yes.
2 Q Okay. And again, you and Mr. Allison track his
3 movements?
4 A Yes.
5 [Video played.]
6 Q Okay. Now, during all of this, prior to being maced, he did
7 not pull out the knife?
8 A No.
9 Q Okay. Prior to being maced, he certainly wasn't swinging
10 it around?
11 A No.
12 Q Okay. Prior to being maced his hands stayed in his
13 pocket?
14 A Yes.
15 Q Okay. And you also testified that when you maced him,
16 you tried to get under his sunglasses, right?
17 A Yes.
18 Q Okay. Why is that?
19 A Because mace is only effective if it makes contact with the
20 eyes. It wouldn't be effective if I just hit his sunglasses.
21 Q Okay. What kind of effect were you going for in terms of
22 how his eyes would be affected?
23 A I was trying to disorient him.
24 Q Okay. So you were trying to disorient him?
25 A Yes.

1 Q Only if you know, do you have any understanding of what
2 mace does to someone physically?
3 A Yes.
4 Q Okay. What's your understanding?
5 A It hurts a lot. You cannot breathe as well, you cannot see,
6 and all you want to do is get it off your face.
7 Q Okay. Do you know whether it causes your eyes to get
8 red?
9 A Very much.
10 Q Very much red?
11 A Yes.
12 Q They're very irritated?
13 A Yes. At my work, another individual has been maced
14 before, and I've seen the full effects of it --
15 Q Okay.
16 A -- before this incident.
17 Q Okay. Can you describe that to me? Actually, you know
18 what, how about you -- can you describe to me how Mr. Edwards
19 looked after having been maced?
20 A I do not recall.
21 Q Okay. I'm going to show you what has been admitted --
22 MS. DERJAVINA: Objection, Your Honor. For her just to
23 be a little clear of the timeframe of when things happen and when --
24 who looked when.
25 MS. BROUWERS: No problem.

1 BY MS. BROUWERS:
2 Q So I asked you a moment ago to describe how
3 Mr. Edwards looked after he had been maced. Did you have the
4 opportunity to observe him after he had been maced?
5 A Not for long.
6 Q Okay. My question was: Did you have the opportunity to
7 observe him before -- after he had been maced?
8 A Yes.
9 Q Okay. Even if it wasn't for very long?
10 A Yes.
11 Q Okay. I'm going to show you what has been admitted as
12 Defense Exhibit B; do you recognize that individual?
13 A Yes.
14 Q Okay. And this individual is Mr. Edwards, correct?
15 A Yes.
16 Q Do his eyes look red to you?
17 A His left eye does.
18 Q Okay. And he has some injuries to him, correct? Can you
19 see those? Some reddening, possibly blood?
20 A Yeah, those look like dried blood.
21 Q Looks like dried blood to you? Okay.
22 And when you observed Mr. Edwards after he had been
23 maced, even though it was briefly, is that roughly kind of what he
24 looked like?
25 A I cannot recall.

1 Q Okay.
2 A I was more worried about my own stab wound.
3 Q There wasn't any question. Thank you.
4 Okay. So just to clarify, prior to being maced,
5 Mr. Edwards was certainly argumentative, but he had not
6 brandished a weapon?
7 A No.
8 Q Okay. You maced him and then the weapon came out?
9 A Yes.
10 Q Okay.
11 MS. BROUWERS: Court's indulgence.
12 Q So after Mr. Edwards was maced, that's when the knife
13 came out, and you had tried to disorient him with that mace,
14 correct?
15 A Yes.
16 Q That was your intended goal?
17 A Yes.
18 Q Okay. And then after that, Mr. Allison kind of went to do
19 a -- like, a takedown move, right? To take him down?
20 A Yes.
21 Q Okay. And you assisted with that?
22 A Yes.
23 Q Okay. In the course of that assistance, you sustained the
24 injury to the back of your leg that you testified to previously?
25 A Yes.

1 Q Okay. That injury was treated in the hospital that same
2 day?
3 A Yes.
4 Q Okay. You received kind of that adhesive bandage that we
5 looked at, right?
6 A We did not look at adhesive badges.
7 Q I'll grab it. I'm showing you what's been admitted as
8 State's Exhibit 23. And I'm going to zoom way out, because we
9 need to see it.
10 Sir, that's your leg, correct?
11 A Yes.
12 Q The puncture wound was there?
13 A Yes.
14 Q Okay. Did you receive stitches for that or how was it
15 treated?
16 A From what I believe, it was a steri strip.
17 Q I'm sorry, a what?
18 A From what I was to believe, it was a steri strip.
19 Q Okay. Is that an adhesive that brings the skin together
20 and closes it?
21 A I believe so.
22 Q Okay. To the best of your recollection, that's how it was
23 treated?
24 A Yes. Yes.
25 Q Okay. All right. And you are limping, but you were able

1 to walk?
2 A Yes.
3 Q You've never needed a wheelchair in relation to this
4 incident?
5 A No.
6 Q Never needed crutches in relation to this incident?
7 A No.
8 Q Never needed a cane?
9 A No.
10 Q Okay. And then you did not go back for treatment for that
11 leg injury, correct?
12 A No.
13 Q Okay. So only it was that one day.
14 A Yes.
15 Q How long were you actually in the hospital, in hours?
16 A I cannot recall.
17 Q Okay. Did you stay overnight?
18 A No.
19 Q No. Okay. So would -- can you estimate for me roughly
20 how many hours you believe you were there?
21 A Four to five hours, probably.
22 Q Four to five hours. Okay.
23 And Mr. Edwards also sustained some injuries as part of
24 the altercation that you were all involved in, correct?
25 A I'm not aware.

1 Q You're not aware?
2 A No.
3 Q Okay. You -- when you observed him later, you didn't
4 notice?
5 A No.
6 Q Okay. That wasn't your concern?
7 A No.
8 Q When paramedics came, they gave their attention to you
9 and Mr. Allison?
10 A Yes.
11 Q They didn't give their attention to the -- to Mr. Edwards
12 as -- that you saw?
13 A He fought with the paramedics.
14 Q My question was the paramedics did not give treatment to
15 Mr. Edwards that you saw?
16 A They offered it.
17 Q My question was, they didn't treat him that you saw?
18 A I'm not aware of that. He was still there when I left.
19 Q Okay.
20 MS. BROUWERS: Court's indulgence.
21 Your Honor, I will pass the witness.
22 THE COURT: State, any redirect?
23 MS. DERJAVINA: Yes, Your Honor. If I could just have
24 the Court's indulgence for a minute?
25 THE COURT: Sure.

1 [Pause in proceedings.]

2 **REDIRECT EXAMINATION**

3 BY MS. DERJAVINA:

4 Q Now, a little while ago, Defense counsel asked you a

5 couple of questions regarding what your knowledge was regarding

6 mace?

7 A Yes.

8 Q Specifically, how it affects somebody when they get

9 maced?

10 A Yes.

11 Q Remember that?

12 A Yes.

13 Q Do you know how long, usually, the effect of mace lasts

14 on a person who's just been maced?

15 A It can last up to about three hours, I believe.

16 Q So some time?

17 A Yes.

18 Q Now, in this case, you maced the defendant?

19 A Yes.

20 Q And you said based on your knowledge -- or your intent

21 was to disorient him?

22 A Yes.

23 Q Was that successful in this case?

24 MS. BROUWERS: Objection. Calls for speculation.

25 BY MS. DERJAVINA:

1 Q Was he still able to move around?
2 THE COURT: Hey, counsel. Objection's sustained.
3 MS. BROUWERS: Thank you.
4 MS. DERJAVINA: I'll rephrase it, Your Honor.
5 THE COURT: Thank you.
6 BY MS. DERJAVINA:
7 Q When you maced the defendant, was he still able to move
8 around?
9 A Yes.
10 Q Still able to fight you?
11 A Yes.
12 Q Now, the area that you patrol, the Hawaiian Marketplace,
13 is that private property?
14 A Yes.
15 Q Are people allowed to sleep on that property?
16 A No, they are not.
17 Q Now, I want to go over some video with you. We actually
18 have it right here, so perfect.
19 Is, at this point, which is 6:56:53, you're still just talking to
20 him?
21 A Yes.
22 [Video played.]
23 Q I apologize. You'll have to -- just one more time. The
24 unfortunate thing is we can't fast-forward or rewind these videos.
25 [Video played.]

1 Q Now, I want you -- I'm going to rewind this. Pay really
2 close attention to the defendant in this video, if you can.
3 [Video played.]
4 Q Do you see -- right now it's 6:56:55, do you see something
5 in the defendant's right hand?
6 A I do see something in his right hand.
7 Q Okay. What does it look like?
8 A That looks like tissues.
9 Q Okay.
10 [Video played.]
11 Q So at 6:57:01, at this point are you taking out the
12 handcuffs?
13 A Yes.
14 Q Now, it might be hard to see, but if you look close
15 at 6:57:04, can you see something in the defendant's left hand? If
16 you can't let me know.
17 A I cannot.
18 Q But can we see, at 6:55 -- 6:57:05, where is the defendant's
19 right hand now?
20 A In his pocket.
21 [Video played.]
22 Q And what did you just do?
23 A Pulled out mace.
24 Q So before that point, your mace was not out?
25 A No.

1 [Video played.]
2 Q And what is happening at this point right now, 6:57:21?
3 You can just describe to us what was going on, what was the
4 conversation?
5 A We were trespassing Mr. Toyer from property for refusing
6 to leave.
7 Q You weren't using your mace at this time?
8 A No, I was not.
9 [Video played.]
10 Q Now, looking at 6:57:26, does it appear that the defendant
11 is planning on going anywhere?
12 MS. BROUWERS: Objection. Calls for speculation.
13 THE COURT: Sustained.
14 BY MS. DERJAVINA:
15 Q Looking at the video, does it look like he got more
16 comfortable in the chair?
17 A Yes.
18 Q And at this point he's still refusing to leave?
19 A Yes.
20 Q And, again, you're not using your mace?
21 A No.
22 MS. BROUWERS: And again, Your Honor, I'm going to
23 object to leading.
24 MS. DERJAVINA: I'll rephrase it, Your Honor.
25 BY MS. DERJAVINA:

1 Q Are you using your mace at this time?
2 A No.
3 [Video played.]
4 Q And what are you looking at right now in this video?
5 A His hand in his pocket.
6 [Video played.]
7 Q And what's going on right now?
8 A We are detaining Mr. Toyer.
9 Q And is he complying with any of your commands?
10 A Not until the knife came loose.
11 [Video played.]
12 Q I won't play it till the end.
13 The State has no further questions.
14 THE COURT: Any recross by the Defense?
15 **RECROSS-EXAMINATION**
16 BY MS. BROUWERS:
17 Q He didn't bring the knife out until after he had been
18 maced, correct?
19 A Yes.
20 Q Thank you.
21 MS. DERJAVINA: And, Your Honor, I apologize, just have
22 one redirect on that.
23 **FURTHER REDIRECT EXAMINATION**
24 BY MS. DERJAVINA:
25 Q But you know it is the knife when he put his hands in his

1 pocket?
2 A Yes.
3 Q Thank you.
4 THE COURT: Would you like to ask any additional
5 questions, Defense?
6 MS. BROUWERS: No.
7 THE COURT: Can this witness be excused?
8 MS. BROUWERS: Your Honor, I don't know if you wanted
9 to question the jury about it.
10 THE COURT: Oh, that's correct.
11 Does anybody have any questions of this witness? Seeing
12 no response by the jurors, can this witness be excused? Oh, I'm
13 sorry, we have one?
14 No, no, no. It has to be in writing. A piece of paper.
15 Okay. So the juror does not have any questions; is that
16 correct? Okay.
17 Can this witness be excused?
18 MS. DERJAVINA: Yes, Your Honor.
19 THE COURT: Sir, thank you. You can be excused.
20 THE WITNESS: Thank you very much.
21 THE COURT: State, call your next witness.
22 MR. DICKERSON: State's next witness will be Joshua
23 Simms.
24 Can I approach your clerk, Your Honor?
25 THE COURT: Sure.

1 MR. DICKERSON: Thank you very much.

2 **JOSHUA SIMMS**,

3 [having been called as a witness and first duly sworn, testified as

4 follows:]

5 THE COURT CLERK: Please be seated. Would you state

6 and spell your name for the record.

7 THE WITNESS: Yes. It's Joshua Simms, J-O-S-H-U-A,

8 S-I-M-M-S.

9 MR. DICKERSON: May I proceed, Your Honor?

10 THE COURT: Yes.

11 MR. DICKERSON: Thank you.

12 **DIRECT EXAMINATION**

13 BY MR. DICKERSON:

14 Q Now are you employed, sir?

15 A Patrol officer with Las Vegas Metropolitan Police

16 Department.

17 Q What's your current assignment?

18 A I work on the Strip, Convention Area Command patrol.

19 Q Convention Center Area Command, you said patrol?

20 A Yes, sir.

21 Q Convention Center Area Command, is that the area

22 command or station that generally covers the Strip?

23 A Yes, sir.

24 Q And as a patrol officer, what's your duty?

25 A I respond to calls for service, make legal stops, person

1 stops.
2 Q Okay. Working as a patrol officer out of Convention
3 Center Area Command, is it common or do you ever respond to
4 calls to assist security officers?
5 A Yes, sir.
6 Q On a regular basis?
7 A Every day.
8 Q Every day?
9 A [No audible response.]
10 Q Is that a yes?
11 A Yes.
12 Q Lot of security officers out there on the Strip?
13 A Yes.
14 Q And so at times do they have people in custody and you
15 come and respond?
16 A Yes.
17 Q Generally, when that happens, then you take over the call?
18 A Yes.
19 Q Is that actually what happened here in this case?
20 A Yes. Yes.
21 Q You responded, security officers had an individual in
22 custody?
23 A Yes.
24 Q And, specifically, you responded to a call on
25 June 18th, 2017, to the Hawaiian Marketplace; is that right?

1 A Yes.
2 Q And the Hawaiian Marketplace is a little outdoor mall area
3 located on the Strip in Las Vegas, Clark County, Nevada?
4 A Yes.
5 Q What were the details of the call, generally, that you were
6 responding to?
7 A Details called two victims were stabbed, and that's pretty
8 much all I remember.
9 Q How was it that you responded to that call?
10 A I responded Code 3, lights and sirens.
11 Q Code 3, lights and sirens?
12 A Yes.
13 Q Is that what Code 3 means?
14 A Yes.
15 Q Lights and sirens?
16 A Yes.
17 Q You arrived, is that fair to say, approximately 7:02 a.m.?
18 A Yes.
19 Q And where was it that you arrived to on this call?
20 A Eventually, I made myself -- made my way to the security
21 office.
22 Q At the Hawaiian Marketplace?
23 A Yes.
24 Q When you arrived at the security office of the Hawaiian
25 Marketplace, what was it that you found there?

A There's a suspect in custody sitting down in a chair in cuffs, and there's two other officers there and security -- Hawaiian Market security officers.

Q Two other officers being police officers?

A Yes.

Q And then Hawaiian Marketplace security officers?

A Correct.

Q And you said there was a suspect that was in custody?

A Yes.

Q Do you see that suspect that was in custody here in court today?

A Yes.

Q If you could please point to that individual and identify a piece of clothing that they're wearing?

A Gentleman over here's wearing a white dress shirt.

MR. DICKERSON: If the record could reflect that Officer Simms has identified the defendant, Your Honor.

THE COURT: The record will so reflect.

MR. DICKERSON: Thank you very much.

BY MR. DICKERSON:

Q So when you arrive in there, what's the defendant's demeanor?

A He was very amped up, kind of seemed like he was gloating about what he had just done.

Q And did you see the security officers?

1 A Yes.
2 Q Specifically, William Allison and Chase Lovato?
3 A Yes.
4 Q And what was their demeanor?
5 A They're being attended to by different officers, but it
6 seemed like they were attending to some stab wounds that they
7 had just received.
8 Q Did you interrogate the defendant or anything?
9 A No.
10 Q But was he talking?
11 A Yes, he was talking.
12 Q A little bit or a lot or what?
13 A A lot. He was very amped up and excited, you would say,
14 of what just happened.
15 Q And do you wear -- looks like you do -- a body cam?
16 A Yes.
17 Q What is that?
18 A That's a camera. I got a battery pack in my pocket. When
19 I get assigned to a call, I activate it and it records while I'm on the
20 call.
21 Q So you wear that every day?
22 A Yes.
23 Q Were you wearing that this day, on June 18th, 2017?
24 A Yes.
25 Q You were wearing it when you arrived at the security

office?

A Yes.

Q And so that actually records everything that you're saying?

A Yes.

Q Have you actually reviewed that footage?

A Yes.

MR. DICKERSON: And if I may publish, Your Honor, what's been admitted by stipulation as State's Exhibit 2?

THE COURT: And State's Exhibit 2 is what, counsel?

MR. DICKERSON: State's Exhibit 2 is a body-worn camera of Officer Simms.

THE COURT: And that has been admitted pursuant to stipulation; is that correct?

MR. DICKERSON: That's correct.

MS. BROUWERS: That's correct, Your Honor.

THE COURT: Okay.

MR. DICKERSON: And may I approach the officer before publishing?

THE COURT: You may.

MR. DICKERSON: Thank you.

BY MR. DICKERSON:

Q Officer Simms, you recognize this particular disc?

A Yes.

Q How is it that you recognize this?

1 A My signature.
2 Q Your signature?
3 A And I wrote Body-Worn Camera and my P-number.
4 Q Okay. That's all right here on this disc?
5 A That's correct.
6 Q And you said you wrote your P-number, what's that?
7 A That's personnel number, the badge number, as most
8 people call it.
9 Q So what is it that's contained on this disc?
10 A That shows me arriving in the security office.
11 Q Are we going to see the defendant on this disc?
12 A Yes.
13 Q And the general scene that you encountered when you
14 arrived?
15 A Correct.
16 Q And the events depicted here, they're fair and accurate
17 depiction of what happened that day when you arrived?
18 A Yes.
19 Q Just to note, is there a small portion of this body-cam
20 video that is redacted due to having personal identifying
21 information, including the serial -- social security number of the
22 defendant?
23 A Yes.
24 Q But other than that, that's it?
25 A Correct.

1 MR. DICKERSON: At this time, I'm publishing for the
2 members of the jury State's Exhibit 2.
3 [Video played.]
4 MR. DICKERSON: I'm going to pause this right there.
5 BY MR. DICKERSON:
6 Q This is your body cam?
7 A Correct.
8 Q Did you wear it right there in that general area on your
9 shoulder, where you wear it here today?
10 A Yes.
11 Q And where are we right now?
12 A Back halls through Hawaiian Marketplace. He's guiding
13 me through to the security office, because I had never been there
14 before.
15 Q I take it the individual's a security officer?
16 A Correct.
17 [Video played.]
18 Q That individual that we just saw you walk past, who was
19 that?
20 A That was the defendant sitting over there.
21 Q And that voice that we heard saying, Those motherfuckers
22 are glazed donuts, who was that?
23 A That's the defendant.
24 [Video played.]
25 Q Do you recognize those two individuals, not the police

1 officer that you see there?
2 A Yes.
3 Q And who are those individuals?
4 A Those would be the Hawaiian Market security guards, the
5 victims.
6 Q The two that were injured?
7 A Correct.
8 [Video played.]
9 Q That individual that steps outside another security officer?
10 A Yes.
11 Q Not one of the two victims?
12 A Correct.
13 [Video played.]
14 Q And did we just see that small portion where there was
15 personal identifying information on it?
16 A Yes.
17 Q Thank you.
18 [Video played.]
19 Q Officer Simms, those comments that -- the derogatory
20 terms and the comments, who was the defendant directing those
21 towards?
22 A The security officers that were in the room.
23 Q Chase Lovato?
24 A Chase, yes.
25 Q William Allison?

1 A Yes.
2 Q And the individual that we saw in that video with the black
3 Polo and gold star, who was that?
4 A That was a patrol detective sergeant.
5 Q So detectives were called out?
6 A Correct.
7 Q Crime scene investigations called out?
8 A Yes.
9 Q The scene was secured?
10 A Yes.
11 Q And then were the victims taken to the hospital?
12 A Yes.
13 Q And what did you do at that point in time?
14 A I followed the victims to the hospital.
15 Q That was -- you followed them?
16 A Yes, I followed them -- I followed the ambulance which
17 they were in to the hospital.
18 Q I see. And, ultimately, during the time of the
19 investigation, the knife was recovered?
20 A Yes.
21 MS. BROUWERS: Your Honor, I know some of these
22 questions are foundational, but I'm going to object as to leading.
23 MR. DICKERSON: It's foundational. I think that the
24 objection --
25 THE COURT: It is foundational.

1 MR. DICKERSON: -- the objection's --
2 THE COURT: You can lead on foundational questions
3 only, counsel.
4 MR. DICKERSON: I appreciate it, Your Honor.
5 BY MR. DICKERSON:
6 Q And you actually brought the knife into court; is that right?
7 A Yes.
8 Q What is this that I have in my hand?
9 A It's a box.
10 Q State's --
11 A A box --
12 Q State's Exhibit 1. In specific, what is this box?
13 A It's evidence.
14 MR. DICKERSON: And may I approach, Your Honor?
15 THE COURT: Yes.
16 BY MR. DICKERSON:
17 Q Is this the evidence that you brought to court?
18 A Yes.
19 Q What is it that we see here?
20 A It's a evidence box and it's listed that there's a knife
21 inside.
22 Q Okay. This red tape on here, what's that?
23 A That's evidence tape.
24 Q Okay. Is that done to seal the box?
25 A Correct.

1 Q And are you able to tell who actually sealed this up?
2 A Can't read the name, but it was the CSA who responded
3 to the scene.
4 Q Is there some sort of initials and P-number that's used to
5 mark these things?
6 A Yes.
7 Q And what is that? Is that documented on here?
8 A Yes, it's M13207M, that two M's would be her initials and
9 the number would be her badge number.
10 Q And that's located right up here?
11 A Yes.
12 Q And when that's done -- so that M and then the number
13 and then the other M, what is that?
14 A Those are her initials.
15 Q Okay. Is that a common thing within the Las Vegas
16 Metropolitan Police Department?
17 A Yes.
18 Q Showing you here the box that we've opened by
19 stipulation here; do you see that same number on the knife?
20 A Yes.
21 Q And the same initials?
22 A Correct.
23 Q That being the CSA's?
24 A Yes.
25 Q Marking this particular knife that's being impounded by

her; is that right?

A Yes.

Q And this knife, it's marked as State's Exhibit 1A, that consistent with the description of the knife that's here on the impound box?

A Yes.

MR. DICKERSON: State will pass the witness.

THE COURT: Any cross-examination by the Defense?

MS. BROUWERS: Yes, Your Honor. Thank you.

If I could approach your clerk just about some exhibits.

CROSS-EXAMINATION

BY MS. BROUWERS:

Q Good afternoon, Officer.

A Good afternoon.

Q So I'm going to try to -- hopefully we can do this without having to play the video all the way through again, but if we need to, we will.

A Okay.

Q But, obviously, you recall having watched that video just a moment ago?

A Yes.

Q Okay. I'm assuming you were paying attention to it, you were asked some questions?

A Yes.

