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Elizabeth A. Brown
Clerk of Supreme Court

Appellants,

**THI OF NEVADA AT CHEYENNE, LLC; HEALTHCARE REALTY OF
CHEYENNE, LLC; FUNDAMENTAL ADMINISTRATIVE SERVICES,
LLC**

Respondents.

Appeal from the Eighth Judicial District Court for Clark County
District Court Case No. A-16-735550-C
(Honorable Mark Gibbons)

Nevada Bar No.: 5041
CAP & KUDLER
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Counsel for Appellants
Jeffrey A. Myers and Andrew James

APPELLANTS' APPENDIX
VOLUME 3
CHRONOLOGICAL ORDER

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VOLUME 3

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1 projects, three or four projects that's been Bombard.

2 Now if you want to, being as the owner's rep, you know,
3 essentially part of -- have the whole, just like a general contractor. So to
4 remember them all, I actually don't, it's been -- I just went back to the
5 owner's side. I was working on the steel subcontractor side, as of just --
6 I just started with this company in April 3rd. So --

7 MR. KUDLER: So you were working for a subcontractor who
8 was in charge of --

9 PROSPECTIVE JUROR 135: Just steel.

10 MR. KUDLER: Steel frame and everything?

11 PROSPECTIVE JUROR 135: Yes, sir.

12 MR. KUDLER: Okay. Big, heavy work?

13 PROSPECTIVE JUROR 135: Yeah, the bones.

14 MR. KUDLER: Obviously on all sides of construction,
15 following policies and procedure's important.

16 PROSPECTIVE JUROR 135: Yes, sir.

17 MR. KUDLER: Okay. And you understand that sometimes
18 things have to be worked on while they're hot?

19 PROSPECTIVE JUROR 135: Yes, sir.

20 MR. KUDLER: Okay. And you understand that there's
21 policies and procedures that have to be followed?

22 PROSPECTIVE JUROR 135: Yes.

23 MR. KUDLER: Okay. And you understand that -- like I
24 couldn't just go say, well, I'm going to go work on something while it's
25 hot?

1 PROSPECTIVE JUROR 135: No. That would be a very bad
2 idea.

3 MR. KUDLER: Yeah. Okay. Because I'm just a lawyer and --

4 PROSPECTIVE JUROR 135: Understood.

5 MR. KUDLER: -- and not really qualified to do that?

6 PROSPECTIVE JUROR 135: Correct.

7 MR. KUDLER: Okay.

8 Thank you, Your Honor. I pass for cause.

9 THE COURT: Defense may inquire.

10 MR. A. GIOVANNIELLO: Mr. Addley, have you overseen, or I
11 guess supervised electricians while they're doing their work?

12 PROSPECTIVE JUROR 135: A little bit. I've been the
13 representative on site, not to say I've overseen, but I've been on site to
14 be the representative for the company,

15 MR. A. GIOVANNIELLO: For the company doing the
16 construction?

17 PROSPECTIVE JUROR 135: For the general contractor, as
18 such.

19 MR. A. GIOVANNIELLO: For the general contractor. Okay.
20 And what do you mean when you go onsite? What -- in other words,
21 when you're on site, what are your duties; what do you do?

22 PROSPECTIVE JUROR 135: Currently right now my duties
23 are more of -- right now I'm working only with steel and actually a
24 signer's package. So I don't have anything to do with electricity for
25 that -- for that matter.

1 MR. A. GIOVANNIELLO: Have you ever had anything to do
2 with electricity?

3 PROSPECTIVE JUROR 135: I've had probably nine to seven
4 different companies I've worked for, and for the most part, not on a
5 regular basis. It's been -- when you're a general contractor, you know,
6 you're over -- or the owner, you're over it at all.

7 MR. A. GIOVANNIELLO: Right. So you would subcontract
8 out?

9 PROSPECTIVE JUROR 135: Correct? 100 percent.

10 MR. A. GIOVANNIELLO: Okay. But would you monitor the
11 subcontractors? Well, let's just talk about electrical subcontractors.

12 PROSPECTIVE JUROR 135: What I monitor? Yes.

13 MR. A. GIOVANNIELLO: Okay. And by monitoring them, I
14 mean, do you go in and inspect their work?

15 PROSPECTIVE JUROR 135: No.

16 MR. A. GIOVANNIELLO: Okay. Who do you leave that? Up
17 to?

18 PROSPECTIVE JUROR 135: The inspectors.

19 MR. A. GIOVANNIELLO: Okay. Because you, you have
20 inspectors that go in and do that?

21 PROSPECTIVE JUROR 135: Yes.

22 MR. A. GIOVANNIELLO: Okay. So when you hire a
23 subcontractor, you expect them to be knowledgeable in the trade that
24 they're working on, right?

25 PROSPECTIVE JUROR 135: That's -- it's typically in the

1 contract.

2 MR. A. GIOVANNIELLO: It's in the contract, right. So if you
3 hire an electrician you would expect them to know everything about
4 electricity?

5 PROSPECTIVE JUROR 135: Yes.

6 MR. A. GIOVANNIELLO: Right. And then electricity is -- it's
7 not exact -- electricity's dangerous, isn't it?

8 PROSPECTIVE JUROR 135: Yes, sir.

9 MR. A. GIOVANNIELLO: Okay. So you would expect them to
10 know I guess policies, procedures, to safely work on a -- on a project?

11 PROSPECTIVE JUROR 135: Correct.

12 MR. A. GIOVANNIELLO: Okay. And that's not something
13 that I guess you, yourself, would have to go over with them, correct?

14 PROSPECTIVE JUROR 135: I would not.

15 MR. A. GIOVANNIELLO: Okay. So do you listen to the news?

16 PROSPECTIVE JUROR 135: I do not.

17 MR. A. GIOVANNIELLO: You do not, at all?

18 PROSPECTIVE JUROR 135: Nope.

19 MR. A. GIOVANNIELLO: Okay. Not even on your phone?

20 PROSPECTIVE JUROR 135: Not really.

21 MR. A. GIOVANNIELLO: Nothing really pops up, right?

22 PROSPECTIVE JUROR 135: It pops up, but it's -- when it's
23 already the only one I wanted to see, it's typically just the sports. I can't
24 count that as -- really as news, so --

25 MR. A. GIOVANNIELLO: Okay. All right. So you watch and

1 listen to sports?

2 PROSPECTIVE JUROR 135: Yes.

3 MR. A. GIOVANNIELLO: Okay. What, what sport in
4 particular?

5 PROSPECTIVE JUROR 135: Hockey.

6 MR. A. GIOVANNIELLO: Hockey?

7 PROSPECTIVE JUROR 135: Yeah.

8 MR. A. GIOVANNIELLO: Are a Knight's fan?

9 PROSPECTIVE JUROR 135: Yeah.

10 MR. A. GIOVANNIELLO: Yeah. Because you live here?

11 PROSPECTIVE JUROR 135: I'm from Detroit. I'm a Red
12 Wings' fan.

13 MR. A. GIOVANNIELLO: Oh, okay. All right. Can you be fair
14 to my clients?

15 PROSPECTIVE JUROR 135: Yes, sir.

16 MR. A. GIOVANNIELLO: Okay. And now, you know, that my
17 clients are on the building side, right?

18 PROSPECTIVE JUROR 135: Correct.

19 MR. A. GIOVANNIELLO: Okay. And let's see, what else did I
20 ask? And I think the Judge already asked you all of the questions that I
21 was going to ask you, so we'll let it go with that, thank you so much.

22 PROSPECTIVE JUROR 135: Thank you.

23 MR. A. GIOVANNIELLO: And I pass for cause.

24 THE COURT: Thank you.

25 Moving on to Juror Number 143, chair number 19. Is it Kan?

1 PROSPECTIVE JUROR 143: Yes.

2 THE COURT: Ms. Kan, how long have you been in

3 Las Vegas?

4 PROSPECTIVE JUROR 143: Seventeen years.

5 THE COURT: And what do you do for a living?

6 PROSPECTIVE JUROR 143: I work at a laboratory, for First

7 Diagnostic?

8 THE COURT: It's a lab?

9 PROSPECTIVE JUROR 143: Yes.

10 THE COURT: Okay. Take me a little further along, then.

11 What do you do in the laboratory?

12 PROSPECTIVE JUROR 143: Process specimens. Mainly

13 COVID right now, and the past three years. Deal with blood work, blood

14 draws, everything from the hospitals to hospice, to IOPS, they bring all

15 the blood work back to our lab, and then we process them and deliver

16 them to different departments.

17 THE COURT: Okay. How far in school did you have to go to

18 in order to do that kind of work?

19 PROSPECTIVE JUROR 143: I got a Bachelor.

20 THE COURT: All right. Are you married, single, or in a

21 significant partnership?

22 PROSPECTIVE JUROR 143: Single and divorced.

23 THE COURT: Do you have any children?

24 PROSPECTIVE JUROR 143: Yes. Two, 14 and 15.

25 THE COURT: Are they with you, or --

1 PROSPECTIVE JUROR 143: Joint custody.

2 THE COURT: Joint custody.

3 PROSPECTIVE JUROR 143: Uh-huh.

4 THE COURT: Have you, or anyone close to you ever been the
5 victim of a crime, or accused of a crime?

6 PROSPECTIVE JUROR 143: I have, myself.

7 THE COURT: What -- tell me a little bit about that?

8 PROSPECTIVE JUROR 143: Just last year in October, I was a
9 victim of cryptocurrency fraud.

10 THE COURT: Okay. Is there anything about the nature of
11 that difficulty that might impact your ability to be a fair juror here?

12 PROSPECTIVE JUROR 143: No.

13 THE COURT: Has that cryptocurrency, last year, has that
14 brought you to court in some fashion?

15 PROSPECTIVE JUROR 143: I have filed police reports, filed
16 for the Federal Bureau. But nothing dealing with court-wise. I -- the only
17 time I came to court was for the divorce.

