

IN THE SUPREME COURT OF THE STATE OF NEVADA

HENRY APARICIO,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
Aug 24 2022 09:38 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 84300

RESPONDENT'S APPENDIX

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CERTIFICATE OF SERVICE

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on 24th day of August, 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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IN THE SUPREME COURT OF THE STATE OF NEVADA

HENRY APARICIO,
Appellant,

v.

THE STATE OF NEVADA,
Respondent.

Electronically Filed
May 07 2020 09:02 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Case No. 80072

RESPONDENT'S APPENDIX

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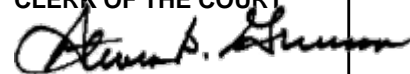
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DISTRICT COURT
CLARK COUNTY, NEVADA

I.A. 6/6/18
10:00 AM
SHEETS

THE STATE OF NEVADA,

Plaintiff,

-vs-

HENRY APARICIO, aka,
Henry Biderman Aparicio, #6069038

Defendant.

CASE NO: C-18-332496-1

DEPT NO: VIII

I N F O R M A T I O N

STATE OF NEVADA }
COUNTY OF CLARK } ss.

STEVEN B. WOLFSON, District Attorney within and for the County of Clark, State of Nevada, in the name and by the authority of the State of Nevada, informs the Court:

That HENRY APARICIO, aka, Henry Biderman Aparicio, the Defendant(s) above named, having committed the crimes of **DRIVING UNDER THE INFLUENCE RESULTING IN DEATH (Category B Felony - NRS 484C.110, 484C.430, 484C.105 - NOC 53908); RECKLESS DRIVING (Category B Felony - NRS 484B.653 - NOC 53896) and DRIVING UNDER THE INFLUENCE RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 484C.110, 484C.430, 484C.105 - NOC 53906)**, on or about the 15th day of May, 2018, within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

///

1 COUNT 1 - DRIVING UNDER THE INFLUENCE RESULTING IN DEATH

2 did then and there willfully and unlawfully drive and/or be in actual physical control of
3 a vehicle on or off a highway at West Sahara Avenue and South Hualapai Way, Las Vegas,
4 Clark County, Nevada, Defendant being responsible in one or more of the following ways
5 and/or under one or more of the following theories, to wit: 1) while under the influence of
6 intoxicating liquor to any degree, however slight, which rendered him incapable of safely
7 driving and/or exercising actual physical control of a vehicle, 2) while he had a concentration
8 of alcohol of .08 or more in his blood, and/or 3) when he was found by measurement within
9 two (2) hours after driving and/or being in actual physical control of a vehicle to have a
10 concentration of alcohol of .08 or more in his blood, Defendant, while driving and/or in actual
11 physical control of a vehicle, failing to pay full time and attention to his driving, failing to
12 exercise due care, and/or failing to drive in a careful and prudent manner, which acts, or neglect
13 of duties, proximately caused the vehicle Defendant was driving and/or in actual physical
14 control of, to strike and collide with a vehicle being driven or occupied by DAMASO
15 PUENTE, said collision proximately causing death to DAMASO PUENTE.

16 COUNT 2 - DRIVING UNDER THE INFLUENCE RESULTING IN DEATH

17 did then and there willfully and unlawfully drive and/or be in actual physical control of
18 a vehicle on or off a highway at West Sahara Avenue and South Hualapai Way, Las Vegas,
19 Clark County, Nevada, Defendant being responsible in one or more of the following ways
20 and/or under one or more of the following theories, to wit: 1) while under the influence of
21 intoxicating liquor to any degree, however slight, which rendered him incapable of safely
22 driving and/or exercising actual physical control of a vehicle, 2) while he had a concentration
23 of alcohol of .08 or more in his blood, and/or 3) when he was found by measurement within
24 two (2) hours after driving and/or being in actual physical control of a vehicle to have a
25 concentration of alcohol of .08 or more in his blood, Defendant, while driving and/or in actual
26 physical control of a vehicle, failing to pay full time and attention to his driving, failing to
27 exercise due care, and/or failing to drive in a careful and prudent manner, which acts, or neglect
28 of duties, proximately caused the vehicle Defendant was driving and/or in actual physical

1 control of, to strike and collide with a vehicle being driven or occupied by CHRISTA
2 PUENTE, said collision proximately causing death to CHRISTA PUENTE.

3 COUNT 3 - RECKLESS DRIVING

4 did then and there willfully, unlawfully, and feloniously drive a motor vehicle at West
5 Sahara Avenue and South Hualapai Way, Las Vegas, Clark County, Nevada, with willful or
6 wanton disregard for the safety of persons or property, by driving said vehicle without paying
7 full time and attention to his driving, and/or failing to exercise due care, and/or failing to drive
8 in a careful and prudent manner, and/or by traveling at a high rate of speed and/or failing to
9 slow down for traffic, thereafter crashing into and/or rear-ending a vehicle in which DAMASO
10 PUENTE was seated, which acts, or neglect of duties, proximately causing the death of or
11 substantial bodily harm to DAMASO PUENTE.

12 COUNT 4 - RECKLESS DRIVING

13 did then and there willfully, unlawfully, and feloniously drive a motor vehicle at West
14 Sahara Avenue and South Hualapai Way, Las Vegas, Clark County, Nevada, with willful or
15 wanton disregard for the safety of persons or property, by driving said vehicle without paying
16 full time and attention to his driving, and/or failing to exercise due care, and/or failing to drive
17 in a careful and prudent manner, and/or by traveling at a high rate of speed and/or failing to
18 slow down for traffic, thereafter crashing into and/or rear-ending a vehicle in which CHRISTA
19 PUENTE was seated, which acts, or neglect of duties, proximately causing the death of or
20 substantial bodily harm to CHRISTA PUENTE.

21 COUNT 5 - RECKLESS DRIVING

22 did then and there willfully, unlawfully, and feloniously drive a motor vehicle at West
23 Sahara Avenue and South Hualapai Way, Las Vegas, Clark County, Nevada, with willful or
24 wanton disregard for the safety of persons or property, by driving said vehicle without paying
25 full time and attention to his driving, and/or failing to exercise due care, and/or failing to drive
26 in a careful and prudent manner, and/or by traveling at a high rate of speed and/or failing to
27 slow down for traffic, thereafter crashing into and/or rear-ending a vehicle in which MORGAN
28 HURLEY was seated, which acts, or neglect of duties, proximately causing the death of or


1 substantial bodily harm to MORGAN HURLEY.

2 COUNT 6 - DRIVING UNDER THE INFLUENCE RESULTING IN SUBSTANTIAL
3 BODILY HARM

4 did then and there willfully and unlawfully drive and/or be in actual physical control of
5 a vehicle on a highway or on premises to which the public has access at West Sahara Avenue
6 and South Hualapai Way, Las Vegas, Clark County, Nevada, Defendant being responsible in
7 one or more of the following ways and/or under one or more of the following theories, to wit:
8 1) while under the influence of intoxicating liquor to any degree, however slight, which
9 rendered him incapable of safely driving and/or exercising actual physical control of a vehicle;
10 2) while he had a concentration of alcohol of .08 or more in his blood and/or 3) when he was
11 found by measurement within two (2) hours after driving and/or being in actual physical
12 control of a vehicle to have a concentration of alcohol of .08 or more in his blood, Defendant,
13 while driving and/or in actual physical control of a vehicle, failing to pay full time and attention
14 to his driving, failing to exercise due care, and/or failing to drive in a careful and prudent
15 manner, which acts, or neglect of duties, proximately caused the vehicle Defendant was
16 driving and/ in actual physical control of, to strike and collide with a vehicle being driven or
17 occupied by MORGAN HURLEY, said collision proximately causing substantial bodily harm
18 to MORGAN HURLEY.

19 STEVEN B. WOLFSON
20 Clark County District Attorney
Nevada Bar #001565

21 BY


22 CHARLES MARTINOVSKY
23 Chief Deputy District Attorney
Nevada Bar #007439

24 Names of witnesses known to the District Attorney's Office at the time of filing this
25 Information are as follows:

26 NAME

ADDRESS

27 ATKINSON, K.

LVMPD P#8543

28 CONTRERAS, E.

LVMPD P#9316

1	CORNEAL, J.	CLARCK CO. MEDICAL EXAMINER
2	CUSTODIAN OF RECORDS	LVMPD, Records, 400 So. Martin Luther King
3	Or Designee	Blvd., LV, NV
4	CUSTODIAN OF RECORDS	LVMPD, Communications, 400 So. Martin Luther
5	Or Designee	King Blvd., LV, NV
6	CUSTODIAN OF RECORDS	CCDC, Records, 330 So. Casino Center Blvd.,
7	Or Designee	LV, NV
8	CUSTODIAN OF RECORDS	NV DMV, 555 Wright Way, Carson City, NV
9	Or Designee	
10	CUSTODIAN OF RECORDS	DAVE AND BUSTERS, Downtown Summerlin,
11	Or BARTENDER	LV, NV
12	CUSTODIAN OF RECORDS	THE MATADOR RESTAURANT, Downtown
13	Or BARTENDER	Summerlin, LV, NV
14	CUSTODIAN OF RECORDS	RAISING CANE'S RESTAURANT, Security
15	Or Designee	10050 W.Sahara, LV, NV
16	FIGUEROA, D.	LVMPD P#9693
17	GARDUNO, K.	MEDICAL DOCTOR/CCDC/NAPHCARE
18	GIALKETSIS, GEORGE	200 Satin Mist Court, LV, NV
19	GRIMMESEY, E.	LVMPD P#5316
20	GUERRERO, G.	LVMPD P#15290
21	HUCKE, FORREST	1200 Redwwod St, LV, NV
22	HURLY, MORGAN	c/o CCDA, 200 Lewis, Ave., LV, NV
23	MACALUSO, KEVIN	10209 Anniston Lane, LV, NV
24	MALONE, DAN	3432 Tuscany Village Dr., LV, NV
25	MCCAULEY, BRANDON	P.O. BOX 3177, SANTA CLARA, CA
26	MORALES, JEISEL	5387 Morris Street, LV, NV
27	PAINE, T.	LVMPD P#14793
28	PUENTE, CHRISTA	c/o CCDA, 200 Lewis, Ave., LV, NV

1	PUENTE, DAMASO	c/o CCDA, 200 Lewis, Ave., LV, NV
2	RUSSELL, D.	LVMPD P#7503
3	SALISBURY, K.	LVMPD P#8264
4	SONETTI, K.	LVMPD P#15905
5	SOTO, MAXIMO	11257 RAINBOW PEAK AVE., LV, NV
6	STAHELI, C.	LVMPD P#9705
7	THROCKMORTON, ARTHUR	3120 Clamdigger Lane, LV, NV
8	WARE, M.	LVMPD P#9684
9	WHITLEY, R.	LVMPD P#1617

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27 18F09022X/mlb/vcu
28 LVMPD EV#1805154422
(TK11)

Steven D. Grierson

1 CASE NO.: C-18-332496

2 DEPT. NO.: 13

3

4 IN THE JUSTICE COURT OF LAS VEGAS TOWNSHIP

5 COUNTY OF CLARK, STATE OF NEVADA

6 -ooo-

7 STATE OF NEVADA,)

8 Plaintiff,)

9 vs.)

10 HENRY APARICIO,)

11 Defendant.)

12

13

14 REPORTER'S TRANSCRIPT OF

15 PRELIMINARY HEARING

16 BEFORE THE HONORABLE SUZAN BAUCUM
17 JUSTICE OF THE PEACE

18 MONDAY, JUNE 4, 2018

19

20 APPEARANCES:

21

For the State: CHARLES MARTINOVSKY, ESQ.
Chief Deputy District Attorney

22

23 For the Defendant: DAMIAN SHEETS, ESQ. ✓

24

25 Reported by: Rose R. Morichetti, CCR No. 817

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RA 000010

1 LAS VEGAS, NEVADA; JUNE 4, 2018; 9:52 A.M.

2
3 -oOo-

4
5 THE COURT: State of Nevada versus
6 Henry Aparicio, 18F09022X. This is the time set for
7 preliminary hearing.

8 Is the State ready to proceed?

9 MR. MARTINOVSKY: Yes, Your Honor.

10 THE COURT: Is the defense ready to proceed?

11 MR. SHEETS: Yes, Your Honor.

12 We did receive a bunch of new Discovery on
13 Friday. So I reviewed much of it but I haven't
14 reviewed all of it. So at this point in time we are
15 making the decision to proceed forward in the interest
16 of expeditiousness. And my client is going to invoke
17 that right to proceed today.

18 THE COURT: All right.

19 Does the State or defense need to have any
20 items marked as exhibits this morning?

21 MR. MARTINOVSKY: I already marked them.

22 THE COURT: Okay.

23 MR. SHEETS: The defense does not, Your
24 Honor.

25 I'm going to ask to invoke the exclusionary

1 rule.

2 THE COURT: So at this time I'm going to ask
3 anyone that will be testifying today in this matter to
4 please step outside. Please do not discuss your
5 testimony with anyone. You will be called in one at a
6 time to testify.

7 And I also know that this is going to a very
8 difficult morning for many of you. I know that
9 emotions may run high, but I'm going to ask if at all
10 possible we can maintain the decorum of the courtroom.
11 If you need to step outside for any reason, please free
12 to do that at any time.

13 Again, we'll try to get through this as
14 quickly and expeditiously as possible. I'm sorry for
15 of your loss. But, again, if you need to step outside
16 you may come in and out. But we need to maintain the
17 proper courtroom decorum, okay? Thank you so much.

18 Mr. Martinovsky, would you please call your
19 first witness.

20 MR. MARTINOVSKY: Brandon McCauley.

21 THE COURT: I'm just going to ask the State
22 and the defense to look around the courtroom and just
23 make sure that we do not have any other witnesses that
24 have remained in the courtroom.

25 THE MARSHAL: Step up to the witness stand,

1 remain standing, raise your right hand, and face the
2 clerk.

3
4 Whereupon, after having been duly sworn,

5 BRANDON MCCAULEY,
6 did testify as follows:

7 THE CLERK: Put your hand down, please be
8 seated, and state and spell your name for the record.

9 THE WITNESS: Brandon McCauley,
10 B-r-a-n-d-o-n, M-c-C-a-u-l-e-y.

11 THE COURT: Please proceed, Mr. Martinovsky.

12
13 DIRECT EXAMINATION

14 BY MR. MARTINOVSKY:

15 Q. Mr. McCauley, what is your occupation?

16 A. I work at IT'SUGAR in Downtown Summerlin.

17 Q. Were you working there on May 15, 2018?

18 A. I don't know -- like do you mean working at
19 the time?

20 Q. No. On that day do you recall working in
21 Downtown Summerlin at IT'SUGAR on May 15th?

22 A. Not on the day of the incident.

23 Q. Do you recall where you were on May 15, 2018
24 at around 9:00?

25 A. Yes.

1 Q. Where were you?

2 A. I was at Downtown Summerlin.

3 Q. And what were you doing there?

4 A. I was just shopping.

5 Q. Okay. And what time you did leave?

6 A. I left at around 8:30.

7 Q. Where were you going after that?

8 A. I was going home.

9 Q. What route did you take?

10 A. I took the route towards Hualapai and Sahara
11 from Downtown Summerlin.

12 Q. Were you driving on Sahara?

13 A. Yes.

14 Q. What direction were you heading?

15 A. Towards -- towards Decatur.

16 Q. Were you going towards Hualapai on Sahara
17 from Downtown Summerlin?

18 A. Yes.

19 Q. Is that in Clark County?

20 A. Yes.

21 Q. What did you observe, if anything, as you
22 were driving home on Sahara that evening?

23 A. As I was driving home around that time, I was
24 preparing to stop for a red light on Hualapai and
25 Sahara. And I was preparing to stop for the red light,

1 the suspect sped past me at an approximate speed of
 2 70-80 miles an hour.
 3 MR. SHEETS: I'm going to object as to
 4 foundation.
 5 THE COURT: Mr. Martinovsky?
 6 BY MR. MARTINOVSKY:
 7 Q. Do you know how fast you were driving?
 8 A. I was driving at around 45 miles an hour.
 9 Q. Okay. And were you preparing to stop at the
 10 red light?
 11 A. Yes, I was.
 12 Q. Are you positive that the red light at
 13 Hualapai and Sahara was red?
 14 A. Yes, I am.
 15 Q. Did you have the opportunity to observe how
 16 fast the vehicle passed you?
 17 A. After the vehicle passed me, yes, I did.
 18 Q. All right. And how fast was it going?
 19 MR. SHEETS: Objection. Foundation.
 20 BY MR. MARTINOVSKY:
 21 Q. Did you observe the vehicle pass you?
 22 A. Yes, I did.
 23 Q. And did you observe how fast you were going?
 24 MR. SHEETS: Objection. Leading.
 25

11

1 MR. SHEETS: Objection. Foundation as to the
 2 term speeding.
 3 BY MR. MARTINOVSKY:
 4 Q. Was it going faster than you?
 5 A. Yes.
 6 Q. And you were going the speed limit?
 7 A. Yes.
 8 MR. SHEETS: Objection. Foundation as to the
 9 speed limit.
 10 MR. MARTINOVSKY: He already said it was 45.
 11 MR. SHEETS: He said he was going 45. He
 12 didn't say the speed limit was 45.
 13 BY MR. MARTINOVSKY:
 14 Q. What's the speed limit on Sahara?
 15 A. 45 miles an hour.
 16 Q. All right. So what did the red car do at the
 17 light?
 18 A. The red car did not prepare to stop for the
 19 light. It just kept going the same speed it was going
 20 as it passed me.
 21 Q. And then what happened?
 22 A. The collision occurred, and the white car
 23 spun out into middle of the intersection.
 24 Q. Okay. What did the red car do after it hit
 25 the white car?

1 BY MR. MARTINOVSKY:
 2 Q. Have you ever driven 75 miles an hour?
 3 A. No.
 4 Q. You've never driven 75 miles an hour?
 5 MR. SHEETS: Objection. Asked and answered.
 6 THE COURT: Okay.
 7 So, Mr. Martinovsky, ask a different
 8 question. Move on.
 9 MR. MARTINOVSKY: Okay.
 10 BY MR. MARTINOVSKY:
 11 Q. After the vehicle passed you, then what
 12 happened?
 13 A. After the vehicle passed me, he got in front
 14 of me and he crashed into the back of the car, the
 15 victims --
 16 MR. SHEETS: Objection. Foundation as to the
 17 term he.
 18 BY MR. MARTINOVSKY:
 19 Q. Okay. What was the color of the vehicle
 20 which passed you?
 21 A. Red.
 22 Q. Okay. What did that vehicle do after it
 23 passed you?
 24 A. It kept speeding and it didn't prepare to
 25 stop for the red light.

12

1 A. The red car also spun out to the side of the
 2 intersection (indicating throughout).
 3 Q. What did you do after you observed the
 4 collision?
 5 A. After my initial shock, I parked on the
 6 shoulder of the road, and I got out of the car and
 7 checked to see if everything was okay.
 8 Q. Okay. And what car did you go to first?
 9 A. I went to the red car first.
 10 Q. What did you observe when you went to the red
 11 car?
 12 A. I observed a group of civilians apprehending
 13 the suspect.
 14 MR. SHEETS: Objection, Your Honor.
 15 Foundation.
 16 BY MR. MARTINOVSKY:
 17 Q. Without saying suspect, when you say you saw
 18 a group of individuals just describe what they were
 19 doing.
 20 A. They were holding him down over his car.
 21 MR. SHEETS: Objection. Foundation as to his
 22 car.
 23 MR. MARTINOVSKY: Okay.
 24 BY MR. MARTINOVSKY:
 25 Q. Were they holding him down near the red car?

