

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID CRAIG MORTON,

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

Electronically Filed
Docket No. 23-0084 12:44 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
D. Ct. Clerk's Office

APPEAL FROM JUDGMENT OF
THE HONORABLE RICHARD WAGNER

SIXTH JUDICIAL DISTRICT COURT

APPELLANT'S APPENDIX

VOLUME 1

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NO. CR 09-5709

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TAMARA SPERO
DIST. COURT CLERK

C. Smith

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF HUMBOLDT.

-ooo-

STATE OF NEVADA,

Plaintiff,

vs.

INFORMATION

DAVID CRAIG MORTON

DOB: 10/12/1959,

Defendant. /

RUSSELL SMITH, District Attorney of Humboldt County,
Nevada, in the name and by the authority of the State of Nevada,
informs the Court:

COUNT I

OPEN MURDER, WITH THE USE OF A DEADLY WEAPON

A CATEGORY A FELONY

AS DEFINED BY NRS 200.010, NRS 200.020, NRS 200.030,
NRS 200.033, AND NRS 193.165

That the Defendant did willfully, unlawfully,
feloniously with malice aforethought, and with
deliberation and premeditation kill and murder another
human being, with the use of a deadly weapon, in the
following manner, to-wit: that on or about the 6th day
of August, 2009, at or near the location of 1565
Harmony Road, Winnemucca, County of Humboldt, State of

1 Nevada, the Defendant shot his wife, Cynthia Morton,
2 in the abdomen with a rifle, causing the death of
3 Cynthia Morton.

4 COUNT II

5 DISCHARGING A FIREARM FROM WITHIN OR FROM A STRUCTURE,
6 A CATEGORY B FELONY
AS DEFINED BY NRS 202.287(b),

7 That the Defendant, while being in a structure, did
8 maliciously or wantonly discharge or cause to be
9 discharged a firearm from within a structure or
10 vehicle, and that such conduct occurred within an area
11 designated by city or county ordinance as a populated
12 area for the purpose of prohibiting the discharge of
13 weapons, in the following manner, to-wit: that on or
14 about the 6th day of August, 2009, at or near the
location of 1565 Harmony Road, Winnemucca, County of
Humboldt, State of Nevada, the Defendant shot a rifle
in his house, located at 1565 Harmony Road,
Winnemucca, Nevada.

15 All of which is contrary to the form of the statute in such
16 cases made and provided and against the peace and dignity of the
17 State of Nevada.

18 That the names of all witnesses who will testify for the
19 State of Nevada in said action that are known to the District
20 Attorney at the time of the filing of this Information are
21 listed with addresses on the annexed Exhibit "A" and the names
22 of all other witnesses who will testify for the State of Nevada
23 that become known to the District Attorney before time of trial
24 will be endorsed hereon by subsequent Exhibit.

25 Furthermore, pursuant to NRS 239B.030., the undersigned
26 hereby affirms this document does not contain the social
27
28

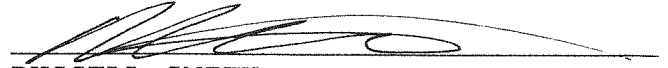
HUMBOLDT COUNTY DISTRICT ATTORNEY

P.O. Box 909

Winnemucca, Nevada 89446

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security number of any person.



RUSSELL SMITH
District Attorney

EXHIBIT "A"INFORMATIONNames and Addresses Known to the
District Attorney at the time of
Filing of the Information

DAVID GARRISON
50 W. Fifth Street
Winnemucca, Nevada 89445

ROBERT MORTON
835 Melarkey Street
Winnemucca, Nevada 89445

MATT HAYLETT
50 W. Fifth Street
Winnemucca, Nevada 89445

DOMINIC CASSINELLI
50 W. Fifth Street
Winnemucca, Nevada 89445

MITCH HINTON
50 W. Fifth Street
Winnemucca, Nevada 89445

JEFF MURDOCK
50 W. Fifth Street
Winnemucca, Nevada 89445

DR. DAVID CRUTCHFIELD
c/o Humboldt General Hospital
Winnemucca, Nevada 89445

DR. ELLEN CLARK
10 Kirman Avenue
Reno, Nevada 89502

SUZANNE HARMON
Washoe County Crime Lab
Reno, Nevada 89512

FIREARMS SPECIALIST
Washoe County Crime Lab
Reno, Nevada 89512

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of
the Humboldt County District Attorney's Office, and that on the
23rd day of October, 2009, I delivered a true copy of the

INFORMATION to:

Richard A. Molezzo, Esq.
96 & 98 Winter Street
Reno, Nevada 89503

Letty Norcott

FILED

2009 NOV 16 AM 8:24

TAMM HALL SHERIFF
DIST. COURT CLERK

IN AND FOR THE COUNTY OF HUMBOLDT

Defendant.

IN CAMERA HEARING

BE IT REMEMBERED that the above-entitled matter came on for hearing on November 2, 2009, before the HONORABLE RICHARD A. WAGNER, District Court Judge.

The State was present in chambers and represented by Brian Williams, Humboldt County Deputy District Attorney.

The Defendant was NOT present in chambers, but was represented by Richard A. Molezzo, Attorney at Law.

The Division of Parole and Probation was NOT present.

Zoie Williams, CCR, RPR, CCP, CRR, RMR
775-623-6358

ORIGINAL

6

1 P R O C E E D I N G S

2 (Whereupon, the following proceedings were had in
3 chambers without the presence of the defendant.)

4 THE COURT: Court will come to order. We are in
5 the Judge's chambers, Winnemucca, Nevada, the Sixth Judicial
6 District Court, in and for the State of Nevada. Case number
7 CR-09-5709.

8 This is entitled State of Nevada, plaintiff, vs.
9 David Craig Morton.

10 The record should reflect that Mr. Richard Molezzo
11 is here on behalf of the defendant.

12 The record should reflect the absence of the
13 defendant.

14 Mr. Brian Williams is here on behalf of the State.

15 I indicated to counsel on the record in chambers
16 that I at least wanted to have the opportunity to make sure
17 they were prepared on a couple of issues that I saw during
18 the course of reading the preliminary hearing transcript of
19 October 20th, 2009.

20 I'm sure that you gentlemen may be familiar with
21 these things, but I want to be sure in my job as the Judge
22 that these things may become important legal issues with
23 regard to evidentiary matters. And I wanted simply to bring
24 them to your attention on the record.

25 Um, one issue, of course, that I know you're

1 familiar with, um, is the corpus delicti rule. And that is
2 that, generally a confession or an admission of a defendant
3 is not admissible until such time as corpus delicti has been
4 established. That happened at some point in the preliminary
5 hearing. And I don't tell people how to put witnesses in
6 order.

7 In this case, the preliminary hearing, the
8 pathologist, Dr. Clark, actually testified last. I would
9 indicate to you, so that you know for trial, in the event
10 any kind of admissions or confessions are attempted to be
11 put into evidence, that you must meet that corpus delicti
12 rule.

13 In addition, the voluntariness of any admissions
14 or confessions is a matter that needs to be ruled upon by
15 the Court and then becomes a jury issue at some point and
16 may if that issue is raised by counsel.

17 The other matter that I would bring to your
18 attention is that there apparently was admissions -- or,
19 excuse me, statements by the victim in this case while in
20 the hospital, prior to her dying.

21 And the issue of whether or not, um, under the
22 Crawford Rule of the United States Supreme Court,
23 confrontation is an issue.

24 And in the State of Nevada, there's also a case,
25 as I recall the name of the case was Tabitha, um -- I'm

1 trying to think -- is it Tabish? No. Samantha Tabish, I
2 believe. I may be wrong on the name, but it had to do with
3 the Binion case in Las Vegas in which there were certain
4 statements made by the decedent prior to, uh, his being
5 killed the next day.

6 And with regard to those, of course, we have to
7 deal with whether or not under confrontation those are dying
8 declarations and the necessary ability of the State to put
9 the proper foundation for that. If that's what you're
10 attempting to do, those are issues that need to be well in
11 advance and dealt with as things that I saw here.

12 Um, I see it as my job at least to raise issues
13 that I want to be sure are dealt with appropriately before
14 we get up to the trial stage. That's why I bring them to
15 your attention at this point.

16 Is there any objection for my doing that with
17 counsel here?

18 MR. MOLEZZO: Not at all. At this time, no.

19 MR. WILLIAMS: No, Your Honor. I appreciate the
20 guidance, and we'll be ready.

21 MR. MOLEZZO: There's going to be some unique
22 things as well in this case, because the family had the
23 plugs pulled. So we're going to have --

24 THE COURT: So cause of death --

25 MR. MOLEZZO: That's right.

1 THE COURT: -- and those kinds of issues? I
2 understand.

3 MR. MOLEZZO: That's right.

4 THE COURT: And those things also need to be
5 briefed with regard to this.

6 The old common rule used to be that death had to
7 occur within a year and a day, as I recall. Now, they plead
8 the legal issue as cause of death, whether or not the State
9 can prove beyond a reasonable doubt that the cause of death
10 was directly caused by the defendant's actions and so forth.

11 So I think that is another issue that, of course,
12 needs to be dealt with before we ever get to the trial
13 stage. Um, I just like to try to be prepared as much as we
14 can on those things. So glad you brought that to my
15 attention.

16 (Whereupon, an off-the-record exchange was had between
17 counsel.)

18 MR. MOLEZZO: Yeah, I think I have a good
19 relationship out here.

20 THE COURT: Yeah.

21 MR. MOLEZZO: And it's going to be a trial, no
22 question.

23 THE COURT: Okay. All right.

24 MR. MOLEZZO: Well, that's where we're at.

25 THE COURT: And for the record, I have granted

1 certain resources to you. In the event that there are other
2 things, I want you, on the record, to know that you have the
3 ability to contact this Court.

4 MR. MOLEZZO: Thank you, Judge.

5 THE COURT: Anything else?

6 MR. MOLEZZO: And I need the transcript in about
7 five hours.

8 MR. WILLIAMS: No, Your Honor. As I was telling
9 Mr. Molezzo, we have from the prelim, we have some discovery
10 issues --

11 THE COURT REPORTER: Wait. Wait. Wait. Brian,
12 I'm sorry?

13 MR. WILLIAMS: Okay. Sorry.

14 From the prelim, we have some discovery issues
15 that we're going to be working on. We will be getting
16 copies of those to Mr. Molezzo. Some things we're going to
17 be hunting down that we need on our end that we will be
18 getting to him as well. I just wanted to make that clear on
19 the record. I spoke to him briefly about that in the
20 hallway before we came inside.

21 THE COURT: I also saw some possible contamination
22 issues of a crime scene, apparently where apparently the
23 son --

24 MR. WILLIAMS: Yes.

25 THE COURT: -- went back in and cleaned up the

1 crime scene at some point. So I don't know whether we're
2 going to run into Brady issues, but handling of evidence
3 certainly will be part of this case as well.

4 All right, gentlemen. Thank you for your time.
5 And I'm simply trying to do my job here in an appropriate
6 way, that we make sure we cover all the bases.

7 MR. MOLEZZO: It's nice to be back.

8 THE COURT: All right. Thanks.

9 MR. WILLIAMS: Thank you, Your Honor.

10 THE COURT: We will be in recess in this matter.

11 MR. MOLEZZO: Thank you, Your Honor.

12 THE COURT: And we will continue on with our court
13 calendar.

14 MR. WILLIAMS: Okay.

15 (Whereupon, the proceedings concluded.)
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STATE OF NEVADA)
) ss.
COUNTY OF HUMBOLDT)

I, ZOIE M. WILLIAMS, official court reporter of
the State of Nevada, in and for the County of
Humboldt, do hereby certify that I was present during
all the proceedings had in the matter of the STATE OF
NEVADA, plaintiff, vs. DAVID CRAIG MORTON, defendant,
heard at Winnemucca, Nevada, on November 2, 2009, and
took verbatim stenotype notes thereof; and that the
foregoing pages contain a full, true and correct
transcription to the best of my ability, by my
stenotype notes so taken, and a full, true and correct
copy of all proceedings had.

Zoie Williams
Zoie Williams, CCR 540, RPR, CCP, CRR, RMR
Official Court Reporter

Case No. CR-09-5709

Department I

FILED

2010 MAY 20 AM 11:56

TAMI SAE SPERO
DIST. COURT CLERK



IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF HUMBOLDT

ooOoo

THE STATE OF NEVADA,

Plaintiff,

v.

DAVID CRAIG MORTON,

Defendant.

PRETRIAL CONFERENCE

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter came on for hearing on May 17, 2010, before the HONORABLE RICHARD A. WAGNER, District Court Judge.

The State was present in court and represented by Brian Williams, Humboldt County Deputy District Attorney.

The Defendant was present in court and represented by Richard A. Molezzo, Attorney at Law.

The Division of Parole and Probation was present in court and represented by Bryan Waters.

Zoie Williams, CCR, CRR, RPR, CCP, RMR
775-623-6358

ORIGINAL

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Winnemucca, Nevada, Monday, May 17, 2010

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P R O C E E D I N G S

THE COURT: Court will come to order. Please be seated.

MR. MOLEZZO: Thank you. Mr. Molezzo on behalf of Mr. Morton who is present and also in custody.

THE COURT: Court will come to order, please. This is case number CR-09-5709. This is entitled State of Nevada, plaintiff, vs. David C. Morton, defendant.

The record should reflect that this is the time and place set for a pretrial conference in this matter.

Mr. Brian Williams is here on behalf of the State.

Mr. Richard Molezzo is here representing the defendant. The defendant is present in court.

This matter is set for a pretrial conference. This matter is scheduled to begin trial on the 22nd of June, 2010. And I set this as a pretrial hearing to determine the status of where we are with regard to discovery and in preparation for the case to go forward.

The Court would note that there has been a motion filed on May 13th, 2010, on behalf of the defendant, which is a motion for release without bail, or in the alternative,

1 a reduction to a less excessive bail amount.

2 The time has not yet run with regard to the answer
3 to be required on behalf of the State, but we will deal with
4 that in a minute.

5 As it relates to the trial itself, gentlemen,
6 where do we stand in going forward with the trial date as
7 set?

8 MR. WILLIAMS: Thank you, Your Honor. Your Honor,
9 one of the issues we've been having in this case is getting
10 the Washoe County Crime Lab to analyze the gun that the
11 State is alleging was used as the murder weapon in this
12 case.

13 I have a letter with me that's come from the crime
14 lab, Your Honor, explaining in detail when the items were
15 received and the reason that they are not done yet. And I
16 would like to have that admitted into evidence. I have
17 provided a copy to defense counsel.

18 THE COURT: It's marked for identification as
19 Exhibit 1 for purposes of this hearing.

20 (Whereupon, Exhibit 1 was marked for identification.)

21 THE COURT: Mr. Molezzo, did you receive copies of
22 this document?

23 MR. MOLEZZO: Yes, sir, I did, Your Honor.

24 THE COURT: Okay. Do you have any objections to
25 its being admitted here and considered?

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MR. MOLEZZO: No, Your Honor, I do not.

THE COURT: Okay. Exhibit 1 will be admitted and then I will review that document.

MR. WILLIAMS: Thank you. Your Honor, I've also marked as Exhibit 2 in relation to that document, this document makes reference to a Kevin Lattyak who is one of the firearms examiners at the Washoe County Crime Lab. He left the lab in December, putting a strain on their resources.

He was deployed to Iraq and chose to resign from his position. And that's a copy of his letter of resignation. And you'll see that name also in the letter that we brought as Exhibit 1.

(Whereupon, the documents were reviewed.)

THE COURT: I've read Exhibit 1 from the supervising criminalist from Washoe County Sheriff's Department.

With regard to Exhibit 2, what is that purporting to be, sir?

MR. WILLIAMS: Your Honor, that is a letter of resignation. I haven't provided a copy of that to defense counsel so I need to show it to him.

THE COURT: All right. Show it to him.

MR. WILLIAMS: What it is, Your Honor, is this is a letter from Kevin Lattyak just showing that he did resign

1 in December of 2009. What that letter details, Your Honor,
2 is they had --

3 THE COURT: What I don't understand is apparently
4 at the time he resigned, no work had been done on the
5 firearm anyway.

6 MR. WILLIAMS: No, Your Honor.

7 THE COURT: So what significance is it that he
8 resigned?

9 MR. WILLIAMS: I just wanted to put it in there as
10 part of the record, Your Honor.

11 THE COURT: Okay. A guy resigned who didn't
12 examine this?

13 MR. WILLIAMS: Well, and I think the one
14 significance it has, Your Honor, now that I come to think
15 about it is Mr. Lattyak was, his specific job I think was to
16 look at and approve the work of Miss Howard. And because he
17 is no longer there, once she's finished with all of her
18 work, it has to be confirmed by another expert.

19 So she has to take it and send it down to Las
20 Vegas, have the lab there confirm it, and then have it sent
21 back up, which causes a further delay in this case. And so
22 that's why it's relevant.

23 THE COURT: Well, I'm running into this problem in
24 all three counties. And that is, Washoe Crime Lab -- and
25 for the record, here's what's occurred. Some years ago,

1 legislatively, and this was some time ago, because it was
2 when I was a district attorney, we went to the legislature
3 to create a state crime lab.

4 Instead of doing that, they promised Washoe and
5 Clark County that the crime labs would take care of the
6 rural counties at no cost. That was the agreement reached
7 with the legislature. Of course, I'm sure all those people
8 have left and there's no promise there. Because, as I
9 understand it now, they are now charging with regard to
10 doing the work.

11 MR. WILLIAMS: (Nods head.)

12 THE COURT: And it is being done upon their
13 schedule and their priorities in Washoe County. So the
14 Court system here is really at the mercy of what's happening
15 in Washoe County.

16 It would appear to me that it might be more
17 prudent if you can find an independent crime lab to have the
18 analysis done, to do it in a timely fashion, because you're
19 paying for it anyway.

20 And the other part of that and the concern that I
21 have is that, as these people come and go from the Washoe
22 Crime Lab and we schedule them for court, they always tell
23 us they're not available on the dates that we set for court.

24 And so what's happened, we really are at the mercy
25 of the crime lab. And I am informed that, in fact, they

1 made public announcements that, because of the backlog they
2 are doing, they are outsourcing the work that they're doing,
3 which tells me they're just sending it off to another lab
4 anyway, which makes no sense to me.

5 And so the problem here, and I just went through
6 this in Lander County where we went for, it had to be a
7 year, year and a half trying to get lab results of this
8 nature from the crime lab. And every time we scheduled
9 something, no one was available to come out.

10 And if they did, they were going to charge us
11 extra money to do everything. So I'm trying to tell you
12 that we've got a problem going on to have this done.

13 My understanding was, and I think at some point
14 defense counsel indicated that you also wanted to have
15 this -- your own expert with regard to these matters; is
16 that correct, sir?

17 MR. MOLEZZO: Oh, absolutely, Your Honor. The
18 weapon in question is a 1918 rifle. And the facts suggest
19 that an accidental discharge could have occurred. So it has
20 to be done, for me.

21 THE COURT: Okay.

22 MR. MOLEZZO: And the gentleman I'm looking at,
23 Your Honor, is in Sacramento. Of course, I'd have to make a
24 motion for funds. I will provide you with his curriculum
25 vitae. And the prosecution, I know, trusts me to do a

1 professional job.

2 But he's going to need this weapon and -- for
3 probably a couple of weeks. I'm just waiting for these
4 folks, who I work well with, but I need to get that gun.
5 That's my defense, a big part of it.

6 THE COURT: Sir, I'm sure what you're asking here.
7 I don't know it's the Court's problem or you as the
8 prosecutor, whose problem. I guess it's a problem for
9 everyone for scheduling.

10 But the point is, is that I don't want to be at
11 the mercy of someone, first of all, who is simply going to
12 say, we can't be available. We're charging you anyway.

13 Um, it appears to me that we need to -- you need
14 to explore some other possibilities to have this -- I don't
15 know what it is you're seeking to have done with the gun.
16 The operation of firearm to determine how it operates, and
17 as counsel indicates, whether it's capable of accidentally
18 discharging and the likelihood of that happening.

19 Because they have been -- from the very beginning
20 of this case, it centers around a defense, as I understand
21 it from the preliminary hearing transcript, of an accidental
22 discharge, as opposed to a crime with intent. That's how I
23 read the pleadings here.

24 MR. WILLIAMS: I tend to -- I agree with that,
25 Your Honor. I do think, and I'm confident that they will

1 have this gun done by the end of May. But, of course, that
2 doesn't give defense counsel enough time to take it to his
3 expert before trial. And that's the problem we're running
4 into here.

5 Based on what she's told us and the time frame
6 we've been told, our secretary -- our legal secretary has
7 had many communications with them to try to, you know, keep
8 them moving. That's the understanding we have is the gun
9 will be done by then.

10 But once again, we have the problem that defense
11 counsel doesn't have the opportunity at that point to have
12 it examined before trial, which clearly they have the right
13 to do.

14 THE COURT: Well, what you're both telling me is
15 that the trial date that we now have set cannot be met.

16 MR. MOLEZZO: That's correct, Your Honor.

17 MR. WILLIAMS: I would agree, Your Honor.

18 MR. MOLEZZO: It cannot be met. And may I suggest
19 to the Court, um, we do have a mutual, I think, time frame
20 to continue the trial, if you allow us to do that, we're
21 looking in September. And it shouldn't be this difficult.

22 And I know the prosecution works hard, but if I
23 can get a phone call in a month or so and the prosecution
24 says, "Rich, the weapon's ready." I'm on it. I'll send you
25 the motion for your signature, Your Honor, and we'll get it

1 to Sacramento. But it's just vital for this case that I
2 look at that weapon.

3 THE COURT: I understand.

4 MR. MOLEZZO: Yes, sir.

5 THE COURT: I understand your position, that it
6 has to be -- it certainly has to be, um, examined.

7 MR. MOLEZZO: And if I may, Your Honor, um, I just
8 want to share my thoughts with you. That's kind of why I
9 wanted to revisit this, the bail and the release dynamic in
10 this case. I mean this very respectfully, before I start
11 asking for sanctions, what would be a sanction, the weapon
12 can't come in, A, B, C, D, and E, I want to show good faith.

13 And so a September setting for a new trial, I'm
14 happy with. That's another three and a half months. But if
15 things don't get done, and I mean this as no disrespect for
16 the prosecution, if I can't get this weapon, I will start
17 filing the appropriate sanctions. I want this trial to take
18 place. I want to get it going, but I'm good for a
19 continuance until September, for what it's worth, Your
20 Honor.

21 THE COURT: Counselor?

22 MR. WILLIAMS: I think that September is the time
23 frame we're looking at, Your Honor. And I really don't see
24 how the State could object to putting it in September. I
25 think that's what we're going to have to do, Your Honor.

1 THE COURT: Okay. But I don't intend to get to
2 September and have somebody walk in and say, gee, we can't
3 be here and available. We haven't had time to examine it
4 and haven't had time to get it to the defense. That isn't
5 going to happen here.

6 MR. WILLIAMS: I understand, Your Honor.

7 THE COURT: I just went through that. And I'm not
8 going to do that anymore. So in some fashion or the other,
9 you're going to have to find somebody on behalf of the
10 State. And you certainly have the ability to do that, to
11 find somebody that you may have to hire to do that.

12 Since apparently they're doing it anyway at the
13 crime lab. I mean, outsourcing tells me -- and all I see in
14 the paper and read about what's happening with the crime
15 lab, it's the same thing. That they can't meet the
16 deadlines of the Court. You know, and they're not
17 available. And when we have a court date, they're saying,
18 well, if they have a trial in Washoe County and we have one
19 out here, guess who takes precedence?

20 MR. MOLEZZO: Yeah.

21 THE COURT: That's what's been going on here.

22 MR. MOLEZZO: Yeah.

23 THE COURT: So you're really in a position where,
24 on behalf of the State, I expect that you do some diligence
25 in finding some alternative with regard to Washoe County

1 Crime Lab. If they can't -- it's a funny thing, because
2 apparently people are being paid to do this, can do it.
3 Okay?

4 MR. MOLEZZO: Yes, sir.

5 MR. WILLIAMS: All right.

6 THE COURT: Well, um, I guess the first thing we
7 better do is deal with the trial date.

8 Is it by stipulation of counsel and with the
9 consent of the defendant that this matter be continued?

10 MR. MOLEZZO: So stipulated with consent, Your
11 Honor, yes.

12 THE COURT: Mr. Morton, do you understand what
13 your attorney is asking?

14 THE DEFENDANT: Yes, I do, Your Honor.

15 THE COURT: And are you in agreement that this
16 matter be delayed until September?

17 THE DEFENDANT: Yes, I am.

18 THE COURT: All right. And he's fully advised you
19 of the constitutional rights that you have to a speedy trial
20 and those various rights; is that correct, sir?

21 THE DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: Okay. Then the order of the Court is
23 that I am going to vacate the trial date and we are going to
24 set this. This will take a precedence over anything else
25 that I have in September.

1 Counselor, let's start with you as to your
2 two-week period of time that's best during the month of
3 September.

4 MR. MOLEZZO: Respectfully request, Your Honor,
5 September 20th. That is a Monday. And two weeks, I think,
6 would certainly be plenty of time.

7 THE COURT: So from the 20th through the 1st of
8 October?

9 MR. MOLEZZO: Yes, sir.

10 THE COURT: Either way, it's going to affect three
11 of my law and motion days.

12 MR. WILLIAMS: Your Honor, could the State request
13 to put it on the 27th? The week of the 22nd is the week of
14 the DA's association meeting. We will leave it to the Court
15 on that.

16 THE COURT: So you're asking from the 27th through
17 the 8th?

18 MR. WILLIAMS: Yes, Your Honor.

19 THE COURT: Counselor, can you live with that?

20 MR. MOLEZZO: Yes. Yes, Your Honor.

21 THE COURT: Okay. All right. Myself, I would
22 like to move it up, but --

23 MR. MOLEZZO: I would have no problem with --

24 THE COURT: How about the 13th?

25 MR. MOLEZZO: I can do that.

1 MR. WILLIAMS: Why don't we do the 13th, Your
2 Honor?

3 MR. MOLEZZO: I can do that.

4 THE COURT: That's better. Let's put the
5 13th through the 24th. All right. 9:00 a.m.

6 MR. MOLEZZO: Yes, sir.

7 THE COURT: 13th will be the beginning of the
8 trial. What I would like to do is to schedule a status
9 hearing earlier. I want to know ahead of time if we've got
10 a problem with any of the evidence.

11 I don't want to be two weeks before trial and
12 somebody come in, like we are and say, guess what, we've got
13 a problem here. So let's set this, um, in July for a
14 status.

15 MR. MOLEZZO: I'm liking that very much, Your
16 Honor. Thank you.

17 THE COURT: All right. Let's put it for the 19th.
18 Is that a date that you're available, sir? July 19th?

19 MR. MOLEZZO: Um, it is, Your Honor. Thank you.

20 THE COURT: All right. Miss Clerk, give us a
21 30-minute time.

22 THE COURT CLERK: 2:00.

23 THE COURT: 2:00 p.m. on July 19th will be a
24 status hearing. At that time, I will set a pretrial
25 conference date, which would be the date for any motions

1 that could delay the trial. And other than motions in
2 limine, those kind of things can be done at the day of
3 trial. But something that might delay the trial, any kind
4 of motions would be set on the future pretrial conference.
5 We don't have a date yet. When we get to the status
6 hearing, at that time, we will set that. If that's okay
7 with counsel?

8 MR. MOLEZZO: It is. And out of respect for
9 Humboldt County's budget, I would have no objection to doing
10 this on a phone call, unless you would like to see my
11 smiling face, Your Honor.

12 THE COURT: I want to see your smiling face.

13 MR. MOLEZZO: Outstanding.

14 THE COURT: It's important that you be here on
15 this kind of a case.

16 MR. MOLEZZO: I respect that very much, Your
17 Honor.

18 THE COURT: All right. Anything else we need to
19 do?

20 I'm ordering that the trial date be vacated at
21 this point of June -- beginning June 22nd. I'm sorry, June
22 the 14th through the 25th. I'm sorry.

23 Now, counselors. On behalf of the State, sir,
24 have you received a copy of the motion with regard to
25 release without bail?

1 MR. WILLIAMS: Thank you, Your Honor. The State
2 did receive a copy of it. We discussed it with Mr. Molezzo
3 over the phone and agreed, even though we didn't have time
4 to respond, he could go ahead and raise that issue today and
5 we would respond orally.

6 THE COURT: Okay. With regard to that, do you
7 have evidence or witnesses you wish to call, sir?

8 MR. MOLEZZO: I do and have. In brief, Your
9 Honor, Joyce Upshaw, please.

10 THE COURT: Okay.

11 MR. MOLEZZO: Or Scott.

12 THE COURT: Would you come forward, sir, and stand
13 before the clerk of the court? Please raise your right hand
14 to be sworn.

15 SCOTT UPSHAW,
16 Having been first duly sworn to tell the truth, the whole
17 truth, and nothing but the truth, was examined and testified
18 as follows:

19 THE WITNESS: I do.

20 THE COURT: Sir, would you please come and be
21 seated here in the witness stand?

22 Please pull up to the microphone. And after
23 you're pulled up to the microphone -- it doesn't work too
24 good -- would you please state your name for the record,
25 sir?

1 THE WITNESS: Scott Randall Upshaw.

2 THE COURT: And would you state -- or spell your
3 name for the court reporter?

4 THE WITNESS: S-c-o-t-t. Randall, R-a-n-d-a-l-l.
5 Upshaw, U-p-s-h-a-w.

6 THE COURT: You may proceed, sir.

7 MR. MOLEZZO: Thank you very much, Your Honor.

8 DIRECT EXAMINATION

9 (BY MR. MOLEZZO:)

10 Q. Mr. Upshaw, we're going to go through a few of the
11 dynamics necessary for the Court to hear in reference to
12 release or a reduced bail.

