

IN THE SUPREME COURT OF THE STATE OF NEVADA

WILBURT HICKMAN, JR., A/K/A
WILLIAM HICKS,
Appellant(s),

vs.

THE STATE OF NEVADA,
Respondent(s),

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Case No: C-12-278699-1

Docket No: 86554

RECORD ON APPEAL VOLUME 6

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1 Q Ten years as a police officer?

2 A Yes.

3 Q Was here locally?

4 A Yes, sir.

5 Q Is that in part why you would have taken over that point in time --

6 MR. POSIN: Objection; leading.

7 MR. SCOW: It's not leading if it doesn't suggest the answer; overruled.

8 THE WITNESS: Yes; I took over. I felt that my experience would better deal
9 with the problem.

10 BY MR. SCOW:

11 Q Having been a police officer, driven the streets, and encountered --

12 MR. POSIN: Objection; leading.

13 THE COURT: I'm not sure it's leading, but it is kind of testifying. So, try and
14 -- if there was a going to be a question that was going to be leading. So, I'm going
15 to sustain that objection.

16 BY MR. SCOW:

17 Q So, you take over at that point in time escorting the Defendant to his
18 car?

19 A Yes.

20 Q And did you have your hands on him?

21 A Yes, sir.

22 Q How was it that you did that?

23 A I did that with an arm bar.

24 Q Okay. Can you describe what that is?

25 A An arm bar is having the arm extended and placing your other arm,

1 your other hand in the arm pit and in the shoulder area keeping the subject away
2 and just escorted him to his car.

3 Q So, would the arm be extended out to the side of behind? Where would
4 the arm --

5 A It was actually out to the side and we were walking to his car.

6 Q Okay. And on this part at this point in time -- at a previous hearing you
7 described as you were escorting him out he was mumbling; do you recall that?

8 A Yes.

9 Q Can you describe what it was that he was saying as you escorted him
10 to the car?

11 A He wanted to see his daughter. That was his whole thing. He just
12 wanted to see his daughter.

13 Q Okay. Now was this something that he was yelling out at that time?

14 A No, he wasn't yelling it at all.

15 Q So, why would you describe it as mumbling?

16 A Because it was low under his breath. I could hear him because I was
17 right there.

18 Q So, under his breath you said?

19 A Yes, yes.

20 Q When you got the Defendant to his car, the general area is right in here;
21 is that correct?

22 A Yes, sir.

23 Q What happens when you get him to his car?

24 A As he begins to enter in to this car, he gets in his car; intuition,
25 experience, told me not to turn my back on him. So, I backed away from him.

1 Q Okay. So, you're backing. Towards the church building or where you
2 going?

3 A Yeah. I'm backing away towards the middle of the walkway towards the
4 door.

5 Q But you are keeping our eye -- and you're facing the car; is that what
6 you said?

7 A Yes.

8 Q Why was that?

9 A Intuition. Something just told me something's about to happen.

10 Q So, your intuition -- you felt like something was going to happen?

11 MR. POSIN: Objection; leading.

12 THE COURT: Sustained.

13 MR. SCOW: I'm just stating what he had just said.

14 THE COURT: I know you are. I think you don't need to restate everything he
15 says. Sustained.

16 BY MR. SCOW:

17 Q Did you ever testify at a previous hearing as well in this case to where
18 you just said that you had felt that something was about to happen; do you recall
19 that?

20 A Yes.

21 Q And do you recall during that hearing if the Defendant had said
22 something in response to what you had just said?

23 A Yes, sir.

24 Q What was that?

25 A That I almost broke his damn arm.

1 Q Okay. And so that's something that the Defendant had said?

2 A Yes.

3 Q After you'd said that your intuition told you something was about to
4 happen, what was it that Defendant said?

5 A You know, that you almost broke my damn arm.

6 Q And he was talking about you almost broke his arm?

7 A Yes.

8 Q So, then what happens as you're backing up, keeping your eye on the
9 car; what happens?

10 A He backs out. He puts the car in reverse and backs out. I'm looking
11 right into the car, the front windshield, and the motors revs, wheels start spinning.
12 The car comes directly at me. I jump out of the way. He turns the car right into the
13 crowd of people that's standing at the front door of the church and crashes into the
14 door hitting several people and taking the car into the church.

15 Q Now let's go through this a step at a time. Let's go back to that prior
16 hearing when you had said that you felt like something was about to happen and the
17 Defendant blurted out because you almost broke my arm. Do you remember if he
18 had said anything else after that?

19 A You almost broke my damn arm. That's why. That's what he said. A

20 Q So, that's why something was about to happen.

21 MR. POSIN: Objection, Your Honor; calls for speculation.

22 THE COURT: I don't remember how he phrased it.

23 MR. SCOW: Your Honor, the witness said that's why and ended there. The
24 question then tried to give some interpretation before as to what that meant.

25 THE COURT: All right.

1 MR. SCOW: Well the question was --

2 THE COURT: What was the question.

3 MR. SCOW: That going back to the prior hearing when you testified that you
4 were keeping an eye on him because something was about to happen, the
5 Defendant said something about because you almost broke my arm, was there
6 anything else that was said; do you recall. And he said because you almost broke
7 my arm. That's why.

8 THE COURT: Okay. And this was said at a hearing, not at the time he was
9 at the church?

10 MR. SCOW: Correct; at a prior hearing.

11 THE COURT: Okay. That wasn't clear. Okay. All right. Overruled.

12 BY MR. SCOW:

13 Q Now you had said before as you're backing up and keeping an eye on
14 the Defendant in the car that he backs up?

15 A Yes.

16 Q When he backs up, which direction is the car facing?

17 A The car facing Las Vegas Boulevard. It's facing the exit to leave.

18 Q So, the car was facing out towards the street out here?

19 A Yes, sir.

20 Q Okay. And did the car stop at that point when it's facing Las Vegas
21 Boulevard?

22 A It came to a complete stop, yes.

23 Q What did you observe that happened at that point?

24 A I noticed the engine rev up, the wheels started spinning, the car came
25 directly at me. I jumped out of the way and it continued into the church into the

1 crowd of people.

2 Q So, did you see the tires turn in your direction?

3 A Yes.

4 Q At what point in time was that in relation to when you heard the tires
5 screeching?

6 A The tires started screeching, the wheels turned, and he came at me.

7 Q So, maybe -- when you say the wheels turned were they like spinning
8 like this --

9 A Spinning.

10 Q -- or did they turn in your direction?

11 A The wheels started -- he started squealing his tires, the wheels turned,
12 and the car started moving towards me.

13 Q And moving towards you. And you said -- what did you do at that point
14 in time?

15 A I jumped out of the way.

16 Q What would have happened if you didn't move out of the way?

17 A I would have been hit.

18 Q So, were you in fear for your life at that point in time?

19 A Absolutely; yes, sir.

20 Q And did this happen -- was this quick? Did this happen a short period
21 of time between when he backed up and drove at you, was this relatively quick?

22 A Yes.

23 Q So, you jumped out of the way. And where did the car go after you
24 jumped out of the way?

25 A The car continued its path. After he came at me, the car continued its

1 path into the doors of the church where the other people were standing.

2 Q There were other people standing in the front doors, those double doors
3 of the church?

4 A Yes; yes, sir.

5 Q About how many?

6 A Six, about six or seven people.

7 Q Six or seven people. Were any of those people kids -- children?

8 A Yes.

9 Q So, after you jump out of the way, the car continues on; there's people
10 in front of the church. Did you see them at that point in time as the car passes you?

11 A As the car passes me, yeah, I could see the people.

12 Q So, what did they do as that car approached the doors?

13 A They're running and moving. The little girl didn't. She wasn't fast
14 enough to get out of the way.

15 Q The little girl got hit by the car?

16 A Yes, sir.

17 Q Showing you State's Exhibit 6. If you can hit that bottom left corner
18 again it'll erase some of those finger marks. Is this where the car ended up after it
19 passed you?

20 A Yes, sir.

21 Q After the people are jumping out of the way, is this where the car ended
22 up?

23 A Yes, sir.

24 Q What did you do after the car ran into those doors?

25 A I came around the passenger side of the vehicle and entered the cabin

1 of the vehicle through the back passenger door.

2 Q When the wheels started spinning, turning towards you and starts
3 going, could you see the Defendant behind the steering wheel?

4 A Yes.

5 Q What was he doing?

6 A He was looking at me.

7 Q So, you knew he was behind the wheel of that car?

8 A Yes; he was driving the vehicle.

9 Q So, after it lodges in the doors, what did you do again?

10 A I came through the passenger side of the vehicle, opened the back
11 passenger door, and entered the cabin of the vehicle.

12 Q Showing you Exhibit 8. Is this showing the passenger side of the car?

13 A Yes, sir.

14 Q Now it looks like the front passenger door is open. Is that the one you
15 had gone in?

16 A No, sir.

17 Q Which door did you go through?

18 A I went through this door.

19 Q Okay. The back one. What did you do when you went in the car?

20 A I immediately started to attempt to get his hand off the gear shift
21 because he was trying to reverse the vehicle.

22 Q And could you hear the engine at that point?

23 A Yes, sir.

24 Q What was the engine doing?

25 A It was revving.

1 Q So, you could hear the engine going even though the car's in the doors
2 you could hear the engine revving?

3 A Yes, sir.

4 Q You had said that the hand -- the Defendant's hand was on the gear
5 shifter?

6 A Yes, sir.

7 Q And what did you do?

8 A I struck him arm several times attempting to have him break free of the
9 gear shift. After about the third or fourth strike, it came free. At that point, I put the
10 car in park and turned it off and held him down.

11 Q Was he physically resisting you at this point?

12 A Yes.

13 Q Because you were trying to take his hand off, was he fighting against
14 your efforts?

15 A Yes; he's holding on to the gear shift pretty good. That's why it took
16 four or five strikes.

17 Q Because you were hitting his arm to try to get him let to go?

18 A Yes, sir; trying to get him to let go of the gear shift.

19 Q Has your attempting to gain control of the Defendant as he's sitting in
20 the driver's seat, are you able to see outside the car at that point too?

21 A Yes, sir; yes, sir, I am.

22 Q What do you see when you look outside the car?

23 A As I'm holding him down, I look over and I see a shoe, a kid's shoe, and
24 I immediately started asking the other guys and the other people around was she
25 underneath the car, you know, I asked that several times and didn't get a response.

1 Q What was the scene like outside the car?

2 A It was chaotic, it was chaotic.

3 Q And during this time when you're in the car, the Defendant's car, and
4 you're trying to get him under control, did you hear him saying anything at that
5 point?

6 A No, sir, I honestly don't remember if he said anything.

7 Q You don't remember if he had said anything? What was it that you were
8 focused on?

9 A Trying to stop him from furthering his car into the church; trying to
10 subdue him, keep him from hurting anybody else.

11 Q So, you don't remember if you had said anything in that period?

12 A No, sir, I don't.

13 Q What happens then after you get the Defendant under control, the
14 people outside are kind of chaotic looking for the girl with the missing shoe, what
15 happens then? Do you put the Defendant into handcuffs?

16 A Yes, sir.

17 Q Where'd you get those handcuffs?

18 A I had to switch places with another officer. So, I went to my car and
19 grabbed set of handcuffs out of my car and came back to his car and placed him in
20 hand restraints.

21 Q And at some point did Metro police officers respond to the scene?

22 A Yes, sir, they did.

23 Q About how long after the car ran into the church was it that police
24 responded?

25 A Thirty, 35 minutes, maybe. It was a while.

1 Q It took some time?

2 A Yes, sir.

3 Q And were you and other security members then involved with trying to
4 keep control of the scene and maintain the Defendant in custody?

5 A Absolutely; yes.

6 Q You said you didn't remember anything being said but in the time you
7 were in the car trying to get him off the gear and the steering wheel, at any time after
8 that was there ever an apology from the Defendant?

9 A No, sir.

10 MR. POSIN: Objection; relevance.

11 THE COURT: Overruled.

12 THE WITNESS: No, sir.

13 BY MR. SCOW:

14 Q And at any point in time during that entire incident from the first time
15 you met up with him on the exit side of the building so when the car ran into the
16 church was he ever, from your observations, incoherent?

17 A No, sir.

18 Q Unable to do things of his own will and power?

19 A No, sir. He was definitely coherent.

20 Q At any point in time could you smell the odor of alcohol?

21 A Yes, sir.

22 Q At what point or points?

23 A The initial contact when Craig and I met with him on --when I first
24 arrived and as Craig was talking to him, I could smell the odor of alcoholic beverage
25 coming from his person.

1 Q At the time where the wheels are screeching after he just backed up,
2 the wheels are screeching turning towards you, how would you describe the
3 Defendant's actions at that time?

4 A Deliberate, very deliberate.

5 MR. SCOW: Court's indulgence.

6 BY MR. SCOW:

7 Q Just one more thing. In relation to where you were versus the crowd,
8 showing you what's marked as State's proposed Exhibit 16 and ask if you recognize
9 this?

10 A Yes, sir.

11 Q What is that a picture of?

12 A It's a picture of the wall against -- where his car was parked against
13 before he ran into the church -- where he backed up from to come at me.

14 Q So, this is the area where he parked a second time?

15 A A second time; yes, sir.

16 Q When he backed up and then drove at you?

17 A Yes, sir.

18 Q So, it fairly and accurately depicts that scene as it was on December
19 18th, 2011?

20 A Yes, sir.

21 MR. SCOW: Move to admit State's proposed 16.

22 MR. POSIN: No objection, Your Honor.

23 THE COURT: It'll be admitted.

24 **[STATE'S EXHIBIT #16 ADMITTED]**

25 MR. SCOW: I'm publishing for the jury. This is the area where -- as you

1 described the incident, where he backed up and then drove at you; this is where that
2 took place?

3 MR. POSIN: Objection; leading.

4 MR. SCOW: I'm just setting foundation.

5 THE COURT: Overruled.

6 BY MR. SCOW:

7 Q So, on this picture, can you indicate approximately where you were as
8 the Defendant backed up and then drove at you?

9 A I was about here.

10 Q Okay. And in this photograph, can you see where the people were or
11 approximately where they would have been outside the doors?

12 A My back is to him. So, at some point I wouldn't be able to see him. I'm
13 looking at him.

14 Q Okay. Then when the car passes you said you see the people
15 scattering out of the way?

16 A Yes.

17 Q Is that in this picture, the area where they then scattered?

18 A Yes, sir.

19 Q And where is that?

20 A It's just -- actually it's on the other side of this car here so it's in that
21 general area.

22 Q Okay. And then showing back to State's Exhibit 6; do you see on here
23 where it was that the people were congregated?

24 A Yes.

25 Q Where was that?

1 A They were congregated here.

2 Q Okay. So, right in front of that -- the double doors?

3 A Yes, sir.

4 MR. SCOW: I'll pass the witness, Your Honor.

5 THE COURT: Cross.

6 MR. POSIN: Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MR. POSIN:

9 Q Now this incident happened in December of 2011; right?

10 A Yes, sir.

11 Q And then you testified as you mentioned in another hearing in this case,
12 and that was some time after that; right?

13 A Yes, sir.

14 Q In fact, that was in January of 2012, just about a month later; right?

15 A Yes, sir.

16 Q At that time you swore to tell the truth. You held up your hand and you
17 said I'm going to tell the truth?

18 A Yes, sir.

19 Q And at that time you mentioned the fact that Mr. Hickman was
20 mumbling; right?

21 A Yes, sir.

22 Q And you mentioned the fact that it was like he was under -- not
23 understanding what we were saying; right?

24 A Yes, sir.

25 Q And then you also talked about at some point that you were back

1 pedaling away from him; do you remember that?

2 A Yes, sir.

3 Q Now you meant physically back pedaling; right?

4 A Walking backwards, yes.

5 Q Walking backwards.

6 A Yes.

7 Q Now back pedaling has another meaning; doesn't it?

8 A If you play football as a defense back, of course it does.

9 Q It also means figuratively, you can back pedaling away from something;
10 that you can be moving away from something you previously said?

11 A I was walking backwards away from his vehicle.

12 Q Okay. Now today do you think you're back pedaling away from those
13 statements?

14 A No.

15 Q Because in fact he was mumbling; wasn't he?

16 A No; I could hear him.

17 Q All right. Well isn't that a bit of a back pedaling? You didn't say that
18 when you testified a month later; did you?

19 A I could hear him. Nobody else could hear him.

20 Q You didn't say that to the Court when you testified a month after this
21 happened; did you?

22 A I said mumbling.

23 Q You said mumbling and now you're back pedaling; aren't you?

24 A No, I don't back pedal.

25 MR. POSIN: That's all I have, Your Honor.

1 THE COURT: Redirect.

2 MR. SCOW: Yes; thank you.

3 **REDIRECT EXAMINATION**

4 BY MR. SCOW:

5 Q At that prior hearing were you asked to describe what you meant by
6 mumbling when you said mumbling?

7 A Yes.

8 Q You were asked what that mean at that prior hearing?

9 A No, no, I wasn't.

10 Q At the prior hearing you weren't but today you were?

11 A Yes.

12 Q At the prior hearing you weren't asked by the prosecutor or by the
13 defense attorney what you meant by mumbling?

14 A Nr, sir.

15 Q What was it that you meant by mumbling?

16 A He was talking low under his breath. I could hear him because I within
17 two or three feet of him. Nobody else could hear him.

18 Q And at that prior hearing when the Defendant had made the statement
19 you almost broke my arm that's why; how was it that he said that?

20 A He yelled it.

21 Q He yelled it out?

22 A Yes, sir.

23 MR. SCOW: No more questions.

24 MR. POSIN: No recross, Your Honor.

25 THE COURT: Thank you very much for your testimony.

1 THE WITNESS: Thank you.

2 THE COURT: Call your next witness.

3 MR. HAMNER: The State calls Washington Thompson to the stand.

4 THE MARSHAL: The State calls Washington Thompson.

5 **WASHINGTON THOMPSON**

6 [having been called as a witness and being first duly sworn, testified as follows:]

7 THE COURT CLERK: You may seated. And if you could please state your
8 name and spell it for the record.

9 THE WITNESS: Yes, Washington Thompson. That's W-A-S-H-I-N-G-T-O-N
10 T-H-O-M-P-S-O-N.

11 THE COURT CLERK: Thank you.

12 THE COURT: You may proceed.

13 **DIRECT EXAMINATION**

14 BY MR. HAMNER:

15 Q Good afternoon, Mr. Thompson.

16 A How you doing?

17 Q Good. Are you familiar with a place called the New Antioch Christian
18 Fellowship Church?

19 A Yes, I am.

20 Q How do you -- how do you know about that place?

21 A That is my church that I go to.

22 Q How long have you been going to the New Antioch church for?

23 A Approximately four years.

24 Q All right. Now I want to turn your attention back to December 18, 2011
25 probably about 8 o'clock in the morning. Do you remember where you were around

1 that time?

2 A Yes.

3 Q Where were you?

4 A At church services.

5 Q At the New Antioch church?

6 A Yes.

7 Q And that's located on 3950 Las Vegas Boulevard here in Clark County;
8 isn't it?

9 A Yes, it is.

10 Q Now what did you notice -- did something kind of stand out during that 8
11 a.m. service did you notice when you were inside at the service?

12 A Yes.

13 Q What kind of jumped out?

14 A Well we had one guest that came in that was acting a little peculiar.

15 Q Okay. Now prior to that guest arriving, how did the service up to that
16 point go?

17 A It was a normal service.

18 Q Now do you see that guest here in the courtroom today?

19 A Yes.

20 Q Mr. Thompson, if you could point out that guest and an article of
21 clothing that they're wearing and where they're located in the courtroom we'd
22 appreciate it.

23 A He's sitting right there with glasses on with a white shirt.

24 MR. HAMNER: Let the record reflect that the --jacket on or off?

25 THE WITNESS: Off.

1 MR. HAMNER: All right. Let the record reflect the witness has identified the
2 Defendant, Wilburt Hickman.

3 THE COURT: It will.

4 BY MR. HAMNER:

5 Q All right. So, Defendant comes in and you notice him. Tell the jury
6 what kind of caught your eye about it?

7 A Well when he came in he was -- he was jovial, he was walking around.
8 When he first came in, he came through the door. The ushers tried to seat him like
9 they normally do any other guests that come in. He didn't want to seat where they
10 wanted to sit him at. He wanted to go up front of the church and sit in the front pews
11 in the front chairs, and they normally don't sit guests there. They kind of fill up the
12 church from the back to the front. Well he wanted to go up front. They allowed him
13 to go up front because he insisted on going up front. And when he went up front, he
14 kept moving around a lot like he was really -- he was acting happy, jovial, but he
15 kept moving around and looking around. And one of the other members on the
16 safety team told me and the other guy that was on safety that day make sure you
17 keep an eye on this guy. He looks wet.

18 Q I'm going to stop you right there for a second. That's giving us a lot of
19 information. I'm going to break it up just a little bit.

20 A Okay.

21 Q So, one of the things that you mentioned was that you said that the
22 Defendant was pretty particular about where he wanted to sit?

23 A Yes.

24 Q He was very insistent exactly where he wanted to sit in the courtroom --
25 scratch that -- in the church, in the sanctuary; is that what you're telling us?

1 A Yes, it is.

2 Q Okay. And you said his demeanor initially was pretty happy?

3 A Yes.

4 Q Now you used this word wet. What did you mean by that?

5 A It means that he was drunk. He had been drinking and he was kind of
6 high, and wet is a term that we use for that.

7 Q Okay. Do you remember coming to a prior proceeding and maybe even
8 using the word -- in addition to wet maybe a little tipsy; do you remember saying that
9 maybe previously?

10 A Yes.

11 Q Now, Mr. Thompson, have you ever seen drink alcohol before?

12 A Yes.

13 Q Have you seen people drink a few drinks?

14 A Yes.

15 Q Have you seen people drink a lot of drinks?

16 A Yes.

17 Q Sloppy drunks; you've seen those too?

18 A Yes.

19 Q What sort of situation are we dealing with when the Defendant comes?
20 Are we dealing with a sloppy drunk. Is that the type of situation we're dealing with?

21 A No, he wasn't a sloppy drunk in my opinion, no.

22 Q Tell the jury. What are we kind of dealing with here at this point?

23 A I was say it was in between. He was not sloppy; he was high. He was
24 like really at the point where he was -- he wasn't falling around; he was feeling good.
25 He was high.

1 Q Have you ever heard the term buzzed before?

2 A Yes.

3 Q Does that sound about right? Does buzzed seem to kind of fit this
4 situation?

5 A Yes, it does.

6 Q Okay. Now when he walked up to the church, was he stumbling
7 around?

8 A You mean when he walking around in the church?

9 Q Yeah. When he came up to sit up, was he having a hard time walking
10 to make it up to that front part?

11 A No.

12 Q Did he lean on any of the ushers to kind of help him get there on his --
13 because he couldn't get there on his own?

14 A No.

15 Q Okay. Anything remarkable about the way he moved when he was
16 inside church?

17 A Not really, no.

18 Q All right. Now at some point later is there a point where you guys have
19 like an altar call and like a joining of the church; does something like happen during
20 your services?

21 A Yes, it is.

22 Q Okay. Did something along those lines happen during that service?

23 A Yes. Shortly after we took up the offering, the pastor always asked
24 anyone -- any visitors if they would like to join our church, become members.

25 Q And did the Defendant have any reaction to that request or question by

1 the pastor?

2 A Well yes. He came up to the altar to join the church.

3 Q And did your church accept him as a member?

4 A Yes, we did.

5 Q Did he have any difficulty walking up to the front when he decided to
6 join your church?

7 A No; he came up with a big smile happy to do it.

8 Q And when he announced that he'd like to join, did he have to say
9 anything or was it just a physical walking up?

10 A It was a just a walk up but he was smiling. The pastor asked him his
11 name. He gave him her name and she prayed for him and we said welcome home.
12 She told him -- she normally take 'em back to get their information to take him back
13 to get his information. She took him back and got his information. He came back
14 out and came back up to the front again and sit there.

15 Q And during all the time that you've observing him during your 8 a.m.
16 service, Is there anything kind of unusual about the way he's walking or interacting
17 with people at this point?

18 A Other than being extra happy, no.

19 Q Okay. I want to turn your attention about the time that the service kind
20 of concludes. Around what time does the 8 a.m. wrap up?

21 A Normally between 9:20, 9:40.

22 Q Now is there another service that happens after the 8 a.m.?

23 A Yes; we have a 10 o'clock service.

24 Q Okay. So what do you do during this kind of transition period? What
25 are you doing at this point?

1 A I'm normally with the pastor. We let the 8 o'clock service go. I'm
2 standing with the pastor at the double doors inside to make sure that everyone is
3 able to get out and leave, and she's greeting everyone that leaves, thanking them
4 for coming. And that's where I was at at the time so I could see everything that's
5 going on inside the sanctuary and watching members as they leave.

6 Q Okay. I'd like to show you State's -- it's already been admitted as
7 State's 1 but I can't make this pop back on. I'm going to show you what's been
8 admitted as State's Exhibit 1; you recognize that building right there?

9 A Yes.

10 Q Could you point out where the entrance to the church is where you
11 were standing; do you see it depicted in this picture here? Do you see it depicted in
12 this picture here?

13 A Yeah -- yes.

14 Q You could take your finger and actually just make a slash right on the
15 TV screen and it will make a mark; could you do that?

16 A Okay. This is the door where -- I was inside this door.

17 Q And I know the marking is moving a little bit to the left. So, when you
18 say I was near this door, is this the door you're talking about?

19 A Yes.

20 Q Okay. So, you're standing out there, those are the double doors that
21 you're talking about?

22 A Not at first. I was inside those doors. There's other double doors inside
23 there.

24 Q Okay. So, are you in the double doors to the sanctuary or are you at
25 the double doors at the actual entrance from the outside to the church?

1 A I was at the double doors to the sanctuary at first.

2 Q All right. So, now you're there. Do you notice anything at that point in
3 time while you're standing around at that point?

4 A I noticed that Mr. Hickman was being escorted out.

5 Q And who was escorting him out?

6 A At first Craig was escorting him out.

7 Q And tell the jury this. Was he being escorted out the front or was he
8 being escorted in another direction?

9 A He was being escorted out the back way which is the other side.

10 Q Okay. And do you see kind of generally -- could you make a mark
11 generally where the back entrance is to your church?

12 A Yeah. Right over here.

13 Q Okay. So, somewhere on this side there's an exit where you can walk
14 out?

15 A Yes.

16 Q And that's where Craig was going with the Defendant?

17 A Yes.

18 Q Now could you tell what the Defendant's demeanor was at that point?

19 A Smiling and walking with Craig.

20 Q He seemed all right at that point?

21 A Yes.

22 Q What do you notice next, anything?

23 A Not at that time. He left with Craig.

24 Q Okay. And then what's the next thing you kind of remember as it
25 relates to this case, Mr. Thompson?

1 A The next thing I remember is as everybody left, the pastor went back --
2 she had went into her office. I was checking the double doors inside and I could see
3 that Mr. Hickman had came back inside and I could see that Kevin had asked -- was
4 talking to Mr. Hickman. So, I came over where I could hear Kevin and Mr. Hickman
5 talk because normally between 9:50 to say 9:55 they have a prayer service with the
6 serving leaders, you know, before the 10 o'clock service and they were trying to do
7 that, but with Mr. Hickman being -- walking around as he was, it was creating some
8 kind of confusion.

9 Q Okay. I want to stop you just for a second. I know you've been asked
10 this before. Do you have sort of role at the church, at least around this time on
11 December 18, 2011?

12 A Yes; I was part of the safety.

13 Q Okay. And who are some of the other members of the safety team, Mr.
14 Thompson?

15 A Craig Hutton was the safety team leader, Allen Burse was on the safety
16 team --

17 Q Okay.

18 A -- and myself.

19 Q All right. Now you said you mentioned you saw Mr. Madden, Pastor
20 Madden.

21 A Kevin -- Minister Madden, yeah.

22 Q Mr. Madden, Kevin Madden?

23 A Yes.

24 Q Now you see him and you approach?

25 A Yes.

1 Q Now you had already seen the Defendant walk out but now he's back
2 inside the sanctuary of the church.

3 MR. POSIN: Objection; leading.

4 MR. HAMNER: I don't think it suggests the answer.

5 THE COURT: No; it's more asked and answered so it's overruled.

6 BY MR. HAMNER:

7 Q So, now he's back inside the sanctuary; is that right Mr. Thompson?

8 A Yes, it is.

9 Q All right. So, you approach. What do you -- do you hear the Defendant
10 say anything at this time?

11 A I hear Kevin telling him you have to leave.

12 Q Okay. And what was the Defendant's demeanor to that request by
13 Minister Madden?

14 A Well he was shouting that he wanted to see his daughter. He was
15 looking for his daughter.

16 Q Is he still as happy and jovial as he was before?

17 A No; he was shouting, he was angry. He had changed from happy to
18 angry.

19 Q Okay.

20 A And that's why Kevin was trying to get him out because we was trying
21 to have the prayer before the 10 o'clock service.

22 Q Was Minister Madden yelling at him?

23 A No, he wasn't yelling.

24 Q Now when you heard speak did he mumble?

25 A Which one?

1 Q I apologize. When the Defendant spoke saying I want to see my
2 daughter was he mumbling at the time?

3 A No, he wasn't mumbling; he was shouting.

4 Q Did he sound incoherent?

5 A No.

6 Q Did he sound, based on the interaction between the two, as if he didn't
7 understand what was going on?

8 A He understand everything that was going on from what I saw.

9 Q So, ultimately is he escorted out again, Mr. Thompson?

10 A Yes; he was taken by the arm by Minister Madden and Minister Madden
11 took him over to Allen Burse.

12 Q And is that the back entrance this time or is that someplace else?

13 A No; Allen brought him out the doors through where I was at which is the
14 doors on the this side in.

15 Q So, now we're out at the front entrance of the church?

16 A Yes.

17 Q And Allen's there at this point?

18 A Allen was there because Mr. Hickman apparently had drove around the
19 building and parked on this side now.

20 Q Okay. But Mr. Thompson you didn't see that; right?

21 A I didn't see him drive around, but I saw his car on this side since Mr.
22 Burse was taking him over to this car.

23 Q And go ahead and take a look at this map. Can you maybe make a
24 point to show us kind of generally where you believe the general area where the
25 Defendant's car was in the parking lot?

1 A It was -- it was about -- there's a -- we were about here.

2 Q We can't even see with those markings. Why don't you --

3 A It's about here because there's a brick like --

4 Q Okay.

5 A -- thing so it was about here. Right here as he pulled out.

6 Q We're talking somewhere in this area here?

7 A Yes.

8 Q All right. Now when he was escorted out, was he having difficulty
9 walking?

10 A No; he wasn't having difficulty walking because Allen had him by the
11 arm and escorted him to his car.

12 Q Did he appear as if the Defendant was leaning on Allen for support?

13 A No, he was not.

14 Q Now where do you see Allen take the Defendant at this point?

15 A He took him to his car that was parked here.

16 Q And what do you remember seeing next?

17 A Allen was like coming back up to the church. He was like backing up
18 coming back up to the church watching Mr. Hickman.

19 Q Okay. Do you see what the Defendant does at this car? Does the
20 Defendant get in his car?

21 A He got in his car, he backed out, and then he started like he was
22 coming out like he was, as I said, white line come there, well he was driving down
23 like he was leaving, and Allen was coming back but he was like backing, watching
24 him as he leaves. And Mr. Hickman, like when he was coming out, he like swung at
25 Allen with his car to try to get Allen but Allen, since he was watching, was able to

1 jump out of the way.

2 Q Okay.

3 A And Mr. Hickman kept coming up and as he got about here, he turned
4 his wheels --

5 Q And, sir, you're going to need to make a mark. We can't really see it.

6 THE COURT: He did.

7 MR. HAMNER: Oh, sorry.

8 THE WITNESS: When he got back here, he turned his wheels and aimed the
9 car at us, and we were standing here. There was about six or seven of us standing
10 here at the door. I'm standing on the right side of the door and there was a lady
11 standing there with me because she was coming in and there was other people
12 coming in. And he turned his wheels and aimed at us trying to -- I think it was --

13 BY MR. HAMNER:

14 Q Could you please point -- and I don't know the marks to make; I didn't
15 see it -- where was Allen Burse standing kind of on that street when the Defendant,
16 as you said, tried to hit him?