1 A. Yes.
 2 Q. All right. Do you see the person that they
 3 were holding down, the people were holding down, here
 4 in court today?
 5 A. I do not see people who were holding him
 6 down, but I see the person they were holding down.
 7 Q. Can you point to that person and describe
 8 where they're sitting.
 9 A. They're sitting right next to the man with
 10 the blue shirt right there (indicating).
 11 MR. MARTINOVSKY: Could the record reflect
 12 the witness has identified the defendant?
 13 THE COURT: So reflected.
 14 BY MR. MARTINOVSKY:
 15 Q. How much time passed after the collision to
 16 the time you went over to the red car and observed the
 17 group of people?
 18 A. Please rephrase the question.
 19 Q. How much time passed after you saw the
 20 collision and did the U-turn and went over to the red
 21 car?
 22 A. About ten minutes.
 23 Q. Ten minutes?
 24 THE COURT: So, Mr. McCauley, the court
 25 reporter takes down absolutely everything that you say.

1 Q. And did you do anything else other than park
 2 on the shoulder?
 3 A. I got out of my car and I approached the red
 4 car.
 5 Q. And that took ten minutes?
 6 A. Yes.
 7 Q. Okay. I'm going to show you some
 8 photographs. Showing you what's been marked for
 9 identification as State's Proposed Exhibit No. 13. Do
 10 you recognize the vehicle depicted in that photo?
 11 A. Yes, I do.
 12 Q. And does that truly and accurately reflect
 13 the red vehicle you saw that night?
 14 A. Yes.
 15 Q. Okay. Showing what's been marked for
 16 identification as State's Exhibit No. 15. Do you
 17 recognize what's depicted in that photograph?
 18 A. Yes, I do.
 19 Q. Does that accurately and truly depict the way
 20 that the white vehicle looked on that date and time?
 21 A. Yes, it does.
 22 MR. MARTINOVSKY: At this time, Your Honor,
 23 I'd like to move into evidence State's Proposed
 24 Exhibits 13 and 15?
 25 MR. SHEETS: May I voir dire the witness,

1 When you nod your head, she can't take that down
 2 because she can't hear that. You need to be verbal in
 3 everything you say.
 4 THE WITNESS: I apologize.
 5 THE COURT: No problem.
 6 BY MR. MARTINOVSKY:
 7 Q. Did you have any contact with the other
 8 vehicle?
 9 A. No, I did not.
 10 Q. How long were you there at the scene?
 11 A. Three hours.
 12 Q. Did you see anyone else near the red car
 13 other than the group of people you described?
 14 A. No, I did not.
 15 Q. How long did you spend looking at the red
 16 car?
 17 A. I spent five minutes looking at the red car.
 18 Q. Did you call 911?
 19 A. No, I did not.
 20 Q. After you observed the collision what did you
 21 do before you went over to the red car?
 22 A. I parked on the shoulder of the road.
 23 Q. Did you make any phone calls before you went
 24 over to the red car?
 25 A. No, I did not.

1 Your Honor?
 2 THE COURT: Yes, of course.
 3
 4 VOIR DIRE EXAMINATION
 5 BY MR. SHEETS:
 6 Q. You weren't actually physically present when
 7 these photographs were taken, were you?
 8 A. Yes, I was.
 9 Q. So you actually saw them taking that very
 10 photograph at that very same time with regards to
 11 exhibit, Proposed 13?
 12 A. Yes. I saw the person taking the
 13 photographs, taking those photos.
 14 Q. And you saw that with 15 as well?
 15 A. I did see that.
 16 MR. SHEETS: No objection for prelim.
 17 THE COURT: Okay.
 18 Was it 13, 14, and 15 or --
 19 MR. MARTINOVSKY: Just 13 and 15.
 20 THE COURT: 13 and 15 will be admitted today.
 21 (Whereupon, State's Exhibits 13 and
 22 15 were admitted into evidence.)
 23 MR. MARTINOVSKY: No further questions from
 24 the State.
 25 THE COURT: Thank you.

1 Mr. Sheets, Cross?

3 CROSS-EXAMINATION

4 BY MR. SHEETS:

5 Q. You've never taking any formal training in
6 speed determination or accident reconstruction; is that
7 correct?

8 A. No, I haven't.

9 Q. Okay. And you haven't received any classroom
10 or formal training in determining the speed of a
11 vehicle moving while you're moving; isn't that correct?

12 MR. MARTINOVSKY: I'm going to object as to
13 relevance.

14 THE COURT: Mr. Sheets?

15 MR. SHEETS: He made testimony regarding the
16 speed of the vehicle. I think I'm entitled to
17 re-address that.

18 MR. MARTINOVSKY: Except that he was admitted
19 as a lay witness under NRS 50.265. And pursuant to
20 Patton versus Henrikson, 79 Nevada 197, a lay witness
21 can testify about the speed. In that particular case a
22 15-year old boy was allowed to testify about the speed
23 of the vehicle.

24 MR. SHEETS: In response, the defense was
25 also allowed to cross-examine regarding the basis for

1 that lay opinion or the lack of a basis for that lay
2 opinion.

3 THE COURT: I'll allow it.

4 BY MR. SHEETS:

5 Q. You don't have any formalized training
6 regarding determining the speed of a vehicle that's
7 moving next to yours; isn't that correct?

8 A. No, I do not.

9 Q. When you said you pulled over your vehicle
10 onto the shoulder over the road, which road were you
11 referring to?

12 A. Sahara.

13 Q. Okay. And which direction you were facing?

14 A. I was facing away from the -- facing away
15 from the crash towards Sahara (indicating).

16 Q. So you were parked on Sahara or you were
17 facing Sahara, sir?

18 A. I was facing Sahara, parked on the shoulder
19 next to the red car.

20 Q. Okay. So was your vehicle parked on the
21 Sahara shoulder or the other Intersection?

22 A. I was parked on the Sahara shoulder.

23 Q. Facing Sahara?

24 A. I believe so.

25 Q. Are you familiar which direction Sahara goes

1 as a street?

2 A. No, I am not.

3 Q. Okay. Are familiar which direction is east?

4 A. Eastbound?

5 Q. Correct.

6 A. Yes, I am.

7 Q. Okay. And are you familiar with which
8 direction is westbound?

9 A. Yes.

10 Q. And forgive me. I'm just trying to kind of
11 figure out where you're at so we can all kind of have a
12 clear image.

13 Would it be fair to say that if you're facing
14 westbound on Sahara and you're looking westbound you're
15 looking towards the approximate area of Red Rock.
16 Would that be correct?

17 A. Yes. But I was looking eastbound.

18 Q. Okay. And so you were looking eastbound.
19 And were you looking eastbound east of the Intersection
20 or west of the Intersection?

21 A. I was looking eastbound east of the
22 Intersection.

23 Q. Okay. So it would be fair to say that when
24 you pulled over on the shoulder the accident was behind
25 you?

1 A. Yes.

2 Q. Okay. And for that ten-minute period you
3 said you were parked on the shoulder; is that correct?

4 A. Yes.

5 Q. Okay. And what were you doing for that ten
6 minutes?

7 A. I was in my car.

8 Q. Were you doing else anything in your car,
9 drinking water, making a phone call, playing with the
10 radio?

11 A. May I please clarify something?

12 Q. Sure, if you don't understand the question,
13 absolutely.

14 A. During those ten minutes I meant as I was
15 pulling up safely to the accident to check on the
16 people. So as I was pulling up to the shoulder of the
17 accident it was within those ten minutes.

18 Q. Okay. So did you actually see the accident?

19 A. Yes. It happened right in front of me.

20 Q. Okay. And so I don't think I asked you --
21 I'm just trying to follow your timeline here. It took
22 you ten minutes to pull over, or you pulled over and
23 then it took you ten minutes to get to the car?

24 A. It took me ten minutes to pull over because I
25 needed to make a U-turn in order to safely get across

1 the street to the scene of the accident.
 2 Q. Okay. So you drove past it and you turned
 3 around and came back; is that correct?
 4 A. Yes.
 5 Q. Okay. So did you drive -- how many minutes
 6 would you say you drove after the accident occurred?
 7 A. After the accident occurred I was driving
 8 around four minutes including the wait time for the
 9 light to turn green after I made my U-turn.
 10 Q. And that's when you made a U-turn?
 11 A. Yes.
 12 Q. And then it took you about four minutes to
 13 get back?
 14 A. Yes.
 15 Q. Okay. That makes sense.
 16 A. So that resulted in the ten minutes.
 17 Q. Okay. And when you that car drove past you,
 18 you didn't see who was behind the wheel of that car --
 19 and I'm referring to the red car -- isn't that correct?
 20 A. That is correct.
 21 Q. And you didn't see who was operating that
 22 vehicle?
 23 A. That's correct.
 24 Q. Okay. And when you returned you didn't see
 25 anybody behind the wheel of that vehicle; isn't that

1 looked out of it. And he was being apprehended over
 2 the red car, so I just assumed that he was the driver.
 3 Q. Okay. So you made the assumption but you
 4 don't know?
 5 A. Yes.
 6 Q. Okay. And you said that he looked out of it,
 7 correct?
 8 A. Yes.
 9 Q. And you said the vehicle had been involved in
 10 a collision, a front end collision, that had this kind
 11 impact; isn't that correct?
 12 A. Yes.
 13 Q. So you're not sure if he was intoxicated or
 14 that it could have been the result of the car accident;
 15 isn't that correct?
 16 A. Yes.
 17 Q. Okay. Sir, you have no knowledge as to
 18 whether or not my client was actually intoxicated;
 19 isn't that correct?
 20 A. That's correct.
 21 MR. SHEETS: No further questions.
 22 MR. MARTINOVSKY: Nothing else, Your Honor.
 23 THE COURT: Thank you very much for time your
 24 today.
 25 THE WITNESS: Thank you. Have a nice day.

1 correct?
 2 A. That's correct.
 3 Q. Okay. Now, you used the term suspect -- and
 4 you testified a little bit earlier that you were
 5 present physically pictures being taken; isn't that
 6 correct?
 7 A. Yes.
 8 Q. Now, to your knowledge was that picture taken
 9 by a police officer or a firefighter?
 10 A. It looked like it was taken by an
 11 investigator at the scene.
 12 Q. Did that investigator have any insignia that
 13 represented they were part of any kind of department?
 14 A. I could not see that.
 15 Q. Okay. Now, when you were on the scene you
 16 were questioned by an officer; isn't that correct?
 17 A. Yes, I was.
 18 Q. Okay. And at some point you were told who
 19 the suspect was; isn't that correct?
 20 A. No, I was not.
 21 Q. Okay. Then I got to ask: How do you come up
 22 with the term suspect?
 23 A. Because I -- well, initially after I saw the
 24 accident, like when the civilians were apprehending the
 25 guy next to you, he looked intoxicated. He just

1 THE MARSHAL: Step to the up witness stand,
 2 remain standing, raise your right hand, and face the
 3 clerk.
 4
 5 Whereupon, after having been duly sworn,
 6 KEITH RICHARD SONETTI, LVMPD
 7 did testify as follows:
 8 THE CLERK: Put you hand down, please be
 9 seated and state, and spell your name for the record.
 10 THE WITNESS: My name is Keith Richard
 11 Sonetti. It's K-e-i-t-h, R-i-c-h-a-r-d, S-o-n-e-t-t-i.
 12 THE COURT: Please proceed, Mr. Martinovsky.
 13
 14 DIRECT EXAMINATION
 15 BY MR. MARTINOVSKY:
 16 Q. Who is your occupation?
 17 A. I'm employed with the Las Vegas Metropolitan
 18 Police Department. I'm a police officer.
 19 Q. How long have you been employed with Metro?
 20 A. A little over two years.
 21 Q. Were you on duty on May 15th at 9:00 in the
 22 evening?
 23 A. Yes, sir.
 24 Q. Where were you doing?
 25 A. I was actually being dispatched to a domestic

1 violence call. En route to that call, I came across
2 this accident and disregarded that call and assigned
3 myself to this call.

4 Q. What was the location of the accident?

5 A. I believe it was Hualapal and Sahara.

6 Q. Is that in Clark County?

7 A. I believe so, sir.

8 Q. What did you observe when you got there?

9 A. When I first arrived on scene I saw a white
10 Prius. F.D. was on the scene. They were actually
11 taking care of that car. I saw everyone kind of
12 crowded around the vehicle.

13 As I started to approach to go help provide
14 aid, I had a gentleman that I guess was on scene, one
15 of the passerbys (sic), told me, hey, man --

16 MR. SHEETS: Objection as to hearsay.

17 THE COURT: So you just want to try and talk
18 about what you saw, not what somebody else said or
19 anything like that. Okay?

20 THE WITNESS: Yes.

21 So I arrived on scene --

22 BY MR. MARTINOVSKY:

23 Q. How many vehicles did you see at the scene of
24 the accident?

25 A. Two.

1 dash in the lower on the lower part of the seat, excuse
2 me, of the floorboard. She had her back towards me and
3 she was hunched over to her left.

4 There was a gentleman that was providing aid
5 to her as well. I told him to just relax. The first
6 thing I did was I went to see if she was breathing.
7 She was unconscious but was breathing. She could not
8 answer any questions. I immediately summoned medical
9 to get there to take care of her but they had arrived
10 on scene. They grabbed a C-collar, they got her out,
11 and they rushed her to her hospital.

12 Q. Were there other people around the vehicle
13 besides the individual that was helping the girl in the
14 passenger seat?

15 A. Yes, sir. There was quite a few people. I'd
16 say probably about 15 people, 20 people.

17 Q. Where were those people in relation to --

18 A. They were all to the sidewalk. You see that
19 picture (indicating), they'd be right there on the
20 sidewalk to the left gathering around.

21 Q. Was anyone else in the red vehicle other than
22 the female in the front passenger seat?

23 A. No, sir. I didn't see anyone else inside the
24 vehicle other than her on the floorboard of the
25 passenger seat.

1 Q. What color were the two vehicles?

2 A. A white Prius I believe. And I believe it
3 was either a red or black Mercedes. I want to say red,
4 but I'm not 100 percent sure.

5 Q. Let me show you what's been admitted as
6 State's Exhibit Nos. 13 and 15. Do you recognize the
7 vehicles depicted in State's Exhibit No. 13?

8 A. Yes, sir.

9 Q. Is that one of the vehicles that was involved
10 in the collision?

11 A. Yes, sir.

12 Q. And I'm showing you what's been admitted as
13 State's Exhibit No. 15. Is that the other vehicle?

14 A. Yes, sir.

15 Q. Okay. Initially, did you go over to the
16 white vehicle?

17 A. I made my way to the white vehicle and then
18 was pulled to the direction of the red vehicle.

19 Q. Did you go over to the red vehicle?

20 A. I did, sir.

21 Q. What did you observe when you got to the red
22 vehicle?

23 A. When I arrived at the red vehicle I observed
24 a white female. She was sitting hunched over -- she
25 was on the passenger side in between the seat and the

1 Q. After you made that initial contact with the
2 passenger, then what did you do?

3 A. I observed this gentleman (indicating). He
4 was --

5 Q. I'm going to stop you right there. You said
6 this gentleman. Who are you talking about?

7 A. This gentleman right here (indicating).

8 Q. Can you describe where he's sitting and what
9 he's wearing.

10 A. I believe he was in like a nice dress shirt
11 from what I recall. I couldn't really tell because he
12 was kind of slumped over. He was crying. He was
13 upset.

14 I then turned my attention to him, asked him
15 if he needed any aid, anything I could do, what's going
16 on. He was like I don't need your help. Can you
17 please just save her and just take care of her. Just
18 save her.

19 And that's when I started asking him
20 questions about the night and what happened.

21 Q. Okay. So where was this individual you were
22 describing sitting in relation to the red vehicle?

23 A. He was back side, passenger side, right up
24 there at the wheel. So he was sitting down up on the
25 curb with his back towards the vehicle right along

1 where the back tire would be.
 2 Q. Was there anyone else around him?
 3 A. There was a woman that was around him that
 4 was kind of like massaging him. And I asked her, I
 5 said, are you family? Do you know him? She said no.
 6 Then I need you to just step away. You need to stop
 7 touching him. I need to talk to him.
 8 And that's when she stepped away. She was
 9 just one of the I guess bystanders that was around and
 10 was providing aid to him.
 11 Q. Do you see that person that you saw who was
 12 crying on the curb saying go save her, do you see that
 13 person here in court today?
 14 A. Yes, sir.
 15 Q. Could you point him out -- that person out
 16 and describe where he's sitting.
 17 A. This gentleman sitting next to his attorney
 18 in the blue shirt (indicating).
 19 MR. MARTINOVSKY: Can the record reflect that
 20 the witness identified the defendant?
 21 THE COURT: So reflected.
 22 BY MR. MARTINOVSKY:
 23 Q. How long did you stay at the scene?
 24 A. I was there the whole time. I was there all
 25 night until probably about 12:30 to be relieved from

1 you found in the car, you said she found in between the
 2 dash board and where?
 3 A. In the seat, the passenger seat. She was on
 4 the floorboard.
 5 Q. She was on the floorboard, okay. And you
 6 said she had her back towards you. Where were you?
 7 A. I was actually rushing -- the initial things
 8 I got was that she was stuck inside the vehicle. So
 9 her back was facing me as the door was already open.
 10 Q. Okay.
 11 MR. SHEETS: If I may approach, Your Honor?
 12 THE COURT: Yes.
 13 BY MR. SHEETS:
 14 Q. Just so that I'm clear. I'm showing you 13.
 15 Can you point to where you were and maybe just put an X
 16 there.
 17 MR. SHEETS: If Your Honor is okay with that?
 18 THE COURT: That's fine.
 19 THE WITNESS: Yeah. The door was already
 20 open. There was a gentleman here (indicating
 21 throughout). I came right here and saw her on the
 22 floorboard.
 23 BY MR. SHEETS:
 24 Q. And so when she had her back to you, that was
 25 as you were looking in the passenger door or you were

1 graveyard. So quite a bit of time.
 2 Q. So after that initial contact with the
 3 defendant there on the scene, did you have any other
 4 subsequent contact with him?
 5 A. No, sir. Once I initially got with him and I
 6 got medical there to provide him aid as well, once AMR
 7 took him, that was the only contact I had with him.
 8 Q. All right. Thank you.
 9 MR. MARTINOVSKY: No further questions.
 10 THE COURT: Mr. Sheets, Cross?
 11 MR. SHEETS: Yes.
 12

CROSS-EXAMINATION

13
 14 BY MR. SHEETS:
 15 Q. So were you the first officer to arrive on
 16 the scene?
 17 A. Yes, sir.
 18 Q. But Fire had arrived first; is that right?
 19 A. Fire arrived had first on the Toyota, yes,
 20 sir, on the Prius.
 21 Q. Okay. But Fire had not yet been handling the
 22 red car; isn't that correct?
 23 A. Correct.
 24 Q. Okay. So I just want to clarify because I
 25 want to make sure I get it right. So this female that

1 looking towards the passenger door that was open --
 2 A. Yeah.
 3 Q. -- is that correct? Okay.
 4 A. The door was already open as I walked up.
 5 Q. Now, you said that my client was sitting on
 6 the curb. Can you put an O where my client was sitting
 7 on this picture.
 8 A. Right in this general area.
 9 Q. Okay. So it would be fair to say that it's
 10 next to the passenger side tire of the vehicle,
 11 correct?
 12 -A. Correct.
 13 THE COURT: Mr. Sheets, which exhibit is he
 14 marking on?
 15 MR. SHEETS: 13, Your Honor.
 16 THE COURT: Thank you very much.
 17 BY MR. SHEETS:
 18 Q. And you said you asked my client questions;
 19 isn't that correct?
 20 A. Yes, sir.
 21 Q. My client never said that he was driving that
 22 vehicle; isn't that correct?
 23 A. No, sir.
 24 MR. MARTINOVSKY: Objection. Hearsay.
 25 MR. SHEETS: It's not hearsay because I'm not

1 asking for a statement.
 2 MR. MARTINOVSKY: Yeah. But the defendant's
 3 statement, whether he made one or not, is not
 4 admissible by the defense.
 5 MR. SHEETS: A statement -- can you show me
 6 the case law? There's no case law that supports the
 7 proposition that something not stated by the defendant
 8 is not admissible.
 9 MR. MARTINOVSKY: He's basically asking for
 10 hearsay.
 11 MR. SHEETS: Hearsay concerns statements
 12 only.
 13 MR. MARTINOVSKY: He's trying to get out the
 14 fact that his client -- statements that his client
 15 made. And it's hearsay.
 16 MR. SHEETS: I didn't ask him if he asked my
 17 client questions and what my client's answer was. I
 18 asked him if my client had admitted to driving the
 19 vehicle.
 20 MR. MARTINOVSKY: Which is basically asking
 21 about the defendant's statement, which is not
 22 admissible.
 23 THE COURT: I'm going to sustain the
 24 objection.
 25

1 MR. MARTINOVSKY: The next witness is
 2 Jaisel Morales.
 3 THE COURT: How many witnesses is the State
 4 calling today?
 5 MR. MARTINOVSKY: Possibly ten, but a lot of
 6 them are not very long.
 7 THE MARSHAL: Step up to the witness stand,
 8 remain standing, raise your right hand, and face the
 9 clerk.
 10
 11 Whereupon, after having been duly sworn,
 12 JEISEL ANTONIO MORALES,
 13 did testify as follows:
 14 THE CLERK: Put your hand down, please be
 15 seated, and state and spell your name for the record.
 16 THE WITNESS: Jaisel Morales. J-e-i-s-e-l --
 17 THE COURT: Can you please slow down.
 18 THE WITNESS: J-e-i-s-e-l.
 19 THE COURT: Thank you.
 20 THE WITNESS: Antonio, A-n-t-o-n-i-o.
 21 Morales with an s. M-o-r-a-l-e-s.
 22 THE COURT: Okay.
 23 Please proceed, Mr. Martinovsky.
 24
 25 /////

1 BY MR. SHEETS:
 2 Q. Officer, during your investigation you were
 3 unavailable to locate any witnesses that said my client
 4 was driving the vehicle; Isn't that correct?
 5 MR. MARTINOVSKY: Objection. Hearsay.
 6 MR. SHEETS: I'm not asking for a specific
 7 statement.
 8 MR. MARTINOVSKY: Your Honor, he's asking if
 9 this witness talked to other witnesses who said that he
 10 was not the driver. That is hearsay.
 11 THE COURT: I have to agree with the State,
 12 Mr. Sheets. You'll have to rephrase your question.
 13 MR. SHEETS: All right.
 14 BY MR. SHEETS:
 15 Q. Officer, you have no personal knowledge of
 16 who was operating that motor vehicle; Isn't that
 17 correct?
 18 A. No, sir.
 19 Q. Is that incorrect or is that correct?
 20 A. That's correct, sir.
 21 MR. SHEETS: No further questions.
 22 THE COURT: Anything else, Mr. Martinovsky?
 23 MR. MARTINOVSKY: No, Your Honor.
 24 THE COURT: Thank you, Officer.
 25 THE WITNESS: Thank you.

