

IN THE SUPREME COURT OF THE STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

IAN CHRISTOPHER HELD,)	
)	
Appellant,)	Case No. 83549
)	
vs.)	
)	
THE STATE OF NEVADA,)	
)	
Respondent.)	
_____)	

Appeal from Jury Verdict and Conviction
Second Judicial District Court of the State of Nevada
The Honorable David Hardy

APPELLANT'S JOINT APPENDIX – VOLUME VIII

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 Reno, Nevada 89512

THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
 IN AND FOR THE COUNTY OF WASHOE
 BEFORE THE HONORABLE DAVID A. HARDY, DISTRICT JUDGE

-oOo-

STATE OF NEVADA,	:	
	:	
Plaintiff,	:	
	:	
vs	:	Case No. CR20-3104
	:	
IAN CHRISTOPHER HELD,	:	Dept. No. 15
	:	
Defendant.	:	
	:	

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TRANSCRIPT OF PROCEEDINGS

JURY TRIAL - DAY 2

WEDNESDAY, JUNE 30TH, 2021

Reno, Nevada

Reported By:

ERIN T. FERRETTO, CCR #281

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2 RENO, NEVADA, WEDNESDAY, JUNE 30TH, 2021, 9:05 A.M.

3 -o0o-

4

5

6 THE COURT: Good morning. We'll go on the record
7 in the State versus Held, CR20-3104. All counsel are
8 present.

9 Good morning, Mr. Held.

10 THE DEFENDANT: Good morning.

11 THE COURT: I should have acknowledged yesterday
12 that I observed and appreciated the way you conducted
13 yourself in the courtroom. I appreciate it and encourage
14 you to continue.

15 THE DEFENDANT: Okay. Thank you.

16 THE COURT: The jury, please.

17 (Jury entered courtroom.)

18 THE COURT: Please be seated.

19 The jury is present. Trial counsel are present.
20 Mr. Held is present.

21 It's really nice to see you the first morning
22 after jury selection. It's a little unsettling for
23 everyone until we lay eyes on all 13 of you.

24 I begin with a few opening preliminary

1 instructions.

2 We ended the day yesterday by your oath. The
3 court employee who administered the oath is the court
4 clerk. She swears witnesses, marks exhibits, tracks and
5 manages all the evidence. The court clerk is always
6 present when the court is in session. We have two court
7 clerks assisting each other throughout the week.

8 You heard my reference to Deputy Coss. He's the
9 primary deputy assigned to Department 15, and he and the
10 other deputies are charged by law to be present whenever
11 the court is in session regardless of the case type.
12 During our jury trials, the deputy staff are available
13 for your convenience. Deputy Coss or another deputy will
14 be the conduit through which you communicate with the
15 court. If at any time you need to bring something to my
16 attention, please do so in writing through Deputy Coss.
17 Again, any time you communicate with the court, it's
18 available to the attorneys. Never will you communicate
19 with me outside of the attorneys' presence. We'll often
20 read your notes together as I contemplate how to respond.

21 During the flow of trial, if there is something
22 that arises, I'll invite you just to signal to me and
23 I'll pause. That typically will be a restroom break or
24 if you need something of that nature. I will strive to

1 watch you and be mindful of the pace. From time to time
2 I might interrupt trial and invite you to stand for a few
3 moments.

4 I say this in advance so none of you feel
5 scrutinized, but occasionally our jurors lapse into
6 sleepiness, and I'll watch that carefully and not point
7 it out but just try to attend to your comfort.

8 The District Court is a court of record, which
9 means that every word uttered in this room is transcribed
10 into a transcript. You see a reporter this morning. The
11 reporters will alternate throughout the week. Sometimes
12 I'll interrupt attorneys or witnesses and invite them to
13 slow their cadence or to amplify their voices. The
14 reporter can't write multiple voices at the same time,
15 and so please understand the interruption is not intended
16 to convey an opinion or to be grouchy, it's just I smell
17 the smoke coming out of the court reporter's fingers
18 first. So we will break also, not just for the reporter
19 but for all, on a fairly predictable schedule.

20 You are now the jury in this case. Your formal
21 instructions will come in writing at the end of the
22 evidence. Preliminarily, you are admonished that you
23 will not talk with each other about this case until you
24 are authorized to deliberate. If at any time you

1 discover you know anything personal about the facts in
2 this case, please let me know in writing through the
3 deputy. If at any time you discover that you know a
4 witness or other participants in this trial, please let
5 me know in writing.

6 As I ended yesterday, you are not authorized and
7 specifically prohibited from conducting any form of
8 personal investigation or research. That rule is not
9 insignificant. It is a structural feature and very
10 important.

11 The trial is highly orchestrated. It will unfold
12 to you, but the attorneys know what will be presented --
13 mostly they know what will be presented, and they are
14 required to present evidence within an admissible context
15 as governed by our evidence code. You will learn and
16 hear everything the State believes is necessary for you
17 to make a decision. And I reference the State only
18 because of its burden of proof. I do not unintentionally
19 omit Mr. Held.

20 For you to go out and to do your own research
21 would develop inadmissible information. And, again,
22 could cause these proceedings to be defective.

23 At no time can anybody speak with you after
24 opening statements. The attorneys were able to address

1 you during jury selection, they will address you during
2 opening statements, but then I'll raise this invisible
3 pane of glass and we'll become passive observers of what
4 occurs within the well of the court. That is by design.
5 Please do not infer any antisocial attributes or make any
6 judgments about the attorneys. I will interact with you
7 but the attorneys will not. They will return to you
8 during the closing arguments.

9 In a moment the court clerk is going to read the
10 Information. The Information is the title of the
11 document that the State files to assert allegations
12 against Mr. Held. It is not evidence. It is just the
13 State's position.

14 Whatever the attorneys tell you is argument. It
15 is not evidence. They are charged with competing
16 responsibilities. Commonly, they zealously represent
17 their interests. They share that in common but their
18 interests are separate. And they, as I indicated
19 yesterday, embody the professionalism we expect of our
20 attorneys, but they have different roles and what they
21 say is argument and not evidence.

22 The evidence will come through witnesses or
23 documents that I declare are admissible for your review.
24 You will learn that there are -- evidence comes in

1 different ways. There is direct evidence. A witness
2 might testify as to what he or she said or did or
3 observed. There is also circumstantial evidence in which
4 there are just different events that may be linked
5 together to arrive at a conclusion.

6 For your purposes, it doesn't make any difference
7 throughout the course of trial, you may hear and
8 consider, you may read and consider evidence in whatever
9 form it is presented to you. You alone are the judges of
10 facts. You will determine what the facts are.

11 Please do not be influenced by any personal
12 feelings of sympathy, solidarity, compassion. We trust
13 you to be neutral, objective factfinders. You should not
14 consider any consequences of the decisions that you
15 reach.

16 I mentioned the rules of evidence. There are
17 strict rules about what you can receive, and the
18 attorneys often disagree about my interpretation of those
19 rules and sometimes we have spirited conversations about
20 whether evidence is admissible. Again, the attorneys are
21 doing their jobs honorably. If I choose to not admit
22 evidence, please do not guess as to what that evidence
23 would have been. It's simply not available for your
24 review.

1 Please also refrain from making any judgments
2 about the way I interact with the attorneys. If I rule
3 in favor of an attorney, an attorney's question, it's
4 because of my interpretation of the evidence code. If I
5 rule for or against an attorney, please do not allow that
6 to invade your review of the facts as you carefully
7 consider both the evidence and the attorneys' arguments
8 about what that evidence demonstrates. If I sustain the
9 objection, we move on. No speculations or guesses.

10 Throughout trial you may take notes. I encourage
11 you do so. However, don't be so note bound that you lose
12 the energy and the flow of trial. Communication is much
13 more than the spoken or written word. There are various
14 forms of non-verbal communication. Those are available
15 for your review as well. So as you take notes, find a
16 way to manage those notes with your presence, presence
17 with the evidence. If you choose to take notes, you may
18 not share those notes with each other until you
19 deliberate, so please keep them private.

20 If at any time anyone attempts to communicate with
21 you outside of this room, please let me know. Again,
22 should you -- should you see the attorneys or Mr. Held or
23 other court staff in the hallways, they are all
24 instructed not to even say *Good Morning* to you.

1 You each have badges. Our courthouse is closed
2 except for a few juries that are working this week, so
3 the likelihood that you'll interact with others is lower,
4 but please always be aware of those badges. Those are a
5 marker to everyone else in the building that you are off
6 limits.

7 It's not likely with these four good attorneys in
8 this court this week, but I might sometimes admonish
9 attorneys. I am the referee of this proceeding. It is
10 not personal, and it is not evidence, so please don't
11 focus too much on what I say or do. Social science
12 reveals that you'll watch me a little bit and you'll
13 maybe take queues, and I strive to be very dispassionate
14 as the evidence unfolds so that you alone make the
15 decisions.

16 Think about a judge who might roll his eyes or
17 make gestures, signal discontent. I'll try not to do
18 that. But if I fail at my own high standards, please
19 ignore me. In fact, I am fairly busy. I have a couple
20 of computer screens, I do research and I do emails and
21 look at the file materials and so forth, so focus on the
22 attorneys and the witnesses.

23 I'm going to read specifically this instruction
24 because it's so important. No statement, ruling, remark,

1 gesture or facial expression I may make during trial is
2 intended to indicate my opinion about what the facts may
3 be. I do not determine the facts. You are the ones who
4 determine the facts. And this determination you alone
5 must decide upon the believability of the evidence, its
6 weight and value.

7 In considering the testimony of any witness, you
8 may take into consideration the appearance, attitude,
9 behavior, interests, relationships, the inclination of
10 the witness to speak truthfully or not, the probability
11 or improbability of the witness' testimony and otherwise.
12 Thus, you may give to the witness any weight and value
13 that you determine to be appropriate.

14 Only the lawyers ask questions in Department 15.
15 Under our law, you have a very limited right to ask
16 questions. At no time will you penetrate that plane of
17 glass and participate in the trial. If you have a
18 question and you've waited long enough and you're fearful
19 that it won't be answered, you may write it. I will
20 consider it out of your presence but in the presence of
21 the attorneys, and I may or may not authorize the
22 question to be asked. My experience is, if you patiently
23 await the evidence, your questions will be answered.

24 So the trial is now to begin. The State and the

1 defense have an opportunity to make opening statements.
2 Hopefully these are brief. They are not argument. It's
3 a map of where they expect the evidence to go.

4 Counsel, I hope that you will not try the case in
5 your opening statements.

6 As always, the State has the burden of proof so it
7 begins. The defense may or may not -- may or may not
8 make a statement, may or may not make a lengthy
9 statement. The defense may do what it -- yes, I hate
10 that pronoun because I have three vibrant, living
11 people -- whatever the attorneys and Mr. Held decide will
12 be what they do. And I hope that you're fully informed
13 as the evidence begins.

14 I mentioned yesterday, bench conferences will be
15 referred to as side bars. Those might happen
16 periodically. Please do not guess as to what we discuss
17 or make any judgments about what you observe.

18 And with that, I turn to the attorneys. To the
19 State, you may begin with opening statement.

20 MR. DELONG: Your Honor, it's my understanding the
21 Information needs to be read first.

22 THE COURT: Oh. I overlooked that, Ms. Clerk. I
23 glossed right over it. Thank you, counsel.

24 To the clerk.

1 THE CLERK:

2 In the Second Judicial District Court
3 of the State of Nevada, In and For the
4 County of Washoe, the State of Nevada,
5 Plaintiff, versus Ian Christopher Held,
6 Defendant, Case No. CR20-3104, Department
7 No. 15, Information, filed, March 18,
8 2021, Jacquelyn Bryant, Clerk of the
9 Court.