Q Okay. And, obviously, you were there on the scene, so

1 you also have an independent recollection --
2 A Yes.
3 Q -- of what happened?
4 A Yes.
5 Q Okay. When you first entered through the security office,
6 you saw Mr. Edwards sitting there in the chair, correct?
7 A Yes.
8 Q Okay. No one was administering to him, correct?
9 A Correct.
10 Q Okay. But he did have injuries?
11 A Yes.
12 Q Injuries that --
13 A He --
14 Q He had injuries that you could see?
15 A He was bleeding from the head, I really couldn't tell where
16 it was coming from.
17 Q Bleeding from the head? Okay.
18 Prior to you arriving, had you been aware that he had
19 been maced?
20 A Yes.
21 Q Okay. So you knew that?
22 A Yes.
23 Q What are the physical effects of mace?
24 A Affects your breathing and your eyesight. It's really
25 irritating.

1 Q Okay. Does it affect -- fair to say it affects kind of your
2 mucous membranes in general; would it affect your mouth if it got
3 in your mouth?
4 A Yes.
5 Q Would it affect your nose if it got in your nose?
6 A Yes.
7 Q And it affects your eyes, you just said?
8 A Yes.
9 Q Okay. Incredibly painful?
10 A Yes.
11 Q Very irritating?
12 A Yes.
13 Q Causes your eyes to turn red?
14 A Yes.
15 Q Okay. And you did have the opportunity to encounter
16 Mr. Edwards, obviously, through the course of your investigation?
17 A Yes.
18 Q Okay. And I'm going to show you what has been
19 admitted as Defense Exhibit B per stipulation. That's Mr. Edwards,
20 correct?
21 A Yes.
22 Q Is that how he looked on the day that you encountered
23 him, this day?
24 A Yes.
25 Q Okay. Do you notice some reddening in his eyes?

1 A Yes.
2 Q Is that consistent with having been maced?
3 A Yes.
4 Q Okay. Can you see a little bit of mucous around the nose
5 and face area?
6 A Yes.
7 Q Okay. Is that consistent with being maced?
8 A Yes.
9 Q Okay. And then there's also blood, correct?
10 A Correct.
11 Q Okay. Now, you didn't take these photos, but you were --
12 but these are consistent with the way he looked when you saw him,
13 correct?
14 A Yes.
15 Q Okay. Showing you what's been -- I apologize -- admitted
16 as Defense Exhibit B per stipulation; it's Mr. Edwards again, yes?
17 A Yes.
18 Q Okay. There's some blood on the right side of his face?
19 A Yes.
20 Q Okay. Again, you can see some kind of mucous coming
21 out of the nose area?
22 A Yes.
23 Q Okay. And that -- again, that mucous is consistent with
24 having been maced?
25 A Yes.

1 Q Okay. In the video -- I'm sorry, I'm going to show these
2 ones too.
3 I'm showing you what's been admitted as Defense Exhibit
4 E. I'm going to back out a little bit so you can see. Okay. And that
5 is Mr. Edwards again, yes?
6 A Yes.
7 Q Okay. This is a close-up of the left side of his face?
8 A Yes.
9 Q Okay. He appears to have some kind of cut or abrasion
10 where it's bleeding fairly profusely?
11 A Yes.
12 Q Okay. And there's also blood around the bridge of his
13 nose and his eyebrow area?
14 A Yes.
15 Q Some mucous coming out of his nose area?
16 A Yes. Sorry, yes.
17 Q I'm sorry. It's okay. If you need water, I think other
18 people have been using it too, so.
19 Showing you what's been admitted as Defense Exhibit F.
20 This is just a little bit of a closer-up view of that, correct?
21 A Yes.
22 Q Can you tell me what this is?
23 A It's a ruler, angle point ruler.
24 Q Okay. What's the purpose of that ruler?
25 A Just to show that the width or the length of a injury or

1 object.
2 Q Okay. Is this side in centimeters -- or are they both in
3 centimeters?
4 A I can't tell.
5 Q Okay. Hard to tell on this ELMO, right?
6 Do you mind if I approach?
7 A Sure.
8 MS. BROUWERS: Your Honor, I'm going to approach.
9 THE COURT: Yes.
10 MS. BROUWERS: Thank you.
11 BY MS. BROUWERS:
12 Q Kind of glare on that. Can you take a look at that for me?
13 A Yes.
14 Q Okay. So fair to say that the measurements on both sides
15 are in centimeters?
16 A Yes.
17 Q Okay. Using that ruler, can you tell for me, if you can,
18 what the width or length of that injury is?
19 A Looks to be about 1 centimeter.
20 Q Okay. You think it's about 1 centimeter, it looks like a
21 pretty good amount of blood?
22 A Yes.
23 Q Okay. You recall in the video that we just watched,
24 Mr. Edwards was pretty -- we'll call it talkative.
25 A Yes.

Q He was talking pretty much consistently throughout the entire video?

A Yes.

Q Okay. He was making -- and some of the statements you heard were that he was 125 pounds?

A Yes.

Q Okay. And you, obviously, did have the chance to observe Mr. Edwards?

A Yes.

Q Showing you what's been admitted as Defense Exhibit C. Zooming out again. Okay. This is Mr. Edwards, correct?

A Yes.

Q Okay. He's missing a sock, it looks like. You have to say yes.

A Yes. Yes.

Q All right. And does he look to be roughly 125 pounds in your estimation?

MR. DICKERSON: Calls for speculation, Your Honor.

THE WITNESS: Yes. Sure.

THE COURT: It's -- I'll allow it. She asked in his estimation. Overruled.

THE WITNESS: I would guess closer to 140, if --

BY MS. BROUWERS:

Q Okay. How much -- and no offense, how much do you weigh, Officer?

1 A I weigh 280.
2 Q Okay. And how tall are you?
3 A 6-1.
4 Q Okay. In relation to you, how tall was Mr. Edwards? If --
5 to your estimation?
6 A 5-5.
7 Q Okay. So pretty significantly shorter than you?
8 A Yes.
9 Q Okay. And you said you're 6-1?
10 A Correct.
11 Q Were the officers -- the security officers that you were
12 there -- I'm sorry.
13 Were the security officers who were the alleged victims in
14 this case, were they roughly your height?
15 A I believe William was maybe taller than me. I don't think
16 Lovato was close to my height or weight.
17 Q Okay. But you think Mr. Allison might have been bigger?
18 A Taller, yes.
19 Q Taller.
20 A Yes.
21 Q Okay. Also in that video, there was a time when I -- when
22 paramedics came and were kind of standing near Mr. Edwards; do
23 you remember that in the video?
24 A Yes.
25 Q And you actually directed them to go talk to the security

1 officers instead?
2 A Yes.
3 Q So no one, actually, was administering to Mr. Edwards'
4 head wounds?
5 A Correct, at the time. In the video, yes.
6 Q In the video that we watched, okay?
7 A Yes.
8 Q And no one was administering to any of the injuries he
9 sustained as a result of being maced?
10 A Correct.
11 Q And as you just said, when paramedics went to go look at
12 him, you said, no, no, no, over there, basically?
13 A Yes.
14 Q Okay. At a certain point, he -- at a certain point he asked
15 for some tissue?
16 A Correct.
17 Q Okay. He had mucous all over his face, yes?
18 A Yes.
19 Q Okay. And that was consistent, again, with having been
20 maced previously?
21 A Yes.
22 Q Okay. The injuries you observed -- well, did you have the
23 opportunity to observe the injuries to the security officers?
24 A When I was at the hospital, yes.
25 Q Okay. Those injuries were fairly minor?

1 MR. DICKERSON: Objection. Calls for an expert opinion.
2 THE COURT: We'll allow it, overruled.
3 THE WITNESS: I don't think I would call getting stabbed
4 minor, no.
5 BY MS. BROUWERS:
6 Q Okay. You have to prepare reports when --
7 A Sure.
8 Q -- investigate a case; is that correct?
9 A Yes.
10 Q Okay. And those are written reports?
11 A Yes.
12 Q Okay. In those written reports, you try to be as accurate
13 and detail-oriented as possible?
14 A Yes.
15 Q It's important to get these facts correct?
16 A Yes.
17 Q If you were to get the facts wrong, then something bad
18 could happen in terms of any kind of criminal case that was being
19 investigated?
20 A Yes.
21 Q Okay. I'm going to ask you to take a look at this, please,
22 sir.
23 A Okay.
24 Q Do you recognize that?
25 A Yes.

1 Q Can you tell me what that is?
2 A The narrative of the incident crime report that I typed up.
3 Q Okay. And the narrative you wrote?
4 A Yes.
5 Q Okay. Showing you paragraph -- we'll count it down, one,
6 two, three -- showing you paragraph 3, how did you characterize
7 those injuries?
8 A They were released with minor injuries.
9 Q With minor injuries?
10 A Yes.
11 Q Those are words you typed?
12 A Yes.
13 Q And you had followed them to the -- you had followed the
14 security officers to the hospital?
15 A Yes.
16 Q Okay. Do you know whether Mr. Edwards was ever
17 transported to a hospital, if you know?
18 A No idea.
19 Q He wasn't transported or you don't know?
20 A I have no idea, I don't know.
21 Q Okay.
22 MS. BROUWERS: Court's indulgence.
23 Q When you were taking Mr. Edwards -- you needed to get
24 his information and he provided that to you, correct?
25 A Yes.

1 Q His personal information, and that was part that was
2 redacted?
3 A Correct.
4 Q Okay. Do you recall how old he was?
5 A I don't recall.
6 Q Okay.
7 MS. BROUWERS: Court's indulgence.
8 Q Oh, actually, you know what? We can go ahead and use
9 that.
10 MS. BROUWERS: I'm showing this, okay?
11 MS. DERJAVINA: Uh-huh.
12 BY MS. BROUWERS:
13 Q I'm showing you again that statement that I showed you
14 just a moment ago. And I'm going to direct you -- I think -- yes,
15 thank you so much -- to paragraph 1. I -- when you got his
16 information, he gave you his date of birth?
17 A Yes. 8/24/1959.
18 Q 1959, and this happened in June of 2017?
19 A Correct.
20 Q Okay. I'm horrible at math.
21 A Me too.
22 Q You too?
23 A Yes.
24 Q Okay. So -- but if he's born in 1959, and this occurred
25 in 19 -- I'm sorry, in 2017, fair to say he's over 55?

A Yes.

Q Okay. And did you get the information from the security officers about their dates of birth?

A I was given their Nevada IDs.

Q Okay. So you retrieved information concerning their dates of birth?

A Yes.

Q Okay. Do you recall what their ages were?

A They were in their 20s.

Q Okay. Late 20s, mid-20s, early 20s?

A I don't recall. I would guess mid-20s.

Q Would it refresh your recollection to see those -- to see this statement again?

A Yes.

Q Okay. Thank you.

A Born in '94 and '95.

Q Okay. And which individual was born in '94, sir -- I'm sorry, Officer.

A William Allison was born in '94.

Q Okay. So that would make him how old in 2017?

A 23.

Q And as to Mr. Lovato?

A 22, 23, around there. Early 20s.

Q Early 20s, both of them?

A Yes.

1 Q And Mr. Edwards is 50 -- was over 55?
2 A Yes.
3 Q Okay.
4 MS. BROUWERS: Court's indulgence.
5 I'll pass the witness, thank you.
6 THE COURT: State, any redirect?
7 MR. DICKERSON: No redirect, Your Honor.
8 THE COURT: Can this witness be excused?
9 MR. DICKERSON: This witness can be excused.
10 THE COURT: Sir, thank you.
11 MR. DICKERSON: Looks like we have a question, Your
12 Honor.
13 THE COURT: I'm sorry. I apologize. You need to raise
14 your hand. I glance over there and if I don't see a hand raised, I
15 move on. So.
16 [Bench conference transcribed as follows.]
17 THE COURT: There's just two?
18 MS. ODEH: There's one right in front of you.
19 THE COURT: Oh, where? Oh, I'm sorry. I apologize. I
20 thought there was three. Okay.
21 The first one is: What is the definition of brandishing a
22 weapon and is holding/showing a butt of a knife brandishing a
23 weapon?
24 MR. DICKERSON: Improper legal conclusion.
25 MS. BROUWERS: I think that's a legal --

1 THE COURT: Yeah, I don't believe this is a factual
2 question.
3 MS. BROUWERS: Correct.
4 THE COURT: So I'm not going to give that question.
5 MS. BROUWERS: Agreed.
6 THE COURT: Is agreed by counsel?
7 MS. BROUWERS: Yes.
8 MS. DERJAVINA: Yes.
9 THE COURT: Okay. What is the length of the knife blade?
10 I don't have a problem with that, if he knows. The knife is in
11 evidence.
12 MR. DICKERSON: Yeah.
13 MS. ODEH: I don't care. That's fine.
14 THE COURT: So you have no objection to me asking that
15 question?
16 MR. DICKERSON: Sure. That's fine.
17 MS. BROUWERS: No objection.
18 MS. ODEH: Yeah, that's fine.
19 THE COURT: Okay. I'll ask that one.
20 Was Mr. Toyer Edwards -- I think they're trying to say
21 DNA, it says DRNA.
22 MS. DERJAVINA: What?
23 THE COURT: I think they're asking was Mr. Toyer
24 Edwards DRNA tested after incident? If yes, was something found
25 in his system?

1 MS. ODEH: Oh.
2 MS. DERJAVINA: Oh.
3 MR. DICKERSON: I think it's probably improper. We don't
4 want to get into whether he's under the influence.
5 THE COURT: Okay. This, counsel --
6 MS. BROUWERS: I --
7 MR. DICKERSON: But I mean --
8 MS. BROUWERS: I don't think it's a proper question
9 either.
10 THE COURT: Okay. So both counsel are requesting that I
11 not ask that question because it's an improper question; is that
12 correct?
13 MR. DICKERSON: Yeah. Because if we do, it'll open the
14 door to all kinds of questions.
15 THE COURT: I agree.
16 MS. BROUWERS: Yeah.
17 THE COURT: So if both counsel object, I'm not going to
18 ask the question.
19 MS. BROUWERS: Okay.
20 THE COURT: It's an improper question.
21 MS. BROUWERS: Okay.
22 THE COURT: And so the only question I'm going to ask is
23 the knife blade, correct?
24 MS. DERJAVINA: That's fine.
25 MS. ODEH: Uh-huh.

1 MR. DICKERSON: Yes, thank you, Your Honor.
2 MS. BROUWERS: Thank you.
3 THE COURT: Thank you. And then, obviously, both
4 counsel will have the opportunity to do follow-up questions.
5 MR. DICKERSON: Thank you very much.
6 THE COURT: Thank you.
7 [End of bench conference.]
8 THE COURT: Sir?
9 THE WITNESS: Yes, sir?
10 THE COURT: Officer, what is the length of the knife blade?
11 THE WITNESS: It was listed as approximately 3-1/2 inches
12 long.
13 THE COURT: Okay. Thank you.
14 MR. DICKERSON: Nothing from the State, Your Honor.
15 THE COURT: Anything from the Defense?
16 MS. BROUWERS: No, Your Honor.
17 THE COURT: Can this witness be excused?
18 MR. DICKERSON: This witness can be excused.
19 THE COURT: Sir, thank you.
20 THE WITNESS: Thank you.
21 THE COURT: You can be excused.
22 THE WITNESS: Thank you, sir.
23 THE COURT: State, any additional witnesses?
24 MR. DICKERSON: Just briefly, may we approach your
25 clerk, Your Honor?

THE COURT: You may.

MR. DICKERSON: Thank you.

THE COURT: Counsel, I'm going to take my evening -- my afternoon recess at this point.

MR. DICKERSON: Okay.

THE COURT: Or -- before we get started on the next witness.

MR. DICKERSON: I think that there's a good chance -- we're just double-checking to make sure that everything's been admitted, then we'll rest.

THE COURT: Okay. Well, I'm going to take our afternoon recess at this time.

MR. DICKERSON: Thank you.

THE COURT: Ladies and gentlemen, we are going to take a 15-minute recess. During this recess, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or read, watch, or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including, without limitation, newspapers, television, radio, or Internet, or form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

We'll be in recess for 15 minutes.

[Court recessed at 3:24 p.m., until 3:40 p.m.]

[Outside the presence of the jury.]

THE COURT: This is the continuation of the trial of State of Nevada versus Toyer Edwards, Case Number C-324805.

State, do you have any additional witnesses or are you resting?

MR. DICKERSON: State --

MS. DERJAVINA: No, I --

MR. DICKERSON: The State is going to rest. We would just ask that maybe now's a good time for the defendant to be admonished.

THE COURT: I agree.

MS. BROUWERS: So do we. Huzzah.

THE COURT: Mr. Edwards, under the Constitution of the United States and under the Constitution of State of Nevada, you cannot be compelled to testify in this case; do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: You may, at your own request, give up this right and take the witness stand and testify. If you do, you'll be subject to cross-examination by the deputy district attorney and anything that you may say, be it on direct or cross-examination, will be the subject of fair comment when the deputy district attorney speaks to the jury in his or her final argument. Do you understand that?

THE DEFENDANT: Yes, I do.

THE COURT: If you choose not to testify, the Court will not permit the deputy district attorney to make any comments to

1 the jury because you have not testified; do you understand that?
2 THE DEFENDANT: Yes.
3 THE COURT: If you elect not to testify, the Court will
4 instruct the jury, but only if your attorneys specifically request it as
5 follows:
6 The law does not compel a defendant in a criminal case to
7 take the stand and testify, and no presumption may be raised and
8 no inference of any kind may be drawn from the failure of a
9 defendant to testify.
10 Do you have any questions about these rights?
11 THE DEFENDANT: Not at all.
12 THE COURT: You are further advised that if you have a
13 felony conviction and more than 10 days has not elapsed from the
14 date you have been convicted or discharged from prison, parole, or
15 probation, whichever is later, and the Defense has not sought to
16 preclude that coming before the jury, and you elect to take the
17 stand and testify, the deputy district attorney, in the presence of the
18 jury, will be permitted to ask the following:
19 1. Have you been convicted of a felony?
20 2. What was the felony?
21 And 3. When did it happen?
22 However, no details may be gone into; do you understand
23 that, sir?
24 THE DEFENDANT: Yes, I do.
25 THE COURT: Defense, do you present -- shucks.

1 Defense, do you intend to present any witnesses?
2 MS. ODEH: No, we don't, Your Honor.
3 THE COURT: Is the Defense resting at this time?
4 MS. ODEH: We are resting.
5 THE COURT: I was going to excuse the jury then, and we
6 can discuss jury instructions at this point.
7 MR. DICKERSON: Thank you, Your Honor.
8 THE COURT: Is that agreeable to the parties?
9 MS. BROUWERS: Yes, Your Honor.
10 MS. ODEH: Yes.
11 THE COURT: Okay. I was -- I have a matter early in the
12 morning and I believe one -- the deputy district attorneys also have
13 a matter.
14 MS. DERJAVINA: That's correct, Your Honor.
15 THE COURT: What time do you think you'll have your
16 matter completed?
17 MS. DERJAVINA: I'll be here by 9:15.
18 THE COURT: Okay. I was going to start tomorrow
19 at 10:30 --
20 MS. DERJAVINA: That's fine with the State.
21 THE COURT: -- if that's agreeable to the parties.
22 MS. BROUWERS: Yes.
23 MS. ODEH: Yes, Your Honor.
24 THE COURT: And then -- so I'm going to excuse the jury
25 at this point and then we'll settle instructions.

1 MS. ODEH: All right. Thank you.
2 MS. DERJAVINA: Thank you, Your Honor.
3 THE COURT: Thank you, counsel.
4 Can you bring the jurors back in?
5 THE MARSHAL: When you tell them to come back, would
6 you tell them 10:15 --
7 THE DEFENDANT: 10:15, I will.
8 THE MARSHAL: -- because we're having --
9 THE COURT: And also, I'm going to ask the questions on
10 the record whether you --
11 MS. ODEH: Yes.
12 THE COURT: -- rest and whether you're going to present
13 any witnesses.
14 MR. DICKERSON: Yes, Your Honor.
15 [Jury reconvened at 3:45 p.m.]
16 THE COURT: Let the record reflect the presence of the
17 counsel for the State, counsel for the defendant, and the defendant.
18 Will the parties stipulate to the presence of the jury?
19 MS. DERJAVINA: Yes, Your Honor.
20 MS. ODEH: Yes, Your Honor.
21 THE COURT: State, do you have any additional
22 witnesses?
23 MS. DERJAVINA: No, Your Honor. The State rests at this
24 time.
25 THE COURT: Defense, are you going to call any

witnesses?

MS. ODEH: Your Honor, we are not going to call any witnesses. And the Defense would rest at this time, as well.

THE COURT: At this point, ladies and gentlemen, I'm going to take our evening recess. I'm going to have you return tomorrow at 10:15. We should start around 10:30. But I would like everybody here at 10:15.

Ladies and gentlemen, we are going to take our evening recess at this time. During this recess, you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or read, watch, or listen to any report of or commentary on the trial or any person connected with this trial by any medium of information, including, without limitation, newspapers, television, radio, or Internet, or form or express any opinion on any subject connected with the trial until the case is finally submitted.

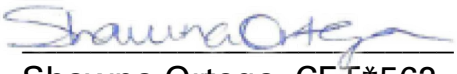
We'll be in recess.

I'll see counsel in the conference room.

[Court recessed at 3:48 p.m.]

/ / /

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



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CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff(s), vs. TOYER EDWARDS, Defendant(s).	Case No. C-17-324805-1 Department XXI

BEFORE THE HONORABLE MARK B. BAILUS,
DISTRICT COURT JUDGE

FRIDAY, MARCH 2, 2018

TRANSCRIPT OF PROCEEDINGS RE:
JURY TRIAL – DAY 5 of 5

APPEARANCES:

For the Plaintiff(s): EKATERINA DERJAVINA, ESQ.
MICHAEL DICKERSON, ESQ.
Deputy District Attorneys

For the Defendant(s): ELAINE ODEH, ESQ.
SHANA S. BROUWERS, ESQ.
Deputy Public Defenders

RECORDED BY: JESSICA KIRKPATRICK, COURT RECORDER

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EXHIBITS

No exhibits offered.

LAS VEGAS, NEVADA, FRIDAY, MARCH 2, 2018

[Proceeding commenced at 10:19 a.m.]

[Outside the presence of the jury.]

THE COURT: This is a continuation of the trial of State of Nevada versus Toyer Edwards, Case Number C-17-324805. Let the record reflect the presence of counsel for the State, counsel for the defendant, and the defendant. The jury is not present. This is time set for settling of instructions.

Counsel, it's my understanding that the instructions submitted by the State that we'll be reviewing this morning -- where are they? -- were the ones that were submitted this morning; is that correct?

MS. DERJAVINA: That's correct, Your Honor.

MR. DICKERSON: Correct, Your Honor.

THE COURT: And then the State also has supplemental instructions that were submitted this morning; is that correct?

MS. DERJAVINA: That's correct.

MR. DICKERSON: Correct, Your Honor.

THE COURT: And as for the Defense, the instructions that the Defense are proposing were the ones that were submitted this morning also; is that correct?

MS. BROUWERS: Your Honor, we also have the ones that we originally filed last week on Friday.

THE COURT: You also requesting those?

MS. BROUWERS: There are some that are covered by the State, but there are some that we have that are a little bit different. And so I want just to be heard on those ones when we get there.

THE COURT: Absolutely. What I was going to do is go through the State's initial ones and see if you have an objection to what the State's proposed.