1 DIRECT EXAMINATION
 2 BY MR. MARTINOVSKY:
 3 Q. Mr. Morales, what is your occupation?
 4 A. I'm an advanced EMT at MedicWest.
 5 Q. What kind of training do you have in order to
 6 have that occupation?
 7 A. I have a couple years of training, a couple
 8 years of experience.
 9 Q. Okay. What was your training? Did you take
 10 classes or did you go to school?
 11 A. I went to school. Classes and clinicals.
 12 Q. How long did you go school?
 13 A. About two years.
 14 Q. And what school did you go to?
 15 A. I went to CSN.
 16 Q. And how long have you actually been an
 17 advanced EMT?
 18 A. For about four years.
 19 Q. And what are your duties as an advanced EMT?
 20 A. I work the 911 system.
 21 Q. What does that mean?
 22 A. That means I work a critical care transport
 23 truck over at MedicWest. We do 911 calls as well as
 24 critical care transports from inner facilities.
 25 Q. Okay. So do you respond to scenes where

1 people have been injured?
 2 A. Yes.
 3 Q. Is your job to take care of those people that
 4 have been injured?
 5 A. Yes.
 6 Q. And they often times have traumatic injuries?
 7 A. Yes.
 8 Q. Have you seen dead people before?
 9 A. Yes.
 10 Q. All right. Where were you on May 15, 2018 at
 11 around 9:00 o'clock in the evening?
 12 A. I was driving -- I was going to go out to
 13 dinner. I was driving southbound on Hualapal near
 14 Sahara.
 15 Q. Okay. And did you observe anything at that
 16 time?
 17 A. Yes. I observed a car accident, white versus
 18 red car.
 19 Q. Did the accident happen in front of you?
 20 A. Yes.
 21 Q. Showing you what's already been admitted as
 22 State's Exhibit No. 15. Does that accurately reflect
 23 the white car that was involved in the collision?
 24 A. Yes.
 25 Q. And I'm also showing you what's been marked

1 Does that accurately reflect how the passenger of the
 2 vehicle looked --
 3 A. Yes.
 4 Q. -- at the time? And were they both deceased?
 5 A. Yes.
 6 Q. All right.
 7 MR. MARTINOVSKY: No further questions.
 8 THE COURT: Mr. Sheets?
 9
 10 CROSS-EXAMINATION
 11 BY MR. SHEETS:
 12 Q. So when you got there, sir, you said you
 13 immediately tended to the white car; is that correct?
 14 A. Yes.
 15 Q. Okay.
 16 MR. SHEETS: Court's indulgence.
 17 BY MR. SHEETS:
 18 Q. Is it fair to say that your attention was
 19 really solely focused on that white car; isn't that
 20 correct?
 21 A. Yes.
 22 Q. Okay. So you didn't actually see who was
 23 behind the wheel of that red car prior to the
 24 collision; isn't that correct?
 25 A. Like I said, it initially --

1 as State's Exhibit No. 13. Is that the red car that
 2 was involved?
 3 A. Yes.
 4 Q. After the collision, what did you do?
 5 A. After the collision, I went to the white car
 6 as I seen the passenger from the red car was ambulatory
 7 on scene. The passengers from the white car were not
 8 ambulatory on the scene. Both passengers in the white
 9 car -- the male had no pulse initially. The female had
 10 a pulse for a couple minutes.
 11 I attempted to extricate the patients from
 12 the white car. It was nearly impossible without heavy
 13 machinery. After a couple of minutes of trying, the
 14 male was pulled out of the vehicle and chest
 15 compressions were began for about a minute or so. Then
 16 I transferred care to the fire department on scene.
 17 Q. Showing you what's been marked for
 18 Identification as State's Proposed Exhibit No. 10.
 19 Does this show how one of the passengers looked in the
 20 white car?
 21 A. Yes.
 22 Q. And was that person the driver?
 23 A. Yes.
 24 Q. I'm showing you also what's been marked for
 25 Identification as State's Proposed Exhibit No. 11.

1 Q. Isn't that correct?
 2 A. Yes.
 3 MR. SHEETS: No further questions.
 4 THE COURT: Mr. Martinovsky?
 5 MR. MARTINOVSKY: No, your Honor.
 6 THE COURT: Thank you very much for being
 7 here today. I appreciate it.
 8 MR. MARTINOVSKY: Next witness is
 9 Katlynn Garduno.
 10 THE MARSHAL: Step up to the witness stand,
 11 remain standing, raise your right hand, and face the
 12 clerk --
 13 MR. MARTINOVSKY: I asked for Garduno.
 14 Katlynn.
 15 THE MARSHAL: Are you Katlynn?
 16 THE WITNESS: Khadija.
 17 THE MARSHAL: Oh, sorry.
 18 MR. MARTINOVSKY: We have a different witness
 19 to call.
 20 THE MARSHAL: Step up to the witness stand,
 21 remain standing, raise your right hand, and face the
 22 clerk.
 23 Whereupon, after having been duly sworn,
 24 KATLYNN GARDUNO,
 25 did testify as follows:

1 THE CLERK: Put your hand down, please be
 2 seated, and state and spell your name for the record.
 3 THE WITNESS: My name is Katlynn Garduno.
 4 K-a-t-l-y-n-n, G-a-r-d-u-n-o.
 5 THE COURT: Please proceed.
 6
 7 DIRECT EXAMINATION
 8 BY MR. MARTINOVSKY:
 9 Q. Was is your occupation?
 10 A. I'm an AEMT.
 11 Q. And what is an AEMT?
 12 A. It's an advanced emergency medical
 13 technician.
 14 Q. Did you receive any training in order to have
 15 that occupation?
 16 A. Yes, sir.
 17 Q. What was your training?
 18 A. I had to go through the basic course first.
 19 So I had six months of EMT training, and then I had
 20 another four months of AEMT training many years ago.
 21 Q. Does one of your duties include drawing
 22 blood?
 23 A. Yes, sir.
 24 Q. And where you do normally work?
 25 A. I work at the Clark County Detention Center.

1 that I can attach the tube in the vacutainer.
 2 I withdraw blood into the tube. I attach the
 3 vacutainer to the needle, and then I stick the person
 4 with the needle in the vein that I had chosen. And
 5 then I attach the tube to the vacutainer to draw out
 6 the blood.
 7 Q. Normally, where did you get the devices
 8 you've been talking about, like the tubes etc.?
 9 A. The tube, the needle, all that stuff, all
 10 that comes from the DUI kit that the officer will give
 11 me, in the box. The vacutainer is the medical supplies
 12 that come from my company.
 13 Q. And after you draw the blood, what do you
 14 normally do with it?
 15 A. I give it right back to the officer after I
 16 initial the tubes.
 17 Q. Okay. And do you also have to complete some
 18 paperwork?
 19 A. I do, sir.
 20 Q. All right. Now, you must do a lot of blood
 21 draws down at the jail?
 22 A. Yes, sir.
 23 Q. And do you have any specific memory of
 24 conducting the blood draw on this defendant?
 25 A. I do, sir.

1 Q. Okay. Do have a license in order --
 2 A. I do.
 3 Q. Okay. When you draw someone's blood, do you
 4 have a standard protocol that you follow?
 5 A. I do, sir.
 6 Q. And what is that protocol?
 7 A. You're asking how I do it?
 8 Q. Yes.
 9 A. Okay. The first thing is I always ask is if
 10 they're allergic to anything because we use iodine in
 11 terms of we can't use alcohol. So I ask if they are
 12 allergic to anything. If they are not allergic to
 13 anything, I make sure I clean wherever I want to draw
 14 the blood.
 15 Usually it would be right here (indicating),
 16 what we call the AC, right here in the arm pit -- well,
 17 the elbow area.
 18 Then I will clean the area in a circular
 19 motion, and then I would wipe it off with what I call a
 20 4 by 4. It's medical gauze. I wipe it off so that
 21 it's clean.
 22 Then I have a tourniquet that I put on so
 23 that I can restrict the blood flow, not completely cut
 24 it off but restrict the blood flow. So I have that on.
 25 And I have a vacutainer that's attached to my needle so

1 Q. I'm showing you what's marked for
 2 identification as State's Proposes Exhibits No. 19 and
 3 20? Do you recognize these?
 4 A. I do, sir.
 5 Q. And how do you recognize these?
 6 A. They are the affidavits that I fill out for
 7 any DUI that I do, but that was the one I filled out
 8 for the defendant there.
 9 Q. Okay. And how do you know that you completed
 10 these forms?
 11 A. That is my handwriting.
 12 Q. Did you also sign it?
 13 A. I did.
 14 Q. And how do you know that it pertains to this
 15 defendant?
 16 A. Because of his name.
 17 Q. Okay. Did you also fill that name in there?
 18 A. I did.
 19 Q. Did you verify that all the information on
 20 these documents is correct?
 21 A. Yes, I did, sir.
 22 Q. And when you described that procedure of
 23 drawing blood, is that in a medically acceptable
 24 manner?
 25 A. Yes, sir.

1 MR. SHEETS: Objection, Your Honor.
 2 THE COURT: I'm sorry, Mr. Sheets?
 3 MR. SHEETS: Objection. Foundation.
 4 THE COURT: As to what?
 5 MR. SHEETS: As to whether it's in a
 6 medically accepted manner.
 7 MR. MARTINOVSKY: She's an AEMT. I laid out
 8 the groundwork, her education. That's what she does.
 9 She's got a license to draw blood. She knows what that
 10 is.
 11 THE COURT: Overruled.
 12 BY MR. MARTINOVSKY:
 13 Q. Okay. So what time was the first blood draw
 14 conducted on the defendant?
 15 A. The first blood draw was at 0147 in the
 16 morning.
 17 Q. And what time was the second one?
 18 A. 0247 in the morning.
 19 Q. All right. And who else was involved in the
 20 blood draw?
 21 A. Officer Ware was.
 22 Q. And after you took the blood kits, what did
 23 you do with them?
 24 A. Once I initialed the tubes, I handed them to
 25 Officer Ware.

1 A. Right there in the blue CCDC shirt
 2 (indicating).
 3 MR. MARTINOVSKY: Can the record reflect the
 4 witness has identified the defendant?
 5 THE COURT: So reflected.
 6 MR. MARTINOVSKY: I'll pass the witness.
 7 THE COURT: Cross, Mr. Sheets?
 8
 9 CROSS-EXAMINATION
 10 BY MR. SHEETS:
 11 Q. Ma'am, officers had brought -- when you saw
 12 my client he was in handcuffs, correct?
 13 A. Correct.
 14 Q. Okay. And this was a consensual or a
 15 nonconsensual blood draw?
 16 A. Well, we did not do -- the officers had
 17 gotten the warrant. I don't know if it was consensual
 18 or nonconsensual. I don't always get all those
 19 details, but I do know that there was a warrant
 20 received for it.
 21 Q. Okay. Was he strapped in the chair at all?
 22 A. No. He went into the regular blood draw
 23 chair.
 24 Q. Okay. And you heard -- officers brought him
 25 in and they said that he was drunk and caused the

1 Q. Okay. Now, do you normally talk to
 2 defendants or people you draw blood from about why
 3 you're drawing their blood?
 4 A. No. They might ask be what I'm doing, and I
 5 just tell them I'm drawing their blood. And if they
 6 ask why, I reference it to the officer.
 7 Q. Do you have specific memory of conducting
 8 this specific blood draw?
 9 A. I do.
 10 Q. And what is that?
 11 A. It was more of, for a lack of a better word,
 12 a higher type case. So those ones stick in my mind a
 13 little bit better. Plus because I did two I seem to
 14 remember those better because you are with them for
 15 more than one occurrence.
 16 I also did do his medical screen that day.
 17 So then because of that I then had more recollection of
 18 him.
 19 Q. Did the defendant make any statements to you
 20 about the collision?
 21 A. He didn't make it directly to me, but he did
 22 ask the officer if he had ran the red light or not.
 23 Q. Okay. And can you point to the person from
 24 whom you drew the blood as depicted in State's Proposed
 25 Exhibits 19 and 20?

1 deaths of people; isn't that correct?
 2 A. They suspected him of being drunk.
 3 Q. Okay. And did you hear the officer talking
 4 to him about anything that night?
 5 A. The only thing that I heard was that he had
 6 stated to the officer -- okay. I'm sorry. He'd state
 7 to the officer that he was not driving multiple
 8 different times and then turn around and ask the
 9 officer did I run the red light.
 10 That's the only conversation he really had
 11 that I can remember.
 12 Q. Okay. And you don't know what the officers
 13 had told him prior to taking him in, correct?
 14 A. No.
 15 Q. So you don't know if the officers had said,
 16 hey, you were driving the vehicle; isn't that right?
 17 A. I have no idea.
 18 Q. Okay. But you do know that the officers
 19 brought him in under the accusation of him driving the
 20 vehicle, correct?
 21 A. Correct.
 22 Q. All right. And you're an EMT, correct?
 23 A. Correct.
 24 Q. You received medical training in order to do
 25 that, correct?

1 A. Correct.
 2 Q. And EMT stands for emergency medical
 3 technician, correct?
 4 A. Correct.
 5 Q. So you're trained to handle instances where
 6 people are involved in car accidents and fights and
 7 injuries, correct?
 8 A. Correct.
 9 Q. And have you had a fair share of interactions
 10 with people involved in car accidents?
 11 A. Yes.
 12 Q. And would it be fair to say that being in a
 13 car accident can your impair memory; isn't that
 14 correct?
 15 A. It could. Yes.
 16 Q. Okay. So sometimes when that memory is
 17 impaired you may or may not rely on statements that
 18 other people are making; isn't that correct?
 19 A. That is a possibility. Yes.
 20 Q. Okay. Was this blood draw videotaped, do you
 21 know?
 22 A. Not to my knowledge. But I don't know for a
 23 fact.
 24 Q. Okay. And you don't know what the time of
 25 the accident was, do you?

1 THE MARSHAL: Step up to the witness stand,
 2 remain standing, raise your right hand, and face the
 3 clerk.
 4 THE CLERK: Put your hand down, please be
 5 seated, and state and spell your name for the record.
 6 THE WITNESS: Matthew Ware. Matthew,
 7 M-a-t-t-h-e-w. Ware, W-a-r-e.
 8 THE COURT: Please proceed.
 9
 10 DIRECT EXAMINATION
 11 BY MR. MARTINOVSKY:
 12 Q. What is your occupation?
 13 A. I'm a police officer with the Las Vegas
 14 Metropolitan Police Department.
 15 Q. How long have you been an officer with Metro?
 16 A. Eleven years.
 17 Q. Were you on duty on May 15, 2018 at around
 18 9:00 o'clock in the evening?
 19 A. Yes, I was.
 20 Q. Okay. And later on that evening -- well, did
 21 you get dispatched to the jail to conduct a blood draw?
 22 A. I did, yes.
 23 Q. Who was the defendant or the suspect you were
 24 sent to go get the blood draw from?
 25 A. Last name Aparicio -- I don't know if I'm

1 A. No, I do not.
 2 Q. So you indicated that this was a higher
 3 profile case; isn't that correct?
 4 A. Correct.
 5 Q. Had you been told by other officers that this
 6 was a higher profile case?
 7 A. No. I had been told already that he -- since
 8 they'd assumed that he was the driver that's what they
 9 were trying to prove, that he was the driver. And so
 10 he had been the one that killed the people in the
 11 accident. So I knew that that had already happened.
 12 They wanted to forewarn me of what.
 13 Q. And when you say they, who is that?
 14 A. The officers.
 15 Q. Okay. And was that one officer or more that
 16 one officer?
 17 A. It was two officers.
 18 Q. Okay. And they specifically told you that
 19 they were trying to prove that he was operating the
 20 vehicle, correct?
 21 A. Correct.
 22 MR. SHEETS: No further questions.
 23 MR. MARTINOVSKY: Nothing, Your Honor.
 24 THE COURT: Thanks for being here.
 25 MR. MARTINOVSKY: Officer Ware.

1 saying that correctly -- first name Henry.
 2 Q. Okay. And where did you contact him?
 3 A. I first contacted him at UMC trauma.
 4 Q. All right. And where was he when you
 5 contacted him?
 6 A. He was in a waiting room at UMC trauma.
 7 Q. Is he here in the courtroom?
 8 A. Yes, he is.
 9 Q. Could you point to where he's sitting and
 10 describe what he's wearing?
 11 A. He's sitting to my left at approximately
 12 11:00 o'clock. He's got black hair and wearing a navy
 13 blue shirt.
 14 MR. MARTINOVSKY: Could the record reflect
 15 the witness has identified the defendant?
 16 THE COURT: So reflected.
 17 BY MR. MARTINOVSKY:
 18 Q. Did you personally obtain the blood kit to
 19 conduct the blood draw?
 20 A. I did. Yes.
 21 Q. And was it sealed?
 22 A. Yes.
 23 Q. You opened it up?
 24 A. Yes, I did.
 25

1 Q. What did you do with the box?
 2 A. I gave it to the medic who drew the blood.
 3 Q. Do you know who that was?
 4 A. Yes, I do.
 5 Q. What's her name?
 6 A. Katlynn Garduno.
 7 Q. And she just left the courtroom?
 8 A. Correct.
 9 Q. All right. And how many blood draws did you
 10 conduct?
 11 A. Two.
 12 Q. Did you fill out any paperwork pursuant to
 13 the blood draw?
 14 A. I did. Yes.
 15 Q. Showing you what's been marked for
 16 identification as State's Proposed Exhibits 19 and 20.
 17 Do you recognize those documents?
 18 A. Yes, I do.
 19 Q. How do you recognize them?
 20 A. They have my name. And that is my badge
 21 number and also my signature on the bottom.
 22 Q. Are they true and accurate copies of the
 23 original?
 24 A. Yes.
 25 Q. Did you verify that the information on these

1 A. I did not. No.
 2 Q. Did another officer do that?
 3 A. That's correct.
 4 Q. And who was that?
 5 A. That's Officer Corey Staheli.
 6 Q. How much time did you spend with the
 7 defendant?
 8 A. Total, from the time at the hospital to two
 9 times at the jail, approximately four hours.
 10 Q. Did you transport him to the jail?
 11 A. I did not. I had another police officer with
 12 a car.
 13 Q. So did you do the blood draw and then you
 14 went to the jail?
 15 A. No. The blood was done at the Clark County
 16 Detention Center.
 17 Q. Okay. Then you drove him to the hospital?
 18 A. No. He was at the hospital first. And soon
 19 as he was cleared at the hospital, then we went to the
 20 detention center.
 21 Q. Did you read him any of the Miranda warnings?
 22 A. I did not, no.
 23 Q. Did you ask him any questions about what had
 24 occurred?
 25 A. I did not.