10 Christopher J. Hicks, District
11 Attorney, within and for the County of
12 Washoe, State of Nevada, in the name and
13 by authority of the State of Nevada,
14 informs the above-entitled court that the
15 defendant above named, Ian Christopher
16 Held, has committed the crime of, Count
17 I, residential burglary, a violation of
18 NRS 206.060(1)(a), a Category B felony,
19 in the manner following:

20 That said defendant, Ian Christopher
21 Held, on or about September 21st, 2020,
22 did willfully and unlawfully, by day or
23 night, enter or remain in a dwelling
24 located at 1440 Whisper Rock Way, Reno,

1 Washoe County, Nevada, with the intent
2 then and there to commit grand or petit
3 larceny and/or a felony therein.

4 Count II, attempt residential burglary,
5 a violation of NRS 205.060(1)(a),
6 206.060(2)(d), 119.330 (1)(a)(2), a
7 Category C felony, in the manner
8 following: That the said defendant, Ian
9 Christopher Held, on or about
10 September 24th, 2020, did willfully and
11 unlawfully attempt on enter or remain in
12 a dwelling located at or near 920 South
13 University Park Loop, Reno, Washoe
14 County, Nevada, with the intent then and
15 there to commit grand or petit larceny
16 and/or felony therein.

17 All of which is contrary to the form of
18 the statute which case is made and
19 provided, and against the peace and
20 dignity of the State of Nevada.

21 Chris J. Hicks, District Attorney,
22 Washoe County, Nevada. By Robert W.
23 DeLong, Deputy District Attorney.

24 To the counts stated, the defendant has

1 entered pleas of not guilty.

2 THE COURT: Thank you.

3 MR. DELONG: Thank you, your Honor. If I may?

4 Good morning, ladies and gentlemen. I introduced
5 myself yesterday. My name is Robert DeLong. I really
6 appreciate you all being here. I know the judge has
7 commented on that, but you all came back. We're very
8 grateful. This is a very serious matter so that's why
9 we're so grateful for your service.

10 It's serious because the defendant, Ian Held, is
11 being charged with two felony counts. The first,
12 residential burglary, and the second, attempted
13 residential burglary. Each of these charges concerns two
14 very distinct incidents, two different residences, if you
15 will.

16 So the first is 1440 Whisper Rock Way. That's a
17 home in the Somerset area of town. Then the second is
18 920 University Park Loop, which is in Northwest Reno.
19 So, as the judge mentioned, my job right now is not to
20 argue the case but it's to give you an outline of where
21 we're going when presenting the evidence. The reason for
22 that is simple. Usually when we talk with one another,
23 we tell stories but here it's a little different. We're
24 going to be putting individuals telling their little

1 piece of the story one at a time on the stand, and so we
2 have to give an overview for that to sort of make sense
3 where it's going to fit in the puzzle as we move through
4 the trial. So hopefully that's what I'm going to do
5 right now.

6 So I'm going to start with 1440 Whisper Rock Way
7 and what occurred there. You're going to hear from
8 Mr. Chris Gardella. He lives in the area, and he was
9 driving in the neighborhood and saw something that caught
10 his eye. He's going to testify that he saw a U-Haul
11 pickup truck that didn't make sense to be in the
12 neighborhood, or at least didn't make sense to him. He
13 saw an individual that just gave him a bad feeling.

14 So if any of you know Somerset, it has
15 roundabouts. Well, he drove through a roundabout and
16 drove back and saw that pickup truck parked in front of
17 1440 Whisper Rock Way. He'll testify that he took a
18 picture of the pickup truck and the license plate of the
19 pickup truck, and then he left. That was that for
20 September 20, 2020.

21 However, the next day, the next witness is going
22 to testify, Officer Golden, Heather Golden, that she
23 responded to 1440 Whisper Rock Way because there was a
24 report of a burglary. She's going to show you a bunch of

1 photos. She's going to show you the photos that she took
2 when she was at that address the next day. Those photos
3 are going to show a big, cinder brick went through a
4 sliding glass door. They're going to show that all the
5 drawers -- I shouldn't say *all* -- many drawers in the
6 residence were pulled out and many of the closet doors
7 were open.

8 Then we're going to hear from the homeowner, Mr.
9 Allen McCulloch. Mr. McCulloch wasn't in town when that
10 occurred so he had to find out about it, but he will be
11 able to describe for us what is going on in the photos,
12 what is going on in his residence. He'll be able to
13 describe what went missing from his house -- what he
14 believes at least was missing from his house on that day.
15 And that's going to be important because we're going to
16 find out later that certain items, at least two items
17 were returned to him.

18 The next individual that is going to testify is
19 Officer Joe Trail. He also responded to the burglary at
20 1440 Whisper Rock Way on September 21st. He did his
21 investigation as well, witnessed all the events that I
22 described, the drawers being open and the open doors.
23 But he did something in addition. He received that photo
24 of the pickup from Chris Gardella and he did a little

1 more research.

2 He contacted U-Haul and found out that the license
3 plate on the truck was rented to an individual named Ian
4 Held, and he figured out that individual's residence.
5 It's in a trailer park on Fourth Street.

6 So he got in his car and drove down to that
7 trailer park and he's going to present evidence that he
8 took a picture of that very pickup truck with the same
9 license plate that Chris Gardella took a picture of in
10 front of the residence of Ian Held.

11 We're also going to put on the stand a
12 representative from U-Haul, and his job mainly is just to
13 testify to the business records of U-Haul reflecting that
14 that truck was indeed rented by Mr. Held.

15 There are -- there's a bit more evidence regarding
16 that residence and I'll get to that in a moment, but now
17 I want to move on to 920 University Park Loop. Different
18 residence. Different area of town. We're going to put
19 on evidence of the homeowners of University Park Loop.

20 The first is going to be Mr. Robert Merrill and
21 he's going to testify regarding what happened in late
22 September 2020 when he was in his residence. He heard a
23 crash. He went into his bedroom and he saw a rock laying
24 on the floor of his bedroom. He looked out the window

1 and he saw an individual that was, my understanding,
2 wearing a mask and there was a pole on a bush in front of
3 the broken glass of the window.

4 While this is occurring, his wife drives home.
5 She sees a red Jeep in front of her house and thinks,
6 *That's odd. I haven't seen that before*, goes inside and
7 sees her husband interacting with a man outside the
8 window and a rock inside of her home. She determines
9 it's important at that time to call the police.

10 And the individual that Robert Merrill was talking
11 to quickly leaves, but before he leaves she will testify
12 that she got a good look at him and she will identify
13 that individual as Ian Held.

14 Now, this -- this incident isn't the same as the
15 Whisper Rock incident because this is an attempted
16 burglary, so we're going to have to present evidence that
17 he was attempting to get in because he never actually
18 entered into the residence, so there's one more piece of
19 evidence. Before the rock came through the window and
20 before Mr. Robert Merrill was alerted to his presence,
21 you're going to see Ring doorbell camera footage that was
22 provided by Dorothy Merrill, his wife, which shows Ian
23 Held coming up to the door, taking a camera phone and
24 covering the Ring doorbell camera for a second. He's got

1 a mask on at the time.

2 He knocks quietly, which seems -- he knocks
3 quietly. Then there's another Ring doorbell piece of
4 footage, very short in time together, where we see Ian
5 Held take a glove and put it over the Ring doorbell
6 camera.

7 In addition, we're going to put on the testimony
8 of Detective Kenneth Fye. He had, at that point, been
9 tracking the red Jeep and Ian Held, and he actually knew
10 that Ian Held had gone into the University Park Loop area
11 but he didn't see exactly what was happening. What he
12 did see was a red Jeep coming out at a very high rate of
13 speed.

14 You will also later hear testimony from Detective
15 Lance Tindell who actually saw the defendant in that red
16 Jeep, along with his girlfriend, Annabelle Bush, driving
17 away. They then learned the information about what
18 occurred at 920 University Park Loop and determined it
19 was appropriate to make an arrest. So you will hear
20 evidence from Detective Kenneth Fye regarding what they
21 did to effectuate the arrest of Ian Held, very near to
22 his trailer, his residence on Fourth Street.

23 You're also going to hear from Jeremy -- Detective
24 Jeremy Catalano, who was there to make sure that no one

1 entered or exited the residence after Mr. Held was
2 arrested until the trailer was released. So they did
3 obtain a search warrant, you will hear evidence of, and
4 they searched the trailer.

5 When they searched the trailer, you'll hear
6 evidence from Detective Tindell that they found a drill
7 set. They found a saw and a drill together in a hard
8 case. That saw and drill, they determined later, was
9 owned by Allen McCulloch, the owner of 1440 Whisper Rock
10 Way. It was eventually returned to him, so his property
11 from Whisper Rock Way, he will testify, was found in the
12 trailer of Ian Held.

13 Now, I mentioned there was additional evidence
14 regarding Whisper Rock Way -- actually there's additional
15 evidence regarding 920 University Park Loop, and that's
16 going to come in the form of Detective Tindell telling
17 you about his interview with Ian Held. Once he was
18 arrested, he drove him to the police station and
19 interviewed him. And he admitted to being in the
20 Somerset area with a U-Haul pickup truck.

21 He said he used a tire iron or a tire jack to try
22 to pry the door open. He also said that he took tools
23 and clothes, I think it was coins from 1440 -- well, from
24 the house in Somerset, as he described it. Well, we

1 know -- we'll hear the evidence from the homeowner that
2 he had lost power tools. We also have the connection of
3 the U-haul truck to 1440 Whisper Rock Way.

4 But he doesn't make just admissions concerning his
5 involvement in the Somerset burglary. He also makes
6 admissions concerning his involvement in 920 University
7 Park Loop. He admits to being there. He admits to
8 Detective Tindell that he threw a rock through the
9 window. He admits that he made contact with the owner of
10 the house.

11 So once you hear all of this evidence, ladies and
12 gentlemen, we will ask that you return a verdict of
13 guilty for both residential burglary and attempted
14 residential burglary in this case.

15 Thank you.

16 THE COURT: Thank you.

17 To the defense.

18 MR. SILVERBERG: Thank you, your Honor.

19 Good morning, ladies and gentlemen of the jury.
20 My name is Ian Silverberg. Ms. Rosenthal and I both
21 represent Ian Held in this matter.

22 The facts and the evidence that you are going to
23 hear in this case are not exactly like the State tells
24 you. Throughout the course of this trial, you're going

1 to hear bits of evidence, you're going to hear some
2 facts, what one person might have seen or heard, and then
3 the State is going to ask you to fill in a lot of blanks.
4 And there are a lot of blanks in this case. They're
5 going to ask you to connect dots that may or may not be
6 appropriate to connect. We will submit to you that it's
7 a bridge too far to connect these dots.

8 Let me tell you what I mean. I want to start here
9 with the -- excuse me -- with the Whisper Rock Way
10 alleged burglary, which you just heard a little bit
11 about. You will learn, as Mr. DeLong stated, that one of
12 the residents saw this U-Haul truck, and it was parked on
13 the street legally in front of these mailboxes. A lot of
14 houses in that area but that's where it was parked. And
15 certainly he thought it was strange, and that's his
16 right. You'll hear him.

17 And you'll hear that this was not a box van
18 U-Haul, it was a pickup truck and with all U-Haul's
19 insignia and everything, not really the type of truck
20 that you would have if you were trying to be sneaky or
21 hide yourself.

22 Mr. Gardella, this neighbor, didn't see anybody
23 get in and out of the truck, didn't see anybody get in
24 and out of the house. He didn't see anything that would

1 indicate there was some burglary or something going on at
2 this residence. But he took a picture of that U-Haul and
3 he provided it to law enforcement. And as you heard from
4 the State, law enforcement was able to contact U-Haul and
5 find out that this truck was lawfully -- lawfully rented
6 by Ian Held.

