

1 wall. And as I'm driving around the block wall, they state that he actually goes into
2 Walmart through a back service door.

3 Q So, what do you do then?

4 A At that time, myself and several other officers, we actually go to the
5 front of the store to lock that down and myself and my canine partner go into the
6 store on the west side of the store entrance doors. There's two doors.

7 Q And do you and Rocco eventually find the Defendant?

8 A We do.

9 Q Where do you find him?

10 A We find him walking down the aisles. The clothes are on one side here
11 and the aisles that are all the clothes -- or the food are right here. We actually find
12 him walking down this way.

13 Q And did you make eye contact with the Defendant?

14 A I did. I made eye contact with him also when he was bailing out of the
15 vehicle and I also made eye contact when he was walking directly towards me.

16 Q Okay. And do you recall if he had any visible injuries?

17 A Yes, there was blood coming from his face.

18 Q Showing you what's already been marked as State's Exhibit 24.

19 Is that what you recall the Defendant looking like while inside Walmart?

20 A Yes, ma'am.

21 Q Okay. So, what happened after you saw the Defendant?

22 A I gave him several commands. Obviously I'm in full Metro uniform. I
23 issue him several commands to get on the ground, to get on the ground, Metro
24 police; you know, he fails to actually comply with those. He tells me: Fuck you. I
25 didn't do anything wrong. And he continues to walk towards me. At that time, I then

1 send my dog after him.

2 Q All right. And does Rocco get him?

3 A Yes, Rocco bites him. I have to look at my report but I believe he bites
4 him in the left hip several times.

5 Q Now did Rocco bite the Defendant in the fact at all?

6 A I have to look at my report again.

7 MS. WONG: May I approach?

8 THE COURT: Yes.

9 BY MS. WONG:

10 Q I'm showing you page 2 of your report.

11 A No, he did not bite him in the face.

12 Q So, none of the injuries depicted of the Defendant's face on Exhibit 24
13 is attributable to Rocco?

14 A Correct; none of them are.

15 Q Now, just for the record, Officer Harper, the entire pursuit of this
16 Defendant occurred within Clark County?

17 A Yes, ma'am.

18 MS. WONG: Pass the witness.

19 THE COURT: Raise your hand if you need a 15 break. We've been working
20 for about two hours.

21 Ladies and gentlemen, it is your duty not to converse among yourselves
22 or with anyone else on any subject connected with this trial. Further, you may not
23 read, watch or listen to any report of or commentary on this trial by any medium of
24 information, including without limitation, newspaper, television, radio or Internet.
25 You may not form or express any opinion on any subject connected with this case

1 until it is finally submitted to you. Fifteen minutes, ladies and gentlemen. Follow
2 Officer Reichert.

3 [Outside the presence of the jury]

4 THE COURT: All right. The record shall reflect we're outside the presence of
5 the jury. Officer Harper remains in the courtroom. Fifteen minutes. Any additional
6 record with the -- noting that the officer -- the witness is present. Any additional
7 record either side? State?

8 MS. WONG: No, Judge.

9 THE COURT: All right. So, 15 minutes. You'll have the witness on cross.

10 [Recess taken at 11: 00 a.m.]

11 [Proceedings resumed at 11:13 am.]

12 THE COURT: This is C 272483, State of Nevada, plaintiff versus Frankie
13 Watters. The record shall reflect the presence of the representatives of the State
14 and defense. All members of the jury panel do appear to be present. The record
15 shall also reflect the presence of the witness. And we are on State's case in chief,
16 cross-examination for the witness. Mr. O'Brien, you have the witness.

17 MR. O'BRIEN: Thank you, Your Honor.

18 **CROSS-EXAMINATION**

19 BY MR. O'BRIEN:

20 Q Officer Harper, when you first saw the suspect at -- exiting the Eastside
21 Cannery parking lot, do you remember what he was wearing.

22 A I do not.

23 Q Would it refresh your recollection if you took a look at your report?

24 A I don't believe I wrote it in there. I can take it look at it though.

25 Q Okay.

1 A This one's actually not my report. This is a declaration of arrest, if I
2 remember right. The arrest report was done by another officer.

3 Q This is the report that you looked at, the one the District Attorney asked
4 if you could remember anything; is that correct?

5 A Yes.

6 Q Okay. Does the report state what the Defendant was wearing at the
7 time?

8 MS. WONG: Your Honor, I'm going to object here because this -- basically
9 counsel is trying to get the witness to remember something that he doesn't recall at
10 all. All the information that he is going to get is going to come from his report which
11 he did not write.

12 THE COURT: Ms. Wong, remember, you state a basis for the objection. No
13 speaking objections unless the basis of the objection.

14 MS. WONG: Okay. That he cannot refresh his recollection with that
15 document.

16 THE COURT: All right, counsel. How do you respond?

17 MR. O'BRIEN: Your Honor, can we actually approach?

18 THE COURT: Sure.

19 [Bench conference -- begins]

20 MR. O'BRIEN: Your Honor, we're willing to concede on the idea if he can't --
21 on the issue if he can't remember [indiscernible].

22 THE COURT: That's fine.

23 MS. HERBERT: Well our concern is that he didn't offer that report.
24 Everything that Ms. Wong asked him was something that he said he had personal
25 knowledge of at the time. I don't think they've established that he had personal

1 knowledge or --

2 THE COURT: What?

3 MR. O'BRIEN: We're going to argue that these [indiscernible].

4 MS. WONG: He can't adopt facts.

5 THE COURT: There's no adoptive admissions but I'll let you inquire of the
6 witness. If it's not his report, then really he can be refreshed with anything. You can
7 be impeached potentially with anything. I'm going to sustain your objection, but I'm
8 going to let you -- cross-examination.

9 MR. O'BRIEN: [Indiscernible].

10 THE COURT: What?

11 MR. O'BRIEN: [Indiscernible].

12 THE COURT: All right.

13 MS. WONG: It's that guy that --

14 THE COURT: We'll make a record on it. All right. Back to this.

15 [Bench conference -- concluded]

16 THE COURT: Your object is sustained as to the form of the question, but I'm
17 going to allow cross-examination on this issue. Mr. O'Brien, you have the witness.

18 MR. O'BRIEN: Thank you, Your Honor.

19 BY MR. O'BRIEN:

20 Q Officer Harper, you did assist in preparing an arrest report?

21 A I did.

22 Q The day of the incident?

23 A Yes, I did.

24 Q Okay. And did you review the report before you signed off on it?

25 A I did, yes. I didn't sign off on it but I did review it with the officer that --

1 Q Right, I apologize. Poorly phrased question. Officer -- Sergeant Baker
2 now signed the report?

3 A Yes.

4 Q She authored it?

5 A Yes.

6 Q Okay. But you took a look at it?

7 A Correct.

8 Q And approved it before?

9 A Correct.

10 Q Okay. And in the report what you -- does the report state that the
11 Defendant was wearing a blue hoodie at the time of --

12 A When you asked me if I saw what he was wearing inside of that vehicle,
13 I did not see what he was wearing inside of that vehicle.

14 Q Okay. Did the radio call that you received state that the Defendant was
15 wearing --

16 MS. WONG: Objection, Your Honor, hearsay.

17 MR. GARDNER: Your Honor, he's already said -- what information was he
18 given that he was looking for. He said his green Honda. I mean, it's fair to say it
19 was a blue hoodie --

20 THE COURT: It's not being offered.

21 MR. GARDNER: -- he slips down over his head would be fair if that's what
22 the radio message came out.

23 THE COURT: No speaking objections either side. Okay. I'm going to
24 overrule the hearsay objection. I don't believe it asks -- it's not offered for the truth
25 of the matter asserted. So, you can inquire as to the radio broadcast and the

1 information -- the understanding of the officer from that broadcast.

2 MR. O'BRIEN: Okay.

3 THE COURT: Overruled.

4 BY MR. O'BRIEN:

5 Q Officer, you received a radio broadcast about a Honda?

6 A Correct.

7 Q In the Eastside Cannery parking lot?

8 A Correct.

9 Q And that the suspect had gotten into the Honda?

10 A Correct.

11 Q And the suspect was -- the radio call suggested the suspect was
12 wearing a dark colored hoodie?

13 A Correct.

14 Q Cinched down around his face?

15 A Correct.

16 Q Okay. And let's see. When you encountered the Honda exiting the
17 Eastside Cannery lot, I believe on the map it was headed at the north side of the lot;
18 is that correct?

19 A Correct.

20 Q And you were coming in off of Boulder Highway or you were still on
21 Boulder Highway?

22 A No, I was actually inside of the Eastside Cannery parking lot also.

23 Q Okay. And you were driving along side the vehicle or --

24 A We were both coming head on with each other.

25 Q Coming head on to each other. Okay. And he was driving at a high

1 rate of speed at that point?

2 A At that point, no, he was maybe doing 25 miles an hour in the parking
3 lot.

4 Q Okay. But he had officers in pursuit?

5 A No, not at that time.

6 Q Officer, did you see the vehicles for Officer Bleek or Officer Bleak or
7 Officer Maas?

8 A I did not.

9 Q Okay. Not in the parking lot at that point?

10 A I did not see them.

11 Q Okay. And when you saw the suspect in the Honda, you were looking
12 through your windshield?

13 A Correct.

14 Q You were driving a Ford Explorer; is that right?

15 A Ford Expedition.

16 Q The Expedition. Okay. It's a little bit higher clearance; is that right?

17 A Yes.

18 Q Okay. And -- so you're looking through your windshield and his
19 windshield?

20 A Yes.

21 Q All right. And you said that he was reclining in his seat?

22 A Correct.

23 Q And then from that point you began pursuing the -- or at least following
24 the Honda; is that correct?

25 A Yes, sir.

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1 Q And you stated that it was driving fast?
2 A Correct.
3 Q Making several turns or circles or several other moves?
4 A Correct.
5 Q And it was doing everything it could to get away?
6 A Yes, sir.
7 Q All right. And the -- a couple questions about the dog -- the dog that
8 you had in the -- well first I guess about the Walmart. You came in the Walmart
9 from the west entrance you said?
10 A The west front entrance, yes, sir.
11 Q West front entrance. Okay. Were there customers in the Walmart?
12 A Yes, sir.
13 Q Was it a busy day?
14 A Average for a Walmart.
15 Q Okay. Did the officers close off the exits to the Walmart?
16 A I don't remember if they closed it off. All the officers I saw actually went
17 into the Walmart.
18 Q Okay. And did Officer Rowe spot the suspect first?
19 A Officer Rowe spotted him where? Inside?
20 Q Inside the Walmart.
21 A I don't know if he spotted him. I know I came eye to eye with him.
22 I'm not sure if he was behind me and spotted him first. He possibly could have. I
23 don't know.
24 Q Okay. But Officer Rowe was standing in the aisle when you
25 encountered the suspect?

1 A I don't recall if he was in the aisle or not. I don't believe he was.

2 MR. O'BRIEN: Okay. Court's indulgence.

3 BY MR. O'BRIEN:

4 Q And, Officer, the suspect you encountered in the Walmart, he told you
5 he didn't do anything wrong?

6 A Correct.

7 Q Okay. And you ordered him to the floor?

8 A Correct.

9 Q All right. And when he didn't comply -- I'm sorry -- the training with the
10 -- I should start with the training with the dog. Does he respond to commands?

11 A Correct.

12 Q Okay. And you work with him on those commands?

13 A Correct.

14 Q And so there's a command for attack?

15 A Well yes and no. There are commands that were given to my dog,
16 correct. But if the dog in his eyes sees somebody as a threat to me, he is going to
17 go with instinct and he is going to actually bite them.

18 Q Okay. And so did that happen in this instance, the dog --

19 A No, I was giving him the command to bite him.

20 Q Okay. And the dog bit him?

21 A Yes, sir.

22 Q More than once?

23 A Yes, sir.

24 Q Okay. And then you took the suspect into custody; is that correct?

25 A Correct.

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1 Q All right. And while you were in the Walmart, was there an officer that
2 was keeping customers away while you were in the aisle?

3 A I believe an officer and security were.

4 Q Okay. And did you -- you encountered people when you went into the
5 Walmart? You saw customers?

6 A Did I encounter them?

7 Q Yes, while you were --

8 A Yes, I was telling them all to move away from me, yes.

9 Q And there were enough you had to tell them to move away?

10 A Yeah.

11 MR. O'BRIEN: Okay. No further questions, Your Honor.

12 THE COURT: Redirect.

13 MS. WONG: Briefly, Your Honor.

14 **REDIRECT EXAMINATION**

15 BY MS. WONG:

16 Q Officer Harper, do you recall what the Defendant was wearing while he
17 was inside the Walmart?

18 A I have to look at my report. I'm not a hundred percent sure.

19 Q Why did you make the decision to send Rocco in to fight the
20 Defendant?

21 A One, I identified him with eye contact and I remember he's the one that
22 just got out of the vehicle and ran into the store. He was refusing to comply with me.
23 He had one of his hands in his pockets. Not knowing if there was any weapons
24 involved or anything like that, I perceived it as a threat of you saying: Fuck you. I
25 didn't do anything wrong. That's not a compliant person. And that is in our arrest

1 control.

2 Q When did you see the Defendant with his hands in his pocket?

3 A He was probably a good four aisles away from me, if I remember.

4 Q Did you order him to take -- to remove his hands from his pocket?

5 A I did.

6 Q Okay. And he didn't do that?

7 A No, he did not.

8 Q Okay. You indicate you were fearful that he may have had weapons?

9 A Correct.

10 MS. WONG: No further questions.

11 THE COURT: Recross.

12 **RECROSS EXAMINATION**

13 BY MR. O'BRIEN:

14 Q When you arrested the suspect, were there any weapons found on
15 him?

16 A I don't believe so.

17 MR. O'BRIEN: Nothing further, Your Honor.

18 THE COURT: Anything else from this witness? You may step down.

19 THE WITNESS: Thank you.

20 THE COURT: Call your next witness.

21 MS. HERBERT: Judge, can we approach real quick?

22 THE COURT: Yes.

23 [Bench conference -- begins]

24 MS. HERBERT: There were weapons found on the Defendant and we were
25 going into that, but I feel like they opened the door by asking if any weapons were

1 found.

2 THE COURT: What was the weapon? What kind of weapons?

3 MS. HERBERT: A knife.

4 THE COURT: [Indiscernible].

5 MS. HERBERT: I just wanted to make sure before we opened -- before we
6 asked the question. We would actually -- we would have to call a different witness
7 for that so we'll make that decision at lunch time. But I just wanted to clarify that
8 with the Court before we went there.

9 [Bench conference -- concluded]

10 THE COURT: Call your next witness.

11 MS. HERBERT: Jamie Poynor.

12 THE MARSHAL: Remain standing, raise your right hand and face the clerk.

13 **JAMIE POYNOR**

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

15 THE COURT CLERK: Thank you, ma'am. Please be seated. State your
16 name -- state and spell your name for the record.

17 THE WITNESS: It's Jamie Poyner, J-A-M-I-E Poynor, P-O-Y-N-O-R.

18 **DIRECT EXAMINATION**

19 BY MS. HERBERT:

20 Q Good afternoon -- good morning, almost afternoon. Do you want me to
21 call you Jamie or Ms. Poynor?

22 A Jamie's fine.

23 Q Okay. I'm going to direct your attention to March 18th of 2011,
24 approximately 3 p.m. Were you the victim of a car accident?

25 A Yes, I was.

1 Q Where were you?
2 A Sun Valley and Nellis.
3 Q And what kind of vehicle were you driving?
4 A Ford Explorer, but with a motorcycle trailer behind it.
5 Q And were there any motorcycles on the trailer or was it empty?
6 A There was not. It was empty.
7 Q And you said Sun Valley and Nellis; is that correct?
8 A Yes.
9 Q And what kind of intersection is that?
10 A It's a four way stop.
11 Q And what happened when you were at the four way stop?
12 A I was in a school zone, four way stop, and I was waiting my turn to go
13 and I was rear-ended.
14 Q Do you remember what kind of car rear-ended you?
15 A White Chrysler Sebring.
16 Q What did you right -- where did the car hit?
17 A It hit the motorcycle trailer.
18 Q And right after that happened, what did you do next?
19 A I got out of my vehicle and walked to the back to look at the motorcycle
20 trailer and also to talk to the gentleman that was in the white Sebring.
21 Q Okay. When you got out and looked at the motorcycle trailer, did you
22 notice any damage?
23 A It was scratched.
24 Q Okay. And did that trailer belong to you or somebody else?
25 A It was a friend of mine's. I had borrowed it.