18 THE COURT: Okay. Anything about any frustrations, or
19 anything about those experiences, again, that might affect your ability to
20 sit here and judge this case?

21 PROSPECTIVE JUROR 143: No.

22 THE COURT: Have you ever served as a juror before?

23 PROSPECTIVE JUROR 143: No.

24 THE COURT: You've listened to the other questions, I asked
25 fellow potential jurors. Is there any insight you can offer? We're talking

1 nursing homes. You know, you work in the lab so you probably touch, I
2 would think, samples from a variety of different sources; anything
3 relevant in a nursing?

4 PROSPECTIVE JUROR 143: Yes. From different hospitals,
5 nursing homes, everything basically.

6 THE COURT: What about electrical? Any personal or
7 professional experience in dealing with electricity?

8 PROSPECTIVE JUROR 143: I've done my own fixtures for like
9 the bathroom fixture, [indiscernible] lights and all that? Yes.

10 THE COURT: Okay. The ultimate question that I always
11 leave with --

12 PROSPECTIVE JUROR 143: Uh-huh.

13 THE COURT: -- or end with, can you be fair?

14 PROSPECTIVE JUROR 143: Yes.

15 THE COURT: Can you listen with patience and focus on the
16 evidence and come to what you view to be fair decision after you've
17 heard all the evidence?

18 PROSPECTIVE JUROR 143: Yes, I can.

19 THE COURT: Plaintiff, you may inquire.

20 MR. KUDLER: Thank you, Your Honor.

21 Ms. Kan, which lab do you work at?

22 PROSPECTIVE JUROR 143: Quest Diagnostics.

23 MR. KUDLER: Quest?

24 PROSPECTIVE JUROR 143: Quest, yes.

25 MR. KUDLER: Okay.

1 PROSPECTIVE JUROR 143: At the main lab, which is on --
2 across from Desert Spring Hospital?

3 MR. KUDLER: Okay. The one that's back on Birmingham, or
4 something?

5 PROSPECTIVE JUROR 143: Yeah. Uh-huh.

6 MR. KUDLER: Okay.

7 PROSPECTIVE JUROR 143: Correct.

8 MR. KUDLER: Your only concern at your job, is making sure
9 that the specimen is clean, and original, and not tainted, and the results
10 get out?

11 PROSPECTIVE JUROR 143: Correct.

12 MR. KUDLER: Okay. You don't know who the people are
13 then?

14 PROSPECTIVE JUROR 143: No.

15 MR. KUDLER: Okay. The crypto fraud, was that something
16 that emptied on an account, or what happened?

17 PROSPECTIVE JUROR 143: I met someone, and they
18 basically was a profession in this, so they were trying to pursue me to
19 join cryptocurrency, which I had very minimum knowledge. He was an
20 advisor for it. And I did some exchanges through Bitcoin and later found
21 out that it was a scam, the whole website, everything was pretty much
22 legit where they had like customer service, et cetera, which I spoke to.
23 So, yeah.

24 MR. KUDLER: What -- did you have your own wallet, or --

25 PROSPECTIVE JUROR 143: It was through like bank

1 exchange, through wire transfer.

2 MR. KUDLER: Okay. Did you have a coin-base wallet, or an
3 MS wallet?

4 PROSPECTIVE JUROR 143: Yes, I did.

5 MR. KUDLER: Were you coin-based?

6 PROSPECTIVE JUROR 143: Yes.

7 MR. KUDLER: Okay. And then somebody got access to that
8 that shouldn't have?

9 PROSPECTIVE JUROR 143: Correct.

10 MR. KUDLER: And then they took what you had in there?

11 PROSPECTIVE JUROR 143: Quite a few, total in all that I
12 lost --

13 MR. KUDLER: Okay. I don't even know the total, I --

14 PROSPECTIVE JUROR 143: Oh.

15 MR. KUDLER: -- but whatever was in there --

16 PROSPECTIVE JUROR 143: Correct. It was all emptied out.

17 MR. KUDLER: They somehow got somehow got access to
18 your wallet, and --

19 PROSPECTIVE JUROR 143: Yes.

20 MR. KUDLER: -- took it. And so do you know who that
21 person is?

22 PROSPECTIVE JUROR 143: No, I do not.

23 MR. KUDLER: Okay.

24 PROSPECTIVE JUROR 143: I think he just made a fake
25 identity.

1 MR. KUDLER: Okay. It was not the company that you were
2 working with?

3 PROSPECTIVE JUROR 143: He made a fake -- basically like a
4 popular business bureau. When I went into to do more research of it,
5 after the fact that, all our money was gone, it was not a legit website.

6 MR. KUDLER: Okay.

7 PROSPECTIVE JUROR 143: Because he used a big company
8 as a -- to basically --

9 MR. KUDLER: He like spoofed -- he spoofed an actual
10 company?

11 PROSPECTIVE JUROR 143: Yes, correct.

12 MR. KUDLER: Okay. And then you found out that it wasn't
13 that company, it was somebody who acted as if they were that
14 company?

15 PROSPECTIVE JUROR 143: Yes, correct.

16 MR. KUDLER: And so you -- you don't know the actual
17 person's actual identity?

18 PROSPECTIVE JUROR 143: Correct.

19 MR. KUDLER: And you don't know where they reside, or
20 anything?

21 PROSPECTIVE JUROR 143: Correct.

22 MR. KUDLER: Okay. And a little frustrating?

23 PROSPECTIVE JUROR 143: Yes.

24 MR. KUDLER: Okay. Have you ever been injured in an
25 accident?

1 PROSPECTIVE JUROR 143: Yes. Car accident.

2 MR. KUDLER: Okay. Did you make a claim for those
3 injuries?

4 PROSPECTIVE JUROR 143: Yes, I have.

5 MR. KUDLER: Were they able to settle before court, or did
6 you have to file a lawsuit?

7 PROSPECTIVE JUROR 143: There was no lawsuit for it. It's
8 just insurance paid me out.

9 MR. KUDLER: Okay. And --

10 PROSPECTIVE JUROR 143: -- the car was a total loss.

11 MR. KUDLER: And what kind of injuries did you
12 have?

13 PROSPECTIVE JUROR 143: Just minor back pain, which I
14 went to the chiropractor for.

15 MR. KUDLER: Okay. And do you have any issues
16 remaining?

17 PROSPECTIVE JUROR 143: No.

18 MR. KUDLER: Okay. Everything all done?

19 PROSPECTIVE JUROR 143: Yes.

20 MR. KUDLER: Okay, great. And you were able to get that
21 settled with the other driver's insurance company?

22 PROSPECTIVE JUROR 143: Correct.

23 MR. KUDLER: Did that experience of having, you know,
24 going through the treatment, and dealing with the insurance company;
25 did you have a lawyer for that?

1 PROSPECTIVE JUROR 143: I'm sorry, what was that?
2 MR. KUDLER: Did you have a lawyer for that or did you
3 represent --
4 PROSPECTIVE JUROR 143: Yes I did.
5 MR. KUDLER: Okay. Was that here in Nevada?
6 PROSPECTIVE JUROR 143: Correct, yes.
7 MR. KUDLER: Okay. Any thoughts on lawyers after having
8 to work with one?
9 PROSPECTIVE JUROR 143: No. He's a positive outcome.
10 MR. KUDLER: Okay. And the experience of making a claim
11 and going through treatment, how does -- does that make you feel any
12 way in particular about other people who are doing the same?
13 PROSPECTIVE JUROR 143: No.
14 MR. KUDLER: Okay.
15 Your Honor, thank you. Pass for cause.
16 THE COURT: Thank you. Defense may inquire.
17 MR. A. GIOVANNIELLO: Ms. Kan, hi.
18 PROSPECTIVE JUROR 143: Hi.
19 MR. A. GIOVANNIELLO: How long did you treat for?
20 PROSPECTIVE JUROR 143: I'm sorry, what was that?
21 MR. A. GIOVANNIELLO: What -- when you went for
22 treatment for that injury, how long did you treat for? How many --
23 PROSPECTIVE JUROR 143: Like a month, or so, yeah.
24 MR. A. GIOVANNIELLO: And you said you had a lawyer for
25 that?