17 A Allen was standing to the right about here.

18 Q Okay. So, he's in the street though? He's not in those trees. Is he in
19 the trees or is he in -- I know the mark --

20 A No, he was the street.

21 Q He's in the street so we're talking maybe something like here?

22 A Yeah, right next to the white line, yeah.

23 Q Near the white line. Okay. I want you to describe to the jury how he's
24 driving this car. Does it appear that the vehicle is in control or does it appear like it's
25 wobbling or out of control at the time that it's driving towards Allen and driving

1 towards you and the other people?

2 A When he was -- when he backed up and came out, he was in control. It
3 was like going straight out. But then when he swerved at Allen, it was like he
4 missed Allen. So, I guess he wanted to get something and it was like he was in
5 control. And then he just turned when saw us standing there, he just turned his
6 wheels and he just came right at us like he wanted to hit something and it was only
7 us there. So, he wanted to hit us, is my opinion.

8 Q Okay.

9 A And it was like a scene of Twilight Zone, I mean, because -- it was like
10 panic. I mean, I was afraid for the lady that was standing right there in front of me
11 because I was holding the door for her. And when I saw the car coming I had
12 enough time to react to try to pull her out of the way and she fell, and I'm thinking
13 we're going to get hit, and by the grace of God she didn't get hit and I didn't get hit.
14 And there were two little girls, from what I understand, inside the church, right inside
15 the door playing and one of the girls apparently got hit and everyone was shouting
16 that she was underneath the car, and it was chaos. We all thought she was
17 underneath the car. We could see the shoe but we couldn't find the little girl.

18 Q Mr. Thompson, at any point did you hear the brakes being slammed on
19 before this car went through the church?

20 A I didn't hear any brakes. I could hear an acceleration but I didn't hear
21 any brakes.

22 Q Did you hear the tires?

23 A Tires?

24 Q Did you hear the tires making any noise as it was approaching?

25 A Not of any brakes.

1 Q Not of brakes, but did you hear 'em like squealing at all before that?

2 A Like an acceleration, yes.

3 Q Okay. Did the Defendant at any point toot or honk the horn before
4 coming through?

5 A No.

6 Q Did you hear any warnings shouted like get of the way or anything like
7 that coming from the Defendant's car?

8 A No.

9 Q Now about how many people were out there? I'm sorry if I didn't hear
10 that. You said there was some people but --

11 A About seven or eight people, if my memory served me right, that was
12 out there. There was more inside the vestibule, but there were only seven or eight
13 that was out there.

14 Q Now did you see after this car went through the church, did Allen Burse
15 have a reaction at that point?

16 A Yes, he did. Thank God he did.

17 Q What did he do?

18 A He was able to get inside the car somehow and he was able to restrain
19 Mr. Hickman and was able to get to the ignition to turn the engine off because from
20 my vantage point where I was at when the car came into the door of the church, it
21 got struck, and when it hit the door it popped open the passenger door. And where I
22 was standing, when the lady got up, I was able to get up there and hold the door
23 that was popped open. And I was watching as Allen had gotten in there, Mr.
24 Hickman looked like he was trying to either put the car in drive or reverse to try to do
25 something else with the car. And we was thinking that he was trying to either back

1 up and do it again or put it in drive and go further. We didn't know what he was
2 trying to do, but Allen was able to try to get the key out of the ignition.

3 Q Okay. I'm going to show you State's 10. Is that what you're referring to
4 when you say that the car appeared to be kind of wedged in by the door?

5 A Yes.

6 Q So, you don't remember the Defendant at any point in time after
7 immediately going to turning off the engine on his own?

8 A No, he did not.

9 Q Allen Burse needed to do that?

10 A Yes; because he was trying to get the car to go in drive or he was trying
11 to do some other action [indiscernible].

12 Q When you got near the car and you Allen Burse trying to restrain the
13 Defendant, what was the Defendant's demeanor at that point?

14 A He was very agitated. He was making -- he was saying a lot of things.

15 Q Okay. Was he cursing at that time?

16 A He was cursing; he was -- he made a couple comments to me, either to
17 me or Allen but he was looking up at me as I was holding the door and he said that
18 you're next. So, I didn't know he was talking about me or Allen, but I assumed he
19 was talking about me but I don't know what next means because I've never met the
20 man before.

21 MR. HAMNER: Court's indulgence. Thank you. No further questions at this
22 time.

23 THE COURT: Cross.

24 MR. POSIN: Thank you, Your Honor.

25 **CROSS-EXAMINATION**

1 BY MR. POSIN:

2 Q Mr. Thompson, you were in another courtroom on this case once
3 before; right?

4 A Yes, I was.

5 Q And that was about a month after the incident in question; right?

6 A I don't know how long it was.

7 Q Well the incident was back in December of 2011; does that sound right?

8 A The incident, yes.

9 Q And then was there a hearing in about January of 2012; does that
10 sound about right to you?

11 A I don't know the exact dates, but we did -- there was a hearing, yes.

12 Q Would it help refresh your recollection if I showed you a transcript of
13 that hearing?

14 A Sure.

15 MR. POSIN: May I approach, Your Honor?

16 THE COURT: Yes.

17 THE WITNESS: Okay.

18 BY MR. POSIN:

19 Q Okay. So, Mr. Thompson, have you looked at the document I just
20 showed you, this document?

21 A Yeah.

22 Q And did that refresh your recollection as to the date of the hearing tghat
23 you were in ?

24 A Yeah.

25 Q And you testified at that hearing; right?

1 A Yeah.

2 Q And would you say the events were a little fresher in your mind back
3 when you testified a month after the hearing than a year and a half later or so?

4 A It was still unbelievable, but yes.

5 Q And at that time you were asked some questions and you said that Mr.
6 Hickman was drunk; right? You used the word wet initially; right?

7 A yes.

8 Q You didn't use the word buzzed?

9 A Well I just said wet this time too.

10 Q That's his word. The word you used was wet and then you clarified that
11 to mean drunk; right?

12 A I just said wet this time also, sir.

13 Q That's true, and you did. And you didn't use the word buzzed until
14 somebody else presented that word to you; right?

15 A Well the definition could be clarified in several different ways.

16 Q It could be several different ways. But when you just asked both that
17 time and this time what his condition was you said wet and drunk; correct?

18 A I said wet this time; I said he was drunk, but drunk --the definition can
19 still be the same, sir.

20 Q And you noticed that when he was still sitting down at the front of the
21 church; right?

22 A Yes.

23 Q And that was something that you were already discussing before he
24 was escorted anywhere or anything happened, you were discussing that with other
25 people that you observed that he was drunk?

1 A Yes.

2 MR. POSIN: Thank you. No further questions, Your Honor.

3 THE COURT: Redirect.

4 MR. HAMNER: Thank you.

5 **REDIRECT EXAMINATION**

6 BY MR. HAMNER:

7 Q I want to talk to you on those questions for a second. At that prior
8 proceeding, do you recall the first words you actually used were a little tipsy; would
9 that accurate? Or would it be helpful to refresh your recollection as to which order
10 you used different words to describe his level of drinking? Would it help to -- do you
11 remember if whether or not you used the words a little tipsy first at the prior
12 proceeding?

13 A It's been two years so --

14 Q Okay. So, so would it help to refresh your recollection?

15 A Yes, sir, please.

16 MR. HAMNER: Okay. Permission to approach the witness?

17 THE COURT: Granted.

18 BY MR. HAMNER:

19 Q Thank you. Let the record reflect I'm showing the witness his voluntary
20 statement. I'm showing you page 55 and 56, 56 line 1. Take a look and read this
21 area here. Take a look and see what order of words you used and then I'm going to
22 re-ask you these questions. Just let me know when your memory's refreshed. Look
23 at lines 1 and 2.

24 THE COURT: You're showing him the preliminary hearing transcript?

25 MR. HAMNER: Yes, I am, Your Honor.

1 THE COURT: You said voluntary statement.

2 MR. HAMNER: I apologize.

3 THE WITNESS: Okay.

4 BY MR. HAMNER:

5 Q Okay. We a little clear now on the order?

6 A Yeah.

7 Q Let me re-ask the question. So, tell the jury, what were the first words
8 you used to describe him drinking?

9 A He was a little tipsy.

10 Q And then you followed that up with saying what?

11 A He was drunk.

12 Q Did you use another word before saying he was drunk?

13 A Wet.

14 Q So, you first said a little tipsy then you said wet and then you said
15 drunk?

16 A Yes.

17 Q Do you recall whether you were asked by the State what exactly do you
18 mean by any of those words at that proceeding?

19 A Yes.

20 Q Did we follow-up within a more broader explanation from you at that
21 point in time?

22 A Yes.

23 Q Okay. Did it help refresh your recollection to see whether we did.
24 Okay.

25 MR. HAMNER: Permission to approach, Your Honor?

1 THE COURT: Granted.

2 BY MR. HAMNER:

3 Q Take a look and see if we did actually ask for an explanation after you
4 made those statements. Does that help refresh your recollection as to whether or
5 not we actually wanted a follow-up from you when you used those words?

6 A Yeah.

7 Q Okay. Did we actually ask, what do you actually mean by a little tipsy?
8 Did we actually do that in the prior proceeding?

9 A No.

10 Q Did I ask you -- and it was me who was there; wasn't it?

11 A Yes.

12 Q So, I didn't ask you what do you mean by wet?

13 A No.

14 Q Did I ask you well what do you mean by drunk?

15 A No.

16 Q Okay. If I had asked those questions, would you have given me an
17 answer?

18 A Yes.

19 Q And I asked you today; is that right?

20 A Yes.

21 Q Do you recall whether the defense attorney at that time asked you well
22 what do you mean by a little tipsy?

23 A No.

24 Q How about a little wet?

25 A No.

1 Q How about drunk?

2 A No.

3 Q If they had asked for an explanation would you have provided it?

4 A Yes, I would.

5 Q But I asked today and you provided it?

6 A Yes, I did.

7 MR. HAMNER: Thanks. No further questions.

8 THE COURT: Recross.

9 MR. POSIN: Nothing further, Your Honor.

10 THE COURT: Thanks. May this witness be excused?

11 MR. HAMNER: Yes, Your Honor.

12 THE COURT: Thank you very much for your testimony.

13 MR. SCOW: We'll call Marquetta Jenkins.

14 MR. POSIN: Your Honor, I'm sorry. I wonder if we could call that witness
15 back in for one moment and give him the instruction asked for for the last witness
16 not to discuss his testimony with the other witnesses.

17 THE COURT: Sure.

18 MR. HAMNER: I'm sorry. I didn't hear that. I apologize.

19 THE COURT: Mr. Posin asked if I could admonish the witness to not discuss
20 his testimony.

21 Mr. Washington, if you please not discuss your testimony with other witnesses
22 in the trial before the trial is over I'd appreciate that.

23 MR. WASHINGTON: Yes, ma'am.

24 THE COURT: Thank you.

25 MR. POSIN: Thank you, Your Honor.

1 **MARQUETTA JENKINS**

2 [having been called as a witness and being first duly sworn, testified as follows:]

3 THE COURT CLERK: Please be seated and state and spell your name for
4 the record.

5 THE WITNESS: Marquetta Jenkins, M-A-R-Q-U-E-T-T-A Jenkins
6 J-E-N-K-I-N-S.

7 THE COURT: You may proceed.

8 **DIRECT EXAMINATION**

9 BY MR. SCOW:

10 Q Marquetta, I'm going to take you back to December 18th 2011; do you
11 remember that day?

12 A Yes.

13 Q On that day, were you going to attend church services at the New
14 Antioch Christian Fellowship Church?

15 A I had attended the 8 a.m. service, yes.

16 Q So, you had actually attended the 8 a.m. service?

17 A Uh-hm.

18 Q And that's a yes?

19 A Yes.

20 Q Sorry. She's recording what you say --

21 A Okay.

22 Q -- and uh-hm and uh-huh don't come out well on the record.
23 So, you had attended the 8 a.m. service. How long had you been attending services
24 at the New Antioch church?

25 A Prior to that day?

1 Q Yes.

2 A For three years.

3 Q Okay. So is the place you're familiar with and people that were there
4 you were familiar with them as well?

5 A Yes.

6 Q Were you present with anyone else in your family?

7 A On December 18th?

8 Q Yes.

9 A Yes; my daughter.

10 Q Okay. What was your daughter's name?

11 A Jayla Manor [phonetic].

12 Q So, you were with your daughter, Jayla. And where were you seated
13 during that 8 a.m. service?

14 A In the center of the church toward the back.

15 Q So, toward the back of the aisles in the middle, like in the middle of a
16 bench?

17 A Yes.

18 Q Did you notice anything unusual or that caught your attention during
19 that 8 a.m. service?

20 A Only toward the end of the service when the gentleman walked in,
21 probably ten to 15 minutes before church was out, and he was kind of a distraction
22 because he wanted to walk across the altar and typically no one walks across the
23 altar until the altar call happens.

24 Q So, he's walking across the front during the service?

25 A Yes.

1 Q Was there any efforts made to escort him to the back of the services?

2 A Yes; he was escorted to the back but then he walked up the center
3 aisle to the front and he sat on the first row of the altar -- right before the altar.

4 Q Okay. So, after he's escorted to the back he walked in to the front
5 again?

6 A Yes.

7 Q Did he sit down at that time?

8 A Yes.

9 Q And you had described it as being by the altar?

10 A Well the pastor is on the altar and it's kind of heightened and then
11 there's a walk area and then chairs. So, the first row right in front of the altar.

12 Q Okay. The gentleman that had walked in that you saw do you see in
13 the courtroom today?

14 A Yes.

15 Q Can you point out that individual and describe an article of clothing that
16 he's wearing today?

17 A The white shirt and black glasses.

18 Q Okay. And is he wearing a jacket?

19 A No.

20 MR. SCOW: Your Honor, can the record reflect identification of the
21 Defendant, Wilburt Hickman.

22 THE COURT: It will.

23 BY MR. SCOW:

24 Q Was there anything else about that gentleman, the Defendant, or
25 anything that seemed unusual to you during those services?

1 A The disruption and you could smell the alcohol as he walked past.

2 Q So, did he walk past you as he went to the front?

3 A I was more -- a little bit maybe like two or three seats in from the aisle
4 so I could still smell the alcohol as he walked past.

5 Q Okay. So, a couple seats in as he's walking through the middle aisle?

6 A Uh-hm.

7 Q After he had already been escorted back?

8 A Yes.

9 Q You could smell it as he walked past?

10 A Yes.

11 Q Did anything else occur in the rest of the 15 minutes or so of the
12 services?

13 A Not during the service. The pastor, at the end of the service, called an
14 altar call for anyone that wanted to join church or that wanted prayer, and he was one
15 of the people that went to the front of the church to either join or prayer.

16 Q Now when you say he, are you referring to the Defendant?

17 A Yes, yes.

18 Q So, he went up for that altar call that called for prayer or to join to the
19 church?

20 MR. POSIN: Objection; leading and asked and answered.

21 THE COURT: Sustained.

22 BY MR. SCOW:

23 Q So, after he goes up for that altar call, the Defendant, what happens?

24 A The new members committee comes out and them as well as one of
25 the security guards escort him to the back along with the other people that came up

1 for joining the church or for the prayer.

2 Q Okay. So, he wasn't the only one who had gone up for that altar call?

3 A Correct.

4 Q So, after he goes back with the other people to take care of records or
5 whatever is happening there, what do you do?

6 A Church is over. At that time everything finishes and myself as well as
7 one of the other members of the church we go and we get our children out of
8 children church and we're standing there in front of the church talking about the
9 Christmas program that's supposed to take place that night.

10 Q So, where was your daughter during those 8 a.m. services?

11 A We have auxiliary area in the back of the church that the children have.
12 There's children's church during the main services.

13 Q So, your daughter was not with you during the main services?

14 A Correct.

15 Q So, then to the point you get your daughter and as you're walking out
16 you said you with somebody else as well?

17 MR. POSIN: Objection; leading and asked and answered.

18 MR. SCOW: I'm setting foundation for the next step.

19 THE COURT: Overruled.

20 BY MR. SCOW:

21 Q So, you're walking out and there's another lady with you; is that --

22 A Yes.

23 Q And was your daughter -- and you said there was a child with the other
24 lady?

25 A Yes.

1 Q Were your kids friends?

2 A Yes.

3 Q And you said they were discussing a program for that evening?

4 A We had a Christmas program set for the evening and both of the girls
5 were in the program. So, they were discussing it as well as the other lady I was with
6 -- her name is Anneesah -- as well as Anneesah and I were talking as they were
7 talking as well.

8 Q Okay. And do you know the name of Anneesah's daughter?

9 A Anyla.

10 Q Where do you end up as you're speaking with Anneesah and her
11 daughter with your daughter?

12 A We go to the -- right outside of the church doors on the front end of the
13 church and we sit there talking.

14 Q Okay. About how long were you there talking; do you recall?

15 A Maybe five, ten minutes.

16 Q As you were there talking with Anneesah, did there come a point in time
17 that you saw the Defendant again?

18 A Yes.

19 Q When was that? Tell us about that.

20 A Well we were standing outside talking. I believe his car had to be either
21 -- either he had left the service or he came from the back of the church and drove to
22 the front of the church where we were and he parked, which the parking is there's a
23 street between the church and the parking aisle. He parked and he said he wasn't
24 ready to leave. He walks back into the church and then he's escorted back out of
25 the church to his car.

1 Q Okay. So, did you see him park his car --

2 A Yes.

3 Q -- from where you standing at that main entrance?

4 A Yes.

5 Q I'm going to show you first State's Exhibit 6. In Exhibit 6, is this the
6 front main entrance of the church?

7 A Yes.

8 Q Now as you were standing there speaking with Ms. Anneesah, was that
9 car there?

10 A No.

11 Q So, this car wasn't there. You were speaking with Anneesa; you see
12 the Defendant park his vehicle. From this point, where was that car parked? From
13 here, could you see where the vehicle was parked?

14 A No 'cause it's actually -- like the street that you see here is what's
15 between the main church and the parking spaces. So, it's on the opposite side of the
16 roadway there.

17 Q Is that where he was initially parked?

18 A Yes.

19 Q But then you saw him come around the building and park on this side of
20 the building?

21 A When I say this side of the building because there's a back side of the
22 church also where there's parking. So, when you say on this side of the building I
23 would say yes just because there's parking there also.

24 Q On both sides?

25 A Correct.

1 Q So, from where you were standing here you could see where the
2 Defendant had parked his car?

3 A Yes.

4 Q And you said when he got out he said something; what was it that he
5 said?

6 A I'm not ready to leave yet.

7 Q Okay. And you heard that from where you were standing?

8 A Yes; 'cause he had got out of the car at that time and he was walking
9 back into the church.

10 Q Okay. Was that something you heard when he was at his car, as he
11 was walking?

12 A No; he had got out of his car. He was almost to the church to enter the
13 church when he said it.

14 Q Okay. And that's where you were standing then when you heard him
15 say that?

16 A Yes.

17 Q So after he went in or I guess as he's walking in, can you describe his
18 demeanor, how he was acting at that point in time?

19 A He was pretty mellow, but you could tell that he wasn't like all there, like
20 he's walking in and he's just like, oh, I'm not ready to leave yet. I'm going to go
21 back. But of course we didn't think anything of it. It wasn't like he was upset or irate
22 about leaving or, you know, you could tell that if it wasn't for the smell of alcohol you
23 wouldn't have really known that he had been drinking 'cause he got out of the car
24 and he's just walking normal and he's -- I'm not ready to leave yet. So, he walks
25 past us and he goes back into the church.

1 Q So, just to make sure I'm clear on what you had said. What was it that
2 led you believe that alcohol was involved at all?

3 A I could smell liquor when he walked past us to back into the church.
4 And I had smelled it when he walked into the church earlier when we were in
5 service.

6 Q Okay. But your observations what you saw him do the things that he
7 was doing, could you tell that alcohol was involved or even a factor by what you
8 saw?

9 A Not from the speech or from his walking I couldn't tell.

10 Q So, it's just the smell?

11 A Yes.

12 Q So, after he had gone in and you heard him say I'm not ready to leave,
13 what happens after that?

14 A One of the security guards escorted him back out telling him that he
15 couldn't come; he had to leave the church, and I believe his name was Allen;
16 escorted him back to his car and he got into his car at that time.

17 Q So, he, the Defendant, got back into his car?

18 A Correct.

19 Q After Allen had escorted him out?

20 A Correct.

21 MR. POSIN: Objection; asked and answered.

22 THE COURT: Overruled.

23 BY MR. SCOW:

24 Q So, at the point where Allen had escorted him out, he gets in his car,
25 the Defendant gets in his car. Are you still out in the front of the church at this main

1 entrance here?

2 A Yes.

3 Q Are you still there with other people?

4 A Yes; my daughter, Anneesah, and Anyla.

5 Q Okay. And do you recall if there other members there or security,
6 anybody else at that entrance?

7 A There were a couple other security guards that walked out after Allen
8 but I don't exactly remember who they were.

9 Q Okay. But there were other people there also?

10 A Yes.

11 Q What happens after the Defendant gets into his car; what do you
12 observe?

13 A We continue to talk, but because there was the disruption of him being
14 escorted back to his car when I tried to kind of keep an eye what was going on in the
15 parking lot. So, he backs out of the parking stall and the wheels of his car back out
16 normal and they turned more to the right but then when I see the wheels go all the
17 way to the left, I stopped the conversation and I just yelled and grabbed my
18 daughter and we -- there's a railing here that me and my --

19 Q Can you touch the screen? Sorry to interrupt.

20 A Oh, sorry.

21 Q It'll put a mark if you draw on the screen.

22 A Okay. So, the railing here is where me and my daughter went over the
23 rail to get out of the way because we didn't know what was going to happen at that
24 point. We just got scared. Everybody screaming. The first thought is to grab my
25 daughter and get out of the way.

1 Q Okay. So, what was the car doing as you're screaming and jumping out
2 of the way?

3 A It all happened so fast. All I really recall is that the wheels turning all
4 the way to the left, which would be toward the church, and then you can hear the
5 engine of the car start to go which at that point it was like grab my daughter and get
6 out of the way; we're yelling and screaming. Other people are yelling and
7 screaming.

8 Q So, is that happening as the car is coming in your direction?

9 A Yes.

10 Q Now the car that we see pictured here, was that the car that the
11 Defendant had gotten into?

12 A Yes.

13 Q And that was the car he then drove at the church?

14 A Yes.

15 Q And with you and other members jumping out of the way?

16 MR. POSIN: Objection; leading.

17 THE COURT: Sustained.

18 BY MR. SCOW:

19 Q Is this how the car ended up, the final resting place?

20 A Yes.

21 Q After the car drove in and got stuck right there, what happened then?
22 Describe the scene for us.

23 A There was people coming out of the church; there were people yelling
24 and screaming because you could hear the engine like rev up like he was still trying
25 to go. And that's when I walked away from the accident and I had just seen my

1 brother pull out of the parking lot. So, I called my brother. I walked around the car
2 to call my brother to have him come back to the church because my daughter was
3 shaken up. The other girl, we saw her on the ground, so we checked on her as I'm
4 calling my brother.

5 Q Okay. Who was that other little girl?

6 A Anyla.

7 Q So, that was Anyla?

8 A Uh-hm.

9 Q Did you hear the Defendant say anything in the car after the car had
10 gone into the church like that?

11 A He was yelling he didn't understand why he couldn't see his daughter
12 and other things that -- I don't remember exactly but I know that it was something in
13 relations to something that had happened to his daughter that he was talking about
14 as he was still in the car.

15 Q Now as the car was coming in your direction -- I know you said this
16 happened pretty quickly?

17 A Yes.

18 Q But did you see the car like swerve one direction or another as it was
19 coming towards the church?

20 A No. Once I saw the wheels go left and I could hear the engine, it was
21 like a gut instinct that we better just get out of the way. I don't remember seeing it
22 swerve or anything.

23 Q Did it come directly --

24 A It came directly to the church.

25 Q Where you standing at those double doors?

1 A Yes.

2 Q I know you kind of described how you felt something was about to
3 happen which caused you to get out of the way. What would have happened if you
4 and those around you didn't jump out of the way at that time frame?

5 MR. POSIN: Objection; calls for speculation.

6 THE COURT: Overruled.

7 THE WITNESS: If we didn't get out of the way because right where the doors
8 -- here -- I was about here 'cause -- oh no -- it's going to far over ---

9 BY MR. SCOW:

10 Q It's marking too far to the left than where you want to mark.

11 A Yes. A little bit more over to the right is where I was standing 'cause we
12 had just walked out the door and we didn't move over to the side or anything 'cause
13 there wasn't people coming for a while for the 10 o'clock service.

14 Q So, you were standing like right in front of the open door area?

15 A Yes.

16 Q Were you afraid for your life at that time?

17 A Yes.

18 Q Other than the smell of alcohol, did you ever see the Defendant tripping
19 or stumbling as he walked?

20 A No.

21 Q Mumbling or talking incoherently or gibberish?

22 A No. I can understand pretty much all what he was saying. It's been
23 almost two years. So, I don't remember everything but you could understand what
24 was being said.

25 MR. SCOW: Okay. Court's indulgence.

1 BY MR. SCOW:

2 Q As the car was coming your direction, were the brakes ever applied?

3 A No.

4 Q After the car had stopped, did you hear the car engine after it had
5 lodged in the doors as well?

6 A Yes.

7 Q And you may not have been around but after this had happened, the
8 Defendant drove his car into the church, did you ever hear him make any apologies?

9 A No.

10 MR. SCOW: I don't have any more questions, Your Honor. Pass the witness.

11 THE COURT: Cross.

12 MR. POSIN: Thank you, Your Honor. I have no questions for this witness.

13 THE COURT: May she be excused?

14 MR. SCOW: Yes, Judge.

15 MR. POSIN: Yes.

16 THE COURT: Thank you very much for your testimony.

17 THE WITNESS: Thank you.

18 THE COURT: And if you would please not discuss your testimony with any
19 other witnesses until after the trial is over.

20 THE WITNESS: Okay.

21 THE COURT: Thank you.

22 All right. Ladies and gentlemen, we're going to take a ten minute
23 recess. During this recess, it is your duty not to converse among yourselves or with
24 anyone else on any subject connected with the trial or read, watch or listen to any
25 report of or commentary on the trial by any person connected with the trial or by any

1 medium of information, including without limitation, newspaper, television, radio or
2 internet and you are not to form or express an opinion on any subject connected
3 with the this case until it is finally submitted to you. We'll be in recess until quarter to
4 four.

5 [Recess taken at 3:37 p.m.]

6 [Proceedings resumed at 3:52 p.m.]

7 [Inside the presence of the jury]

8 THE COURT: Please be seated. The record will reflect we're back within the
9 presence of the jury; Defendant is present with his counsel, the Deputy District
10 Attorney prosecuting the case are present as are all officers of the Court; will
11 counsel so stipulate?

12 MR. POSIN: So stipulated.

13 MR. HAMNER: Yes, Your Honor.

14 THE COURT: All right. Call your next witness.

15 MR. HAMNER: The State calls Anneesah Franklin to the stand.

16 **ANNEESAH FRANKLIN**

17 [having been called as a witness and being first duly sworn, testified as follows:]

18 THE COURT CLERK: You may be seated. Could you please state your
19 name and spell it for the record.

20 THE WITNESS: Anneesah Franklin, A-N-N-E-E-S-A-H F-R-A-N-K-L-I-N.

21 THE COURT CLERK: Thank you.

22 THE COURT: Okay. Proceed.

23 MR. HAMNER: Thank you, Your Honor.

24 **DIRECT EXAMINATION**

25 BY MR. HAMNER:

1 Q Ma'am, if you could, are you familiar with the New Antioch Christian
2 Fellowship Church?

3 A Yes.

4 Q Now that's located on 3950 Las Vegas Boulevard here in Clark County'
5 isn't it?

6 A Yes.

7 Q Now I want to turn your attention to December 18, 2011; do you
8 remember where you were that morning?

9 A Yes.

10 Q Tell the jury. Where were you?

11 A My daughter and I, we attended a 8 o'clock service that Sunday and
12 that was pretty much it. We attended the church Sunday service.

13 Q And when you say the church service, are you talking about the New
14 Antioch church?

15 A Yes.

16 Q Okay. Now you mentioned your daughter, Anyla. How old was Anyla
17 at the time you went there on December 18th of 2011?

18 A She was nine years old.

19 Q I'm going to show you what's been admitted as State's Exhibit 1.

20 A Okay.

21 Q Thank you. Do you recognize that building, ma'am?

22 A Yes.

23 Q And what is that?

24 A That's New Antioch Christian Fellowship center.

25 Q And do you recognize where the entrance of the church from there?

1 A Yes.

2 Q Could you maybe -- if you touch your finger and you make a mark on
3 the screen it will actually pop up on the monitor.

4 A Okay.

5 Q So -- I know the calibration's a little bit off. So, were you pointing a little
6 bit to the right? Were you kind of pointing in this direction here?

7 A It's the double doors over -- yes.

8 Q Okay. Right there. Now during that 8 a.m. service, did you see
9 anybody here in the courtroom that you recognize that was at that 8 a.m. service?

10 A Yes.

11 Q Could you please point out that individual and maybe an article of
12 clothing that they're wearing and where they're located in the courtroom?

13 A He's wearing a white long sleeved shirt and he has glasses and he's in
14 front of me.

15 Q Okay. Is he wearing a coat or not wearing a coat?

16 A He is not wearing a jacket.

17 MR. HAMNER: All right. Let the record reflect that the witness has identified
18 the Defendant in this case, Your Honor.

19 THE COURT: It will.

20 MR. HAMNER: Thank you.

21 BY MR. HAMNER:

22 Q Now when -- did you see him during the actual service, Ms. Franklin?

23 A Yes.

24 Q What kind of stood out to you, at least at that point?

25 A He's smiling. After the service the pastor asked if anyone wanted to

1 join and he stood up and he gave his name and we all said welcome home and he
2 went to the back and he was smiling.

3 Q Smiling or smelling? I couldn't quite hear you.

4 A He was happy. He was smiling.

5 Q Happy. All right. So, he was happy. So, you noticed that he was
6 happy?

7 A Yeah.

8 Q Were there anything remarkable that how he kind of moved about
9 inside the sanctuary of the church?

10 A I don't know.

11 Q Did you see him stumble or fall?

12 A No.

13 Q Did you see him needing to lean on anybody for help for assistance?

14 A No.

15 Q You noticed he was happy. That's the one thing that stood out to you?

16 A Yhes.

17 Q I want to turn your attention to after the 8 a.m. service is over, Ms.
18 Franklin. Where do you go once church has ended?

19 A You leave. Some stay to talk to individuals, other members from the
20 church.

21 Q Okay.

22 A At that time, I left to go out towards the entrance and I was speaking to
23 a young lady.

24 Q And that's the entrance that you pointed out here, this entrance right
25 here, the double doors?

1 A It's over -- yes, the double doors.

2 Q Okay. So, these double doors?

3 A Yes.

4 Q So, you walk out. Who did you walk out with; do you remember?

5 A My daughter.

6 Q Who else was with you at that time or who were you talking to at that
7 point?

8 A It was a young lady named Marquette and her daughter.

9 Q Was her daughter about the same age as Anyla?

10 A Yes.

11 Q So, you guys are out there and you're talking. How many other kind of
12 people are out there at that point?

13 A I'm not sure.

14 Q Were there more than just the four of you?

15 A There was others out there, yes.

16 Q And they're all standing fairly close to you at that point in time?

17 A I'm not sure.

18 Q Okay. What do you notice as it relates to this case? You're standing
19 out there. What do you kind of notice next that catches your attention?

20 A We were talking about the gym, the young lady, Marquette and I, and
21 instantly we seen about four male individuals come out with an individual --

22 Q Okay.

23 A -- and we just heard bits and pieces saying you're not supposed to be
24 here. You can't come here no more. Things like that. I seen him and I seen them.
25 It was -- I know two of 'em were like the security team. I looked and I went back to

1 the conversation with Marquettea.

2 Q And you said they were walking out with someone. Who was that
3 person they were walking out with?

4 A The gentleman in the white attire shirt.

5 Q Okay. So, the Defendant?

6 A Yes.

7 Q Now when these individuals from the church were speaking to him,
8 were they yelling at him?

9 A No; they weren't yelling. They were just letting him know speaking
10 authority saying you cannot be here. Do not come back here no more.