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1 Q And after you looked to see if there's damages on the trailer, did you
2 end up talking to the driver of the Sebring?

3 A I did. There was damage on the Sebring; the trailer was just scratched.
4 And so the man in the Sebring stayed in the car and kind of motioned to me and
5 kept kind of waiving his hands and saying: It's all good, it's all good. And I said: It's
6 not good. There's a lot of damage to your vehicle. And he got out of the car. I
7 proceeded to ask him if I could have his insurance information because I wouldn't
8 know if there was damage to my trailer until I folded it down. It folds in half. The
9 ramps come down so I wouldn't know until I folded it down.

10 Q Okay. So, far to say that even though there's a little scratch you were
11 worried if you went to fold it --

12 A That there would be more.

13 Q it wouldn't work?

14 A Exactly.

15 Q Okay. So, once the -- what did the individual driving the Sebring look
16 like?

17 A Dark hair, thin; big baggy sweatshirt on, hooded, like a hoodie.

18 Q Okay. Do you remember what color that was?

19 A He was tall. I believe it was blue.

20 Q Okay. Do you remember if he was white, black, Hispanic, something
21 else?

22 A I would have guessed more Hispanic.

23 Q Okay. And once he got out of the vehicle, what happened next?

24 A He was really antsy. He jumped around a lot, waved his hands at me a
25 lot. He kept putting his hands on inside the hoodie. And I kind of got nervous. And

1 he just kept saying: It's all good, it's all good, it's all good. And I kept saying: It's
2 not good. And I said: I want your information. And he said: Call the law. And I
3 said: Okay. And I dialed 9-1-1. And when I did, he jumped in his vehicle and said:
4 I'm out of here.

5 Q Okay. So, when he told you to call the law, the driver of the Sebring,
6 did you immediately get on your phone?

7 A Immediately. It was in my hand.

8 Q Okay. And then what he state as soon as you got on your phone?

9 A He said: I'm out of here.

10 Q Is the Nellis and Sun Valley intersection, is there more than one lane?

11 A Two.

12 Q On each side?

13 A Yeah, like two lanes going each direction at the four way stop.

14 Q Okay. Do you remember which direction you were going on Nellis and
15 Sun Valley?

16 A I'm horrible with north south. I was going towards Boulder Highway
17 towards Harmon and then it would have been Boulder Highway

18 Q I'm showing you -- it's already been admitted -- as State's Exhibit 1.
19 Okay. Do you see the intersection of Sun Valley and Nellis that you were at?

20 A Yeah, I was right here.

21 Q Okay. If you touch the screen, you can just point; make a dot.

22 A Well that's kind of close.

23 Q Which direction -- if you just want to just draw with your finger -- were
24 you headed?

25 A This way [illustrates].

1 Q Okay. And so you were on Nellis?

2 A I was on Nellis.

3 Q Okay. So you, just for the record, made -- you were going north on
4 Nellis?

5 A Yes.

6 Q Okay. And the individual in the Sebring was behind you. So, is it fair to
7 say that he was also going north on Nellis?

8 A Yes, he was.

9 Q Okay. So, after the driver said: I'm out here, what did you see him do?

10 A I was on the phone to 9-1-1. I was in the far right hand lane so it was
11 my car along the curb. And somehow he backed up just a few feet and then he
12 accelerated very fast and went between my car and the curb and went up on the
13 curb, lost control of the vehicle. The wheel covers of the Sebring went rolling down
14 the street and car spun out, the Sebring spun out in the middle of Sun Valley and
15 then came back up on the curb and we were in school zone. There was two
16 children walking down the road. The Sebring narrowly missed them. The crossing
17 guard came running. I went running towards the children. The car spun out again
18 and went down Sun Valley. And I was just screaming to get help.

19 Q Were the children on the sidewalk?

20 A They were on the sidewalk.

21 Q Okay. And how close did you observe the Sebring get to the children?

22 A About two feet. It narrowly missed them.

23 Q And on the map, can you draw with your finger like you did before, the
24 direction the Sebring went on Sun Valley.

25 A It was this way, towards like Boulder Highway.

1 Q So that would be, for the record, east on Sun Valley.

2 I want to back up real quick. You said when you got -- when the accident initially
3 happened, you got out of your car and noticed damage to the Sebring; is that right?

4 A I did.

5 Q Can you describe what damage you noticed?

6 A Motorcycle trailers, when they folder over, they're metal and so they're
7 like a foot or so sticking out where it bends. And that looked like it had gone through
8 the radiator. So, there was a lot of fluid that was dripping from the Sebring.

9 Q Okay. Did you -- was the fluid just -- where was it located regarding the
10 Sebring? Was it in the front or the back?

11 A Yeah, the front, the front of the car like in the middle so it left a trail.
12 Anywhere that the Sebring went you could see the fluid on the ground.

13 Q Okay. Did you notice any fluid behind the Sebring?

14 A No, I did not.

15 Q Okay. So, it was all in the middle and then when he drove off, you saw
16 it?

17 A Yes.

18 Q The fluid? Okay. After the -- at some point did you end up getting --
19 calling the police? Because you said you were on the phone, did you ever actually
20 call them or getting contact?

21 A I was on the phone with 9-1-1 the whole time. They just advised me to
22 leave the scene since he had left, and if they needed any further information from
23 me they would contact me.

24 Q Okay.

25 A And so I just proceeded to go to my place of business.

1 Q Okay. And so you just went about your day after the accident at that
2 point?

3 A I did.

4 Q Okay. And where exactly did you go?

5 A I own a tattoo shop on Nellis. So, I actually drove to my tattoo shop
6 which is about maybe a six to seven minute drive, loaded a motorcycle, and then I
7 was driving back down Nellis.

8 Q Okay. Is that why you had the motorcycle trailer initially? Were you
9 planning --

10 A Yeah, I was picking up a motorcycle that was at my business.

11 Q Okay.

12 A Yeah.

13 Q And so after you go to your shop and you get the motorcycle, where do
14 you go next?

15 A I came up Nellis and I was at the corner of Boulder Highway. I was
16 heading to my home to take my motorcycle home.

17 Q Okay. Do you at some point go by the Walmart that's on Harmon?

18 A Yeah, I'm on Boulder Highway. That's the Walmart that's on Boulder
19 Highway and Nellis.

20 Q Okay. And so did you notice anything when you went by the Walmart?

21 A Lots and lots and lots of police. And I decided to stop and see if it had
22 -- it was just so close, the distance, I decided to stop and see if it had anything to do
23 with the accident that I was in.

24 Q How much time do you estimate had lapsed between your accident and
25 when you saw the police at the Walmart?

1 A Oh, maybe a half hour or so somewhere roughly. I probably didn't
2 really pay attention to that. I'm sorry.

3 Q Yeah, understandable. On the map can you, for the jury, circle the
4 Walmart that you went to or that you drove by and saw the police at?

5 A Yeah, it's right here on Nellis.

6 Q Okay. So, you see all those officers and decide maybe to see if that's
7 related to you; right?

8 A Yes.

9 Q And then what do you do when you get there?

10 A I went up and I spoke to an officer and then told him that I just been
11 rear-ended a short time ago. And he said: Oh, we need to talk to you.

12 MR. O'BRIEN: Objection; hearsay.

13 THE COURT: Sustained.

14 BY MS. HERBERT:

15 Q Don't tell me what the officer said --

16 A Oh, sorry.

17 Q That's okay.

18 A I told the officer that I had been rear-ended a short time ago and
19 wanted to make sure that this had nothing to do with that.

20 Q So, based upon information that you learned from the officer, did you fill
21 out a report or a statement or anything?

22 A I was asked to fill out a police report which I did at that time. And then I
23 was asked to identify articles of clothing and such that they had on the hood of the
24 police.

25 Q Did you recognize any of those items?

1 A All of it. Well I recognized the sweatshirt. And I believe that there
2 knives and stuff there but I did not recognize those because I did not see those
3 prior.

4 Q I'm going to show you what's already been marked as State's Exhibit
5 and admitted as State's Exhibit 6. And actually I'll show you what's also been
6 marked as State's Exhibit 3. Do you recognize that photograph?

7 A Yeah, that's the sweatshirt, the hoodie that I saw.

8 Q At the Walmart?

9 A Yes.

10 Q And then I'm going to show you State's Exhibit 3. Do you recognize
11 that vehicle?

12 A Well the top was done but that's the Sebring that hit me.

13 Q Okay. And what is coming out the bottom of the Sebring?

14 A Fluid.

15 MS. HERBERT: Permission to publish?

16 THE COURT: They're admitted.

17 BY MS. HERBERT:

18 Q For the jury, this is State's Exhibit 3 and that's what you said -- that's
19 the car that hit the motorcycle trailer?

20 A It is.

21 Q Obviously that's not in the accident location but you recognize that as
22 being the same?

23 A Yeah, the same car though.

24 Q Okay. And then State's Exhibit 6. That's the sweatshirt that you
25 identified at the Walmart?

1 A Yes, it is.

2 Q Okay. Is that sweatshirt similar to the sweatshirt you noticed the driver
3 of the Sebring wearing?

4 A Yes, it is.

5 Q And then you mentioned that the top was down on the convertible?

6 A Yes, it was.

7 Q Okay. Do you happen to see the person who was driving the Sebring in
8 Court today?

9 A I do; he's sitting over there.

10 Q Can you please tell me something he's wearing right now and which
11 seat he's sitting in?

12 A The light blue shirt in the third seat.

13 MS. HERBERT: May the record reflect the identification of the Defendant.

14 THE COURT: Yes.

15 BY MS. HERBERT:

16 Q And that's the individual you spoke to who was driving the Sebring?

17 A It is.

18 MS. HERBERT: Court's indulgence. Pass the witness.

19 THE COURT: Cross examination.

20 **CROSS-EXAMINATION**

21 BY MR. O'BRIEN:

22 Q Ms. Poynor, you said -- later on when you were at the Walmart you said
23 the officer showed you a blue hoodie?

24 A Yes, he did.

25 Q Okay. Did they ever ask you to identify a suspect?

1 A Yes, they did, sir, but then they said don't worry about it. They would
2 have me identify pictures because they said that he was already in the ambulance
3 and he needed medical care.

4 Q But you never did actually ID the suspect? You never got a chance to?

5 A He was already in the ambulance; no, sir.

6 Q Okay. Let's see -- and so when you were in the accident, you said the
7 way the driver was acting made you nervous?

8 A Very nervous.

9 Q Okay. And you were -- was there traffic around you at that
10 intersection?

11 A A few cars, yes, sir.

12 Q Okay. And were cars behind the Sebring as well?

13 A You know what, sir. I can't honestly answer that 'cause I was -- I mean,
14 I was nervous and I was upset so I don't I even paid attention to that.

15 Q Understand. When you -- you were nervous and you said you were
16 upset, were you angry or what did you mean by upset?

17 A Well, no, I was concerned because it wasn't my trailer.

18 Q Okay.

19 A I was more concerned with that. And when I got out of the car, it was
20 an odd situation.

21 Q Got you.

22 A Not what I would have expected.

23 Q Got you. And you had a chance to take a look at the trailer, to check
24 out any damage to it?

25 A Later or at the accident?

1 Q At the accident.
2 A Yeah, it was scratched.
3 Q Okay. And you, you know, verified the scratch or you looked at it?
4 A Yeah.
5 MR. O'BRIEN: Okay. No further questions, Your Honor.
6 THE COURT: Redirect.
7 MS. HERBERT: Judge, real briefly.

8 **REDIRECT EXAMINATION**

9 BY MS. HERBERT:

10 Q How much time passed between when you were actually hit and you
11 called 9-1-1 do you think?

12 A I would say less than three to four minutes.

13 Q Okay. So, very close in time?

14 A Very close.

15 MS. HERBERT: Nothing further.

16 THE COURT: Recross.

17 MR. O'BRIEN: Nothing, Your Honor.

18 THE COURT: Anything else for this witness?

19 MS. HERBERT: That's it, that's it, Judge. Thank you.

20 THE COURT: You may step down.

21 THE WITNESS: Okay.

22 THE COURT: Call your next witness.

23 MS. HERBERT: Judge, can we just have one second?

24 THE COURT: Yes.

25 MS. HERBERT: Okay. Thank you.

1 Judge, at this point, the State is going to rest.

2 THE COURT: The State rests at this time.

3 [The State rests]

4 THE COURT: At this time, ladies and gentlemen, we're going to take our
5 lunch at this time. Remember, at this break as in all, it is your duty not to converse
6 among yourselves or with anyone else on any subject connected with this trial.
7 Further, you may not read, watch or listen to any report of or commentary on this
8 trial by any medium of information, including without limitation, newspaper,
9 television, radio or Internet. You may not form or express any opinion on any
10 subject connected with this case until it is finally submitted to you. Hour fifteen
11 minutes, ladies and gentlemen. That brings up back to work at 1 o'clock. Have a
12 good lunch. Officer Reichert, take charge of this jury.

13 [Outside the presence of the jury]

14 THE COURT: The record shall reflect we're outside the presence of the jury.
15 Any additional record need to be made as a consequence of the witness
16 examination since the break? State.

17 MS. HERBERT: Judge, I believe we'd admitted everything into evidence
18 except for State's Exhibit Number 18, proposed 18 which we will withdraw.

19 THE COURT: So, you're going to --

20 MS. HERBERT: We're not going to admit that one.

21 THE COURT: So, having conferred with the Clerk of the Court, 18 has never
22 been offered and not admitted?

23 MS. HERBERT: Correct.

24 THE COURT: Okay. Is that consistent with the Clerk's note?

25 THE COURT CLERK: It is correct.

1 THE COURT: Anything else, State?

2 MS. WONG: Just make a record of what occurred at the bench earlier. The
3 State was not intending on getting into the fact the Defendant had in possession
4 some knives on his person when he was arrested. However, the defense did ask
5 the officer whether or not any knives were found on cross-examination and thereby
6 opening the door to our subsequent witness, Ms. Jamie Poynor, indicating that she
7 in fact did see knives at the patrol vehicle. We approached the bench prior to
8 getting that statement out and Your Honor indicated that the door had been opened
9 for us to go into that.

10 THE COURT: Okay. All right. On this issue, response, if any?

11 MR. O'BRIEN: Responds nothing specifically to Ms. Poynor but to address it
12 so it is on the record, Your Honor. We'd object to any testimony -- obviously there
13 was no objection to Ms. Poynor -- but we'd object to any testimony regarding -- any
14 further testimony regarding knives given --

15 THE COURT: I think it's moot now though.

16 MS. HERBERT: Yeah, we rested.

17 MR. GARDNER: We think it's fair that, you know, we won't comment on the
18 knives. We don't think they should. No one said they were in his possession.

19 MS. HERBERT: We don't intend on --

20 MR. GARDNER: We won't comment on the --

21 THE COURT: The evidence before this trier is tenuous with regard to the
22 knives in any event. So -- all right. I mean, everybody -- you're allowed to comment
23 clearly on the evidence but the evidence is --

24 MS. HERBERT: Right.

25 THE COURT: -- that something -- again, nebulous about knives being

1 observed by the civilian --

2 MS. HERBERT: Right.

3 THE COURT: -- not by an officer and not certainly admitted or part of the
4 evidence. So -- all right. Is that all you have, State?

5 MS. HERBERT: Yes, that's it.

6 THE COURT: Defense, any additional record?

7 MR. O'BRIEN: Nothing further, Your Honor.

8 THE COURT: All right. Do you need to make a record on the juror note that
9 came out? The record shall reflect that the bailiff approached with a note from Juror
10 Number 1. The note reads: Juror announced in deliberation room that Jeffs --
11 quote -- Jeffs had life sentence as she looked at her phone. I showed the note to
12 both sides when it was received. It appears to be a reference to the criminal trial in
13 Utah. It has nothing to do with this case. But as a consequence of that proffered
14 note from Juror Number 1, does either side wish any further inquiry of any member
15 of the jury panel? State?

16 MS. HERBERT: No, Judge.

17 THE COURT: Defense.

18 MR. GARDNER: I don't believe there's any news coverage of this. So, I don't
19 think --

20 THE COURT: It has nothing whatsoever to do with this case. All right. Fairly
21 stated. Let's settle up instructions then. I think -- what I see happening, gentlemen,
22 is you need to have a conversation with Mr. Watters. The State having rested their
23 case, it's your decision to move forward or not. It's up to you. But I know you need
24 a few minutes to talk about that. So, take your time. When you're done -- State why
25 don't you grab whatever you're going to eat and we're going to settle instructions

1 and get them all numbered up as necessary, fair enough?