13 How long have you known this individual to my
14 left, please?

15 A. All my life, pretty much.

16 Q. And in a term of years, how long would that be?

17 A. Well, ever since I was 13.

18 Q. Yes, sir.

19 A. I've known David -- I'm 43 now.

20 Q. I'm sorry. Please?

21 A. I'm 43 now.

22 Q. And do you know Mr. Morton to reside primarily in
23 Winnemucca?

24 A. Yes.

25 Q. Winnemucca, Nevada?

1 And do you know any firsthand information in
2 reference to Mr. Morton's prior employment?
3 A. Uh, he used to work out at Turquoise Ridge, yes.
4 Q. And what is that, please, sir?
5 A. It's a mine, underground mine.
6 Q. And how long was he employed in that position; do
7 you recall?
8 A. Uh, I'm not really sure.
9 THE COURT: Is this a Newmont Mine, sir?
10 THE WITNESS: No. It's Barrick.
11 THE COURT: Oh, Barrick Mine. Okay.
12 (BY MR. MOLEZZO:)
13 Q. Have you had knowledge whether or not Mr. Morton
14 worked for the railroad system?
15 A. Yes, he did.
16 Q. And do you recall how long that was for?
17 A. For -- seemed like forever. So, no, I don't know
18 how many years.
19 Q. I think paramount to the Court respectfully is
20 Mr. Morton's reputation.
21 You understand you are under oath; is that right,
22 sir?
23 A. Yep.
24 Q. Can you share with the Court your personal
25 impressions with Mr. Morton, how he conducts himself and so

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forth?

A. Dave's awesome. I mean --

Q. Is he a nice person?

A. He is a very nice person. He's the type of guy that would do anything for you. I mean --

Q. Character traits, would you say he's aggressive? Non-aggressive?

A. Non-aggressive.

Q. Would you say he's more of a passive human being?

A. Very passive.

Q. Do you have any reason to question, if he is granted the release, whether he would come to court or not?

Does he seem to be an honest person to you?

A. Very.

Q. And you've indicated you've known him for quite some time?

A. Yes.

Q. Is that right?

A. Yes.

Q. And so you would qualify him as an acquaintance, a friend, or a very good friend?

A. A brother.

Q. A brother. Okay. Okay.

If he's allowed that freedom from custody, would he be allowed to stay with you?

1 A. You betcha. Yes.

2 Q. And, sir, do you have a home, a trailer, or an
3 apartment?

4 A. I have a home.

5 Q. And who is living in that home right now, sir?

6 A. Me and my daughter.

7 Q. And how old is your daughter, please?

8 A. Thirteen.

9 Q. And does she know Mr. Morton?

10 A. Yes, she does.

11 Q. In your opinion, what's her opinion of Mr. Morton?

12 A. She loves him.

13 Q. Now, in all candor, do you know of Mr. Morton
14 having a prior criminal record?

15 A. Uh, I've just heard about some domestic things is
16 all.

17 Q. Do you have knowledge whether or not Mr. Morton
18 has been arrested for a domestic battery?

19 A. Uh, kinda, yeah, by hearsay from him. I mean --

20 Q. Okay. We just want to get your impression. Did
21 you know the deceased in this case?

22 A. Yes, I did.

23 Q. Uh-huh. And was that Mr. Morton's wife?

24 A. Yes.

25 Q. Uh-huh. And not delving too deep, but was that

1 dynamic, in your opinion, very toxic?

2 MR. WILLIAMS: I'm going to object to that, Your
3 Honor. I don't know what the dynamic -- what relevance that
4 dynamic has to this hearing.

5 THE COURT: Well, you can restate your question,
6 sir. I don't know what you mean by "dynamic."

7 MR. MOLEZZO: Yes, sir. Thank you, Your Honor.

8 (BY MR. MOLEZZO:)

9 Q. Obviously, sir, you're aware that she's no longer
10 with us?

11 A. Correct.

12 Q. Do you have -- are you -- are you concerned at all
13 that if Mr. Morton is allowed his freedom of his personal
14 welfare, do you think he would do anything to harm himself?

15 A. No. I don't think so.

16 Q. Would you be able to aid him in the looking for
17 employment, sir?

18 A. Yes.

19 Q. In what way?

20 A. Uh, I could refer him to my job. And I would be
21 able to drive him around on my days off to find places to
22 work. I'd assist him in any possible thing I could, yes.

23 MR. MOLEZZO: I really have nothing further, Your
24 Honor. I certainly welcome the Court with any questions.
25 Nothing further.

1 THE COURT: Okay. On behalf of the State, sir?

2 MR. WILLIAMS: Thank you.

3 CROSS-EXAMINATION

4 (BY MR. WILLIAMS:)

5 Q. So as Mr. Morton's brother -- stepbrother, excuse
6 me, sorry, stepbrother, right?

7 A. Yes, correct.

8 Q. You know him pretty well?

9 A. Yes, I do.

10 Q. And since you know him well, you would know that
11 he has a problem with drinking alcohol too much?

12 A. Uh, I would agree with that, yes.

13 Q. After this happened between him and his wife, how
14 long afterwards did you speak to him?

15 A. I came and seen him like two weeks after.

16 Q. Okay. So you were probably aware that, when this
17 happened, that it put his mental state in a bad situation;
18 would you agree with that?

19 A. I -- yes, he was very devastated.

20 Q. Okay. And you're not a trained medical
21 professional, right?

22 A. No. But you can tell when somebody's hurt.

23 Q. Oh, okay.

24 And as not being trained as a professional, you
25 wouldn't be able to offer an opinion as to his mental state

1 then, right?

2 A. That's right. Yeah, I'm not a trained medical
3 professional.

4 Q. Thank you.

5 Was Mr. Morton working at the time this happened,
6 in August?

7 A. Um, he had a side job he was working, yes.

8 Q. How about full-time employment, was he employed
9 full-time?

10 A. Uh, no.

11 MR. WILLIAMS: That's all the questions I have,
12 Your Honor.

13 THE COURT: Okay. Any follow-up on those
14 questions?

15 REDIRECT EXAMINATION

16 (BY MR. MOLEZZO:)

17 Q. Have you had an opportunity to visit with
18 Mr. Morton since he's been in custody, sir?

19 A. I've seen Dave like three times since he's been in
20 there.

21 Q. Uh-huh. And in the jail setting; is that right?

22 A. In the jail setting, yeah.

23 Q. Uh-huh. And you've had an opportunity to speak to
24 him and talk to him?

25 A. Yes.

1 Q. Based upon your layman's opinion, how does he
2 appear now?

3 A. Well, he appears to be fine for a little while
4 until it starts getting time to go and then he gets a little
5 sad. And he knows that everybody's hurt over this.

6 Q. Uh-huh.

7 A. It's -- I think he'd be better off outside than
8 inside, because being caged up is not helping.

9 MR. MOLEZZO: I have nothing further, Your Honor.

10 MR. WILLIAMS: Nothing on that, Your Honor. Thank
11 you.

12 THE COURT: You may step down.

13 THE WITNESS: Thank you.

14 MR. MOLEZZO: I have no further witnesses. I will
15 qualify for the Court individuals here, Your Honor. I'm not
16 going to ask them questions. For the record, Beverly Upshaw
17 is here.

18 Miss Upshaw, will you stand up, please? This is
19 Mr. Morton's mother. Thank you.

20 And also for the record, Royce Upshaw is also
21 here, his stepfather.

22 Sir, can you stand up?

23 And again, that's just to identify for the record,
24 Your Honor. And as an advocate, I can share with you both
25 of these folks would take him if he was out of custody. I

1 have no further witnesses.

2 THE COURT: Okay. Do you have any evidence, sir?

3 MR. WILLIAMS: The State has no evidence at this
4 time, Your Honor. Thank you.

5 THE COURT: With regard to the preliminary hearing
6 transcript, is that something to be before the Court or not
7 in its determination of the matter before the Court?

8 MR. WILLIAMS: The State would ask the Court
9 considers that, Your Honor. I apologize. I thought that
10 would be part of the record, but we would ask --

11 THE COURT: Not automatically.

12 MR. WILLIAMS: Okay.

13 THE COURT: The Court can take judicial notice of
14 that on request of counsel.

15 MR. WILLIAMS: We would ask the Court take
16 judicial notice of that at this time and consider it as part
17 of the record for this hearing.

18 THE COURT: Do you agree, sir?

19 MR. MOLEZZO: Sir, I have no problem with that,
20 yes.

21 THE COURT: Sir, the Court would take judicial
22 notice of that. I have read that as of this morning. So I
23 am familiar with the contents of that.

24 MR. MOLEZZO: Okay.

25 THE COURT: So, sir, this is your motion.

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MR. MOLEZZO: Yes.

THE COURT: You may argue the motion.

MR. MOLEZZO: Thank you very much, Your Honor. In reference to the facts of this case and this Court is aware that every case must stand on its own facts, particularized facts. I think the main thrust here is to not look at the bail as a punishment-type dynamic. And we know from the founding fathers to present that bail should be afforded, absent a capital case. This is not a capital case.

And with due respect to the Court, Your Honor, it's my opinion that most Judges look at the following, the nature of the offense, and specifically, the possible harm to the community if a person is released; and of course, to the victim. In this case, there is no longer a victim.

In reference to the community, through my investigations with Investigator Grate, talking to family members, he is an extremely passive human being. I, as an officer of the Court can tell you, I've spoken in prep for trial to probably six or seven individuals who knew both of these folks when they were married. And across the board, and I share that with you in the motion, Your Honor, Mr. Morton is a very passive individual.

If the court does grant his release, clearly there needs to be an alcohol clause, without question. There is an alcohol issue with Mr. Morton.

1 Again, his prior criminal history may be one
2 domestic battery, misdemeanor conviction. As well as with
3 respect to the deceased, I believe she had that as well.

4 In reference to the strengths of the State's case,
5 Your Honor, not to sound arrogant, but the way it's charged
6 right now doesn't cause me, as a defense lawyer, any grief
7 whatsoever. I'm pretty confident -- I'm very confident, not
8 only in my skill, but in the facts of this case, that this
9 is not going to go down as a premeditated murder once it's
10 presented to the jury.

11 And I'm pretty forthcoming with the prosecution.
12 I work well with these folks here in Winnemucca. I work
13 well with this honorable Court, but I absolutely do not see
14 that as the case here.

15 THE COURT: Let me ask you about that, sir.

16 MR. MOLEZZO: Yes, sir.

17 THE COURT: Other than the defendant's own
18 statements, which could be considered self-serving
19 statements about what happened --

20 MR. MOLEZZO: Yes, sir.

21 THE COURT: -- do you have any other evidence that
22 would indicate that this was indeed an accidental event, as
23 you've indicated, as opposed to the evidence that's within
24 the preliminary hearing transcript in which the son of the
25 defendant heard certain things happening and heard his

1 mother and so forth and apparently was almost immediately
2 there.

3 MR. MOLEZZO: Uh-huh.

4 THE COURT: Other than the defendant's own
5 statements --

6 MR. MOLEZZO: Uh-huh.

7 THE COURT: -- of what occurred, are there any
8 other evidence that you can point to?

9 MR. MOLEZZO: That's an excellent question, Your
10 Honor. I will have it, you can be assured of that. I did
11 do a crime scene review. I went to the home. I can just
12 offer this to you, without the testimony --

13 THE COURT: I don't want you to have to divulge
14 your evidentiary things. But at this point one of the
15 considerations under the statute, 178.4853 says, the nature
16 of the offense with which the person is charged, the
17 apparent probability of conviction and the likely sentence,
18 insofar as these factors relate to the risk of not
19 appearing. So that's one of the factors that I have to look
20 at.

21 MR. MOLEZZO: Yeah. And that's a serious factor,
22 Your Honor. In reference to this case, I think -- in fact,
23 I'm certain the prosecution agrees, it seems to me that, in
24 looking at the facts here, the discharge of the weapon, the
25 weapon was around this area (indicating), around here

1 (indicating), and would show that it wasn't an aiming-type
2 situation.

3 The area of the home where the weapon went off,
4 again, this is a 1918 rifle, was a small area by the
5 bathroom. Other than the age of the firearm, which I need
6 to have tested, I'm strong on the accidental shooting
7 defense in this case.

8 THE COURT: I understand. But the evidence would
9 appear to point to a woman sitting on the toilet being shot
10 to death. Is that what your understanding --

11 MR. MOLEZZO: That's my understanding, Your Honor.

12 THE COURT: Okay.

13 MR. MOLEZZO: And thank you --

14 THE COURT: And that your client was the one
15 holding the weapon shortly after she was shot.

16 MR. MOLEZZO: That is my understanding, sir.

17 THE COURT: Okay.

18 MR. MOLEZZO: I have no forensic evidence to offer
19 you at this time.

20 THE COURT: All right.

21 MR. MOLEZZO: To qualify where the bullet entered
22 and so forth that may show accidental lack of aim, et
23 cetera.

24 THE COURT: Well, and in dealing with that, here's
25 the concern that I have is, is that, at least within the

1 preliminary hearing transcript, um, we have Mr. Robert James
2 Morton who testified, "My mom screamed 'Help me. He's
3 hurting me.'" And that's when he ran up the stairs and so
4 forth.

5 MR. MOLEZZO: Uh, in reference to that statement,
6 Your Honor, I think it's fair that Mr. Robert Morton wasn't
7 there during the time of the event, though soon after, but I
8 have nothing to offer as to why those statements were made,
9 if indeed they were made by the deceased in this case.

10 THE COURT: Okay. All right. Well --

11 MR. MOLEZZO: In reference --

12 THE COURT: I understand --

13 MR. MOLEZZO: Yes, sir.

14 THE COURT: I understand your position with regard
15 to this is that you're saying this was accidental, because
16 at the time apparently your client made statements to law
17 enforcement after, at least according to this preliminary
18 hearing transcript, made statements to law enforcement
19 indicating that he didn't intend to shoot her. That it was
20 accidental in nature.

21 But the circumstantial evidence in this case,
22 what's presented at prelim, of course, a preliminary hearing
23 is generally only the State's side of that. I don't know of
24 any other evidence that I can consider here. You're telling
25 me you hope to be able to develop certain information --

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MR. MOLEZZO: Right.

THE COURT: -- that will bolster your claim?

MR. MOLEZZO: Right.

THE COURT: But other than that, I'm just trying to find out if there's something that now exists that you know of, other than what's in the preliminary hearing transcript as far as the difference between whether this was an accidental shooting or indeed a premeditated-type of an act?

MR. MOLEZZO: There is none at this time.

THE COURT: Okay.

MR. MOLEZZO: The two boys, if you will, Robert and Chad, I cannot locate them, Your Honor, at this time. So I could not delve into that.

But in looking at that prong, the serious nature of the offense, the Court must rely on the prelim. I have nothing to explain it better than what the prelim tells us.

THE COURT: Okay.

MR. MOLEZZO: And I'm just using the term prong. That's probably a very serious prong with the Court.

THE COURT: Well, when somebody's dead and been shot at the hands of someone else, I'm assuming that's a pretty serious offense.

MR. MOLEZZO: That's a pretty serious offense, Your Honor. That is true.

1 His lack of criminal history, I think, should
2 carry some merit. There's a presumption of innocence, the
3 classic, that should carry merit as well.

4 THE COURT: It does, sir.

5 MR. MOLEZZO: I know it does in this court, most
6 courts, Your Honor, respect that. He does have a place to
7 stay. I hate to say it, please don't be offended, but
8 there's no longer a victim.

9 THE COURT: I wouldn't say there's -- there's no
10 longer a live victim.

11 MR. MOLEZZO: There's no longer a live victim.
12 And in my investigation with the community, he's a very
13 passive human being.

14 THE COURT: Doesn't the evidence point to a very
15 volatile relationship between these two people?

16 MR. MOLEZZO: Pretty dramatically, yes. You bet.
17 Both folks, may she rest in peace, but both of them consumed
18 a lot of alcohol. Her sons even verify the deceased was --
19 uh, took a lot of medication. Doctor shopping, et cetera.

20 THE COURT: His testimony was that your client's
21 the one who generally instigated the battles here between
22 them. Do you agree that's what it says, his testimony?

23 MR. MOLEZZO: The Robert Morton, Your Honor?

24 THE COURT: Yes, sir.

25 MR. MOLEZZO: Yeah. Well, of course. You know,

1 that's -- yes.

2 THE COURT: I understand that.

3 MR. MOLEZZO: Yes.

4 THE COURT: But that's part of the evidence?

5 MR. MOLEZZO: That's part of the evidence.

6 THE COURT: And your witness counters that and
7 says that he's a peace-loving person or a more peaceable
8 person, not an aggressive person?

9 MR. MOLEZZO: Yes, sir.

10 THE COURT: So there's a difference of opinion or
11 evidence with regard to that matter?

12 MR. MOLEZZO: Yes, sir. There is, Your Honor.

13 THE COURT: Okay.

14 MR. MOLEZZO: And again, the Court's read my
15 pleading. That's really all I have to share with the Court
16 at this time.

17 THE COURT: Okay.

18 MR. MOLEZZO: I have no independent evidence or
19 analysis to present at this time. And the Court also is
20 aware, respectfully, that the preliminary hearing is really
21 the bailiwick of the prosecution.

22 THE COURT: It is.

23 MR. MOLEZZO: And law enforcement. So I really
24 can't expound too much at that stage in the proceedings.
25 With that, I'll submit it to you, Judge. Thank you.

1 THE COURT: Thank you, sir.

2 Counsel?

3 MR. WILLIAMS: Thank you, Your Honor. Your Honor,
4 the State opposes the defendant's motion to be released
5 without bail in this case. We feel that this is a serious
6 crime. Um, the Court went through at length some of the
7 evidence in this case with the defense.

8 We believe and strongly disagree with defense
9 counsel's representation of the State's case here. We
10 believe that we do have a strong case, and we can prove what
11 has been charged in the information.

12 We proved that the testimony at the preliminary
13 hearing, from our victim's son and the defendant's son, um,
14 indicates, based on his testimony, that premeditation can be
15 proven in this case. We also believe that, once the
16 forensic evidence comes back, that it will support that
17 theory.

18 And so, for that reason, Your Honor, we believe
19 that our case is strong here. And that is one of the
20 considerations the Court has here.

21 THE COURT: Let me ask you this question. On
22 behalf of the State, apparently there are allegations within
23 the preliminary hearing with regard to statements of the
24 deceased made to law enforcement prior to her passing away.
25 Is that your understanding?

1 MR. WILLIAMS: That is my understanding, Your
2 Honor.

3 THE COURT: How does that ever get into court?

4 MR. WILLIAMS: Well, Your Honor, my plan is to --
5 our plan is to try to introduce those as either a dying
6 declaration or a present sense impression about what
7 happened, Your Honor. And, obviously, that's something
8 we're going to have to litigate.

9 THE COURT: You may have an uphill battle with
10 that. You understand?

11 MR. WILLIAMS: We may have an uphill battle, Your
12 Honor. I definitely agree with the Court on that. But I do
13 think that the statements she made at the time that it
14 happened to her son, while he's there trying to help her,
15 standing over her, directly after she's shot --

16 THE COURT: I understand. That's a different
17 issue. But with regard to the Court and determining -- now,
18 during bail hearings Chapter -- or Title 4 specifically says
19 that our rules of evidence do not apply during bail
20 hearings.

21 So the things that have to do with hearsay and
22 other things do not apply under Title 4. And it's one of
23 the first sections of that provision of our evidence code,
24 but it still has to be evidence which is not highly
25 impalpable, as I understand the standard to be.

1 MR. WILLIAMS: That's my understanding as well,
2 Your Honor.

3 THE COURT: Okay. So with regards to that, I
4 guess I'm putting you through the same thing I did with
5 counsel, and that is, pointing to the weaknesses of your
6 case with regard to this matter that would create a problem
7 evidentiary-wise as to showing the seriousness of this case
8 and some of the evidence that may not result in a
9 probability of conviction based upon the evidence.

10 MR. WILLIAMS: I can appreciate that, Your Honor.
11 I would also --

12 THE COURT: He says he can -- he can -- he can
13 make sure that he wins on his side. You're telling me the
14 same thing.

15 MR. WILLIAMS: That's correct, Your Honor.

16 THE COURT: Okay.

17 MR. WILLIAMS: That's part of our job as
18 attorneys, so --

19 THE COURT: And my job is to question both of you
20 to make sure that you understand that you have weaknesses in
21 both of your cases --

22 MR. WILLIAMS: Uh-huh.

23 THE COURT: -- with regard to this matter.

24 MR. WILLIAMS: Uh-huh. Well --

25 THE COURT: Because we're talking about

1 probability of conviction here.

2 MR. WILLIAMS: The State can certainly appreciate
3 that, Your Honor.

4 THE COURT: Okay.

5 MR. WILLIAMS: The other thing is --

6 THE COURT: Let me go --

7 MR. WILLIAMS: Sorry. Go ahead, Your Honor.

8 THE COURT: -- as we go through the factors,
9 they're statutorily listed --

10 MR. WILLIAMS: Yes.

11 THE COURT: -- under 178.4853.

12 MR. WILLIAMS: I have that open as well.

13 THE COURT: It says, "In deciding whether there's
14 good cause to release a person without bail, the Court, as a
15 minimum, shall consider the following factors." That's not
16 an all-inclusive list, but it sets forth the factors that a
17 Judge must determine in making a determination.

18 As I go through that list, length of residence in
19 the community. That's a positive for the defendant.

20 Status and history of employment. That's a
21 positive on his behalf.

22 Relationship with person's spouse and children.
23 That's not good.

24 But he has apparently other people that he has
25 close, personal ties with in the community, which is one of

1 the factors.

2 Reputation, character, and mental condition. One
3 of the concerns that I have here, frankly, there's very
4 little evidence about the defendant's mental condition, but
5 what I have noticed today here in court is that he is
6 somewhat fragile at times with regard to his mental
7 condition, which has some concern for me.

8 I have no evidence, other than watching him here
9 in court being emotionally, um, as he probably should be,
10 attached to this case, but still that's an issue that I have
11 to deal with.

12 Prior criminal record. When we deal with domestic
13 violence, the State is alleging that this particular case is
14 a result of domestic violence.

15 The defendant certainly has at least a minor
16 history with regard to domestic violence. That mitigates
17 against the defendant in this particular matter.

18 The nature of the offense is very serious. We're
19 talking about a homicide charge here. And the probability
20 of conviction, I have tried to go through that and weigh
21 that in my mind. As I've indicated to counsel on both
22 sides, I think there is issues on both sides of this that
23 work against both of you.

24 The nature and seriousness of the danger to the
25 alleged victim. That can't be considered, because the

1 victim is deceased.

2 The question is, does he present a risk to the
3 community with regard to other future activity and criminal
4 activity from him?

5 Um, and finally, any other factors concerning the
6 person's ties to the community or bearing on the risk that
7 person may willfully fail to appear.

8 As counsel points out, bail is not for the purpose
9 of punishment. It is to insure his appearance. And these
10 are the factors that a Court, minimally, has to determine.

11 Now, you can finish up arguing, and then I'll hear
12 from counsel, his final argument.

13 MR. WILLIAMS: Thank you, Your Honor. You saved
14 me the time of going through all of them. I was going to go
15 through all of them, but I think that what the State's
16 saying here, Your Honor, in all seriousness is, we oppose a
17 release without bail. This isn't a capital case, and so we
18 understand bail can be set.

19 We ask, if the Court sets bail here, we think
20 that's the appropriate way to go, that it be an appropriate
21 number for the seriousness of the case, the nature of the
22 case, and take into consideration all the factors we've just
23 talked about.

24 We feel -- the State feels they can prevail at
25 trial. And we also feel that the defendant should not be

1 released without bail. And we'll submit it to the Court.
2 Thank you.

3 THE COURT: Thank you, sir.

4 Counsel, you get the final word.

5 MR. MOLEZZO: Thank you, Your Honor. In reference
6 to the custody issue, the lack of criminal history, I think,
7 should seriously carry merit here. Also that he has a place
8 to stay.

9 And of import, and I believe respectfully,
10 Humboldt County has this in place, we have court services
11 supervision or some kind of a monitoring device.

12 And to keep it on the simplest form for my mental
13 consumption, Your Honor, is that I don't see a risk to the
14 community if he is released. My investigation tells me that
15 the drama in his life was with his spouse.

16 He has a place to go. Uh, court services can
17 monitor. There's an alcohol issue that needs to be
18 addressed. It allows counsel to have better access to him
19 to prepare for his defense.

20 I will go so far as to say, when this case goes to
21 trial, do I think a straight acquittal is going to occur?
22 No. Do I think there will be a lesser included, that I will
23 prevail? You bet.

24 But with that, if we have the monitoring, the lack
25 of history, even though it's a very dramatic type of

1 offense, I respect that very much, Your Honor. Family
2 members here to support, a passive individual, at least
3 through my investigation and witness interviews. What does
4 it hurt to let him out? That's, I think, the thrust. I
5 mean, if I was a jurist, that's what -- who is it hurting?

6 Now, we may be bending policy. And it may not
7 bode well, for whatever reasons. But there is a crime here,
8 there is a victim here, she's no longer with us. The family
9 members will take, um -- (verbatim). And so we do have a
10 monitoring dynamic we can pursue with the alcohol, Your
11 Honor.

12 And you can see, and you made a very good point,
13 and maybe I need to supplement this down the road, Your
14 Honor, with a psycho evaluation, but he is a broken man.
15 Now in my conversations with him, I'm not getting a sense of
16 suicidal ideologies. I wish I could end it. I'm not
17 getting this from my client.

18 THE COURT: That was a part of the preliminary
19 hearing.

20 MR. MOLEZZO: Yes. Yes. But I'm not getting that
21 now. I did staff that with his family. They're not sensing
22 that either. It's just major grief.

23 So I'll submit it to you at this point, Your
24 Honor. I think I've met the foundation for release
25 respectfully. And with that, I'll submit it. Thank you.

1 THE COURT: Well, as you've indicated, the
2 Constitution requires that reasonable bail be set. In a
3 case like this, particularly where there is some history of
4 domestic violence, and this is a case about domestic
5 violence, I have to consider that one of the primary
6 factors. I'm setting bail at \$400,000. That's as good as
7 it gets for this kind of a case.

8 It would be inappropriate, as far as I'm
9 concerned, considering all the factors -- and I have
10 considered the factors that I have given to you here. And
11 that is, the seriousness of that. I think that he faces
12 certainly, um, a -- an uphill battle with regard to him
13 holding the gun shortly after she was shot, statements by
14 her at the time, that he was hurting her at the time, and
15 other things would mitigate that there would be some type of
16 charge in this case that the State can certainly maintain.

17 As to whether or not that's first degree, sir, I
18 agree with you, there may be some questions there. And
19 certainly, um, the defense that you are raising and continue
20 to raise is certainly very valid based upon the evidence
21 that I have seen in the preliminary hearing transcript.

22 But the bottom line is, is that the question is
23 who should bear the risk in this community in this case
24 where someone is now dead and as a result of this situation?

25 And the evidence from the preliminary hearing

1 transcript would indicate that he was the primary aggressor
2 in most of the cases. That's the evidence in front of me.
3 And so for those reasons, you will prepare an order on
4 behalf of the State that I have set --

5 MR. WILLIAMS: I will, Your Honor.

6 THE COURT: -- that I have set bail in that amount
7 and the reasons I have provided in that order?

8 The defendant's going to be remanded back to the
9 custody of the sheriff until the next hearing in this
10 matter.

11 And if counsel can at some point expedite the
12 matters with regard to the laboratory, I will be happy to
13 assist if I can. I don't know what I can do there, but I
14 think you need to, not only go put all your eggs in one
15 basket with regard to the Washoe County Crime Lab, you need
16 to be looking elsewhere to see if you can get these services
17 done that need to be done for this case.

18 MR. MOLEZZO: Your Honor, thank you very much. On
19 the weapon, I know the prosecution will certainly call me
20 and let me know when it's available for defense.

21 MR. WILLIAMS: We will.

22 MR. MOLEZZO: Sure. When that occurs, Your Honor,
23 I will draft for you an order to release in a motion so you
24 know what expert it's going to go to. So I just wanted to
25 share that with you.

1 THE COURT: Let's make sure how that process is
2 going to work.

3 MR. MOLEZZO: Right.

4 THE COURT: In order to maintain a chain of
5 custody, how do you propose that a proper chain of custody
6 be maintained on the weapon into the laboratory? Normally,
7 I would suggest that law enforcement would have to transport
8 and return that.

9 MR. WILLIAMS: That's what I was thinking, Your
10 Honor --

11 THE COURT: That's what I'm thinking too, sir.

12 MR. WILLIAMS: -- that we're going to have to have
13 law enforcement.

14 THE COURT: Because whoever is in that chain of
15 custody then becomes a witness here in court.

16 MR. WILLIAMS: We'll discuss that with law
17 enforcement once we get it back and make sure we have that
18 ready to go.

19 THE COURT: Okay.

20 MR. MOLEZZO: And Investigator Grate, in prior
21 cases said he's picked up the weapon as well, but he's hired
22 by the defense, isn't he?

23 THE COURT: He is.

24 MR. MOLEZZO: But the expert I'm looking at in
25 Sacramento, and I'll supplement everything that you need --

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MR. WILLIAMS: Yeah.

MR. MOLEZZO: -- in Sacramento has some type of special license where he can get a weapon. I think he's former FBI, but I will provide you with all that.

THE COURT: Okay.

MR. MOLEZZO: Just to -- I want to clarify so we can get moving as soon as I get access to that gun.

THE COURT: I agree.

MR. MOLEZZO: Thank you, Judge.

THE COURT: Counselor, before you leave, I need to see you in chambers. You have some ex parte motion for some fees?

MR. MOLEZZO: Yes, sir.

THE COURT: If it doesn't deal with the State, you have a right to deal with those on an ex parte basis with me.

MR. MOLEZZO: Yes, sir.

THE COURT: Like to have discussion with you about investigative fees and those kinds of things.

MR. MOLEZZO: You bet.

THE COURT: Do you have any problem with that?

MR. MOLEZZO: No, sir.

THE COURT: Do you have any objection to that, sir?

MR. WILLIAMS: No, sir.

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THE COURT: All right. That will be the order of
the Court. We will be in recess in this matter.

(Whereupon, a recess was had.)

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STATE OF NEVADA)

) ss.

COUNTY OF HUMBOLDT)

I, ZOIE M. WILLIAMS, official court reporter of
the State of Nevada, in and for the County of
Humboldt, do hereby certify that I was present during
all the proceedings had in the matter of the STATE OF
NEVADA, plaintiff, vs. DAVID CRAIG MORTON, defendant,
heard at Winnemucca, Nevada, on May 17, 2010, and took
verbatim stenotype notes thereof; and that the
foregoing pages contain a full, true and correct
transcription to the best of my ability, by my
stenotype notes so taken, and a full, true and correct
copy of all proceedings had.

Zoie Williams
Zoie Williams, CCR 540, RPR, CCP, CRR, RMR
Official Court Reporter

Case No. CR-09-5709

Department I

FILED

2010 AUG 23 AM 8:56

TAMI RAE SPERO
DIST. COURT CLERK

C. Smock

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF HUMBOLDT

ooOoo

THE STATE OF NEVADA,

Plaintiff,

v.

