

# IN THE SUPREME COURT OF THE STATE OF NEVADA

GERALD LEE WHATLEY, JR.,  
Appellant(s),

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF CLARK,  
Respondent(s),

Electronically Filed  
May 02 2023 10:11 AM  
Elizabeth A. Brown  
Clerk of Supreme Court

Case No: C-21-357412-1  
*Related Case A-22-861330-W*  
Docket No: 86185

# RECORD ON APPEAL VOLUME 2

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1 of your relation with your son, your father, your cousin, and your uncle,  
2 anything about your relation with them and their work that would affect  
3 your ability be a fair juror in this case?

4 PROSPECTIVE JUROR 053: No.

5 THE COURT: Okay. All right. Thank you very much.

6 Anybody in the next row? Let's go down to Number 11,  
7 Ms. Heldt?

8 [Pause]

9 PROSPECTIVE JUROR 058: My sister-in-law is with -- a  
10 Lieutenant with Metro.

11 THE COURT: Oh, okay. And is she specialized in any  
12 particular area?

13 PROSPECTIVE JUROR 058: The top of the strip, up by  
14 Bellagio.

15 THE COURT: Okay. How long has she been with Metro?

16 PROSPECTIVE JUROR 058: Close to 20 years.

17 THE COURT: All right. Anything about your relation with her  
18 and her work there, that would affect your ability to be a fair juror in this  
19 case?

20 PROSPECTIVE JUROR 058: I don't think so.

21 THE COURT: Again, you'd be able to follow my instructions  
22 on the law, and fairly and unbiasedly apply those instructions to the  
23 evidence admitted?

24 PROSPECTIVE JUROR 058: Yeah.

25 THE COURT: Okay. Thank you.

1 PROSPECTIVE JUROR 058: Who else in the second row. Oh,  
2 right next door. Number 12, Ms. Lacayo?

3 PROSPECTIVE JUROR 063: I have a significant other who is  
4 an MP in the Navy.

5 THE COURT: Okay. And thank you for his service. Is he --  
6 where is he stationed?

7 PROSPECTIVE JUROR 063: Well, he's in the reserves, so he  
8 just has his reserve unit once a month.

9 THE COURT: Oh, okay.

10 PROSPECTIVE JUROR 063: And he'll occasionally go  
11 overseas for two weeks.

12 THE COURT: All right. And so he retired, I take it then from  
13 the Navy or --

14 PROSPECTIVE JUROR 063: No. He's in with the active  
15 reserves, I suppose.

16 THE COURT: Okay. So they'll occasionally call him into  
17 active duty.

18 PROSPECTIVE JUROR 063: All right. Anything about your  
19 relation with him and his work that would affect your ability to be a fair  
20 juror in this case?

21 PROSPECTIVE JUROR 063: No, sir.

22 THE COURT: You'd be able to follow my instructions on the  
23 law, and fairly and unbiasedly apply those instructions to the evidence  
24 admitted?

25 PROSPECTIVE JUROR 063: Yes.

1 THE COURT: Okay. Thank you very much.

2 And who else in this second row? All right. Let's go all the  
3 way down to number 19, Mr. Elmer?

4 PROSPECTIVE JUROR 091: Yes, sir. I have a nephew that's  
5 currently a police officer in Albuquerque.

6 THE COURT: Okay. And is he specialized in anything, or --

7 PROSPECTIVE JUROR 091: He's K-9 officer.

8 THE COURT: Oh, okay. Well, that's sort of interesting.

9 Anything about his work and your relation with him that  
10 would affect your ability to be a fair juror in this case?

11 PROSPECTIVE JUROR 091: No.

12 THE COURT: All right. Do you feel you'd be able follow my  
13 instructions on the law and fairly and unbiasedly apply those instructions  
14 to the evidence submitted?

15 PROSPECTIVE JUROR 091: Yes.

16 THE COURT: All right. Thank you very much.

17 Anyone else I missed in the second row? And then I think,  
18 Mr. Harvey, did you have your hand?

19 PROSPECTIVE JUROR 100: Yes.

20 THE COURT: Okay. Let's go to the fourth row. Oh, I'm,  
21 sorry. I didn't see you, Ms. Mecham.

22 PROSPECTIVE JUROR 086: I didn't raise my hand until now,  
23 so that was my fault. My grandpa, he was a highway patrolman in  
24 Wyoming.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR 086: But he retired when I was a lot  
2 younger.

3 THE COURT: Okay. Anything about your relation with him,  
4 and his work as a highway patrolman, that would affect your ability to be  
5 a fair juror this case?

6 PROSPECTIVE JUROR 086: No.

7 THE COURT: Okay. Thank you.

8 PROSPECTIVE JUROR 086: Uh-huh.

9 THE COURT: All right. Now we'll go down to Mr. Harvey.

10 PROSPECTIVE JUROR 100: I did 28 years with the Eugene  
11 Police Department in Oregon. Two of those years I was in the drug  
12 enforcement part of a DUI enforcement team, and then my son is a  
13 detective here with the Metro Department.

14 THE COURT: Okay. And where's his area of expert --

15 PROSPECTIVE JUROR 100: He's currently in the background.

16 THE COURT: All right. Let me ask, in terms of your work  
17 with the Eugene, Oregon Police, anything in terms of that work you think  
18 that affect your ability to be fair to the parties in this case?

19 PROSPECTIVE JUROR 100: No.

20 THE COURT: All right. You feel you'd be able to follow my  
21 instructions on the law, fairly and unbiasedly apply those instructions to  
22 the evidence submitted?

23 PROSPECTIVE JUROR 100: Yes, I can.

24 THE COURT: And then as to your son being with Metro,  
25 anything about your relationship with your son and his work that you



1 feel would affect your ability to be fair juror in this case?

2 PROSPECTIVE JUROR 100: No.

3 THE COURT: All right. Thank you very much.

4 Anyone else, in the third row, either you, a close family  
5 member, or a close friend, engaged in law enforcement work, or security  
6 work? Anyone I missed? All right. Let the record reflect no other hands.

7 Now, as has been explained, this case involves the charge of  
8 driving while under the influence. Does anyone feel that they possibly  
9 could not be fair, or keep an open mind as to whether the State has met  
10 its burden of proof until the end of trial, because of the nature of the  
11 charge in this case? All right, let the record reflect no hands.

12 Let me ask, have you, or any close family member, or close  
13 friend, been the victim of a driving under the influence crime, or other  
14 crime involving allegations of substance abuse? Okay. We've got a few  
15 hands.

16 Let's go to Number 9, Mr. Padilla?

17 PROSPECTIVE JUROR 053: I had a cousin that got in an  
18 accident.

19 THE COURT: Okay. How long -- where was that?

20 PROSPECTIVE JUROR 053: Someone saw -- actually ran --  
21 and ran into her.

22 THE COURT: I'm sorry, what?

23 PROSPECTIVE JUROR 053: Someone actually ran into her.

24 THE COURT: Okay. Was that here locally or where was it?

25 PROSPECTIVE JUROR 053: No. It wasn't locally. It was in

1 Fremont.

2 THE COURT: Fremont, California?

3 PROSPECTIVE JUROR 053: Correct.

4 THE COURT: All right. And were the police called in?

5 PROSPECTIVE JUROR 053: The police were called in.

6 THE COURT: All right. And was the person who ran into her  
7 apprehended?

8 PROSPECTIVE JUROR 053: Yes. They were.

9 THE COURT: And were you satisfied or dissatisfied with how  
10 the justice system handled that case?

11 PROSPECTIVE JUROR 053: Well, I wasn't -- I don't know the  
12 particulars of the case.

13 THE COURT: All right.

14 PROSPECTIVE JUROR 053: I have no idea either way.

15 THE COURT: Either way. All right. Anything about your  
16 relation with her and her experience, that you feel would affect your  
17 ability to be a fair juror in this case?

18 PROSPECTIVE JUROR 053: No.

19 THE COURT: All right. Thank you very much for letting us  
20 know that.

21 PROSPECTIVE JUROR 055: And then, Number 10,  
22 Ms. Andrews indicated something?

23 PROSPECTIVE JUROR 055: My little brother got in a car  
24 accident about ten years ago. He -- he was the one drunk driving.

25 THE COURT: Okay. And was he prosecuted for that?

1 PROSPECTIVE JUROR 055: Yes.

2 THE COURT: Were you satisfied, or dissatisfied with how the  
3 justice system handled his case?

4 PROSPECTIVE JUROR 055: I guess satisfied. I -- I didn't  
5 really think about it.

6 THE COURT: Okay. Well, that's a good answer too. I just --  
7 you know, people have different experiences or feelings and I'm just  
8 trying to find out your feelings, if you felt that he was treated all right by  
9 the system?

10 PROSPECTIVE JUROR 055: Uh-huh. I think the system  
11 works.

12 THE COURT: All right. Is there anything about your relation  
13 with him, and his prior DUI, that would affect your ability to be a fair  
14 juror in this case?

15 PROSPECTIVE JUROR 055: I don't think so.

16 THE COURT: All right. Do you feel you'd be able to follow  
17 my instructions on the law fairly and unbiasedly apply those instructions  
18 to the evidence admitted?

19 PROSPECTIVE JUROR 055: Yes.

20 THE COURT: All right. Thank you very much, Ms. Andrews.

21 All right. And then second row, I only -- oh, we missed a  
22 hand, Number 8, Ms. Wong.

23 PROSPECTIVE JUROR 051: I have a few friends that were  
24 arrested for drunk driving.

25 THE COURT: Okay. Close friends?

1 PROSPECTIVE JUROR 051: Two of them were close.

2 THE COURT: All right. Was that locally?

3 PROSPECTIVE JUROR 051: No. It was in California

4 THE COURT: And about how long ago was that?

5 PROSPECTIVE JUROR 051: A little less than ten years ago.

6 THE COURT: All right. Were they prosecuted?

7 PROSPECTIVE JUROR 051: Yes.

8 THE COURT: And were you satisfied, or dissatisfied with  
9 how the justice system handled their cases?

10 PROSPECTIVE JUROR 051: Well, I mean, they were my close  
11 friends, so I'm not sure how, if I could be impartial to that.

12 THE COURT: Okay. Do the parties have any problem if I let  
13 Juror Number 20, go to the restroom?

14 MR. LEXIS: No objection.

15 MS. PARK: No.

16 THE COURT: All right. Okay.

17 THE MARSHAL: Just follow me.

18 THE COURT: Follow him.

19 All right. I'm sorry. So you didn't really have an opinion one  
20 way or the other as to how the system handled them?

21 PROSPECTIVE JUROR 051: I know, and one of them they  
22 ended up getting their license taken away --

23 THE COURT: Right.

24 PROSPECTIVE JUROR 051: -- for a year. I think it -- I mean,  
25 they were my close friends, so I don't -- I felt like it was unfair, but I'm

1 not necessarily impartial to that.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR 051: Yeah.

4 THE COURT: All right. Do you feel that you'd be able to put  
5 that aside and be fair to both sides in this case?

6 PROSPECTIVE JUROR 051: I can try.

7 THE COURT: Well, do you think you can do that?

8 PROSPECTIVE JUROR 051: I -- I think so. Yeah.

9 THE COURT: Yes. All right. All right. Thank you.

10 Let's hand your mic back to Mr. Padilla.

11 PROSPECTIVE JUROR 053: I didn't bring this one up. I  
12 actually got two DUIs myself.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR 053: About 22 years ago.

15 THE COURT: All right.

16 PROSPECTIVE JUROR 053: You know, neither one of them  
17 was involved in an accident. At that time I guess I would feel that they  
18 handled it incorrectly, because I -- everyone's not guilty, right?

19 THE COURT: All right. But you felt --

20 PROSPECTIVE JUROR 053: But I don't think it will affect me  
21 currently.

22 THE COURT: You didn't feel that they were handled  
23 correctly?

24 PROSPECTIVE JUROR 053: At the -- at that time I didn't.

25 THE COURT: At that time, yeah. Looking back, what do you

1 think?

2 PROSPECTIVE JUROR 053: Looking back? Yeah, Probably  
3 they were.

4 THE COURT: All right. Anything about your personal  
5 experiences that affect your ability to be a fair juror in this case?

6 PROSPECTIVE JUROR 053: I don't think so, no.

7 THE COURT: All right. All right. Thank you. Anybody else I  
8 missed in the back row? All right. Let's hand that up to the second row.  
9 Anyone in the second row who either you, close family member, or a  
10 friend, been a victim of a driving under the influence crime, or other  
11 crimes involving allegations of substance abuse?

12 PROSPECTIVE JUROR 091: Yes, here.

13 Going to Number 19, Mr. Elmer?

14 PROSPECTIVE JUROR 091: Yes. I just had a, I guess, a  
15 former brother-in-law that was arrested for DUI, some years ago.

16 THE COURT: Okay. How long you said, I'm sorry?

17 PROSPECTIVE JUROR 091: It was probably 15 years ago  
18 now.

19 THE COURT: Okay. Was that locally?

20 PROSPECTIVE JUROR 091: No. That was in the State of  
21 Washington.

22 THE COURT: Okay. Was he prosecuted?

23 PROSPECTIVE JUROR 091: I believe so.

24 THE COURT: Were you satisfied, or dissatisfied with how the  
25 system handled his case?

1 PROSPECTIVE JUROR 091: Satisfied.

2 THE COURT: All right. Anything about that experience that  
3 would affect your ability to be fair juror in this case?

4 PROSPECTIVE JUROR 091: No.

5 THE COURT: All right. Thank you.

6 Anybody else? Let's go down to Number 14, Ms.  
7 Quinto'Ocasio?

8 PROSPECTIVE JUROR 070: Yes. My husband was convicted  
9 of DUI.

10 THE COURT: Was that here, locally?

11 PROSPECTIVE JUROR 070: Yes.

12 THE COURT: About how long ago?

13 PROSPECTIVE JUROR 070: Maybe 12 years.

14 THE COURT: All right. Did you feel that the system  
15 appropriately or inappropriate -- how did you feel about how the system  
16 handled this case?

17 PROSPECTIVE JUROR 070: I think it was appropriately.

18 THE COURT: All right. Anything about your experience,  
19 your relation with your husband, your experience with that incident, that  
20 you think would affect your ability to be a fair juror in this case?

21 PROSPECTIVE JUROR 070: No.

22 THE COURT: Do you feel you'd be able to follow my  
23 instructions on the law fairly and unbiasedly, to apply those instructions  
24 to the evidence submitted?

25 PROSPECTIVE JUROR 070: Yes.

1 THE COURT: Okay. Thank you very much.

2 Anyone else in the second -- oh, let's go one over to

3 Mr. Maier.

4 PROSPECTIVE JUROR 075: My son was convicted of a DUI, I  
5 guess about 12 years ago. And I had no issues with him being  
6 convicted. He -- he -- everything was fair, how -- how it was all handled.

7 THE COURT: All right. Was that locally?

8 PROSPECTIVE JUROR 075: Yes.

9 THE COURT: Okay. All right. Anything about that  
10 experience that would affect your ability to be a fair juror in this case?

11 PROSPECTIVE JUROR 075: No.

12 THE COURT: All right. Thank you very much.

13 Anyone else in the second row? Not seeing any hands.

14 Anyone in the third row? Okay. Let's go to number 22, Ms. Robinson?

15 PROSPECTIVE JUROR 115: My son is currently going  
16 through DUI, two of them.

17 THE COURT: All right. Here locally?

18 PROSPECTIVE JUROR 115: Uh-huh.

19 THE COURT: You need to answer yes, or no.

20 PROSPECTIVE JUROR 115: Yes.

21 THE COURT: And do you feel the system is handling his  
22 cases appropriately, or inappropriately?

23 PROSPECTIVE JUROR 115: We're just beginning.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR 115: So -- I mean, he lost his license



1 so far, but he's still going through court.

2 THE COURT: All right. Let me ask you, in terms of your  
3 relation with him and his situation with the pending charges, anything  
4 about that you feel would affect your ability to be fair juror in this case?

5 PROSPECTIVE JUROR 115: No.

6 THE COURT: All right. Do you feel you'd be able to follow  
7 my instructions on the law, and fairly and unbiasedly apply those  
8 instructions to the evidence submitted?

9 PROSPECTIVE JUROR 115: Yes.

10 THE COURT: Okay. Thank you very much.

11 Anyone else in the third row, anyone else who I've missed at  
12 all? All right.

13 My next question. I think a lot of you've asked, but I -- I sort  
14 of try to break this down. So if you've already answered it don't feel that  
15 you need to answer it again, but have any of you, or a close family  
16 member or friend been charged with driving under the influence? If  
17 you've already answered it, don't feel you need to answer it again. All  
18 right. Let the record reflect no other hands.

19 THE COURT: Let me ask, have any of you, or a close family  
20 member, or friend, been a victim of a crime, which you believe would  
21 impact upon your ability to be fair to both sides in this case? Any crime  
22 that either you, or a close family member, or a close friend has been a  
23 victim of, which you feel, which would impact in some way on your  
24 ability to be fair in this case? Let the record reflect no hands.

25 Let me ask, and I know a couple of people have mentioned

1 things that you don't need to re-mention, but let me ask, have any of you  
2 ever been convicted -- or excuse me, have any of you ever been accused  
3 of a crime, or serious misconduct? Again, if you mentioned something  
4 already, don't feel you need to repeat it. Have any of you been accused  
5 of a crime or serious misconduct? Let the record reflect no hands.

6 Let me ask, have any -- if there's anyone of you that feel that  
7 either you or someone close to you has been treated unjustly by the  
8 police, or a prosecutor? Let the record reflect no hands. Let me ask if  
9 there's anyone of you, that you, or you feel someone close to you has  
10 been treated unjustly by some State or Government agency; and I'm not  
11 talking about the IRS, and taxes, but have any of you feel that you've  
12 been treated, you or a close family member or friend, been treated  
13 unjustly by some State or Government agency? Let the record reflect no  
14 hands.

15 Now in deciding the facts in this case, you may have to  
16 decide which testimony to believe, and which testimony not to believe.  
17 You may believe everything a witness says, or part of it, or none of it. In  
18 that regard I will instruct you as to possible circumstances that you may  
19 take into account in considering the testimony of any witness; this would  
20 include law enforcement officers, or government agents.

21 These factors include a witness' opportunity and ability to  
22 see or hear, and other things testified to, the witness' memory, the  
23 witness' manner while testifying, the witness' interest in the outcome of  
24 the case, if any, the witness is bias for prejudice, if any.

25 Whether other evidence contradicted the witness' testimony.

1 Whether the reasonableness of the witness' testimony, in light of all the  
2 evidence, and any other factors that you believe, bear on believability.  
3 The weight of the evidence as to a fact does not necessarily depend on  
4 the number of witnesses who testify about it. What is important is how  
5 believable the witnesses are, and how much weight do you think their  
6 testimony deserves.

7 In that regard you must consider the testimony of any law  
8 enforcement agent, or officer who testifies here, just like that of any  
9 other witnesses. Assessing the officer's opportunity and ability to see, or  
10 hear, or know the things he or she testifies to. Their memory, their  
11 manner of testifying, their interest in the outcome of the case, their bias  
12 or prejudice, whether their testimony is corroborated or contradicted by  
13 other testimony, and whether their testimony is reasonable, in light of all  
14 the evidence, and any other circumstances that you feel bear on a  
15 witness' believability.

16 Let me ask if a police officer or other government agents  
17 testifies, is there anyone who would not be able to follow my  
18 instructions and treat the officer or agents as an ordinary witness and  
19 evaluate their testimony by the factors I have stated, just like any other  
20 witness? Let the record reflect no hands.

21 Let me just ask, is there anyone who would give more or less  
22 credibility to a police officer's testimony simply because they are a police  
23 officer, or a government agent, and would not evaluate their testimony  
24 by the factors that I've just stated, by any other witness?

25 All right, let's go to Number 9, Mr. Padilla? All right,

1 Mr. Padilla, are you going to give more credibility or less --

2 PROSPECTIVE JUROR 053: More.

3 THE COURT: -- credibility to police officer's testifying.

4 PROSPECTIVE JUROR 053: It depends on the -- there's a lot  
5 of factors. This is my -- my big issue is, how long ago did it happen? I  
6 mean, most of these are police officers, they -- they can tell you, this  
7 happened, this happened, this happened, this happened, but they don't  
8 actually remember that particular person, because of all the incidents  
9 that they've been put through, there's no possible way.

10 THE COURT: Well --

11 PROSPECTIVE JUROR 053: [Indiscernible]

12 THE COURT: And that's something that, you know, the  
13 parties --

14 PROSPECTIVE JUROR 053: And me saying exactly what  
15 they're telling me is the truth. They probably believe it is, but it's  
16 probably not.

17 THE COURT: Okay. Well, I mean, that's what you, as jurors  
18 are asked to evaluate, as I went through that list of factors you consider  
19 in the testimony. The question I've got is, are you willing to consider  
20 those factors in evaluating a police officer's testimony?

21 PROSPECTIVE JUROR 053: Yeah. There's no problem, with  
22 that.

23 THE COURT: I'm sorry, what?

24 PROSPECTIVE JUROR 053: Yes.

25 THE COURT: Okay. I mean, and do you think that you can be

1 fair in evaluating a police officer's testimony; are you going to give it  
2 more credibility or less credibility, just because they're a police officer?  
3 I understand what you're saying about --

4 PROSPECTIVE JUROR 053: Not because -- just because  
5 they're a police officer, no I would not --

6 THE COURT: Okay.

7 PROSPECTIVE JUROR 053: -- either way,

8 THE COURT: I know, I understand, you know, how long ago  
9 something may have occurred, how good their memory is, how much is  
10 corroborated by other things, that all plays into evaluating their  
11 testimony? What I'm essentially asking is, just because they're a police  
12 officer, are you going to give them more credibility or less credibility?

13 PROSPECTIVE JUROR 053: Neither.

14 THE COURT: Neither. Okay. All right. Thank you. Anybody  
15 else? Let the record reflect no hands.

16 Evidence may be direct or circumstantial. Direct evidence is  
17 direct proof of a fact, such as testimony by a witness, about what that  
18 witness personally saw or heard or did. Circumstantial evidence is  
19 indirect evidence, that is, it is proof of one or more facts from which you  
20 can find another fact.

21 You're to consider both direct and circumstantial evidence,  
22 either can be used to prove any fact. The law makes no distinction  
23 between the weight to be given to either direct or circumstantial  
24 evidence, it is for you if you're selected as a juror to decide how much  
25 weight to give to any evidence.

1               So let me ask, is there anyone of you who has any issue with,  
2 or concern about their ability or willingness to consider both direct  
3 evidence and circumstantial evidence? Let the record reflect no hands.

4               By way of example of circumstantial evidence, if you wake  
5 up in the morning and see that the sidewalk is wet, you may find from  
6 that fact that it rained during the night. However, other evidence such as  
7 a turned on garden hose may provide an explanation for the water on  
8 the sidewalk. Therefore, before you decide that a fact has been proved  
9 by circumstantial evidence, you must consider all the evidence in the  
10 light of reason, experience, and common sense.

11              Is there anyone who doesn't understand what I'm talking  
12 about when I speak about circumstantial evidence? Okay. Let the record  
13 reflect no hands.

14              Is there anyone here who doesn't think that they would be  
15 able to wait until all evidence comes in before deciding any facts has  
16 been proven by circumstantial evidence? The record will reflect no  
17 hands.

18              Let me ask, is there anyone who believes they would not be  
19 able to follow my instructions on the law, if not consistent with what you  
20 believe the law should be? Let the record reflect no hands.

21              Let me give you a very brief rundown of how the trial will  
22 proceed. After we select a jury in this case the attorneys will give  
23 opening statements. Witnesses will then testify, and exhibits will be  
24 admitted. After all the evidence comes in I will give you the law for you  
25 to consider in your deliberations, and the attorneys will give closing

1 arguments.

2 Your job is to judge or figure out the facts and take the law I  
3 give you and see if the facts you find prove the elements of the charges  
4 beyond a reasonable doubt, and come up with a verdict. The jury is the  
5 judge of questions of fact.

6 My responsibility is to ensure you are presented with  
7 evidence that under the law is appropriate to consider, and to give you  
8 the law that you are to use in determining the facts and evaluating the  
9 evidence, to determine if the State has proved what it needs to prove as  
10 to each charge beyond a reasonable doubt; and to determine if the  
11 Defendant is guilty or not guilty of the crime charged.

12 It would be a violation of your duty to render a judgment  
13 based upon something other than the law given by the Court. With that  
14 in mind, let me ask again, is there anyone who doesn't believe that they  
15 cannot follow the law and apply the law that I give you, if you didn't  
16 agree with the law? Let the record reflect no hands.

17 There are three key principles in our criminal justice system  
18 that I want to discuss with you at this point in time and see if  
19 everybody's comfortable with those principles. The first one is that the --  
20 oh, I misplaced it. Do you have the information?

21 THE CLERK: I do.

22 THE COURT: All right. Thank you.

23 The first principle is that the amended information in this  
24 case is simply a charging document. It is a notice document and is not  
25 evidence. Just because someone's been charged with a crime and an

1 information or indictment is not evidence of anything. It is simply a  
2 document which says to the Defendant that you're being charged with a  
3 crime and says to the public, that this person is being accused of a crime,  
4 but it is not evidence of anything and does not prove anything and  
5 cannot be considered by you as evidence in any way in your  
6 deliberations.

7           Is there anyone who has a problem or concern with being  
8 able to follow this important principle of our criminal law? Let the record  
9 reflect no hands. The second principle I want to get into is that the  
10 Defendant is presumed innocent. The State has the obligation to prove  
11 its case beyond a reasonable doubt.

12           Now, we hear the phrase, the Defense that is presumed in  
13 innocent a lot, but I think we don't often think a lot about it. What it  
14 means is at this point in time the Defendant is innocent, no ifs, ands, or  
15 buts about it. If I was to send you back to the jury room right now and  
16 tell you to reach a verdict, your verdict would have to be not guilty,  
17 because the Defendant is considered innocent until he is proven by the  
18 State, beyond a reasonable doubt, that he is guilty.

19           And this is a hard concept for some jurors. I've seen some  
20 jurors when asked the question, what verdict would you render right  
21 now, say that they don't know that they would have to see what the  
22 evidence is. But the point that I'm trying to make is that the Defendant is  
23 considered innocent right now.

24           And if you were asked to render a verdict right now, it would  
25 have to be not guilty. He remains innocent until the State has proven his



1 case beyond a reasonable doubt. Is there anyone who has a problem or  
2 issue with the idea that the Defendant right now is innocent, and you  
3 have to find him not guilty until the State provides evidence beyond a  
4 reasonable doubt, of his guilt. Let the record reflect no hands.

5           The third principle I want to talk about is the State is  
6 obligated to prove its case beyond a reasonable doubt, and the  
7 Defendant has no obligation to prove innocence. This last point is very  
8 important. The Defendant does not have to do anything in a criminal  
9 trial, his attorney, and he can just sit there and say nothing for the whole  
10 trial.

11           And if at the end of the State's presentation of its evidence,  
12 you did not believe that the State had proven beyond a reasonable doubt  
13 that a crime had been committed and the Defendant had committed the  
14 crime, then you would have an obligation to find the Defendant not  
15 guilty, even though the Defendant and his attorney didn't say anything  
16 or do anything.

17           Is there anyone who has a problem or concern with the fact,  
18 the Defendant has no obligation to prove his innocence, or to do  
19 anything at trial, and the State has the burden of proving its case beyond  
20 a reasonable doubt. Let the record reflect no hands.

21           Also a part of this principle is that the Defendant pursuant to  
22 the Fifth Amendment of the United States constitution and the Nevada  
23 constitution, has an absolute right, if he chooses, not to testify. And the  
24 State cannot use the fact the Defendant did not testify, as part of its case  
25 to prove the Defendant's guilt, and you cannot consider it at all in

1 evaluating, if the State has met its burden of proving its case beyond a  
2 reasonable doubt.

3           This is a hard concept for some people, but I will instruct you  
4 that you cannot consider if a defendant chooses not to testify in  
5 evaluating and making your verdict in this case, and your verdict must  
6 be based only on the evidence introduced at trial. Is there anyone who  
7 doesn't think that they can follow my instruction on this point? Let the  
8 record reflect no hands.

9           I want to emphasize this last point again, because I've had  
10 jurors say that it would bother them, if the Defendant didn't testify, or  
11 they would like to hear the Defendant testify; and this, quite simply, is  
12 not the law. The Defendant has the right to decide if he testifies, or  
13 doesn't testify, and you need to put aside any feelings or preferences  
14 you have about the Defendant's action, and in deliberations focus just on  
15 the evidence presented in determining if the State has met its burden of  
16 proving its case beyond a reasonable doubt. Does anyone have a  
17 concern with being able to follow this principle? Let the record reflect no  
18 hands.

19           Let me ask if you'll be able to wait in forming your opinion as  
20 to an appropriate verdict until after all the evidence and arguments are  
21 presented, the law is given, and you get together as a whole juror to  
22 deliberate? Is there anyone who doesn't feel that they would be able to  
23 wait in forming their opinion as an appropriate verdict until after all the  
24 evidence and arguments are presented, the law is given to you, and you  
25 get together as a whole jury to deliberate? Let the record reflect no

1 hands.

2 In other words, the simple question is, you can't make up  
3 your mind now or after the opening statements, or during the middle of  
4 the evidence. You need to wait until you get to the end, if you could  
5 finish the presentation on the evidence, the law and the closing  
6 arguments, before you make up your minds, is there anyone who thinks  
7 they wouldn't be able to do that? Let the record reflect no hands.

8 Is there anyone who has concern with sitting in judgment of  
9 another human being, which you think may interfere with your ability to  
10 consider the evidence, follow my instructions and be fair to both sides?  
11 Let the record reflect no hands.

12 Is there anything that I haven't touched on that causes you to  
13 be concerned about being fair, that you feel you should tell us? Let the  
14 record reflect, no hands.

15 All right. Do you have the list of personal questions?

16 THE MARSHAL: I do, sir.

17 THE COURT: Okay.

18 THE MARSHAL: Do want to double check?

19 THE COURT: Let me glance at it real quick.

20 All right. We're going to try to quickly go through this last  
21 part before we break, and that is, I want to have each of you give us a  
22 little bit of information about you.

23 The first question. How long have you lived here and where  
24 generally in the valley do you live? For example, North Las Vegas,  
25 Boulder City, Henderson, Green Valley, Summerlin, Southern Highlands,

1 et cetera.

2 Two. If you've lived here less than ten years, where did you  
3 live before you moved here?

4 Three. What is your education, and if you have a university  
5 degree, what was the field?

6 Four. How are you employed? And what is the name of your  
7 employer or employing business. If not obvious from your job title, what  
8 do you do, generally? If you're retired, how and with what business  
9 were you employed when you retired, and how long have you been  
10 retired?

11 Are you married or have a partner, and what is your spouse  
12 or partner's job? Do you have any children, and what are the ages of  
13 those children still living at home? How are any of your children  
14 employed?

15 And have you ever been a juror? Was it a civil or a criminal  
16 trial? And without telling us a verdict, did you reach a verdict and were  
17 you the foreperson?

18 So let's start off with Number 1, Mr. Papay?

19 PROSPECTIVE JUROR 002: First question, how long have we  
20 lived here? I've lived in Summerlin for the last coming up on four years,  
21 but prior to that I lived in Orange County, California, for the previous 15  
22 years. My education level, I hold a Master's, an MBA, and at the  
23 University of Duke.

24 And then let's see; how are you employed? I'm retired at this  
25 point in time, and I am married. My --- my partner, my wife, she works

1 for an event company here in Las Vegas. I do have children, but they're  
2 all grown, both, and they live in California.

3 THE COURT: What do they generally do?

4 PROSPECTIVE JUROR 002: My oldest son is a CEO for Angle  
5 Point, which is a -- a software company, and my youngest son is a  
6 lawyer, as we spoke about before. And he works for Bingham  
7 McCutchen, and he's a litigator. And I have never made it to be a juror,  
8 I've been, non-selected up until this point. So as far as that, no civil or,  
9 or criminal.

10 THE COURT: When you retired, did you try retire directly  
11 from the military, or were you in another business before you retired?

12 PROSPECTIVE JUROR 002: I retired -- 22 years in the Marine  
13 Corps, I ended up retiring, moving to California, and then I joined a  
14 company, Granite Construction, where I was an executive there,  
15 overseeing their -- their supply chain, and their corporate governance.

16 THE COURT: Okay. Thank you.

17 Please hand that off now to Number 2, Ms. Esposito.

18 PROSPECTIVE JUROR 008: Okay. I have lived in Las Vegas  
19 for 12 years, I live in the Centennial Hills, Northwest -- Northwest corner  
20 in Centennial Hills, excuse me. I've lived with her for about 12 years. My  
21 education level is high school, with a few college courses. I am currently  
22 retired.

23 I worked for a few years out her in the medical field, I worked  
24 for the Nevada Orthopedic & Spine office here. Prior to moving here I  
25 worked for 13 years with Chemung County Department of Social

1 Services in Elmira, New York. I am married. My husband is the vice  
2 president of sales for a lighting manufacturer, it's called Amberlux, it's  
3 out of new -- Oakland, New Jersey.

4 I do not have any children; however, I do have a stepchild.  
5 He lives in Tennessee, near his Mom. He did attend the Janitorial  
6 University at -- he's autistic. What's the name of the autistic organization  
7 out here? The one that does all the special needs; and I think of what it's  
8 called.

9 Anyway he attended Janitorial University out here, and -- but  
10 lives in Tennessee, he's in his 30s. And I have not been a juror. I have  
11 been in the room twice, and just for one reason or another didn't make it  
12 all the way through.

13 THE COURT: All right. Thank you.

14 Hand that off down to Number 3, Mr. Densley.

15 PROSPECTIVE JUROR 010: I have lived in Las Vegas since  
16 2005, October of 2005, in Centennial Hills. I have a Bachelor of Science  
17 in Business Management, with an emphasis in international business.  
18 I'm currently employed by a company named General Insulation, they're  
19 a wholesale distributor throughout the country. I'm a regional  
20 operations coordinator with them and involved in a lot of training and  
21 oversight with the operations of our business.

22 I am married, very happily, and my wife is domestic  
23 engineer, and able to be at home with the children. We do have four  
24 children, three are teenagers. I have one that's younger than a  
25 teenager, and my oldest son is currently employed with three different

1 jobs. He works for an office building, and does some just administrative  
2 type stuff there, he's 17 years old. He does private coaching for tennis,  
3 and then he also does some work at Red Rock Country Club, with some  
4 of the counseling, related to tennis.

5 My two daughters, also -- I mean, it's not really I guess a  
6 technical job, but they do -- do some instruction in cello and viola, with  
7 other students. I have never been a juror, this is the first time that I've  
8 ever reached the courtroom, and I've been summoned many, many  
9 times, but never reached this far.

10 THE COURT: All right. Thank you very much. Would you  
11 hand that now to Number 4, Ms. Castaneda.

12 PROSPECTIVE JUROR 019: I live in Las Vegas since 1998,  
13 and I'm living in Spring Valley side of town. And my education level is  
14 just high school, and currently I'm employed at Panda Express, I'm a  
15 store manager. And I have my other, my spouse, he works as a sale  
16 person, he sell chemical for [indiscernible] Company. And I have  
17 children. My oldest is working part-time at AMR, just to stock -- stock the  
18 -- the truck. And there is -- and still in school.

19 THE COURT: All right.

20 PROSPECTIVE JUROR 019: And this is my first time to reach  
21 the Court, as well.

22 THE COURT: How many children do you have?

23 PROSPECTIVE JUROR 019: I have six.

24 THE COURT: Okay. What are their ages?

25 PROSPECTIVE JUROR 019: My oldest is 20.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR 019: 18, 13, 11 -- so many. Eight and  
3 6-years-old.

4 THE COURT: All right.

5 PROSPECTIVE JUROR 019: Yeah.

6 THE COURT: That was a test.

7 PROSPECTIVE JUROR 019: Thank you.

8 THE COURT: You passed with flying colors. All right.

9 PROSPECTIVE JUROR 019: Don't ask me their birthday, oh  
10 my God. I try to remember.

11 THE COURT: Number 5, please?

12 PROSPECTIVE JUROR 021: I live on the east side of Las  
13 Vegas. I came from Ventura, California. I have some college for  
14 culinary. Right now, I'm working for Patriot Environmental. I am  
15 married. I have a six-year old daughter. And it's my first time being in  
16 the court.