2 MR. GARDNER: You want us to come back at what time to settle
3 instructions, Your Honor?

4 THE COURT: I'd like you to have that conversation with Mr. Watters now and
5 decide what you're next -- what your decisions are regarding the *Carter* instruction
6 or your case, if any. And I don't want anybody to leave frankly. I want us to work
7 through lunch to get those instructions settled. I don't want to delay the process
8 anymore than necessary. And I'd just like to settle up and move on sufficiently and
9 fairly.

10 MR. GARDNER: Are we going to be allowed to eat, Your Honor, those of us
11 who are famished here?

12 THE COURT: What would you like? We'll order you a sandwich.

13 MR. GARDNER: Would you?

14 [Colloquy]

15 THE COURT: It'll only take us 45 to settle instructions. I don't want anybody
16 hungry so I want to give you the time you need.

17 MR. GARNER: Okay. Thank you, Your Honor.

18 THE COURT: Okay. So, we'll recess. State, why don't you give defense the
19 room so they can talk freely.

20 MS. HERBERT: Right, we will. We'll go upstairs and get our lunch.

21 [Recess taken at 11:47 p.m.]

22 [Proceedings resumed at 12:51 p.m.]

23 [Outside the presence of the jury]

24 THE COURT: Okay. This is C272483, State of Nevada versus Frankie
25 Watters. The record shall reflect the presence of the representatives of the State

1 and the defense, outside the presence of the prospective panel and also the
2 absence of Mr. Watters who is having lunch right now.

3 The record should further reflect parties have worked on and settled
4 instructions, State, are you familiar with Instructions 1 through 23?

5 MS. WONG: Yes, Your Honor.

6 THE COURT: Does the State object to the giving of any of these
7 instructions?

8 MS. WONG: No.

9 THE COURT: Does the State have any additional instructions it wishes to
10 offer that the Court's refused to give?

11 MS. WONG: No.

12 THE COURT: Is the State familiar with the verdict form?

13 MS. WONG: Yes.

14 THE COURT: Any objection to the verdict form?

15 MS. WONG: No.

16 THE COURT: Is the Defense familiar with Instructions 1 through 23?

17 MR. GARDNER: Yes, Your Honor.

18 THE COURT: Does the Defense object to the giving of any of these
19 instructions?

20 MR. GARDNER: Yes, Your Honor. We would object to the flight instruction.
21 We think that that over emphasizes flight, that it tends to shift the burden, and that
22 shouldn't be a factor that's set out in this specific instruction.

23 THE COURT: All right. That instruction as included in the package is -- let's
24 see -- Number 7. State, do you have any response to Mr. Gardner's objection to
25 flight instruction?

1 MS. WONG: Well, Your Honor, I believe the testimony in this case is the
2 Defendant basically fled from scene to scene so it is consistent with the testimony.
3 With that, I will submit it.

4 THE COURT: All right. Case law, although we didn't specifically cite it,
5 permits the flight instruction to be given if there's a factual basis -- factual
6 information and evidence to support it based upon the testimony that I have
7 observed flight is a factor that this jury may consider. Instruction 7, as proffered, is
8 an accurate statement of that case law so I'm inclined to give it over objection.

9 Mr. Gardner, any objections to any other instructions?

10 MR. GARDNER: We would object to Instruction Number 4 on possession of a
11 stolen vehicle.

12 THE COURT: All right.

13 MR. GARDNER: It appears that the last case in Nevada that touched on this
14 states that intent to permanently deprive is not an element. We believe that under
15 common law and other theories and consistent with the grand larceny of an
16 automobile case law that intent to permanently deprive should be an element listed
17 in that. And additionally, if not listed there as an element, that as a back-up to the
18 word stolen should mean that the vehicle has been taken with intent to permanently
19 deprive. So, we believe that should be an element of those and I have two
20 proposed instructions, D-1 and D-2, that we'd like to offer that Your Honor's
21 indicated that --

22 THE COURT: Okay. D-1 and D-2 are offered and marked as Court's Exhibits
23 next in order by defense.

24 MR. GARNER: Additionally, Your Honor, as far as that argument that -- just
25 make a record -- that if, you know, if a person takes his mother's car and was driving

1 it around the block, he could be guilty of a gross misdemeanor of taking vehicle
2 without consent of owner. Well if he had a friend with him, his friend would be in
3 possession of a car taken without permission of the owner and would be guilty of a
4 felony possession of stolen vehicle. We think that's so improbable and that intent to
5 permanently deprive should apply to even people who simply possess. And as a
6 corollary of that, we also are objecting to -- we think there should be an offer that
7 taking a vehicle without consent of owner should be a lesser included of possession
8 of stolen property.

9 THE COURT: Okay. Just so we're clear here. I agreed with you when we
10 talked about those that taking a vehicle without consent of owner is and should be a
11 lesser included of grand larceny auto because of the aspects of possession and
12 taking make it so. But I don't think it's a lesser and I haven't included it as a lesser
13 of possession of stolen vehicle for the reasons that taking a vehicle without consent
14 of owner is not a lesser included of possession. So, State, do you have any record
15 you want to build on this?

16 MS. WONG: No, Your Honor.

17 THE COURT: In pulling up -- and a couple of important points to make in
18 terms of why Instruction 4 approved and we went ahead with Instruction 4 is correct
19 statutory definition pursuant to 205.273. In reviewing the annotations as we move
20 through this effort, I do cite or see cited in that annotation *Montes v. State*, 95.
21 *Nevada* 891, a 1979 case. It says intent to cure a past title or permanently deprive
22 the owner of possession are not elements of this -- under this statute. So, under the
23 *Montes* decision, the Supreme Court's already ruled that this is an offer of element.
24 So, that's why I have not included the language as requested. Anything else in
25 terms of objections to these instructions, Mr. Gardner?

1 MR. GARDNER: No, Your Honor.

2 THE COURT: All right. Do you have any additional instructions other the D-1
3 and D-2 to submit so you can maintain your record?

4 MR. GARDNER: No, Your Honor.

5 THE COURT: Do you any objection to the verdict form?

6 MR. GARDNER: Only in that it relates - we would have asked for the lesser
7 included of -- taking vehicle as a lesser included of possession of stolen vehicle
8 which Your Honor said you won't give for the reasons you set out before.

9 THE COURT: Exactly. Other than that, it sounds like we settled instructions
10 and everybody's had an opportunity to create and build their record.

11 Talk to Mr. Watters as soon as he gets here. I'll give you the time you
12 need to confer with him and make some important decisions you must make. I'll
13 have my staff prepare copies of these and be ready to distribute them to the jury.
14 Anything else, either side? All right. Thank you.

15 [Recess taken at 12:57 p.m.]

16 [Proceedings resumed at 1:11 p.m.]

17 [Outside the presence of the jury]

18 THE COURT: Danny, please hold.

19 MR. GARDNER: Your Honor, we're -- I don't think we're going to be arguing
20 conceding anything specifically,

21 THE COURT: Okay.

22 MR. GARDNER: -- but we're just going to argue it in general. So, I'm not
23 sure if that would really apply.

24 THE COURT: I just want to make sure that we're clear. C272483, State of
25 Nevada, plaintiff versus Frankie Watters. The record shall reflect the presence of

1 the representatives of the State and defense. The record shall reflect that under
2 *Hernandez* -- I want to make sure that there's no concession of any specific element
3 as the theory of defense and that if so, we're following the appropriate procedures
4 outlined by that case law and, you know, I've got to canvass. And I know your both
5 -- counsel are well aware of it. You're good lawyers; you've done this many times.
6 Is that an issue that we need to build a record on?

7 MR. O'BRIEN: Your Honor, I don't believe so. I'd say.

8 THE COURT: And I'm not asking you to say anything -- if you want the DA to
9 leave, we'll then leave because we can do that under *Hernandez* commonly.

10 MR. O'BRIEN: Actually, if we could just have that for a couple of minutes so
11 we can speak frankly.

12 THE COURT: If you two could please step out just in the anti room.

13 Okay. The record shall reflect that I've asked the DA's leave the room
14 as *Hernandez* says so the Defendant has freedom to make a record here.

15 Under *Hernandez* -- you've reviewed the case law under *Hernandez*,
16 counsel?

17 MR. O'BRIEN: Yes, Your Honor.

18 THE COURT: And I just want to make sure we're doing it right.

19 MR. O'BRIEN: We're under the impression *Hernandez* does not apply with
20 what we're about to argue. I think, you know, we've been pushing the entire time for
21 basically an ID defense. But our secondary defense and the reason this lesser -- we
22 ask for a lesser included instruction our secondary defense is if Mr. Watters is not
23 the person in these vehicles, but if he was -- or, no, whoever was in those vehicles
24 did not commit grand larceny.

25 THE COURT: Okay. That makes sense. Okay. All right. So, it really

1 doesn't concede -- your primary proper defense is Mr. Watters is not the right guy?

2 MR. O'BRIEN: Correct.

3 THE COURT: And whoever it is involved in this, they're not guilty of GLA or
4 PSV, they're guilty of taking the vehicle without the consent of owner, is that right?

5 MR. O'BRIEN: Right.

6 THE COURT: All right. So, Hernandez really doesn't apply under that theory
7 of defense. Good. All right. Good. Officer, if you could request the DA, they can
8 come back in now that we've gone outside the presence and cleared that up. Okay.
9 Mr. Watters, that's your understanding as well, too; right?

10 THE DEFENDANT: Yes, sir, it is, Your Honor.

11 THE COURT: Very good.

12 All right. The record will the District Attorneys have returned to this
13 courtroom. We have a jury in the hall. Ladies and gentlemen, let's get to work.
14 Bring them in, please.

15 [Inside the presence of the jury]

16 THE MARSHAL: Everyone's present.

17 THE COURT: Thank you. This is C272483, State of Nevada, plaintiff versus
18 Frank Alan Watters. The record shall reflect the presence of the representatives of
19 the State and defense and all members of the jury panel do appear to be present.
20 Will the parties stipulate to the presence of the entire panel; State?

21 MS. HERBERT: Yes, Your Honor.

22 THE COURT: And defense.

23 MR. O'BRIEN: Yes, Judge.

24 THE COURT: All right. The record shall reflect we -- the case now passed to
25 defense.

1 MR. O'BRIEN: At this point, Your Honor, the defense rests.

2 THE COURT: The defense rests.

3 **[Defense rests]**

4 THE COURT: Ladies and gentlemen, that therefore concludes the evidence
5 portion of the trial. We're going to move now into the instruction phase. As you may
6 recall yesterday, as I told you my opening comments, the instructions on the law are
7 of such importance I reduce those to writing. Dan's handing you those package of
8 instructions right now. As much as I'd like to have a conversation with you about the
9 law, again, the instructions are of such importance that they're reduced to this formal
10 writing. As soon as everybody has your packet of instructions, it's my intent to read
11 from the first to the last instruction. The packages you have in your hands are you
12 to keep as you move from instruction through argument into deliberations. So, you'll
13 carry them with you through the balance of the case and have them with you
14 throughout when you move into deliberation. All right. As soon as everybody has
15 their package of instructions, I'll begin with the reading of Instruction Number 1.

16 [The Court reads the Instructions to the jury -- not transcribed]

17 THE COURT: Counsel, you have the floor. Closing argument.

18 MS. WONG: Thank you, Your Honor.

19 **STATE'S CLOSING ARGUMENT**

20 BY MS. WONG:

21 Ladies and gentlemen, this case is about an individual who on March
22 18th 2011 showed complete disregard for the lives and safety of others. This is the
23 case of State of Nevada versus Frankie Watters.

24 In every criminal case the State must prove two things. First, that
25 crimes were committed and, two, that the Defendant in this case, Frankie Watters, is

1 the one who committed those crimes.

2 The Defendant in this case is charged with three counts: Count one,
3 possession of stolen vehicle, count two, grand larceny auto, and count three, stop
4 required of signal of police officer. Let's go through each of these counts one at a
5 time.

6 Count one. What is possession of stolen vehicle? Any person who has
7 in his possession any motor vehicle which he knows or has reason to believe has
8 been stolen is guilty of possession of stolen vehicle. Now what I've done here is I've
9 highlighted some of the key elements of the offense. And I'm going to explain to you
10 what these words mean and how the facts of this case apply to those elements.

11 So, one of the first things the State must prove is that the vehicle in
12 question is in fact stolen. Here, in count one, the vehicle in question is the 2006
13 Chrysler Sebring belonging to Heather Reed. Heather testified that on March 17th
14 2011 she parked her car at the Boulder Station parking garage and went into work.
15 When she left work she returned to the parking garage and realized that her car was
16 missing. Heather testified that nobody other than her husband had permission to
17 possess or drive her vehicle.

18 So, what is possession? A person who knowingly has direct physical
19 control over a thing is in actual possession of it. So, the person is seen driving or
20 steering a vehicle he's obviously in possession of it. And in this case, we actually
21 have a witness who can place Defendant inside that vehicle. Jamie Poyner testified
22 this morning that the Defendant was driving a Chrysler Sebring with the black top
23 down when he hit her trailer. After the accident, the Defendant got out of that
24 vehicle. Jamie insisted on calling the police and that's when she saw the Defendant
25 return and go back into that vehicle and sped away. In addition, we also have the

1 Defendant on video driving that Chrysler Sebring throughout the Eastside Cannery
2 parking lot.

3 So, now how do we know that the Defendant knew or should have
4 known that this vehicle was stolen? Well obviously we don't have a machine that we
5 can plug Defendant's head into to see what's going on in his mind. However,
6 knowledge by the Defendant of the stolen nature of the vehicle may be inferred from
7 all of the evidence. And one of the ways that we can infer that the Defendant knew
8 that this vehicle was stolen is by looking at his course of conduct. So, let's ask
9 ourselves: What did the Defendant do after the accident involving Jamie? And
10 Defendant's flight immediately after committing a crime may be considered by you in
11 determining his guilt or innocence. And in this case, after hitting Jamie's trailer, the
12 Defendant fled. Why did he flee? It is because he knew that the vehicle that he was
13 driving was in fact stolen and had the police arrived on the scene, they would have
14 discovered that he was driving a vehicle which had only been reported stolen 24
15 hours ago.

16 Now one of the other things that you're going to be asked to determined
17 is the value of this vehicle. You're going to be asked to determine whether the value
18 of this vehicle is \$2500 or more or whether you believe it worth less than \$2500.
19 The value is the highest value attributable to the vehicle by any reasonable
20 standard. Now Heather testified that she purchased this vehicle back in 2007 for
21 \$19,700. After the Defendant totaled her vehicle, the insurance paid her \$8,000 and
22 her gap insurance paid her \$2,000. And as we know, insurance companies do not
23 pay more than they think a vehicle is worth. So, I submit to you, ladies and
24 gentlemen, no matter which standard you apply this vehicle in question is in fact
25 over \$2500.

1 So, how do we know the Defendant was the one who committed
2 possession of stolen vehicle? Well we've already gone over this. One, we have
3 Jamie Poynor who can place the Defendant inside the car. She saw him, she talked
4 to him, she saw him when he exited the Chrysler Sebring; she saw him re-entered
5 the Chrysler Sebring and of course we have the Defendant on video driving within
6 the Eastside Cannery parking lot.

7 Count two. What is grand larceny auto? A person who steals, takes or
8 drives away the motor vehicle of another with the specific intent to deprive him
9 permanently of his property is guilty of grand larceny auto. Now the stolen vehicle in
10 question in count two obviously is different from the one alleged in count one. In
11 count one, the Defendant is charged with possessing the stolen vehicle belonging to
12 Heather Reed. In count two, Defendant's actually charged with stealing the vehicle
13 belonging to Yosvany Otano, that vehicle being a 2000 Honda Civic. Now Yosvany
14 testified today that he had parked his vehicle at the Eastside Cannery parking lot to
15 take his mother to lunch. He was surprised when he was later informed by police
16 officers that his car had been stolen. Yosvany testified that nobody other than
17 certain close family members had permission to take, drive or steal the vehicle.

18 So, how do we know that when the Defendant took the victim's vehicle
19 that he had the specific intent to permanently deprive Yosvany of that vehicle? Well
20 let's look at Defendant's actions. In fact, let's look at what the Defendant did not do
21 in this case. Well we know the Defendant did not return the Honda Civic back to the
22 Eastside Cannery parking lot where he found it, we know he didn't park it in front of
23 the victim's house, but what did he do? Well he took the victim's car on a high
24 speed chase, got into three accidents, struck the light pole and back into a patrol
25 car. Ladies and gentlemen, he totaled the victim's vehicle. And I ask you if

1 someone is going to inflict this kind of damage on another person's property, does
2 he have any intention of returning it to its rightful owner? Now the answer there is
3 clearly no.