MS. BROUWERS: Okay.

THE COURT: Okay. As to Instruction Number 1, it begins: It is now my duty as judge.

Any objection by either party to that proposed instruction?

MS. BROUWERS: No.

MR. DICKERSON: No, Your Honor.

THE COURT: Then I'm going to mark these as we go. So -- they were unmarked at this point.

As to the State's Proposed Instruction Number 2: If in these rules. If in these instructions, any rule --

Any objection by either party?

MS. BROUWERS: No.

MR. DICKERSON: No, Your Honor.

THE COURT: That will be given.

Instruction Number 3: An information is but a formal method of accusing a person.

Any objection?

MS. BROUWERS: No.

MR. DICKERSON: No, Your Honor.

THE COURT: That instruction will be given.

Instruction -- State's Proposed Instruction Number 4: To constitute the crime charged.

Any objection?

MS. BROUWERS: No.

MR. DICKERSON: No.

THE COURT: State's Proposed Instruction Number --

THE COURT CLERK: Will the previous one be given?

THE COURT: Yeah. See -- previous -- State's Proposed Instruction Number 4 will be given.

State's Proposed Instruction Number 5 begins: The defendant is presumed innocent.

MS. BROUWERS: And, Your Honor, we proposed an alternative instruction to that. It's our page 2. So in our original ones that were submitted on the -- I believe the 23rd.

THE COURT: This is the defendant's supplemental proposed jury instructions --

MS. BROUWERS: No, Your Honor. It's the ones that were submitted on the 23rd. So our original set that was submitted.

THE COURT: Hold on.

MS. BROUWERS: I can approach you if you need to see it.

THE COURT: And what page is it on, counsel?

MS. BROUWERS: 2, Your Honor. And the language that's different is specifically in paragraph 3. It's -- that's a correct statement of the law and we're asking for that to be given to the

jury.

MR. DICKERSON: The State objects to that, as the reasonable doubt instruction is statutory and set out as-is in the State's instruction, which is the proper instruction to be given.

THE COURT: As to Defendant's Proposed Instruction Number 1, that will not be given. It's covered by State's Proposed Instruction Number 5. As to -- and so State's Proposed Exhibit -- Instruction Number 5 will be given.

State's Proposed Instruction Number 6: You are to determine the guilt or innocence; any objection?

MS. BROUWERS: Your Honor, this is one that we discussed a little bit yesterday and so yes, based upon the fact that there's -- I think it's a little bit confusing and misleading in that there's no codefendant. And so this talks about other people being considered.

MR. DICKERSON: The State submitted, Your Honor, that it is a correct statement of the law and the obvious route that Defense is going to argue is that everybody else in this case is guilty of a crime besides the defendant. For that reason, it's a necessary instruction to have.

THE COURT: Defense, if I do not give this instruction, you will be precluded from arguing that any other person has violated the law. Do you still have an objection to it?

MS. BROUWERS: And, Your Honor, I don't think that that's necessarily an appropriate preclusion. It's not that we're

1 going to be saying that the security officers violated the law, but
2 that they acted improperly. And so --
3 MR. DICKERSON: It's precisely why we need the
4 instruction, Your Honor.
5 THE COURT: I'll give it.
6 State's Proposed Jury Instruction Number 7: The
7 evidence which you are to consider.
8 Any objection?
9 MS. BROUWERS: No.
10 THE COURT: Instruction Number 7 will be given.
11 State's Proposed Jury Instruction Number 8: The
12 credibility or believability of a witnesses.
13 Any objection?
14 MS. BROUWERS: No.
15 THE COURT: State's Proposed Instruction Number 8 will
16 be given.
17 I believe State's Instruction Number 9 was withdrawn; is
18 that correct? It deals with experts.
19 MR. DICKERSON: That's correct. Or I -- yeah, that's
20 actually from the original packet that we set over. We were looking
21 at the additional packet that was sent over today that does not have
22 that instruction in it.
23 THE COURT: I apologize, counsel.
24 MS. BROUWERS: All of the instructions have been in that
25 same order so far, though. So we're still fine.

MR. DICKERSON: Yes, absolutely.

THE COURT: All right. So it should be Proposed Jury Instruction Number 9: Battery means any willful and lawful?

MR. DICKERSON: Correct, Your Honor.

THE COURT: Thank you, counsel.

MS. BROUWERS: No objection.

THE COURT: That instruction will be given.

Instruction -- State's Proposed Instruction Number 10: If you find the defendant is guilty of battery.

Any objection?

MS. BROUWERS: No objection to that one. But, Your Honor, I don't know if it would make sense now to look -- well, because we're numbering them in the order we want them, is that --

THE COURT: These are just proposed instructions.

MS. BROUWERS: Okay. All right.

THE COURT: I'm going to -- we're going to redo the numbering once we address your instructions, counsel.

MS. BROUWERS: Okay. Never mind. That's perfectly fine, then. Yeah. No objection to 10.

THE COURT: And so Defendant's -- shucks.

The State's Proposed Instruction Number 10 will be given.

State's Proposed Instruction Number 11: If you find the defendant it guilty of battery.

Any objection?

MS. BROUWERS: No.

THE COURT: That instruction will be given.

State's Proposed Instruction Number 12: An owner or occupant of land.

MS. BROUWERS: Yes, Your Honor. We have an objection to this one. This is, basically, what the -- what this one is doing is instructing the jury to find him guilty of a trespass which hasn't been charged. And I think that's confusing. Additionally, it gives -- it's making them -- it's forcing the jury to draw the legal conclusion that the security officers had a right to be asking him to leave. And I think that's a matter that should be left for the juries -- the jury to be -- to consider on their own about what they believe the conduct was appropriate or not. And as he has not been charged with a trespass, I think it's improper to instruct on a trespass.

MR. DICKERSON: And, Your Honor, what Defense counsel's argued is that this requires the jury to make a legal conclusion. That's not the jury's role. The jury is the finder of fact. The jury needs to be instructed on the law. This is the law. This is the law that's the basis for the arrest and ultimately the force that can be used during the rest, and thereto, the resisting that may come from an arrest if it's unlawful.

That's why the jury needs to be instructed on this law, because the jury is not the judge of the law. That's your job. And that's why you need to instruct them on this and they can apply this law to the facts as given. This law allows the jury to see that the -- two security officers had the right to demand that the defendant

leave property. Ultimately, the defendant acting as he did, was the original aggressor in this entire matter, given that fact, that these two officers had the ability and the right to ask him to leave. And then after his refusal to leave, he was trespassing, which then gave them the right, as a private citizen, to effect an arrest, because he was committing a public offense in their presence.

For that reason, Your Honor, the jury needs to be instructed on this. If they are not instructed on this, the Defense has to be precluded from arguing that the defendant wasn't trespassing and that he's not the original aggressor, namely.

MS. BROUWERS: And, Your Honor, my concern --

THE COURT: Counsel.

MS. BROUWERS: Yes?

THE COURT: Go ahead, make a record. I just have some follow-up questions.

MS. BROUWERS: Sure.

Our concern is that it's instructing the jury that the officers had a right to act in the way that they were. And I think that's a factual situation that the jury needs to be able to determine for theirself -- or for their own, basically.

MR. DICKERSON: And that's why it should be given. It's not instructing them the officers were acting appropriately. That would be an instruction that said the officers had the right to arrest him. This is an instruction that is simply the law. And that's for the jury to decide whether those officers were, in fact, following the law

when they effected the arrest on him.

THE COURT: All right. Counsel, I -- this particular instruction also coincides with another set of instructions the State has submitted. If you could -- if counsel could turn to State's supplemental instructions to the jury.

MS. BROUWERS: Yes.

THE COURT: Do you have those in front of you?

MS. BROUWERS: Yes.

THE COURT: If you could look at the State's Supplemental Instructions Number 1 and Number 2.

Number -- State's Supplemental Instruction Number 1: Arrest is taking of a person into custody.

And State's Supplemental Instruction Number 2: An arrestee may physically resist.

As to State's Supplemental Instruction Number 1, they had put in: The crime of trespass is a public offense.

MS. BROUWERS: Correct.

THE COURT: I was going to modify that that the State -- trespassing is a public offense.

MR. DICKERSON: Okay.

THE COURT: If you take this instruction with the State's Supplemental Instruction Number 1 and State's Supplemental Instruction Number 2, and again, I may modify State's Supplemental Instruction Number 2, this seems to be consistent with the facts presented in this case and the Defense. Basically,

that an arrestee may physically resist arrest only if the peace officer or private person make the arrest -- and this is State's Supplemental Exhibit Number 2 -- uses force as unlawful and excessive.

If you read the *Batson* decision, 113 Nev. Report, page 669. If you look at Footnote Number 3, it says -- and I'm only going to read it in relevant part: Accordingly, *Smithson* is overruled to the extent it justifies use of any force and response to anything less than a police officer's use of unlawful and excessive force. That appears to be the law.

So what I was -- if you read State's Proposed Instruction Number 12, State's Supplemental Instruction Number 1, modifying it where it says, The crime of trespass is a public offense, to say Trespassing is a public offense.

And then State's Supplemental Proposed Instruction Number 2, it would say, An arrestee may physically resist arrest only if the peace officer or private person make or uses force is unlawful and excessive.

I'm not inclined to give the rest of that sentence.

MR. DICKERSON: Okay.

THE COURT: And I think if you take those three instructions, that's a correct statement of the law and coincides with the facts that were presented in this case, counsel.

MS. BROUWERS: Okay. So it's my understanding those are being given over --

MS. ODEH: Just, I just -- there's one issue on State's

1 Proposed Number 12.
2 THE COURT: Yes.
3 MS. ODEH: So if that instruction is going to be given, I
4 would ask that the warning be defined. What does the warning
5 have to contain?
6 MR. DICKERSON: It's very clear. It's an oral or written
7 demand of any person on property to vacate the property. It's right
8 there in the instruction, Your Honor.
9 THE COURT: How about after being given such demand
10 rather than warning, counsel?
11 MR. DICKERSON: Yeah, sure. That's -- State has no
12 objection to that.
13 MS. BROUWERS: Okay.
14 THE COURT: Do you want warning or demand? I
15 recognize you're objecting to it, but do you want warning or
16 demand?
17 MS. BROUWERS: I think demand, just to be consistent
18 between the two parts of the sentence.
19 MS. ODEH: Right.
20 THE COURT: Okay. State, if you can make those
21 modifications to State's Proposed Instruction Number 12, changing
22 the word Warning in the third sentence on line 4 to the word
23 Demand.
24 And then on State's Supplemental Instruction Number 1,
25 on line 5, where it says: The crime of trespass; change -- deleting

that and changing it to trespass.

And then on State's Supplemental Instruction Number 2, on line 3, I believe consistent with *Batson* Footnote Number 3, if we end it at the word excessive.

MR. DICKERSON: Okay.

MS. DERJAVINA: Okay.

MR. DICKERSON: Noted, Your Honor.

THE COURT: Okay. So those instructions will be given as modified. All right.

As to State's Proposed Instruction Number 13: Although you are to consider only the evidence.

Any objection?

MS. BROUWERS: No.

THE COURT: That instruction will be given.

As to State's Proposed Instruction Number 14 --

MS. ODEH: No objection.

THE COURT: -- in your deliberation -- no objection?

MS. ODEH: No objection.

THE COURT: That instruction will be given.

State's Proposed Instruction Number 15: During the course of this trial.

Any objection?

MS. BROUWERS: No objection.

THE COURT: That instruction will be given.

State's Proposed Instruction Number 16: When you retire.

1 Any objection?
2 MS. BROUWERS: No objection. No.
3 THE COURT: That instruction will be given.
4 State's Proposed Instruction Number 17: If, during your
5 deliberation.
6 MS. BROUWERS: No objection.
7 THE COURT: That instruction will be given.
8 And then State's Instruction -- Proposed Instruction
9 Number 18: Now you will listen to arguments.
10 Any objection?
11 MS. BROUWERS: No objection.
12 THE COURT: That instruction will be given.
13 As to the State's verdict form, any objection?
14 MS. BROUWERS: Sorry, Court's indulgence. I had flipped
15 away from it.
16 Your Honor, we proposed a different verdict form. It was,
17 basically, going in the other direction. So, well, actually --
18 MS. DERJAVINA: And, Your Honor, the State actually
19 has -- I realized it was our mistake, has no objection to switching
20 out going from battery to -- and kind of going upwards.
21 THE COURT: So it would be not guilty --
22 MS. DERJAVINA: Guilty of battery.
23 THE COURT: -- guilty of battery --
24 MS. DERJAVINA: Guilty of --
25 THE COURT: -- guilty -- and that's somewhat what the

1 Defense had proposed, except they capitalize the words Not Guilty
2 and I wasn't going to do that.
3 MR. DICKERSON: Yeah, we were objecting.
4 MS. DERJAVINA: And that was our objection for theirs,
5 Your Honor.
6 THE COURT: All right. So with that --
7 MR. DICKERSON: In addition, Your Honor, we would
8 move Count 2 to its own page.
9 THE COURT: Okay. And so with that understanding, that
10 the first box will be not guilty;
11 The second box will be guilty of battery;
12 Third box will be guilty of battery resulting in substantial
13 bodily harm;
14 The fourth box will be guilty of battery with use of a
15 deadly weapon;
16 And the fifth box will be guilty of battery with use a deadly
17 weapon resulting in substantial bodily harm.
18 That'll be the order of the verdict forms.
19 MS. BROUWERS: Okay. And, Your Honor, I just -- just so
20 the record is clear, I -- that's pretty consistent with the verdict form
21 that we proposed in our supplemental, but it's, obviously, very
22 different than the one we proposed in our original. The original
23 was prepared because we were not intending to ask for a lesser
24 included. It's my understanding the State has requested the lesser
25 includeds, and over our objection, we prepared the form because

1 Your Honor indicated that you were going to do -- that you were
2 going to allow them to have the lessers in there.
3 THE COURT: That's correct, counsel. It's my
4 understanding that the State is asking that the lesser includeds me
5 included -- be -- that the jury be permitted to deliberate regarding
6 the lesser included offenses. Is it -- that's State's request?
7 MR. DICKERSON: Pursuant to NRS 175.501, that was a
8 State's request as to battery with use of a deadly -- or, yeah, battery
9 with use of a deadly weapon, battery/substantial bodily harm.
10 Ultimately, Defense counsel did end up requesting the
11 misdemeanor battery as a lesser included. And the State objected
12 to that, as there's no evidence that there was a misdemeanor
13 battery alone committed.
14 THE COURT: And I'm going to include the misdemeanor
15 battery, counsel.
16 Counsel, do you disagree with Mr. Dickerson's recitation
17 of the facts regarding the lesser included?
18 MS. BROUWERS: Yes, Your Honor. If the lesser -- if the
19 State's going to be requesting lesser includeds, I think we need to
20 go all the way down to the misdemeanor, as well. And so --
21 THE COURT: But what he stated --
22 MS. BROUWERS: Oh, I'm sorry.
23 THE COURT: -- was they did not request the battery, and
24 as a result of the State's request, it was your position if we're going
25 to do that, you also -- you requested the misdemeanor battery.

1 MS. BROUWERS: That's correct.
2 THE COURT: Okay.
3 MS. BROUWERS: I apologize if I misunderstood your first
4 question.
5 MS. ODEH: That's fine.
6 THE COURT: So with that modification, that'll be the
7 verdict form in this case.
8 On the State's supplemental instructions, we've already
9 addressed instructions -- State's Proposed Supplemental
10 Instructions Number 1 and Number 2.
11 On the State's Supplemental Instruction Number 3, is
12 there any objection?
13 MS. BROUWERS: Yes, Your Honor. I don't believe this is
14 an appropriate instruction, based upon the case law cited by the
15 State. The *State v Wedel* case refers to deadly force in making an
16 arrest. Not -- deadly force and use of -- and any kind of self-defense
17 or defense of others.
18 And then the *Newell versus State* is -- has to do with use
19 of force and resisting the commission of a felony. So I don't think
20 that that's appropriate either. They don't -- it doesn't fit with the
21 facts of this particular case.
22 And I believe the parenthetical after the *Brooks v Sheriff*
23 citation is correct. But as far as the application of *State v Wedel* and
24 *Newell v State* to this case, I think it's inappropriate, because it has
25 to do with --

THE COURT: What is your specific objection to the language, counsel? What part of the instruction are you asking to be modified?

MS. BROUWERS: I don't think the instruction should be given at all.

MR. DICKERSON: It's a proper statement of the law, Your Honor.

MS. BROUWERS: Based upon case law that's totally inapplicable to --

THE COURT: Well, they cite *Runyan* and they cite *Gonzalez*, and that case law is applicable.

MS. BROUWERS: We're talking about the -- it says deadly forces as a matter of law unreasonable. That's the --

THE COURT: Hold on.

MS. BROUWERS: State's Supplemental 3, I believe.

THE COURT: Did you submit a self-defense instruction, counsel?

MS. BROUWERS: Yes, Your Honor. We have submitted self-defense instructions.

MR. DICKERSON: And this is a correct statement of law whether it be for an arrest of self-defense, that the person perceiving the threat has to be perceiving a threat of imminent substantial bodily harm or death to use deadly force. It's applicable to this situation as well as the others that Defense counsel has mentioned.

1 THE COURT: Counsel, where's your proposed
2 self-defense instruction covering this?
3 MS. BROUWERS: We have -- I -- so in our original, and
4 actually since we're in the State's packet, we can refer to that one in
5 just a moment as well, but in our original packet, we submitted
6 some instructions concerning self-defense. And I believe those are
7 on our pages 9 through 13.
8 And, based upon the discussions that we had between the
9 parties and Your Honor yesterday, when you raised the issue of
10 wanting to make sure that all of the *Runyan* instructions had been
11 covered, I worked -- the State and I worked together to make sure
12 that we were covering all of those. And so in the State's
13 supplemental packet, I believe it's starting on their next page. So
14 their Supplemental Proposed 4 through -- just up until the
15 penultimate one, basically --
16 THE COURT: So --
17 MS. BROUWERS: -- have been agreed between the
18 parties.
19 THE COURT: -- State's Supplemental Instructions
20 Number 4, 5, 6, and 7 have been agreed to as -- is that correct?
21 MS. BROUWERS: 4, 5, 6, and 7, yes, have been agreed to.
22 This -- in -- out of the State's supplemental packet. And I believe
23 that those are consistent with *Runyan,* and both parties agreed on
24 that.
25 MS. DERJAVINA: That's correct, Your Honor.

THE COURT: Okay. As to State's Supplemental Instructions Number 4, 5, 6, and 7, those instructions will be given.

And also on State's Proposed Instruction Number 8, a portion of the video, I assume that -- there's no objection to that, on State's Supplemental Instruction Number 8, a portion of the video audit contained -- has been redacted?

MS. BROUWERS: I don't believe that that's -- I don't believe that that would be 8, but as to that --

THE COURT: It's State's Supplemental Instruction Number 8. It's right after the self-defense instructions.

MS. BROUWERS: Well, the ones that we -- the ones that I specifically had no objection to based upon them coming out of *Runyan*, were 4, 5, 6 and 7. But there are --

THE COURT: No, no. This has nothing to do with *Runyan*. It's just I --

MR. DICKERSON: You know, Your Honor --

MS. BROUWERS: No, it's just I don't think we're --

MS. DERJAVINA: I think you might be looking at --

MR. DICKERSON: -- I think that's the previously submitted --

MS. BROUWERS: Sorry.

MR. DICKERSON: -- State's supplemental.

THE COURT: Okay. Counsel, I have several supplemental. Can you -- do you have an extra copy --

MS. DERJAVINA: I --

THE COURT: -- of the one that you have?

MS. DERJAVINA: May I approach, Your Honor?

THE COURT: Yes, you may. Thank you, counsel.

MS. DERJAVINA: And I believe, for the record, everything that was discussed in the supplemental up to this point has been correct regarding the numbering of it.

THE COURT: All right. Counsel -- can both counsel approach the bench.

MS. DERJAVINA: Yes.

THE COURT: Let's make sure.

All right. So this is your old one, the one I was going off of. All right. So is this -- this has your writing on it. Do you have an extra copy, a clean copy?

MR. DICKERSON: I don't.

THE COURT: Hold on. Let me see if I can find that. All right. I don't have a law clerk, so I've been trying to do this on my own.

Can you tell me if this is the one we're going off of?

MR. DICKERSON: No, that's the old one.

MS. DERJAVINA: Yeah, this is the old one.

THE COURT: All right. Shannon.

THE COURT CLERK: Yes?

THE COURT: Make a -- give me -- which is the one we're going off of? Do you have it right here?

MR. DICKERSON: I have this one. It does have --

1 MS. DERJAVINA: Writing on it too.
2 MR. DICKERSON: -- just given, if objected, and then we'll
3 exchange.
4 THE COURT: All right. So this is not the right one,
5 though, the one I've been going off of? It's not the right one? Or is
6 that yours that you just gave me?
7 MS. DERJAVINA: No, that one is -- the one that you're
8 holding right now is the one.
9 THE COURT: Okay.
10 MR. DICKERSON: This is not the right one.
11 THE COURT: All right. Is there anything on this that you
12 don't want me to see for - is it clean? Or is there anything on this
13 you don't want me to see?
14 MS. DERJAVINA: No, it's just the changes that you told
15 us to make.
16 THE COURT: All right. Go make me a copy of this real
17 quick.
18 I apologize.
19 MR. DICKERSON: Sorry, Your Honor.
20 MS. BROUWERS: We've been sending a lot of e-mails.
21 And all calling them the same thing.
22 THE COURT: Well.
23 MR. DICKERSON: Yeah, I -- yeah.
24 MS. DERJAVINA: We just this morning tried to send you
25 a file copy of the changes that we've already kind of discussed to

1 expedite things a little bit.
2 THE COURT: Well, all right.
3 MR. DICKERSON: Yeah, I think that once you get that one,
4 it will be a lot of the --
5 MS. ODEH: Yeah, we'll be able to zoom.
6 MR. DICKERSON: -- stuff that's --
7 THE COURT: Right. And just for the record --
8 MS. BROUWERS: Uh-huh.
9 THE COURT: -- I just want to make sure. And as far as the
10 Defense, this is the correct one; is that correct?
11 MS. BROUWERS: Yes, this is the correct supplemental.
12 THE COURT: And this is your correct initial ones?
13 MS. BROUWERS: Yes. We've only ever submitted just
14 one set of the originals.
15 THE COURT: Okay. So when I --
16 MS. BROUWERS: That's correct.
17 THE COURT: When I reference yours, those are the
18 correct ones.
19 MS. BROUWERS: Yes.
20 THE COURT: Okay. And then I've gone through the
21 State's.
22 MS. BROUWERS: Actually, Your Honor, I do apologize.
23 Maybe I should -- let me take one more look at the supplemental.
24 Because there was -- the verdict form wouldn't have been the thing
25 that changed between them. It would have been --

1 MS. DERJAVINA: Oh, yeah.
2 THE COURT: This has your verdict form on it.
3 MS. BROUWERS: Yeah. Let me just double-triple-check.
4 THE COURT: All right.
5 MS. DERJAVINA: I think it's your *Crawford* one.
6 MS. BROUWERS: Yeah, I'm just making sure that
7 they're -- the change that we talked about.
8 MS. DERJAVINA: Okay.
9 MS. BROUWERS: Okay. Yeah.
10 MS. DERJAVINA: The -- yeah.
11 MS. BROUWERS: We have to add in the words. But,
12 yeah.
13 THE COURT: All right. So while we're doing that, why
14 don't we start going over -- we'll come back to the State's
15 supplemental.
16 MS. BROUWERS: Okay.
17 THE COURT: Why don't we start going over with your --
18 Defendant's Proposed Jury Instructions --
19 MS. BROUWERS: Okay.
20 THE COURT: -- dated March 23.
21 Well, hold on. It looks like we're back.
22 Counsel, approach.
23 Thank you.
24 MS. DERJAVINA: Thank you. Was it just approach to get
25 it?