17 THE COURT: All right. Does your spouse have any outside  
18 employment?

19 PROSPECTIVE JUROR 021: Yeah, she works at the  
20 Cosmopolitan.

21 THE COURT: What does she do there?

22 PROSPECTIVE JUROR 021: She's a cook.

23 THE COURT: Okay. What do you do at the business you  
24 work at?

25 PROSPECTIVE JUROR 021: Environmental work.



1 THE COURT: Okay. Generally, what are you talking about?  
2 PROSPECTIVE JUROR 021: Biohazard, drug cleanup --  
3 THE COURT: All right. Very --  
4 PROSPECTIVE JUROR 021: -- sewer.  
5 THE COURT: Thank you very much.  
6 You can hand that now to number 6, Ms. Thomas.  
7 PROSPECTIVE JUROR 024: I've lived in Green Valley since  
8 '93. I moved here from Phoenix. My education is high school, some  
9 college. I am retired. Had 31 years federal. Four years of it with the Air  
10 Force and 31 years with the post office. I'm divorced. I have one child.  
11 She's a teacher at CCSD. In her 16th year now. And I've never been a  
12 juror.  
13 THE COURT: All right. Thank you.  
14 Can you hand that now to number 7, Ms. Sosa Rizo.  
15 PROSPECTIVE JUROR 032: I living here in North Las Vegas.  
16 THE COURT: Okay.  
17 PROSPECTIVE JUROR 032: Six year.  
18 THE COURT: Okay.  
19 PROSPECTIVE JUROR 032: I'm married. Two -- I have two  
20 children and they're twins. My husband is carpenter.  
21 THE COURT: All right. And are you employed  
22 PROSPECTIVE JUROR 032: No.  
23 THE COURT: All right. And how far did you go in school?  
24 PROSPECTIVE JUROR 032: High school.  
25 THE COURT: High school?

1 PROSPECTIVE JUROR 032: Uh-huh.

2 THE COURT: All right. Have you ever been a juror?

3 PROSPECTIVE JUROR 032: No.

4 THE COURT: No?

5 PROSPECTIVE JUROR 032: No.

6 THE COURT: Okay. All right, thank you.

7 Can you hand that now to number 8, Ms. Wong.

8 PROSPECTIVE JUROR 051: I lived in Las Vegas in the  
9 Centennial area for seven years. Before that, I lived in California. I have  
10 a bachelor's in public administration and psychology. I'm employed by  
11 the State of Nevada, compliance investigator. I have a partner who is a  
12 teacher for the school district. I do not have children. And I have never  
13 been selected for a juror.

14 THE COURT: All right. Thank you.

15 If you could hand that now to number 9, Mr. Padilla.

16 PROSPECTIVE JUROR 053: I used to live here back in the  
17 '90's when I was in the military. Then I moved back to California. And  
18 then I just recently moved here about a year ago.

19 THE COURT: What part of California did you live in?

20 PROSPECTIVE JUROR 053: Chico in Sacramento.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR 053: You know where that's at?

23 I have a doctorate in juris prudence. And I also went to Cal  
24 State East Bay, political science, prelaw, and criminal justice. I own a  
25 couple of companies. One's a food delivery service. And then I also do

1 day trading in crypto money. I have three kids. One is 22, in the  
2 Marines. And I have two 21-year old daughters, twins. And I am not  
3 married. Divorced. And I have never been a juror.

4 THE COURT: Is your daughter still -- or are they employed  
5 outside the home?

6 PROSPECTIVE JUROR 053: They're both in college.

7 THE COURT: Oh.

8 PROSPECTIVE JUROR 053: One goes to Arizona State  
9 University, and the other one is in Chico State.

10 THE COURT: Okay. All right. Thank you very much.

11 PROSPECTIVE JUROR 053: Uh-huh.

12 THE COURT: If you can hand that now to number 10, Ms.  
13 Andrews.

14 PROSPECTIVE JUROR 055: Okay. I live in Southern  
15 Highlands. I've been here for about five years. I came from the D.C.  
16 area. I have a bachelor's in business and have taken some post-graduate  
17 courses. I work for a company called EverChain and I'm the chief  
18 marketing officer there. I'm responsible for marketing, branding. I am  
19 married. My husband owns a few businesses in the area. I don't have  
20 children. I have two stepsons. One's 21. One's 23. And I have never  
21 been a juror.

22 THE COURT: All right. Your husband, what's his primary  
23 business?

24 PROSPECTIVE JUROR 055: It's a communications and  
25 branding firm.

1 THE COURT: Okay. All right. Thank you very much.  
2 We'll go down to number 11, Ms. Heldt.

3 PROSPECTIVE JUROR 058: I was born and raised here in Las  
4 Vegas. I live right now in North Las Vegas. Other than living in Georgia  
5 for three years, when my husband was in the military, I've lived here all  
6 my life. My education is high school with some college. I'm employed  
7 by Smith's Food and Drug. I'm a scan coordinator. I'm married. My  
8 husband is a store director for Sprouts. I have two kids. My daughter is  
9 a phlebotomist with Quest Diagnostic. And my son is going to school to  
10 be -- at an auto mechanic school to become a mechanic. And I've been  
11 called for jury duty, but I've never been on a jury.

12 THE COURT: Okay. Thank you.  
13 Go now to number 12, Ms. Lacayo.

14 PROSPECTIVE JUROR 063: So I've lived here in Vegas for  
15 seven years in the Summerlin area. I originally came from Tucson. I  
16 have a bachelor's degree in linguistics with a minor in Japanese. I  
17 currently work for Take-Two Interactive or 2K Vegas as a QA tester. I am  
18 not married, but I do have a significant other who we've already  
19 discussed is in the Navy. And he's also a teacher full-time. I don't have  
20 any children. And I've never been a juror before.

21 THE COURT: All right. Thank you.  
22 Can you hand that down to number 13?

23 PROSPECTIVE JUROR 068: So I live in North -- North Las  
24 Vegas. Right. The Centennial Hills -- Centennial Hills two years ago.  
25 Then I move here from San Diego, California. So my educational is in

1 Japan. Keio University. Then -- so -- so right now I is -- I'm retired. Then  
2 -- I'm married. Then my husband -- so, he has his own business in  
3 Japan.

4 THE COURT: Doing what?

5 PROSPECTIVE JUROR 068: Kind of the doctors -- doctor.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR 068: Yeah. But I don't have children.

8 What did they mean, this one?

9 PROSPECTIVE JUROR: Have you ever been to court as a  
10 juror?

11 PROSPECTIVE JUROR 068: Oh, yes. For the first time I came  
12 here.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR 068: Yeah.

15 THE COURT: First time you've been here for jury service?

16 PROSPECTIVE JUROR 068: Yeah.

17 THE COURT: What did you do at the time you retired?

18 PROSPECTIVE JUROR 068: Two years ago.

19 THE COURT: Okay. But what were you doing?

20 PROSPECTIVE JUROR 068: So before export --

21 THE COURT: Oh, that's right. We talked about that earlier,  
22 yeah.

23 PROSPECTIVE JUROR 068: Yeah.

24 THE COURT: All right. Thank you.

25 PROSPECTIVE JUROR 068: Thank you.

1 THE COURT: Okay. Can you hand that now to number 14?

2 PROSPECTIVE JUROR 070: I lived here in Nevada for 21  
3 years.

4 THE CLERK: I don't think it's on.

5 PROSPECTIVE JUROR 070: I'm sorry.

6 THE COURT: Hold on a second.

7 THE CLERK: The mic might be off.

8 THE MARSHAL: Can you press the button? There's a button  
9 at the bottom. It's a green button --

10 PROSPECTIVE JUROR 070: Is that --

11 THE MARSHAL: -- that --

12 PROSPECTIVE JUROR 070: Or blue? Or -- yeah, it's red, red.

13 THE MARSHAL: And then just press it. Don't talk into it.

14 Here, let me see. Now, it's working.

15 PROSPECTIVE JUROR 070: I've been here for 21 years in  
16 Nevada. I moved here from New Jersey. I actually live in Green Valley  
17 now, but I lived in Nye County for five years. And we moved back here, I  
18 guess, 11 or 12 years ago to Green Valley. Education is a bachelor's in  
19 early childhood education and psychology. And it was from Kean  
20 College in New Jersey, which is now called Kean University. I am  
21 employed with a major payroll company called Paychex. And it's almost  
22 25 years that I've worked there. And I'm an account manager. I am  
23 married. My husband is actually retired, but he was doing air  
24 conditioning maintenance and construction when he was working. I do  
25 not have any children. And I was summoned many times for jury duty,

1 and I was actually selected for a jury once, and that was in Nye County.

2 THE COURT: Was that a civil or criminal trial?

3 PROSPECTIVE JUROR 070: Criminal.

4 THE COURT: And don't tell us the verdict, but were you able  
5 to reach a verdict?

6 PROSPECTIVE JUROR 070: No, it was dismissed prior.

7 THE COURT: All right. Thank you. Were you the  
8 foreperson?

9 PROSPECTIVE JUROR 070: No.

10 THE COURT: Okay. Thank you.

11 Can you hand that down to Mr. Maier?

12 PROSPECTIVE JUROR 075: It is turned -- turned off again.

13 THE COURT: Turn --

14 THE CLERK: I think it's the batteries again, maybe.

15 THE MARSHAL: The bottom. Push the bottom.

16 PROSPECTIVE JUROR 075: The bottom?

17 THE MARSHAL: There we go.

18 PROSPECTIVE JUROR 075: I have lived here in Anthem Sun  
19 -- not Sun City, Anthem, but in that Green Valley-Anthem area for 24  
20 years. My education is a bachelor's degree in economics from Seattle  
21 University. I am semi-employed at this point in time. I sell real estate.  
22 And I also manage nine rental homes or Airbnb's that my wife and I own.  
23 My long-term career was an executive -- executive management,  
24 nationally, but I was mainly headquartered here. My wife is a stay-at-  
25 home mom. I have three grown children who are in their late 20's and

1 30's. Nine grandchildren. And then we recently -- well, three years ago,  
2 we took on a foster child, and we're about to adopt her. So she's at  
3 home with my wife right now.

4 THE COURT: How old is she?

5 PROSPECTIVE JUROR 075: She's three and a half.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR 075: I --

8 THE COURT: And your older children, what do they do?

9 PROSPECTIVE JUROR 075: My two sons work for United  
10 Healthcare, and they're involved in executive positions there. And then  
11 my daughter is a housewife. I also volunteer for Foster Kinship in  
12 Nevada. It's for the common good. I have been a juror twice before.  
13 The first case was dismissed before -- we just -- we just convened and  
14 then we dismissed a few hours later.

15 THE COURT: Was it a civil or criminal trial?

16 PROSPECTIVE JUROR 075: That was a criminal trial. The  
17 second time it was a civil trial. We went all the way through everything.  
18 And just when we were about to be dismissed it settled, so we didn't  
19 deliberate. And I was -- we never broke out, so I wasn't the foreperson.

20 THE COURT: Okay. All right.

21 You can hand that now to number 16.

22 PROSPECTIVE JUROR 077: I've lived in Nevada less than a  
23 year. We moved in from Brad [phonetic], California. My education is  
24 high school. I am unemployed. I'm a stay-at-home mom. My husband  
25 is employed with Momentum Solar. He's a warehouse manager. I have



1 two children. One is 6. The other one is two. And I have never been a  
2 juror before.

3 THE COURT: All right. Thank you.

4 Hand that now to number 17.

5 PROPSECTIVE JUROR 083: I lived here about 13 years. I  
6 lived behind Sam's Town. High school education. Let's see, I was a  
7 pipefitter at a Local 198 in Louisiana and worked out of 525 here in  
8 Nevada. I'm retired. Never been married. No children. And never been  
9 a jury.

10 THE COURT: All right.

11 You can hand that now to number 18, Ms. Mecham.

12 PROPSECTIVE JUROR 086: I have lived here for a total of a  
13 year and a half. In 2020, I -- we lived here. My husband and I. And then  
14 we moved to Idaho so that my husband could go to school. And we  
15 actually just moved back last month.

16 THE COURT: What part of the Valley do you live in?

17 PROPSECTIVE JUROR 086: We live in Henderson.

18 THE COURT: Okay.

19 PROPSECTIVE JUROR 086: I have a bachelor's degree in -- or  
20 with an emphasis of graphic design. And I am employed. I work for a  
21 political consulting company out on the east coast. But I specifically do  
22 graphic design for clients. I am married. And my husband is a student.  
23 But he previously was a fillings clerk for a hospital in Idaho. And he's  
24 looking for a job. I do not have any children. And this is my first time on  
25 a jury.

1 THE COURT: Okay. Thank you.

2 You can hand that now to number 19, Mr. Elmer.

3 PROSPECTIVE JUROR 091: Yes. I've been here for, let's see,  
4 nine years now. Prior, I lived in Portland, Oregon. I live in Henderson  
5 now. Education. I have four years of college, but no degree. I work for  
6 Nevada State Bank. I'm an executive vice president in charge of credit  
7 there. Let's see. I'm married. My wife is now retired. I have three  
8 children. They're all adults. A son in Portland, who is a realtor. A  
9 daughter in Carlsbad, California, who's a loan processor. And my  
10 youngest is a first year medical student at UNLV.

11 THE COURT: Okay, good.

12 PROSPECTIVE JUROR 091: I've never been a juror before.

13 THE COURT: All right. Thank you.

14 Can you hand that now to number 20?

15 PROSPECTIVE JUROR 092: I've been here in Nevada for nine  
16 years. Currently, I reside in the Summerlin area. Prior to that, I lived in  
17 Bakersfield, California. I have a master's degree in family nurse  
18 practitioner. Currently work with Optum Care Cancer Center. My  
19 husband is also a nurse practitioner and works for pain management,  
20 Desert Orthopedics. Don't have any children yet, but currently pregnant  
21 with our first one. And I've been selected -- no, I haven't been selected  
22 for a jury yet.

23 THE COURT: Okay. Thank you.

24 Home stretch now. Only one, Mr. Harvey.

25 PROSPECTIVE JUROR 100: I moved to the Aliante area six

1 years ago after living my entire life in Eugene, Oregon. Retired after 28  
2 years in law enforcement there. Graduated from the Oregon State  
3 University with a sociology degree. Retired for the past six years. My  
4 wife retired the same time I did. We have two children. My daughter  
5 lives up in Boise. She works for the City of Boise in acquisitions. And  
6 my son works as a detective here with Law Vegas Metro. And never  
7 been selected as a juror.

8 THE COURT: All right. Thank you.

9 Hand that down to number 22, Ms. Robinson.

10 PROSPECTIVE JUROR 115: I've lived in Las Vegas for 50  
11 years. I live in Summerlin. I have an associate's degree in health  
12 sciences, UNLV. I was employed for 35 years at Sunrise Hospital as an  
13 X-ray technician in the cardiac cath lab. I'm now retired. My significant  
14 other works at Young Electric Sign Company installing signs. I have two  
15 children. A daughter who's a nurse. And a son who's a bartender. My  
16 daughter's 29 and my son is 28. And I was selected as a juror in an  
17 injury case. And it took them two weeks to pick the jury. And then  
18 another two weeks for us to listen to all the evidence. And then they  
19 settled out of court.

20 THE COURT: All right. Well, thank you for your service back  
21 then. Was that local?

22 PROSPECTIVE JUROR 115: Yes.

23 THE COURT: Okay. All right.

24 Let's hand it to 23, Ms. Calara.

25 PROSPECTIVE JUROR 117: I live here in Northwest Las

1 Vegas since 1998. I -- we moved here from California before that. I have  
2 an associate degree in nursing. I've been a nurse since 1990. And I'm  
3 working right now at MountainView Hospital for 24 years. I have three  
4 children. My two kids are registered nurse, and one is dialysis  
5 technician. My husband works at the post office for like, 32 years now. I  
6 have been summoned many times as a juror, but this is my first time to  
7 be selected. Thank you.

8 THE COURT: All right. Thank you.

9 And let's go to 24.

10 PROSPECTIVE JUROR 136: Let's see. I've been living --  
11 living in Summerlin for about six years now. Prior to that, I lived in  
12 Honolulu, Hawaii. Currently, I have graduated high school and I'm a  
13 student at UNLV. I'm currently employed with Einstein Bros. Bagels,  
14 part-time. And I'm, of course, not married. No partner. No children.  
15 And this is the first time I've been summoned.

16 THE COURT: All right. Thank you very much.

17 All right. Thank you ladies and gentlemen for sharing a little  
18 bit about yourselves with us.

19 We're going to break now. And I know I said we were going  
20 to break about 12:30, but we're going to break now for lunch. I'd ask  
21 everyone to get back -- it's now 12:10. Ask everyone to be back by 1:10.  
22 And we'll keep pushing to try to get this process done today. It's very  
23 important that you get back. Go to lunch. Grab a bite. Stretch. Get back  
24 by 1:10. We cannot get started again until you all get back. So if one of  
25 you decides to go down and ride the Zipline on Fremont Street, we're all

1 going to be waiting here to hear how great the experience was. So it's  
2 critical that you get back.

3 While you're out there, during this recess, do not discuss or  
4 communicate with anyone, including fellow jurors, in anyway, regarding  
5 this case or its merits either by voice or phone or email or text or  
6 internet, or other means of communication or social media.

7 Do not read, watch, or listen to any news media or media  
8 accounts or commentary about the case. Do not do any research such as  
9 consulting dictionaries, using the internet, or using reference materials.  
10 Do not make any investigation, test the theory of the case, recreate any  
11 aspect of the case, or in any other way, investigate or learn about the  
12 case on your own. And do not begin to form or express any opinion  
13 regarding the case until it is submitted to you.

14 Thank you for your attention this morning. I know there's a  
15 little bit of a process to get you all up here.

16 We'll see you back at 1:10.

17 THE MARSHAL: All rise for the potential jury.

18 [Prospective jurors out at 12:11 p.m.]

19 [Outside the presence of the prospective jurors]

20 THE COURT: Okay. Let's deal with -- I guess, let's deal first  
21 with the language issue.

22 Does anybody have a problem if we excuse Ms. Sosa Rizo.,  
23 number 7?

24 MS. PARK: I've got no problem with that.

25 THE COURT: State?

1 MR. LEXIS: Submitted, Judge.

2 THE COURT: All right. I'll go ahead and excuse number 7.

3 Then I think she's on the ball and everything, but I don't think  
4 we can leave Ms. Cortes-Leon on with her not being a citizen. I think this  
5 is the first time I've gotten someone who's actually answered that  
6 question that they're not a citizen. I've had felonies come up before,  
7 but --

8 MS. PARK: Yeah.

9 THE COURT: Any objection to excusing Ms. Cortes-Leon?

10 MR. LEXIS: No objection.

11 MS. PARK: No.

12 THE COURT: All right. As to number 20, Ms. Omandac,  
13 who's a physician's assistant, I -- you know, this is inconvenient for  
14 everybody who's sitting there on the jury. I can't help to think that they  
15 can't make some accommodations for her in the next two days at her  
16 office.

17 MR. LEXIS: I agree, Judge.

18 THE COURT: How about you?

19 MS. PARK: I agree.

20 THE COURT: I, maybe, would feel more inclined if when we  
21 had jurors who had doctors' appointments that they would tell me that  
22 they tried to call and continue it and it's like, two months wait or three  
23 months to wait. I don't have a lot of sympathy for people -- the medical  
24 professional, and they give so little consideration to the juror service in  
25 terms of scheduling people's -- so we'll leave her on for now.

1 MS. PARK: Okay.

2 THE COURT: Is there anyone who feels that they have a  
3 motion for cause at this point in time? State?

4 MR. LEXIS: No, Judge.

5 THE COURT: Okay. Defense?

6 MS. PARK: No.

7 THE COURT: Okay. All right. I pretty much -- whoops.  
8 Okay. Number 39, who was in the back corner, says he's also not a  
9 citizen.

10 Anybody have a problem if I excuse number 39?

11 MS. PARK: No.

12 MR. LEXIS: No.

13 THE COURT: All right. We'll go ahead and excuse him. Is he  
14 still out there?

15 THE MARSHAL: Yes, sir. He's waiting.

16 THE COURT: You can tell him that he's excused.

17 THE MARSHAL: Yes, sir.

18 THE COURT: All right. Did you answer whether you had  
19 anybody for cause --

20 MS. PARK: I don't --

21 THE COURT: -- at this point?

22 MS. PARK: -- see anyone for cause at this point, Your Honor.

23 THE COURT: Okay. All right. I thought you did, but I wanted  
24 to make sure. All right. I'm pretty much done with my questions. So  
25 when we get back, we'll let you guys go in -- tear into them.

1 MR. LEXIS: I don't have any questions. I'm not going to be  
2 long at all.

3 THE COURT: Okay. That's fine.

4 MS. PARK: Yeah. I may have just a few to a few individuals,  
5 but other than, I'm not --

6 THE COURT: That --

7 MS. PARK: I don't have much either.

8 THE COURT: Okay. We'll get that done. We'll get a jury.  
9 And then we'll move in to -- I have some introductory instructions to the  
10 jury that I think will take about 20, 25 minutes for me to read through.  
11 And then we'll move in to opening statements.

12 MS. PARK: Okay.

13 THE COURT: All right?

14 MS. PARK: Yep.

15 THE COURT: All right. Anything else before you break for  
16 lunch?

17 MS. PARK: No.

18 THE COURT: Mr. Lexis, anything?

19 MR. LEXIS: No, Judge.

20 THE COURT: All right. We'll see you all back at 1:10.

21 MS. PARK: Okay.

22 THE COURT: And keep our fingers crossed that they all get  
23 back in a timely fashion.

24 MS. PARK: Thank you.

25 THE COURT: All right. Thank you.



1 [Lunch recess taken from 12:16 p.m. to 1:22 p.m.]

2 [Outside the presence of the prospective jurors]

3 THE COURT: Okay, let's go back into session. All right. I'm  
4 showing that when we bring them in, I'm going to be excusing number  
5 7, Ms. Sosa Rizo, and number 16, Ms. Cortes-Leon. Everybody concur  
6 with that?

7 MS. PARK: Yes.

8 THE COURT: Okay. All right. Anything else before we bring  
9 them in?

10 MR. LEXIS: No

11 MS. PARK: No.

12 THE COURT: All right. Go ahead.

13 [Prospective jurors in at 1:23 p.m.]

14 THE MARSHAL: All rise for the potential jury.

15 THE COURT: All right. Parties stipulate to the presence of  
16 the voir dire panel?

17 MR. LEXIS: Yes, Judge.

18 MS. PARK: Yes, Judge.

19 THE COURT: Okay. All right.

20 Ladies and gentlemen, thank you for getting back in fairly  
21 timely fashion. I really do appreciate it. This is a big group, and it's  
22 always difficult to get everybody out here and back from lunch.

23 I did speak with the attorneys during the break, and at this  
24 time, I am going to excuse number 16, Ms. Cortes-Leon. We checked,  
25 and being a resident alien doesn't allow you to serve on the jury, so I --

1 PROSPECTIVE JUROR 077: I tried.

2 THE COURT: No, I fully -- I appreciate you coming down  
3 here. I do appreciate you being down here --

4 PROSPECTIVE JUROR 077: Okay.

5 THE COURT: -- but that wasn't one where we could make  
6 any exceptions, so I do appreciate you coming down, and meeting your -  
7 - meeting what your responsibilities would be if you were a citizen. So I  
8 do appreciate that. But in any case, you are excused. Thank you.

9 PROSPECTIVE JUROR 077: Thank you. Good luck. Sorry.

10 THE COURT: And then we're also going to excuse number 7,  
11 Ms. Sosa Rizo. You may be excused, ma'am. Thank you for coming  
12 down here and participating.

13 PROSPECTIVE JUROR 032: Thank you.

14 THE COURT: All right. That means we're going to need a  
15 new Juror Number 7, and that will be Steve Valdez.

16 And we're going to need a new Juror Number 16, and that  
17 will be Cleto Arceo.

18 Okay. If we could hand the mic back to Mr. Valdez. How are  
19 you doing, sir?

20 PROSPECTIVE JUROR 032: Very good. Thanks for asking.

21 THE COURT: All right. Hey, did you have a chance to hear  
22 the questions I asked earlier today?

23 PROSPECTIVE JUROR 032: Yes, I did.

24 THE COURT: Would you have answered any of them?

25 PROSPECTIVE JUROR 032: Yes, I would.

1 THE COURT: Okay. Go ahead and tell us your answers.

2 PROSPECTIVE JUROR 032: I'm currently a security armed  
3 officer for a property and a casino.

4 THE COURT: Okay. How long you been doing that?

5 PROSPECTIVE JUROR 032: Over four years.

6 THE COURT: All right. Okay. What else would you have  
7 answered?

8 PROSPECTIVE JUROR 032: That's the only one.

9 THE COURT: Huh?

10 PROSPECTIVE JUROR 032: That's the only question.

11 THE COURT: Okay. Anything about your work that would  
12 affect your ability to be a fair juror in this case?

13 PROSPECTIVE JUROR 032: No.

14 THE COURT: Okay. You feel you'd be able to follow my  
15 instructions on the law and fairly and unbiasedly apply those instructions  
16 to the evidence submitted?

17 PROSPECTIVE JUROR 032: Yes.

18 THE COURT: Okay. If you would --

19 Did you hand him the sheet?

20 THE MARSHAL: Yes, Sir.

21 THE COURT: There are some questions, if you'd go through  
22 those real quick.

23 PROSPECTIVE JUROR 032: Okay. I've been in Las Vegas  
24 since '92. I currently leave -- currently live in the southwest area. High  
25 school graduate. I am married. Like I said, I am a security officer, armed

1 security officer for a casino property. My wife works for State Farm. We  
2 have two kids, a nine and 12-year-old; they're currently in school. And I  
3 -- it's my first time being a jury.

4 THE COURT: Okay. Thank you. If you'd hand that down to  
5 the second row, to our new number 16, Mr. Arceo.

6 How are you doing this afternoon?

7 PROSPECTIVE JUROR 163: Very good, thank you, Sir.

8 THE COURT: Good. Did you have an opportunity to hear the  
9 questions I asked earlier today?

10 PROSPECTIVE JUROR 163: Yes.

11 THE COURT: And would you have answered any of those?

12 PROSPECTIVE JUROR 163: There's one.

13 THE COURT: Okay, go ahead.

14 PROSPECTIVE JUROR 163: My mother-in-law, she was  
15 involved in a DUI accident.

16 THE COURT: Was she the victim or was she --

17 PROSPECTIVE JUROR 163: She was a victim.

18 THE COURT: Okay. Is that locally?

19 PROSPECTIVE JUROR 163: No, it was in New Mexico.

20 THE COURT: Okay. About how long ago?

21 PROSPECTIVE JUROR 163: Probably been about 20 years  
22 ago.

23 THE COURT: And was that -- do you remember if it was  
24 prosecuted?

25 PROSPECTIVE JUROR 163: It was prosecuted.

1 THE COURT: Were you satisfied or dissatisfied with how  
2 your mother's case was handled?

3 PROSPECTIVE JUROR 163: I was satisfied, I guess, you  
4 know, for the most part, yes.

5 THE COURT: All right. Is there anything about that  
6 experience that would affect your ability to be a fair juror in this case?

7 PROSPECTIVE JUROR 163: I don't believe so, no.

8 THE COURT: All right. Do you feel you'd be able to follow  
9 my instructions on the law and fairly and unbiasedly apply those  
10 instructions to the evidence submitted?

11 PROSPECTIVE JUROR 163: Yes.

12 THE COURT: Any other questions you would have  
13 answered?

14 PROSPECTIVE JUROR 163: No. No others.

15 THE COURT: Would you go through that list there and let us  
16 know what you have to -- a little bit about you?

17 PROSPECTIVE JUROR 163: Okay. Let's see, I've been here  
18 since '92. We moved from New Mexico. We live in the north Las Vegas  
19 area. Before, you know, we were from New Mexico, Albuquerque. I  
20 have two associate degrees, and -- from here, the College of -- when it  
21 was COCN, it was -- community college. I'm employed by NV Energy.  
22 I'm a senior administrator for them. Been with them for 27 years. I am  
23 married, and my wife is a stay-at-home mom, although she worked in  
24 DUE before, when we were married and stuff. We have seven children,  
25 and so we have -- let's see, I have one in college -- well, actually, two in

1 college. My oldest now -- well, my oldest, my first born, she passed  
2 away.

3 THE COURT: Sorry.

4 PROSPECTIVE JUROR 163: And then we have my second  
5 will be -- will graduate as a doctor this next month.

6 THE COURT: Congratulations.

7 PROSPECTIVE JUROR 163: Thank you. And then I have  
8 another one in college in Florida. And then I have another graduate;  
9 she's at home trying to figure things out. And then I have three of our  
10 young children, we have 10th grade, and then 8th grade, and 5th grade  
11 at the house.

12 THE COURT: All right. All right. Thank you. Ever been on a  
13 jury?

14 PROSPECTIVE JUROR 163: Never been on a jury.

15 THE COURT: I've never been on a jury, no. Okay. Thank you  
16 very much. I think that's the last question. Yeah.

17 All right. That pretty much finishes off my questions. At this  
18 point in time, I'm going to allow the attorneys to ask you questions, if  
19 they want to do that. They can ask you questions sort of like I've been  
20 asking of you all as a group, or they may want to talk to you individually,  
21 based upon maybe some of your answers or just some general interest  
22 in something in terms of your background.

23 In any case, the same rules apply. All we're looking for is an  
24 honest answer. There's no right answer or wrong answer, just an honest  
25 answer. If you don't understand one of their questions, just say, I don't

1 understand it. They'll be glad to rephrase it. If you don't hear one of  
2 their questions, say I need you to repeat it. They'll be glad to repeat it.  
3 And if they ask you a question where you think that you'd feel more  
4 comfortable going behind the sidebar to answer it, just let us know, and  
5 we'll go ahead and do that. All right.

6 We'll be pleased to hear any questions from the State.

7 MR. LEXIS: I don't have many, folks. With regards to when  
8 somebody gets involved in an accident or crashes their car, does  
9 anybody here believe that the cops should get involved, that it should be  
10 a third-party matter, something between the other party involved or the  
11 insurance company, if you just crash the car yourself? Let the record  
12 reflect no hands.

13 Does anybody dislike or not trust the police? Let the record  
14 reflect no hands.

15 Anybody believe that there's too many cops on the streets?  
16 Let the record reflect no hands.

17 Anyone have any negative contact with law enforcement?  
18 There must be something.

19 PROSPECTIVE JUROR 032: In the past.

20 MR. LEXIS: What's that?

21 PROSPECTIVE JUROR 032: I said in the past.

22 MR. LEXIS: Okay. Please pass it back.

23 PROSPECTIVE JUROR 032: It was my fault.

24 THE COURT: That's number 9, Mr. Padilla.

25 MR. LEXIS: Go ahead and --

1 PROSPECTIVE JUROR 032: That day was negative, because I  
2 got arrested for it. It was my fault.

3 THE COURT: Were these the DUIs you were talking about --

4 PROSPECTIVE JUROR 032: Yeah.

5 THE COURT: -- earlier?

6 PROSPECTIVE JUROR 032: Correct.

7 THE COURT: Okay.

8 MR. LEXIS: But I understand you stated earlier that --

9 PROSPECTIVE JUROR 032: It was my fault. It was --

10 MR. LEXIS: Okay.

11 PROSPECTIVE JUROR 032: -- something I did that was  
12 wrong. I feel that it was negative, because it was against me, but it was  
13 my fault.

14 MR. LEXIS: Okay. Would it give rise for something for me to  
15 worry about with regards to you taking it out on the cops involved in this  
16 case?

17 PROSPECTIVE JUROR 032: No.

18 MR. LEXIS: Anybody else? Does anybody have any negative  
19 feelings towards law enforcement? Let the record reflect no hands.

20 Anybody think the criminal justice system is unfair?

21 Can you please pass the mic, sir, down to Juror Number 12?  
22 That would be Ms. LaCayo.

23 THE COURT: How would you pronounce your name?

24 PROSPECTIVE JUROR 063: LaCayo.

25 THE COURT: LaCayo?



1 PROSPECTIVE JUROR 063: LaCayo, yes.

2 THE COURT: LaCayo? Okay.

3 MR. LEXIS: So ma'am, the Court give both the Defense and  
4 myself a packet. It contains questions that present to all of you -- well, I  
5 should say to the majority of you. In your packet, it comes back as you  
6 have a question on whether or not the criminal justice system is fair, and  
7 whether you have any -- whether you have positive feelings towards law  
8 enforcement. And you answered negative to both of those. So let's start  
9 with the law enforcement question.

10 PROSPECTIVE JUROR 063: I think over the past couple  
11 years, there have been news articles about police acting out of, I don't  
12 know, maybe police brutality, I would say. It's more -- I answered those  
13 questions mostly informed by news articles that have come out about  
14 how police officers tend to conduct themselves in certain situations.  
15 There have been wrongful deaths of certain individuals in the past, and  
16 so those were kind of the reasons why I answered no to those questions.

17 MR. LEXIS: Okay. Is there a reason why when I just asked  
18 the question earlier and you didn't respond, why you did not respond?

19 PROSPECTIVE JUROR 063: Just didn't think it would be  
20 important enough, or like, I don't know, I didn't feel like it was relevant  
21 enough to take the stage and let everybody know.

22 MR. LEXIS: Okay. Same with the criminal justice system?

23 PROSPECTIVE JUROR 063: It's more so, like I said, earlier,  
24 informed from those articles over the past couple of years about people  
25 -- the conduct of the police towards people that they're arresting seems

1 to be out of line with what the -- what they stand for.

2 MR. LEXIS: Okay. You understand that there's going to be  
3 cops called in this case?

4 PROSPECTIVE JUROR 063: Yes, sir.

5 MR. LEXIS: Okay. And why should I not be concerned that  
6 you're not going to view them in a negative light, given your prior  
7 thoughts?

8 PROSPECTIVE JUROR 063: Because it's for this case  
9 specifically, and their experience in regards to this case, specifically, so I  
10 will be paying close attention to what they're saying and their  
11 perspective, but otherwise, I'm not going to hold it against them what  
12 other cops in the nation have done.

13 MR. LEXIS: Okay.

14 So let me just ask two questions, generally, to everybody  
15 again. And it is important for me, because what I'm ultimately trying to  
16 do, and just with the Defense, we're looking for a level playing field.  
17 There is no right answer. I just want the truth. So does anybody have  
18 any negative feelings towards law enforcement? Let the record reflect  
19 no hands.

20 Does anybody believe the criminal justice system is  
21 inherently unfair? Let the record reflect no hands.

22 Can you please pass it down to Juror Number 10? That's  
23 number 55. Ms. Andrews? Ma'am, in the packet you have that you  
24 believe the criminal justice system is unfair.

25 PROSPECTIVE JUROR 055: I was kind of sitting over here,

1 sort of making a face, because I think sometimes it can be unfair. But to,  
2 you know, the same thing as this other woman said, this is specific to  
3 this case right here, and the facts that we're about to hear.

4 MR. LEXIS: But you have no idea what is going to transpire  
5 in this case, correct?

6 PROSPECTIVE JUROR 055: No, absolutely not.

7 MR. LEXIS: Okay. So tell me specifically why you think the  
8 criminal justice system's unfair, and how it would not pertain to this  
9 case.

10 PROSPECTIVE JUROR 055: I think, in general, I think we, as a  
11 society don't do a good enough job rehabilitating people who've maybe  
12 had a small infraction, and instead, we choose to incarcerate them and  
13 spend our tax resources, and rehabilitation is not really the goal, so I  
14 think that's probably my underlying, sort of, challenge with it, I guess.

15 MR. LEXIS: So sentencing is the main thing?

16 PROSPECTIVE JUROR 055: I think, unfortunately, some  
17 people that are free get convicted -- or some people that are guilty get to  
18 go free, and some people who are not guilty could go to jail, so --

19 MR. LEXIS: Okay.

20 Let me just ask the group in general. Sentencing is  
21 ultimately up to the Judge, as you'll be instructed, and you're not to take  
22 that into consideration when you go back and deliberate. Is there  
23 anybody here that's going to say, you know what? Even though the  
24 Judge is going to instruct me that he is the one that who's supposed -  
25 - that is going to, if found guilty, sentence the individual and determine

1 the appropriate sentence, it's not me, it's not Defense Counsel, and it's  
2 you, is anyone going to say, you know what, though? That's going to  
3 weigh on my mind when I go back to deliberate and it's going to hinder  
4 my ability to find either guilty or not guilty? Let the record reflect no  
5 hands.

6 Ma'am, is there a reason why you didn't initially answer  
7 when I asked did anybody --

8 UNIDENTIFIED PROSPECTIVE JUROR: I -- honestly, that  
9 questionnaire was a long time ago. I don't -- I don't think that I  
10 remembered writing that. I'm [indiscernible].

11 MR. LEXIS: Thank you.

12 Has anybody ever been involved with any protests or rallies?  
13 Pass the mic, sir. Seat number 15.

14 PROSPECTIVE JUROR 075: Yes, Dan Maier.

15 MR. LEXIS: Yes, sir.

16 PROSPECTIVE JUROR 075: I've been involved in a lot of  
17 rallies for just housing and that sort of thing, nothing having to do with  
18 what this case is all about.