DAVID CRAIG MORTON,

Defendant.

PRETRIAL CONFERENCE

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter
came on for hearing on August 16, 2010, before the
HONORABLE RICHARD A. WAGNER, District Court Judge.

The State was present in court and represented by
Russell Smith, Humboldt County District Attorney.

The Defendant was present in court and
represented by Richard A. Molezzo, Attorney at Law.

The Division of Parole and Probation was present
in court and represented by Debbie Okuma.

Zoie Williams, CRR, RMR, RDR
775-623-6358

1
2 Winnemucca, Nevada, Monday, August 16, 2010

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5 P R O C E E D I N G S

6 THE COURT: Court will come to order, please.
7 This is case number CR-09-5709. This is entitled State of
8 Nevada, plaintiff, vs. David C. Morton, defendant.

9 The record should reflect the presence of the
10 defendant, together with his attorney, Mr. Richard Molezzo.

11 Mr. Russell Smith, district attorney, is here on
12 behalf of the State.

13 The Court would note that this matter is set to go
14 to trial beginning the 13th of September, 2010. And that
15 this is the pretrial with regard to that, the last day to
16 carry out any plea negotiations or to file motions which
17 could delay the trial.

18 With regard to the trial date, are we confirming
19 that as a -- proceeding with the trial in this matter?

20 MR. MOLEZZO: At this point we are, Your Honor.

21 THE COURT: Okay.

22 MR. MOLEZZO: And pursuant to statutory authority,
23 the motion deadline I have is September 3rd, 2010. I will
24 be drafting responses to the two motions that I have
25 received so far. I don't think they will prolong anything.

1 And thank you for having this hearing.

2 But my responses are due on 9-3-2010. The reply
3 for the prosecution may be verbal or written, as the Court
4 knows. But we may want to have an argument date before the
5 trial.

6 THE COURT: Yeah, I intend to set a hearing date
7 on motions.

8 MR. MOLEZZO: Definitely.

9 THE COURT: And the other thing I'm concerned with
10 is, is that it takes at least two weeks to serve the jury.
11 So I'm going to have to put an order in place with regard to
12 the number of jurors and make a selection so that we get
13 that in place.

14 Miss Clerk, when will you need to be sending those
15 out, the certified service on that?

16 THE COURT CLERK: August 30th.

17 THE COURT: So by August 30th they're going to
18 have to be sending out those summonses to the jurors.

19 MR. SMITH: If there is any --

20 THE COURT: And the reason for that is because
21 what happens, because the certified mail, people are
22 well-trained not to pick those up. So we sometimes have to
23 have those people served personally that do not pick up
24 their certified mail. It seems to be a part of the jury
25 pool.

1 MR. MOLEZZO: Yes, sir. Um, if I may, in
2 reference to my responses, Your Honor, the only goals that I
3 have, and the motions I've received from the district
4 attorney right now I understand completely, but my responses
5 are going to come about through sanitization. I'm not going
6 to really come out with a 30- or 40-page reply or response.

7 Without going into detail, the motions right now
8 are in reference to dying declarations.

9 THE COURT: Yeah, there's motions in limine that
10 have various evidentiary issues, both positively and
11 negatively, as I understand it.

12 MR. MOLEZZO: Yes.

13 THE COURT: And that is, they're asking for a
14 motion in limine to be allowed to introduce into evidence
15 certain things. Most of those motions, as I recall, are
16 with regard to my ruling in advance on evidentiary issues.

17 MR. MOLEZZO: That's -- that's fine. And again, I
18 will not leave you hanging, Your Honor. I will draft
19 replies. And one reply may be we'll just submit it, but I'd
20 certainly want to say some things on the record prior to the
21 trial, of course, for evidentiary issues.

22 And I'll share this with Mr. Smith, we're not
23 disputing the fact that she was shot. So some of those
24 arguments in your motion may be superfluous.

25 So I'd be willing to stipulate to certain issues,

1 if I can have a dialogue with you, Mr. Smith, in the next
2 couple, two or three weeks. I just want to get you on the
3 playing field of my thoughts, Your Honor.

4 THE COURT: All right.

5 MR. MOLEZZO: Motions in limine will be filed by
6 me. They won't delay anything. If I may suggest the
7 following, with the 9-3-2010 deadline statutorily for me, in
8 theory, I'm looking at September 6th.

9 THE COURT: Which is a holiday.

10 MR. MOLEZZO: Not for me.

11 THE COURT: I won't be here.

12 MR. MOLEZZO: I'm looking at September 7th, 8th,
13 9th.

14 THE COURT: The 8th, I will be here with a law and
15 motion day. How does that look if we take perhaps an hour
16 or two on that day?

17 MR. SMITH: That will work, Your Honor.

18 THE COURT: The 8th, counselor, does that work for
19 you?

20 MR. MOLEZZO: Absolutely, it works for me.

21 THE COURT: Gentlemen, I'm looking at 2:45 on the
22 8th of September. I've got quite a few cases, but we will
23 have time in there to do it then. 2:45?

24 MR. SMITH: That works for me, Your Honor.

25 THE COURT: Why are you looking at me like that,

1 counselor?

2 MR. MOLEZZO: I apologize, Judge. First of all,
3 as the Court is aware, I like to talk, and this is a very
4 serious case.

5 THE COURT: All right.

6 MR. MOLEZZO: I just think, you know, there may be
7 four or five or six big issues we --

8 THE COURT: How much time? Tell me how much time
9 you need.

10 MR. MOLEZZO: Yes, sir. Thank you. Well, I don't
11 mind working late. So 2:45, but I just don't want to feel
12 rushed on it. I'm sure there's going to be a couple hours.
13 It is my gut feeling, because this case is so serious, I
14 won't rush it, probably we could be done by five if we get
15 started at 2:45.

16 THE COURT: Okay. What we're going to have to do,
17 we're going to have to move some other cases then.

18 MR. MOLEZZO: I apologize, but I want to be up
19 front with you, Your Honor.

20 THE COURT: It's okay. I want to make sure --
21 what other law and motion days do we have?

22 MR. SMITH: Now that the Court is looking at the
23 calendar, well, the main officer that we're going to need in
24 any of the arguments on these motions is going to not be
25 available from August 27th through September 7th.

1 THE COURT: So he's available on the 8th and the
2 9th though?

3 MR. SMITH: Yes. Absolutely.

4 MR. MOLEZZO: I'm certainly available on the
5 9th all day, Your Honor.

6 THE COURT: Well, let's do this. Instead of
7 putting it on the 8th, let's put it at 1:30 on the 9th.

8 MR. MOLEZZO: That sounds great.

9 THE COURT: I have a death penalty case under
10 review on the 9th in the morning, which I think is a
11 resentencing. That should be enough time to do that.

12 MR. MOLEZZO: Yes, sir, it should be.

13 THE COURT: Okay. Let's do it at 1:30 then on the
14 9th.

15 Okay. Well, what I need to do is I need to go
16 forward with a jury panel.

17 MR. MOLEZZO: Absolutely.

18 THE COURT: And I'm trying to figure out the
19 number that we're going to need. Miss Clerk, is it 80 or
20 90? What do you think?

21 You each have eight peremptory challenges. So we
22 have 16 and 12.

23 MR. SMITH: I prefer to go with the 90, Your
24 Honor.

25 THE COURT: Yeah, let's go with 90 potential

1 jurors.

2 MR. MOLEZZO: Yes, sir.

3 THE COURT: What numbers have not been used for
4 the computer?

5 THE COURT CLERK: Five.

6 THE COURT: Five has not been used?

7 THE COURT CLERK: It's been used but a long time
8 ago.

9 THE COURT: Okay. I'm selecting the number 5 to
10 go into the computer to select those names randomly
11 assigned, number 5 for potential jurors, the first 90 of
12 those.

13 With regard to that, I think we're also going to
14 have two alternate jurors in this case.

15 MR. MOLEZZO: Yes, sir.

16 THE COURT: And I don't know that we have enough
17 room to do the Arizona method.

18 Do you have any problem with the traditional
19 method of jury selection?

20 MR. MOLEZZO: No, sir. I'll educate myself. I'm
21 just used to the Arizona, but I'll be ready.

22 THE COURT: Okay. If we do that, we'll have to
23 set up enough for --

24 MR. MOLEZZO: That's fine, Your Honor. I've done
25 the original -- traditional before.

1 THE COURT: All right. Let's see. Are there any
2 other outstanding motions that we have now besides the
3 motion in limine from the State? I have reviewed that.

4 You're going to get an answer to that, we will
5 have a hearing on it. What else do we have?

6 In terms of discovery, have you exchanged with
7 regard to the weapon and all those things?

8 MR. SMITH: Yes.

9 THE COURT: Has that been dealt with?

10 MR. SMITH: At this point, Your Honor, Mr. Molezzo
11 is waiting for his expert to tell him that he's done with
12 the weapon. As soon as he gets that communication, he will
13 communicate with us. We will send the officer back over to
14 pick the weapon back up. He will share that documentation
15 of what the findings are.

16 Mr. Molezzo came over to our office a couple weeks
17 ago and went through our file to make sure he had everything
18 that we have.

19 At that point, it was my understanding that you
20 have everything that we have?

21 MR. MOLEZZO: I have everything. I did receive
22 some disks in reference to photographs.

23 MR. SMITH: Okay.

24 MR. MOLEZZO: And I'm just gonna tell the Court,
25 in communication with your office, hopefully, you folks make

1 copies. If I have to, it's going to be a Humboldt bill of
2 over 400.

3 MR. SMITH: You want the copies of the
4 photographs?

5 MR. MOLEZZO: It probably is cheaper for you folks
6 to do it.

7 MR. SMITH: Yeah, not a problem.

8 THE COURT: Do you have the photographs?

9 MR. SMITH: Yeah. We have the ability to do that
10 in office, Your Honor. And we just gave him all the photos
11 on CDs. So I'll just run off a copy of each one of those
12 and give him a copy, a hard copy also.

13 THE COURT: All right. Any other discovery?
14 There is a motion for discovery and order for discovery in
15 this case. I want to make sure that we're complying both
16 ways with the discovery. Has that occurred?

17 MR. SMITH: Yes, Your Honor.

18 MR. MOLEZZO: Yes, I feel it certainly has. I
19 haven't felt otherwise.

20 THE COURT: Okay.

21 MR. MOLEZZO: I will get the reports back from my
22 expert on the firearm, Your Honor.

23 THE COURT: Okay.

24 MR. MOLEZZO: Which may be dispositive in this
25 case to a certain degree, depending upon the workings of the

1 gun, of course.

2 THE COURT: Okay.

3 MR. MOLEZZO: And you will get those immediately
4 when I get them. But I do not want to delay, Your Honor.

5 THE COURT: And have you both made your witness
6 list as to experts in this matter?

7 MR. SMITH: We have, Your Honor. We haven't
8 received any of the vitaes or anything from you on experts
9 yet.

10 THE COURT: Okay. But have you named your
11 experts?

12 MR. MOLEZZO: I don't think I've endorsed one just
13 yet. Mr. Vankus is merely giving me a report.

14 THE COURT: Okay. Be sure that you both
15 endorse those.

16 MR. MOLEZZO: I have all yours. Five physicians,
17 and that's about it.

18 MR. SMITH: Yeah.

19 THE COURT: Okay.

20 MR. MOLEZZO: Okay.

21 THE COURT: All right. Are there any other
22 matters that you think -- I want you to start working on
23 jury instructions so that the first day that I can start
24 putting together instructions.

25 Counselor, from the defense point, any special

1 instructions from the defense point as to your theory of the
2 case --

3 MR. MOLEZZO: There certainly will be.

4 THE COURT: -- if you will, please, have those
5 prepared for me.

6 MR. MOLEZZO: By the first day of trial, correct?

7 THE COURT: That's right.

8 MR. MOLEZZO: Yes, sir. I promise.

9 THE COURT: That's the only way to prepare for
10 trial is to do the instructions first.

11 Now, um, I'm trying to think if there's anything
12 else we need to get ready as far as the attorneys are
13 concerned?

14 MR. MOLEZZO: Well, the technical stuff, Your
15 Honor, with the CDs and so forth, I guess projectors and --
16 we got all of that, right?

17 MR. SMITH: Yeah.

18 MR. MOLEZZO: Okay.

19 THE COURT: Mr. Morton, with regard to your
20 attorney here, Mr. Molezzo, he is still representing you; is
21 that correct?

22 THE DEFENDANT: Yes, sir, Your Honor.

23 THE COURT: And are you still satisfied with his
24 representation of you?

25 THE DEFENDANT: Very much, Your Honor.

1 THE COURT: Is there anything that you see or that
2 needs to be done in preparation for the trial that you're
3 concerned about to be ready to go to trial on this matter?

4 THE DEFENDANT: No, sir, Your Honor.

5 THE COURT: All right. Go ahead and be seated,
6 sir.

7 All right, counselors. Well, I'm going to be
8 ready. And if there's anything that comes up, please let me
9 know and we will schedule it.

10 The clerk will be sending you a setting memo on
11 the motions on the 9th at 1:30, the 9th of September.

12 I guess we need to deal with any issues with
13 regard to the court reporter. Any special issues with
14 regard to the court reporter?

15 MR. MOLEZZO: Not that I recognize.

16 THE COURT: Okay.

17 MR. SMITH: Not from the State, Your Honor.

18 THE COURT: Okay. Well, in the event that there's
19 something that you may need during the trial, I don't know
20 that she's prepared to do dailies, but she can certainly
21 give you a set of notes from that day from realtime
22 reporting to some degree. So that --

23 MR. MOLEZZO: Yes, sir.

24 THE COURT: -- it doesn't necessarily have to be
25 certified as to the transcript, but if that's okay,

1 Miss Court Reporter? Does that make it easier on you?
2 THE COURT REPORTER: Yeah. I thought you wanted
3 dailies on it?
4 THE COURT: Do you want dailies?
5 MR. MOLEZZO: I would imagine that we need to have
6 those in this case.
7 THE COURT: Okay.
8 MR. MOLEZZO: Now, Miss Reporter -- if I may, Your
9 Honor -- do you have the capability of -- I have a laptop.
10 Can you hook that up for realtime?
11 THE COURT REPORTER: Can we go off the record?
12 THE COURT: Yes. We're off the record.
13 MR. MOLEZZO: Thank you, Judge.
14 (Whereupon, an off-the-record discussion was had.)
15 THE COURT: You will have the capabilities of
16 having that and then daily transcripts.
17 MR. MOLEZZO: Yes, sir.
18 THE COURT: Okay. We're back on the record.
19 And the record should reflect that the court
20 reporter will furnish daily transcripts and set up some
21 laptop computers for the attorneys so that you can see
22 what's coming up.
23 MR. SMITH: Thank you, Your Honor.
24 MR. MOLEZZO: Thank you, Judge.
25 THE COURT: Anything else now that we need to

1 prepare for?

2 On the technical things and exhibits, I would
3 request perhaps on the 9th, counselors, that you take some
4 time with the clerk of premarking exhibits, those kinds of
5 things. So we don't delay the trial with marking exhibits
6 and so forth during the trial. If you can do that ahead of
7 time, anything you can do to do that, I would appreciate
8 that.

9 MR. SMITH: Will do, Your Honor.

10 MR. MOLEZZO: Yes, sir.

11 THE COURT: All right. And in that process, the
12 State will have numbers. You will have letters assigned to
13 your exhibits.

14 MR. MOLEZZO: Okay.

15 THE COURT: All right. I think we've accomplished
16 everything that we need to do here, gentlemen. And I think
17 we're up-to-date with regard to the financial matters from
18 your side, are we not?

19 MR. MOLEZZO: Yes, sir. I just -- you've taught
20 me well. Send in those phases.

21 THE COURT: Thank you.

22 MR. MOLEZZO: And I will continue to phase, phase.

23 THE COURT: And I appreciate that very much.

24 MR. MOLEZZO: You bet.

25 THE COURT: All right. Nothing further, the

1 defendant's remanded back to the custody of the sheriff
2 until the time of trial. And we'll be in recess in this
3 matter.

4 MR. MOLEZZO: Thank you, Your Honor.

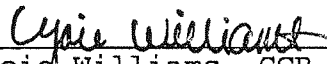
5 THE COURT: Thank you.

6 (Whereupon, the proceedings concluded.)
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STATE OF NEVADA)
) ss.
COUNTY OF HUMBOLDT)

I, ZOIE M. WILLIAMS, official court reporter of
the State of Nevada, in and for the County of
Humboldt, do hereby certify that I was present during
all the proceedings had in the matter of the STATE OF
NEVADA, plaintiff, vs. DAVID CRAIG MORTON, defendant,
heard at Winnemucca, Nevada, on August 16, 2010, and
took verbatim stenotype notes thereof; and that the
foregoing pages contain a full, true and correct
transcription to the best of my ability, by my
stenotype notes so taken, and a full, true and correct
copy of all proceedings had.



Zoie Williams, CCR #540
Official Court Reporter

Case No. CR-09-5709

FILED

Department I

2010 SEP 21 AM 8:03

TAMI RAE SPERO
DIST. COURT CLERK

Tami Rae Spero

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF HUMBOLDT

ooOoo

THE STATE OF NEVADA,

Plaintiff,

v.

DAVID CRAIG MORTON,

Defendant.

JURY TRIAL - OPENING STATEMENTS

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter came on for hearing on September 14, 2010, of said day, before the HONORABLE RICHARD A. WAGNER, District Judge.

The plaintiff was present in court and represented by Russell Smith, Humboldt County District Attorney, and Brian Williams, Deputy District Attorney.

The defendant was present in court and represented by Richard Molezzo, Attorney at Law.

1
2 Winnemucca, Nevada, Tuesday, September 14, 2010

3 oOo

4
5 P R O C E E D I N G S

6 THE COURT: Court will come to order. Please be
7 seated. Good afternoon, ladies and gentlemen.

8 Will counsel stipulate to the presence of the jury
9 and the alternates?

10 MR. MOLEZZO: The defense so stipulates.

11 MR. SMITH: The State would so stipulate, Your
12 Honor.

13 THE COURT: This is continuation of case number
14 CR-09-5709, State of Nevada, plaintiff, vs. David C. Morton,
15 defendant.

16 We have reached the point, ladies and gentlemen,
17 in which I'm going to have the clerk of the court read aloud
18 to you the information, which are the official charges
19 against the defendant, filed by the district attorney.

20 Again, I would remind you, these are simply
21 allegations and they are not evidence of any kind as to the
22 guilt of the defendant and you should not assume it is.

23 So at this point, Miss Clerk, would you please
24 read aloud the information?

25 Gentlemen, there are pertinent parts with regard

1 to the witnesses that she will not be reading, so that you
2 know.

3 MR. WILLIAMS: That's fine, Your Honor.

4 MR. MOLEZZO: Yes, sir.

5 THE COURT CLERK: Number CR-09-5709, Department I,
6 in the Sixth Judicial District Court, in the State of
7 Nevada, in and for the County of Humboldt. State of Nevada,
8 plaintiff, vs. David Craig Morton, defendant.

9 Information. Russell Smith, district attorney of
10 Humboldt County, Nevada, in the name and by the authority of
11 the State of Nevada informs the Court. Count I, open murder
12 with the use of a deadly weapon, a Category A felony, as
13 defined by NRS 200.010, NRS 200.020, NRS 200.030, NRS
14 200.033, and NRS 193.165, that the defendant did willfully,
15 unlawfully, feloniously, with malice aforethought, and with
16 deliberation and premeditation, kill and murder another
17 human being with the use of a deadly weapon, in the
18 following manner, to wit: That on or about the 6th day of
19 August, 2009, at or near the location of 1565 Harmony Road,
20 Winnemucca, County of Humboldt, State of Nevada, the
21 defendant shot his wife, Cynthia Morton, in the abdomen with
22 a rifle causing the death of Cynthia Morton.

23 Count II, discharging a firearm from within or
24 from a structure, a Category B felony, as defined by NRS
25 202.287 (b), that the defendant, while being in a structure,

1 did maliciously or wantonly discharge or cause to be
2 discharged a firearm from within a structure or vehicle, and
3 that such conduct occurred within the area designated by
4 city or county ordinance as a populated area for the purpose
5 of prohibiting a discharge of weapons, in the following
6 manner, to wit: That on or about the 6th day of August,
7 2009, at or near the location of 1565 Harmony Road,
8 Winnemucca, County of Humboldt, State of Nevada, the
9 defendant shot a rifle in his house located at 1565 Harmony
10 Road, Winnemucca, Nevada.

11 All of which is contrary to the form of the
12 statute in such cases made and provided and against the
13 peace and dignity of the State of Nevada.

14 That the names of all witnesses who will testify
15 for the State of Nevada in said action that are known to the
16 district attorney at the time of the filing of this
17 information are listed with addresses on the annexed Exhibit
18 A. Signed Russell Smith, district attorney.

19 To the above information, the defendant duly
20 entered a plea of not guilty on November 2nd, 2009.

21 THE COURT: And for your edification, Exhibit A
22 are the list of witnesses that you saw originally in here.
23 The clerk is not going to reread them.

24 We have now reached the point in the proceedings
25 where the district attorney and defense counsel make their

1 opening statements. The law provides that the district
2 attorney shall make his opening statement first.

3 Defense counsel may make his opening statement
4 immediately following the opening statement of the district
5 attorney, or they may wait until the conclusion of the
6 State's case before making opening statement.

7 At this time, with regard to the district
8 attorney's office, Mr. Williams, you may make your opening
9 statement to the jury.

10 MR. WILLIAMS: Thank you, Your Honor. Ladies and
11 gentlemen of the jury, opposing counsel, and may it please
12 the Court.

13 THE COURT: Counselor.

14 MR. WILLIAMS: Thank you. Ladies and gentlemen of
15 the jury, on the night of August 5th, 2009, the defendant,
16 David Morton, pointed a .30 caliber rifle at his wife while
17 she was sitting on the toilet and shot him in the abdomen --
18 shot her in the abdomen area, and the testimony and evidence
19 will show that this act was deliberate. It was malicious.
20 It was premeditated. And it was no accident.

21 Now, on the night of August 5th, the defendant and
22 his wife had gone out to a bar to go drinking, and they got
23 back to the house at about 10:00. Now, we know that they
24 got back at about 10, because also present in the home that
25 evening were Robert Morton, who is the son of the -- son of

1 the defendant and his wife, Cynthia, our victim; Jessica
2 Morton, who was his cousin; and Anastasia Barsness, who is
3 Robert's girlfriend. And they had all got to the house
4 sometime around 9:00 p.m. that night.

5 And when they got there, they went down to where
6 Robert lived in the house, which was the basement area of
7 the home. They went down to the basement. And it had been
8 a long day and Anastasia and Jessica just wanted to go to
9 bed. So they retired to their rooms to go to sleep when
10 they heard the defendant and his wife come in the door at
11 about 10. And they heard them upstairs.

12 And as they continued to hear them, they started
13 to hear them argue and -- now, this was not an uncommon
14 occurrence, as Robert will testify, to hear his parents
15 argue. And as they argued, the argument began to increase
16 in volume. They began to yell more and more things at each
17 other. And the people downstairs began to make out what was
18 being said.

19 What was clearly heard downstairs was our victim,
20 Cynthia, yelling at the defendant that if he just put tires
21 on her car that she would leave. And as she said that, they
22 could clearly hear the defendant yelling back at her, "Shut
23 up. Shut up. Shut up." Now, he actually said it in more
24 vulgar terms than that, as you will hear during testimony,
25 but he continued to yell that back at her. He continued to

1 tell her to stop.

2 Now, Robert knew this was not necessarily unusual
3 because the marriage between the defendant and our victim
4 had been rocky for some time. In fact, as you will hear,
5 divorce papers had been received and they had been talked
6 about and even had been signed. And so this wasn't unusual
7 for them to argue like this. And all the people downstairs
8 did was try to ignore it.

9 After about a half-hour of this though, suddenly
10 the people downstairs, and all three of them will testify to
11 this, they all heard a loud and distinct bang. Almost like
12 a thud, but they didn't know what it was at first.

13 But immediately after the bang, they could hear
14 downstairs the victim began to cry out for Robert, yelling,
15 "Robert, help. He's hurting me." And Robert heard this and
16 immediately went bounding up the stairs. He went to try to
17 see what was wrong with his mother.

18 What he saw when he got upstairs terrified him.
19 Standing in the doorway of the bathroom, which was right by
20 where the defendant and the victim slept, was the defendant
21 with a gun in his hands. He was holding the .30 caliber
22 rifle that they kept in their home. And the testimony will
23 show that this rifle was typically kept behind the door, the
24 front door of the house. And that on that night, this gun
25 was loaded.

1 And Robert seeing this gun and seeing his mother
2 in the bathroom, lying on the floor, curled in a fetal
3 position, he sees his mom with blood coming out of her body,
4 and immediately he begins to try take the gun from his
5 father, because he's concerned about what might happen. And
6 while he's doing this, she's yelling at Robert to stop, to
7 get away, because she wants to protect her son.

8 But he continues to argue and fight with his
9 father and eventually he's able to take the gun away from
10 him. And he takes the gun and his next thought is he needs
11 to call 911. And Robert will testify that eventually he
12 decides he needs to go downstairs and get his cell phone.
13 And his cell phone is down in the room where he had been
14 sleeping with Anastasia.

15 Of course, at this point, no one's asleep.
16 Everybody's awake. Everybody knows what's -- everybody in
17 the home knows what's going on. And Anastasia is still
18 downstairs. And she sees Robert come in the room and gives
19 him a cell phone and in walks the defendant. And he's
20 asking Robert to give him the gun back, saying he didn't do
21 anything wrong. And Anastasia will testify that the things
22 she noticed the most about the defendant was how calm he
23 was. That he wasn't acting like he had just shot somebody.

24 And after Robert gets on the phone, the defendant
25 takes off and he runs back up the stairs. And Robert seeing

1 this happen as he's still on the phone with 911, trying to
2 tell them about what's happened, distressed about what's
3 happened to his mother, runs up after his father.

4 And his father's upstairs pulling on pants and
5 trying to leave the house. So Robert sees this and doesn't
6 want him to take off and he starts to struggle with him
7 again. And they make their way outside, and Robert still
8 has the gun. And so now the defendant tries to take the gun
9 back from him.

10 So at some point, Robert not wanting the gun to be
11 taken back, he takes it and throws it and it lands in the
12 neighbor's yard, and right then is when the police show up.
13 They're still fighting. They're arguing with each other and
14 three or four officers converge on the scene at one time
15 then. And not knowing what happened, of course, they
16 handcuff both of them.

17 But Robert, at that point, he screams that his
18 mother is inside the house bleeding. And Officer Murdock,
19 he hears this. Officer Jeff Murdock of the police
20 department, he'll testify that knowing this, he decides he
21 better go in the house and see what's going on.

22 So he decides to walk in the front door of the
23 house. And as he's walking in the front door, he notices a
24 couple of things. While he's doing this, what he's doing is
25 he's clearing the house. He's trying to make sure there's

1 nothing in there that's going to harm him or some of his
2 fellow officers.

3 So he goes in the house. And right in the living
4 room, he sees an unspent shell casing there, a live bullet.
5 And he notes that and continues to walk on and goes to the
6 kitchen and looks in there. And then, as you will see in
7 the photographs, the living room is the first room you come
8 to. And then straight ahead is the kitchen, and off to the
9 left there's a hallway. And in the hallway is where the
10 bathroom is located, where our victim is. As he comes upon
11 that hallway, he can hear her in the hallway -- in the
12 bathroom, and she's moaning and crying in pain. And the
13 people who are downstairs will testify that the victim cried
14 over and over, "Ow, it hurts." And she was talking about
15 the wounds in her stomach.

16 Now, Officer Murdock, he walks in and asks her
17 what's wrong. She says, "You know, my stomach's hurting."
18 And he can hear the ambulance coming at this point, so he
19 tells her, "Just hold on. They'll be here in a minute."
20 But still trying to figure out what's happening, he asked
21 her what happened, and what's your name? And she tells him
22 her name is Cynthia, and that her husband had shot her.

23 And he could see at this point that -- what the
24 effects of the bullet have done to her. That the bullet
25 went in through her left breast area, that it traveled down

1 her body, causing a large wound in her stomach, and then it
2 had exited her body. And he was able to see also that in
3 the bathroom there is a bullet hole right by -- right to the
4 right of the toilet, where the bullet had gone out of her
5 body and into the wall.

6 And he stays with her and comforts her until the
7 ambulance gets there. And then he continues to look around
8 and he finds the gun out in the hallway -- out in the yard.
9 The neighbor's yard.

10 So he takes note of all that, and he passes the
11 case off at this point to Detective Dave Garrison. And
12 Detective Garrison is given the assignment by his department
13 to be the lead investigator on the case. And when he gets
14 there, he's told the situation. And he immediately decides
15 that he better go to the hospital and try to talk to the
16 victim, because he's afraid that she might not make it.

17 And so he goes to the hospital. And he's able to
18 get a few things from her when he talks to her. She tells
19 him that her husband had shot her with a shotgun. And
20 that's about all he got, basically. He wasn't able to get
21 very much else, except that she was sitting on the toilet in
22 the bathroom.

23 At this point, she's in the hospital. She's got a
24 billion different doctors. People are running, trying to
25 help her. And she's got multiple wounds. And he's able to

1 see the same wounds as Officer Murdock.

2 So he leaves there, he decides he's going to go
3 back to the house and get a search warrant and look for
4 evidence. Before he can do that, he gets a call from the
5 detention center, the Humboldt County Detention Center, here
6 over by the fairgrounds. And they tell him that the
7 defendant is actually trying to harm himself.

8 And so while Officer Garrison, he's not trying to
9 go interview the defendant yet, because he doesn't really
10 know what's going on. He decides he needs to at least go
11 make sure that the defendant's okay.

12 So he goes to the jail and he finds the defendant
13 in a room there. And what's happened is he's taken a piece
14 of Formica off the countertop and he's tried to scratch his
15 neck. So he's got some scratches on his neck. And while
16 the defendant's being treated for these injuries, he starts
17 making statements. He tells, to no one in particular, that
18 he could not believe that he shot his wife. And that he was
19 going to go to prison for a long time. He follows that up
20 by saying that he should have done it right the first time.

21 Now, at that point, Detective Garrison realizes
22 that the defendant's willing to talk. So he stops him and
23 he reads him his rights under Miranda. Tells him he has his
24 right to remain silent. That anything he says to him will
25 be used against him in a court of law. And that he has a

1 right to an attorney. And that the defendant agrees to
2 speak to him and waive all those rights.