1 documents is correct?
 2 A. Yes.
 3 Q. How do you know that these documents pertain
 4 to this defendant in this case?
 5 A. They have his name on them at the very top of
 6 both pages.
 7 Q. And is that name in your handwriting?
 8 A. No. That's Katlynn Garduno's.
 9 Q. Did you verify that that information was
 10 correct before you signed it?
 11 A. Yes, I did.
 12 Q. All right.
 13 MR. MARTINOVSKY: At this time, Your Honor,
 14 I'd like to move into evidence State's Proposed
 15 Exhibits 19 and 20.
 16 MR. SHEETS: Court's Indulgence.
 17 No objection for the purposes of prelm.
 18 THE COURT: Okay.
 19 State's 19 and 20 will be admitted today
 20 purpose of the preliminary hearing.
 21 (Whereupon, State's Exhibits 19 and
 22 20 were admitted into evidence.)
 23 BY MR. MARTINOVSKY:
 24 Q. When you first contacted the defendant, did
 25 you conduct any field sobriety tests?

1 Q. Did he make any spontaneous statements about
 2 what happened?
 3 A. He did.
 4 Q. What did he say?
 5 A. He stated that I killed two people, kind of
 6 like it was a question. He kind of said it like he was
 7 asking a question.
 8 MR. MARTINOVSKY: All right. No further
 9 questions.
 10 THE COURT: Cross, Mr. Sheets?
 11
 12 CROSS-EXAMINATION
 13 BY MR. SHEETS:
 14 Q. Sir, he actually asked did I really kill two
 15 people; is that correct?
 16 A. I don't exactly remember the verbiage.
 17 Q. But you remember them as a question, correct?
 18 A. Correct.
 19 Q. It wasn't the statement I killed two people?
 20 A. As far as I can recall, yes.
 21 Q. Okay. So you don't know what was going
 22 through his mind. But what you do know is that it was
 23 a question, correct?
 24 A. Sounded like it to me, but I'm not a mind
 25 reader.

1 Q. And at this time you had already been told
2 that he was suspected of being the driver of that
3 vehicle, correct?
4 A. That's correct.
5 Q. And you don't know what any other officer
6 told him; isn't that correct?
7 A. Yes.
8 Q. And you were aware he had been in --
9 supposedly been in a vehicular accident; isn't that
10 correct?
11 A. Correct.
12 Q. Okay. And in fact he had been in a vehicular
13 accident that at least the officers took the position
14 he was in an accident that required him to go to the
15 hospital; isn't that correct?
16 A. Correct.
17 Q. Okay. And you've been an officer for eleven
18 years, correct?
19 A. Yes.
20 Q. And you've seen a lot of vehicular
21 collisions, correct?
22 A. Yes.
23 Q. You've seen head trauma, correct?
24 A. Yes.
25 Q. That's going to affect people's memory; isn't

1 that correct?
2 A. Possibly.
3 Q. Okay. So if somebody doesn't remember and is
4 told something happened, they might ask a question like
5 that; isn't that correct?
6 A. Could be.
7 Q. You don't actually know if my client was
8 driving the motor vehicle; isn't that correct?
9 A. I don't know.
10 Q. Okay. Because my client never actually
11 admitted to you he was driving the motor vehicle,
12 correct?
13 A. That's correct.
14 MR. SHEETS: No further questions.
15 MR. MARTINOVSKY: Nothing else, Your Honor.
16 THE COURT: Thank you, Officer.
17 THE WITNESS: Thank you.
18 THE COURT: Next witness is Officer Staheli.
19 THE MARSHAL: Step up to the witness stand,
20 remain standing, raise your right hand, and face the
21 clerk.
22 THE CLERK: Put your down, please be seated,
23 and state and spell your name for the record.
24 THE WITNESS: My name is Officer Corey
25 Staheli. C-o-r-e-y, S-t-a-h-e-l-i.

1 THE COURT: S-t-a- what?
2 THE WITNESS: S-t-a-h-e-l-i.
3 THE COURT: Thank you.
4 Please proceed.
5
6 DIRECT EXAMINATION
7 BY MR. MARTINOVSKY:
8 Q. What is your occupation?
9 A. I'm an officer with the Las Vegas
10 Metropolitan Police Department traffic division.
11 Q. How long have you been an officer with Metro?
12 A. Twelve years.
13 Q. Were you assigned to go interview an
14 individual named Aparicio on May 15, 2018?
15 A. Yes.
16 Q. And where did you contact him?
17 A. I contacted him at UMC trauma.
18 Q. Where was he when you first contacted him, in
19 a room, in a bed?
20 A. In a bed.
21 Q. What was the purpose of you going there to
22 contact him?
23 A. To find out whether the subject was
24 intoxicated.
25 Q. So you went there to conduct the FSTs?

1 A. Yes.
2 Q. And did you conduct any FSTs?
3 A. I did.
4 Q. What FSTs did you conduct?
5 A. I conducted the horizontal gaze nystagmus.
6 Q. Is that the only one you conducted?
7 A. Yes.
8 Q. Are you certified to give that exam?
9 A. Yes.
10 Q. When were you certified?
11 A. November of 2009.
12 Q. Okay. Did he pass or fail?
13 A. He failed.
14 MR. SHEETS: Object. Foundation.
15 BY MR. MARTINOVSKY:
16 Q. How many clues are there on the HGN?
17 A. There's six.
18 Q. What are those six clues?
19 A. There's the lack of smooth pursuit, the max
20 deviation, and also the onset at 45.
21 Q. And are those for each eye?
22 A. Yes.
23 Q. So how many clues total are there?
24 A. There's six.
25 Q. And how are you supposed to perform the test?

1 A. You're supposed to perform the test with the
2 subject standing in front of you and following your
3 finger with his eyes only and not moving his head.
4 Q. All right. Were you able to have him stand
5 in front of you?
6 A. No. Because he was in a hospital bed.
7 Q. Is it acceptable to conduct an HGN in a
8 hospital bed?
9 A. Yes.
10 Q. Are there any other conditions they're
11 supposed to follow or rules they're supposed to follow
12 when you give the HGN?
13 A. No.
14 Q. All right. Were there any bright lights
15 flashing in the hospital room when you were there?
16 A. No.
17 Q. What is a failing score on the HGN?
18 A. I'm sorry?
19 Q. What's a failing score?
20 A. A failing score is four.
21 Q. And what was the defendant's score?
22 A. Six.
23 Q. So is that a failure?
24 A. Yes.
25 Q. Did you detect the odor of an unknown

1 alcoholic beverage on his breath?
2 A. I did.
3 Q. How close did you get to him?
4 A. Talking to him, interview, so maybe two or
5 three feet (indicating).
6 Q. Showing you what has been marked for
7 identification as State's Proposed Exhibit No. 2.
8 Could you state what that is for the record please.
9 A. This is the defendant in the hospital room.
10 Q. Is that a true and accurate depiction of how
11 he looked on that date?
12 A. Yes.
13 Q. Were there any injuries to his face?
14 A. There was. You could see the dried blood
15 from his lip and also his nose.
16 Q. Okay.
17 MR. MARTINOVSKY: Can the record reflect --
18 I'm sorry. I would like move into evidence State's
19 Proposed Exhibit No. 2.
20 THE COURT: Mr. Sheets?
21 MR. SHEETS: One question.
22
23 VOIR DIRE EXAMINATION
24 BY MR. SHEETS:
25 Q. Officer, were you present at the moment this

1 photograph was taken?
2 A. Yes.
3 MR. SHEETS: No objection for purposes of
4 prelim.
5 THE COURT: State's Proposed Exhibit 2 will
6 be admitted.
7 (Whereupon, State's Exhibit 2 was
8 admitted into evidence.)
9 MR. MARTINOVSKY: I'll pass the witness.
10 THE COURT: Cross, Mr. Sheets?
11
12 CROSS-EXAMINATION
13 BY MR. SHEETS:
14 Q. Officer, you said there was blood on my
15 client's lip, correct?
16 A. Yes.
17 Q. Taking a look at the same pictures. There
18 appears to be redness on his left cheek?
19 A. His left cheek?
20 Q. I'm sorry. His right cheek.
21 A. Yes. It appears so.
22 Q. Okay. And there appears to possibly to be a
23 head injury, correct?
24 A. It's unknown.
25 Q. Okay. So in your experience and training as

1 an officer, does someone generally sustain injuries to
2 their nose and mouth without physical contact being
3 made to their nose and their mouth?
4 A. No.
5 Q. Okay. And your nose and mouth is connected
6 to your head, correct?
7 A. Correct.
8 Q. Okay. So injuries might be indicative of
9 injuries to the head, isn't that correct, or contact
10 with the head?
11 A. I suppose.
12 Q. Aren't you aware, sir, that the horizontal
13 gaze nystagmus testing standards are set forth by the
14 National Highway Traffic Safety Administration; isn't
15 that correct?
16 A. Yes.
17 Q. And that's also known as NHTSA, correct?
18 A. Yes, sir.
19 Q. And you're aware that NHTSA does not
20 specifically use the term failed the test; isn't that
21 correct?
22 A. I'm not sure what you mean.
23 Q. Okay. Are you aware that NHTSA does not say
24 you can fail a horizontal gaze nystagmus test?
25 A. I'm not aware of that.

1 Q. Okay. In fact, are you aware that NHTSA
2 simply states that horizontal gaze nystagmus is present
3 or not present; isn't that correct?
4 A. That's correct.
5 Q. Okay. And you can perform a test
6 satisfactorily or unsatisfactorily is the term given by
7 your department; isn't that correct?
8 A. Yes.
9 Q. Okay. And you're aware that when somebody --
10 you've been a officer for a long time, correct?
11 A. Yes, sir.
12 Q. And NHTSA says you're supposed to take into
13 account all physical circumstances prior to assessing
14 someone's nystagmus; isn't that correct?
15 A. Yes.
16 Q. Like if somebody's been involved in a car
17 accident, correct?
18 A. Yes.
19 Q. If someone's sustained an injury; isn't that
20 correct?
21 A. Yes.
22 Q. If somebody has fallen down and hurt
23 themselves, correct?
24 A. Yes.
25 Q. Somebody's age, correct?

1 that correct?
2 A. No. I was the Investigating officer.
3 Q. Okay. You were the investigating officer or
4 you were not? I'm sorry. I just couldn't hear.
5 A. I was.
6 Q. You were?
7 A. Yes.
8 Q. So is it your testimony that you had not
9 determined that he was being detained for suspicion of
10 a DUI at that point?
11 A. That's correct.
12 Q. Okay. So all the way to hospital, that's
13 your position. I'm just making sure I hear you,
14 correct?
15 A. So my job was to wait --
16 Q. Is that correct?
17 A. What are you asking?
18 Q. All the way from the moment you started
19 investigating through the time in that time in the
20 hospital, it's your position as the investigating
21 officer that he was not detained on the suspicion of a
22 DUI?
23 A. That's correct.
24 Q. Okay. And as part of being the investigating
25 officer were you out there at the scene as well?

1 A. I don't know recall their age, no.
2 Q. Okay. Lighting conditions; isn't that
3 correct?
4 A. Yes.
5 Q. Prior medical care; isn't that correct?
6 A. Yes.
7 Q. Okay. Now, prior to getting into this you
8 never read my client his Miranda rights; isn't that
9 correct?
10 A. That's correct.
11 Q. Okay. At that point he's already in custody;
12 isn't that correct?
13 A. He's in a hospital bed. He wasn't in
14 custody.
15 Q. Okay. Was he free to leave?
16 A. He couldn't leave. I was interviewing him.
17 Q. Okay. So he wasn't free to leave; isn't that
18 correct?
19 A. He was unable to.
20 Q. And who brought him to the hospital, do you
21 know?
22 A. I'm not sure if it was the fire department or
23 AMR.
24 Q. Okay. But you were aware that at that point
25 Metro had detained him on suspicion of a DUI; isn't

1 A. No.
2 Q. So you were the follow-up Investigating
3 officer not the lead investigating officer; isn't that
4 correct?
5 A. I was the Investigating officer at the
6 hospital with your client.
7 Q. Okay. So you're unaware as to what went on
8 before that; isn't that correct?
9 A. Unaware where?
10 Q. Of the substance of any investigation prior
11 to that point; isn't that correct?
12 A. Correct.
13 Q. Okay. Were there officers guarding the door?
14 A. At the hospital?
15 Q. Correct.
16 A. No.
17 Q. No? Not to your recollection?
18 A. No.
19 Q. Okay. If my client had got up and wanted to
20 walk out the door, would you have let him out?
21 A. No. I was there talking to him --
22 Q. That's not my question. If my client had
23 gotten up and walked out the door right there, would
24 you have let him out?
25 A. No.

1 Q. Okay. Because he was not free to leave,
 2 correct?
 3 A. Because I was interviewing him.
 4 Q. Okay. Because he was not free to leave,
 5 correct?
 6 A. Yes, that's correct.
 7 Q. Okay. Now, getting back to our discussion
 8 regarding NHTSA. So you just testified that whether
 9 somebody had been involved in a collision, been
 10 involved in impact injuries, all are things put forward
 11 by NHTSA for you to know prior to engaging in a
 12 horizontal gaze nystagmus. Isn't that correct?
 13 A. Yes.
 14 Q. Okay. In this case had you spoken with
 15 investigating officers prior to arriving at the
 16 hospital?
 17 A. Yes, I spoke with them.
 18 Q. Okay. So you were aware that there was an
 19 allegation that there had been a vehicular accident,
 20 correct?
 21 A. Yes.
 22 Q. And there was an allegation that my client
 23 had been inside the vehicle; isn't that correct?
 24 A. Yes.
 25 Q. And that was an allegation that my client had

1 THE COURT: Thank you very much.
 2 MR. MARTINOVSKY: Our next witness is
 3 Bilali-Azzat.
 4 THE MARSHAL: Step up to the witness stand,
 5 remain standing, raise your right hand, and face the
 6 clerk.
 7 Whereupon, after having been duly sworn,
 8 KHADIJA BILALI-AZZAT,
 9 did testify as follows:
 10 THE CLERK: Put your hand down, please be
 11 seated, and state and spell your name for the record.
 12 THE WITNESS: My name is Khadija,
 13 K-h-a-d-i-j-a. Last name B-i-l-i-a-l-i hyphen A-z-z-a-t.
 14 THE COURT: Please proceed.
 15
 16 DIRECT EXAMINATION
 17 BY MR. MARTINOVSKY:
 18 Q. What is your occupation?
 19 A. I am a registered nurse.
 20 Q. And how long have you been a registered
 21 nurse?
 22 A. Five years.
 23 Q. What training do you have in order to have
 24 the occupation as a registered nurse?
 25

1 been injured in that accident; isn't that correct?
 2 A. Yes.
 3 Q. Okay. And you're aware through your training
 4 per the National Highway Safety Administration that
 5 injuries to the head, accidents, whiplash cause
 6 natural nystagmus. Isn't that correct?
 7 A. At times.
 8 Q. Okay. And you didn't conduct any other field
 9 sobriety test, correct?
 10 A. Correct.
 11 Q. Okay. So as you testify here today you are
 12 unable to determine whether or not nystagmus was
 13 present because of any physical injuries or because of
 14 any alcohol; isn't that correct?
 15 A. It is my testimony --
 16 Q. Isn't that correct?
 17 A. No.
 18 Q. Okay. So you are assuming that it's because
 19 of alcohol; is that correct?
 20 A. Yes.
 21 Q. Okay. But you don't have any medical
 22 knowledge to base that on; isn't that correct?
 23 A. That's correct.
 24 MR. SHEETS: No further questions.
 25 MR. MARTINOVSKY: Nothing from the State.

1 A. I do pediatric ICU specialty surgery, open
 2 heart.
 3 Q. And how long were you in school?
 4 A. For about five years.
 5 Q. Okay. Did you receive extra training besides
 6 your regular school?
 7 A. In the ICU. I'm registered nurse.
 8 Q. And are you licensed in the State of Nevada?
 9 A. Yes.
 10 Q. As a registered nurse?
 11 A. Yes.
 12 Q. Do you recall where you were on May 15, 2018
 13 at around 9:00 o'clock in the evening?
 14 A. Yes, I do.
 15 Q. Where were you?
 16 A. I was actually driving from work to home on
 17 Sahara, heading west. And I saw the car, the white
 18 car. I didn't witness the accident, but I saw there
 19 was an accident. So I stopped to help. At that time
 20 there were no paramedics or firefighters. So I got out
 21 of the car to help.
 22 There was like people around the car. I
 23 asked if there were any injuries. And they said, well,
 24 the people are still inside the car. So --
 25 Q. Did you approach the people inside the white

1 car?
 2 A. I'm sorry?
 3 Q. Did you approach the people inside the white
 4 car?
 5 A. Yes.
 6 Q. Did you have contact with them?
 7 A. Yes.
 8 Q. Did you try to help them?
 9 A. Yes.
 10 Q. Were you able to help them?
 11 A. Unfortunately -- I tried. But there was no
 12 pulse when I did the assessment. First I said why
 13 can't we get them out of the car. And he said they
 14 couldn't open the doors because of the collision. And
 15 I said we'll have to do something.
 16 And smoke started coming out. And I remember
 17 one guy broke the glass. And finally we were forcing
 18 the door. We were able to take the driver out of the
 19 car.
 20 I assessed no pulse. And I believe there was
 21 also a paramedic who said, okay, let's do CPR. So I
 22 started compression while he was holding their head and
 23 neck.
 24 And there were people who went on the other
 25 side to try to get the passenger out. They were having

1 that when you saw her?
 2 A. It was so hard with the fire and smoke, but
 3 all I could see was the blonde hair.
 4 Q. Okay. Were both occupants of the white car
 5 dead?
 6 A. Yes.
 7 MR. SHEETS: Objection, Your Honor.
 8 Foundation.
 9 THE COURT: Mr. Martinovsky?
 10 BY MR. MARTINOVSKY:
 11 Q. Did you observe both people in the vehicle?
 12 A. I'm sorry?
 13 Q. Did you see both people in the white car?
 14 A. What do you mean?
 15 Q. Did you see both people who were inside the
 16 white car?
 17 A. Yes.
 18 Q. And you tried to take their pulse?
 19 A. Yes.
 20 Q. And you tried to help them?
 21 A. Yes.
 22 Q. And what did you do to help them?
 23 A. I checked their pulse, tried to get them out
 24 of the car with the other people that were with me.
 25 Q. Okay. And you have extensive training,