19 MR. LEXIS: Okay. Anybody else?

20 As instructed by the Court, the State needs to prove our case  
21 beyond a reasonable doubt, and that could be proven if you just have  
22 one witness take the stand, and sometimes we do. Sometimes we just  
23 have one person take the stand. However, for some jurors, you'd say,  
24 you know what?

25 Even though the proof is beyond a reasonable doubt, and if I

1 find this person credible enough to find beyond a reasonable doubt the  
2 crime has been committed, that's not going to be enough for me. I'm  
3 going to need something else. I'm going to need some type of video  
4 surveillance or corroborating evidence, or some other type of  
5 photographs. Is anyone here of the belief that, you know, State just  
6 -- State, if you call one witness, even if I find that person beyond a  
7 reasonable doubt credible, there's going to be problems? Let the record  
8 reflect no hands.

9 Does anybody have any other beliefs that were -- or  
10 dispositions that would hinder their ability to be fair and impartial in a  
11 criminal trial?

12 Go ahead. Hold on, sir. You need the mic.

13 THE COURT: That's number -- and you know I don't go by  
14 badge numbers.

15 MR. LEXIS: Seat number 17.

16 PROSPECTIVE JUROR 083: Seventeen.

17 THE COURT: Mr. Lobianco.

18 PROSPECTIVE JUROR 083: If it pertains sentencing someone  
19 to the electric chair, you know, I might have questions about that.

20 MR. LEXIS: Okay. Did you hear what we stated earlier with  
21 regard to sentencing? First of all, I'd like to say the electric chair is not  
22 -- that's not on the table in this case.

23 PROSPECTIVE JUROR 083: That's what -- that's what I'm  
24 hoping. Since I'm not familiar with the case. But I would be a little  
25 hesitant of sentence somebody to the hanging gallery.

1 THE COURT: No, that's not -- I mean, obviously, any criminal  
2 charge is a serious charge. In this instance, though, I'll -- that's not an  
3 issue. You will be instructed that the issue -- the determination of any  
4 sentence if someone's convicted is up to the Court and is not to be  
5 considered by the jury in reaching a determination whether someone is  
6 guilty or not guilty of a crime. Do you feel you'd be able to follow my  
7 instructions on that?

8 PROSPECTIVE JUROR 083: I'll follow your instructions on  
9 that.

10 THE COURT: All right. Thank you.

11 MR. LEXIS: One last question. Does anybody have anything  
12 else, either in the past where having grown up with personal beliefs that  
13 you believe would affect your ability to cast judgment upon the  
14 Defendant, whether it's guilty or not guilty? Let the record reflect no  
15 hands.

16 Thanks, Judge.

17 THE COURT: All right. Thank you.

18 All right. We'd be pleased to hear any questions from  
19 Defense Counsel.

20 MS. PARK: I just have one question for one particular  
21 individual. There have been a lot of questions asked.

22 THE COURT: You can take whatever time you need.

23 MS. PARK: Okay.

24 So my question would be for seat number 11, Mary Heldt.

25 THE COURT: Let's get her the mic.

1 MS. PARK: So Ms. Heldt, I know that you talk about some  
2 issues that are going on with your family and with you. I guess my  
3 question to you would be, are you under a level of stress that would  
4 make you feel that you --

5 PROSPECTIVE JUROR 058: Yes.

6 MS. PARK: -- can't participate, maybe --

7 PROSPECTIVE JUROR : Yes, I'm under --

8 MS. PARK: -- go along because --

9 PROSPECTIVE JUROR : -- I'm under medication because the  
10 stress has caused me to start having seizures this last year.

11 MS. PARK: Okay.

12 PROSPECTIVE JUROR : And the seizures are caused by  
13 stress. Just while we've been sitting here, when we went on break, I had  
14 four phone calls and six texts because the mother I take care of took a  
15 fall, and they couldn't get ahold of anybody so she had to lay on the floor  
16 until they could get somebody to get her up. So, yeah, I'm a little bit --

17 MS. PARK: Okay. I mean, would it -- would the stress you  
18 feel affect your ability to hold out, if you believed something different  
19 than everyone else? Or would you --

20 PROSPECTIVE JUROR : Well, if my belief or my  
21 understanding of what I'm hearing by whatever testimony I go -- maybe  
22 a little. I go -- I'll go be -- by what I feel and what I believe and how I  
23 understand the testimony.

24 MS. PARK: Okay. All right. I guess that would be a question  
25 that I should ask all of you. Is -- if one of you comes to a decision and

1 the rest of you are of a different opinion, are any of you willing to just go  
2 along because the others have agreed on something, or is -- are there  
3 any of you that would do that?

4 THE COURT: I think she's asking would -- are there -- is there  
5 anyone who would give up their position as to guilt not guilt, just  
6 because there was a majority of people supporting one side or the other?

7 MS. PARK: No hands? Okay. All right. That's all the  
8 questions I have. Thank you.

9 THE COURT: Thank you.

10 All right. Can I see counsel at sidebar?

11 [Sidebar begins at 1:46 p.m.]

12 THE COURT: All right. Is there anyone the State wishes to  
13 move for cause?

14 MR. LEXIS: Yes, Judge, and that would be seat number 12.

15 THE COURT: Okay.

16 MR. LEXIS: I specifically asked her -- first of all, I should say  
17 the packet provided by the Court, obviously, the Court feels those  
18 questions in there are important, as do I, because you're the one that  
19 provided it to me. And two of the main questions in there are, do you  
20 have any negative feelings towards law enforcement, and -- it's worded,  
21 do you have any positive feelings towards law enforcement, and with  
22 regards to the criminal justice system.

23 She -- I asked those point blank to her, no response, and then  
24 I basically called her out, as far as why she didn't tell me the truth the  
25 first time. And her response was not good. Basically, that, oh, I didn't



1 feel that they were that important. It's not that she didn't -- she agreed  
2 with what I was telling her, and that calling her out on it. She didn't say,  
3 oh, no, I don't think that. I don't think the criminal justice system's  
4 unfair. I don't have any negative feelings towards law enforcement, but  
5 simply, yeah, I agree with you, but I don't think it's that -- it's that  
6 relevant. Despite you repeatedly admonishing them that -- how  
7 important it is to give us truthful answers and to tell the truth.

8 THE COURT: Any response?

9 MS. PARK: Well, I think she responded today with how she  
10 felt and why. She didn't feel that it would alter her ability to be fair in  
11 this case, because she specifically said that this case would be based on  
12 the facts in this case, and the officers' version of the facts in this case, so  
13 as not compared to other things she has read in the media about other  
14 police officers.

15 THE COURT: Anything else?

16 MR. LEXIS: As I stated, when I was talking to her, she has no  
17 idea of what this -- how this case is transpiring and what the cops are  
18 going to say.

19 THE COURT: All right. Well, it does concern the Court when  
20 they put one answer down and arguably do a different answer here in  
21 court, but she did explain that, basically that she has some general  
22 concerns in terms of the justice system. I'm guessing just about  
23 everybody does, at one point or another, with some aspect. And she  
24 explained the aspects that she was most concerned about, and she didn't  
25 feel those necessarily related, in terms of her participation in this case,

1 which is why she didn't feel that it was something to raise.

2           You had the opportunity to examine her. She indicated she  
3 could be fair, so I'll deny the motion for cause as to number 12.  
4 Anybody else?

5           MR. LEXIS: Number 10. I mean, if it can get any worse,  
6 when you call someone out in front of everybody about, hey, I got a  
7 piece of paper here telling me what you previously stated with regards to  
8 the criminal justice system. I called Juror Number 12 out on it. I then  
9 asked the question again to everybody, no response, and sure enough,  
10 Juror Number 10, we're in the same boat. Now what? Calling it out  
11 twice, again.

12           The Court thinks these questions are worthy enough and  
13 important enough to provide it, to one, ask them, and then to provide it  
14 for both counsel. I don't know what the worth is of those, if they can  
15 come in here, flat out not say anything, and then -- and then, lack of a  
16 better term, lie about it, and then have to be called out on it yet again.  
17 So again, Judge, I think it goes to their ability to be fair and impartial,  
18 and not -- definitely their credibility.

19           MS. PARK: Well, I think she said that she filled it out quite  
20 some time ago. She wasn't really sure how long ago that was. She did  
21 say she could be fair and impartial, even though she feels, I think, to the  
22 point that you brought up, it's more about the sentencing than it is about  
23 the system that people should be rehabilitated.

24           THE COURT: All right. You know, I do believe the questions  
25 are important, and for the reason that they were important today, in that

1 they allow you an opportunity to ask people about their feelings and  
2 thoughts, as it relates to this.

3 In Ms. Andrews' case, she's indicated she didn't -- it's been a  
4 while, and she wasn't sure what she had put down. She expressed, you  
5 know, these people, when they fill out these things, it's speed plugging  
6 in, and -- but it does highlight something to be asked about, and you  
7 asked about it, and she explained what her concern was, and again, said  
8 she could be fair. So I'll deny the request for cause.

9 Anybody else?

10 MS. PARK: No.

11 THE COURT: So we'll -- you get four each on the first 20,  
12 then one each on the last -- 21 through 24. Again, the alternate will come  
13 from 21 -- two alternates will come from 21 to 24. We'll start with State  
14 making first pick and then back and forth. Number your picks, okay?

15 MS. PARK: Okay.

16 THE COURT: All right. Thanks.

17 [Sidebar ends at 1:52 p.m.]

18 THE COURT: All right, ladies and gentlemen. At this point in  
19 time, we're going to start a process called peremptory challenges. We  
20 allow each side an opportunity to essentially remove some potential  
21 jurors from consideration. Doesn't mean you've said anything wrong or  
22 done anything wrong. The goal, obviously, in trying to put together a  
23 jury, is to get a group of people who both sides feel comfortable with,  
24 and so in an effort to do that, we, at this point, allow some -- each side to  
25 remove certain people from consideration, for whatever real reason that

1 they may have. Like I say, it doesn't mean you said anything wrong or  
2 done anything wrong, just meant somebody didn't feel you were  
3 necessarily a good fit for this case.

4 This'll take a little bit of time. I would like all of you in the  
5 group of 24 over here to stay at your chairs, but if you want to stand up  
6 and stretch, that's fine, and feel free to chit-chat among each other while  
7 this is going on, about anything other than this case, and we'll get this  
8 part of the process done and we'll move on from there. All right.

9 Go ahead, Marshal.

10 THE COURT: Ms. Park, he dropped that sheet on your --

11 MS. PARK: Oh, I'm sorry. Am I putting one on mine or --

12 THE COURT: You should put one on yours.

13 MS. PARK: Okay, okay.

14 THE COURT: Yeah, thanks. And your first one is one; his  
15 first one is one --

16 MS. PARK: Okay.

17 THE COURT: -- on there.

18 MS. PARK: All right.

19 THE COURT: Can I see counsel at sidebar again?

20 [Sidebar begins at 2:07 p.m.]

21 THE COURT: All right. I show the jury being Juror Number  
22 1, Mr. Papay; 2, Ms. Esposito; 3, Mr. Densley; 4, Ms. Castaneda; 5, Mr.  
23 Bojorquez; 6, Ms. Thomas; 7, Ms. Mr. Valdez; 8, Mr. Padilla; 9, Ms.  
24 Quinto'Ocasio; 10, Ms. Arceo; 11, Mr. Elmer; and 20 -- I mean 12, Ms.  
25 Omandac, with first Alternate Juror 13, Ms. Robinson; and second

1 Alternate Juror 14, Ms. Calara. Does everybody concur with that?  
2 State?

3 MR. LEXIS: Yes, Your Honor. Yes, Judge.

4 MS. PARK: Yes, Your Honor.

5 THE COURT: All right. Anybody wish to make any motions  
6 in regard to the peremptory challenge portion? State?

7 MR. LEXIS: No, Judge.

8 MS. PARK: No, Judge.

9 THE COURT: All right. In your openings, I'd try to avoid  
10 letting the alternates know that they're alternates, so I prefer not  
11 referring to a jury of 12 or anything like that. Just refer to them as jurors.

12 We haven't gone that long. I'm going to go ahead and read  
13 them my -- thank you -- read them my initial instructions, then we'll take  
14 a break then, and you can set up for opening.

15 MR. LEXIS: It's going to be one of the shortest I've ever  
16 done, two minutes, so I'd rather just crack it out, Judge, without a break.

17 MS. PARK: Well --

18 THE COURT: All right. Well, we'll see how -- where we are  
19 when I get done with reading the jury instructions.

20 MR. LEXIS: After that, I mean, we'll be done. I have all my  
21 witnesses lined up tomorrow.

22 THE COURT: All right.

23 [Sidebar ends at 2:09 p.m.]

24 THE COURT: All right. I think at this point, we may have a  
25 jury, so what I want to do is ask all of you that are in the box, that's the

1 first -- the two rows, the one against the wall and one up, if you would  
2 come out into what we call the well. Don't ask me why we call it the  
3 well, but that's area out in front of my bench. You all could come out  
4 into this area, and I'll see if we'll -- see if we've got a jury that has -- we  
5 can agree on.

6 All right. I'm going to ask Mr. Papay if you'd go back,  
7 actually, to where you were sitting, in seat number 1.

8 And Ms. Esposito, if you'd go back to where you were sitting  
9 in seat number 2.

10 Mr. Densley, if you'd go back to seat number 3.

11 At least you're getting stand minutes -- standing up.

12 Seat number 4, Ms. Castaneda, if you'd go back to where you  
13 were sitting.

14 Seat number 5, Mr. Bojorquez, if you'd go back where you  
15 were sitting.

16 Number 6, Ms. Thomas, if you'd go back to where you were  
17 sitting.

18 Number 7, Mr. Valdez, if you'd go back to where you were  
19 sitting.

20 Mr. Padilla, I'd ask you to go to the second row and sit in  
21 front of Mr. Papay.

22 And then Ms. Quinto'Ocasio, I'd ask you to sit next to Mr.  
23 Padilla.

24 Mr. Arceo, if you would sit next to Ms. Quinto'Ocasio.

25 Mr. Elmer, if you would sit next to Mr. Arceo.

1 And Ms. Omandac, if you'd sit next to Mr. Elmer.

2 Ms. Robinson, if you'd sit in the next seat.

3 And then, Ms. Calaria or Calara, if you'd sit in the seat next  
4 to her. Yeah, go back to -- next to Ms. Robinson.

5 Parties concur with this being our jury? State?

6 MR. LEXIS: Yes, Judge.

7 THE COURT: Defense?

8 MS. PARK: Yes, Your Honor.

9 THE COURT: All right. We have a jury then.

10 For those of you down in the well, you weren't selected, but I  
11 appreciate your time and service here today. Those of you out in the  
12 gallery, you were not selected, and you're excused, but I also appreciate  
13 your time and service.

14 The one thing I can do for those of you who are leaving now  
15 is I can tell you that under our system, the computer won't pull your  
16 names for 18 months, so you're protected from the State's system for  
17 being jurors again for 18 months. Doesn't protect you at all from the  
18 Federal system. You could have a summons for the Federal Court in  
19 your box when you get home today, but from the State, it does.

20 Thank you very much. I hope you take away --

21 UNIDENTIFIED PROSPECTIVE JUROR: Thank you, Your  
22 Honor.

23 THE COURT: -- something from the --

24 UNIDENTIFIED PROSPECTIVE JUROR: Thank you, Court.

25 THE COURT: -- experience.

1 [Pause]

2 THE COURT: Okay. I'd ask that all the jurors rise, if you're  
3 able, and be sworn in as jurors for the trial.

4 [The jury was sworn in by the Clerk]

5 THE COURT: All right. Go ahead and be seated. All right.  
6 Let me give you a little bit more in terms of schedule. At this point in  
7 time, I'm going to you some initial introductory jury instructions. That'll  
8 take probably about 20, 25 minutes. After that, the parties will give their  
9 opening statements. I'm told by both sides that they don't intend these  
10 statements to go very long, and then we'll break for the evening, and get  
11 back together tomorrow at 11:00. I'd ask you to get here at about 10:50.  
12 The marshal will give you instructions in regard to that, so we can get  
13 started right at 11:00, and we'll get started right away with the  
14 presentation of evidence.

15 The State will present its evidence, because, as I've talked to  
16 you about already, the State has the burden of proof in a criminal case,  
17 to prove the necessary elements of the crime of driving under the  
18 influence, beyond a reasonable doubt.

19 So the State will get started with its presentation of evidence  
20 at 11:00 tomorrow. As I said, the parties feel pretty comfortable that  
21 they'll get the case to you on Wednesday, so that, as I mentioned before,  
22 this isn't going to be a long case.

23 So that's the schedule then for right now, so I'll go into my  
24 jury instructions; we'll go into opening statements; and then we'll let you  
25 guys go for the day, and we'll get back together at 11:00 tomorrow and



1 get the case started, presented to you.

2 All right. You are now the jury in this case, and I want to take  
3 a few minutes to tell you something about your duties as jurors and to  
4 give you some preliminary instructions. At the end of the trial, I will give  
5 you more detailed written instructions that will control your  
6 deliberations.

7 When you deliberate, it will be your duty to weigh and to  
8 evaluate all the evidence received in the case, and in that process, to  
9 decide the facts. To the facts as you find them, you will apply the law as  
10 I give it to you, whether you agree with the law or not. You must decide  
11 the case solely on the evidence and the law before you and must not be  
12 influenced by any personal likes or dislikes, opinions, prejudices, or  
13 sympathy.

14 Please do not take anything I may say or do during the trial  
15 as indicating what I think of the evidence or what your verdict should be.  
16 That is entirely up to you.

17 This is a criminal case commenced by the State of Nevada.  
18 You may sometimes hear me refer to the case as State versus Gerald  
19 Whatley, Jr. The case is based upon what we call an information. It's a  
20 charging document. I'm now going to ask Catherine, our clerk, to read  
21 that information to you and to state the plea of the Defendant.

22 THE CLERK: District Court Clark County Nevada, the State of  
23 Nevada versus Gerald D. Whatley, Jr., A.K.A. Jerald L. Whatley, Jr. Case  
24 number C-21-357412-1, Department 20.

25 Second amended information, State of Nevada, County of

1 Clark, Steven B. Wolfson, District Attorney, within and for the County of  
2 Clark, State of Nevada, in the name and by the authority of the State of  
3 Nevada, informs the Court that Gerald D. Whatley, Jr., A.K.A. Gerald L.  
4 Whatley, Jr., the Defendant above named, having committed the crime  
5 of driving under the influence on or about the 23rd day of November,  
6 2019, within the County of Clark, State of Nevada, contrary to the form,  
7 force, and effective statutes in such cases made and provided, and  
8 against the peace and dignity of the State of Nevada, did willfully and  
9 unlawfully drive and/or be in actual physical control of a motor vehicle  
10 on a highway or on the premises to which the public has access, at  
11 Desert Inn Road and Theme, Las Vegas, Clark County, Nevada,  
12 Defendant being responsible in one or more of the following ways,  
13 and/or under one or more of the following theories, to wit:

14 1) While under the influence of intoxicating liquor to any  
15 degree, however slight, which rendered him incapable of safely driving  
16 and/or exercising actual physical control of a vehicle;

17 2) While he had a concentration of alcohol of .08 or more  
18 in his blood, and/or;

19 3) When he was found by measurement within two hours  
20 after driving and/or being in actual physical control of a vehicle, to have  
21 a concentration of alcohol of .08 or more in his blood.

22 Steven B. Wolfson, Clark County District Attorney, by Chad  
23 Lexis, Chief Deputy District Attorney, to wit, the Defendant has pled not  
24 guilty.

25 THE COURT: All right.

1           As I have said before, the information simply describes the  
2 charge the State brings against the Defendant. The information is not  
3 evidence and does not prove anything. The Defendant has pleaded not  
4 guilty to the charge and is presumed innocent. The State, therefore, has  
5 the burden of proving each of the essential elements of the information  
6 beyond a reasonable doubt. In addition, the Defendant has the right to  
7 remain silent, and never has to prove innocence or to present any  
8 evidence.

9           The purpose of this trial is to determine whether the State  
10 will meet that burden. It is your primary responsibilities as jurors to find  
11 and determine the facts. Under our system of criminal procedure, you  
12 are the sole judge of the facts. You are to determine the facts from the  
13 testimony you hear, and the other evidence, including exhibits  
14 introduced in Court. It is up to you to determine the inferences which  
15 you feel may be properly drawn from the evidence.

16           You communicate to the Court through the marshal. Our  
17 marshal's name is James Trimidol [phonetic]. He's present at all times  
18 while we are in session.

19           During the course of this trial, the attorneys for both sides  
20 and court personnel, other than the marshal, generally are not permitted  
21 to converse with you. It's not that we are antisocial; it's simply that we  
22 are bound by ethics and the law not to speak with you because to do so  
23 might contaminate your verdict. We typically will not say hi to you, if we  
24 should pass you in the hall or be in the elevator together.

25           There are rules of evidence that control what can be received

1 into evidence. When a lawyer asks a question or offers an exhibit into  
2 evidence, and the lawyer on the other side thinks that it is not permitted  
3 by the rules of evidence, that lawyer may object. If I overrule the  
4 objection, the question may be answered, or the exhibit received. If I  
5 sustain the objection, the question cannot be answered, or the exhibit  
6 cannot be received.

7           Whenever I sustain an objection to a question, you must  
8 ignore the question, and must not guess what the answer would have  
9 been.

10           Sometimes I may order that evidence be stricken from the  
11 record and that you disregard or ignore the evidence. That means that  
12 when you are deciding the case, you must not consider the evidence that  
13 I told you to disregard. It is the duty of a lawyer to object to the evidence  
14 which he or she believes may not properly be offered, and you should  
15 not be prejudiced in any way against the lawyer who makes objections  
16 on behalf of the party to which he or she represents.

17           I may also find it necessary to admonish the lawyers, and if I  
18 do, you should not show prejudice toward the lawyer or their client  
19 because I found it necessary to admonish them.

20           Throughout the trial, if you cannot hear a question being  
21 asked by the attorney or the answer given by a witness, please raise  
22 your hand as an indication. If I don't see your hand up, please just say,  
23 excuse me, I didn't hear that, and we will ask that the question be  
24 repeated or that the answer be repeated.

25           If you wish, you may take notes to help you remember the

1 evidence. If you wish, you may take notes to help you remember the  
2 evidence. If you do take notes, please keep them to yourself until you  
3 and your fellow jurors go to the jury room to decide the case. Do not let  
4 notetaking distract you from being attentive. When you leave Court for  
5 recesses, your notes should be left in the courtroom. No one will read  
6 your notes.

7           Whether you take notes or not, you should rely on your own  
8 memory of the evidence. Notes are only to assist your memory. You  
9 should not be overly influenced by your notes or those of your fellow  
10 jurors.

11           You will be given the opportunity to ask written questions of  
12 any of the witnesses called to testify in this case. You're not encouraged  
13 to ask large numbers of questions, because that is the primary  
14 responsibility of counsel. If, after both lawyers have finished questioning  
15 a witness, and only at this time, there are additional questions you would  
16 like to ask the witness, write your question down with your juror number  
17 on a full sheet of clean paper, and raise your hand. All questions from  
18 jurors must be factual in nature and designed to clarify information  
19 already presented. The marshal will pick up your question and give it to  
20 me. All questions must be directed to the witness, and not to the  
21 lawyers or the judge.

22           After consulting with counsel, I will determine if your  
23 question is legally proper. If I determine that your question may  
24 properly be asked, I will ask it. No adverse inference should be drawn if  
25 the Court does not allow a particular question. In addition, jurors must

1 not place undue weight on the responses to their questions.

2           The next phase of trial will now begin. First, each side may  
3 make an opening statement. An opening statement is not evidence; it is  
4 simply an outline to help you understand what that party expects the  
5 evidence will show. A party is not required to make an opening  
6 statement.

7           After the opening statements, the State will first introduce  
8 evidence. At the conclusion of the State's evidence, the Defendant has  
9 the right to introduce evidence, however, please remember that the  
10 Defendant is not obligated to present any evidence or to prove his  
11 innocence. The law never imposes upon the Defendant in a criminal  
12 case the burden of calling any witnesses. The Defendant may do  
13 nothing at all, because the Defendant has no burden of proof in the  
14 criminal trial.

15           As we already discussed, the State has to prove two things to  
16 you. First, the State has to prove to you, beyond a reasonable doubt,  
17 that a crime occurred, and second, the State has to prove to you, also  
18 beyond a reasonable doubt, that the Defendant did it.

19           At the close of the Defendant's case, if any, the State may  
20 introduce rebuttal evidence. At the conclusion of all the evidence, I will  
21 instruct you on the law. You must not be concerned with the wisdom of  
22 any rule of law stated in these instructions, or the instructions which I  
23 will read to you after all the evidence is in. Regardless of any opinion  
24 you may have as to what the law ought to be, it would be a violation of  
25 your oath to base a verdict upon any other view of the law than that

1 given to you by the Court.

2           After the instructions on the law are read to you, each party  
3 has the opportunity to argue orally in support of his or her case. This is  
4 called a closing argument or summation. What is said in closing is not  
5 evidence. The arguments are designed to summarize and interpret the  
6 evidence for you and show you how the evidence and the law relate to  
7 one another.

8           Since the State has the burden of proving the Defendant  
9 guilty beyond a reasonable doubt, the State has the right to open and  
10 close the arguments, which means at the end of the trial, the State gets  
11 to argue to you twice, and the Defense gets to argue to you once.

12           Opening statements and closing arguments are intended to  
13 help you in understanding the evidence and in applying the law, but  
14 please understand, what the attorneys tell you is not evidence. They are  
15 not witnesses. They have no firsthand information, and therefore, what  
16 they tell you is not evidence. You must not be influenced in any degree  
17 by any personal feelings of sympathy for or prejudice against any party  
18 to the case, for each party is entitled to the same fair and impartial  
19 consideration.

20           After the attorneys have presented their arguments, you will  
21 retire to select a foreperson to deliberate and arrive at your verdict.  
22 Faithful performance by you of your duties is vital to the administration  
23 of justice.

24           If, during the course of the trial, you should recognize a  
25 witness or realize that you are familiar with the facts of the case when a

1 witness is testifying, please make a little not on your juror pad that you  
2 recognize such and such a witness, and how it is you recognize that  
3 witness. At the next break in the trial, please hand that note to the  
4 marshal and he'll present it to the Court. Frequently people do not  
5 recognize witnesses by name, but may recognize them when they come  
6 into the courtroom to testify. The person may be your child's soccer  
7 coach, and you may know that person by the name of Coach, or Bob, or  
8 Betty, or may be someone who lives three or four houses down from  
9 you, and you recognize them by sight, but you don't know them by  
10 name, and that happens quite frequently.

11               So if that should happen in this case, please just make a note  
12 of that as the witness is testifying, and at the next break, give the note to  
13 the marshal.

14               It is your duty to determine the facts and to determine them  
15 from the evidence and the reasonable inferences arising from such  
16 evidence, and in doing so, you must not indulge in guesswork or  
17 speculation. The evidence you are to consider in deciding what the facts  
18 are consists of (1) the sworn testimony of any witness; (2) the exhibits  
19 which are received into evidence; and (3) any facts to which the parties  
20 agree.

21               The term witness means anyone who testifies in person.  
22 You must not consider anything which you may have seen or heard  
23 when the Court is not in session, even if what you have seen or heard is  
24 said or done by one of the parties or by one of the witnesses.

25               Evidence may be direct or circumstantial. Direct evidence is



1 direct proof of a fact, such as testimony by a witness about what that  
2 witness personally saw or heard or did. Circumstantial evidence is  
3 indirect evidence. That is, it is proof of one or more facts from which  
4 you can find another fact.

5           You are to consider both direct and circumstantial evidence.  
6 Either can be used to prove any fact. The law makes no distinction  
7 between the weight to be given direct or circumstantial evidence. It is  
8 for you to decide how much weight to give to any evidence.

9           By way of example, if you wake up in the morning -- we went  
10 over this a little bit earlier -- if you wake up in the morning and see that  
11 the sidewalk is wet, you may find from that fact that it rained during the  
12 night. However, other evidence, such as a turned-on garden hose, may  
13 provide an explanation for the water on the sidewalk. Therefore, before  
14 you decide that a fact has been proved by circumstantial evidence, you  
15 must consider all the evidence in light of recent experience and common  
16 sense.

17           In deciding the facts in this case, you may have to decide  
18 which testimony to believe and which testimony not to believe. You  
19 may believe everything a witness says, or part of it, or none of it. In  
20 considering the testimony of any witness, you may take into account (1)  
21 the witness' opportunity and ability to see, or hear, or know the things  
22 testified; (2) the witness' memory; (3) the witness' manner while  
23 testifying; (4) the witness' interests in the outcome of the case, if any; (5)  
24 the witness' bias or prejudice, if any; (6) whether other evidence  
25 contradicted the witness' testimony; (7) the reasonableness of the

1 witness' testimony in light of all the evidence, and; (8) any other factors  
2 that you feel bear on believability.

3           You must avoid bias, conscious or unconscious, based on  
4 the witness' race, color, religious beliefs, national origin, sexual  
5 orientation, gender identity, or gender in your determination of  
6 credibility.

7           The weight of the evidence as to a fact does not necessarily  
8 depend on the number of witnesses who testify about it. What is  
9 important is how believable the witnesses are and how much weight you  
10 think their testimony deserves.

11           No statement, ruling, remark, or facial expression which I  
12 may make during the course of the trial is intended to indicate my  
13 opinion as to what the facts are. I don't get to decide the facts; you are  
14 the ones who determine the facts.

15           I may, during the trial, take notes of what the witnesses are  
16 saying. Do not make any inference from this action on my part, because  
17 I am required to be prepared for legal arguments during the trial, and for  
18 that reason, I may, at times, take notes.

19           Our system of justice depends on the willingness and ability  
20 of judges like me, and jurors like you to make careful and fair decisions.  
21 What we are asked to do is sometimes difficult, because everyone,  
22 including me, has feelings, assumptions, perceptions, fears, and  
23 stereotypes.

24           We all have biases, including implicit biases of which we  
25 may not even be aware. They can influence the evidence we see and

1 hear, and how we perceive a person or situation. They can affect the  
2 evidence we remember, and how we remember it. They can influence  
3 the gut feelings and conclusions we form about people and events.  
4 They can affect how we make important decisions.

5           Fortunately, when we realize we can have implicit biases and  
6 take efforts to recognize them, we can often control them and minimize  
7 their possible effect on our consideration of the evidence and decisions.

8           As you listen to the witnesses and consider the evidence, I  
9 encourage you to be mindful, and consider whether your perception of  
10 the witnesses and the evidence are affected in any way by these hidden  
11 biases. For this reason, you are encouraged to thoroughly and carefully  
12 examine your decision-making process to ensure the conclusions you  
13 draw are a fair reflection of the law and the evidence.

14           You should resist jumping to conclusions based on personal  
15 likes and dislikes, generalizations, gut feelings, prejudices, sympathies,  
16 or stereotypes. Consider examining your reasoning for any possible  
17 bias by reconsidering your first impressions of the people and evidence  
18 in this case.

19           Is it easier to believe statements or evidence when presented  
20 by people who are more like you? If you and the people involved in this  
21 case are from different backgrounds, richer or poor, more or less  
22 educated, older or younger, or of a different gender, race, religion or  
23 sexual orientation, would you still view them and the evidence the same  
24 way?

25           You must not be biased in favor of or against any party or

1 witness because of his or her disability, gender, race, religion, ethnicity,  
2 sexual orientation, age, national origin, or socioeconomic circumstances.

3           When you are instructed to begin your jury deliberations  
4 with your fellow jurors, please also listen to the other jurors during  
5 deliberations, who may be from different backgrounds and who will be  
6 viewing this case in a light of their own insights, assumptions, and  
7 perspectives.

8           The law demands that you return a just verdict, based solely  
9 on the evidence, your individual evaluation of that evidence, your reason  
10 and common sense, and the instructions on the law. Our system of  
11 justice is counting on you to render a fair decision based on the  
12 evidence, not on biases.

13           I will now say a few words about your conduct as jurors.  
14 First, keep an open mind throughout the trial, and do not decide what the  
15 verdict should be until you and your fellow jurors have completed your  
16 deliberations at the end of the case.

17           Second, because you must decide this case based only on  
18 the evidence received in the case and on my instructions on the law that  
19 applies, you must not be exposed to any other information about the  
20 case, or to the issues it involves, during the course of your jury duty.  
21 Thus, until the end of the case, or unless I tell you otherwise, do not  
22 communicate with anyone in any way, and do not anyone else  
23 communicate with you in any way about the merits of the case, or  
24 anything to do with it.

25           This includes discussing the case in person, in writing, by

1 phone or electronic means, via email, via text messaging, or any internet  
2 chat room, blog, website, or application, including , but not limited to  
3 Facebook, YouTube, Twitter, Instagram, LinkedIn, Snapchat, WhatsApp,  
4 or other forms of social media.

5 This applies to communicating with your fellow jurors, until I  
6 give you the case for deliberation, and it applies to communicating with  
7 everyone else, including your family members, your employer, the  
8 media or press, and people involved in the trial, although you may notify  
9 your family and employer that you have been seated as a juror in the  
10 case, and how long you expect the trial to last.

11 But if you are asked or approached in any way about your  
12 jury service or anything about this case, you must respond that you have  
13 been ordered not to discuss the matter, and to report the contact to the  
14 Court.

15 As a caution, while you are here in the courthouse, please  
16 always wear the badge the marshal will give you, or has given you,  
17 which identifies yourself as a juror. When you come into the courthouse  
18 in the morning, and during breaks during the daytime or other recesses,  
19 when you are in the elevators or walking around in the hallways, I  
20 encourage you to only chit-chat with people wearing badges which  
21 indicate they are jurors.

22 And the reason for this is that the witnesses in this trial, and  
23 all the rest of the trials that will be going on in the building, are not  
24 identified in any way. Consequently, if you start chatting with someone,  
25 you will not know if you're carrying on a conversation with a witness in

1 this trial until it's too late, and they come in and take the witness stand  
2 and are sworn to testify. Therefore, I would urge you not to talk to  
3 anyone in the building, unless they're identified as a juror, because if  
4 they are identified as a juror, you know they're not going to have  
5 anything to do with this case.

6           Because you will receive all the evidence and legal  
7 instruction you properly may consider to return your verdict, do not  
8 read, watch, or listen to any news media, or media accounts, or  
9 commentary about the case, or about anything to do with it. Do not do  
10 any research, such as consult a dictionary, searching the internet, or  
11 using any other reference materials, and do not make any investigation,  
12 or in any other way try to learn about the case on your own. Do not visit  
13 or view anyplace discussed in this case, and do not use internet  
14 programs or other devices to search for or view anyplace discussed  
15 during the trial.

16           Also, do not do any research about this case, or the law, or  
17 the people involved, including the parties, the witnesses, or the lawyers,  
18 until you have been excused as jurors. If you should happen to read or  
19 hear anything touching on this case in the media, turn away, and report  
20 it to me as soon as possible.

21           These rules protect each party's right to have the case  
22 decided only on the evidence that's been presented here in Court.  
23 Witnesses here in Court take an oath to tell the truth, and the accuracy of  
24 their testimony is tested through the trial process. If you do any research  
25 or investigation outside the courtroom, or gain any information through

1 improper communications, then your verdict may be influenced by  
2 inaccurate, incomplete, or misleading information that has not been  
3 tested by the trial process.

4           Each of the parties is entitled to a fair trial by an impartial  
5 jury, and if you decide the case based on information not presented in  
6 Court, you will have denied the parties a fair trial.

7           Remember, you have taken an oath to follow the rules, and it  
8 is very important that you follow these rules. A juror who violates these  
9 restrictions jeopardizes the fairness of proceedings, and a mistrial could  
10 result that would require the entire trial process to start over. If any juror  
11 is exposed to any outside information, please notify the Court  
12 immediately. After that, you'll go to the jury room to deliberate on your  
13 verdict.

14           From time to time during the trial, it may become necessary  
15 for me to take up legal matters with the attorneys privately, either by  
16 having a conference at the bench when the jury is present in the  
17 courtroom, or by calling a recess. Please understand that while you are  
18 waiting, we are working. The purpose of these conferences is not to  
19 keep relevant information from you, but to decide how certain evidence  
20 is to be treated under the rules of evidence, and to avoid confusion and  
21 error.

22           Of course, we will do what we can to keep the number and  
23 length of these conferences to a minimum. I may not always grant an  
24 attorney's request for a conference. Do not consider my granting or  
25 denying a request for a conference as any indication of my opinion of the

1 case or what your verdict should be.