11 Q Did you get a chance to get a look at the Defendant as this was
12 happening?

13 A Yes.

14 Q What did he look like? What was his demeanor like at this point?

15 A He was silent. He was walking a little bit in front of them and he was
16 just walking to his vehicle and they were walking as well a little bit behind him to
17 make sure that he got into his vehicle.

18 Q When you looked at his face, could you see if he was expressing an
19 emotion?

20 A He just looked angry but, again, I don't know. There was a little bit of
21 wrinkles in his face. I don't know if he was angry but, again, he was just silent.

22 Q Based on your observations, that's the impression that you got? He
23 was quiet and he was angry about something?

24 A Yes.

25 Q Now I want you to take a look at this map again, ma'am. Did you see

1 where the staff walked with the Defendant, if at all? Did they all continue to walk
2 with him out of the church?

3 A I seen the Defendant and the four individuals as they came out of the
4 church.

5 Q Okay.

6 A And they were walking with him.

7 Q And where does the Defendant ultimately go, if you even noticed?

8 A As I seen him, he was walking to his vehicle. And, again, I turned to
9 continue my conversation with Marquetta.

10 Q Okay. Do you see -- could you tell the jury maybe by pointing or circling
11 on the screen, where is the general area that the Defendant was walking to when
12 you said he was walking to his car?

13 A He was walking like this way.

14 Q And are there parking stalls -- you can see trees -- but are there parking
15 spaces that are kind of along that wall?

16 A Yes.

17 Q Now when you saw him walk, did he have any difficulty walking at that
18 point in time?

19 A No, not that I seen, no.

20 Q So, he wasn't leaning on any security staff or falling down or stumbling?
21 You weren't seeing anything like that?

22 A No.

23 Q Was there anything really remarkable about the manner he went from
24 that church to his car?

25 A No.

1 Q So, you see him walk to his car and you returned talking to your friend
2 or Marquetta? What's the next thing you remember happening or seeing?

3 A As I looked -- as I was talking to Marquetta, I heard the tires screeching,
4 like a churr [phonetic] and I heard male voices saying get out the way, get out the
5 way, move. And as I was looking -- as I was talking and I was looking through my
6 peripheral I seen the car coming instantly. I panicked and I ran and when I thought I
7 was away from the car, the car was going like this. When I actually-- because the
8 way that I drew it, he was going like this and it was going right into the church and
9 then it turned. And that's why -- that's how it was able to hit me and I fell to the
10 ground.

11 Q Okay. Now I'm going to show you what's already been admitted as
12 State's Exhibit 6. Do you recognize what's depicted in State's Exhibit 6?

13 A Yes.

14 Q What is that? Tell the jury.

15 A It's a vehicle ran into the church, the white Cadillac.

16 Q Is that the vehicle that you saw coming at you?

17 A Yes.

18 Q Is that what it looked like after this incident came to its conclusion?

19 A Yes.

20 Q I want you to tell the jury where you are standing. Make a mark.
21 Where are you and Anyla standing when this is happening?

22 A Can you be more specific?

23 Q Do you see in this picture where you and Anyla were standing before
24 the car came at you?

25 A When they were leaving, we were standing somewhere over here by

1 the railing a little bit.

2 Q And it was you and Anyla and Marquette and her daughter?

3 A Yes.

4 Q Okay. Where are you standing -- were you standing in a different place
5 once the car starts coming towards you?

6 A Yes, because I moved, yes.

7 Q All right. What direction do you move in?

8 A I moved somewhere in this direction.

9 Q So, if we're looking at the picture, if you're looking at the picture, you're
10 telling us you moved to the right?

11 A Yes.

12 Q Okay. To the opposite side of those double doors?

13 A Yes.

14 Q Are you successful in getting away from the car?

15 A I got hit, so no.

16 Q You got hit. Describe to the jury what -- what happened as you were
17 being hit?

18 A When I got hit I didn't actually realize everything blanked out when I got
19 hit. I didn't -- honestly I didn't feel any pain or anything. It was -- I just flew. I
20 remember flying in the air and I fell hard and everything that was in my hand I
21 dropped. But instantly I honestly thought about my daughter. So, just instantly got
22 up looking for my daughter.

23 Q Were you able to see what happened to Anyla?

24 A I did not see. The only thing I seen was when she flew on top of the
25 hood and fell. That was it.

1 Q So, you saw your daughter actually on the hood, the front hood of this
2 car?

3 A Yes, I did.

4 Q When this vehicle -- when the Defendant's vehicle was coming towards
5 that church, did you ever hear the brakes being slammed on or applied?

6 A No.

7 Q Did you ever hear any honking of a horn or a voice coming from in the
8 car saying get out of the way?

9 A No.

10 Q Was the car slowing down or was it accelerating when it came towards
11 you, your daughter and the other people in front of that church?

12 A I do not know. When the car hit the church, I still -- I was still hearing
13 the tires being rolled, the acceleration from the tires.

14 Q So, when you heard those tires it sounded like the tires were
15 accelerating not an idle rolling of wheels?

16 A Yes.

17 Q When you looked up and you saw this vehicle, did it appear as if the
18 vehicle was out of control of the driver, like it was kind of weaving back and forth or
19 did it seem like it was following on a direct path?

20 A I'm not sure.

21 Q Okay.

22 A But I did not see it weaving or anything.

23 Q How quickly did all of this unfold?

24 A Seconds.

25 Q What as the reaction of your daughter to the situation?

1 A She was in pain. She just kept crying and saying, Mommy, what did I
2 do. I didn't do anything.

3 Q Was she complaining about a particular part of her body?

4 A Her foot, yes.

5 Q Did you notice anything --- did she lose any article of clothing after this
6 incident?

7 A Her shoe.

8 Q What happened to her shoe?

9 A I don't know exactly what happened to her or how it fell off but the tire
10 had ran over her foot.

11 Q I want you to tell me a little bit about what happened afterwards. The
12 police arrive. Do you give them any information or something along those lines?

13 A Yes.

14 Q And then what do you do after that? Do you stay at the church or do
15 you go someplace else?

16 A We had to stay; give out information, and then when they said it was
17 okay for us to leave, they offered for us to go the emergency. They ended up
18 wrapping it up. And my daughter, she was still okay, so I just rushed us to the UMC,
19 just went to the UMC to check because I didn't feel anything. I was just a little dizzy
20 when I got to the emergency room, and they checked me, but my concern was my
21 daughter. So, we went to the emergency room to make sure that she was okay.

22 Q Did you actually ultimately suffer some injuries?

23 A Yes.

24 Q And what were they?

25 A There was acute cervical sprain in my neck, and the nurse and the

1 doctor said it was from the whiplash.

2 Q How about your daughter?

3 A There was a broken bone. There was a metatarsal or something like
4 that that was broken in her foot.

5 Q So, she actually broke a part of her foot?

6 A Yes.

7 MR. HAMNER: Now I want to show opposing counsel what's been previously
8 marked as State's proposed Exhibits 21, 22 and 23. Permission to approach the
9 witness, Your Honor?

10 THE COURT: Granted.

11 BY MR. HAMNER:

12 Q Let the record reflect I'm showing the witness what's been previously
13 marked as State's proposed Exhibits 21, 22, and 23. I'm going to show you State's
14 proposed 21; do you recognize what's in this exhibit?

15 A Yes.

16 Q What's in that exhibit?

17 A Anyla, my nine year old child, and she has a wrapping on her leg from
18 when the wrapped up her foot.

19 Q Is this a fair and accurate -- I apologize; I didn't mean to cut you off --

20 A No, it's okay.

21 Q -- is than a fair and accurate depiction of what you looked like on that
22 day?

23 A Yes. She looks a little bit more calmed down because she was very
24 panicky at first when it happened.

25 Q Okay. So, that's taken some time afterwards. This is not immediately

1 after she got hit?

2 A No, not at all.

3 Q But that's a fair and accurate picture of what she looked like around the
4 time that photo was taken?

5 A Yes.

6 Q I want to show you State's proposed 22 and 23; do you recognize
7 what's in these exhibits?

8 A Yes.

9 Q And what is that?

10 A It's her foot being wrapped up at the incident when the paramedics and
11 the police arrived at the scene.

12 Q So, this is at the scene rather than at the hospital; is that right?

13 A Correct.

14 Q All right. And these are fair and accurate depictions of these photos?

15 A Yes.

16 Q All right.

17 MR. HAMNER: At this time, I'd ask that State's proposed Exhibits 21, 22 and
18 23 be admitted?

19 MR. POSIN: No objection, Your Honor.

20 THE COURT: They'll be admitted.

21 **[STATE'S EXHIBIT #'s 21, 22 AND 23 ADMITTED]**

22 MR. HAMNER: Permission to publish, Your Honor?

23 THE COURT: Granted.

24 MR. HAMNER: Thank you.

25 BY MR. HAMNER:

1 Q So, this is Anyla?

2 A Yes.

3 Q And that's what she looked like a little while after; is that right?

4 A Yes.

5 Q I'm showing State's 22. This is a picture of the cast. There was a
6 wrapping at least they put on at the church?

7 A Yes.

8 Q And 23 is also a picture of that same foot?

9 A Yes.

10 Q Tell me a little bit about what they had to prescribe your daughter to
11 help with her injury?

12 A There was just antibiotics to keep the pain from occurring.

13 Q So, they gave her medicine for pain?

14 A Yes.

15 Q Do you remember the name of the medication?

16 A I don't.

17 Q Okay. Do you remember whether your daughter had any residual pain
18 in the days after this incident regarding her foot?

19 A Yes.

20 Q Tell the jury a little bit about what she was going through.

21 A She -- well after the incident happened, she was having nightmares a
22 lot. She was always at nighttime complaining about her foot and how it hurt [sic].
23 That was pretty much it after that. I would give her pain pills or I would give her a
24 pain pill like every eight hours as the doctor prescribed her. But after that, after the
25 pain pills were gone, she was still having a little bit of pain also.

1 Q Was she able to do all the same things she was able to do before she
2 was hit by this car or did she have difficulty do some things?

3 A She had difficulties -- are you speaking around the time that the incident
4 happened or after when the healing went on.

5 Q Well let's take it one at a time. Let's talk about immediately after the
6 accident, the few days ensuing after what happened here. Was she having trouble
7 at that point?

8 A Yes, she was on crutches.

9 Q Okay. What sort of things wasn't she -- what sort of things wasn't she
10 able to do that she normally used to do before at that point?

11 A She couldn't run and play.

12 Q Okay. How long was she on crutches for?

13 A It wasn't that long. It was about -- I want to say maybe about a week.
14 I'm not sure.

15 Q Now was she in some type of cast or soft cast or hard cast?

16 A She was in a boot.

17 Q In a boot. A walking boot or something?

18 A Yes.

19 Q How about after that? How after that first week, was she still having
20 some difficulties in some respects?

21 A Just with the pain. Sometimes the pain will come and go. But for the
22 most part the doctor said that she heals pretty quickly so --

23 Q All right. But she still complained of pain even after a week --

24 MR. POSIN: Objection; asked and answered.

25 THE COURT: Overruled.

1 BY MR. HAMNER:

2 Q But she still complained of pain after that fact?

3 A Yes.

4 Q How long do you think she complained of pain to you?

5 A I don't know.

6 Q Was it about a month, two months?

7 MR. POSIN: Objection; asked and answered.

8 THE COURT: Sustained.

9 BY MR. HAMNER:

10 Q But it certainly didn't stop after a week; would that be accurate?

11 MR. POSIN: Objection; leading.

12 THE COURT: I'll allow it. Overruled.

13 BY MR. HAMNER:

14 Q I know you don't know the exact amount of time, but would it be fair to
15 say that it simply wasn't one week that she didn't complain of pain anymore?

16 A It was more than one week.

17 MR. HAMNER: Court's indulgence. All right. Thank you, Ms. Franklin. I
18 have no further questions at this time.

19 THE COURT: Cross.

20 MR. POSIN: Thank you, Your Honor.

21 **CROSS-EXAMINATION**

22 BY MR. POSIN:

23 Q Ms. Franklin, the bone that your daughter broke was the fifth
24 metatarsal; correct?

25 A I'm not sure if it was the fifth but I know it was a metatarsal.

1 Q Did you receive documents from the hospital after you went to the -- to
2 North Vista?

3 A Yes.

4 Q Would it refresh your recollection if I showed you those documents?

5 A Yes.

6 MR. POSIN: May I approach the witness, Your Honor?

7 THE COURT: Yes.

8 BY MR. POSIN:

9 Q Without reading anything on this, does this look like the document that
10 you were provided by the hospital?

11 A Yes.

12 Q And if you could look right there; does that refresh your recollection?

13 A Yes.

14 Q Was it the fifth metatarsal bone or rather the metatarsal of the fifth toe
15 that was broken?

16 A It was somewhere in the foot. I'm sorry.

17 Q Okay.

18 A I don't know.

19 Q If you have five toes, would the fifth metatarsal -- would the fifth toe be
20 the -- your little pinky toe; right?

21 A The fifty toe, yes.

22 Q Okay. And the metatarsal would be the second bone from the end; is
23 that your understanding?

24 A I don't know.

25 Q Okay. Thank you. That's all I have, Your Honor.

1 THE COURT: Thank you. Redirect.

2 MR. HAMNER: No, Your Honor.

3 THE COURT: May this witness be excused?

4 MR. HAMNER: Yes, Your Honor.

5 THE COURT: Thank you.

6 THE WITNESS: Thank you.

7 THE COURT: Do you not discuss your testimony with any of the other
8 witnesses in the trial until it's over.

9 THE WITNESS: Yes.

10 THE COURT: Thank you.

11 MR. SCOW: The next witness will be Anyla Hoye.

12 THE COURT: Good morning.

13 **ANYLA HOYE**

14 [having been called as a witness and being first duly sworn, testified as follows:]

15 THE COURT CLERK: Please be seated, and please state your name and
16 spell it for the record.

17 THE WITNESS: My whole --

18 THE COURT CLERK: Just your first name and last name.

19 THE WITNESS: Anyla Hoye, A-N-Y-L-A H-O-Y-E.

20 THE COURT CLERK: Thank you.

21 THE COURT: You may proceed.

22 **DIRECT EXAMINATION**

23 BY MR. SCOW:

24 Q This is a big room. So, if you remember to try to keep your voice up a
25 little so the jury can hear you that would be good. Okay. Anyla, how old are you?

1 A Eleven.

2 Q Okay. So, back in December of 2011, were you nine years old at that
3 time?

4 A Yes.

5 Q Okay. Today I'm going to talk to you about some things that happened
6 the day that you had your foot broken back in December of 2011. Before we go into
7 that, I just want to make sure that -- ask you a few questions. Okay. Do you know
8 the difference between telling the truth and telling a lie?

9 A Yes.

10 Q Is telling the truth a good thing or a bad thing?

11 A A good thing.

12 Q How about lies; are they good or bad?

13 A Bad.

14 Q Okay. So, if I told you that my hair was bright pink right now; was that
15 true or is that a lie?

16 A A lie.

17 Q Okay. So, as we talk about things I'm going to ask you to tell the truth.
18 Okay.

19 A Okay.

20 Q So, back on that day that your foot was broken, were you at church that
21 day?

22 A Yes.

23 Q And were you at the morning church services with your mom?

24 A Yes.

25 Q Okay. And while she went into some church services, did you go into

1 another room?

2 A No.

3 Q Is there a separate room for the kids while the adults go to worship
4 service?

5 A Yes.

6 Q Okay. And so were you in that different room with other kids while your
7 mom went to the worship service?

8 A Yes.

9 Q Okay. When your mom's worship services ended, did she come get
10 you out of that room?

11 A Yes.

12 Q Were did you go after your mom came to get you out of that room?

13 A We went out in front of the church.

14 Q Was anybody else with you as you went to the front of the church?

15 A Yes.

16 Q Who else was with you?

17 A Marquetta and her daughter, Jayla.

18 Q What was the daughter's name again?

19 A Jayla.

20 Q Were you friends with Jayla?

21 A Yes.

22 Q Were you and Jayla talking while your mothers were talking?

23 A No.

24 Q No? You didn't talk to Jayla?

25 A No.

1 Q Okay. Did anything happen then while you were at the front of that
2 church with you mom, Kayla [sic] and Kayla's mother Marquette?

3 THE COURT: Jayla.

4 THE WITNESS: Yes.

5 Q Jayla. What happened?

6 A There was some bodyguards with the church. They came and they
7 were escorting a man outside. And he was walking to his car. He was parked right
8 next to our old Hundai car and then he backed up and he ran us over -- ran me over.

9 Q He ran you over?

10 A [Witness nods her head in the affirmative].

11 Q And you said he was parked right next to where you had actually -- your
12 mom had parked her car?

13 A Yes.

14 Q And so you saw when he backed up and came at you guys?

15 A Yes; but didn't see when he came right toward us. It was so fast I
16 couldn't see.

17 Q It happened fast?

18 A Yes.

19 Q Is that why you got ran over?

20 A Yes.

21 Q What happened to you when that car came in and ran you over?

22 A I fell on the top of the car and then I fell and the car tire ran over my leg
23 and my foot.

24 Q So, after you got hit by the car did you say you had gone up on top of
25 the car, the hood?

1 A Yeah, like I fell on top and then I fell back down on the ground and he
2 ran over my foot.

3 Q That's when the tire went over your foot?

4 A Yes.

5 Q What happened when the tire went over your foot?

6 A My mom, she went to go help me up and I couldn't really walk, like I felt
7 a broken bone in my foot and I was crying.

8 Q So you were crying your foot hurt?

9 A Yes.

10 Q So, when the car first went over your foot did it hurt then too?

11 A Yes; I felt it.

12 Q Okay. I'm going to show you some pictures. This is Exhibit 21; was
13 that you a couple years ago?

14 A Yes.

15 Q And then Exhibit 22; was that your foot, the one that was hurting?

16 A Yes.

17 Q And where was it hurting on your foot; do you remember?

18 A It was on my little pinky toe.

19 Q On your pinky toe. Did that make it hard to walk?

20 A Yes.

21 Q And was this -- was your foot wrapped up like this when you still at the
22 church?

23 A Yes.

24 Q So, this picture was when you were still at the church?

25 A Yes.

1 Q Did you go to see a doctor as well because your foot was hurting?
2 A When it first happened?
3 Q Sure. Right at first, did you go see a doctor?
4 A No -- well, yeah. We went to the hospital after that.
5 Q Okay. Did police show up to the church first before you actually went to
6 a hospital?
7 A Well no the Metro came.
8 Q Metro came?
9 A Yeah.
10 Q Okay. And after Metro came you then went to see a doctor for your
11 foot?
12 A Well no first they wrapped up my foot and then we waited a couple
13 minutes and they left and then a man he had to carry me to the car and then we
14 went to the hospital.
15 Q And when you went to the doctor at the hospital, did they take x-rays
16 and pictures of your foot --
17 A Yes.
18 Q -- to see what was wrong?
19 A Yes.
20 Q And did they put your foot in something after they had done the x-rays
21 and they learned what was wrong?
22 A No.
23 Q No. Did they put it in like a cast or a boot or anything like that?
24 A Yes.
25 Q What was it?

1 A It was like -- it was something like a cast, like you could take it off and
2 put it back on.

3 Q Okay. Did they give you something else to help you walk also?

4 A Yes.

5 Q What was that?

6 A Crutches.

7 Q How long did you have those crutches?

8 A About two days.

9 Q A couple days. How long was your foot hurting you?

10 A It was hurting the same day I got hit and on Monday.

11 Q So, the day it got hit was a Sunday?

12 A Yes.

13 Q And the Monday it hurt too?

14 A Yes.

15 Q Did you get some medicine to help the pain stop?

16 A After -- yes.

17 Q Okay.

18 MR. SCOW: I'm going to pass the witness, Judge.

19 THE COURT: Thank you.

20 MR. POSIN: No questions, Your Honor.

21 THE COURT: Thank you. You may be excused. Before you go, let me just
22 tell you don't talk about your testimony with any of the other people that are
23 testifying in the case until it's all over and the trial's over. All right. Thank you.

24 MR. SCOW: Judge, can we approach for a minute?

25 THE COURT: Yes.

1 [Bench conference -- not recorded]

2 [Jury Trial, Day 1, concluded at 4:48 p.m.]

3 THE COURT: All right. Ladies and gentlemen, the attorneys finished a little
4 sooner than they had anticipated so there's no additional witnesses scheduled for
5 today and the trial is progressing a pace. So, we may be able to finish up this week.

6 So, tomorrow morning we'll be able to start at 9 o'clock because I don't
7 have a calendar and we should be able to go -- so 9 o'clock we'll be commencing
8 again. I have a matter at 8:30 but we'll be done with that before you get here for 9
9 and I will see you tomorrow. And I'm going to read you the admonition.

10 Ladies and gentlemen, we're taking an overnight recess. It is your
11 duty not to converse among yourselves or with anyone else on any subject
12 connected with the trial or read, watch or listen to any report of or commentary on
13 the trial by any person connected with the trial or by any medium of information,
14 including without limitation, newspaper, television, radio or internet and you are not
15 to form or express an opinion on any subject connected with the case until it is
16 finally submitted to you. We'll be in recess until tomorrow at nine.

17 [Outside the presence of the jury]

18 THE COURT: All right. The record will reflect that the jury has departed the
19 courtroom. Are there any matters outside the presence?

20 MR. POSIN: No, Your Honor.

21 MR. HAMNER: No, Your Honor.

22 ...

23 ...

24 ...

25 THE COURT: Thank you. We'll be in recess till tomorrow at 9 o'clock.

1
2 [Jury Trial, Day 2, concludes at 4:29 p.m.]
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20 ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I
21 acknowledge that this is a rough draft transcript, expeditiously prepared, not
22 proofread, corrected, or certified to be an accurate transcript.

23 
24 PATRICIA SLATTERY
25 Court Transcriber

EXHIBIT 6


CLERK OF THE COURT

1 RTRAN

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4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 WILBURT HICKS
12 Aka WILLIAM HICKS,

13 Defendant.

CASE#: C278699

DEPT. V

14
15 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE

THURSDAY, SEPTEMBER 5, 2013

16 **RECORDER'S ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS**
17 **JURY TRIAL, DAY 3**

18 APPEARANCES:

19 For the State:

RICHARD H. SCOW, ESQ.
Chief Deputy District Attorney
CHRISTOPHER S. HAMNER, ESQ.
Deputy District Attorney

22 For the Defendant:

MITCHELL L. POSIN, ESQ.

23
24
25 RECORDED BY: LARA CORCORAN, COURT RECORDER

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1 THURSDAY, SEPTEMBER 5, 2013 AT 9:33 A.M.

2
3 [Inside the presence of the jury]

4 THE COURT: Please be seated. All right.

5 This is the continuance of State of Nevada versus Wilburt Hickman,
6 case number C278699, and the record will reflect the presence of all 12 members of
7 the jury and the two alternates. Defendant is present with his counsel and Deputy
8 District Attorney prosecuting the case are present as are all officers of the Court.
9 Will counsel so stipulate?

10 MR. SCOW: Yes, Your Honor.

11 MR. POSIN: Yes, Your Honor.

12 THE COURT: Good morning. How's my jury? Good. All right.
13 We'll we're going to get started. State, call our next witness.

14 MR. SCOW: Before we call the next witness, we have State's proposed
15 Exhibit 24, the medical records for treatment of Anyla Hoye; it's the hospital. By
16 stipulation of the parties, we're going to move to admit 24.

17 THE COURT: All right.

18 MR. POSIN: That's correct, Your Honor.

19 THE COURT: All right. And, ladies and gentlemen, that means -- a
20 stipulation means the lawyers have agreed to the admission of these, that they're
21 authentic records and they're admissible as evidence. I will admit them on the
22 stipulation of counsel and that means you can accept them as evidence.

23 MR. SCOW: Thank you, Your Honor.

24 THE COURT: Proceed.

25 MR. SCOW: Our next witness is Craig Hutton.

1 **CRAIG HUTTON**

2 [having been called as a witness and being first duly sworn, testified as follows:]

3 THE COURT CLERK: Please be seated. If you would please state and spell
4 your first and last name for the record.

5 THE WITNESS: Craig Hutton, first name's C-R-A-I-G, last name Hutton
6 H-U-T-T-O-N.

7 THE COURT: Please proceed.

8 MR. SCOW: Thank you, Your Honor.

9 **DIRECT EXAMINATION**

10 BY MR. SCOW:

11 Q Are you familiar with the New Antioch Christian Fellowship Church?

12 A Yes, sir.

13 Q Is that located at 3950 North Las Vegas Boulevard?

14 A Yes, sir.

15 Q And that's in Las Vegas, Clark County, Nevada?

16 A How is it that you're familiar with that church?

17 A I was a member at that church for seven years.

18 Q Okay. So, going back to December 18th 2011, at that time were you
19 member of the New Antioch Church?

20 A Yes, I was.

21 Q So, on that day, I'm going to show you State's Exhibit 1. If you look on
22 your screen there, does this depict the church there on Las Vegas Boulevard?

23 A Yes, sir.

24 Q Okay. We're going to talk about some events from December 18th
25 2011; do you remember that day?

1 A Yes.

2 Q Were you participating in the 8 o'clock services that morning?

3 A Yes, I was.

4 Q And this was a Sunday?

5 A It was Sunday.

6 Q Do you have other roles or duties at the church or at that time did you
7 have other roles?

8 A At that time I was director of safety/security of the New Antioch
9 Christian Fellowship.

10 Q And was Allen Burse and Washington Thompson, were they members
11 of that security as well?

12 A Yes, sir.

13 Q Also members of the church but helped out with security?

14 A Yes.

15 Q During that 8 o'clock session that morning, did you notice anything
16 unusual or that stood that out to you?

17 A Nothing unusual that stood out until about 9:15, and we had a
18 gentleman come into church. He was approached by one of our sanctuary
19 attendants or ushers and he kind of just shrugged her off and, you know, proceeded
20 to sit on the front row of the church. And at that time, you know, I didn't know who
21 he was or what was going on. I was approached by my senior pastor to just keep
22 my eye on something that just didn't seem right; it was unsettling. And she asked
23 me to try and escort him out and I said, well, we have ten minutes of service left. I'd
24 rather just let it sit and I'll just keep my eye on him, and so that was the only thing
25 that happened at that time.

1 Q Okay. Did the usher also approach you to --

2 A She approached me. She said that she smelled alcohol and she tried
3 to seat the gentleman. He was very abrasive and, you know, I'm just going to sit up
4 here and he just kind of took off.

5 Q Okay. So, after the pastor and the usher approach you, what do you do
6 at that point in time?

7 A I just kind of stood back and just kept my eye on the individual.

8 Q So, from then on you were --

9 A Focused.

10 Q -- to keep an eye on him?

11 A Yes.

12 Q So, then you start keeping an eye on him. There's about -- you said
13 about ten or 15 minutes left in the service?

14 A Yes.

15 Q Okay. Anything else happen during the services?

16 A Towards the end of the service, normally they call for anybody who
17 would like to be a new member. The individual raised his hand. He yelled out I do.
18 And so they proceeded to escort him to the back to fill out membership
19 documentation so I kind of followed along. At that time, he said his name was
20 Wilburt Hicks and, you know, he just wanted to be a member of the church, that his
21 daughter went there.

22 Q Okay. Did you -- at that time, did you know who the daughter was?

23 A I didn't know at that specific moment, no.

24 Q And the gentleman who you were keeping an eye on that identified
25 himself as Wilburt Hicks, do you see in the courtroom today?

1 A Yes, sir.

2 Q Can you point to the individual and describe the clothing that he's
3 wearing --

4 A Right there; glasses, white shirt.

5 Q Okay. And is he wearing a coat or no coat?

6 A No coat. Older black gentleman.

7 MR. SCOW: Your Honor, can the record reflect identification of the
8 Defendant?

9 THE COURT: It will.

10 BY MR. SCOW:

11 Q So, up to this point in time now he went to fill out paperwork and
12 identified himself; what happens then?

13 A After that, he proceeded to go back into the sanctuary. Service was
14 just about over and so -- we were on the north side of the building where they do the
15 documentation. So, he was parking on the south side, and the only reason I knew
16 that is because I kind of followed him as he went out to his vehicle. I got kind of
17 delayed because the crowd is moving. When I got outside, the gentleman was at
18 this vehicle with his trunk open. He had backed in, and there's a wall there so I
19 couldn't see what he was doing and so I just kind of kept my eye on him sitting
20 about midway in the parking lot. At that time, Allen Burse was pulling up and I
21 asked him to kind of just hang out and make sure everything was okay.

22 Q And up to this point in time was -- what was your intention with regard
23 to the Defendant at this time?

24 A I just wanted to see to it that he left the premises.

25 Q And was that at the directive of the pastor?

1 A The directive of senior pastor.

2 Q Looking at this map here, State's Exhibit 1, can you see here the south
3 area, the parking lot that you were describing?

4 A Yes.

5 Q And if you rub on the screen it'll make marks. It's not the best markings
6 but as best you can, circle that south area.

7 A All right. This is south parking lot.

8 Q Okay. And do you see on there approximately where the Defendant's
9 vehicle was parked?

10 A Yeah. He was approximately in between these two cars right there.

11 Q Okay. So when you went outside, you said that he was already at his
12 car?

13 A He was at his vehicle with his trunk open.

14 Q Okay. And what happens at that point in time?

15 A I kind of stood where I initially circle there and just kind of kept my eye
16 on him. At that time, Allen Burse pulls in the parking lot and I stop him and ask him
17 to go ahead and park and kind of just hang out, you know, 'cause I'm not sure
18 what's about happen because with the gentleman and the truck, I don't know what's
19 going on. He closes his trunk and he proceeds to walk toward the church. And at
20 that time, I stop him and I ask him, you know, go ahead and leave and he said that
21 he wanted to see his daughter. He told me his daughter's name. And I said well
22 your daughter's busy because at that time she was one of the sanctuary attendants.

23 Q So, when he said the name you knew that was?

24 A I know exactly who it was.

25 Q What's her name?

1 A Samira Grove.

2 Q So, did he walk from the car where you had marked up there down to
3 the circle area you were at?

4 A Yes.

5 Q And that's when you said it's time for you leave?

6 A Right. I asked him, you know, I said, hey, I've been instructed to ask
7 you to leave. He said that he was there to his daughter. And I said, well, you can't
8 see her right now. She's busy because we are actually in between services and
9 we're trying to escort people out and get people in. It's a lot going on. He said well
10 what, my daughter can't pray for me. I need my daughter to pray for me now. And
11 he got kind of agitated. I said well, sir, why you getting upset with me. I said all I'm
12 doing is what I was asked to do was to ask, you know, you get to in your vehicle and
13 just go ahead and leave. Right now is not a good time to see your daughter. And he
14 kind of stood there for a moment and he looked at me and he says okay and he got
15 in his car.

16 Q So, he walked from the circle up to this car?

17 A Yes; he went from the circle back to his vehicle. He got in his vehicle
18 and he pulled out. He made a right and went around the back side of the building,
19 and that's the last I seen of his vehicle at that time.

20 Q Can you mark the path that he took?

21 A He came around the back side. There's a fire lane back there. And
22 once he hit that corner on the back side of the building that was the last I saw of his
23 vehicle at that time.

24 Q Okay. So, the marking was little bit dark, but the line indicating he
25 drove back behind that way?

1 A Yes.

2 Q Out of your sight?

3 A Out of my sight.

4 Q At the time that you interacted with him, could you smell alcohol?

5 A I did smell alcohol, yes.

6 Q Were there any other observations that you made of him that you
7 thought he might have been under the influence?

8 A No; just, you know, the smell of alcohol is the only thing I seen. Other
9 than that, everything seemed normal.

10 Q Was he walking normally?

11 A Walked normal, he talked normal, you know.

12 Q Drove his car normal?

13 A When he came out and went around, yes.

14 Q You didn't see much of it but what you saw?

15 A What I saw.

16 Q So, at the point now where he drove around the back of the church, are
17 you still in that circle area there?

18 A I'm kind of in the circle are and I'm beginning to walk. There's a door
19 kind of right here. You can see that little mark right there. So, I'm headed back
20 there and at that time Samira comes out, his daughter, comes out and she's kind of
21 a little flustered and, you know, I said, hey, it's okay. You don't have to leave. I said
22 your dad to go ahead and go, you know, and she was like, no, I got to go, I got to
23 go. And then she kind of came out and got in her vehicle and she went out of the
24 parking here onto Las Vegas Boulevard.