7 That's all they needed. That's when the blinders
8 came on and they were so convinced that Ian Held was
9 their guy that they're going to make every fact try to
10 fit in this narrow box.

11 Mr. Gardella couldn't tell if anything was
12 missing. He was allowed to go into the house at some
13 point. By the way, an important fact, it wasn't until a
14 day later -- not until a day later that it came known
15 that there was some break-in into this Whisper Rock
16 residence, so the day after the U-Haul was seen there.

17 So nobody is going to be able to tell you when
18 this alleged break in took place, whether it took place
19 at the time that the U-Haul truck was there, just
20 somebody's suspicion that a U-Haul truck looked weird in
21 his neighborhood. Won't be any fingerprints, won't be
22 any evidence of property being pawned by Mr. Held, won't
23 be any evidence of property from that residence being
24 found in the U-Haul truck.

1 One of the other things you will learn about the
2 U-Haul truck is there's another authorized driver, and
3 you heard her name from the State. That will become
4 relevant in this case because not only was she an
5 authorized driver of the U-Haul truck, she also had
6 access to the trailer park, to the residence, as it was
7 called, of Mr. Held -- actually his mother's trailer.
8 But this person, who was also authorized to drive the
9 U-Haul truck, also had authority to be in that residence
10 as well.

11 Again, the State is going to ask you to fill in
12 these blanks. It's our position that these blanks cannot
13 be filled in with the evidence that you're going to hear.

14 Now, the State also told you a little bit about
15 this incident at 920 South University Park Loop, which
16 happened three days later, involved a different vehicle.
17 And no one is going to sit here and tell you that Mr.
18 Held was not at that residence. You heard and you'll
19 hear that he had some interaction with the homeowner, but
20 he never went into that residence, had no property from
21 that residence. And it is going to be on the State to
22 prove to you beyond a reasonable doubt what Mr. Held's
23 intention was when he was having that interaction with
24 the homeowner. Because that intent and that proof of

1 that intent is what makes this either an attempted
2 burglary or something altogether different.

3 You heard a little bit about the search of the
4 trailer where some items were found that were related to
5 the residence on Whisper Rock, that there was a search
6 warrant. But what you'll also hear is that law
7 enforcement allowed this other person, who was also able
8 to drive the U-Haul truck and also had access to that
9 residence and was staying there, allowed her to go into
10 the trailer before they even issued -- got a search
11 warrant and do whatever she was going to do in there, and
12 they just decided that she had really nothing to do with
13 it.

14 Again, they're so focused on Mr. Held that they
15 can't even possibly see what went on in this case.
16 They're counting on you to take a couple of facts and
17 make a giant inference that Mr. Held is guilty of these
18 crimes.

19 Ladies and gentlemen of the jury, we'll submit to
20 you that when you hear all the evidence in this case, you
21 will not be so convinced. I thank you for your attention
22 today.

23 THE COURT: Thank you, counsel.

24 To the State, you may call your first witness.

1 MR. DELONG: Thank you, your Honor.

2 The State would call Christopher Gardella.

3 THE BAILIFF: Face the clerk, raise your right
4 hand, and she'll swear you in.

5 (Witness sworn.)

6 THE COURT: I'm going to invite counsel to
7 instruct the witnesses at the beginning of each witness
8 examination regarding the masks, because I don't want to
9 remember. I'll do it the first time and then you can
10 just take over from there.

11 You may lower your mask, if you choose. You are
12 not required to, only if you're comfortable. We want the
13 jury to be able to hear everything, so if you choose not
14 to lower your mask, please amplify your voice so that
15 it's not muffled.

16 MS. ROSENTHAL: Your Honor, may we have a side bar
17 discussion regarding that?

18 THE COURT: Yes, you may.

19 Ladies and gentlemen of the jury, stand and be at
20 ease, if you would, please?

21 (Discussion at side bar; not reported.)

22 THE COURT: All right. Be seated, if you would,
23 please?

24 Counsel, I am reversing myself. I'm going to ask

1 the witness to drop his mask so that the jury can have
2 full access to facial features and other forms of
3 communication. If you are uncomfortable doing so, I will
4 provide a face shield for you and there is no harm in
5 requesting.

6 THE WITNESS: I am not comfortable removing my
7 mask.

8 THE COURT: You don't have to say anything past
9 that, I'm very comfortable with your answer, in which
10 case we're going to be in recess and we are going to
11 discover a face shield.

12 THE WITNESS: If it's going to be a face shield
13 I'll take it off.

14 THE COURT: Mr. Gardella, please put your mask
15 back on. I want you to be comfortable first. If at any
16 time I have a difficult time hearing or any of the jurors
17 have a difficult time hearing, please signal. I'll just
18 ask you to be attendant to the volume of your words.

19 THE WITNESS: Thank you.

20 THE COURT: Go ahead, please.

21 MR. DELONG: Thank you, your Honor.

22 / / / /

23 / / / /

24 / / / /

1

CHRIS GARDELLA

2

3

called as a witness on behalf of the State,
having been duly sworn, testified as follows:

4

5

6

+++ DIRECT EXAMINATION +++

7

8 BY MR. DELONG:

9 Q Mr. Gardella, would you please state and spell
10 your name for the record?

11 A Chris Gardella; C-H-R-I-S, G-A-R-D-E-L-L-A.

12 Q Can you describe generally where you live, not
13 your specific address?

14 A I live in the -- within a quarter mile.

15 Q Quarter mile?

16 A Of where the incident took place.

17 Q Do you live in the Somerset area?

18 A I do.

19 Q What do you do for a living?

20 A I'm in the insurance business.

21 Q How long have you been in the insurance business?

22 A Thirteen years.

23 Q Do you recall being in the Somerset area on
24 September 20, 2020?

1 **A** I do.

2 **Q** What do you recall from that date?

3 **A** I was driving up the street and I noticed a U-Haul
4 truck that had a person in it that did not look in the
5 right place in the neighborhood. And where the location
6 was, the two neighbors there I knew, it was just out of
7 place and I felt uncomfortable about the situation,
8 and --

9 **Q** When you saw him, was the truck stationary?
10 Moving? What was happening?

11 **A** Stationary, in between the top two houses of that
12 street.

13 **Q** Then what did you do after you saw the truck?

14 **A** I pulled down the street thinking about how shady
15 the situation was I just felt and drove through the
16 roundabout, drove back down Somerset Parkway entering
17 the bottom entrance to that -- to that subdivision. I
18 did stop at my house, I picked up a propane tank, and I
19 then further went back up and that U-Haul truck was
20 parked by the mailboxes with nobody in it, which I felt
21 even more strange at that moment.

22 I sat there for probably a minute. I thought, *I'm*
23 *going to take a picture of the truck.* So I took a
24 picture of the truck and furthered myself on to the day.

1 **Q** Now, you said you saw initially a person inside
2 the truck; is that correct?

3 **A** I did.

4 **Q** How many people was it? Just one?

5 **A** I believe one, yes.

6 **Q** Were you able to see details of this individual?

7 **A** Scraggly hair.

8 **Q** Did you see any other details?

9 **A** Just came to mind, shady person.

10 **Q** No other specific details that you can remember?

11 **A** Middle age but dirty, scraggly.

12 MR. DELONG: Your Honor, permission to move
13 freely?

14 THE COURT: Yes, please.

15 BY MR. DELONG:

16 **Q** I'm showing you what is proposed Exhibit 88, have
17 you seen this photo before?

18 **A** I took that photo.

19 MS. ROSENTHAL: Your Honor, I would ask that he
20 show defense.

21 MR. DELONG: I apologize.

22 THE COURT: Yes, just as a continuing reminder.

23 MR. DELONG: Absolutely, your Honor. Thank you.

24 / / /

1 BY MR. DELONG:

2 Q So you said you took this photo?

3 A I did.

4 Q Is that the photo of the truck you were just
5 describing?

6 A Yes.

7 Q Are those the mailboxes you were describing?

8 A Those are.

9 Q Do you remember the date that you took this photo?

10 A September 20.

11 Q Does that fairly and accurately depict the scene
12 at the time you took the photo?

13 A Absolutely.

14 Q Does it appear altered in any way?

15 A No.

16 MR. DELONG: The State would move for admission of
17 marked 88.

18 MR. SILVERBERG: No objection.

19 THE COURT: 81 -- 88, excuse me, is admitted.

20 (Exhibits 88 was admitted.)

21 MR. DELONG: Thank you. Permission to publish?

22 THE COURT: Yes.

23 MR. DELONG: I'm going to have to turn off the
24 light.

1 THE COURT: You know it's probably -- your light
2 or my light?

3 MR. DELONG: That's not going to work, I don't
4 think. No. See if zooming --

5 BY MR. DELONG:

6 Q Can you see the photo that is being presented to
7 the jury right now?

8 A Yes, I can.

9 Q Now, those mailboxes, are those the mailboxes you
10 were referring to?

11 A Yes.

12 Q And there's a house right there. Do you know the
13 address of that house?

14 A It's the first house on Whisper Rock, Cityscape --
15 I don't want to guess -- probably 1410, 1430.

16 Q Do you know the owners of that house?

17 A I do know the owners of that house.

18 Q You're familiar with that house?

19 A I'm very familiar with that house.

20 Q Who owns that house?

21 A Allen and Sandy McCulloch.

22 Q What is the last name?

23 A McCulloch, if I pronounce it wrong.

24 Q Now, the next day, were you at this house on

1 September 21st?

2 A I passed that house but I was -- oh, I was at that
3 house after it was -- I was informed that there was a
4 break-in. Yes, I went to that house.

5 Q So you met with police officers at that house the
6 next day; is that right?

7 A I did. I did.

8 Q And did you give anyone this photo?

9 A The police officers took a picture of that photo.

10 Q And did you end up walking through the house at
11 all or --

12 A I did.

13 Q -- viewing the house?

14 What did you see in the house?

15 A The house is always very kept, but it was rifled
16 through, drawers opened, every room. Definitely out of
17 the ordinary because that's not how that house was kept.
18 Drawers in the bedrooms open, drawers in the kitchen, it
19 was just out of place.

20 Q So I apologize, we should back up for a second.
21 Before September 21st, 2020, had you been in that house
22 before?

23 A Yes.

24 Q So it did look different on that day?

1 **A** Absolutely.

2 **Q** Did you notice anything else inside the house?

3 **A** Well, the broken sliding glass door. Other than
4 that, glass on the floor. Again, just doors opened and
5 out of place. It's not how they keep their house.

6 **Q** And who let you inside the house?

7 **A** The police officers cleared the house and then I
8 entered with a fellow neighbor.

9 **Q** Did you provide police officers with any other
10 information other than the photo?

11 **A** I mean, other than the fact that I know how the
12 house is very neat and it was not neat that day.
13 Somebody had been -- it had been gone through.

14 MR. DELONG: Thank you very much.

15 No further questions at this time, your Honor.

16 THE COURT: To the defense.

17

18 **+++ CROSS-EXAMINATION +++**

19 BY MR. SILVERBERG:

20 **Q** Good morning, Mr. Gardella.

21 **A** Good morning.

22 **Q** So you indicated that you felt uncomfortable
23 seeing this U-Haul truck in the neighborhood?

24 **A** I did. I did.

1 **Q** And you took a picture?

2 **A** I did.

3 **Q** But you didn't do anything with that for that next
4 period of time; is that correct?

5 **A** No. I'm not going to address somebody that I
6 don't know, and it's just not -- it was out of the
7 ordinary and I felt uncomfortable about the situation
8 that I saw. So I looped back around and came back up,
9 and the truck was parked with nobody in it.