1 a hard time. And roughly about five minutes the
 2 firefighter arrived.
 3 I checked the driver. The pupils were
 4 dilated, nonreactive. So that was my contact.
 5 Q. Was that a significant thing for you, what
 6 you just said about dilated and contracted?
 7 A. Nonreactive and dilated.
 8 Q. Nonreactive?
 9 A. Yes.
 10 Q. All right.
 11 Showing you what have been admitted as
 12 State's Exhibits No. 10 and 11. Do you recognize the
 13 person in State's Exhibit 10?
 14 A. I do.
 15 Q. And who was that?
 16 A. That was on the driver's side.
 17 Q. Is that a true and accurate photo of the way
 18 he looked on that date and time?
 19 A. Yes. I do remember his face. Yes.
 20 Q. And I'm showing you what's been admitted as
 21 State's Exhibit No. 11. Do recognize the person in
 22 that photo?
 23 A. I do. She was inside the car. Now I see
 24 clearer. She had blonde hair.
 25 Q. Is that how she looked at the date and time

1 right, because you're an R.N.?
 2 A. Yes.
 3 MR. SHEETS: Objection. Leading.
 4 BY MR. MARTINOVSKY:
 5 Q. Do you have extensive training as an R.N.?
 6 A. Yes.
 7 Q. Have you seen dead people before?
 8 A. Yes.
 9 Q. Were these people dead?
 10 MR. SHEETS: Objection, Your Honor.
 11 Foundation. No medical basis for that determination.
 12 MR. MARTINOVSKY: Actually, there is. She's
 13 an R.N. She's seen dead people before. She's been in
 14 school for over five years. She tried to help them.
 15 It's clear she can testify about that, Your Honor.
 16 MR. SHEETS: I don't think that always means
 17 they're dead. People are revived all the time.
 18 THE WITNESS: And that's why I said let's do
 19 CPR just in case. There was no pulse.
 20 MR. MARTINOVSKY:
 21 Q. There was no pulse?
 22 A. Correct. And the firefighter came and they
 23 said they're dead.
 24 MR. SHEETS: Objection, Your Honor. Hearsay.
 25

1 THE COURT: I'll sustain that objection.
 2 MR. MARTINOVSKY: Okay.
 3 BY MR. MARTINOVSKY:
 4 Q. Thank you.
 5 MR. MARTINOVSKY: No further questions.
 6 MR. SHEETS: I have no questions, Your Honor.
 7 THE COURT: Thank you very much. You're free
 8 to go.
 9 THE WITNESS: Thank you.
 10 MR. MARTINOVSKY: I'd like to move into
 11 evidence State's Proposed Exhibits Nos. 17 and 18.
 12 MR. SHEETS: I'll note for the record, I
 13 won't object for the purposes of prelim. But I don't
 14 see the raised seal on those, Your Honor.
 15 THE COURT: Okay.
 16 17 and 18 will be admitted today for purposes
 17 of the preliminary hearing.
 18 (Whereupon, State's Exhibits 17
 19 and 18 were admitted into
 20 evidence.)
 21 THE MARSHAL: Step up to the witness stand,
 22 remain standing, raise your right hand, and face the
 23 clerk.
 24
 25 /////

1 A. Yes.
 2 Q. What did you do when you arrived?
 3 A. I observed there in the intersection an
 4 accident had occurred. There was big debris field
 5 through the intersection. Two vehicles. One was on
 6 the south side of the intersection and the second
 7 vehicle was up on the north side curb.
 8 Q. How long did you stay at the scene?
 9 A. I was probably on scene approximately three
 10 to four hours.
 11 Q. Did you ultimately come into contact with an
 12 individual named Henry Aparicio?
 13 A. Yes.
 14 Q. Where did you come in contact with him?
 15 A. The Clark County Detention Center.
 16 Q. And where was he when you contacted him?
 17 A. At Clark County Detention Center.
 18 Q. I'm sorry. What was the purpose of you
 19 contacting him?
 20 A. I was doing the initial booking process.
 21 Q. Did you also ask him if he would consent to a
 22 blood draw?
 23 A. Yes.
 24 Q. And what did he say?
 25 A. He said okay.

1 Whereupon, after having been duly sworn,
 2 EDWARD AARON CONTRERAS, JR., LVMPD,
 3 did testify as follows:
 4 THE CLERK: Put your hand down, please be
 5 seated, and state and spell your name for the record.
 6 THE WITNESS: Edward Aaron Contreras, Jr.
 7 E-d-w-a-r-d, A-a-r-o-n, C-o-n-t-r-e-r-a-s.

DIRECT EXAMINATION

9
 10 BY MR. MARTINOVSKY:
 11 Q. What is your occupation?
 12 A. Police officer.
 13 Q. With what agency?
 14 A. Las Vegas Metropolitan Police Department.
 15 Q. How long been so employed?
 16 A. Approximately 13 years.
 17 Q. Were you on duty on May 15, 2018 at around
 18 9:00 o'clock in the evening?
 19 A. Yes.
 20 Q. Were you dispatched to a particular location
 21 at that time?
 22 A. Yes.
 23 Q. Where was that location?
 24 A. Sahara and Hualapai.
 25 Q. Did you go to that location?

1 Q. All right.
 2 MR. MARTINOVSKY: No further questions.
 3 THE COURT: Mr. Sheets?

CROSS-EXAMINATION

6 BY MR. SHEETS:
 7 Q. Officer, did you seek an application for a
 8 search warrant?
 9 A. I did not do it myself.
 10 Q. Okay. But to your knowledge an application
 11 for a search warrant was tendered; is that correct?
 12 A. Yes.
 13 Q. In your general experience do you apply for
 14 search warrants for blood draws where individuals
 15 consent to a blood draw?
 16 A. I believe we have. Yes.
 17 Q. Okay. Officer, were you the primary officer
 18 on scene in this case?
 19 A. I was. Yes.
 20 Q. And while you were on the scene you were
 21 investigating who might have been operating a red
 22 vehicle; isn't that correct?
 23 A. Yes.
 24 Q. And during that investigation you were unable
 25 to locate any witnesses who could put my client as the

1 driver of that car; Isn't that correct?
 2 MR. MARTINOVSKY: Objection. Hearsay.
 3 MR. SHEETS: I'm not even remotely asking for
 4 a statement. I'm asking if he located any witnesses
 5 that could put him behind the car (sic).
 6 MR. MARTINOVSKY: Which is basically asking
 7 for a statement, Judge. I could just ask did you find
 8 any witnesses who could put him behind the wheel and I
 9 wouldn't have to call any witnesses. It's hearsay.
 10 BY MR. SHEETS:
 11 Q. Throughout your investigation on the scene,
 12 you were unable to put my client behind the wheel of
 13 the motor vehicle, correct?
 14 A. Correct. Initially. Right.
 15 Q. Okay. And you never read my client his
 16 Miranda rights, correct?
 17 A. No, I did not.
 18 Q. Okay. My client never made any admissions to
 19 you?
 20 A. No.
 21 Q. Okay.
 22 MR. SHEETS: No further questions.
 23 MR. MARTINOVSKY: Nothing else, Your Honor.
 24 THE COURT: Thank you.
 25 MR. MARTINOVSKY: Officer Salisbury.

1 allows you to work on the Fatal unit?
 2 A. I have literally hundreds of hours of traffic
 3 of crash reconstruction investigation, training, and
 4 experience.
 5 Q. Okay. From what university?
 6 A. Northwestern.
 7 Q. You say hundreds of hours. Did you take a
 8 specific course there?
 9 A. Multiple. Yes.
 10 Q. Okay. When you say multiple, can you
 11 estimate like five, six?
 12 A. Maybe a dozen.
 13 Q. Okay. And approximately how much time have
 14 you spent in school studying accident reconstruction?
 15 A. Weeks. From the culmination of all the
 16 classes.
 17 Q. How many accidents have you personally
 18 investigated?
 19 A. Fatal accidents?
 20 Q. Fatal, yes.
 21 A. 400-ish.
 22 Q. And how much non-fatals?
 23 A. I wouldn't have a number. I assume in the
 24 thousands.
 25 Q. All right. Have you also received specific

1 THE MARSHAL: Step to the witness stand,
 2 remain standing, raise your right hand, and face the
 3 clerk.
 4
 5 Whereupon, after having been duly sworn,
 6 KENNETH SALISBURY, LVMPD,
 7 did testify as follows:
 8 THE CLERK: Put your hand down, please be
 9 seated, and state and spell your name for the record.
 10 THE WITNESS: Kenneth Salisbury.
 11 K-e-n-n-et-h, S-a-l-i-s-b-u-r-y.
 12 THE COURT: Please proceed.
 13
 14 DIRECT EXAMINATION
 15 BY MR. MARTINOVSKY:
 16 Q. What is your occupation?
 17 A. I'm with the Las Vegas Metropolitan Police
 18 Department.
 19 Q. Are you assigned to a particular unit?
 20 A. I am with the Fatal Detail.
 21 Q. Okay. And what are your duties on the Fatal
 22 Detail?
 23 A. I respond to and investigate fatalities
 24 involved with vehicles.
 25 Q. What specific training do you have which

1 training in downloading ACM data?
 2 A. I have.
 3 Q. And what was the training for that?
 4 A. It was a week-long class from Accident
 5 Analysis, LLC.
 6 MR. SHEETS: I'm going to object as to vague
 7 to the term ACM.
 8 BY MR. MARTINOVSKY:
 9 Q. What is ACM data?
 10 A. The airbag control module. There's a bunch
 11 of different terms that are used: Data recorder, power
 12 train control module. All of them are synonyms for
 13 what is known as the black box data.
 14 Q. Okay. And is that generally a tool that you
 15 use in terms of the reconstruction of accidents?
 16 A. Correct.
 17 Q. Did you do an investigation regarding an
 18 accident collision involving a defendant named
 19 Henry Aparicio?
 20 A. I did.
 21 Q. And as part of those duties, did you conduct
 22 a download of some ACM data?
 23 A. I did.
 24 Q. Okay. And what vehicle did you download that
 25 data from?

1 A. From the Ford Prius that was struck in the
2 collision.
3 Q. Okay. And did you get any data from the red
4 Mercedes?
5 A. It was not supported.
6 Q. When you say it wasn't supported, what does
7 that mean?
8 A. Certain vehicles make modules. Those modules
9 are supported for imaging of that crash data retrieval
10 information and others are not. The red BMW (sic) in
11 this case was one of the vehicles that was not
12 supported for the software for download.
13 Q. Okay. And how did you download the data from
14 the red vehicle involved in the collision?
15 A. Through the data link connector with the
16 Bosch crash data retrieval program.
17 Q. Okay. And did you get some data?
18 A. I did.
19 Q. And what did the data indicate?
20 A. There was five seconds of precrash data. A
21 few -- I believe three of the five seconds showed that
22 the Prius was stopped. It was registering zero miles
23 per hour. And then it experienced a change of
24 velocity, a max change of velocity, at 58.4 miles per
25 hour.

1 A. It is, yes. It meets the Daubert and Fry
2 standards to use Delta V.
3 Q. Were you able to calculate a speed for the
4 red vehicle --
5 A. I did.
6 Q. -- at the time of impact?
7 A. I did.
8 Q. And what was that speed?
9 A. The range of variables that I used just, you
10 know, for any subjectivity on those weights the impact
11 speed fell in between 96 miles an hour and 102 miles an
12 hour.
13 Q. All right. Did you actually go to the
14 collision scene?
15 A. I was there.
16 Q. And were you there with Detective Atkinson?
17 A. I was.
18 Q. And what did you at the scene?
19 A. To start, we insure the scene is secure and
20 safe, that it's shut down for an vehicular traffic.
21 After we ensure that all life saving measures have been
22 met and that the scene and the evidence are well
23 protected, we conduct a briefing with the traffic
24 officers gathering any preliminary information that
25 they've obtained.

1 Q. Was that significant in terms of your
2 investigation?
3 A. Absolutely. Essentially what that data is
4 telling me that I verified is in the course of 150 to
5 170 milliseconds the Toyota Prius was expedited from
6 zero miles an hour to 58.4 miles an hour.
7 Q. Okay. Did you conduct any other workups in
8 terms of your investigation of this vehicle?
9 A. I did. I used that vehicle to solve for the
10 impact speed of the striking vehicle.
11 Q. What information did you use to calculate
12 that number?
13 A. That Delta V that I was talking about, the
14 58.4 miles an hour, and the vehicle and occupant
15 weights.
16 Q. Okay. And did you use some formulas in order
17 to help calculate the speed of the other vehicle?
18 A. I did.
19 Q. And are those standard formulas that are used
20 in accident reconstruction?
21 A. I would think not standard. They're advanced
22 formulas. But it's algebra that is scientifically
23 reasonably expected in a traffic crash reconstruction.
24 Q. Basically, it's accepted in the field of
25 accident reconstruction?

1 Then we walk the scene to familiarize
2 ourselves with the vehicle dynamics and available
3 evidence.
4 Q. Did you inspect the red vehicle, the red
5 Mercedes?
6 A. I did a cursory inspection. The exhaustive
7 inspection was done by Detective Atkinson.
8 Q. Did you review any photos of the red
9 Mercedes?
10 A. I did, as well as my personal observations on
11 the cursory inspection I did.
12 Q. What are the positions that a seat belt can
13 be in?
14 A. Extended and the upright position. Extended,
15 which is elongated, or retracted in the upright
16 position.
17 Q. Okay. And how do those correlate with being
18 used or unused?
19 A. So when an airbag control module senses a
20 sudden change of velocity like it does in this case, it
21 produces an algorithm enablement. Essentially, it
22 registered a jerk. Something happened. A crash
23 happened.
24 So that's when it makes the decision to
25 deploy airbags and seat belt tensioners to restrain

1 occupants when it's warranted and whether or not to
2 deploy airbags.

3 Q. Okay. And were you able to draw a conclusion
4 as to whether the seat belts in the back seat of the
5 vehicle were used?

6 A. I don't believe they were.

7 Q. All right. Was there any evidence that there
8 were any occupants in the back seat of the vehicle?

9 A. Not from what we found.

10 So Newton's laws of physics apply to crashes,
11 right? And so when a person is in rest or continual
12 motion, like a vehicle traveling in excessive speed and
13 it's acted upon by an outside force, there's a change
14 in velocity to that person only when acted upon by an
15 outside force.

16 So simply put, an object in motion will
17 remain in motion unless it strikes something else.

18 The seat belt in this case we determined that
19 it was not used at the time of the crash or something
20 else in the vehicle, the seats forward of that person.
21 Somebody seated in the front would impact the airbags,
22 seat belts, or windshield whether or not they were
23 restrained.

24 In this case we didn't find any evidence of a
25 transfer or anything to suggest that there was anybody

1 in the back seat that continued forward as a result of
2 the crash.

3 Q. Okay. Other than the lack of any impact on
4 the seats from a potential passenger, against the front
5 seats --

6 A. The rear of the front seats, that's correct.

7 Q. -- was there any other evidence to support
8 your conclusion that there was no one in the back seat?

9 A. There was a glass debris field that was
10 spread about the rear of the vehicle. And if somebody
11 had occupied that same space -- the debris field
12 doesn't suggest that anybody would have been there.
13 There would have been clean marks from either of them
14 moving or them being in that position at the time the
15 crash occurred and that glass debris field was
16 dispersed.

17 Q. Okay. So let me clarify. Was the glass
18 debris field consistent in the back seat?

19 A. It was consistent with no nobody occupying
20 that space at the time the glass was deposited.

21 Q. I'm sorry. When I say consistent, was it
22 continuous?

23 A. Correct.

24 Q. All right. And when you say clean, what do
25 you mean by clean?

1 A. If an object or debris is there and somebody
2 is in motion as a result of trying to exit the vehicle,
3 whether or not their hands or their jeans displace or
4 disrupt any glass or dirt debris, there would be
5 evidence that certain things were transferred or
6 misplaced as a result of that person's movement.

7 In this case we didn't have anything that
8 suggested that anybody was in the rear.

9 Q. Did you find any blood in the back seat?

10 A. We did not. At least I did not on the
11 cursory inspection.

12 Q. Is that something you would have expected to
13 find had someone been sitting in the back seat?

14 A. Possibly. Depending on their injuries.

15 Q. Okay.

16 MR. MARTINOVSKY: I'll pass the witness.

17 THE COURT: Cross, Mr. Sheets?

18

19 CROSS-EXAMINATION

20 BY MR. SHEETS:

21 Q. So just to clarify. These questions that you
22 were just being asked regarding the back seat, were you
23 referring to the red car or the white car?

24 A. The red car.

25 Q. Okay. But you're unaware as to whether or

1 not there were seat belts buckled in the red car
2 because you were unable to pull the data, correct?

3 A. I was --

4 Q. You were unaware of whether or not there were
5 seat belts buckled in the back of the red car because
6 you were unable to pull the data, correct?

7 A. So to answer your question --

8 Q. Yes or no, sir?

9 A. You're asking me if the seat belts were
10 buckled based on me not being able to pull data?

11 Q. At the time of the collision you are unaware
12 of whether or not seat belts were buckled in the back
13 seat; is that correct?

14 A. The seat belts themselves didn't demonstrate
15 that they had been used at the time of the crash, no.

16 Q. But you're unaware; isn't that correct?

17 A. Unaware would be mean that I have no idea
18 whatsoever. The seat belts and their positioning
19 suggest that they weren't used.

20 Q. And what was their positioning, sir?

21 A. Upright.

22 Q. Okay. And that would be consistent with
23 somebody taking their seat belt off?

24 A. No. In crashes of this magnitude the airbag
25 control module or the data recorder senses that

1 algorithm enablement, that sudden change of velocity,
 2 and the pretensioners on seat belts are fired. So when
 3 they're extended, they're used and buckled. When
 4 somebody unbuckles them, they don't retract and spool
 5 up in an upright position.
 6 Q. But you don't know if that was the case on
 7 that car; isn't that correct?
 8 A. How do I not know that was the case?
 9 Q. Well, you don't have access to the crash
 10 data. So you're sitting here and testifying that that
 11 ACM actually worked without having pulled the data. Is
 12 that what I'm hearing?
 13 A. There's a separation between it deploying
 14 airbags and firing pretensioners and being supported
 15 with software to finish that information.
 16 Q. Did you or did you not pull information,
 17 digital information, off that car?
 18 A. I did not pull any information off the BMW
 19 (sic).
 20 Q. So any statements regarding what the computer
 21 did or didn't do are purely speculation on your part;
 22 isn't that correct?
 23 A. Correct.
 24 Q. Okay. So you don't know whether or not
 25 pretensioners were locked by the computer system or

1 they weren't because you don't have that data; isn't
 2 that correct?
 3 A. We can also --
 4 Q. Isn't that correct, sir?
 5 A. It's not.
 6 Q. It's not? So you can figure that out, if the
 7 pretensioners are activated? Did you pull the
 8 pretensioners on that car?
 9 A. I did not.
 10 Q. Okay. Did you pull the panels around the
 11 pretensioners off?
 12 A. I did not.
 13 Q. Okay. So you haven't actually inspected the
 14 pretensioners on that car; isn't that correct?
 15 A. I have not.
 16 Q. Okay. Now, you've been involved -- you said
 17 you've got literally hundreds of hours working with
 18 accidents; isn't that correct?
 19 A. Correct.
 20 Q. And you're familiar with bodies ending up in
 21 different seats in a vehicle; isn't that correct?
 22 A. I am.
 23 Q. Let me ask you this, sir: How many bodies
 24 did you see in the vehicle?
 25 A. In which vehicle?

1 Q. The red one.
 2 A. None.
 3 Q. Okay. You don't know who was in that vehicle
 4 at this time; isn't that correct?
 5 A. Definitely? No.
 6 Q. Okay. Because you've been told by other
 7 officers who was in that vehicle; isn't that correct?
 8 A. Correct.
 9 Q. Okay. And you were told that information at
 10 the time you were preparing your accident report; isn't
 11 that correct?
 12 A. I didn't prepare an accident report in this
 13 case.
 14 Q. Okay. At the time of the pulling your data.
 15 So when you come to the conclusion on the
 16 speed of a vehicle, do you refer to an accident report
 17 when you're doing your algorithms?
 18 A. What report are you referring to?
 19 Q. What I'm asking is you've come to a fairly
 20 definitive conclusion as to what speed the red car may
 21 or may not been going at the time it impacts this white
 22 car.
 23 A. Correct.
 24 Q. And what I'm asking is other than this data
 25 do you refer to any other sources of information?