THE COURT: Huh? Yeah, I was just giving her her copy back.

MS. DERJAVINA: I just didn't know if you needed us.

MS. ODEH: Your Honor, are we going back to the State's supplemental?

THE COURT: We will. I just am numbering them and then I'm going to make sure I've -- okay.

So on the State's supplemental instructions, Number 1 will be given as modified.

Number 2 will be given as modified.

MS. DERJAVINA: I don't believe we've decided on Number 3.

THE COURT: Number 3 --

MR. DICKERSON: So Number 3 was originally part of the *Runyan* --

THE COURT: Well, let me go on the ones we've agreed on before I come back.

So we've agreed on -- to give 4, 5, 6, and 7; is that correct?

MS. BROUWERS: That's correct. And, I think -- I can probably -- I'll just submit on 8.

THE COURT: Number 8 is --

MS. BROUWERS: Actually, I'll submit on 8, 9, 10, and 11.

THE COURT: Okay. Counsel, on Number 8, it says: A person may use force in defense of others to the same extent that the person could have used force in self-defense.

1 That appears to be a correct statement of the law from the
2 *Batson* decision.
3 MS. BROUWERS: And I'm submitting on it.
4 THE COURT: It'll be given.
5 The right to -- of self-defense exists only as long as a real
6 or apparent threat and danger continues to exist. When such
7 danger ceases to appear to exist, the right to use force in
8 self-defense ends.
9 Is there any objection to this?
10 MS. BROUWERS: Submit it.
11 THE COURT: And what authority do you have for that,
12 counsel?
13 MS. DERJAVINA: Court's --
14 MR. DICKERSON: It is a correct statement of law under
15 the law that's in *Runyan*, that only as long as the threat exists, you
16 can use that force. And that goes for the actual or apparent threat,
17 which is a correct statement of the law. Anything after that point in
18 time would not be self-defense. So I think that what it does is it just
19 gives a temporal limit to the right to self-defense.
20 THE COURT: All right. I'll give it.
21 And then Number 10: The law does not just justify use of
22 greater degree of force than is reasonably necessary, a person act
23 as a -- in self-defense allow to use force in a proportionally
24 reasonable manner to avoid actual or apparent danger.
25 You're relying upon *Runyan*; is that correct?

MR. DICKERSON: Yes, Your Honor. *Runyan* and the unpublished decisions for illustration only. Yeah.

MS. BROUWERS: Submit it.

THE COURT: Okay. It'll be given.

Let's go back to State's Supplemental Instruction Number 3.

MS. BROUWERS: And, Your Honor, the State had one more. It was 11, and I'm agreeing to that one.

MR. DICKERSON: And the only additional on 11 is that the exhibit number is Number 2.

MS. BROUWERS: Oh.

MR. DICKERSON: So we'll just be adding that in.

MS. BROUWERS: Correct.

THE COURT: With that modification, it'll be given.

State's Supplemental Instruction Number 3.

MR. DICKERSON: And, Your Honor, as to *Newell v State*, *Newell v State* said that the use of deadly force in response to a felony is only justified when the person poses threat of serious injury. That is especially necessary in light of the fact that Defense counsel's proposed the instruction under NRS 193230, in their original instructions, page 11. The one that the State was asking that we add the By Other Parties language to.

It just goes to show it is applicable to this situation as any that deadly force as a matter of law is, in fact, unreasonable unless the threat of substantial bodily harm or death is imminent.

1 MS. BROUWERS: And, Your Honor, I again, I don't
2 believe that those cases support that under the circumstances of
3 our case, because, again, the *Wedel* case has to do with deadly
4 force being used in the making of an arrest by a police officer. And
5 then the *Newell versus State*, again, has to do with resisting the
6 commission of a felony.
7 And in this particular case, what the officers were doing
8 was trying to prevent him from doing, you know -- he was
9 committing a misdemeanor, arguably, when they started to use
10 force. And then subsequent to that, when he'd been attacked. But I
11 just don't think that it fits under the circumstances and facts of this
12 particular case. And so that's why I've objected to the instruction in
13 its entirety.
14 MR. DICKERSON: And one last point is that this does
15 apply to arrest situations and resisting arrest situations.
16 THE COURT: Right.
17 MR. DICKERSON: And so the language that you struck
18 from the arrest and what force can be used from resisting arrest,
19 is -- actually, this language is applicable here, that using deadly
20 force to resist arrest cannot be done unless there's an imminent
21 threat of substantial bodily harm or death.
22 THE COURT: I'm looking at the *Runyan* decision.
23 Obviously, *Runyan* dealt with a killing, while our case deals with a
24 battery. So I'm going to read this, but I'm going to delete in the
25 *Runyan* decision where they've used the word killing, I'm going to

1 insert the word battery. The battery -- the battering of another in
2 self-defense is just fine, not unlawful, when the person who does
3 the battery actually and reasonably believes, one, that there is
4 imminent danger that the assailant with either -- and then *Runyan*
5 said Kill him or cause him great bodily injury; and two, that there
6 is -- that it is absolutely necessary under the circumstances for him
7 to use in self-defense force or means that might cause the death of
8 the other person for purpose of avoiding death or great bodily
9 injury to himself.
10 MS. BROUWERS: And, Your Honor, I think that's one's
11 actually covered by the State's Supplemental 4, which we've agreed
12 to.
13 Additionally, I think both parties are in agreement that the
14 phrase should not be battery, but it should be use of force.
15 THE COURT: That's fine. I -- again --
16 MS. BROUWERS: Yeah, yeah.
17 THE COURT: I was just trying to --
18 MS. BROUWERS: Sure. Uh-huh.
19 MR. DICKERSON: This specifically deals -- this instruction
20 specifically deals with deadly force, which is used in this case, is the
21 fact that there's a deadly weapon used in multiple stabbing inflicted
22 upon these two officers, these two security officers, I should say.
23 With that, Your Honor, this is a correct statement of the
24 law under *Runyan, Wedel*, and *Newell*. And, specifically, having to
25 do with resisting arrest, that if individual cannot use deadly force to

1 resist arrest unless they are facing imminent threat of substantial
2 bodily harm or death.
3 So it goes beyond just the use of force, and specifically
4 addresses what the issue is: Deadly force.
5 MS. BROUWERS: Additionally, neither of the cases cited
6 by the State in support of Supplemental 3 have to do with defense
7 of others.
8 THE COURT: Well, I'm not going to give defense of others
9 because of *Gonzalez*, quite frankly. If I did give that instruction, I
10 was going to delete Or others --
11 MR. DICKERSON: Okay.
12 THE COURT: -- because of the *Gonzalez* decision. But I'm
13 just looking at Instruction Number 2: An arrestee may physically
14 resist arrest only if the peace officer or private person making the
15 arrest uses force as unlawful and excessive, and only if the arrestee
16 is facing imminent and seriously bodily injury at the hands of the
17 peace officer or private person making the arrest.
18 After looking at the *Runyan* decision, what I am inclined to
19 do, counsel, is give Instruction Number 2 as originally proposed by
20 the State and not give Instruction Number 3. Because I think
21 Instruction Number 2 would then cover Instruction Number 3.
22 MS. BROUWERS: Okay.
23 THE COURT: So, counsel, as to State's Supplemental
24 Instruction Number 2, I will give it as initially proposed. I'm not
25 going to give Instruction Number 3, because I believe it's covered

by State's Supplemental Instruction Number 2.

Is that all the -- of the State's supplemental instructions and instructions -- proposed instructions? Have we covered them all?

MR. DICKERSON: I believe that we have covered them all.

THE COURT: Let's go to the defendant's proposed instructions that was filed on March 23, 2018, counsel.

MS. BROUWERS: February 23, but yes.

THE COURT: Did I say March?

MS. BROUWERS: Yes.

THE COURT: I apologize.

MS. BROUWERS: We're not there yet, I can't file in the future.

THE COURT: All right. As to the Defendant's Proposed Instruction Number 1, I've already advised you I'm not going to give that instruction.

As to Defendant's Proposed Instruction Number 2, I'm not going to give that one, not given.

Counsel, I apologize, make your argument in support of that instruction.

MS. BROUWERS: Thank you, Your Honor. I appreciate that.

This is a correct statement of the law and this particular instant, I think it's -- it imparts to the jury that they're permitted to make reasonable inferences about what's -- about what they believe

has occurred. And in the event that there are two different interpretations of evidence that can be made by the jury, that they are to adopt the one that will -- that tend -- that will tend towards his innocence and reject the one that points to guilt. And that's also consistent with the State having the burden of proof beyond a reasonable doubt in this case.

THE COURT: State, your argument in opposition.

MR. DICKERSON: Argument in opposition is that just like Defense counsel ended her argument with -- consistent with the State having the burden of proof beyond a reasonable doubt, *Vales v State* [phonetic], which is cited here as support for this, is actually saying just the same thing, that as long as the jury is properly instructed on the standard of beyond a reasonable doubt, which we know it is, especially in light of the fact that it's given statutory instruction and the *Crawford* instructions that Defense counsel's proffered, then this particular instruction is, in fact, incorrect and confusing.

THE COURT: I'm not going to give the Defendant's Proposed Instruction Number 2.

Counsel, it's after 11:00. I'm going to have the -- I'm going to advise the jury that they can take a lunch break and be back at 1:00.

MR. DICKERSON: Okay.

MS. BROUWERS: Okay.

THE COURT: If you could advise the jury that they can

take their lunch break now and just be back by 1:00. Thank you, counsel.

MS. BROUWERS: Thank you, Your Honor.

THE COURT: On Defendant's Proposed Instruction Number 3, the crime of battery with use of a deadly weapon resulting in substantial bodily harm --

MR. DICKERSON: The State objects to this, Your Honor, as being confusing and duplicative of what's covered by the proper instructions of battery and battery/deadly weapon resulting in substantial bodily harm.

THE COURT: Defense, what's your position on this?

MS. BROUWERS: Our position is that it's appropriate, because it demonstrates to the jury that they have to meet each one of those elements in order to find him guilty of that particular offense.

THE COURT: And I think the State also objected, if I recall, of the word Improperly.

MR. DICKERSON: That's correct, we did.

THE COURT: I'm not going to give this instruction. I believe it's sufficiently covered by other instructions.

Battery -- State's -- Defense -- Defendant's Proposed Instruction Number 4, battery means willful.

MS. BROUWERS: 4 and -- just for housekeeping purposes -- 4 and 5, Defense Proposed 4 and 5, I think we can withdraw, because I agree that they've been covered by the ones

that Your Honor has indicated you're inclined to give from the State's packet.

THE COURT: So as to Defendant's Proposed Instructions Number 4 and 5, you're withdrawing them?

MS. BROUWERS: Yes.

THE COURT: Thank you, counsel.

As to Defendant's Proposed Instruction Number 6: In order to find that a deadly weapon was used.

MR. DICKERSON: We object to that, Your Honor. It's not proper statement. I think that would be use of a deadly weapon in furtherance of a felony, like robbery. Here, it's the use of a deadly weapon in the actual commission of the battery.

MS. BROUWERS: Your Honor, I do believe it's appropriate. They've -- in the State's packet, they've defined what a deadly weapon is. But they didn't define what it means to use a deadly weapon. And so a deadly -- the jury also needs to be able to find that the weapon was used, not that it was merely present or that it, you know, there needs to be a finding that a deadly weapon was actually used beyond just defining what a deadly weapon is.

MR. DICKERSON: And that's why they've been instructed on all lesser includeds, and the definition of a deadly weapon and the definition of battery with use of a deadly weapon.

THE COURT: Counsel, I reviewed the *Boschauer versus State* [phonetic], and *Brooks versus State* decision. Could you point out to me where in those decisions you derive this instruction?

1 MS. BROUWERS: To be frank, I don't have that case law
2 directly in front of. But both of those stand for the proposition that
3 the mere presence of a weapon doesn't mean that the weapon was
4 being used.
5 THE COURT: And I believe in the *Brooks* decision, it also
6 talked about knowledge. And it talked about aiding and abetting,
7 things of that nature.
8 MS. BROUWERS: Correct.
9 THE COURT: I'm not going to give it, based on this
10 authorities you've cited to me.
11 MS. BROUWERS: And then to speed things up a little bit,
12 the Defense Proposed 7, 8, 9 -- 7, 8, and 9 can be withdrawn,
13 because we've agreed on the language from *Runyan* that's been
14 included in the State's --
15 THE COURT: Thank you, counsel.
16 And then State's proposed -- shucks.
17 Defendant's Proposed Instruction Number 10: Lawful
18 resistance to the commission of a public offense.
19 MR. DICKERSON: We would just object to this, given that
20 the second portion is now covered in the instructions that we have,
21 and the lawful resistance to commission of a public offense doesn't
22 necessarily apply to the defendant in this case. I think it would
23 apply to the two victims. So that's why we object with the caveat
24 that if it is given, we do request that the entire statutory language
25 be given, that being the inclusion of and by other parties to both

1 line 3 and line 4.
2 THE COURT: I actually pulled the legislative history on
3 this statute. There's not a whole lot there, quite frankly, because I
4 think -- I'm not quite clear on the State's position. This does
5 appear -- are you objecting to the second paragraph, counsel?
6 Mr. Dickerson?
7 MR. DICKERSON: The second paragraph I believe is
8 covered by our proportionality instruction that's been agreed upon
9 by the parties. But that's all we submit on that.
10 MS. BROUWERS: As to -- as far as paragraph 2 goes, I
11 don't have any problem with striking paragraph 2.
12 THE COURT: With what, counsel?
13 MS. BROUWERS: I don't have any problem with striking
14 paragraph 2.
15 THE COURT: Okay. What about the State's position that
16 the entire statute be included? I'm inclined to give the instruction.
17 My -- but the State is requesting that I cite the entire statute. What's
18 your position on that?
19 The entire statute reads:
20 Lawful resistance to the commission of public offense
21 may be made:
22 1. By the party about to be injured.
23 2. By other parties.
24 They want me to -- I assume you want to read on the
25 second sentence, counsel?

1 Resistance sufficient to prevent the offense may be made
2 by the person about to be injured and/or by other persons.
3 To keep it consistent, the statute actually uses the word
4 parties. Do you have any objection to adding --
5 MS. BROUWERS: No, I'll submit that.
6 THE COURT: I'm sorry, counsel?
7 MS. BROUWERS: I said I'll submit it --
8 THE COURT: Okay.
9 MS. BROUWERS: -- to Your Honor's discretion.
10 THE COURT: So this will be given as modified.
11 Paragraph 2 will be deleted.
12 The second sentence will read:
13 The resistance sufficient to prevent the offense may be
14 made by the person about to be injured.
15 Should we put an Or there? Or --
16 MS. BROUWERS: Yeah, I think that's --
17 THE COURT: -- by other persons?
18 MR. DICKERSON: And/or. Because both people would
19 still have the right.
20 MS. BROUWERS: That's fine. And/or is fine.
21 THE COURT: And/or by other persons.
22 And with that modification, it'll be given.
23 MS. BROUWERS: And then we can, I think, skip ahead
24 also. So 11, 12 -- okay. 11 and 12 can be withdrawn because we've
25 covered those and the ones based over -- on *Runyan* that were

1 agreed to between the parties, so 11 and 12 we can skip.
2 And then with respect to 13, we can withdraw that one,
3 because it's been covered -- it's being covered, rather, by the ones
4 in the Defense supplemental proposed, which I know we'll get to
5 after.
6 THE COURT: And then as to 14, I intend to give that.
7 You're requesting that instruction?
8 MS. BROUWERS: Yes, Your Honor. Thank you.
9 THE COURT: Okay. That's constitutional right in a
10 criminal case.
11 MR. DICKERSON: No objection.
12 THE COURT: 14 will be given.
13 MS. BROUWERS: And then with respect to the one in our
14 original packet, Number 15, I've prepared a modified one based
15 upon our discussions with Your Honor yesterday, and that's
16 included in the supplemental proposed by the Defense.
17 THE COURT: Okay. And so you're withdrawing this one
18 as --
19 MS. BROUWERS: Well, I -- I'll -- I want to make a record
20 on it just briefly. So --
21 THE COURT: Go ahead.
22 MS. BROUWERS: -- the only changes that have been
23 made between this original proposed one and then the modified
24 one is I agree to strike the word Material in the first sentence, with I
25 think is appropriate.

1 But the second change is, in the original, the instruction
2 says: The defendant does not have to prove his innocence.
3 And then it says: Accordingly, the defendant does not
4 have to call witnesses or testify on his behalf.
5 I believe that the sentence: Defendant does not have to
6 prove his innocence is appropriate, because it doesn't -- there -- it
7 prevents them from trying to shift the burden or prevents the jury
8 from thinking that he has any kind of burden to prove innocence.
9 And so that's why I think my original, with the -- my original
10 proposed instruction with taking out the word Material is
11 appropriate. But based upon our discussions about that with Your
12 Honor yesterday, I proposed a modified one that's concluded in the
13 State's -- I'm sorry, in the Defense supplemental. But it would be
14 my request to have the original.
15 THE COURT: And, counsel, just for the record, the
16 modified one is contained in Defendant's Supplemental Proposed
17 Instructions and it's Instruction Number 5.
18 MS. BROUWERS: That's correct.
19 THE COURT: Counsel for the State, I gave you a piece of
20 paper; do you have that piece of paper?
21 MR. DICKERSON: That's correct. I do have that, Your
22 Honor.
23 THE COURT: Can you approach and provide me with that
24 piece of paper.
25 MR. DICKERSON: Yes.

1 THE COURT: Thank you, counsel.
2 And as to -- since you submitted a modified one, is it your
3 position that if I don't give the initial one, which was Defendant's
4 Proposed Instruction Number 15, that I give the modified one,
5 which is Defendant's Supplemental Instruction Number 5?
6 MS. BROUWERS: Correct. But it was my understanding
7 that Your Honor had a further modification that --
8 THE COURT: That's true. But --
9 MS. BROUWERS: -- because it comes from case law.
10 THE COURT: -- I'm allowing you to make your record.
11 MS. BROUWERS: That would be my request, but I -- I'll
12 submit it to Your Honor's discretion as far as the modified length --
13 as far as the further modification Your Honor's about to read.
14 THE COURT: Okay. And State, what -- my modification
15 that I had proposed was I was not going to give the Defendant's
16 Proposed Instruction Number 15 or Defendant's Supplemental
17 Instruction Number 5. But I was going to modify those. I wasn't
18 going to give them as submitted, but I was going to modify them
19 and I was going to have a jury instruction that basically stated: The
20 defendant does not have to testify or present any evidence to prove
21 innocence. The State has the burden of proving every element of
22 the charges beyond a reasonable doubt. And I was going to have
23 that as a separate instruction.
24 MR. DICKERSON: Yes, Your Honor.
25 THE COURT: What's the State's position?

1 MR. DICKERSON: State's position is that we objected to
2 the original Defense Instruction 15 and the Supplemental
3 Instruction 5. Given that the first two sentences were duplicative
4 and covered fully by the reasonable doubt instruction in State's
5 instructions on what are -- we're calling the stock instructions,
6 Number 5.
7 And as to the next two sentences as modified by Your
8 Honor, with that jury instruction, I believe, 3.2 out of the Ninth
9 Circuit, the State does not object to that.
10 THE COURT: Okay. I am not -- I am going to ask the
11 Defense Proposed Instruction Number 15 and Defendant's
12 Proposed Supplemental Instruction Number 5, I'm going to give
13 them as modified.
14 And the modification will be: The defendant does not
15 have to testify or present any evidence to prove innocence. The
16 State has the burden of proving every element of the charges
17 beyond a reasonable doubt.
18 And it'll -- in all likelihood, we haven't decided yet what
19 order, but that will go after the reasonable doubt instruction. It'll be
20 a freestanding instruction.
21 State, if you could approach. Thank you.
22 MR. DICKERSON: Thanks.
23 MS. BROUWERS: And then the original -- and then
24 Defense originally proposed 16, 17, can be withdrawn. That was
25 with respect to an expert, which was not -- we didn't have an expert

testify. And also, the instruction concerning the defendant having been in custody, that evidence was not adduced at trial or introduced at trial, rather. And so we'll withdraw those two.

THE COURT: Both of those instructions will be withdrawn.

And then as to the defendant's verdict form --

MS. BROUWERS: And I think I made my record on this earlier, but --

THE COURT: Right. And I'm just addressing it.

MS. BROUWERS: Okay. Perfect.

THE COURT: So this verdict form attached to your March 23 Proposed Jury Instructions will not be given.

MS. BROUWERS: Okay.

THE COURT: And then as to Defendant's Supplemental Proposed Jury Instructions, Instructions Number 1, 2 will be given. Instruction Number 3 will be given as modified. And I believe the modification was you're going to -- as to the word, Not guilty, it won't be in caps -- capital -- it won't be capital -- the first letter will not be capitalized and it won't be in quotes.

MR. DICKERSON: Yes, that is correct. For --

MS. BROUWERS: And that applies to 1, 2, and 3, correct?

MR. DICKERSON: That's what the State would request.

THE COURT: Actually, yeah. It's Instructions Number 2, Defendant's Supplemental Instructions Number 2, 3, and 4 will be given, but modified. The words, Not guilty, the first letter in each of

1 those words will not be capitalized and they will not be put in
2 quotes.
3 MS. BROUWERS: Your Honor, with respect to Number 4,
4 it was my understanding before that the parties were in agreement.
5 But only with respect to Number 4 that the not guilty being in
6 quotations is appropriate.
7 THE COURT: Then that'll --
8 MR. DICKERSON: State's fine with that.
9 THE COURT: Then that'll be the order. That'll be given as
10 written.
11 MS. BROUWERS: Okay.
12 THE COURT: And then we've already done Instruction
13 Number 5 will be given as modified, and then the verdict form will
14 be -- this verdict form submitted by the defendant will not be given.
15 It'll be given as previously discussed.
16 MS. BROUWERS: Okay.
17 THE COURT: Is that all the jury instructions, counsel?
18 MS. BROUWERS: Yes, Your Honor.
19 MR. DICKERSON: That is.
20 THE COURT: Okay. At this point, what I'd like to do is
21 have all modifications prepared without citations, leave the number
22 blank. It'll say, Instruction Number. And then we're -- we'll
23 reconvene at 12:30, and then we'll go as to the order we want to
24 give them.
25 MR. DICKERSON: Okay.

THE COURT: If you have a suggestion as to the order, I am amenable to that.

MR. DICKERSON: Okay.

MS. BROUWERS: I think we probably -- I anticipate we're going to be able to agree on the order.

MS. DERJAVINA: Yeah, and that's --

THE COURT: Okay. So how about we reconvene at 12:45?

MS. BROUWERS: Yes.

MR. DICKERSON: Sounds great, Your Honor.