10 **Q** Okay. Now, when you saw -- at one point you saw
11 somebody in the truck; correct?

12 **A** Yes.

13 **Q** Driver's or passenger's side?

14 **A** Driver's side.

15 **Q** They were in the driver's side, okay. And you
16 don't -- you had no knowledge if somebody else at some
17 point was in the passenger side; correct?

18 **A** I didn't.

19 **Q** And you saw nobody go in and out of the house;
20 correct?

21 **A** I didn't.

22 **Q** And you know these homeowners; correct?

23 **A** I do.

24 **Q** Okay. And were they out of town?

1 **A** Yes.

2 **Q** Do you know for how long?

3 **A** It's a second home.

4 **Q** So you don't know how long they were gone?

5 **A** I want to say I saw them in August.

6 **Q** So at least a couple of weeks?

7 **A** Yeah.

8 **Q** Did they have anybody else that you know of that

9 routinely went to the house?

10 **A** No.

11 **Q** A gardener?

12 **A** During lawn season, yeah.

13 **Q** This would be lawn season?

14 **A** He was there on Mondays.

15 **Q** On Mondays?

16 **A** Uh-huh.

17 **Q** Do you know that person?

18 **A** I do.

19 **Q** Do you know the gardener?

20 **A** I do.

21 **Q** Okay. Did you have any discussions with the

22 gardener about these incidents --

23 **A** No.

24 **Q** -- about this incident? Okay.

1 Do you know how long the U-Haul truck was in that
2 location?

3 **A** I went to the grocery store after that, and when I
4 came back it wasn't there, so probably 30 minutes.

5 **Q** Okay. Looking at this exhibit, there are other
6 houses around?

7 **A** This was a corner house. There was a house on the
8 other side of that house.

9 **Q** House across the street?

10 **A** No.

11 **Q** What is across the street?

12 **A** Green belt.

13 **Q** So there's the one house that you've identified as
14 the McCulloches'?

15 **A** Correct.

16 **Q** And there's one on this side?

17 **A** Correct.

18 **Q** Then there's one on the other side?

19 **A** No.

20 **Q** What is that?

21 **A** No house on the other side.

22 **Q** So there's just two houses right there?

23 **A** First two houses on that street.

24 **Q** Where is the driveway?

1 **A** It's in front of that -- you go up and turn the
2 corner, and it's immediately on the right. So it's in
3 front of that living room that you're seeing -- yes.

4 **Q** This side over here?

5 **A** Yes. Uh-huh.

6 **Q** Then there's another house on this side of the
7 mailboxes?

8 **A** No.

9 **Q** Where is the other house?

10 **A** On the other side.

11 **Q** The other side. Excellent. So this truck wasn't
12 parked in the driveway?

13 **A** When I came up the street it was parked -- it was
14 parked in between with the scraggly character in it in
15 between the two houses. I drove by slow, just took in
16 the situation and processed it as not being a good
17 situation, and when I came through, I went around the
18 roundabout, went back down the hill, stopped, and I came
19 back up the street and it was parked there.

20 **Q** Do you -- I mean, are you always in the
21 neighborhood --

22 **A** Yes.

23 **Q** -- or do you have -- so you're retired or you're
24 not working?

1 **A** No, I'm not retired.

2 **Q** Okay. But you're in the neighborhood?

3 **A** Yes.

4 **Q** Okay. How often are you out and about in the
5 neighborhood?

6 **A** Daily.

7 **Q** Daily. Like certainly not all day, every day;
8 correct?

9 **A** No. I have to work --

10 **Q** Okay.

11 **A** -- to pay for the house.

12 **Q** What hours?

13 **A** Sometimes, in my business, at 5:00 in the morning
14 and I have two boys so I'm in and out. I'm -- I work a
15 lot. I don't know. I'm in and out a lot.

16 **Q** It wasn't until a day later that you became aware
17 that there was some break-in at your neighbor's house?

18 **A** Correct. My wife went running and that's when she
19 found out the house was broken into.

20 **Q** Okay. But you don't know what time that happened;
21 correct?

22 **A** What time what happened?

23 **Q** You don't know at what time that a break in
24 happened?

1 **A** No. It pretty much happened, I'm guessing,
2 sometime after I went to the store.

3 **Q** You'd be guessing; right? You don't know?

4 **A** Sure. Sure.

5 **Q** You didn't see anybody go in the house?

6 **A** I didn't see anybody go in the house.

7 **Q** So you don't even know if this truck had anything
8 to do with that break-in, other than your feeling?

9 **A** No.

10 MR. SILVERBERG: Thank you.

11 THE COURT: Is there any redirect?

12 MR. DELONG: No. Thank you, your Honor.

13 THE COURT: Thank you. You're free to step down
14 and leave the courtroom.

15 Your next witness, please.

16 MR. DELONG: Your Honor, the State calls Officer
17 Heather Golden.

18 THE BAILIFF: Face the clerk and raise your right
19 hand, please.

20 (Witness sworn.)

21 THE COURT: Officer Golden, you may lower your
22 mask during your testimony if you are comfortable. You
23 are not required to do so. A second option we have is to
24 have a face shield so the jury can see your mouth as you

1 speak. It's your preference.

2 THE WITNESS: Okay. Thank you, sir.

3

4

5

HEATHER GOLDEN

6

7

called as a witness on behalf of the State,
having been duly sworn, testified as follows:

8

9

10

+++ DIRECT EXAMINATION +++

11

BY MR. DELONG:

12

Q Good morning, Officer Golden. Please state and

13

spell your name for the record.

14

A Officer Golden; G-O-L-D-E-N.

15

Q What is your current occupation?

16

A I work for the Reno Police Department as a patrol

17

officer.

18

Q How long have you worked for the Reno Police

19

Department?

20

A Approximately a year-and-a-half.

21

Q And were you involved in an investigation of a

22

burglary on September 21st, 2020?

23

A I was, yes.

24

MS. ROSENTHAL: Your Honor, I'm sorry to

1 interrupt. I would like to re-address something, but I
2 want it to be on the record. I don't know if we need the
3 jury to be excused.

4 THE COURT: Well, I don't know. I might need to
5 excuse the jury. Does it have to do with the face mask?

6 MS. ROSENTHAL: Yes.

7 THE COURT: Go ahead and put it on the record.

8 MS. ROSENTHAL: Thank you.

9 I would ask that the court require that these
10 witnesses lower their mask when they are testifying. If
11 they are comfortable, that they be provided a clear face
12 shield which will allow the jurors to properly see facial
13 expressions or reactions. But when the witness is not
14 required to do so, it limits the jury's ability to judge
15 that credibility as if we were in non-COVID times, and I
16 think it's important for this jury to see all the aspects
17 of a witness' testimony.

18 THE COURT: Does the State have a response?

19 MR. DELONG: My concern would be simply what we
20 just witnessed with the prior witness. If there's not
21 comfort with a face shield, that may create an issue.
22 But the State would defer to the court.

23 THE COURT: Pursuant to administrative order that
24 controls these proceedings, I am not at liberty to direct

1 a witness to lower a face mask. I have taken the liberty
2 of providing discretion to the witness according to his
3 or her own comfort level. I will not inquire as to
4 vaccination status. Private health remains private to
5 each witness. I have created three options: lower the
6 mask, if comfortable; remove the mask during testimony,
7 if comfortable; or, as an alternative, a face shield. I
8 deny the request for mandatory mask removal. It is
9 overruled.

10 BY MR. DELONG:

11 Q Are you comfortable proceeding in this manner?

12 A Yes.

13 THE COURT: Please remember to speak directly into
14 the microphone and amplify your voice so your words are
15 not muddled together because of the mask.

16 THE WITNESS: Yes, your Honor.

17 BY MR. DELONG:

18 Q Did you participate in an investigation of 1440
19 Whisper Rock Way on September 21st?

20 A Yes.

21 Q Do you remember what you did in connection with
22 that investigation?

23 A Yes.

24 Q What occurred?

1 **A** I arrived in order to provide cover for my fellow
2 officer. We had to clear the residence, make sure there
3 was no one inside the residence. I arrived. We located
4 a door that we could enter the residence in. We entered.
5 We cleared the residence. We observed what was happening
6 in the residence -- or what had prior happened in the
7 residence. I took photographs. And that was pretty much
8 my role that day.

9 **Q** Now, do you remember meeting with me on Monday of
10 this week?

11 **A** I did.

12 **Q** Do you remember going over a video with me --

13 **A** I do.

14 **Q** -- that was contained on a thumb drive? Does this
15 look familiar?

16 **A** Yes.

17 **Q** And, if I may, did you put any markings on this?

18 **A** Yes, I did.

19 **Q** What is on there?

20 **A** I put my initials and then I dated it.

21 **Q** You did review the footage?

22 **A** Yes, I did.

23 **Q** Can you describe for us what that footage is, just
24 generically?

1 **A** Yes. So it's a clip from my camera footage of
2 what I did that day.

3 MR. DELONG: Your Honor, the State moves for
4 admission of proposed Exhibit 87.

5 MS. ROSENTHAL: Your Honor, I have a couple of
6 questions for this witness prior to this.

7 THE COURT: Go ahead, please.

8

9 +++ VOIR DIRE EXAMINATION +++

10 BY MS. ROSENTHAL:

11 **Q** Officer Golden, you said it's a clip of your body
12 cam?

13 **A** Yes, ma'am.

14 **Q** It's not the full length?

15 **A** No.

16 **Q** Did you clip that?

17 **A** No.

18 MS. ROSENTHAL: That's all. No objection.

19 THE COURT: 87 is admitted.

20 (Exhibit 87 was admitted.)

21 THE COURT: You may publish to the jury.

22 MR. DELONG: Thank you, your Honor.

23 / / / /

24 / / / /

1 +++ DIRECT EXAMINATION +++

2 (Resumed)

3 BY MR. DELONG:

4 Q So as a patrol officer you wear a body camera; is
5 that correct?

6 A Yes.

7 Q I'll pause this real quick. So this would be at
8 least a portion of what was captured on your camera that
9 day?

10 A Yes.

11 Q Now, we're looking at a pause shot of this
12 footage. Is that 1440 Whisper Rock Way?

13 A Yes, it is.

14 Q Were those other officers involved in the
15 investigation?

16 A Yes.

17 Q Okay.

18 (Video played.)

19 What was occurring in that footage right there?

20 A We were clearing the residence at that point,
21 making sure there was no one in the residence currently.

22 Q Was there anyone in the residence?

23 A No.

24 Q And the area you entered through, was that like

1 when you showed up on scene?

2 **A** Yes.

3 **Q** So that was footage of you arriving on scene for
4 that investigation?

5 **A** Yes.

6 **Q** So I'm now going to show you marked proposed
7 Exhibits 5 through 12. Take a minute to look at those
8 real quick, please.

9 Have you seen those photos before?

10 **A** Yes. I took these photos.

11 **Q** And what are they of?

12 **A** They are the residence, outside the residence, as
13 well as inside the residence.

14 **Q** Is that 1440 Whisper Rock Way?

15 **A** Yes.

16 **Q** Do they look to be altered in any way?

17 **A** Yes -- or the doors did and all that.

18 **Q** I apologize. Let me back up.

19 **A** Sorry.

20 **Q** Do the photos look to be altered in any way?

21 **A** No, no. The photos do not look to be altered.

22 MR. DELONG: Your Honor, the State moves for the
23 admission of proposed Exhibits 5 through 12.

24 MS. ROSENTHAL: No objection.

1 THE COURT: 5 through 12 are admitted, Ms. Clerk.

2 THE CLERK: Thank you, your Honor.

3 (Exhibits 5 through 12 were admitted.)