25 Q From this side of the parking lot?

1 A She kind of went this way and then on to Las Vegas Boulevard.

2 Q So, describe her demeanor?

3 A Like I said, she just seemed very upset and kind of, you know, nervous
4 almost to a degree, you know, she was just like, no, I got to go, I got to go now. I
5 got to get out of here. I didn't know what it was about.

6 Q Was that even after you had told her that --

7 A I said, yeah, I got to him to leave. You don't have to go. She said, no, I
8 got to get out of here now, I got to go, and she took off.

9 Q What did you do after she drove out of the area?

10 A Okay. After she drove out, I kind of stood there for a moment and, you
11 know, something said go to the other side of the building, north of the side of the
12 building. So, I kind -- from the circle and almost in the path that Samira drove, I
13 came across but I cut through this -- like these bushes here. So, I kind of cut through
14 along the wall and I came out right under this awning.

15 Q That's were you're pointing right in there?

16 A Right; under that awning. And so I turned like right there.

17 Q So, you came across here and turned this corner?

18 A Yes.

19 Q What do you observe when you do that?

20 A What I see is I see almost like a green/pearl colored Cadillac inside the
21 doorway, right about there.

22 Q So, you're pointing right in here?

23 A Right.

24 Q Okay. I'm going to show you State's Exhibit 6 and ask you if you
25 recognize this?

1 A Yes, sir. That's the scene that I seen.

2 Q Now if you hit the bottom left of your screen it'll clear those markings.

3 So, when you come around the corner from the west side of the building --

4 A Yes.

5 Q -- this is the scene that you observe as you're coming down?

6 A Yes, sir.

7 Q What other observations do you make as you're coming up there?

8 A Once I see this, I kind of take off into a sprint to get down there and see
9 what's going on. As I walk up on the vehicle, there's a couple ministers and pastors
10 they're looking all under the car screaming, where's the baby at, where's the baby.
11 And so not knowing what's going on, I look in the vehicle and, again, I see the
12 gentleman there. He's trying to put the car back in gear, and on the driver's side
13 Allen Burse is trying to lay on the gentleman to keep him from moving the car and
14 trying to basically detain him. And then I don't recall who but somebody reached
15 their arm in and just turned the car off because it's clear that he was trying to move
16 the vehicle.

17 Q Did you hear the engine?

18 A The engine was running when I walked up.

19 Q Was it revving or was it in idle?

20 A No, it was revving.

21 Q And you saw the Defendant messing the gears?

22 A Trying to reach for the gearshift. But like I said, Allen Burse was trying
23 to lay on top of him and, you know, just trying to keep him from doing that. And like I
24 said, somebody came in from the passenger side and just turned the car off.

25 Q Do you hear the Defendant say anything while this was going on?

1 A He's just -- at that time, no. He was just kind of yelling. Everybody's
2 yelling, you know. There's a lot being said so -- to determine who was saying what
3 at that time though.

4 Q And the scene outside of the car; what was that like?

5 A The scene outside the car was people running around looking for this
6 child, you know. As I looked under the car I did see a child's shoe. So, again, kind
7 of concerned. Everybody was trying to find the child, and then they found the child
8 inside one of the pastor's office. They got her inside there.

9 Q So, when you passed the Defendant to leave from the other side of the
10 parking lot, describe his demeanor; how was he acting at that time that you're
11 asking him to leave?

12 A Okay. When I initially asked him to leave he was very agitated. He
13 demanded to see his daughter now. He wanted his daughter to pray for him right
14 now, and like I explained to him, she was tied up; she was doing something else and
15 that they wanted him to leave.

16 Q So, a couple minutes after that confrontation --

17 A I'd say it lasted a good minute, minute and a half that we kind of went
18 back and forth. I finally asked him, why are you getting upset with me. I'm just
19 doing what I'm asked to do.

20 Q And then within a few minutes after that, you go around the other side
21 and see him in his car --

22 A Probably within three to four minutes.

23 Q -- and ran into those doors there?

24 A Well the car was in the door. I didn't see the car go in, but the car was
25 in the door.

1 Q That's where it ended up?

2 A Right.

3 Q About how long does the process take of Allen holding the Defendant in
4 the car and turning the car off?

5 A By the time the car got turned off, I'd say it was about a minute or so
6 after I got there. At that time, Allen was holding him down and he asked somebody
7 to go his car and get some handcuffs and then he put handcuffs on him.

8 Q Did the Defendant make any statements at that time?

9 A After he was handcuffed, he was just kind of yelling and screaming and
10 he said, I'll kill everybody in here or something to that effect because it kind of set
11 me back. And I thought, man, you did all of this and you still just, you know, you're
12 handcuffed and everything and now you're still trying to go and on; you know, it was
13 my fault. It's just like wow.

14 Q Were you still there when the police arrived on the scene?

15 A Yes, sir.

16 Q Was the Defendant still in the car being held down by security
17 members?

18 A No; by the time the police came the fire department or paramedics had
19 came and they had got the gentleman out of the vehicle.

20 Q And where did they put him?

21 A They set him on a stretcher and I believe they put him in the back of the
22 ambulance, and then at that time, the police were doing their investigation and
23 talking and going back and forth.

24 Q When the ambulance got there and the Defendant's being pulled out of
25 the car, describe him at that time?

1 A Actually when the ambulance came -- I don't know how it happened --
2 but he -- somehow the door ended up opening up and he jumped out of the car right
3 as the ambulance -- the paramedic was walking up. I believe it was actually the fire
4 department because I remember seeing his shirt saying the fire department. And he
5 kind of walked up and they started looking at him.

6 Q So, the Defendant jumped up out of the car?

7 A Yeah. He jumped out of the car on the passenger side.

8 Q Was he still agitated at that point?

9 A He was still agitated, yes.

10 Q So based on your observations from beginning to end, could you tell
11 that alcohol was involved?

12 A Other than the odor, no.

13 Q His actions didn't clue anything out to you?

14 A No.

15 Q The way he spoke or the way he --

16 A No, not at all.

17 Q It was just the smell?

18 A Just the smell.

19 Q So, if not for the smell --

20 MR. POSIN: Objection; leading.

21 MR. SCOW: I was going to ask what was your observations have been.

22 THE COURT: All right. Overruled.

23 THE WITNESS: I just thought it was just an agitated gentleman, you know.
24 Without the smell of alcohol, I wouldn't have thought anything other than he was just
25 there.

1 MR. SCOW: Court's brief indulgence. I'll pass the witness.

2 THE COURT: Cross.

3 MR. POSIN: I have no questions for this witness, Your Honor.

4 THE COURT: Thank you. May this witness be excused?

5 MR. SCOW: Yes, Your Honor. Thank you.

6 THE COURT: Thank you very much for your testimony.

7 THE WITNESS: Thank you, ma'am.

8 THE COURT: And if you would please not discuss your testimony with any
9 other witnesses in the trial till it's over?

10 THE WITNESS: Yes, ma'am.

11 THE COURT: Thank you.

12 MR. HAMNER: The State's going to call Tiffany Trass next, Your Honor.

13 **TIFFANY TRASS**

14 [having been called as a witness and being first duly sworn, testified as follows:]

15 THE COURT CLERK: Please be seated. If you would state and spell your
16 first and last name for the record, please.

17 THE WITNESS: Tiffany, T-I-F-F-A-N-Y, Trass, T-R-A-S-S.

18 THE COURT: Thank you. Proceed, please.

19 **DIRECT EXAMINATION**

20 BY MR. HAMNER:

21 Q Thank you, Your Honor. Ms. Trass, are you familiar with the New
22 Antioch Christian Fellowship Church?

23 A Yes.

24 Q How do you know about that?

25 A I've been a member there for about six years.

1 Q Okay. Were you at that church on December 18, 2011?

2 A Yes.

3 Q I want to turn your attention to about the 8 a.m. service; do you
4 remember being at that service?

5 A Yes, I was.

6 Q Do you remember observing anything in particular at least at the
7 beginning of the session?

8 A At the beginning of the service?

9 Q Yeah.

10 A No; just normal.

11 Q Do you see any individual here in the courtroom right now that was at
12 New Antioch Christian Church that time in the morning -- around that time in the
13 morning?

14 A Yes.

15 Q Sorry about that. I apologize. Do you see anybody here in the
16 courtroom today that was with your or at least was there at the church around that
17 time in the morning?

18 A Yes; at the end of services.

19 Q Okay. Why don't you point out, Ms. Trass, who that individual is, what
20 they're wearing, any article of clothing; where they are in the courtroom?

21 A They're sitting over there with the white long sleeved shirt on.

22 Q And you're saying they.

23 A He's sitting there.

24 Q Okay. Is he wearing a coat or not a coat?

25 A No, not wearing a jacket.

1 MR. HAMNER: Okay. Let the record reflect the witness identified the
2 Defendant, Wilburt Hickman.

3 THE COURT: It will.

4 BY MR. HAMNER:

5 Q Thank you, Your Honor. Now when you saw him you said you noticed
6 him at -- near the end of service?

7 A Yes.

8 Q Was there anything really remarkable about how he was moving around
9 at church when you first saw him

10 A It was just -- when he came in he was trying to walk in the front while
11 the pastor was speaking.

12 Q So, what jumped out of you was that he kind of wanted to walk all the
13 way up front?

14 MR. POSIN: Objection; leading.

15 THE COURT: Sustained.

16 BY MR. HAMNER:

17 Q That's what stood out in your mind?

18 A Yes.

19 Q Now when you -- what did you do after the service was over; what were
20 you doing at that point?

21 A At the end of service?

22 Q Yeah.

23 A I went to sell -- we were having our ten year gala the following January
24 and I was standing out in the foyer to sell tickets so people can purchase them for
25 the gala.

1 Q Okay. So, explain to the jury a little bit. You were standing in the foyer.
2 What's at one end of the foyer and what's at the other end of the foyer?

3 A If you're standing in the foyer, one side is the entrance to the sanctuary
4 and then the other side is the exit -- entrance and exit to the church.

5 Q Okay. So, one is the main entrance and the other one is where you
6 have your prayer services?

7 A Yes.

8 Q Okay. Where are you in the foyer?

9 A I was standing against the wall in between the door -- the front door and
10 the sanctuary behind a long table facing -- if you look where I facing towards the
11 pastor's office and where we sell our [indiscernible].

12 Q About how many people are kind of in the foyer around that time?

13 A A lot of people. It was like -- we were going in between 8 and 10
14 o'clock service so people were leaving as well as people coming into service.

15 Q Probably a good time to sell tickets?

16 A Yes.

17 Q Okay. Do you notice the Defendant around the time that you're sitting
18 out in that foyer?

19 A No, I didn't see him in the foyer.

20 Q Okay. When is the next time you saw the Defendant?

21 A When the car was coming into the front door of the sanctuary -- I mean
22 of the foyer.

23 Q Do you ever recall seeing the Defendant being escorted out at any point
24 in time?

25 A No, I do not.

1 Q Do you remember giving a statement at a prior proceeding?

2 A Yes.

3 Q Would it help, maybe refresh your recollection as to that fact. You had
4 a chance to look at maybe your statements from the prior proceeding?

5 MR. POSIN: Your Honor, there's no question. She said she doesn't recollect.

6 BY MR. HAMNER:

7 Q Okay. At the prior proceeding, do you recall stating that you actually
8 saw the Defendant being escorted out?

9 A I might have. I don't -- at this time. It was a couple years ago. I can't
10 remember.

11 Q And fair to say this incident happened almost two years ago; right?

12 A Uh-hm.

13 Q And you testified at this proceeding I think maybe a couple of months
14 after that; right?

15 A Yes.

16 Q Would you agree that maybe your memory is probably a little fresher at
17 the time that you testified at the prior proceeding than it almost two years later?

18 A Yes.

19 Q Would you be surprised to learn that you had maybe stated that you
20 actually saw him being walked out as you sat in the foyer; would that surprise you at
21 that previously proceeding?

22 A No, no. I don't recall if he did. There was so much going on 'cause I
23 was talking to people and so at the time. I could have saw him but I don't
24 remember.

25 Q Okay. So, do you remember whether or not he was saying -- so you

1 don't recall whether or not he was saying anything at that time?

2 A Going in or out the --

3 Q As he walking out.

4 A -- service? No.

5 Q Okay. Would it help to refresh your recollection if you saw your
6 previous statement to see whether or not you even heard him make mention of
7 anything?

8 A I had saw him earlier before I went in the foyer.

9 Q Okay. So, you saw him earlier. Did you hear him speak?

10 A No; I don't remember hearing him speak. I remember seeing him
11 earlier but if you're saying while we were in the foyer, I don't remember. I remember
12 seeing him in the sanctuary.

13 Q Do you recall at a previous proceeding you stating something to the
14 effect of I saw him saying some incoherent things?

15 A That was during -- when he was tried to join the service, the church.

16 Q Okay. How close were you to him though when he was saying -- when
17 he was speaking?

18 A We were right in the same room.

19 Q You were in the same room?

20 A Hm-hm.

21 Q Now what do you mean when you used the word incoherent? Were
22 you having a hard time hearing him or was he just saying something that didn't even
23 sound like English?

24 A Well he was just saying things that I didn't know what he was talking
25 about because I had just taken him back. He joined the church and I had taken him

1 back to the office. And so he was saying things that I didn't understand what he was
2 talking about. He was just saying things -- we I had never met him before so the
3 things he was saying I didn't know him so I don't know what he was talking about so
4 I was just like, okay, can you fill this out.

5 Q So, it wasn't in relation to what you were talking to him about?

6 MR. POSIN: Objection; leading.

7 MR. HAMNER: Okay. It doesn't suggest --

8 THE COURT: Overruled.

9 BY MR. HAMNER:

10 Q Let me ask the question again. So, it wasn't in relation to having him
11 register and having him sign up to become a member of the church?

12 A No, no.

13 Q When he spoke was he mumbling?

14 A No; he wasn't mumbling. He was talking normal. He was saying things
15 -- talking about what was in the pastor's office, saying, you know, what are those in
16 the office. There was some people sitting there [indiscernible] and he was
17 commenting on them and then he was saying, do you know, you know, where this
18 person is or do you know how do I get to the other side. Things like that. It was just
19 -- he had already made me nervous so I really wasn't paying attention to what he
20 was saying.

21 Q Okay. So, was this a situation where you didn't actually understand the
22 sentence or you just didn't understand maybe who he was asking about or what he
23 was asking you questions about --

24 A Right.

25 Q -- like the substance of?

1 A Yeah. I just was telling him to fill out the paperwork and then I left him
2 there with one of our safety team members and they went back in the sanctuary.

3 Q Okay. So this isn't necessarily a situation where he's saying a bunch of
4 words --

5 MR. POSIN: Objection; leading.

6 MR. HAMNER: Okay. It doesn't --

7 THE COURT: Sustained.

8 BY MR. HAMNER:

9 Q Okay. So, just to be clear. Did you or did you not understand the
10 actual sentences he was saying; you just didn't know why he was asking them?

11 A I understood every word he said. I just didn't know what the reasons he
12 was asking or saying them. I just was ready to go.

13 Q All right. And, Ms. Trass, you mentioned you're sitting in the foyer and
14 then I think you mentioned you saw a car kind of come through?

15 A Yes.

16 Q Do you remember anything else happening just prior to the car coming
17 in to the church?

18 A I was sitting there talking with one of our mothers and another young
19 gentleman was coming by and I was telling him, oh, I have your ticket. One of the
20 doors to our -- coming in front outside was open and I heard a man outside say
21 move out of the way really loud. And I thought to myself what's going on out there.
22 And after that, that's when I saw the car coming into the building.

23 Q Now did you make any attempt to move out of the way?

24 A I did. Initially I was frozen in place, like, oh my God, in my head I'm like
25 is this really happening, and then I moved to the left as far as I could because where

1 I was standing the table was long and the only way to get in and out was the way
2 that the car was coming in. So, I moved over as far as I could to the left.

3 Q Ms. Trass, you said you moved over to this area to the left. What do
4 you believe could have happened to you if you had stood in that exact spot as this
5 car was coming through?

6 A I probably would have gotten hit because the vase that was on the table
7 at the end got hit and crashed onto the ground.

8 Q Were you afraid of being hit as this was all happening?

9 A Yes.

10 Q How afraid were you?

11 A I was terrified. I just -- I didn't know what to do. I just was frozen in
12 place, but then I moved as far as I could and I just closed my eyes because I didn't
13 know what was going to happen because I couldn't go any further because of the
14 way the table and wall was made. I couldn't get out any further. So, I just had to
15 wait and see.

16 Q Okay. I'm going to show you State's 10; do you recognize that?

17 A Yes.

18 Q Okay. And what is that?

19 A That's the front entrance to the church where the came in there.

20 Q Okay. Is that the car that we're talking about?

21 A Yes.

22 Q That's a fair and accurate depiction of what it looked like on that day?

23 A Yes.

24 Q Now where you were kind of in relation to this car?

25 A I was if you look at the --

1 Q If you put your hand and make a mark you can -- it actually marks on
2 the screen?

3 A Okay.

4 Q It will show up there.

5 A Okay. This is -- that end right here, the end here. I was over on this
6 side.

7 Q So, if you're looking at the car would you say that you were to the right
8 of the car?

9 A Yes.

10 Q And the table that you were nearby was to the right of that car?

11 A Yes.

12 Q I'm showing you State's 11; is that kind of a fair and accurate depiction
13 of what it kind of looked like to the right?

14 A Yes.

15 Q I'm showing you State's 12; is that the table that we're talking about
16 over here or was there another table that's not in that?

17 A There was another table that's in the picture. That's our computer
18 table. I had a set up table just for that day.

19 Q Okay. Was that table actually closer than that?

20 A Yeah. It was more out because we have stuff back there. We have a
21 computer table and other things so I was a little more out.

22 Q So, taking a look at this photo at least when it was taken, are you telling
23 us that the table you were sitting at is not in the position that it was at the time right
24 before that car came through? I'm trying to get a sense -- is the table you were
25 sitting at is it in this picture at all?

1 A No.

2 Q Okay. Based on what we can see here would that have been the
3 general area as to where your table would have been? I just don't know when this
4 picture was taken. I know it was taken probably on that day, but I'm just trying to get
5 a sense of was the table probably in that field of view?

6 A Yeah. It might have been more down this way right here.

7 Q But prior to that car coming in, that's really -- if you had taken a picture
8 from that vantage point at least a portion of the table you were sitting at would have
9 been in that photo?

10 A Yes.

11 Q Okay. Was the scene like after this car came through, Ms. Trass?

12 A Chaotic; people screaming. I saw people running -- people were
13 running in as he was coming in. Then people were screaming they thought a little
14 girl was under the car so they were screaming look under the car. And some of the
15 men dropped to the ground to try to see if anybody was under the car. One young
16 lady was really hysterical because she thought there was a child under there and so
17 she was just screaming and everybody was just ---

18 Q Do you remember whether or not -- you remember seeing the
19 Defendant at all after this car came through?

20 A I just happened to look and look in the driver's side and saw and then
21 after that I was -- my sister was looking for me so I went to her 'cause she was like
22 Tiffany, you know, screaming my name trying to see where I was at because she
23 knew I was out in the foyer and they were in the sanctuary still.

24 Q Okay. Did you see anything the Defendant was doing at that point?

25 A No; I didn't pay attention after that to what he was doing.

1 MR. HAMNER: Court's indulgence.

2 BY MR. HAMNER:

3 Q Ms. Trass, if you could explain to the jury about how far were you from
4 this car at the time it comes through your church?

5 A In feet or --

6 Q Sure. In feet.

7 A Before he comes through or as it was coming through.

8 Q Just -- well before it comes through, how close are you in that -- how
9 close are you sitting to those double doors?

10 A I'm not good at measurement. I mean, not even a few feet away.

11 Q Just a couple of feet?

12 A Yeah; just maybe three, five. I don't know. I'm not good at measuring
13 feet so --

14 Q Okay. And what county did all this happen in?

15 A Clark County.

16 MR. HAMNER: All right. Thank you. No further questions at this time.

17 THE COURT: Cross.

18 **CROSS-EXAMINATION**

19 BY MR. POSIN:

20 Q Good morning, Ms. Trass.

21 A Good morning.

22 Q On direct examination you stated that your memory was clear back a
23 month after the events when you testified that time than it is now; right?

24 A Hm-hm.

25 Q And at that time when you were asked what he was saying, what this

1 gentleman was saying, you said he was saying things that were incoherent; right?

2 A I don't remember what I wrote.

3 Q Would it refresh your recollection if I showed you a transcript of that
4 hearing?

5 A Sure.

6 Q Okay. Without reading anything aloud, look at this -- lines, 6,7, 8,9, 10,
7 11. Does that refresh your recollection with you said a month after the events?

8 A Yes, sir.

9 Q And did you say he was incoherent?

10 A I probably meant I couldn't hear -- what incoherent is?

11 Q Is that what you said?

12 A Yeah, that's what I said.

13 MR. POSIN: Thank you. I have nothing further, Your Honor.

14 THE COURT: Redirect.

15 **REDIRECT EXAMINATION**

16 BY MR. HAMNER:

17 Q I'd like to follow-up on that. You were just asked about whether or not
18 you used the word at the prior hearing that he was incoherent?

19 A Hm-hm.

20 MR. HAMNER: Your Honor, if I could approach. I'd actually like the witness
21 to read her actual answer within context to give context to the statement.

22 THE COURT: Go ahead.

23 MR. HAMNER: Thank you.

24 MR. POSIN: No objection, Your Honor.

25 MR. HAMNER: Let the record reflect I'm showing the witness her voluntary

1 statement.

2 BY MR. HAMNER:

3 Q Now you were asked a question: What was the Defendant's demeanor
4 like as he's being escorted out of the church? If you could please just read your
5 complete answer to give context to the jury, please, ma'am.

6 A Kind of, you know, if someone's holding you where you're going out just
7 kind of. He was saying different things like he wanted to talk to someone and some
8 incoherent things. I really couldn't hear everything he was saying but he was talking
9 and they told him that he had to get off the premises.

10 Q Thank you. So, Ms. Trass, you couldn't really hear everything --

11 MR. POSIN: Objection; leading.

12 THE COURT: Sustained.

13 BY MR. HAMNER:

14 Q So, was the -- why did you use the word incoherent in that answer,
15 ma'am?

16 A Because I couldn't hear what he was saying so to me it was not
17 understandable.

18 MR. HAMNER: Thank you. No further questions.

19 MR. POSIN: Nothing further, Your Honor.

20 THE COURT: I have just one question. Do you know what the definition
21 of the word incoherent is?

22 THE WITNESS: I do. I just at the time probably.

23 THE COURT: Tell me what it is.

24 THE WITNESS: Incoherent is talking where it's not understandable, to me.

25 THE COURT: Okay. All right. That's your understanding of what the word

1 means?

2 THE WITNESS: Hm- hm.

3 THE COURT: All right. Thank you. Any questions as a result of my
4 question?

5 MR. HAMNER: No, Your Honor.

6 THE COURT: Thank you very much for your testimony. And if you'll please
7 not discuss your testimony with any other witness until the trial's over.

8 THE WITNESS: Thank you.

9 THE COURT: You can call your next witness.

10 MR. SCOW: Sharon Powell.

11 **SHARON POWELL**

12 [having been called as a witness and being first duly sworn, testified as follows:]

13 THE COURT CLERK: Please be seated. If you'll state and spell your first
14 and last name for the record.

15 THE WITNESS: Sharon Powell, S-H-A-R-O-N Powell, P-O-W-E-L-L.

16 THE COURT: Please proceed.

17 MR. SCOW: Thank you, your Honor.

18 **DIRECT EXAMINATION**

19 BY MR. SCOW:

20 Q Good morning, Ms. Powell.

21 A Good morning.

22 Q Are you familiar with the New Antoich Christiansen Fellowship Church?

23 A Yes, sir.

24 Q Is that located at 3950 North Las Vegas Boulevard?

25 A Yes, sir.

1 Q And that's here in Clark County, Nevada?

2 A Yes, sir.

3 Q On December 18th 2011 were you attending worship services on that
4 day?

5 A Yes, sir.

6 Q And that was a Sunday?

7 A Yes.

8 Q What service had you attended that day?

9 A I was getting ready to attend the 10 a.m. service.

10 Q Okay. So, you hadn't gone to the 8 o'clock service?

11 A No, I haven't.

12 Q Was there anything that you were doing in preparation for before the 10
13 a.m. service?

14 A Yes; it was a few days before Christmas and I knew that I wouldn't see
15 the members so I was handing out Christmas cards in the vestibule of the church at
16 around five minutes to ten.

17 Q Shortly before that 10 a.m. service?

18 A Yes.

19 Q And in the vestibule, what part of the church building is that located at?

20 A That's the front of the church.

21 Q Okay.

22 A And it's a room where we mingle and do things prior to service, after
23 service. It's just a little area just before you enter the sanctuary.

24 Q I'm going to show you an overhead view of the church. So, the front of
25 the church, do you recognize --

1 THE COURT: Which exhibit is this just for the record?

2 MR. SCOW: This one is Exhibit 2 that I had put on here.

3 THE COURT: All right. Thank you.

4 BY MR. SCOW:

5 Q Do you recognize what we're seeing in this?

6 A Yes.

7 Q What do we see here?

8 A Okay. This is the main entrance of the church here.

9 Q Okay. And if you touch the screen it'll actually make a mark. It's not a
10 great mark but if you kind of put a circle around there you're looking at.

11 Is that arrow kind of pointing to the general area?

12 A Well I don't know if I'm doing this wrong but --

13 Q Is it making a mark a little to the left of where you actually want to put
14 the mark?

15 A Yeah. Actually it's over to the left. I want to go towards the right.

16 Q Okay. So, the arrow you put is right here?

17 A Right. We were right in here, yes.

18 Q That's the entrance?

19 A Yes.

20 Q So, just behind this is that the vestibule?

21 A Yes.

22 Q Where's the sanctuary from there?

23 A Okay. If you walk through the vestibule and go through two double
24 doors, the sanctuary is there behind -- right directly behind.

25 Q So, like straight through?

1 A Yes.

2 Q So, if you're going to walk in and just go straight through those doors,
3 the next double doors you would end in the sanctuary?

4 A Yes, sir.

5 Q And so you were just inside that area passing out cards?

6 A Yes.

7 Q Tell us what happened in those few minutes before ten. What
8 happened when you were in the vestibule?

9 A Like I said, I was handing out the Christmas cards and, you know, going
10 back and forth. I was catching people leaving 8 o'clock and people coming in to the
11 10 o'clock service. And I handed out the last one that I had for that group of people.
12 So, I went back to the table and, you know, got the rest of my cards and picked up
13 my purse and I was straightened the cards out and the Lord said move and I
14 stepped to my right and as soon as I stepped to my right from in front of that door I
15 heard this tremendous sound; I thought it was an earthquake. And I just fell on my
16 knees and I didn't know what had happened, but it was a horrible sound. It was a
17 loud crashing sound. And once I was on my knees, all chaos broke out. People
18 were screaming, crying. They were saying there was a little kid, and I looked and I
19 saw a car, and I thought, my God. So, there was a car that had come through those
20 doors just right at where I was standing.

21 Q Okay. Let me kind of break this up a little bit. You gave us a lot of
22 information there.

23 A Okay.

24 Q I'm going to show you State's Exhibit 12. Is this the double doors
25 where you were standing in the vestibule?

1 A Yes.

2 Q So, what we see in this picture is the vestibule area?

3 A Yes.

4 Q This looks like a door. Is that a door laying on top of the car?

5 A Yes.

6 Q Is that door a door that is normally shut during the church services?

7 A Yes; the -- that door is closed and the other one is open for people to
8 come in and out.

9 Q Okay. And so in relation to this door that is now up, where was that
10 table set out that you said the Christmas cards were on?

11 A It was right over in this area here -- yeah, right in there.

12 Q I can't see that mark. Can you maybe do a big -- okay. So, that mark is
13 right here. Was the table set out to come out this way or was it against this wall?

14 A I believe it was a little forward more because when things started
15 happening, things got moved around. It was a little more forward because where I
16 was standing I could touch this area right here. Right in here.

17 Q Does that mark -- you want it to be a little more to the right?

18 A This is closer. To the right. I'm sorry.

19 Q That's okay. It's a little off where you actually want to put the mark. So,
20 the line you drew is right here but you want it to be right here?

21 A Right. The table was more forward. So, I was standing right here.

22 Q So where my pen this is where you were standing?

23 A Yes.

24 Q And at the point in time you said you had hearing something that told
25 you move; what was it that you heard?

1 A The Lord -- God.

2 Q Okay. You heard the voice of the Lord tell you to move?

3 A Yes; just that one word. Move.

4 Q And you moved?

5 A Yes, I did.

6 Q What happened when you moved?

7 A When I moved, the car came through the door and at that time when I
8 moved, I didn't look in the direction, I just moved. I mean, I just -- I was obedient and
9 I moved.

10 Q And you heard a loud crashing noise?

11 A Yes, I did.

12 Q What would have happened if you didn't move?

13 A If I had stood where I was standing to hand out the Christmas cards, I
14 would have been hit by this car.

15 Q And so after you heard that crashing noise you said you had fallen to
16 our knees?

17 A Yes, sir.

18 Q And then you described some kind of chaos going on in that scene?

19 A Yes.

20 Q People looking for a girl?

21 A Yes; there was a child that when I was on my knees and I did turn
22 around to look I saw a young child's shoe, and they were screaming, people were
23 crying. The safety team, they were trying to move out. The mother was asking, you
24 know, my child, my child is under the car. So, I leaned over to try to see if I could
25 see a child. All I saw was the shoe and I thought, oh, my God, but I didn't see a

1 child.

2 Q Did you ever look inside the car? What happened after you looked for
3 the child?

4 A No, I didn't look inside the car. The door was blocking the view. I
5 looked at that right there, but I could not see inside of the car.

6 Q Okay. At this point in time with the chaos going on, what do you do
7 after this?

8 A I just stayed on my knees and I just -- I was just praying because I didn't
9 know what had happened. I didn't know why it happened. I thought someone might
10 have gotten ill in the car. I was praying for that person and I was praying for the
11 child that hopefully she wasn't in the back where I couldn't see her, but I saw the
12 shoe. I just stayed on my knees.

13 Q After you finished your prayer, did you stay in this area or did you do
14 somewhere else?

15 A One of the young ladies -- I can't remember who it was -- she came
16 over and put me towards the corner -- sorry-- of the -- by the sanctuary and I didn't
17 stay in this area. I was more over to the right by the entrance to the sanctuary.

18 MR. SCOW: I'm going to pass this witness, Your Honor.

19 THE COURT: Thank you.

20 MR. POSIN: No questions for Ms. Powell, Your Honor.

21 THE COURT: Thank you. May she be excused?

22 MR. SCOW: Yes.

23 MR. POSIN: Yes.

24 THE COURT: Thank you very much for your testimony. And if you would
25 please not discuss your testimony with any other witnesses until the trial is over.

1 THE WITNESS: Okay. Thank you.

2 THE COURT: Call your next witness.

3 MR. HAMNER: The State calls Officer David Corbin to the stand, Your
4 Honor.

5 **DAVE CORBIN**

6 [having been called as a witness and being first duly sworn, testified as follows:]

7 THE COURT CLERK: Please be seated. If you would state and spell your
8 first and last name for the record, please.

9 THE WITNESS: Dave Corbin, D-A-V-E C-O-R-B-I-N.

10 THE COURT: Please proceed.

11 MR. HAMNER: Thank you.

12 **DIRECT EXAMINATION**

13 BY MR. HAMNER:

14 Q Good morning. Could you explain to the jury what you do for a living?

15 A Yes, sir. Traffic officer with the Las Vegas Metropolitan Police
16 Department?

17 Q How long have you been with Metro?

18 A Eleven years.

19 Q And what'd you do before becoming an officer?

20 A I was in the United States military for 22 years.

21 Q On December 18, 2011, were you working for the Las Vegas
22 Metropolitan Police Department?

23 A Yes, sir.

24 Q Were you on duty that day?

25 A Yes, sir.

1 Q I want to ask if you responded to a call for service at 9:57 in the
2 morning at 3950 North Las Vegas Boulevard here in Clark County?