2 At the end of the trial, you will have to make your decision  
3 based upon what you recall of the evidence. You will not have a written  
4 transcript to consult. Even though we have a court recorder who records  
5 the testimony, it's not typed up into a readable format, and it's difficult  
6 and time-consuming for the recorder to read back lengthy testimony.  
7 Therefore, I urge you to pay close attention to the testimony as it is  
8 given.

9 Okay. That concludes my initial instructions. The parties  
10 have indicated that they probably have about 20 minutes of opening  
11 statements. Is everybody good, or do we need to take a bathroom  
12 break? Want to make sure --

13 MS. PARK: Bathroom [indiscernible].

14 THE COURT: Huh?

15 MR. LEXIS: It's more like five minutes.

16 THE COURT: Well, in any case, it's -- do we need to take -- I  
17 want to make sure that everybody is good, because I always remember I  
18 had a trial a long time ago and had a key witness on the stand, and we  
19 had worked with him, and he got up there and he was horrible. And I  
20 was like, after he came down, it was like, why -- why -- what happened?  
21 He said, well, I had to go to the bathroom.

22 So anyway, it's important to go to the restroom. Is  
23 everybody good for about another 20 minutes?

24 UNIDENTIFIED SPEAKER: Twenty minutes, Your Honor?

25 THE COURT: Twenty minutes.



1 UNIDENTIFIED SPEAKER: Oh, bathroom break, please.

2 THE COURT: Okay.

3 THE MARSHAL: All of them or --

4 THE COURT: Does every -- it'd be quicker if we just take her  
5 out. Is everybody good with that? And you need to go to the restroom  
6 too?

7 All right. You can follow -- well, all right. Let's -- probably  
8 the easier thing is to just go ahead and do a quick ten-minute break.  
9 While you're out there, ladies and gentlemen, just go to the restroom,  
10 come back, we'll do the openings and get you on your way for the day.

11 During this break, do not discuss or communicate with  
12 anyone, including fellow jurors, in any way regarding the case or its  
13 merits, either by voice, phone, email, text, internet, or other means of  
14 communication or social media. Do not read, watch, or listen to any  
15 news or media accounts or any commentary about the case.

16 Do not do any research such as consulting dictionaries, using  
17 the internet, or using reference materials. Do not make any  
18 investigation, test the theory of the case, recreate any aspect of the case,  
19 or in any other way investigate or learn about the case on your own, and  
20 do not begin to form or express any opinion regarding the case until it is  
21 submitted to you.

22 As soon as we get you all back, we'll do the openings and  
23 get you out of here.

24 THE MARSHAL: All rise for the jury. And leave your  
25 notebooks.

1 [Jury out at 2:38 p.m.]

2 THE COURT: Ma'am, I'm going to need you to step out,  
3 because sometimes we conduct some business while you guys are all  
4 outside.

5 UNIDENTIFIED SPEAKER: Okay.

6 THE COURT: So I appreciate it.

7 All right. I'm sorry. Once we started going past the one, I -  
8 - all right, we're just -- we're going down the slippery slope to bathroom  
9 time. It's just easier to have them go out and get back in ten minutes.

10 All right. Well, run to the restroom if you need to, otherwise,  
11 we'll get back as soon as the marshal lets me know they're all back.

12 [Recess taken from 2:39 p.m. to 2:50 p.m.]

13 THE COURT: All right. Everybody ready?

14 MS. PARK: Yep.

15 THE COURT: Okay. Go ahead and bring them on in.

16 THE MARSHAL: Yes, Sir.

17 [Pause]

18 All rise for the jury.

19 [Jury in at 2:50 p.m.]

20 THE COURT: We've already stipulated to the presence of the  
21 jury panel?

22 MR. LEXIS: Yes, Your Honor.

23 MS. PARK: Yes, Your Honor.

24 THE COURT: Okay, very good. Well, everybody get situated,  
25 get your notepads. Okay, ladies and gentlemen. As I said, this is the

1 time for opening statements. Opening statements are each side's  
2 opportunity to give you, what I like to say, a picture or roadmap of what  
3 they see each side's case being. A lot of times during these trials, things  
4 don't necessarily come in logical format or chronological, so this sort of  
5 helps you to know when somebody testifies that X, or Y, or Z, how that  
6 all fits in to each side's view of the picture. So these are very important.

7 But the one thing I want to emphasize, and I'll emphasize it a  
8 number of times during the trial, is what the attorneys say in opening  
9 statement is not evidence. They're just telling you what they think the  
10 evidence ultimately will be that comes into the case, but what they say,  
11 it's not evidence. They are not witnesses to any of the facts of this case,  
12 so what they say is not evidence.

13 So if you hear in an opening statement, or in a closing  
14 argument, an attorney say that Witness Y is going to testify to 1, 2, 3, and  
15 at the end of the case, your recollection is that Witness Y testified to 8, 9,  
16 10, it's your recollection of what that witness says that controls. So as I  
17 want to emphasize, what the attorneys say is not evidence. But these  
18 statements are important, because they do provide you that roadmap or  
19 picture, so I encourage you to pay close attention to them.

20 We'd be pleased to hear the opening statement of the  
21 Plaintiff.

#### 22 STATE OPENING STATEMENT

23 MR. LEXIS: Folks, this case is very straightforward. On the  
24 day in question, the evidence will show the Defendant ran his vehicle  
25 into a concrete barrier. Two individuals driving by witnessed this and

1 called 911. You will hear from -- both of those 911 calls will be played in  
2 Court.

3 When the officer got there, the Defendant had already been  
4 transported to the hospital, so the primary officer went down to the  
5 hospital, and at his direction, had the nurse obtain a blood draw. You  
6 will hear from the expert stating that she tested that blood, and it came  
7 back above the legal limit, therefore, at the end of this case, we're going  
8 to ask you to find the Defendant guilty of driving under the influence.  
9 Thank you.

10 THE COURT: Thank you, Counsel.

11 We'd be pleased to hear the opening statement of Defense.

12 MS. PARK: Thank you.

13 DEFENDANT OPENING STATEMENT

14 MS. PARK: Members of the jury, thank you for being here  
15 today.

16 Mr. Gerald Whatley has pled not guilty to the charge of  
17 driving under the influence. The only question you're going to have  
18 before you is on November 23rd, 2019, did Gerald Whatley drive while  
19 under the influence of alcohol? I believe if you listen to the facts  
20 carefully, listen to the witness testimony carefully, then I'm confident  
21 that you will find Mr. Whatley not guilty. Thank you.

22 THE COURT: Okay. Thank you.

23 Well, ladies and gentlemen, those were pretty quick opening  
24 statements, but they did summarize each side's view of the evidence in  
25 this case, and we'll get into the presentation of that evidence first thing

1 tomorrow, starting at 11:00.

2 As I mentioned before, if you could try to get here about  
3 10:50, we'll get going as close to 11:00 as possible, and we'll put in a full  
4 day tomorrow, until about 5:00. We'll have some breaks. We won't have  
5 a lunch break; we'll have some breaks.

6 If you need to eat beforehand or bring something to snack on  
7 here in the courtroom while we're doing trial or during one of the breaks,  
8 feel free to do that. If you need some refrigeration, that's not a problem.  
9 Let the marshal know and he'll arrange for anything you want to be  
10 refrigerated to be refrigerated.

11 While you're out there tonight, do not discuss or  
12 communicate with anyone, including fellow jurors, in any regarding the  
13 case or its merits, either by voice, phone, email, text, internet or other  
14 means of communication or social media. Do not read, watch, or listen  
15 to any news, or media accounts, or commentary about the case.

16 Do not do any research, such as consulting dictionaries,  
17 using the internet or using reference materials. Do not make any  
18 investigations, test a theory of the case, or recreate any aspect of the  
19 case, or in any other way investigate or learn about the case on your  
20 own, and do not begin to form or express any opinion regarding the case  
21 until it is submitted to you.

22 I know it's been a long day. I really appreciate everybody's  
23 patience. We'll see you tomorrow. Like I said, again, try to get here  
24 about 10:50, and we'll get started as close as we can to 11:00. Have a  
25 great evening.

1 THE MARSHAL: All rise for the jury.

2 UNIDENTIFIED JUROR: Leave our notebooks?

3 THE MARSHAL: Leave your notebooks. Bring the  
4 instructions though [indiscernible].

5 [Jury out at 2:56 p.m.]

6 [Outside the presence of the jury]

7 THE COURT: All right. Since we're finishing early today, I  
8 thought we could discuss the jury instructions. I received a set from the  
9 State. Have you had a chance to review those?

10 MS. PARK: I have.

11 THE COURT: Anything in there that you saw that you had an  
12 issue with, or that you're going to want to add?

13 MS. PARK: No, Your Honor.

14 THE COURT: All right. Do you have a copy with you?

15 MS. PARK: I don't have a copy with me, but --

16 THE COURT: All right.

17 MS. PARK: -- I do have them.

18 THE COURT: Well --

19 MS. PARK: I have reviewed them.

20 THE COURT: -- here, let me ask if you [indiscernible].

21 MS. PARK: Okay.

22 THE COURT: And then these, do you have copies for  
23 everybody, or just her?

24 THE CLERK: Just two.

25 MS. PARK: Do you have your copy?

1 MR. LEXIS: I didn't bring mine.  
2 THE COURT: Okay. All right. Get rid of that --  
3 THE CLERK: You have an extra.  
4 THE COURT: -- and then this.  
5 THE CLERK: [Indiscernible]  
6 THE COURT: Then you can -- yeah. Could you give that to  
7 Mr. Lexis?  
8 THE CLERK: Okay. I don't think he has a copy of the other  
9 [indiscernible].  
10 THE COURT: You have yours?  
11 MR. LEXIS: I don't, Judge.  
12 THE COURT: Oh, okay. Let's print out a copy real quick.  
13 THE CLERK: So here's the group [indiscernible].  
14 MS. PARK: Okay.  
15 THE CLERK: [Indiscernible]  
16 MS. PARK: Okay.  
17 THE COURT: Hold on one second; we'll print out a copy for  
18 Mr. Lexis.  
19 [Pause]  
20 THE COURT: Tiffany should be right back.  
21 MR. LEXIS: I've been in here before, and I know you use that  
22 credibility instruction, so I've got no problem.  
23 THE COURT: Okay. I appreciate that.  
24 MS. PARK: I don't have an issue with it.  
25 THE COURT: All right. Well, I want to still go through this,

1 make sure we've got a set that we're all good with. So I don't know how  
2 quickly things will move tomorrow. Looking at our opening statements, I  
3 want to just be ready to go tomorrow, so we'll -- we'll get a set out to Mr.  
4 Lexis, and we'll run through them.

5 Mr. Lexis. Did I get you? I'm sorry.

6 MR. LEXIS: Thank you.

7 THE COURT: Thank you.

8 All right. Looking at instruction number 1. It's now my duty  
9 as Judge to instruct you on the law that applies in this case.

10 Any objection, State?

11 MR. LEXIS: No.

12 THE COURT: Defense?

13 MS. PARK: No.

14 THE COURT: Instruction on --

15 THE CLERK: Okay. That's all they ever sent to me.

16 THE COURT: I know. But you know, I [indiscernible] jury.

17 All right. Instruction number 2, if, in these instructions, any  
18 real direction or ideas repeat or are stated in different ways, et cetera.

19 Any objections, State?

20 MR. LEXIS: No.

21 THE COURT: Defense?

22 MS. PARK: No.

23 THE COURT: All right. Instruction number 3, an amended  
24 information is but a formal method of accusing a person of a crime and  
25 is not itself any evidence of his guilt. In this case, it is charged in the



1 information that Gerald D. Whatley, Jr., A.K.A. Gerald L. Whatley, Jr., the  
2 Defendant -- we'll just get rid of the S at the end of Defendant -- the  
3 Defendant above named, having committed the crime of driving under  
4 the influence -- we'll strike the category B felony and Nevada Revised  
5 Statutes; I don't have any idea what those say -- on or about the 23rd day  
6 of November, 2019, within the County of Clark, State of Nevada, contrary  
7 to the form, force, and effective statutes, et cetera.

8 Mr. Lexis, are you -- which of the three categories are you  
9 planning on doing? All 1, 2, and 3, or which ones?

10 MR. LEXIS: 1 and 3.

11 THE COURT: One and three? All right. So --

12 MR. LEXIS: But they're listed in the information; that's why I  
13 put it all.

14 THE COURT: Okay. Well, if we -- if there's not going to be  
15 any evidence of it, I don't see any reason for us to -- I think we should  
16 just use 1 and 3.

17 MR. LEXIS: Fine with me.

18 THE COURT: All right. So we'll strike 2, and renumber 3  
19 as --

20 MR. LEXIS: What we're talking about is B, right? That's what  
21 I'm talking about too. 2(a) and 2(c) is where I'm going with it. You could  
22 get rid of 2(b) if you want.

23 THE COURT: 2(b) is -- let's make sure we're -- while he had a  
24 concentration of alcohol of .08 or more in his blood --

25 MR. LEXIS: Yeah, so --

1 THE COURT: You're going to be going on he was either, one,  
2 under the influence of intoxicating liquor in any degree, however slight,  
3 which rendered him incapable of safely driving or exercising actual  
4 physical control of a vehicle, and/or when he was found by measurement  
5 within two hours of driving or having physical control of a vehicle to  
6 have a concentration of alcohol of 0.08 or more in his or her blood?

7 MR. LEXIS: Correct. So you could get rid of (b), just make  
8 sure you keep that or in there at the end, I think.

9 THE COURT: Yeah. And/or. All right. So renumber 3 as 2.  
10 All right.

11 With those changes, any objections, State?

12 MR. LEXIS: No.

13 THE COURT: Defense?

14 MS. PARK: No.

15 THE COURT: Okay. All right.

16 Instruction number 4, the elements of driving or being in  
17 actual physical control while under the influence of intoxicating liquor or  
18 alcohol are: (1) a person is driving a vehicle on or off the highway or on  
19 a premises to which the public has access to; (2) a person, while driving,  
20 is under the influence of intoxicating liquor to any degree, or -- and then  
21 we'll cut out (b), and then we'll just have -- change (c) to (b). And then  
22 we'll just have the -- either one of those. All right.

23 Any -- with that change, any objection, State?

24 MR. LEXIS: No.

25 THE COURT: Defense?

1 MS. PARK: No.

2 THE COURT: Okay.

3 Physical -- instruction number --

4 THE CLERK: 5.

5 THE COURT: 5?

6 THE CLERK: Yes.

7 THE COURT: -- 5, physical control means a person has  
8 existing or present influence, dominion, or a regulation of a motor  
9 vehicle. In deciding whether someone has existing or present influence,  
10 dominion, or regulation of a vehicle, et cetera.

11 Any objection, Plaintiff, State?

12 MR. LEXIS: No.

13 THE COURT: Defense?

14 MS. PARK: No.

15 THE COURT: Okay.

16 Instruction 6, motor vehicle means every vehicle which is  
17 self-propelled but not operated upon rails. A car or van is a motor  
18 vehicle.

19 Any objection, State?

20 MR. LEXIS: No.

21 THE COURT: Defense?

22 MS. PARK: No.

23 THE COURT: All right.

24 Highway means the entire width between the boundary lines  
25 of every dedicated to -- of every way dedicated to a public authority,

1 when any part of the way is open to the use of the public for purposes of  
2 vehicular traffic, whether or not the public authority is maintained  
3 through the way. Desert Inn and Thames are highways.

4 Any objection, State?

5 MR. LEXIS: No.

6 THE COURT: Defense?

7 MS. PARK: No.

8 THE COURT: Okay.

9 Instruction number 7?

10 THE CLERK: 8.

11 THE COURT: 8? 8. Premises to which the public has access  
12 means property in private or public ownership onto which members of  
13 the public regularly enter, are reasonably likely to enter, or are invited or  
14 permitted to enter as invitees or licensees. Term includes, but is not  
15 limited to, parking deck, garage, or parking structure. All right.

16 I mean, are you going to be arguing any of this?

17 MR. LEXIS: This isn't even an issue in this case, but it's still  
18 an element, so I have to include it.

19 THE COURT: No, you don't have to include it. It's an or  
20 element. It's either on the highway or on a premises to which the public  
21 has access. If you're not going to be presenting any -- this occurred on a  
22 parking deck, parking garage, or parking structure, or a parking lot, or --

23 MR. LEXIS: He was [indiscernible] the highway and crashed  
24 it off road, so I'm going to argue where he crashed it is a premises, either  
25 way, Judge.

1 THE COURT: Well, I guess I could see your point, in terms of  
2 the crash being off road. Was this a residential area?

3 MR. LEXIS: No, it was on Desert Inn and Thames, two  
4 streets, but then went off the road and crashed.

5 THE COURT: All right. We'll go ahead.

6 You all right with leaving it in?

7 MS. PARK: I am.

8 THE COURT: Okay. All right. We'll leave in number 8.

9 9, under the influence means impaired to a degree that  
10 renders the person incapable of safely driving, et cetera.

11 Any objection, State?

12 MR. LEXIS: No.

13 THE COURT: Defense?

14 MS. PARK: No.

15 THE COURT: 10, incapable of safely driving does not mean  
16 that a person is incapable of reaching his destination in safety, but rather  
17 that the person's mental or psychological functions are diminished so  
18 that the risk of an accident is unreasonably increased.

19 Any objection, Plaintiff -- State?

20 MR. LEXIS: No.

21 THE COURT: Defense?

22 MS. PARK: No.

23 THE COURT: All right.

24 Concentration of point -- of alcohol of .08 or more in his  
25 blood means .08 grams or more of alcohol per 100 milliliters of blood of

1 a person.

2 Any objection, State?

3 MR. LEXIS: No.

4 THE COURT: Defense?

5 MS. PARK: No.

6 THE COURT: State has alleged the Defendant has -- and this  
7 is what number?

8 THE CLERK: 12.

9 THE COURT: 12?

10 State has alleged that the Defendant is criminal liable for the  
11 charge of driving in or being in actual physical control of a motor vehicle  
12 while under the influence of intoxicating liquor or alcohol under one or  
13 more of the following principles of criminal liability.

14 Then we struck number 2, so we'll do that, and then strike  
15 -- and put in -- change 3 to 2.

16 Your verdict must be unanimous as to the charge. You do  
17 not have to be unanimous on the principle of criminal liability. It is  
18 sufficient that each of you find, beyond a reasonable doubt, that the  
19 crime that was committed was driving or being in actual physical control  
20 of a motor vehicle while under the influence of intoxicating liquor or  
21 alcohol, resulting in death.

22 No, that didn't happen, right?

23 MR. LEXIS: No. I've got to take that part out.

24 THE COURT: Okay. We'll take it out.

25 MR. LEXIS: Good. Use this in my last try.

1 THE COURT: Okay. Well, will that be read? That -- that  
2 would [indiscernible] everybody --

3 MS. PARK: Your Honor, I didn't --

4 THE COURT: -- would look around the room.

5 Regardless of which principle of criminal liability you find.  
6 With that -- those changes, State, okay?

7 MR. LEXIS: Yes, just take out the bodily harm part? Yes.

8 THE COURT: Yeah. Well, taking out the resulting in death,  
9 and number 2.

10 MR. LEXIS: Yes.

11 THE COURT: All right.

12 Defense, okay?

13 MS. PARK: Yeah.

14 THE COURT: All right.

15 13, to constitute the crime charged, there must exist a union  
16 or joint operation or act [indiscernible] by law, and intend to do the act,  
17 et cetera.

18 Any objection, State?

19 MR. LEXIS: No.

20 THE COURT: Defense?

21 MS. PARK: No.

22 THE COURT: All right.

23 What is this one?

24 THE CLERK: 14

25 THE COURT: 14, the Defendant is presumed innocent unless

1 the contrary is proved. This presumption places upon the State the  
2 burden of proving beyond a reasonable doubt every element of the  
3 crime charged, et cetera.

4 Any objection, State?

5 MR. LEXIS: No.

6 THE COURT: Defense?

7 MS. PARK: No.

8 THE COURT: 15, it's the Constitutional right of the Defendant  
9 in a criminal trial that he may not be compelled to testify, thus a decision  
10 as to whether he should testify is left to the Defendant on advice of  
11 counsel of an attorney. You must not draw any inference of guilt from  
12 the fact he does not testify, nor should this fact be discussed by you or  
13 enter into your deliberations in any way.

14 This technically has to be requested by Defense. Are you -- if  
15 he doesn't testify, are you requesting it?

16 MS. PARK: I am.

17 THE COURT: Okay. All right.

18 Assuming he doesn't testify, any objection, State?

19 MR. LEXIS: [Indiscernible]

20 THE COURT: I didn't understand.

21 MR. LEXIS: [Indiscernible]

22 THE COURT: Is there any objection to this instruction, if he  
23 chooses not to testify?

24 MR. LEXIS: No objection.

25 THE COURT: All right.



1 MR. LEXIS: And just so you know, that we do have priors as  
2 well.

3 THE COURT: Okay. Well, I'm going to do the canvas here in  
4 a second, so we'll deal -- fire those up in a second.

5 THE COURT: Any objection, Defense?

6 MS. PARK: No.

7 THE COURT: All right.

8 What instruction is this one?

9 THE CLERK: 16.

10 THE COURT: 16, you are here to determine the guilt or  
11 innocence -- I know that some Defense people don't like guilt or  
12 innocence, because it's not technically guilt or innocence, it's whether  
13 -- to determine whether the Defendant's guilty or not guilty from the  
14 evidence in the case.

15 Do you want that changed, or are you good with guilt or  
16 innocence?

17 MS. PARK: Change it to not.

18 THE COURT: You are here to determine whether the  
19 Defendant is guilty or not guilty from the evidence in the case.

20 MS. PARK: Yeah, I think that sounds better. Let's do that.

21 THE COURT: All right. You are here to determine whether  
22 the Defendant is guilty or not guilty from the evidence in this case.  
23 You're not called upon to return a verdict as to guilty or not guilty, as to  
24 any other person. So if the evidence in the case convinces you beyond a  
25 reasonable doubt of the guilt of the Defendant, you should so find, even

1     though you believe one or more persons are also guilty.

2             Any objection, State, with those changes?

3             MR. LEXIS: No.

4             THE COURT: Defense?

5             MS. PARK: No.

6             THE COURT: All right.

7             17, the evidence which you are to consider in this case is the  
8     testimony of the witnesses, the exhibits, and any facts admitted or  
9     agreed to by counsel, et cetera.

10            Any objection, State?

11            MR. LEXIS: No.

12            THE COURT: Defense?

13            MS. PARK: No.

14            THE COURT: All right. This is --

15            What's this one?

16            THE CLERK: I --

17            THE COURT: I know. 18?

18            THE COURT: All right.

19            I handed out my preferred witness credibility instruction;  
20     both sides got that.

21            Any objection to using that, State?

22            MR. LEXIS: No. No.

23            THE COURT: Defense?

24            MS. PARK: No.

25            THE COURT: Okay. Let's see, instruction 19, a witness who

1 has special knowledge, skill, experience, training, education, et cetera.

2 Any objection, State?

3 MR. LEXIS: No.

4 THE COURT: Defense?

5 MS. PARK: No.

6 THE COURT: All right. It's 20?

7 THE COURT: 20, although you are to consider only the  
8 evidence in the case when reaching a verdict, you must bring  
9 consideration of the evidentiary with common sense, et cetera.

10 Any objection, State?

11 MR. LEXIS: No.

12 THE COURT: Defense?

13 MS. PARK: No.

14 THE COURT: Okay.

15 21, in your deliberations, you may not discuss or consider  
16 the subject of punishment, as that is a matter which lies solely with the  
17 Court. Your duty is confined to the determination of guilt  
18 -- determination of whether the Defendant is guilty or not guilty. Of  
19 whether the Defendant is guilty or not guilty.

20 With that change, State, okay?

21 MR. LEXIS: Yes.

22 THE COURT: Defense?

23 MS. PARK: Yes.

24 THE COURT: All right.

25 22, during the course of the trial and your deliberations, you

1 are not to (1) communicate with anyone in any way, et cetera.

2 Any objection, State?

3 MR. LEXIS: No.

4 THE COURT: Defense?

5 MS. PARK: No.

6 THE COURT: Okay.

7 23, when you retire to consider your verdict, you must select  
8 one member as foreperson to preside over your deliberations, be your  
9 spokesperson here in Court, et cetera.

10 Any objection, State?

11 MR. LEXIS: No.

12 THE COURT: Defense?

13 MS. PARK: No.

14 THE COURT: Okay.

15 Then 24, Tiffany handed out my enhanced version of 24.

16 Anybody have any objection to me substituting in my version of 24?

17 MR. LEXIS: No.

18 MS. PARK: No.

19 THE COURT: Okay. Very good.

20 And then 25, now you'll listen to the arguments of counsel,  
21 who will endeavor to aid you to reach a proper verdict, et cetera.

22 Any objection, State?

23 MR. LEXIS: No.

24 THE COURT: Defense?

25 MS. PARK: No.

1 THE COURT: Okay. State, have anything -- let's see, verdict  
2 form.

3 Defense, go over the verdict form?

4 MS. PARK: Yes.

5 THE COURT: State, I assume, is good with it.

6 MR. LEXIS: Yes.

7 THE COURT: All right.

8 Anybody have any problem if I remove the number 2753951  
9 after the -- Mr. Whatley's name?

10 MR. LEXIS: No.

11 MS. PARK: No, no problem.

12 THE COURT: Okay.

13 I don't see -- oh, and this shows Department 1 -- Department  
14 20. All right. Let's see. State, have anything else it thinks it's going to  
15 want to add?

16 MR. LEXIS: No.

17 THE COURT: Anything further Defense thinks it's going to  
18 want to add?

19 MS. PARK: No.

20 THE COURT: All right. So I think we've got a set. And  
21 obviously, up until we get ready to give it to the jury, if you think of  
22 something or you need to -- want to add something, let the Court know,  
23 we'll consider it at that time.

24 In view of how, you know, that we're moving fairly quickly,  
25 does any party have any issue with me canvassing the Defendant as to

1 his Constitutional rights today?

2 MS. PARK: Oh, no, I think that's fine to do today.

3 THE COURT: Okay. All right.

4 Mr. Whatley, my name is Eric Johnson, and I know you've  
5 appeared in my Court a number of times, but let me just introduce  
6 myself formally to you at this point in time. As you know, I am the  
7 District Court Judge that's been assigned your case.

8 At this point in time, I have an obligation to make sure you  
9 understand certain rights that you have pursuant to the United States  
10 Constitution and Nevada Constitution in your criminal trial, so I'd like to  
11 run through those at this point in time, if that's okay with you.

12 THE DEFENDANT: Sure.

13 THE COURT: All right. You have a right, under the  
14 Constitution of the United States and under the Constitution of the State  
15 of Nevada, not to be compelled to testify in this case. Do you  
16 understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: That means that no one can make you take the  
19 witness stand and make you answer any questions. Do you understand  
20 that right?

21 THE DEFENDANT: Yes.

22 THE COURT: You may, if you wish, give up this right, and  
23 you may take the witness stand and testify. If you do, you will be asked  
24 questions by your attorney, and be subject to cross-examination by the  
25 Deputy District Attorney. Do you understand you have a right to testify

1 and be subject to cross-examination?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Anything that you say, whether it's in answer  
4 to questions put to you by your attorney or by the Deputy District  
5 Attorney, will be the subject of fair comment when the Deputy District  
6 Attorney and your attorney speak to the jury in final arguments. Do you  
7 understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: Your testimony will be available to the jurors to  
10 consider in their deliberations, and they will evaluate your testimony as  
11 any other witness, and may believe all of your testimony, part of it, or  
12 none of it, and give it as much weight as they feel it deserves. Do you  
13 understand that?

14 THE DEFENDANT: Yes.

15 THE COURT: If, by chance, you are convicted of any crime  
16 with which you are charged in this case, your testimony will be subject  
17 to comment by the Deputy District Attorney, and your attorney, during  
18 the sentencing hearing -- excuse me.

19 If, by chance, you are convicted of any crime with which you  
20 are charged in this case, your testimony will be subject to comment by  
21 the Deputy District Attorney, and your attorney, during the sentencing  
22 hearing, and the Court may consider your testimony in determining an  
23 appropriate sentence. Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: Your testimony will be recorded in public

1 information available to anyone, and could be used on your behalf, or  
2 against you, as the law permits, in any personal business or legal matter,  
3 including any subsequent criminal or civil litigation in which your  
4 testimony could be relevant. Do you understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: What was the number of the not testify  
7 instruction?

8 THE CLERK: 15.

9 THE COURT: If you choose not to testify, the Court will not  
10 permit the District Attorney to make any comments to the jury  
11 concerning the fact that you have not testified. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: If you elect not to testify, the Court will instruct  
14 the jury, if your attorney specifically requests, an instruction which reads  
15 substantially as follows. It is the Constitutional right of the Defendant in  
16 a criminal trial that he may not be compelled to testify, thus a decision as  
17 to whether he should testify is left to the Defendant on advice of counsel  
18 of his attorney. You must not draw any inference of guilt from the fact  
19 he does not testify, nor should this fact be discussed by you or enter into  
20 your deliberations in any way. Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you have any questions that you would like  
23 to ask me about your Constitutional rights?

24 THE DEFENDANT: No.

25 THE COURT: If you choose to testify and have been



1 convicted of a felony within the past ten years or have been on parole or  
2 probation for a felony within the past ten years, the State -- the District  
3 Attorney will be permitted to ask you (1) if you've been convicted of a  
4 felony; (2) what was the felony; and (3) when it happened. No details  
5 may be gone into in regard to any prior felony conviction. If you do not  
6 [indiscernible] felony convictions, the State may impeach your testimony  
7 with certified copies of conviction, which may contain more information  
8 in them than simply what the felony was and when it occurred. Do you  
9 understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: State indicated that there are prior felonies that  
12 it feels would be for impeachment.

13 MR. LEXIS: Yes, and I don't have that with me, but I know  
14 that he has multiple, including the one that's a Court exhibit, and another  
15 one that he's currently on probation with.

16 THE COURT: Okay. And you're familiar with those?

17 MS. PARK: I am.

18 THE COURT: All right. And you've discussed those with  
19 your client?

20 MS. PARK: We did, briefly, about the fact that it would  
21 -- those could come up if he wanted to testify.

22 THE COURT: All right. You understand that, sir?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. I don't want you to disclose any  
25 communication with your attorney, but have you discussed with your

1 attorney your right to testify and your right not to testify in this trial?

2 THE DEFENDANT: Yes.

3 THE COURT: Did she answer all your questions?

4 THE DEFENDANT: Yes, she did.

5 THE COURT: You should discuss your options with your  
6 attorney and listen carefully to her advice. However, the ultimate choice  
7 as to whether or not you testify is your choice. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: All right.

10 State have anything else further it'd want me to canvas?

11 MR. LEXIS: No, Judge.

12 THE COURT: I mean, I don't know if you've made a decision  
13 whether to testify or not to testify, I just want to make sure you  
14 understand, State will present its case; it'll finish either tomorrow or on  
15 Wednesday. After the State finishes, I'll turn to your attorney and ask if  
16 the Defense wishes to present any evidence. If she -- if you decide to  
17 testify, fine. If you decide not to testify, that's your right. You have a  
18 right to testify, up until she says the Defense rests. Do you understand  
19 that?

20 THE DEFENDANT: Yes.

21 THE COURT: So when I turn to her and say, does the  
22 Defense wish to present any evidence? Once she says the Defense rests,  
23 your right to testify, at that point, ends. Do you understand that?

24 THE DEFENDANT: Yes, Sir.

25 THE COURT: Okay.

1 All right. Well, anything else that you feel I need to go over  
2 with him, Ms. Park?

3 MS. PARK: I don't think so.

4 THE COURT: All right.


5 Anything else we should talk about tonight?

6 MR. LEXIS: No, but if we go off record, I'll talk about  
7 scheduling real quick.

8 THE COURT: Okay. Let's go off record, I guess.

9 [Proceedings adjourned at 3:22 p.m.]

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

23 

24 Maukele Transcribers, LLC

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



1 RTRAN

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7  
8 STATE OF NEVADA,  
9 Plaintiff,

CASE#: C-21-357412-1  
DEPT. XX

10 vs.

11 GERALD LEE WHATLEY, JR.,  
12 Defendant.

13 BEFORE THE HONORABLE ERIC JOHNSON  
14 DISTRICT COURT JUDGE  
TUESDAY, APRIL 26, 2022

15 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 2**

16  
17 APPEARANCES

18 For the Plaintiff:

CHAD N. LEXIS, ESQ.  
YU MENG, ESQ.

19  
20 For the Defendant:

LESLIE A. PARK, ESQ.

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25 RECORDED BY: ANGIE CALVILLO, COURT RECORDER

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1 Las Vegas, Nevada, Tuesday, April 26, 2022

2

3 [Case called at 11:21 a.m.]

4 THE COURT: All right. Let's call state Nevada v. Gerald  
5 Whatley, Jr., case number C357412. Counsel, make your formal  
6 appearances for the record.

7 MR. LEXIS: Chad Lexis, and Yu Meng for the State.

8 MS. PARK: And Leslie Park for Gerald Whatley, he's present,  
9 at liberty.

10 THE COURT: All right. Mr. Whatley, where have you been?  
11 Where have you been Mr. Whatley?

12 THE DEFENDANT: At home. I was at home.

13 THE COURT: Mr. Whatley, I said we're going to start trial at  
14 11 o'clock. I have 14 jurors sitting out there waiting for you to get here.

15 THE DEFENDANT: I --

16 THE COURT: Why weren't you here on time?

17 THE DEFENDANT: I -- I understand that. My --

18 THE COURT: I'm sorry. What?

19 THE DEFENDANT: My apologies.

20 THE COURT: Don't apologize. Tell me why you weren't here  
21 on time

22 THE DEFENDANT: Traffic.

23 THE COURT: Okay.

24 THE DEFENDANT: Traffic.

25 THE COURT: Traffic?



1 THE DEFENDANT: Yeah.

2 THE COURT: Where was the traffic problem? Mr. Whatley, is  
3 it necessary for me to incarcerate you each night to have you get here on  
4 time?

5 THE DEFENDANT: No. No. But it -- it was traffic.

6 THE COURT: All right. Well, then tomorrow we're going to  
7 need you to get started a little bit earlier. Okay?

8 THE DEFENDANT: No problem. No problem.

9 THE COURT: All right. We have the jury here. Are we ready  
10 to proceed?

11 MR. MENG: Yes, Your Honor. But I apologize. Can we just  
12 mark the exhibits?

13 THE COURT: Sure.

14 MR. MENG: Yeah. Thank you.

15 [Counsel and Clerk confer]

16 MR. MENG: Can we also set up the ELMO, just for this  
17 machine?

18 THE COURT: Sure.

19 [Pause]

20 THE COURT: She's got them all marked. Are you good to  
21 go, Mr. Meng?

22 MR. MENG: Yes, Your Honor. I believe so.

23 THE COURT: Anything else before we bring in the jurors?

24 MS. PARK: No, Judge.

25 THE COURT: Very good. Bring them up.

1 THE MARSHAL: Yes, sir.

2 [Pause]

3 MR. MENG: I guess we can tell, Judge, we did review the  
4 exhibits, we're stipulating to the two 9-1-1 calls, everything else is not  
5 stipulated.

6 THE COURT: Okay.

7 MR. MENG: Thank you. Just 1, 2.

8 THE COURT: I'll ask when you get ready to move them into  
9 evidence, just say we have a stipulation, and I'll confirm that.

10 THE MARSHAL: All rise for the jury.

11 [Jury in at 11:27 a.m.]

12 THE COURT: All right. Parties stipulate to the presence of  
13 the jury panel.

14 MR. LEXIS: Yes, Your Honor.

15 MS. PARK: Yes, Your Honor.

16 THE COURT: Okay. I'll let everybody get situated, get your  
17 notepads.

18 I apologize, ladies and gentlemen, and the Marshal let me  
19 know you all were here in timely fashion. I apologize. We had some  
20 things come up that we had to deal with to get started this morning, and  
21 so I apologize. We will make every effort to use your time for the best of  
22 our abilities, because I do appreciate how it is valuable.

23 As I indicated yesterday, what we'll start off today is with the  
24 presentation of evidence, the State will present its evidence, and it goes  
25 first, because the State has the burden of proving each of the elements

1 of the crime charged, beyond a reasonable doubt. So the State has the  
2 burden of proving the case, so they're the ones who go first in  
3 presenting any evidence. And we'll let the State call its first witness.

4 MR. MENG: Thank you, Your Honor. The State calls Jerry  
5 Skilbred, J-E-R-R-Y S-K-I-L-B-R-E-D.

6 [Pause]

7 THE COURT: All right. We've had a disconnect with a  
8 witness, so we'll just wait here for a couple of minutes, if you want to  
9 chit-chat among yourselves about anything, other than the case, feel free  
10 to do that, and we'll get back in action as soon as we get a chance.