1 A. I do.
 2 Q. Like you look at the scene, correct?
 3 A. Correct.
 4 Q. You look at photographs?
 5 A. Correct.
 6 Q. You look at an accident report, correct?
 7 A. I'm typically the person that generates the
 8 accident report.
 9 Q. Okay. And you didn't do that in this case,
 10 correct?
 11 A. Correct.
 12 Q. Did you take measurements?
 13 A. Correct.
 14 Q. You did take measurements in this case?
 15 A. Correct.
 16 Q. Did you memorialize that in a report?
 17 A. I did not.
 18 Q. Okay. So you were -- can you tell me where
 19 those measurements are factored into your mathematical
 20 determination?
 21 A. In this case the speed analysis I did was
 22 based on that Delta V information from the crash data
 23 retrieval.
 24 Q. Okay. So you didn't base any of that other
 25 information, you didn't factor any of that into your

1 determination here? It was strictly based off this
 2 digital data?
 3 A. I would disagree. Being there at the scene
 4 and seeing the distances traveled after impact, I mean,
 5 it would be unreasonable for me to think that there was
 6 an impact speed of 100 if they only traveled ten feet
 7 after impact.
 8 Q. But you did just say that you mathematically
 9 put it all together and it's all math, correct?
 10 A. Correct.
 11 Q. And you didn't factor any of those
 12 measurements into that math; isn't that correct?
 13 A. That's such a broad statement I'm trying to
 14 figure out how to answer it.
 15 Q. Well, distances, sliding distances, distances
 16 from impact, those are all important pieces of
 17 information. Isn't that correct?
 18 A. Correct.
 19 Q. Okay. And none of that got factored into the
 20 math that you did, correct?
 21 A. That does factor because it validates the
 22 math that I did complete from the crash data retrieval.
 23 Q. In the actual formulas that you used, did you
 24 put anything regarding your measurement into those?
 25 A. The mathematical equations I use are

1 contingent upon variables that rely on distances
 2 involved.
 3 Q. Okay. So the variables -- then let me ask:
 4 What are the variables that fit? Because you did
 5 testify earlier, correct, that when you're doing this
 6 math you factored in variables. Isn't that correct?
 7 A. Correct.
 8 Q. And what variables are those then?
 9 A. Delta V and weights.
 10 Q. Okay. And you're aware of the weight of this
 11 red car?
 12 A. I am.
 13 Q. And you factored in the weight of a red BMW?
 14 A. Not a red BMW, the specifications for that
 15 vehicle's weight.
 16 Q. Okay. Which you testified earlier is a red
 17 BMW, correct?
 18 A. Correct.
 19 Q. Okay. Would you be surprised to learn that
 20 it was a red Mercedes?
 21 A. I'm not.
 22 Q. Okay. Let me ask: Whose the manufacturer
 23 for the computer system in the Prius?
 24 A. I'm not sure.
 25 Q. Would it be fair to say -- well, would it

1 refresh your recollection, does the word Denso come to
 2 mind?
 3 A. It does not.
 4 Q. Okay. You don't know who the manufacturer of
 5 the data system in a Mercedes, do you?
 6 A. I do not.
 7 Q. Okay. Or a BMW; isn't that right?
 8 A. Correct.
 9 Q. And it's quite possible that the same
 10 computers are made by Denso; isn't that correct?
 11 A. It's possible. Sure.
 12 Q. Okay. But it's your testimony that the
 13 system in the Mercedes did not support your interaction
 14 with it; is that correct?
 15 A. Correct.
 16 Q. But had you been able to access that
 17 information it could have affected your result; isn't
 18 that correct?
 19 A. It's possible. Sure.
 20 MR. SHEETS: No further questions.
 21 MR. MARTINOVSKY: Nothing, Your Honor.
 22 THE COURT: Thank you very much.
 23 THE MARSHAL: Step up to the witness stand,
 24 remain standing, raise your right hand and face the
 25 clerk.

1
 2 Whereupon, after having been duly sworn,
 3 KARL ATKINSON, LVMPD,
 4 did testify as follows:
 5 THE CLERK: Put your down. Please be seated
 6 and state and spell your name for the record.
 7 THE WITNESS: Karl Atkinson.
 8 K-a-r-l, A-t-k-i-n-s-o-n.
 9
 10 DIRECT EXAMINATION
 11 BY MR. MARTINOVSKY:
 12 Q. What is your occupation?
 13 A. I'm a Fatal detective with the Las Vegas
 14 Metropolitan Police Department.
 15 Q. And how long have you been on Fatal?
 16 A. Six months now.
 17 Q. How long been at Metro?
 18 A. Thirteen and a half years.
 19 Q. What training do you have in order to be a
 20 detective on the fatal unit?
 21 A. I attended in the past accident
 22 reconstruction school, Crash I and Crash II, which at
 23 the time was called vehicle dynamics. I was in our
 24 traffic unit for ten years prior to going into Fatal.
 25 I've investigated multiple vehicle collisions.

1 Q. Did you investigate a collision which
 2 occurred on May 15, 2018 at around 9:00 at the
 3 intersection of Hualapai and Sahara?
 4 A. Yes, I did.
 5 Q. Did you go to the scene?
 6 A. Yes, I did.
 7 Q. What did you observe when you arrived?
 8 A. I arrived just before 10:00 p.m. We were
 9 notified around 9:15 p.m. that there was a two-person
 10 fatal collision at that intersection. Upon my arrival,
 11 I parked on the south side of the intersection facing
 12 northbound on Hualapai so I wouldn't disturb any of the
 13 debris that was left in the intersection.
 14 From where I parked, I couldn't actually see
 15 the vehicles or if there were occupants at the time
 16 because there was a county fire rescue unit -- an
 17 engine blocking my view of the Prius. But there was
 18 debris extending across intersection, the west side of
 19 the intersection to the east side of the intersection.
 20 At the time of my arrival there was City Fire
 21 Rescue 44. They were still on scene. The engine was
 22 still on scene. At the time of my arrival they were
 23 attempting to cut the roof off of the Prius and had
 24 just taken both of the occupants out of the car, and
 25 they were in the roadway covered by a sheet at that

1 I'd like to move into evidence the exhibits I just
 2 mentioned. 1, 3, 4, 5, 6, 7, 8, 9, 12, and 14.
 3 MR. SHEETS: No objection for prelim.
 4 THE COURT: So 1, 3, 4, 5, 6, 7, 8, 9, 12,
 5 and 14 will be admitted.
 6 (Whereupon, State's Exhibits 1, 3,
 7 4, 5, 6, 7, 8, 9, 12, and 14 were
 8 admitted into evidence.)
 9 MR. MARTINOVSKY: Thank you.
 10 BY MR. MARTINOVSKY:
 11 Q. Did you find anything in the front passenger
 12 seat of the vehicle, the red vehicle?
 13 A. On the front floorboard there was a black
 14 leather handbag, a female's handbag.
 15 Q. Okay. And did you inspect the handbag?
 16 A. Yes. After a search warrant was granted by
 17 the Honorable Judge Delaney, we inspected the interior
 18 of the vehicle. The handbag contained a billfold with
 19 a Nevada driver's license in it and some other I.D.s
 20 and a food handler card for Morgan Hurley.
 21 Q. Okay. Showing you State's Exhibits 4 and 5.
 22 Were those items depicted in State's 4 and 5 found
 23 inside the handbag that was on the floorboard of the
 24 passenger side of the vehicle?
 25 A. Yes, they were.

1 point.
 2 The information I was given by the engineer
 3 on the rig was that they were attempting cut the roof
 4 of the car because they were searching for --
 5 MR. SHEETS: Objection, Your Honor. Hearsay.
 6 BY MR. MARTINOVSKY:
 7 Q. All right. So did you go to the red car
 8 eventually?
 9 A. Eventually. Yes.
 10 Q. And did you inspect the red vehicle?
 11 A. I did.
 12 Q. Did you take photographs --
 13 A. Yes.
 14 Q. -- or you were with someone who took
 15 photographs?
 16 A. Correct. Gabby Guerrero (phonetic) was the
 17 CSA that was assigned to the scene.
 18 Q. I'm approaching with State's Proposed
 19 Exhibits 1, 3, 4, 5, 6, 7, 8, 9, 12, and 14. Can you
 20 please review these and see if those accurately reflect
 21 the way the red vehicle looked that evening when you
 22 went there.
 23 A. Yes. These do reflect the condition of the
 24 vehicle.
 25 MR. MARTINOVSKY: At this point, Your Honor

1 Q. And there's a driver's license there as well,
 2 isn't there?
 3 A. Correct.
 4 Q. It contains specific information about date
 5 of birth, etc.?
 6 A. Correct.
 7 Q. Without telling me what she said, did you
 8 ever have any contact with Morgan Hurley?
 9 A. I did. I actually conducted a voluntary
 10 interview with her on May 17th at approximately
 11 1:00 p.m. at UMC Hospital.
 12 Q. Okay. Did learn who was the registered owner
 13 of the Mercedes 250?
 14 MR. SHEETS: Objection, Your Honor. Calls
 15 for hearsay.
 16 MR. MARTINOVSKY: It's a public record, Your
 17 Honor.
 18 MR. SHEETS: Your Honor, he asked if he
 19 learned it. That is the same exact objection that he
 20 made with me about whether he did or didn't learn
 21 something.
 22 THE COURT: Please rephrase the question.
 23 MR. MARTINOVSKY: It's a public record. But
 24 that's fine.
 25

1 BY MR. MARTINOVSKY:

2 Q. So what did you do to inspect the red vehicle
3 other than take photographs or observe photographs
4 being taken?

5 A. Initially on the red vehicle we waited until
6 after the search warrant was granted. After the
7 application for the search warrant was granted, after
8 that we always conduct a full vehicle inspection any
9 time there's a fatal collision, which includes the tire
10 pressure of the vehicle, the location of the vehicle,
11 make and model, everything.

12 But the interior inspection of the vehicle,
13 we collected the airbags because there was a large
14 amount of blood on both of the airbags. There was
15 blood on the driver's side door. There was blood on
16 the exterior of the vehicle moving from the driver's
17 side around the rear of the vehicle to the passenger
18 side. And there was blood on the passenger door as
19 well.

20 Blood samples were collected for DNA
21 comparative analysis with the airbags that were
22 collected as well. Both airbags were taken, both the
23 driver and the passenger side.

24 The location and positions of the seats, so
25 the front driver's seat, the front passenger seat, and

1 the rear seat was examined. In the rear the seat
2 belts -- all three of the seat belts in the back of the
3 vehicle were locked into place and not extended, so
4 locked in place during the time of the airbag
5 deployment and collision. And they were tight and not
6 extended.

7 Q. So how is that significant in terms of your
8 investigation? How is the fact they were locked -- you
9 said the positions of the seat belts --

10 MR. SHEETS: Objection, Your Honor.
11 Foundation.

12 BY MR. MARTINOVSKY:

13 Q. Did you inspect the rear of the vehicle?

14 A. Yes.

15 Q. Did you inspect the seat belts in the rear of
16 the vehicle?

17 A. Yes.

18 Q. Was there anything significant about the seat
19 belts?

20 A. The fact that they were locked and not
21 extended along with the even coating of a lot of broken
22 glass from the front windshield, which hadn't been
23 disturbed suggesting that there was no occupant in the
24 rear of the vehicle.

25 MR. SHEETS: I'm going to object again.

1 Foundation.

2 MR. MARTINOVSKY: I believe that foundation
3 was laid, Your Honor.

4 THE COURT: I believe foundation was laid as
5 well.

6 BY MR. MARTINOVSKY:

7 Q. Was there any blood on the back of the front
8 seats of the vehicle?

9 A. No.

10 Q. Okay. Was there any blood in the back of the
11 vehicle at all?

12 A. No.

13 Q. Now, did you notice anything about the
14 speedometer of the vehicle?

15 A. Yes.

16 Q. What did you notice?

17 A. It was locked in place at approximately
18 100 miles an hour.

19 Q. Okay. Showing you State's Proposed Exhibit
20 No. 12. Does that actual depict the speedometer at 100
21 mile an hour?

22 A. Yes.

23 Q. Also showing you State's Exhibit No. 1. What
24 does that show for the record?

25 A. This is the rear seat of the vehicle, from

1 the passenger side of the vehicle to behind the front
2 passenger seat.

3 Q. Okay. Now, I'm showing you what's been
4 admitted as State's No. 3. Could you state what that
5 is please.

6 A. This is the bloody rag that was found on the
7 driver's side seat, and it was located in the seat just
8 underneath the bloody airbag. It was beneath the
9 steering wheel.

10 Q. So was there blood on the airbag that was
11 deployed on the driver's side of the vehicle?

12 A. Yes.

13 Q. Was there blood on the passenger's airbag?

14 A. I believe so. Honestly, I don't remember.
15 I'd have to review the passenger airbag.

16 Q. Was there more blood, if you can recall, in
17 relation to the two, was there more blood on the
18 driver's side or was there more blood on the airbag
19 that was on the passenger side?

20 A. There was more blood on the driver's side.

21 Q. Was there any blood on the driver's side of
22 the vehicle other than on the airbag?

23 A. Yes.

24 Q. Where was --

25 A. On the door, on the armrest of the door, on

1 the handle of the door, just outside of the door, on
 2 the driver's side, on the rear right side of the hood,
 3 on the right side of vehicle. And then there was a
 4 little bit on the outside of the right front passenger
 5 door (indicating throughout).
 6 Q. All right. What other steps did you take in
 7 terms of the investigation of the case besides taking
 8 photographs of the red Mercedes Benz?
 9 A. Are you talking about at the scene that
 10 night?
 11 Q. At the scene, yes.
 12 A. Okay. We photographed the vehicle. We
 13 collected both airbags, again for DNA analysis,
 14 comparative analysis for the DNA for the blood that was
 15 left on the airbag.
 16 The tire pressure was taken. The seat
 17 positions were taken. We attempted to do a download on
 18 the Mercedes as well. That was also --
 19 Q. When you say we, who is we?
 20 A. My sergeant, Sergeant McCauley. He was
 21 operating the CDR for the Mercedes that night. It
 22 didn't show supported, but in the past those types of
 23 vehicles haven't shown supported. It just means maybe
 24 they forgot to list that model year within the
 25 parameters for the Bosch CDR system.

1 MR. SHEETS: I would oppose as to the
 2 affidavits regarding the warrants, the transcripts of
 3 the context. I believe that those are all hearsay
 4 statements.
 5 MR. MARTINOVSKY: I just want to put it in
 6 for the fact they had a warrant.
 7 MR. SHEETS: I'd be okay in redacting the
 8 transcript and submitting just the warrants for
 9 purposes of prelim.
 10 MR. MARTINOVSKY: I just want to establish
 11 that they had warrants for the blood so if there's a
 12 writ later on. That's all.
 13 MR. SHEETS: Right. I'm okay with the
 14 warrants themselves but the underlying --
 15 MR. MARTINOVSKY: Why don't we stipulate that
 16 they had warrants though. Can we do that?
 17 MR. SHEETS: I'll stipulate that as it's
 18 presented to me there are two filed warrants here.
 19 MR. MARTINOVSKY: Okay.
 20 MR. SHEETS: Yes.
 21 MR. MARTINOVSKY: So we're stipulating that
 22 they had a warrant for the blood draw without going
 23 into the --
 24 MR. SHEETS: For purposes of the preliminary
 25 hearing.

1 Q. Okay. So are you still working on getting
 2 that information?
 3 A. No. It was not supported. It did not
 4 generate a CDR report for the Mercedes.
 5 Q. Okay. But you did get one for the Prius?
 6 A. Yes.
 7 Q. Now, you said you had a warrant to search the
 8 vehicle and the purse?
 9 A. We had a warrant for the contents of the
 10 vehicle. Because there was no admission to there to
 11 being a driver that night, it was necessary to obtain a
 12 warrant to collect information or evidence which could
 13 identify a driver.
 14 Q. Showing you what's been marked for
 15 identification as State's 22 and 23. Are these copies
 16 of the warrant that you obtained, one for the car and
 17 one for the blood?
 18 A. Yes. And Eric Grimmesey is the author of the
 19 search warrants.
 20 MR. SHEETS: If I could have the Court's
 21 indulgence? I got one but I didn't get the other. So
 22 I just wanted to read through this if that's okay?
 23 THE COURT: No problem.
 24 MR. MARTINOVSKY: I'd like to move for the
 25 admission of State's Exhibits 22 and 23.

1 MR. MARTINOVSKY: Okay.
 2 MR. SHEETS: Yes.
 3 THE COURT: So you're stipulating that e is
 4 warrant for the blood draw and a warrant to search the
 5 contents of the vehicle for purposes of preliminary
 6 hearing?
 7 MR. SHEETS: Both vehicles. Yes.
 8 MR. MARTINOVSKY: Yes. Both vehicles. And I
 9 won't admit State's Proposed Exhibits 22 and 23.
 10 They'll just be marked as exhibits but not admitted.
 11 THE COURT: Okay. Thank you.
 12 BY MR. MARTINOVSKY:
 13 Q. Now, Detective, were you also able to perform
 14 a speed workup on this case?
 15 A. Yes, I was.
 16 Q. And what factors go into your speed workup?
 17 A. The weight of the vehicles coupled with the
 18 weight of the occupants of the vehicles. But because
 19 we couldn't weigh the vehicles that night I had to go
 20 off of published data for the curb weight of both
 21 vehicles, since they were both so deformed, and also
 22 the listed weight of the vehicle's occupants, which was
 23 on their Nevada driver's license, lead me to a sum the
 24 for weight of each vehicle plus its occupants.
 25 At that point, based off of the CDR

1 Information that Detective Salisbury obtained from the
 2 Prius, the Prius showed that it was stopped at the
 3 speed of zero --
 4 MR. SHEETS: Object, Your Honor, as to
 5 hearsay.
 6 THE WITNESS: I reviewed the data as well
 7 with Detective Salisbury.
 8 MR. MARTINOVSKY: He is an expert we can rely
 9 on plus he testified he reviewed it with
 10 Detective Salisbury.
 11 THE COURT: I'll allow it.
 12 BY MR. MARTINOVSKY:
 13 Q. Normally, do you look at the distances
 14 traveled of the vehicles?
 15 A. We can. That is another way to figure out
 16 speed, but the more accurate way was to show the change
 17 in velocity of the Prius because the download was not
 18 possible with the Mercedes.
 19 Q. Okay. So it is possible to calculate speed
 20 using the distance traveled, etc.?
 21 A. Yes.
 22 Q. You did not rely on that formula?
 23 A. It was more reliable to do the equation based
 24 off the change in velocity of the Prius. But I can
 25 work it based off of the weights of vehicles and their

1 calculation. So the more accurate way was to rely upon
 2 that change of velocity of the Prius.
 3 Q. Okay. And did you get a result, an opinion,
 4 as to the speed of the red Mercedes?
 5 A. I did.
 6 Q. What was the speed?
 7 A. 100.156 miles per hour at time of impact.
 8 Q. Okay. And were you able to calculate the
 9 location of the area of impact?
 10 A. I'm sorry?
 11 Q. Where did the collision occur?
 12 A. Just immediately west of the intersection in
 13 the first travel lane closest to the left turn lanes.
 14 Q. In your opinion did speed play a role in the
 15 collision?
 16 A. Absolutely.
 17 Q. Were there any other factors that played a
 18 role in the collision beside the speed?
 19 A. Are you referring to the impairment?
 20 MR. SHEETS: I'm going to object, Your Honor.
 21 Move to strike.
 22 MR. MARTINOVSKY: Well, I'm not --
 23 THE COURT: You're not what?
 24 MR. MARTINOVSKY: Asking about --
 25 THE WITNESS: Other factors indicated that