3 A Yes, sir.

4 Q What was at that location?

5 A It was a -- the call came out as a vehicle into a structure. So, I was
6 dispatched to the call and I got there and looked at the situation. There were some
7 things that weren't consistent with accident.

8 Q Now you mentioned car and vehicle. When you got that report, did you
9 have preliminary facts as to whether or not it may have been accidental versus
10 deliberate before you got on scene?

11 A I'm not sure, but if that was dispatched over the radio it was shortly
12 before I got there.

13 Q Now, Officer, you mentioned when you got on the scene you noticed
14 that something didn't seem accidental to you.

15 A Yes, sir.

16 Q We'll get to your observation, but I want to take a step back further.
17 Have you ever investigated accidents before in your ten years on the force?

18 A Oh, yes, sir, hundreds.

19 Q Have you ever involved in a situation where a vehicle goes through
20 doors or the wall of a building?

21 A Yes, sir.

22 Q So, you've seen those before?

23 A Yes, sir.

24 Q How many have you seen?

25 A I would say close -- maybe five, ten maybe more, but I've seen it, yes.

1 Q Okay. And I want to clarify. Is that the total number of ones that you've
2 seen going just simply through a building or is that just a deliberate one versus an
3 accident?

4 A No; these are usually accidents I've seen that have been accidental.

5 Q Okay. So, five to ten that have been accidental?

6 A Yes, sir.

7 Q Have you ever seen some that in your opinion when you got there you
8 believed it was a deliberate act?

9 A Yes, sir.

10 Q How about how many of those have you seen?

11 A Roughly about five, but there's definitely indicators.

12 Q Okay. When you got to the scene you said you mentioned -- there was
13 something that seem right as far as accidental?

14 A Yes, sir.

15 Q What was jumping out based on your observations?

16 A After -- when I first got there and I'm looking at the scene after talking to
17 some of the witnesses, I'm watching -- I see where the vehicle tracks were coming
18 through the parking lot, and the parking lot being wide enough for five cars to be
19 side by side. I'm looking and I'm seeing the -- yaw marks of the vehicle turning and
20 as its turning, it's not decreasing speed, it's increasing speed. And that's indicated
21 by the yaw marks -- when I say yaw marks I'm talking -- most people would think
22 'em as a skid mark. It's when the vehicle loses traction and it starts to move
23 sideways because it's carrying too much speed.

24 Q All right. I'm going to show you what's been admitted as State's 5. Is
25 this the road that we're talking about?

1 A Yes, sir. That's the parking lot.

2 Q Could you fit one set of cars going in one direction and another set of
3 cars going in the other direction?

4 A You could probably fit two vehicles going both ways, two this way two
5 that way.

6 Q Where is the front entrance of the church; can you see that here?

7 A I want to -- I can't -- I want to say it's --

8 Q You can put your finger on there and you can put a big old slash
9 through it. It should pop up. The calibration is a little bit off.

10 A Okay. Right in here somewhere I believe is where it's at.

11 Q Okay. So, your calibration --

12 A Right there.

13 Q I'm assuming the double doors are not actually in the street. So, are
14 you intending on --

15 A Yes; correct.

16 Q -- kind of push somewhere over here?

17 A Yes, sir.

18 Q All right. So, you got there. I'm going to show you what's been
19 admitted as State's 6; does that kind of fairly and accurately depict what you walk up
20 to and you see?

21 A Yes, sir.

22 Q Now you mentioned these tire marks. I'd like to show you at this time--
23 I'll like to first approach opposing counsel -- what has been previously marked as
24 proposed Exhibits -- State's proposed Exhibits 15, 17, 18 and 19; permission to
25 approach the witness?

1 THE COURT: Granted.

2 MR. HAMNER: Thank you.

3 BY MR. HAMNER:

4 Q Let the record reflect I'm showing the witness State's proposed Exhibits
5 15, 17, 18 and 19. Sir, I want you to take a look at those --

6 A Okay.

7 Q -- and tell me if you recognize these?

8 A Yes, sir. These are the photos taken at the scene indicating the marks I
9 was talking about.

10 Q Are these fair and accurate depictions of all four exhibits of kind of the
11 tire marks left by this vehicle?

12 A Yes, sir.

13 MR. HAMNER: All right. At this time, we'd ask that State's proposed Exhibits
14 15, 17, 18 and 19 be admitted into evidence.

15 MR. POSIN: No objection, Your Honor.

16 THE COURT: They'll be admitted.

17 **[STATE'S EXHIBIT #'s 15, 17, 18 AND 19 ADMITTED]**

18 MR. HAMNER: Permission to publish to the jury?

19 THE COURT: Granted.

20 MR. HAMNER: And, you know, Your Honor -- I don't know how we want to do
21 this. The blow-up's not very good. I don't know if you have a policy about handing it
22 to the jury or not because --

23 THE COURT: No, I don't. Sometimes it doesn't -- the contrast is not good on
24 the ELMO. So, if it would be better, I'd rather you publish them among the jury.

25 MR. HAMNER: Okay. I'm going to approach the jury and publish State's

1 Exhibit 15. First I'm going to approach him just to give him a description.

2 BY MR. HAMNER:

3 Q Let's look at State's 15 for a second. What are you seeing in that photo
4 that was of significance to you?

5 A There's two things, actually three things. If you look, you'll see a very
6 faint -- and it's almost like it's a white color from where it scrapped the top of the
7 asphalt off you'll see this line right there and it follows straight up and it makes an
8 arc, gets a little dark here, and then you see a dark residue from the tire and then
9 goes to the back of the tire. If you look over here, you can faintly see the same thing
10 on the left tire.

11 Q Did you notice any kind of variation in the tires kind of going from this
12 way to that or is it one kind of smooth pathway?

13 A This is what's consistent with, as I said, when you're going and you're
14 making that abrupt turn where it scraps the top of the asphalt to where he -- it's not
15 slowing down, it's acceleration. That's this right here.

16 Q Okay. Did it appear to be -- any braking applied --

17 A No, not at all.

18 Q -- at least what you could you see?

19 A No.

20 MR. HAMNER: All right. I'd like to publish 15 to the jury.

21 BY MR. HAMNER:

22 Q Now, Officer, I'm going to show you 17, 18 and 19. What do you note
23 at least in 17 that was important for your investigation?

24 A Again, it's the yaw marks. It's right here. I know it's pretty faint. You
25 can see where -- I believe this is the back of the car that's parked to the left of the

1 doors which is the last --

2 Q Okay. So, you're saying that the church and the vehicle are up in the
3 top --

4 A Yes, sir.

5 Q -- left hand corner of the photo?

6 A Right about here.

7 Q Okay. And -- but you can still see tire marks?

8 A Right there. You can see 'em very clearly.

9 Q Okay. Is there any -- from what you saw when you're out there, did you
10 see any kind of weaving of the tires, either something that like looks it's either
11 deviating off that path of did it seem to be the same path?

12 A It was the same path. It was heading -- let me get the direction right
13 here -- heading north.

14 MR. HAMNER: Let the record reflect I'm just showing 17 to the jury.

15 THE COURT: It will

16 THE WITNESS: Heading north and then abruptly a turn where again it's
17 acceleration -- it's not braking -- turned to the left and that's where you see the arc
18 and the scrape on the pavement. Where the discoloration is in that picture that you
19 have now which indicates, again, not braking, it indicates acceleration, and it just
20 goes straight in the doors.

21 BY MR. HAMNER:

22 Q I'll show you State's 18. Do you see any markings here that were
23 significant for your investigation? I know it's kind of faint again.

24 A You can still it. It's very hard to see with this printer, but you'll see
25 where the -- this is where the vehicle is going straight like this. I don't know if you

1 can -- it's very faint -- where it's -- now you start to get the arc.

2 Q Okay. And similar in State's 19, are you seeing kind of half marks at
3 least there?

4 A And this is a little more clear though. The lighter color here where it's --
5 you see the asphalt and it looks like there's like a salt -- for lack of better description
6 -- like a salt on the ground that's where it scrapes the top layer of the asphalt on.

7 MR. HAMNER: All right. I'm publishing State's 18 and 19 for the jury.
8 BY MR. HAMNER:

9 Q So, forgot the pictures for a second. When you were out there, could
10 you see a fairly clear pathway?

11 A Yes.

12 Q I mean, from what you remember seeing on that day?

13 A Yes, sir.

14 Q And you didn't see any kind of deviation?

15 A No, sir.

16 Q About how far of a pathway are we talking about there? Maybe I can
17 show you as far as -- let me show you 5 again. I mean, how far out are these tire
18 pathway are you seeing? I mean, I don't know if you can estimate feet, Officer, or
19 car lengths but --

20 A From what I remember the vehicle was -- started to come towards the
21 north and I saw the marks. It was probably about 70 to 80 feet of where you could
22 notice the vehicle accelerating and starting to --

23 Q Okay. So, that's kind of like a couple car lengths down --

24 A Yes, sir.

25 Q -- from the entrance of the church?

1 A Yes, sir; uh-hm.

2 MR. HAMNER: All right. I'm just going to show opposing counsel what's
3 been previously marked as State's proposed Exhibit 20; permission to approach the
4 witness?

5 THE COURT: Granted.

6 BY MR. HAMNER:

7 Q Let the record reflect I'm showing the witness State's proposed 20; sir,
8 do you recognize what's depicted in that exhibit?

9 A Yes, sir. That's the vehicle that went in the church.

10 Q Okay. And that's a fair and accurate depiction as it looked on that day?

11 A Except it was in the building.

12 Q Okay.

13 MR. HAMNER: At this time, we'd ask that State's proposed Exhibit 20 be
14 admitted.

15 MR. POSIN: No objection, Your Honor.

16 THE COURT: It'll be admitted.

17 **[STATE'S EXHIBIT #20 ADMITTED]**

18 MR. HAMNER: Permission to publish to the jury?

19 THE COURT: Granted.

20 BY MR. HAMNER:

21 Q So, this is that vehicle after it got kind of taken out of the church; it's
22 being towed out? Sir, is that a fair and accurate depiction --

23 A Yes, sir.

24 Q -- kind of what it looks like? All right. So, let's kind of get back. So, the
25 tire marks was something that jumped out to you that you felt that --

1 A Yes, sir.

2 Q -- what other things did you see that you went, you know what, this
3 might not be accidental?

4 A In one of the pictures you'll see the rear of the vehicle. It's the one
5 where it's in the -- through the doors and you've got the black tire mark. And then
6 when you look at the tire mark there's certain things that show you that it's either
7 braking or acceleration. And what indicates the acceleration is the shade going from
8 light to dark or dark to light.

9 Q Let me show you State's 13. Is this kind of helpful --

10 A Right here.

11 Q -- in terms of --

12 A This is acceleration not braking. This means when the vehicle hits it's
13 not slowing. We're still on the gas. That's what that means, showing how the
14 residue from a tire -- and that's just not a tire mark. That's also residue from a tire
15 spinning and causing a build up of -- I'm sure you've seen like a tire dust. That's
16 what that is.

17 Q Now anything else you notice? Were there any other things? How
18 about the position of the car with respect to where it is in the church; was that of any
19 significance for your investigation?

20 A Yes; because if you look -- if this was to be blown up -- where you see
21 -- that's my leg right there, on the right right there. That's the first parking spot to the
22 right. Over here is the handicap rail.

23 Q I'm going to show you State's 6.

24 A There we go. Much better.

25 Q This is State's 6.

1 A Much better.

2 Q Is that helpful for you, Officer?

3 A Yes. This right here is going to be the parking spot closest to the right.
4 This is one of our vehicles over here that's come to take the pictures and things.
5 There is not a parking spot, again, for another 20 or 25 feet to the left. There's no
6 way you can accidentally say you were parking a vehicle and this happened
7 because there's no parking spots there.

8 Q Now when you say accidentally parking, what are we talking about? I
9 mean, based on your experience, what sort of situations where you've had or you've
10 seen a car accidentally go into the wall or the building?

11 a Usually it's either with an inexperienced younger driver or an elderly
12 driver that accidentally puts his foot on the gas or the brake, and usually that is
13 indicated -- indicators, again, are not on the gas all the way through the building. It's
14 just, I put my foot on the gas instead of the brake and I've now run into the building.
15 Okay. I'm off the gas and now I'm on the brake. Well the example that we can look
16 at is that there's an Allstate commercial or something where the guy's backing out of
17 his driveway and there's a woman with her baby coming behind --

18 MR. POSIN: Your Honor, I think this is getting a little far afield.

19 THE COURT: Do you wish to withdraw the question. It's non responsive to
20 the question; is that your objection?

21 MR. POSIN: Yes, Your Honor.

22 MR. HAMNER: We'll move on.

23 BY MR. HAMNER:

24 Q So, what you're saying is you said something to the effect of sometimes
25 when someone does it accidentally they step on the gas, maybe it's the wrong gear,

1 and then they quickly hit on the brake?

2 A Exactly.

3 Q From your observations, was this consistent with those prior situations?

4 A No.

5 Q How about the depth in which the car's actually inside the church; was
6 that also part of the factor for you?

7 A Yes, it was.

8 Q Why?

9 A Because it's -- the vehicle is totally half way in through the doors and
10 not just -- and that's another aspect. We didn't go into the building; we went straight
11 in the center of the doors to where -- to me, it is an indicator of this was, you know,
12 we're aiming this thing at the doors.

13 Q How about that guardrail on the left of the car; did that have any scape
14 marks or dents on it?

15 A Nope; no contact whatsoever.

16 Q Now did you ultimately see the driver of that vehicle?

17 A Yes, sir. When I got there, he was in the -- I believe the ushers or the
18 security folks had removed him from the front seat. I believe he was in the back
19 seat of the vehicle when I got there. They had him detained.

20 Q Do you see that person here in the courtroom today?

21 A From the driver, sir?

22 Q The driver. Do you see the person that was in the back seat?

23 A Yes, sir, the gentleman right there.

24 Q Okay. Why don't you point out where they're sitting in the courtroom,
25 maybe an article of clothing that they're wearing?

1 A Right here in front of me to the left of the counselor, white shirt and
2 glasses.

3 Q Coat on or off?

4 A What's that, sir?

5 Q Coat on or off?

6 A Off, sir.

7 MR. HAMNER: Let the record reflect the witness has identified the
8 Defendant.

9 THE COURT: It will.

10 BY MR. HAMNER:

11 Q What was the Defendant's demeanor at the time that you saw him?

12 A He was uncooperative with me when I was asking him -- trying to ask
13 him questions about what had happened.

14 Q Okay. Was he -- he was uncooperative. Was it a situation where you
15 weren't able to -- he didn't understand the questions that you were asking or he just
16 didn't want to --

17 A He just didn't want to answer the questions.

18 Q Okay. Did you notice anything else? Did you notice any odors or
19 anything like that?

20 A Yes, sir. There was an odor of alcohol about the gentleman, yes.

21 Q Okay. Did he have any difficulty walking or speaking at any point in
22 time when you interacted with him?

23 A No, sir. When I got there, like I said, he was in the back of the vehicle.
24 They had detained him and then while I was trying to ask him questions and he was
25 being uncooperative that's when he was put on to the gurney and taken in the

1 ambulance.

2 MR. HAMNER: Court's indulgence. All right. Thank you. I have no further
3 questions at this time.

4 THE COURT: Cross.

5 MR. POSIN: Thank you, Your Honor.

6 **CROSS-EXAMINATION**

7 BY MR. POSIN:

8 Q Good morning, Officer Corbin.

9 A Good morning.

10 Q You in your duties as a police officer have dealt with other people who
11 have been driving well under the influence of alcohol; correct?

12 A Yes, sir.

13 THE COURT: Counsel, let's retrieve those photos.

14 MR. HAMNER: Yeah; I apologize, Your Honor.

15 THE COURT: They might be distracting during your examination.

16 All right. Thank you.

17 BY MR. POSIN:

18 Q And in fact in this case you issued a citation for driving under the
19 influence; correct?

20 A Yes, sir.

21 Q And in connection with that citation, you mentioned the fact that he not
22 only had an odor of alcohol but a very --

23 A Correction, sir. I did not issue the citation. Another officer issued the
24 citation, I believe. The blood draw at the hospital, was that mine or someone else.

25 MR. POSIN: Your Honor, can I approach the witness? Would it refresh your

1 recollection to look at the citation itself?

2 THE WITNESS: It would, yes; yes sir.

3 THE COURT: Yes, you may approach.

4 BY MR. POSIN:

5 Q Is this the citation that was issued?

6 A It looks that way, sir.

7 Q And does that have your name at the bottom?

8 A Yes, it does. I had another officer do the blood draw because I was at
9 the scene. That's what that was.

10 Q And, Officer Corbin, there's some other associated documents here.
11 Are these documents yours or was that done by some other officer?

12 MR. HAMNER: Your Honor, if I could just see what he's referring to.

13 MR. POSIN: That's fair enough, Your Honor. I will show counsel.

14 THE COURT: Why don't you approach?

15 MR. HAMNER: Thank you.

16 THE WITNESS: That's what's called an impaired driver report.

17 BY MR. POSIN:

18 Q And was that something that you did or some other officer did?

19 A If my name's on it I did it.

20 Q And is that your handwriting there?

21 A Yes, it is.

22 Q Okay. And so at that time did you say that there was a very strong odor
23 of alcohol?

24 A Yes, it was.

25 Q Now normally if you suspect that somebody has been driving while

1 under the influence, you normally perform certain tests with them?

2 A When they're not injured or being transported, yes.

3 Q Okay. And those are called field sobriety tests?

4 A Yes, sir, they are.

5 Q What are those tests that you usually do?

6 A They're standard tests recognized by the National Highway Safety
7 Administration; HGN which is Horizontal Gaze Nystagmus which has to do fully and
8 voluntary twitching of your eyes that you have no control over. There's three
9 separate parts of the test. And then there's the walk and turn, one leg stand, and
10 then there's a PBT.

11 Q And why do you even give those tests?

12 A Sir, because he was being transported hospital.

13 Q No; I'm saying why ordinarily when you've got somebody that you
14 suspect has been operating a vehicle under the influence of alcohol, why do you
15 normally give those field sobriety tests?

16 A To confirm your suspicions.

17 Q Okay. Did you give those tests here?

18 A No, sir, I did not.

19 Q And that was because?

20 A He was being transported.

21 Q And do you normally ask people when their -- no, strike that. Did you
22 in fact write on the portion of your document that would normally review those tests
23 unable?

24 A Yes, sir.

25 MR. POSIN: I think that's all I have, Your Honor.

1 THE COURT: Thank you. Redirect.

2 MR. HAMNER: Thank you.

3 **REDIRECT EXAMINATION**

4 BY MR. HAMNER:

5 Q So, you prepared that impaired driving report?

6 A Yes, sir.

7 Q Now, Officer, you had some questions about this impaired driving
8 report. What was the reason why a field sobriety test was not offered in this case?

9 A The subject was in the back of the vehicle had complained he needed
10 to be transported. He complained of injuries. And if there's any suspected injury to
11 the head, HGN is not going to work; you can't do it. He's being transported. He's
12 laying down in the back of an ambulance; I can't do anything. He's not walking. I
13 can't have him do a one leg stand, walk and turn. So, based on the odor of alcohol
14 and trying to talk to him, these are the observations we use and that gave me what I
15 needed to have the officer go to the hospital and get a blood draw.

16 Q Okay. Now, Officer, when you prepared -- prepare a driving report,
17 there is physical observations that you make of the driver?

18 A Yes, sir.

19 Q When you had an opportunity to describe his attitude, you did not put
20 unresponsive did you?

21 A No, I didn't.

22 Q What did you put?

23 A Argumentative, I believe.

24 Q When you put down his speech, did you put down confused?

25 A No.

1 Q When you spoke to him, did he indicate to you whether he was drinking
2 or not?

3 A I do not remember. I'd have to look at my report, sir.

4 Q Would it help to refresh your recollection?

5 A Yes, sir.

6 MR. HAMNER: Permission to approach the witness?

7 THE COURT: Granted.

8 MR. HAMNER: Thank you.

9 BY MR. HAMNER:

10 Q Officer, I want you to take a look here. Let me know when your
11 memory's refreshed and then I'll re-ask you the question and you can answer it.

12 A Okay.

13 Q What was the Defendant's response as to have you been drinking?

14 A First he said no, then he said yes, and I asked him how much and he
15 said one.

16 Q I'm going to have to show it to you one more time.

17 A Okay. I'm sorry.

18 Q That's okay. Just take a look one more time in the order of those
19 yesses.

20 A Okay.

21 Q Okay. So, was it no then yes?

22 A It was yes then no.

23 Q Okay. Did he indicate to you how much he had been drinking?

24 A Yes, sir. He said one Bud.

25 Q Okay.

1 MR. HAMNER: Thank you. No further questions.

2 THE COURT: Recross.

3 **RECROSS EXAMINATION**

4 BY MR. POSIN:

5 Q In addition to performing those tests, do you normally ask somebody
6 that you suspect to have been driving under the influence to sign the citation?

7 A Not if they're in the hospital.

8 Q And in this case did you in fact write unable to sign?

9 A We don't write anything on there because it's electronic signature and
10 anytime we touch that window it comes up as them signing. So, you do not write
11 anything in there.

12 Q Would it refresh your recollection if I again presented you with the
13 citation?

14 A Yeah; sure. And if I did it I made a mistake. I shouldn't have done it
15 because we have new systems.

16 Q Does that in fact say unable to sign?

17 A Yes, it does.

18 Q Unable to sign. Admitted to UMC?

19 A Yes.

20 MR. POSIN: Thank you. No further questions, Your Honor.

21 THE COURT: Thank you. All right. May this witness be excused?

22 MR. HAMNER: Yes, Your Honor.

23 THE COURT: Thank you very much, Officer. If you would please not discuss
24 your testimony with any other witnesses until the trial's over.

25 THE WITNESS: Sure.

1 THE COURT: Thank you. How's my jury doing? Anybody need a break?
2 No. Court staff?

3 **DARREN GREEN**

4 [having been called as a witness and being first duly sworn, testified as follows:]

5 THE COURT CLERK: Please be seated. Please state and spell your first
6 and last name for the record.

7 THE WITNESS: My name is Darren Green spelled D-A-R-R-E-N last name
8 G-R-E-E-N.

9 THE COURT: You may proceed.

10 MR. SCOW: Thank you, Your Honor.

11 **DIRECT EXAMINATION**

12 BY MR. SCOW:

13 Q Are you an officer with the Las Vegas Metropolitan Police Department?

14 A Yes, sir.

15 Q How long have you been a police officer?

16 A Thirteen years, sir.

17 Q December 18th, 2011, were you working as a patrol officer at that time?

18 A Yes, sir.

19 Q Meaning you patrol the streets?

20 A Yes.

21 Q Do you conduct traffic stops as part of your role as a patrol officer?

22 A Yes.

23 Q How may traffic stops or accidents have you been involved with in your
24 13 years?

25 A I wouldn't know off the top of my head. It's quite a few.

1 Q A lot?

2 A Yes.

3 Q Okay. So, directing your attention back to December 18th 2011, as a
4 patrol officer did you respond to the New Antioch Fellowship Church?

5 A Yes, sir, I did.

6 Q What was the purpose for you responding to that scene?

7 A I received a call that a vehicle had ran into the front of the church and
8 that there was potentially multiple victims -- injuries.

9 Q Okay. So, had in fact a motorcycle patrol officer already responded?

10 A Yes; I believe a motorcycle unit got there, you know, originally thinking
11 if it was just an accident or not. I don't exactly what he saw that he must have felt
12 there was something more than just a straight accident so he requested a patrol
13 presence.

14 Q So, that's why you responded?

15 A Yes, sir.

16 Q And what were your observations when you arrived at the scene?

17 A When I first pulled in, I came in off the Las Vegas Boulevard. I saw the
18 ambulance there with the back doors open. I saw somebody laying on the gurney.
19 So, I went into the ambulance and saw the guy on the gurney. They said -- I was
20 told this guy had driven and was the driver of the vehicle. I also prior to getting in
21 the ambulance I saw the car was wedged partially into the church, into the structure.
22 So, they said that he was the driver and that he had run his car into the church. So,
23 went around and started asking people, you know, talked to the witnesses to see
24 exactly what happened and figure out, you know, what was going on there.

25 Q So, showing you State's Exhibit 6; is this the car as you described

1 wedged into the church?

2 A Yes, sir.

3 Q And did you take these photographs?

4 A Yes, I did, sir.

5 Q Is that the date that shows up on there?

6 A Yes.

7 Q Did you take multiple photographs of the -- that area of the street and
8 the street area in the parking lot --

9 A Yes.

10 Q -- that's just to the north of it?

11 A Yeah, the entire scene.

12 Q Why did you take those photographs?

13 A When I -- during my investigation when I saw the car there, I
14 immediately saw the tracks from the tires that led away from the vehicle and they
15 kind of turned and went down the parking lot and they went directly to the tires of the
16 vehicle. So I, you know, reasoned that -- those tracks belonged to the vehicle
17 reference today's event. So, I went ahead and took pictures of the tire tracks in the
18 parking lot, the general scene overall, and then of the vehicle from outside and also
19 from inside the church where it had come in.

20 Q So, showing you State's Exhibit 13. It doesn't show extremely well, but
21 in this picture you can see, is that the tire marks you're referring to?

22 A Yes, sir.

23 Q So, you kind of connected point A to point B where the lines ended with
24 the wheels of the car?

25 A Right; it went directly to the tires.

1 Q So, based on your observations you made the conclusion that those
2 marks were from that car?

3 A Yes, sir.

4 Q And did you have any observations of the tire marks or anything that
5 you could deduce from them?

6 A The first thing I noticed was, you know, you try to determine whether it's
7 a skid mark or whether it's from acceleration. Based on the length of 'em and the
8 type of marks, it was my opinion that they were acceleration marks where the tire
9 was spinning going forward as opposed to braking in a stopping motion.

10 Q Showing you State's Exhibit 16; is this a view from the car to the
11 parking lot?

12 A Yes.

13 Q And can you in fact see the tire marks from that vehicle that go out into
14 the parking lot?

15 A Yes. They're kind of faint on this picture but you can kind of see how
16 they go out and they curve around to the right from this point.

17 Q Maybe I'll show it to you first and then see if you can draw on the
18 screen to assist the jury.

19 A Yeah. In this one you can see a lot better. They go right over here you
20 can see this one going right over that way.

21 Q I'll have you draw it on the screen.

22 A So, you can see the one off this tire. It goes and then it curves and
23 comes around this way and then this one over here.

24 Q You can actually touch the screen. Go ahead and touch it.

25 A Okay. Oh, this one's a little bit off.

1 Q Is the marking a little to the left of where you want the line to be?

2 A Yes. It goes over this way. But, yeah, you can see that would go there
3 and this one you see it goes right like this and then curves over this way.

4 Q As you observe those lines, was there any deviations or were they
5 straight lines that curved directly into the church?

6 A They were straight lines that curved into the church. There was no
7 sliding or deviation to 'em.

8 Q When you look at State's Exhibit 5 -- if you hit the bottom left that'll clear
9 those lines -- and as best you can, the lines will appear slightly to the left from where
10 you want it to be, but can you draw in there approximately where the tires started
11 out from the in parking lot to curbing into those doors?

12 A It's kind of hard off of this picture, at least on the screen here.

13 Q Or if you can give the approximate area where they started out in that
14 roadway area.

15 A Over there and over in this area over here. My finger's way off there.
16 Sorry.

17 Q That's all right. If you just tap and hold I think it'll make an arrow.

18 A Yeah, but it's still way to the left of where I'm tapping. It's tapping over
19 by the cars.

20 Q Okay.

21 A But it came from the parking lot to the front of those parked vehicles on
22 the left, right over in there, sir.

23 Q And this is about the area that you're trying to indicate?

24 A Yes, sir.

25 Q Then they came around and curve right into that door?

1 A Well the door past the picture here. Okay. Yeah. That's it. I don't see
2 the -- I see the sign but I don't see the --

3 Q This is not from that day, by the way.

4 A Okay. I was looking for the crash door.

5 Q Yeah. The car's not in this picture. Is that the sign though for the front
6 of the church right there?

7 A Yes; yeah, that is the sign.

8 Q So, the car started out in here somewhere?

9 A Yes; down there to the left of where I'm looking at and then it came in
10 and then they made a sharp turn into the structure.

11 Q And right into that door right there?

12 A Yes.

13 Q Did you have any observations of the Defendant at that scene when
14 was in the back of the ambulance?

15 A Yeah. It was the first I saw of him was he was already on the gurney in
16 the ambulance.

17 Q Did you speak with him there at all?

18 A He didn't -- he was nonresponsive to questions. He didn't answer
19 anything. He didn't really say much. And then I knew immediately that, you know,
20 he was in the ambulance. They said it was non-life threatening so I knew that was
21 okay. The first thing I wanted to do was find out exactly what was going on. So, I
22 left him since he wasn't talking and went around and started talking to everybody
23 else.

24 Q Now we get those voluntary statements where a witness will write
25 things out. Was that you who had passed those out to the people to fill out?

1 A Yes, sir.

2 Q For your investigation?

3 A Yes.

4 Q And when you said that you were talking or attempting to speak with the
5 Defendant in the ambulance, when you said non responsive, did that mean he was
6 unconscious and unable to speak or just didn't want to talk to you?

7 A He was conscious.

8 MR. POSIN: Objection; calls for speculation.

9 THE COURT: Sustained.

10 BY MR. SCOW:

11 Q Was he unconscious?

12 A He was not unconscious; he was conscious.

13 Q Did you actually have any words with him at all?

14 A There was no exchange. I asked -- I don't even remember exactly what
15 I asked, maybe if he had an I'd or what his name was. That was about it.

16 Q Did he give you those?

17 A They have his I'd, I believe, the -- somebody else had his I'd and gave it
18 to me, I believe.

19 Q Okay. And the other officer that was here testified about an officer
20 going to the hospital with the Defendant -- the person that was in the ambulance;
21 was that you?

22 A Yes, sir. I followed the ambulance to UMC Trauma.

23 Q So, the person that was in the ambulance that you followed to the
24 hospital do you see in the courtroom today?

25 A Yes, sir.

1 Q Can you point to that individual and describe something they're wearing
2 in Court?

3 A That be the gentleman sitting there in the white shirt with the glasses.

4 Q Okay. And hair or no hair?

5 A No hair, sir, bald.

6 MR. SCOW: Your Honor, can the record reflect identification of the
7 Defendant?

8 THE COURT: It will.

9 MR. SCOW: Court's brief indulgence. I'll pass the witness, Your Honor.

10 THE COURT: Cross.

11 MR. POSIN: I have no questions for Officer Green, Your Honor.

12 THE COURT: Thank you. May he be excused?

13 MR. SCOW: Yes, Your Honor.

14 THE COURT: Thank you very much for your testimony.

15 THE WITNESS: Thank you, ma'am.

16 THE COURT: Don't discuss your testimony with any of the witnesses until the
17 trial's over.

18 THE WITNESS: Thank you.

19 THE COURT: Thank you.

20 MR. SCOW: May we approach?

21 THE COURT: Counsel approach.

22 [Bench conference -- not recorded]

23 THE COURT: All right.

24 Ladies and gentlemen, the trial is progressing very much a pace and
25 there is just one State witness left for tomorrow. That person's flying in from out of

1 state so isn't here this morning. So, we are concluded with trial today, and we'll start
2 tomorrow at ten. So, you're released for the overnight recess.

3 During this recess, it is your duty not to converse among yourselves or
4 with anyone else on any subject connected with the trial or read, watch or listen to
5 any report of or commentary on the trial by any person connected with the trial or by
6 any medium of information, including without limitation, newspaper, television, radio
7 or internet and you are not to form or express an opinion on any subject related with
8 this case until it is finally submitted to you. I'll see you tomorrow at ten.

9 You're just going to need to assemble the jury commissioner's area
10 because we have to find a courtroom for tomorrow. I can't use this courtroom
11 tomorrow. So, we don't know and so we'll tell you as soon as we know so if you'd
12 just go over to the jury room and we'll let you know. Thank you.

13 [Outside the presence of the jury]

14 THE COURT: All right. The record will reflect the jury has left the room. Are
15 there any matters outside the presence?