4 MR. DELONG: Sorry. I'm trying to make sure we
5 can see these photos clearly without the black
6 background.

7 BY MR. DELONG:

8 Q So this is a photo you took?

9 A Yes, it is.

10 Q Is this a photo of the front door?

11 A Yes.

12 Q That's the condition you found it in?

13 A Yes.

14 Q Then what is this a photo of?

15 A That is a photo of what I -- what appeared to be
16 pry marks on the door. I took the photo because it did
17 look like pry marks and, in my opinion, when I took the
18 photo it appeared that someone had possibly tried to pry
19 open the front door, that's why I took a photo of it.

20 Q I'm trying to see if we can see it as clearly
21 as --

22 MR. DELONG: Your Honor, permission to ask the
23 witness to move?

24 THE COURT: For the witness to move?

1 MR. DELONG: Just to point where the pry marks
2 are.

3 THE COURT: So this is just a housekeeping
4 question. Typically we have software that allows the
5 witness to touch the screen, that doesn't exist.

6 I'm going to ask if you'll just direct co-counsel
7 to point a finger where you want him to and confirm with
8 the witness.

9 MR. DELONG: Of course. Thank you.

10 Mr. Graham, could you please point just below the
11 lock? Yes. Thank you.

12 BY MR. DELONG:

13 **Q** Is that one of the pry marks you were describing?

14 **A** Yes.

15 **Q** There's a mark below it. Is that also one of the
16 pry marks you were describing?

17 **A** Yes.

18 **Q** And this is on the front door of the residence?

19 **A** Correct.

20 **Q** Now, here, what are we looking at?

21 **A** That is a picture of the windows that are located
22 just to the right of the front door, then there's a
23 screen that's laying underneath the window that appeared
24 to be -- that it was taken off of the window.

1 **Q** So these were -- I'm sorry.

2 **A** The far left window.

3 **Q** So these are the same side of the house?

4 **A** Yes.

5 **Q** And the door is to the left of these windows?

6 **A** Yes.

7 **Q** That was the door with the pry marks?

8 **A** Yes. Correct.

9 **Q** Now what are we looking at here?

10 **A** This is a photograph of the outside of the sliding
11 glass door. It's the outside of where we located that
12 large brick inside the house.

13 **Q** So what's on the bottom of that photo below the
14 door?

15 **A** It's all of the shattered glass from the sliding
16 glass door.

17 **Q** See if we can see that a little better. So is
18 there glass on the bottom of the door sill and on the
19 ground?

20 **A** Correct. Yes.

21 **Q** Now take a look at your video real quick.

22 (Video played.)

23 I want to pause it here.

24 Mr. Graham, can you point out the lower wall on

1 the outside of the residence?

2 Where in relation to that wall was the door that
3 was broken?

4 A Just behind the wall. So you go through that gate
5 and it's located just behind that wall.

6 Q So I'm going to play a little more footage to see
7 if we can see the gate better.

8 I missed it. I apologize.

9 Right there on the left, is that the gate that
10 you're referring to --

11 A Yes.

12 Q -- next to the small wall? So it's behind that
13 wall?

14 A Yes.

15 Q Now I'm showing you what is marked and admitted as
16 Exhibit 9. What is this a photo of?

17 A That's a photo of the large brick located in the
18 house right inside the glass door that was broken inside
19 the house.

20 Q I'm going to turn the light off so we can try to
21 see it better.

22 That's a brick, is that what you said?

23 A Yes. It's a large brick.

24 Q That's more glass from the door we just saw?

1 **A** Correct.

2 **Q** Now I'm showing you what's been admitted as
3 Exhibit 10. What are we looking at here?

4 **A** The same thing. It's just a different angle. I
5 tried to take an overall so you could see the door, the
6 glass, and the brick.

7 **Q** So that was the glass that was broken on the
8 inside?

9 **A** Correct.

10 **Q** Looking at Exhibit 11 --

11 **A** That's a close-up of the door with the glass
12 inside of the house.

13 **Q** Then one more in this set. Looking at
14 Exhibit 12 --

15 **A** It's another photo of the outside door, of the
16 broken door.

17 **Q** I'm sorry. You can see the edges of the glass in
18 this one; right?

19 **A** Correct.

20 **Q** That are still hanging on to the edge of the
21 frame?

22 **A** Correct.

23 **Q** I'm showing you what's been marked as proposed
24 Exhibits 13 through 28. If you would please take a

1 moment and look through those.

2 Have you seen these photos before?

3 A Yes. I took them.

4 Q And what are they of?

5 A They are photos of the inside of the house and one
6 photo of the door that we entered into.

7 Q Do they look altered in any way from when you took
8 them?

9 A No, sir.

10 MR. DELONG: Your Honor, the State moves for the
11 admission of proposed Exhibits 13 through 28.

12 MS. ROSENTHAL: One follow-up question.
13

14 +++ VOIR DIRE EXAMINATION +++

15 BY MS. ROSENTHAL:

16 Q Officer Golden, did you touch anything in the
17 house before you took these?

18 A I do not recall.

19 Q So they could be in a different position when you
20 arrived?

21 A I don't recall if I touched anything so --

22 Q Do you know if anybody else touched any of them?

23 A I do not.

24 MS. ROSENTHAL: No objection, your Honor.

1 THE COURT: 13 to 28 are admitted.
2 (Exhibit 13 through 28 were admitted.)
3

4 +++ DIRECT EXAMINATION +++
5 (Resumed)

6 BY MR. DELONG:

7 Q So what are we taking a look at now in this photo?

8 A That's going to be a broken kitchen cabinet -- or
9 counter. That's an open kitchen door.

10 Q Now, you didn't open that door; did you?

11 A No, I did not.

12 Q Did you see anyone else open that door?

13 A Not that I recall.

14 Q Now I'm showing you what's been admitted as
15 Exhibit 14. What is this a photo of?

16 A It's another photo of an open door in the house,
17 looks like a closet.

18 Q Once again, did you open that door?

19 A Not that I recall.

20 Q Did you see any officers open that door?

21 A No.

22 Q Showing you what's been admitted as Exhibit 15.
23 What is this a picture of?

24 A Open closet door.

1 **Q** Did you open this closet door?

2 **A** Not that I recall, no.

3 **Q** Did you notice any officers open this closet door?

4 **A** Not that I recall.

5 **Q** Showing you what's been admitted as Exhibit 16,
6 what are we looking at here?

7 **A** It's in the laundry room. It's an open cabinet.

8 **Q** Once again, did you or any officers open that
9 door?

10 **A** Not that I recall.

11 **Q** Is it ever customary for officers to open doors in
12 an investigation and leave them open?

13 **A** No.

14 **Q** Have you ever seen that in your career as a police
15 officer?

16 **A** I have not, no.

17 **Q** Now showing you what should be admitted as
18 Exhibit 17. What are we looking at here?

19 **A** Another open cabinet.

20 **Q** That's not the same cabinet we just saw; is it?

21 **A** No.

22 **Q** I'm showing you what's been admitted as
23 Exhibit 18. What do we see here?

24 **A** Open drawers.

1 **Q** Once again, did you or any other officers open
2 these drawers?

3 **A** Not that I recall.

4 **Q** Showing you what's been admitted as Exhibit 19.

5 **A** Another open drawer.

6 **Q** What type of drawer is this?

7 **A** It's one of the bedroom drawer -- one of the
8 bedroom -- I'm sorry, I'm trying to remember the words.

9 **Q** Of course.

10 **A** It's one of the dresser drawers in the bedroom.

11 **Q** It's not the same dresser that we just looked at;
12 is it?

13 **A** No.

14 **Q** Showing you what's been marked Exhibit 20.

15 **A** Another open drawer -- or two open drawers.

16 **Q** Is this the same as the previous dresser?

17 **A** No.

18 **Q** This is a little different. What is admitted as
19 Exhibit 21, what are we looking at here?

20 **A** That's the front door to the residence, the inside
21 of the front door to the residence.

22 **Q** Can you see what's on the bottom there?

23 **A** Yes.

24 **Q** What is that?

1 **A** It's one of those sandbag sealers that you can put
2 on the bottom of the door so the draft doesn't come in or
3 out.

4 **Q** So neither you or any of the officers, you
5 witnessed at least, moved or changed anything with
6 respect to this door?

7 **A** Correct.

8 **Q** And that is the front door of the residence?

9 **A** Correct.

10 **Q** Showing you what should be admitted as Exhibit --
11 admitted as Exhibit 22.

12 **A** More open drawers with clothing on the ground.

13 **Q** What type of piece of furniture is this?

14 **A** Looked like to me one of the ottoman seats that
15 also has drawers where you can store stuff in.

16 **Q** And what are we looking at in Exhibit 23?

17 **A** Another open cabinet.

18 **Q** So this is different from all the other pieces of
19 furniture we've looked at so far?

20 **A** Correct.

21 **Q** Looking at Exhibit 24, what do we see here?

22 **A** More open dresser drawers.

23 **Q** And you can see articles of clothing in there;
24 correct?

1 **A** Correct.

2 **Q** Is this different from the other dressers and
3 cabinets we've seen so far?

4 **A** Yes.

5 **Q** Looking at Exhibit 25, what do we see here?

6 **A** Open drawers with a piece of property on the
7 ground.

8 **Q** Do you know what that is?

9 **A** I do not.

10 **Q** Once again, this is a unique piece of furniture
11 from the other photos?

12 **A** Yes.

13 **Q** Now, this is Exhibit 26.

14 **A** These are the same drawers, just a little bit
15 closer up.

16 **Q** 25 and 26 are the same dresser?

17 **A** Correct.

18 **Q** Now 27, what are we looking at here?

19 **A** It's an open closet door.

20 **Q** Just sliding it so the jury can see, there's a
21 little glare.

22 Now 28, what is this a picture of?

23 **A** This is a picture of the door that myself and
24 other officers entered into to clear the residence. That

1 was open when I arrived.

2 Q So in the video we play, Exhibit 87, you walked
3 through a slider, this was the slider?

4 A Correct.

5 Q And this is not the slider that had broken glass?

6 A No, it is not.

7 Q This is on the outside of the smaller wall?

8 A Correct.

9 Q Inside that smaller wall is where the window was
10 broken?

11 A Correct.

12 Q Did you do anything else in connection with your
13 investigation?

14 A No, not that I recall.

15 MR. DELONG: No further questions at this time,
16 your Honor.

17 THE COURT: Thank you.

18 To the defense.

19

20 +++ CROSS-EXAMINATION +++

21 BY MS. ROSENTHAL:

22 Q Good morning, Officer Golden.

23 A Good morning.

24 Q When you arrived on scene, do you recall how many

1 officers were there?

2 A I recall I had two sergeants on scene and another
3 officer, including myself.

4 Q So around four or five?

5 A Around four or five, yes, ma'am.

6 Q And you mentioned that you cleared the house
7 first; correct?

8 A Yes, ma'am.

9 Q That involves looking to see if any individuals
10 are there?

11 A Correct.

12 Q And do you normally look in closets when you do
13 that?

14 A Depending on the situation. If we feel that
15 there's a need to look into a closet to make sure someone
16 is there, absolutely we will.

17 Q Did you all move through the house together?

18 A Usually the way that we do it and the way we did
19 that day is we kind of separate so that way we can save a
20 little bit more time, make sure that we clear the
21 residence in a timely manner.

22 Q So you were not with all the officers when they
23 walked through the house the first time?

24 A Not during the whole situation.

1 **Q** So you're not sure how the house looked when
2 officers first arrived because you weren't the first to
3 go through it?

4 **A** Correct.

5 **Q** When you arrived on scene, was there a U-Haul
6 parked in front of the house?