4 And, again here, you'll also be asked to determine the value of this
5 vehicle and whether -- you'll have to determine whether the value of vehicle is overly
6 \$2500 or less than \$2500. Yosvany testified that he purchased the vehicle back in
7 December of 2009 for \$4,599. He indicated that prior to Defendant wrecking his car,
8 he had placed less than 15,000 miles on the car since 2009. And according to the
9 Kelley Blue Book value, if you believe his car was in good condition, it's currently
10 worth \$4,130. And even you believe that perhaps his car is only in fair condition, still
11 his car is worth \$3,455.

12 So, how do we know it was the Defendant that committed grand larceny
13 auto? Well Officer Maas actually sees the Defendant as he's in the process of
14 stealing this vehicle. When Officer Maas first observed the Defendant, the
15 Defendant is bent over in the driver's side seat [indiscernible] with something that's
16 inside the vehicle. Now if you actually look on the video from the Eastside Cannery,
17 what you'll see is you'll see the Defendant actually enter the Eastside Cannery
18 parking lot in that 2006 Chrysler Sebring. Moments later he exits that vehicle and a
19 few seconds later you see police officers actually converse in that same general
20 area. And the next thing you'll see is the Defendant putting that Honda Civic in
21 reverse and speeding out of that Eastside Cannery parking lot. Both Officer Maas
22 and Officer Harper testified and identified the Defendant as the person in that stolen
23 Honda Civic.

24 Count three. What is stop required on signal of police officer? The
25 driver of a motor vehicle who willfully refuses to bring their vehicle to a stop or

1 otherwise flee or attempt to elude a police officer in a readily identifiable vehicle of
2 any police department when given a signal by flashing a red lamp and siren to bring
3 the vehicle to a stop, and while so doing operates or is likely to endanger any
4 person other than themselves or the property of any other person other than
5 themselves is guilty of stop required on signal of police officer. And on that note, I'm
6 going to take a drink of water.

7 Now, ladies and gentlemen, I know that's a really, really long
8 paragraph, but really we can break this simple rule into four elements. One, that
9 they have to prove that a Defendant willfully refused to bring the vehicle to a stop for
10 a police officer, who in this case would be Officer Jeff Harper. Now what willfully
11 means is intentional. So, let's say you have a situation where you're getting pulled
12 over by the police and you in fact attempt to stop for the police. At that moment you
13 realize your brakes don't work and your car keeps going. Well that's not willful
14 evasion on your part because it wasn't intentional.

15 But that's not case here; is it? Here the Defendant willfully refused to
16 stop for police officers. He intent was to get away. And nothing is more evident of
17 that intent than when after he struck a light pole. After he ran into the light pole,
18 Officer Harper and Officer Pro had him pinned to the curb. What did the Defendant
19 do? He did not stop, he did not stay in the car. Instead, he jumped out of the
20 passenger side window, hopped a wall and ran to Walmart. Ladies and gentlemen,
21 nothing is more evidence that his failure to stop for police officers was in fact willful,
22 not accident.

23 The State must also prove that at the time that Officer Harper attempted
24 to stop the Defendant's vehicle he was in fact in a readily identifiable police vehicle.
25 Well Officer Harper testified that he was in fact in a standard Metro issue black and

1 white patrol vehicle. And Officer Harper also testified that he was given -- that he
2 had his lights and sirens on at the time he attempted to stop the Defendant's
3 vehicle. Now in both of these factors the Defendant -- it is clearly seen on the video
4 from the Eastside Cannery.

5 And finally the State must show that the Defendant while evading the
6 police endangered or was likely to endanger the lives or property of others. Now
7 ladies and gentlemen, you've heard all the evidence. So, you know that the more
8 appropriate question in this instance is not whether the Defendant endangered or
9 was likely to endanger the lives and property of others but rather how many lives did
10 he endanger and how much property damage did he cause? So, to answer that
11 question, let's review what the Defendant did in this case.

12 First we'll start off with Officer Maas and Officer Blake attempting to
13 stop the Defendant inside the Eastside Cannery. The Defendant put the stolen
14 Honda Civic in reverse and speeds off the Cannery with Officers Blake, Maas and
15 Harper all following in pursuit with their lights and sirens on. The Defendant then
16 speeds out of the parking lot traveling westbound on Harmon and then drives
17 northbound on Boulder Highway crossing over the landscape median trying to go
18 into a Walmart parking lot and in doing so, he causes an accident with a Ford
19 Taurus driven by an elderly man. Defendant then heads northbound on Boulder
20 Highway in the southbound lanes driving head on into oncoming traffic. Officer
21 Harper paces Defendant going at approximately 65 to 70 miles an hour. Defendant
22 then drives through the red light at Boulder and Nellis almost causing another
23 accident. Here Defendant actually loses control and spins out causing his vehicle to
24 lose power. Patrol units actually try to pinch the Defendant in but he's able to regain
25 power and flees again almost hitting several cars.

1 Defendant then drives northbound on Boulder until he reaches
2 Flamingo where he then runs the red light. Defendant then goes westbound on
3 Flamingo traveling at about 65 miles per hour and when the Defendant reaches
4 Mountain Vista, traffic there was slow. So, Defendant decides he going to drive in
5 the bike lane and while driving in the bike lane, Defendant almost runs over several
6 small children and a school crossing guard who all have to jump out of the way in
7 order to avoid being hit.

8 Defendant then continues west on Flamingo traveling 65 to 75 miles an
9 hour and at the U.S. 95, Defendant crosses the median and goes into oncoming
10 traffic. He then goes eastbound on Flamingo and again almost strikes several
11 vehicles. He then goes eastbound Flamingo in the westbound lanes and crosses
12 back over the median again to go southbound on the U.S. 95. Finally he then enters
13 the freeway but not before the striking the cement barrier several times.

14 The Defendant then continues southbound on 95 to Tropicana where
15 he then exits the freeway. At this point, traffic was actually stopped for a red light.
16 So, the Defendant goes through the landscaping on the eastside of the onramp. He
17 then drives out onto Tropicana where he then causes an accident with a
18 landscaping truck. Defendant then continues westbound on Tropicana in the
19 eastbound lanes and again drives over the median, then runs a red light at
20 Tropicana and Mountain Vista almost causing another accident. And then as the
21 Defendant approaches Nellis, he crosses the median again and drives into
22 oncoming traffic and this time he strikes the Napa truck driven by David Granger.

23 After this incident, Defendant then turns northbound onto Nellis. He
24 runs a stop sign at Sun Valley and continues northbound to Harmon. He then turns
25 east onto Harmon and once at Harmon, Defendant drives eastbound in the

1 westbound lanes, drives up onto the sidewalk and strikes a light pole. And as he
2 was getting pinched in by Officers Harper and Pro, that is when the Defendant
3 throws his vehicle into reverse and strikes Officer Pro's patrol vehicle.

4 So, now ladies and gentlemen, back to our original question. How
5 many lives did the Defendant endanger that day? Well we know for a fact that he
6 drove on the wrong side of the road at least six times. He ran stop signs and stop
7 lights at least four times. He nearly caused an accident five times and he actually
8 caused an accident four times, all the while driving 65 to 70 miles an hour on a busy
9 street in Las Vegas on a Friday afternoon.

10 So, how do you know it was the Defendant who committed stop
11 required on signal of police officer? Well the Defendant's actually caught inside the
12 Walmart just moments after crashing the Honda Civic into the light pole. We also
13 have Officer Harper who identifies the Defendant as the person who was speeding
14 away from the Eastside Cannery parking lot in that Honda Civic. Officer Harper
15 identified the Defendant as the person who subsequently jumps out of that Honda
16 Civic and runs into the Walmart. And finally Officer Harper identifies the Defendant
17 as the person who's taken into custody inside the Walmart. In fact, it was Officer
18 Harper's canine partner Rocco who ultimately subdues Defendant allowing officers
19 to take the Defendant into custody.

20 Next, ladies and gentlemen, let's look at the Defendant's injuries. This
21 is the face of someone who had been involved in five car accidents. Rocco did not
22 bite the Defendant in the face. Defendant caused these injuries to himself when he
23 ran into all those cars attempting to run from the police.

24 The Defendant's blue sweatshirt also helped identify the Defendant. In
25 fact, it helped identify the Defendant not only as the person who was evaded the

1 police but also as the person who was in the first stolen 2006 Chrysler Sebring as
2 well as the person who stole the 2000 Honda Civic. As you will recall, Jamie
3 testified that when she saw the Defendant after the accident, he had on a blue
4 sweatshirt. By the Defendant was observed on Tropicana and Boulder by Sergeant
5 Baker, the Defendant had removed, had taken off his sweatshirt and was now in a
6 gray tee shirt. At the Eastside Cannery on video, ladies and gentlemen, you will see
7 the Defendant put on his sweatshirt again and it occurs at one minutes 35 seconds
8 into the video and I encourage you to review the video and see for yourself. Later
9 on when the Defendant subsequently is taken into custody at Walmart, he had taken
10 his sweatshirt off again. However, that sweatshirt was recovered inside the Walmart
11 where the Defendant had fled to towards the end of that pursuit.

12 Now, ladies and gentlemen, this case now rests in your hands. When
13 you go back there to deliberate, you will receive a verdict form, and on that verdict
14 form you will have the option of checking one of several boxes. And I urge you to
15 check the box marked count one, guilty of possession of stolen vehicle, value \$2500
16 or more; guilty, count two, grand larceny auto, value \$2500 or more, and finally,
17 count three, guilty, stop required upon signal of police officer because this is what
18 the evidence in this case purports. Thank you.

19 THE COURT: Defense, you have the floor; closing argument.

20 MR. O'BRIEN: Thank you, Your Honor.

21 DEFENSE CLOSING ARGUMENT

22 BY MR. O'BRIEN:

23 You know, ladies and gentlemen of the jury, you heard a lot of officers
24 and witnesses over the past two days and they all seemed pretty sure that they
25 know Frankie Watters was driving that car. They better be because what we do

1 know one hundred percent know for sure is that Frankie Watters was in a Walmart
2 and an officer his dog to attack; that Frankie Watters was bitten and mauled by a
3 police dog. The dog attacks him while he's standing in an aisle, teeth sinking into
4 his hips, teeth sinking into the side of his face causing the blood on the face in the
5 photo that the prosecutor would like you to see. The dog attacks and Frankie's
6 slammed down to the ground. Officers move in, put the cuffs on him. He's so badly
7 bitten he needs to be taken for medical treatment. So, they better be sure that he's
8 the guy otherwise they got a very badly bleeding injured person who has done
9 nothing.

10 Now ladies and gentlemen, the Judge instructed you on the law in this
11 case and I appreciate you keeping an open mind up to this point as I asked in the
12 very beginning. Now that you have the rules you know that, as the Judge told you,
13 the prosecutors have the burden of proving beyond a reasonable doubt that a crime
14 was committed and that Mr. Watters is the person that committed that crime.

15 So, we had a lot of evidence in the past two days. Let's start talking
16 about that. How did we get to that Walmart? How did we find Mr. Watters in that
17 Walmart? We'll start with Sergeant Baker. A Chrysler Sebring is traveling at high
18 speed south on Boulder Highway. She's stopped at a light facing east on
19 Tropicana. The Sebring tires screech as it starts to turn west then turns east
20 quickly. It's a short amount of time. Sergeant Baker is looking out her windshield,
21 cross her hood, over a lane into a car for seconds and the best description you can
22 give a Latino male with a shaved head.

23 We talked to Officer Rowe. He's patrolled east Vegas or southeast
24 Vegas a while. He knows there's a high population of Latinos in that neighborhood.
25 And he also told you there's a lot of Latino men with shaved heads. If you take a

1 look at Frankie here, Mr. Watters is a person of mixed race, not so clearly
2 identifiable as Latino. In fact, you might describe him as a black male. But that's
3 the description that we have from the officer -- Sergeant Baker that starts this entire
4 story.

5 So, how do we go from there? Well based on those few seconds, the
6 police find a report that they see a Sebring at Eastside Cannery. Actually before we
7 get to the Eastside Cannery, let's talk about what Officer Rowe saw in that aisle in
8 Walmart. There's a little bit of a different between Officer Harper's version and
9 Officer Rowe's. Officer Rowe says he's in the aisle first. He sees Mr. Watters,
10 someone matching the description. Remember the description over the radio call
11 that we've heard so far, Latino male, shaved head, blue hoodie, and as Officer
12 Harper admitted on the stand, the hoodie sits tight around the driver's face. That's
13 the description we have. What does Officer Rowe find in the Walmart aisle? He
14 finds Frankie Watters in a grey tee shirt. The first thing he says when the officers
15 tell him to get down on the ground, he said he didn't do anything wrong. The officers
16 testified it's a busy day in the Walmart; busy day in the Walmart on the east side of
17 Vegas where other Latinos, maybe other Latin males shopping with a shaved head.

18 One of the things you didn't hear is the officers saying that they
19 checked all the aisles, all the people in the Walmart, went through everyone to make
20 sure that the suspect they saw run into the Walmart was Frankie Watters. They
21 didn't cross out all those possibilities. They found Mr. Watters and based on the
22 very generic description in Las Vegas of a shaved head Latino male, they decided
23 he's the guy who did it. Officer Rowe steps back, pulls his gun when Mr. Watters
24 won't get down on the ground and then he says he takes a step back and lets
25 Officer Harper take charge. Officer Harper lets the dog attack, orders the dog to

1 attack, and Frankie is mauled by the dog.

2 But that's not the only evidence here. Let's take a second and talk
3 about why everybody is so sure or what they're so sure about. We go back to -- we
4 go back to the Eastside Cannery lot. Officer Maas took the stand and he said he's
5 sure that it was Frankie Watters. He got a clear look at him. Never mind that the
6 driver of the vehicle was bending over messing with something in the car; never
7 mind that the radio call that comes out of Officer Maas's view of the suspect is that
8 the person's wearing a hoodie cinched tight. He's definitely got a view. He knows
9 that's the suspect. He knows that's the Latino male with a shaved head that they
10 need. Office Harper, he sees -- he can definitely testify that it's Frankie Watters he
11 sees exiting the Eastside Cannery. He testified that he can identify Mr. Watters
12 because he's able to see him through the windshield in what's an ongoing police
13 chase, that he's just crawling along not moving at a rate of speed. Now the officer's
14 call that goes over the radio about the Sebring in the parking lot is that the Sebring's
15 moving at a high rate of speed but the suspect they're chasing isn't driving a Honda
16 at a high rate of speed, according to Officer Harper. We contend that a suspect
17 fleeing in a Honda trying to get away from the police with multiple patrol cars
18 following him around that goes to leave at a fast rate of speed giving Officer Harper
19 seconds to identify who it is. There's no doubt in his mind because he has to be
20 sure. He has to be sure because the police dog mauled Frankie Watters. It's a lot
21 easier to look backwards once you decide that the person who's been arrested must
22 have done it. It's a lot easier to work backwards to your ID to being positive that
23 that's the person you saw. It might have been a second or two but you can be
24 positive. Remember, Officer Harper can't remember what Mr. Watters was wearing.
25 He was willing to admit that he was wearing a blue hoodie cinched tight on the

1 stand, but not before he said he couldn't remember. He can't remember what he's
2 wearing but he can remember it was definitely him.

3 As for the other folks that testified, Officer Pro, he gets involved in the
4 chase a little bit later on. He is another person who says he has a direct view of Mr.
5 Watters, that he can identify Mr. Watters. This is after he's an accident with the
6 driver of the Honda, the driver of the Honda wearing a blue hoodie, hood up cinched
7 tight. Officer Pro has to climb out the passenger side of his vehicle because his
8 driver's side door is jammed shut because of the accident. The adrenalin's
9 pumping, everything's moving fast. The suspect is getting away. The suspect's on
10 the other side of the car. He's getting out of his, but he's sure, he's sure it's Mr.
11 Watters. He better be because otherwise the police dog's attacking an innocent
12 man.

13 You know, ladies and gentlemen, there are some ways to be sure.
14 First, the police could have checked the Walmart to see if there were other men with
15 shaved heads, but they're still positive the suspect ran in that Walmart. You know
16 another way that's real simple in a car theft case? Finger prints. You haven't seen
17 any finger print evidence, not from the Sebring, not from the Honda. Remember
18 back when the DA went through jury selection and talked about CSI, how that's not
19 real, that's TV. I'll give you that. I don't want a very expensive DNA test. I'm asking
20 for finger prints. That's old technology. That's cheap technology. But they didn't
21 need to do finger prints because they were sure or maybe they just didn't want
22 different finger prints showing up on those cars.