16 MR. POSIN: No, Your Honor.

17 MR. HAMNER: No, Your Honor.

18 THE COURT: So, we're going to meet 2 o'clock in my chambers for
19 instruction settling.

20 MR. HAMNER: Yes, Your Honor.

21 THE COURT: All right. Good. See you then.

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MR. HAMNER: Thank you.

[Jury Trial, Day 3, concludes at 11:06 a.m.]

ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I acknowledge that this is a rough draft transcript, expeditiously prepared, not proofread, corrected, or certified to be an accurate transcript.


PATRICIA SLATTERY
Court Transcriber

EXHIBIT 7

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

PINU

SEP - 6 2013

BY Andrea Davis
ANDREA DAVIS, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA
VS
WILBURT HICKMAN

CASE NO.: C-12-278699-1

DEPARTMENT 5

DEFENDANT'S PROPOSED JURY INSTRUCTIONS NOT USED AT TRIAL

Attached hereto are the proposed jury instructions which were offered to the Court, but not submitted to the jury in the above entitled action.

DATED: This 6th day of September, 2013.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By:

Andrea M. Davis
Andrea Davis, Deputy Clerk of the Court

JURY INSTRUCTION NO. 12

If the jury believes from the evidence that the condition of the defendant, from intoxication ~~or otherwise~~, was such to show that there was no *specific intention* to cause the death of an individual, they cannot find the defendant guilty of attempted murder.¹²

~~will offer but not~~
~~give~~

Defense proposed but not given.

Cindy Ellworth

¹² NRS 193.220 When voluntary intoxication may be considered.

JURY INSTRUCTION NO. 13

In order to convict the defendant of attempted murder, the jury must find either that the defendant was in control of his mental faculties and entertained an intent to kill when the crime occurred, or that he had formed this intent before he lost control of his faculties, mere intent to harm or intimidate is not sufficient to warrant a guilty verdict for attempted murder.¹³ "Nothing less than a criminal intent to kill must be shown."¹⁴

~~will offer but not be given~~
will

Defense proposed but not given.

Cecily Elsworth

¹³ *Ford v. State*, 102 Nev. 136 (1986).

¹⁴ *Keys v. State*, 104 Nev. 739 (1988).

EXHIBIT 8


CLERK OF THE COURT

1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 THE STATE OF NEVADA,

9 Plaintiff,

10 vs.

11 WILBURT HICKS
12 Aka WILLIAM HICKS,

13 Defendant.

CASE#: C278699

DEPT. V

14
15 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
16 FRIDAY, SEPTEMBER 6, 2013

17 **RECORDER'S PARTIAL ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS**
18 **JURY TRIAL, DAY 4**

19 APPEARANCES:

20 For the State:

RICHARD H. SCOW, ESQ.
Chief Deputy District Attorney
CHRISTOPHER S. HAMNER, ESQ.
Deputy District Attorney

22 For the Defendant:

MITCHELL L. POSIN, ESQ.

23
24
25 RECORDED BY: LARA CORCORAN, COURT RECORDER

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3

46

1 FRIDAY, SEPTEMBER 6, 2013 AT 10:22 A.M.

2
3 [Outside the presence of the jury]

4 THE COURT: All right. We're back on the record outside the presence of
5 the jury in case number C12278699, State of Nevada versus Wilburt Hickman.

6 The record will reflect the presence of the Defendant with his counsel
7 and Deputy District Attorney prosecuting the case and all officers of the Court.

8 Now, counsel, are you each familiar with Instruction numbers 1 through
9 29?

10 MR. POSIN: Yes, Your Honor.

11 THE COURT: And does the State object to giving of any of the instructions --
12 jury instructions numbered 1 through 29?

13 MR. HAMNER: No, Your Honor.

14 THE COURT: Does the State have any additional instructions to propose?

15 MR. HAMNER: We would just, at least, note for the record that when we had
16 discussed the instructions previously in chambers that, just for the record, that it was
17 kind of agreed upon that the defense counsel did not want an expert witness
18 instruction to be given because I think -- the thought process was that wasn't really
19 -- the observations of the officer was not really at issue and we just want that to be
20 just part of the record. But other than that, we don't have anything else to note.

21 THE COURT: Okay. And you agree with defense counsel that you wouldn't
22 give the expert instruction?

23 MR. HAMNER: That's correct.

24 THE COURT: That's why you're not offering?

25 MR. HAMNER: That's correct.

1 THE COURT: Does the Defendant object to any of these instructions which
2 are going to be given as 1 through 29?

3 MR. POSIN: No, Your Honor.

4 THE COURT: Does defense have additional instruction to propose?

5 MR. POSIN: Court's indulgence.

6 Your Honor, I'm sorry. I know that in chambers we had discussed there
7 were one or two that I had proposed that you were not giving. I'm afraid I didn't flag
8 them in my notes.

9 THE COURT: All right.

10 MR. POSIN: So, perhaps we can identify them and in a later point in the
11 proceedings I can --

12 THE COURT: I have them here. I was just hoping that you would type them.

13 All right. So, I have two. If you'd like to approach.

14 MR. POSIN: Thank you, Your Honor. There was two proposed instructions I
15 had submitted. One was read as follows: If the jury believes from the evidence that
16 the condition of the Defendant from intoxication was shown -- was such to show that
17 there was no specific intention to cause the death of an individual, they cannot find
18 the Defendant guilty of attempted murder. And as -- for that, I had cited NRS
19 193.220.

20 I'd also submitted an instruction that read in order to convict the
21 Defendant of attempted murder, the jury must find either the Defendant was in
22 control of his mental faculties and entertaining intent to kill when the crime occurred
23 or that he had formed this intent before he lost control of his faculties. Mere intent to
24 harm or intimate is not sufficient to warrant a guilty verdict for attempted murder.
25 Nothing less than a criminal intent to kill must be shown. And as authority for that, I

1 have cited the case of *Ford v. State at 102 Nevada 136* and *Keys versus State at*
2 *104 Nevada 739 [sic]*. If I may approach I'll give the Court back --

3 THE COURT: Thank you.

4 MR. POSIN: -- these copies.

5 THE COURT: All right. The copies that you handed me obviously are written
6 on because they were my working copies when we worked on these in chambers.
7 So, I'm going to write -- I'm going to strike the language for the writing on it that I
8 wrote in chambers and then I will write on the first one which was your jury
9 instruction, proposed jury instruction number 12, Defendant's proposed, which is the
10 one that says if the jury believes from the evidence the condition of the Defendant
11 from intoxication or otherwise to show that there was no significant intention to
12 cause the death of an individual they cannot find the Defendant guilty of attempted
13 murder. I'm not giving that because it's covered. The specific intent is covered in
14 the other instructions. Otherwise, I think actually when we discussed it you're willing
15 to strike the or otherwise language; is that right?

16 MR. POSIN: That's correct, Your Honor. And that's why what I just read into
17 the record I read it without the or otherwise --

18 THE COURT: All right. So --

19 MR. POSIN: -- language.

20 THE COURT: -- it was your intention to offer it without the stricken part and
21 so that's what it shows on here. But I believe that it's duplicative of other
22 instructions and that is why I did not give it.

23 Does the State wish to make any further record?

24 MR. HAMNER: No, Your Honor.

25 THE COURT: All right. I'm going to mark it as Defense proposed but not

1 given. And I will sign that and ask the clerk to mark that as Defendant's proposed
2 jury instruction. Actually we can probably do both as one exhibit. The other one is
3 marked as jury instruction number 13. You already read it into the record and
4 likewise if this went up, I've stricken the language or the handwriting, hand printing
5 that I put on during our working session. Now I will notate that it is defense
6 proposed but not given. I will sign it and that will be marked likewise for the record.

7 And does the Defendant -- do you wait until the final witness has
8 testified before you make the decision?

9 MR. POSIN: Your Honor, I think we can go ahead and canvass him right now
10 as to his right to testify.

11 THE COURT: All right. Mr. Hickman, if you'll stand please, sir.

12 Under the Constitution of the United States and under this constitution
13 of the state of Nevada, you cannot be compelled to testify in this case; do you
14 understand that?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: You may, however, at your own request, give up that right and
17 take the witness stand and testify but if you do you'll be submit to cross-examination
18 by the District Attorney and anything that you did say be it on direct or cross-
19 examination while you are on the stand would be subject to fair comment by the
20 District Attorney when he speaks to the jury in closing argument; do you understand
21 that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: All right. If you choose not to testify, the Court will not permit
24 the District Attorney to make any comment to the jury because you've not testified
25 because that is your constitutional right; do you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: If you elect not to testify, the Court will instruct the jury but only
3 if your attorney specifically requests he has done so, and actually we have included
4 in the jury instructions -- the jury instruction which indicates that the law does not
5 compel a Defendant in a criminal case to take the stand and testify and no
6 presumption may be raised and no inference of any kind may be drawn from the
7 failure of a Defendant to testify. And so that instruction will be given at your
8 attorney's request. Do you have any questions about these rights?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Have you.

11 THE DEFENDANT : May I --

12 THE COURT: Yes.

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: And have you decided whether you would like to testify?

15 THE DEFENDANT: No, I'm not going to testify.

16 THE COURT: All right. And you made that decision after consultation with
17 your counsel?

18 THE DEFENDANT: Yes, Your Honor.

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

20 THE DEFENDANT: Thank you, ma'am.

21 THE COURT: All right. Where is our marshal?

22 [Inside the presence of the jury]

23 THE COURT: Thank you. Please be seated.

24 Ladies and gentlemen, this is the continuation of State of Nevada
25 versus Wilburt Hickman, case number C12 278699. The record will reflect the

1 presence of the Defendant with his counsel, the Deputy District Attorney prosecuting
2 the case, and all officers of the Court, all 12 members of the jury as well as the two
3 alternates; will counsel so stipulate?

4 MR. POSIN: Yes, Your Honor.

5 MR. HAMNER: Yes, Your Honor.

6 THE COURT: Okay. Call your next witness.

7 MR. HAMNER: The State calls Rahmeka Adams to the stand.

8 THE MARSHAL: Please step up to the stand and raise your right hand,
9 please.

10 **RAHMEKA ADAMS**

11 [having been called as a witness and being first duly sworn, testified as follows:]

12 THE COURT CLERK: Please be seated. If you could please state and spell
13 your first and last name for the record.

14 THE WITNESS: My name is Rahmeka Adams; it is R-A-H-M-E-K-A Adams,
15 A-D-A-M-S.

16 THE COURT: Proceed.

17 MR. HAMNER: Thank you.

18 **DIRECT EXAMINATION**

19 BY MR. HAMNER:

20 Q Ms. Adams, do you live here in Las Vegas currently?

21 A No.

22 Q Where do you currently live?

23 A Louisiana.

24 Q What do you do for a living?

25 A I'm in the military.

1 Q Now at some point let's say back December of 2011, were you living
2 here in Clark County?

3 A Yes.

4 Q Are you familiar with the New Antioch Christian Fellowship Church?

5 A Yes; I used to be a member.

6 Q How long did you go to that church for?

7 A About two or three years.

8 Q Two or three years. I want to turn your attention to December -- sorry
9 -- I want to turn your attention to December 18, 2011; do you remember where you
10 were on that day?

11 A Yes; at church.

12 Q Okay. I'm going to focus around that morning; what time did you get to
13 church?

14 A Around 9: 56, right before church started.

15 Q Ms. Adams, I'm going to show you what's been already admitted as
16 State's 1. And that monitor should pop up on your screen at some point. Okay.
17 You see it over there on your monitor?

18 A Yes.

19 Q Now looking at State's 1, do you recognize what you're looking at
20 there?

21 A Yes.

22 Q What is that?

23 A That is the church?

24 A Okay. Tell the jury how you kind of arrived at the church? And if you
25 put your finger on that monitor you can actually draw a line through your path or

1 whatnot. So, tell the jury, where did you when you first showed up -- pulled up to the
2 church?

3 A Well whenever you drive down Las Vegas Boulevard you have to make
4 a U-turn. So, I first arrived in the first parking lot which is right here. Can you see it?

5 Q No.

6 A Is it not working.

7 Q Just push -- see how hard you push. The trial of technical difficulties.
8 Okay. Why don't you tell me and then I'll make some motion on there.

9 So, you went down Las Vegas Boulevard. Did you enter the front part of the church
10 or the back part of the church?

11 A I entered the front part of the church.

12 Q Okay. So, when I front part I'm referring to where the double doors
13 are?

14 A Oh, no, then the back part of the church. I entered the parking lot on
15 the back part of the church first.

16 Q Okay. So, when you say you entered you came in on Las Vegas
17 Boulevard and you entered in this parking area here?

18 A Yes.

19 Q All right. So, when you get to that front part, do you notice anything at
20 that point?

21 A At that time there were some gentlemen in the parking lot with another
22 gentleman that I didn't recognize.

23 Q Did you recognize some of the gentlemen?

24 A Yes.

25 Q Tell the jury who you saw that you recognized?

1 A I don't remember their names.

2 Q Were they members of the security team, members, pastors? What are
3 we talking about?

4 A There was an associate pastor there. Then there was a couple of men
5 that do security around the church.

6 Q Okay. And you said you saw another person there that they were
7 speaking to?

8 A Yes.

9 Q And you had never seen that person before?

10 A No.

11 Q Okay. So, what were they doing out there?

12 A They were kind of talking to the gentleman and they were looking
13 around, and I think I specifically think I seen them pointing around like, you know,
14 just talking to the man.

15 Q Okay. But you don't really hear anything because you're not out of your
16 car yet?

17 A Uh-hm; no.

18 Q Do you get out of your car and park at that point?

19 A No; actually there were no parking spaces so I had to turn around the
20 drive out of that parking lot into the additional parking lot in the front of the church.

21 Q Now, Ms. Adams, do you see one of those individuals who's in that kind
22 of parking lot area here in the courtroom today?

23 A Yes; that man right there.

24 Q Okay. Why don't you point out where they're located in the courtroom
25 and maybe an article of clothing that they're wearing?

1 A He has a blue shirt on.

2 Q All right. And what direction? Is he standing -- is he over on my left.

3 A To your right.

4 Q To my right. From looking at me to the right of me?

5 A Yes.

6 MR. HAMNER: All right. Let the record reflect the witness has identified the
7 Defendant?

8 THE COURT: It will.

9 MR. HAMNER: Thank you.

10 BY MR. HAMNER:

11 Q So, you see him standing outside with some people from your church?

12 A Yes.

13 Q Okay. So, there's no parking. Where do you go now; did you go home
14 at this point?

15 A No; I go into the adjacent parking lot in the front of the church.

16 Q So, when you say adjacent parking lot are we talking about here?

17 A Yes.

18 Q All right. Now you pull into the parking lot. At that point, where do you
19 go?

20 A I park -- I can't really show you because it's not working --

21 Q Okay.

22 A -- but I park -- do you see where the car is right there?

23 Q Are we talking about this car here?

24 A Yes, that car. I parked directly across from that car.

25 Q Okay. So, you parked somewhere in this area here?

1 A Yes.

2 Q Okay. Are you by yourself at this point?

3 A No; I have my daughter with me.

4 Q So, what do you do? So, you get out of your car and what happens?

5 A I get out the car and of course I'm just looking around because I see the
6 same gentlemen that were on the other parking lot -- in the other parking lot on this
7 side of the parking lot now. So, I'm just looking and paying attention to my
8 surroundings and I'm waiting for my daughter to get out of the car. So, I walk on the
9 other side of the car to the passenger side and I'm opening the door for her and
10 waiting for her to get out.

11 Q So, you saw -- I think you pointed to the Defendant before at the other
12 end. Now you're seeing the Defendant on that same side of the parking lot that
13 you're now parked in?

14 A Yes.

15 Q Around where he is parked at; if you can remember?

16 A He's probably parked -- it's further down.

17 Q Why don't we do this? You see the building that's a little farther up.
18 You see this building here?

19 A Uh-hm.

20 Q Can you tell me which one of these cars kind of directly across or if he's
21 parked at these cars or tell me if he's parked across from the cars?

22 A He's parked across from those cars, the white car.

23 Q There's four white cars that I can see.

24 A I can see four white cars too. I'm sorry. I apologize for that. You see
25 the first car?

1 Q We talking this one?

2 A Closest to the building, yes.

3 Q Okay.

4 A He's probably parked next -- across from the two cars that are -- yes.

5 Q These two cars?

6 A Yes.

7 Q So, he's kind of parked somewhere here?

8 A Yes.

9 Q And you're parked somewhere here?

10 A Yes.

11 Q Okay. So, now you're outside of your car?

12 A Yes.

13 Q And you see him there. Is he alone at this point?

14 A No.

15 Q Who's there?

16 A He's with the associate pastor Dwayne.

17 Q Okay. So, you see more members of church staff there?

18 A Yes.

19 Q Now when you get out of your car, what's your feeling at this point,

20 seeing this same guy now on the opposite end; what are you feeling at that point?

21 A I have a heightened sense of awareness because I see him on the

22 other side so apparently there's something going on. So, I'm paying attention to

23 what's going on down there and waiting on my daughter to get out.

24 Q How many -- tell the jury -- how many people are caught up, milling

25 about in this parking lot?

1 A About 15 or 20.

2 Q Okay. Now they're all congregated the church --

3 A No; they're walking from their cars. Some of them are gathered around
4 the door. I mean, of course there's something going on so everybody is kind of
5 watching and on looking.

6 Q So, you're feeling a little bit concerned. So, what do you decide to do
7 with you and your daughter at that point?

8 A I tell her to hurry up and get out the car. So, at that time I'm looking
9 down towards the car with the gentleman and Dwayne and Dwayne is basically
10 talking to him saying, man, we can't help you here. Could you please leave. We
11 can't help you here. And so by that time my daughter is getting out, the man has
12 gotten in to his car. As I am midway across the parking lot, I see him pull out of his
13 parking space and he pulled out and slowing started to approach the church.

14 Q All right. I want to stop you there. I want to take a couple steps back
15 for a second; okay? So, where do you and your daughter walk from. You walk --
16 you say, hurry up, let's go. Are you going to someplace in particular?

17 A We are walking towards the doors of the church.

18 Q Okay. Is that the double doors of the church?

19 A Yes, the double doors of the church.

20 Q Would that be these double doors kind of located about here?

21 A Yes, sir.

22 Q All right. So, when you are looking back are you still only looking at him
23 when your by your car or are you also kind of looking back as you're walking
24 towards the front entrance of the church?

25 A I'm looking back towards his car as he's driving as I'm walking towards

1 the doors of the church.

2 Q Now you mentioned to the jury that they were also kind of saying things
3 like, you know, hey, we can't help you, something along those lines?

4 A Uh-hm.

5 Q What was the Defendant's demeanor at that time? Could you tell if he
6 was happy, sad, what are we talking about here?

7 A He was kind of agitated.

8 Q Okay. Now you couldn't hear anything he says at this point?

9 A No; I cannot hear anything he says.

10 Q But from what you can tell he seems agitated to you at this point?

11 A Yes.

12 Q Now you mentioned he got into his car and he started to back out.
13 Describe to the jury how he backs out of this parking space?

14 A He backs out slowly.

15 Q And when you see him back out slowly, I think you said he even started
16 driving a little bit forward; is that right?

17 A Yes, he did. I mean, there's people in the parking lot so of course
18 normally you take caution with driving out of the parking space and you drive slowly
19 because there's people walking across the street and that type of thing.

20 Q So, you mentioned you were concerned at first when you see him for
21 the second time on the other side of the church?

22 A Yes.

23 Q Now when you see him backing out and slowing driving out, are your
24 feelings the same or are they different?

25 A No; I was kind of at ease because he's in his car now and so he's

1 getting ready to leave so I'm kind of like, okay, well that's resolved. Let's get ready
2 for church.

3 Q So, at some point you're feeling a little bit like your -- you're letting your
4 guard down a little bit because you think things are kind of done with?

5 A Yes, sir.

6 MR. POSIN: Objection; leading.

7 THE COURT: Sustained.

8 BY MR. HAMNER:

9 Q So, was your guard still up or was it down at this point?

10 A It was down. I mean, I wasn't really concerned about it because he
11 was, you know, he pulled out of his parking space and he was getting ready to leave
12 the parking lot so --

13 Q Now as he's driving forward, where are you located in this parking lot?

14 A I am midstream which that white line is that could you see in the middle
15 of the parking lot I am right there as he pulled out of his parking lot and starts to
16 drive forward.

17 Q So, on the white line somewhere between where you were parked and
18 the front entrance of the church?

19 A Yes, sir.

20 Q Okay. Do you ever ultimately get to the front entrance of the church?

21 A Yes, sir.

22 Q Where is the Defendant -- and by the way what kind of car is he driving;
23 do you remember?

24 A He's driving -- he was driving a Cadillac?

25 Q Do you remember what color?

1 A A crème color Cadillac.

2 Q So, where are you -- you ultimately get to the front entrance of the
3 church, I think you said; right?

4 A Yes, sir.

5 Q Where is the Defendant in his car at this point in time?

6 A He's probably -- I don't know how to explain it to you. You know where
7 you see the A in the --

8 Q Sure.

9 A -- in the building.

10 Q Yeah.

11 A If you draw a line --

12 Q Out towards the street?

13 A Yes; out towards -- a little bit further back -- right there. He's probably
14 right there.

15 Q So, by the time you get to the front entrance of the church that's about
16 where he's located?

17 A Uh-hm.

18 Q All right. So, now you're at the front entrance of the church. You still
19 got your daughter with you at this point?

20 A Uh-hm; yes, sir.

21 Q Tell me what happens when you reach the front entrance of the
22 church?

23 A When I reach the front entrance of the church, I heard a revving of an
24 engine -- of an engine and as I'm walking through the doors of the church I look
25 back and I see his car and his wheels turning towards the doors of the church at an

1 accelerated speed.

2 Q So, you hear -- you actually see the wheels turning?

3 A Yes, sir.

4 Q So, are you inside the church or are you kind of at the entrance?

5 A I am at the entrance.

6 Q How many people are standing outside kind of on that sidewalk area
7 near the cement just outside the front entrance of the church?

8 A At the time about probably like 10 to 15. They are a lot of people
9 walking in midstream to the doors of the church at the time.

10 Q As you were walking into the church, were both the doors open or
11 closed?

12 A No; one door was open. The right side door was open.

13 Q Okay. And, Ms. Adams, could you see how many people were just on
14 the inside foyer here?

15 A Yes; there were about 10 people -- 10 to 12 people in the foyer.

16 Q So, you mentioned you saw this car and you said you heard the revving
17 of the engine and you saw the wheels turning?

18 A Uh-hm.

19 Q Could you actually see the Defendant at this point?

20 A Yes.

21 Q How could you see him?

22 A Because whenever I'm looking back, I can see the windshield and I can
23 see him in the car. I can see his hands on the wheel.

24 Q So, you could see the Defendant's hands on the wheel through the front
25 windshield of that car?

1 A Yes.

2 Q What is he doing at that point with his hands?

3 A Turning his wheel.

4 Q He's turning his wheel?

5 A Yes.

6 Q Is he slumped over asleep in his car?

7 A No.

8 Q Not passed out or something in the car?

9 A No, sir.

10 Q Are his eyes open?

11 A Yes.

12 Q Where's he looking?

13 A He's looking towards the front entrance of the church.

14 Q Okay. When you see him turning this wheel and accelerating and

15 driving towards you and the church, what do you do at this point?

16 A I started screaming and telling people to move out of the way, get out

17 the way.

18 Q Do you do anything more than just scream?

19 A No; my daughter was in front of me and there was another child in front

20 of me so I'm trying to push people out the way.

21 Q What's the scene like at that point in time?

22 A At that time it was a little bit chaotic --

23 Q Okay.

24 A -- because people outside were screaming too so --

25 Q Now, Ms. Adams, as this car's coming towards you, do you hear the

1 brakes being applied?

2 A No, sir.

3 Q Do you only hear the engine revving?

4 A Yes, sir.

5 Q Do you hear any noise coming from the tires?

6 A There was a screeching noise coming from the tires. When you're
7 driving and you're going fast and you're turning, the screeching noise where the tires
8 are skidding across the pavement would be the noise that I would be talking about,
9 like urrrh so --

10 Q Okay. Ms. Adams, at any point before this car starts -- I guess reaches
11 the church, do you hear the brakes slam down?

12 A No, sir.

13 Q Do you see the car slow down?

14 A No, sir.

15 Q Do you ever hear him toot or honk the horn?

16 A No, sir.

17 Q Do you ever hear him yell out, you know, get out of the way, something
18 along those lines?

19 A No, sir.

20 Q So, tell the jury what happened. You're telling people get of the way;
21 what happens next?

22 A The car hits the building and there's a scrunching noise and I assume
23 that that was the car being stopped by the doors of the building.

24 Q Now I want to show you what's been admitted as State's 12. Do you
25 kind of recognize what we're looking at here?

1 A Yes, sir.

2 Q What is that?

3 A That is the gentleman's car in the doors of the church.

4 Q Is that a fair and accurate depiction of what it looked like when it came
5 through that church?

6 A Yes, sir.

7 Q Now if you could, tell the jury where are you standing at the time you
8 first see the Defendant turning his wheel and accelerating towards the church?

9 A I am standing in the doorway.

10 Q Okay. Are you standing behind the closed door or in that open
11 doorway?

12 A I am in the open doorway.

13 Q So, you're kind of -- would that be an accurate -- you're kind of standing
14 right here at this entrance here?

15 A Yes, sir.

16 Q When the car comes through, how close does the car -- does the car hit
17 you?

18 A No, sir.

19 Q You managed to get out of the way?

20 A Yes, sir.

21 Q How close does the car come -- when it finally rests, where are you,
22 how far away are you from this car?

23 A Less than a foot.

24 Q So, could you tell us -- where are you kind of in this picture? I know it's
25 kind of -- there's no marking. Why don't you show me in this photo? Why don't you

1 point on here?

2 A I would be right here.

3 Q Okay. Right here?

4 A Yes, sir.

5 Q So, take a look on the monitor. You said you were right here?

6 A Yes, sir.

7 Q That's an accurate reflection as to where you were when that car came
8 to rest?

9 A Yes, sir.

10 Q Describe the scene inside that church once that car stops coming
11 forward?

12 A There's a lot of people yelling and most of the people had moved out of
13 the way at that time. Once I had realized what was going on, I turned around to look
14 for my daughter and I dropped to my knees and there was a shoe lodged in between
15 the door and the car and I started screaming for my daughter.

16 Q Did you know where your daughter was at that point?

17 A No.

18 Q How old was she?

19 A She was -- I think she was five at that time.

20 Q So, what did you think when you saw the shoe?

21 A That she may have been lodged underneath the car because she was
22 right next to me.

23 Q Did you ever find your daughter?

24 A I did.

25 Q Okay. Where was she?

1 A She was in the church.

2 Q Was she hurt?

3 A No, sir.

4 Q Okay. Did anyone try to help you at that point when you were yelling
5 out?

6 A Yes; people were looking underneath the car screaming trying to see if
7 there was child lodged underneath the car.

8 MR. HAMNER: Court's indulgence.

9 BY MR. HAMNER:

10 Q A couple other quick questions. When you saw this car coming at you,
11 were you afraid at this point?

12 A Yes, sir.

13 Q What were you afraid of?

14 A That it was going to hit me or my child.

15 Q And you hadn't moved out of that front entrance, do you believe that
16 you would have been hit?

17 A Yes, sir.

18 Q Now you mentioned somebody named Dwayne. Do you know
19 somebody by the name of Allen Burse?

20 A Yes, sir.

21 Q Okay. Was he one of these individuals who was kind of out there?

22 A Yes, sir.

23 Q Outside in the parking lot. Okay. And what county did all this happen
24 in?

25 A In Clark County.

1 MR. HAMNER: All right. Thank you. No further questions at this time.

2 THE COURT: Cross.

3 MR. POSIN: No cross, Your Honor.

4 THE COURT: Thank you. May this witness be excused?

5 MR. HAMNER: Yes, Your Honor.

6 THE COURT: Thank you very much for your testimony.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Do you have any further witnesses?

9 MR. HAMNER: No, Your Honor. At this time if we could just check to see
10 before we rest. I just want to make sure. I think all the exhibits have been admitted.
11 They have. At this time, the State rests.

12 **[The State rests]**

13 THE COURT: Does the defense wish to present?

14 MR. POSIN: Defense rests, Your Honor.

15 **[The Defense rests]**

16 THE COURT: Thank you. All right. Ladies and gentlemen, the State has
17 rested its case and the defense has rested this case. So, I'm going to now instruct
18 you on the law as it applies to the case. I'll like to instruct you just orally without
19 reading to you, but these instructions with are typewritten are very important. Each
20 and every word is important and they are carefully constructed to comport with the
21 law. So, I'm going to be reading these to you, but you don't need to worry that you
22 need to take notes because you're going to have these written instructions with you
23 in the jury room to read. So, best just to listen now and then you can read them
24 more closely when you get into the jury room to deliberate.

25 **[The Court reads the Instructions to the jury -- not transcribed]**

1 [State's Closing Argument -- not transcribed]

2 [Defense Closing Argument -- not transcribed]

3 [State's Rebuttal -- not transcribed]

4 [The Clerk swore in the officers to take charge of the jurors]

5 [The jury retires to deliberate 12:30 p.m.]

6 THE COURT: The record will reflect the jury has departed the courtroom.
7 Are there any matters outside the presence?

8 MR. HAMNER: No, Your Honor.

9 MR. POSIN: I just am curious. Assuming they're still deliberating this
10 afternoon, would you come back tomorrow or we could come back Monday?

11 THE COURT: Well we're not coming back Saturday.

12 MR. POSIN: Okay.

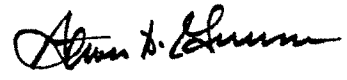
13 THE COURT: No; because that would require lots of overtime which we can't
14 afford here. So, we would bring you back Monday. But it's only 12:30. I did ask
15 them to order lunch. When we call you come back to the third floor courtroom
16 instead of up here. All right. Thank you. We're off the record.

17
18 [Jury Trial, Day 4, concludes at 12:31 p.m.]
19
20

21 ATTEST: Pursuant to Rule 3(c)(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected, or certified to be an accurate transcript.

23 
24 PATRICIA SLATTERY
25 Court Transcriber

EXHIBIT 9



CLERK OF THE COURT

1 RTRAN

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5 STATE OF NEVADA,

6 Plaintiff,

7 vs.

CASE NO. C12-278699-1

DEPT. VII

8
9 WILBURT HICKMAN aka
10 WILLIAM HICKS,

11 Defendant.
12

13 BEFORE THE HONORABLE CAROLYN ELLSWORTH, DISTRICT COURT JUDGE
14 FRIDAY, SEPTEMBER 6, 2013

15 **RECORDER'S PARTIAL ROUGH DRAFT TRANSCRIPT**
16 **JURY TRIAL - DAY 4**
17 **CLOSING ARGUMENTS**

18 APPEARANCES:

19 For the State:

RICHARD H. SCOW, ESQ.
Chief Deputy District Attorney
CHRISTOPHER S. HAMNER, ESQ.
Deputy District Attorney

22
23 For the Defendant:

MITCHELL L. POSIN, ESQ.

24 RECORDED BY: LARA CORCORAN, COURT RECORDER
25

1 Friday, September 6, 2013 -- 11:15:15 a.m.

2
3 **STATE'S CLOSING ARGUMENT**

4 MR. SCOW: While this boots up, it would've been fine if I could've
5 plugged it into this side, but because we came to a different courtroom, we know
6 that the plugs over here don't work, of course. So I plugged it in over there, no
7 power to the plug, and so now it's shut down, and it's going to start up.

8 That's -- when we started this case, State of Nevada versus Wilburt
9 Hickman, Mr. Hendron told you this is a pretty straightforward case. There won't
10 be much dispute about what actually happened that day. The only discussion that
11 we're really going to have is what the Defendant's mindset was, what his state of
12 mind -- and the Defendant's --

13 In the opening we heard -- their arguments are that the Defendant
14 could not formulate any intent to kill; that he wasn't capable or so drunk that he
15 wasn't able to do that.

16 MR. POSIN: Your Honor, I'm going to object. That's not exactly what
17 we're saying, and so --

18 MR. SCOW: I'm paraphrasing. I'm not quoting him.

19 THE COURT: All right. Well, let's confine your closing to the evidence
20 and let him just --

21 MR. SCOW: That is the evidence. It's going to be, what was this
22 Defendant's state of mind? I'm coming up, it looks like.