1 PROSPECTIVE JUROR 143: Yes.

2 MR. A. GIOVANNIELLO: Okay. But do you know whether
3 you actually filed a lawsuit?

4 PROSPECTIVE JUROR 143: That I'm not sure.

5 MR. A. GIOVANNIELLO: Okay. You didn't --

6 PROSPECTIVE JUROR 143: Because he just basically went
7 through the insurance.

8 MR. A. GIOVANNIELLO: Okay.

9 PROSPECTIVE JUROR 143: Yeah.

10 MR. A. GIOVANNIELLO: All right. So did you, did you have
11 to answer things like what's called "interrogatories"?

12 PROSPECTIVE JUROR 143: No.

13 MR. A. GIOVANNIELLO: Or get a deposition taken?

14 PROSPECTIVE JUROR 143: No.

15 MR. A. GIOVANNIELLO: Okay. Other than that, have you
16 ever had any other experience with attorneys?

17 PROSPECTIVE JUROR 143: No.

18 MR. A. GIOVANNIELLO: Okay. Now how long ago was that?

19 PROSPECTIVE JUROR 143: For my car accident?

20 MR. A. GIOVANNIELLO: Yeah.

21 PROSPECTIVE JUROR 143: That would be like seven years
22 ago.

23 MR. A. GIOVANNIELLO: Okay. And that was here in Las
24 Vegas?

25 PROSPECTIVE JUROR 143: Correct.

1 MR. A. GIOVANNIELLO: Okay. I forgot -- I know the Judge
2 asked you this, is this first time you served on a jury?

3 PROSPECTIVE JUROR 143: Yes.

4 MR. A. GIOVANNIELLO: Okay. And one of the things you
5 said was you put up your own light fixture?

6 PROSPECTIVE JUROR 143: Yes. Hey, you all need to out
7 there.

8 MR. A. GIOVANNIELLO: Where did you put that up?

9 PROSPECTIVE JUROR 143: Last year.

10 MR. A. GIOVANNIELLO: Okay. I said where?

11 PROSPECTIVE JUROR 143: Oh, where? My bathroom
12 downstairs, my kid's bathroom and then the master bathroom.

13 MR. A. GIOVANNIELLO: Okay.

14 PROSPECTIVE JUROR 143: Light fixtures.

15 MR. A. GIOVANNIELLO: Do you do a little bit of handy work
16 around the house?

17 PROSPECTIVE JUROR 143: Yes.

18 MR. A. GIOVANNIELLO: Okay.

19 PROSPECTIVE JUROR 143: If it's easy,

20 MR. A. GIOVANNIELLO: If it's easy?

21 PROSPECTIVE JUROR 143: Yes.

22 MR. A. GIOVANNIELLO: Okay. What do you consider easy?

23 PROSPECTIVE JUROR 143: Like the light fixtures. I did
24 have --

25 MR. A. GIOVANNIELLO: I guess it isn't that hard?

1 PROSPECTIVE JUROR 143: Yeah. It's not that hard.
2 MR. A. GIOVANNIELLO: Okay.
3 PROSPECTIVE JUROR 143: I did have recessed lighting put
4 up and a ceiling fan put up, but I did hire outside contractor for that.
5 MR. A. GIOVANNIELLO: Oh, to put that in?
6 PROSPECTIVE JUROR 143: Yes.
7 MR. A. GIOVANNIELLO: Okay. Have you ever worked with
8 your circuit breakers?
9 PROSPECTIVE JUROR 143: Yes.
10 MR. A. GIOVANNIELLO: Okay. What have you done with
11 them?
12 PROSPECTIVE JUROR 143: Just turn it off and basically
13 install my ring, cameras and then the light fixtures, of course.
14 MR. A. GIOVANNIELLO: Oh, so you put a ring and what
15 fixtures?
16 PROSPECTIVE JUROR 143: The light fixtures.
17 MR. A. GIOVANNIELLO: You put you the ring in, you put --
18 PROSPECTIVE JUROR 143: Yeah. I put my ring cameras in.
19 Yes.
20 MR. A. GIOVANNIELLO: All right. Okay.
21 PROSPECTIVE JUROR 143: So --
22 MR. A. GIOVANNIELLO: So you're really handy then?
23 PROSPECTIVE JUROR 143: Yes. I don't need a guy.
24 MR. A. GIOVANNIELLO: Okay. Do you listen to news
25 channels?

1 PROSPECTIVE JUROR 143: Yes. I listen to podcasts.

2 MR. A. GIOVANNIELLO: Okay. Is that it? Is that the only
3 source of your news?

4 PROSPECTIVE JUROR 143: And then social media of course
5 has the new newscast and all that --

6 MR. A. GIOVANNIELLO: Okay.

7 PROSPECTIVE JUROR 143: -- and basically internet.

8 MR. A. GIOVANNIELLO: Have you ever -- have you ever
9 burned yourself?

10 PROSPECTIVE JUROR 143: No.

11 MR. A. GIOVANNIELLO: No? Okay. And are you still
12 working?

13 PROSPECTIVE JUROR 143: Yes.

14 MR. A. GIOVANNIELLO: Okay. I think that's it. Thank you so
15 much.

16 PROSPECTIVE JUROR 143: Thank you.

17 MR. A. GIOVANNIELLO: I pass for cause.

18 THE COURT: Thank you. And moving on to Mr. Bernal, 147,
19 chair 20.

20 Mr. Bernal, how long have you been in Las Vegas?

21 PROSPECTIVE JUROR 147: Twenty-five years.

22 THE COURT: What do you do for a living?

23 PROSPECTIVE JUROR 147: I'm a seasonal warehouse
24 associate at Sephora.

25 THE COURT: And how far did you go in school?

1 PROSPECTIVE JUROR 147: High school.

2 THE COURT: Are you married, single or in a significant
3 relationship?

4 PROSPECTIVE JUROR 147: Single.

5 THE COURT: Do you have any children?

6 PROSPECTIVE JUROR 147: No.

7 THE COURT: Have you or anyone close to you ever been the
8 victim of a crime, or accused of a crime?

9 PROSPECTIVE JUROR 147: No.

10 THE COURT: Do you have any prior service as a juror?

11 PROSPECTIVE JUROR 147: A couple years ago. I -- I got this
12 far.

13 THE COURT: Oh. You got this far, and then you --

14 PROSPECTIVE JUROR 147: Yeah.

15 THE COURT: Did you deliberate the case with fellow jurors
16 or were you --

17 PROSPECTIVE JUROR 147: No. They sent me home.

18 THE COURT: You got into the room, but you didn't make it
19 onto the panel?

20 PROSPECTIVE JUROR 147: Yeah.

21 THE COURT: Okay. Is there anything about this case that
22 you've heard from my mouth, or from the lawyers as they've asked their
23 questions of fellow jurors that made you sit up and think maybe they
24 would want to know about me in that way?

25 PROSPECTIVE JUROR 147: No.

1 THE COURT: Okay. Now electric, we've been talking a lot
2 about electricity, their concerns, nursing homes?

3 PROSPECTIVE JUROR 147: I did used to be a carpenter.

4 THE COURT: Okay.

5 PROSPECTIVE JUROR 147: A couple years ago, I was --

6 THE COURT: Finish --

7 PROSPECTIVE JUROR 147: -- working at the MSG Sphere,
8 layout.

9 THE COURT: Layout.

10 PROSPECTIVE JUROR 147: It was only for a little while until
11 COVID, and then they laid off everyone.

12 THE COURT: Were you -- how far along in the training did
13 you get?

14 PROSPECTIVE JUROR 147: I did two years of school.

15 THE COURT: Two years of --

16 PROSPECTIVE JUROR 147: And then, yeah, I stopped.

17 THE COURT: Okay.

18 PROSPECTIVE JUROR 147: I wanted to do a different career.

19 THE COURT: Okay. Any dealings with electricity, other than
20 plugging in your equipment and making it all work?

21 PROSPECTIVE JUROR 147: No.

22 THE COURT: Okay. Anything else you can think of? We've
23 talked about -- have you ever been involved in a lawsuit?

24 PROSPECTIVE JUROR 147: No.

25 THE COURT: Ever had a close family member, yourself, in a

1 nursing home?

2 PROSPECTIVE JUROR 147: No.

3 THE COURT: Ever been burned?

4 PROSPECTIVE JUROR 147: No.

5 THE COURT: You've listened again, to everything I've asked
6 with patience and focus, can you give the -- if you're sworn on this jury,
7 can you give it the full attention it requires, and come to what you view
8 to be a fair decision based upon the evidence?

9 PROSPECTIVE JUROR 147: Yes.

10 THE COURT: Thank you very much. Plaintiff, you may
11 inquire.

12 MR. KUDLER: Thank you, Your Honor.

13 Mr. Bernal, you worked as a carpenter?

14 PROSPECTIVE JUROR 147: Yes.

15 MR. KUDLER: Were you working through union?

16 PROSPECTIVE JUROR 147: Yes.

17 MR. KUDLER: And when you say you were two years at
18 school, that was the union --

19 PROSPECTIVE JUROR 147: Yes.

20 MR. KUDLER: -- training. Okay. Most of that on the job?

21 PROSPECTIVE JUROR 147: Yes.

22 MR. KUDLER: I thought I heard you say you were a layout
23 carpenter.

24 PROSPECTIVE JUROR 147: Yeah, it was only for three
25 months.

1 MR. KUDLER: Okay. Can you tell me what that means?

2 PROSPECTIVE JUROR 147: I would just chalk out the lines
3 and then they would put the scaffolds in, other people would put the
4 scaffold in, and that's pretty much it. Every day was like a different --
5 they were just teaching me like something new every day. Uh-huh.

6 MR. KUDLER: Were you working on like framing type work?

7 PROSPECTIVE JUROR 147: No.

8 MR. KUDLER: Okay. What were you laying out?

9 PROSPECTIVE JUROR 147: Just scaffolds and all that.

10 MR. KUDLER: Okay. What project was this?

11 PROSPECTIVE JUROR 147: The Sphere.

12 MR. KUDLER: Okay. The one that's almost capped -- well, it
13 did capped, yeah.

14 PROSPECTIVE JUROR 147: Yes.

15 MR. KUDLER: Okay. And then -- have you ever been injured
16 in an accident?

17 PROSPECTIVE JUROR 147: No.

18 MR. KUDLER: Ever had a bad burn?

19 PROSPECTIVE JUROR 147: No.

20 MR. KUDLER: Okay. How about any of your close family
21 members in any accidents?

22 PROSPECTIVE JUROR 147: No.

23 MR. KUDLER: Thank you. Pass for cause, Your Honor.

24 THE COURT: Thank you. Defense, you may inquire.

25 MR. A. GIOVANNIELLO: Thank you, Your Honor.

1 Mr. Bernal, do you have a nurse, any nurses in your family?
2 PROSPECTIVE JUROR 147: Yeah. A lot.
3 MR. A. GIOVANNIELLO: A lot?
4 PROSPECTIVE JUROR 147: Yeah. My grandma's a nurse.
5 Two uncles are nurses. My cousin's a nurse -- and, yeah.
6 MR. A. GIOVANNIELLO: And did you -- have you ever
7 thought of going into a nursing?
8 PROSPECTIVE JUROR 147: Yeah.
9 MR. A. GIOVANNIELLO: And how come you did not?
10 PROSPECTIVE JUROR 147: I -- carpentry, my dad talked me
11 into just doing carpentry.
12 MR. A. GIOVANNIELLO: Your dad talked to you into
13 carpentry.
14 PROSPECTIVE JUROR 147: Yeah.
15 MR. A. GIOVANNIELLO: But you're not doing that now,
16 right?
17 PROSPECTIVE JUROR 147: No. Not at the moment. That's
18 why I want to start going back to school.
19 MR. A. GIOVANNIELLO: Oh, okay. What, what are you doing
20 now for work?
21 PROSPECTIVE JUROR 147: I'm a picker at Sephora. It's a
22 warehouse, a seasonal warehouse associate? Yeah.
23 MR. A. GIOVANNIELLO: A seasonal worker.
24 PROSPECTIVE JUROR 147: Yeah.
25 MR. A. GIOVANNIELLO: Okay. And I think in the beginning,

1 you raised your hand when the Judge said that -- I guess the Judge
2 asked the question, you said that you had an anxiety disorder?