23 Ladies and gentlemen, the last person is Ms. Poynor who's sure it was
24 Frankie Watters as well. And Ms. Poynor had a -- she had a pretty bad day. On the
25 stand she talked about being incredibly nervous talking to the person that she talked

1 to out there. She had just gotten into an accident, she's upset. She's nervous and
2 this person just [indiscernible]. This person is in a white Sebring, not a silver
3 Sebring, but a white Sebring. And she says he's just [indiscernible] at her, making
4 her nervous. So, in between checking on the damage of the trailer and trying to,
5 you know, stay in a safe space from someone that's making her nervous, she's sure
6 that she ID'd him. Now the police could have made sure that day that he was the
7 person who hit her trailer, the person that's in this chain of events. They could have
8 brought her to the ambulance sitting right there at the Walmart where Frankie
9 Watters was sitting after being mauled by the dog. They didn't do that. They told
10 her she could look at photos there. But she didn't tell us she looked at photos. She
11 didn't tell us she ever ID'd him again until he's sitting here behind a sign that says
12 Defendant. It's pretty to ID somebody once the police have decided that's who it is
13 and he's gotten all the way here to Court.

14 So, ladies and gentlemen, what you have is a whole bunch of officers
15 that can't remember a lot of things from that day. They can remember one thing,
16 definitely, absolutely. It must have been Frankie Watters. Whether it was one
17 second they saw him, two seconds they saw, however long it was, they're sure it
18 was Frankie Watters because Officer Rowe saw a shaved head, maybe a Latino
19 gentleman, in a Walmart wearing a grey shirt, not a blue hoodie, but close enough,
20 close enough to grab him and pick him up for the charge. They're pretty sure he's in
21 the Walmart, the guy they're looking for. They're having to clear people out as they
22 run through. They're having to keep the aisle clean because one officer has to
23 stand there to keep the crowds from going down there in case something's going on.
24 With that many people on the east side of Las Vegas, given the heat in this town,
25 and the fashion, I'm pretty sure there are other Latino men in that Walmart with a

1 shaved head.

2 One other thing that Ms. Poynor did not say -- now I note during the two
3 days that you sat here, one thing you may have noticed about Mr. Watters, he does
4 have a couple tattoos. Ms. Poynor never said the man that hit her had tattoos; dark
5 hair, white Sebring. She's describing him but she never says tattoos.

6 Ladies and gentlemen, based on all the things that aren't here, the lack
7 of finger prints, the lack of making sure that that's the right person in the Walmart
8 and the attack from the dog based on Officer Rowe's identification, which is based
9 on generic ID info, that's a reasonable doubt, ladies and gentlemen. That's a
10 reasonable doubt that there's someone else out there who committed these crimes
11 and it wasn't Frankie Watters. But the officers are sure because if they aren't they
12 just severely harmed an innocent person.

13 There's one other thing I want to talk to you about, too, when the State
14 was going through the different element. Now we're so sure that Frankie Watters is
15 not the person who was in that Walmart, but if you decide that we're wrong on that
16 issue, looking at the grand theft auto charge, one of the elements there is that the
17 person taking a car must intend to permanently deprive the owner of the vehicle.
18 The suspect the police were chasing, the suspect that jumps in the Honda, he's not
19 window shopping. He's not going around a neighborhood picking the perfect car,
20 the one he's always wanted to take on a joy ride to Mexico, the one he's always
21 wanted to keep. He's not intending to permanently deprive. The car is an
22 instrument to get away from the police. Every officer up here testified that the
23 person's doing everything they can to get away from the police. Now the prosecutor
24 said: He didn't drive it back. He didn't have a chance. That suspect was cornered,
25 the car was stopped by the police. Every turn, every move, every speed, every

1 minute of that chase is about getting away from the police.

2 You know, we see, I think, good analogies in a lot of movies where you
3 got a crowd of kids chasing a kid through the streets and he grabs a -- the way
4 Hollywood has it there's always a skateboard or a bicycle readily available along the
5 side of the road from, you know, another child that's standing there. The kid being
6 chased grabs the bicycle and takes it to outrun the mob that's chasing him, the
7 group of kids that are chasing him. He's not taking that bicycle to permanently
8 deprive the owner of the bike. He's taking that bicycle to get away. It's an
9 instrument to get away.

10 And so, ladies and gentlemen, we'd ask -- if you don't agree for some
11 reason, if there's a lot of questions left from the officers, that there's a lot of
12 questions left unanswered by the State, we'd ask that you find that it wasn't grand
13 larceny auto but merely a joy ride. Thank you, ladies and gentlemen.

14 THE COURT: Rebuttal.

15 MS. HERBERT: Thank you, Judge.

16 REBUTTAL

17 BY MS. HERBERT:

18 Good afternoon, everyone. Fuck you. I didn't do anything. Those are
19 the words that that man said to Officer Harper after leading officers on a several mile
20 chase, after running approximately five to seven red lights, blowing through stop
21 signs, almost hitting two completely separate groups of children, one on Sun Valley
22 and Nellis and other one on Flamingo and Sandhill and after causing five accidents,
23 four with civilians and one with police officers. You've had officers, particular Officer
24 Harper, that saw him the entire time that he was fleeing from the police. Officer
25 Harper had no doubt it was him because he had never lost sight of the Defendant in

1 the Honda during his entire time.

2 The defense wants you to think that the officers were looking for a
3 shaved male who's Hispanic in the Walmart. Well that's not exactly accurate
4 because this Defendant also from having been in five car accidents was injured.
5 You saw the condition of Yosvany Otano's car. That car was totaled. The air bags
6 deployed. He had cuts and bruises on his face from all of those accidents that he's
7 in which is why he's bleeding from his face, which is also why when Officer Harper
8 sees him in the Walmart; he knows that's him because he recognizes him from
9 having previously made eye contact when he fled the Honda. He recognizes him
10 from the couple mile high speed chase and he recognizes him because he just got
11 into a bunch of accidents. He's in the same clothing, it's the same person, and he's
12 injured from all of those accidents. He was very clear that the dog did not bite him in
13 the face; it bit him on the hip. And why is that? Because he refused to comply with
14 officer's commands yet again for the third or the fourth time that day. He had his
15 hands in his pockets, which was a danger to everybody in the Walmart plus a
16 danger to Officer Harper. Using the dog was a last resort. This Defendant was
17 going to do whatever he needed to do to get away from police and if that meant
18 running through the Walmart, if that meant stealing cars, totaling them, using other
19 cars as weapons to push other cars out of the way then that's what he was going to
20 do.

21 We know this is the Defendant for several reasons. Jamie Poynor is hit
22 by the Defendant driving Heather Reed's car. She didn't just say: Oh, he hit me
23 and then ran off. She actually had a conversation with him. She got out of the car.
24 She went to his vehicle and spoke to him face to face. And it wasn't a long
25 conversation but they actually had a conversation. He actually got out of his vehicle,

1 went to her vehicle and then got back inside. She had plenty of opportunity to look
2 at the Defendant, to be able to recognize his face; yes, she was shaken up because
3 he almost hit a bunch of kids after he ran into her car. She remembered his
4 behavior. This was not, as she testified, a normal accident. Things did not go the
5 way that she would have expected an accident to go. You don't expect someone to
6 take off right after they hit you. So, she knows that it's him because she had a close
7 opportunity to observe his face and she remembers his strange behavior and how
8 he took off from that accident.

9 Officer Maas also ID'd the Defendant because he's looking for the
10 Sebring, which he locates a couple car spots down from the Honda, he sees the
11 Sebring, looks a couple cars down and the Defendant, even though he's doing
12 something in that vehicle, pops his head up and makes eye contact with Officer
13 Maas. Officer Maas recognizes that's him. He fits the description. The car he was
14 just in is two cars down. All the officers are getting license plates during this call so
15 they know which cars they're looking for specifically. It's not just any Sebring that's
16 in that parking, it's the Sebring the Defendant was seen driving, the Sebring that
17 Jamie Poynor puts him in. He's two cars down in the Honda. And that is the
18 Defendant from the Sebring goes into the Honda. Officer Maas sees him and then
19 Officer Harper, because being on a long speed chase with him and then making eye
20 contact when he bails from car, knows that that is the Defendant as well.

21 Officer Harper also testified that he was pacing the Defendant down
22 Boulder Highway. And he told you that pacing means that I'm driving at the same
23 speed as the Defendant. So, he's on the right side of the road, the Defendant's on
24 the wrong side of the road. He's keeping track of him. So, that's another
25 opportunity that he was given to be able to look and observe the Defendant and to be

1 able to recognize that that is in fact him.

2 He also testified, Officer Harper did, that when he exited the Walmart --
3 when they pinned the Defendant's car in, the Defendant jumps out and he made eye
4 contact several times before chasing him over the wall. Once they get into the
5 Walmart, there's mere seconds, maybe a couple of minutes that have passed since
6 he last made eye contact that he sees the Defendant in the Walmart and he knows
7 that that is in fact the same person that he was just chasing. So, there's no ID issue
8 regarding ID in this case. The person who was driving the Sebring who hit Jamie
9 Poynor is the same person in the Honda, it's the same person who led this high
10 speed chase with the officers, is the same person who ran into the Walmart, and is
11 the same person who was apprehended. Additionally, the blue sweatshirt is also
12 found in the Honda. As you heard as Ms. Wong explain in the closing statement,
13 when he hits Jamie he's got the blue sweatshirt on. Then when Officer Baker sees
14 him, he's in a gray shirt. Then he's seen again in a blue sweatshirt. He keeps
15 changing his clothing to be able to throw officers off as to what clothing he's wearing
16 in another attempt to try to get away. The fact that he matches both descriptions,
17 the blue sweatshirt in the Walmart and he's in a grey tee shirt in the Walmart, shows
18 that that is another element that you can consider. That's the same person. That's
19 the same guy that did this entire thing.

20 One I briefly addressed defense's argument on the taking vehicle
21 without consent of owner. We've talked about this a little bit in the State's closing.
22 But the main issue that you have to decide is did this Defendant have the intent to
23 permanently Yosvany Otano of his Honda. And if you look at Instruction Number
24 14, that's the one that talks specifically about intent. As Ms. Wong said, we can't get
25 into his mind so we don't know exactly what he was thinking. But what you do do is

1 you look at all the facts and circumstances surrounding the case in order to arrive at
2 what his intent was. And his intent was to permanently deprive Yosvany Otano of
3 this vehicle. He gets into the car, and Yosvany testifies his car was in good
4 condition. When he goes to the scene by the Walmart, his steering column is all
5 messed up, there's things taken off of his car, there's wires sticking out everywhere.
6 The Defendant gets into the car and dismantles it in order to start it in order to flee.
7 There's no keys being started with this key. He's stealing the vehicle. If you going
8 to joyride, you're not to just go to somebody's car and take apart the inside of it and
9 hot wire it in order to take off for a fun ride and then bring it back. That doesn't
10 make sense. In addition, Instruction 19 talks about common sense. You're allowed
11 to bring in your common sense of our everyday experiences. Does this make sense
12 to you what happened? Does it makes sense that somebody is going to hot wire a
13 car and then bring it back later? That just doesn't make sense.

14 In terms of intent, the other thing is that, you know, he was going to do
15 whatever he needed to do to get away from police and that included completely
16 totaling Yosvany Otano's car. And not only did he total Yosvany Otano's car, he
17 totaled Heather Reed's car. She said that was totaled out, the Sebring. He hit
18 David Granger's car. That car was totaled out. And then he was in such an urge to
19 get away from the police that he backed Yosvany Otano's car into the officer's patrol
20 car in an attempt to get away. You're not going to joy ride in someone's car,
21 completely total it and then try to give it back. That just doesn't make sense. He
22 was stealing this car to get away. Had he been successful in getting away, he
23 wasn't going to go back to the Cannery and park the car and leave it for the owner
24 to find. That's just not something that makes any sense in this case.

25 And the last thing that I talked about briefly is use your common sense.

1 It makes sense that the person that hit Heather -- I'm sorry -- that hit Jamie Poynor
2 drives off. A few minutes later, Officer Baker sees the Sebring with a male that fits
3 the description of the male that Jamie identified for you in Court. It's the same
4 person. It's the Defendant. And then minutes later he's found in the Cannery. You
5 can see in the video. He pulls up in the Sebring, gets out of the Sebring and puts
6 the sweatshirt back on again. And then you see the officers come. You see him
7 drive off in the Honda onto Boulder Highway. It's the same person, the same
8 person is doing this. There's no way you have the exact same Chrysler Sebring in a
9 parking lot with the exact same Honda that's parked two cars down that the
10 Defendant's stealing just by coincidence. It's common sense it's the same guy
11 that's doing that.

12 In addition, he's the guy that went down and caused all these accidents.
13 Officers -- not just one officer, several officers testified to a series of accidents and a
14 series of behavior that the Defendant engaged in. It's common sense that that's the
15 same guy and then he bails out and runs into the back of a Walmart. And it's
16 common sense that when they get into the Walmart, who's going to be the guy that
17 looks like he just got into five accidents? It's the Defendant because he has blood
18 all over the place, he's wearing the same clothes, and several officers at this point
19 have had an opportunity to actually see him and know what he looks like. This isn't
20 a one or two second encounter with him. They've been going on a high speed
21 chase with him in addition to officers seeing him steal vehicles. So, the Defendant
22 in this case is guilty beyond a reasonable doubt of all three crimes in this case, the
23 possession of stolen vehicle, grand larceny auto and evading. Thank you.

24 THE COURT: All right. I'm going to have the Clerk now swear the officers to
25 take charge of the jury to being the deliberation. In this case as in all cases, there

1 THE JURY PANEL: Yes.
2 THE COURT: Does either side wish to have the jury polled?
3 MR. GARDNER: Yes, Your Honor.
4 THE COURT CLERK: Juror Number 1, is this your verdict as read?
5 JUROR NUMBER 1: Yes, it is.
6 THE COURT CLERK: Juror Number 2, is this your verdict as read?
7 THE MARSHAL: You have to speak.
8 THE COURT: You have to answer out loud.
9 JUROR NUMBER 2: Yes.
10 THE COURT CLERK: Juror Number 3, is this your verdict as read?
11 JUROR NUMBER 3: Yes.
12 THE COURT CLERK: Juror Number 4, is this your verdict as read?
13 JUROR NUMBER 4: Yes.
14 THE COURT CLERK: Juror Number 5, is this your verdict as read?
15 JUROR NUMBER 5: Yes.
16 THE COURT CLERK: Juror Number 6, is this your verdict as read?
17 JUROR NUMBER 6:
18 THE COURT CLERK: Juror Number 7, is this your verdict as read?
19 JUROR NUMBER 7: Yes.
20 THE COURT CLERK: Juror Number 8, is this your verdict as read?
21 JUROR NUMBER 8: Yes.
22 THE COURT CLERK: Juror Number 9, is this your verdict as read?
23 JUROR NUMBER 9:
24 THE COURT CLERK: Juror Number 10, is this your verdict as read?
25 JUROR NUMBER 10: Yes, ma'am.

1 THE COURT CLERK: Juror Number 11, is this your verdict as read?

2 JUROR NUMBER 11: Yes.

3 THE COURT CLERK: Juror Number 12, is this your verdict as read?

4 JUROR NUMBER 12: Yes.

5 THE COURT: All right. We will record the verdict in the minutes.

6 Ladies and gentlemen, the admonition that I've been reading to you for
7 the last two days about that you're not allowed to talk to anybody about the case
8 and you're not allowed to let anybody talk to you, I'm releasing you from that
9 admonition. You may speak with anybody about the case as you wish. You don't
10 have to if you don't want to. Should somebody attempt or persist in talking to you
11 about the case against your wishes, report it to any court staff including Reichert
12 and I'll deal with it appropriately.

13 I also want to thank you. I told you yesterday that we have a cherished
14 constitutional right and I mean it. And without folks like you who are willing to come
15 from the community to sit in this important capacity we couldn't respect and honor
16 this right. So, I thank you for that and thank you for your service. I like to speak with
17 each jury in the jury room for just two minutes. I don't talk about the decisions. I ask
18 whether you've been treated with respect from the point you received your jury
19 summons to the time you were released and find out if there's something that
20 maybe Court services and the process could do better. And so I reach out to you
21 with those questions very brief and then I'll have the bailiff take you downstairs and
22 get you paid through jury administrator and get you on your way and out the door.