23 MR. HAMNER: Is it the user?

24 MR. SCOW: Yes.

25 MR. HAMNER: You just gave them our password.

1 MR. SCOW: That was on the record, too, by the way.

2 BY MR. SCOW

3 So the charges that we have in this case that were read to you in
4 the beginning, you have those in your instructions. There are 17. The first eight
5 are attempt murder. The next ones are battery with use of a deadly weapon and
6 then battery with a deadly weapon resulting in substantial bodily harm. I'll go
7 through these instructions. We'll talk about them fairly briefly because there's not
8 really a dispute about the actions that occurred; it's the Defendant's state of mind.

9 And the assault, the attempt murder and burglary, those are crimes
10 of intent or state of mind. Battery is not. Battery is, if I'm walking along and I bump
11 you like this or I don't mean to be mean, but you take that wrong, that's a battery
12 because it's unwanted physical touching, if I give you a little nudge like that. The
13 instructions tell you no matter how slight.

14 It looks like we're up and running.

15 So this is the case. This is the end position of the Defendant's
16 vehicle. And we're going to talk about -- a lot about what happened before, what
17 happened during and what happened after because as the instructions tell you,
18 we're going to talk about intent. It's Instruction Number 20, if you want to make a
19 note to refer to that later. The intent with which an act is done is shown by the
20 facts and circumstances surrounding the case. We don't look at just an action
21 isolated in one single moment, and I'm going to talk about that again in just a
22 minute.

23 (State Counsel confer)

24 BY MR. SCOW:

25 There we go. There's the charges that we just went through. And

1 as burglary comes up, you might be sitting there scratching your heads thinking,
2 isn't burglary like when somebody goes into somebody's house to steal their
3 computer or their money or whatever thing, property might be in there? That is
4 true, that is a form of burglary, but in the State of Nevada, there are multiple ways
5 that you can commit a burglary, even in a commercial building, a church, any
6 building, and I'll get to that in just a minute. But I wanted to point that out because
7 you might be thinking this isn't somebody's home that was broken into.

8 So we'll start first with battery. It's the intentional and unwanted
9 exertion of force upon another, however slight. So even a nudge with my elbow, if
10 that's unwanted, you don't know me, that's a battery. Battery with use of a deadly
11 weapon is that same force, but applied with a deadly weapon. So like if I have a
12 gun and I shoot at you instead of nudge you and the bullet grazes you, that's still a
13 battery with a deadly weapon, no matter how slight that -- that exertion or force on
14 another person might be. But now it's just with a deadly weapon, a gun. In this
15 case it's a car.

16 We look at Count 9, the battery with use of a deadly weapon, the
17 victim is Anneesah Franklin, the mother of Anyla. The Defendant drove his car at
18 the church into a group of people in front of the church, and as she told you as she
19 was standing at the doors talking to her friend, Marquette, as the car came up, she
20 tried to get out of the way, and the car actually hit her, and it threw her in the air
21 some, and she landed face first on the ground, ended up with some problems in
22 her neck. But the car that hit Anneesah knocked her over. A vehicle is a deadly
23 weapon, and I'll talk about the deadly weapon now.

24 It's any weapon whose construction is designed to inflict death or
25 bodily harm like a gun. That's a weapon that's designed to do that. That's the first

1 way that you can have a deadly weapon, but there's another. And in the
2 instruction there's an A and a B, and Subpart B is what we have here, "It's an
3 instrument or material or a substance which under the circumstances in which it is
4 used."

5 So if I have some powder and I try to smother somebody with it, that
6 can be a deadly weapon. It's the way in which it's used, and a car is something
7 that kills people every day sadly, in accidents or hits pedestrians. So a vehicle, in
8 the manner which it's used here, driving at a group of people, is readily capable of
9 causing death or seriously bodily injury. That's why a car in this case is a deadly
10 weapon, and that will apply --

11 MR. POSIN: Your Honor, I don't want to interrupt, but (indiscernible). For
12 the record, there are statements or sentences on here that are not exactly what
13 has been argued in court. I don't know how we make that part of the record. I ask
14 that --

15 MR. SCOW: I'll have a printout of this.

16 THE COURT: We're going to mark this as a Court's exhibit.

17 MR. POSIN: I feel that, you know, this last -- the second part, a car is
18 clearly capable of causing death, it happens almost every day and incorrect
19 statement of the law there. It's not exactly what Counsel's arguing, but there on
20 the --

21 MR. SCOW: That's exactly what I'm arguing, and I'm not quoting the law
22 right there. These are my arguments. The portion above is the instruction, and the
23 instructions stand for themselves. I can argue that a car is a deadly weapon
24 because that's -- that's our argument.

25 THE COURT: The objection's overruled.

1 MR. SCOW: Thank you, Your Honor.

2 BY MR. SCOW

3 Clearly, a car is a deadly weapon. The instructions don't tell you a
4 car is a deadly weapon, but what you read there, that something's that used in a
5 manner that can cause death or seriously bodily injury, like driving into a group of
6 people, that's a deadly weapon. And it applies for all the crimes we're looking at
7 here, assault, battery, attempt murder, they're all charged with a deadly weapon.
8 So it's the manner in which it's used, and, again, there's where it's end up.

9 But before it ended up there, there was a group of people standing
10 there in the front, and Allen Burse a little bit further out that the Defendant was
11 driving at. That's the manner in which this vehicle was used in this case.

12 So we turn next to the substantial bodily harm portion of the
13 instructions. "Bodily injury which creates substantial risk of death or which causes
14 serious, permanent disfigurement or protracted loss or impairment of the function
15 of a bodily organ or a member." So for in this case, that first part of the instruction,
16 Anyla, she had a broken toe, and for several days she was on crutches, so she
17 had a protracted loss of the function of any bodily member, her foot, because she
18 couldn't walk right. Or you look at the second, it could be either one, prolonged
19 physical pain. And she may not have remembered the time as well as her mother
20 did, who said she complained of pain for about a week, even a little bit more, and
21 had to use pain medication to help her, especially at night when she was going to
22 bed.

23 So Anyla had prolonged physical pain. She also had protracted or
24 impaired use of a bodily member, her foot. So we have substantial bodily harm
25 here. And this is Count 10 for Anyla. The car actually ran over her foot. She said

1 she was run over by the car, knocked her over, and she had the broken toe. And
2 the Defense doesn't dispute that the Defendant driving that vehicle when it
3 happened. So we have Anyla and her injured foot.

4 The instructions tell you that voluntary intoxication, which is part of
5 the focus on the Defendant's mental state in this case, that intoxication is not a
6 defense to general intent crimes. In this case, battery and any of the forms with
7 use of a weapon and substantial bodily harm, it's a general intent crime, and so the
8 intoxication is no defense to hitting somebody with the car.

9 So for Counts 9 and 10, the intoxication instruction, you just throw
10 those out for those two and you look at whether the State has proven with the
11 evidence presented that Anyla and Anneesah were hit by a car and whether the
12 Defendant did it and whether Anyla had a substantial bodily injury that resulted. So
13 for those two, the evidence presented has proven that the Defendant is guilty of
14 Counts 9 and 10, the battery with use of a weapon, battery with a weapon and
15 substantial bodily harm.

16 So now we'll turn to the next three set of charges. I know it's 15 total,
17 but that makes three. So this is when we get into the intoxication, "that no act
18 committed by a person in the state of voluntary intoxication shall be deemed less
19 criminal by reason of that condition." Okay. The law still says this is criminal
20 activity, but on these three charges here -- and this is important -- when intent is an
21 element of those crimes, then you can consider the intoxication to see whether the
22 Defendant could formulate the intent for that particular crime.

23 So that's why as each witness got up, we would ask them, could
24 you smell anything? What were your observations? How was the Defendant
25 acting? Because that's the evidence in this case of his intoxication.

1 So we turn to burglary. Burglary is "the entering of any building or
2 structure with the intent to commit an assault, a battery or any felony therein."
3 When a person does that, they're guilty of burglary. If you go into a store, you're
4 going in to steal food or money from a register, that's burglary. If you go into
5 somebody's house intending to punish them or commit a battery, that's also
6 burglary.

7 What we have here, the Defendant driving into a church intending to
8 commit an assault or a battery or an intent to kill, attempt murder. That's the way
9 that they're pled, each of the charges, they say, assault and/or battery or intent to
10 kill. That's what establishes the intent for the burglary, and it could be either -- if
11 you find any one of those intents, he's guilty of burglary.

12 Intent may be inferred from the Defendant's conduct and all the other
13 circumstances of the case, like what I had just read to you on intent.
14 And this will be the same with the intent murder and the fault, what was his intent
15 when he did this. What was the Defendant's intent when he drove his vehicle at
16 that group of people and straight through into those doors of that church?

17 You can see the car gets wedged in there really well, breaks part of
18 the wall on the left side of the door, tosses things around inside. They had moved
19 the table where Tiffany Trass had been standing or sitting. She had scooted to the
20 left as soon as she heard the chaos and get out of the way. She was lucky she
21 wasn't hit. The same with Sharon Powell was behind the door and then the group
22 in front of them. And then the ending state of the Defendant's vehicle.

23 As I talk about assault now and then the attempt murder next, I've
24 already spoke about burglary, the main focus is going to be the Defendant's intent.

25 So the victims of assault with a deadly weapon are Allen Burse,

1 Washington Thompson, Marquetta Jenkins, Rahmeka Adams, Sharon Powell, and
2 I have her in stars next to her because her being inside the building and not
3 hearing the car, she didn't know beforehand that something was coming. So hers
4 is charged a little bit differently, and I'll explain that in the next slide. And Tiffany
5 Trass.

6 And you'll notice that Anneesah and Anyla aren't on that list of assault
7 with a deadly weapon because they got hit. Once you get hit, the assault is gone
8 because then it's a completed battery, so it's no more an assault on that person, it
9 becomes then a battery. So for the other people that were aware of things and
10 almost got hit or dodging the car, it's an assault. It's also attempt murder, which I'll
11 get to that.

12 But assault is an unlawful attempt and a use of force against
13 another person, so like an attempt battery, and that's how Sharon Powell comes
14 into play. She's sitting behind the door, doesn't know what's coming, but the
15 Defendant, by driving into a group of people and at the doors, there's instructions
16 on transferred intent. If you attack the group intending to sit somebody in the
17 group, no matter where the person is in the group, you have that intent, the intent
18 of one is the intent of all. So that's why she's included in this assault charge; that it
19 was an attempt battery on here, even though she was sitting behind the door.

20 The other way to complete an assault is, "Intentionally placing
21 another person in reasonable apprehension of immediate bodily harm, place them
22 in fear." In this case a very good example of that, before the Defendant even starts
23 driving towards everybody, is Allen Burse, as he's watching and getting into his
24 car, his intuition is telling him or his reasonable apprehension, something is about
25 to happen, doing his little football backpedal.

1 So that's -- we have both of these charged for all of the victims
2 except for Ms. Powell. Hers is just the first one. So make sure you make that
3 distinction as you're looking through these charges. And the transferred intent,
4 which I have already mentioned, the attack on the group is the attack on all, as
5 long as you have the intent to hit at least once, whether it's Allen in front,
6 Washington in the back or whoever else or Kevin inside.

7 Attempt murder, our Counts 1 through 8, and most of the discussion
8 now for the Defendant's mental state will relate to attempt murder because the
9 voluntary intoxication instruction specifically mention attempt murder. These are
10 Allen Burse, Anneesah Franklin, Anyla Hoyer, because even though they're hit,
11 they can still be charged -- he can still be charged with their attempt murder, even
12 though there are also charges to battery. Same with the others, assault and
13 attempt murder, he can be charged with both. You can find him guilty of both.

14 Washington Thompson, who was standing at the door greeting
15 people, Marquetta Jenkins, who was speaking with Anneesah, Rahmeka Adams,
16 who just testified, Ms. Powell and Ms. Trass. You saw the victims listed for attempt
17 murder. There we go.

18 So an attempt murder, what is it? "Performing an act or acts which
19 tend but fail to kill a human being, when such acts are done with express malice,
20 which is defined as the deliberate intention to kill," which makes sense. Attempt
21 murder, you've got to be trying to kill somebody if you can be convicted of attempt
22 murder. So express malice is the intentional attempt to kill another human being
23 without legal cause, without there being a defense of "I was trying to defend
24 myself." Then it's not attempt murder or with what the law considers adequate
25 provocation.

1 So when you consider the intent here, the Instruction Number 20 on
2 intent also talks about motive. It says, "Don't confuse motive with intent." The
3 intent here is the specific intent to kill another human being. The motive is
4 something that, obviously, motivates somebody to do something. When you
5 consider motive here, that may arise from anger, hatred, revenge, ill will, spite,
6 grudge toward the person who was attempted to be killed. And in that case -- I
7 highlight those in yellow for my benefit so I remember what to say when I see
8 them. But we have those in this case.

9 When you're looking at the car driving at these people into the
10 church, was this act which tended but failed to kill? Yes. If somebody had a hurt
11 leg and they couldn't get out of the way fast enough, they would've been run over.
12 They, in all likelihood, unless they were lucky, would have been killed.

13 Now we have to look at what was the Defendant's intent. It's a
14 straightforward case. It's not a whodunit. It's not even a question really of what
15 was done. People were almost killed. That's attempt murder as long as he has
16 that intent. People were in reasonable apprehension of immediately bodily harm,
17 assault, and the car and the Defendant entered the building, burglary. As long as
18 he had that intent.

19 Oh, there was -- a lot of the questions we asked people was a
20 moment incoherent drunk, (indiscernible) people, getting into the Defendant's
21 state, or lack thereof, of intoxication. So when you consider the voluntary
22 intoxication instructions, the real question whether this Defendant formulated the
23 intent to kill; for assault, whether he wanted to place these people in fear of being
24 harmed, and for the burglary, either one.

25 So the first thing to consider was, was he even intoxicated? And

1 what's the only evidence that alcohol was involved? He smelled of alcohol. We
2 asked every witness, and I think almost everyone said, he smelled of alcohol. But
3 when we asked them to describe whether there was something else about his
4 actions or their observations that tipped them off that alcohol could've been
5 involved, they said, if it weren't for the smell -- I think about three of the witnesses
6 said, if it weren't for the smell, I would've never have known because I didn't see it.

7 On intoxication, if the Defendant had the capacity to form the intent
8 to kill and conceived it and acts upon it, it is not a defense of the crime of attempt
9 murder that he was intoxicated, that people could smell alcohol.

10 Now we're going to look at whether he could formulate this intent.
11 Kevin Madden, Allen Burse, Washington Thompson -- I'm falling
12 behind -- Marquetta Jenkins, Anneesah Franklin, Craig Hutton, Tiffany Trass, they
13 all testified the Defendant could express himself. When he spoke, they could
14 understand his words, and they made sense together. The time that Tiffany said
15 he seemed a bit -- or said -- and the testimony was read into the record. She didn't
16 say he was incoherent. She said some of things he said were incoherent. I
17 couldn't hear very well what he was saying.

18 That was the testimony that was read in from the prior hearing. And
19 when she testified, she said, no, he wasn't incoherent walking by mumbling to
20 himself about the Easter bunny. He could walk under his own power. He had no
21 difficulty driving. They could smell alcohol, but the Defendant was coherent. He
22 was just upset.

23 Allen felt that at first, when he came upon the scene, the Defendant
24 didn't seem to understand what we were saying because we're asking him to
25 leave, and he's not leaving. He's talking about wanting to see his daughter,

1 wanting his daughter pray for him. So for him, that was like, this guy's just not
2 getting it, because he didn't know any of the back story, that that man's daughter --
3 this man's daughter -- had gone up to Assistant Pastor Kevin and said, you gotta
4 get him outta here. I'm terrified. Get him to leave. So that's why they start to, you
5 know, make efforts to say, okay, sir, you need to leave.

6 Allen said in the prior testimony that he was mumbling, wasn't
7 asked to explain that. He was asked to explain it here. Said he was talking softly
8 to himself as I was walking him to his car in the Arm Bar, but I could hear him
9 because I was close to him. And then Tiffany, which I already explained, it was
10 incoherent to her because she couldn't hear what he was saying.

11 So what is this not? When we're talking about intoxication, this is
12 not somebody driving Las Vegas Boulevard, sloppy drunk, passing out or just not
13 having control of their faculties. The wheel turns, they veer off the road, almost hit
14 a group of people waiting at a bus stop and then smashing into a building behind it.
15 That one wouldn't be charged with assault with a deadly weapon because that
16 person hadn't -- didn't have any voluntary action of driving off the road and saying,
17 oh, I hate this group of people. Let me try to get them.

18 That's not what we have here, the option to the point where they have
19 no idea of how they even got there. That person wouldn't be charged with assault
20 with a deadly weapon, who not and did not form the intent to leave the roadway, to
21 hit a person who's standing on the side of the road.

22 So if we were to look at this case in a little vacuum, think of it is like
23 the center of a bull's-eye because that car actually, you know, hit a bull's-eye.
24 Look just at that middle circle and you think, gosh, this car hit this building like Ms.
25 Powell who hit her knees right after and praying for the guy in that car, how could

1 somebody run into our church? Please help him. Your first thought is, that guy
2 was trying to hit people. It was just at that moment right there knowing nothing
3 else.

4 Let's take some steps back and see what we know about what was
5 going on in that moment right there. First of all -- let us blow that up -- the tire
6 marks; that the officer said on that curve, it's accelerating, and even Rahmeka on
7 the stand here, she explained it the same way, even though she hasn't gone to any
8 traffic investigations. As it's making the turn, she could hear the tires like going
9 (audible noise) because it's accelerating on the curve. And even after he hits the
10 building, the tires are still spinning, leaving the dust on the ground, trying to get in
11 that building. He really wanted to get in, and he's not sitting there unconscious for
12 -- just down on the pedal because she said she saw him looking and turning,
13 Rahmeka Adams. Allen Burse saw him looking at them. And I'll get back to this in
14 a minute.

15 But when they go to get him off the wheel, he's still fighting to put it
16 in gear. Tire marks, right in, just a straight path. My lines aren't perfectly straight
17 in, but there's no like weaving or smashing other cars in the way in like he's not in
18 control of the car.

19 Let's take another step back, learn more of the story of what's going
20 on here. The Defendant is first asked to leave after his daughter had frantically
21 gone to Pastor -- Assistant Pastor Kevin, just get him to leave, please. She's
22 afraid. He was asked to leave once, which takes some coaxing, but he goes to get
23 in his car. He drives around the other side and parks, goes back in the church.

24 This time Kevin's like, no, we're not going to have it this time. We
25 asked you to leave once. So he puts his hands on him and walks him out, where

1 Allen takes over and he's physically escorted to his car a second time. And with
2 each encounter with the Defendant, the witnesses describe him as getting more
3 and more agitated, getting a little bit louder, demanding to see his daughter.

4 When you look at where he hit, he could've hit anywhere on that
5 building, but it happens to hit those double doors, and the location where he had
6 just been brought out, knowing that there's 10 to 15 people standing even inside
7 and the whole group of people standing outside, he just walked through those
8 people. It's not like he didn't know what was in there.

9 Allen Burse, he gets in his car, and my intent -- and my intuition told
10 me not to take my eyes off that car. I just felt like something was going to happen.
11 And when I had asked him -- he testified something similar to that at the prior
12 hearing, right? He said yes. Did the Defendant blurt something out right after you
13 said this? It wasn't just a blurt. He yelled it out from what Allen testified to. He
14 yelled out in the courtroom. He almost broke my damn arm. That's why -- that's
15 why something was about to just happen. He shouted it out at the prior hearing.
16 He was still angry about what happened a month ago. When he's sitting in the
17 courtroom hearing about it happening again, he was still angry. So do you think he
18 didn't remember what was going on? Do you think he wasn't thinking about being
19 upset with these people, where a month later he's still -- because he almost broke
20 my arm, that's why. That's why I wanted to hit you, Allen.

21 And the key player here, as we take another step back, is the
22 Defendant's daughter, Samira Grove, the Defendant -- Defendant demanding over
23 and over, I need to see my daughter. He's terrified, trying to get out of there.
24 They're trying to escort him out, which is why he's even there in the first place.
25 He's getting increasingly agitated as he's denied. How does she react to his being

1 there? Hysterical, very afraid and the reason he's told to leave in the first place.

2 And she left the property after even being told, hey, I -- by Craig,
3 hey, I just told your dad to leave. He went around the building, so I think he's
4 gone. You can go back in and enjoy things. She's like, No way, Jose, I'm out. Got
5 in her car and drove away.

6 MR. POSIN: Your Honor, I don't think the evidence showed that.

7 MR. SCOW: He didn't say "I'm out." I was paraphrasing.

8 MR. POSIN: I don't think that it showed that she drove away
9 (indiscernible) she drove away.

10 THE COURT: Well --

11 MR. SCOW: Craig testified --

12 THE COURT: The jury will rely on their own recollection.

13 BY MR. SCOW:

14 If you'll recall, what we say is in evidence. There's an instruction
15 that says that. We kind of just recite the evidence to bring it back to your memory
16 as we go through these laws and instructions. You'll remember that Craig Hutton
17 testified as he was on that back side of the church after the Defendant just drove
18 around the corner, she came running out, still pretty upset. He's like, hey, he's
19 gone. He just drove -- I told him to leave. And she said, I'm still leaving. Got in
20 her car, and he said she exited on Las Vegas Boulevard, and the path that he took
21 was basically the same one that she went. She went to the street, walked over
22 after she had left, and he ended up back at the other side of the building and saw
23 the car, plowed into the church.

24 So maybe the most revealing evidence is we take a final step back
25 and get the whole bull's-eye here, the whole story. What was the Defendant

1 saying immediately after driving at all the people and smashing his car into the
2 church? And it gives us some insight into the state of the mind of the Defendant,
3 whether he could formulate an intent to kill, if he could formulate an intent to scare
4 people, place them in reasonable apprehensive of harm.

5 As Washington Thompson is standing there next to the door, trying
6 to keep it shut so the Defendant wouldn't get out, as Allen is wrestling with him
7 inside, the Defendant looks at him and says, You're next, and Washington's like,
8 what's that all about? I didn't even -- I haven't done anything to you today. Well,
9 you're next. And what else could he mean by that after just ramming his car into
10 the church?

11 Kevin, the Defendant was yelling, I'm going to kill all you
12 motherf'ers. And Craig, the Defendant was threatening to kill everyone or anyone
13 who was making threats to kill. And that's in the few seconds after he'd just drove
14 through a group of people and plowed his car into the church. Still talking about,
15 I'm going to kill you guys.

16 What do you think was going through his mind just before? Was it a
17 blank zombie mind from alcohol because people could smell it? Because
18 somebody said at one time he mumbled or sounded incoherent to me? Because
19 he didn't seem to understand that we just wanted him to leave.

20 It's a burglary. It's an intent to commit a battery or an assault or to
21 kill someone. Assault, intentionally placing another in reasonable apprehension of
22 immediate bodily harm. Attempt murder, intent to kill another person.

23 Statements immediately after, his reaction to Allen Burse testifying
24 at that prior hearing all show that the Defendant had this intent. He was angry.
25 Maybe the alcohol just gave him a little extra courage to do something that

1 somebody otherwise wouldn't normally do; broke down his barriers of, you know,
2 society, societal norms. Breaks those down and makes them more likely to lash
3 out in his angry, which is what happened.

4 In this case the evidence establishes that the Defendant is guilty
5 also of burglary, a thief intent crime, burglary, assault with a deadly weapon,
6 attempt murder with a deadly weapon. And based on the Defendant's action that
7 he formulated in his own mind and acted upon, I'm going to ask that you find him
8 guilty of all the charges because he needs to be held accountable for what he did,
9 the terror that he put these people through.

10 He didn't -- he didn't break anybody's neck. Thank goodness. Or
11 anybody's back. Everybody can walk and move about after this, but that doesn't
12 make it any less that he was trying to kill those people, assault them and inflict as
13 much damage as he could because they wouldn't let him in that church. Do justice
14 here, find him guilty. Thank you.

15 THE COURT: Thank you.

16 MR. POSIN: It goes against the grain as a defense attorney to agree with
17 anything the prosecution would've said. I think Mr. Scow was actually -- summed
18 up pretty well what the issues are, and I think we actually do agree on the point
19 that we're dealing with here, that is, we're not disputing who was there. Mr.
20 Hickman was there. He was driving that car that day. There's no dispute about
21 that. The issue is, what was his intent -- intent.

22 His intent -- again, we -- as Mr. Scow has said, intent is a different
23 thing for different crimes that are charged here. We have a different intent that
24 we're looking at for the battery, the burglary, the attempt murder, and the Judge's
25 read you these instructions. It talks about general intent crimes, specific intent

1 crimes, and I thought I was going to have to explain that a little more than I
2 probably will because I think he's actually told you a little bit about the different
3 between what those things are.

4 And when you first heard the Judge talking about that, I'm sure a lot
5 of that was just sounding like -- you know, just what does all of this stuff mean?
6 Because we as lawyers, we hear all that legal jargon all the time, and we're used to
7 it, and you guys aren't.

8 Remember when we first started and I was giving my opening
9 statement or even before that when we were talking to you guys as potential jurors
10 still, I was asking, you know, can you really listen and listen to the Judge's
11 instructions about what the law is and follow those instructions. There was a
12 potential juror who is no longer an actual juror, who -- you know, his attitude-- he
13 was an ex-police officer. His attitude was, well, once -- once the case is presented
14 to the D.A., well, you know, the work is done. I just -- cops brought it to the D.A.;
15 then the work is done.

16 I think the prosecutors and I probably agree, no, that's just the
17 beginning of the interesting part. This is the interesting part. The part that you're
18 involved in is really the interesting part, seeing how those facts apply to the law
19 that the Judge is giving you and coming to a reasonable analysis as to each and
20 every one -- not just of the crimes charged, but each of the elements of the crimes
21 that are charged, each and every element of each of the crimes charged.

22 And we've got a complicated morass of -- of crimes where several
23 of the crimes, as you'll see -- you're going to see a verdict where there are
24 alternate versions you can give. You can find the Defendant guilty of one part, two
25 parts, part one and part two, part one and part three, part one -- only -- none of

1 them, all of them. You're going to have to go through that, and it is important that
2 you go through each and every one of those counts and analyze what was Mr.
3 Hickman's intent.

4 Now, there are options other than the ones that have been
5 presented to you by the State as to what that intent was. They're trying to say that
6 his intent was either, I have the specific intent to actually cause the death of these
7 individuals. Now that's -- that is what you have to find for the attempt murder. Or
8 he was so drunk, he -- that's why I objected. He was so drunk that he couldn't
9 even formulate such an intent.

10 Now, I'm not going to argue that he was so drunk that he couldn't
11 formulate that intent. I'm arguing that he didn't, and his intoxication is one element
12 for you to look at in deciding what his intent -- what his true intent was. And I think
13 his true intent can be seen by the course of events that led up to this.

14 He went in. He asked for his daughter. They weren't going to let
15 him see his daughter. He was insistent. He asked over and over and over for his
16 daughter. He wanted to see his daughter. He started out jolly; he was asking for
17 his daughter. Then he became angrier and angrier. He wanted to see his
18 daughter. He was escorted out of the place once. He wanted to see his daughter.
19 He came back in. Gets escorted out again, this time with a little more force. It's
20 clear to him that he's not going to go in voluntarily again just on foot. So what was
21 his intent when he drove that car into -- into the building? And counsel used an
22 interesting word, bull's-eye.

23 Now, in their eye, the fact that there was a direct line from that car
24 into the church, that's somehow shows his intent to kill. I think far from it. I think
25 what that shows, his intent at that point looks to me like whatever way it was going

1 to take, he was going to go back into that church to see his daughter. Now, was
2 that a smart thing -- smart way to do it? A safe way to do it? No. Was that a
3 reckless way to do it? Yeah, that was pretty reckless. And if we were sitting here
4 dealing with a crime of reckless driving, there would be other issues. Maybe you'd
5 have different considerations, a different analysis of what intent you are looking at
6 or lack of intent.

7 If we were sitting here dealing with what was initially charged by the
8 officer, driving under the influence, then we would have -- would've had different
9 intent issues. But you're dealing with his intent as charged in these instructions,
10 and specifically, let's talk about the attempt murder, his intent to kill.

11 Was it his intent to kill or was it his intent to just get into that
12 building? We knew that there were three big, strong men at least that we're going
13 to escort him out, keep him out if he went in on foot, and he was just going to go in
14 in his car. Reckless? Maybe. That's not the crime that you're dealing with. DUI?
15 Again, maybe. That's not the crime you're dealing with. Was it the kind of reckless
16 act that would give rise to some civil liability if somebody was suing him? Maybe.
17 But that's not the issue here. The issue here is was he planning; did he formulate
18 the intent to kill people? Saying, I'm going to do this in order to kill people. I want
19 to kill people. If that's what you find, then find him guilty, but that's not what the
20 evidence shows. The evidence shows that the intent he had was to get to his
21 daughter.

22 So where does the intoxication come in? Does it come in that he
23 was so drunk, he didn't know where he was driving? No, that's not what I'm
24 arguing. Does it come in that he was so drunk, that he couldn't even begin to
25 formulate that intent? That he was unable to decide, I want to kill somebody?

1 That's not what I'm arguing either. Did it come in on the basis that he wasn't
2 making sound decisions; that when he did come up with an intent, and that intent
3 was, I'm going after my daughter, and I'm driving my car in that building if that's
4 what it's going to take? But he didn't think, oh, there are people in the way, I'm
5 going to hurt them. Well, you know, if that's what he was thinking, that was pretty
6 reckless, but that wasn't an intent to kill. That was not the intent to kill.

7 The facts that have been shown here -- you know, as counsel has
8 said, there's not really too much dispute about what the facts were. What you have
9 to do is look into this man's mind. And how do you do that? You have to take the
10 facts that have been presented by the prosecution, and then you have to look at
11 the instructions, and you have to look specifically at what every defense attorney in
12 every case talks about, which is the reasonable doubt instruction. You have to
13 think, well, why -- maybe, you know -- I don't know. Maybe he had this intent.
14 Maybe he had that intent.

15 If you think that maybe he had the intent to kill people -- I'm arguing
16 that you couldn't even begin to think that he even maybe had the intent to kill
17 people. I'm arguing that the intent that was shown here was to go get his
18 daughter. Then let's say you disagree with that. You think, yeah, I can see -- I can
19 see the State's argument. I can see where, maybe he was, maybe he was so
20 mad, so irritated with these people, that he actually decided, I want to kill them.
21 I've forgotten about my daughter now. Who cares about her? I just -- my new plan
22 is I'm going to kill some people, and this is how I'm going to do it. Let's say that's --
23 you think that the evidence gives that as one possibility. And let's say you look at
24 what I'm saying, arguing here, that I want to go get my daughter, and you say, well,
25 that's another possibility, and you say, I don't know, those both seem like

1 possibilities. Then what do you do? This is not a situation where you just kind of
2 look, well, I don't know, I'll just pick the one way, it could go the other way, we'll go
3 here.

4 Again, you go back to the Judge's instructions and some of the
5 basic principles of law that we have. It's not just any old instruction. I mean, none
6 of these are just any old instructions. These are all very important, and we
7 discussed them and agreed on them, and the Judge gave them careful
8 consideration, and they are the law.

9 But the proof beyond a reasonable doubt and the fact that -- who
10 has the burden of proof, the State? What that means is that if you're looking at two
11 possibilities and you're weighing them, with any kind of trial you find a defendant
12 not guilty -- now, not guilty, you're not saying, I'm deciding guilty or innocent. You
13 notice the word is not innocent, it's not guilty. Not guilty means not proved beyond
14 a reasonable doubt by the State.

15 They've presented their case. They see it one way. They're
16 arguing it one way. I'm arguing it another way. If you, when you go back and
17 deliberate, think that my argument even is a matter that you think could be
18 possible, then you think, is -- okay, if it could be possible, is that -- do I then have a
19 doubt based on that analysis as to whether their argument is right? You may even
20 think, well, more likely than not their argument is right. I kind of like their argument
21 better than Mr. Posin's argument, I don't know, it just seems more likely he really
22 did forget about his daughter and was trying to kill them, you still have to find this
23 man not guilty if you have a reasonable doubt, a reasonable doubt as to whether
24 what I might feel is the case.