3 PROSPECTIVE JUROR 147: I do generalize anxiety --
4 generalize anxiety disorder.

5 MR. A. GIOVANNIELLO: Okay. And is that going to affect
6 your ability to be --

7 PROSPECTIVE JUROR 147: I think it --

8 MR. A. GIOVANNIELLO: -- an impartial juror in this case?

9 PROSPECTIVE JUROR 147: I think it might, yeah.

10 MR. A. GIOVANNIELLO: It is?

11 PROSPECTIVE JUROR 147: I'm going to do my best. If I am
12 picked, to fairly look at all the evidence. But sometimes -- you know, my
13 anxiety, sometimes it can get out of hand, you know, I'm on medication
14 for it.

15 MR. A. GIOVANNIELLO: Okay.

16 PROSPECTIVE JUROR 147: I've always been this way, so --

17 MR. A. GIOVANNIELLO: But as far as this case is concerned,
18 because there's going to be some testimony concerning, you know --
19 well, mostly it's called PTSD. Do you know what that is?

20 PROSPECTIVE JUROR 147: Yeah.

21 MR. A. GIOVANNIELLO: Right. Post-traumatic stress
22 disorder.

23 PROSPECTIVE JUROR 147: Uh-huh.

24 MR. A. GIOVANNIELLO: Okay. Is that going to affect your
25 ability to be fair and impartial?

1 PROSPECTIVE JUROR 147: No.

2 MR. A. GIOVANNIELLO: Not at all?

3 PROSPECTIVE JUROR 147: No.

4 MR. A. GIOVANNIELLO: Okay. And you said -- well, you just
5 hesitated a little bit when we talked about your anxiety disorder. I don't
6 want to get too much into this because I don't want to embarrass you or
7 anything.

8 PROSPECTIVE JUROR 147: No.

9 MR. A. GIOVANNIELLO: I just want to make sure that, you
10 know, you can sit in this jury, listen to all the evidence and you know, be
11 fair to both sides.

12 PROSPECTIVE JUROR 147: Yes.

13 MR. A. GIOVANNIELLO: Okay. So you think you could do
14 that?

15 PROSPECTIVE JUROR 147: Yes.

16 MR. A. GIOVANNIELLO: Okay. All right, Benjamin. Excuse
17 me, I called you by your first name. Thank you, Mr. Bernal.

18 Your Honor, I pass for cause.

19 THE COURT: Thank you. The panel having been fully
20 examined on challenge; we're going to move into the second phase of
21 the trial now. If I could have the lawyers approach, very briefly, just to
22 make sure we're clear on --

23 [Sidebar begins at 2:41 p.m.]

24 THE COURT: So again. Each of you have five peremptory
25 challenges. I'd like you to -- this is [indiscernible] form, and it's fine. You

1 can just mark 1, 2, 3, 4, 5 here, on choices and decisions you make. The
2 second page is for the waivers. So your second peremptory challenge is
3 a way to just mark it theirs, 2, 3, 4, 5, make sense?

4 MR. KUDLER: Yeah.

5 MR. A. GIOVANNIELLO: Yeah.

6 THE COURT: So for example, you're going to -- if one of you
7 decide that Mr. Gibson needs to go, mark Plaintiff or Defendant and the
8 preempt that you're exercising, mark 1, 2, 3, 4, 5 in that box.

9 MR. A. GIOVANNIELLO: Okay.

10 THE COURT: Does that make sense?

11 MR. A. GIOVANNIELLO: Yeah.

12 THE COURT: Okay. Good to go. I'm going to hand this the
13 Marshal, and he'll start the process.

14 [Sidebar ends at 2:42 p.m.]

15 THE COURT: All right. Ladies and gentlemen remain on the
16 record.

17 As I indicated earlier jury selection is a bifurcated process,
18 two sections to it; we've just completed the first; that's the challenge for
19 cause portion of selection. Now we're moving in the peremptory phase,
20 a peremptory challenge is -- we've had them for hundreds of years, and I
21 like to say what they recognize is some flexibility.

22 Each side has a limited number, limited but equal number of
23 peremptory challenges. It's, frankly, because they've had a short time to
24 talk to, they have their own ideas of who might make a good jury, so
25 they can exercise peremptory challenge, they don't have to state a

1 reason for it.

2 What you're going to see them do, and they're silent here.
3 I've handed them a piece of paper and now make their decisions. And
4 what you're going to see them do for the next time it takes, is probably
5 meet, confer, talk among themselves, each side, and then back -- they'll
6 hand the piece of paper back and forth. They'll note their decisions, and
7 eventually that'll be complete.

8 They'll bring the piece of paper up to me. I'll note on my
9 contemporaneous chart what those decisions are. There might be a brief
10 sidebar on reasons, but we'll see how that goes. And then I'll announce
11 those changes, and I'll thank and excuse those who have been
12 challenged by peremptory challenge.

13 If you happen to be that person, don't take that personally.
14 Nobody's saying you can't, you're not fair. It's just based upon their
15 unique understanding of their case, they feel that your time and energies
16 might be better served elsewhere, and not in this case.

17 As I said earlier, also, I do them silently. And so rather than
18 have you sit there and stare at them and have them stare back at you in
19 a quiet room, I like to use the time to explain to those of you who will
20 remain, some of the rules and how this all is all supposed to work. All
21 right?

22 My role as the Judge is in a very simple sense, I am a
23 referee. I have no interest in the outcome of the case. My job is to see
24 that the jury can do their job, that you can see and hear everything as it's
25 presented by both sides. So if you're unable to do that while we're --

1 when we're in the evidence phase of the trial, or at any point, I want you
2 to raise your hand and say, Judge, I can't hear or see.

3 Sometimes it requires me to direct the witness to speak up,
4 or have the lawyer change the direction in whatever display they're
5 trying to persuade you with, but whatever it takes, I won't know you're
6 having a challenge to seeing or hearing something unless you tell me.
7 So don't be shy about that, just raise your hand and say, Judge, can I --
8 we need to move around, and I'll make it happen.

9 Also, when the jury is finally composed, there'll be some
10 room in the jury box. So you won't be all 20 of you shoved together,
11 quite so closely, and I'll be able to move you around, as again, as
12 circumstances might require. So again, that you can see here and be
13 comfortable in the effort. But again, all I need is for you to tell me what
14 you need, and for me within the rules to see if I can make it happen.

15 I indicated earlier today, I work about 90 minutes to two
16 hours, as we move to the trial. I find that's about the maximum extent of
17 time that people can sit still and focus on the testimony and the
18 evidence. But if you have a sudden unanticipated need for private time, I
19 want you to, again, raise your hand, say, Judge, I need a break. Or as
20 happened earlier today, you can communicate with the Marshal by way
21 of a note, because we'll give you some writing utensils and notepads.

22 You can communicate with the Marshal your concerns, and
23 he'll bring that to me. So don't hesitate if that happens you find yourself
24 in that situation, don't hesitate to ask for a little bit of personal time.
25 When we break this evening the Marshal's going to hand you some

1 unique badges. They identify you as a sworn member of the jury. You
2 need to wear that badge as you come and go from the Courthouse.

3 It identifies you in that unique role, and frankly, what
4 happens is you're out in the hallways where there's people coming and
5 going lawyers and witnesses coming and going, lawyers especially are
6 supposed to give you some deference.

7 They're supposed to give you some room, get up into the
8 building so you can get to where you need to be, and court staff is also
9 inclined to give you more deference in time to help you get where you
10 need to be, if that becomes a problem. So please wear that badge when
11 he distributes them this afternoon, for sure.

12 Your parking situation, and that is still true, isn't, Marshal
13 Walker, we're still, we've still got parking across the street?

14 THE MARSHAL: Yes, sir. I will give them the instructions
15 after we break out --

16 THE COURT: Good. So if you follow the directions and the
17 directions are the same as they have been for years, on the back of that
18 summons, you parked in a place that's totally inconvenient. Okay.
19 That's because we bring literally hundreds of jurors, citizens into
20 selection, and we don't have enough room to park them all.

21 When you are sworn juror, however, your numbers are
22 greatly reduced, and so we have a parking garage directly across the
23 street, which is much more convenient for you. So follow the directions
24 of the Marshal and he'll help answer those questions.

25 Now let's talk about the Marshal's role. He is your sole point

1 of contact. Under the rules, the lawyers, myself, no one else on the staff
2 is permitted to speak with you in any fashion. And in fact, specific
3 direction of the parties is, if they see you in the hallways, because they
4 use the same hallways, they're supposed to pass you like two ships in
5 the night. No good morning. No good afternoon. How are you doing?
6 Thank you for your service. None of that two ships in the night.

7 Why? Because as I've been stressing from the time I met you
8 this morning, the decision you make in this case is about the evidence in
9 the case. It's not a popularity contest. And so they're supposed to leave
10 you alone so you can do what you do. Also further than just the lawyers,
11 nobody in the hallway should be attempting to talk to you about the
12 case. I want to know if that happens to you, if you're out in the world
13 and somebody approaches you, I want you to understand that that
14 would be inappropriate, whether it's on purpose or not, and I want you
15 to bring that to my attention.