7 **A** No, ma'am.

8 **Q** Were there any other people other than officers
9 present?

10 **A** Yes. I remember -- if I remember correctly, there
11 was more people there and I'm not sure their relation. I
12 believe one was a neighbor.

13 **Q** Do you recall if anybody else had entered the
14 residence prior to officers arriving?

15 **A** Not that I'm aware of. I do not remember.

16 **Q** Do you recall what day you responded?

17 **A** September 21st, 2020.

18 **Q** And did you take a photo of the U-Haul?

19 **A** No, I did not.

20 **Q** Did you see a photo of the U-Haul?

21 **A** I did see a photo of the U-Haul but I did not take
22 a photo.

23 **Q** You didn't take a photo of the photo?

24 **A** No.

1 **Q** Somebody else did?

2 **A** Correct.

3 **Q** Do you recall what day the photo of the U-Haul was
4 taken?

5 **A** I believe it was on the same day that we arrived.

6 **Q** Was the homeowner present?

7 **A** No.

8 **Q** And you have no idea when the house was broken
9 into; correct?

10 **A** No, ma'am, I do not.

11 **Q** And you have no idea when those pry marks would
12 have been placed on that house; correct?

13 **A** No, I do not.

14 **Q** You don't even know that they're pry marks;
15 correct?

16 **A** That was just my observation.

17 **Q** Okay. And you took photos of the scene, that was
18 your duty that day?

19 **A** Correct.

20 **Q** And do you recall if anything was taken as
21 evidence other than the photos?

22 **A** I do not recall.

23 **Q** The brick wasn't seized?

24 **A** I did not.

1 **Q** You did not seize the brick?

2 **A** I did not seize the brick, no.

3 **Q** Did you take any fingerprint evidence at all?

4 **A** I did not.

5 **Q** Did you take any other forensic evidence other
6 than the photos?

7 **A** I did not.

8 MS. ROSENTHAL: I'll pass the witness back.

9 THE COURT: Any redirect?

10 MR. DELONG: Yes, your Honor, briefly. Thank you.

11

12 **+++ REDIRECT EXAMINATION +++**

13 BY MR. DELONG:

14 **Q** So just to summarize what I think I heard you say,
15 you said you thought -- you believed the photo of the
16 U-Haul was taken on the same day?

17 **A** Okay.

18 **Q** But you're not sure; right?

19 **A** Not 100 percent. Back in memory, I do recall
20 Officer Trail taking a photo. I just don't want to speak
21 incorrectly -- I'm positive -- almost positive it was on
22 the same day.

23 **Q** Okay. I want to make sure we're clear here,
24 though. Are you referring to the initial photo of the

1 truck in front of the house or the photo of the photo?

2 A Photo of a photo.

3 Q Okay. So you never saw a truck in front of the
4 house?

5 A No, I did not.

6 Q You never saw someone take a photo of the truck in
7 front of the house?

8 A No, I did not.

9 Q But you have seen the photo of the photo?

10 A Correct.

11 Q Now, when you first entered the house, what we
12 watched on the video, Exhibit 87, what -- what was the
13 purpose of that?

14 A Entering that door -- through the door.

15 Q Well, you and the officers entering the house,
16 what were you doing at that time?

17 A Securing the scene to make sure that there was no
18 one in the house, make sure the scene was safe for us to
19 investigate.

20 Q So you were looking for individuals in the house?

21 A Correct.

22 Q Would you open cabinet drawers to look for
23 individuals?

24 A No, we would not. Just anywhere someone could

1 possibly be hiding.

2 Q You wouldn't be looking through the homeowners'
3 dressers?

4 A No.

5 Q You didn't witness anyone open any of those
6 drawers or change anything?

7 A No, I did not.

8 MR. DELONG: No further questions, your Honor.
9 Thank you.

10 THE COURT: Any re-cross?

11 MS. ROSENTHAL: No, your Honor.

12 THE COURT: Thank you.

13 Ladies and gentlemen of the jury, during this
14 recess, please do not discuss this case amongst
15 yourselves. Do not form or express any opinion about
16 this matter until it has been submitted to you.

17 We'll be in recess for 20 minutes, subject to the
18 deputy's call. If you'll remain in the jury room?

19 We'll stand for our jury.

20 (Recess taken.)

21 THE COURT: The jury, please.

22 Please be seated.

23 To the State, your next witness.

24 MR. DELONG: Thank you, your Honor. The State

1 would like to call Allen McCulloch.

2 THE BAILIFF: Stand here. Raise your right hand.
3 Face the clerk.

4 (Witness sworn.)

5 THE COURT: Mr. McCulloch, you may drop your mask
6 during your testimony, only if you are comfortable doing
7 so. You are not required to do so.

8 THE WITNESS: Thank you.

9 THE COURT: To the State, you may proceed.

10 MR. DELONG: Thank you.

11

12

13 ALLEN MCCULLOCH

14

15 called as a witness on behalf of the State,
16 having been duly sworn, testified as follows:

17

18

+++ DIRECT EXAMINATION +++

19 BY MR. DELONG:

20 Q Mr. McCulloch, can you please state and spell your
21 name for the record?

22 A Yeah. My -- my name is Allen McCulloch;

23 A-L-L-E-N, McCulloch, M-C-C-U-L-L-O-C-H.

24 Q Do you own a residence in Somerset?

1 **A** Yes, I do.

2 **Q** What is the address of that residence?

3 **A** 1440 Whisper Rock Way.

4 **Q** Is that located in Reno, Washoe County, Nevada?

5 **A** Reno, Nevada. Zip code, if you want it, 89523.

6 **Q** That's Washoe County?

7 **A** It is.

8 **Q** What do you do for a living now?

9 **A** I'm retired.

10 **Q** What did you do before this?

11 **A** I was a police officer.

12 **Q** How long were you a police officer for?

13 **A** Thirty-six years.

14 **Q** Where were you a police officer?

15 **A** I was a police officer in San Jose, California,
16 for 26 years, and I worked for the District Attorney's
17 Office in Santa Clara County for 10 years.

18 **Q** Can you describe briefly what your
19 responsibilities were as a police officer?

20 **A** It was various during my career. I was a police
21 officer, then a sergeant, then a lieutenant. I retired
22 as a lieutenant in 1998.

23 **Q** Did you become aware that something had happened
24 at your home in Somersett on September 21st of 2020?

1 **A** I did.

2 **Q** What did you find out?

3 **A** Our gardener arrived at about 8 o'clock every
4 Monday morning to mow the lawns, and he called us right
5 around 8 o'clock asking us if we were home because the
6 window was open in the back of the house, the sliding
7 glass door window, and there was a sliding glass door at
8 the side of the house that was smashed and with glass all
9 over the patio and inside the -- inside the house.

10 So we said no, we're in Gilroy, California, where
11 we live, and that's how we found out about it.

12 **Q** Did you eventually come back to your home?

13 **A** We did. We left for Reno, Nevada, about an hour
14 later.

15 **Q** And did you get back on that Monday then?

16 **A** We came up to Reno that Monday, on the 21st. We
17 arrived here about 3 o'clock in the afternoon.

18 **Q** Were officers still at your residence when you
19 arrived?

20 **A** Pardon?

21 **Q** Were officers still at the residence when you
22 arrived?

23 **A** No, they were not. They had gone by then. And
24 our neighbor, whose wife had been running by the house in

1 the morning, she's a jogger, found out that the house was
2 burglarized and she had notified Chris, her husband.

3 Q Is that Chris Gardella?

4 A Yes, that would be Chris Gardella.

5 Anyway, our neighbor, who is a retired sheriff's
6 lieutenant from LA County, had come to the house and
7 cleaned up the glass and boarded it up, put plywood up
8 against the window to secure it against the weather.

9 Q So I'm going to show you some photos right now
10 that have been admitted into evidence. Do you
11 remember -- do you recognize this door?

12 A Not the best photograph. It looks like our front
13 door. I can recognize it because of the little thing
14 that my wife puts down near the door. Yes, that's our
15 front door of our house.

16 Q Just for the record, we're looking at Exhibit 5
17 right now.

18 So that's the front door of your house?

19 A Yes.

20 Q And then looking at Exhibit 7, are these the front
21 windows of your house?

22 A Yeah. A lot of the screens were dislodged and
23 that looks like the front of our house. I think that's
24 the front -- I'm not certain where that is. It might be

1 in the patio area.

2 Q Did you leave any screens like this when you left
3 for Gilroy?

4 A No, we don't leave the house like that. Certainly
5 not.

6 Q So before September 21st, when had you left?

7 A Approximately two Mondays before. On a Monday.
8 That's usually when we leave is on a Monday morning so we
9 can talk to the gardener.

10 Q So looking at Exhibit 13, what are we looking at
11 here? Do you recognize this?

12 A Well, that looks like our kitchen and where our
13 refrigerator is, and the door to our pantry looks to be
14 open.

15 Q Did you leave it that way?

16 A No. We never leave it like that.

17 Q Do you check the house before you leave for
18 Gilroy?

19 A We have a checklist actually. We go through a
20 checklist every time we leave -- departing checklist,
21 yes.

22 Q What is on that checklist?

23 A Well, thermostats off. Windows and doors closed.
24 I'm trying to think what else is on it. I have, you

1 know, temperature, the temperature -- the thermostat is
2 set in the wintertime and the summer it's turned off. So
3 during that time of the year, in September, it would have
4 been completely turned off because of the heat. In the
5 wintertime, we leave it at 55 degrees. And so I can go
6 through the -- oh, stereo turned off. All things -- go
7 through the house, I have a complete checklist. That's
8 my regimen.

9 Q So looking at Exhibit 14, do you recognize this?

10 A Yeah. That would be the hallway closet, and I
11 have a cooler down below on the bottom, and that's my
12 shirt jacket that I keep available if I'm going outside
13 and it's cold. And then there's the security box, the
14 electrical system to the right, right below the hangers,
15 that's where our system is located. You can see some
16 extra wires there on the right hanging.

17 Q So this door is open, did you leave it that way?

18 A No. We never leave it like that.

19 Q I'm going to go through a couple more. Do you
20 recognize this?

21 A That's our laundry room.

22 Q This is Exhibit 16.

23 A And we never leave it like that either. It's all
24 closed up. And there's our security alarm. As we leave

1 the house, we leave it activated on *Chime*, but that's our
2 laundry room.

3 Q Looking at Exhibit 21, do you recognize this
4 photo?

5 A Yes. My wife is real diligent about putting paper
6 in there, paper -- paper towels, because when the wind
7 blows up there, even though we have a good sealant around
8 the door, the wind sometimes blows so strong that the
9 dust and sand blows in through the front door and we end
10 up spending about a half hour cleaning up the sand, so
11 that's the way she likes to leave it.

12 Q Looking at Exhibit 22, what are we looking at
13 here?

14 A That's our bedroom, our master bedroom. All the
15 drawers, that's kind of the way we found it when we came
16 home but we never leave it like that when we leave the
17 house. She was pretty upset that all her clothes were
18 thrown on the floor and, of course, some of mine as well.

19 Q So are the clothes on the floor in the back of the
20 picture?

21 A In the background there, it looks like, yeah, some
22 of the clothes. Then in the foreground you'll see --
23 there's some DVDs in the foreground right there to the
24 right, yeah. We have a stack of family DVDs that we keep

1 there in the master bedroom so that it's out of sight
2 from the family room.

3 **Q** So looking at Exhibit 28, what are we seeing here?
4 Do you recognize this door?

5 **A** That -- I'm trying to figure out what that is.
6 It's not the front door. It's --

7 **Q** Just because it's a little hard to see on the
8 screen, I'm going to come over to show this to you.