1 distances after as well.
 2 Q. Okay. And what information other than the
 3 weights of the vehicles, the occupants, and the change
 4 in velocity did you use to calculate the speed of the
 5 red Mercedes?
 6 A. I'm sorry. What other information --
 7 Q. You said you relied on the weights of the
 8 vehicles and the change in velocity of the Prius. Was
 9 there any other information upon which you relied in
 10 order to calculate the speed of the red vehicle?
 11 A. No, not for this particular set of equations.
 12 If the roadway grade -- if you were to do it based off
 13 of just the weights of the vehicles and their distances
 14 traveled after, you would apply the roadway grade if it
 15 was more than 50 percent down slope or up slope. So it
 16 would affect the speed of the vehicle.
 17 You would also apply the coefficient friction
 18 of the roadway, the drag factor of the roadway, and
 19 that vehicle's ability to stop. So a braking
 20 percentage. So if a wheel is locked, completely
 21 locked, which the Prius did have a locked and disabled
 22 wheel, then you would have to apply that into your
 23 equation as well.
 24 So the more factors you have in the equation,
 25 the more chances you have for little differences in

1 the Prius was stopped. And from the video that I was
 2 able to obtain, the Prius is stopped for what's
 3 apparently a red light. And there are other vehicles
 4 stopped both to the left and to the right of the Prius
 5 at the time of impact. And it is at a dead stop when
 6 it's impacted.
 7 Q. Okay.
 8 MR. MARTINOVSKY: No further questions. I'll
 9 pass the witness?
 10 THE COURT: Mr. Sheets?
 11
 12 CROSS-EXAMINATION
 13 BY MR. SHEETS:
 14 Q. Just to make sure, Detective, that crash data
 15 that you used and you observed does not tell you
 16 whether or not somebody's foot is on the brake pedal;
 17 is that correct?
 18 A. That particular one I don't remember seeing.
 19 I remember seeing that the occupants of the Prius were
 20 seat belted in. But as far as the foot pedal or the
 21 brake pedal pressure, I don't know recall seeing that.
 22 Q. It does not tell you if a parking brake is
 23 engaged; is that correct?
 24 A. I don't remember seeing that.
 25 Q. Now, you've been an officer again for how

1 long? I'm sorry, sir.
 2 A. Thirteen and a half years, sir.
 3 Q. You've seen plenty of people in a motor
 4 vehicle without a seat belt on; Isn't that correct?
 5 A. Correct.
 6 Q. In fact, if people don't wear their seat
 7 belts they get thrown around the car; Isn't that
 8 correct?
 9 A. It's a possibility.
 10 Q. Turning your attention to Exhibit 1. This is
 11 a picture of the back seat of the vehicle; Isn't that
 12 correct?
 13 A. That is correct, sir.
 14 Q. There's not very much glass on the back seat
 15 of that vehicle, is there?
 16 A. It's not visible that well in this picture.
 17 But on that night there was a consistent coating, sort
 18 of like dust on a table.
 19 Q. So what you're saying is the pictures don't
 20 really give you a good, accurate conveyance of the
 21 scene. Is that correct?
 22 A. This particular picture, no, sir.
 23 Q. Okay. Looking at Exhibit 9. There's more
 24 glass on the front seat of that vehicle in this picture
 25 than there is glass on the back seat of that vehicle;

1 Q. When you got on scene did you see anybody
 2 inside the vehicle, the red vehicle?
 3 A. No, sir. It was transported prior to my
 4 arrival.
 5 Q. Okay. So you didn't see who was in what
 6 location of the vehicle; Isn't that correct?
 7 A. I did through body camera videos.
 8 Q. Okay. And you only saw one person through
 9 that body camera footage, is that correct, inside the
 10 red vehicle?
 11 A. That's correct.
 12 Q. And that was a female; Isn't that correct?
 13 A. Yes, the female consistent with
 14 Morgan Hurley.
 15 MR. SHEETS: Court's indulgence.
 16 BY MR. SHEETS:
 17 Q. So did you prepare an accident report with
 18 regard to this case?
 19 A. I did not. Officer Contreras prepared the
 20 initial accident report.
 21 Q. So it's your testimony that he actually did
 22 prepare an accident report?
 23 A. I'm sorry?
 24 Q. So it's your testimony that you're aware that
 25 he prepared an actual accident report in this case?

1 Isn't that right?
 2 A. Which is consistent with the windshield being
 3 in the front of the vehicle, sir.
 4 Q. Okay. So looking at Exhibit 13, the
 5 passenger -- I'm sorry. The rear window on the
 6 passenger side of the vehicle is in tact; Isn't that
 7 correct?
 8 A. That's correct.
 9 Q. So looking at Exhibit 14. The rear window on
 10 the driver's side of the vehicle is in tact; Isn't that
 11 correct?
 12 A. That's correct.
 13 Q. And you're unaware as to whether or not the
 14 driver's front window was in tact; Is that correct?
 15 A. That's in the vehicle --
 16 Q. But you're unaware as you testify here today,
 17 correct?
 18 A. As I testify here today, yes. But it is in
 19 my vehicle inspection forms.
 20 Q. And you're unaware as to whether the right
 21 front window was in tact; Isn't that correct?
 22 A. That's correct. Today.
 23 Q. So virtually, in these pictures, the only
 24 cracked glass is the windshield; Isn't that correct?
 25 A. That's correct.

1 A. He prepares the preliminary report, which is
 2 required to be released to the State within ten days.
 3 I'm going to finalize that report with my findings, and
 4 it will ultimately become my report to submit with my
 5 case.
 6 Q. So has that report been finalized as of
 7 today's date?
 8 A. No, sir. We're still collecting information,
 9 and I'm still waiting on the Coroner's reports and
 10 multiple other pieces of information.
 11 Q. So you need additional information to come to
 12 a conclusion; Isn't that correct?
 13 A. On the speed, no.
 14 Q. Okay. Would it be fair to say, sir, that
 15 whether somebody's foot is on the brake pedal and what
 16 gear the car is in would impact the distance it might
 17 travel if it's hit by another vehicle?
 18 A. Yes.
 19 Q. Okay. And you don't have any of that data
 20 from the Prius; Isn't that correct?
 21 A. That's correct.
 22 Q. You don't have any data from the Mercedes;
 23 Isn't that correct?
 24 A. Correct.
 25 Q. No.

1 MR. SHEETS: No further questions.
 2 THE COURT: Mr. Martinovsky?
 3
 4 REDIRECT EXAMINATION
 5 BY MR. MARTINOVSKY:
 6 Q. This location was in Clark County; is that
 7 correct?
 8 A. Yes.
 9 MR. MARTINOVSKY: No further questions, Your
 10 Honor.
 11 MR. SHEETS: I'm going to object. Vague as
 12 to this location.
 13 BY MR. MARTINOVSKY:
 14 Q. The location of this collision was in Clark
 15 County; is that correct?
 16 A. Yes, it is.
 17 Q. All right.
 18 MR. MARTINOVSKY: No further questions.
 19 THE COURT: Thank you, Officer.
 20 MR. MARTINOVSKY: I move for the admission of
 21 State's Proposed Exhibit No. 21.
 22 MR. SHEETS: I'm going to object, Your Honor.
 23 MR. MARTINOVSKY: It's the affidavit of the
 24 chemist.
 25 THE COURT: Pursuant to statute that can come

1 have any connection to this matter whatsoever.
 2 Without that expert testimony there's no
 3 relation. It does not meet the relevancy standard.
 4 The prejudicial nature far outweighs the probative
 5 nature. There has been no expert opinion to even get
 6 into what would be an extrapolation. Armstrong is
 7 very, very clear on this. Not admissible. I'd ask for
 8 the opportunity to brief.
 9 MR. MARTINOVSKY: Actually, Armstrong is not
 10 very clear on this. The holding of Armstrong is simply
 11 that we are not going to overturn Judge Miley's ruling
 12 because it is not arbitrary and capricious. That's
 13 what the case says. That's number one.
 14 Number two -- so any District Court judge who
 15 wants to make their own determination as to whether or
 16 not the alcohol content of a driver is relevant in a
 17 DUI case can make their own determination. And I quite
 18 frankly can't think of anything which would be more
 19 relevant for a DUI case than the blood alcohol. That's
 20 number two.
 21 So first thing is all they said was that she
 22 had did not abuse her discretion.
 23 Number three, Anderson specifically says that
 24 the retrograde extrapolation is admissible.
 25 Number four, we're all talking about a trial.

1 in.
 2 MR. SHEETS: Well, Your Honor, I'm objecting
 3 based on a different reason. In this particular case
 4 it doesn't meet the relevancy standard. The State is
 5 essentially moving to produce unextrapolated blood test
 6 results.
 7 Pursuant to the State versus District Court
 8 Armstrong case the Nevada Supreme Court makes it very
 9 clear that unextrapolated results are not proper and,
 10 in fact, extrapolated results are only proper when
 11 there are 15 factors that are considered.
 12 We have heard zero testimony as to that
 13 occurring. In fact, the only testimony that we have
 14 heard today is that a blood draw occurs 4 hours and 39
 15 minutes after a supposed collision, Your Honor. So we
 16 have a very real issue.
 17 I do have it briefed. I'd ask Your Honor if
 18 you're not inclined to grant that today to allow me to
 19 submit that brief to you this afternoon.
 20 But I think the law is clear in Armstrong.
 21 It prohibits the admission of unextrapolated data.
 22 There is no statute that allows him to present that.
 23 There is no basis for establishing relevancy because
 24 they haven't provided any testimony that establishes
 25 the results outside the per se period of two hours

1 This is a prelim. And there's a case specifically on
 2 point, Sheriff versus Burcham, 124 Nevada 1247 2009,
 3 specifically says that at a hearing where the issue is
 4 slight to marginal evidence such as this one the State
 5 doesn't need to call a retrograde expert. It only
 6 needs to present two blood draws one hour apart and
 7 that the trier of fact when the burden is slight to
 8 marginal evidence does need to call.
 9 Again, that is Sheriff versus Burcham 124
 10 Nevada 1247. Exactly on point.
 11 Mr. Sheets is discussing a trial issue. This
 12 is not a trial issue. He's discussing an issue of one
 13 blood draw. And there are two in this case.
 14 And, again, there's a case right on point
 15 saying that at these types of hearings in the interest
 16 of saving time that the State does not need to call an
 17 expert as long as there are two draws one hour apart.
 18 THE COURT: As I just previously ruled, it
 19 will be allowed for the purposes of preliminary
 20 hearing.
 21 MR. MARTINOVSKY: I also would like to admit
 22 State's Exhibit No. 24.
 23 THE COURT: And what is 24?
 24 MR. MARTINOVSKY: It's medical records for
 25 Miss Hurley. I'm seeking to admit it under the medical

1 records exception as well as the business records
 2 exception. 51.115 and 51.135, which specifically hold
 3 that medical records are not hearsay, are admissible,
 4 and they're admissible under the business records
 5 exception.
 6 MR. SHEETS: And, Your Honor, I would object
 7 again. First of all, my client has a right to confront
 8 his accuser, in this case Morgan Hurley. The State has
 9 chosen not to do that. Best evidence rule is
 10 Morgan Hurley again.
 11 Furthermore, I would object because this does
 12 not state anywhere in the affidavit as is required that
 13 indicates that these are the records are normally kept
 14 in the course of medical care. It further doesn't
 15 state that these are records kept in the normal course
 16 of business.
 17 The affidavit on the front itself does not
 18 meet the necessary requirements for this to be admitted
 19 without the testimony of the custodian of records. So
 20 I do not believe the State has what they need in order
 21 to admit this evidence.
 22 I can tell Your Honor that I recently won
 23 this issue with a higher court.
 24 MR. MARTINOVSKY: Which is irrelevant for
 25 this hearing.

1 So not only is it admissible as a business
 2 record, it's admissible as a medical record. And it's
 3 also authenticated, again by 52.015, that any evidence
 4 sufficient to show that the matter in question is what
 5 the proponent claims. So I'm asking --
 6 THE COURT: I'll allow it.
 7 (Whereupon, State's Exhibit 24 was
 8 admitted into evidence.)
 9 MR. MARTINOVSKY: Thank you.
 10 THE COURT: So, Mr. Martinovsky, do you want
 11 just to go over what's been admitted. 1, 2, 3, 4, 5,
 12 6, 7, 8, 9, 12, 13, 14, 15, 17, 18, 19, 20, 21.
 13 MR. MARTINOVSKY: The only exhibit I did not
 14 admit was 16. And we did not admit 22 and 23 because
 15 those were stipulated. This is a photo I didn't admit,
 16 Exhibit 16. I did not admit 22 and 23 because we
 17 stipulated.
 18 THE COURT: Okay.
 19 MR. MARTINOVSKY: I can go through the list,
 20 but his is what I have. That's correct, Your Honor.
 21 The only ones I didn't admit were 22, 23, and 16.
 22 THE COURT: What about 10 and 11?
 23 MR. MARTINOVSKY: Those were admitted. Those
 24 were photos.
 25 MR. SHEETS: Those were admitted, Your Honor.

1 Also, Your Honor, I would like to point out
 2 that 52.015, the requirement of authentication is
 3 satisfied by evidence of another showing sufficient to
 4 sufficient to show a finding that the matter in
 5 question is what the proponent claims.
 6 And 53.045 says any matter which may be
 7 authenticated by affidavit may also be authenticated by
 8 unsworn declaration. And also the statute only
 9 requires that the affidavit from the custodian
 10 substantially complies with what is outlined in the
 11 actual statute.
 12 I actually have one for the Court. It
 13 specifically states, it says, "Records made in the
 14 course of regularly conducted activity as it required,"
 15 and it gives an example. And then it says -- this is
 16 52.260 -- it says that the -- well, we don't even need
 17 an affidavit. We can do it with a declaration. But it
 18 only has to substantially comply.
 19 We have the woman in question, her purse was
 20 in the vehicle. Her license was there. They got a
 21 search warrant. All her relevant identifying
 22 information is there in the car in the passenger seat.
 23 And then we have medical records, which have
 24 her same date of birth, her same name, all the same
 25 relevant information.

1 THE COURT: Okay. Thank you.
 2 MR. MARTINOVSKY: So I believe the affidavits
 3 of the blood draw were admitted, death certificates,
 4 forensic toxicology report, and then a number of
 5 photos, as well as the medical records.
 6 THE COURT: Okay.
 7 MR. SHEETS: And just so that I can
 8 supplement just for the record on my objection
 9 regarding the medical records. They also contain
 10 statements that were supposedly provided by Miss Hurley
 11 and by other doctors. And those are all hearsay
 12 statements within what I believe is a hearsay document.
 13 THE COURT: Okay. Thank you, Mr. Sheets.
 14 Does the State rest?
 15 MR. MARTINOVSKY: Yes, Your Honor.
 16 MR. SHEETS: Your Honor, I have advised my
 17 client of his right to testify as well as not to
 18 testify and the fact that choice is his and his alone.
 19 I cannot force him to engage in either of those two
 20 paths.
 21 If he were to testify, he would be subject to
 22 cross-examination. If he were not to testify, Your
 23 Honor cannot use it against him. I believe he's going
 24 to heed my advice and not testify.
 25 And the defense would rest.

1 THE COURT: Okay.
 2 Mr. Aparicio, is that correct that after
 3 discussing with your client (sic) today you have chosen
 4 your constitutional right not to testify. Correct?
 5 THE DEFENDANT: That is correct, ma'am.
 6 THE COURT: Okay. Thank you very much.
 7 So the defense rests.
 8 Mr. Martinovsky, do you want to reserve for
 9 rebuttal?
 10 MR. MARTINOVSKY: I'm going have to argue
 11 upfront, Your Honor.
 12 I'm going to ask that you hold the defendant
 13 to answer for everything, all the six charges. Let's
 14 go through it backwards.
 15 In terms of proximate cause, we had
 16 Mr. McCauley testify that the defendant drove by him.
 17 He was going fast, faster than was going and faster
 18 than the speed limit, and that he ran into the victims
 19 who were stopped at the red light. So the proximate
 20 cause is clearly speeding and not stopping for a red
 21 light.
 22 We have numerous witnesses -- we have also
 23 the photograph which shows that the defendant's car,
 24 the speedometer was stuck at 100 miles an hour. Pretty
 25 good evidence.

1 that if there's contradictory evidence the trier of
 2 fact at a preliminary hearing is only to consider
 3 whether or not there are elements as to the crime, not
 4 whether or not there is conflicting evidence on the
 5 other side.
 6 If there is, that's great. That's something
 7 for a trial. But at a preliminary hearing, according
 8 to Badillo versus State, as long as the State can
 9 present evidence as to all the elements, even if
 10 there's contradictory evidence, the Court must bind it
 11 up.
 12 Was he the driver of the car? There was a
 13 photograph that was admitted, Your Honor which shows
 14 that he has injuries to his face, a bloody lip. And
 15 there has also been testimony that there was a bloody
 16 rag found in the driver's seat of the vehicle. There's
 17 evidence that there was a trail of blood going from the
 18 driver's side around the car to the passenger side.
 19 There was also testimony that the defendant
 20 was distraught and crying at the scene and concerned
 21 about the passenger in the vehicle saying help the
 22 passenger. Help the passenger. That is inconsistent
 23 with the fact that he was the driver.
 24 We also have another piece of circumstantial
 25 evidence. We have Officer Sonetti coming and

1 We also had two different officers testify
 2 that in their estimation of the speed workup, the more
 3 reliable speed workup, the defendant was driving 100
 4 miles an hour as well.
 5 We also have the evidence that the
 6 defendant's blood alcohol level at 1:47 in the morning
 7 was .204 and that one hour later it was .178.
 8 I'm asking that you hold him on all the
 9 theories.
 10 Again, as we already argued, according to
 11 Sheriff v. Burcham, which I've repeated ad nauseam, but
 12 for a preliminary hearing if the State has two blood
 13 draws the trier of fact at a slight to marginal hearing
 14 can draw some inferences that his BA was over .08.
 15 So he was driving. The driver of the vehicle
 16 was the proximate cause. The victims obviously --
 17 unbelievably, we had two EMTs at the scene who
 18 indicated that the victims were basically dead as soon
 19 as the collision occurred. So we have death. We have
 20 the blood alcohol.
 21 Obviously, what the real issue in this case
 22 is going to be is was the defendant driving.
 23 A number of things I wanted to indicate. The
 24 standard at a slight is slight or marginal. And
 25 there's also Badillo versus State, which basically says

1 testifying that there was a girl -- that one of the
 2 victims was in the passenger seat with her face down
 3 and her purse was there. So she was clearly the
 4 passenger.
 5 And the evidence from the officers was that
 6 there was no one in the back seat. And the Court has
 7 the photos. There's no blood anywhere in the back
 8 seat. The seat belts were not engaged. So a collision
 9 of the magnitude -- if you look at the photographs --
 10 which destroyed both the cars where a vehicle was
 11 accelerated from zero to 50 miles an hour in 1.5
 12 seconds, then it's safe to assume someone in the
 13 backseat who was not restrained would have suffered
 14 tremendous injuries.
 15 However, there's no blood at all in the
 16 backseat. The only blood is on the airbag, consistent
 17 with the defendant's face having hit it, and around the
 18 side of his car of someone who's expressing concern
 19 about his passenger.
 20 Then we have the statements, Your Honor,
 21 although there are some contradictory statements. We
 22 did have at two different times, Miss Garduno testified
 23 that the defendant said something to the effect did I
 24 run the light. And then Officer Ware said that the
 25 defendant said did I kill two people.

1 Now, if this was a beyond a reasonable doubt
2 hearing would we be able prove that he was the driver?
3 No, probably not. But we're not at that hearing. This
4 is a slight to marginal hearing. And the evidence that
5 he was driving, was at the scene, he's got injuries to
6 his face, there's blood on the driver's side, the
7 passenger seat was occupied, there was no one else
8 there, oh, and then finally Mr. McCauley testified --
9 he was the first witness -- he testified there was a
10 crowd of people he said and the defendant was there and
11 there was a crowd of people restraining him.

12 So based on everything, because the standard
13 is so low, I'm going to ask that you hold the defendant
14 to answer for all the charges.