16 How do you do that? You do it through the Marshal, he is
17 your point of contact. So if you have questions, or concerns that you
18 need to bring to me, you bring it through the Marshal. You can do it to
19 him orally. He's a very capable Marshal, he knows the rules. You can do
20 it orally, or you can do it in writing, if that's your favor, but understand
21 his role is a conduit.

22 He brings that information to me. and under the rules, my
23 responsibility is to review and consider what your concerns or questions
24 might be, and then reach out to the lawyers, because remember this trial
25 is about the parties in the case. So I'll reach back to them to get an

1 answer if that's the appropriate direction to go. But again, he is your
2 point of contact. No one else should be talking to you, and I can't talk to
3 you.

4 I've had many, many jurors who would like to talk to me. I
5 can't do that. I can't -- my rules are the same. I see you come. I see you
6 go, I appreciate your service, but my role is the neutral -- is to be neutral;
7 and that goes with appearances as well. So if I happen to see you, I'm
8 passing you like two ships on a night, okay, and so should the lawyers
9 and the parties in this case.

10 The Marshal will also ask you, by the close of business today
11 I hope, for contact information. He'll give you the Department contact
12 phone number, and he'll ask you for a phone number, probably a cell
13 number in return. That's so we can have the ability to reach out to you.
14 should you turn up missing, or we need to find out why you might not
15 be here.

16 And in return you can call in if there are concerns that
17 develop, or situations developed that you normally inform the Court of,
18 and I'll have staff available to take that call. You don't have to give us
19 that number. We're going to give you our number, but you don't have to
20 give us yours, it just makes things easier, so think about that and decide
21 what you want to do.

22 No independent research. No independent investigations. I
23 talked earlier, very briefly; I think about the formality of the process. The
24 lawyers, as is their responsibility, have developed the evidence they feel
25 is relevant and necessary for you to hear, in order to make a fair

1 decision; that evidence is what you must base your decision on.

2 There have been stories in the news about jurors excited or
3 interested in their service, but going way beyond that, in doing their own
4 independent investigation. Take, for example, if this were a car accident
5 case, which it is not, or say a robbery of a business, which it is not, it
6 would be -- it would be juror misconduct for a juror to say, oh, this event
7 happened at the corner of Ogden and Maine.

8 And to when they leave the courtroom today, they get in
9 their car and they drive to the corner of Ogden and Maine and they get
10 out of the car and they stand around and go, all right, there's the traffic
11 light, there's the -- there's the curb. That's kind of what I saw in the
12 pictures, that would be misconduct.

13 Why? Because what happened during an event is not
14 necessarily a fair and accurate depiction of what is there at the time you
15 make that independent investigation. And frankly, if the litigants, the
16 lawyers and the parties think that a further examination of location
17 presently might be appropriate, then they'll do so, they'll make that
18 request through the appropriate motion, and I would address it. But you
19 can't go do that independent investigation.

20 We also had a situation that resulted in a mistrial and a
21 significant impact on jurors in a criminal case, where there was an
22 allegation of a rock being dropped on a head. And somebody decided
23 that a coconut brought into the jury room during deliberation and then
24 slamming it with the rock that was used as the alleged weapon might be
25 an appropriate way to demonstrate whether what happened is truly what

1 happened; complete misconduct. They literally brought tools in to try to
2 simulate the events. That's called "independent investigation" and
3 results in a complete mistrial and further inquiry by this Court.

4 I don't want to have to have a further inquiry by this Court.
5 You don't want to have a further inquiry by this Court. So listen to the
6 evidence and make your decision based upon what you see and hear,
7 here, in this room, and that you take with you back into the jury
8 deliberation room, of course.

9 I've talked about water. I want you comfortable. So if it's
10 coffee, your choice, it's water, your choice, bring it, so you don't make a
11 mess for the next jurors behind you. Please be respectful of fellow jurors
12 in that effort and take advantage of it when you need to.

13 All right. I'm going to read you an admonishment. There are
14 a number of admonishments that I give to a jury, you'll hear another one
15 tomorrow. And what is an admonishment? An admonishment is a
16 directional order by me, to you as a sitting juror, that you must obey
17 during the pendency of the trial.

18 The description of the independent investigation, that's also
19 in essence an admonishment. But let me give you this one, it's
20 specifically required under the rule.

21 You are admonished that no juror may declare to any fellow
22 juror, any fact relating to this case of his or her own knowledge, and if
23 any juror discovers during the trial, or after the jury has retired, that he
24 or she or any other juror has personal knowledge of any facts and
25 controversy in the case, you must disclose that situation to myself, in the

1 absence of the other jurors.

2 What does that mean? You know, nothing about this case
3 and that's on purpose. If then, when we get into the case, a witness is
4 called and it's the most common way this comes up, is a witness is
5 called and you know that witness, you didn't recognize the name
6 because your relationship with them never triggered that memory, or
7 that thought, but now you recognize that witness from your personal life
8 in some way.

9 If that happens, it doesn't mean you've done anything
10 wrong, it's perfectly understandable, and it doesn't happen often, but it
11 does happen, all I need you to do is communicate that concern to me by
12 way of the Marshal. So you would obviously take -- I hope to take a
13 piece of paper, write out what your fact or controversy might be,
14 whether personal knowledge of the witness, you suddenly realize, you
15 know, something about the case that you didn't recognize before, or
16 whatever it might be, you write it out, give it to the Marshal, he'll bring it
17 to me, and I'll take what appropriate action is necessary in
18 communication and conference with the other lawyers.

19 But that's the admonishment. If you have personal
20 knowledge of any fact and controversy in this case, bring it to my
21 attention. And again, the most common way is a witness who was
22 called, and you didn't recognize the previous relationship with the
23 witness.

24 All right. That's as far as I want to go in my discussions
25 today, I think, let me check my checklist. That that's all I need.

1 [Pause in proceedings]

2 THE COURT: All right. When I read your badge number,
3 seat, and last name please stand and remain standing in your location.
4 Badge 2, chair 1, Alviles-Martinez. And I mean, no disrespect by
5 identifying you by your last name. Chair 4, badge 20, Guzman. Chair 6,
6 badge 52, Gibson. Chair 9, badge 68, Mallinger. Chair 13, badge 104,
7 Antonino. Chair 15, badge 113, Kim. Chair 17, badge 134, Quigley.
8 Chair 18, 135, Addley. Chair 19, 143, Kan. And chair 21, badge 147,
9 Bernal.

10 If I've just read your name, please collect all your personal
11 items up and head to the back towards the doors, please. Those of you
12 who remain in the jury box, remain seated, while I move you around a
13 little bit.

14 All right. Mr. Torzon I need you to move over into chair 1,
15 sir. I'm going to move everybody, all 10 of you. Mr. Torzon, you're
16 going to move to chair 1. Mr. Ness, you're going to follow along.
17 Mr. Acunto, excuse me, you're now in 3. Mr. Beckmann is in 4. Okuda is
18 in 5. And you just stay on the top row. Thompson, I'm going to -- just
19 move right over here, Ms. Thompson, we'll put you in 6, there.

20 PROSPECTIVE JUROR 155: Over here?

21 THE COURT: No. Top row, that's more comfortable.
22 Ms. Foley stay where you are. McCallum, Ms. McCallum, stay where
23 you are. Going to move you sir, one over, and Mr. Feustel, you're two
24 over.

25 Gentlemen, both Plaintiff and Defense, is this the jury you

1 picked?

2 MR. KUDLER: Yes, Your Honor.

3 MR. A. GIOVANNIELLO: Yes, Your Honor.

4 THE COURT: Thank you very much. Ladies and gentlemen,
5 both standing and seated behind the jury -- behind the bar, that's
6 actually the bar right there, if you have ever wondered what the bar
7 means; that bar to the Court is the bar.

8 I'm going to thank you for your time and patience and
9 attention here. Your responsibilities here for jury selection are complete
10 and you are excused. You don't need to go back to the Jury
11 Commissioner. You are excused, with thanks of the Court.

12 GROUP RESPONSE: Thank you.

13 THE MARSHAL: Please rise for the exit of the jury.

14 [Prospective jurors out at 3:00 p.m.]

15 [Outside the presence of the prospective jurors]

16 THE COURT: The record should reflect we're outside the
17 presence of the balance of the panel. Ladies and gentlemen, please be
18 seated. You are the jury selected to hear this matter. The first step in
19 that process is to re-swear you as a member of this jury. Could you all,
20 please stand to be sworn by the Clerk?

21 THE CLERK: Please raise your right hand.

22 [The jury was sworn in by the Clerk]

23 THE COURT: Please be seated.

24 We're going to take -- I have some additional comments.

25 Ladies and gentlemen, before this case commences with opening

1 statements, let me offer a few comments, but first I'd like to have a
2 lawyer's sidebar.

3 [Sidebar begins at 3:01 p.m.]

4 THE COURT: I should have asked before. Do you wish to
5 have your complaint, or your amended complaint to this file read?

6 Do you wish to have your answer read?

7 UNIDENTIFIED SPEAKER: No.

8 THE COURT: Okay. Just have to check.

9 MR. MR. A GIOVANNIELLO: Thank you, Your Honor.

10 [Sidebar ends at 3:01 p.m.]

11 THE COURT: All right. Marshal's doing his work. He's going
12 to bring you a pad of paper and a pen or pencil so you can write with.
13 These notes that -- this notepad is for you to keep. It should be identified
14 by your badge number. We go from 1 to 10. Okay?

15 These note, again, for you to keep during the pendency of
16 the action. They're private. You have to leave them in the room, and the
17 marshal will collect them at the close of every day but have them in your
18 chair before we commence on the following day. They're notes for you
19 to have through the entirety of the process up to and including
20 deliberation.

21 Understand that there is no electronic record for you to
22 review if and when you head into jury deliberation and there are
23 disputes about the testimony evidence. It's your notes and memory of
24 the evidence that will carry you through the deliberative process for the
25 most part.