THE COURT: Okay. And -- so -- and at that point, that will be -- I will number them and that'll be the jury instructions.

And, counsel, please confer prior to submitting to them and make sure it's what we have --

MS. BROUWERS: Correct.

THE COURT: -- what has been ordered by the Court.

So we'll be in recess till 12:45.

MS. BROUWERS: Thank you.

MS. DERJAVINA: Thank you.

MR. DICKERSON: Thank you, Your Honor.

THE COURT: Thank you, counsel.

Oh, I apologize. Did -- is that all the instructions that either counsel wanted to submit?

MS. BROUWERS: Yes.

MS. DERJAVINA: Yes.

1 MR. DICKERSON: That is.
2 THE COURT: Okay. Thank you.
3 [Court recessed at 11:21 a.m., until 12:55 p.m.]
4 [Outside the presence of the jury.]
5 THE COURT: Let the record reflect the presence of
6 counsel for the State, counsel for the defendant, and the defendant.
7 The jury instructions have been settled. I've been
8 provided with a copy of the instructions to the jury.
9 Counsel, has each counsel had an opportunity to review
10 the instructions prior to them being submitted to me this
11 afternoon?
12 MS. DERJAVINA: Yes, Your Honor.
13 MS. BROUWERS: Yes, Your Honor.
14 THE COURT: And all parties are in agreement as to the
15 instructions; is that correct?
16 MS. DERJAVINA: Yes, Your Honor.
17 MS. BROUWERS: Yes, Your Honor.
18 THE COURT: And also as to the order the instructions are
19 to be given?
20 MS. DERJAVINA: That is correct.
21 MS. BROUWERS: Correct.
22 THE COURT: Does counsel have copies?
23 MS. DERJAVINA: Yes, Your Honor.
24 THE COURT: Okay. So Instruction Number 1 will be: It is
25 now my duty as judge.

1 Instruction Number 2 will be: If, in these instructions.
2 Instruction Number 3 will be: And information is but a
3 formal method.
4 Instruction Number 4 will be: To constitute the crime.
5 Instruction Number 5 will be: The defendant is presumed.
6 Instruction Number 6: The defendant does not have to
7 testify.
8 Instruction Number 7: You are here to determine.
9 Instruction Number 8: The evidence which you are to
10 consider.
11 Instruction Number 9: The credibility or believability of a
12 witness.
13 Instruction Number 10: Battery means willful and
14 unlawful.
15 Instruction 11: If you find the defendant is guilty of
16 battery.
17 Instruction Number 12: If you find the defendant is guilty
18 of battery regardless of whether.
19 Instruction Number 13: If the State fails to prove beyond a
20 reasonable doubt.
21 Instruction Number 14: If the State fails beyond a
22 reasonable doubt the defendant committed each and every
23 element.
24 Instruction Number 15: If the State proves beyond a
25 reasonable doubt.

1 Instruction 16: If the State proves beyond a reasonable
2 doubt.
3 Instruction 17: An owner or occupant of land.
4 Instruction 18: An arrest is the taking of a person into
5 custody.
6 Instruction 19: An arrestee may physically resist.
7 Number 20: Lawful resistance of the commission of a
8 public offense.
9 Number 21: The use of force in self-defense.
10 Instruction Number 22: Fear of death or great bodily
11 injury.
12 Instruction Number 23: Self-defense is not available.
13 Instruction Number 24: If evidence of self-defense is
14 present.
15 Instruction Number 25: A person may use force or -- I'm
16 sorry -- a person may use force in defense.
17 Instruction Number 26: The right of self-defense exists.
18 Instruction Number 27: The law does not justify.
19 Instruction Number 28: It is a constitutional right.
20 Instruction Number 29: A portion of the video/audio.
21 Instruction Number 30: Although you are to consider.
22 Instruction Number 31: In your deliberation.
23 Instruction Number 32: During the course of this trial.
24 Instruction Number 33: When you retire.
25 Instruction Number 34: If, during your deliberation.

1 And Instruction Number 35: Now you will listen to the
2 arguments.
3 Are those all the instructions, counsel?
4 MS. DERJAVINA: Yes, Your Honor.
5 THE COURT: And then the verdict form that will go back,
6 it's been submitted attached to the back of the jury instructions,
7 correct?
8 MS. DERJAVINA: Correct.
9 MS. BROUWERS: Correct.
10 THE COURT: And both parties have had an opportunity to
11 review it?
12 MS. DERJAVINA: Yes.
13 THE COURT: Thank you.
14 Counsel, I'm just going to take a two-minute recess. I'll be
15 right back.
16 MS. DERJAVINA: Okay.
17 MS. BROUWERS: Uh-huh.
18 [Off the record at 1:01 p.m., until 1:03 p.m.]
19 [Outside the presence of the jury.]
20 THE COURT: I'm having the marshal check to see if all the
21 jurors are present. If they are, I'm going to have them enter the
22 courtroom.
23 [Pause in proceedings.]
24 THE COURT: If for any reason somebody cannot hear me,
25 please raise your hand, make sure all parties can hear me.

[Pause in proceedings.]

[Jury reconvened at 1:05 p.m.]

THE COURT: Let the record reflect the presence of counsel for the State, counsel for the defendant, and the defendant.

Do the parties stipulate to the presence of the jury?

MS. DERJAVINA: Yes, Your Honor.

MS. BROUWERS: Yes, Your Honor.

THE COURT: Thank you.

Ladies and gentlemen of the jury, I'm about to instruct you upon the law as it applies in this case. I would like to instruct you orally, without reading to you. However, these instructions are of such importance that it is necessary for me to read to you these carefully prepared written instructions. The instructions are long and some are quite complicated. If they are not especially clear when I read them to you, please keep in mind that when you go back to the jury room, you will be able to take these carefully prepared written instructions with you so that you can read them and consider them carefully.

[Jury instructions read.]

THE COURT: State, are you prepared to go forward with closing argument?

MR. DICKERSON: We are, Your Honor.

THE COURT: You may proceed.

MR. DICKERSON: Thank you.

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CLOSING ARGUMENT FOR THE STATE

MR. DICKERSON: Ladies and gentlemen, what kind of man stabs two security guards on the Las Vegas Strip just for asking him to leave? Well, the same man that later tells police, I tore they asses up, two bitches. That's Toyer Edwards, sitting right there.

Toyer Edwards, on June 18th, 2017, used totally unjustified deadly force against two security guards. There was no basis for his actions and there's no justification here today. That's why Toyer Edwards is guilty of the crimes in the charge.

Now, you've heard the evidence and you've listened to the reading of the instructions. These instructions are going to lead you through your deliberations and act as a guide as to how you weigh the evidence in this case. In there, it talks about the evidence, in particular, and what evidence you've heard, specifically, evidence of direct and circumstantial nature. Direct evidence being that which a witness has testified to, and circumstantial evidence being things that are proven by other facts.

Well, you've heard both, you were to consider both. Think about what you've heard and who you heard it from, and those facts that are actually in evidence. Because you're also instructed that you must not speculate to be true any insinuation suggested by any questions. And, really, you can't just speculate to anything. You can make reasonable inferences based on the evidence, but speculation doesn't apply here.

1 So what do we know? Well, the Defense charge of the
2 crime of battery with use of a deadly weapon resulting in
3 substantial bodily harm. This is three general parts to this crime:
4 The battery, the use of the deadly weapon, and the resulting in
5 substantial bodily harm.
6 First we'll take a look at the battery, which is in your
7 instructions. The battery means any willful or unlawful use of force
8 or violence upon the person of another.
9 Now, I must note that a battery can be any slight touching
10 by the defendant upon the person of another, as long as the
11 touching was intentional and unwanted. It's also worth noting that
12 a battery, it need not be violent or severe and it need not cause
13 bodily pain or bodily harm. That's a battery. Just a basic battery.
14 A push is a battery. And that's the first part of the crime charged
15 here. No doubt battery occurred. The touching was unlawful, it
16 was willful, and it was, no doubt, unwanted.
17 But this was more than just a mere nonviolent or
18 nonsevere battery that didn't cause pain or harm. This battery did
19 cause pain, it did cause harm. And that's because it was caused
20 with a deadly weapon. Now, you're instructed that you'd consider
21 that the battery -- you find guilty of battery and then move onto
22 whether it was committed with a deadly weapon.
23 Deadly weapon's defined for you in one of two ways, you
24 can consider both:
25 Any instrument which, if used in the ordinary manner

1 contemplated by its design and construction will or is likely to
2 cause substantial bodily harm or death.
3 Alternatively or in addition to any weapon, device,
4 instrument, material, or substance, which, under the circumstances
5 of which it's used, attempted to be used, or threatened to be used,
6 is readily capable of causing substantial bodily harm or death.
7 What do we have, ladies and gentlemen? We have a
8 knife. Probably one of the oldest weapons in human history. The
9 knife. No doubt at deadly weapon under both of those two
10 standards. It is an instrument which, if used in its ordinary
11 contemplated manner, a knife ordinarily contemplated for several
12 things, including defense, also cutting a steak. But, regardless, to
13 cut flesh.
14 Or any weapon, device, instrument under the
15 circumstances in which it's used, attempted to be used, or
16 threatened to be used, is readily capable of causing substantial
17 bodily harm or death.
18 Now, we heard the defendant's words when he was out
19 there talking to William Allison and Chase Lovato. He told them, I'll
20 stitch you up, I'll kill you. I got mines; indicating that, yeah, he is
21 threatening to use this weapon to cause death or substantial bodily
22 harm. And it is absolutely capable of doing that, as we saw by the
23 ultimate injuries inflicted and, luckily, nothing further beyond that.
24 And, ultimately, his own words to police officers, yelling
25 in the back room of that security office, indicating that he could

have done worse and he should have done worse.

Now, we know the battery occurred. But just to refresh everybody's memory on it, William Allison, stabbed in the side, who's also stabbed in the shoulder. Couldn't see the defendant using that knife, coming in right into his side. Chase Lovato, ultimately coming to the assistance of William Allison, is stabbed in the back of leg when he's doing that. You can see the knife going into his leg there in the bottom section. That's a battery with the knife being a deadly weapon. So we have battery with use of a deadly weapon.

Now, onto the substantial bodily harm portion of this crime. So we have the battery, we have the deadly weapon. What's a substantial bodily harm? You might be thinking that, well, they have all their fingers, toes, their arms, everything. They're able to walk in here. Couldn't be substantial bodily harm, could it?

Well, remember, a typical battery doesn't need to cause pain, it doesn't need to cause harm. It can be a push. That's why we have the addition of substantial bodily harm.

Substantial bodily harm includes prolonged physical pain. So if the battery causes prolonged physical pain, not something that a slight push is going to do, though the push is a battery, it's not going to cause prolonged physical pain. Here, stabbing somebody, well, you heard it did. It did cause prolonged physical pain.

It would help to know what prolonged means, right?

1 Prolonged physical pain, you're instructed, occurs when a victim
2 experiences physical suffering or injury lasting longer than that of
3 the immediate pain of the wrongful touching.
4 Lasting longer than the immediate pain of the wrongful
5 touching. So you can think of a couple of things that would have
6 immediate pain and then it would go away. Maybe a slap to the
7 face, something like that. This pain lasted longer than that for both
8 William Allison and Chase Lovato.
9 Here, Chase Lovato was stabbed in the back of the leg. He
10 told you that the pain lasted several days. It hurt to put weight on
11 the leg, we could see that, we could see him limping around in the
12 back before he'd walk to the back. And he tells you that the bruise
13 lasted for months and he was scarred.
14 The important thing here is the pain to his leg lasted for
15 several days. That is far beyond that immediate period of the initial
16 wrongful touching. That is substantial bodily harm. And the
17 reason we have that is because battery covers a number of actions.
18 And when you cause an injury like this, it's something different than
19 just a slight push or a slap.
20 William Allison, stabbed twice. Once in the lower-back
21 area, mid-back, and once in the shoulder. He told you that that
22 shoulder injury, the pain lasted a month and a half and that it hurt
23 to move his arm up above his shoulder, to the front and to the side,
24 all of that hurt. Pressure -- any pressure to that injury hurt and he
25 bled continuously and scarred.

1 Again, this is far beyond pain of the immediate wrongful
2 touching. This is lasting a month and a half. This is pain that rises
3 to the level of prolonged physical pain being substantial bodily
4 harm.
5 And then we look to his other injury. There, his back.
6 That pain, he told you, lasted three months. It hurt to turn, all the
7 pressure hurt, and it bled continuously.
8 Again, ladies and gentlemen, that is pain rising to the
9 level of being prolonged physical pain. That is substantial bodily
10 harm.
11 So it's important to note, you're also instructed that the
12 defendant, he does not need to intend to cause substantial bodily
13 harm to be liable for actually causing substantial bodily harm. So
14 you can think about other examples. If a person were to punch
15 somebody in the face and maybe fracture their nose or cause a slice
16 to their eyelid, where it takes a really long time to heal, it's going to
17 hurt, not going to be able to see. That's going to be an issue.
18 That's going to be substantial bodily harm.
19 The deciding factor here is prolonged physical pain. You
20 heard about these individuals, prolonged physical pain. The pain
21 here is rising to the level of substantial bodily harm. Make no
22 doubt about it.
23 So we have both these individuals, Chase Lovato and
24 William Allison have had batteries with deadly weapons resulting in
25 substantial bodily harms committed upon them by the defendant.

1 It's undisputed that the defendant did that.
2 Now, I think the question that comes up is, Well, were
3 they justified in what they did? It's obviously what's in the back of
4 your mind and I'll tell you, yeah, they work.
5 There's two different avenues here. Were there
6 justification? They're justified under both. The first is self-defense
7 and defense of others. They are just as justified as anybody else in
8 the world using self-defense and defense of others. This is
9 something that we'll talk about, you're instructed heavily on it, as
10 you could hear when you heard the instructions.
11 The other avenue is a citizen's arrest. Now, you also will
12 go through the instructions here, but a citizen's arrest changes the
13 dynamic. Any arrest, for that instance, changes the dynamic of who
14 can use force and how they can use force, and in what situation.
15 Both of these two avenues are open and available only to the
16 victims in this case, William Allison and Chase Lovato.
17 First, self-defense, defense of others. Keep in mind when
18 we go through these instructions that a person may use force in
19 defense of others to the same extent that a person could use force
20 to protect themself in self-defense.
21 So two different ways of self-defense being, one, there is
22 an actual imminent threat; or two, what we'll get to right here, next,
23 is an apparent threat. The actual imminent threat is a person -- the
24 use of force in self-defense is justified and not unlawful when the
25 person who uses such force actually and reasonably believes that

there is imminent danger that the assailant will cause him great bodily injury. And that it's absolutely necessary under the circumstances for him to use, in self-defense, force for the purpose of avoiding great bodily injury to himself.

Now, remember the instruction right before this: Self-defense applies just the same as defense of others. So you can use that same force to protect others if you perceive that same threat.

The next avenue of self-defense is the apparent threat. Actual danger is not necessary to justify the use of force in self-defense. A person has the right to defend from an apparent danger to the same extent as he would from an actual danger.

That being justified only under these three prongs, if they're all met. That he's confronted with the appearance of an imminent danger which arouses in his mind an honest belief and fear that he is about to suffer great bodily injury. Again, applies to defense of others as well. He or someone else is about to suffer great bodily injury.

He acts solely upon the appearances and his fear in that actual belief. It's important to remember that, ladies and gentlemen. Solely acting upon that appearance and that fear. That's not acting in retaliation and anger, that's not acting in anything except that apparent threat and your fear of that attack, that imminent danger.

And then a reasonable person in a similar situation would

1 believe himself to be in like danger. A reasonable person. Ladies
2 and gentlemen, you were all chosen for this jury for a reason:
3 Because you are the reasonable people. You are here to determine
4 what the reasonable person would perceive, what the reasonable
5 person in a similar situation would believe. That's why we worked
6 so tirelessly for two days to have you here as a fair and impartial
7 jury.
8 Now, you take a look at those two different avenues, the
9 imminent danger and the apparent threat of an imminent danger,
10 and you realize what are we looking at? We're looking at Chase
11 Lovato using pepper spray on Toyer Edwards. At that point in time
12 is when the self-defense, defense of others actually occurs. It's
13 after several -- a long period of time that the defendant has, at that
14 point in time, had his hand in his pocket, shaking that knife.
15 Obviously, to both of them, William Allison knowing there's
16 something there, Chase Lovato, knowing it's a knife.
17 At this point in time, Toyer Edwards has stood up, he's
18 taking a bladed stance, focusing on who he's been focusing most of
19 his energy on the entire time, William Allison. Chase Lovato, as
20 you saw in the video over and over and over again, he's -- right
21 before he does this, he's staring at that pocket, realizing that this
22 threat is imminent, this is going to happen.
23 You actually heard it from William Allison too, who was
24 perceiving it from the front, not even knowing what, in fact, it was,
25 just knowing there was a weapon in there. And he told you that he

1 believed the threat was imminent and that, if he were to turn his
2 back to Toyer Edwards, that imminent threat was going to reveal
3 itself right in his back.
4 So what is done? Chase Lovato, he actually and
5 reasonably believed in that threat. Remember? He told you he
6 actual believed it, that's established. What would the reasonable
7 person believe? The reasonable person who's been standing there
8 looking at Toyer Edward with what they know to be a knife in the
9 pocket, holding it, ready to go, getting more angry and more angry,
10 more explicit in his threats second after second after second, as
11 he's refusing all of their demands, the easiest one being just leave.
12 Toyer Edwards then stands up and takes that bladed
13 position. It's that point in time when that appearance of the
14 imminent danger is ever-present. There's no doubt that that right
15 there is the appearance of imminent danger. So acting solely upon
16 the fear and actual belief, what does he do? He sprays him with
17 pepper spray.
18 Chase Lovato was acting in self-defense and, really, the
19 defense of William Allison when he sprayed Toyer Edwards with
20 pepper spray. It was justified. That's the bottom line.
21 But what's important is that we look to the citizen's arrest.
22 I told you that it changes things. And it does, no doubt. An owner
23 or occupant of land or building -- or a building may make an oral or
24 a written demand of a person to vacate the property. Any person
25 who then thereafter, having been given such a demand, remains on

1 the land or the building is trespassing.
2 So we are, William Allison, Chase Lovato, they work for
3 the security company, representing the owners and occupants of
4 this property, they can make a demand of someone to leave. And
5 that's exactly what they did here.
6 After giving Toyer Edwards some time maybe to move by
7 himself, maybe just to wake up and walk down Las Vegas
8 Boulevard, they come and they talk to him. And, well, we saw how
9 that played out.
10 They walked up early on in the shift, their coffees in their
11 hands, just, Hey, Hey, sir. They wake him up, they ask him to leave.
12 Simple, ladies and gentlemen. They have the right to do that, it's a
13 very simple demand. All Toyer Edwards had to do was just leave,
14 which he, at that point in time, is legally required to do, or he's
15 trespassing.
16 After numerous demands, you heard demand after
17 demand after demand to leave, and warned the defendant that he
18 was trespassing and that he was going to be arrested if he didn't
19 leave. That's what William Allison's doing right there is reading a
20 trespass warning.
21 At that point in time, Chase Lovato is pulling out his
22 handcuffs, realizing that there's an arrest that's about to go down.
23 They're going to have to citizen's arrest a guy for just refusing to
24 leave the property after a simple request.
25 The defendant, he's grabbing his knife. Look where that

1 hand is. It's right there in his pocket, ever present. Again, grabbing
2 that knife, he refuses to leave.
3 Defendant says, You ain't going to do shit. I'll stitch you
4 up.
5 I don't know how much more explicit the refusal to leave
6 can be, but this isn't just a refusal to leave now. This is an overt
7 threat to use deadly force upon these two young security guards.
8 So, as we look at that, trespassing, any person who, after
9 being given such a demand, remains upon the land or in the
10 building is trespassing. Toyer Edwards was trespassing. That's the
11 bottom line.
12 Now, an arrest, it isn't just reserved for police officers.
13 Under the law, an arrest is the taking of a person into custody in a
14 case and in the manner authorized by law. An arrest may be made
15 by a peace officer or by a private person, one or the other.
16 Now, a private person may make an arrest or an attempt
17 to commit a public offense that occurs in that person's presence.
18 Trespassing, that's a public offense. Here, the defendant was
19 trespassing in their presence. At that point in time, they have the
20 right to make the citizen's arrest or trespass him.
21 Now, the next line in this instructions is incredibly
22 important, that a private person, when arresting another, may use
23 force that is necessary and reasonable to secure the arrest under
24 the circumstances. Necessary and reasonable under the
25 circumstances.

1 I say that all the force that was used here by Chase and
2 William was reasonable and, no doubt, necessary to avoid much
3 greater harm under these deadly circumstances.
4 So what do we see? What do we see -- the force that's --
5 initial force being pepper spray. Pepper spray, when faced with a
6 deadly weapon, a deadly situation, a situation where someone
7 could have died, William Lovato believed that he could have died.
8 The defendant told him as much. And what do they use? Pepper
9 spray. They bring pepper spray to a knife fight.
10 The weapons totally different here. The advantage, far be
11 it, it's with the defendant. Pepper spray, more than reasonable.
12 Probably, you know, not even where it should be. It's slow, that's
13 all they had. That's all they carry, that's all they can do. So they
14 use it.
15 Is it necessary? Yes, it's necessary. That attack was
16 imminent. You heard from them. You see the situation. You see
17 the defendant's demeanor. They, at this point in time, have the
18 right to effectuate this arrest. And they have the right to use the
19 force that's reasonable and necessary to effect that arrest, to take
20 the defendant into custody.
21 This isn't a situation where they're just -- they stand there
22 and the defendant can do whatever he wants; at this point in time,
23 he's going in handcuffs. He's getting arrested and the police are
24 going to get called. That's it.
25 Well, because he's resisting in the manner that he is,

clearly having a knife in his pocket, they can use any force that is reasonable and necessary under the circumstances. This force, pepper spray, reasonable and necessary. Probably should have used more.

The defendant did not have the right to resist a lawful arrest. It's incredibly important, ladies and gentlemen, once the arrest is happening, the arrestee may physically resist the arrest only if the peace officer or private person making the arrest uses force that is unlawful and excessive, and only if the arrestee is facing imminent and serious bodily harm at the hands of the peace officer or private person making the arrest. That's not available to the defendant.

It's not available to Toyer Edwards. He cannot use force to resist these two security officers. Not the force that was used, not any force, because what they were using was lawful force. The first thing to use force for the arrest, it would have to be that there's unlawful force. The force that these two security officers are using is lawful.

And it's not excessive. It's absolutely not excessive to the circumstances that he's facing -- that they're facing right there, a man with a knife. And they're sitting there with a can of peppers [sic].