23 Again, on behalf of the Eighth Judicial District, I want to thank you for
24 your service. If you'd follow the officer, please.

25 [Outside the presence of the jury]

1 THE COURT: The record shall reflect we're outside the presence of the jury
2 based upon the verdicts as recorded. This matter is referred to the Department of
3 Parole and Probation for the preparation of a Pre-Sentence Investigation Report and
4 passed for sentencing. Any motions either side?

5 MS. HERBERT: No, Judge.

6 THE COURT: All right. This will be your sentencing date.

7 THE COURT CLERK: The sentencing date is October 10th, 8:15 a.m.

8 THE COURT: Anything else, ladies and gentlemen? Anything at all?
9 Have a good day.

10 MR. O'BRIEN: Thank you, Judge.

11 THE COURT: If you want to talk to them in the hallway, you might want to
12 meet them on the third floor. It's frankly up to you.

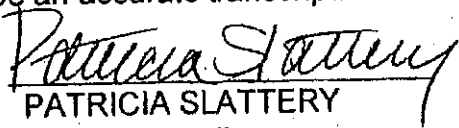
13 MS. HERBERT: Okay.

14 MR. O'BRIEN: Okay.

15
16 [Jury trial, Day 2, concluded at 3:35 p.m.]

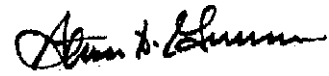
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21 ATTEST: Pursuant to Rule 3C(d) of the Nevada Rules of Appellate Procedure, I
22 acknowledge that this is a rough draft transcript, expeditiously prepared, not
proofread, corrected, or certified to be an accurate transcript.

23 
24 PATRICIA SLATTERY
25 Court Transcriber

ROUGH DRAFT TRANSCRIPT
Vol. 2- Page 137

COPY



CLERK OF THE COURT

1 **RTRAN**

2
3
4 **DISTRICT COURT**
5 **CLARK COUNTY, NEVADA**

6
7 **THE STATE OF NEVADA,**

8 **Plaintiff,**

9 **vs.**

10 **FRANKIE ALAN WATTERS,**

11 **Defendant.**

CASE NO. C272483-1

DEPT. XVIII

12 **BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE**

13 **MONDAY, OCTOBER 10, 2011**

14 **TRANSCRIPT OF PROCEEDINGS**
15 **SENTENCING**

16
17
18 **APPEARANCES:**

19 **For the Plaintiff:**

HETTY O. WONG, ESQ.
Deputy District Attorney

21 **For the Defendant:**

ROBERT E. O'BRIEN, ESQ.
Deputy Public Defenders

23
24
25 **RECORDED BY: RICHARD KANGAS, COURT RECORDER**

1 MONDAY, OCTOBER 10, 2011 AT 8:12 A.M.

2
3 THE COURT: Page 7, C272483, State of Nevada versus Frankie Alan
4 Watters. The record should reflect the presence of Mr. Watters in custody with
5 counsel, representative of the State.

6 This is time set for sentencing. Any legal cause or reason why
7 judgment should not be entered?

8 MR. O'BRIEN: No, Your Honor.

9 THE COURT: Hearing no reason to delay adjudication -- well, the first
10 question we're going to talk about prior to adjudication is this was a decision by
11 verdict, jury verdict. Counts 1 and 2, possession of stolen vehicle; Count 1, Count 2
12 grand larceny auto are alternative theories. No?

13 MS. WONG: They're two separate vehicles, Your Honor.

14 THE COURT: Okay.

15 MS. WONG: The Defendant was in a stolen vehicle and he fled to the
16 Eastside Cannery and then stole a second vehicle --

17 THE COURT: Oh, that's right.

18 MS. WONG: -- at the Eastside Cannery.

19 THE COURT: All right. So they are not -- under the *Point* [phonetic] decision,
20 they are not alternative theories. So adjudication as to each offense would be
21 appropriate under law.

22 Mr. Watters, you're adjudicated guilty of Counts 1, possession of stolen
23 vehicle; Counts 2, grand larceny auto; Count 3, stop required on signal of police
24 officer. Again, this is a jury verdict. Ms. Wong, you were trial counsel. Your insight.

25 MS. WONG: Thank you, Your Honor.

1 Your Honor, in this case the State's going to ask that the Court impose
2 a sentence of 22 to 96 months as to Count 1; 48 to 120 months as to Count 2 to run
3 concurrent with Count 1 and then finally, 28 to 72 months on Count 3, consecutive
4 to both Counts 1 and Count 2, concurrent with Case C273350.

5 The Defendant has four prior felonies including priors for evading,
6 possession of stolen vehicle and grand larceny auto which are the same offenses
7 that he was convicted by a jury of two months ago. The Defendant's most recent
8 felony is for a robbery in Case C273350. There he was also found guilty by a jury.
9 In that case the Defendant basically went into the store, stole some beer and when
10 confronted by the clerk, punched the clerk in the face. In that case the Defendant
11 was sentenced to 48 to 156 months on October the 4th of 2011.

12 Your Honor, I actually wanted to talk about the Defendant's prior three
13 cases, the evading, grand larceny auto and possession of stolen vehicle. In Case
14 C216011 and C216365, those instances stem from -- that -- those cases stem from
15 an incident occurring on September 24th of 2005 where the Defendant ultimately
16 pled guilty to grand larceny auto and possession of stolen vehicle. In those cases
17 officers noticed that the Defendant was actually driving a stolen vehicle. They
18 activated their lights and sirens, told the Defendant to stay inside his vehicle. The
19 Defendant actually then took off running and ran into a woman's back yard. He then
20 actually runs into the woman's house and actually tells the woman that she needed
21 to go hide because the police were looking for him. Ultimately, the Defendant was
22 apprehended and he did in fact admit to stealing that stolen vehicle earlier that
23 morning.

24 And then in Case C210303, which occurred on March 14th of 2005, the
25 officers attempted to stop the Defendant in a vehicle. Ultimately, that vehicle later

1 returned stolen as well. And when the officers attempted to stop him, the Defendant
2 then accelerated into a gas station, darted between gas pumps where two people
3 were actually pumping gas and then almost hit two of the vehicles. The Defendant
4 then exited the parking lot at the gas station and proceeded down Russell where he
5 then cutoff several cars; again, almost hitting two other motorists.

6 Defendant ultimately lost control of his car and hit two street signs and
7 when the car came to a stop, the Defendant actually fled on foot, jumped into a
8 wash area and swam across the wash until he reached the other side. And when
9 the Defendant ultimately exited the wash, he then removed all of his clothes -- or
10 removed his clothes and jumped over a wall of a residence where police were
11 ultimately able to apprehend him.

12 The Defendant ended up serving 18 to 48 months on those three
13 cases.

14 Now in this particular case, I know Your Honor already heard the trial so
15 I'll be brief with the facts. Here the Defendant was driving a stolen vehicle. He
16 actually runs into the back of a trailer. He then flees to the Eastside Cannery where
17 he is caught on video stealing a second car. He -- and then when confronted by the
18 police, he then takes them on a high-speed chase going 65 to 70 miles down city
19 streets on a Friday afternoon. And in the process he then drives on the wrong side
20 of the road six times, runs stop lights and stop signs at least three times, nearly
21 causes an accident three times including almost running over two small children and
22 a crossing guard.

23 The Defendant then actually causes four separate accidents including a
24 collision with an 82-year-old man as well -- or a vehicle driven by an 82-year-old
25 man and then also a patrol car. And after the police finally brought his vehicle to a

1 stop, he then fled on foot, took off the sweatshirt he had been wearing, ran into a
2 Wal-Mart where he was ultimately apprehended by the canine unit.

3 Your Honor, when we look at the Defendant's conduct since 2005, a
4 theme clearly emerges here. The Defendant has demonstrated that he is not only a
5 prolific car thief, but he is someone who will steal cars and when confronted by
6 police, will do anything to get away. He's shown a complete disregard for human
7 lives and it's really amazing that he hasn't really killed anybody yet.

8 Now, the Defendant went to prison in 2005 for engaging in the same
9 type of conduct as he is convicted here of today. Obviously, he hasn't learned his
10 lesson. I anticipate that Mr. O'Brien, when he finally gets a moment to speak, will
11 probably talk about the Defendant's drug abuse and how his drug addiction has led
12 to his conduct over the past six years.

13 However, the Defendant went to prison for 18 to 48 months on those
14 other three cases a couple of years ago. He hasn't learned his lesson and if going
15 to prison for 18 to 48 months did not help him with this problem, did not teach him a
16 lesson, there really isn't much more that the system can do for him. At some point
17 it's no longer about rehabilitation. At some point it has to be about punishment. It
18 has to be about keeping the community safe. And every day that Mr. Watters
19 remains in prison is another day that our community is just a little bit safer. And for
20 that reason the State is going to ask that the Court impose a 22 to 96 month
21 sentence as to Count 1, 48 to 120 months as to Count 2, concurrent, and then 28 to
22 72 months as to Count 3, consecutive to Count 1 and 2, concurrent with C273350.

23 THE COURT: All right.

24 Mr. Watters, this is your opportunity to present any information in
25 mitigation of sentence. You've never served in the military; true?

1 THE DEFENDANT: True.

2 THE COURT: Anything you want to say?

3 THE DEFENDANT: Yes, sir. I'd just like to apologize to the victims in this
4 case, as well as to Court, Your Honor. I don't want to make excuses for my
5 behavior. I take full responsibility for my actions, as well as I just want the Court to
6 know that I want to go and rehabilitate myself during my prison sentence, get out to
7 the community and be a productive citizen. I know that these actions that are here
8 today do not show me for the true person that I am. I do have a drug addiction,
9 Your Honor. I'm completely two different people and I intend to go to prison and do
10 whatever it takes to rehabilitate myself for my drug addiction, Your Honor.

11 With that being said, that's basically all I have to say, Your Honor.

12 THE COURT: Counsel, your insight?

13 MR. O'BRIEN: Yes, Judge.

14 I guess to, you know, before I start talking about mitigation, just to put
15 forward what we're requesting. Defense is requesting that the Court run -- that the
16 Court accept the sentence recommendations of the PSI; 22 months to 96 months on
17 Count 1, 22 months to 96 months on Count 2 and 13 months to 60 months on Count
18 3. But, Judge, the main difference here being that we're requesting that that -- those
19 sentences all run concurrent with his sentence that he received from Judge Leavitt
20 in Case Number C273350. Judge Leavitt imposed a 4 to 13-year sentence in that
21 case, Judge.

22 With that said, to discuss some of the factors I think, you know, one of
23 the phrases that popped out in the DA's discussion here is showing absolutely no
24 value for human life. And I don't want to minimize the danger that Mr. Watters put
25 people in the day that he was driving around because it's probably true. He didn't

1 value human life 'cause he certainly didn't value his own. And looking back over his
2 history, it's a consistent sign of basically suicidal activity. Now, one -- you know, one
3 method of that is, you know, pills or a gun or slitting your wrist; another is acting
4 incredibly dangerously in a way that you -- just showing that you don't care if you die
5 when you act this way.

6 And, you know, towards -- to discuss towards that, Judge, I want to talk
7 a little bit about his mental health history because I'm not sure where Parole and
8 Probation looked to try to find mental health history. They have listed no significant
9 concerns in their report. Well, our social worker went out to the Clark County School
10 District and went out and talked to the State Prison system. There's significant
11 mental health concerns here, Judge.

12 In 1995 at eight years old Mr. Watters is diagnosed as manic
13 depressive. This is from -- this is a doctor who's -- he's been referred to by the Clark
14 County School District. He's not only diagnosed as manic depressive but that he
15 also has serious mental illness. And I apologize, I do have records on all this as I'm
16 speaking. I didn't get the PSI until Friday. So if at any point, the Court or the DA
17 would like to see records, I do have records to back this up. But a year before that
18 in 1994 what gave rise to the referral at seven years old the Clark County School
19 District started following his emotional instability. They diagnosed him as having a
20 serious emotional disturbance and being depressive -- or having depression. The
21 doctor they refer to him in 1995, Judge, he says that he believes Mr. Watters is
22 manic depressive at eight years old. But because of his young age, he doesn't want
23 to put a firm definition of manic depression but he warns this boy needs to be
24 watched. He needs to be re-evaluated every few years because if I'm right, we have
25 a serious problem.

1 In 2002 Clark County School District re-evaluates Mr. Watters at 15
2 years old. Once again, they categorized him as emotionally disturbed and suffering
3 from depression. In 2006, Judge, he's finally in the state prison system. He's 19
4 years old. Well, NDOC diagnosis him as part of his entry evaluation and for the first
5 time he's diagnosed as bipolar on top of manic depression, on top of the other
6 serious emotional issues. And when he gets out of state prison, before he, you
7 know, engages in all the other activity we talked about here today, in 2010 he shows
8 up at Saint Rose Hospital. He's brought in there because he's found in a car with
9 the windows up in the middle of summer. When the doctors asked what he's doing,
10 he says he just wants to die.

11 Throughout this entire time, Judge, he's only received any treatment for
12 the mental illness, only received any medication when he was in state prison and it
13 doesn't just start there, as mental health issues usually tend to come at least in part
14 genetically.

15 Looking back into his, you know, family history, Mr. Watters' mother
16 was addicted to crack cocaine, his biological mother. And the doctor who was
17 evaluating Mr. Watters at eight years old suggested he believes that she used crack
18 cocaine continuously while Mr. Watters was -- while she was pregnant with Mr.
19 Watters. Now, I don't have a specific diagnosis on how that affects him but as we've
20 seen over and over again, in utero crack usage does tend to cause problems with
21 brain development.

22 In addition, Judge, looking at the background criminal history on Mr.
23 Watters' father, he also has a long history of drug abuse and, subsequently, a long
24 history of incarceration. The doctor going over his -- over Mr. Watters' family
25 records in 1995 suggests that there's several reports that his father is paranoid

1 schizophrenic.

2 So like so many of my clients with significant mental health issues,
3 Judge, when there is not readily available medication, they turn to essentially self-
4 medication, to what's readily available on the streets and that's what leads to the
5 drug addict -- or the drug usage by Mr. Watters. And I wanted to talk about the
6 mental health history first because I wanted to just show that it's not Mr. Watters
7 taking -- just taking a joy ride in that car. It's not recreational use of crystal
8 methamphetamine or marijuana that puts him in that car. It's a long history of
9 mental illness untreated and then self-treated with illicit drugs in order to get him into
10 that car, to get him to the suicidal state where he would take those actions.

11 And then to go a little bit into the drug history because the PSI does
12 cover some of this, but the ages are pretty amazing here, Judge. At eight years old
13 he starts using marijuana regularly. At 11 years old he becomes a regular drinker of
14 alcohol. At 14 years old he begins his regular usage of crystal methamphetamine;
15 all this time receiving no treatment for his mental illness, self-treating with these
16 different substances.

17 And I guess that has a lot to do with where Mr. Watters has come from
18 and what we're discussing really is where he goes from here. He's going to state
19 prison. There's no way around that. He's going for 4 to 13 years. And what I would
20 suggest, Judge, is that this Mr. Watters standing in front of you is different than the
21 one that was in the car making the decisions to be in the car as a teenager in the
22 earlier case that Ms. Wong was discussing and the decision to be in the car at this
23 time joy riding.

24 Now Mr. Watters is a 25-year-old man. He has one son, one child on
25 the way. He's starting to recognize that he's now the model for his son for what a

1 man's behavior should be that he's now creating a cycle where he's reproducing
2 some of the ugly behaviors he saw as a child. Towards the idea of changing his life
3 and focusing on his children, Judge, one other thing I'd like to correct in the PSI
4 under gang activity/affiliation, the PSI has him listed as denying any gang
5 involvement. Mr. Watters hasn't denied that he's been a member of a gang before,
6 Judge. What he's trying to explain is that he has left the gang. He has made a
7 decision to leave the gang since being picked up on this charge, since making the
8 decision to change his life.

9 In addition to that, you know, the Mr. Watters that I met in prison,
10 obviously, sober and not addicted to crystal methamphetamine -- well, or not using
11 crystal methamphetamine at the time, is reflective, thoughtful. While he can't
12 remember the events of that day and he's still -- he has told me that from the minute
13 I got on this case, Judge, you know, concerned about what he did if -- you know,
14 assuming that he did do that and a jury obviously found that he did. But and --
15 towards that in steps that he's shown towards that action in addition to trying to
16 leave the gang or leaving the gang, Judge, when he was sentenced in front of Judge
17 Leavitt he asked for the 184 treatment program in state prison. Judge Leavitt did
18 approve him for that or recommend him for that.