3 So he starts talking to him about what happened.
4 And Detective Garrison tries to get out of him the story of
5 what occurred that night. And the defendant's version that
6 he gives him is that he was asleep in his house and that his
7 wife started attacking him, our victim, and that she started
8 hitting him in the face.

9 Now, Detective Garrison continues to question him.
10 And he says, at some point she stops this attack, decides to
11 go sit on the toilet. And that's when he, in his words,
12 "lost it," and went and got the gun. And then he brought
13 the gun back and he pointed the gun at her and -- that he
14 shot her at that point. And he claims to him that he didn't
15 mean to shoot her.

16 So Detective Garrison talks to him for a little
17 bit longer and asks him where the victim had assaulted him
18 at. And he tells him that Cynthia had hit him in the face.
19 So he looks at his face and he doesn't see any injuries. In
20 fact, later he goes back and he photographs those injuries
21 to make sure and to document all that. So you will be able
22 to see all that. See that there were no injuries on him.

23 Now, at the end of all this, for the first time
24 the defendant asks him how his wife is doing. So Detective
25 Garrison tells him what he knows. That he's in the

1 hospital -- that she's in the hospital. And that he doesn't
2 know if she's going to make it.

3 And so at that point, he ends the interview and he
4 continues his investigation. And he goes to the house and
5 he looks at the gun. And he finds the gun with live rounds
6 still in it, including one in the bolt, and one in the
7 chamber, still ready to be fired.

8 He takes that out -- he takes those rounds out of
9 the gun. And he takes it -- he sends it to the crime lab to
10 be analyzed. And when he sends it to the crime lab, uh,
11 Kerri Heward, who is a criminalist at the crime lab, she
12 analyzes this gun and looks at it and sees -- and tests it.

13 What she finds is that it functions properly, and
14 that it takes three pounds of pressure to deploy the
15 trigger. So she makes a report of all that. And you will
16 get to hear testimony about all that from Miss Heward, about
17 how much pressure it took to deploy that gun.

18 Now, the sadder part about Detective Garrison's
19 investigation is eventually, after fighting for her life and
20 having 27 surgeries to try to repair the damage to her body,
21 our victim succumbs to her injuries about a month after
22 this. So he has to attend her autopsy and see -- and see as
23 they looked at her to try to determine the cause of death.

24 And so, when you hear all this evidence and you,
25 as a jury go back to deliberate, the State is confident that

1 you will come to the conclusion that this was no accident.
2 That this was deliberate, premeditated murder. Thank you.

3 THE COURT: Thank you, counselor.

4 Sir, you have the right to make your opening
5 statement at this time --

6 MR. MOLEZZO: Thank you, Your Honor.

7 THE COURT: -- if you desire.

8 MR. MOLEZZO: Opposing counsel, may it please the
9 Court.

10 THE COURT: Counselor.

11 MR. MOLEZZO: Ladies and gentlemen, my name is
12 Richard Molezzo. I'm the defense attorney in this case
13 representing David Morton.

14 On the night of August 5th, a person in Humboldt
15 County was shot. If that was the end of the story, we
16 wouldn't need a jury. Now, what happened this night, you
17 will see through evidence and testimony, was a tragic
18 accident. And that's why in our system of juris prudence,
19 and this democracy, there's various degrees of murder.

20 What I would like you folks to remember, as you
21 hear the testimony in this case, is reliability, and
22 realistic. As the Judge -- as the judges of facts in this
23 case, that's going to be powerful to you to implant in your
24 system as you hear the testimony. Is it realistic? Listen
25 to the efforts of the witnesses, be they police officers or

1 support staff; is it reliable?

2 Ladies and gentlemen, in this case what we have
3 here is a family in crisis. A toxic, wasteful, wretched
4 family. You're going to hear, through testimony and
5 evidence, of severe alcoholism on the part of the deceased,
6 on the part of my client, Mr. Morton. You're going to hear
7 about drug use on the part of the deceased, anger. And I
8 think a very valid thing that you're going to hear through
9 the testimony is codependency.

10 Obviously, on August 5th, this was a hopeless
11 situation. And the testimony will share that with you. And
12 that is evidence, ladies and gentlemen. Testimony is
13 evidence. As jurors you are to give weight to that
14 testimony. You are free to use your own personal
15 experiences in deciding what weight to give testimony. Take
16 notes. Look at those witnesses. Watch how they answer
17 questions and so forth.

18 As you hear the facts of this case, ladies and
19 gentlemen, try as best you can not to judge too harshly.
20 What I mean by that is, the family environment. I was
21 blessed with a great family dynamic. Hopefully most of you
22 were as well. We don't all have that. And in this case,
23 this family was broken.

24 The charges as shared to you by the court clerk,
25 in the wording of those charges, the only way those charges

1 can be met is if the prosecution provides evidence that
2 shows intent.

3 The only way those charges cannot be met, and
4 legally you cannot find guilt is, if we proffer evidence and
5 show through testimony and what people say that it was
6 accidental.

7 On August 5th, 2009, on Harmony Lane, a person was
8 shot. The evidence will show my client, Mr. Morton, had
9 possession of that gun. The evidence will show that that
10 gun is a 91-year-old rifle. It's a weapon that's not
11 trustworthy. You will hear through the State's own expert,
12 a gun that is fatigued, broken, and manipulated.

13 The evidence will also show an environment, ladies
14 and gentlemen, a family dynamic that is alien to most of us,
15 I would hope.

16 You're going to hear through testimony that the
17 gun in question, not only was 91 years of age, but was
18 purchased at a garage sale in 1970.

19 You're going to hear through the State's own
20 witnesses, Robert Morton, that that gun was in the open
21 throughout his life. It was not in a gun case. They
22 weren't gun savvy. Mr. Morton was not a member of the NRA.
23 Mr. Morton was not a gun advocate. You're going to hear
24 this.

25 Again, as you hear the evidence, what's realistic

1 and what's reliable? That's going to be the key to this
2 case, ladies and gentlemen.

3 We're going to share with you through the
4 testimony the codependency nature of these individuals, of
5 the deceased and Mr. Morton.

6 We will provide you with facts through testimony.
7 We will argue the facts through testimony that this tragic
8 event was an accident. It was criminal negligence. It was
9 not intentional.

10 Now, you're going to hear evidence through law
11 enforcement. And you're going to see that law enforcement,
12 they're good men. You will not see me, as maybe you've seen
13 on TV, be aggressive or nasty in any fashion.

14 But what I will show you through my questions, and
15 watch closely their answers, a lack of effort. Not a
16 malicious lack of effort, but a lack of effort to gather the
17 evidence that is necessary. That's powerful stuff.

18 You will hear through testimony evidence, the
19 investigative nature of what they did. "They" being law
20 enforcement. We will show you that the investigation was
21 lacking, if you can even call it an investigation.

22 You will hear, among other things, that law
23 enforcement failed to secure the crime scene. You will hear
24 through testimony from Robert Morton himself, he came back
25 to the bathroom and started cleaning it up.

1 You will hear, and you may be astounded that
2 witnesses at the home on Harmony, the witnesses being
3 Jessica Morton and Anastasia Barsness and Robert Morton were
4 allowed to leave without thorough questioning. Why is that?
5 This is serious stuff. Law enforcement knew it. A person
6 was shot.

7 You will hear through testimony and the statements
8 of the witnesses, specifically law enforcement, that no
9 trajectory testing was done. Trajectory is the bullet, how
10 it travels. It's powerful stuff. Why wasn't it done? We
11 will try to explain that to you. And hopefully, the police
12 officer can try to share his thoughts on it. He tells you
13 if it was aimed, how it was aimed. I want to know and you
14 would want to know, I hope, as you listen to the evidence.

15 You're going to see, through the evidence and the
16 testimony of law enforcement, that Robert Morton was not
17 interviewed until four days later, and I believe was allowed
18 to leave within a half-hour of law enforcement getting
19 there. They were there and a person's in the bathroom
20 bleeding. They're there.

21 You will hear evidence that their hands weren't
22 bagged. There was no gunshot residue swabs done on Robert,
23 Jessica or Anastasia. Ask yourself, why not? You're going
24 to hear evidence that Anastasia Barsness and Jessica Morton
25 were downstairs. You're going to hear evidence they were

1 listening to music. You're going to hear evidence that they
2 heard shouting. And then they heard words being said, and
3 then they couldn't tell what was being said.

4 Nowhere in this case, folks, are you going to hear
5 evidence from any direct witness. And a direct witness sees
6 the event from start to finish. That's how they understand
7 it. There's no direct witness here.

8 MR. WILLIAMS: Your Honor, I would object at this
9 point, because this is an incorrect statement of a direct
10 witness.

11 THE COURT: Just a second. Counselor, this isn't
12 the time to argue your case. You have a right to tell the
13 jury what you expect the evidence will show.

14 MR. MOLEZZO: Thank you, Your Honor.

15 THE COURT: If you will proceed with that, please?

16 MR. MOLEZZO: I apologize to the Court.

17 THE COURT: That's fine.

18 MR. MOLEZZO: You're going to hear evidence that
19 law enforcement did not interview Jessica and Anastasia
20 until 77 days later.

21 It was our intent to show through the evidence and
22 testimony that efforts of the folks hired to protect us were
23 lacking. Again, ladies and gentlemen, what's realistic?
24 When you hear things, what's reliable?

25 Also you're going to hear from police support

1 staff, the prosecution targets these individuals as expert
2 witnesses. Well, you're going to hear through evidence that
3 they work for the police. And they're going to testify as
4 employees of law enforcement.

5 As law enforcement takes the stand, it is our
6 theory, through testimony and evidence, you're going to hear
7 editorialization, which basically means law enforcement will
8 implant what they believe happened in their reports. That's
9 clear, and we're going to show you that. Editorializing.

10 It's not Joe Friday, like just the facts, ma'am.
11 You're going to hear law enforcement, as well as support
12 staff, four law enforcement, assume things without
13 foundation.

14 You're going to hear specifically through support
15 staff, again, law enforcement support staff, the evidence
16 will show us, that they're biased. That prior to
17 investigating their part of the case, they are in receipt of
18 e-mails and police reports.

19 Again, ladies and gentlemen, what's reasonable?
20 What's reliable? As you hear this evidence, remember to
21 analyze this, folks, with your head, not your heart.

22 As indicated previously, the evidence will tell us
23 that this rifle is ancient, 91 years of age. The evidence
24 will also tell us it's been in the open for years, leaning
25 against the wall. The prosecution -- strike that.

1 The evidence -- you will not be able to hear
2 through the evidence, nor will you hear evidence that
3 anybody saw that weapon being loaded prior to the fire being
4 shot (verbatim).

5 You're going to hear evidence through testimony
6 that, at the time of the discharge, the weapon was being
7 held by Mr. Morton, who was completely naked, with potential
8 witnesses in the house.

9 You will clearly see that, on this night,
10 August 5th, Mr. Morton was a fool, was negligent, hopeless.
11 Remember, ladies and gentlemen, as you hear this case, and
12 the evidence will show stupidity, the evidence will show
13 reckless behavior. And the evidence will show intoxication
14 on both parties, the deceased and my client, Mr. Morton.

15 Ladies and gentlemen, there's two sides to every
16 story. Listen closely. Judge for yourselves. Don't listen
17 to the attorneys. Listen to the testimony. If you hear and
18 you pay attention, which I know you will, you would expect
19 nothing less if you were sitting here and he was sitting
20 there. Ask questions amongst yourself. Take your notes.

21 If you do this, we will ask that, once the
22 evidence is all in, a determination that this was a tragic
23 accident. And once you come to that realization, you have
24 no choice, ladies and gentlemen, but to find my client,
25 Mr. Morton, not guilty. Thank you.

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Thank you, Your Honor.

THE COURT: Counselor.

Are there any preliminary motions before we proceed?

MR. MOLEZZO: Not from the defense at this time.

MR. WILLIAMS: Not from the State, Your Honor.

THE COURT: Then the rule of exclusion of witnesses has not been invoked.

MR. SMITH: Your Honor, at this time the State was going to invoke the witnesses exclusion rule.

THE COURT: Okay. That's what I was asking.

MR. MOLEZZO: Wasn't sure. We ask the Court to do that as well.

THE COURT: All right. Rule of exclusion of witnesses has been invoked. What that means is that, with regard to any witnesses, and the two sides must keep track of your witnesses, all witnesses must remain outside the courtroom unless and until you are called to testify.

Any witnesses are not to discuss their testimony with any other witnesses or with anyone else except with the attorneys during the course of this trial. If you fail to abide by that, your testimony may be excluded. So it's important that you abide by this rule.

The State will now call its first witness.

MR. WILLIAMS: Your Honor, the State would call

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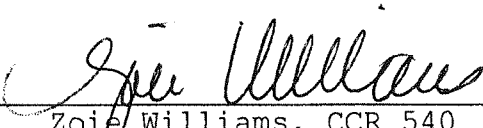
Robert James Morton.

(Whereupon, opening statements concluded.)

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STATE OF NEVADA)
) ss.
COUNTY OF HUMBOLDT)

I, ZOIE WILLIAMS, official court reporter of the State of Nevada, in and for the County of Humboldt, do hereby certify that I was present during all the proceedings had in the matter of the STATE OF NEVADA, plaintiff, vs. DAVID CRAIG MORTON, defendant, heard at Winnemucca, Nevada, on September 14, 2010, and took verbatim stenotype notes thereof; and that the foregoing pages contain a full, true and correct transcription to the best of my ability, by my stenotype notes so taken, and a full, true and correct copy of all proceedings had.



Zoie Williams, CCR 540
Official Court Reporter

Case No. CR-09-5709

Department I

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,

IN AND FOR THE COUNTY OF HUMBOLDT

ooOoo

THE STATE OF NEVADA,

Plaintiff,

v.

DAVID CRAIG MORTON,

Defendant.

JURY TRIAL - VOLUME I

TAMARA SPERO
DIST. COURT CLERK
Tamara Spero

2010 SEP 15 AM 8:13

FILED

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter came on for hearing on September 14, 2010, of said day, before the HONORABLE RICHARD A. WAGNER, District Judge.

The plaintiff was present in court and represented by Russell Smith, Humboldt County District Attorney, and Brian Williams, Deputy District Attorney.

The defendant was present in court and represented by Richard Molezzo, Attorney at Law.

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I N D E X

<u>State's Witnesses -</u>	<u>Page</u>
<u>ROBERT JAMES MORTON</u>	
<u>Volume I -</u>	
Direct Examination by Mr. Smith	6
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E X H I B I T S

	Marked	Admitted
<u>State's Exhibits -</u>		
1 - Death certificate	-	6
2 - Downstairs diagram	-	12
3 - Upstairs diagram	-	29
4 - 911 call CD	-	31
5 - Upstairs diagram	-	43
6 - .30 caliber rifle	-	--
<u>Defendant's Exhibits -</u>		
A - Upstairs diagram on foam board	74	78
B - Robert James Morton's statement	80	81

1
2 Winnemucca, Nevada, Tuesday, September 14, 2010

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4
5 P R O C E E D I N G S

6 THE COURT: Counselor, are there any preliminary
7 motions before we proceed?

8 MR. MOLEZZO: Not from the defense at this time.

9 MR. SMITH: Not from the State, Your Honor.

10 THE COURT: Then the rule of exclusion of
11 witnesses has not been invoked.

12 MR. SMITH: Your Honor, at this time the State was
13 going to invoke the witnesses exclusion rule.

14 THE COURT: Okay. That's what I was asking.

15 MR. MOLEZZO: Wasn't sure. We ask the Court to do
16 that as well.

17 THE COURT: All right. Rule of exclusion of
18 witnesses has been invoked. What that means is that, with
19 regard to any witnesses, and the two sides must keep track
20 of your witnesses, all witnesses must remain outside the
21 courtroom unless and until you are called to testify.

22 Any witnesses are not to discuss their testimony
23 with any other witnesses or with anyone else except with the
24 attorneys during the course of this trial.

25 If you fail to abide by that, your testimony may

1 be excluded. So it's important that you abide by this rule.

2 The State will now call its first witness.

3 MR. SMITH: Your Honor, the State would call
4 Robert James Morton.

5 THE COURT: Please, sir, would you come forward,
6 face the clerk to be sworn?

7 ROBERT JAMES MORTON,
8 Having been first duly sworn to tell the truth, the whole
9 truth, and nothing but the truth, was examined and testified
10 as follows:

11 THE DEFENDANT: Yes.

12 THE COURT: Please come and be seated in the
13 witness stand. After you're seated, please pull up to the
14 microphone and speak directly into the microphone so that
15 everyone can hear you.

16 We're going to take a break.

17 I'm going to admonish you it is your duty not to
18 discuss among yourselves or with anyone else any matter
19 having to do with this case.

20 It is your further duty not to form or express any
21 opinion regarding the guilt or innocence of the defendant
22 until the case has been finally submitted to you for your
23 decision.

24 You are not to read any newspaper articles or
25 listen to or view any radio or television broadcasts

1 concerning this case.

2 Should any person attempt to discuss the case with
3 you or in any manner attempt to influence you with respect
4 to it, you are to advise the bailiff who will, in turn,
5 advise the Court.

6 We will be in recess for five or ten minutes.

7 (Whereupon, a recess was had.)

8 THE COURT: Court will come back to order. Please
9 be seated.

10 Will counsel stipulate to the presence of the jury
11 and the alternates?

12 MR. MOLEZZO: Defense stipulates.

13 MR. SMITH: The State would so stipulate.

14 THE COURT: Put Mr. Morton back on the witness
15 stand.

16 Sir, would you please come and take your place on
17 the stand? After you're seated, please pull up to the
18 microphone and state your name for the record.

19 THE WITNESS: Robert James Morton.

20 THE COURT: You've been previously sworn. You
21 understand that, sir?

22 THE WITNESS: Yes.

23 THE COURT: You may proceed on direct examination.

24 MR. SMITH: Thank you, Your Honor.

25

DIRECT EXAMINATION

(BY MR. SMITH:)

Q. Robert, who are your parents?

A. Dave and Cynthia Morton.

MR. SMITH: I'm going to pause there for a minute. Your Honor, the State moves to enter State's Exhibit 1 on the record. It is the Washoe County Health District, Vital Statistics of Reno, Nevada, certified copy of the certification of death.

THE COURT: It's been marked as exhibit what, sir?

MR. SMITH: One.

MR. MOLEZZO: Certified and self-authenticating. No objection.

THE COURT: It is. It's hereby admitted as Exhibit 1.

(Whereupon, State's Exhibit 1 was admitted into evidence.)

MR. SMITH: Thank you, Your Honor.

(BY MR. SMITH:)

Q. Are either of your parents in the court today?

A. Yes.

Q. Can you please point to --

Who's in the court today of your parents?

A. My dad, David.

Q. Can you please point to him and tell the Court

1 what he is wearing?

2 MR. MOLEZZO: We will stipulate to Mr. Morton
3 being here today and the father of this witness.

4 THE COURT: Okay. The record should reflect the
5 identification of the defendant as being his father for the
6 record has been established, sir.

7 MR. SMITH: Thank you, Your Honor.

8 (BY MR. SMITH:)

9 Q. Robert, let me draw your attention to August 5th,
10 2009. How old were you on August 5th, 2009?

11 A. Twenty-one.

12 Q. And where did you reside?

13 A. Downstairs in the basement.

14 Q. Of? Of what?

15 A. 1565 Harmony Road.

16 Q. And is that a residence?

17 A. Yes.

18 Q. And what town is that located in?

19 A. Winnemucca, Nevada.

20 Q. Thank you.

21 Who else resided in that home with you on
22 August 5th, 2009?

23 A. Dave and Cynthia Morton.

24 Q. And where in the residence did they reside?

25 A. Upstairs.

1 Q. Are you the only three that resided in the home on
2 that date?
3 A. No. Jessica and Stasia.
4 Q. Well, they were there on that date; is that
5 correct?
6 A. Yes.
7 Q. Did they live there full-time?
8 A. No.
9 THE COURT: Sir, you said Jessica, and what was
10 the other name?
11 THE WITNESS: Stasia.
12 THE COURT: How do you spell that?
13 THE WITNESS: S-t-a-s-i-a.
14 THE COURT: Okay. You may proceed.
15 (BY MR. SMITH:)
16 Q. What's Stasia's first name?
17 A. Anastasia Barsness.
18 Q. Thank you.
19 But you call her Stasia?
20 A. Yes.
21 Q. All right. On August 5th, 2009, who were the
22 full-time residents of the home?
23 A. Me, David and Cynthia Morton.
24 Q. Thank you.
25 Were you at the home throughout the day on

1 August 9th, 2009 -- August 5th, 2009?

2 A. Yes.

3 Q. And, um, were your parents at the home on this
4 day?

5 A. They were around, yeah.

6 Q. Are you aware if either of your parents were
7 drinking that day?

8 A. Yes.

9 Q. Did you see either of them drinking on August 5th,
10 2009?

11 A. My dad.

12 Q. And what was he drinking?

13 A. Beer.

14 Q. Were you aware if your parents stayed home
15 throughout the day and evening?

16 A. Yes.

17 Q. On August 5th?

18 A. Yes.

19 Q. Did there come a time when they left the home that
20 you were aware of?

21 A. Yes.

22 Q. And when was that?

23 A. Um, later in the evening.

24 Q. And how do you know that they were leaving the
25 home?

1 A. Because my mom told me that they're leaving.
2 Q. And did she tell you where they were going?
3 A. The bar.
4 Q. Did you see your parents leave the home?
5 A. Yes.
6 Q. After your parents left the home, when did they
7 come back?
8 A. Later on that evening. Probably around 11. I
9 don't know.
10 Q. You're not sure what time it was?
11 A. No.
12 Q. About how long were they gone?
13 A. Um, like an hour.
14 Q. Okay. Prior to your parents coming back, did
15 anyone else come to your home?
16 A. Stasia and Jessica.
17 Q. Now, when Stasia and Jessica got to your home,
18 what did you do?
19 A. Went downstairs.
20 Q. And how did you get downstairs?
21 A. Walked.
22 Q. How did Jessica get downstairs?
23 A. I had to carry her.
24 Q. And why did you have to carry her?
25 A. Because she's in a wheelchair.

1 Q. And what relationship do you have with Jessica?
2 A. Cousin.
3 Q. And what's Jessica's last name?
4 A. Morton.
5 Q. On August 5th, 2009, what was your relationship
6 with Anastasia or Stasia?
7 A. Girlfriend.
8 Q. When your parents returned, where in the home were
9 you located, physically?
10 A. Downstairs.
11 Q. When you say they both returned, how do you know
12 that they both returned to the home?
13 A. Because you could hear them.
14 Q. Could you hear both of their voices?
15 A. Yes.
16 Q. Which door did they come in?
17 A. The back door.
18 Q. Robert, I hand you what's been previously marked
19 as State's Exhibit 2.
20 MR. SMITH: May I approach, Your Honor?
21 THE COURT: You may, sir.
22 (BY MR. SMITH:)
23 Q. Do you recognize this document?
24 A. Yes.
25 Q. What is this a document of?

1 A. The downstairs.

2 Q. Is it an accurate representation of the

3 downstairs?

4 A. Yes.

5 Q. The downstairs of what?

6 A. Our house. The basement.

7 Q. Okay. And is this the same home that you were

8 living in on August 5th, 2009?

9 A. Yes.

10 MR. SMITH: May I approach, Your Honor?

11 THE COURT: You may, sir.

12 MR. SMITH: Your Honor, the State moves for

13 State's Exhibit 2 to be used as -- to be used in this case

14 for the -- to help the defendant -- not the defendant -- to

15 help the witness give his testimony.

16 THE COURT: Any objection, sir?

17 MR. MOLEZZO: Not for that purpose, Your Honor.

18 THE COURT: Exhibit 2 is hereby admitted.

19 The record should reflect it's a single-page

20 document, a downstairs diagram as indicated.

21 (Whereupon, Exhibit 2 was admitted into evidence.)

22 (BY MR. SMITH:)

23 Q. Robert, could I have you come down here by the

24 projector? I'm going to hand you a black pen at this time.

25 Could you write on that document the address of that

1 location of that home?

2 Did I hand you a pen that doesn't work? All
3 right. Let's go to with blue. I don't want blue. Okay.
4 Can you take the blue pen and write the address on there?

5 Can you write your name below that so that we'll
6 know that you're the one that wrote on this document?

7 Now could you, for -- just so that we have
8 orientation, what -- if that were the upstairs, where would
9 the front of the home facing Harmony --

10 THE COURT: Counselor, as I understand the
11 testimony, this is the downstairs.

12 MR. SMITH: That is correct, Your Honor.

13 THE COURT: Okay.

14 MR. SMITH: I'm just trying to get orientation:
15 North, south, east, west.

16 THE COURT: Okay.

17 (BY MR. SMITH:)

18 Q. Okay. Let's start with doors. Where would the
19 back door of this residence be located?

20 A. (Indicating).

21 Q. Now, if this were the upstairs, what side would
22 the front door be located?

23 A. (Indicating).

24 Q. On which side is Harmony Road located?

25 A. (Indicating).

1 Q. And in which side would the backyard be located?
2 A. (Indicating).
3 Q. Now, you indicated that you reside downstairs.
4 Which room did you reside in?
5 A. (Indicating).
6 Q. Would you put "Robert's room"?
7 A. (Indicating).
8 Q. Now, it says there's another bedroom down there.
9 What would you call that bedroom?
10 A. Spare bedroom.
11 Q. Okay. Could you write "spare bedroom" on that
12 one?
13 A. (Indicating).
14 Q. Now, hold on just a couple more minutes and get
15 you back up in the witness box.
16 When your parents came in, which door did they
17 come in again?
18 A. The back door.
19 Q. When your parents came in, what room were you in?
20 A. My room.
21 Q. Okay. Can you write "Robert" there?
22 A. (Indicating).
23 Q. When your parents came in, what room was Anastasia
24 in?
25 A. My room.

1 Q. Can you put "Anastasia" or "Stasia" there?
2 A. (Indicating).
3 Q. When your parents came in, what room was Jessica
4 in?
5 A. The spare bedroom.
6 Q. Okay. Can you write "Jessica" in the spare
7 bedroom?
8 A. (Indicating).
9 Q. You indicated that you carried Jessica downstairs.
10 You can go ahead and sit back on the witness
11 stand -- box. Can I have that pen though?
12 You indicated that you carried Jessica downstairs.
13 When you first went downstairs, where did you carry her to?
14 A. My room.
15 Q. How did she get from your room into the spare
16 bedroom?
17 A. I carried her.
18 Q. Where did you put her in the spare bedroom?
19 A. In bed.
20 Q. When your parents came in the back door, you
21 indicated that you could hear both of their voices?
22 A. Yes.
23 Q. What were they doing?
24 A. Arguing.
25 Q. Do you know what they were arguing about?

1 A. No, I couldn't really tell.

2 Q. Do you know what time they came in the back door?

3 A. No, I couldn't remember.

4 MR. SMITH: Thank you. Your Honor, the State now

5 moves for State's Exhibit 2 with the identifications of the

6 rooms to be entered in as evidence in this case.

7 THE COURT: It's already in evidence. And the

8 marks were put on after it's in evidence, and so it still

9 remains in evidence, sir.

10 MR. SMITH: All right.

11 (BY MR. SMITH:)

12 Q. Robert, I hand you a document now that's been

13 previously marked as State's Exhibit 3. Do you recognize

14 this document?

15 A. Yes.

16 Q. And what does that document depict?

17 A. That's the upstairs of 1565 Harmony.

18 Q. And is that the home that you lived in on

19 August 5th, 2009?

20 A. Yes.

21 MR. SMITH: Your Honor, the State moves for the

22 admission of document three for the purposes of helping the

23 witness give testimony, and to, um, aid in where people

24 were.

25 THE COURT: Counsel, I suggest if you're going to

1 have him mark on it that once it's completed, then it be put
2 into evidence, if there's no objection to that.

3 MR. MOLEZZO: No objection to that procedure.

4 THE COURT: All right.

5 MR. SMITH: Thank you, Your Honor.

6 THE COURT: It's marked for identification, but
7 it's my understanding it will be -- have other marks put
8 upon it. So you may proceed.

9 (BY MR. SMITH:)

10 Q. That black pen just doesn't want to work.

11 Robert, can I have you come down and we're going
12 to mark some of the stuff on this exhibit now so that we'll
13 have an orientation. So I hand you a blue pen for this
14 purpose.

15 Can you write on the side of the home where
16 Harmony Road is? Can you write "Harmony Road" or "Street"?

17 A. (Indicating).

18 Q. For orientation, can you write "backyard" where
19 the backyard would be located at?

20 A. (Indicating).

21 Q. Can you write "back door" where the back door of
22 the home is located?

23 A. (Indicating).

24 Q. Can you write "front door" where the front door is
25 located?

1 A. (Indicating).
2 Q. All right. You can go ahead and sit back up
3 there. I need the pen.
4 So, Robert, when your parents came in the back
5 door, you were downstairs. What were you doing?
6 A. Just listening to music.
7 Q. And when your parents came in the back door and
8 began arguing, what did you do?
9 A. Turned up the music a little louder.
10 Q. Why did you do that?
11 A. Drowned them out.
12 Q. Could you still hear your parents arguing over the
13 music?
14 A. Yeah. Yes.
15 Q. At that point did you know what they were arguing
16 about? Could you make out anything yet?
17 A. No.
18 Q. At some point when you were downstairs listening
19 to the music, did you hear something that caused you
20 concern?
21 A. My mom.
22 Q. And what did you hear from your mom?
23 A. "Help, Robert. He's hurting me."
24 Q. How did you hear that?
25 A. She screamed.

1 Q. Did you hear it clearly over the music?
2 A. Yes.
3 Q. When you heard your mother scream, "Help, Robert.
4 He's hurting me," what did you do?
5 A. Ran upstairs.
6 Q. Why did you run?
7 A. Uh, felt like it was needed.
8 Q. Now, Robert, I'm going to have you come back down
9 to this diagram. Sorry for having you go up and down so
10 many times. This time I'm going to hand you a green pen. I
11 want you to put a mark at the top of the stairs where you
12 came up the stairs.
13 A. (Indicating).
14 Q. Now, let me ask you. Is that the only stairs that
15 go down into the basement?
16 A. Yes.
17 Q. Is that the only way in and out of the basement?
18 A. Yes.
19 Q. So there's no other doors?
20 A. No.
21 Q. When you got to the top of the stairs, what did
22 you do?
23 A. Started running around the corner.
24 Q. Okay.
25 THE COURT: Counsel, I don't know that the jury

1 can hear him.