9 **A** Is that the point of entry here?

10 **Q** I want to know if you know what that door is.

11 **A** Oh, okay. This looks like the rear sliding glass
12 door at the rear of the house that was left open where
13 the subjects who went in the house left it open when they
14 left. We don't -- excuse me.

15 **Q** So this was easier for you to see now that you're
16 holding the exhibit in your hand?

17 **A** Yes. Yes. I can tell what it is now, because I
18 can see the pillar.

19 **Q** Now, does this door depicted in Exhibit 28, is
20 there a house behind it, a neighbor?

21 **A** Behind our house? No, there is no neighbor behind
22 our house. It's open field.

23 **Q** So no one -- well, okay. So it's open field
24 behind the house?

1 **A** Yeah.

2 **Q** Looking at Exhibit 8, does this look familiar?

3 **A** Yes. By the time we got there, my neighbor had
4 vacuumed all that glass up, but that's the point of entry
5 at the side courtyard where the subjects threw a brick
6 through that and broke the glass to make entry to the
7 house.

8 **Q** So did you ever see this -- looking at
9 Exhibit 9 -- this brick inside your house?

10 **A** Yeah. And I leave that brick there on top of a
11 container that holds a hose. My hose goes in there and
12 the brick is left on top of that so the wind doesn't blow
13 the lid off. So it was very convenient for somebody to
14 take that and throw it through the window.

15 **Q** You're saying you leave it on a hose thing
16 outside?

17 **A** Outside.

18 **Q** Not in your home?

19 **A** Not in the home, no. It's left outside.

20 **Q** Was this glass swept up when you got home?

21 **A** That had been picked up and cleaned up by the time
22 I got home, but it's obviously laying inside on the tile
23 now when the photo was taken. I did not see that. When
24 we arrived at about 3 o'clock in the afternoon, it had

1 all been cleaned up.

2 Q So can you describe the home when you arrived?

3 A Yeah. The glass was gone from the actual sliding
4 glass door -- or the glass part of it was smashed out and
5 Herb had cleaned up all that glass inside and outside
6 with a shop vac. By that time, he had also brought over
7 some OSB plywood, four-by-eight sheets of plywood and put
8 them up against the slider, which was open to the
9 weather, and propped it up with two-by-fours and used
10 that brick that you just saw there laying on the tile as
11 a brace to hold the tile against the opening to prevent
12 the weather from getting into the house.

13 Q So Herb is one of your neighbors?

14 A Yes, he is. Herb James.

15 Q Was anything missing that you identified when you
16 came home?

17 A Oh, yes. The first thing I noticed was the change
18 I had next to the bed was gone. There was
19 approximately -- we're guessing about six DVDs that were
20 in one picture that were gone. I could not tell you the
21 names of them. There was the drill set I kept in the
22 garage was completely gone. The container with the
23 drill, the saw. It was a RYOBI set. And the batteries,
24 it was completely gone. And four bottles of wine off the

1 counter, full, unopened bottles of wine we had on a rack.
2 Two of them were J Lohr and two of them were Seven Deadly
3 Zins that we had bought at a local store.

4 I'm trying to remember some of the other things.
5 That's about it.

6 Q So were any of the items that you -- that you just
7 listed returned to you?

8 A Yes.

9 Q What was returned?

10 A The drill set was back to me because I had
11 described it in the report that I submitted on the 25th
12 of September online, and that was -- I was pretty
13 descriptive about it.

14 Anyway, I got a call from the -- from the repeat
15 offender program, the task force. The officers said they
16 believed they had my drill set and were going to bring it
17 over. When they did, brought it into the house and set
18 it down, and opened it, I immediately identified it as
19 mine. And I was able to do that because when I get up
20 there, there's certain things that I use and I leave in
21 that, that set, one of them is a magnetic drill bit,
22 magnetic bit with a No. 2 bit in it. Then there was an
23 approximately eight-inch -- eighth-inch drill. I've had
24 some problems with my cabinets so whenever I got up

1 there, I may have to repair them, and I use that set to
2 do that.

3 But it was right there. And I told the guy, I
4 said, "That's mine. That's my set."

5 **Q** So you weren't hesitant, you were confident that
6 was your set that was returned?

7 **A** Pardon?

8 **Q** You were confident --

9 **A** Yes.

10 **Q** -- that was yours?

11 **A** Yes. Yes, I was.

12 **Q** So I'm showing what's been marked as proposed
13 Exhibits 29 through 32. Can you please take a second and
14 take a look at those?

15 **A** Sure.

16 **Q** Sorry. Those are photos; correct?

17 **A** Yes.

18 **Q** Have you seen those photos before?

19 **A** No. Just outside in front of the courtroom.

20 **Q** But you didn't take those photos?

21 **A** No, of course not.

22 **Q** But you have seen them before today -- not before
23 today -- you have seen them today?

24 **A** Today.

1 **Q** Before we came in and started testifying?

2 **A** Before we came in to testify, yes.

3 **Q** And what -- what is shown generally in those
4 photos?

5 **A** Well, it shows the case, the drill, and saw, and
6 the -- it actually has a flashlight in there as well, and
7 the container, it's identical to the way I leave it. The
8 only thing when I got it back it was cleaner. Somebody
9 had dusted it off when I got it back. But there's my bit
10 right inside. I didn't see that right away initially. I
11 had to put on my glasses. It's laying in there because
12 it looks like the case had been turned upside down and
13 the bit was not in the place I usually leave it, which is
14 that little holder.

15 **Q** Does that fairly and accurately depict the tool
16 set that was returned to you?

17 **A** Yes.

18 MR. DELONG: Your Honor, we move for the admission
19 at this point.

20 MR. SILVERBERG: May I voir dire this witness?

21 THE COURT: Yes.

22 / / / /

23 / / / /

24 / / / /

1 +++ VOIR DIRE EXAMINATION +++

2 BY MR. SILVERBERG:

3 Q Good morning, sir.

4 A Good morning.

5 Q Let me grab those pictures from you real quick.

6 A Sure.

7 Q Thank you.

8 Mr. McCulloch, you didn't take these pictures?

9 A No, I did not.

10 Q Do you know where they were taken?

11 A Where they were taken? I have no idea where they
12 were taken.

13 Q You don't know when they were taken?

14 A I do not.

15 Q Okay. And I'm just going to ask you -- first of
16 all, what was the color of the case of your RYOBI set?

17 A What color?

18 Q Yes, the exterior of the case?

19 A Gray.

20 Q Gray, okay. Can you show me in these pictures,
21 sir, the drill bit that you found unique?

22 A Actually, it's a bit holder. It's not a drill
23 bit, although the drill that I had in the set I did find
24 at the bottom when I put it back in its place in the

1 garage.

2 Here. Right here you can see it laying down in
3 here near the -- near the drill.

4 Q If I could take that from you?

5 A See that right there? Right there.

6 MR. DELONG: What exhibit are we looking at?

7 MR. SILVERBERG: I was going to say, that was
8 proposed Exhibit 30.

9 MR. DELONG: Thank you.

10 BY MR. SILVERBERG:

11 Q And there's a drill bit that comes --

12 A It's not a drill bit. It's a Phillips head bit, a
13 No. 2.

14 Q Right. Is there anything unique about a Phillips
15 head No. 2?

16 A Yes. The unique thing is the difference in size
17 from No. 3 and No. 1, and I use a No. 2 for the size of
18 the screws that I need to use at the house. It was a
19 magnetic bit. That magnetic holder that held that, it
20 was on the bottom, I did find that.

21 Q When I say anything *unique*, there's nothing unique
22 as far as you can go right down to the Home Depot and
23 Lowe's and get a magnetic No. 2 bit?

24 A Yes, you can.

1 **Q** There's nothing identifying of that bit per se
2 other than you had one?

3 **A** That's correct.

4 **Q** And you don't know that this bit is the exact bit
5 that you had; correct?

6 **A** No. That's correct.

7 **Q** You also indicated under questions from Mr. DeLong
8 that that's the way you left it, that it was in the
9 condition that you left it, other than it was a little
10 bit cleaner, but isn't it true there's only one way you
11 can put your tools in that case because there's a --

12 THE COURT: Mr. Silverberg, I need you to await
13 your cross-examination. We're just here on voir dire for
14 the admission of the evidence.

15 MR. SILVERBERG: Correct, your Honor. And if I
16 may --

17 THE COURT: I interrupted, I regret that, but I
18 want to make sure you don't go past your voir dire.

19 MR. SILVERBERG: Just trying to establish what is
20 unique about this.

21 BY MR. SILVERBERG:

22 **Q** Isn't it true that there's only a certain place
23 for the saw to go, for the drill to go, and for the
24 flashlight to go; correct?

1 **A** Yes.

2 MR. SILVERBERG: Thank you.

3 THE COURT: So the admissibility of the documents,
4 distinct from what they may portray, do you have an
5 evidentiary objection?

6 MR. SILVERBERG: Yes, your Honor. I don't believe
7 they can be identified as Mr. -- respectively, as
8 Mr. McCulloch's drill as opposed to any other drill or
9 any other drill bit. I don't believe this is the right
10 witness to get those in.

11 MR. DELONG: May I be heard?

12 THE COURT: No. I believe that's a fact question
13 for the jury as to ownership. The question before this
14 court is the admissibility of the evidence. There is an
15 indicia of reliability that is consistent with the code.

16 29 and 32 will be admitted.

17 (Exhibits 29 through 32 were admitted.)

18 MR. DELONG: Thank you. Through 32?

19 THE COURT: 29 through 32.

20 MR. DELONG: Thank you, your Honor.

21 / / / /

22 / / / /

23 / / / /

24 / / / /

1 +++ DIRECT EXAMINATION +++

2 (Resumed)

3 BY MR. DELONG:

4 **Q** So these images that were admitted, 29 through 32,
5 do they fairly depict the drill set as it was returned to
6 you, the drill set that you received?

7 **A** Yes, they do. One thing I need to note is that
8 that's an older set. There's not a lot of those sold
9 today. That's years old. There's much newer ones now on
10 the market.

11 MR. SILVERBERG: Objection, your Honor;
12 non-responsive.

13 THE COURT: It's overruled. Although at some
14 point, if the witness continues, not through narrative
15 but through examination, there must be foundation laid
16 for what he's provided testimony. I would encourage you
17 to ask your next question.

18 MR. DELONG: Thank you, your Honor.

19 BY MR. DELONG:

20 **Q** I was actually going to get there. How long have
21 you had this set?

22 **A** I've had that set probably ten years.

23 **Q** So we're looking at Exhibit 30. Is this the set
24 we're referring to?

1 **A** Yeah.

2 **Q** Do you remember where you got it?

3 **A** Probably Home Depot.

4 **Q** Now, I know this is difficult. Do you remember
5 the color of the chargers for the drills?

6 **A** Yeah. You know, what? When I bought the
7 batteries -- well, the chargers, the black thing on the
8 bottom there, that stays in there and I just have a wire
9 that reaches around and I plug it into the wall. I leave
10 it in that set all the time.

11 **Q** Am I pointing to the charger right now?

12 **A** Pardon me?

13 **Q** Am I pointing to the charger right now?

14 **A** Yes, you are. Yes.

15 **Q** Now, are these, where I'm pointing, it says "18
16 V," I believe, are these the batteries?

17 **A** That's one of the batteries, yes.

18 **Q** Is this also a battery right here?

19 **A** Yes. And one thing I didn't look at in the photo,
20 when I buy those batteries, a lot of times I write the
21 date on there when I bought them. I didn't look to see
22 if I can see the date, because I write it with a marker.
23 As I'm looking at it now, I go, you know -- because you
24 got to replace batteries, the batteries go bad every once

1 in a while -- so when I buy a new batteries, I generally
2 write the date I purchased those so I know how long a
3 life I get out of the battery.