25 Many of these witnesses had testified once before, as you heard,

1 and they were going over what some of their testimony was. And I kind of focused
2 on the word that one of them used, which was backpedaling. Now that they
3 understand a little better where the Defense is going, it's -- they're kind of
4 downplaying the drunk think.

5 But every one of them admitted that they said it. Washington
6 Thompson said -- used the word drunk, and counsel then went back and actually
7 did something that -- to my mind helped us, our side, more than his, which is, his
8 actual testimony went from starting to say -- his initial statement in the prior
9 testimony was a little tipsy. Then he further clarified that to say, well, he was wet
10 and then finally said drunk.

11 Tiffany Trass used the word incoherent, and, you know, again, kind
12 of maybe backpedaled a little bit on that. Allen Burse said, he was mumbling and
13 wasn't understanding what we were saying. Again, I'm not going to argue it that he
14 wasn't capable of understanding the English language and didn't understand in
15 that sense. The party wasn't under exam. He wasn't taking no for an answer
16 about, no, you're not going to see your daughter.

17 Marquetta Jenkins -- Jenkins said, you could smell the alcohol as he
18 walked past, and then she threw another phrase even in this trial that -- that some
19 of you may have caught, which was, he wasn't all there. Kevin Madden said, I
20 smelled liquor. Craig Hutton said that the usher had told him she smelled alcohol.
21 He smelled alcohol. And Darren Green, who was the officer -- second officer to
22 testify said, he was non-responsive.

23 Now, again, this is not to say that he was so drunk, he couldn't even
24 (indiscernible), so drunk that he couldn't walk under his power. There was a lot of
25 testimony about that. Could he -- did he seem to be stumbling? Did he have to

1 use assistance to walk?

2 But (indiscernible) can do, you heard the instruction about your
3 common sense comes in and can cause you to disregard the dangers of actions
4 that we take. People can assess that they didn't plan out when they're drunk.
5 They can drive when they really shouldn't because they made a bad decision,
6 because they were drunk. They can do all kinds of things because the risks -- the
7 risks that most of us when we're sober of doing a particular course of action that
8 seems so obvious when we're sober somehow recede in the background when
9 people have too much alcohol.

10 Here, there was not only a risk, but an actuality of people getting
11 scared and injured because of what Mr. Hickman did. But was -- was that his
12 intent? Was that his intent? Again, there's the battery --

13 Again, I'm going to read what is stated here. The battery has a
14 different form of intent. It would be a lot of easier, actually, for you to find him guilty
15 of the battery, but was it his intent to hurt or kill people or was that just one of those
16 things that -- one of those risks that because of his intoxication, he didn't look at
17 the way he would have that any normal or sober person normally would look and
18 say, I can't drive my car into the church because somebody's going to get hurt.
19 Well, was that something was just kind of not a central focus of his mind.

20 If that's the case, then you've got to look at these intent instructions.
21 And, again, I'll agree with the State that may not be enough to get us past the
22 battery because that's a general intent, but it sure is enough for you to find a not
23 guilty verdict on all of the other counts.

24 Then there's the burglary, of course. Let me talk about the burglary
25 again. Burglary, he has to have the intent -- it comes down to the intent again, but

1 he has to have the intent when entering the building, structure, whatever it is, to
2 commit one of the crimes involved. So, again, you have to find at the time he was
3 entering -- I'm not even sure he had quite actually ever entered, but if you give the
4 State the benefit of the doubt that his body had actually entered the building at the
5 time, did he have that intent at the time? So we're still back to that issue of the
6 intent.

7 There are enhancements that you're going to have to look at as
8 well. If you agree with what I'm saying now -- of course, you never get to those
9 enhancements. If there was no assault, then it couldn't have been with a deadly
10 weapon and it couldn't have been with substantially bodily harm. I don't think you
11 ever need to get there I'm going to talk about it a little bit anyway because even if
12 the State could say that they had proved it to the extent their argument is that he
13 committed the physical acts he did, they have not proven the enhancements.

14 First of all, the use of a deadly weapon, again, I credit the State with
15 having gone through at length with you on the PowerPoint, the elements of the
16 crime, the instructions that the Judge has read to you and that you're going to
17 have, and I'm going to want you to go back and look at those instructions.

18 But it's not just -- you heard me object. It's not just the object you're
19 using could be used as a deadly weapon. You can't just take that it could because
20 anything ultimately could be used. Somebody's fist, a chair, boots, anything could
21 be deadly. It has to be used in a way that it potentially will.

22 And as much as the State has tried to inflate what has happened
23 here -- I'm not trying to minimize it. Certainly, driving a car into a building and pass
24 into people is not a good idea. Nonetheless, you've got to remember, this was
25 across a parking lot. And as much, again, as the State has tried to say, oh, well, it

1 was a really wide parking lot, you've seen the pictures; it was a parking lot. It was
2 a parking lot with spaces on one side and spaces on another side, and we could
3 see pretty clearly from those tires tracks and many of the witnesses, just how far
4 that car had come.

5 It wasn't going that fast. It wasn't going that fast. It wasn't going fast
6 enough to kill. It was going fast enough to scare people. That's not enough. It
7 was going fast enough to injure people, to hit people. That's not enough. It was
8 not going fast enough to kill.

9 And, you know, the proof of the pudding there -- and this actually
10 goes to the other element, the bodily injury element. There was not substantial
11 bodily injury. Again, that was -- you know, we heard about the hurt foot, the broken
12 foot. When the kid came, the kid who was injured, was a nice little girl. Again, I'm
13 not trying to minimize what she went through. She didn't have any basis to try to
14 sell you on anything, to spin it anyway. She told it like it was. And you know what
15 she said, she said, yeah, it was my little baby pinky toe, and it hurt that day and the
16 next day. I'm sorry, that is just not substantial bodily harm. So we don't have
17 substantial bodily harm, we don't have use of a deadly weapon, and we don't have
18 battery, the assault, the attempt murder. I'm sorry, the -- we don't -- potentially, I'm
19 going to grant you, you may get to a battery. You don't have the assault, you don't
20 have the attempt murder. You don't have the burglary.

21 So when you go back -- again, and I -- before I heard counsel, I was
22 going to go through some of these instructions one by one, but I think you see how
23 important it is, and he's gone through with you and focused on what we do agree is
24 the issue, is what was his intent. His intent was not to kill.

25 This is not a reckless driving case, this is not a DUI case, and you

1 cannot find him guilty of crimes that are not charged here. You're looking at the
2 crimes that are charged, and of those crimes, I think you will find that he is not
3 guilty. Thank you.

4 THE COURT: Mr. Hamner.

5 MR. HAMNER: Thank you.

6 **STATE REBUTTAL ARGUMENT**

7 **BY MR. HAMNER:**

8 I made some notes of what I heard Opposing Counsel said. I want
9 to touch on some of those and then touch on a couple of things that I want to bring
10 up.

11 Now, the Defense concedes that we're pretty much in agreement,
12 it's him. He's the one who did it. There's no dispute as to what he did. So let's
13 just check all that stuff off because that's the truth. All the -- everything the
14 witnesses said is on point. The question becomes, what's his intent?

15 He said, what we need to do is look into that man's mind on that day
16 to figure what he was thinking. From the very beginning of this trial, during voir
17 dire, we talked about, hey, might it be important to look at the before, the during
18 and the after? And I think some people said, you know, it is, because it gives you,
19 just what he said, a window into that man's mind.

20 So let's think about what he did, think about what he said. Now,
21 what they basically said was, the only thing that was going through his mind, the
22 very clever and unique reason why he drove halfway into a church was because he
23 wanted to see his daughter? That's their theory, but is that supported by the
24 evidence. Well, let's look at all the circumstances.

25 What did he say after he's halfway through a church where he flew

1 the doors off the hinges? Did he say, where's Samira? Did he say, I'd like to see
2 my daughter now? Can I see her now? I'm so sorry, but I just want to see my
3 daughter? Is that what this man said? No. He said, I'm going to kill all you
4 motherfuckers. You don't know who you're messing with.

5 Mr. Craig Hutton said, He was threatening to kill everyone.
6 Washington Thompson, who never even seen this guy, he looks at him dead in the
7 eye and he goes, You are next. That's funny, I don't think Mr. Thompson looks like
8 his daughter. You saw him. Is that someone that you could get confused with his
9 daughter? Probably not. A window into his mind.

10 He drove through the church to see his daughter, is that -- my
11 favorite instruction of all the instructions is the common sense instruction. It's in
12 there. I don't know the exact one is, but the law basically says, when you're
13 selected as a juror, you don't get to leave your common sense at the door. You've
14 got to bring it in.

15 So when you listen to all of the evidence and you heard all of his
16 statements, the thing you should be asking yourself is, does that make sense?
17 Was this a man who was expressing his desire to see his daughter after he plowed
18 halfway through this church? The answer's no, absolutely not. Beyond a
19 reasonable doubt, the answer is no.

20 It's never about Samira at that point. It was at the beginning, but
21 not at the end and not while he was getting in that car for the second time. It never
22 was about his daughter at that point. It was about anger. It was about revenge. It
23 was about spite. It was about payback. That's what motivated, to try to run over
24 Allen Burse, run over the people at church and put that car halfway through that
25 church. That's what he was thinking about that second time he was in the car.

1 And then there was some talk about backpedaling. It seems to be
2 one of the words of this trial. There's a difference between backpedaling and
3 giving context. Now, I appreciate Opposing Counsel wasn't there at the previous
4 proceeding to ask the questions of these witnesses as to what they meant, but
5 when you heard them testify, all those witnesses mumble incoherent, not sure what
6 he said. When they were asked, they very clearly explained at trial what they
7 meant.

8 You remember what they said. I don't need to remind that to you.
9 But just remember, they also said they were never asked to explain exactly what
10 those words meant at a prior proceeding. That's not backpedaling. That's not
11 being given an opportunity to explain. And that's what we did. So when you think
12 about their credibility and whether they're really trying to backpedal or if they're just
13 simply asking now to explain further on what they said before, I'll let you be the
14 judge of that.

15 Another interesting thing about this notion about intoxication, let's
16 be clear about something as to what the law says. Instruction 16 says, "No act
17 committed by a person while in a state of intoxication shall be deemed less criminal
18 by reason of his condition, but whenever the actual existence of any particular
19 intent is necessary," that's when you can kind of think about it. So as a general
20 rule, it's no excuse to be drinking and then commit a criminal act.

21 So what this law actually says is, if you drink so much that you
22 cannot mentally form the idea to do something intentional, then you can't be found
23 guilty of a particular crime, whether it's burglary or assault or attempt murder.

24 Okay? But here's the funny thing about the Defense's argument.

25 He told us the reason why he wanted to go in there was to see his daughter, if

1 that's to believe. Well, then that's funny. You must not have been that intoxicated
2 if you formed the specific intent to go in the church to see your daughter. It doesn't
3 work that way.

4 He's either totally zonked out of his mind, drunk out of his mind that
5 he doesn't know what he's doing or you don't get the defense of intoxication. It
6 doesn't work that way. You'll see the instructions. You're either totally wasted and
7 you have no control or maybe when you had a few drinks -- we like to sometimes
8 call it liquid courage -- it fuels some of your feelings. Maybe you get the courage to
9 walk up to a girl and ask her out on a date at a bar. Maybe you get in a fight when
10 you shouldn't have. Opposing counsel mentioned, maybe you slept with
11 somebody that you probably shouldn't have. But the bottom line is, that notion, if
12 the alcohol helps you do something a little bit more that you wouldn't have normally
13 done if you drank, that doesn't qualify. It's not forming specific intent. That's not
14 the way the defense works. You literally have to consume so much alcohol, that
15 you don't know what you're doing.

16 So under either theory, our theory or theirs, he hadn't drank enough
17 alcohol.

18 And think about the evidence that you heard. He admitted to the
19 officer that he had one beer. You had multiple witnesses saying, you know what, if
20 I didn't smell it, his behavior didn't look like a guy who was drunk, and you saw his
21 actions, that they're conceding he did. Seemed like a pretty deliberate path into
22 that church. Is this really a guy who didn't know how to drive a car? I mean, he did
23 a bang up job getting to the church, parking the first time, walking under his own
24 power, walking back, driving all around, parking a second time. Never bumping
25 into a thing. That's amazing. In that one split second in time, oh, no, forget it,

1 lights went out, I don't really remember what happened.

2 Common sense, is that really supported by the evidence? The
3 answer is no, absolutely not. He knew what he was doing. He was pissed, and he
4 lashed out.

5 MR. HAMNER: Excuse my language, Your Honor.

6 BY MR. HAMNER:

7 The Defense concedes the battery. That's a general intent crime.
8 So he's on the hook for those. Those are just lesser crimes. We've charged
9 battery with a deadly weapon, battery with a deadly weapon resulting in substantial
10 bodily harm. Here's the actual instruction -- you'll have the instruction on the
11 deadly weapon. The deadly weapon instruction says, "Any instrument or device
12 which under the circumstances in which it is used is readily capable of causing
13 substantial bodily harm or death."

14 Do you think driving at a person who is unarmed, on foot, alone in
15 the middle of the street could possibly cause substantially bodily harm or death if
16 you gun the gas like Mr. Burse was? Yes. Deadly weapon. Do you think driving
17 into a crowd of unarmed people on foot while you're gunning the gas might cause
18 someone to die, to succeed at hitting or hurting them really bad? Of course.
19 Deadly weapon. Same thing with driving through the church.

20 So the enhancement has been proven beyond a reasonable doubt
21 because there's no dispute that he is the one who did all of those actions. He
22 physically did it. He's on the hook for that enhancement. So you check off battery
23 with a deadly weapon. Let's get to substantial bodily harm.

24 That law states that anybody who has prolonged impairment for one
25 of their bodily members. So you have to ask yourself, did this nine-year-old girl

1 have some prolonged time when she wasn't able to use her foot in the right way?
2 We concede, we contend, we've submitted, yes, absolutely. You put a little girl in a
3 soft cast or a walking boot for a period of time where she has to take pain
4 medication, she's having a hard time sleeping, she's complaining to her mother,
5 yeah, guess what -- she's not able to run and play like they used to. That's
6 prolonged impairment. She also had prolonged pain. And you can consider the
7 testimony of her mother as well as her. Don't just take it from her mouth. Take it
8 from the people who watch and care for her on a daily basis. We've met that
9 beyond a reasonable doubt.

10 She's not in a coma. She doesn't have a limb lobbed off, but that's
11 not what the law says. And you'll have a chance to read that. So we've made
12 those enhancements. So you can check off those two crimes as they were initially
13 charged. He's guilty of them beyond a reasonable doubt.

14 There's also a comment, well, it's not really going that fast. Did you
15 see the pictures of that door? You can judge that for yourself. How fast do you got
16 to go to blow a closed door up into the air? How fast do you have to be driving?
17 How fast must he be going to put a Cadillac halfway into a church?

18 And you also had the eyewitness testimony. You can judge it for
19 yourself. Did all those people think it was going pretty fast? The State would
20 submit absolutely.

21 There was a lot of focus -- a little bit on the type of injury, that it was
22 only just a pinky toe. But we have charges like attempt murder, the law doesn't
23 say you have to put somebody on life support to be guilty of attempt murder. You
24 have to permanently cut off one of their limbs to be guilty of attempt murder. That's
25 not how it works. Because if that's how it works, someone could walk into a

1 crowded theatre with a gun, rattle off 150 bullets at people, and if he didn't hit a
2 single soul, well, guess what, you're not guilty of attempt murder. Does that make
3 sense? No.

4 You could push a nine-year-old girl off the top of a building and if
5 she miraculously ended up unharmed, well, apparently it's not attempt murder.
6 Really? Pushing a nine-year-old girl off of a very high building, that isn't something
7 that could cause death or substantially bodily -- absolutely. It's the act that
8 matters.

9 So the question you have to ask yourself, is the act of driving at an
10 unarmed man first and then speeding into a crowd of unarmed people next and
11 then driving half through -- halfway into a crowded church, are these acts that
12 could substantially cause death? The answer is beyond a reasonable doubt yes.

13 Now, ladies and gentlemen, there was also -- getting to this issue of
14 specific intent. I think a really interesting thing, if you're believed -- forget -- forget
15 the Samira -- "I'm coming to find Samira" theory. Let's just assume what the law
16 really says to get this intoxication defense, that you basically cannot form the
17 mental intent at the time that you're doing it. Think about that because that's what
18 the law says.

19 Here's the problem for the Defendant based on the evidence that
20 was presented. Let's just assume for a second he is so intoxicated, he had no idea
21 what he was doing. He did not know how to back that car out, cut those wheels, et
22 cetera. Let's just assume because the drinking was just so much for him. He
23 basically blacked out, right? Here's the problem with that theory.

24 Take yourself to the testimony of Allen Burse. When he sat on the
25 stand and talked about testifying at a prior proceeding, when he said, I've been a

1 cop, or whatever, but my gut was telling me not to take my eyes off this guy
2 because I thought something bad was going to happen. What did he tell you this
3 man did? He shouted out and said, you almost broke my arm, my damn arm,
4 that's why. How in the world --

5 MR. POSIN: That misstates the testimony. He stated -- that was alleged to
6 have been stated at the prior proceeding, not at --

7 MR. HAMNER: I got it --

8 THE COURT: Overruled.

9 BY MR. HAMNER:

10 Ladies and gentlemen, if he is so intoxicated that he was blacked
11 out during this senseless attack on these people, how did he remember? Why was
12 he trying to explain to Allen Burse, you know what, Mr. Burse, you're right, you had
13 a good reason to suspect something bad was going to happen. He told us. We
14 called his bluff at this point. He showed his tell. The hands he was showing, he
15 was trying to say, I don't remember anything, but when you shot out at a witness
16 and explain to them, you know what, sir, you're intuition's right. Something bad
17 was going to happen because I didn't like the way you treated me. I didn't like how
18 you put me in that arm bar, you put me in that car.

19 He told us two months later that he was fully cognizant of what he
20 was doing, and there's no dispute about that fact. That's what he said. But if he's
21 so intoxicated that he doesn't form that intent, he doesn't say that. He sits there
22 silently just saying, I don't remember what happened because I was so wasted.
23 And that is why we know beyond a reasonable doubt this is what he wanted to do.
24 He repeatedly said over and over again he wanted to kill these people.

25 And that's another question. Why do you think he said all those

1 things once lodged in that church? The answer is, when you look at the very
2 definition of attempted murder, it's the "performance of an act which tends but fails
3 to kill a human being." The reason why he's saying to these people after he failed
4 to kill them, "I'm going to kill you," is he recognized and realized he failed. He
5 failed at first. And so he made a communication to all of them, "I'm going to kill all
6 you people. You don't know who you're messing with." He's still trying to get that
7 car free to finish the job.

8 Do not let the Defendant backpedal. Do not let him off the hook.
9 Hold him responsible for this absolutely senseless act that terrified countless
10 people, broke a little girl's foot and injured her mother. Do justice for all of these
11 victims. Find him guilty on all counts. Thank you.

12 THE COURT: Will the marshal please take charge of the jury now.

13 (Pause)

14 THE COURT: Is he out there?

15 MR. SCOW: No, ma'am. I checked chambers behind us. He's not there.
16 I'm assuming that possibly he may be in the restroom, Your Honor.

17 THE COURT: Well, I will swear you in, and then we'll swear him in.

18 (The Marshal enters the courtroom)

19 (Clerk swears the Marshal and Recorder)

20 (Court and Marshal confer)

21 THE COURT: Thank you.

22 THE MARSHAL: Okay. Ladies and gentlemen of the jury, please grab
23 your notebooks, all your personal effects. Please follow me.

24 (Jury exits courtroom to deliberate)

25 (Out of the presence of the jury panel)

1 THE COURT: The record will reflect the jury has departed the courtroom.
2 Are there any matters outside the presence?

3 MR. SCOW: No, Your Honor.

4 MR. POSIN: No, Your Honor. I just am curious, assuming they're still
5 deliberating this afternoon, would you come back tomorrow or come back Monday
6 or --

7 THE COURT: Well, we're not coming back Saturday, I know, because that
8 would require lots of overtime, which we can't afford here. So we would bring them
9 back Monday, but it's only 12:30. I did ask --

10 MR. POSIN: Yeah, not expecting --

11 THE COURT: Let's ask them for lunch.

12 (Court and Clerk confer)

13 THE COURT: So when we call you, come back to the third floor courtroom
14 instead of here.

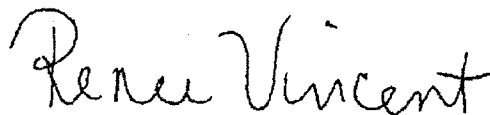
15 MR. POSIN: I like that courtroom better. It's (indiscernible).

16 THE COURT: This was never intended to be a courtroom. All right. Thank
17 you. We're off the record.

18 MR. HAMNER: Thank you.

19 [Proceeding concluded at 12:32 p.m.]

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



— Renee Vincent, Court Recorder/Transcriber

EXHIBIT 10

1 INST

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

SEP - 9 2013

BY, Andrea M. Davis
ANDREA DAVIS, DEPUTY

DISTRICT COURT
CLARK COUNTY, NEVADA

8 THE STATE OF NEVADA,)

9 Plaintiff,)

10 -vs-)

11 WILBURT HICKMAN, aka)
12 William Hicks, #2888968)

Defendant.)

CASE NO: C-12-278699-1

DEPT NO: V

13 INSTRUCTIONS TO THE JURY (INSTRUCTION NO. 1)

14 MEMBERS OF THE JURY:

15 It is now my duty as judge to instruct you in the law that applies to this case. It is
16 your duty as jurors to follow these instructions and to apply the rules of law to the facts as
17 you find them from the evidence.

18 You must not be concerned with the wisdom of any rule of law stated in these
19 instructions. Regardless of any opinion you may have as to what the law ought to be, it
20 would be a violation of your oath to base a verdict upon any other view of the law than that
21 given in the instructions of the Court.
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If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

An Information is but a formal method of accusing a person of a crime and is not of itself any evidence of his guilt.

In this case, it is charged in an Information that on or about the 18th day of December, 2011, the Defendant committed the offenses of ATTEMPT MURDER WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.010, 200.030, 193.330, 193.165); BATTERY WITH USE OF A DEADLY WEAPON (Category B Felony - NRS 200.481); BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN SUBSTANTIAL BODILY HARM (Category B Felony - NRS 200.481.2e); ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471) and BURGLARY (Category B Felony - NRS 205.060), within the County of Clark, State of Nevada, contrary to the form, force and effect of statutes in such cases made and provided, and against the peace and dignity of the State of Nevada,

COUNT 1 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ANNEESAH FRANKLIN, a human being, by striking the said ANNEESAH FRANKLIN with a deadly weapon, to-wit: a Cadillac.

COUNT 2 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ANYLA HOYE, a human being, by striking the said ANYLA HOYE with a deadly weapon, to-wit: a Cadillac.

COUNT 3 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill ALLEN BURSE, a human being, by driving a Cadillac at or in the direction of the said ALLEN BURSE with a deadly weapon, to-wit: a Cadillac.

COUNT 4 – ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

did then and there, without authority of law, and malice aforethought, willfully and feloniously attempt to kill WASHINGTON THOMPSON, a human being, by driving a

1 Cadillac at or in the direction of the said WASHINGTON THOMPSON, being inside and/or
2 in front of the said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

3 COUNT 5 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

4 did then and there, without authority of law, and malice aforethought, willfully and
5 feloniously attempt to kill MARQUETTA JENKINS, a human being, by driving a Cadillac
6 at or in the direction of the said MARQUETTA JENKINS, being inside and/or in front of the
7 said ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

8 COUNT 6 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

9 did then and there, without authority of law, and malice aforethought, willfully and
10 feloniously attempt to kill RAHMEKA ADAMS, a human being, by driving a Cadillac at or
11 in the direction of the said RAHMEKA ADAMS, being inside and/or in front of the said
12 ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

13 COUNT 7 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

14 did then and there, without authority of law, and malice aforethought, willfully and
15 feloniously attempt to kill SHARON POWELL, a human being, by driving a Cadillac at or
16 in the direction of the said SHARON POWELL, being inside and/or in front of the said
17 ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

18 COUNT 8 - ATTEMPT MURDER WITH USE OF A DEADLY WEAPON

19 did then and there, without authority of law, and malice aforethought, willfully and
20 feloniously attempt to kill TIFFANY TRASS, a human being, by driving a Cadillac at or in
21 the direction of the said TIFFANY TRASS, being inside and/or in front of the said
22 ANTIOCH CHURCH with a deadly weapon, to-wit: a Cadillac.

23 COUNT 9 - BATTERY WITH USE OF A DEADLY WEAPON

24 did then and there wilfully, unlawfully, and feloniously use force or violence upon
25 the person of another, to-wit: ANNEESAH FRANKLIN, with use of a deadly weapon, to-
26 wit: a Cadillac, by driving said Cadillac at an occupied building, striking the said
27 ANNEESAH FRANKLIN.

1 COUNT 10 - BATTERY WITH USE OF A DEADLY WEAPON RESULTING IN
2 SUBSTANTIAL BODILY HARM

3 did then and there wilfully, unlawfully and feloniously use force or violence upon the
4 person of another, to-wit: ANYLA HOYE, age nine (9) years old, with use of a deadly
5 weapon, to-wit: a Cadillac, by driving said Cadillac through the entrance of the said
6 ANTIOCH CHURCH, resulting in substantial bodily harm to the said ANYLA HOYE.

7 COUNT 11 - ASSAULT WITH A DEADLY WEAPON

8 did then and there wilfully, unlawfully, feloniously and intentionally place another
9 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
10 to use physical force against another person, to-wit: ALLEN BURSE, with use of a deadly
11 weapon, to-wit: a Cadillac, by driving said Cadillac at the said ALLEN BURSE in an
12 attempt to strike him.

13 COUNT 12 - ASSAULT WITH A DEADLY WEAPON

14 did then and there wilfully, unlawfully, feloniously and intentionally place another
15 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
16 to use physical force against another person, to-wit: WASHINGTON THOMPSON, with
17 use of a deadly weapon, to-wit: a Cadillac, by the said WASHINGTON THOMPSON,
18 being inside or in front of a church, having to move to the side to avoid Defendant, who
19 drove said Cadillac at the said WASHINGTON THOMPSON.

20 COUNT 13 - ASSAULT WITH A DEADLY WEAPON

21 did then and there wilfully, unlawfully, feloniously and intentionally place another
22 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
23 to use physical force against another person, to-wit: MARQUETTA JENKINS, with use of
24 a deadly weapon, to-wit: a Cadillac, by the said MARQUETTA JENKINS, being inside or
25 in front of a church, having to move to the side to avoid Defendant, who drove said Cadillac
26 at the said MARQUETTA JENKINS.

1 COUNT 14 - ASSAULT WITH A DEADLY WEAPON

2 did then and there wilfully, unlawfully, feloniously and intentionally place another
3 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
4 to use physical force against another person, to-wit: RAHMEKA ADAMS, with use of a
5 deadly weapon, to-wit: a Cadillac, by the said RAHMEKA ADAMS, being inside or in
6 front of a church, having to move to the side to avoid Defendant, who drove said Cadillac at
7 the said RAHMEKA ADAMS.

8 COUNT 15 - ASSAULT WITH A DEADLY WEAPON

9 did then and there wilfully, unlawfully and feloniously attempt to use physical force
10 against another person, to-wit: SHARON POWELL, with use of a deadly weapon, to-wit: a
11 Cadillac, by the said SHARON POWELL, being inside or in front of a church, having to
12 move to the side to avoid Defendant, who drove said Cadillac at the said SHARON
13 POWELL.

14 COUNT 16 - ASSAULT WITH A DEADLY WEAPON

15 did then and there wilfully, unlawfully, feloniously and intentionally place another
16 person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt
17 to use physical force against another person, to-wit: TIFFANY TRASS, with use of a deadly
18 weapon, to-wit: a Cadillac, by the said TIFFANY TRASS, being inside or in front of a
19 church, having to move to the side to avoid Defendant, who drove said Cadillac at the said
20 TIFFANY TRASS.

21 COUNT 17 - BURGLARY

22 did then and there wilfully, unlawfully, and feloniously enter, with intent to commit a
23 felony, to-wit: Attempt Murder and/or Battery and/or Assault, that certain building occupied
24 by ANTIOCH CHURCH, located at 3950 North Las Vegas Boulevard, Las Vegas, Clark
25 County, Nevada.

26 It is the duty of the jury to apply the rules of law contained in these instructions to the
27 facts of the case and determine whether or not the Defendant is guilty of one or more of the
28 offenses charged.

1 Each charge and the evidence pertaining to it should be considered separately. The
2 fact that you may find the Defendant guilty or not guilty as to one of the offenses charged
3 should not control your verdict as to any other offenses charged.
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INSTRUCTION NO. 4

Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate and specific intention unlawfully to kill.

It is not necessary to prove the elements of premeditation and deliberation in order to prove attempted murder.

INSTRUCTION NO. 5

Express malice is that deliberate intention unlawfully to take away the life of a fellow creature, which is manifested by external circumstances capable of proof.

1
2 If an illegal yet unintended act results from the intent to commit a crime, that act is
3 also considered illegal. Under the doctrine of "transferred intent", original malice is
4 transferred from one against whom it was entertained to the person who actually suffers the
5 consequences of the unlawful act. For example, if a person intentionally directs force
6 against one person wrongfully but, instead, hits another, his intent is said to be transferred
7 from one to the other though he did not intend it in the first instance.
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INSTRUCTION NO. 7

During an attack upon a group, the intent to kill does not need to be directed at one particular individual to find the defendant guilty of attempted murder, however, the jury must still determine beyond a reasonable doubt that the defendant had the specific intent to kill someone in the group. Mere intent to harm or intimidate is not sufficient to warrant a guilty verdict.

1
2 You are instructed that if you find a defendant guilty of Attempt Murder you must
3 also determine whether or not a deadly weapon was used in the commission of this crime.

4 If you find beyond a reasonable doubt that a deadly weapon was used in the
5 commission of such an offense, then you shall return the appropriate guilty verdict reflecting
6 "With Use of a Deadly Weapon".

7 If, however, you find that a deadly weapon was not used in the commission of such an
8 offense, but you find that it was committed, then you shall return the appropriate guilty
9 verdict reflecting that a deadly weapon was not used.

"Deadly weapon" means:

- (a) Any instrument which, if used in the ordinary manner contemplated by its design and construction, will or is likely to cause substantial bodily harm or death; or
- (b) Any weapon, device, instrument, material or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing substantial bodily harm or death.

Battery is the intentional and unwanted exertion of force or violence upon another, however slight.

A Battery With Use of a Deadly Weapon is any willful and unlawful use of force or violence upon the person of another with the use of a deadly weapon.

If substantial bodily harm results to the victim of a battery, the crime committed is Battery Resulting in Substantial Bodily Harm.

If a Battery is committed with the use of a deadly weapon and it results in substantial bodily harm, then the crime is Battery With Use of a Deadly Weapon Resulting in Substantial Bodily Harm.

Battery is the intentional and unwanted exertion of force or violence upon another, however slight.

As used in these instructions, "substantial bodily harm" means:

1. Bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ; or
2. Prolonged physical pain.

INSTRUCTION NO. 12

An Assault is unlawfully attempting to use physical force against another person, or intentionally placing another person in reasonable apprehension of immediate bodily harm.

To constitute an assault, it is not necessary that any actual injury be inflicted.

INSTRUCTION NO. 13

You are instructed that if you find a defendant guilty of Assault, you must also determine whether or not a deadly weapon was used in the commission of this crime.

If you find beyond a reasonable doubt that a defendant committed Assault With the Use of a Deadly Weapon, then you are instructed that the verdict of Assault With the Use of a Deadly Weapon is the appropriate verdict.

If, however, you find that a deadly weapon was not used in the commission of the Assault, but you do find that an Assault was committed, then you are instructed that the verdict of Assault is the appropriate verdict.

You are instructed that you cannot return a verdict of both Assault With the Use of a Deadly Weapon and Assault.

INSTRUCTION NO. 15

Every person who, by day or night, enters any building or structure, with the intent to commit a assault and/or battery and/or a felony therein is guilty of Burglary.

In Nevada, the crime of Attempt Murder is a felony.

**PLEADING
CONTINUES
IN NEXT
VOLUME**