2 MR. SMITH: Oh, okay.

3 You've got to speak loud enough. And I'm having
4 you face the other way. Could you maybe stand on that side
5 of the projector. And as you answer, let's make sure that
6 the jury can hear.

7 (BY MR. SMITH:)

8 Q. So when you got to the top of the stairs -- you
9 ran up the stairs, right?

10 A. Yes.

11 Q. What did you do when you got to the top of the
12 stairs?

13 A. Ran around the corner.

14 Q. Okay. Now, I want you to put a mark, a circle,
15 where you were when you first saw somebody else when you got
16 to the stop of the stairs.

17 A. (Indicating).

18 Q. Okay. Can you draw a dotted line from the top of
19 the stairs to that mark on how you went, which direction you
20 went?

21 A. (Indicating).

22 Q. Who was it that you saw at that moment?

23 A. My dad.

24 Q. Can you put an X where your father -- where you
25 located -- where you saw your father?

1 A. (Indicating).
2 Q. What is that room?
3 A. Bathroom.
4 Q. You saw your father in the hallway at the bathroom
5 door?
6 A. Yes.
7 Q. Now, when you first saw your father, what did you
8 see?
9 A. Um, naked holding a gun.
10 Q. I'm going to ask you, with the red pen, can you
11 mark on there in which direction the gun was pointed when
12 you saw -- when you first saw him?
13 A. (Indicating).
14 Q. Now, you marked on that diagram what appears to be
15 kind of a long T?
16 A. Yeah, the butt is the T.
17 Q. Okay. So where you were standing, the butt of the
18 gun was facing you; is that correct?
19 A. Yes.
20 Q. What type of gun was this?
21 A. Rifle.
22 Q. The barrel of the rifle then was pointed in which
23 direction?
24 A. Towards the closets.
25 Q. Okay. Now, so now we got the general direction.

1 Was it pointed straight?

2 A. No.

3 Q. Okay.

4 A. It was like (indicating), pointing towards the
5 ceiling.

6 Q. Okay. Can you put your hands back up there,
7 because the record can't do that? So I'm going to have to
8 describe that for the record.

9 MR. SMITH: Your Honor, will the record reflect
10 that he would be holding the gun in what would appear to be
11 roughly a 45-degree angle toward the ceiling?

12 THE COURT: With the right hand on the lower end
13 and the left hand up higher.

14 MR. SMITH: That is correct, Your Honor.

15 THE COURT: The record will so reflect.

16 (BY MR. SMITH:)

17 Q. So let's clarify that. Where was your father's
18 right hand when he was holding the gun?

19 A. Kind of by the trigger.

20 Q. And where was his left hand?

21 A. On the stock.

22 Q. Okay. And you said your father was naked?

23 A. Yes.

24 Q. What, if anything, did your father say to you at
25 that moment when you first saw him?

1 A. He didn't say anything at that point.
2 Q. Did you say anything to him?
3 A. No, not that I remember.
4 Q. Did you hear anything at that moment when you
5 first saw him?
6 A. My mom.
7 Q. What did you hear from your mom?
8 A. Moaning and groaning.
9 Q. Can you describe the moaning and groaning?
10 A. Like someone in pain, uh.
11 Q. Did you smell anything?
12 A. Gunpowder.
13 Q. So as your senses have taken all this in, what did
14 you do next?
15 A. Ran over to my dad.
16 Q. Can you continue with the green pen, putting a
17 dotted line there where you went, how you traveled there?
18 A. (Indicating).
19 Q. On the mark there that you made for your father,
20 off to the side, can you write "father"?
21 A. (Indicating).
22 Q. Now, when you approached your father or as you
23 were approaching your father, did your senses pick up
24 anything else before you got to him?
25 A. No.

1 Q. When you got to your father, did your senses pick
2 up anything else besides just your father?
3 A. My mom.
4 Q. Where did you see your mother?
5 A. In the bathroom on the ground.
6 Q. I'm going to have you use the orange pen. Can you
7 put a mark -- I'll take that from you.
8 Can you put a mark where you saw your mother for
9 the very first time?
10 A. (Indicating).
11 Q. Can you write "mother" next to that?
12 A. (Indicating).
13 Q. Can you describe to the Court the position your
14 mother was in when you first saw her?
15 A. Fetal position. Knees tucked into the chest.
16 Q. What else did you see?
17 A. Blood.
18 Q. How much blood?
19 A. A lot.
20 Q. Where was the blood?
21 A. Coming out of her stomach.
22 Q. What did you do next?
23 THE COURT REPORTER: I'm sorry, I couldn't hear
24 him.
25 MR. SMITH: You can go ahead and have a seat.

1 THE COURT: Just take your time. Do you want a
2 drink of water?

3 THE WITNESS: Fighting with the gun.

4 (BY MR. SMITH:)

5 Q. Can you repeat that?

6 A. Fighting with the gun.

7 Q. I know it's really emotional and I'm sorry.

8 You said you were wrestling for the gun. When you
9 grabbed the gun, did your father give it to you?

10 A. No.

11 Q. Did he say anything to you?

12 A. Leave me alone.

13 Q. Now, Robert, I'm going to back up just a bit. You
14 indicated that your father was holding the gun in this
15 45-degree angle with the butt toward you.

16 As you began to approach your father, did he
17 continue to hold the gun in that fashion?

18 A. He started, like, putting it under his chin.

19 Q. What part of the gun did he put under his chin?

20 A. The barrel.

21 Q. Where did the butt of the gun go?

22 A. By his waist.

23 Q. When he put the barrel under his chin and the butt
24 down by his waist, where was his right hand?

25 A. Down by the trigger, the butt.

1 Q. Could you tell if his finger was in the trigger?
2 A. No.
3 Q. Where was his left hand?
4 A. On the stock.
5 Q. Did you have any concerns for your father at that
6 moment?
7 A. A little, yeah. Make sure he didn't kill himself.
8 Q. When you wrestled with your father, were you able
9 to get the gun from him?
10 A. Yes.
11 Q. Did it take a little bit of doing?
12 A. Yeah. Yes.
13 Q. Once you had the gun from your father, what did
14 you do next?
15 A. Ran for the phone.
16 Q. Now, Robert, I'm going to ask you to come back
17 down again.
18 A. All right.
19 Q. And I'm going to hand you back the green pen. Can
20 you put a dotted line from the position there of your father
21 where you were wrestling around for the gun to where you
22 went for the phone?
23 A. (Indicating).
24 Q. Can you write "phone" where the phone was located
25 in your home that you went to?

1 A. (Indicating).
2 Q. And now, when you got to the phone, what did you
3 do?
4 A. Picked it up.
5 Q. Now, before we go any further, let me ask you,
6 what was your intention of going for the phone?
7 A. Call 911.
8 Q. And why was that?
9 A. Because my mom was in trouble.
10 Q. Did you have any fears for your mom?
11 A. Yes.
12 Q. And what were they?
13 A. She might die.
14 Q. So what did you do when you got to the phone?
15 A. Pushed talk and it didn't work. It was
16 disconnected.
17 Q. What did you do then?
18 A. Ran downstairs for my cell phone.
19 Q. Now, when you had gotten to the phone and tried to
20 call for help what was your father doing?
21 A. Right behind me.
22 Q. Was he saying anything?
23 A. No, not that I remember.
24 Q. Was he doing anything?
25 A. Just following me around.

1 Q. Can you put another dotted green line on how you
2 went back to the stairs?
3 A. (Indicating).
4 Q. Now, when you went to the stairs, what was your
5 father doing?
6 A. Following me.
7 Q. Now, when you went from -- you ran upstairs to the
8 point where you first saw your father?
9 A. Uh-huh.
10 Q. In what fashion did you go from the corner to
11 where your father was at?
12 A. What do you mean?
13 Q. How did you travel that distance?
14 A. Running. Fast walk, I guess.
15 Q. When you left your father and you had the gun, in
16 what fashion did you travel to the phone?
17 A. Running.
18 Q. When the phone didn't work and you went to the top
19 of the stairs, in what fashion did you travel that distance?
20 A. Running.
21 Q. When you got to the top of the stairs, what did
22 you do?
23 A. Ran downstairs.
24 Q. Why were you going downstairs?
25 A. To get my cell phone.

1 Q. Robert, by the address there on the diagram, can
2 you write "first time upstairs"?

3 A. (Indicating).

4 MR. SMITH: The State would now move for
5 State's Exhibit 3 to be entered into evidence in this case.

6 MR. MOLEZZO: No objection, Your Honor. Thank
7 you.

8 THE COURT: Exhibit 3 is hereby admitted.

9 (Whereupon, Exhibit 3 was admitted into evidence.)

10 (BY MR. SMITH:)

11 Q. As you went downstairs, Robert, in what fashion
12 did you travel down the stairs?

13 A. Run.

14 Q. What, if anything, did your father do?

15 A. Kept following me.

16 Q. Did your father follow you all the way to the
17 bottom of the stairs?

18 A. (Nods head.)

19 THE COURT: You have to answer out loud.

20 THE WITNESS: Yes.

21 MR. SMITH: Thank you.

22 (BY MR. SMITH:)

23 Q. What did you do when you got to the bottom of the
24 stairs?

25 A. Went to my room to get my cell phone.

1 Q. Were you able to locate your cell phone?
2 A. Yes.
3 Q. Once you had your cell phone, what did you do?
4 A. Called 911.
5 Q. Robert, I hand you now what's been marked --
6 previously marked as State's Exhibit 4.
7 MR. SMITH: May I approach, Your Honor?
8 THE COURT: You may, sir.
9 (BY MR. SMITH:)
10 Q. What is this?
11 A. It's a 911 call.
12 Q. And how do you know it's a 911 call?
13 A. Because I listened to it the other day.
14 Q. How do you know that this is the CD that you
15 listened to the other day?
16 A. Put my initials on it and the date.
17 MR. SMITH: Your Honor, the State moves to enter
18 State's Exhibit 4 as evidence in this case.
19 MR. MOLEZZO: Without hearing the contents of the
20 CD, we have no objection. I'm assuming it's the 911 call.
21 THE COURT: He's identified it, and so --
22 MR. MOLEZZO: Yes, sir. No objection.
23 THE COURT: So I'm going to admit it into
24 evidence.
25 MR. SMITH: Thank you, Your Honor.

1 (Whereupon, Exhibit 4 was admitted into evidence.)

2 MR. SMITH: With your permission, the State
3 intends to play the 911 call at this point, Your Honor.

4 THE COURT: You may proceed.

5 Now, for purposes of the record, the official
6 record will actually be the CD itself, not the court
7 reporter.

8 MR. SMITH: That's correct. My understanding is
9 she will not --

10 THE COURT: She's not going to take that down.

11 MR. SMITH: Correct.

12 THE COURT: What's coming off from the disk. The
13 actual record, for the record, will be the disk, which has
14 been marked and admitted as Exhibit 4.

15 MR. SMITH: While I have my younger assistant help
16 me with the technology. I just want to warn you, this is
17 graphic. This is the 911 call that was made that evening.
18 So we will listen to it now.

19 THE COURT: Counsel, as you need to position
20 yourself within the courtroom, feel free to do that.

21 MR. MOLEZZO: Thank you, Judge. I have my back-up
22 computer in case they need it.

23 (Whereupon, the CD of the 911 call was played.)

24 (BY MR. SMITH:)

25 Q. Robert, is that a true and accurate representation

1 of the conversation you had with the 911 operator?

2 A. Yes.

3 MR. SMITH: May I approach, Your Honor?

4 THE COURT: You may, sir.

5 (BY MR. SMITH:)

6 Q. Robert, I now hand you what's been previously
7 marked as State's Exhibit 5. Do you recognize this
8 document?

9 A. Yes.

10 Q. And what is it a document of?

11 A. The upstairs.

12 Q. Is that the same document as the previous exhibit
13 of your home?

14 A. Yes.

15 Q. Without the marks on it, of course, right?

16 A. Yes.

17 MR. SMITH: Your Honor, the State would just use
18 this at this time, and we'll enter it after it's used, if
19 it's okay with the Court?

20 THE COURT: Yes, sir.

21 We're off the record waiting for something else to
22 boot up.

23 (BY MR. SMITH:)

24 Q. Okay. Robert, everyone's not going to see what
25 you're doing at the moment. It might make you feel a little

1 more comfortable, but --

2 Can you please start at the top of the stairs,
3 because that is the diagram of the upstairs, correct?

4 A. Yes.

5 Q. Can you please take a moment and write where the
6 street is on that diagram?

7 A. (Indicating).

8 Q. And then the backyard. And then go ahead and
9 write where the front door is and where the back door is.
10 So we can orientate all of the diagrams together.

11 A. (Indicating).

12 Q. Now, Robert, I want to run through that 911 call
13 for a moment.

14 When you first called 911 was your father still by
15 you?

16 A. Yes.

17 Q. And what happened when you -- where were you when
18 you called 911?

19 A. Downstairs in my room.

20 Q. And what was your father doing at that time?

21 A. Telling me to give him the gun.

22 Q. And were you struggling with him at all?

23 A. No, not at that time, no.

24 Q. And then what happened next?

25 A. He ran upstairs.

1 Q. And what did you do when your father ran upstairs?
2 A. I ran after him.
3 Q. Why did you do that?
4 A. Because I didn't want him to get away with
5 anything.
6 Q. What happened when you got upstairs?
7 A. He was coming out of the hallway, heading out the
8 front door.
9 Q. Now, when you first saw your father coming out of
10 the hallway, can you put a circle where you first saw your
11 father and write "father" next to it?
12 A. (Indicating).
13 Q. When you first saw your father was there anything
14 different about him than when you previously had been
15 dealing with him?
16 A. He had pants on.
17 Q. Did he have a shirt on?
18 A. No.
19 Q. Did he have socks on?
20 A. No.
21 Q. Shoes?
22 A. No.
23 Q. So the only thing that had changed is he put pants
24 on?
25 A. Yes.

1 Q. When you first saw your father at the entrance of
2 the hallway, what was he doing?
3 A. Heading out the front door.
4 Q. When you saw your father heading out the front
5 door, what did you do?
6 A. Stopped him in, like, the living room.
7 Q. What happened when you stopped him in the living
8 room?
9 A. Started fighting over the gun again.
10 Q. On the 911 tape we hear you say, very loud and
11 clear, that your father -- you didn't say your father. You
12 said, "He's trying to kick my ass." What were you referring
13 to?
14 A. Just struggling over the gun.
15 Q. How long did you guys struggle over the gun?
16 A. Not that long. Like a minute, if that.
17 Q. And you had just indicated that was in the living
18 room; is that correct?
19 A. Yes.
20 Q. Can you put some lines where you guys struggled in
21 the living room?
22 A. (Indicating).
23 Q. And write "struggle" next to it.
24 After you struggled for that moment over the gun,
25 what happened next?

1 A. He started walking out the front door.

2 Q. When he started going out the front door, what did
3 you do?

4 A. Stopped him again.

5 Q. We hear on the 911 tape, when you indicate that
6 you're trying to keep your father from leaving, when did you
7 say that?

8 A. When we were out in the neighbor's backyard.

9 Q. The operator had asked you to go check on your
10 mother?

11 A. (Nods head.)

12 Q. And at first you didn't want to. But on the tape
13 we can tell that at some point you did?

14 A. (Nods head.)

15 Q. Where were you at when you left your father and
16 went to check on your mother?

17 A. In the -- by the front door in the yard.

18 Q. Now, when you left to go check on your mother,
19 where was your father?

20 A. Outside.

21 Q. Where outside?

22 A. Uh, in the neighbor's backyard.

23 Q. So he'd already gone to the neighbor's backyard?

24 A. Yes.

25 Q. And you went back in?

1 A. (Nods head.)
2 THE COURT: Just a second. You have to answer --
3 THE WITNESS: Yes. Sorry.
4 MR. SMITH: Thank you, Judge.
5 (BY MR. SMITH:)
6 Q. When you went in and checked on your mother, what
7 did you see?
8 A. Her just laying there bleeding.
9 Q. What was your mother wearing?
10 A. Um, like a nightgown.
11 Q. How long did you stay in with your mother?
12 A. Just a few seconds. Just to check on her.
13 Q. Then what did you do?
14 A. Ran back outside.
15 Q. Why did you do that?
16 A. To get my dad again.
17 Q. Why were you trying to get your dad?
18 A. Because I didn't want him to get away.
19 Q. Where did you find your dad when you went outside?
20 A. In the backyard still.
21 Q. And was that in your backyard?
22 A. No, the neighbor's.
23 Q. And what did you do when you found your dad in the
24 neighbor's backyard?
25 A. Tackled him.

1 Q. Now, when you tackled your dad, where was the gun?
2 A. On the ground.
3 Q. The weapon?
4 Now, I'm going ask you a few questions about the
5 rifle for a minute. You took the rifle from your father in
6 the hallway, correct?
7 A. Yes.
8 Q. When you went to the phone, where was the rifle?
9 A. In my hand.
10 Q. When you went downstairs, where was the rifle?
11 A. In my hand.
12 Q. When you called 911, where was the rifle?
13 A. In my hand.
14 Q. When you went back upstairs, where was the gun?
15 A. In my hand.
16 Q. When you were tussling with your father in the
17 living room, where was the rifle?
18 A. In my hand.
19 Q. When you went outside the first time, where was
20 the rifle?
21 A. In my hand.
22 Q. When you went into the bathroom to check on your
23 mother, where was the rifle?
24 A. In my hand.
25 Q. When you went outside the second time and went

1 into the neighbor's backyard, where was the gun?

2 A. On the ground.

3 Q. When did the rifle get put on the ground?

4 A. When I went to tackle my dad.

5 Q. What did you do with the rifle before you tackled

6 your dad?

7 A. Dropped it.

8 Q. We hear on the 911 tape that that call got

9 terminated.

10 A. (Nods head.) Yes.

11 Q. How did the call get terminated?

12 A. Must have dropped my cell phone.

13 Q. And when did you drop the cell phone?

14 A. Probably when I was tackling my dad.

15 Q. So for a big portion of this time, from the time

16 you called 911 downstairs, until you tackled your dad in the

17 backyard, you had a cell phone in one hand talking with the

18 operator and you had the rifle in your other?

19 A. Yes.

20 MR. MOLEZZO: Objection, leading.

21 THE COURT: Overruled.

22 Go ahead.

23 (BY MR. SMITH:)

24 Q. Why did you hang onto the gun that long?

25 A. Didn't want my dad to get it.

1 Q. Why not?

2 A. Wasn't too sure what he was going to do with it.

3 Q. Now, once you dropped the gun on the ground in the

4 backyard, you indicated you tackled your dad?

5 A. Yes.

6 Q. What did you do after you tackled him?

7 A. Picked him up and started carrying him to the

8 road.

9 Q. Which road was that?

10 A. Harmony.

11 Q. And why were you doing that?

12 A. Seemed like the right thing to do.

13 Q. Why did it seem like the right thing to do?

14 A. Because I just called 911, so cops should be on

15 the way.

16 Q. Now, Robert, this rifle, when you first saw your

17 father holding the rifle outside that bathroom door, did you

18 recognize that rifle?

19 A. Yeah.

20 Q. How were you able to recognize that rifle?

21 A. Because we keep it behind the front door.

22 Q. The front door of the home?

23 A. Yes.

24 Q. In what fashion is it kept behind the front door?

25 A. Loaded.

1 Q. Do you know why it's kept behind the front door
2 loaded?

3 A. No.

4 Q. But if you would have gone over to that rifle on
5 August 5th, 2009, and picked it up, what would your
6 expectation of that rifle be?

7 A. Loaded.

8 Q. I'm going to kind of backtrack a little bit.
9 On the day of August 5th, 2009, did you have
10 anything to drink?

11 A. No.

12 Q. While you were with Jessica and Anastasia, did
13 they have anything to drink?

14 A. No.

15 Q. On August 5th, 2009, did you use any illegal
16 drugs?

17 A. No.

18 Q. When Jessica and Anastasia were with you, did they
19 use any illegal drugs?

20 A. No.

21 Q. Robert, in the period of time just before August
22 5th, 2009, had you heard either of your parents arguing
23 about a divorce?

24 A. Yeah.

25 Q. On August 5th, 2009, were you aware of any divorce

1 papers in your home?

2 A. Yes.

3 Q. Just prior to August 5th, 2009, did you go on a
4 trip?

5 A. Yes.

6 Q. And who did you go on the trip with?

7 A. My mom.

8 Q. Where did you go?

9 A. Salt Lake.

10 Q. What form of transportation did you use?

11 A. Train.

12 Q. Why did you go to Salt Lake?

13 A. Go see my brother.

14 Q. Why did you go on the train?

15 A. 'Cause her car wouldn't make it.

16 Q. Why wouldn't her car make it?

17 A. Tires probably blow out; they were bald.

18 MR. SMITH: Your Honor, at this point the State
19 would move for State's Exhibit 5 to be entered as evidence
20 in this case with the markings on it.

21 Your Honor, before I do that, it might be better
22 if we put a few more marks on here for identification.

23 THE COURT: Okay, sir.

24 (BY MR. SMITH:)

25 Q. By the address on that document, can you write,

1 um, "while making 911 call"?

2 A. (Indicating).

3 Q. From the top of the stairs, can you put a dotted
4 line to how you traveled to your father in the living room?

5 A. (Indicating).

6 Q. Now, can you make a dotted line in how you
7 traveled to go outside?

8 A. (Indicating).

9 Q. I'm going to now hand you a red pen. Can you do a
10 dotted line in how you traveled to go and check on your
11 mother?

12 A. (Indicating).

13 Q. Now, I'm going to hand you a blue pen. Can you
14 draw a dotted line on where you traveled to when you and
15 your father -- where you tackled your father in the
16 backyard?

17 A. (Indicating).

18 MR. SMITH: Now, the State would move for
19 State's Exhibit 5 to be entered in this case, Your Honor.

20 MR. MOLEZZO: No objection.

21 THE COURT: Exhibit 5 is hereby admitted.

22 (Whereupon, Exhibit 5 was admitted into evidence.)

23 (BY MR. SMITH:)

24 Q. Now, Robert, you indicated you had heard your
25 parents talk about a divorce. Who did you hear that

1 conversation from?

2 A. Both of them.

3 Q. Are you aware of who wanted to get the divorce?

4 A. My mom wanted to get it.

5 Q. Did your dad want to get a divorce also?

6 A. He said he did. But every time the divorce would
7 come up missing, the papers. So I don't know who was
8 throwing them away or doing what with them, but they weren't
9 there for both of them to sign it.

10 Q. When the police got there that evening, where were
11 you and your father?

12 A. Outside.

13 Q. Where outside?

14 A. In the backyard. Neighbor's backyard.

15 Q. What happened when law enforcement approached you?

16 A. They laid us down on the ground.

17 Q. Both of you?

18 A. Yes.

19 Q. And what did they do to you?

20 A. Handcuffed me.

21 Q. Did you give them information at that time on what
22 occurred?

23 A. Yes.

24 Q. Did you give them the whole story?

25 A. Not the whole story.

1 Q. Why not?
2 A. I don't know.
3 Q. Did you write a statement that evening?
4 A. Yes.
5 Q. Did that statement contain everything that
6 happened that night?
7 A. No.
8 Q. Did you stay in that home that night?
9 A. No.
10 Q. Why not?
11 A. Just wanted to get out of there. Didn't want to
12 be in there.
13 Q. What was your mood?
14 A. Angry, sad.
15 Q. Did you come back to the home after that night?
16 A. A few days later, yeah.
17 Q. Was there anything different about the home?
18 A. No.
19 Q. Did there come a time that you cleaned up the
20 house?
21 A. Yes.
22 Q. When was that?
23 A. Um, three or four days later.
24 Q. Had you come by the home at any time when there
25 was, um, anything that might indicate that you shouldn't go

1 in?

2 A. No. I drove by once, like, probably the third day
3 after and I had saw police tape up so I just drove away.

4 Q. Then when you came back the next day was the
5 police tape still up?

6 A. I didn't go the next day.

7 Q. When you did go back, was the police tape still
8 up?

9 A. No.

10 Q. And what did you do?

11 A. Went inside, cleaned the bathroom.

12 Q. What did you do in the bathroom?

13 A. Cleaned up all the blood.

14 Q. Why did you do that?

15 A. 'Cause no one else was doing it.

16 Q. When you cleaned up the blood, was there anything
17 else that you needed to clean up?

18 A. No. Just the bathroom and the wall.

19 Q. What was on the wall?

20 A. Blood.

21 Q. After the night of August 5th, 2009, did you ever
22 sleep in that house again?

23 A. No.

24 Q. Why not?

25 A. Knowing what would happen, I don't think anyone

1 would (verbatim).

2 Q. Where did you stay?

3 A. My Uncle Scott's house.

4 Q. Is there anything that we haven't covered that you
5 think is important for the Court to know?

6 A. Um, people are saying that me and my mom used all
7 the money --

8 Q. Okay. Wait. Wait.

9 A. Can't use that?

10 Q. No. I just want to --

11 Anything that you saw or you actually heard. We
12 can't talk about what people were saying out there.

13 A. No?

14 Q. Okay. Thank you.

15 A. Yes.

16 MR. SMITH: No further questions at this time,
17 Your Honor.

18 THE COURT: Why don't we take about a 10-minute
19 recess, and then you can do cross-examination, sir.

20 Before we do that, ladies and gentlemen, I have to
21 admonish you.

22 It is your duty not to discuss among yourselves or
23 with anyone else any matter having to do with this case.

24 It is your further duty not to form or express any
25 opinion regarding the guilt or innocence of the defendant

1 until the case has been finally decided -- submitted to you
2 for your decision.

3 You are not to read any newspaper articles or
4 listen to or view any radio or television broadcasts
5 concerning this case.

6 Should any person attempt to discuss the case with
7 you or in any manner attempt to influence you with respect
8 to it, you are to advise the bailiff who will, in turn,
9 advise the Court.

10 Be in recess for about 10 minutes.

11 (Whereupon, a recess was had.)

12 THE COURT: Court will come to order. Please be
13 seated.

14 Will counsel stipulate the presence of the jury
15 and alternates?

16 MR. MOLEZZO: The defense so stipulates.

17 MR. SMITH: The State would so stipulate, Your
18 Honor.

19 THE COURT: Sir, would you please come and take
20 your place up here on the witness stand? Again, pull up to
21 the microphone, and please state your name again.

22 THE WITNESS: Robert James Morton.

23 THE COURT: You're still under oath. You
24 understand that, sir?

25 THE WITNESS: Yes.

1 THE COURT: You may proceed on cross-examination.

2 MR. MOLEZZO: May I, Your Honor, if the witness
3 allows, call him Robert?

4 THE WITNESS: Yes.

5 THE COURT: Yes, you may do so.

6 MR. MOLEZZO: Thank you.

7 Mr. Morton, would that be okay?

8 THE WITNESS: Yes.

9 MR. MOLEZZO: Thank you.

10 CROSS-EXAMINATION

11 (BY MR. MOLEZZO:)

12 Q. Prior to your testifying today, have you met with
13 the district attorney's office?

14 A. Yes.

15 Q. And how long did that meeting take place? Or how
16 long was that meeting, please?

17 A. Four hours. Or two, actually.

18 Q. And is there anything during that meeting that --
19 let me ask it a different way.

20 What did you talk about in that meeting?

21 A. The case.

22 Q. Did you have an opportunity to review your written
23 statement? Anything like that?

24 A. Yes.

25 Q. And I'm assuming that he told you to do the best

1 you can and tell the truth; is that correct?

2 A. Yes.

3 Q. And it was four-and-a-half hours?

4 A. It was two, actually. Sorry.

5 Q. That's fine. That's fine.

6 Um, now, on August 5th, 2009, you indicated on
7 direct testimony that, uh, your mother told you that she was
8 going to the bar? Is that what you said?

9 A. That both of them were going to the bar.

10 Q. Uh-huh.

11 A. (Nods head.)

12 Q. But that's not true, is it?

13 A. It is true.

14 Q. In fact, they left for the bar and you were
15 downstairs, correct?

16 A. What?

17 Q. They left the house and you were still downstairs?
18 You didn't see your mother when she left?

19 A. My mom told me they were going to the bar.

20 Q. I notice that your hands are crossed. Are you
21 uncomfortable?

22 A. Nervous.

23 Q. Don't be nervous, Robert.

24 Now, so it's your testimony under oath that you
25 saw your mother before she had left?

1 A. Yes.

2 Q. And that she told you she was going to the bar?

3 A. That they were going to the bar.

4 Q. Not she, but they were going to the bar?

5 A. They were going to the bar.

6 Q. Let me -- Robert, please let me finish my question

7 and then answer. Is that fair?

8 A. Yes.

9 Q. Thank you.

10 Now, when did this occur? Approximately what

11 time?

12 A. I don't really remember.

13 Q. Could it have been 7? Could it have been

14 8:00 p.m. when they left?

15 THE COURT: Sir, what is it you're asking?

16 MR. MOLEZZO: I'm sorry, Your Honor. When his

17 mother and father left the house.

18 THE COURT: Okay. Do you understand the question?

19 THE WITNESS: Yes.

20 THE COURT: Okay.

21 THE WITNESS: Don't really remember. Didn't look

22 at the time when they left.

23 (BY MR. MOLEZZO:)

24 Q. Okay. And do you recall exactly when they

25 returned or approximately what time?

1 A. I don't really remember, no. Pretty late.
2 Q. Isn't it true that you told the police that it was
3 somewhere around 11 or 10:30; isn't that correct?
4 A. Yes.
5 Q. So is that the time you think they returned?
6 A. Yes.
7 Q. Around 10:30?
8 And when they returned, you had not -- you did not
9 see them walk in, correct?
10 A. No.
11 Q. And according to your testimony, they were
12 arguing? You heard the arguing?
13 A. Yes.
14 Q. Was it immediately upon them entering the house?
15 A. Yeah. I could hear them bickering back and forth.
16 Q. Bickering?
17 A. (Nods head.)
18 Q. Okay. And what did you do?
19 A. What did I do?
20 Q. Uh-huh.
21 A. Turned up the music.
22 Q. Okay. Do you recall how loud the music was?
23 A. No. Loud enough to still hear them fighting.
24 Q. This is common occurrence, correct? The arguing?
25 A. Yes.