4 Q So what the color are these batteries?

5 A Looks like yellow and black.

6 Q They're not the original batteries that came with
7 the --

8 A Oh, no. Of course not. I've replaced them a
9 couple of times.

10 Q And what are the color of the tools in the set?

11 A Well, they're gray. You can see that. You know,
12 they're gray and kind of aqua color. They haven't sold
13 that kind of a set for a lot of years.

14 Q So looking at Exhibit 32, can you see that
15 clearly?

16 A As clearly as I can, yes.

17 Q I'm going to approach real quick so you can see it
18 up close. It's not on the screen. Which tool is
19 primarily pictured in that photo?

20 A Yeah. It's the cordless saw, the battery, the
21 drill, the charger -- two batteries actually.

22 Q When you refer to *gray*, that was the --

23 A Well, it's -- there is some gray on it but it's
24 also the aqua -- you know, aqua color that goes in there.

1 And I'm trying to see if I can see the date that I had
2 written on the battery, and in this photo it's not
3 exposed so --

4 Q Did you look at the drill set -- the drill and saw
5 set when it was returned to you?

6 A Did I what?

7 Q Look at the drill and saw set when it was
8 returned?

9 A Yes, I did.

10 Q Did you look to see if any of these dates were on
11 those batteries when it was returned to you?

12 A I did not. I was so certain that it was my set, I
13 told the officer right away, I said, "Yeah, that's my
14 set." It's an old one, it's certainly not a new one, and
15 it had those items in it that I leave in there all the
16 time.

17 Q So moving on, I'm going to, in one moment, play
18 for you a video -- it's been admitted as Exhibit 87 --
19 and just to show you a clip of the video, we're going to
20 pause it to see the outside of the house.

21 Is this your house right here?

22 A Yes.

23 Q The shorter wall, is that the courtyard you're
24 referring to?

1 **A** That is, yes.

2 **Q** And where was the broken door on the house?

3 **A** Right in the courtyard straight back. The glass
4 door is right at the right edge of the right side further
5 back about, oh, ten feet.

6 **Q** And is there -- is there a way to access that
7 courtyard from the outside?

8 **A** You have to jump that fence. We leave -- there's
9 an iron gate and I leave it locked all the time. We have
10 Clark Pest Control service the property periodically and
11 they have a key to that lock to open it. That's the only
12 people that can access that without climbing that wall
13 and going over.

14 **Q** I'm just going to try to get a closer view here
15 real quick.

16 (Video played.)

17 Is that the gate you're referring to on the left
18 there?

19 **A** Yes, it is.

20 **Q** That's the only access from the outside?

21 **A** That is, yes.

22 **Q** Now I'm going to continue playing Exhibit 87.

23 Is this the sliding glass door you referred to as
24 the point of entry?

1 **A** No. That's the point of exit. It looks like when
2 they exited, they exited -- it looks like the back
3 sliding glass door and left it completely open.

4 **Q** Is that the open field behind your sliding glass
5 door?

6 **A** Yes. Yes, that's an open field behind that fence
7 to the right.

8 **Q** How many neighbors do you have, immediate
9 neighbors?

10 **A** One on -- if you look to the far side of that
11 property, there's one neighbor on that side -- on the
12 other side of the house.

13 **Q** If you're standing in front of that neighbor's
14 house, do they have a view of the courtyard?

15 **A** No, no. The courtyard is back on this side and it
16 faces the open space.

17 **Q** Do they have a view of this sliding glass door?

18 **A** No, they don't.

19 **Q** Thank you very much.

20 MR. DELONG: No further questions at this time.

21 THE COURT: Let me pause for a moment.

22 Undoubtedly you have the right of cross-examination. I'm
23 writing a note contemporaneous with the evidence.

24 All right, counsel.

1 MR. SILVERBERG: Thank you.

2

3 +++ CROSS-EXAMINATION +++

4 BY MR. SILVERBERG:

5 Q Hello again, sir.

6 So I believe on direct you indicated that when you
7 were retired you were in law enforcement and then you
8 worked with the district attorney?

9 A I did.

10 Q How many years in law enforcement?

11 A Thirty-six.

12 Q What sort of -- what did do you? Did you
13 specialize in any particular area?

14 A Yeah. I worked -- I worked in the Patrol Uniform
15 Division, field training, training new officers, both as
16 an officer and a sergeant, and I worked on the SWAT team.
17 I was on the SWAT team for two years, major call-ups.
18 And from there I worked in the chief's office in
19 specialized systems development for computer programs,
20 different systems for tracking crimes.

21 Leaving there, I was promoted sergeant. I worked
22 field training, sexual assault investigations. From
23 there I was promoted to lieutenant, assigned to a mounted
24 unit, horse mounted unit. From there I was assigned by

1 the chief to Criminal Intelligence and Vice as a
2 commander of that unit, worked organized crime. I was in
3 that unit for three years.

4 Had a task force, ran a task force for organized
5 crime, both Asian and Italian, and put on trainings up
6 here at the Nugget on organized crime. Back in '89, '90,
7 '91 and also down in Tucson and New Mexico.

8 Went back to the field, field operation, uniformed
9 division, as an area commander, and handled major
10 incidents there, and eventually retired.

11 Q In those 30-some-odd-years, was crime scene
12 investigation something that you did?

13 A I didn't do any crime scene investigation, no.

14 Q The reason I ask that is because you on direct
15 examination routinely referred to the perpetrator as the
16 *subjects, subjects in this case*. I'm wondering, did you
17 have any reason to believe there's more than one person?

18 A I got that indication that there was probably more
19 than one person, yes.

20 Q Why is that?

21 A In talking to the officer and talking to the
22 neighbor, I got the feeling there was more than one
23 individual involved.

24 Q Okay. More than two or --

1 **A** No. Just more than one.

2 **Q** Just more than one?

3 **A** Yeah, more than one.

4 **Q** You did mention that you have a security system at
5 your house?

6 **A** I do. And it's -- I don't activate the alarm. I
7 don't like to activate the alarm when I leave.
8 There's -- having been in law enforcement, I know how
9 many accidental alarms go off so I leave it usually on
10 *Chime*.

11 **Q** And are you alerted like on your cell phone?

12 **A** No, I don't have that, that system. I priced some
13 out. The last time I was up I was supposed to have an
14 appointment with Systems of Nevada, and he didn't show up
15 and so -- ADT has been out. I've gotten some prices from
16 ADT.

17 **Q** So when you say "chime" -- you have it set on
18 *Chime*, who is being chimed if there's --

19 **A** The doors -- setting off a chime inside the house
20 so you know that a window or a door had been opened if it
21 chimes.

22 **Q** I see. So only if you're home does this provide
23 any assistance for you?

24 **A** That's true.

1 **Q** Okay. How about any sort of camera like a Ring --
2 you know what a Ring device is?

3 **A** I do. My son just recently got one and I'm
4 considering that.

5 **Q** But you didn't have one at this point?

6 **A** I did not.

7 **Q** Your security system, when it chimes, does it
8 record, like is there some data recordation as far as
9 when the chimes started, when the chimes stopped?

10 **A** No.

11 **Q** You can't get into the system that way?

12 **A** No.

13 **Q** Do you know if any finger -- search for
14 fingerprints was conducted at your residence?

15 **A** I do. I believe the tech --

16 THE COURT: Forgive me for just a moment. I just
17 turned on another court computer, and it's chiming. I
18 need to figure out how to turn off the volume.

19 MR. SILVERBERG: No problem. I just had to do the
20 same thing.

21 THE COURT: I'm looking at a statute real quick,
22 and the last thing I want is noise.

23 Thank you. Please continue.

24 MR. SILVERBERG: Thank you, your Honor.

1 BY MR. SILVERBERG:

2 Q So you were talking about fingerprints. It's your
3 understanding that there was a search for prints?

4 A Yes. There was fingerprint powder on the security
5 box, which obviously is a telltale sign of that.

6 Q Do you know if any fingerprints were recovered?

7 A I do not know.

8 Q We spoke briefly a little bit about your drill
9 set. I just want to follow up a few more times.

10 You indicated it's an older set; is that correct?

11 A That's correct.

12 Q But when you purchased it, it's just one of many
13 sets that could be purchased at Home Depot or Lowe's --

14 A Yes.

15 Q -- correct?

16 A Correct.

17 Q There was nothing unique about it?

18 A No.

19 Q And you indicated you got a call Monday morning
20 about something possibly happening at your residence;
21 correct?

22 A No. That the window was broken and the sliding
23 glass door at the back of the house was open.

24 Q Was that from your gardener?

1 **A** Yes.

2 **Q** This gardener is someone that you've worked with
3 for how long?

4 **A** Since we've had the house. He's the original
5 gardener.

6 **Q** Okay. Is he just yours or is he a gardener for
7 other --

8 **A** He works for a company. He works for Sierra
9 Summit.

10 **Q** And Sierra Summit does a lot of people's gardening
11 in that area?

12 **A** They do.

13 **Q** I think I asked you this, just to make sure. The
14 color of the case of your drill set was?

15 **A** Pardon me?

16 **Q** The color of the case of your drill set, what
17 color was it again?

18 **A** Well, the case was gray.

19 **Q** Okay. And you indicated that you wrote the date
20 on your batteries so you'd know how long --

21 **A** I usually do. I usually do. And I -- however,
22 those are the color of the batteries that I most recently
23 purchased that were available. There are newer batteries
24 now available that you can purchase that are smaller but

1 those were the color that I -- I had purchased
2 probably -- I probably had those batteries a couple of
3 years.

4 **Q** Okay. Do you always write in the same area?

5 **A** No --

6 **Q** Okay.

7 **A** -- I don't.

8 **Q** All right. On that picture that we saw -- if you
9 want, I can get that picture again -- you didn't see any
10 of your writing?

11 **A** I didn't -- I didn't see or look for the date on
12 those batteries. It just occurred to me while on the
13 stand that I may have done that.

14 **Q** You indicated that you kept the RYOBI set in the
15 garage?

16 **A** Yes.

17 **Q** Nothing else from the garage was missing, though?

18 **A** Not that -- no, I didn't see anything else that
19 was missing.

20 **Q** Do you have other tools in there?

21 **A** I do.

22 **Q** Okay. What sort of tools?

23 **A** Wrenches, drill bits, sets of drivers, different
24 drivers, tips. I have a full Husky toolbox with a number

1 of tools.

2 Q Any other power tools?

3 A No, that would be the -- well, other than a -- I
4 have a shop vac and some other things, but that's it.

5 Q Okay. Any other corded tools like a shop vac,
6 anything else you can think of?

7 A I have a gas weed eater that is hung up on the
8 wall, but that was still there.

9 Q Okay. So it sounds like, correct me if I'm
10 wrong, because your security system doesn't really record
11 or memorialize when the chiming starts and doesn't start,
12 you have a pretty big window of when this might have
13 happened; correct? We can't pinpoint it to any specific
14 time?

15 A Well, pinpoint, you know, my neighbor down the
16 street who runs by there every day, and the neighbor,
17 Herb James, him and his wife will drive by the house and
18 look at it to see if it's okay, those neighbors are
19 looking out for us.

20 Q Okay.

21 A My other neighbor on the other side, the one
22 neighbor on one side of the house, he's relatively new,
23 we don't know them that well, they may or may not do
24 that. But I know that Chris Gardella, his wife runs by

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the Washoe County Alternate Public Defender's Office and that on this date I served a copy of the Appellant's Joint Appendix – Volume VIII to the following:

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DATED this 28th day of February, 2022.

/s/Randi Jensen
Randi Jensen