11 [Brief Pause]

12 THE COURT: All right, ma'am. I'll have you come up here to  
13 the witness stand? There's a couple steps. When you get to the top,  
14 stay standing for just a second, and our clerk over here will swear you in.

15 THE CLERK: Raise your right hand.

16 JERYLYN SKILBRED, STATE'S WITNESS, SWORN

17 THE CLERK: Thank you.

18 THE COURT: Go ahead and be seated.

19 THE CLERK: And once you're settled, please state and spell  
20 your name for the record.

21 THE WITNESS: Jerylyn Skilbred, J-E-R-Y-L-Y-N, Skilbred, S-  
22 K-I-L, B as in boy, R-E-D.

23 THE CLERK: Thank you.

24 THE COURT: Thank you. Whenever you're ready,  
25 counsel.

1 MR. MENG: Thank you, honor.

2 DIRECT EXAMINATION

3 BY MR. MENG:

4 Q Good morning, Jerry. Thank you for being here. Jerry, let  
5 me take you back to November 23rd of 2019. At around 5:20 in the  
6 afternoon what were you doing?

7 Q I was on my way to take my son to his choir performance.

8 A Okay. And how old is your son?

9 Q Sixteen.

10 A Were you just with him that day?

11 A Yes.

12 Q Were you driving at the time?

13 A Yes.

14 Q Did you come to the intersection of Theme and Desert Inn?

15 A Yes.

16 Q For the record that's T-H-E-M-E. And what happened at  
17 around 5:20 at the intersection of Theme and Desert Inn?

18 A We were at a stop sign and there's this van just going really  
19 fast, and we were in front of the stop sign, and he didn't stop, or  
20 anything just blew right through the stop sign and hit barricades.

21 Q This intersection Theme and Desert Inn, are you familiar with  
22 the area?

23 A Yes.

24 Q And Theme --

25 MR. MENG: Actually, Your Honor, may I approach?

1 THE COURT: All right. And you've seen these?

2 MS. PARK: I've seen them.

3 THE COURT: All right, go ahead.

4 MR. MENG: Thank you, Your Honor.

5 BY MR. MENG:

6 Q I'm showing you State's Proposed 4. Jerry, what are you  
7 looking at?

8 A That's the intersection of Theme and Desert Inn.

9 Q How do you know that?

10 A Because I live there.

11 Q A fair inaccurate depiction of the intersection, on November  
12 23rd, 2019?

13 A Yes.

14 MR. MENG: Move to admit, Your Honor?

15 THE COURT: What's the number again?

16 MR. MENG: State's Proposed 4.

17 THE COURT: Any objection to 4?

18 MS. PARK: No objection.

19 THE COURT: 4 will be admitted.

20 [State's Exhibit 4 admitted into evidence]

21 MR. MENG: Thank you, Your Honor.

22 BY MR. MENG:

23 Q I'm showing you State's Proposed 5, what are you looking  
24 at?

25 A The intersection with the stop signs.

1 Q Is it a closer picture of it?

2 A Yes.

3 Q A fair and accurate depiction of the intersection?

4 A Yes.

5 MR. MENG: Move to admit States 5, Your Honor.

6 THE COURT: Any objection to 5?

7 MS. PARK: No, Your Honor.

8 THE COURT: 5 will be admitted.

9 [State's Exhibit 5 admitted into evidence]

10 MR. MENG: Move to publish 4 -- Your Honor, I'm just going  
11 to move to publish 5.

12 THE COURT: Which one are you putting on?

13 MR. MENG: 5.

14 THE COURT: 5, go ahead.

15 BY MR. MENG:

16 Q Ma'am, you should have a little mouse in front of you. Do  
17 you see it?

18 A Yes.

19 Q Could you go ahead and try to use that? A cursor should  
20 come up.

21 A The mouse in front of me?

22 Q Yeah.

23 A Oh, I'm sorry. It's here. I got it.

24 THE COURT: I'm going to say, you're not going  
25 crazy.

1 THE WITNESS: Okay. Thank you.

2 BY MR. MENG:

3 Q So go ahead and tell me where Desert Inn is, in 5?

4 A This is Desert Inn.

5 Q Okay. And where -- is that east west --

6 A Correct.

7 Q Yeah. What about Theme?

8 A Theme goes north and south.

9 Q What's the speed limit on Theme?

10 A Theme, I believe is 30.

11 Q What about Desert Inn?

12 A Thirty-five.

13 Q Where were you at around 5:20? Can you tell us which  
14 direction you were facing, and about to make what kind of turn?

15 A Yeah. We were at the stop sign right here, heading north,  
16 about to make a left on Desert Inn.

17 Q So what you just pointed, you were parked at this -- at the  
18 intersection, you were on Theme heading north, about to make a left  
19 westbound onto Desert Inn; is that correct?

20 A Correct.

21 THE COURT: Hold on just one second.

22 COURT RECORDER: I got it.

23 THE COURT: You got it. I want to make sure we get a record  
24 of that. So go ahead, I'm sorry, counsel.

25 BY MR. MENG:

1 Q Is that a two-way stop?

2 A Yes.

3 Q And did you stop at the stop sign?

4 A Yes.

5 Q That's when you noticed -- I believe you testified, a van?

6 A Correct.

7 Q Did you have an opportunity to look at this van?

8 A Yes. I saw the van.

9 MR. MENG: May I approach the witness, Your Honor? I've  
10 already showed these to Defense counsel.

11 BY MR. MENG:

12 Q I'm showing you States 6 to 13. Ma'am, go ahead and take a  
13 look at these photos and tell me what they are.

14 A They're just --

15 Q Take time and go through all of them first.

16 [Witness reviews pictures]

17 THE WITNESS: That's -- it's a picture of the van.

18 BY MR. MENG:

19 Q Fair and accurate depiction of van you saw on November  
20 23rd, 2019?

21 A Yes.

22 MR. MENG: Your Honor. I moved to admit State's Proposed  
23 6 through 13.

24 THE COURT: Any in objection to 6 to 13.

25 MS. PARK: No, Your Honor.



1 THE COURT: 6 to 13 will be admitted.

2 [State's Exhibits 6 through 13 admitted into evidence]

3 BY MR. MENG:

4 Q Go ahead and tell us what happened at around 5:20?

5 A I was on my way to take my son to his choir practice, or  
6 performance. We were making a left off of Theme onto Desert Inn.  
7 There was a van that was going really, really fast. I stopped and he blew  
8 right through a stop sign, hit the barricade. I called 9-1-1, and I didn't --  
9 me and my son didn't get out, there were people already helping him, so  
10 we just went ahead and left.

11 Q In 2019, at that point, how long have you been driving?

12 A Oh, geez, 25 years.

13 Q And based on your experience as a driver of 25 years of the  
14 driving age, how fast do you think the white van was going?

15 A He was going about, I would say 40, 45.

16 Q You stated that there was a concrete barrier, correct?

17 A Correct.

18 THE COURT: Now you putting what on the screen?

19 MR. MENG: Publishing Exhibit 5, Your Honor.

20 THE COURT: Okay.

21 MR. MENG: Zooming to the intersection of Theme and  
22 Desert Inn.

23 BY MR. MENG:

24 Q Could you use the mouse and tell the ladies and gentleman  
25 of the jury where the concrete barriers are?

1           A     Right here.

2           Q     That's where the white van smashed into?

3           A     Correct?

4           Q     Did the white --

5           THE COURT: All right. Stop for one second?

6           COURT RECORDER: I got it.

7           THE COURT: Got it. All right, go ahead.

8     BY MR. MENG:

9           Q     Did the white van ever slow down --

10          A     No.

11          Q     -- after blowing the stop sign?

12          A     No.

13          Q     Was it your turn to proceed at that point?

14          A     Correct, yes.

15          Q     Why didn't you proceed?

16          A     Because he was going way too fast. He would have hit  
17     me.

18          Q     Could you describe the van? What happened after the van  
19     hit the concrete barrier?

20          A     When he hit the barrier, the van, the back of the tires lifted  
21     up, and then came back down.

22                 MR. MENG: Publishing, Your Honor, at this point, 6 to 13.  
23     Already admitted.

24                 THE COURT: What are you putting up right now?

25                 MR. MENG: 6 through -- oh, yeah, 6.

1 THE COURT: Okay.

2 BY MR. MENG:

3 Q That's the van after hitting the concrete barrier, correct?

4 A Yes.

5 Q It's the position that the van came to a stop?

6 A Yes.

7 MR. MENG: Publishing 7, 8, 9, 10, 11, 12 and 13.

8 BY MR. MENG:

9 Q Ma'am, after the incident you called 9-1-1?

10 A Yes.

11 MR. MENG: A stipulation, Your Honor, I move to admit  
12 State's 1 per stipulation, and I move to publish the same.

13 THE COURT: Any objection to Number 1?

14 MS. PARK: No.

15 THE COURT: All right. 1 will be admitted, and you may  
16 publish it.

17 [State's Exhibit 1 admitted into evidence]

18 MR. MENG: Thank you, Your Honor.

19 [Whereupon, an audio recording, State's Exhibit 1 was played in  
20 open court at 11:40:21 a.m. and not transcribed]

21 [Audio ended at 11:41 a.m.]

22 MR. MENG: Your Honor, for the record I played from the  
23 beginning to one minute and 25 seconds.

24 BY MR. MENG:

25 Q Ma'am, is that your voice on the 9-1-1 call?

1           A     Yes.

2                   MR. MENG: And you reference the pole; publishing, Your  
3 Honor, 6.

4 BY MR. MENG:

5           Q     Ma'am. Do you see the pole you're referencing in that 9-1-1  
6 call?

7           A     Yes.

8           Q     Could you go ahead and use the little cursor and just go on --

9           A     This one.

10          Q     It's in the approximately two o'clock position? Oh, I'm  
11 sorry.

12                   THE COURT: I'm just saying, I need you to speak up just a  
13 little bit.

14                   THE WITNESS: Okay.

15                   THE COURT: In fact, you could maybe scoot up a little closer  
16 to that red light.

17                   THE WITNESS: Okay.

18                   THE COURT: Thank you.

19 BY MR. MENG:

20          Q     Is it the pole at two o'clock position --

21          A     Yes.

22          Q     -- in State 6?

23                   MR. MENG: No further, questions, Your Honor.

24                   THE COURT: I'm sorry, what?

25                   MR. MENG: I move the witness, Your Honor. I pass the

1 witness.

2 THE COURT: Oh, okay. All right. Cross-examination.

3 CROSS-EXAMINATION

4 BY MS. PARK:

5 Q Good morning, Ms. Skilbred.

6 A Good morning.

7 Q So that particular day, when you were at the stop sign, you  
8 were going to be taking a left onto Desert Inn; is that correct?

9 A Correct.

10 Q Okay. And you saw the white van go by?

11 A Yes.

12 Q You didn't come into contact with the person driving that  
13 van?

14 A No.

15 Q You didn't see the person driving that van?

16 A No.

17 Q So when you sit here today and you say, "he went by," he --  
18 this -- you referenced "he." You don't know that it was a he?

19 A No, I don't. No, I didn't.

20 Q Okay. So all you saw is a van, you said "speeding very fast."  
21 You said the speed limit was 35 on Desert Inn, correct?

22 A Correct.

23 Q And in your phone call to 9-1-1, you said that the van was  
24 going approximately 40?

25 A Correct.

1           Q     Okay. So you saw a van crash, and that's the extent of what  
2 you saw?

3           A     Correct.

4           Q     Okay.

5           MS. PARK: I have nothing further. Thank you,

6           THE COURT: Redirect?

7           MR. MENG: Just one question, Your Honor.

8                         REDIRECT EXAMINATION

9     BY MR. MENG:

10          Q     When you stated 40 miles on 9-1-1, were you referring to the  
11 car blowing through the stop sign? Is that the speed you were referring  
12 to?

13          A     Yes. Yes.

14          MR. MENG: No further questions, Your Honor.

15          THE COURT: All right. Any recross?

16          MS. PARK: No, Your Honor.

17          THE COURT: All right, ladies and gentlemen, you are given  
18 the opportunity to ask written questions of any witness called to testify.  
19 in this case. You're not encouraged to ask large numbers of questions,  
20 because that's the primary responsibility of counsel. If after both  
21 lawyers have finished questioning a witness, and only at this time there  
22 are additional questions you would like to ask the witness, write your  
23 question down with your juror, number, on a full sheet of clean paper  
24 and raise your hand.

25                 All questions from jurors must be factual in nature and

1 designed to clarify information already presented. The Marshal will pick  
2 up your question and give it to me. All questions must be directed to the  
3 witness and not to the lawyers or the Judge. After consulting with  
4 counsel I will determine if your question is legally proper. If I determine  
5 that your question may properly be asked, I will ask it.

6 No adverse inference should be drawn if the Court does not  
7 allow a particular question; in addition, jurors must not place undue  
8 weight on responses to their questions. Is there any member of the jury  
9 has question n for this witness?

10 Okay. I have one hand. Write your question down on a clean  
11 sheet of paper and be sure to put your juror number on it.

12 THE COURT: Okay. Can I see counsel at sidebar?

13 [Sidebar begins at 11:45 a.m.]

14 THE COURT: Okay. From Juror Number 3. Do you have  
15 training on being able to determine how fast a vehicle is traveling. Any  
16 objection, State?

17 MR. MENG: No, Your Honor. You may proceed.

18 MS. PARK: And, no, Your Honor. Not from the Defense.

19 THE COURT: Okay. Thank you, guys.

20 [Sidebar ends at 11:45:49 a.m.]

21 THE COURT: All right. Ma'am, do you have any special  
22 training on being able to determine how fast a vehicle is traveling?

23 THE WITNESS: No, I don't.

24 THE COURT: In terms of your estimates, is that based upon  
25 your experience as a driver?

1 THE WITNESS: Correct. Yes.

2 THE COURT: All right. Does that generate anything further  
3 from the State?

4 MR. MENG: Not from the State, Your Honor. Thank you.

5 THE COURT: Anything further from Defense?

6 MR. MENG: No, Your Honor.

7 THE COURT: All right. Thank you very much for your  
8 testimony today. You're excused.

9 THE WITNESS: Thank you.

10 THE COURT: The State may call its next witness.

11 MR. MENG: The State calls Oscar Castillo.

12 [Pause]

13 THE COURT: All right, sir. If you'd come up to the witness  
14 stand, there are a couple steps. When you get there, when you get to the  
15 top, stay standing for just a second, and our clerk over here will swear  
16 you in.

17 THE CLERK: Raise your right hand.

18 OSCAR CASTILLO, STATE'S WITNESS, SWORN

19 THE CLERK: Thank you. Go ahead and be seated. And once  
20 you're settled, please state and spell your name for the record?

21 THE WITNESS: It's Oscar Castillo, O-C-A-S -- O-S-C-A-R  
22 C-A-S-T-I-L-L-O

23 THE CLERK: Thank you.

24 THE COURT: All right. Thank you. Counsel, go ahead.

25 MR. MENG: Thank you, Your Honor.



DIRECT EXAMINATION

BY MR. MENG:

Q Good morning, Oscar. Thank you for --

A Hey, good morning.

Q Thank you for being here, sir. Sir, tell us about yourself.

What do you do for a living?

A I am a professional driver -- I hold a CDL driver license.

Q What is that?

A A commercial driver license.

Q And how long have you been doing that?

A Ten years with a CDL.

Q And are you married?

A Yes, I am.

Q How many -- do you have any children?

A Yes, I do.

Q How many?

A Three.

Q Okay. Let me take you back to November 23rd, 2019, at around 5:20 in the afternoon. What were you doing at the time?

A I had left work. I was heading to pick up my children from my father-in-law's house.

Q Was that near the intersection of Cabana and Desert Inn?

A Yes, sir. I was already -- I had already picked them up on my way home from picking them up on -- I was on Cabana, needing to make a right onto Desert Inn. I had the green light, and then -- yeah, so I had a

1 green light, I was going to make a right, and then I came to a stop, you  
2 know, it's just -- it's just a habit, you know, for me being driving for so  
3 long, especially a commercial vehicle. And then I came to a stop. I was  
4 going to make a right when I saw a white Chevy van, and it looked like it  
5 wasn't going to stop. So I just stood there, I didn't even continue on  
6 when I saw the van pass by.

7 Q Let me ask you this, you were fairly familiar with the area?

8 A Very familiar with the area.

9 Q Do you pick up your kids from your grandparents' house all  
10 time.

11 A Every day to this point --

12 Q Every day?

13 A -- yeah.

14 MR. MENG: Your Honor, moving to publish 4?

15 THE COURT: All right.

16 BY MR. MENG:

17 Q Oscar, can -- there's a mouse right in front of you. You can  
18 use it to -- can you show us where Cabana and Desert Inn is?

19 A This is Cabana right here. This is where I came to a stop.  
20 This is Desert Inn. So this is where I came to a stop; there's a four-way  
21 stop. There's actually lights, a four-way light stop. And when I realized  
22 that there was a white object coming this way, extremely fast, and that --  
23 that's when I stood, and I had a green light. I was about make that right  
24 turn, but I just decided not to, when that white minivan just flew by me.

25 Q Okay.

1                   MR. MENG: Your Honor, if I may, just go ahead and put the  
2 cursor movement on the record.

3 BY MR. MENG:

4           Q     Oscar, you just pointed -- and Oscar, tell me if I'm wrong, you  
5 just pointed -- you were heading northbound on Cabana; is that correct?

6           A     Northbound on Cabana, yes, sir.

7           Q     You were involved --

8           A     To make a right on -- onto east Desert Inn. Yes.

9           Q     And then where was the -- you said a white subject. Is that  
10 the white van?

11          A     The white minivan. Yeah.

12          Q     Where direction was the white van traveling?

13          A     It was traveling eastbound on Cabana, passing -- I mean on  
14 Desert Inn, passing Cabana, heading towards Theme Road, which is in  
15 the back of Desert Inn, which there's a dead end.

16          Q     Okay. So at that intersection, you had the green light, you  
17 stated?

18          A     Yes, sir.

19          Q     But you stated that you were checking just to make sure  
20 there was no unexpected incident?

21          A     That is correct.

22          Q     Okay. Is that something you do often?

23          A     Yes. As a professional driver, I just constantly do it. And so  
24 yeah, I just decided to stop, even though I had the green light ready to  
25 go, I just stopped, and then saw the white minivan extremely, really fast.

1 So I couldn't --

2 Q What color of light did the white van have, traveling  
3 eastbound on Desert Inn?

4 A Definitely a red.

5 MS. PARK: I would say that's speculation. I don't think that  
6 Mr. Castillo could see the light on the upper side.

7 THE COURT: Right. Well, objection -- you can lay a  
8 foundation, if he saw the light, or if he just can state that he's sure he  
9 had the green light.

10 MR. MENG: Sure.

11 BY MR. MENG:

12 Q Oscar, you had the green light to make a right turn onto the  
13 Desert Inn eastbound, correct?

14 A Yes, sir.

15 Q And you weren't expecting anyone to travel eastbound from  
16 -- on Desert Inn, at that point, correct?

17 A At that point, exactly.

18 Q And what -- were you with anyone at this moment?

19 A What was that again?

20 Q Who were you with, at this moment?

21 A My three children.

22 Q And you were driving a vehicle, correct?

23 A Yes.

24 Q What kind of vehicle do you drive?

25 A It's a Ford F150.

1 Q And it's pretty high up, you have good views?

2 A Yes.

3 Q Okay. What happened after you saw the white van? How did  
4 you --

5 A I knew there was danger, so -- and then knowing there was  
6 construction, until this point there's still construction, a one way; one  
7 way out, and one way out. I just -- after that white van passed me  
8 extremely, really fast, that I follow right behind. And then I got on the  
9 phone right away, made a call with 9-1-1. It didn't look like he was  
10 stopping at all, he was just continuing to go, swerving into the incoming  
11 traffic, making other vehicles fall off -- move out the way, and then  
12 getting back in place; swerving a lot back and forth. So --

13 Q So why you were seeing other vehicles swerving back and  
14 forth, which direction were both vehicles travelling?

15 A They were heading -- that would be, they were heading onto  
16 Cabana from Theme Road.

17 Q To westbound?

18 A So that would be westbound. Yeah.

19 Q So is it fair to say the white van at this point was driving on  
20 onto oncoming traffic?

21 A Yes.

22 Q And you stated that you were ready to call 9-1-1. Why were  
23 you thinking about calling 9-1-1?

24 A I was very concerned, you know, I lived there for a long time,  
25 until this point still live there, and I knew something was wrong. Just the

1 fact that if I would have taken -- if I would have decided to go on that  
2 green light, I probably would have been hit, with my three children.

3 Q Based on your driving experience, how fast do you think the  
4 white van was going, and when he --

5 A Approximately from 55 miles per if not a little bit higher.

6 Q And what happened after; did you maintain visual on this  
7 white van?

8 A At all times? Yeah. So as I'm on the phone with 9-1-1, they  
9 took me through the process if I needed medical or police, I said both.  
10 And then they -- that's when I got on the phone with them, started  
11 talking to them, when that white minivan, right off of Theme, crashed  
12 into the median, taking down a pole.

13 Q Let me put a different map up, showing --

14 MR. MENG: Publishing 5, Your Honor.

15 THE COURT: Okay.

16 BY MR. MENG:

17 Q And this is just Cabana and Desert Inn, right; a closer shot?

18 A Correct. So as he came down -- as he came down on Theme  
19 Road, there was a vehicle ready to make a left, I remember. And the  
20 vehicle panicked, went into a shock mode, seeing the white object, which  
21 is the white minivan coming so quick.

22 I believe it was a female. She stopped and came out of her vehicle  
23 crying, but he realized that the vehicle had stopped, so he swerved  
24 around it, and that's when he immediately took impact into the median,  
25 taking the pole down. This vehicle hit so hard that the back of the van

1 jumped up and hit the back side of the -- left side of the vehicle. The left  
2 side of the minivan hit the median, as well. So it's a pretty hard impact.

3 Q From your hand gesture, I can describe for the record, what  
4 you just said is that white van hit the concrete barrier. The back of it  
5 jumped up, and then the back of the van swerved left into the --

6 A Yeah. Facing -- making the front of the van facing towards  
7 Theme Road. A lot of vehicles had stopped, and I put -- pulled over to  
8 the left hand side, and came over to check up on the driver, and whoever  
9 else was in the vehicle, and check to make sure there was no -- make  
10 sure they were okay. So --

11 Q After the white van passed you at Cabana and Desert Inn, did  
12 the white van ever slow down?

13 A Not at all, not until he hit the median -- I mean, the barriers.

14 Q And do you know if it's -- what kind of a light, is there a light  
15 or is it a two-way stop at Theme and --

16 A There's actually just a stop sign, but there's just a regular  
17 light post to give us -- to give the community light. That's it, but there's  
18 no green, yellow or red light, it's just a stop sign with the white light.

19 Q We're talking about the intersection of Theme and Desert Inn,  
20 correct?

21 A Yes, correct.

22 MR. MENG: Move to publish 6, Your Honor.

23 THE COURT: Okay.

24 BY MR. MENG:

25 Q Is this the one you witnessed?

1           A     Yeah. That's the minivan.

2           Q     7? Correct, this is the white van?

3           A     This is the white van, yeah.

4           Q     I'm going to show you a series of photos. Okay. 8. Is that  
5 right, that's white van you saw?

6           A     Yeah.

7           Q     9, 10, 11, 12, 13. Just different angles of that same white  
8 van?

9           A     Yes, sir.

10          Q     After he crashed the concrete barrier, what did you do?

11          A     I came to -- I was still on the phone, and police showed up  
12 and saw the individual in the minivan, really badly injured. You could  
13 just see his face, bloody. I was a little concerned, because I really didn't  
14 know what was happening, you know. He could have had anything  
15 happen to him.

16                So as he -- as I'm pulling forward, coming to his aid, I was still on  
17 the phone with the police. They're like, "Okay, police is on the way." I  
18 had already hung up, I believe or something like that, and then I came --  
19 as I'm approaching the minivan through the front windshield I see the  
20 individual trying to get out of the minivan, like pushing it, with his door.  
21 It was jammed in; he couldn't get out. Somehow he managed to get out  
22 as he's pushing it with his body. But then --

23          Q     Let me ask you this; do you see that person in court today?

24          A     Yes.

25          Q     Would you go ahead and point him out, describe what he's



1 wearing?

2 A It's this individual with the red sweater.

3 MR. MENG: May the record reflect the witness has identified  
4 the Defendant, Your Honor.

5 THE COURT: Do you have any issue with the identification?

6 MS. PARK: No, I don't.

7 THE COURT: All right. The record will reflect identification  
8 of the Defendant.

9 MR. MENG: Thank you, Your Honor.

10 BY MR. MENG:

11 Q You are at this point, Oscar, you are were on the phone with  
12 9-1-1, correct?

13 A Yes, sir.

14 MR. MENG: I move to admit States 2, by stipulation, and to  
15 publish the same.

16 THE COURT: Any objection to 2?

17 MS. PARK: No.

18 THE COURT: 2 will be admitted, and you may publish it.

19 [State's Exhibit 2 admitted into evidence]

20 MR. MENG: Thank you.

21 THE COURT: You're going to play it.

22 MR. MENG: Right.

23 [Whereupon, an audio recording, State Exhibit 2 was played in  
24 open court at 11:59 a.m. and not transcribed]

25 [Audio ended at 12:03 p.m.]

1 MR. MENG: For record, I'm going to stop playing right there.  
2 It's from -- I stopped at 4 minutes and 40 seconds of the call. I played  
3 from the beginning.

4 BY MR. MENG:

5 Q Sir, that's your voice inside, on the 9-1-1 call?

6 A Yes, sir.

7 Q And when you said, "Really, really intoxicated," when you  
8 make that statement, what is that statement based on?

9 A When I approached the victim, and I was talking to say,  
10 "Hey, bro, just sit tight, relax, help is on the way." You could just smell it  
11 from a conversational distance. I could smell a very, very strong odor of  
12 alcohol.

13 Q When you say, "conversational distance" could you  
14 describe -- just use the Judge for an example?

15 A He's too far. Yeah.

16 Q Okay.

17 A It's a little closer, more like about a foot, foot and a half.

18 Q Conversational distance, about two feet?

19 A A conversational distance. Yeah.

20 Q And at this point was he already out of the car?

21 A He was already out of the vehicle. He managed to get out of  
22 the vehicle. He was standing, people was trying to hold him, because he  
23 looked like he was going to fall, and they were just trying to calm him  
24 down, because he looked very disoriented.

25 Q Before the Defendant, who you identified, was sitting -- you

1 saw him inside the van, correct?

2 A Yes. That's correct.

3 Q Which seat was he in?

4 A The driver's seat.

5 Q And where were you, when you made this observation,  
6 where exactly were you, in relation to the van?

7 A Facing the front of the minivan?

8 MR. MENG: Your Honor, publishing 7.

9 THE COURT: Okay.

10 BY MR. MENG:

11 Q Were you standing right in front of there, facing the van?

12 A That is correct.

13 Q Do have that -- no obstruction to your view to see the  
14 Defendant was in his driver's seat?

15 A That is correct, no obstruction at all.

16 Q And after he got out, you say that he smelled of a very, very  
17 strong of scent of alcohol?

18 A That's correct? Yes.

19 Q Did you notice anything else?

20 A No. Other than just being very badly injured.

21 Q And did you hear the Defendant talk?

22 A Very little, yeah. Very little.

23 Q Was it a normal speech pattern, slurred speech.

24 A It was very, very sloppy speech, yeah. So --

25 Q Did the Defendant have any issue with maintaining his

1 balance?

2 A Yes, he did.

3 Q Could you describe what you -- what you saw, regarding his  
4 ability to maintain balance?

5 A Sure. There was -- the median -- the median, he was just  
6 holding on it like this, and then there was people trying to hold him  
7 down. Because he looked like he was going to fall, and he was very  
8 injured. So he tried walking and he was just -- he didn't know where he  
9 was at, at the moment. So the alcohol, the impact, everything going on,  
10 he was just really disoriented. So --

11 Q For a record of the witness, Oscar just stood up at the  
12 witness stand, putting both of his hands in front of him on the witness  
13 stand, acting like if trying to maintain his own balance.

14 THE COURT: Did you get the video of that?

15 COURT RECORDER: Yes, I got it. Yes.

16 THE COURT: Okay.

17 BY MR. MENG:

18 Q What was he holding onto? You stated -- I didn't catch it,  
19 you said he was holding onto something; what was he holding onto?

20 A The medians, the things he had crashed into. Yeah.

21 Q Did you have an opportunity or get close enough to observe  
22 his eyes?

23 A Very -- yeah, I did. When I was close talking to him, he had  
24 the strong odor, watery eyes, very -- yeah, like there was blood, his eyes  
25 was really watery, and a really strong odor of alcohol.

1 Q So as you were all observing all of these, and then talking on  
2 9-1-1, when you were talking to 9-1-1, that he's really, really intoxicated,  
3 that's based on your senses, your sight, your smell, and your hearing?

4 A That's correct.

5 MR. MENG: Pass the witness, Your Honor.

6 THE COURT: Cross-examination.

7 MS. PARK: Yes.

8 CROSS-EXAMINATION

9 BY MS. PARK:

10 Q Oscar, when this occurred, do you remember the date that it  
11 occurred? Do you remember the year?

12 A It was -- 2018?

13 MS. PARK: Can I approach the witness, just to refresh his  
14 recollection?

15 THE COURT: Sure. What are you going to show him?

16 MS. PARK: Just his statement, so that he can refer to the  
17 date.

18 THE COURT: Okay. All right. You know what she's got,  
19 right?

20 MS. PARK: Just looking at your statement.

21 MR. MENG: Yes, Your Honor. Thank you. I appreciate it.

22 THE COURT: All right. Yeah. Would looking at your  
23 statement, refresh your recollection?

24 THE WITNESS: Sure.

25 BY MS. PARK:

1 Q Just ask to the date?

2 A Sure. 11/23rd, '19. Sorry about that.

3 Q Thank you.

4 A You're welcome.

5 Q And what time was this?

6 A It was around 5:00 p.m., 5:22 p.m., around that time.

7 Q Okay.

8 COURT RECORDER: I'm sorry, Mr. Castillo, I need you  
9 closer --

10 THE WITNESS: Oh, yes, ma'am.

11 COURT RECORDER: -- to the mic. Thank you.

12 BY MS. PARK:

13 Q So what was it like outside? Was it -- was it raining? Was it  
14 windy? Was it dark? What --

15 A It was -- it was a nice day. It wasn't -- it was dry, but --

16 Q What about the light? Was it --

17 A We were falling in dark time, so it around --

18 Q So --

19 A -- yeah, kind of like dawn, so it was getting a little darker  
20 already.

21 Q So it was dark, okay. And how would you say you were  
22 feeling at the moment, your state of mind?

23 A Normal. Normal, a little bit scared from what I had just  
24 experienced.

25 Q Okay. So you were a little scared, and it was getting into the

1 dark?

2 A That is correct.

3 Q And you said that this person that you saw get out of the  
4 vehicles, their face was covered in blood; is that correct?

5 A Yes. There -- he was covered in blood.

6 Q Okay. And had you ever seen this person before?

7 A No. Other than that day? No.

8 Q Okay. Now the prosecution asked you about your ability to --  
9 your perception of this person being intoxicated?

10 A Yes, ma'am.

11 Q You're not an expert on the signs of intoxication? You  
12 haven't been trained how to detect those things, have you?

13 A That is correct. I have not. But you could just tell the  
14 difference from when somebody's intoxicated, there's no --

15 Q Had this person just been in an accident?

16 A Of course.

17 Q And there was some trauma to the facial head area?

18 A Not the head, but the front of the face, yeah.

19 Q Okay. From the impact.

20 A Okay. Because there was blood?

21 A Because there was blood, yes

22 Q Okay. And it was quite an impact, you said?

23 A What was that, again?

24 Q It was quite an impact, you said?

25 A It was a huge impact? Yes, ma'am.

1 Q All right.

2 MS. PARK: I have nothing further. Thank you.

3 THE COURT: All right. Redirect?

4 MR. MENG: No, Your Honor.

5 THE COURT: Any member of the jury have a question for  
6 this witness? If you have a question, write it on clean sheet of paper with  
7 your juror number, and signal me or the Marshal. Not seeing any  
8 signaling.

9 THE CLERK: All right, there's one.

10 THE COURT: All right. Write it on a clean sheet of paper, be  
11 sure your juror number's on it.

12 [Pause]

13 THE COURT: All right. Can I see counsel at sidebar?

14 [Sidebar begins at 12:12 p.m.]

15 THE COURT: All right. From Juror No. 8. Despite the blood  
16 and trauma being present, were you able to recognize the person you  
17 saw in this courtroom?

18 Any objection, Plaintiff?

19 MR. MENG: No, Your Honor. You mean for the State?

20 THE COURT: Yeah. Well, you're still taking for the Plaintiff, I  
21 mean. So State. I've had a series of civil cases the last couple of  
22 months, so I'm sort of on the plaintiff/defendant.

23 All right. And Defense?

24 MS. PARK: Well, I would object to that because, I mean  
25 those are the things that I asked him to bolster my closing and saying



1 that --

2 THE COURT: Is there something wrong with the question?

3 MS. PARK: Well, I didn't ask it and the State didn't ask it,

4 so --

5 THE COURT: Well, that's why I have -- what good is it for me  
6 to have jurors allowed to ask questions if they can't -- if it -- they're not  
7 supposed to be repeating your questions.

8 MS. PARK: Right. I mean I just -- I think it's prejudicial to my  
9 client to ask that question. But --

10 THE COURT: All right. I overrule and ask the question.

11 [Sidebar ends at 12:13 p.m.]

12 THE COURT: All right.

13 Sir, despite the blood and trauma that was present that  
14 evening, were you able to recognize the person you saw in this  
15 courtroom today as the driver of the vehicle?

16 THE WITNESS: Yes, sir.

17 THE COURT: All right. Does that generate anything further  
18 from the State?

19 MR. MENG: No, Your Honor.

20 THE COURT: Anything further from Defense?

21 MS. PARK: No, Your Honor.

22 THE COURT: Thank you very much for your testimony here  
23 today --

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: -- you're excused.

1 THE WITNESS: Thank you.

2 THE COURT: Thank you.

3 All right. The State may call its next witness.

4 MR. MENG: The State calls Officer Frost. F-R-O-S-T.

5 THE COURT: All right, Officer. If I could get you to come up  
6 to the witness stand.

7 MR. FROST: Yes, sir.

8 THE COURT: There are a couple of steps. When you get to  
9 the top, stay standing for just a second and our clerk over here will swear  
10 you in.

11 RAINIER FROST, STATE'S WITNESS, SWORN

12 THE CLERK: And go ahead and be seated. And then state  
13 and spell your name for the record.

14 THE WITNESS: It's Rainier Frost, it's R-A-I-N-I-E-R F-R-O-S-T.

15 THE CLERK: Thank you.

16 THE COURT: All right. Go ahead whenever you're ready,  
17 Counsel.

18 MR. MENG: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. MENG:

21 Q Good morning, sir. What do you do for a living?

22 A I work for Las Vegas Metropolitan Police Department.

23 Q And how long have you been an officer for?

24 A About eight years.

25 Q And where are you currently assigned to?

1           A     The Traffic Bureau.

2           Q     What kind of a duty do you generally have as a traffic officer.

3           A     I investigate impaired drivers. I respond to traffic collisions  
4 and issue citations.

5           Q     Can you go about when you go to a crash scene what kind of  
6 things do you do generally when you arrive at a crash scene?

7           A     Generally, I talk to any witnesses that are there. I look at  
8 rules or traffic control devices. I try and determine the cause. So  
9 whether that's by talking to people or looking at video and then I conduct  
10 my investigation from there to determine fault and what occurred in the  
11 collision.

12          Q     Let me take you back to November 23rd, 2019. Were you  
13 working at around 5:20?

14          A     Yes.

15          Q     Did you respond to the intersection of Theme and Desert  
16 Inn?

17          A     Yes.

18          Q     Is that in Clark County, Nevada?

19          A     Yes.

20          Q     And to the west there's also Cabana and Desert Inn, correct?

21          A     Yes.

22          Q     Just one block to the west?

23          A     Yes.

24          Q     Is that also in Clark and Nevada?

25          A     Yes.

1 Q After you arrive at Theme and Desert Inn, what did you  
2 observe?

3 A I observed a white, like work van that had -- appeared to have  
4 impacted a pole and a concrete barrier.

5 Q Would you describe the impact to be small, moderate or  
6 huge impact?

7 A It was a pretty significant impact.

8 Q Was the concrete barriers moved by the impact at all?

9 A It did appear that the barrier had been moved by the van.

10 Q Did you speak to any eyewitnesses at the scene?

11 A I did. When I arrived I was approached by Oscar.

12 Q Was he the gentleman who testified before you?

13 A Yes, I believe so.

14 Q Okay. And did you get his version of what had occurred?

15 A Yes.

16 Q Based on his version of what had occurred, did you examine  
17 the scene and see if it's consistent with his story?