1 Q. And I'm sorry, but you've endured this for quite
2 some time; isn't that true?
3 A. Yes.
4 Q. And you've seen and witnessed this conduct by your
5 mother and your father for quite some time; isn't that true?
6 A. Yes.
7 Q. And isn't it also true that your father, as well
8 as your mother, had some drinking problems?
9 A. Yes.
10 Q. And it's also true that your mother had a serious
11 drug problem; isn't that correct?
12 A. Prescriptions?
13 Q. That's true, right?
14 A. Yes.
15 Q. And you're aware that she would doctor shop and
16 get prescriptions from all different places, correct?
17 A. She would what?
18 Q. She had a lot of prescriptive -- prescription
19 medicine, correct?
20 A. Yeah. Yes.
21 Q. And under oath, had she ever asked you to sell any
22 of that prescriptive medicine?
23 A. Not me, no.
24 Q. Do you have personal knowledge if she asked your
25 brother Chad to sell that prescriptive medicine?

1 A. Yeah, because we were hurting for money.

2 Q. Now, you say "we." So you did sell some of that

3 for your mother?

4 A. Well, she was hurting -- I didn't say I was

5 selling anything. I said she was hurting for money.

6 Q. Now, your basement is a fully-functional basement;

7 is that right?

8 A. Yes.

9 Q. That means it has sheetrock, insulation, all that,

10 correct?

11 A. Yes.

12 Q. Now, you indicated on direct examination that you

13 heard your mother screaming?

14 A. Yes.

15 Q. "He's hurting me"?

16 A. (Nods head.)

17 Q. And is it your sworn testimony that that's when

18 you came up?

19 A. Yes.

20 Q. So isn't it true that you encountered your father

21 before any pow or pop sound?

22 You saw your father before any gun went off; isn't

23 that true?

24 A. No.

25 Q. Well, Robert, that's what you're saying.

1 A. No.

2 MR. SMITH: Objection, argumentative, Your Honor.

3 THE COURT: I sustain that.

4 (BY MR. MOLEZZO:)

5 Q. Well, isn't it true on direct examination you

6 heard your mother scream out and you ran upstairs?

7 A. And then when I got halfway up the stairs, I heard

8 a loud thud.

9 Q. But you didn't say that on direct examination, did

10 you?

11 A. No.

12 Q. Okay. You heard a thud, something like this

13 (indicating)?

14 A. Yes.

15 Q. You didn't hear a pow or a bang or a pop, correct?

16 A. No.

17 Q. Do you recall, on October of 2009, there was a

18 preliminary hearing?

19 A. Yes.

20 Q. And you were called by the State as a witness,

21 correct?

22 A. Yes.

23 Q. And you knew that hearing --

24 You were there at that hearing, correct?

25 A. Yes.

1 Q. And you were subject to questions, right? People
2 asked you questions, right, Robert?

3 A. Yes.

4 Q. And you were also under oath at that hearing; do
5 you recall that?

6 A. Yes.

7 Q. Do you recall at that hearing telling the
8 prosecution that your folks left around 6 or 7:00 p.m.?

9 A. I don't recall, no.

10 Q. Is it possible that you said that?

11 A. Yes.

12 MR. SMITH: What page are you referring to?

13 MR. MOLEZZO: I apologize, counsel. You're
14 looking at page six, lines 14 to 25.

15 (BY MR. MOLEZZO:)

16 Q. Also at that preliminary hearing, isn't it true
17 you said, "I think they went to a bar"?

18 A. They went to a bar.

19 Q. The question is, at the preliminary hearing, you
20 testified "I think they went to a bar," correct?

21 A. Yep.

22 MR. SMITH: Objection, Your Honor. That's not the
23 testimony that was given at the preliminary hearing. And I
24 would also object to the previous statement that he
25 testified that it was 6:00. That's not the testimony that

1 was given either, Your Honor.

2 THE COURT: Well, the appropriate way to do this,
3 sir, if you're going to use another document to impeach his
4 testimony today, is that you give him the opportunity to
5 examine the document, read it --

6 MR. MOLEZZO: Well, this --

7 THE COURT: Don't interrupt me.

8 MR. MOLEZZO: Sorry, Judge.

9 THE COURT: And have him read it silently so he
10 has the right to read the portion that you intend to bring
11 up and then you can ask him questions. That's the
12 appropriate way to do that, sir.

13 MR. MOLEZZO: Okay. Thank you, Your Honor.

14 (BY MR. MOLEZZO:)

15 Q. Will this revive your recollection?
16 May I approach, Judge?

17 THE COURT: You may, sir.

18 (BY MR. MOLEZZO:)

19 Q. I'm handing you page six. Please to yourself read
20 from line 14 to 25.

21 THE COURT: Have you had the opportunity to review
22 that to yourself, sir?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 ///

1 (BY MR. MOLEZZO:)

2 Q. Isn't it true under direct examination at the

3 preliminary hearing when asked what time you thought they

4 left, you said, "Like six or seven"?

5 A. Yes.

6 Q. And isn't it also true that, when the prosecution

7 asked you where they were going, you said, "The bar, I

8 think"?

9 A. Yes.

10 Q. Now, upon your folks' return, you were downstairs;

11 is that correct?

12 A. Yes.

13 Q. With Anastasia and Jessica?

14 A. Yes.

15 Q. But prior to that, there were friends over there

16 for most of the day; isn't that correct?

17 A. No.

18 Q. Is it your sworn testimony that there were no

19 friends there that day, sir?

20 A. Earlier that day?

21 Q. That's correct.

22 A. I might have had a couple of friends, but not all

23 day.

24 Q. I'm sorry?

25 A. I said I might have had a couple of friends over,

1 but not all day.

2 Q. Okay. Is it possible that you had a few friends
3 over that day?

4 A. Like one.

5 Q. One?

6 A. (Nods head.)

7 Q. Okay. Is it also your testimony that you did not
8 consume illegal drugs that day?

9 A. No.

10 Q. On August 5th or when this event took place, do
11 you recall if -- the stairwell to the basement, is there a
12 door there?

13 A. Yes.

14 Q. Was that door open or closed, if you can recall?

15 A. Open.

16 Q. It was open?

17 A. (Nods head.)

18 Q. Is that common, for you to keep that door open?

19 A. Yes.

20 Q. And again, you shared with us that once you
21 heard -- or you heard your parents arguing, you just turned
22 up the music?

23 A. Yes.

24 Q. This was a common thing? You didn't think
25 anything of it; isn't that true?

1 A. That's true.

2 Q. But you really couldn't tell what they were saying
3 back and forth, you just heard the loud voices; is that
4 true?

5 A. Yes.

6 Q. Okay. Now, on direct examination today, you
7 indicated your mother yelled, "He's hurting me"; is that
8 right?

9 A. Yes.

10 Q. And to go back a little bit. That's when you ran
11 upstairs, correct?

12 A. Yes.

13 Q. And as you turned the corner, you encountered your
14 father; is that correct?

15 A. In the hallway, yes.

16 Q. Okay. Now, you said -- you said at the --

17 Did you say at the preliminary hearing you don't
18 recall or that your dad was merely holding the gun? You
19 don't mention any aiming, correct?

20 A. I don't remember, no.

21 Q. Okay. Will this revive your recollection?

22 THE COURT: Sir, what you need to do is show him
23 the document and then ask him as a result of that whether he
24 now is able to recall independently what it is you're asking
25 him.

1 MR. MOLEZZO: Thank you.
2 Counsel, page nine.
3 MR. SMITH: Thank you.
4 MR. MOLEZZO: Thank you, Your Honor.
5 (BY MR. MOLEZZO:)
6 Q. Read from line 18 to 25, please.
7 THE COURT: Read it to yourself.
8 MR. MOLEZZO: To yourself.
9 (BY MR. MOLEZZO:)
10 Q. Sir, do you recall mentioning the holding of the
11 gun at that time?
12 A. No.
13 Q. But you did testify at the preliminary hearing,
14 correct, that he was holding the weapon?
15 A. Yes.
16 Q. But you didn't describe at the preliminary hearing
17 exactly how he was holding it; is that true?
18 A. That's true.
19 MR. SMITH: I'm going to object, Your Honor --
20 MR. MOLEZZO: I'll rephrase, Your Honor.
21 THE COURT: Okay. I don't want to be arguing over
22 what was said, unless he has an opportunity to review the
23 document that you're trying to impeach him with. He has a
24 right to look at that.
25 MR. SMITH: I think it would be a correct

1 statement that on page nine he didn't describe that, but on
2 page 10 he did. So it's a misstatement, Your Honor.

3 THE COURT: Well, you gentlemen, the way, as I
4 understand your questioning is whether or not he recalls
5 testifying in a certain way at the preliminary hearing.

6 And to do that, you can give him the document, he
7 can review it silently. And then you can ask if now he has
8 been able to refresh his recollection, and whether he now
9 independently recalls so testifying. That's how that needs
10 to be done.

11 MR. MOLEZZO: That will be done that way. Thank
12 you, Your Honor.

13 THE COURT: Okay.

14 (BY MR. MOLEZZO:)

15 Q. At the preliminary hearing you just testified as
16 to how he was holding the gun; isn't that true?

17 A. Yes.

18 Q. But you didn't make any statement or testify as to
19 what angle the gun was; isn't that true?

20 A. Yes.

21 Q. Okay. Sir, as you sit here today, you don't know
22 whether or not his hand was on the trigger? Next to the
23 trigger and you can't say; isn't that correct?

24 A. I can say it was next to the trigger.

25 Q. I'm sorry, Robert, please?

1 A. I can say it was next to the trigger.

2 Q. Do you recall what the gun looked like?

3 A. Yes.

4 MR. MOLEZZO: For demonstrative purposes, and for
5 the record, I'm going to handle the firearm.

6 THE COURT: You be very careful handling that
7 firearm in this courtroom, sir. I just want to make sure
8 you understand this is a firearm.

9 MR. MOLEZZO: Yes.

10 THE COURT: And I don't want people to just be
11 using the firearms around here. So you be very careful with
12 that.

13 MR. MOLEZZO: As an officer of the Court, I will
14 state for the record there is no bolt action in the firearm.
15 The bailiff has looked at the firearm. And it is
16 inoperable, cannot shoot.

17 THE COURT: That may be. But I still don't want
18 it being waved around in the courtroom.

19 MR. MOLEZZO: I understand that, Your Honor.

20 THE COURT: Okay, sir.

21 (BY MR. MOLEZZO:)

22 Q. Robert, if you can go back, do the best you can.
23 I know it was a difficult event. But I'm your father.
24 Okay?

25 For the record, this gun is facing towards the, I

1 guess you would say south. Actually, facing toward the
2 east. Now, I'm your dad. Where would my right hand be?

3 A. Go up.

4 Q. Speak up, Robert?

5 A. Go up.

6 Q. Up here (indicating)?

7 A. Yeah. About right there (indicating).

8 Q. About right there (indicating)?

9 A. Yes.

10 Q. Was it in a grasping fashion; do you recall?

11 A. Yes.

12 Q. Okay. Do you recall whether or not the finger was
13 on the trigger?

14 A. I don't remember, no.

15 Q. That's fine. For the record, my right hand is
16 grasping the butt near the trigger area (indicating).

17 Left hand? Where would my left hand go?

18 A. On the stock.

19 Q. Okay.

20 A. About right there.

21 Q. About right there (indicating)?

22 A. Yes.

23 Q. And was it a grasping fashion?

24 A. Yes.

25 Q. Okay. For the record, my left hand is on the

1 stock near the barrel, but the gun is facing down. Is that
2 correct?

3 A. The gun wasn't facing down, no.

4 Q. For these purposes, it's facing down right now,
5 correct?

6 A. Yes.

7 Q. Okay. On direct examination, you said the gun was
8 facing up?

9 A. Up.

10 Q. Would it be like this (indicating)?

11 A. Like holding it across his chest.

12 Q. Holding it like this (indicating)?

13 A. Like that.

14 Q. Okay. So I would say for the record, verify the
15 prosecution's position, 45-degree angle; is that right?

16 A. (Nods head.) Yes.

17 Q. Okay. Now, where would the entrance to the
18 bathroom be at that time?

19 A. Right in front of you.

20 Q. Right directly in front?

21 A. (Nods head.) Yes.

22 Q. Is that correct?

23 A. Yes.

24 Q. Okay. So for the record, the bathroom is away
25 from the barrel, the entrance, correct?

1 A. Yes.

2 Q. The barrel is pointing away from the entrance of
3 the bathroom; is that right?

4 A. Yes.

5 Q. Now, when you encountered your father, if you can
6 recall, he was clearly intoxicated; isn't that true?

7 A. I don't know.

8 Q. Well, for the purposes of this demonstration --

9 A. I didn't smell alcohol.

10 Q. -- was he rigid?

11 A. What?

12 Q. Was he rigid? Do you recall?

13 A. Was he rigid?

14 Q. Was he standing firm?

15 A. Yes.

16 Q. Okay.

17 A. He wasn't swaying or anything. Plus I wasn't
18 paying too much attention to that either.

19 Q. I understand that. But he didn't make any
20 statement to you at all, correct?

21 A. No.

22 Q. And you came, according to your testimony, you
23 grabbed the gun out of his hands?

24 A. Yes.

25 Q. Correct?

1 A. Yes.

2 Q. Now, when you grabbed the gun out of his hands,
3 you had not seen your mother yet; is that true?

4 A. I saw her out of the corner of my eye. That's why
5 I grabbed the gun.

6 Q. Okay. And when you grabbed the gun, it was a
7 simple matter to take it away; isn't that correct?

8 A. No, it took a little bit of a struggle.

9 Q. And it's your testimony that your father, prior to
10 taking that gun, was turning it towards his face?

11 A. Yes.

12 Q. But he made no statements at all; isn't that true?

13 A. That's true.

14 Q. At that time?

15 A. Yes.

16 Q. Now, it's your testimony that you smelled smoke;
17 is that right, Robert?

18 A. Powder. Gunpowder.

19 Q. I'm sorry, gunpowder.
20 But you had not seen the actual firing of the gun;
21 isn't that true?

22 A. That's true.

23 Q. And best to your knowledge, no one had; isn't that
24 true?

25 A. That's true.

1 Q. And at the time of this tragic event, it was you
2 taking care of your dad, if you will, and Stasia and Jessica
3 downstairs still?

4 A. Yes.

5 Q. Isn't that true?

6 A. Yes.

7 Q. So again, your testimony, and then I'll move on,
8 is that you heard mom scream, you ran upstairs, correct?

9 A. Yes.

10 Q. You encountered your dad after the thud or before
11 the thud?

12 A. After.

13 Q. I'm sorry. Let me rephrase. What made you go
14 upstairs?

15 A. My mom screaming.

16 Q. Okay. And approximately how long did it take you
17 to run that length and encounter your father?

18 A. A couple of seconds. I don't know.

19 Q. Okay. But it's your testimony under oath that you
20 heard no bang, no pow-type stuff, correct?

21 A. No, not at that time. Not when I ran up the
22 stairs. I got halfway upstairs before I heard the thud.

23 Q. Well, a thud's not a pow, is it, Robert?

24 A. No, it's not.

25 Q. Okay. Do you understand the difference?

1 A. Yes, I do.

2 Q. When you saw your mother, was she seated on the --

3 on the, uh, toilet?

4 A. No. She was laying on the ground next to the tub.

5 Q. Therefore, isn't it possible the thud would have

6 been her falling off the toilet?

7 A. I don't think she would have fell that far off the

8 toilet. Don't you think she'd be in front of the toilet if

9 she fell?

10 Q. Isn't it possible that the thud could have been

11 her falling off that toilet?

12 A. No.

13 Q. But you didn't see the actual shooting, correct?

14 A. No.

15 Q. I want to talk about something that, in reference

16 to this --

17 In reference to this weapon, you've seen it there

18 your whole life; isn't that right?

19 A. Quite a few times, yes.

20 Q. And Robert, you had never seen your dad with that

21 gun or maybe on one occasion; isn't that correct?

22 A. That's correct.

23 Q. And, in fact, your father was not a hunter, was

24 not a gun guy, as far as you know; isn't that true?

25 A. That's true.

1 Q. Had you had an occasion prior to this tragic event
2 to see your father with that gun?

3 A. No.

4 Q. Let me rephrase that. It sounds too attorney-ish.
5 Did you see your dad with the gun ever? Now,
6 think closely. Did you see your dad with that gun ever?

7 A. Just taking it upstairs. Because usually all the
8 guns were kept in the furnace room downstairs, and that one
9 was behind the door for some reason. I don't know why.

10 Q. After gaining possession of that gun, wouldn't you
11 say he was able -- you were able to keep your dad away
12 fairly easily?

13 A. He was right behind me the whole time.

14 Q. Isn't it also true that it was your father that
15 said, "Call 911"?

16 A. No.

17 Q. "I can't believe I shot her"?

18 A. No.

19 Q. When you say he was right behind you, did you see
20 him right behind you?

21 A. Yes.

22 Q. Did you look around and see him behind you?

23 A. Yes.

24 Q. Was he traveling at you in an aggressive manner?

25 A. Just walking right behind me. Everywhere I went,

1 he was right behind me.

2 Q. Was it something like this (indicating)? Robert.

3 Robert. Robert.

4 Was he stumbling?

5 A. No.

6 Q. Or was he coordinated?

7 A. He was coordinated.

8 Q. But yet you smelled alcohol, correct?

9 A. I didn't smell alcohol. I smelled gunpowder.

10 Q. So it's your testimony, Robert, that at no time

11 did your father say or tell you to call 911?

12 A. No.

13 Q. Did he try to stop you from calling 911?

14 A. No.

15 Q. So he was merely following you around the house,

16 Robert?

17 A. Yes.

18 Q. Isn't it also true that when you got the gun away

19 from your father you asked him what the heck he was doing?

20 A. Yes.

21 Q. And his response was just a mumbled, shocked look;

22 isn't that true?

23 A. No.

24 Q. Well, what was his response, Robert?

25 A. "I fucked up."

1 Q. Wasn't it also, "I can't believe I shot her"?

2 A. I didn't hear that, no.

3 Q. But you heard the "I f'd up"?

4 A. (Nods head.)

5 Q. And that's the only thing you heard?

6 A. (Nods head.) And then I turned and ran for the
7 phone.

8 THE COURT: The record should reflect the witness
9 was nodding his head, yes --

10 MR. MOLEZZO: Thank you, Your Honor.

11 THE WITNESS: Oh, sorry.

12 THE COURT: -- to the answer.

13 That's okay.

14 (BY MR. MOLEZZO:)

15 Q. Now, during this time, it's your testimony that
16 your father was in his birthday suit? He was naked?

17 A. Yes.

18 Q. And during the time he was following you, at no
19 time did he try to take that gun away; isn't that true?

20 A. That's true. Not at that time, no.

21 Q. And isn't it also true that he went to put on some
22 pants, correct?

23 A. Later on, yes.

24 Q. Would you say, Robert, this whole event -- how
25 long did this whole event --

1 From the time you called the police until they got
2 there, and I know it's been a year ago, how much time
3 passed?

4 A. I have no idea.

5 Q. Could it have been more than 40 minutes? Less?

6 A. Probably less. I was in slow motion, so I'm not
7 too sure.

8 Q. So would you say you were in shock?

9 A. Yes. Who wouldn't be?

10 Q. I'm sorry?

11 A. I said, who wouldn't be?

12 Q. Do you believe your dad was in shock as well?

13 A. I don't know. I don't know how he was feeling,
14 so --

15 Q. I'm sorry, please?

16 A. I said I don't know how he was feeling, so I have
17 no idea.

18 Q. Well, you tell the prosecution on direct
19 examination that you felt your dad was trying to get away?

20 A. Yes.

21 Q. And what made you believe that, Robert, he only
22 had pants on?

23 A. He didn't have pants on at that time.

24 Q. So it's your testimony he was trying to get away
25 while naked?

1 A. No. He had pants on. He walked outside. So,
2 therefore, I thought he was trying to get away.

3 Q. Okay. Let me stop you there. He walked outside;
4 is that correct?

5 A. Yes.

6 Q. He didn't run?

7 A. He ran upstairs.

8 Q. Let me ask you again. He walked outside? He
9 didn't run; isn't that true?

10 A. Yes.

11 Q. Do you recall at the preliminary examination that
12 you said you saw your mother as you were walking towards
13 your dad?

14 A. Out the corner of my eye.

15 Q. Was that your testimony today?

16 A. Yes.

17 Q. Well, your dad was located in the hallway; isn't
18 that correct?

19 A. Yes.

20 MR. MOLEZZO: And -- mark this as defense Exhibit
21 A, please.

22 THE COURT: It will be marked as defendant's
23 Exhibit A for identification.

24 (Whereupon, Exhibit A was marked for identification.)

25 MR. MOLEZZO: Thank you, Your Honor.

1 MR. SMITH: Um, what's the gun marked as then?
2 THE COURT CLERK: Six.
3 MR. SMITH: What?
4 THE COURT: Six.
5 MR. SMITH: It's a State's exhibit?
6 MR. MOLEZZO: I used it as demonstrative. We can
7 verify it as an exhibit if you want.
8 THE COURT: Just a second.
9 MR. MOLEZZO: Oh, I'm sorry, Judge.
10 THE COURT: Miss Clerk, has this been premarked
11 with counsel?
12 MR. SMITH: Mr. Molezzo asked for it to be brought
13 over today. We opened it together. And he's the one who
14 marked it as evidence.
15 THE COURT: No. No. He didn't mark it as
16 evidence. The clerk marked it -- if we're talking about the
17 rifle, sir, for the record?
18 MR. SMITH: That's correct.
19 THE COURT: The clerk has indicated that this was
20 marked when it was brought over. Premarked as Exhibit 6 for
21 identification. It is not in evidence.
22 MR. SMITH: Okay.
23 THE COURT: It has been premarked as Exhibit 6
24 only for identification.
25 MR. SMITH: Thank you.

1 THE COURT: The item here appears to be a foam,
2 white, foam board.

3 MR. MOLEZZO: Yes. Thank you, Your Honor. For
4 the record, this is a foam board. It shows the upstairs
5 portion of the house.

6 THE COURT: Why don't you have him identify it and
7 see if it's indeed what you're purporting it as.

8 MR. MOLEZZO: Yes, sir.

9 (BY MR. MOLEZZO:)

10 Q. Robert, can you tell me what this represents, this
11 drawing, if you will? Would this be the upstairs?

12 A. The upstairs, yes.

13 Q. Thank you. And -- and again, I'm displaying this
14 to the jury.

15 Would your father, based upon your testimony, be
16 around this area (indicating)? Do I have that correct?

17 A. In front of the door of the bathroom.

18 Q. I'm sorry?

19 A. In front of the door of the bathroom.

20 Q. Okay. And where would be the stairwell? You
21 would be coming up this way (indicating)?

22 A. Yes.

23 Q. And is it your testimony that you came around
24 (indicating)? You said that on direct examination, correct?

25 A. Yes.

1 Q. Or you were running up here, and then you came
2 around this corner (indicating); is that right?
3 A. Yes.
4 Q. And when you saw your father, right immediately
5 there (indicating), correct?
6 A. Yes.
7 Q. Okay. And it's your testimony at the preliminary
8 hearing, is it not, that when -- you saw your mother before
9 you saw your father?
10 A. I saw my father before I saw my mom.
11 Q. Okay. Therefore, is it your testimony that, as
12 you're approaching your father, you saw your mom?
13 A. Yeah, in the doorway right there, because he was
14 right in front of the door.
15 Q. Okay. And your mother was over here somewhere
16 (indicating); is that your testimony?
17 A. Yeah.
18 Q. Not here by the toilet (indicating)?
19 A. By the tub, kind of by the door.
20 Q. Okay.
21 MR. MOLEZZO: I would now move this in as defense
22 Exhibit A.
23 MR. SMITH: No objection, Your Honor.
24 THE COURT: Exhibit A is hereby admitted.
25 MR. MOLEZZO: Thank you, Your Honor.

1 (Whereupon, Exhibit A was admitted into evidence.)
2 (BY MR. MOLEZZO:)
3 Q. Now, at the time -- the police arrived sometime
4 later; isn't that correct?
5 A. Yes.
6 Q. And isn't it true that, when the police arrived,
7 they saw you and your dad in the yard?
8 A. Yes. In the neighbor's yard. Neighbor's front
9 yard, I think.
10 Q. And regarding that location, isn't it true that
11 the yards are like touching each other? There's no big
12 barrier, is there?
13 A. No, there is not.
14 Q. Okay. It's not a big fence or anything? They
15 just kind of join each other; isn't that correct?
16 A. Yes.
17 Q. I'm sorry, Robert?
18 A. Yes.
19 Q. So when law enforcement encountered you, you were
20 with your father; isn't that right?
21 A. Yes.
22 Q. Is it your sworn testimony that you were
23 struggling with your dad?
24 A. I had him on the ground.
25 Q. Or were you guys just talking?

1 A. I had him on the ground.
2 Q. You had him on the ground?
3 A. (Nods head.) And he was saying, "Get off me."
4 Q. And you had him on the ground because you felt
5 that he was trying to leave?
6 A. Yes.
7 Q. Not running, but he was walking, correct?
8 A. Yes.
9 Q. In pants?
10 A. Yes.
11 Q. No shoes, correct?
12 A. Yes.
13 Q. No socks?
14 A. Yes.
15 Q. No shirt?
16 A. Yes.
17 Q. At night?
18 A. Yes.
19 Q. And isn't it true when law enforcement got there,
20 you were both told to get on the ground?
21 A. Yes.
22 Q. Now, eventually you encountered law enforcement;
23 isn't that true?
24 A. Yes.
25 Q. Or you talked to them?

1 And you made a written statement; isn't that
2 correct?

3 A. Yes.

4 MR. MOLEZZO: Please mark this as defense Exhibit
5 B.

6 THE COURT: It will be marked for identification
7 as Exhibit B, a single sheet of paper.

8 (Whereupon, Exhibit B was marked for identification.)

9 MR. MOLEZZO: Thank you. May I approach, Your
10 Honor?

11 THE COURT: You may, sir.

12 MR. MOLEZZO: Thank you.

13 (BY MR. MOLEZZO:)

14 Q. I'm going to hand you what has been marked as
15 defense Exhibit B. Will you please look at it and tell me
16 when you're done? Is this your handwriting, sir?

17 A. Yes.

18 Q. Is that your signature, sir?

19 A. Yes.

20 MR. MOLEZZO: Defense would move this exhibit into
21 evidence as defense Exhibit B.

22 MR. WILLIAMS: We haven't seen it yet, Your Honor.

23 MR. MOLEZZO: For the record, the prosecution has
24 an identical record in their book. And I received this copy
25 through discovery.

1 MR. SMITH: No objection, Your Honor.

2 THE COURT: It is hereby admitted as defendant's
3 Exhibit B.

4 (Whereupon, Exhibit B was admitted into evidence.)

5 (BY MR. MOLEZZO:)

6 Q. Robert, when you spoke to law enforcement, did
7 they -- they wanted you to write a statement; isn't that
8 true?

9 A. Yes.

10 Q. Did you feel threatened? Did you feel rushed in
11 any way?

12 A. No. I just wanted to get away from that house. I
13 was still in shock. I just wanted to get away.

14 Q. But yet you came back a few days later to clean
15 out the bathroom; isn't that correct?

16 A. Well, yeah.

17 Q. Okay. You weren't told by anybody to do that;
18 isn't that true?

19 A. That's true.

20 Q. And, in fact, the statement which you've already
21 authenticated, this is your writing, correct?

22 A. Yes.

23 Q. This is your signature, right?

24 A. Yes.

25 Q. And again, not to belabor, not to press it too

1 hard, but you were not rushed in doing this, were you?

2 A. Not really, no. Just wanted to get out of there.
3 Went through a lot of crap in that little bit of time. I
4 wanted to leave. Worried about my mom.

5 Q. Did law enforcement ask you --

6 Did they test you for anything? Did they do any
7 swabbing of your skin? Any swabbing of your hands?

8 A. No.

9 Q. Any swabbing of the mouth? Anything like that?
10 Any fingerprints?

11 A. No, not at that time.

12 MR. MOLEZZO: Court's indulgence, please.

13 THE COURT: Yes, sir.

14 (BY MR. MOLEZZO:)

15 Q. Isn't it fair to say that you felt --

16 I mean, Robert, you felt obvious anger when you
17 saw your mother crumpled on the ground?

18 A. Yes.

19 Q. And based upon what you knew at that time, it was
20 your father who caused her to be injured; isn't that
21 correct?

22 A. Yes.

23 Q. Isn't that correct?

24 A. Yes.

25 Q. So isn't it fair to say that, in your mind, your

1 dad was the one who caused this injury?

2 A. Yes.

3 Q. And isn't it fair to say that, in fact, your dad

4 wasn't running anywhere?

5 That you just wanted to make sure -- you wanted to

6 punish him and tackle him; isn't that true?

7 A. No. That's my dad, why would I want to hurt him?

8 Q. So that's a no, sir?

9 A. That's a no.

10 Q. Now, going back, stepping back a little bit.

11 Robert, I apologize, but we've got to go through this.

12 A. That's fine.

13 Q. Stepping back a little bit.

14 THE COURT: Do you need a break?

15 THE WITNESS: No, I'm fine.

16 THE COURT: Okay.

17 MR. MOLEZZO: Your Honor, if I may, it's 15 till

18 5. I'm comfortable --

19 THE COURT: Well, I just want to make sure that

20 he's okay to proceed.

21 MR. MOLEZZO: Okay.

22 THE COURT: You've got another 10 minutes to go,

23 sir. So let's get on with it.

24 MR. MOLEZZO: Yes, sir.

25 ///

1 (BY MR. MOLEZZO:)

2 Q. You encounter your father, you run up the stairs

3 from the basement, correct?

4 A. Yes.

5 Q. At most, it takes five seconds; would you agree?

6 A. Yes.

7 Q. You see your father there with a weapon, just

8 standing like a statue, correct?

9 A. Yes.

10 Q. You never saw your father chamber any type of

11 bullet into the gun?

12 A. No.

13 Q. You never saw your father try to manipulate the

14 gun in any way?

15 A. No.

16 MR. MOLEZZO: I apologize, counsel.

17 (BY MR. MOLEZZO:)

18 Q. Manipulate the bolt in any way?

19 A. No.

20 Q. Isn't it your testimony that you never heard --

21 you didn't hear your dad respond in anger?

22 On this night, Robert, your dad never said that

23 f'g anything, correct?