19 And the final thing I'll just say, Judge, is that Mr. Watters will be coming
20 out of prison likely in his seventies no matter what happens here. And the decisions
21 of a 30-year-old man with two children are very different than the decisions of an
22 impulsive 19-year-old or even 23, 24-year-old. In the 30's as he passes from a
23 young man into a maybe a delayed adulthood, but in his 30's a man begins to think
24 about the future, you know, what stability, what he's building and Mr. Watters has
25 also started turning towards that looking at his children and what he's building for

1 them.

2 And I'd ask that you impose the recommended time listed by the PSI
3 here, Judge, but run it all concurrent with what Judge Leavitt imposed. Thank you.

4 THE COURT: Mr. Watters, based upon your criminal history and the facts of
5 this case, you're a real and continuing threat to the community. You demonstrated
6 that by your own actions and decisions that we heard about during this jury trial.
7 Your decisions were your own. You don't demonstrate by choices you made on that
8 day in March that you've learned anything because you sustained the same type of
9 conviction back in 2005. With three prior felony convictions, three trips to prison,
10 two parole revocations already prior to coming here, you are by all estimates and all
11 analysis here a real continuing threat.

12 Now, I hope that eventually you will parole. That is the reality of our
13 system. And my hope is and as Judge Leavitt recognized, a 184 programming or
14 recommendation does seem to be appropriate based upon your unique situation but
15 you need to be held to account and in accordance with the law of the state of
16 Nevada the following sentence is structured the way I hope to reflect that.

17 In accordance on Count 1 it's going to be 24 to 120 months Nevada
18 Department of Corrections; Count 2, 24 to 120; Count 3 it's going to be 13 to 60
19 months Nevada Department of Corrections for the evading. I'm going to run those
20 counts consecutive to one another. They are independent in their action and choice
21 and they are independent to your decisions in C273350, the robbery case. It's going
22 to run consecutive to that as well. There's a \$25.00 administrative assessment fee.
23 The DNA was taken many years ago on your first adjudication. That statutory
24 requirement is waived but there is a \$250.00 indigent defense fund fee. The PSI is
25 recommending 40 days CTS. All other credit was applied to the robbery case,

1 C273350. Is that an accurate statement of the credit for time served, 40?


2 MR. O'BRIEN: I believe so, Judge.

3 THE COURT: All right. That'll be the order.

4 [Proceeding concluded at 8:30 a.m.]

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

23 
24 Cheryl Carpenter,
25 Court Recorder/Transcriber

ORIGINAL

FILED

JAN 05 2012

1 AJOC

2 DISTRICT COURT

Alan J. Blum
CLERK OF COURT

3 CLARK COUNTY, NEVADA

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6 THE STATE OF NEVADA,

7 Plaintiff,

CASE NO. C272483-1

8 -vs-

DEPT. NO. XVIII

9 FRANKIE ALAN WATTERS
10 #1962765

11 Defendant.

12 AMENDED JUDGMENT OF CONVICTION
13 (JURY TRIAL)

14
15 The Defendant previously entered a plea of not guilty to the crimes of COUNT 1 -
16 POSSESSION OF STOLEN VEHICLE (Felony), in violation of NRS 205.273, COUNT 2
17 - GRAND LARCENY AUTO (Felony), in violation of NRS 205.228, and COUNT 3 -
18 STOP REQUIRED ON SIGNAL OF POLICE OFFICER (Felony), in violation of NRS
19 484B.550; and the matter having been tried before a jury and the Defendant having
20 been found guilty of the crimes of COUNT 1 - POSSESSION OF STOLEN VEHICLE -
21 VALUE \$2,500.00 OR MORE (Felony), in violation of NRS 205.273, COUNT 2 -
22 GRAND LARCENY AUTO - VALUE \$2,500.00 OR MORE (Felony), in violation of NRS
23 205.228, and COUNT 3 - STOP REQUIRED ON SIGNAL OF POLICE OFFICER
24 (Felony), in violation of NRS 484B.550; thereafter, on the 10TH day of October, 2011,
25 the Defendant was present in court for sentencing with his counsel, ROBERT O'BRIEN,
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27
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C-11-272483-1

AJOC

Amended Judgment of Conviction

1736660



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1 Deputy Public Defender, and good cause appearing,

2 THE DEFENDANT WAS THEREBY ADJUDGED guilty of said offenses and, in
3 addition to the \$25.00 Administrative Assessment Fee, Indigent Defense Civil
4 Assessment Fee of \$250.00, and to PAY \$4,870.00 RESTITUTION, the Defendant was
5 SENTENCED to the Nevada Department of Corrections (NDC) as follows: AS TO
6 COUNT 1 - TO A MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a
7 MINIMUM parole eligibility of TWENTY-FOUR (24) MONTHS; AS TO COUNT 2 - TO A
8 MAXIMUM of ONE HUNDRED TWENTY (120) MONTHS with a MINIMUM parole
9 eligibility of TWENTY-FOUR (24) MONTHS, COUNT 2 to run CONSECUTIVE to
10 COUNT 1; and AS TO COUNT 3 - TO A MAXIMUM of SIXTY (60) MONTHS with a
11 MINIMUM parole eligibility of THIRTEEN (13) MONTHS, COUNT 3 to run
12 CONSECUTIVE to COUNT 2 and this Sentence to run CONSECUTIVE to Case
13 C273350; with ZERO (0) DAYS Credit for Time Served. As the Fee and Genetic Testing
14 have been previously imposed, the Fee and Testing in the current case are WAIVED.
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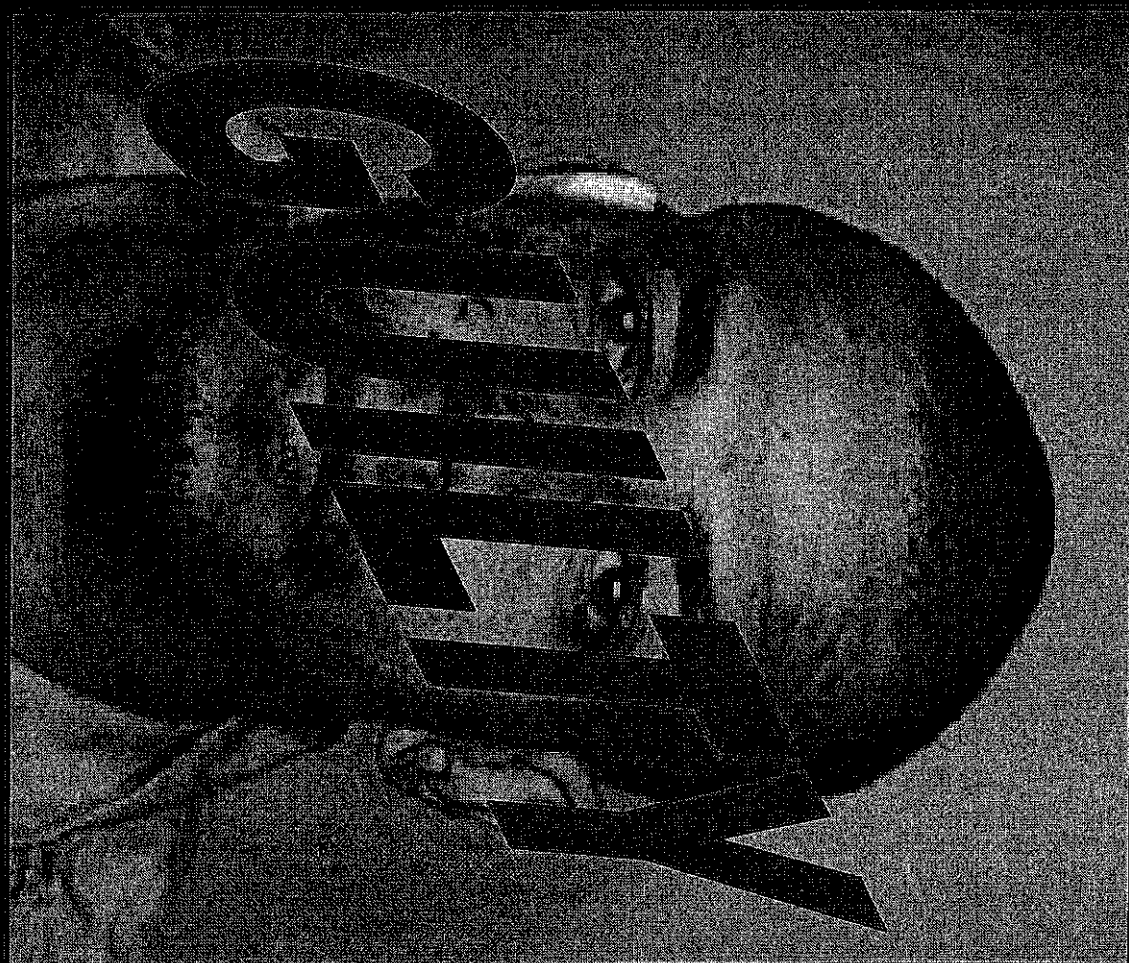
16 THEREAFTER, on the 22nd day of December, 2011, due to a clerical error and
17 good cause appearing to amend the Judgment of Conviction; now therefore,

18 IT IS HEREBY ORDERED the Defendant's sentence to be amended to include
19 FORTY (40) DAYS Credit for Time Served.
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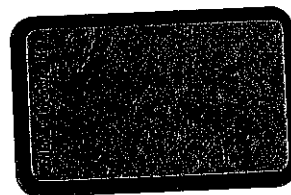
21 DATED this 27th day of December, 2011
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DAVID BARKER
DISTRICT JUDGE

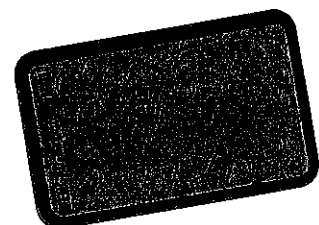


Any person who has in his possession, with the intent to permanently deprive the owner, any motor vehicle which he knows or has reason to believe has been stolen is guilty of Possession of Stolen Vehicle.



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Property is stolen if a person steals, takes, or carries away, personal property of another, with the intent to permanently deprive the owner.



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No. 59703

Appellant,

vs.

THE STATE OF NEVADA,

Respondent.

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CATHERINE CORTEZ MASTO
Attorney General
100 North Carson Street
Carson City, Nevada 89701-4717
(702) 687-3538

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Tracie K. Lindeman
Clerk of Supreme Court

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Respondent.

APPELLANT'S APPENDIX VOLUME III – PAGES 348-494

DAVID ROGER
Clark County District Attorney
200 Lewis Avenue, 3rd Floor
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Counsel for Respondent

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FRANKIE ALAN WATTERS
Case No. 59703

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1	Transcript of Proceedings,	
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5 *John T. Lohman*
6 CLERK OF COURT

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 THE STATE OF NEVADA,

10 Plaintiff,

CASE NO. C272483-1

11 vs.

DEPT. XVIII

12 FRANKIE ALAN WATTERS,

13 Defendant.

C-11-272483-1
TRANS
Transcript of Proceedings
1719592



14 BEFORE THE HONORABLE DAVID BARKER, DISTRICT COURT JUDGE

15 TUESDAY, AUGUST 9, 2011

16 **ROUGH DRAFT TRANSCRIPT OF PROCEEDINGS**
17 **JURY TRIAL**
18 **DAY 2, VOLUME 2**

19 APPEARANCES:

20 For the Plaintiff:

HETTY O. WONG, ESQ.
JENNIFER HERBERT, ESQ.
Deputy District Attorneys

22 For the Defendant:

ROBERT MICHAEL GARDNER, ESQ.
ROBERT E. O'BRIEN, ESQ.
Deputy Public Defenders

23 RECEIVED

24 DEC 14 2011

25 CLERK OF THE COURT
RECORDED BY: RICHARD KANGAS, COURT RECORDER

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1 MONDAY, AUGUST 8, 2011 AT 8:58 A.M.

2
3 [Outside the presence of the prospective jury]

4 THE COURT: This is C272483, State of Nevada, plaintiff, versus Frankie
5 Watters. The record should reflect the presence of the representatives of the State
6 and defense outside the presence of the jury. Mr. Garner.

7 MR. GARNER: Your Honor, I believe yesterday when I made the objection to
8 the State's opening argument when they showed the picture and wrote the words
9 guilty, I think my client wasn't here. And he was very upset about that and he -- I
10 think he doesn't understand that I did make the motion --

11 THE COURT: Oh, absolutely.

12 MR. GARNER: -- in your presence maybe could -- I did object to it.

13 THE COURT: Let's talk -- let's do the *Carter* admonition while we're at it.
14 And that's true. Mr. Watters, if you weren't here --

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Mr. Garner, your lawyer, did object strongly to that and I know
17 that his concerns on the record, frankly, Power Points under the case they're
18 allowed to use it, they're allowed -- both sides are allowed to express where they
19 believe the evidence will take them and the ultimate conclusion that the jury should
20 reach, and that's all that photograph does. But Mr. Garner did strenuously object
21 and he's built a record on that. So, I hope that satisfies you that he's working in your
22 best interest.

23 I'm responsible under the law to explain to you what's known as your
24 *Carter* rights.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And so that's what we're going to do now. They have to do it
2 on the record. You should understand that you have a right under the Constitution
3 of the United States and under the constitution of this state of Nevada not to be
4 compelled to testify; do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: You may if you wish give up that right and take the witness
7 stand and testify. If you do, you would be subject to cross-examination by the
8 District Attorney and anything you may say, be it on direct or cross-examination,
9 would be the subject of fair comment when the District Attorney speak to the jury in
10 final argument. Do you understand that?

11 THE DEFENDANT: Yes, sir.

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

15 THE DEFENDANT: Yes, sir.

16 THE COURT: If you elect not to testify, the Court will instruct the jury only if
17 your attorney specifically requests as follows: The law does not compel a
18 Defendant in a criminal case to take the stand and testify and no presumption may
19 be raised and no inference of any kind may be drawn from the failure of the
20 Defendant to testify. So I would instruct, after you talk to your attorneys -- and it's
21 your decision --

22 THE DEFENDANT: Yes, sir.

23 THE COURT: -- whether to testify or not. If your decision is that you do not
24 wish to testify, then you have to ask and decide whether or not you want the jury
25 specifically instructed. Now if you were listening yesterday when I told everybody at

1 the appropriate time I give the instructions on the law and they're all reduced to
2 writing .

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Some attorneys like to have the *Carter* instruction in it as part
5 of that package. Some do not. Some say it's ringing the bell; some don't.
6 Everybody is a little difference.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Fundamentally, though, it's your right and your decision to
9 make after you talk to your lawyers about how they feel and how you feel about that
10 instruction. Does that make sense to you?

11 THE DEFENDANT: Yes, it does, sir.

12 THE COURT: Do you have any questions that you would like to ask me
13 about these important rights?

14 THE DEFENDANT: Yes, I would, sir.

15 THE COURT: Okay.

16 THE DEFENDANT: Is there any chance that -- okay I know that I can waive
17 my right but I don't have to waive my right.

18 THE COURT: Correct.

19 THE DEFENDANT: Now if I don't waive my right to testify, does that mean I
20 have to testify or I'm just not giving up that right?

21 THE COURT: I'm not sure I understand. They cannot call you as a witness in
22 their case.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: The constitutions say that, both the State and Federal
25 Constitutions say that.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And they cannot, if you invoke your right --

3 THE DEFENDANT: Yes, sir.

4 THE COURT: -- I would not let them talk to the jury and say: Look at Mr.
5 Watters over there, sitting there. He never testified. You should take that, you
6 know, that should be held against him. They can't do that.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: That's what the law says, that's what the Constitution -- that's
9 how the Constitution protects you. It protects all of us.

10 THE DEFENDANT: Okay.

11 THE COURT: So, I guess I just don't understand your question.

12 THE DEFENDANT: I just -- I don't want to give up any more rights than I've
13 already given up in this case and I don't want to give up my right to testify, and I
14 don't want to be pressured to testify.

15 THE COURT: Again, nobody can pressure you to testify.

16 THE DEFENDANT: Thank you, sir. And so if that's your decision -- and
17 frankly you don't have to make that decision until you hear what the DA, the
18 government, the evidence they have against you.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: So, you may have an idea of where the evidence goes but,
21 frankly, it's not done until it's done, until all the witnesses are called and those
22 prosecutors stand up and say: We rest. And then you know all the evidence that
23 your jury's had and that's the time when you have to say: Well, you know, I
24 changed my mind. Right now you sound like you're inclined not to testify. That's
25 your choice.