And then the arrestee, more than that, needs to be facing imminent and serious bodily harm. So it's not just an idea of -- that, Oh, these guys could hurt me. He needs to be facing

1 imminent -- it's imminent and serious bodily harm. There's no
2 evidence that he was facing any of that.
3 He could not resist these two officers arresting him. What
4 he could have done is just listen to commands and never gotten
5 arrested for trespassing. But he didn't do that. He forced the issue
6 and he put himself in the situation. He caused the situation where
7 he could use or decided to use deadly force on these two men.
8 Chase Lovato and William Allison had the right to
9 self-defense, defense of others, and all reasonable and necessary
10 force that a citizen can use during an arrest. They were justified,
11 that's the bottom line.
12 The defendant, well, he wasn't. He committed a battery
13 with use of a deadly weapon resulting in substantial bodily harm.
14 He tore they asses up. That's the clearest evidence of how he was
15 feeling that day.
16 Ladies and gentlemen, this is the verdict form, this is what
17 you're going to see when you go back for your deliberations.
18 There's several options on there, we've gone through them all.
19 We've gone through the definition of battery, battery with use of a
20 deadly weapon, battery resulting in substantial bodily harm. And
21 there's only one option for both counts. The only correct option is
22 battery with use of a deadly weapon resulting in substantial bodily
23 harm based upon what the evidence shows.
24 For that reason, ladies and gentlemen, we ask you to find
25 the defendant guilty of both counts.

THE COURT: Defense, are you prepared to go forward with your closing argument?

MS. ODEH: Yes, Your Honor. If we can switch to my computer?

[Pause in proceedings.]

CLOSING ARGUMENT FOR THE DEFENDANT

MS. ODEH: Thank you, Your Honor.

Okay. So it's a Sunday morning in June and Mr. Edwards isn't bothering anybody. He's walking into the Hawaiian Marketplace alone, causing no trouble at all. He finds a quiet corner, and there's nobody there. And he's going to take a little nap. He takes his shoes off, puts his sunglasses on, and he's just laying down, relaxing. Again, not bothering anyone. He's not pushing a shopping cart filled with garbage. He's not curled up under the table like some vagrant. He's just sitting there.

And here come our security guards. They are not having it. They're on their way to tell him to get out. Apparently, there is a no sleeping rule at the Hawaiian Marketplace. But the funny thing is, it's not in the policy manual, because --

MR. DICKERSON: Objection.

MS. DERJAVINA: Objection, Your Honor.

MR. DICKERSON: Facts not in evidence.

THE COURT: Counsel approach.

[Bench conference transcribed as follows.]

MS. DERJAVINA: There's no evidence that there's a --

1 that the sleeping policy is not in the manual. There's no questions
2 about whether that policy was in the manual.
3 MS. ODEH: My recollection of the testimony was that
4 there was a manual and they didn't know if there was any rules
5 about sleeping in it.
6 MS. DERJAVINA: There wasn't --
7 MS. ODEH: They could --
8 MS. DERJAVINA: -- testimony like that, but much less, I'm
9 saying they don't know whether it's there is much different than
10 saying there is nothing in the policy.
11 THE COURT: Arguably, they did not know of any policy --
12 sleeping policy, before they approached.
13 MS. DERJAVINA: I don't think that was --
14 THE COURT: They were unaware -- is that -- my
15 recollection was --
16 MS. DERJAVINA: They asked about the deescalation
17 policy, but --
18 THE COURT: I understand, counsel.
19 MS. ODEH: My recollection is I asked Allison if there was
20 a written rule about no sleeping, and he said he didn't think there
21 was.
22 THE COURT: Okay. You can argue that.
23 MS. ODEH: Okay.
24 THE COURT: It's argument, counsel.
25 MS. DERJAVINA: It's fine. We're just --

1 MR. DICKERSON: Thank you, Your Honor.
2 [End of bench conference.]
3 MS. ODEH: So Mr. Allison was testifying. I asked him if
4 there was a written rule about no sleeping at the Hawaiian
5 Marketplace. And he said he didn't think there was. In fact, he said
6 that he didn't even know about a manual.
7 It seemed that the policy of these security guards was
8 they just make up the rules as they go along and then they decide
9 on their own how to enforce them. They get some handcuffs, they
10 get some pepper spray, and they just go out there and they figure
11 out how they're going to enforce the rules that they create.
12 So they come up upon Toyer Edwards and they tell him to
13 wake up. If you recall, the entire incident took less than three
14 minutes from start to finish. So they come up to him, tell him to
15 wake up, don't give him much time. He's not waking up fast
16 enough, he's too slow.
17 And then he has the nerve to disrespect them and not get
18 up and walk away right away. Did he talk back? Probably. He
19 probably did. They were harassing him for no reason. He didn't
20 feel like it was justified.
21 And he told them, Call Metro. And the reason he did that
22 is clear: They were acting outside their authority. And even
23 Mr. Edwards knew the right thing to do is call Metro. Did they call
24 Metro? Nope, they didn't. They decided that they're the police of
25 the Hawaiian Marketplace. They don't need to call Metro. And then

1 they escalate the situation.

2 Now, why in the world would they have escalated the
3 situation as fast as they did? I'm going to submit to you because
4 they think they are the police of that area, and everyone needs to
5 answer to them. After all, they sat -- both sat up here and said they
6 were the green security shirt, that makes them in charge. They've
7 got their handcuffs and they got their mace. And that's their
8 jurisdiction. And they enforce the rules of their jurisdiction.

9 So what we see when they come up is immediately, the
10 handcuffs come out and the mace come out before Mr. Edwards is
11 even completely awake. Within seconds of them stepping up to
12 him, we're going to see the handcuffs and the mace.

13 [Video played.]

14 MS. ODEH: These two guys are ready for a fight.
15 Mr. Edwards hasn't done anything except wake up.

16 You know, the State's trying to tell you that they're
17 making a citizen's arrest. Which is interesting, because, first of all, I
18 don't know what they're making a citizen's arrest for. For sleeping?
19 Sleeping's not against the law. Remember, they just walked up on
20 him and the handcuffs and mace are coming out to make an arrest.

21 So he's not -- sleeping is not breaking the law. They want
22 you to believe that maybe it's trespassing. Here's the thing with
23 these security guards claiming they're arresting him for
24 trespassing. Mr. Lovato testified yesterday that it was his
25 understanding that a person needed to be on property for 30

minutes before they could trespass him. And it's clear from the video that you saw over and over again that he was only there for 15 minutes. So from his own testimony, in Mr. Lovato's mind, there was no justification to make any sort of arrest for trespassing.

So this claim of citizen's arrest is something that's being told to you after the fact to try and justify what they do next to Mr. Edwards.

Now, let me say this: If for some reason you believe that they were justified in making a citizen's arrest of Toyer Edwards, he can resist that arrest if it's unlawful and excessive force is used. And he believes that's he's facing imminent serious bodily harm unless he resists. So even if you think somehow that they're justified, their force was so excessive that he's justified in resisting such an arrest.

Now, one of the other things that the State is talking to you about is how Mr. Allison, the security guard on the left there in the image, was reading Toyer Edwards a trespass notice. And that's not what I saw in the video. He took something out of his pocket and then put it back, and then took it out, and then put it back. I didn't see him reading anything to him.

Secondly, Mr. Lovato says that he can see the butt of knife sticking out of Mr. Edwards' pocket. What you're going to see -- what you saw in the video and what you'll see if you review the video again, is that Mr. Edwards' hand was buried deep in his pocket. You know, when we were doing jury selection, somebody

said, I hope there's video, I want to see the video. Because video doesn't lie. People can sit up here and they can forget what really happened, they can outright lit, that anything could happen.

But when you watch the video, the video doesn't lie. And when you watch this, you'll see Mr. Edwards' hand is deep in his pocket. He is clutching the knife, because he's probably scared. These two guys came up on him, handcuffs and mace are out for no reason, he doesn't know what's going to happen, and he's holding onto that knife. There's no way Mr. Lovato saw it.

Another thing I want you to look for is Mr. Lovato told you that he repeatedly told Toyer Edwards, You need to leave. He said he repeatedly told him, Take your hand out of your pocket. His mouth moves a little bit in the beginning, a little smile, and his mouth doesn't move again. So I don't know how he was saying these things, but he claims to have repeated and repeated. It just didn't happen and the video doesn't lie.

[Video played.]

MS. ODEH: Also, while Mr. Lovato was testifying, he indicated that he put his hand up on Mr. Allison and said, He's got a knife. He didn't say anything. He put his hand up. Seems to be he was saying, Hey, settle down, back off.

[Video played.]

MS. ODEH: Then Mr. Edwards stands up. He's going to leave. He doesn't want any trouble. And Mr. Lovato, again, didn't see that knife. He sprayed him with the mace for no reason.

1 Now, you heard Toyer Edwards as 58 years
2 old, 5-foot-5, 125 pounds. Now he's sprayed with mace. And we
3 got a 6-foot-2, 230-pound 22-year-old William Allison backing him
4 into a corner. He's moving closer and closer, he's waving his arms
5 and he's yelling.
6 So after Mr. Lovato sprays Mr. Edwards with the pepper
7 spray, if you recall in the video, he sort of bends over, his eyes are
8 burning, now Mr. Edwards pulls the knife out. Now he pulls it out.
9 And you can see in the frozen image, it's behind his back.
10 Not two -- less than two minutes ago, he was sound
11 asleep. He was woken up, his -- he's been sprayed with pepper
12 spray, he's disoriented, his eyes are burning, he doesn't know
13 what's going to happen and he still has the control to not go at
14 anybody with that knife. He's got it behind his back. Sure, he's
15 ready. Something's about to happen and he knows it. But he's not
16 attacking anybody. He is absolutely in a defensive position.
17 You know, we talked about being prepared to defend
18 yourself if something happens. That's exactly what he's doing right
19 there.
20 Now, for what reason I don't know at this point,
21 Mr. Allison decides he needs to move in and take him down. I'm
22 going to ask you to remember that when Mr. Allison testified, he
23 admitted that, at the preliminary hearing, just one month after this,
24 he said he didn't know that Mr. Edwards had a weapon until he was
25 stabbed. So all that talk about he's going after him, to disarm him;

1 he didn't know he had a knife until after the fact. So that just
2 doesn't hold up.
3 So I'm going to tell you, there can be no doubt that
4 Mr. Edwards was facing imminent danger of bodily harm with
5 Mr. Allison coming at him. It was necessary for him to use force to
6 avoid injury to himself. That's self-defense, pure and simple.
7 In this still image, it's blurry, but you can see William
8 Allison is clearly on top of him and the knife is just starting to come
9 around. He didn't use any force until it was absolutely clear that he
10 was in danger, he was starting to receive bodily harm. And then he
11 defends himself. The video doesn't lie.
12 And if anyone had any doubt about how out of control
13 these security guards were, after Lovato has him in a choke hold,
14 William Allison decides to punch him in the head.
15 [Video played.]
16 MS. ODEH: And Mr. Edwards is left looking like this. A
17 gash on the side of his head, eyes red and burning, and snot's
18 running down his face from the mace.
19 When the State showed you this video of Mr. Edwards
20 yelling. And I guess that this video of him getting all excited again,
21 with snots coming out of his face, nobody helping him, this is
22 supposed to confirm for you that he brutally stabbed two men half
23 his age and twice his size.
24 [Video played.]
25 MS. ODEH: You know what I see here? I see a man

1 whose adrenalin is pumping. Minutes ago he was asleep, now he's
2 sitting there bloody, maced, and in handcuffs.
3 And you can hear him in the video we watched yesterday
4 saying, I can't calm down, I can't calm down. He couldn't calm
5 down. And if you listen to the recording again, you're going to hear
6 what he said. I heard things like, Look at that, I weigh 125 pounds,
7 they wake me up in a stranglehold.
8 He's also trying to explain to someone, I said let me put
9 my shoes on. You're a lying motherfucker. I was dead asleep out
10 there in the chair. They come pushing me around. I know I got to
11 go, but I ain't going nowhere till I put my shoes on. This bitch starts
12 shaking up his pepper spray.
13 And then he says, They ain't hurt, their pride's hurt.
14 Those are the things that I heard him say.
15 Oh, you know what else I didn't hear him say in here? He
16 said some offensive, inappropriate things. But he didn't call
17 anybody a honky, which is what these guys sat up here and said. If
18 that was true, you'd have heard that word in this 10-minute rant.
19 I'm submitting to you they sat up here and made stuff up and filled
20 in blanks after the fact to try and make him look like the bad guy.
21 And if you remember, when the paramedics came in and
22 the police officer said, No, note him, go help them. The way Toyer
23 Edwards was treated through this whole thing is disgraceful. And
24 now he sits here charged with a crime.
25 So here's the charge. He's charged with two counts, one

against each of these security guards, battery with use of a deadly weapon resulting in substantial bodily harm. So the State has the burden to prove all three elements of that, a battery, use of a deadly weapon, and it resulted in substantial bodily harm. I'm going to quickly look at each of those.

So battery is a willful and unlawful use of force or violence upon the person of another. And they have unlawful there, underlined, because if the force you use is not unlawful, then it's not a battery. And you saw from the still images and from the video the only force Toyer Edwards used was in self-defense. And the use of force in self-defense is justified and it's not unlawful when the person who's using it, when Mr. Edwards is using it, he reasonably believes there's an imminent danger that the assailant is going to cause bodily harm to him, and that it's necessary under the circumstances for him to use, in self-defense, the force that's necessary -- the force or means that might cause bodily injury to the other person to avoid it to himself.

So he's using this -- any force he uses is in self-defense, so it's not unlawful. Under no circumstances did he commit willful and unlawful use of force. There just is not a battery on either one of these men.

So the use of a deadly weapon, and that is a weapon capable of causing substantial bodily harm or death. He had a kitchen knife in his pocket. We all saw it. It's a weapon that could cause bodily harm or death. I'll give you that. The State proved

1 that there was a deadly weapon involved in this case.
2 Now, let's talk about the resulting substantial bodily harm.
3 It can be shown through any of these three, injury that creates a
4 substantial risk of death. Neither of these guys testified that they
5 had life-threatening injuries.
6 Number two, causes serious permanent disfigurement.
7 You know, they showed you -- the State showed you some pictures
8 of scars that these two guys have. And your -- those are exhibits,
9 so look at those. And look at how zoomed-in and close-up these --
10 they're distorted, they had to move in so close to be able to see
11 these scars. That's not permanent disfigurement. A tiny scar that
12 you have to zoom in so close you can't even make out the picture.
13 So I think what they're talking about is prolonged physical
14 pain. So let's talk about prolonged physical pain. Both William
15 Allison and Chase Lovato were treated in the emergency room that
16 morning and they were released. You heard the only police officer
17 that testified said he classified their injuries as minor. Now, they
18 testified that they were in pain for months. William Allison couldn't
19 move, he couldn't walk, he couldn't life his arms, he was bleeding
20 profusely for three months. Come on, he didn't go to the doctor, he
21 didn't get stitches. I'm going to tell you what he said is just not
22 true, it doesn't hold up.
23 And here's another thing, they were treated by a doctor,
24 maybe a couple of doctors. The State didn't bring any doctor in
25 here to tell you, Oh, these were deep stab wounds, they were

1 life-threatening, permanent disfigurement, prolonged pain. You
2 better believe if they could have proved that, they'd have put a
3 doctor up there to tell you how horrible these injuries were. And
4 the fact that they didn't do that, that's on them. They have the
5 burden of proof. The State didn't bring that witness here. Ask
6 yourselves why.
7 And while we're at it, any other holes that you see in the
8 case, any questions you don't have answered, anytime you go,
9 Well, wait, why? Well, what about this? That's on the State. It's
10 their burden. They're the words who need to bring in every --
11 MS. DERJAVINA: Objection.
12 MS. ODEH: -- every witness to prove every element of
13 their case. That doesn't count against the defendant. That's the
14 State, in our position, not meeting their burden of proof.
15 So let's look at these injuries. They're basically cuts.
16 There's no profuse bleeding. They're held together with a little
17 sticker. You saw these guys walk in here, they were fine. They
18 walked -- William Allison said when he first got cut, it felt like he got
19 punched. These are not the severe injuries that we're talking about
20 when we talk about substantial bodily injury.
21 Now, I'm going to tell you none of this had to happen.
22 None of it. I don't know if it was because Global Security doesn't
23 train their employees or if it was because Chase Lovato and William
24 Allison just acted way outside their authority. But what I do know is
25 Mr. Edwards was unjustifiably attacked and he did the only thing he

could do: He defended himself.

So the State has the burden of proving beyond a reasonable doubt that he committed a crime. They also have the burden of proving that anything Mr. Edwards did was not in self-defense, and they have to prove that beyond a reasonable doubt. They didn't even come close on either one. And we ask you to find him not guilty on both counts. Thank you.

THE COURT: State, any rebuttal closing?

MS. DERJAVINA: Your Honor, may we approach?

THE COURT: Yes.

[Bench conference transcribed as follows.]

MS. DERJAVINA: Is there any way we can [indiscernible].

THE COURT: Okay.

MS. DERJAVINA: And [indiscernible] hour and a half, I think.

THE COURT: Okay.

MS. DERJAVINA: Thank you.

THE COURT: We'll be able to take our 15-minute recess.

MS. DERJAVINA: Thank you.

[End of bench conference.]

THE COURT: Ladies and gentlemen, we are going to take a 15-minute recess. During this recess you are admonished not to talk or converse among yourselves or with anyone else on any subject connected with this trial, or read, watch, or listen to any report of or commentary on the trial or any person connected with

this trial by any medium of information, including, without limitation, newspapers, television, radio, or Internet, or form or express any opinion on any subject connected with the trial until the case is finally submitted to you.

We'll be in recess for 15 minutes.

[Court recessed at 2:23 p.m., until 2:39 p.m.]

[Outside the presence of the jury.]

THE COURT: Let the record -- wait. Before we bring the jury in, I just want to put a few things on the record.

Let the record reflect the presence of counsel for the State, counsel for the defendant, and the defendant.

It's my understanding the parties want the knife to go back with the jury as one of the exhibits; is that correct?

MR. DICKERSON: Correct.

MS. ODEH: Yes.

THE COURT: What I'm going to instruct the jury then is they can view the knife in the evidence box. However, they -- it's currently secured. If they want to take the knife out of the box, they're to contact the marshal. He will take it out of the box, he will remain there while they review it. And then he'll secure it back in the evidence box. Is there any problem with me instructing the jury on that?

MS. BROUWERS: No, Your Honor.

MR. DICKERSON: State's agreeable.

THE COURT: Okay. The other thing is I noticed the

parties are using PowerPoints. I think I may have mentioned this, if I haven't, please make a copy of your PowerPoints and provide it to my clerk after the conclusion of argument today, and I'll make it a court exhibit.

MR. DICKERSON: Yes, Your Honor.

MS. ODEH: Okay.

THE COURT: Is there anything else before I bring the jury in?

MR. DICKERSON: Nothing from the State.

MS. DERJAVINA: No, Your Honor.

THE COURT: All right. Thank you.

[Jury reconvened at 2:41 p.m.]

THE COURT: Let the record reflect the presence of counsel for the State, counsel for the defendant, and the defendant.

Do the parties stipulate to the presence of the jury?

MS. DERJAVINA: Yes, Your Honor.

MS. ODEH: Yes.

MS. BROUWERS: Yes, Your Honor.

THE COURT: State, any rebuttal closing argument?

MS. DERJAVINA: Yes, Your Honor.

THE COURT: Thank you.

MS. DERJAVINA: Thank you.

THE COURT: You may proceed.

REBUTTAL CLOSING ARGUMENT FOR THE STATE

MS. DERJAVINA: Welcome back, everyone.

1 Now, the first thing I want to talk to you about is a jury
2 instruction that you have that's kind of important, and we touched
3 upon it during voir dire. It talks about sympathy. And that jury
4 instruction specifically says:
5 A verdict may never be influenced by sympathy.
6 Now, we have information here and we've heard a lot
7 about the fact that the defendant's homeless and he really wasn't
8 doing anything initially, but trying to find a place to sleep. And I
9 think as human beings, our hearts usually go out to people like that,
10 somebody who don't have a home and have to sleep on the street,
11 especially in the summer, when it's hot in Vegas.
12 But it's important that you remember that that jury
13 instruction specifically says that your verdict may never be
14 influenced by sympathy.
15 Now, I want to talk about a couple of things that Defense
16 touched upon. The first thing is, obviously, saying that he did this
17 all in self-defense. That's the reason he's justified in what he did. It
18 was to defend himself. You have a very important jury instruction,
19 because self-defense isn't always available. And one time that it's
20 not available is when you're the initial aggressor.
21 So you're going to have a jury instruction, and it's Jury
22 Instruction Number 23. And I know it's a little hard to read, because
23 the letters are not big, but -- and you'll have this. But I want to
24 touch upon the important thing that it says. And this says:
25 Self-defense is not available to an original aggressor, that

is a person who sought the quarrel with the design to force a deadly issue.

And the evidence in this case is very clear: The person who sought that quarrel initially, and that was the defendant.

So the first thing I want to talk about is the video. I won't show you the video over again. You've seen it several times, and most importantly, you're going to have it to look at.

What I do want to talk about, though, is what is in that video. Now, when you get the video, there's a lot of things are in it, a lot of files, and we've stickered some of them. So I want to kind of make it a little bit clearer for you, specifically what video you should be looking at.

So when you look at State's exhibit, and when you open up that CD with the video, there's going to be three files in them. Two that are actual file folders and one that's just a video. There's going to be specifically the Hawaiian Market file. And the video that we're talking -- video that shows exactly what happened in this case is this one right here, it's 20170618065651. And I want you to remember that number, if you want, you can write it down because I think it's important for you to know exactly what to look at. Because as I said, that video is going to show it all.

Now, in that video, what you're going to see is that the defendant is sitting up, he's already awake, and that's the point that it starts. And I think that's the important point of where all of this turns.

1 Now, initially, you're going to see Allison -- Security
2 Officer Allison take something out. And Defense counsel said, Well,
3 I didn't see him reading anything. And I want you to pay attention,
4 because you can actually see at one point he is going to like this,
5 he's looking down. And what's he's doing is reading a trespass
6 statute. Because it's an actual statute that you have to read. And
7 you can see as he's doing that.
8 What you're also going to see is right after that, within
9 seconds, we're not saying it was minutes, but Officer Lovato --
10 Security Officer Lovato takes out his handcuffs. And if you
11 remember, he said why he did that. Because he knew the
12 interaction with the defendant at this -- this is going to be one of
13 those situations where we're going to tell somebody to leave and
14 they're going to leave. And you heard them talk about how,
15 actually, earlier in the patrol, they already told a couple of people
16 that you can't be here, you have to leave. But based on the
17 interaction that they were having with the defendant, he already
18 knew. And I'll talk about it a little bit, and you've seen the body
19 cam, and we've seen how he was acting. It doesn't take a long
20 while to realize that this isn't going to be something that
21 somebody's going to go easy.
22 So you're going to see how Security Officer Lovato takes
23 out those handcuffs. And I want you to pay close attention. You
24 might have to play the video a couple of times. But what you're
25 going to see right before that point, you're going to see in the right

1 hand of the defendant is what appears to be a white tissue or
2 something white.
3 And as soon as Officer Lovato takes out those handcuffs,
4 you can see that tissue is going to go from the right hand to the left.
5 And you're going to see that right hand go in that -- to that pocket.
6 And what is in that pocket? It's the knife.
7 And that's important. Because it shows what the
8 defendant is thinking already. Nothing in going on. They're just
9 asking him to leave and he took out handcuffs, because he's being
10 aggressive. But nobody's taken out mace yet, nobody's done
11 anything. And he already is going to that pocket where the knife is.
12 And I think that's very important for you to pay attention to.
13 Then what you're going to see is at that point, as when
14 that hand goes into that pocket, is when Officer Lovato actually
15 takes out the mace. And that's important, because Defense counsel
16 talked to you about how if you look in the video, you can't really --
17 and the angle, it's obvious that you can't tell it's a knife. Well,
18 actually, if you look at the timeframes of when Officer Lovato takes
19 out that mace and the fact that Defendant puts out his hand at
20 exactly that time, it's obvious that he saw something there.
21 Additionally, if you look at the knife, and you'll have it in
22 evidence with you, you'll be able to look at it, you're going to see
23 the way that the defendant is sitting, it's pretty easy that you can
24 tell from the angle that Officer Lovato is in, the butt of that knife.
25 And he said it was silver, and guess what? That's exactly the knife

that the defendant took out when he stabbed them. So I want you to pay attention to that, I think that's very important.