18 A Yes. His statement was consistent with what I observed on  
19 scene.

20 Q What did you go about afterwards?

21 A Afterwards I began taking pictures of the collision, so the van  
22 and the area around the van and I obtained a voluntary statement from  
23 Oscar, and I began my paperwork for the collision investigation.

24 Q Did any other officer arrive at the scene?

25 A Yes. Officer Polion also arrived on scene.

1 Q And for the record, is that P-O-L-I-O-N?

2 A Yes.

3 Q When you were taking photos of the van, did you eventually  
4 conduct an inventory of the van?

5 A I did.

6 Q When you were observing doing this examination, did you  
7 observe anything of interest?

8 A Yes. There was an open container in the vehicle as I was  
9 conducting my inventory.

10 Q Was Officer Polion at the scene when you made this  
11 observation?

12 A Yes.

13 Q And sir, this occurred at about 5:20, correct?

14 A Yes.

15 Q In the afternoon?

16 A Yes.

17 MR. MENG: I pass the witness, Your Honor.

18 THE COURT: All right.

19 Cross-examination?

20 MS. PARK: Thank you.

21 CROSS-EXAMINATION

22 BY MS. PARK:

23 Q Officer Frost, when you arrived on the scene you said you  
24 spoke with Oscar. Did you speak with any other eyewitnesses?

25 A There was no other eyewitnesses on scene that I recall.

1 Q Okay. So he was the only person there?

2 A Yes. Well, there was other people there, but nobody that  
3 was a witness.

4 Q Okay. So you didn't talk to anybody else?

5 A I spoke to other people on scene, but not about that,  
6 observing the driving.

7 Q Okay. And when you arrived, was the driver of that van  
8 present?

9 A No.

10 Q Okay. So you didn't see who was driving the van?

11 A No.

12 Q You didn't speak with the person driving the van?

13 A No.

14 Q Okay. And that's all the questions I have. Thank you.

15 THE COURT: All right. Any redirect?

16 MR. MENG: Very briefly, Your Honor.

17 THE COURT: Sure. Take whatever time you need.

18 REDIRECT EXAMINATION

19 BY MR. MENG:

20 Q Officer Frost, based on your -- what you gathered at the  
21 scene, do you know where the driver was transported?

22 A I was told that he was transported to the hospital prior to my  
23 arrival.

24 Q How many people were transported that you know of?

25 A One.

1 MR. MENG: No further questions, Your Honor.

2 THE COURT: All right. Any recross?

3 MS. PARK: No, Your Honor.

4 THE COURT: Any member of the jury have a question for  
5 this witness?

6 If you do write it on a clean sheet of paper with your juror  
7 number. I'm not seeing any hands -- there's a hand up. You got to  
8 signal me, so I know that you got a question. Okay. Be sure to put your  
9 juror number on it.

10 All right, let me see, we'll let people continue to write. Oh,  
11 does anybody have a problem while we're talking if the one juror goes to  
12 the restroom?

13 MR. MENG: No.

14 MS. PARK: Okay, no.

15 THE COURT: All right.

16 [Sidebar begins at 12:21 p.m.]

17 THE COURT: It was a short question. Juror No. 7. Did the  
18 van look new or old?

19 Any objection, State?

20 MR. MENG: You mean for the State, not from the State?

21 MS. PARK: No, none from Defense.

22 THE COURT: Okay. All right. Juror No. 8. Was there  
23 evidence of another person in the vehicle prior to the incident accident?

24 Any objection, State?

25 MR. MENG: No, Your Honor.

1 THE COURT: Defense?

2 MR. MENG: You mean for the State, no, Your Honor.

3 THE COURT: Okay.

4 MS. PARK: I wouldn't object if I was able to have a follow-up  
5 on that.

6 THE COURT: I'll allow you to have follow-up, yeah.

7 You've been in front of me before. But I'll ask the question,  
8 then I'll always ask anything further -- initially from whoever offered the  
9 witness. So usually if it's a criminal case, it's the State and Defense.  
10 And we'll go back, I've had us go back and forth five or six times on  
11 some of these. So -- all right, so we'll ask that one.

12 Juror No. 3. Any closed containers also inventoried from the  
13 contents of the vehicles.

14 Any objection, State? Closed containers. He said there was  
15 an open container. He's asking if there are any closed.

16 MR. MENG: You mean for the State? No.

17 THE COURT: Okay.

18 MS. PARK: Not from the Defendant.

19 THE COURT: All right. Thank you.

20 MR. MENG: We have one more witness after this and then  
21 we could break for lunch.

22 THE COURT: Okay. Well, what we'll do is we're not breaking  
23 for lunch, we're going to go straight through. Are you done then with  
24 your case, or do you have more to your case?

25 MR. MENG: This is just scheduling. After this next cop, we



1 have another cop. And then we would ask for the break to be then  
2 because the other two people need an hour notice for us to get them in.

3 THE COURT: Why don't you call right now? Because I told  
4 you yesterday we're going straight through, we're not breaking for  
5 lunch.

6 MR. MENG: I mean, yeah, but you told me -- that's fine.  
7 That's fine.

8 THE COURT: You were telling me you were going to break.

9 MR. MENG: Not break for lunch, but --

10 THE COURT: Yeah, we'll take bathroom breaks and stuff. I  
11 mean we'll break for -- you know, for 15, 20 minutes.

12 MR. MENG: Okay. Okay.

13 THE COURT: But we're not breaking an hour. So let's text  
14 them right now and tell them to get over here.

15 MR. MENG: Part of the reason, Your Honor, this is the lab  
16 people, they generally stay at the lab, they're behind on their work.

17 THE COURT: Tell them to head on over here. Okay. Thank  
18 you.

19 [Sidebar ends at 12:24 p.m.]

20 THE COURT: Let me know when you're done texting.

21 MR. MENG: Yes, sir. I'm good, Your Honor. I'm sending.

22 THE COURT: Okay. With that, I am going to need to have  
23 another sidebar.

24 MR. MENG: Yes.

25 [Sidebar begins at 12:24 p.m.]

1 THE COURT: All right. I think I misread the question from  
2 No. 7, which was I read it before, did the van look old or new. I think, as I  
3 was looking at it now, did the can look old or new?

4 Any objections?

5 MS. PARK: You mean for the State? No, Your Honor.

6 MS. PARK: No, none from the Defense.

7 THE COURT: I'm going to change the term can to the old  
8 open container look old or new. All right. Thank you.

9 [Sidebar ends at 12:26 p.m.]

10 THE COURT: All right. Did you observe anything which  
11 indicated there was another person in the vehicle prior to the accident?

12 THE WITNESS: No, I did not.

13 THE COURT: You indicated you saw an open container. Did  
14 the open container look new or old?

15 THE WITNESS: I don't recall that.

16 THE COURT: Okay. Did you observe any closed containers  
17 in the -- closed alcohol containers in the vehicle?

18 THE WITNESS: Not that I remember.

19 THE COURT: Okay. Does that generate anything further  
20 from the State?

21 MR. MENG: No, Your Honor. Thank you, Your Honor.

22 THE COURT: Generate anything further from Defense?

23 MS. PARK: Yes, Your Honor. I just have one follow-up  
24 question.

25 RECROSS-EXAMINATION

1 BY MS. PARK:

2 Q In regards to if there was another person in the vehicle, what  
3 did you do to investigate the inside of the vehicle to make that  
4 determination that no one else could have been in the vehicle?

5 A Well, the witness was there on scene that stated that there  
6 was only one person in the vehicle, and he had appeared to be driving at  
7 the time of the collision. And then, in addition to that, the passenger  
8 side door was not open. The rear of the vehicle was -- it was a work van  
9 so there was no seats in the rear of the vehicle at all, and there was a  
10 divider separating the front seat from the rear of the van also that was  
11 closed.

12 Q Okay. But prior to you getting there, if someone else had  
13 been in the vehicle, you wouldn't know that just by looking at the van?

14 A No.

15 MS. PARK: Okay. All right. Thank you. Nothing further.

16 THE COURT: All right.

17 That generate anything further from the State?

18 MR. MENG: Yes, Your Honor. Briefly, I just want to clarify.

19 REDIRECT EXAMINATION

20 BY MR. MENG:

21 Q You stat how many seats were in the cargo van?

22 A Two seats in the front of the an.

23 Q There was no seats in the cargo area?

24 A In the rear? No, no seats.

25 Q And were there contents inside in the cargo area?

1           A     Yeah, there was a bunch of like work stuff and trash and stuff  
2 like that.

3           MR. MENG: No further questions, Your Honor.

4           THE COURT: Generate anything further from Defense?

5           MS. PARK: No, Your Honor.

6           THE COURT: All right. Thank you very much for your  
7 testimony here today, Officer. You're excused.

8           THE WITNESS: Thank you, Your Honor.

9           THE COURT: The State may call its next witness.

10          MR. MENG: The State calls Officer Polion, P-O-L-I-O-N.

11          THE COURT: Officer, if you'd come up to the witness stand,  
12 there are a couple of steps. When you get to the top, stay standing for  
13 just a second and our clerk over here will swear you in.

14                   MICHAEL POLION, STATE'S WITNESS, SWORN

15          THE CLERK: Please go ahead and be seated. And once  
16 you're settled please state and spell your name for the record.

17          THE WITNESS: My name is Michael Joseph Polion, M-I-C-H-  
18 A-E-L J-O-S-E-P-H P-O-L-I-O-N.

19          THE COURT: Go ahead, Counsel.

20          MR. MENG: Thank you, sir.

21                           DIRECT EXAMINATION

22 BY MR. MENG:

23          Q     Good morning, sir. What do you do for a living?

24          A     I work with the Los Vegas Metropolitan Police Department.

25          Q     How long have you been an officer?

1 A 15-1/2 years.

2 Q And where are you currently assigned to?

3 A The airport.

4 Q Prior to that where were you assigned to?

5 A I was with the Traffic Bureau.

6 Q Do you have any specific duties that you generally were  
7 assigned to when you were with the traffic?

8 A Our general assignment was to do motor vehicle accidents,  
9 DUI arrests, and traffic enforcement.

10 Q And how long were you assigned to the traffic unit?

11 A Twelve years.

12 Q In those twelve years, if you have to give an estimate, how  
13 many DUI investigations have you conducted?

14 A Approximately 2,000.

15 Q Were you working at the night of -- I'm sorry, sir. What about  
16 crash incidents?

17 A How many have I investigated?

18 Q Yes, Your Honor -- yes, sir.

19 A We average probably three to four wrecks a shift. So I would  
20 say probably 4,000 wrecks, probably at least.

21 Q When you investigate a crash incident, what do you do  
22 typically after you arrive at the scene?

23 A Usually, I would arrive on the scene. You would talk to both  
24 drivers and any witnesses. You would then look at the scene. I always  
25 usually try to get both sides of the story, the witnesses before I would

1 then go to the accident scene and try to look at what evidence was left  
2 on the scene. And then I would try to put together what the evidence  
3 was showing me, what the witnesses were saying, and then what the  
4 two drivers said to come to a conclusion on what occurred for the  
5 collision.

6 Q Sir, on November 23rd, 2019, around 5:20, did you respond  
7 to a crash?

8 A Yes, I did.

9 Q Was that at Theme and Desert Inn?

10 A Yes, it was.

11 Q Is that in Clark County, Nevada?

12 A Yes, it is.

13 Q And were you the first officer arriving at the scene?

14 A Yes, I was.

15 Q Was anyone else responded to the scene?

16 A Officer Frost responded.

17 Q Did he just testify?

18 A Yes, he did.

19 Q Okay. What happened after you arrived at the scene first?

20 A I arrived there, medical had already transported off the  
21 scene. I quickly took a look at the vehicle, the white van, see what kind  
22 of damage there was, if there was anything inside the vehicle, any kind  
23 of evidence that I needed inside the vehicle.

24 Q Did you notice anything of interest to you?

25 A Inside the vehicle there was an open container of alcohol.

1 Q Were you able to speak with anyone at the scene?

2 A Not that I recall.

3 Q Based on your knowledge, did any witness provide a  
4 voluntary statement on the night of?

5 A Yes. I believe his first name was Oscar.

6 Q Okay. And did you have an opportunity to review everything  
7 in this case in your observation at the scene?

8 A Yes.

9 Q Including Oscar's voluntary?

10 A Yes, I did.

11 Q Based on your own observation and based on your training  
12 and experience as a 12-year traffic officer, was Oscar's version of the  
13 event consistent with what you observed at the scene?

14 A Yes, It was.

15 Q You stated that when you arrived at the scene there was  
16 already someone transported to the hospital?

17 A Yes.

18 Q How many people?

19 A One.

20 Q Did you eventually -- what happened after you made your  
21 visit to the crash scene?

22 A Once Frost showed up, I turned the scene over to him so he  
23 could do the accident investigation. And then I responded to Sunrise  
24 Hospital.

25 Q What happened there?

1           A     At Sunrise Hospital I came in contact with the driver of the  
2 white van. He was in the emergency room on a gurney with a collar on  
3 his neck.

4           Q     Do you see that person in court today?

5           A     Yes. He's sitting here to my left.

6           Q     Could you point him out, describe what he's wearing?

7           A     He has a maroon shirt with gray sleeves.

8                     MR. MENG: May the record reflect the witness has identified  
9 the Defendant, Your Honor.

10                    THE COURT: Do you have any issue with the identification?

11                   MS. PARK: I have -- well, when I talk to him. So I guess, in  
12 general, no, I don't.

13                   THE COURT: All right. Very good. The record will reflect the  
14 identification of the Defendant.

15 BY MR. MENG:

16           Q     At the hospital tell us what did you do at the hospital, after  
17 you made contact with the Defendant?

18           A     I walked I started talking with the gentleman, he was  
19 identified by his Nevada issued ID card and his social security card as  
20 Mr. Whatley. I started asking him questions about, you know, the  
21 accident; he refused to answer any questions.

22           Q     Were you able to -- as part of your DUI investigation, do you  
23 usually conduct a field sobriety test?

24           A     Yes.

25           Q     That's referred to as FST



1 A That's correct.

2 Q Were you able to complete on in this case?

3 A No, I was not.

4 Q Why not?

5 A Several factors. One, as I say, he wouldn't answer any of my  
6 questions. He refused to submit to any of them. He was also in a  
7 hospital with a C-collar on his neck and no clothes on.

8 Q But you were able to observe the Defendant in the bed, right?

9 A That is correct.

10 Q And based on your senses did you notice any signs of  
11 impairment?

12 A Yes, I did.

13 Q What kind of signs of impairment did you notice?

14 A He had a fixed focus stare, so he's kind of, you know, his  
15 eyes are just glazed over. And he was slurring his speech pretty bad.

16 Q What did you do after?

17 A I advised him that, you know, he was under investigation for  
18 the DUI, and I asked him if he would submit to a blood test, and he  
19 refused.

20 Q Did you eventually conduct a blood draw?

21 A Yes, pursuant to search warrant.

22 Q And did you witness this blood draw?

23 A Yes, I did.

24 MR. MENG: Your Honor, may I approach the witness?

25 THE COURT: Sure.

1 MR. MENG: And my apologies, ma'am, I didn't want the  
2 officer to separate himself from the blood box. If I can mark that as an  
3 exhibit?

4 THE COURT: Go ahead.

5 MR. MENG: May I approach the clerk?

6 THE COURT: You know what he's got, right?

7 MS. PARK: I do.

8 THE COURT: Okay, go ahead.

9 MR. MENG: You want to take a look.

10 THE COURT: Okay. Go ahead and mark that.

11 Where do you want her to put the mark?

12 THE CLERK: There's one spot --

13 THE COURT: You tell her where you want it.

14 THE CLERK: -- right here that does not have anything.

15 MR. MENG: Yes, that's fine.

16 THE CLERK: One spot.

17 THE COURT: All right.

18 [State's Exhibit 16 marked for identification]

19 MR. MENG: Thank you. Sir, may I approach the witness?

20 THE COURT: Sure. Go ahead.

21 BY MR. MENG:

22 Q Officer Polion, what am I showing you?

23 A This is the blood box that LVMPD issues for doing blood kits.

24 Q Is that for this case?

25 A Yes, it is.

1 Q How do you know?

2 A So on this blood kit you have up top, the agency, LVMPD, the  
3 event number that's issued to this call, has Mr. Whatley's full name, the  
4 offense is DUI, we're at Sunrise Hospital, and then the date and time of  
5 the call.

6 Q Fair and accurate depiction of the blood box --

7 A Yes, it is.

8 Q -- from November 23rd, 2019?

9 A That is correct.

10 MR. MENG: Move to admit for the record, I'm showing this  
11 16.

12 THE COURT: You said fair and accurate depiction. Is that the  
13 blood box?

14 THE WITNESS: Yes, it is, Your Honor.

15 THE COURT: Okay.

16 BY MR. MENG:

17 Q And is this in the same or substantially the same condition as  
18 it was on November 23rd, 2019?

19 A Yes, it is.

20 MR. MENG: Move to admit 16.

21 THE COURT: Any objection to 16?

22 MS. PARK: No, Your Honor.

23 THE COURT: All right. 16 will be admitted.

24 [State's Exhibit 16 admitted into evidence]

25 BY MR. MENG:

1           Q     Sir, I will just put that with you. Could you go ahead and  
2 describe how blood box works?

3           A     Yes. So LVMPD has all these blood boxes. So when we grab  
4 it it is sealed on both ends. Inside the blood box you have a piece of  
5 Styrofoam with two vials of blood in it and a label on that blood kit.

6           And then it also comes with four seals. You would put a seal over  
7 each blood tube, and on the edges of each box when the blood sample is  
8 completed.

9           MR. MENG: You know what, I apologize. Can the officer  
10 step down, show the blood box on the ELMO?

11          THE COURT: Sure.

12          MR. MENG: Thank you.

13 BY MR. MENG:

14          Q     Officer, please.

15          A     You just want me to redescribe that?

16          Q     Yeah, just go ahead and put it right here, on the ELMO and  
17 make sure it's in focus, face the jury. And go ahead and describe what  
18 kind of information, how you -- how does the blood draw process work.

19          A     So as you can see up here, you have the agency, the event  
20 number. The event number is significant to this call. When you call 911,  
21 as soon as the call taker picks up and generates a call, this is the number.

22          The way that's explained is the year, the month, so 1911, and then  
23 it has as many zeros as it needs to and then every day, every call, it spits  
24 out this random number here in sequence as the calls come through.

25          You put the Defendant's name, which is located up top here. The

1 offense and the location. And so on this location we were at the hospital  
2 so that's where the blood draw took place. The date and the time of the  
3 call, so November 23, 2019, the call came out at 1722, which is 5:22 p.m.

4 I'm the one that's doing the blood draw, witnessing the blood  
5 draw. This is my first initial, my last name and badge number, P number  
6 is 9800. The nurse signed right here, and then this is the date and the  
7 time that that blood actually went into the tube.

8 Q Thank you, sir. I appreciate it. You can keep that with you,  
9 sir. So on State's 16 I noticed that you mention something about the  
10 time. Is it important to get the blood within two hours?

11 A it's very important, yes.

12 Q And in this case were you able to obtain the blood in two  
13 hours?

14 A Yes, I was.

15 Q And you stated earlier that you witnessed this blood draw,  
16 correct?

17 A Yes, I did.

18 Q Were you wearing a body cam on the day of?

19 A Yes, I was.

20 Q Could you briefly explain how body cam works?

21 A Body camera sits on my shoulder here. I don't have it on me  
22 right now. I activate it and it records audio and video of the -- everything  
23 that's in air shot there of you. And it also takes Zulu time, which is  
24 up on the top right corner.

25 Q For the record, Officer Polion has pointed to his left shoulder

1 the black object where he stated that the body camera would have been.  
2 Was your body camera activated this time on October 23, 2019 when the  
3 blood draw occurred in this case?

4 A Yes, it was.

5 MR. MENG: Showing opposing counsel Exhibit 3. May I  
6 approach, Your Honor?

7 THE COURT: All right. Is this marked?

8 MR. MENG: Yes, State's 3, Your Honor.

9 THE COURT: State's 3. Has that been --

10 THE CLERK: It was marked.

11 THE COURT: Okay. All right. Go ahead and show it to him.

12 BY MR. MENG:

13 Q Showing you the State's Proposed 3, Officer. Do you  
14 recognize that?

15 A Yes, I do.

16 Q What is it?

17 A It's a still photo of my body camera of the blood draw being  
18 performed.

19 Q Is it a fair and accurate depiction of the blood draw that you  
20 witnessed on November 23rd, 2019?

21 A Yes, it is.

22 MR. MENG: Move to admit State's Proposed 3, Your Honor.

23 THE COURT: Any objection to 3?

24 MS. PARK: No, Your Honor.

25 THE COURT: 3 will be admitted.

1 [State's Exhibit 3 admitted into evidence]

2 MR. MENG: Publishing 3, Your Honor.

3 THE COURT: Go ahead.

4 BY MR. MENG:

5 Q You earlier mentioned the nurse signed it. Do you remember  
6 the nurse's name in this case?

7 THE COURT: You might want to bring that out a little bit,  
8 you've got it zoomed in. Did you want it that far zoomed in?

9 MR. MENG: Oh, thank you, Your Honor.

10 THE WITNESS: I believe his first name was Brian.

11 BY MR. MENG:

12 Q Okay. And do you see him in here?

13 A Yes, I do.

14 Q Is he the person drawing the blood right now?

15 A Yes, it is. He's wearing gray scrubs.

16 Q When you said Zulu time on your body cam is the  
17 timestamp, can you point, use the little mouse in front of you, point to  
18 the timestamp?

19 A Yes, so it's right here. 025251Z.

20 Q What does the Z stand for?

21 A Zulu.

22 Q On that day, how many hours ahead was the Zulu?

23 A Eight hours ahead.

24 Q So this would have been 6:52?

25 A P.m., yes.

1 Q P.m. When the nurse conducted blood draw, do you also  
2 complete a declaration after the nurse conduct the blood draw?

3 A Yes, correct.

4 Q Did you fill out one in this case?

5 A Yes, I did.

6 MR. MENG: Showing Leslie State's Proposed 15.

7 May I approach, Your Honor?

8 THE COURT: Sure. Go ahead.

9 BY MR. MENG:

10 Q What's State's 15, sir?

11 A It's a declaration of withdrawal of whole blood sample.

12 Q Is that for this case?

13 A Yes, it is.

14 Q How do you recognize it?

15 A It has the event number up on the top right. It has Mr.

16 Whatley's name underneath. It has Brian's name that drew the blood.

17 All his certifications. Has the date, the time the blood was drawn, my

18 name and P number and also my signature at the bottom left.

19 Q Is this a fair and accurate copy of the declaration you signed  
20 and with the assistance of Brian on November 23, 2019?

21 A Yes.

22 MR. MENG: Move to admit 15, Your Honor.

23 THE COURT: Any objection to 15?

24 MS. PARK: No, Your Honor.

25 THE COURT: 15 will be admitted.



1 [State's Exhibit 15 admitted into evidence]

2 MR. MENG: Thank you, Your Honor. Move to publish 15,  
3 Your Honor?

4 THE COURT: Okay.

5 BY MR. MENG:

6 Q Sir, what kind of information concerning time is on 15?

7 A So right here it gives you the date and the time of 1852,  
8 which is 6:52 p.m.

9 Q After Brian draws the blood, what happens with the blood?

10 A Once he's done drawing the two vials of blood, he'll initial it.  
11 Before he draws the blood I put the event number on the actual tube,  
12 along with Defendant's name. Once the blood is drawn, the person  
13 drawing the blood will put their initials somewhere on that label as well.  
14 I will take custody of that blood sample.

15 Like I said before, there's red seals that go over the actual part of  
16 the tube. And then I'll put everything back into the original box, put the  
17 seals on the outside here. You see on each end I initial and date each  
18 one, and then this is taken to -- in this instance it was taken to Clark  
19 County Detention Center and impounded into the refrigerator.

20 Q And was it properly stored at the Detention Center according  
21 to your training?

22 A Yes.

23 Q Why is it important to properly store the blood?

24 A They tell us it's the viability, the blood has to be kept cold.

25 Q Do you know -- you don't personally conduct analysis on the

1 blood after you store them, correct?

2 A No, I don't.

3 Q But do you know, as a process, do you know who, which  
4 agency would be responsible for testing the blood?

5 A LVMPD has their own lab.

6 MR. MENG: Court's indulgence?

7 THE COURT: Sure. Take your time.

8 MR. MENG: Thank you, Your Honor. Pass the witness, Your  
9 Honor.

10 THE COURT: All right. Cross-examination?

11 MS. PARK: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. PARK:

14 Q Officer Polion, you said that when you got to the hospital you  
15 made contact with, you said, the driver. But you didn't see Mr. Whatley  
16 driving? You didn't see him in the passenger seat?

17 A No, I did not, ma'am.

18 Q So you based that just off information given to you by --

19 A Witnesses, ma'am.

20 Q -- your other -- was it your other officer? Did you talk to any  
21 witnesses there at the scene?

22 A Not that I recall. I was on the phone with Officer Frost.

23 Q Okay. So it was based on your conversation with Officer  
24 Frost?

25 A Correct.

1           Q     Okay. And now you said that -- you said Mr. Whatley was  
2 uncooperative, that he was -- when you say uncooperative meaning I  
3 understand you said he didn't want to speak to you. Did you ever -- I'm  
4 sure you've seen other people in an emergency room situation that  
5 aren't able to be helpful to you at that point, would that be true?

6           A     What do you mean by helpful?

7           Q     I guess cooperative in doing things you're asking them to do  
8 or having a conversation with someone who's just been involved in a  
9 pretty bad accident.

10          A     No, I've investigated a lot of accidents. People give me their  
11 statements all the time at the hospital.

12          Q     But if someone is injured badly, has been injured in their  
13 face, head area, that -- does that -- can that affect their ability to  
14 communicate with you properly?

15          A     I don't think so. I mean they -- like I said, I have had people  
16 that were pretty bad injuries that have talked to me fine.

17          Q     Okay. But you don't know the extent of Mr. Whatley's  
18 injuries that day.

19          A     No, I don't.

20          Q     And you don't know if he had any type of injury that would  
21 keep him from being fully cooperative, or helpful, or understanding what  
22 you're asking him to do.

23          A     Yeah, I didn't know what his injuries were.

24                MS. PARK: Okay. All right. I have nothing further. Thank  
25 you.

1 THE COURT: All right. Redirect?

2 MR. MENG: Nothing further, Your Honor.

3 THE COURT: All right. Any member of the jury have a  
4 question for this witness?

5 Okay, Mr. Padilla, did I see you raise your hand?

6 JUROR NO. 8: Yes. How are you, Judge.

7 THE COURT: Okay. Make sure you've got it written on a  
8 clean sheet of paper. I see another couple hands. Go ahead and write  
9 your questions on a clean sheet of paper with your juror number.

10 All right. Can I see counsel at sidebar.

11 [Sidebar begins at 12:47 p.m.]

12 THE COURT: It looks like the number of questions grow with  
13 every one.

14 Juror No. 8. Was there evidence of a second occupation in --  
15 occupant in the vehicle prior to the accident?

16 Any objection, State?

17 MR. MENG: No, Your Honor.

18 THE COURT: Defense?

19 MS. PARK: I don't have any objection, but I think we already  
20 asked that with the last witness.

21 THE COURT: With the last witness, yeah. I'll ask it.

22 I'm sorry, you don't have an objection?

23 MS. PARK: No, I don't

24 THE COURT: Juror No. 8: Using your experience as a traffic  
25 officer, and considering all the facts you are aware of, is it likely of a

1 second occupant in the vehicle leaving no evidence being there either by  
2 a --

3 MR. MENG: By an injury sustained.

4 THE COURT: Oh, okay. It looked like whiney to me. I was  
5 like, what? Okay. All right.

6 So using your experience as a traffic officer and considering  
7 all the facts you are aware of, is it likely there was a second occupant in  
8 the vehicle leaving no evidence being there either by injury sustained or  
9 items left?

10 Any objections, State?

11 MR. MENG: You mean for the State? No, Your Honor.

12 THE COURT: Defense?

13 MS. PARK: I would object. I mean I think it calls for  
14 speculation and asking is it likely.

15 THE COURT: I'm not going to use that question. I don't like  
16 the reference to likely. I think that it's covered by the first question  
17 whether or not he was aware of any evidence suggesting a second  
18 occupant.

19 Juror No. 2. Why did you think that it was a DUI and  
20 therefore pursued a blood draw? Is this done routinely following an  
21 accident?

22 Any objection, State?

23 MR. MENG: You mean for the State? No, Your Honor.

24 THE COURT: Defense?

25 MS. PARK: No, Your Honor.

1 THE COURT: Okay.

2 And Juror No. 3. Could driver have consumed in the alcohol  
3 in the open container you identified after the vehicle accident occurred,  
4 resulting in an exceeding legal limit by the time you did the blood draw  
5 of the Defendant at the hospital? I realize this is a compound question.

6 MR. MENG: Can I see it, please?

7 THE COURT: Sure.

8 MR. MENG: There's actually zero evidence of that, Your  
9 Honor.

10 THE COURT: He identified there was an open container in  
11 the vehicle. I think he did. All right. Any thoughts you have on that  
12 question?

13 MS. PARK: I don't have an objection to that question.

14 MR. MENG: That's a hundred percent speculation.

15 THE COURT: Well, and I don't think he's the person -- that  
16 might be a question worth asking one of the -- not Oscar, though, one of  
17 the lab technicians. I mean he's not in a position to say if you drink, I  
18 don't know, no one's ever identified what they open container was. But  
19 let's assume if you drink a pint of bourbon, how long does it hit you,  
20 show up in your blood stream. I think you could ask him if he -- no, I just  
21 don't think I'll ask that question.

22 All right. So we'll ask those two questions.

23 You've got the lab people coming? All right. So we'll take a  
24 break after this one. Hopefully get the lab people here and we'll finish  
25 things up. All right. Thank you.

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[Sidebar ends at 12:52 p.m.]

THE COURT: When you were at the scene of the accident, did you observe any evidence of a second occupant in the vehicle prior to the accident?

THE WITNESS: No there was no evidence on scene of a second occupant.

THE COURT: Why did you think that it was a DUI and therefore pursued a blood draw? Is this done routinely following an accident?

THE WITNESS: So you have to take the totality of the circumstances. So you take the driving pattern first. The reports were that he was speeding, the reports were that he ran a stop sign, and then he just ran into a pole and a wall. On top of that, when I looked in the vehicle, like I said, we had the open container of alcohol. So that kind of leads you down the road.

Okay. Now we're single vehicle, ran into a wall, we got an open container, we have witnesses, now that's what starts bringing me down the road of doing the DUI investigation.

THE COURT: Okay. Did that generate anything further from the State?

MR. MENG: No, Your Honor.

THE COURT: Anything further from Defense?

MS. PARK: Yes, Your Honor, just one thing from the Defense.

RECROSS-EXAMINATION

1 BY MS. PARK:

2 Q Officer, you said you didn't see evidence of a second  
3 occupant. What did you investigate inside of the vehicle?

4 A I was looking inside of the vehicle, one, to see if there was  
5 anybody else in there; two, to see if there was any, like I said, the DUI  
6 investigation, did I have any kind of open containers or anything like  
7 that.

8 Q Okay. But you weren't there at the time the accident  
9 occurred.

10 A No, I was not, ma'am.

11 Q So if someone else had been in the vehicle and left you  
12 would not have known that?

13 A Correct, I would not have.

14 MS. PARK: Okay. Thank you.

15 THE COURT: All right. Thank you.

16 Generate anything further from State?

17 MR. MENG: No, Your Honor.

18 THE COURT: All right. Thank you, Officer for your  
19 testimony.

20 THE WITNESS: Thank you, sir.

21 THE COURT: You are excused.

22 All right. Ladies and gentlemen, we're going to take a break  
23 now. We'll take a break, we're just about five till 1:00, we'll take a break  
24 to 1:15.

25 While you're out there do not discuss or communicate with



1 anyone, including your fellow jurors, in any way regarding the case and  
2 its merits either by voice, phone, email, text, internet, or other means of  
3 communication or social media. Do not read, watch or listen to any  
4 news or media accounts or commentary about the case. Do not do any  
5 research such as consulting dictionaries, using the internet, or using  
6 reference materials.

7 Do not make any investigation, test a theory of the case,  
8 recreate any aspect of the case or in any other way investigate or learn  
9 about the case on your own. And do not begin to form or express any  
10 opinion regarding the case until it is submitted to you.

11 We'll see you back in about 20 minutes.

12 THE MARSHAL: All rise for the jury.

13 [Jury out at 12:55 p.m.]

14 THE COURT: All right. Anything we need to talk about  
15 before we break?

16 Let us know as soon as your witness or one of your  
17 witnesses is here, and we'll get all the jurors back together again, we'll  
18 get started right away. Anything else? All right.

19 MS. PARK: Nothing, Judge.

20 THE COURT: Take a restroom break and get back and be  
21 ready to go in 20 minutes, as soon you got a witness. We'll keep  
22 moving.

23 MS. PARK: Okay.

24 MR. MENG: Thank you, Your Honor

25 [Recess taken from 12:56 p.m. to 1:20 p.m.].

1 THE COURT: All right. Let's go back on record.

2 MS. PARK: Photo 14 is not admitted.

3 THE COURT: Is there something you wanted to raise before  
4 the -- we went to the next witness?

5 MR. MENG: Yes, Judge.

6 Ms. Park had raised it, but a potential jury question did, and I  
7 just want to bring the Court's attention to the statute at issue, which I  
8 gave to you particularly that alleging drinking after the fact is an  
9 affirmative defense at least the alleged 14 days prior, which was not in  
10 place. Ms. Park realized that I was just --

11 THE COURT: Were you planning on raising that?

12 MS. PARK: No, Your Honor.

13 THE COURT: Okay. All right. So that would be the position  
14 then of the Court.

15 All right. Ms. Park, it's my understanding that you and the  
16 Defendant got on the elevator with jurors?

17 MS. PARK: We were on the elevator and then they stepped  
18 in. We were going up and then I realized that I had made a mistake and  
19 we were going to be going down. So pressed the down button.

20 THE COURT: I assume that there was nothing inappropriate  
21 that was said while you were in there.

22 MS. PARK: No, we went in; then they came in --

23 THE COURT: I understand. I'm not going to get into it. But  
24 as an officer of the court you're telling me nothing inappropriate was  
25 said while you were in there with the jurors?

1 MS. PARK: No. He made a comment to me, not directed to  
2 them about feeling stressed, but that was it.

3 THE COURT: All right. Is there any need to --

4 MS. PARK: And I told him --

5 THE COURT: -- talk to the jurors further?

6 MR. MENG: As long as Defense got no problem, I got no  
7 problem.

8 THE COURT: All right. All right. Very good.

9 Let's go ahead and bring in the jury, and we'll call the next  
10 witness.

11 MR. MENG: And we're going to take one break after the two  
12 witnesses?

13 THE COURT: We'll take a -- yeah, we'll take a break and then  
14 finish up and that way I'll know, I'll get my clerk, she's listening to start  
15 copying the jury instructions.

16 [Pause]

17 THE MARSHAL: All rise for the jury.

18 [Jury in at 1:24 p.m.]

19 THE COURT: Parties stipulate to the presence of the jury  
20 panel

21 MR. MENG: Yes.

22 MS. PARK: Yes, Your Honor?

23 THE DEFENDANT:

24 THE COURT: Okay. Everybody get situated.

25 All right. The State may call its next witness.

1 MR. MENG: Thank you, Your Honor.

2 The State calls Brian Bounds, B-O-U-N-D-S.

3 THE COURT: All right, sir, if you'll come up to the witness  
4 stand, there are a couple of steps. When you get to the top, stay  
5 standing for just a second, our clerk over here will swear you in.

6 BRIAN BOUNDS, STATE'S WITNESS, SWORN

7 THE CLERK: Thank you be seated. Once you're settled,  
8 please state and spell your name for the record.

9 THE WITNESS: My name is Brian Bounds, B-R-I-A-N, Bounds  
10 B-O-U-N-D-S.

11 THE CLERK: Thank you.

12 THE COURT: Whenever you're ready, Counsel.

13 MR. MENG: Thank you, Your Honor.

14 THE COURT: Why don't you scoot up closer to that mic,  
15 make sure we can hear you.

16 Go ahead, whenever.

17 MR. MENG: Thank you, sir.

18 DIRECT EXAMINATION

19 BY MR. MENG:

20 Q Good afternoon, sir.

21 A Good afternoon.

22 Q Thank you for being here, sir.  
23 What do you do for a living?

24 A I'm a registered nurse.

25 Q How long have you been a registered nurse?

1           A     Since 2011, so almost 11 years.

2           Q     Where do you currently work?

3           A     I currently work at Southern Hills Hospital.

4           Q     And in 2019, on November 23rd, where were you employed  
5 at that time?

6           A     I was working at Sunrise Hospital.

7           Q     And were you working at around 5:20 on that day?

8           A     Yes.

9           Q     When you were at Sunrise, could you describe the kind of  
10 training and education you must receive in order to be a nurse?