24 A. What? What?

25 Q. When you -- listen to me for a second.

1 When you encountered your father, you didn't sense
2 any anger whatsoever; isn't that true?

3 A. Um, I could sense something. I don't know what it
4 was.

5 Q. Possibly shock; would you agree?

6 A. Yeah.

7 Q. Did you sense grief? Concern?

8 A. Not really, no. He didn't act like he just shot
9 his wife for sure.

10 Q. I'm sorry?

11 A. I said he didn't act like he just shot his wife.

12 Q. Well, Robert, how should someone act?

13 A. You know, you'd think they would be the one trying
14 to get help if it was an accident, or run for the phone or
15 do something, something. Not go and put pants on and walk
16 outside. You think he'd be right there next to her.

17 Q. The fact is, Robert, he was; isn't that true?

18 A. Uh, no, he a wasn't.

19 Q. And isn't it also true that he went into that
20 bathroom to comfort her?

21 A. No.

22 Q. How would you know, you were calling 911?

23 A. He was right there behind me the whole time. We
24 went downstairs, he was with me. He ran upstairs, I ran
25 after him. At no time did he stop and look at my mom and

1 try and comfort her. He walked right by her to go get pants
2 on.

3 Q. Is that your testimony under oath, Robert?

4 A. That is my testimony.

5 MR. MOLEZZO: Your Honor, I have some more with
6 this witness that will take way beyond 5:00. I would just
7 like to share that with the Court.

8 THE COURT: Okay. Thank you for that information.

9 MR. MOLEZZO: So, um, would you like me to just
10 continue, Your Honor?

11 THE COURT: Yeah. We've got another 10 minutes.

12 MR. MOLEZZO: Okay.

13 (BY MR. MOLEZZO:)

14 Q. And at the preliminary hearing, isn't it true that
15 you said, uh, you began dragging your father in front of the
16 house? Do you recall that?

17 A. Yes.

18 Q. Why did you do that?

19 A. Because he was telling me to get off him, and I
20 told him, "I'm not letting you go."

21 Q. And at the time of this alleged dragging, he had
22 pants on; is that right?

23 A. Yes.

24 Q. And this dragging, if you can recall, was it
25 through grass or --

1 A. I picked him up and dragged him. His feet weren't
2 touching the ground. I picked him up.

3 Q. So you didn't drag him, you picked him up?

4 A. And carried him, yes.

5 Q. While holding the weapon?

6 A. No. I didn't have anything in my hands at that
7 time.

8 Q. And according to your testimony with the
9 prosecutor, you had the weapon the entire time -- while in
10 the house, correct?

11 A. Yes.

12 Q. Fighting off your dad with the weapon in your
13 hands, correct?

14 A. Because he was trying to grab it, yes.

15 Q. Correct?

16 A. Yes.

17 Q. Had you ever used this gun before, Robert?

18 A. No.

19 Q. Did you know at the time whether this gun was safe
20 or not or whether a bullet was in the round -- in the
21 chamber?

22 A. It was always loaded. Always.

23 Q. Did you manipulate the bolt on this occasion?

24 A. No.

25 Q. Did you try to open it and make it safe, Robert?

1 A. No.

2 Q. Isn't it fair to say you don't want to be here
3 today?

4 A. Yes.

5 Q. I want to talk about -- just a few more, Robert.
6 Is it fair to say that when this tragedy occurred,
7 you left soon after law enforcement arrived?

8 A. Yes.

9 Q. And you went to Scott, your uncle's house; is that
10 right?

11 A. Yes.

12 Q. Did you leave Anastasia and Jessica behind?

13 A. No.

14 Q. Were they with you?

15 A. They left before I did.

16 Q. They left before you did?

17 A. Yes.

18 Q. Did they leave before the police were there --

19 A. No.

20 Q. -- if you know personally?

21 A. No. No. The police talked to them.

22 Q. And again, it's your testimony -- is it your
23 testimony that you weren't smoking weed that day?

24 A. Yes.

25 Q. Marijuana?

1 A. Yes.

2 Q. Now, you came back -- you came back into a place

3 that you wanted to get away from; isn't that true?

4 A. Yes.

5 Q. Who told you to come back into that residence?

6 A. I did.

7 Q. Did you call and ask for permission from law

8 enforcement?

9 A. No. I thought everything was done since there was

10 no police tape up or anything. Since I drove by a couple

11 days before, it was still up, so I knew something was going

12 on in there, not to go in there, but all the police tape was

13 down.

14 Q. So you did not call the police to see if it was

15 okay?

16 A. No, I didn't.

17 Q. When you went to the room where your mother was

18 lying on the ground, what did you see? Blood? Isn't that

19 correct?

20 A. Yes.

21 Q. Did you see anything else? You see -- you saw

22 blood and other things?

23 A. (Shakes head.)

24 Q. Did you see medical supplies? EMT supplies?

25 A. No. Saw a police ruler and that was by the back

1 door. So I went and took that back down to them.

2 Q. Robert, your encounter with police, would you say,
3 took no more than 10 minutes after this tragedy?

4 A. I couldn't really remember.

5 Q. Robert, give me your guestimate. Ten, 15 minutes;
6 is that fair?

7 MR. SMITH: Your Honor, I'm going to object.

8 THE WITNESS: No idea.

9 THE COURT: Sustained. He's not to guess. If he
10 knows, he can testify. But he's not --

11 (BY MR. MOLEZZO:)

12 Q. In your opinion --

13 MR. MOLEZZO: Thank you, Your Honor.

14 (BY MR. MOLEZZO:)

15 Q. In your opinion, could it have been more than 20
16 minutes?

17 A. Don't remember.

18 Q. Did they preliminary breath -- did they test you,
19 sir, law enforcement?

20 A. Test me for what?

21 Q. Did they give you a preliminary breath test at
22 all?

23 A. No.

24 Q. Did you share with them that you were in a
25 struggle with your father for control of that weapon?

1 A. No.

2 Q. Let me understand this, Robert. You didn't tell

3 the police that you were -- what did you tell the police,

4 Robert?

5 A. That my mom was shot.

6 Q. You left out the fact that you struggled over the

7 gun?

8 A. I wasn't too worried about that at the time.

9 Q. Isn't it true, you left out the fact --

10 A. Yes.

11 Q. -- that you struggled for control of that gun?

12 A. Yes.

13 Q. On the day of this tragedy, did you witness your

14 folks drinking?

15 A. Just my dad had a few beers. He always has a

16 couple.

17 Q. Did you see your mother drinking at all on that

18 day, Robert?

19 A. No.

20 Q. Is it fair to say on that day you saw -- you saw

21 your mother, true?

22 A. Yes.

23 Q. And you saw your father?

24 A. Yes.

25 Q. How long did you see your mother when she told you

1 she was going to the bar?

2 A. That they were going to the bar?

3 Q. How long?

4 A. Um, I don't know, a couple minutes.

5 Q. "Robert, I'm going to the bar, bye"?

6 A. No, it wasn't like that. She came downstairs and

7 said, "Me and your dad are going to the bar." I said,

8 "Okay."

9 Q. And you had seen your father consuming beer when,

10 Robert? Was it that morning?

11 A. Earlier that day.

12 Q. Now, you said on direct examination that it was

13 your mother that wanted the divorce; is that your testimony?

14 A. Yes.

15 Q. Robert, that's not true -- that's not true, is it?

16 A. It is true.

17 Q. Isn't it also a fact, Robert, that your father's

18 the one who got the divorce petitions?

19 A. I don't think so. I don't remember who got them.

20 But all I know is my mom kept signing them, and they would

21 go missing.

22 Q. Isn't it true, Robert, that the divorce petition

23 was on that kitchen table for months and months and months?

24 A. No. Because they had to keep getting new ones

25 because something would happen to the old ones.

1 Q. So isn't it fair to say, Robert, that you're
2 assuming something?

3 You actually didn't see your father do anything
4 with the divorce petitions; isn't that fair?

5 A. That's fair.

6 Q. Okay. So you don't know truly who wanted to get
7 out of the marriage or not; is that fair?

8 A. I'm pretty sure my mom did.

9 Q. Pretty sure. But you're not certain, true?

10 A. True.

11 Q. In fact, your father -- you and your father had
12 spoken about getting out of that marriage; do you recall
13 that? Your dad mentioned it to you before?

14 A. So did my mom.

15 Q. Listen to my question, please. Your dad mentioned
16 to you the divorce before, correct?

17 A. Yes.

18 Q. And your response was what, please?

19 A. I don't remember.

20 Q. Isn't it true your response was, "Good; both you
21 guys need to get out of this relationship"?

22 A. I don't remember.

23 Q. Or something like that?

24 A. I don't remember.

25 Q. Prior to this event, Robert, you had not

1 encountered -- isn't it true that you had not encountered
2 any situation or you had not seen your father, uh -- strike
3 that, Your Honor.

4 Nothing occurred at your house prior to this
5 situation that would lead you to believe, isn't it true,
6 that your father would seriously harm your mother? Would
7 you agree with that?

8 A. I wouldn't agree with that. Because I remember
9 one time --

10 Q. Robert, stay with me. Okay? We can't go in the
11 past.

12 THE COURT: He gets to answer your question
13 though, sir.

14 (BY MR. MOLEZZO:)

15 Q. And it's fair to say that this is --

16 MR. SMITH: I would object, Your Honor. He was
17 answering the question.

18 THE COURT: He was. If you want to complete your
19 answer, you may do so.

20 THE WITNESS: I remember one time I was at work
21 and my brother was living with us and his wife and his baby
22 girl. I was at work. My brother called me, he was all,
23 hey, you need to come home because dad just punched mom in
24 the face.

25 MR. MOLEZZO: Objection, Your Honor. Hearsay. He

1 was not privy. He was not a personal witness to that event.

2 THE COURT: Sustained.

3 (BY MR. MOLEZZO:)

4 Q. Stay with my questions, Robert.

5 The fact is they were both very aggressive to each
6 other; is that fair?

7 A. Not really, no.

8 Q. Really?

9 A. Really.

10 Q. Okay.

11 A. The one time my mom stuck up for herself, he
12 called the cops on her. The one time. She actually --

13 Q. Well, we're not going to go into that, okay,
14 Robert?

15 THE COURT: You're asking the question, sir. You
16 asked about the propensity, and he has a right to answer the
17 question.

18 MR. MOLEZZO: Thank you, Your Honor.

19 THE WITNESS: Can I answer it?

20 THE COURT: I suppose you have already, haven't
21 you.

22 THE WITNESS: Yeah, I guess I did.

23 THE COURT: Okay.

24 (BY MR. MOLEZZO:)

25 Q. So it's fair to say, Robert, that this has been --

1 was a very toxic relationship for quite a few years?

2 A. Yes.

3 MR. MOLEZZO: Court's indulgence, please.

4 THE COURT: Yes.

5 MR. MOLEZZO: Thank you, Your Honor.

6 (BY MR. MOLEZZO:)

7 Q. Robert, have you --

8 MR. MOLEZZO: I'll withdraw that, Your Honor.

9 No further questions, Your Honor, subject -- and
10 thank you, Robert -- subject to recall. Keep Mr. Morton
11 under subpoena, please.

12 THE COURT: Well, what will happen tomorrow --

13 Do you have some redirect?

14 MR. SMITH: Yes, Your Honor.

15 THE COURT: Okay.

16 MR. MOLEZZO: Oh, okay. Thank you, Judge.

17 THE COURT: We're going to stop for the evening,
18 and then you be back here at 9:00, okay?

19 THE WITNESS: Okay.

20 THE COURT: And what's going to happen is that the
21 district attorney's office will have you on what's called
22 redirect. And then the defense will have some recross on
23 additional questions.

24 THE WITNESS: Okay.

25 THE COURT: Okay. So just wait here just a

1 minute.

2 THE WITNESS: All right.

3 THE COURT: Ladies and gentlemen of the jury,
4 we're going to adjourn for the evening. Please be back at
5 5:00 (verbatim). It will probably be a pretty long day
6 tomorrow. You will be hearing testimony all day long with
7 the breaks.

8 And again, I told you the schedule. We go from 9
9 until 12, noon break from 12 to 1:30. And we will go
10 probably till 5. That's the plan and with breaks in
11 between.

12 Again, if you need something special, please let
13 the bailiff know with regard to any special needs that you
14 may have. Please follow my admonition very carefully as you
15 go home and abide by the things that I tell you here,
16 please.

17 It is your duty not to discuss among yourselves or
18 with anyone else any matter having to do with this case.

19 It is your further duty not to form or express any
20 opinion regarding the guilt or innocence of the defendant
21 until the case has been finally submitted to you for your
22 decision.

23 You are not to read any newspaper articles or
24 listen to or view any radio or television broadcasts
25 concerning this case.

1 Should any person attempt to discuss the case with
2 you or in any manner attempt to influence you with respect
3 to it, you are to advise the bailiff who will, in turn,
4 advise the Court.

5 We will be in recess until 9:00 a.m. tomorrow
6 morning.

7 (Whereupon, the proceedings adjourned.)
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Case No. CR-09-5709

Department I

IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF HUMBOLDT

ooOoo

THE STATE OF NEVADA,)
)
Plaintiff,)
)
v.)
)
DAVID CRAIG MORTON,)
)
Defendant.)
_____)

JURY TRIAL - VOLUME II

TAMMIE SPERO
DIST. COURT CLERK
Tammie Spero

2010 SEP 16 AM 7:59

FILED

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter
came on for hearing on September 15, 2010, of said
day, before the HONORABLE RICHARD A. WAGNER, District
Judge.

The plaintiff was present in court and
represented by Russell Smith, Humboldt County District
Attorney, and Brian Williams, Deputy District
Attorney.

The defendant was present in court and
represented by Richard Molezzo, Attorney at Law.

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1
2 Winnemucca, Nevada, Wednesday, September 15, 2010

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4
5 P R O C E E D I N G S

6 (WHEREUPON, the following proceedings were had outside
7 the presence of the jury and the alternates.)

8 THE COURT: Court will come to order. Good
9 morning. This is continuation of case number CR-09-5709,
10 entitled State of Nevada, plaintiff, vs. David Morton,
11 defendant.

12 The record should reflect the presence of the
13 attorneys, and Mr. Morton is present.

14 The record should reflect the absence of the jury
15 and the alternates.

16 The record should reflect that we met outside the
17 presence of the jury. There has been a motion filed on
18 behalf of the State to admit character evidence -- or
19 character testimony under NRS 48.045 (1)(a).

20 On behalf of the defendant, have you received a
21 copy of that, sir?

22 MR. MOLEZZO: Uh, yes, Your Honor. Thank you.
23 Around 10 minutes ago.

24 THE COURT: Okay. As I understand it, the State
25 is alleging that the defense, through questioning of the

1 first witness, has opened a door with regard to the
2 admission of certain evidence.

3 Do you wish to briefly argue that, sir?

4 MR. WILLIAMS: Yes, Your Honor. Thank you. The
5 State is alleging that this occurred, and I have the
6 transcript last night when I was writing the motion, Your
7 Honor, on page 94, at line four, defense counsel asked
8 Mr. Morton the question, "Nothing occurred at your house
9 prior to this situation that would lead you to believe,
10 isn't it true, that your father would seriously harm your
11 mother? Would you agree with that?"

12 Your Honor, I think the implications of that
13 question is that the defendant has good character of never
14 seriously harming his mother previously. We think with that
15 question, Your Honor, the defense's elicited information in
16 the form of character evidence that the State would have the
17 opportunity to rebut. And so we're asking for the
18 opportunity to do that.

19 THE COURT: Counsel, what's your position?

20 MR. MOLEZZO: Thank you, Judge, very much. Good
21 morning.

22 THE COURT: Morning.

23 MR. MOLEZZO: In response to that we decline. We
24 do not feel the door has been opened. Of paramount, I
25 think, interest to the Court, Your Honor, is that Robert was

1 allowed to respond. And he shared with us an event that
2 allegedly occurred previously to this serious issue.

3 And also, the Court has to be aware, obviously,
4 with respect, Your Honor, of the record. And the record
5 tells us this is not a self-defense theory. And the record
6 also tells us in my opening, we do admit some culpability.
7 Those are very powerful facts that this case has.

8 It is my position with those facts and with the
9 door not being opened by my simple question of Robert, and
10 if so, he was still allowed to express the incident that he
11 testified to, that it would be far more prejudicial than
12 probative. And the Court is aware, obviously, on prior
13 specific conduct, um, previous events cannot come in to show
14 that the defendant acted in conformity therein.

15 So clearly, Your Honor, it's our position, and I
16 think it's a real stretch for the prosecution to say that
17 the door was opened for all events or all prior conduct.

18 And I haven't done a Petrocelli in quite a few
19 months, but I believe the standard of proof is clear and
20 convincing of the prior alleged bad acts. I'm sure you will
21 correct me if I'm wrong on that.

22 But in this case again, Your Honor, I will stress
23 it one more time. This is not a self-defense theory. And
24 we admitted on our opening that we do have some culpability
25 here.

1 And we merely say that, if you allow these alleged
2 prior bad acts to come in, it's simply for the purpose of
3 the State in an attempt to inflame the jury. And you
4 really, it's far too prejudicial as opposed to probative.

5 And with that really dynamic argument or, in my
6 opinion, Judge, that powerful, uh, culpability, which I said
7 on the opening, uh, we would ask the Court to decline to
8 allow all prior events to come in, either good or bad, in
9 reference to Mr. Morton.

10 And with respect, Judge, to the prosecution and to
11 the Court, I absolutely don't believe I have opened the door
12 in any fashion. And if the Court thinks I have, Robert was
13 allowed to testify to the event. The Court stopped me and
14 allowed Robert to answer. And we'd ask that the Court go no
15 further. Thank you, Judge.

16 THE COURT: Do you want to respond, sir?

17 MR. WILLIAMS: Yes, Your Honor. First of all,
18 Your Honor, the State -- it's the State's contention that a
19 Petrocelli hearing is not needed here, because we're not
20 seeking to introduce that evidence under (2) of NRS 48.045.
21 We're seeking to introduce that under (1)(a), and under NRS
22 48.055, Your Honor.

23 In addition, Your Honor, we do believe that the
24 defense opened the door to this when they asked Robert that
25 question. The implication of his question is that the

1 defendant never at any time had ever caused serious harm to
2 the victim previously.

3 In addition, Your Honor, it was the defense in
4 this case seems to be going for, um, a charge of voluntary
5 manslaughter. Well, part of the charge of voluntary
6 manslaughter, Your Honor, is you have to show some sort of
7 provocation which arouses passion. And in this case, Your
8 Honor --

9 THE COURT: Wasn't there a question about
10 propensity? As I read the question that counsel asked --

11 MR. MOLEZZO: Yes.

12 THE COURT: His question was, "Nothing occurred at
13 your house prior to the situation that would lead you to
14 believe, isn't it true, that your father would seriously
15 harm your mother? Would you agree with that?"

16 So that question that he asked did open the door
17 with regard to that question, which is, does your father
18 have -- is there anything -- here's the proper question. Is
19 there anything that you personally saw or heard that would
20 indicate that your father had a propensity to harm his
21 mother? I think that's the question that he asked.

22 In response to that, there was a hearsay answer
23 which I stopped, but then he went on and did partially at
24 least answer that question.

25 My position is, by asking that question, you do

1 have the right on redirect to ask that question, but very
2 limited. I do not want to go into a past history of
3 hearsay, inadmissible things.

4 And so the only thing that I think that you have
5 the right to ask is framed in terms of have you seen or
6 heard anything personally as between your parents that would
7 lead you to believe that your father would seriously harm
8 your mother? That's the question that I will allow you to
9 ask and him to answer. We will not go beyond that.

10 And I don't want to get into anything that he has
11 to answer in a hearsay fashion. Somebody told me; the
12 police called, or whatever. It's got to be anything that he
13 heard. Because he did ask this question, it's fair game for
14 you to ask that question put into the proper framework of
15 the law. That's my ruling in this case.

16 MR. WILLIAMS: Your Honor, if I could ask for some
17 clarification, please?

18 THE COURT: Yes, sir.

19 MR. WILLIAMS: In regards to -- we also have the
20 possibility of calling Chad Morton who was another son of
21 these individuals who witnessed an incident that would fall
22 under this same framework. And it was actually the incident
23 Robert was trying to bring up when it was struck as hearsay,
24 and he personally witnessed this. And so I want to put that
25 before the Court so that we can get a ruling on that, Your

1 Honor, so we don't do anything improper.

2 THE COURT: I'm not going to rule on that unless
3 and until we have a hearing outside the presence of the
4 jury --

5 MR. WILLIAMS: Okay.

6 THE COURT: -- as it relates to his individual
7 testimony.

8 MR. WILLIAMS: We will bring that up at the time
9 we intend to call him, Your Honor.

10 THE COURT: Now, you make sure that you meet with
11 your witness and let him know that you're going to be asking
12 that question, if you intend to, but it's going to be very
13 narrowly defined to the limits I have told you here. And he
14 is not to address anything that would be -- amount to
15 hearsay.

16 MR. SMITH: Will do, Your Honor.

17 THE COURT: Do you understand my ruling?

18 MR. SMITH: Yes, Your Honor.

19 MR. WILLIAMS: Yes, Your Honor.

20 MR. MOLEZZO: Yes, sir.

21 THE COURT: Okay. Now, are we ready to proceed?

22 MR. SMITH: Your Honor, we are. I do need to meet
23 with him, because he is the one that's on the stand.

24 THE COURT: Why don't you take just a couple of
25 minutes and meet with him, and then we're going to bring the

1 jury in and go forward.

2 MR. SMITH: Thank you, Your Honor.

3 MR. WILLIAMS: Thank you, Your Honor.

4 (Whereupon, a recess was had.)

5 (WHEREUPON, the jury and the alternates were brought
6 into court.)

7 THE COURT: Court will come to order. Please be
8 seated.

9 Will counsel stipulate to the presence of the jury
10 and the alternates?

11 MR. MOLEZZO: Defense stipulates.

12 MR. WILLIAMS: The State would so stipulate, Your
13 Honor.

14 THE COURT: Ladies and gentlemen, everyone was
15 here on time. I want you to know that we had some things we
16 had to do outside the presence. That's why we're starting a
17 little bit late with you, but we have been working here.

18 We will continue on with the trial. At this time,
19 Robert James Morton is on the stand.

20 Sir, would you please state your name for the
21 court reporter?

22 THE WITNESS: Robert James Morton.

23 THE COURT: Mr. Morton, you understand that you're
24 still under oath?

25 THE WITNESS: (Nods head.) Yes.

1 THE COURT: Okay. And we are proceeding with
2 redirect examination by the State at this time.

3 MR. SMITH: May I approach, Your Honor?

4 THE COURT: You may, sir.

5 REDIRECT EXAMINATION

6 (BY MR. SMITH:)

7 Q. Robert, I hand you a preliminary transcript, page
8 27, lines 4 through line 17.

9 By looking at that transcript, does that refresh
10 your recollection of a conversation you had at the
11 preliminary hearing?

12 A. Yes.

13 Q. When Mr. Molezzo asked you, okay. And as best as
14 you can recall, you said your dad was -- or your father was
15 holding the rifle like a 45-degree angle across the chest;
16 is that fair to say"? Do you remember what your answer was?

17 A. Yes.

18 Q. When Mr. Molezzo asked you, "Okay. So he was
19 holding the gun at a 45? Something like that"; do you
20 recall what your answer was?

21 A. Yes.

22 Q. Robert, have you personally seen or heard
23 anything -- and again, this is personally -- that makes you
24 believe that your father would hurt your mother?

25 A. When they'd argue sometimes, yeah.

1 Q. And what is it that you've heard that's caused you
2 concern that he might do harm to your mother?

3 A. Just the way he talked to her.

4 MR. SMITH: No further questions, Your Honor.

5 THE COURT: You may do recross on those questions,
6 sir.

7 MR. MOLEZZO: Thank you, Your Honor.

8 RECROSS-EXAMINATION

9 (BY MR. MOLEZZO:)

10 Q. Secondary to those questions, Robert, isn't it
11 true that it was an aggressive relationship?

12 A. Yes.

13 Q. And without specifics, isn't it also fair to say
14 that your father, as well as your mother, were aggressive at
15 times towards one another?

16 A. Yes.

17 MR. MOLEZZO: Indulgence, please, Your Honor.

18 THE COURT: Yes, sir.

19 MR. MOLEZZO: Thank you. I have no further
20 questions, Your Honor.

21 The jury may have some questions. Thank you.

22 THE COURT: Okay. Ladies and gentlemen of the
23 jury, if you have any questions, now is the time to make
24 that known. It appears that the jury does not have any
25 questions.

1 You will be excused, but please keep in touch
2 through the district attorney's office in the event either
3 party is going to recall you. Do you understand?

4 THE WITNESS: Yes.

5 THE COURT: You may step down, and you may go
6 ahead and leave the courtroom.

7 THE WITNESS: Thank you.

8 THE COURT: You may call your next witness.

9 MR. WILLIAMS: The State would call Anastasia
10 Barsness to the stand, Your Honor.

11 THE COURT: Okay.

12 MR. WILLIAMS: Robert is remaining, Your Honor, so
13 he can help her get up the steps.

14 THE COURT: Okay.

15 MR. MOLEZZO: We have no objection, Your Honor.

16 THE COURT: Would you just stand there, hold on
17 right there and raise your right hand and face the clerk.

18 ANASTASIA BARSNESS,
19 Having been first duly sworn to tell the truth, the whole
20 truth, and nothing but the truth, was examined and testified
21 as follows:

22 THE WITNESS: Yes.

23 THE COURT: Go ahead and you can assist her into
24 the chair there, sir.

25 Why don't you go ahead, sir.

1 I want you to speak right into the microphone.
2 THE WITNESS: Okay.
3 THE COURT: Would you please state your name for
4 the record?
5 THE WITNESS: Anastasia Merie Barsness.
6 THE COURT: Just a second. I want you speaking
7 right into it. Don't back away from it.
8 THE WITNESS: Anastasia Merie Barsness.
9 THE COURT: And would you spell all of your names
10 for the court reporter?
11 THE WITNESS: A-n-a-s-t-a-s-i-a, M-e-r-i-e,
12 B-a-r-s-n-e-s-s.
13 THE COURT: You may proceed on direct examination,
14 counselor.
15 MR. WILLIAMS: Thank you.
16 DIRECT EXAMINATION
17 (BY MR. WILLIAMS:)
18 Q. You said your name was Anastasia?
19 A. Yes.
20 Q. Do you go by something else?
21 A. Stasia.
22 Q. Is Stasia what most people call you?
23 A. Yes.
24 Q. Stasia, we saw Robert Morton in here with you
25 today. What's your relationship with him?

1 A. He's my boyfriend.

2 Q. How long have you and he been going out?

3 A. A year and four months.

4 Q. And so that would mean you've been going out since

5 when of 2009?

6 A. Um, in -- I'm not too sure.

7 Q. Okay. How about this, were you boyfriend and

8 girlfriend in August of 2009?

9 A. Yes.

10 Q. And how long in August of 2009 had you two been

11 going out?

12 A. For about two months.

13 Q. And in that time that you two had been going out,

14 did you become familiar with Robert's family at all?

15 A. Um, a little bit. I knew -- I talked to Cindy

16 more than I talked to Dave.

17 Q. Okay. Cindy, that would be Robert's mother?

18 A. Yes.

19 Q. And by David, you mean his father?

20 A. Yes.

21 Q. Were you ever around when the defendant and Cindy

22 would be together?

23 A. Yes. They were mostly fighting when I was around.

24 MR. MOLEZZO: I'm sorry, Your Honor, I --

25 ///

1 (BY MR. WILLIAMS:)
2 Q. Could you speak up a little bit Stasia?
3 A. I said they were mostly fighting when I was
4 around.
5 MR. MOLEZZO: Objection, nonresponsive.
6 THE COURT: Overruled.
7 Go ahead.
8 MR. MOLEZZO: Thank you.
9 (BY MR. WILLIAMS:)
10 Q. And how often in those two months would you say
11 that you were around them?
12 A. Not a lot.
13 Q. And let's talk now about August 5th, 2009. Where
14 were you at that day?
15 A. I was in Reno with Jessica.
16 Q. Jessica who?
17 A. Morton.
18 Q. How do you know Jessica?
19 A. She's been my best friend since I was 11.
20 Q. And was it through Jessica that you met Robert?
21 A. Yes.
22 Q. What were you and Jessica doing in Reno?
23 A. Um, we were just shopping.
24 Q. And did you at some point decide to drive home
25 from Reno that day?

1 A. Yes.

2 Q. Do you remember what time you left Reno?

3 A. Um, late in the afternoon.

4 Q. And on the way home from Reno, did you call
5 Robert?

6 A. Yes.

7 Q. Why did you call Robert?

8 A. Because Jessica's mom goes to bed at a certain
9 time and it would be a hassle to her, because we were not
10 gonna be home until after nine. So it was going to be a
11 hassle for her to put her into bed. So I, uh, called
12 Robert.

13 Q. Why would it be a hassle? I don't think the jury
14 would probably know that.

15 A. Because she needs a lot of care and someone to
16 take care of her and get her ready for bed and it's a long
17 process.

18 Q. Is that because Jessica has some disabilities?

19 A. Yes.

20 Q. And so because of that you called Robert?

21 A. Yes.

22 Q. What time did you call Robert?

23 A. Around eight.

24 Q. And why did you call Robert again?

25 A. So, um, we can go spend the night at his house

1 because we needed somewhere to sleep.

2 Q. Did you tell Robert you were going to come to his
3 house?

4 A. Yes.

5 Q. What time did you get to Robert's house?

6 A. It was around 9:30.

7 Q. Was Robert there when you got there?

8 A. He just got there at the same time. He was at a
9 friend's house.

10 Q. Was Robert alone or did he have anybody with him?

11 A. He had friends with him.

12 Q. How many friends?

13 A. Two or three.

14 Q. And where -- what did you do once you got to his
15 house?

16 A. Robert carried Jessica downstairs, and I went
17 downstairs with him, behind him and we went to his room.

18 Q. When you got there, were you able to see if
19 anybody was home?

20 A. No. It was dark upstairs. It didn't look like
21 anybody was home.

22 Q. And you went downstairs right away?

23 A. Yes. Yes.

24 Q. And after you got downstairs, did Robert's friends
25 leave?

1 A. Yes, about 10 minutes afterwards. I asked Robert
2 if his friends could leave because we were tired.
3 Q. Did they go home then?
4 A. Yes.
5 Q. What did you do after they left?
6 A. Robert put Jessica into bed in the spare bedroom
7 and then we went to bed.
8 Q. All right.
9 MR. WILLIAMS: Approach the witness, Your Honor?
10 THE COURT: Pardon?
11 MR. WILLIAMS: First I need to have this marked.
12 THE COURT: Oh, yes.
13 MR. WILLIAMS: First I need to have this marked.
14 THE COURT: Marked for identification, Miss Clerk,
15 as what?
16 THE COURT CLERK: Ten.
17 THE COURT: It will be marked for identification
18 as Exhibit 10 for identification.
19 MR. WILLIAMS: Approach the witness, Your Honor?
20 THE COURT: You may, sir.
21 MR. WILLIAMS: Thank you.
22 (BY MR. WILLIAMS:)
23 Q. Stasia, I'm showing you what's been marked as
24 Exhibit 10. Do you recognize that?
25 A. Yes.