Now, after that, what you're going to see is, now that Officer Lovato right away maced the defendant, he didn't, and he heard from him, is he gave him commands. And he -- what you're going to see, and you've seen, but again, you're going to have it closer, you're going to have time to actually look at it and look at it as many times as you want. And I think it's important that you do that, because what you are going to see is this is what Officer Lovato is doing the entire time, is going like this, the entire time. Why is he doing that? Because he knows there's that knife. The defendant's being aggressive. I've got to keep watch and make sure that nothing happens.

So it's not like all of a sudden he maced him out of nowhere. He took his time. We're not saying it was hours or minutes, but he took his time. And the time that he took out his mace to when he actually maced the defendant, what we see is Defendant get up, and again, Officer Lovato's looking there and he's, like, something's going on. He's got the knife, but -- and at the point that he maces and you heard from him is when -- and in the video you'll see this is the defendant right up front, this is Officer Allison, and it's when the defendant actually turns.

And you heard from Defense counsel say, Well, if he wasn't doing anything, he was trying to go to the street. And I implore you to take a good look at that video. Because it wasn't a

1 stance of, Hey, I'm leaving. It was a stance of something's about to
2 go down. You can tell exactly from the body language.
3 Now, obviously, we don't have the sound, so we don't
4 know what's going on. But we have how the defendant's acting a
5 little while after. And if you put those two things together, it's very
6 obvious exactly what the situation was. This is -- wasn't somebody
7 who was just leaving. This was somebody starting to get
8 aggressive and he still sees that knife.
9 And you heard from Officer Lovato. At that point he
10 realized that this is imminent. Something's going to happen. And
11 if I don't do anything, that my fellow security officer who I'm
12 working with is going to get hurt.
13 And what you're going to see is he does mace him. It
14 actually doesn't work the first time. He does it again. And what
15 you're going to see in that video is the mace gets a little bit on
16 Officer Allison, so he backs away. And now you heard Defense
17 counsel say how, Well, the defendant, you know, he did take the
18 knife out. They submit to that. But he put it in the back. Trying to
19 make it seem like he put it -- like, oh, he's not using it. And again, I
20 ask that you take a good look at that video. Because that's not what
21 happened.
22 What he did is he went like this. And he's in a stance
23 where he's ready to fight. It's not, Hey, I'm just, you know, having it
24 in the back. Look at his body language. Look exactly what he's
25 doing. Because it's obvious from that video exactly what he was

1 planning to do.

2 And then you heard from Officer Allison, he said, Well, at
3 that point is when I didn't necessarily know that it was a knife.
4 Because one, he's got maced, and two, it is behind the defendant.
5 But he knew that it was a sharp weapon. And at that point he
6 realized, have to do something.

7 And if you look at the video, it's not like he's charging --
8 he's actually trying to kind of get behind the defendant. And the
9 reason he's doing it is he's trying to get into control; that's what
10 he's trying to do. He's trying to get control of his arms and get the
11 weapon out of his hands.

12 Unfortunately, that doesn't happen. The reason is
13 because, as you saw, he got stabbed. And you can see very clear in
14 the video. Once, it actually is the left, once right below the rib, and
15 then again in the shoulder. He wasn't sure when the shoulder one
16 happened, because he felt the first one and the second one he
17 realized afterwards where he was, like, I got stabbed twice.

18 And then when Officer Lovato goes for help, he gets
19 stabbed.

20 So the defendant doesn't get to start the whole thing and
21 then say, Well, no, I was defending myself, they maced me. You
22 don't get that right as the initial aggressor. And that's exactly what
23 the defendant is. And that video shows exactly what happened.

24 And like I said, I ask that you take a good look at that
25 video. We've shown it to you, but you'll have it in front of you. You

1 can take a very good look and see exactly how things took place.
2 So self-defense is not available. He doesn't get to claim
3 self-defense.
4 Now, we have the video and, obviously, as I mentioned,
5 the video doesn't really have sounds, so we don't hear what's going
6 on. So we see what's going on. We kind of see the sequence of
7 events, who's doing what at what point.
8 But what we do have is the body camera. And I think
9 that's kind of important, and the reason is, as you heard, that
10 happened a little while after. Officer Simms was actually one of the
11 first responding officers. So he was there a little while after it
12 happened. And you kind of get to see how the defendant's acting.
13 And you heard Officer Allison talk about how -- the way
14 that he's acting right after -- because he happens to be in that
15 security office at the same time. Fortunately, they don't split them
16 up. It's exactly the way that he was acting when they first
17 interacted him.
18 And you can see that from the way that he's acting, it
19 doesn't take a long while to realize what's going on.
20 And I want to play a couple of snippets for you.
21 [Pause in proceedings.]
22 MS. DERJAVINA: That's fine. Thank you. There we go.
23 [Video played.]
24 MS. DERJAVINA: Is there sound?
25 [Video played.]

1 MS. DERJAVINA: This is the part where we hear him,
2 You're slow, you can't fuck with me on your best day and my worst
3 day.
4 And again, this is a little while after. This isn't somebody
5 who was acting like he was scared. This is somebody saying, Hey, I
6 beat you, you can't get me on my worst day.
7 [Video played.]
8 MS. DERJAVINA: Again, from his mouth, I tore his ass up
9 too.
10 And now I want you to pay close attention to what
11 happens.
12 [Video played.]
13 MS. DERJAVINA: What we just saw is another security
14 officer who isn't Officer Allison or Officer Lovato just pass by the
15 defendant. He's not saying anything to him, he's not doing
16 anything. And what does he tell him:
17 And this faggot coming up talking all shit, I'll tear your ass
18 in the sun.
19 So now, you can imagine exactly how he was acting with
20 Officer Lovato and Officer Allison. This is the things that he was
21 saying. Now, Defense counsel said how, What I didn't hear in that
22 video was white honky, things like that. The things that you did
23 hear and the things you'll hear, because you'll have this video and
24 you'll get to hear it yourselves, Glazed donut, faggot, bitch. Those
25 are the words the defendant's using.

1 And you just saw right here, right now, that security
2 officer wasn't doing anything to him, wasn't provoking him, he's
3 passed by, and those are the things that he tells him. So imagine
4 what he's telling the officers who are just asking him to leave when
5 he doesn't want to leave.
6 And I won't play all of this for you, because, like I said,
7 you're going to have this video with you when you deliberate. And
8 I ask that you listen to it. But I'll play this part, because I think it's
9 very important for you to hear this.
10 [Video played.]
11 MS. DERJAVINA: What he just says is, They need to be
12 well so they can come back to work, because I know where they at.
13 I want you to think about that. Think about, really, what's
14 going through the defendant's mind. And like I said, you're going
15 to have this entire video and you're going to hear it.
16 Now, there is a point where Defense counsel talked about
17 how he says, Look at that, I weigh 125 pounds. You'll get to hear
18 him say -- now, he actually says it several times. He's not saying it
19 that, Hey, look at me, I weigh 125 pounds, they're much bigger than
20 me, they're taller than me, and I was scared. He says it as, I'm 125
21 pounds and I tore their ass. That's how he's saying it, because he's
22 proud of what he did. Because he's proud that he got to stab them
23 and he's only 125 pounds.
24 So as I said, once you're the initial aggressor, you do not
25 get to claim self-defense. That is not available to you, and that is

1 exactly what we have here.
2 The next thing I want to talk about is you have another
3 jury instruction that talks about proportionate use. And that's going
4 to be Instruction 27.
5 And I apologize, I know I keep switching back and forth.
6 And once that comes on the screen, you're going to see
7 how it says: The law does not justify -- move it up a little bit -- the
8 law does not justify the use of a greater degree of force than is
9 reasonably necessary. A person acting in self-defense, and again,
10 as I mentioned, outside of this, he doesn't get to claim self-defense,
11 because he's the one who started it, he's the initial aggressor.
12 But even a person who's acting in self-defense is allowed
13 to use force in proportionality, reasonable amount to avoid actual
14 apparent danger.
15 What do we have here? We have Officer Allison and
16 Officer Lovato. They have handcuffs, they have mace, and that's
17 about it. And they also have their badge. What does the defendant
18 have? He has the knife.
19 And you just heard Defense counsel concede that's a
20 deadly weapon. That's not question about it. And that's what he
21 used. There's no proportionate here. This is not a knife to a knife.
22 And you heard them say they had no knife, they had no gun, they're
23 security officers. They have a mace and then they have handcuffs.
24 That's all they have.
25 So at the end of the day, he doesn't get to also say that,

because it's not proportionate, and self-defense, it has to be. So I want you to think about that instruction as you deliberate. I think that's very important.

Now, I want to talk about arrest. And you're going to have a jury instruction, and I think -- we talked a little bit about it during our closings, but I think it's important to go over it again. And that talks about when somebody can resist an arrest.

And, basically, there's two things that have to happen if it's a lawful arrest, for you to be able to. An arrest, he may physically resist arrest only if a peace officer makes the arrest, uses a force that is unlawful and excessive, and only the arrestee is facing imminent or serious bodily harm.

Somebody has to think he actually has to be facing imminent and serious bodily harm.

And we don't have that here. First of all, them wanting to arrest him for trespass, that was lawful. And you heard from them that they read him the trespass statute. And again, this goes back to the video where you get to see the video and decide whether he actually was refusing to leave. And I submit to you, yeah, he was. There's no question about him refusing to leave. It didn't have to be 30 minutes for them to talk to him to know that this isn't somebody who's refusing to leave. Because never do you see in the video where he tries to pout his shoes on or he does anything. There's actually a point in the video where he kind of gets up halfway, kind of in an aggressive way. And then he's, like, and he

1 slouches back down. That's obviously telling him, I am loose.
2 So them wanting to arrest him for trespassing was
3 reasonable and not unlawful. But the moment that he took out that
4 knife, as you heard them say, they also were going to detain him
5 now, obviously, because he's got a deadly weapon. So that wasn't
6 unlawful.
7 And it wasn't excessive. Macing somebody that you know
8 has a knife, and we've talked about this. You get to see the video.
9 He's got that knife and they actually saw it, I'm holding something.
10 Officer Allison about how he can see that he's holding something.
11 He can't see what it is. But based on the angle of Officer Lovato, he
12 can see that it's a knife. It wasn't -- mace isn't excessive. It's not a
13 deadly weapon.
14 Now, is I uncomfortable and is it painful when you get
15 sprayed? Yes. But as you heard Officer Lovato talk, and I believe
16 Officer Simms did too, on Defense's cross, that the point is that it's
17 supposed to prevent the person from doing any other harm. It's
18 supposed to debilitate you. You're supposed to kind of be not
19 knowing what's going on, and that's the whole purpose of doing
20 that. It wasn't to hurt him; it was to make sure they can get him
21 under control, which, unfortunately, they weren't able to do that in
22 time. They both suffered injuries by that point. So we don't have
23 that.
24 So the way that I think I ask that you look at it is -- there's
25 two, there's one, which is regular self-defense. He doesn't get

because he's initial aggressor. He also doesn't get it, because self-defense has to be proportionate. And it's obvious here that it wasn't.

But when there's an arrest involved, there's a different is that fair to self-defense. And here not only do we not have the regular self-defense, but we also don't have the one that talks about the arrest, because we don't have unlawful excessive force, and he wasn't facing imminent bodily harm. And it's not about he thought he was; it's he has to be facing it. I ask that you read the instruction, because it's very specific to that.

Now, I want to talk about substantial bodily harm. Defense counsel talked about the fact that the victims weren't in the hospital for very long, that, you know, they didn't go back to the doctor, things like that. And we went over this, but I want to go over this jury instruction once again, because the law is very clear of what defines substantial bodily harm. And when you all were here and we asked you, like, once you're instructed by the law, are you willing to listen to it and read it.

The law is very clear and now we're not talking about permanent disfigurement, so we're clear. It's a scar, but we're not saying it's, like, a huge permanent. What we're saying is it's substantial bodily harm because there's prolonged pain.

And prolonged pain occurs when a victim experiences physical suffering or injury -- and this is important -- lasting longer than the immediate pain of the wrongful touching.

1 So what does that mean? And my co-counsel talked
2 about it during our closing. If once they felt the pain just during the
3 stab and that's it, yeah, there's no -- but they didn't. He doesn't --
4 they don't have to be facing -- I believe Defense counsel said they
5 weren't facing life-threatening injuries. That's not the law. They
6 don't have to be facing life-threatening injuries. And thankfully, in
7 this case, that they weren't. It just has to be longer than the
8 immediate pain of the wrongful touch.
9 And in this case, it was. For Officer Allison it was a month
10 and a half, and you heard the fact that he wasn't able to pick it up,
11 he wasn't able to move it around. For Chase Lovato, it was a
12 couple of days. But the fact is that's substantial bodily harm.
13 Once they were stabbed and they felt a little while after
14 that, that's substantial bodily harm by the law. They don't have to
15 be in the hospital for days, they don't have to have life-threatening
16 injuries. It just has to last longer.
17 And the fact is that Defense counsel is obviously trying to
18 minimize their injuries. But this isn't a little cut or a little prick of a
19 knife. This is a stab wound that went deep --
20 MS. ODEH: Objection. Judge, can we approach?
21 THE COURT: Counsel approach.
22 [Bench conference transcribed as follows.]
23 MS. ODEH: A stab wound that went deep.
24 MS. DERJAVINA: Well, I'm --
25 THE COURT: There was no testimony it went deep.

1 MS. DERJAVINA: Okay. Well, just, my next --
2 MR. DICKERSON: It's a reasonable inference from
3 watching the video, seeing the blade of the knife, seeing it go all the
4 way into the body.
5 MS. DERJAVINA: And I'm also willing to argue that it had
6 to -- they had to use an adhesive to put the skin together.
7 MR. DICKERSON: It's argument.
8 MS. DERJAVINA: Yeah.
9 MS. ODEH: Judge, my position is they went ahead -- if
10 they're going to talk about the nature of the injury and this -- in
11 these terms --
12 MS. DERJAVINA: I'll reword it.
13 MS. ODEH: -- it's not the doctor where he had to come
14 in --
15 THE COURT: Okay. I'm just going to disregard the
16 comment it went deep.
17 MS. ODEH: Thank you.
18 [End of bench conference.]
19 THE COURT: Jury, disregard the comment it went deep.
20 MS. BROUWERS: All right. I don't know if you need to
21 say it again, because the static was still going.
22 THE COURT: Jury, disregard the comment it went deep.
23 MS. DERJAVINA: So I was saying, this isn't a tag, this
24 isn't a little cut, this is a wound where even though, thankfully, they
25 didn't need stitches, but they needed a thing to actually put the skin

1 together.

2 And think about it this way: Even though it's not a

3 permanent disfigurement, you don't get a scar from a little thing on

4 a skin. And they still have it. And we're in -- have to think for a

5 second -- we're in March of 2018, and they still have that scar. So

6 that also tells you that this wasn't just a little scab on the skin. And

7 that tells you the extent of that injury, and that is substantial bodily

8 harm by the definition of the law.

9 And, finally, what I want to talk to you about is you have

10 you have an instruction, and it talks about reasonable doubt. And I

11 want to point out a little line in that instruction. And I want to --

12 because I think it's a very important instruction, I'm going to try to

13 zoom in a little bit so you can see it. It says:

14 Doubt, to be reasonable, must be actual, not mere

15 possibility or speculation.

16 And I want you to think about that when you're in the --

17 deliberating on this case. Doubt, to be reasonable, must be actual,

18 not mere possibility or speculation.

19 Ladies and gentlemen of the jury, during this case, the

20 evidence has shown to you beyond a reasonable doubt the

21 defendant, Toyer Edwards, is guilty of two counts of battery with a

22 deadly weapon resulting in substantial bodily harm. And we ask

23 that you find him guilty. Thank you.

24 THE COURT: Clerk will now swear in the marshal and

25 the -- my JEA.

[Officers sworn.]

THE COURT: Thank you.

The alternates in this case are Juror Number 13, Jerome Dickey, and Juror Number 14, Ronald Mullins. Those two jurors will -- are the alternates and will go with my judicial executive assistant. The remaining jurors, 1 through 12, the bailiff is going to take you to the jury deliberation room, at which time the exhibits will be brought to you, as well as the jury instructions.

I will advise you that one of the exhibits is the knife, and it's in a box. You can certainly view the knife. But it's in a secure position within that box. If you want to remove it from the box, you need to contact the marshal and he will remove it. And once you have viewed it outside the box, he is going to place it back in the box and secure it.

But for right now, it is going to be sent back with you in the box in a secure position, as well as all the other exhibits and the jury instructions.

At this time, the marshal will escort you to the jury deliberation room.

[Jury recessed for deliberation at 3:10 p.m.]

THE COURT: Okay. Counsel, you have provided my clerk with telephone numbers which you can be reached. Obviously, don't go too far away. Be within 15-20 minutes.

MS. DERJAVINA: And, Your Honor, we're waiting, unfortunately, the laptop we have right now doesn't have a clean

option. Should I just texted my IT person and asked her to bring, like, one that doesn't have anything on it.

THE COURT: Thank you, counsel.

We'll be in recess.

MR. DICKERSON: Thank you, Your Honor.

MS. DERJAVINA: Thank you.

[Court recessed at 3:11 p.m., until 4:09 p.m.]

[Outside the presence of the jury.]

THE COURT: Okay. Recalling State of Nevada versus Toyer Edwards, Case Number C-17-324805. Let the record reflect the presence of counsel for the State, counsel for the defendant, and do you waive the defendant's presence?

MS. BROUWERS: Yes, Your Honor.

MS. ODEH: Yes.

THE COURT: The Court has received a note from the jury with a question. The first question is:

Are we allowed to review testimony from the prelim hearing (more specifically, Allison's testimony).

The second question is:

Can we see a copy of the trespass statute?

And it's from Juror Number 9, Tamara Ouellette.

After conferring with counsel for the State and the Defense, I've been provided an answer by counsel, which as to Question Number 1, the Court is not at liberty to supplement the evidence. And Question Number 2, you have been instructed on

1 the law, please refer to the jury selection.
2 Are both these answers acceptable to the State?
3 MS. DERJAVINA: Yes, Your Honor.
4 THE COURT: All right. Are both these answers acceptable
5 to the Defense?
6 MS. ODEH: Yes, Your Honor.
7 THE COURT: What I'm going to do, then, is tape this
8 question to a piece of paper. Below it, I will have the answers
9 typed. And then I will sign it and send it back to the jury. Is that
10 acceptable?
11 MS. DERJAVINA: Yes, Your Honor.
12 MS. BROUWERS: Yes.
13 MS. ODEH: Thank you, Your Honor.
14 THE COURT: Thank you.
15 [Court recessed at 4:11 p.m., until 5:20 p.m.]
16 [In the presence of the jury.]
17 THE COURT: This is the continuation of the trial State of
18 Nevada versus Toyer Edwards, Case Number C-17-324805. Let the
19 record reflect the presence of counsel for the State, counsel for the
20 defendant, and the defendant.
21 Will the parties stipulate to the presence of the jury?
22 MS. DERJAVINA: Yes, Your Honor.
23 MS. ODEH: Yes, Your Honor.
24 THE COURT: Thank you.
25 Ladies and gentlemen of the jury, have you chosen a

foreperson? And if so, who is that person?

Have all -- and your name is?

JUROR NO. 9: Tamara Ouellette.

THE COURT: And your badge number? Oh, you don't have it?

UNIDENTIFIED SPEAKER: She's Number 9, Your Honor.

JUROR NO. 9: 0787.

THE COURT: Thank you. I apologize.

Have all the members of the jury reached a unanimous verdict as to the charges presented to them? Ma'am?

JUROR NO. 9: Yes.

THE COURT: Thank you.

Please give the verdict form to the marshal, please.

Thank you.

The clerk will now read the verdict of the jury.

THE COURT CLERK: District Court, Clark County, Nevada, State of Nevada, Plaintiff, Case Number C-324805, Toyer Edwards, Defendant, verdict.

We, the jury, in the above-entitled case find the defendant Toyer Edwards as follows:

Count 1, Guilty of Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm.

Count 2, Guilty of Battery with Use of a Deadly Weapon Resulting in Substantial Bodily Harm.

Dated this second day of March, 2018, Tamara Ouellette,

1 Foreperson.
2 Ladies and gentlemen of the jury, are these your verdicts
3 as read, so say you one, so say you all?
4 THE JURY: Yes.
5 THE COURT: Does either party wish to have the jury
6 individually polled?
7 MS. BROUWERS: Yes.
8 THE COURT CLERK: Juror Number 1, is this your
9 verdict -- are these your verdicts as read?
10 JUROR NO. 1: Yes.
11 THE COURT CLERK: Juror Number 2, are these your
12 verdicts as read?
13 JUROR NO. 2: Yes.
14 THE COURT CLERK: Juror Number 3, are these your
15 verdicts as read?
16 JUROR NO. 3: Yes.
17 THE COURT CLERK: Juror Number 4, are these your
18 verdicts as read?
19 JUROR NO. 4: Yes.
20 THE COURT CLERK: Juror Number 5, are these your
21 verdicts as read?
22 JUROR NO. 5: Yes.
23 THE COURT CLERK: Juror Number 6 are these your
24 verdicts as read?
25 JUROR NO. 6: Yes.

THE COURT CLERK: Juror Number 7, are these your verdicts as read?

JUROR NO. 7: Yes.

THE COURT CLERK: Juror Number 8, are these your verdicts as read?

JUROR NO. 8: Yes.

THE COURT CLERK: Juror Number 9, are these your verdicts as read?

JUROR NO. 9: Yes.

THE COURT CLERK: Juror Number 10, are these your verdicts as read?

JUROR NO. 10: Yes.

THE COURT CLERK: Juror Number 11, are these your verdicts as read?

JUROR NO. 11: Yes.

THE COURT CLERK: Juror Number 12, are these your verdicts as read?

JUROR NO. 12: Yes.

THE COURT: The verdict of the jury shall now be recorded in the minutes of the court.

Ladies and gentlemen, as you know, the right to a trial by jury is one of our basic and fundamental constitutional guarantees. I firmly believe in this right, that is the right of every person accused with a crime to be judged by a fair and impartial jury.

Jury service is something that many persons shirk from.

They do not wish to become involved. That's why I'm so pleased that you 14 men and women have been willing to give your valuable time. You have been most attentive and most conscientious. On behalf of counsel, the parties, and the Eighth Judicial District Court, I wish to thank you for your careful deliberation which you gave to this case.

The question may now arise as to whether you may now talk to other persons regarding this matter. I advise you that you may, if you wish, talk to other persons and discuss your deliberations which you gave to this case. You are not required to do so, however. I will be available shortly to speak to you if you so desire. And if any person persists in discussing this case after you have indicated that you do not wish to do so or raises objections as to your result or as to how you deliberate, you may report that fact directly to me.