1 Now, this is a civil case commenced by Jeffery A Meyers,
2 and Andrew James as Plaintiffs against THI of Nevada at Cheyenne, LLC,
3 College Park Rehabilitation Center, Healthcare Realty of Cheyenne, LLC,
4 and Fundamental Administrative Services, LLC. The parties having
5 waived the reading of the amended complaint and answer, it's important
6 to understand the trial will follow -- proceed in the following order:
7 Tomorrow morning, I'm going to do a jury call for 10:00. I have a
8 calendar for unrelated -- completely unrelated to this case. It's called
9 Law and Motion Hearing Calendar that I do early, and then at 10:00, we'll
10 begin the trial unless the calendars, for some reason, runs long. I don't
11 anticipate it will, but to the extent that I can, we'll be starting promptly at
12 10:00.

13 At that point, the parties will have the opportunity to do
14 what's known as opening statements. Opening statements are just that.
15 They're statements from each side, with Plaintiff going first, Defendant
16 following if they choose to do so, about the nature of their case and
17 where they believe the evidence will take you when we move into the
18 evidence phase. Understand that opening statements are not evidence.
19 It's basically a narrative from the lawyers trying to help you as jurors
20 understand where they believe the evidence will take you when we head
21 into the evidence phase.

22 After opening statements are complete, we'll move into
23 what's known as the evidence phase with Plaintiff going first having the
24 burden, and we'll start with what's known as the case in chief. They get
25 to call witnesses on this witness stand and present evidence and

1 testimony to you that they feel is relevant.

2 Each witness is examined in exactly the same way. There's a
3 direct examination of the witness by the calling side and the ability for
4 the non-calling side to do what's known as cross-examination. You've
5 probably seen it in drama and TV many times, and that's, in essence,
6 what happens. Each side gets to examine the witness and ask questions
7 they feel are relevant. So we do direct. We do cross. We do redirect.
8 We do recross until all the questions that each side believes the witness
9 should be asked has been asked.

10 Under Nevada rules, currently, the jury has the ability to ask
11 questions. You do that in writing. You do not get to stand up and ask a
12 question. There needs to be an intermediate step in that process. And
13 so what I would ask you to do is listen carefully for a conclusion of the
14 examination of the witness.

15 And I will physically-- I will actually ask the lawyers, is the
16 examination of the witness complete. And then I will look at the jury,
17 and at that point, if you believe that you wish to ask a question of the
18 witness that has not been asked, I need you to raise your hand so I can
19 give you the time you need to compose your question in writing on a
20 piece of paper. Don't feel pressured about that, but it is important that
21 you make that effort immediately upon the conclusion of the
22 examination of the witness by the lawyer so I can give you a chance to
23 form your question.

24 If I see no hands, then I'm going to discharge the witness and
25 have the side in control of the room call their next witness. I can't call a

1 witness back. So once they're out the door, I can't bring them back in.
2 So if you think that the question needs to be asked, raise your hand,
3 write the question out. You'll hand the question to the marshal. The
4 marshal will bring it up to me sidebar, and then I'll bring the lawyers up
5 sidebar, and we'll look at the question.

6 Any question asked by a juror must meet the same critical
7 evidentiary rules and procedures that a lawyer might have to ask. Now,
8 you're not trained in the law. You don't know those rules. You don't
9 know the -- probably don't know a significant difference between
10 foundation and hearsay or any of the myriad of rules of evidence that we
11 play with or work with every day. And I don't expect you to. So write
12 your questions best you're able. Bring it up here. And we'll examine it
13 for that kind of analysis, very quick analysis.

14 If it's a question that can be asked, then I'll read the question
15 to the witness, have the witness answer your question, and give the jury,
16 juror, or jury necessary time to ask a follow-up question if you feel it's
17 necessary to do so. Then, I'll give each side an opportunity to inquire as
18 well with an eye of answering the concern expressed in the question by
19 the juror.

20 A couple of important facts to appreciate: If we find
21 ourselves in that situation, I've asked many questions in writing posed
22 by jurors. It's perfectly appropriate. But I don't want you to give it any
23 greater weight simply because it's a question you thought of.

24 And also, there are many times that questions are asked or
25 written out that I can't ask for whatever reason. I don't offer explanation

1 for why. I don't apologize for why. I simply apply the rules, listen to the
2 lawyers, and get their opinion. Ultimately, it's my decision on whether it
3 can or cannot be read, but I listen to the lawyers. If your question cannot
4 be read and asked the witness, don't get angry with me, hopefully, or
5 mad and angry at the lawyers simply because your question wasn't
6 asked.

7 Again, it needs to fit in the same important rules of evidence
8 as every other question, and sometimes that's difficult to understand and
9 appreciate. I don't ask -- I don't step back as an editor and help you
10 reform the question even if I have a general idea of where the question
11 might be headed, I simply make a decision on how it's written and don't
12 get angry with anybody if you think -- if your question isn't asked. And
13 don't give it any greater weight simply because it's one you thought of.

14 Each witness is handled in that fashion, direct, cross, witness
15 questioned by the juror, the witness is off, we're on to the next question.

16 Each side controls the room at the appropriate time in their
17 case. So Plaintiff gets to go first. Witnesses are called. A witness,
18 evidence is admitted if any. Eventually, you will hear that side rest their
19 case. They'll just stand up and say, Judge, we rest.

20 At that point, the opposing side, the Defense, would have the
21 ability to present evidence if they wish. They don't have to if they don't
22 want to, but they're able to present evidence in the same fashion;
23 witnesses are called, examined, and excused in exactly the same
24 fashion.

25 After the Defense has presented what they believe to be

1 relevant for you to hear, then I'll give the Plaintiff an opportunity to offer
2 what's known as rebuttal evidence if it's become necessary. And the
3 witnesses are called, evidence is examined to the extent that rebuttal is
4 required, and then there's surrebuttal for the Defense.

5 Ultimately, however, all questions and all witnesses will be
6 called, answers given, and the evidence will conclude. And once
7 everybody rests, I move into what's known as the instruction phase of
8 the trial. So it's my responsibility to prepare written instructions on the
9 law as it applies to the case. And I prepare those -- and they are such
10 critical importance they are reduced to writing, and I give you them
11 numbered. Each side -- each of you will have a package of those
12 instructions in your hands.

13 I will then read them -- the formality is that I read those
14 instructions to you, and you can follow along if you wish. You don't
15 have to if you don't want to. But I'll read those instructions to you. After
16 I read the instructions, we move into the closing argument phase of the
17 trial.

18 Understand, the vision here is that you have two important
19 components to decision. You have the evidence that you hear from the
20 witness stand or the evidence and testimony you hear from the witness
21 stand, and you have -- in one hand, and you have the law that I give you
22 in the other. And your job, after we head into closing argument and you
23 listen to the lawyers talk about those two important components, is to
24 listen with patience and then ultimately retire and deliberate the case
25 and bring those two important components together to come to a

1 decision. Does that make -- I hope that makes sense to you all.

2 So that's what you can anticipate having over -- doing over
3 the next few days. Again, I'll stress if you cannot hear a witness, raise
4 your hand. Indicate to me that difficulty, and I'll straighten it out. If you
5 need a private time, restroom, or feel ill, please raise your hand. I take
6 breaks, as I've indicated, every 90 minutes to two hours. Again, as you
7 might need additional, don't hesitate to ask for that.

8 Now, at some point, at some times, the lawyers, in every
9 case, might have what are known as objections. You might have seen it
10 in TV drama, and it's perfectly appropriate for lawyers to object if they
11 think that a witness is being asked a question they don't feel is correct.
12 It's my obligation to listen to the objection and rule on the objection. If I
13 sustain the objection, that means I agree with the objection, and I'll take
14 appropriate action, maybe tell the witness not to answer or not
15 depending on where we are. If I overrule the objection, that's my
16 decision that the question is appropriate and can be asked and answered
17 by the witness.

18 Oh, I knew there was a back-end to this one. I apologize.

19 That's the lawyer's obligation. So don't get angry if you hear
20 one of the lawyers stand up and say objection and I overrule the
21 objection. Trials are very dynamic. They happen very quickly, and
22 lawyers have to make decisions very quickly, and sometimes I agree.
23 Sometimes I don't agree. But don't draw any adverse inference from
24 whether I sustain or overrule an objection.

25 Again, my role here is to rule on the evidence. It's your job

1 to determine what that evidence means. In our system of criminal
2 procedure, you are the sole judges of the facts. Now, you decide the
3 facts from the testimony that you hear and other evidence including
4 exhibits, and it is up to you to determine what inferences may be
5 properly drawn from the evidence. It is especially important for you to
6 perform your duties in determining the facts diligently, conscientiously,
7 for ordinarily, there is no means of correcting an erroneous
8 determination of the facts by the jury.

9 I explained to you that we move -- in the instruction phase, I
10 read the instructions to you, and the role of the lawyers at the end is to
11 bring the evidence and legal instructions to you. Remember though that,
12 as I said in opening statements, what the lawyers tell you, that's not
13 evidence, and what the lawyers argue to you at the end of the trial is not
14 evidence, it's their vision of the evidence and what they think the
15 evidence might mean to you. But the evidence is what happens between
16 those two critical points at the beginning and the end of the trial, and it's
17 your job to remember that testimony to the best of your ability, and
18 interpret it, and draw what facts you believe -- give it the attention that
19 you believe it deserves.

20 So I've talked about objections and how they work. Anything
21 you may have seen or heard outside the courtroom is not evidence and
22 must also be disregarded. If the attorneys stipulate to the existence of
23 the fact, you regard that fact as being conclusively proved. Sometimes
24 this happens in trials very quickly. So there are many situations where
25 lawyers don't disagree. They agree that whatever is being discussed

1 and offered to you as a juror, they both agree on, so there's no fight
2 about it, and they stipulate to it. So if you hear the words coming from
3 the lawyers, Your Honor, because they'll have to say it to me, we
4 stipulate X, consider that fact as proved. They don't have to present
5 evidence of that fact, but that fact is proved to the extent the stipulation
6 outlines it.