1 Q. What is that?
2 A. The downstairs basement.
3 Q. Okay. I'm going to put it up here on the
4 overhead. Now that we've gotten it working, for now.
5 THE COURT: Thank you, sir.
6 MR. WILLIAMS: So everybody can see it. All
7 right.
8 (BY MR. WILLIAMS:)
9 Q. I know it's difficult for you to stand up, so I'm
10 going to point to things for you. Okay?
11 A. (Nods head.)
12 Q. All right. So you said Jessica went in the spare
13 bedroom?
14 A. Yes.
15 Q. Now, looking at this drawing, was that bedroom one
16 or bedroom two?
17 A. Bedroom two.
18 Q. Okay. So I'm going to put an X in there. All
19 right? (Indicating).
20 And after Jessica went in bedroom one, what did
21 you do?
22 A. Um, after Jessica went to bedroom one?
23 Q. Or went to her bedroom, what did you do after
24 that?
25 A. I, um, went to bed after Robert came back.

1 Q. And what room did you go into?
2 A. Bedroom one.
3 Q. Is that Robert's room?
4 A. Yes.
5 Q. I'm going to go back and write Jessica's name in.
6 Hold on.

7 THE COURT: The record should reflect that
8 counsel's written on this exhibit "bedroom two." He's
9 written the word "Jessica" next to the X, and "Stasia" next
10 to the X in bedroom one.

11 (BY MR. WILLIAMS:)

12 Q. Okay. And was Robert in that room with you?

13 A. Yes, after he put Jessica to bed.

14 MR. WILLIAMS: The record can reflect, Your Honor,
15 I wrote "Robert" in bedroom one?

16 THE COURT: Yes, sir.

17 MR. WILLIAMS: Thank you.

18 THE COURT: Counselor, if there's a number of
19 these, why don't you put her name on this document just to
20 make it clear this goes with her testimony?

21 MR. WILLIAMS: I will, Your Honor. Thank you.
22 The record can reflect I wrote "Stasia's drawing on it,"
23 Your Honor.

24 THE COURT: Yes, sir.

25 MR. WILLIAMS: Okay.

1 (BY MR. WILLIAMS:)

2 Q. So did you and Robert go to bed in his room at
3 that time?

4 A. Yes.

5 Q. While you were in bed, did you hear Robert's
6 parents come in?

7 A. Yes.

8 Q. What did you hear that made you think that they
9 were there?

10 A. Um, we heard the front door open and somebody
11 walking in at first. I thought it was just Cindy. And I
12 asked him if it was just Cindy and he said --

13 THE COURT: You have to speak up.

14 THE WITNESS: And he said he wasn't sure.

15 (BY MR. WILLIAMS:)

16 Q. By "he" you mean?

17 A. Robert. Said he wasn't sure and we listened and
18 we heard two people talking.

19 Q. Were those two people a male and a female?

20 A. Yes.

21 Q. Did you assume that that was Robert's parents?

22 A. Yes.

23 Q. And as they were talking, were you able to hear
24 what they were saying?

25 A. Um, the talking was low at first, and then it

1 started to get gradually louder. And then we heard them
2 arguing and it got pretty loud.

3 Q. And as they were arguing, were you able to make
4 out anything that was being said?

5 A. Um, Cindy was saying, "If you just put the tires
6 on my car, then I would leave." And he told her to, "Shut
7 the f up," many times and --

8 Q. By "many times," how many times do you mean?

9 A. I'm not sure.

10 Q. Okay. And after you heard that, did the arguing
11 continue to go on?

12 A. Yes, it got louder, but I'm not sure what they
13 said. They weren't in the front of the house at the time.
14 I couldn't hear them.

15 Q. What time would you say you think that they got
16 home?

17 A. Um, 10:30, close to 11.

18 Q. How long did the arguing go on for?

19 A. About 20, 25 minutes.

20 Q. And did something happen at that point?

21 A. Yes. Um, as it was getting louder, we heard a
22 really loud bang, and immediately afterwards Cindy screaming
23 for Robert.

24 Q. Do you remember what she was saying exactly?

25 A. Um, she screamed really loud and then screamed

1 "Robert, come help me. Help me." So he, um, ran out of the
2 room, and I could hear him running up the stairs.

3 Q. Could you hear Robert say anything when he got to
4 the top of the stairs?

5 A. He said, "What the f did you do? Oh, my God.
6 What did you do?"

7 Q. Did you hear anything else when Robert was up
8 there?

9 A. Yes. Cindy screaming, "Robert, get out of the
10 way." Um, just for Robert and screaming; "It hurts."

11 Q. Could you ever hear Robert's father yell at all?

12 A. No. I just heard Robert.

13 Q. Did Robert come back down the stairs at some
14 point?

15 A. Yeah. Yes, he came back down the stairs. And,
16 um, when he walked in the room, he was shaking and he was
17 holding the rifle. And, um, he asked me -- or he looked at
18 me and said, "I can't believe he shot her. I can't believe
19 my dad shot my mom," and asked me for the phone and asked me
20 where it was and I handed it to him.

21 Q. Okay. Just back up a little bit. From the time
22 Robert went upstairs to when he came back downstairs, how
23 long -- how much time do you think had passed?

24 A. Um, I'm not too sure. I was kind of in shock.

25 Q. All right. When he came back down the stairs, did

1 anybody come with him?

2 A. While he was on the phone with the police, Dave
3 came down.

4 Q. And how long after Robert got in the room did, uh,
5 the defendant come into the room?

6 A. Twenty seconds later. It wasn't that long. He
7 came down right after Robert was on the phone with the
8 police.

9 Q. And did you notice anything about the defendant
10 when he was in the room?

11 A. Yeah. He was really, um -- he had a really calm
12 face. And there was like no facial expression at all and he
13 was telling Robert, "Give me back the gun. I didn't do
14 anything wrong," and he wasn't shaking. He wasn't doing
15 anything.

16 Q. What was Robert doing while he was saying that?

17 A. "Get away from me. F off." And then Dave went
18 back up the stairs and Robert followed him.

19 Q. As Robert was leaving, was he still on the phone?

20 A. Yes.

21 Q. After they left, what happened?

22 A. I stood there, and, uh, I got a text message from
23 Jessica saying, oh, my God. And that's when I remembered
24 she was there. I kind of forgot. And so I went to the
25 spare bedroom and stayed in there with her until the -- we

1 heard screaming and Cindy screaming the whole time.

2 Q. What was Cindy screaming?

3 A. She was screaming for Robert, and that it hurts
4 and just really loud.

5 Q. While you were down in that bedroom, did the
6 police ever come to the house?

7 A. Yes. We heard the, um, the police coming. And we
8 were glad because we wanted, you know, Cindy to be, okay,
9 and we knew she'd have help then. And we saw lights flash
10 down into the window, and we heard the cops say, "There's
11 somebody down there." So they came down the stairs and told
12 us to stay there until, um, they came back down.

13 Q. And did you stay there like they told you to?

14 A. Yes.

15 Q. How long were you down there before they came back
16 for you?

17 A. I'm not too sure. We just heard them taking care
18 of her and getting her in the ambulance. I'm not too sure
19 how long we were down there.

20 Q. When they came back, did you talk to them at all?

21 A. Um, no. They just told us to -- after everything
22 was done, Robert carried Jessica upstairs, and then I went
23 upstairs and they took -- they said they wanted our names
24 and our number to take statements later.

25 Q. Did they get your names and phone numbers from

1 you?

2 A. Yes.

3 Q. Where did you go that night after you left the
4 house?

5 A. I drove Jessica back to her mom's house. And I
6 went to Robert's Uncle Scott's to stay with him that night.

7 Q. How was Robert that night as you were staying with
8 him?

9 A. He wasn't good. He was, um, very upset and he was
10 really worried about his mom and he was in shock.

11 Q. Did you stay with him over the next couple of
12 days?

13 A. Yes.

14 Q. And at some point did Robert go back to that
15 house?

16 A. Yes. Um, a few days later we went out to get
17 something to eat and he drove back to the house and parked
18 in the driveway. There was no tape or anything. And we sat
19 in the driveway for a while, and I just thought maybe he
20 needed to collect his thoughts. And, um, I asked him what
21 we were doing there. And he said somebody should clean up
22 the bathroom. So I told him I'd do it with him.

23 Q. So did you go help him clean that bathroom up?

24 A. Yes. Sorry.

25 Q. It's okay.

1 THE COURT: Take your time.

2 MR. WILLIAMS: Do you need a moment? There's some

3 tissues right there. Do you need some water or anything?

4 THE WITNESS: (Shakes head.) I'm okay.

5 (BY MR. WILLIAMS:)

6 Q. You ready? How was cleaning up that bathroom?

7 A. It was horrible.

8 MR. MOLEZZO: Objection, relevance.

9 MR. WILLIAMS: Your Honor --

10 MR. MOLEZZO: Move to strike.

11 MR. WILLIAMS: -- defense counsel made a big deal

12 about the bathroom.

13 THE COURT: Overruled.

14 MR. MOLEZZO: Thank you, Your Honor.

15 (BY MR. WILLIAMS:)

16 Q. Looking back on that night, how do you feel about

17 the whole thing now?

18 A. Um, probably will never forget it. It's just --

19 it was really sad.

20 MR. WILLIAMS: Thank you. Nothing further for

21 this witness, Your Honor, other than to ask that

22 State's Exhibit 10 be admitted into evidence.

23 MR. MOLEZZO: Uh, no objection. Thank you.

24 THE COURT: Exhibit 10 is hereby admitted into

25 evidence.

1 (Whereupon, Exhibit 10 was admitted into evidence.)
2 THE COURT: You may cross-examine, sir.
3 MR. MOLEZZO: Thank you very much.
4 CROSS-EXAMINATION
5 (BY MR. MOLEZZO:)
6 Q. Miss Barsness, how I may address you? If the
7 Court allows, would you like me to call you by your first
8 name or Miss Barsness?
9 A. Um, by my first name.
10 MR. MOLEZZO: May I do that, Your Honor?
11 THE COURT: You may.
12 (BY MR. MOLEZZO:)
13 Q. I'm still going to use these glasses, Anastasia,
14 so please be patient with me.
15 Now, in preparation for today's testimony, did you
16 meet with the prosecution?
17 A. I don't understand the question.
18 Q. I'm sorry. I'm sorry.
19 Did you speak to anybody from the prosecutor's
20 office before testifying today?
21 THE COURT: Do you know who the prosecutor is?
22 THE WITNESS: No.
23 MR. MOLEZZO: The district attorney. I'm sorry,
24 Anastasia.
25 THE WITNESS: Oh, um, yes, I spoke with them.

1 (BY MR. MOLEZZO:)

2 Q. I'm sorry?

3 A. Yes.

4 Q. And how long was that conversation, if you recall?

5 A. About an hour.

6 Q. About an hour?

7 A. Yes.

8 Q. And what did you go over?

9 A. Just, um, about how court is going to be.

10 Q. Uh-huh.

11 A. Yeah.

12 Q. And did you go over your statement?

13 A. Yes.

14 Q. And in this case, did you write a written

15 statement?

16 A. No.

17 Q. Let me ask it again. Are you sure you didn't

18 write a written statement?

19 A. That day or?

20 Q. No. No. Later on. Later on.

21 A. Or have I?

22 Q. To the police?

23 A. Oh, yes, I have.

24 MR. MOLEZZO: May I approach, please, Judge?

25 THE COURT: You may.

1 MR. MOLEZZO: Thank you.

2 Please mark this as defense Exhibit C or however

3 the Court wishes.

4 THE COURT: What's next in order? This will be C

5 for identification.

6 (Whereupon, Exhibit C was marked for identification.)

7 THE COURT: A multi-page document. It's been

8 stapled together. It's Exhibit C, and it has been marked

9 for identification.

10 MR. MOLEZZO: May I approach, Your Honor?

11 THE COURT: You may, sir.

12 MR. WILLIAMS: Can I see the document first?

13 MR. MOLEZZO: Yeah, of course.

14 MR. WILLIAMS: Thank you.

15 MR. MOLEZZO: I received it through discovery from

16 the district attorney.

17 MR. WILLIAMS: Thank you.

18 MR. MOLEZZO: I apologize.

19 (BY MR. MOLEZZO:)

20 Q. Anastasia, will you take a look at this document?

21 You don't necessarily have to read it, and then I'll have a

22 few questions for you. Is this your handwriting, dear?

23 A. Yes.

24 Q. And would you please go to the back page, please?

25 And is that your signature?

1 A. Yes.

2 Q. And do you recall, uh, quite some time ago doing
3 that?

4 A. Sorry.

5 MR. MOLEZZO: Thank you. For the record, I've
6 retrieved the document.

7 THE COURT: Pardon?

8 MR. MOLEZZO: For the record, I have the document
9 back.

10 THE COURT: Okay. And her answer was yes to your
11 last question.

12 THE WITNESS: Yes.

13 MR. MOLEZZO: Thank you.

14 (BY MR. MOLEZZO:)

15 Q. Now, when you came to the residence or
16 Mr. Morton's house that night, you recall that as best you
17 can, right? You came to his house?

18 A. Yes.

19 Q. And you contacted -- is it boyfriend or fiancée?

20 A. Boyfriend.

21 Q. Okay. And then you went to Mr. Morton's house,
22 correct?

23 A. Yes.

24 Q. And you -- you were aware that Robert's room was
25 in the basement?

1 A. Yes.

2 Q. Is that fair?

3 A. Yes.

4 Q. And when you went down to the basement, you saw

5 some -- some friends of his?

6 A. Yes.

7 Q. And as best you can recall, was it three? Two?

8 Three?

9 A. Probably two. Two or three.

10 Q. And did you notice whether or not they were

11 smoking marijuana?

12 A. No.

13 Q. You didn't notice or they were not?

14 A. They were not.

15 Q. Okay. What were they doing? Playing games?

16 A. Yes.

17 Q. Now, soon thereafter they left, correct?

18 A. Yes.

19 Q. And, uh, then you heard -- is it your testimony

20 you heard someone come in the front door? Do I understand

21 that?

22 A. Yes. The door right in front of the stairs to the

23 basement.

24 Q. Okay. And, uh, at first you thought it was

25 just -- you thought it was both of them, correct?

1 A. Yes.

2 Q. But Robert said, no, it was just Cindy; do you
3 recall that?

4 A. Yes. But then --

5 Q. I'm sorry, Anastasia. In your written statement,
6 do you recall putting that down?

7 A. Yes, I do.

8 Q. Okay. Thank you.

9 Now, on direct examination, I apologize when
10 these -- when this gentleman was asking you questions, you
11 said you heard arguments; is that correct?

12 A. Yes.

13 Q. And, uh, something about, "Put on the tires and
14 I'll leave"; is that right?

15 A. Yes.

16 Q. And then, when the district attorney was asking
17 you questions, you said you heard my client yelling as well,
18 correct?

19 A. Yes.

20 Q. On direct examination, you said that you heard my
21 client saying, "F off. F off. F off," multiple times;
22 isn't that right?

23 MR. WILLIAMS: Objection, Your Honor.

24 Misstatement of the testimony. The testimony was "Shut up."

25 MR. MOLEZZO: Oh, I apologize, Your Honor. I

1 heard her saying my client was saying f off.
2 THE COURT: You can ask her what she heard.
3 MR. MOLEZZO: I apologize.
4 (BY MR. MOLEZZO:)
5 Q. What did you hear my client saying?
6 A. "Shut up, Cindy."
7 Q. My apologies. He wasn't saying f off, f off?
8 A. No, Robert.
9 Q. I'm sorry?
10 A. Robert.
11 Q. Oh, I apologize.
12 Now, how long had you been there about before the
13 deceased and my client came home; do you recall?
14 A. About an hour.
15 Q. And isn't it true that there were times where you
16 could hear kind of what was saying (verbatim) --
17 A. Yes.
18 Q. -- correct?
19 And there were also times you couldn't hear what
20 was saying (verbatim); is that fair?
21 A. Yes.
22 Q. But you heard arguing or the loudness of the
23 speeches, right? You heard people speaking loud?
24 A. Yes.
25 Q. Is that fair? Okay.

1 Now, you testified that you were with Robert in
2 his room; is that right?

3 A. Yes.

4 Q. Is it Stasia?

5 A. Yeah.

6 Q. May I say Stasia?

7 A. Uh-huh.

8 Q. Um, you hear the arguing, correct?

9 A. (Nods head.)

10 Q. You're not seeing anything? You're downstairs,
11 correct?

12 A. Yes.

13 Q. Okay. And it's your testimony, Stasia, that you
14 heard a bang?

15 A. Yes.

16 Q. And after the bang is when Robert ran upstairs; is
17 that correct?

18 A. Yes, after the bang.

19 Q. After the bang?

20 A. (Nods head.)

21 Q. Okay. Not before the bang?

22 A. (Shakes head.)

23 Q. But it's your testimony after the bang, correct?

24 A. Yes.

25 Q. Now, you testified that Robert came downstairs

1 after a while, correct?

2 A. Yes.

3 Q. And isn't it true that, when he came downstairs,

4 Mr. Morton was not behind him?

5 A. Not right away.

6 Q. Okay. Stasia.

7 Okay. When did Mr. Morton appear? When Robert

8 was doing the 911, correct?

9 A. Yes.

10 Q. And it's your estimation about 20 seconds, as best

11 you can?

12 A. Yes.

13 Q. Is that fair?

14 A. Yes.

15 Q. Okay. And -- okay. I don't want you to say

16 anything. We're going to do 20 seconds. Okay? So just

17 give me 20 seconds of your time, and I'll tell you when to

18 start.

19 MR. SMITH: I'd object, Your Honor. There is no

20 way for any of us to quantify that is a correct amount of

21 time.

22 MR. MOLEZZO: I would ask to be allowed to go

23 forward, Your Honor, and just give her a measurement of

24 time.

25 THE COURT: Go ahead, sir.

1 MR. MOLEZZO: Thank you, Your Honor.
2 (BY MR. MOLEZZO:)
3 Q. Anastasia, don't say anything.
4 MR. MOLEZZO: And my secondhand, for the record,
5 is now on six. Begin. Stop for the record.
6 As an officer of the Court, I have counted off 20
7 seconds.
8 (BY MR. MOLEZZO:)
9 Q. Did that seem about right, Stasia, that little
10 quiet there?
11 A. Um, I don't know for sure.
12 Q. Okay. But it's your guesstimation or it's your
13 estimation it was about 20 seconds?
14 A. (Nods head.)
15 Q. Okay. Now, where were you when my client came
16 downstairs?
17 THE COURT: Just a second.
18 MR. MOLEZZO: I'm sorry, Judge?
19 THE COURT: If you want her answer on the record
20 she will need to answer.
21 MR. MOLEZZO: Out loud.
22 THE COURT: She was shaking her head, but it
23 didn't get on the record.
24 MR. MOLEZZO: I'm sorry.
25 ///

1 (BY MR. MOLEZZO:)

2 Q. So it's your estimation, and I tried to give you

3 something to draw from, it was about 20 seconds; is that

4 still your position?

5 A. Sure. Yeah.

6 Q. Well, it's either yes or no Stasia.

7 A. Yes.

8 Q. Okay. Now, were you up out of bed at this time?

9 In the basement, Stasia?

10 A. Yes.

11 Q. Okay. And is it your testimony that you saw my

12 client come downstairs, correct?

13 A. Yes.

14 Q. And do you recall, as you sit here today, was he

15 wearing clothing?

16 A. Pants.

17 Q. Okay. And as best you can remember, it was only

18 pants; is that correct?

19 A. Yes.

20 Q. Okay. And it's your testimony that he, uh,

21 approached Robert; is that right?

22 A. Yes. He was standing more by the door.

23 Q. Okay. And for the jury and myself, you said he

24 was calm; is that correct?

25 A. Yes.

1 Q. He wasn't agitated? He wasn't trying to fight
2 Robert; isn't that true?
3 A. Yes.
4 Q. He wasn't trying to grab the phone out of Robert's
5 hand, et cetera; isn't that true?
6 A. Yes.
7 Q. But he was saying things, that's your testimony,
8 correct?
9 A. Yes.
10 Q. And at no time did he attempt to stop Robert from
11 using the phone; isn't that true?
12 A. Yes.
13 MR. MOLEZZO: Okay. Court's indulgence please,
14 Your Honor.
15 THE COURT: Yes.
16 MR. MOLEZZO: Thank you.
17 THE COURT: Counsel, will you both approach?
18 (Whereupon, a sidebar was had.)
19 (BY MR. MOLEZZO:)
20 Q. Stasia, we've learned that you have some trouble
21 walking; is that right?
22 A. Yes.
23 Q. And I don't mean to be -- what is it -- what
24 medical issue do you have?
25 A. Muscular dystrophy.

1 Q. I'm sorry, dear?
2 A. Muscular dystrophy.
3 Q. Is it something -- something you had on May 5th,
4 2009 (verbatim)?
5 A. Yes.
6 Q. I don't know, Stasia. Was it difficult then for
7 you to walk around unassisted or is it getting worse?
8 A. Um, it's a lot harder since I'm pregnant.
9 Q. Okay. Back then, I'm assuming you weren't
10 pregnant, correct?
11 A. Yes.
12 Q. Okay. Was it difficult back then to get up and
13 down and do things?
14 A. It was, but not as much.
15 Q. More so difficult now?
16 A. Yes.
17 Q. Stasia, for this -- for your condition, do you
18 take any medication?
19 A. No.
20 Q. Is there medication provided for this type of
21 condition?
22 A. No.
23 Q. So clearly, on August 5th, 2009, you weren't
24 taking any medication?
25 A. No.

1 Q. Let's back up just a bit. Can you share with us,
2 why had you gone to Reno, please?

3 A. To, uh, just shop a little and to fix the back of
4 Jessica's car.

5 Q. I'm sorry? Fix the car?

6 A. Fix Jessica's car.

7 Q. And if I may, how old are you now, please?

8 A. Now?

9 Q. Please?

10 A. I'm 18.

11 Q. So you were 17 then?

12 A. Yes.

13 Q. Okay. And as you testified today, you're not on
14 any medication --

15 A. No.

16 Q. -- correct?

17 Are you having pain sitting?

18 A. No.

19 Q. Now, correct me if I'm wrong, you testified that
20 my client came downstairs approximately 20 seconds later,
21 correct?

22 A. Yes.

23 Q. And this is important, Stasia. Okay? So just
24 stay with me. And he was, in your opinion, very calm --

25 A. Yes.

1 Q. -- correct?

2 Could you tell whether or not he had been
3 drinking?

4 A. I'm not sure.

5 Q. Okay. But you did testify that he said something,
6 "I didn't do anything wrong," something like that; is that
7 right?

8 A. He said, "Give me the gun back. I didn't do
9 anything wrong."

10 Q. Okay. And this is -- pretty much at this time is
11 where Robert was saying, "F off. F off," correct?

12 A. Yes.

13 Q. Was there also a dog down there, Stasia?

14 A. Yes.

15 Q. Whose dog is that?

16 A. Robert's.

17 Q. What kind of dog, if you know?

18 A. Like a chocolate Lab, old dog.

19 Q. Where was the dog at this time; do you remember?

20 A. Where Jessica was. Where Jessica was.

21 Q. Jessica's in the guest room?

22 A. Yes.

23 Q. Okay. Now, as best you can recall, how -- you saw
24 Robert make the phone call to 911, correct?

25 A. Yes.

1 Q. And approximately how long was it before the
2 police showed up? And I know it was a year ago, but do you
3 have --
4 A. I have no idea. I don't know how long it was.
5 Q. Now, the police did show up, obviously, correct,
6 Stasia? The police did show up?
7 A. They did later on when we were in the other room.
8 Q. Okay. And during the entire time of this tragic
9 event you stayed downstairs, correct?
10 A. Yes.
11 Q. And the police finally showed up, yes?
12 A. Yes.
13 Q. And a police officer came and spoke to you; is
14 that correct?
15 A. Yes.
16 Q. Was it more than one?
17 A. It was two.
18 Q. Two officers?
19 A. (Nods head.)
20 Q. Okay. And did they, uh, record what you said?
21 A. No. All they told us to do was stay downstairs.
22 Q. Did they question you as to what happened that
23 night?
24 A. No.
25 Q. Did they ask you if you would give them your

1 fingerprints?

2 A. No.

3 Q. Did they ask you if you would allow them to swab

4 your mouth?

5 A. No.

6 Q. Okay. Did they take any formal statement at

7 all -- strike that.

8 Did they take any statement at all from you that

9 night?

10 A. No.

11 Q. Okay. How long after law enforcement arrived was

12 it before you left? Twenty minutes or more?

13 A. More.

14 Q. Thirty minutes? Is that possible?

15 A. That's possible.

16 Q. Okay. And who did you leave with?

17 A. Um, Jessica.

18 Q. And Robert was still there, correct?

19 A. Yes. They were still talking to him.

20 Q. Did law enforcement -- I'm sorry.

21 Did the police take any photographs of you there?

22 A. No.

23 Q. Did they -- so eventually you did speak to the

24 police, correct?

25 A. Yes.

1 Q. And you did make a written statement, correct?
2 A. Yes.
3 Q. And isn't that true that that was in October of
4 2009?
5 A. Yes.
6 Q. And this event, or this thing occurred August 5th,
7 2009; is that correct?
8 A. Yes.
9 Q. So 77 days later, you met with the police; is that
10 right?
11 A. Yes.
12 Q. And where did you meet with them, please, Miss?
13 A. At the courthouse.
14 Q. Are you sure -- police station?
15 A. It was in this building.
16 Q. Okay.
17 A. Yeah.
18 Q. Was it in -- it was in a room, I gather?
19 A. Yes.
20 Q. Okay. And do you recall who you met with?
21 A. Uh, the -- he was the lead detective. I'm not
22 sure. He was a detective though.
23 Q. Do you have any personal knowledge if that meeting
24 was recorded, either audio or video?
25 A. I'm -- I'm not sure.

1 Q. Backing up just a touch, Stasia. Between the time
2 of this tragedy and the time you met with the police, did
3 you ever go visit the deceased at Renown Medical Center?
4 A. Yes.
5 Q. Did you -- and I know you're not a doctor -- when
6 you visited her, was she able to communicate?
7 A. No.
8 Q. And how often did you visit her there?
9 A. Um, many times.
10 Q. Okay. Let's try to crystallize that. More than
11 10? Less than 10?
12 A. Probably a little -- about 10.
13 Q. Okay. Thank you. And any of those times in
14 your -- did you see her communicating?
15 A. She could nod her head and know what you were
16 saying.
17 Q. Okay. So it's your opinion you could ask her
18 questions and she could nod her head or shake her head; is
19 that right?
20 A. Yes.
21 Q. Had you ever seen her during the times that you
22 visited, um, not in bed, but in a wheelchair?
23 A. No. She was always in bed.
24 Q. Always in bed?
25 A. (Nods head.)

1 Q. And during these visitations were you always with
2 Robert?

3 A. Yes.

4 Q. Okay. Now, jumping forward. How long did you
5 meet with -- with the police? How long was it that you
6 talked to the police?

7 A. When I wrote my statement?

8 Q. Yes, please. Thank you, Stasia.

9 A. Um --

10 Q. Hour? Less? More?

11 A. A little more than an hour.

12 Q. Is that the only time you met with police?

13 A. Yes, because we moved to California that day.

14 Q. Well, thank you for sharing that.

15 But did the police ever call you later on after
16 that --

17 A. No.

18 Q. -- for a follow-up interview, anything like that?
19 Any calls?

20 A. No.

21 Q. Did you inform law enforcement that you were
22 leaving the state?

23 A. Yes.

24 Q. Okay. And a little bit on this. You testified
25 that you went with Robert back to the house a few days

1 later; is that right?

2 A. Yes.

3 Q. And is it your testimony that you were with Robert

4 cleaning that bathroom?

5 A. Yes.

6 Q. Didn't you think that was kind of strange?

7 A. No.

8 Q. After the bathroom was cleaned, what happened,

9 Stasia? Did you guys leave?

10 A. We fed the dog and we left.

11 Q. Did you take the dog with you or is he still

12 there?

13 A. No, he was still there.

14 Q. Was anybody residing -- strike that.

15 Was anybody living at the house?

16 A. No.

17 Q. So Robert would often come back -- well, do you

18 have personal knowledge if Robert would come back and feed

19 the dog?

20 A. No. He told me after that his grandma would do

21 it.

22 Q. Oh, okay. And as best -- as best you can testify

23 to, how long were you with Robert before August 5th, 2009?

24 How long had you guys been together?

25 A. About two months.

1 Q. About two months?

2 A. (Nods head.)

3 Q. Okay. So you really -- you hadn't encountered his

4 family very often; is that fair to say?

5 A. Yes, that's fair.

6 Q. I don't know why I say that. You haven't met his

7 family very much before that, right?

8 A. Yes.

9 Q. Is that?

10 Okay. I'm trying not to talk like an attorney,

11 Stasia.

12 MR. MOLEZZO: A moment of the Court's time,

13 please?

14 THE COURT: Yes, sir.

15 MR. MOLEZZO: Thank you, Your Honor.

16 (BY MR. MOLEZZO:)

17 Q. And again, having shown you this statement, this

18 is your writing?

19 A. Yes.

20 Q. And you -- this is your signature?

21 A. Yes.

22 Q. And this was during the October interview with the

23 police?

24 A. Yes.

25 MR. MOLEZZO: Defense counsel would like to move

CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of Karla K. Butko, Ltd., P. O. Box 1249, Verdi, NV 89439, and that on this date I caused the foregoing document to be delivered to all parties to this action by

X E-Flex Delivery System of the Nevada Supreme Court
_____ placing a true copy thereof in a sealed, stamped envelope with the United States Postal Service at Reno, Nevada.

addressed as follows:

MICHAEL McDONALD DISTRICT ATTORNEY
ANTHONY GORDON, DEPUTY DISTRICT ATTORNEY
Humboldt County District Attorney's Office
P. O. Box 909
Winnemucca, NV 89446

DATED this 25th day of March, 2022.



KARLA K. BUTKO, ESQ.