11          A     Yeah. I went to nursing school, it was a two-year program. It  
12 was a vigorous program.

13          Q     And when you say two years nursing program, what kind of  
14 things do you learn during those two years?

15          A     Multiple things. I mean just from start to finish, you know,  
16 you learn how to take care of patients, you learn clinical -- I'm sorry, you  
17 know like clinical things such as starting IVs, drawing blood, you know,  
18 many little -- little assets like that.

19          Q     And during those two years of vigorous education that you  
20 received from school; do you actually have hands-on experience during  
21 those time?

22          A     Yeah, we have like a whole year of clinical experience. So  
23 we shadow nurses in OR, ER, ICU all different departments.

24          Q     Okay. And that includes drawing blood?

25          A     Correct.

1 Q You would shadow somebody, learn how to do that  
2 properly?

3 A Correct.

4 Q And you became a nurse in 2011?

5 A Correct.

6 Q Do you have to pass your own test or any certification for  
7 you -- in order --

8 A Yeah, you --

9 Q -- for you to be a nurse?

10 A Excuse me, sorry. Yeah there's a nursing board that we have  
11 to pass.

12 Q Okay. And you passed it, obviously?

13 A Correct.

14 Q And you became a nurse in 2011.

15 A Yes.

16 Q After that you received continuous education on how to do  
17 your job properly?

18 A Correct, yeah.

19 Q Is that on a yearly basis?

20 A Two years and you need 30 CEUs, but there's other  
21 certifications where you need more. So --

22 Q So since 2011, sir, you have to estimate, concerning blood  
23 draws, how many have you conducted?

24 A Hundreds, if not over a thousand. For sure. Easily,  
25 realistically. Multiple.

1 Q Okay. So on November 23rd, were you working at around  
2 5:30 to 7:00 in the evening?

3 A Yes.

4 Q And you were at Sunrise Hospital?

5 A Yes.

6 Q Did you conduct an evidentiary draw in a DUI investigation?

7 A Yes.

8 Q Do you remember there was multiple officers at Sunrise  
9 Hospital when you were conducting this draw?

10 A I do, yes.

11 Q And one of the officers was able to provide you the blood  
12 box?

13 A Correct.

14 Q Was that Officer Polion, P-O-L-I-O-N?

15 A I believe so, yes.

16 MR. MENG: Publishing 3, Your Honor.

17 THE COURT: Go ahead.

18 BY MR. MENG:

19 Q Do you recognize this, sir?

20 A Yes.

21 Q You see yourself in there?

22 A Yes.

23 Q That's you drawing blood?

24 A Yes.

25 Q How many DUI draws did you conduct on that day?

1           A     On that day that was my only blood draw for DUI like this.

2           Q     Could you go ahead and describe how you would go about a  
3 blood draw?

4           A     In this particular case, for a DUI blood draw, we're provided  
5 with a little sample box that's got two vials, two empty blood vials in it  
6 and a needle, I believe. We use non-alcoholic wipes when obtaining the  
7 sample, so we use Betadine, so we don't affect the blood sample.

8                     We fill up both blood vials, they are then initialed and given  
9 to the officer with the blood box.

10          Q     When you say initialed, do you initial on the actual vial or the  
11 box?

12          A     I believe on the vials and the box.

13          Q     Okay.

14                     MR. MENG: May I approach, Your Honor?

15                     THE COURT: Sure.

16                     MR. MENG: With 16.

17 BY MR. MENG:

18          Q     Is this the box? The blood box?

19          A     I believe so, yes.

20          Q     Go ahead and put on your gloves. What's inside of the blood  
21 box?

22          A     A tubing like blood tubes, blood vials, and I believe a needle  
23 is in there, too, at times.

24          Q     You stated that you also initialed and signed the box. Do you  
25 see your signature where you initial on the box?



1           A     I do, yes.

2           Q     Just go ahead and use the scissors and open the box. What  
3 do you see inside, sir?

4           A     I see two vials of blood.

5           Q     Go ahead and see, you stated that your initial will be on that,  
6 will you confirm that?

7           A     Yes. Yep, I see one on here on the bottom and also right  
8 here on the bottom.

9           Q     Okay. Just put it back.

10          A     Okay.

11          Q     Are those blood vials the same or substantially the same  
12 condition as after you drew them on November 23rd, 2019?

13          A     Yes.

14          Q     After you drew the two blood vials, did you also fill out a  
15 declaration confirming that you just drew blood --

16          A     Yes.

17          Q     -- from an individual?

18                 Before you draw blood from someone, do you make sure  
19 who you are drawing the blood from?

20          A     Yes.

21          Q     In this case did you verify who the person was?

22          A     Yes.

23          Q     Would that person's name be on the declaration

24          A     Yes.

25          Q     And also on the blood box?

1 A Yes.

2 MR. MENG: Your Honor, publishing 15.

3 THE COURT: All right.

4 BY MR. MENG:

5 Q Do you remember, sir?

6 A Yes.

7 Q Is this the declaration?

8 A Yes.

9 Q Do you see your initial or signature on there that shows you  
10 this was the declaration you signed on that day?

11 A Yes.

12 Q Where is it? There's actually a little mouse there you can go  
13 ahead and use that to point to your initial or signature.

14 A Sure. Right here is my signature, my title, my name. Where  
15 I work, Sunrise Hospital.

16 Q And you also have your name on top, correct?

17 A Correct.

18 Q Along with the person you drew the blood from?

19 A Correct.

20 MR. MENG: Pass the witness, Your Honor.

21 THE COURT: All right. Cross-examination?

22 MS. PARK: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MS. PARK:

25 Q Mr. Bounds, on that day you said that you verified who the

1 person is before you draw the blood. How do you verify that?

2 A We usually look at their name bands, we talk to them ask  
3 them their names, date of birth. They come in with ID, we're able to look  
4 at the IDs to identify the patient.

5 Q Okay. Do you look at the ID?

6 A Yeah. We do.

7 Q Do you have the --

8 A A lot of times we obtain the ID.

9 Q Okay. How do you obtain it?

10 A It's given to us by whether EMSs comes in, they give us IDs if  
11 they have it. Or if the patient walks in they give us to a -- we ask for ID.

12 Q Okay.

13 A Yeah.

14 Q And on that day what else was going on around you at the  
15 time you were doing the blood draw?

16 A I can't really remember. It's always busy over there, so I'm  
17 sure there was a lot of things going on, yes.

18 Q So there's a lot of things going on. So there's other things  
19 around you that could be distracting you at the time you're drawing the  
20 blood?

21 A It could be, yeah.

22 MS. PARK: I have nothing further. Thank you.

23 THE COURT: All right.

24 MR. MENG: No further questions, Your Honor.

25 THE COURT: Any member of the jury have a question for

1 this witness?

2 Okay, one hand up. Write your question out -- two hands.  
3 Write your question on a clean sheet of paper with your juror number,  
4 hand it off to the marshal.

5 All right. Can I see counsel at sidebar.

6 [Sidebar begins at 1:33 p.m.]

7 THE COURT: All right. Let's see what questions we got here.  
8 Juror No. 3. What time did you draw the blood of the  
9 Defendant according to the document you filled out?

10 Any objection, State?

11 MR. MENG: No, Your Honor, he can answer .

12 THE COURT: Juror No. 7. Was he on any medication before  
13 the blood was taken?

14 Any objection?

15 MR. MENG: Speculation.

16 THE COURT: Whether he knows. He was there with the guy.  
17 Yeah.

18 MR. MENG: No, Your Honor. No objection.

19 MS. PARK: No objection.

20 THE COURT: Okay.

21 [Sidebar ends at 1:33 p.m.]

22 THE COURT: You may need to look at some of the  
23 paperwork, but do you know what time you did the blood draw of the  
24 Defendant?

25 THE WITNESS: I mean if I look at it, I can.

1 THE COURT: What would you need to look at, the box or --

2 THE WITNESS: Yeah, the box and the affidavit says the time  
3 on it.

4 THE COURT: Do you have those handy?

5 MR. MENG: Yes, Your Honor.

6 Permission to publish the declaration, is that what you're  
7 referring to?

8 THE WITNESS: Yeah.

9 MR. MENG: State's 15 publishing.

10 THE WITNESS: 1852, so 6:52 p.m. is when the time of the  
11 blood draw.

12 THE COURT: Okay. There's a reference there to a.m., this  
13 was done in the p.m.?

14 THE WITNESS: Yeah, so 1852 that's what we use, we use  
15 military time in every hospital so there's no confusion --

16 THE COURT: Okay.

17 THE WITNESS: -- what time blood's drawn.

18 THE COURT: And then do you know whether the Defendant  
19 was on any medications either was on or was not on any medications  
20 before the blood draw was taken?

21 THE WITNESS: I don't know.

22 THE COURT: Okay. That generate anything further from the  
23 State?

24 MR. MENG: No, Your Honor.

25 THE COURT: Anything further from Defense?

1 MS. PARK: No, Your Honor.

2 THE COURT: All right. Thank you very much for your  
3 testimony.

4 THE WITNESS: Thank you.

5 THE COURT: You are excused.

6 THE WITNESS: Thank you.

7 MR. MENG: Your Honor, the State calls Denise Heineman,  
8 H-E-I-N-E-M-A-N.

9 THE COURT: Okay.

10 All right, ma'am. If you'll come up to the witness stand.  
11 There are a couple of steps. When you get to the top stay standing for  
12 just a second and our clerk over here will swear you in.

13 DENISE HEINEMAN, STATE'S WITNESS, SWORN

14 THE CLERK: Please be seated, and once you're settled please  
15 state and spell your name for the record.

16 THE WITNESS: So my name is Denise, D-E-N-I-S-E, last  
17 name is Heineman, H-E-I-N-E-M-A-N.

18 THE COURT: All right. Whenever you're ready, Counsel.

19 MR. MENG: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. MENG:

22 Q Good afternoon, ma'am. What do you do for a living?

23 A I am a forensic scientist with the Las Vegas Metropolitan  
24 Police Department.

25 Q How long have you been doing that?

1 A I have been a forensic scientist since 2011.

2 Q And what are some of your job duties as a scientist?

3 A So my main function is to analyze blood for its alcohol  
4 content.

5 Q Okay. What kind of education do you need -- do you have to  
6 qualify for that kind of analysis?

7 A So I have a Bachelor of Science in forensic chemistry from  
8 Ohio University.

9 Q Do you also receive training concerning analyzing blood?

10 A Yes.

11 Q What are those?

12 A I have -- I get a lot of training from attending meetings of  
13 associations that deal with alcohol. I have also -- I've gone to California  
14 and taken a course there; it was a 40-hour course on alcohol  
15 interpretation. And I also went to Indiana and took a course there on  
16 alcohol interpretation.

17 Q Do you continue to receive and update your education  
18 concerning blood alcohol analysis?

19 A Yes.

20 Q And since 2011, if you have to give an estimate, how many  
21 blood have you analyzed for its alcohol concentration level?

22 A So blood alcohol concentration at around 15,000.

23 Q Directing your attention to the case number ending in -- go  
24 ahead and tell us, first, how you usually go about analyzing a blood.

25 A I use a technique called gas chromatography. And what that

1 does is it allows me to see the different components that's in my sample.  
2 It will actually separate them so that I actually look at it. So it analyzes it  
3 and then it prints out a graph for me and there's peaks on the graph. So  
4 that I can see every volatile compound that is in that sample. And then I  
5 can determine the concentration for each one.

6 Q Where do you obtain the samples from to start your test?

7 A So they are collected by the officers, and they are turned in  
8 to -- usually at the jail. There's a secured refrigerator at the jail. So  
9 when the officers are done collecting their blood, they sign everything,  
10 and they put it in the refrigerator, and they lock it. And then we have  
11 evidence technicians from the lab that twice a week go down to the jail  
12 and collect up all of the samples. And then they bring it back to us and  
13 we analyze them in the order that they come in.

14 Q And the way you test blood is that generally accepted by the  
15 medical community?

16 A Yes.

17 Q Is there any safeguard to ensure that the test that you receive  
18 after you conduct your test that the result is accurate?

19 A Yes. So before I do anything with the -- I check everything  
20 and make sure that everything on the front of the kit matches what has  
21 been entered into our tracking system for our evidence. I make sure it all  
22 matches.

23 Then before I start to run, I will actually run a calibration on my  
24 instrument. And that is going to prove that my instrument does, in fact,  
25 recognize the different levels of ethanol that could be out there. Then I



1 will open the evidence and I will select a blood tube. I will open the  
2 blood tube, I will take a sample of that blood tube, place it in a vial and  
3 I'll crimp that vial so nothing can get in and nothing can get out.

4 I will go ahead and close the blood tube, put it back in the kit, and  
5 I'll move that kit to the side. And I will go on to the next kit. That way I  
6 do not risk the chance of -- I put the wrong blood tube back in the wrong  
7 kit. If I only open one kit, it's going back in the same kit.

8 Every five samples -- so all of my samples are run in duplicate. So  
9 every five samples, so that would be every ten vials, I run a control.  
10 Which is also a known standard so that I can make sure throughout the  
11 run my instrument is still working properly.

12 Q I think I got this, but how many times you actually test the  
13 blood?

14 A I test each sample twice.

15 Q And what type of blood? Hopefully it's human, but what type  
16 of blood do you test?

17 A Yes, human. We actually the statute of the Nevada says we  
18 test whole blood.

19 Q Do you, after you conduct your test, do you create a record of  
20 your testing?

21 A Yes.

22 Q And what is that record?

23 A Some people call it a declaration, we call it a report of  
24 examination.

25 Q And how do you create that?

1           A     So after everything's analyzed, I transfer all the data into --  
2 we have a LIM system, it's a Lab Information Management system. And  
3 that's where we create our worksheets, that is where we create our  
4 reports, all of my data, anything that -- emails, anything that goes with  
5 this case goes in there.

6           So when I need my data, it's all in one spot I can just go collect  
7 everything. And from there is where we generate the reports and then  
8 they are distributed to whoever has requested those reports.

9           MR. MENG: May I approach the witness?

10          THE COURT: Sure.

11          MR. MENG: These exhibits were already on the desk, were  
12 on the witness stand, Your Honor. That's --

13          THE COURT: 16.

14          MR. MENG: Yes, Your Honor, 16.

15 BY MR. MENG:

16          Q     Denise, do you recognize this?

17          A     I do.

18          Q     What is it?

19          A     This is a standard blood kit that we use.

20          Q     And did you conduct a test regarding the content of this kit?

21          A     I did.

22          Q     How do you know that you did that?

23          A     My signature and personnel number are on the front of the  
24 kit. And then on the back of the kit where I sealed it is also my initials,  
25 my personnel number and the date.

1 Q And also on that box are the information concerning the  
2 event number.

3 A Yes.

4 Q And based on your knowledge, is that unique to a particular  
5 defendant?

6 A It is unique to this case.

7 Q Yes. And is there a defendant under that event number  
8 that's also listed on the blood kit?

9 A This blood kit says the last name is Whatley and the first  
10 name is Gerald.

11 Q And when you first received this box through a lab  
12 technician, from the evidence vault refrigerator, was this box sealed?

13 A Yes, it was.

14 Q What if the box wasn't sealed?

15 A If it wasn't sealed, would have returned it to my vault and  
16 they would have most likely contacted the officer and said you need to  
17 get in here and seal this.

18 Q Any problems here concerning this blood kit?

19 A No.

20 Q Did you open this blood box and test the vials inside?

21 A I did.

22 Q And is there a way to find out -- how do you know you  
23 actually tested the blood vials in this case?

24 A May I open the box?

25 Q There's gloves right there.

1           A     I don't --

2           THE COURT: However you want to do it.

3           THE WITNESS: So inside are the two tubes. This one over  
4 here has a white label and on there are my initials so that would be the  
5 blood tube that I analyzed. It's also the blood tube that the other people,  
6 that may have done any testing on this have also put their initials on  
7 that. So this is how I know I did that tube.

8 BY MR. MENG:

9           Q     And your initial is on that tube?

10          A     My -- yes.

11          Q     Okay. What do you do after you open the box and test the  
12 blood? What do you do after you test the blood?

13          A     So after I test the blood, I review all of my -- so I put them on  
14 my instrument. I tell it, I program the instrument, I say I want to run  
15 these vials in this particular order, and I start the instrument. I go home.  
16 It runs overnight because it takes probably five hours, six hours for this  
17 to run.

18                So when I come in in the morning, I will process my data.  
19 Meaning I will retrieve any data that has been generated by the  
20 instrument overnight. Then I will go through each piece of data, and I  
21 will match that up with each case and I will make sure that everything  
22 matches. And when it does, I will go back, and I will seal the kit and then  
23 I will generate a report.

24               MR. MENG: May I approach, Your Honor?

25               THE COURT: Sure.

1 BY MR. MENG:

2 Q You stated that then you generate a report --

3 A Yes.

4 Q -- by conducting a blood test in this case?

5 A Yes.

6 Q Showing you State's 14. What is this?

7 A This would be my report of examination or my declaration.

8 Q How do you know that?

9 A My initial -- my signature and my personal number are on  
10 the bottom of this kit -- are on the bottom of the report, sorry.

11 Q Is this a fair and accurate depiction of the result after  
12 conducting a test concerning the blood box in this case?

13 A Yes.

14 MR. MENG: Move to admit, Your Honor, 15. Oh 14, I'm  
15 sorry.

16 THE COURT: You said 14? Any objection to 14?

17 MS. PARK: No, Your Honor.

18 THE COURT: 14 will be admitted.

19 [State's Exhibit 14 admitted into evidence]

20 MR. MENG: Thank you. Move to publish 14.

21 THE COURT: Go ahead.

22 BY MR. MENG:

23 Q Denise, could you tell us the result of your analysis of the  
24 blood box in this case?

25 A Yes. So the sample that I analyzed had a blood alcohol

1 content of .20 -- oh, I'm sorry. .249 grams of ethanol per 100 milliliters of  
2 blood.

3 MR. MENG: Thank you.

4 I pass the witness, Your Honor.

5 THE COURT: All right.

6 Cross-examination?

7 MS. PARK: Thank you.

8 CROSS-EXAMINATION

9 BY MS. PARK:

10 Q Ms. Heineman, you stated that there are people from your  
11 office that go over approximately twice a week to the jail --

12 A Yes.

13 Q -- to collect the vials? How long before you test them?

14 A Depends on how backlogged my lab is.

15 Q Okay. So on this particular date do you -- I mean on this  
16 particular case do you know when you tested this blood?

17 A I believe I analyzed this sample on February 25th.

18 Q February 25th? Okay. And you made a reference to you put  
19 the vials in the machine and go home for the night.

20 A Correct.

21 Q When you say vials, are those different vials? Different -- out  
22 of different blood boxes?

23 A So we run all of our samples in we call them batches,  
24 obviously. So I can run up to up to 45 cases in one batch. And that is  
25 one of the joys of having an automated system. You can get a lot done

1 in a short period of time.

2 So each vial that the blood goes into is labeled with -- we label it  
3 with our internal number. We have that LIM system. And that label is  
4 right here on the side. So it's labeled with this, so I know that that  
5 sample went with this case. And that's how I match them up when they  
6 come off. So yes, I do have 48 or 45 cases running at the same time.

7 Q Okay. And is there a margin of error in the results?

8 A We don't use the term error. We use the term the  
9 uncertainty of the measurement.

10 Q Okay. Can you explain that a little bit?

11 A Sure. So in any measurement you're going to take, there's  
12 going to be variance. Whether you're looking at a watch or, you know, I  
13 always like to say, you know, I'm going to go to the doctor, the first thing  
14 they're going to do is they're going to put me on a scale. So, you know,  
15 you weigh yourself in the morning, so you're not shocked when you get  
16 there. But one time you get to the -- you know, so you weigh yourself it  
17 says I weigh 165 today. Okay. Fine.

18 So you get it to the doctor, and they put you on their scale,  
19 and you weight 170. And you say how did I gain five pounds from the  
20 time I left the house until the time I got to the doctor? Well, it's a  
21 different scale. The environment that you're in is different. The  
22 temperature is different. Maybe your fully clothed where, you know, you  
23 have shoes on, which you didn't when you were at home. So there are  
24 many variables that can go into why there was a difference.

25 In my laboratory we took -- we got the uncertainty of

1 measurements from the manufacturer of our instrumentation and the  
2 manufacturer of our calibrators and controls, and we calculated our  
3 own -- we calculated what we estimate would be our uncertainty of  
4 measurement for what we -- for this analysis that we're doing. And that,  
5 if you look on the report, is the plus or minus, what is that .011.

6 Q Okay.

7 A That's our uncertainty.

8 Q Okay.

9 A Or the variance in our measurement.

10 MS. PARK: Okay. That's all the questions I have. Thank you.

11 THE WITNESS: Okay.

12 THE COURT: All right. That generate anything further from  
13 the State?

14 MR. MENG: Just two questions, Your Honor.

15 THE COURT: Sure.

16 REDIRECT EXAMINATION

17 BY MR. MENG:

18 Q Denise, in this particular case, concerning this blood, did you  
19 follow all the proper steps to conduct a blood analysis?

20 A I did.

21 Q And are the process that you followed in this case are  
22 generally accepted by the medical and scientific community?

23 A They are.

24 MR. MENG: Thank you. No further questions, Your Honor.

25 THE COURT: Generate anything further from Defense?



1 MS. PARK: No, Your Honor.

2 THE COURT: Any questions from the panel?

3 Okay, I see one hand. Write your question on a clean sheet  
4 of paper and make sure you got your juror number on it.

5 Let me see counsel at sidebar.

6 [Sidebar begins at 1:51 p.m.]

7 THE COURT: Juror No. 3. Do vials of blood ever break or  
8 spill while being tested?

9 Any objection, State?

10 MR. MENG: No objections.

11 THE COURT: Defense?

12 MS. PARK: No.

13 [Sidebar ends at 1:51 p.m.]

14 THE COURT: All right. Do vials of blood ever break or spill  
15 while being tested?

16 THE WITNESS: I have opened blood kits where I've opened  
17 it up and one of the vials inside has been already broken. Whether that  
18 was through transport, maybe somebody dropped the blood kits. I have  
19 had a couple of vials break on me when I was -- after I took the stopper  
20 out, took my sample, when I went to put the stopper back on I've had it  
21 crack down the side, and I've lost the rest of the sample that was in  
22 there. I simply make a note that goes in the file so anybody that wants to  
23 do a discovery on it will see my notes as to what happened.

24 THE COURT: All right. That generate anything further from  
25 the State?

1 REDIRECT EXAMINATION

2 BY MR. MENG:

3 Q Any issues here?

4 A No, I did not see anything wrong with this one.

5 MR. MENG: Nothing further.

6 THE COURT: Anything further from Defense?

7 MS. PARK: No, Your Honor. Thank you.

8 THE COURT: All right. Thank you very much for your  
9 testimony, ma'am.

10 THE WITNESS: Thank you.

11 THE COURT: You are excused.

12 Ladies and gentlemen, I have a matter I need to deal with just  
13 very, very briefly. I'm going to ask you to leave the room. I ask that you  
14 stay out in the hall. With a little luck, we'll have you back in about five to  
15 ten minutes. So don't go far and we'll continue on with the trial.

16 While you're out there -- whoops, almost forgot the key thing  
17 here. While you're out there do not discuss or communicate with  
18 anyone, including your fellow jurors in any way regarding the case or its  
19 merits either by voice, phone, email, text, internet or other means of  
20 communication or social media.

21 Do not read, watch or listen to any news or media accounts  
22 or commentary about the case. Do not do any research such as  
23 consulting dictionaries, using the internet or using reference materials.  
24 Do not make any investigation, test the theory of the case, recreate any  
25 aspect of the case or in any other way investigate or learn about the case

1 on your own and do not begin to form or express any opinion regarding  
2 the case until it is submitted to you.

3 We'll see you back in just a few minutes.

4 THE MARSHAL: All rise for the jury.

5 [Jury out at 1:53 p.m.]

6 THE COURT: All right. I just want to confirm for the record is  
7 that the State's last witness?

8 MR. MENG: Yes, Your Honor.

9 THE COURT: Any additional exhibits the State intends to  
10 introduce?

11 MR. MENG: No, Your Honor. I've believe everything marked  
12 has already been admitted, Your Honor.

13 THE COURT: This should just be straight forward. Is there  
14 anything that hasn't been admitted that you're aware?

15 MS. PARK: There is not.

16 THE COURT: Okay. So when we bring the jurors back in, I'll  
17 ask the State to call its next witness. At that point you'll say the State  
18 rests.

19 MR. MENG: That's the way. Thank you.

20 THE COURT: All right. Does Defense intend to call any  
21 witnesses?

22 MS. PARK: No, we are not calling any witnesses. And you  
23 went over his constitutional rights.

24 THE COURT: I went over the constitutional rights, but I did  
25 want to make sure -- want to confirm for the record that, Mr. Whatley, it's

1 your decision not to testify; is that correct?

2 THE DEFENDANT: Yes.

3 THE COURT: All right. And you did discuss this with your  
4 attorney?

5 THE DEFENDANT: Yes.

6 THE COURT: And you do realize that the decision ultimately  
7 whether you testify or not is your decision?

8 THE DEFENDANT: Yes.

9 THE COURT: And so in this instance you have decided not to  
10 testify.

11 THE DEFENDANT: Yes.

12 THE COURT: Okay. I will tell you what's going to happen is,  
13 I'll ask the State to call its next witness. They'll say they rest. I'll turn to  
14 your attorney and ask if the Defense wishes to present any evidence, and  
15 she'll say, the Defense rests.

16 You can change your mind up until the point she says, the  
17 Defense rests. Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Once she says, the Defense rests --

20 THE DEFENDANT: I see.

21 THE COURT: -- then the presentation of evidence will be  
22 done.

23 THE DEFENDANT: Yes.

24 THE COURT: Okay. All right. Do you need any setup  
25 before?

1 MR. MENG: I'll figure it out, Judge. I think I'm good.

2 THE COURT: Don't hand out the -- because we aren't ready  
3 for that yet. I'm sorry, I should have watched you. But didn't hand out  
4 the jury instructions yet. Just in case something throws off.

5 [Counsel confer]

6 THE CLERK: Mr. Meng, do you have a hard copy of your  
7 PowerPoint by any chance?

8 MR. MENG: I'm going on changing it. I can print one and  
9 send it to you, or I can create a disc.

10 THE CLERK: No, I'd rather it be paper.

11 THE COURT: Just print it out and be sure you get it to us by  
12 the end of the day.

13 MR. MENG: Will do.

14 THE COURT: All right. So are you ready to go with your  
15 closing?

16 MR. MENG: Oh, I am, yeah.

17 THE COURT: All right. I will just let you know, Counsel, and I  
18 don't know -- how long do you think your closing's going to be?

19 MS. PARK: I'm probably going to address instructions 4 and  
20 5, 15 minutes.

21 THE COURT: 15 minutes. All right.

22 I just want you to understand, I'll give you at least five  
23 minutes for your rebuttal, but my general principle is you get one-third  
24 of whatever time she uses.

25 MS. PARK: There it is. I can do it in ten.

1 THE COURT: If she uses 10 minutes, you'll get five. If she  
2 uses 15 minutes, you'll get 5. If she uses 20 minutes, you'll get 7. So I  
3 just wanted you to be aware of that. So -- all right.

4 Anything else, then before we bring in the jurors? Nope?

5 MS. PARK: Not from us.

6 THE COURT: All right. Let's go ahead and bring in the  
7 jurors. Hold on a second.

8 All right. Let's bring in the jurors.

9 THE MARSHAL: All rise for the jury.

10 [Jury in at 1:59 p.m.]

11 THE COURT: All right. Parties stipulate to the presence of  
12 the jury panel?

13 MR. MENG: Yes.

14 MS. PARK: Yes, Your Honor.

15 THE COURT: All right. Everybody get in, get situated.

16 The State may call its next witness.

17 MR. MENG: Your Honor, at this point the State rests. Thank  
18 you.

19 STATE RESTS

20 THE COURT: All right. By making the statement that the  
21 State rests, that means that the State has presented to you all of its  
22 evidence for its case-in-chief.

23 At this point in time, the Defense is given the opportunity, if  
24 it wishes to do so, to present evidence. But as I've stated to you a  
25 number of times, Defense has no obligation to do anything or to present

1 any evidence. The burden of proof always remains on the State to prove  
2 the elements of the crime charged beyond a reasonable doubt. And the  
3 Defense does not need to do anything, if the State does not meet that  
4 burden.

5 So with that, does the Defense wish to present any evidence?

6 MS. PARK: The State rests, Your Honor -- I'm sorry. The  
7 Defense rests, Your Honor.

8 DEFENDANT RESTS

9 THE COURT: Okay. With that, ladies and gentlemen, that  
10 means all the evidence that you're going to receive for purposes of your  
11 deliberations has been presented to you. What we're going to do now is  
12 to move into reading you the jury instructions and then we'll go right  
13 into closing arguments. The State will give the first closing argument,  
14 again, because the State has the burden of proof.

15 Defense will have the opportunity to give a closing argument  
16 and then the State has a chance to give a short rebuttal argument.  
17 Again, because the State has the burden of proof.

18 Do you have the jury instructions?

19 THE MARSHAL: Yes, sir.

20 THE COURT: Okay. We'll hand those out to you. This is a  
21 packet of the jury instructions. This is your packet to do with as you  
22 wish. If you want to make notes on it during the closing arguments feel  
23 free to do so. You can take it back with you to the jury deliberation  
24 room. You'll find at different times some attorneys will make specific  
25 reference to some of the instructions, so that this gives you an

1 opportunity to have the instructions and follow along if you wish to do  
2 so. In any case, it's up to you to use as you want and take it back and  
3 have it at the jury deliberation process.

4 All right. District Court, Clark County, Nevada, State of  
5 Nevada, plaintiff, v. Gerald D. Whatley, Jr. a/k/a Gerald L. Whatley, Jr.,  
6 defendant. Case No. C-21-357412-1 Department 20. Instructions to the  
7 Jury.

8 Members of the Jury, it is now my duty as Judge to instruct  
9 you on the law that applies to this case. It is your duty as jurors to follow  
10 these instructions and to apply the rules of law to the facts as you find  
11 them from the evidence. You must not be concerned with the wisdom of  
12 any rule of law stated in these instructions, regardless of any opinion  
13 you may have as to what the law ought to be it would be a violation of  
14 your oath to base the verdict upon any other view of the law than that  
15 given in the instructions of the Court.

16 If in these instructions any rule, direction or idea is repeated  
17 or stated in different ways, no emphasis thereon is intended by me, and  
18 none may be inferred by you. For that reason you are not to single out  
19 any certain sentence or any individual point or instruction and ignore the  
20 others, but you are to consider all the instructions as a whole, and regard  
21 each in the light of all the others. The order in which the instructions are  
22 given, has no significance as to their relative importance.

23 An amended Information is but a formal method of accusing  
24 a person of a crime and it's not of -- try that again. An amended  
25 Information is but a formal method of accusing a person of a crime and



1 is not of itself any evidence of his guilt. In this case it is charged in an  
2 Information that Gerald Lee Whatley, Jr., a/k/a Gerald L. Whatley, Jr., the  
3 Defendant above-named, having committed the crime of driving under  
4 the influence on about the 23rd day of November, 2019, within the  
5 County of Clark, State of Nevada, contrary to the form force and effect of  
6 statutes in such cases made and provided and against the peace and  
7 dignity of the State of Nevada, did willfully and unlawfully drive and/or  
8 be in actual physical control of a motor vehicle on a highway or on  
9 premises to which the public has access at Desert Inn and Theme, Las  
10 Vegas, Clark County, Nevada. Defendant being responsible in one or  
11 more of the following ways and/or under one or more of the following  
12 theories. To wit:

13 1. While under the influence of intoxicating liquor to any  
14 degree, however slight, which rendered him incapable of driving safely  
15 and/or exercising actual physical control of a vehicle; and/or

16 2. When he was found by measurement within two hours  
17 after driving and/or being in actual physical control of a vehicle to have a  
18 concentration of alcohol of .08 or more in his blood.

19 It is the duty of the jury to apply the rules of law contained in  
20 these instructions to the facts of the case and determine whether or not  
21 the Defendant is guilty of the offense charged.

22 The elements of driving and/or being in actual physical  
23 control of a motor vehicle while under the influence of an intoxicating  
24 liquor or alcohol are:

25 1. A person is driving a vehicle on or off the highway or on

1 premises to which the public has access.

2 2. The person, while driving:

3 (a) is under the influence of an intoxicating liquor to a degree  
4 that renders him incapable of safely driving the vehicle; or

5 (b) is found by measurement within two hours after driving  
6 or being in actual physical control of the vehicle to have a concentration  
7 of alcohol of .08 or more in his blood.

8 Physical control means a person has existing or present  
9 influence, domination or regulation of a motor vehicle. In deciding  
10 whether someone has existing or present influence, domination or  
11 regulation of a motor vehicle, the trier of fact must weigh a number of  
12 considerations, including:

13 1. Where and in what position the person is found in the  
14 vehicle.

15 2. Whether the vehicle's engine is running or not.

16 3. Whether the occupant is awake or asleep.

17 4. Whether if the person is apprehended at night the vehicle  
18 lights are on.

19 5. The location of the vehicle keys.

20 6. Whether the person was trying to move the vehicle or did  
21 move the vehicle.

22 7. Whether the property on which the vehicle is located is  
23 public or private; and

24 8. Whether the person must out of necessity have driven to  
25 the location.

1           These considerations should be taken as a whole and  
2 considered together. No one consideration is dispositive in determining  
3 actual physical control.

4           Motor vehicle means every vehicle with a self-propelled, but  
5 not operated upon rails and a car or van is a motor vehicle.

6           Highway means the entire width between the boundary lines  
7 of every way dedicated to a public authority, when any part of the way is  
8 open to the use of the public for purposes of vehicular traffic, whether or  
9 not the public authority is maintaining the way. Dessert Inn and Theme  
10 are highways

11           Premises to which the public has access means property in a  
12 private or public owned -- means property in private or public ownership  
13 on to which members of the public regularly enter, are reasonably likely  
14 to enter or are invited or permitted to enter as invitees or licensees  
15 whither or not the access to the property by some members of the public  
16 is restricted or controlled by a person or a device.

17           The terms include -- the term includes, but is not limited to,  
18 (1) a parking deck or a parking garage or other parking structure; (2) a  
19 paved or unpaved parking lot or other paved or unpaved area where  
20 vehicles are parked or reasonably likely to be parked; (3) a way that  
21 provides access to or is appurtenant to (a) a place of business; (b) a  
22 governmental building; (c) an apartment building; (d) a mobile home  
23 park; (e) a residential area or residential community which is gated or  
24 enclosed or the access to which is restricted or controlled by a person or  
25 a device or any other similar area, community building or structure.

1 Under the influence means impaired to a degree that renders  
2 a person incapable of safely driving or exercising actual physical control  
3 of the vehicle.

4 Incapable of safely driving does not mean that a person is  
5 incapable of reaching his destination in safety, but rather that the  
6 person's mental or physiological functions are diminished so that the  
7 risk of an accident is unreasonably increased.

8 Concentration of alcohol of .08 -- or 0.08 or more in his blood  
9 means .08 grams or more of alcohol per 100 milliliters of the blood of a  
10 person. The State has alleged that the Defendant is criminally liable for  
11 the charge of driving or being in actual physical control of the motor  
12 vehicle while under the influence of intoxicating liquor or alcohol under  
13 one or more of the following principles of criminal liability:

14 1. The Defendant was under the influence of an intoxicating  
15 liquor to the degree that rendered him incapable of driving the vehicle --  
16 incapable of safely driving the vehicle; or

17 2. The Defendant was found by measurement within two  
18 hours after driving a vehicle to have a concentration of alcohol of .08 or  
19 more of alcohol in his blood.

20 Your verdict must be unanimous as to the charge. You do  
21 not have to be unanimous on the principle of criminal liability. It is  
22 sufficient that each of you find beyond a reasonable doubt that the crime  
23 committed was driving and/or being in actual physical control of the  
24 motor vehicle while under the influence of intoxicating liquor, regardless  
25 of which principle of criminal liability you find.

1           To constitute the crime charged, there must exist a union or  
2 joint operation of an act forbidden by law and an intent to do the act.  
3 The intent with which the act -- with which an act is done is shown by the  
4 facts and circumstances surrounding the case.