7 You must not speculate to be true any insinuations
8 suggested by a question asked a witness. A question is not evidence
9 and may be only considered as it supplies meaning to the answer. So if
10 we get into a situation where a lawyer asks the question and the
11 answerer is denied the ability of the witness to answer the question,
12 don't draw any adverse inference or think that there's any fact or
13 evidence in a question asked that is not answered. The evidence is in
14 the answer, not in the question that brings it out.

15 You must not be influenced in any degree by personal
16 feelings of sympathy for or prejudice against the Plaintiff or the
17 defendant. Both sides are entitled to the same fair and impartial
18 consideration. So you should understand you draw your decision from
19 the evidence, and you are allowed, as reasonable men and women, to
20 view the credibility or believability of the witness.

21 Credibility or believability of the witness should be
22 determined by his or her manner upon the stand, their relation to the
23 parties, their fears, motives, interests or feelings, their opportunity to
24 observe the matter to which they testified, and the reasonableness of
25 their statements and strength or weakness of their recollection. So you

1 get to evaluate the voracity of a witness and decide what you believe or
2 don't believe based upon the testimony. Remember, you are the trier of
3 the facts.

4 Now, there's two types of evidence. There's direct evidence
5 and circumstantial evidence. Direct evidence is a proof of facts such as a
6 testimony of an eye witness who testifies that they saw, felt, observed
7 something. That's one example of direct evidence. Circumstantial
8 evidence is different. Circumstantial evidence is two independent facts
9 that tend to prove a different fact. My example, and it's a rough example
10 nowadays, but it's a one that kind of illustrates the point: Say we weren't
11 sitting in a bright, sunshiny day in Las Vegas, but when, earlier, when
12 you were walking in this room, and you looked out the windows and you
13 saw clouds in the sky, just for example. You came in here, you did your
14 work, and you went back out the same doors at the conclusion of your
15 effort, and you looked out the same exact windows, but the view had
16 changed. If you looked closer, it looked to you like there was moisture
17 on the exterior of the window. You looked even closer. You looked at
18 the street. You saw passers by walking with umbrellas. You could
19 conclude based upon those two independent observations that it's
20 rained in the time you were in this courtroom. You wouldn't have been
21 able to observe it, but you could conclude by the circumstantial evidence
22 that that's what had occurred. In a very simple sense, that's all
23 circumstantial evidence is. And as the trier of fact as the jurors and jury,
24 you can draw whatever inference you believe is supported by the
25 evidence by either direct or circumstantial evidence.

1 Now, whenever we head into instruction phase, and I'm
2 going to give you a -- one of the instructions, I state that the burden or
3 burden of proof rests upon a certain party to prove a certain allegation
4 made by them. The meaning of the instruction is this, that unless the
5 allegation is proved by a preponderance of the evidence, you shall find
6 the same to be not true. The term preponderance of the evidence means
7 such evidence as with weighed against that opposed to it has more
8 convincing force and from which it appears the greater probability of the
9 truth lies therein. The lawyers will have their vision on how to instruct
10 you on that important concept, but that is the burden of proof here.

11 No statement, ruling, remark, or comment which I make
12 during the course of this trial is intended to indicate my opinion as how it
13 should be decided by you or influence you in any way. I make notes up
14 here. It's my job to make those notes so I can stay with the testimony
15 and make fair and appropriate rulings. Don't draw any conclusions
16 based upon the fact that I may be making a note or engage in some
17 other responsibility, including potentially even asking a witness a
18 question. If I do so, it's for the express purpose of bringing up matters
19 which I feel should be brought out, and not in any way to indicate my
20 opinion about the facts or indicate the weight I feel you should give the
21 testimony of the witness.

22 I've mentioned that there will be no transcripts available for
23 you. I've explained to you how jury questions work. So let's stress four
24 important points: Do not talk to each other about the evidence as we
25 move through the case. Again, as I mentioned earlier this morning, you

1 can get to know one another. You can go to lunch together and come to
2 know each other in that fashion, but if that should occur, please don't
3 talk about the facts of the case.

4 Don't let anyone else talk to you about the case. Don't go out
5 in that hallway and have somebody try to reach out and talk to you. If
6 they do, I want to know about that through the marshal. I don't want you
7 to go home and talk, especially, well, once we're in the evidence, I don't
8 want you to go home and say boy, it's been a long day, we heard, you
9 know a number of witnesses. This is the kind of case. Honey, this is the
10 kind of case, somebody's opinion about you. I don't want you sitting
11 there making your dinner and talking about the facts of the case. You
12 can go home and say I've been sworn as a member of a jury in a civil
13 case, but with respect, I'm not allowed to talk about any of it until after
14 it's all done. And then you go on with your evening and talk about
15 something that matters. But don't talk to your loved one or somebody
16 who's opinion you value about any aspect of the case.

17 Do not read, watch, any news articles, listen to radio,
18 television. Do not do any independent research. I don't want you going
19 home and getting on social media and trying to find information about
20 this case or parties in this case. I want you to allow the evidence to
21 come to you through the testimony of the witnesses and the efforts of
22 the lawyers.

23 Those are the directions I have. So we're going to take our
24 evening recess, ladies and gentlemen. My marshal's going to have
25 some words with you. I'm going to have him do that in the hallway.

1 Remember, during this recess, you must not discuss or communicate
2 with anyone including fellow jurors in any way regarding this case or its
3 merits either by voice, phone, email, text, internet, or other means of
4 communication or social media. You may not read, watch, listen to any
5 news reports or media accounts or commentary about the case. Do not
6 do any research such as consulting dictionaries, using the internet, or
7 reference materials, or make any investigation or test any theory,
8 recreate any aspect of the case, or investigate the case on your own to
9 learn about the case on your own. Do not form or express any opinion
10 regarding this case until its finally submitted to you.

11 I'm going to do a jury call for tomorrow morning at 10 a.m. I
12 need you here on the 11th floor. We're in Alpha Courtroom, so you have
13 a sense of where we are now. The marshal will get numbers from you
14 and give you a number in return.

15 Have a good evening, ladies and gentlemen.

16 THE MARSHAL: Please rise for the jury.

17 [Jury out at 3:22 p.m.]

18 [Outside the presence of the jury]

19 THE COURT: All right. Record should reflect outside the
20 presence of the jury.

21 Let's talk a little bit about what I hope happens tomorrow.
22 So we'll open with -- we'll do openings. Give me an idea of how long
23 you anticipate openings taking, Mr. Kudler.

24 MR. KUDLER: Forty-five minutes to an hour.

25 THE COURT: Forty-five minutes to an hour for you?

1 MR. KUDLER: Probably closer to 45.

2 THE COURT: Counsel, what are you thinking?

3 MR. A GIOVANNIELLO: Thirty to forty-five, I would say.

4 THE COURT: Do you have witnesses that you can present in
5 the morning if the opportunity is there?

6 MR. KUDLER: Yes. I have scheduled in the morning, Mr.
7 Gifford, the electrical expert.

8 THE COURT: Okay, good.

9 MR. KUDLER: I believe, I'm not sure if Dr. Ozobia is coming.
10 I'd have to see who I had put on the list for the third, but I will let you
11 know.

12 THE COURT: Doctor who?

13 MR. KUDLER: Ozobia.

14 THE COURT: Ozobia?

15 MR. KUDLER: The ER doctor.

16 THE COURT: Oh, okay. In terms of exhibits, disputes
17 between the exhibits, something we need to settle that we can discuss
18 now?

19 MR. KUDLER: Yeah. And I think you are aware, being new to
20 this case, still, you are aware that this has been around a long time.

21 THE COURT: Yes. That's --

22 MR. KUDLER: Discovery closed in May of 2020.

23 THE COURT: Okay.

24 MR. KUDLER: there was some new providers, and there was
25 a certain amount of discovery that was allowed by the Defendant in

1 October 2021. And at that time, there was three photographs pulled off
2 the internet from 2014-2017 that Judge Villani said yes, those were
3 allowed.

4 THE COURT: Okay.

5 MR. KUDLER: Since that time, on May 16th of this year,
6 there was a [indiscernible] supplement where a fourth photograph was
7 produced. I would object to something being produced two weeks
8 before trial.

9 THE COURT: Okay.

10 MR. KUDLER: And then, in the exhibit list, a fifth photograph
11 was produced that was never produced elsewhere. I would object to that
12 as well.

13 THE COURT: Have they been marked as Defense?

14 MR. KUDLER: Yes. They're marked as Defense Exhibit.

15 THE COURT: All right. Let's make some decisions on that.
16 So proffered, two additional photographs outside the four corners of
17 discovery.

18 MR. KUDLER: And they would be Exhibits 228 and 229 in the
19 Defense book.

20 MR. A GIOVANNIELLO: 226 and 228?

21 MR. KUDLER: 228 and 229.

22 THE COURT: Okay. I see a bunch of folks sitting around a
23 table in 228. I see a party in 229. All right. It appears to be one of the
24 Plaintiffs drinking a can -- from a can.

25 MR. KUDLER: And where these come from are the

1 [indiscernible] Valley Rotary Club --

2 THE COURT: Okay.

3 MR. KUDLER: -- page on Facebook. And these pages, these
4 are pictures from 2014, one of them is. I think the other one might be
5 2017. But clearly, these were around during discovery phase of this
6 case. And they did -- the Defendant's did go and Judge Villani did let in
7 the three photographs that were --

8 THE COURT: Well, which ones did he let in, everything?

9 MR. KUDLER: 225, 26, 27.

10 THE COURT: Okay.

11 MR. KUDLER: Okay. And you know, they're related. The
12 judge said they can come in. Okay, that's the judge's decision.