15 THE COURT: Mr. Sheets?

16 MR. SHEETS: Yes, Your Honor.

17 I have quite a few issues with these
18 particular arguments that were made by the state in the
19 this case. First of all, there were some
20 misstatements. One of the misstatements the State
21 makes bothers me because the State wants you to assume
22 facts. They want you to act on a hunch. They want you
23 to presume things that haven't been presented today.
24 And then they want to cover it all up under the term
25 slight or marginal evidence.

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1 What you actually heard is he said save her.
2 Do what you can for her. He didn't say save the
3 passenger. That is a huge leap that is being put forth
4 to skew what's actually presented. I can go through
5 it.

6 McCauley, he didn't see the driver. He
7 doesn't know who the driver was. I specifically asked
8 that question.

9 Sonetti, I specifically asked the same
10 question. He didn't know.

11 Mr. Morales didn't see the driver. The very
12 last thing I asked him.

13 Miss Garduno, she wasn't even there. She
14 doesn't know other than what cops told her. She said
15 that officers had indicated that to her and, quite
16 frankly, that they were trying to prove it.

17 Officer Ware, the State again wants you to
18 assume that him asking a question was an admission.
19 But the very last question is I asked Officer Ware was,
20 "My client made no admissions?" "Correct."

21 So even the officer by his own testimony said
22 that was not an admission. Zero.

23 Officer -- I'm going to pronounce this
24 wrong -- Stahell, again, no admissions. We have him
25 never being read Miranda. We have field sobriety tests

1 Now, I understand that there was a decision
2 somewhere in the past where the Nevada Supreme Court
3 said slight or marginal evidence that a crime may have
4 been committed. But I would point out that the
5 defendant has a constitutional right to a probable
6 cause determination.

7 The term slight or marginal evidence has been
8 misused by the State since the date that ruling was
9 issued to downgrade that which is needed for probable
10 cause. And I state that because if you think of it in
11 terms of real semantics what's less than marginal?
12 Nothing. Then where does reasonable suspicion fall
13 within that? A standard that has been held to be less
14 than probable cause.

15 So while they like to use the term slight or
16 marginal evidence as a way to bring down that which is
17 required, I think it's important to note that they must
18 show probable cause as to each and every element of
19 each and every offense.

20 They want you to assume he's operating that
21 motor vehicle. One of the biggest points he makes when
22 he argues that this girl is in the passenger seat is
23 that she is the passenger of the vehicle. He states
24 that there's a claim that my client is like take care
25 of the passenger. That's not what you heard.

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1 that he says the National Highway Traffic Safety
2 Administration indicates that natural nystagmus occurs
3 in collisions that they're saying he was involved in.

4 Contreras, no admissions.

5 Salisbury, never there. No driver is in the
6 car. No driver is seen.

7 Atkinson, nobody in the car. Only a video
8 that shows somebody else in the car.

9 Now, we have a passenger who supposedly has
10 her back turned to the passenger window and she's
11 trapped in between the dash. She's on the floorboard.
12 She's not in the seat. And we heard testimony that
13 people often can end up in a different seat than they
14 started in a collision.

15 That's the only evidence you have had
16 presented before you other than my client sitting on
17 the curb next the vehicle. You haven't heard any
18 testimony of whose vehicle it was. None of that.

19 You heard testimony that there couldn't have
20 been anybody in the back seat because the seats were
21 much more cleaned off than the front. Look at the
22 pictures, the actual evidence. Pretty damn clear that
23 there's no glass on that back seat. Either that or the
24 photos inaccurate, whichever part of that testimony you
25 want to take.

1 I have no doubt that these people died.
 2 That's not what we're contesting. We have no doubt
 3 that there was a collision between the red vehicle and
 4 the white vehicle. I think the State has shown that.
 5 There's no doubt for at least for right now for
 6 purposes of establishing cause. There's definitely
 7 probable cause that the vehicle was traveling at a high
 8 rate of speed. But what there is not is probable cause
 9 that my client's behind the wheel of that vehicle.
 10 They claim that there's blood. They don't
 11 have a chemist come in and say it was blood. That's
 12 all speculative information. There's an impact on the
 13 windshield. One person in the car, I.D. of one person
 14 in the car. No I.D. of my client. You cannot make the
 15 assumption simply because he's standing next to the
 16 vehicle that's it's him.
 17 You heard the officer testify about a video.
 18 The video is not here today. The video of the accident
 19 hasn't been presented. We have a situation where the
 20 State has to show probable cause that he was operating
 21 that motor vehicle. It's interesting.
 22 Gillespie versus Sheriff talks about a hunch.
 23 There's also a Texas case that about you can't rely on
 24 hunches. Nevada Supreme Court says there's no probable
 25 cause in a case where an officer is driving by an

1 not have been operating a motor vehicle 4 hours and 39
 2 minutes after a supposed accident would have on this
 3 case.
 4 Again, the State is asking you to make the
 5 leap that there's probable cause because almost 5 hours
 6 later somebody who may or may not have been operating a
 7 motor vehicle had a high blood that they must have had
 8 it at that time. They don't have it.
 9 They don't have a walk-and-turn. They don't
 10 have a one-legged stand. They have a horizontal gaze
 11 nystagmus, which by their own testimony could have been
 12 the result of any kind of impact injury at all. You
 13 don't know. They don't have any data from the car.
 14 So they truly want you to assume because
 15 there's somebody sitting next to the car and somebody
 16 in the passenger seat that by their own testimony could
 17 have been ended up in that spot or could have ended up
 18 in a different spot in a vehicle where the only I.D.
 19 submitted to Your Honor is the one with the passenger's
 20 name -- passenger, air quotes -- that he must have the
 21 operator of that motor vehicle. It's just there.
 22 There's not even slight evidence that he was operating
 23 it. You've got nobody.
 24 You heard testimony that there were crowd of
 25 people around. And while I was objected to and

1 alley. He see two people next to each other. They
 2 turn around and walk away from each other. He's
 3 convicted of a drug deal because they finally stop him
 4 and search him. He's got money.
 5 The next day the Supreme Court says no. It
 6 doesn't work that way. You're acting on a hunch. Just
 7 because they're standing next to each other isn't good
 8 enough. Proximity isn't enough. There's nothing else.
 9 If there's so supposedly so much blood that
 10 it's on a towel, it's on a door, it's all the way
 11 around the side of the car, and all we have is a
 12 picture of a busted lip? The evidence is to the
 13 contrary.
 14 They want you to speculate that the busted
 15 lip was bleeding that night. They want you to
 16 speculate that the nose was bleeding that day, and they
 17 want you to speculate that that blood is his. All
 18 things that the State has not presented to Your Honor
 19 today. And you can't do it. You can only accept
 20 evidence which is presented to Your Honor. And it just
 21 hasn't been presented.
 22 Furthermore, notwithstanding the objection
 23 regarding the blood alcohol level, there has been zero
 24 testimony as to how or what significance a blood
 25 alcohol level drawn from somebody who may or may have

1 sustained regarding what other officers investigated,
 2 the State never moved to strike the testimony of
 3 Detectives Atkinson when he offered of his own volition
 4 that nobody could identify the driver of the vehicle.
 5 He offered that testimony. I didn't ask that question.
 6 He offered it while we were standing over there with
 7 exhibits.
 8 So all the testimony you have is there's
 9 nobody there. The group of people didn't see him
 10 operating the motor vehicle. You heard about some
 11 video of the accident not presented. You had him not
 12 in the car but somebody else in car. Their I.D. is in
 13 the car.
 14 You have something purporting to be blood.
 15 You have two statements that both parties say
 16 when we were questioning, one of them an officer of the
 17 law, says it was not an admission. Somebody who is
 18 quite frankly trained in that circumstance. And
 19 everybody is saying he was never Mirandized anyways and
 20 he wasn't free to leave.
 21 So there's questions -- at least as presented
 22 today there are questions as to the admissibility of
 23 those statements anyways. So when you put it all
 24 together, Your Honor, I just don't see even slight or
 25 marginal evidence with regard to the actual physical

1 control. I see issues with the with nonextrapolated
2 blood draw.

3 You heard zero testimony as to prolonged
4 physical pain or permanent disfigurement, which are the
5 standards to substantially bodily harm as it pertains
6 to Count 6 and Count 4 with regards to Miss Hurley.
7 You have heard nothing from Miss Hurley regarding those
8 effects.

9 Medical records in and of themselves are not
10 sufficient. They can show that at the time there was
11 an injury, but the jury instructions themselves say
12 that which tends to go beyond the initial moment.
13 That's the jury instruction that they would get.
14 That's the state of the law taken straight from the
15 Nevada Supreme Court.

16 So I don't believe that they've even
17 established the elements for that prolonged physical or
18 that permanent disfigurement. There's nothing in those
19 records that says anything about permanent
20 disfigurement. And without her, without Miss Hurley,
21 without follow-up doctor visits, you don't have
22 prolonged physical pain. So I think at least Counts 5
23 and 6 need to go.

24 I think honestly, Your Honor, with regards to
25 Counts 1 through 4, based on the arguments I have made

1 there is not probable cause.

2 MR. MARTINOVSKY: You know, it's interesting
3 that he talks about jury instructions because we're not
4 at a jury trial. So we can get rid of all that.

5 The medical records, he mentioned something
6 about injury, except there's a case, Hardaway versus
7 State, 112 Nevada 1208 1996, state's that a broken bone
8 constitutes substantial bodily harm. It's in the
9 medical records. It's on Page 9 and Page 10. She had
10 broken bones. So we're good based on Hardaway versus
11 State.

12 There was some discussion here about he wants
13 us to speculate that there was all this blood. I don't
14 know what -- maybe it was ketchup? I don't know what
15 that is I guess. We're going to have to just use our
16 own common sense that there was a massive car collision
17 in which they had to cut the victims out of the car and
18 the speedometer is stuck at 100 miles per hour, that
19 the victims' car accelerated from zero to 50 miles an
20 hour in one and a half seconds, that we're going to
21 think that it wasn't blood or that it happened some
22 other day? You do get to use common sense.

23 Also, Your Honor, Miranda is not relevant.
24 Case law after case law, all down the line for field
25 sobriety tests, you don't have to be Mirandized for

1 field sobriety tests.

2 And the fact that the officer said you're not
3 free to go. Of course he's not free to go. He
4 couldn't go even if they wanted to keep him there
5 because he was in the hospital. But black letter law:
6 Miranda warning not required for a field sobriety test.
7 Not relevant whatsoever.

8 And Schmerber, 1960, driving pattern, odor of
9 alcohol. That's probable cause to get a blood draw.
10 That's all you need. That's black letter U.S. Supreme
11 Court case for the past 60 years says that as long as
12 you have a driving pattern. Because why? What's the
13 rationale? Because stuff like this happens. We can't
14 now take him out of the hospital and have him do field
15 sobriety tests because he's been hurt in a collision
16 presumably, right?

17 So obviously if the law required us to do
18 field sobriety tests to get a warrant to test someone
19 for DUI we'd be basically it's unproven every time
20 there's a collision, which is the most serious of the
21 cases. So we can throw that argument out.

22 And then sometimes he wants us to believe the
23 cops and sometimes he doesn't want us to believe them.
24 I guess whenever it's convenient.

25 In terms of the evidence that shows that he

1 was driving, again, it is slight to marginal. I didn't
2 make it up. He wants to say that we want to minimize
3 it. That's what the law is.

4 And I never said that someone is going to
5 come in here and say that he was the driver. But we
6 prove murder cases without witnesses all the time.
7 Again, injuries to his face, apprehended at the scene,
8 distraught.

9 Okay, he didn't say get the passenger out.
10 So then he came and said, yeah, I just saw the
11 passenger in the seat. And then he said help my
12 girlfriend. Help my girlfriend. Maybe he's talking
13 about some other person there? I don't know. There
14 was no one else at the scene. I mean, we get to use
15 our common sense.

16 And the statements did I run the light or did
17 I kill two people are extremely probative. Because
18 someone who -- like if he was just walking down the
19 street or if he was in the back seat not driving, he
20 would never have said that, oh, my God, is my friend
21 okay or whatever. But when he blurts out these two
22 statements did I kill the two people, did I run the red
23 light, questioning what happened, it's basically a
24 backdoor admission to having been someone who was
25 driving the vehicle because he's expressing concern.

1 More than once. 1
2 So for a prelim I am asking that you hold him 2
3 to answer for everybody. Again, the medical records 3
4 how that Hurley suffered a broken arm. She had broken 4
5 bones. Hardaway versus State 112 Nevada 1208 1996, 5
6 that's enough for substantial bodily harm. 6
7 THE COURT: So, Mr. Aparicio, we heard the a 7
8 lot of testimony today from ten different witnesses. 8
9 As you heard over and over again today, in a 9
10 preliminary hearing it is slight or marginal evidence. 10
11 It's just a little tiny bit. It's not beyond a 11
12 reasonable doubt like it is at a jury trial. 12
13 I believe that there are definitely some 13
14 facts that need to be decided by a jury as trier of 14
15 fact, but I do believe that the State has met their 15
16 burden of slight or marginal evidence to bind you over 16
17 today on all the counts. That's Counts 1 through 6. 17
18 You will be bound over to the Eighth Judicial 18
19 District Court and your bind over date is: 19
20 THE CLERK: June 6th at 10:00 a.m., lower 20
21 level. 21
22 THE COURT: Thank you. 22
23 23
24 (The proceedings concluded.) 24
25 25

ATTEST: Full, true, and accurate
transcript of proceedings.

/S/ Rose Morichetti
ROSE MORICHETTI, CCR No. 817

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1 REPORTER'S CERTIFICATION
2 STATE OF NEVADA)
3 COUNTY OF CLARK)
4
5 I, Rose R. Morichetti, a certified court
6 reporter in and for the State of Nevada, hereby certify
7 that pursuant to NRS 239B.030 that I have not included
8 the Social Security number of any person within this
9 document.
10 I further certify that I am not a relative or
11 employee of any party involved in said action, nor a
12 person financially interested in the action.
13 Dated in Las Vegas, Nevada this 1st day of
14 July, 2018.
15
16 /S/ Rose Morichetti
17 ROSE MORICHETTI, CCR No. 817
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RA 000046

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<p>told [13] 22/18 25/15 27/5 48/13 50/5 50/7 50/18 57/1 57/6 58/4 95/6 95/9 135/14</p> <p>took [10] 8/10 15/5 20/21 20/23 20/24 21/12 30/7 45/22 57/13 102/14</p> <p>tool [1] 84/14</p> <p>top [1] 54/5</p> <p>total [2] 55/8 60/23</p> <p>touching [1] 29/7</p> <p>tourniquet [1] 42/22</p> <p>towards [10] 8/10 8/15 8/15 8/16 18/15 19/15 27/2 28/25 31/6 32/1</p> <p>towel [1] 138/10</p> <p>toxicology [1] 128/4</p> <p>Toyota [2] 30/19 86/5</p> <p>traffic [8] 59/10 64/14 83/2 86/23 87/20 87/23 100/24 136/1</p> <p>trail [1] 131/17</p> <p>train [1] 84/12</p> <p>trained [2] 49/5 140/18</p> <p>training [22] 17/5 17/10 18/5 36/5 36/7 36/9 41/14 41/17 41/19 41/20 48/24 63/25 70/3 71/24 72/5 75/25 76/5 82/25 83/3 84/1 84/3 100/19</p> <p>transcript [2] 111/8 146/2</p> <p>transcripts [1] 111/2</p> <p>transfer [1] 89/25</p> <p>transferred [2] 38/16 91/5</p> <p>transport [2] 36/22 55/10</p> <p>transported [1] 119/3</p> <p>transports [1] 36/24</p> <p>trapped [1] 136/11</p> <p>trauma [4] 52/3 52/6 57/23 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<div>whatever [1] 144/21</div> <div>whatsoever [3] 92/18 123/1 143/7</div> <div>wheel [10] 21/18 21/25 28/24 39/23 81/8 81/12 108/9 114/20 114/22 137/9</div> <div>when [61] 12/10 12/17 14/1 16/6 18/9 19/23 21/10 21/17 21/24 22/15 22/24 25/8 25/9 26/21 26/23 28/19 29/8 31/24 39/12 42/3 44/22 47/11 49/16 50/13 52/4 54/24 59/18 60/10 61/12 61/15 65/9 73/12 75/1 79/2 79/16 83/10 85/6 88/19 88/24 89/1 89/11 89/14 90/21 90/24 93/2 93/3 95/15 95/17 98/5 101/7 102/21 109/19 116/5 119/1 122/10 124/7 134/21 140/3 140/16 140/23 144/21</div> <div>whenever [1] 143/24</div> <div>where [43] 7/23 8/1 8/7 13/8 19/11 24/24 27/17 28/8 28/21 29/1 29/16 31/2 31/6 31/15 32/6 36/25 37/10 41/24 43/7 49/5 52/2 52/4 52/9 59/16 59/18 68/9 72/12 72/15 78/23 79/14 79/16 80/14 96/18 101/14 108/24 115/11 124/3 132/10 134/2 134/12 137/19 137/25 139/18</div> <div>Whereupon [14] 7/4 16/21 24/5 35/11 40/23 54/21 63/7 71/8 77/18 78/1 82/5 100/2 103/6 127/7</div> <div>wherever [1] 42/13</div> <div>whether [22] 23/18 33/3 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<p>Y</p> <p>yeah [4] 31/19 32/2 33/2 144/10 year [2] 17/22 109/24 years [17] 24/20 36/7 36/8 36/13 36/18 41/20 51/16 57/18 59/12 71/23 72/4 76/14 78/16 100/18 100/24 117/2 143/11 yes [176] yet [1] 30/21 you [615] You'll [1] 34/12 you're [36] 17/11 19/11 19/13 19/14</p>	<p>Z</p> <p>zero [9] 85/22 86/6 113/3 122/12 132/11 135/22 138/23 141/3 142/19 zero miles [1] 85/22</p>

Felony/Gross Misdemeanor

COURT MINUTES

August 01, 2019

C-18-332496-1 State of Nevada
 vs
 Henry Aparicio

August 01, 2019 09:30 AM STATUS CHECK: TRIAL READINESS

HEARD BY: Silva, Cristina D. COURTROOM: RJC Courtroom 11B

COURT CLERK: Garcia, Louisa

RECORDER: Villani, Gina

REPORTER:

PARTIES PRESENT:

Charles Martinovsky Attorney for Plaintiff

Damian R. Sheets Attorney for Defendant

Henry Aparicio Defendant

State of Nevada Plaintiff

JOURNAL ENTRIES

Amended Information FILED IN OPEN COURT.

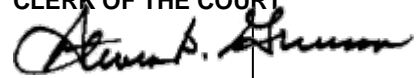
NEGOTIATIONS are as contained in the Guilty Plea Agreement FILED IN OPEN COURT. Mr. Martinovsky stated

State will retain the right to argue as to Counts 1 and 2, but no opposition to concurrent time between Count 3 - reckless driving and the two counts of driving under the influence.

DEFT. APARICIO SWORN, ARRAIGNED AND PLED GUILTY TO COUNT 1 - DRIVING UNDER THE INFLUENCE RESULTING IN DEATH (F); COUNT 2 - DRIVING UNDER THE INFLUENCE RESULTING IN DEATH (F); COUNT 3 - RECKLESS DRIVING (F). Court ACCEPTED plea, and, ORDERED, matter referred to the Division of Parole and Probation (P & P) and SET for sentencing. COURT FURTHER ORDERED, the trial date and pending motions were VACATED.

CUSTODY

10/18/19 9:30 AM SENTENCING



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Attorney for Defendant
Henry Aparicio

**EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA**

The State of Nevada)	Case No. C-18-332496-1
Plaintiff,)	
)	Dept. No. IX
vs.)	
)	NOTICE OF APPEAL
Henry Aparicio,)	
Defendant.)	

NOTICE IS HEREBY GIVEN that Defendant/Appellant, HENRY APARICIO, hereby appeals to the Supreme Court of Nevada from the Judgment of Conviction in the above-referenced case entered on or about October 29, 2019.

DATED this 15 day of November, 2019.

/s/ Damian Sheets
Damian Sheets, Esq.
726 S. Casino Center Blvd.
Las Vegas, Nevada 89101
Telephone: (702) 598-1299
Attorney for Defendant

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