5           Do not confuse intent with motive. Motive is what prompts a  
6 person to act; intent refers only to the state of mind with which the act is  
7 done. Motive is not an element of the crime charged and the State is not  
8 required to prove a motive on the part of the Defendant in order to  
9 convict. However, you may consider evidence of motive or lack of  
10 motive as a circumstance of the case.

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

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

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

24           It is a constitutional right of a defendant in a criminal trial  
25 that he may not be compelled to testify. Thus the decision as to whether

1 he should testify is left to the Defendant on the advice and counsel of his  
2 attorney. You must not draw any inference of guilt from the fact that he  
3 does not testify, nor should this fact be discussed by you or enter into  
4 your deliberations in any way.

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

11           The evidence in which you are -- the evidence which you are  
12 to consider in this case consists of the testimony of the witnesses, the  
13 exhibits and any facts admitted or agreed to by counsel. There are two  
14 types of evidence: direct and circumstantial.

15           Direct evidence is the testimony of a person who claims to  
16 have personal knowledge of the commission of the crime which has  
17 been charged, such as an eyewitness.

18           Circumstantial evidence is the proof of a chain of facts and  
19 circumstances which tend to show whether the Defendant is guilty or not  
20 guilty.

21           The law makes no distinction between the weight to be given  
22 either direct or circumstantial evidence. Therefore, all of the evidence in  
23 the case, including the circumstantial evidence, should be considered by  
24 you in arriving at your verdict.

25           Statements, arguments, and opinions of counsel are not

1 evidence in the case. However, if the attorneys stipulate to the existence  
2 of a fact, you must accept the stipulation as evidence and regard that fact  
3 as proof. You must not speculate to be true any insinuations suggested  
4 by a question asked a witness. A question is not evidence and may be  
5 considered only as it supplies meaning to the answer. You must  
6 disregard any evidence to which an objection was sustained by the Court  
7 and any evidence ordered stricken by the Court. Anything you may have  
8 seen or heard outside the courtroom is not evidence and must also be  
9 disregarded.

10 In deciding the facts in this case you may have to decide  
11 which testimony to believe and which testimony not to believe. You  
12 may believe everything a witness says or part of it or none of it. In  
13 considering the testimony of any witness, you may take into account:

14 1. The opportunity and ability of the witness to see or hear  
15 or know the things testified to.

16 2. The witness' memory;

17 3. The witness' manner while testifying;

18 4. The witness' interest in the outcome of the case, if any;

19 5. The witness' bias or prejudice, if any;

20 6. Whether other evidence contradicted the witness'  
21 testimony;

22 7. The reasonableness of the witness' testimony in light of  
23 all the evidence; and

24 8. Any other factors that bear on believability.

25 Sometimes a witness may say something that is not

1 consistent with something else he or she said. Sometimes different  
2 witnesses will give different versions of what happened. People often  
3 forget things or make mistakes in what they remember. Also, two  
4 people may see the same event, but remember it differently. You may  
5 consider these differences, but do not decide that testimony is untrue  
6 just because it differs from other testimony.

7           However, if you decide that a witness has deliberately  
8 testified untruthfully about something important, you may choose not to  
9 believe anything that witness said. On the other hand, if you think the  
10 witness testified untruthfully about some things, but told the truth about  
11 others, you may accept the part you think is true and ignore the rest.

12           The weight of the evidence as to a fact does not necessarily  
13 depend on the number of witnesses who testify. What is important is  
14 how believable the witnesses were and how much weight you think their  
15 testimony deserves.

16           A witness who has special knowledge, skill, experience,  
17 training or education in a particular science, profession or occupation, is  
18 an expert witness. An expert witness may give his or her opinion as to  
19 any matter in which he or she is skilled. You should consider such  
20 expert opinion and weigh the reasons, if any, given for it. You are not  
21 bound, however, by such an opinion. Give it the weight to which you  
22 deem it entitled, whether that be great or slight and you may reject it if,  
23 in your judgment, the reasons given for it are unsound.

24           Although you are to consider only the evidence in the case in  
25 reaching a verdict, you must bring to the consideration of the evidence



1 your everyday common sense and judgment as reasonable men and  
2 women. Thus you are not limited solely to what you see and hear as the  
3 witnesses testify. You may draw reasonable inferences from the  
4 evidence which you feel are justified in the light of common experience,  
5 keeping in mind that such inferences should not be based on speculation  
6 or guess.

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

10 In your deliberations you may not discuss or consider the  
11 subject of punishment as that is a matter which lies solely with the Court.  
12 Your duty is confined to the determination of whether the Defendant is  
13 guilty or not guilty.

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

16 1. Communicate with anyone in any way regarding this case  
17 or its merits either by phone, text, internet or other means;

18 2. Read, watch or listen to any news or media accounts or  
19 commentary about the case;

20 3. Do any research such as consulting dictionaries, using the  
21 internet or using reference materials; or

22 4. Make any investigation, test the theory of the case,  
23 recreate any aspect of the or in any other way investigate or learn about  
24 the case on your own.

25 When you retire to consider your verdict you must select one

1 of your member to act as a foreperson who will preside over your  
2 deliberations and will be your spokesperson here in court. During your  
3 deliberations you will have all the exhibits which were admitted into  
4 evidence, these written instructions, and form of verdict which have  
5 been prepared for your convenience. Your verdict must be unanimous.  
6 As soon as you've agreed upon a verdict have it signed and dated by  
7 your foreperson and then return with it to this room.

8               If during your deliberation you should desire to be further  
9 informed on any point of law or hear again any portions of the  
10 testimony, you may send a note through the marshal, signed by any one  
11 or more of you. No member of the jury should ever attempt to  
12 communicate with me, except by a signed writing and I will respond to  
13 the jury concerning the case only in writing or here in open court.

14              If you send out a question I will consult with the lawyers  
15 before answering it, which may take some time. You may continue your  
16 deliberations while waiting for the answer to any questions. Remember  
17 you are not to tell anyone, including me, how the jury stands numerically  
18 or otherwise on any question submitted to you, including the question of  
19 the guilt of the Defendant until after you have reached a unanimous  
20 verdict or have been discharged.

21              Playbacks of testimony are time consuming and are not  
22 encouraged unless you deem it a necessity. Should you require a  
23 playback, you must carefully describe the testimony being played back  
24 so the court recorder can arrange for notes.

25              Remember the Court is not at liberty to supplement the

1 evidence.

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

10           All right. That concludes the jury instructions. As I said,  
11 we'll move now into closing arguments. The State will give its closing  
12 argument first. Again, because the State has the burden of proof.  
13 Defense will then give its closing argument. And then we'll have a  
14 rebuttal argument by the State.

15           I want to emphasize, as I had before, that during these  
16 arguments, what the attorneys say to you is not evidence. They are not  
17 witnesses in the case, so what they say is not evidence. If you -- their job  
18 here is to refresh in your minds the evidence that has been presented  
19 and to suggest to you how that evidence fits with the elements and the  
20 facts that need to be proved beyond a reasonable doubt for you to reach  
21 a verdict one way or the other. But what they're saying is not evidence.

22           If you hear an attorney say, you'll recall Witness Y said, A, B,  
23 and C and it's your recollection that Witness Y said 9, 10 and 11, it's your  
24 recollection of the evidence that controls. But these arguments are very  
25 important because it does give the parties a chance, again, to summarize

1 to you their recollection of the evidence and to discuss with you how  
2 they think that evidence fits in with the law that's been given to you by  
3 the Court. So I encourage your close attention.

4 We'll be pleased to hear the opening (sic) argument by the  
5 State.

6 STATE'S CLOSING ARGUMENT

7 MR. MENG: Thank you, Your Honor.

8 Ladies and gentlemen, it's not just the science in this case,  
9 it's the senses. It's not just the science it's the senses. All right?  
10 Throughout this trial, Chad and I have a responsibility to prove to you  
11 two things: who did the crime and what crime was committed. The only  
12 two questions we need to answer. Who did it? The Defendant Gerald  
13 Whatley. Who told you that, ladies and gentlemen? Oscar Castillo.

14 Oscar got on the stand, he was about to make a right turn,  
15 start heading down Desert Inn eastbound, thank God he checked left,  
16 right? He was going to go with his three children in the car. He checked.  
17 He started noticing this white van not stopping, continued to drive. He  
18 followed the car, the car didn't stop at Theme either, almost ran into  
19 Jerry. Thank God Jerry stopped and checked. Smashed straight into the  
20 concrete barrier. Oscar said never lost sight. Was already on the phone  
21 ready to call the police.

22 After the Defendant in his white van run into the concrete  
23 barrier, where was Oscar? Oscar was calling 911. He was standing right  
24 in front of the van. Right in front. Face to face with the van. What did  
25 Oscar say? The Defendant was in the driver's seat trying to get out.

1           No one else was in the car, Oscar would have said something  
2 about. He's been looking at this white van ever since Cabana. Oscar  
3 interacted with -- interacted with the Defendant after he got out at the  
4 concrete barrier. Go ahead and review all the 13 pictures that you have  
5 with you. The only door that's ajar, it's the driver's side door, right next  
6 to the concrete barrier.

7           Where do you think the Defendant goes and put his hands on  
8 to hold himself to keep balance? Concrete barriers. Go ahead and check  
9 the photos, see if any other door is open. None of them were. Because  
10 the Defendant was the driver, and he decided to get out from the driver's  
11 side door. Just like Oscar said. The Defendant was the only person was  
12 taken to the hospital.

13           Ladies and gentlemen, as the officer testified to you and you  
14 will see the pictures, there's two seats in the front. And what did the  
15 officer say? Absolutely, absolutely no seats in the back. With the  
16 impact like that, if someone was in the back unrestrained not in the seat,  
17 you don't think that's going to be more than one person to hospital. No,  
18 you can count on Oscar's testimony what he told you since he started  
19 following the white van. And since the Cabana and Desert Inn.

20           No question. Look at that right there. That's the vantage  
21 point where Oscar was looking in fact to face he had a perfect view to  
22 see the van. No question.

23           What kind of crime are we talking about here, ladies and  
24 gentlemen? Just one to that, driving under the influence of alcohol.  
25 That's the crime Chad and I must prove to you.

1           There are two elements, you can go through your jury  
2 instructions, but I want to go through them at least once. There are two  
3 elements, only two elements. The first element is a person's driving a  
4 vehicle on or off highway or on premises to which the public has access.  
5 Element one. All right?

6           Element two. The person, while driving, is under the  
7 influence of an intoxicating liquor to a degree that renders him incapable  
8 of safely driving the vehicle.

9           How else can you prove element two? Is found by  
10 measurement within two hours after driving or being actual physical  
11 control of a vehicle to have a concentration of alcohol of 0.8, 08 or more  
12 in his blood. So we have two ways of satisfying the second element.  
13 Two ways. All right.

14           Element one you have the instruction. Judge just read it to  
15 you. When you go back there look at instruction 7. It literally tells you.  
16 The Judge, His Honor, told you. Desert Inn and Theme are public  
17 highways. All right? They're highways. Throughout testimony I'm sure  
18 common sense dictates both Jerry and Oscar was driving on this road.  
19 Oscar literally told you there were other people on the roadways who  
20 were being driven off when the Defendant was driving on to the  
21 oncoming traffic. These are public highways where everyone had  
22 access. Use the element, ladies and gentlemen, look to the instruction 7.

23           Element two. If Leslie and I were talking about the case we  
24 would call the number one the two ways A theory and the C theory.  
25 Okay? Those are the professional vernacular that we use. The first way

1 of satisfying element two is the A here, which we call it the impairment.  
2 And then the C theory which is the two hour theory.

3 Let's talk about the impairment theory. In capable of safely  
4 driving a vehicle with any amount of alcohol in his system. How do we  
5 know this impairment? Through driving behaviors. Through what we  
6 can hear. What we can see. And what we can smell through our  
7 senses. That's what impairment is.

8 What did Oscar tell you based on his senses? Oh, Defendant  
9 run a red light. And then stop sign. Run a red light at Cabana, and then  
10 run a stop sign without ever slowing down. Oscar actually said 55 miles  
11 per hour. Jerry said 40, let's just go with 40. Ladies and gentlemen, 40  
12 is the speed at which he run the red light. It's the speed at which he run  
13 the stop sign. This was not just his normal driving behavior. What else  
14 did Defendant doing like that? Driving in oncoming traffic off the road.

15 So while he was on Desert Inn, the Defendant was literally  
16 driving the people who were headed east or heading west off the public  
17 roadway. Defendant smashed right into the concrete barriers without  
18 slowing down.

19 Water eyes when Oscar started interacting. Remember what  
20 did Oscar say. Conversational distance. Short of where Oscar was and  
21 the Judge. All right? A feet or two conversational distance. He saw  
22 watery eyes, could not keep balance, very strong sense -- scent of  
23 alcohol that was immediately noticeable. And slurred speech. Okay?

24 These are what Oscar noticed based on his senses and you  
25 guys can vicariously live through Oscar to see those signs of

1 impairment.

2           What about Jerry didn't see who the Defendant was driving  
3 the white van. She didn't try to claim to you. All she wanted to tell you  
4 was he observed. Anything that Jerry said didn't match what Oscar  
5 said? Anything? No. It's exactly consistent. All right? Even Oscar  
6 remembers Jerry's car. Right? Stop at the stop sign, it was her turn.  
7 Oh, man, this white van is not stopping. Continue to drive smash into  
8 the concrete barrier. That's what she could see.

9           What about Officer Polion at UMC. Yes, Officer Polion didn't  
10 see the impairment, but that's okay. We have members of the  
11 community to breach that gap. But what did the Officer Polion say?  
12 Watery eyes. He saw watery eyes from the Defendant and then he says  
13 slurred speech. Okay?

14           Here's the map to show you it's exactly the driving pattern of  
15 the Defendant. The orange arrow indicates that's Cabana, as you can  
16 see, the Defendant was driving westbound -- eastbound on Desert Inn.  
17 Ran a red light right here. Okay? On Cabana. Continue to drive.

18           Mind you, Oscar was following behind him this whole way.  
19 Never even tried to stop. Smashed right into the concrete barrier. Sorry,  
20 I got excited, but you saw the concrete barrier, that's where he was.

21           So that was the sentence where you can -- what Oscar saw,  
22 hear and smell. What Jerry saw and what officer saw and heard.

23           And then you have a different way of satisfying element two,  
24 which is that's easier, the two-hour theory. This is the science. Okay?  
25 This is the science. Where Denise Heineman testify how she conduct



1 analysis of the blood. Where the officer and the nurse get together to  
2 get the blood kit. That's the science. Okay?

3 Ladies and gentlemen there was no question in this case it  
4 was within two hours. How do you know when the incident occurred,  
5 the last time the Defendant was driving? Well we have the benefit of the  
6 911 calls. We have literally a robot telling us when the call came in. And  
7 I'm going to play that just for a second here.

8 [Whereupon, an audio recording, State Exhibit 1. was played in  
9 open court at 2:28 p.m., ending at 2:28 p.m., not transcribed]

10 MR. MENG: Jerry made the first call. 17 is the military time  
11 for 5:00, 5:19:09. That's what Jerry observed right after Defendant  
12 smashed into the concrete barrier. Zero question, it's on the 911. We  
13 have a robotic voice telling you that's when the call came in.

14 When did Officer Polion took the blood? 6:52:51. More than  
15 enough time, we have about 30 minutes to spare on the two-hour  
16 window. We saw right here, it might not show up very good, Officer  
17 Polion told you it's Zulu time that's what the Z stands for, 02:52, minus  
18 eight hour difference , pacific time to Zulu time eight hours ahead, 6:52.

19 Zero question. That's Brian right there -- he almost looks  
20 exactly the same from three years ago -- drawing the blood. No  
21 question. What was the result on the defendant's blood analysis? You  
22 will have this particular exhibit with you. Denise went extensively with  
23 her knowledge about blood testing. She told you .249. .249, three times  
24 the legal limit of what you're dealing with here .08.

25 So ladies and gentlemen, just to summarize, you have the

1 senses this and you have the science. All right? The A theory, the  
2 impairment theory, those are just the factors that Oscar, Jerry, and  
3 Officer Polion was able to see through their senses. The sight, the  
4 hearing and the smell. And then you have the science. The bloodwork  
5 telling you that Defendant's blood was .249 within two hours of the 911  
6 call when he smashed into those concrete barriers.

7 That's why, ladies and gentlemen, it's not just the C theory,  
8 it's the A theory. Those theories were there. Element two should be  
9 satisfied. And that's why I say it's not just the science, it's also the  
10 senses. Through the members of this community.

11 This is just a recap of the elements of the two elements. You  
12 should be checking off on all of them. At the end of this trial, ladies and  
13 gentlemen, after you consider all the testimony, Chad and I are going to  
14 ask you to find the Defendant, Gerald Whatley, guilty of driving under  
15 the influence.

16 THE COURT: Thank you very much. That concludes the  
17 opening [sic] by the State.

18 I'm pleased to hear the closing remarks by the Defense  
19 counsel.

#### 20 DEFENDANT'S CLOSING ARGUMENT

21 MS. PARK: Thank you, Your Honor.

22 Members of the jury, we heard from Ms. Skilbred, and she  
23 indicated that she saw a speeding white van, she did not see who was  
24 driving it. We heard her on the stand saying repeatedly he, him. But  
25 when questioned about that she said I don't know if it was a male or a

1 female. So I just want that to be very clear to the jury at this point.

2 Now, we have two officers who responded to the scene,  
3 neither of which came in contact with Mr. Whatley at the scene of the  
4 accident. All we have is Oscar. And when I spoke with Oscar today, we  
5 talked about when this happened, November 23rd of 2019. It was five,  
6 approximately 5:20 p.m. It's getting dark. He indicated that he was  
7 feeling a little scared. He also indicated that the person he came into  
8 contact with blood all over their face. So he's helping to make a  
9 recollection from almost three years ago with those other factors going  
10 on.

11 Now, we also know that Oscar said when he came upon the  
12 van, he saw the person trying to get out of the van. He didn't say I saw  
13 the Defendant while they were driving, and I saw this person trying to  
14 get out of the van. The doors were stuck. He was trying to get out of the  
15 door. Trying to push his way out of the van.

16 So Oscar didn't say to you, yes, when he was driving down  
17 the road, I saw his face. He said, I saw this person, covered in blood,  
18 while I was feeling scared at 5:20 p.m. on November 23rd of 2019. This  
19 is -- there is no other person that had any contact with Mr. Whatley while  
20 at the scene of an accident.

21 Now, I just want to bring your attention to Instruction No. 4,  
22 that that instruction said that a person is driving a vehicle on a highway  
23 to which the public has access. And that the person while driving is  
24 under the influence of an intoxicating liquor. And again, as the State just  
25 said, which is within measurement within two hours. But the key here is,

1 was Mr. Whatley driving that vehicle on November 23rd of 2019?

2           We go on to Instruction No. 5 where it goes the instruction  
3 on physical control in deciding whether a person has present influence,  
4 domination or regulation of the vehicle. And the factors that you would  
5 go through to try to determine that. Where the person is found in the  
6 vehicle. And whether the engine is running. The location of the vehicle  
7 keys. So those are things that you would take into consideration. The  
8 only person here who said that MR. Whatley could have been driving  
9 that vehicle was Oscar and like I said, he did not state that Mr. Whatley,  
10 he absolutely saw him driving the vehicle.

11           So I hope you all take that into consideration and consider  
12 the facts carefully and I'm confident that you will return with a guilty of --  
13 I'm sorry a verdict of not guilty. Thank you.

14           THE COURT: Thank you, Counsel.

15           All right. The State will have about five minutes to do a  
16 rebuttal. Everybody good? Anybody need to go to the restroom or  
17 anything? Okay. Very good.

18           We'll be pleased to hear the rebuttal from the State.

19           JUROR NO. 12: [Indiscernible]

20           THE COURT: I'm sorry. Did you need to go to the restroom?

21           JUROR NO. 12: No, sir. No, no, Judge, Your Honor. Sorry.

22           THE COURT: As I said before it is important to keep a sense  
23 of everything. So if anyone needs to, I don't have a problem.

24           All right. Go ahead. The State may have its rebuttal  
25 argument.

1                   STATE'S REBUTTAL CLOSING ARGUMENT

2                   MR. LEXIS: Folks I told you at the beginning this case is  
3 straight forward and it absolutely is. Look, possibilities and speculation  
4 is not reasonable doubt. And that's in your reasonable doubt instruction.  
5 You heard from the evidence, the evidence from Oscar told you this was  
6 the man. The evidence that Oscar told you that he saw the crash.  
7 Immediately went up there, you hear his 911 call, and tells you he sees  
8 one person in the car. One person transporting, even if he didn't -- even  
9 if he wasn't able to identify the man in court, you heard one person was  
10 transported to the hospital. As he told you one person's in the car.

11                  We could sit up here all day long and talk about, you know,  
12 it's possible maybe there was someone hiding in the back. Maybe there  
13 is this guy that jumped out of the back. Maybe speculate as to that.  
14 That's not reasonable doubt. And I'll get to that real -- in a second.

15                  As far as Defense counsel mentioned actual physical control,  
16 folks, as you see up here the elements is driving and/or in actual visible  
17 control of the motor vehicle.

18                  Yes, you have a separate thing that says actual physical  
19 control. When you're driving you're obviously in actual physical control.  
20 In some cases, you know, when the cop rolls up on somebody and  
21 they're walking out, they're doing an investigation they see him walk into  
22 the car, they're not even in the car. Or they come up upon a crash and  
23 he's outside the car. They you have to go through the factors on  
24 whether or not somebody's in actual physical control. Where is the  
25 keys? Are they in his pocket? You know, those factors don't apply when

1 someone's actually driving and crashes and somebody can say, oh,  
2 yeah, when I saw the crash that's the guy that was in the driver's seat.

3           So then there's two possible ways. The person driving, one,  
4 is found within a .08 or more of alcohol within two hours. Okay? But the  
5 law is broad. Sometimes you don't get the blood within two hours, or  
6 the blood gets destroyed or something happens with the blood. Okay?  
7 So what do we go on? We can go on the A theory. Look, he's guilty of  
8 both.

9           And all you need to do is find him guilty of one or the other.  
10 You even have a jury instruction that says some of you could find that  
11 he's guilty under the .08 theory; and some could find that he's guilty  
12 under the A theory and he's still guilty.

13           The fact of the matter is what are we going to look for? Let's  
14 say we had no blood. When you're talking about under the influence of  
15 alcohol, it means impaired to a degree that renders a person incapable  
16 of safely driving or exercising actual physical control. You don't even  
17 need to find driving conduct if somebody's exercising actual physical  
18 control.

19           So what are the factors you're going to look at? Well, alcohol  
20 on the breath. Open containers in the car. Bloodshot, watery eyes.  
21 Fixed stare. Having trouble standing up, as you heard in this case.  
22 Incapable of safely driving does not mean that a person is incapable of  
23 reaching his destination in safety, but rather the person's mental or  
24 psychological functions are diminished so that the risk of an accident is  
25 unreasonably increased.

1           Again, there is no better fact you could give the jury than  
2           somebody's driving conduct. Even though the law's telling you you  
3           don't need driving conduct. You got a man that runs a red light, runs a  
4           stop sign and crashes into a concrete barrier. Then Oscar telling you you  
5           got alcohol on the breath and the cop's telling you the same. If that's all  
6           the evidence we have, we'd be right here telling you that man's guilty.

7           With regards to the defense, oh, you know, it's possible  
8           somebody else is the driver. Let's speculate as to what else could have  
9           been -- who else could have been driving that car, if somebody. That's  
10          not the evidence. The evidence came from that witness stand. And  
11          don't take my word for it, this is your jury instruction. Yes, the  
12          Defendant is proved innocent unless the contrary is proved. The  
13          presumption places upon the State the burden of proving beyond a  
14          reasonable doubt every element of the crime charged, and that the  
15          Defendant is a person who committed the offense.

16          One, he's the driver, that's what the evidence showed. And  
17          two, he was either found with blood above a .08, no question three times  
18          the limit. Or exercise was impaired to a degree that rendered him  
19          incapable of safely operating that motor vehicle. Which obviously is  
20          apparent when you crash your car into a concrete barrier after running a  
21          red light and a stop sign.

22                THE COURT: One minute, Counsel.

23                MR. LEXIS: Reasonable doubt is one based on reason. It is  
24          not mere possible doubt but is such a doubt as would govern or control  
25          a person in the more weighty affairs of life. If the mind of the jurors after

1 the entire comparison and consideration of all the evidence are in such a  
2 condition that they can say they feel an abiding conviction of the truth of  
3 the charge, there is not reasonable doubt.

4 And here it is, folks, when the defense counsels could come  
5 up here all day long and talk about possibilities and speculation. Doubt  
6 to be reasonable must be actual, something that you can grasp on to and  
7 say, yeah, you know what? There was evidence. There's other people in  
8 that car. No, doubt to be reasonable must be actual, not mere possibility  
9 or speculation.

10 The State of Nevada asks you hold this man accountable for  
11 his actions and find him guilty of driving under the influence.

12 Thank you.

13 THE COURT: Thank you, Counsel.

14 All right. That concludes the closing arguments. At this  
15 point it's come for you to go back to the jury deliberation room and to  
16 begin your deliberations together.

17 Unfortunately two of your numbers won't be going back with  
18 you today. In every one of these trials we always select a couple people  
19 to be alternate jurors. We do that in case something comes up during  
20 the trial, somebody becomes ill, or an emergency occurs and that way  
21 we have somebody who can fill in for that juror and not have to redo the  
22 whole trial.

23 And so that's what we do in that regard. In this instance, our  
24 two alternates was Ms. Robinson and Ms. Calara. You won't be going  
25 back with the other jurors to deliberate. I apologize for that. I know



1 you've spent the last couple of days here and participated and listened to  
2 all the evidence. And I appreciate that. The parties appreciate that.

3 I'm not going to excuse you, though, at this point in time.  
4 Because there is a chance in any deliberation that something could come  
5 up and one of the jurors during the deliberation process would have to  
6 be excused. And if you think that that never happens, I had an instance  
7 happen just before the pandemic started where the jury started  
8 deliberations and within an hour one of the jurors got a call from the  
9 hospital that his wife was in the emergency room, and he had to go.  
10 And we were able to bring back one of the alternates and start the jury  
11 deliberations over.

12 So I'm not going to excuse you at this point in time. And as  
13 a consequence, I'm going to have to give you the same admonitions that  
14 I've given you every other break that we've had and that is while you are  
15 not to discuss or communicate with anyone, including fellow jurors, in  
16 any way regarding the case or its merits either by voice, phone, email,  
17 text, internet, or other means of communications or social medial.

18 You must not read, watch or listen to any news media --  
19 news or media accounts or commentary about the case. You must not  
20 do any research such as consulting dictionaries, using the internet or  
21 using reference materials.

22 You must not do any investigation, test the theory of the case  
23 or recreate any aspect of the case or in any way investigate or learn  
24 about the case on your own. And you must not begin to form or express  
25 any opinion regarding the case until you are discharged by me as

1 alternate jurors.

2 I want to thank you for your participation these next -- these  
3 last couple of days. I wish you the best going forward. I know the  
4 parties do, too. I'll ask -- where's Tiffany?

5 THE LAW CLERK: Here.

6 THE COURT: There she is.

7 I'll ask that the clerk to swear in Tiffany to take the alternate  
8 jurors out.

9 [The Clerk swears in the law clerk to take charge of the  
10 alternates]

11 THE COURT: All right. Leave your badge on the chair or  
12 actually Tiffany can pick those up. If you'll follow out Tiffany out and  
13 we'll -- she'll get what information to get in contact with you if we need  
14 to and bring your personal items. Okay.

15 [Alternate Jurors out at 2:44 p.m.]

16 THE COURT: I'll ask the clerk to swear in the marshal to take  
17 the jury out to begin deliberations.

18 [The Clerk swears in the marshal to take charge of the jury]

19 THE COURT: Ladies and gentlemen, take all of your items,  
20 your notepads and follow the Marshal out they'll take you to the jury  
21 deliberations rooms and you begin your deliberations with the goal of  
22 reaching a unanimous verdict.

23 [Jury retires to deliberate at 2:45 p.m.]

24 MR. MENG: Judge if there's any jury questions you have, I  
25 believe, BlueJeans?

1 THE COURT: Usually I'll just, if it's not anything that requires  
2 a lot of thought, I'll usually just call you up on the phone and we'll record  
3 it over the phone.

4 MR. MENG: Even better.

5 THE COURT: So sometimes the question requires a little  
6 more thought, but most of the time we're able to handle it over the  
7 phone. I assume you guys are just going to be -- are you both in this  
8 building or across the street?

9 MR. MENG: We're across the street, but we'll be working on  
10 this other --

11 THE COURT: No, I understand. So you're close buy.

12 MR. MENG: We're all close by, yeah.

13 THE COURT: Okay. What's your plans?

14 MS. PARK: I was just going to go over to my office and do  
15 some work.

16 THE COURT: Where are you at?

17 MS. PARK: I'm on 4th and Garces so about three blocks  
18 away.

19 THE COURT: Okay. All right. And Mr. Whatley, can I get you  
20 just to stay here at the courthouse?

21 THE DEFENDANT: Yes.

22 MS. PARK: I mean he could go to get something to eat  
23 across the street or something, right?

24 THE COURT: Well, yeah, I mean if he's somewhere within -- I  
25 just don't want to have the jury if they do come back today spend an

1 hour waiting for you guys to get here.

2 MS. PARK: Right.

3 THE COURT: And I'll be honest, you weren't very timely this  
4 morning, Mr. Whatley.

5 THE DEFENDANT: I apologize.

6 THE COURT: All right. Anyway, well, let's stay in the  
7 building or across the street at the restaurants that are over there. Okay,  
8 Mr. Whatley?

9 THE DEFENDANT: No problem.

10 THE COURT: Okay.

11 MR. MENG: Your Honor, I actually messed up, it's my fault. I  
12 forgot to bring a clean laptop for the jury to play the 911 calls, the digital.  
13 There's only two discs. So I'll run really quick and grab a clean laptop.

14 THE COURT: Okay. Grab the thing. Do you want to inspect  
15 the laptop before we send it back to the jurors?

16 MS. PARK: I trust that it will be a clean laptop.

17 THE COURT: Okay. I just wanted to make sure you had the  
18 opportunity to do that if you wanted to do that.

19 MS. PARK: Yeah. I trust that it will be a clean one.

20 THE COURT: And you make this really quick, so I mean we'll  
21 get it to you really fast if you want to take a look at it.

22 All right. Well, we'll see if they have any questions. I'll reach  
23 out to counsel. Otherwise we'll see you back when we have a verdict.

24 MR. MENG: Do you have everyone's cell phone number?

25 THE COURT: Sorry, what?

1 MR. LEXIS: I did, I sent it.

2 THE COURT: I think we've got the numbers.

3 THE CLERK: We have all of that, yes.

4 MS. PARK: Do you have mine?

5 THE CLERK: Yes.

6 MS. PARK: Okay. So at what time would we anticipate it  
7 would be the end of the day if they didn't reach a verdict?

8 THE COURT: Oh, counsel, before you leave, one more  
9 questions. If -- I'm not inclined to really go past 5:00 today. So if they  
10 need additional time to deliberate, does either side have any issue if I  
11 just excuse them at around 5:00 today and have them come back  
12 tomorrow? Or do you want to be here when I excuse them?

13 MR. MENG: Just excuse them, Judge, sounds good.

14 THE COURT: Okay.

15 MS. PARK: Yes, sounds good.

16 THE COURT: You good with that, Ms. Park?

17 MS. PARK: I'm good with that.

18 THE COURT: And then tomorrow morning when they would  
19 come back, is everybody okay with me just having the marshal meet  
20 them out in front of the double doors and taking them back to the jury  
21 deliberation room, or do you want me to have you come back and greet  
22 them in the morning for further deliberations?

23 MR. MENG: Just do the Court's thing. We don't want to be  
24 here.

25 THE COURT: All right.

1 MS. PARK: I agree.

2 THE COURT: Okay.

3 MS. PARK: One question, though. If they are coming back  
4 tomorrow what time would they be coming back so we know to be  
5 within the area?

6 THE COURT: Usually what I'll tell them is they can come  
7 back their choice as early as 8:00, but I would ask no later than 10:00.  
8 And almost, I'd say 75 percent of the time they'll pick 9:00.

9 MS. PARK: Okay.

10 THE COURT: So I've never had anyone yet pick 8:00. So I've  
11 had a few pick 10:00 but almost everybody ends up picking 9:00.

12 MS. PARK: Okay.

13 THE COURT: All right. We'll see what happens.

14 MS. PARK: All right.

15 THE COURT: Thank you all.

16 [Recess at 2:50 p.m., recommencing at 4:11 p.m.]

17 THE COURT: We're ready to go back on record?

18 COURT RECORDER: Yes, back on the record.

19 THE COURT: All right. All right.

20 It's my understanding the jury's reached a verdict. Is there  
21 anything we need to discuss before we bring them in?

22 MR. MENG: No, Your Honor.

23 MS. PARK: No, Your Honor.

24 THE COURT: Okay. Go ahead and bring in the jury.

25 THE MARSHAL: Yes, Sir.

1 [Jury in at 4:13 p.m.]

2 THE MARSHAL: All rise for the jury.

3 THE COURT: All right. The parties stipulate to the presence  
4 of the jury panel?

5 MR. MENG: Yes, Your Honor.

6 MS. PARK: Yes, Your Honor.

7 THE COURT: All right. Good afternoon, ladies and  
8 gentlemen. It's good to see you all back.

9 Mr. Padilla, it's my understanding you are the selected  
10 support person?

11 JUROR NO. 8: Yes.

12 THE COURT: And it's also my understanding that the jury  
13 has reached a verdict?

14 JUROR NO. 8: We have.

15 THE COURT: All right. Did you fill out the verdict form and  
16 sign and date it?

17 JUROR NO. 8: I have.

18 THE COURT: Could you hand up that to the marshal, please?

19 All right. Clerk will read the verdict.

20 VERDICT

21 THE CLERK: District Court Clerk, County of Nevada, State of  
22 Nevada versus Gerald Lee Whatley, Jr., A.K.A. Gerald Lee Whatley, Jr,  
23 case number C-21-357412-1, Department 20.

24 We, the jury in the above-entitled case, find the Defendant as  
25 follows:

1 Count I: Driving and/or being in actual physical control of a  
2 motor vehicle, while under the influence of an intoxicating liquor or  
3 alcohol.

4 Guilty of driving and/or being in actual physical control of a  
5 motor vehicle, while under the influence of an intoxicating liquor or  
6 alcohol.

7 Dated this 26th day of April 2022, Stephen Padilla,  
8 Foreperson.

9 THE CLERK: Ladies and gentlemen of the jury is this your  
10 verdict, as read? So say you one, so say you all?

11 THE JURY: Yes.

12 THE CLERK: Thank you.

13 THE COURT: Does either party wish to have the jury polled?  
14 State?

15 MR. MENG: No, we're set, Your Honor.

16 THE COURT: Defense?

17 MS. PARK: No, Your Honor.

18 THE COURT: All right.

19 All right, ladies and gentlemen. That concludes your service  
20 as jurors in this case, and you are discharged as jurors. You're free now  
21 to discuss the case with whoever you want, your family, your friends, or  
22 whoever you would like. You're also free not to discuss the case with  
23 anyone, if you don't want to discuss the case. All you need to do is tell  
24 them you don't want to discuss it, and the 32 years that I was a litigator  
25 with the Department of Justice and the seven years I've been here on the



1 bench, I haven't had anyone tell me that when they said they didn't want  
2 to discuss the case, that people didn't honor that request. But you are  
3 free at this point to discuss it.

4           You have my thanks. You have the Parties' thanks, in terms  
5 of your participation. As I said yesterday, I do know -- we all know that  
6 this takes you away from your lives and your time and things you'd  
7 probably be much rather doing, but what you are doing is very, very  
8 important for the community, and I appreciate that, and so do the  
9 parties.

10           If you have just a couple minutes, I really would appreciate it  
11 if you'd go back with the marshal to the jury deliberation room, let me  
12 come back and personally thank you for your service, and see if you  
13 have any suggestions for the Court, in terms of how we operate or how  
14 we present the case, and give you the information that you need to make  
15 a decision.

16           So if you've got a minute, I really would appreciate it if you'd  
17 do that. If you don't have the time to do that, I understand, and you can  
18 take out and leave with my thanks and appreciation and the appreciation  
19 of the whole Court. But if you do have a minute, I'd appreciate it if you'd  
20 go with the marshal.

21           THE MARSHAL: All rise for the jury.

22                           [Jury excused at 4:18 p.m.]

23           THE COURT: All right. Let's see. Make sure it's closed. All  
24 right.

25           Does either party -- is there anything we need to deal with

**PLEADING  
CONTINUES  
IN NEXT  
VOLUME**