13 THE COURT: Okay.

14 MR. KUDLER: But then, to eight months later go and look for
15 photographs and produce photographs that have been available for
16 eight years or seven and a half years because it was November of 2014 --

17 THE COURT: Okay.

18 MR. KUDLER: -- isn't appropriate to be dropping
19 photographs at the last minute or any evidence.

20 THE COURT: All right. Counsel on contemporaneous
21 objection to 228, 229, position?

22 MR. A GIOVANNIELLO: Your Honor, is it okay if I sit?

23 THE COURT: Yeah.

24 MR. A GIOVANNIELLO: Your Honor, it's my understanding
25 that 228 was allowed by Judge Villani. And my other argument is these

1 are on the web. These pictures are available any time. Any time
2 somebody wants to look at them, they're there.

3 THE COURT: I appreciate that, but I'm going to sustain on --
4 you say 228 is subject to a prior order?

5 MR. A GIOVANNIELLO: I thought -- my pic -- yeah. I believe
6 228 was subject to a prior order.

7 MR. KUDLER: There were three photographs. And if you
8 look at the order from October. There is an order that talks about three
9 photographs. Now there are five. It was a different two, but there are
10 definitely two more photographs than were discussed in October.

11 THE COURT: All right. What I want you to do, Mr. Kudler,
12 I'm inclined to sustain the objection.

13 But if you can take me back to an order where 228 is in, then
14 228's in. But I'm sticking with prior order.

15 MR. A GIOVANNIELLO: I'll have to find that, Your Honor,
16 obviously.

17 THE COURT: Okay. All right.

18 MR. KUDLER: And again, it's just three, whichever three it is,
19 it's going to be three because that's --

20 THE COURT: Fine.

21 MR. KUDLER: -- what was addressed.

22 And okay. I would also look at Exhibit 233, which is College
23 Park State License.

24 THE COURT: Okay.

25 MR. KUDLER: This Exhibit, well, this is the second exhibit.

1 The first exhibit list a couple of days before this was the first time that
2 that was ever mentioned. It's never been produced in this case. It was
3 never in an early case conference. I have a feeling I know what the
4 intended purpose is. They did try and have two witnesses come in and
5 talk about the different relationships between the three defendants. That
6 was denied by Judge Villani because it was new and additional
7 information that had not been disclosed during the discovery period.

8 THE COURT: That the facility is hereby licensed as a facility
9 for skilled nursing?

10 MR. A GIOVANNIELLO: Your Honor, my thing is, it's the
11 public record, and it's not being brought in for that purpose whatsoever.
12 It's being brought in for the purpose of the fact that it's a skilled nursing
13 facility, which I believe the jury already knows.

14 MR. KUDLER: Okay. And again, whether it's a skilled
15 nursing facility, or whether it's a hotel, or whether it's any commercial
16 building, doesn't matter as to how this happened. It's irrelevant to the
17 instance. But you're also looking at stuff that came in and wasn't even
18 disclosed ever.

19 THE COURT: If it hasn't been disclosed, it's not coming in.
20 All right..

21 MR. A GIOVANNIELLO: Then, it's public record.

22 THE COURT: You're over -- your objection to motion is
23 overruled. If you can produce to me an indication that this was
24 appropriately disclosed pursuant to discovery, I won't hesitate to let it in.
25 But we have discovery rules for a reason, and I'm trying to apply them

1 fairly.

2 All right. Next?

3 MR. KUDLER: Exhibit 234.

4 THE COURT: 2-2-4?

5 MR. KUDLER: Yeah, and I'm going to preface this by this
6 evidence was produced before the final decision was made.

7 MR. A GIOVANNIELLO: It's withdrawn.

8 MR. KUDLER: Right. And I would assume that's yes. But
9 that -- yeah.

10 MR. A GIOVANNIELLO: It's withdrawn, Your Honor. It was
11 produced before final decision came out, and obviously, I can't use it.

12 MR. KUDLER: And I appreciate that this was done at the last
13 minute, and the decision was at the last minute.

14 MR. A GIOVANNIELLO: Right.

15 THE COURT: Okay.

16 MR. KUDLER: In regard to the first 25 exhibits, the medical
17 records --

18 THE COURT: First 25 Defendant's exhibits?

19 MR. KUDLER: Yeah, everything on the first page of the
20 exhibit list.

21 THE COURT: Okay. I'm just trying to manage your
22 documents here. Okay. One through twenty-five, all right.

23 MR. KUDLER: Those are duplicative medical records that
24 the Plaintiff has produced. I also noticed that they are unredacted. They
25 include information such as their birthdates, their insurance information,

1 social security numbers, driver's license photographs, and all that
2 information within the driver's license. We discussed redacting them.
3 They have chosen not to do that.

4 THE COURT: I can't --

5 MR. KUDLER: I don't think it's appropriate that -- especially
6 since they're duplicative, to have an unredacted set.

7 THE COURT: I am going to let you try your case, but if
8 there's a social security number in violation of the court rule.

9 MR. A GIOVANNIELLO: I'm not going to put that in. I'm
10 going to redact that. I'm not even -- what I'm more interested in is the
11 content of the record, Your Honor.

12 THE COURT: That's fine.

13 MR. A GIOVANNIELLO: And the reason I used mine is
14 because Plaintiff's counsel produced his without any bates stamps
15 whatsoever on them, and I couldn't make heads or tails out of them.
16 Mine are bates stamped.

17 MR. KUDLER: Ours are bates stamped in the final version.

18 MR. A GIOVANNIELLO: And I think that I would be severely
19 prejudiced if I was not able to use the ones that I have that are bates
20 stamped.

21 THE COURT: All right. Mr. Kudler, take me to a social
22 security number. I'm not so concerned about the date of birth.

23 MR. A GIOVANNIELLO: I thought it was only the last four
24 digits, Your Honor on every one of these things.

25 THE COURT: So where is the --

1 MR. A GIOVANNIELLO: And I'm going to get on redacting
2 that before it ever gets to the jury. And as far as their home number and
3 home address --

4 MR. KUDLER: It's all of the documents.

5 THE COURT: Yeah, it's all over every single document. I'm
6 concerned with the social security numbers.

7 MR. KUDLER: Yeah, I -- you know -- they're --

8 MR. A GIOVANNIELLO: This --

9 MR. KUDLER: I -- I can't point to one right now, but I know
10 that you know, I looked through these, there's dates of birth. There's
11 home addresses. There's a photo of a driver's license in one of the
12 records with -- with nothing removed from it, the driver's license number
13 included.

14 MR. A GIOVANNIELLO: I have no intention of putting the
15 driver's license in as evidence.

16 THE COURT: I'm looking at UNC fact sheet identified by
17 bates 205-15. I just see the last four digits of the social. I'm going to
18 overrule that objection. I'll let you ply your case.

19 MR. A GIOVANNIELLO: Thank you, Your Honor.

20 THE COURT: All right. Next.

21 MR. KUDLER: It is more of a jury instruction issue on --

22 THE COURT: I'm not going to talk to about that now.

23 MR. KUDLER: Yeah.

24 THE COURT: It's been a long day already.

25 MR. KUDLER: Yeah. No. I understand. I think that's going

1 to be it. But we will, at some point have to have a discussion regarding
2 the OSHA and the --

3 THE COURT: Right. Right. That's a discussion for a different
4 day.

5 MR. KUDLER: Right. I just don't know because I have a
6 feeling that they're going to start talking about OSHA in opening
7 statements, and this is going to be the basis of our defense is that they
8 violated OSHA. And you know, it's a risk they're going to have to take if
9 they can prove the evidence on it. But I think bringing up a statute, and if
10 the judge is going to -- we can, I guess, discuss it tomorrow if you want
11 to.

12 THE COURT: No, no. Now you just made it more relevant. I
13 thought -- my vision was we were looking at a jury instruction and a
14 testimony. But Counsel, what is your thoughts on that objection?

15 MR. A GIOVANNIELLO: His expert talks about OSHA. He
16 mentions an OSHA statute. If he mentions an OSHA statute on cross-
17 examination, I can mention other OSHA statutes. I mean, seriously.

18 MR. KUDLER: Your Honor --

19 THE COURT: Is it true that your expert witness talks about
20 OSHA?

21 MR. KUDLER: He may talk about a portion of OSHA. But it's
22 a very specific portion that they're talking about that they're claiming
23 that he's violated, which nobody -- there is no expert that's going to
24 discuss that. Where that came in was there was an expert that the
25 Defendant had retained and never disclosed timely, and that expert talks

1 about this particular OSHA statute, 19-10.333, which is not mentioned by
2 my expert whatsoever.

3 MR. KUDLER: Your Honor, regardless of whether it's
4 mentioned by his expert, he mentions OSHA. That means he talked
5 about an OSHA statute.

6 THE COURT: I'm going to -- opening statement is not
7 evidence. It's also subject to cautionary instruction if it gets -- if it's not
8 supported by the evidence. I'm inclined to let each side argue their --
9 present their case and opening statement. If you mention OSHA, then
10 based on what I hear so far, I'm going to let that happen.

11 MR. A GIOVANNIELLO:

12 MR. KUDLER: Thank you. And I just go home and have a
13 good night.

14 THE COURT: Okay. Anything on Defense side?

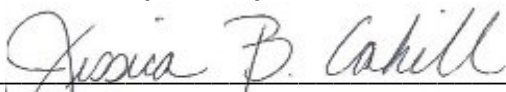
15 MR. KUDLER: No, Your Honor. That's -- you cleared that up.

16 THE COURT: All right. Have a good evening, all.

17 MR. KUDLER: Thank you, Your Honor.

18 [Proceedings adjourned at 3:36 p.m.]

19
20 ATTEST: I do hereby certify that I have truly and correctly transcribed the
21 audio-visual recording of the proceeding in the above entitled case to the
22 best of my ability.

23 

24 Maukele Transcribers, LLC

25 Jessica B. Cahill, Transcriber, CER/CET-708