I truly appreciate you all serving. I know it was in many instances away from your job or your family. And I think I speak on behalf of all parties involved in this case, we appreciate when people in the community, such as yourselves, gives up their time to serve on a jury.

Many times after a trial, when I was an attorney, it was always helpful to speak to the jurors to get their insights, since I had never served on a jury. So counsel may approach you after the case to speak with you. That is entirely your call if you want to talk to them. Really, what they're trying to do is just give a -- get some

1 insight as to how you arrived at your verdict and maybe
2 suggestions from you what they could or could not have done
3 better in the case.
4 But again, if you don't want to talk to anybody about your
5 verdict, you do not have to. If somebody persists in talking to you
6 and you don't want to, please report it to me.
7 I'll make myself available a few minutes afterwards if you
8 want to talk to me in the jury deliberation room, or you can just
9 leave. You can just go home to your families and with our deep
10 appreciation.
11 At this time, the jury is excused with the thanks of the
12 Court and counsel. Thank you.
13 [Jury dismissed at 5:26 p.m.]
14 THE COURT: Defense, do you want to be heard on
15 custody status?
16 MS. BROUWERS: We'll submit it, Your Honor.
17 THE COURT: The defendant is remanded to custody and
18 will remain in custody it'll the sentencing date.
19 Mr. Castle, we'll need an in-custody sentencing date.
20 THE COURT CLERK: April 26, 9:00 a.m.
21 MR. DICKERSON: Thank you.
22 MS. DERJAVINA: Thank you.
23 THE COURT: Anything further that needs to be brought to
24 the attention of the Court?
25 MS. DERJAVINA: No, Your Honor.

MR. DICKERSON: No, Your Honor. Just that we understand it's late on a Friday. They probably don't want to talk to us. If they want our contact information, we have cards here, but --

THE COURT: And then when I was an attorney, they used to have to go down to the third floor to get paid. It's my understanding that they now will mail the check. So if you want to try going down to the third floor, see if anybody goes by, that's entirely your call.

I doubt if anybody's going to be back there, even to talk at all.

MR. DICKERSON: Right.

THE COURT: So -- again, at this point, we'll be in recess.

MR. DICKERSON: Thank you.

MS. DERJAVINA: Thank you.

MR. DICKERSON: Thank you, Your Honor.

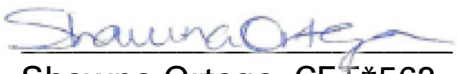
THE COURT: Thank you, counsel.

MR. DICKERSON: Thank you everybody.

[Court adjourned at 5:28 p.m.]

///

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Shawna Ortega, CET*562

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Steven D. Grierson
CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
ELAINE ODEH, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 14099
SHANA S. BROUWERS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 12337
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
elaine.odeh@clarkcountynv.gov
shana.brouwers@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. TOYER EDWARDS, Defendant,	)	CASE NO. C-17-324805-1 DEPT. NO. XVIII

DEFENDANT'S SUPPLEMENTAL PROPOSED JURY INSTRUCTIONS

COMES NOW, the Defendant, TOYER EDWARDS, by and through his attorneys, ELAINE ODEH and SHANA BROUWERS, Deputy Public Defenders, and hereby submits the following proposed jury instructions and verdict form.

DATED this 2nd day of March, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/*Elaine Odeh*
ELAINE ODEH, #14099
Deputy Public Defender

INSTRUCTION NO. _____

If the State fails to prove beyond a reasonable doubt that Defendant committed each and every element of the offense of Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm, then Defendant is "Not Guilty" of Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm.

Crawford v. State, 121 Nev. 744, 753 (2005). ("…this court [Supreme Court of Nevada] has consistently recognized that specific jury instructions that remind the jurors that they may not convict the defendant if proof of a particular element is lacking should be given upon request.").

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Crawford v. State, 121 Nev. 744, 753 (2005). ("…this court [Supreme Court of Nevada] has consistently recognized that specific jury instructions that remind the jurors that they may not convict the defendant if proof of a particular element is lacking should be given upon request.").

INSTRUCTION NO. _____

If the State fails to prove beyond a reasonable doubt that Defendant committed each and every element of the crime of Battery Resulting in Substantial Bodily Harm, then Defendant is "Not Guilty" of Battery Resulting in Substantial Bodily Harm.

Crawford v. State, 121 Nev. 744, 753 (2005). ("…this court [Supreme Court of Nevada] has consistently recognized that specific jury instructions that remind the jurors that they may not convict the defendant if proof of a particular element is lacking should be given upon request.").

INSTRUCTION NO. _____

If the State fails to prove beyond a reasonable doubt that Defendant committed each and every element of the crime of Battery, you must find the Defendant "Not Guilty."

Crawford v. State, 121 Nev. 744, 753 (2005). ("…this court [Supreme Court of Nevada] has consistently recognized that specific jury instructions that remind the jurors that they may not convict the defendant if proof of a particular element is lacking should be given upon request.").

INSTRUCTION NO. _____

The State has the burden of proving beyond a reasonable doubt every element of the crime charged. The Defendant is presumed innocent. Accordingly, the Defendant does not have to call witnesses to testify on his behalf. If the Defendant does not call witnesses on his behalf, you are instructed not to discuss this fact or permit it to influence your deliberations in any way.

Crawford v. State, 121 Nev. 744, 121 P.3d 582 (2005).

VER

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-17-324805-1
	)	
v.	)	DEPT. NO. XVIII
	)	
TOYER EDWARDS,	)	
	)	
Defendant.	)	
	)	

V E R D I C T

We, the jury in the above-captioned case, find the Defendant, TOYER EDWARDS, as follows:

COUNT 1 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (as to William Allison)

(Please check the appropriate box, select only one)

☐ NOT GUILTY
☐ Guilty of BATTERY
☐ Guilty of BATTERY WITH USE OF A DEADLY WEAPON
☐ Guilty of BATTERY RESULTING IN SUBSTANTIAL BODILY HARM
☐ Guilty of BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

COUNT 2 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (as to Chase Lovato)

(Please check the appropriate box, select only one)

☐ NOT GUILTY
☐ Guilty of BATTERY
☐ Guilty of BATTERY WITH USE OF A DEADLY WEAPON
☐ Guilty of BATTERY RESULTING IN SUBSTANTIAL BODILY HARM
☐ Guilty of BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

Dated this _____day of March, 2018.

_____
FOREPERSON

Electronically Filed
3/2/2018 9:17 AM
Steven D. Grierson
CLERK OF THE COURT

PHILIP J. KOHN, PUBLIC DEFENDER
NEVADA BAR NO. 0556
ELAINE ODEH, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 14099
SHANA S. BROUWERS, DEPUTY PUBLIC DEFENDER
NEVADA BAR NO. 12337
PUBLIC DEFENDERS OFFICE
309 South Third Street, Suite 226
Las Vegas, Nevada 89155
Telephone: (702) 455-4685
Facsimile: (702) 455-5112
elaine.odeh@clarkcountynv.gov
shana.brouwers@clarkcountynv.gov
Attorneys for Defendant

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, v. TOYER EDWARDS, Defendant,	)	CASE NO. C-17-324805-1 DEPT. NO. XVIII

DEFENDANT'S SUPPLEMENTAL PROPOSED JURY INSTRUCTIONS

COMES NOW, the Defendant, TOYER EDWARDS, by and through his attorneys, ELAINE ODEH and SHANA BROUWERS, Deputy Public Defenders, and hereby submits the following proposed jury instructions and verdict form.

DATED this 3rd day of March, 2018.

PHILIP J. KOHN
CLARK COUNTY PUBLIC DEFENDER

By: /s/*Elaine Odeh*
ELAINE ODEH, #14099
Deputy Public Defender

INSTRUCTION NO. _____

If the State fails to prove beyond a reasonable doubt that Defendant committed each and every element of the offense of Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm, you must find Defendant "Not Guilty" of Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm.

Crawford v. State, 121 Nev. 744, 753 (2005). ("…this court [Supreme Court of Nevada] has consistently recognized that specific jury instructions that remind the jurors that they may not convict the defendant if proof of a particular element is lacking should be given upon request.").

INSTRUCTION NO. _____

If the State fails to prove beyond a reasonable doubt that Defendant committed each and every element of the offense of Battery With Use of a Deadly Weapon, you must find Defendant "Not Guilty" of Battery With Use of a Deadly Weapon.

Crawford v. State, 121 Nev. 744, 753 (2005). ("…this court [Supreme Court of Nevada] has consistently recognized that specific jury instructions that remind the jurors that they may not convict the defendant if proof of a particular element is lacking should be given upon request.").

INSTRUCTION NO. _____

If the State fails to prove beyond a reasonable doubt that Defendant committed each and every element of the crime of Battery Resulting in Substantial Bodily Harm, you must find Defendant "Not Guilty" of Battery Resulting in Substantial Bodily Harm.

Crawford v. State, 121 Nev. 744, 753 (2005). ("…this court [Supreme Court of Nevada] has consistently recognized that specific jury instructions that remind the jurors that they may not convict the defendant if proof of a particular element is lacking should be given upon request.").

INSTRUCTION NO. _____

If the State fails to prove beyond a reasonable doubt that Defendant committed each and every element of the crime of Battery, you must find the Defendant "Not Guilty."

Crawford v. State, 121 Nev. 744, 753 (2005). ("…this court [Supreme Court of Nevada] has consistently recognized that specific jury instructions that remind the jurors that they may not convict the defendant if proof of a particular element is lacking should be given upon request.").

INSTRUCTION NO. _____

The State has the burden of proving beyond a reasonable doubt every element of the crime charged. The defendant is presumed innocent. Accordingly, the defendant does not have to call witnesses to testify on his behalf. If the Defendant does not call witnesses on his behalf, you are instructed not to discuss this fact or permit it to influence your deliberations in any way.

Crawford v. State, 121 Nev. 744, 121 P.3d 582 (2005).

VER

DISTRICT COURT

CLARK COUNTY, NEVADA

THE STATE OF NEVADA,	)	
	)	
Plaintiff,	)	CASE NO. C-17-324805-1
	)	
v.	)	DEPT. NO. XVIII
	)	
TOYER EDWARDS,	)	
	)	
Defendant.	)	
	)	

V E R D I C T

We, the jury in the above-captioned case, find the Defendant, TOYER EDWARDS, as follows:

COUNT 1 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (as to William Allison)

(Please check the appropriate box, select only one)

☐ NOT GUILTY
☐ Guilty of BATTERY
☐ Guilty of BATTERY WITH USE OF A DEADLY WEAPON
☐ Guilty of BATTERY RESULTING IN SUBSTANTIAL BODILY HARM
☐ Guilty of BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

COUNT 2 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (as to Chase Lovato)

(Please check the appropriate box, select only one)

☐ NOT GUILTY
☐ Guilty of BATTERY
☐ Guilty of BATTERY WITH USE OF A DEADLY WEAPON
☐ Guilty of BATTERY RESULTING IN SUBSTANTIAL BODILY HARM
☐ Guilty of BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

Dated this _____day of March, 2018.

_____
FOREPERSON

INST

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 2 - 2018
5:27 p.m.
BY: ALAN PAUL CASTLE, SR. DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA,

Plaintiff,

-vs-

TOYER EDWARDS,

Defendant.

CASE NO: C324805

DEPT NO: XVIII

INSTRUCTIONS TO THE JURY (INSTRUCTION NO. I)

MEMBERS OF THE JURY:

It is now my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than that given in the instructions of the Court.

C-17-324805-1
INST
Instructions to the Jury
4725890

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INSTRUCTION NO. 2

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

INSTRUCTION NO. 3

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that on or about the 18th day of June, 2017, the Defendant committed the offenses of Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm.

It is the duty of the jury to apply the rules of law contained in these instructions to the facts of the case and determine whether or not the Defendant is guilty one or more of the offenses charged.

COUNT 1 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

did willfully, unlawfully, and feloniously use force or violence upon the person of another, to wit: WILLIAM ALLISON, with use of a deadly weapon, to wit: a knife, by stabbing and/or cutting the said WILLIAM ALLISON with said knife, resulting in substantial bodily harm to WILLIAM ALLISON.

COUNT 2 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM

did willfully, unlawfully, and feloniously use force or violence upon the person of another, to wit: CHASE LOVATO, with use of a deadly weapon, to wit: a knife, by stabbing and/or cutting the said CHASE LOVATO with said knife, resulting in substantial bodily harm to CHASE LOVATO.

INSTRUCTION NO. 4

To constitute the crime charged, there must exist a union or joint operation of an act forbidden by law and an intent to do the act.

The intent with which an act is done is shown by the facts and circumstances surrounding the case.

Do not confuse intent with motive. Motive is what prompts a person to act. Intent refers only to the state of mind with which the act is done.

Motive is not an element of the crime charged and the State is not required to prove a motive on the part of the Defendant in order to convict. However, you may consider evidence of motive or lack of motive as a circumstance in the case.

INSTRUCTION NO. 5

The Defendant is presumed innocent unless the contrary is proved. This presumption places upon the State the burden of proving beyond a reasonable doubt every element of the crime charged and that the Defendant is the person who committed the offense.

A reasonable doubt is one based on reason. It is not mere possible doubt but is such a doubt as would govern or control a person in the more weighty affairs of life. If the minds of the jurors, after the entire comparison and consideration of all the evidence, are in such a condition that they can say they feel an abiding conviction of the truth of the charge, there is not a reasonable doubt. Doubt to be reasonable must be actual, not mere possibility or speculation.

If you have a reasonable doubt as to the guilt of the Defendant, he is entitled to a verdict of not guilty.

INSTRUCTION NO. 6

The Defendant does not have to testify or present any evidence to prove innocence. The State has the burden of proving every element of the charges beyond a reasonable doubt.

INSTRUCTION NO. 1

You are here to determine the guilt or innocence of the Defendant from the evidence in the case. You are not called upon to return a verdict as to the guilt or innocence of any other person. So, if the evidence in the case convinces you beyond a reasonable doubt of the guilt of the Defendant, you should so find, even though you may believe one or more persons are also guilty.

INSTRUCTION NO. 8

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

There are two types of evidence; direct and circumstantial. Direct evidence is the testimony of a person who claims to have personal knowledge of the commission of the crime which has been charged, such as an eyewitness. Circumstantial evidence is the proof of a chain of facts and circumstances which tend to show whether the Defendant is guilty or not guilty. The law makes no distinction between the weight to be given either direct or circumstantial evidence. Therefore, all of the evidence in the case, including the circumstantial evidence, should be considered by you in arriving at your verdict.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection was sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

INSTRUCTION NO. 9

The credibility or believability of a witness should be determined by his manner upon the stand, his relationship to the parties, his fears, motives, interests or feelings, his opportunity to have observed the matter to which he testified, the reasonableness of his statements and the strength or weakness of his recollections.

If you believe that a witness has lied about any material fact in the case, you may disregard the entire testimony of that witness or any portion of his testimony which is not proved by other evidence.

INSTRUCTION NO. 10

Battery means any willful and unlawful use of force or violence upon the person of another.

The force used by the defendant need not be violent or severe, and need not cause bodily pain or bodily harm. Any slight touching by the defendant upon the person of another suffices, as long as the touching was intentional and unwanted.

The word "willfully", when applied to the intent with which an act is done, implies simply a purpose or willingness to commit the act in question. It does not require in its meaning that the defendant held any intent to violate any law, or to injure another, or to acquire any advantage.

INSTRUCTION NO. 11

If you find the Defendant is guilty of Battery, you must also determine whether a deadly weapon was used in the commission of the Battery. A "deadly weapon" is

(a) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death;

(b) Any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death

INSTRUCTION NO. 18

If you find the Defendant is guilty of Battery, regardless of whether you find a Deadly Weapon was used, you must determine whether the force used in the Battery resulted in substantial bodily harm to the victim. The Defendant need not have intended to cause substantial bodily harm to be liable for substantial bodily harm resulting from the Battery.

"Substantial bodily harm" means

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or

2. Prolonged physical pain.

"Prolonged" pain occurs where the victim experiences physical suffering or injury lasting longer that the immediate pain of the wrongful touching.

INSTRUCTION NO. 13

If the State fails to prove beyond a reasonable doubt that Defendant committed each and every element of the offense of Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm, then Defendant is not guilty of Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm.

INSTRUCTION NO. 14

If the State fails to prove beyond a reasonable doubt that Defendant committed each and every element of the offense of Battery With Use of a Deadly Weapon, then Defendant is not guilty of Battery With Use of a Deadly Weapon.

INSTRUCTION NO. 18

If the State fails to prove beyond a reasonable doubt that Defendant committed each and every element of the crime of Battery Resulting in Substantial Bodily Harm, then Defendant is not guilty of Battery Resulting in Substantial Bodily Harm.

INSTRUCTION NO. 16

If the State fails to prove beyond a reasonable doubt that Defendant committed each and every element of the crime of Battery, you must find the Defendant "Not Guilty."

INSTRUCTION NO. 17

An owner or occupant of land or building may make an oral or written demand of any person on the property to vacate the property. Any person who, after been given such demand, remains upon the land or in the building, is trespassing.

INSTRUCTION NO. 18

An arrest is the taking of a person into custody, in a case and in the manner authorized by law. An arrest may be made by a peace officer or by a private person.

A private person may arrest another for a public offense committed or attempted in the person's presence. Trespassing is a public offense.

A private person, when arresting another, may use force that is necessary and reasonable to secure the arrest under the circumstances.

INSTRUCTION NO. 19

An arrestee may physically resist arrest only if the peace officer or private person making the arrest uses force that is unlawful and excessive and only if the arrestee is facing imminent and serious bodily harm at the hands of peace officer or private person making the arrest.

INSTRUCTION NO. 20

Lawful resistance to the commission of a public offense may be made by a party about to be injured. Resistance sufficient to prevent the offense may be made by the person about to be injured and/or by other parties.

INSTRUCTION NO.: 21

The use of force in self-defense is justified and not unlawful when the person who uses such force actually and reasonably believes:

1. That there is imminent danger that the assailant will cause him great bodily injury; and
2. That it is absolutely necessary under the circumstances for him to use in self-defense force for the purpose of avoiding great bodily injury to himself.

INSTRUCTION NO. 28

A bare fear of death or great bodily injury is not sufficient to justify force. To justify such a force, the circumstances must be sufficient to excite the fears of a reasonable person placed in a similar situation. The person using said force must act under the influence of those fears alone.

However, actual danger is not necessary to justify the use of force in self-defense. A person has a right to defend from apparent danger to the same extent as he would from actual danger. The person is justified if:

1. He is confronted by the appearance of imminent danger which arouses in his mind an honest belief and fear that he is about to suffer great bodily injury; and
2. He acts solely upon those appearances and his fear and actual beliefs;
3. A reasonable person in a similar situation would believe himself to be in like danger.

The acts of self-defense are justified even if it develops afterwards that the person was mistaken about the extent of the danger.

INSTRUCTION NO. 23

Self-defense is not available to an original aggressor, that is, a person who has sought quarrel with the design to force a deadly issue and this through his fraud, contrivance or fault, to create a real or apparent necessity for making a felonious assault.

However, where a person, without voluntarily seeking, provoking, inviting, or willingly engaging in a difficulty of the person's own free will, is attacked by another and it is necessary for one to use force against another to protect himself, then the person need not flee for safety, but has the right to stand one's ground and use force against the other person.

INSTRUCTION NO.: 24

If evidence of self-defense is present, the State of Nevada must prove beyond a reasonable doubt the Defendant did not act in self-defense. If you find the State of Nevada has failed to prove beyond a reasonable doubt the Defendant did not act in self-defense, you must find the Defendant "Not Guilty."

INSTRUCTION NO. 25

A person may use force in defense of others to the same extent that the person could have used force in self–defense.

INSTRUCTION NO. 26

The right of self-defense exists only as long as the real or apparent threatened danger continues to exist. When such danger ceases to appear to exist, the right to use force in self-defense ends.

INSTRUCTION NO. 27

The law does not justify the use of a greater degree of force than is reasonably necessary. A person acting in self-defense is allowed to use force in a proportionately reasonable amount to avoid actual or apparent danger.

INSTRUCTION NO. 38

It is a constitutional right of a defendant in a criminal trial that he may not be compelled to testify. Thus, the decision as to whether he should testify is left to the defendant on the advice and counsel of his attorney. You must not draw any inference of guilt from the fact that he does not testify nor should this fact be discussed by you or enter into your deliberations in any way.

INSTRUCTION NO. 29

A portion of the video/audio contained in State's Exhibit 2 has been redacted, as it contained irrelevant and/or inadmissible evidence. You are not to infer anything from said redaction or consider it in your deliberations.

INSTRUCTION NO. 30

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

INSTRUCTION NO. 31

In your deliberation you may not discuss or consider the subject of punishment, as that is a matter which lies solely with the court. Your duty is confined to the determination of the guilt or innocence of the Defendant.

INSTRUCTION NO. 38

During the course of this trial, and your deliberations, you are not to:

(1) communicate with anyone in any way regarding this case or its merits-either by phone, text, Internet, or other means;

(2) read, watch, or listen to any news or media accounts or commentary about the case;

(3) do any research, such as consulting dictionaries, using the Internet, or using reference materials;

(4) make any investigation, test a theory of the case, re-create any aspect of the case, or in any other way investigate or learn about the case on your own.

INSTRUCTION NO. 33

When you retire to consider your verdict, you must select one of your member to act as foreperson who will preside over your deliberation and will be your spokesperson here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

Your verdict must be unanimous. As soon as you have agreed upon a verdict, have it signed and dated by your foreperson and then return with it to this room.

INSTRUCTION NO. 34

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return you to court where the information sought will be given you in the presence of, and after notice to, the district attorney and the Defendant and his/her counsel.

Playbacks of testimony are time-consuming and are not encouraged unless you deem it a necessity. Should you require a playback, you must carefully describe the testimony to be played back so that the court recorder can arrange his/her notes. Remember, the court is not at liberty to supplement the evidence.

INSTRUCTION NO. 35

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law; but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence as you understand it and remember it to be and by the law as given to you in these instructions, with the sole, fixed and steadfast purpose of doing equal and exact justice between the Defendant and the State of Nevada.

GIVEN: _____
DISTRICT JUDGE

VER

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAR 2 - 2018
5:24 p.m.

BY, [signature]
ALAN PAUL CASTLE, SR. DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

THE STATE OF NEVADA, Plaintiff, -vs- TOYER EDWARDS, Defendant.	CASE NO: C324805 DEPT NO: XVIII

VERDICT

We, the jury in the above entitled case, find the Defendant TOYER EDWARDS, as follows:

COUNT 1 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (William Allison)

(Please check the appropriate box, select only one)

- ☐ Not Guilty
- ☐ Guilty of Battery
- ☐ Guilty of Battery With Use of a Deadly Weapon
- ☐ Guilty of Battery Resulting in Substantial Bodily Harm
- ☑ Guilty of Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm

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C-17-324805-1
VER
Verdict
4725889

COUNT 2 – BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Chase Lovato)

(Please check the appropriate box, select only one)

- ☐ Not Guilty
- ☐ Guilty of Battery
- ☐ Guilty of Battery With Use of a Deadly Weapon
- ☐ Guilty of Battery Resulting in Substantial Bodily Harm
- ☑ Guilty of Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm

DATED this 2 day of March, 2018

FOREPERSON