1 THE DEFENDANT: Yes.

2 THE COURT: But I'm not going to ask -- you don't have to decide until it's all
3 done and you know what the evidence is.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: -- and I'm going to ask you. If your decision is the same, the
6 next step you have to take is whether or not you want this instruction included in the
7 package of instructions or not.

8 THE DEFENDANT: Okay.

9 THE COURT: And like I said before, sometimes Defendants like yourself like
10 that, they want it in there so that their attorney can stand up and say: Ladies and
11 gentlemen, you cannot hold this against my client because he has a constitutional
12 right. Some don't like to ring that bell. It's kind of a trial strategy, but ultimately it's
13 your choice. Does that make sense?

14 THE DEFENDANT: Yes, I understand that, sir.

15 THE COURT: All right. Now if there are prior felony convictions involved -- in
16 your history -- I know nothing about you, Mr. Watters.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: But you are treated like -- if you get on the stand, you're
19 treated like every other witness, you're examined, cross-examined. Each witness
20 under the rules and under the law can be impeached with prior felony convictions if
21 you've had them and they're within the rules. The rule is you can't be impeached
22 with a prior felony conviction that's older than ten years from the expiration of a
23 sentence.

24 THE DEFENDANT: Okay.

25 THE COURT: So, I don't know if they're in your background if there's a prior

1 felony conviction or not, but you need to talk to Mr. Garner and Mr. O'Brien about
2 that. But that's got to be part of your decision. Does that make sense?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. Anythign else, Mr. Garner?

5 MR. GARNER: No, Your Honor.

6 THE COURT: Good. All right. I don't know if the bailiff came in and said we
7 were ready or not. He did stick his head in and normally he wouldn't unless we
8 were ready to go.

9 State, are you lined up?

10 MS. HERBERT: Yes.

11 THE COURT: All right.

12 [Pause in proceedings at 9:05 a.m.]

13 [Proceedings resumed at 9:10 a.m.]

14 [Outside the presence of the jury]

15 THE COURT: This is C272483, State of Nevada versus Frankie Watters.
16 The record shall reflect the presence of the representatives of the State and defense
17 outside the presence of the jury. Both side should -- I don't know if you just heard
18 the bailiff report that Juror 4 and 12 are missing. My common practice is to what 15
19 minutes from the call -- when I told them to report and adjust according. Let's see
20 where we go. We're still a few minutes outside the --

21 MR. GARNER: Thanks, Judge.

22 MS. HERBERT: Thank you.

23 THE COURT: We can still move forward because we still have 12 if we have
24 substitute the two alternates, but that's kind of where we're at right now. We might
25 even give them a few more minutes than that.

1 MR. GARNER: Thank you, Judge.

2 MS. HERBERT: Thank you, Judge.

3 [Pause in proceedings at 9:10 a.m.]

4 [Proceedings resumed at 9:20 a.m.]

5 [Inside the presence of the jury]

6 THE COURT: Okay. This is C272483, State of Nevada, plaintiff versus
7 Frankie Waters. The record shall reflect the presence of the representatives of the
8 State and the defense and all members of the jury do appear to be present. Do the
9 parties stipulate to the presence of the entire panel? State.

10 MS. HERBERT: Yes, Judge.

11 THE COURT: And defense?

12 MR. O'BRIEN:

13 THE COURT: The record will reflect we remain in State's case in chief. Call
14 your next witness.

15 MS. HERBERT: The State calls David Granger.

16 THE MARSHAL: Remain standing, raise your right hand and face the clerk.

17 **DAVID GRANGER**

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

19 THE COURT CLERK: Thank you. Please be seated. State and spell your
20 name for the record.

21 THE WITNESS: David Robert Granger, last name is spelled G-R-A-N-G-E-R.

22 THE COURT: Counsel, your witness.

23 MS. WONG: Thank you, Judge.

24 **DIRECT EXAMINATION**

25 BY MS. WONG:

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1 Q Good morning, Mr. Granger.

2 A Good morning.

3 Q How are you employed?

4 A I am currently employed with the Clark County School District in the
5 garage as a garage attendant.

6 Q I'm sorry. I couldn't hear you.

7 A I'm currently employed with Clark County School District as a garage
8 attendant.

9 Q Garage attendant. Okay. Now back on March 18th, 2011, how were
10 you employed?

11 A I was employed with -- by Cheyenne Auto Parts. I was a delivery
12 driver.

13 Q Okay. And how long did you work with Cheyenne Auto Parts?

14 A At that time I was there for approximately three and a half years.

15 Q And where were you on March 18, 2011 at approximately 3:15 in the
16 afternoon?

17 A I'm guessing I was on Sunset Road and Green Valley Parkway.

18 Q And is that located near your job?

19 A No; it would have been in the course of my job.

20 Q Okay. What were you doing there?

21 A I was delivering auto parts.

22 Q Now did something occur on that day that caused you to be here
23 today?

24 A I'm afraid maybe I misunderstood the question.

25 Q Okay. I'll re-phrase. Back on March 18, 2011 did something occur that

1 caused you to be here today?

2 A Right. I'm sorry. I got confused; yes, an auto accident.

3 Q Okay. And take us back. Right before this car accident, what were you
4 doing?

5 A I had just left the Cheyenne Auto Parts store on my way --

6 Q I'm sorry. And where's the Cheyenne Auto Parts store located?

7 A It's on Tropicana Avenue just east of Nellis Boulevard.

8 Q All right. And what happened after you just left the store?

9 A I was westbound on Tropicana. I had just passed through the traffic
10 light at Nellis Boulevard when --

11 Q So, you were in a vehicle?

12 A Yes, I'm sorry. I was making my deliveries in the company truck.

13 Q Okay. And what kind of truck was it?

14 A It was a Chevy -- I believe it is a Tacoma.

15 Q Okay. And what color?

16 A It was dark blue.

17 Q All right. And did it have license plate S --I'm sorry -- C-H-E-Y 34?

18 A Yes; we called it Chey 34. That's how they numbered their vehicles.

19 Q Okay. After it's name, the company name?

20 A Yeah, Chey as in Cheyenne.

21 Q All right. So, please continue. What were you doing as you were going
22 to make that delivery?

23 A All right. Right after I left the store parking lot, I was westbound on
24 Tropicana. I got caught at the traffic light so I stopped and waited for the traffic light
25 to turn green. It placed in the front there at the line and when the light turned green,

1 I proceeded westbound. I think I'd gotten approximately -- well first of all, I was
2 increasing my speed to match the posted speed limit.

3 Q Which was?

4 A Which was 45 miles per hour. I think I had passed maybe fifty feet
5 beyond the other side of the traffic light when I noticed out of the corner of my eye,
6 something odd. It was a vehicle traveling east traveling in the westbound lanes.
7 About the time my brain processed this, this vehicle made a sharp left hand turn,
8 cutting on front of me. I realized that there was going to be an impact so I stepped
9 on my brake as hard as I could. But because of his odd position in traffic, his
10 sudden turn and the speed we were going, I couldn't avoid collision.

11 Q Okay.

12 A So, we collided. I think at the very last second I turned my face away
13 from the impact, the windshield, as anyone would when something's about to
14 explode in their face. So, at the time I wasn't aware exactly where on his vehicle I
15 hit but we collided.

16 Q Okay. Now this car that collided with yours, what kind of car was it; do
17 you recall?

18 A It was a foreign, probably Asian teal green.

19 Q And how hard was the impact of the collision?

20 A I think I had reached 35 miles per hour. I believe he was -- the other
21 vehicle was doing at least that so your guess is good as mine as far as hard.

22 Q Now when the teal color car hit yours, did your body jump forward? Did
23 the air bags deploy?

24 A The air bags did not deploy, but that doesn't mean anything. It's a
25 delivery vehicle. Delivery vehicles are usually pushed pretty hard so I can't say the

1 failure for the air bags had anything to do with -- could tell you how fast we were
2 going or how hard the impact was.

3 Q Did you actually feel an impact?

4 A Oh, yes.

5 Q Now how busy were the streets that day?

6 A I have no idea what the traffic was like behind me at the moment, but it
7 was pretty typical. At a red light, you could be car number four or five back there in
8 a three lane traffic light.

9 Q So, there were other cars around on the road?

10 A Oh, yes, definitely.

11 Q Okay. Were there cars to either side of you?

12 A I believe there was a car to the right of me at the traffic light, but I think
13 he -- the car made a right hand turn onto Nellis northbound.

14 Q Now when the -- now this person that collided with your vehicle, do you
15 know which direction he was actually going?

16 A He was heading eastbound.

17 Q On?

18 A On Tropicana.

19 Q And you were going westbound?

20 A Yes.

21 Q Okay. And when he crossed over into your lane, he was now going
22 eastbound in the westbound lane?

23 A Correct.

24 Q Okay. Now did that vehicle, the teal colored vehicle, did it have to cross
25 over a median in order to get to where you were?

1 A I believe he was already over the median when I noticed, when I
2 noticed his vehicle, when I noticed.

3 Q Now were there any structures around that area of Tropicana and
4 Nellis?

5 A Oh, yes, it's a busy intersection. On one corner, there's a little
6 shopping plaza with a bank, a laundry, a grocery store. On two corners there's gas
7 stations with businesses around them. And then on the fourth corner, there's a
8 grocery store. It's a real busy intersection.

9 Q Okay. Now what happened after the collision? Did you see where the
10 teal colored car went?

11 A I looked around and the car was heading -- after the collision was
12 heading eastbound once again and made a left hand turn on Nellis northbound.

13 Q Okay. So, that person was still going eastbound on Tropicana?

14 A Yes.

15 Q Before he made the left on Nellis?

16 A Yes.

17 Q Okay. And now what was the scene like after the accident?

18 A From my part, after I realized this person was driving away, my first
19 thought was to call the police. Then suddenly I heard sirens. I turned around
20 because I originally -- well at this time I had been looking back at the car as it raced
21 away -- I turned around and there were police cars coming at me, in my direction
22 anyway.

23 Q So, within seconds of you calling the police?

24 A Yeah, within seconds; no, I didn't call the police.

25 Q Okay.

1 A I was still thinking of doing this. I turned around and my first thought
2 was: Gee, that was quite a response. I haven't even called the police.

3 Q So, you thought the police were coming to help you?

4 A Yeah. And then I -- as one police -- there was two police cars heading
5 eastbound. One stopped to assist me, I assumed, and the other one pursued the
6 car that had raced away from the accident.

7 Q Now with respect to the car that collided with yours, did you actually see
8 any damage to that vehicle?

9 A It happened real fast, no.

10 Q Okay.

11 A At the moment of impact, like I say, I turned away because I was afraid
12 I was going to get glass in my eyes. And then as soon as the truck stopped, my
13 truck I was in, I looked at the things in my cab that had all gotten thrown to the floor.
14 I guess at the moment I expected the driver to come to a stop also and that
15 everything else would follow the moment.

16 Q So, you thought this would have been just a normal accident?

17 A Yes.

18 Q Okay. And it wasn't?

19 A No, it wasn't.

20 Q Okay. Now was there any damage to the vehicle that you were driving?

21 A It was considered totaled.

22 Q What kind of damages were there to the vehicle?

23 A The front end, probably a chassis, I believe the front suspension and
24 cooling system.

25 Q Were you able to drive this vehicle away?

1 A No, it had to be towed.

2 MS. WONG: Judge, May I approach?

3 THE COURT: Yes.

4 BY MS. WONG:

5 Q Mr. Granger, I'm showing you what's been marked as State's proposed
6 Exhibits 9, 10, 11 and 12. Can you take a look at these and let me know if you
7 recognize the items?

8 A Yes, this was the truck I was driving. This is definitely the truck. That's
9 the truck I was driving.

10 Q And are these photographs fair and accurate depictions of the way the
11 vehicle -- your vehicle looked after the collision?

12 A Yes.

13 MS. WONG: State moves for the admission of State's proposed Exhibits 9,
14 10, 11 and 12 into evidence?

15 THE COURT: Any objection to the exhibits offered.

16 MR. O'BRIEN: No objection, Your Honor.

17 THE COURT: Nine through 12 will be received without objection.

18 **STATE'S EXHIBIT #'s 9 THROUGH 12 ADMITTED**

19 MS. WONG: Permission to publish, Your Honor?

20 THE COURT: Yes.

21 BY MS. WONG:

22 Q Okay. Mr. Granger, showing you State's Exhibit 9. Can you tell us
23 what we're looking at here?

24 A We're looking at the delivery truck I was driving which is is CHEY 34.
25 The vehicle is facing westbound on Tropicana. As you can see, the suspension has

1 been damaged. The impact was on the passenger side and it's pretty totaled.

2 Q And the left side of the vehicle, is this where the teal colored vehicle
3 collided with yours?

4 A Yes.

5 Q Showing you State's Exhibit 10. Is this a close-up of what we just
6 previously looked at? Mr. Granger?

7 A Yes, I'm sorry, yes.

8 Q State's Exhibit 11.

9 A Yes.

10 Q Still a close-up?

11 A Yes.

12 Q Okay. And State's Exhibit 12?

13 A Yes, yes.

14 Q And is this the license plate right here?

15 A Yes, it is.

16 Q C-H-E-Y 34?

17 A That's it.

18 Q I have one question here. What does this say here on the side?

19 A It says: NAPA Genuine Auto Parts. Cheyenne Auto Parts is a
20 distributor of NAPA.

21 Q What is NAPA?

22 A NAPA is a national auto parts association. It's a auto parts
23 manufacturer. And Cheyenne Auto Parts with a distributor for NAPA.

24 Q Okay. Thank you very much.

25 MS. WONG: Pass the witness.

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1 THE COURT: Cross-examination.

2 MR. O'BRIEN: Court's indulgence, Your Honor. No question for Mr. Granger.

3 THE COURT: Anything else from this witness? Please step down.

4 THE COURT: Call your next witness.

5 MS. WONG: Yosvany Otano.

6 THE MARSHAL: Remain standing, raise your right hand and face the clerk.

7 **YOSVANY OTANO**

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

9 THE COURT CLERK: Thank you, sir. State and your spell your name for the
10 record.

11 THE WITNESS: Yosvany Otano.

12 THE COURT CLERK: Spelling.

13 THE WITNESS: Oh, the first name, Y-O-S-V-A-N-Y Otano, O-T-A-N-O.

14 THE COURT: Counsel, your witness.

15 MS. HERBERT: Thank you, Judge.

16 **DIRECT EXAMINATION**

17 **BY MR. HERBERT:**

18 Q Do you want to called Yosvany or Mr. Otano? Which do you prefer?

19 A Yosvany.

20 Q Where do you live right now?

21 A I live here in Las Vegas, 4550 Karen Avenue, Apartment 230.

22 Q Okay. Do you also travel for work?

23 A Yeah.

24 Q Okay. And where do you travel for work?

25 A New York City.

1 Q Okay. How often are you in New York compared to Nevada?
2 A About ninety five percent of the time?
3 Q So, is it fair to say you spend the majority of your time doing business in
4 New York but you're a resident of Nevada?
5 A Yeah.
6 Q Okay. I want to direction your attention to March 18th, 2011. At
7 approximately around 2 o'clock, were you at the Eastside Cannery?
8 A Yeah.
9 Q Okay. And what were you doing there?
10 A Eating with my mom at the restaurant.
11 Q Okay. And did you arrive approximately around 2 o'clock?
12 A Yeah.
13 Q Okay. And how long were at the restaurant for?
14 A At least -- probably like an hour, hour to 15 I think.
15 Q While you were -- well how did you get to the restaurant?
16 A In my car.
17 Q What kind of car did you drive?
18 A 2000 Honda Civic.
19 Q And how many miles did you have on that car, if you remember?
20 A About 150 to about 155,000 miles.
21 Q So, 150,000 to 155,000?
22 A Yeah.
23 Q And where'd you park your car?
24 A In the parking lot on the north -- probably north side parking lot.
25 Q Is it a parking garage or is it an open parking lot?

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1 A Open parking garage.
2 Q Is it is a parking lot or a garage?
3 A Yeah, a parking lot.
4 Q Okay. And when you parked your car did you lock it or leave it
5 unlocked?
6 A Locked.
7 Q And how many sets of keys do you have to your car?
8 A About five.
9 Q Okay. Did you leave any of those sets of keys in your vehicle?
10 A No.
11 Q Were you aware when you parked your car on March 18th where all
12 those sets of keys were?
13 A I have two in my house and then the one in my wallet and then -- well
14 one in my wallet, one on me in my pocket and then I think it's like one or two at
15 home and the remaining in New York City.
16 Q Okay. You have multiple sets of keys because you travel a lot?
17 A Yeah.
18 Q And you don't remember -- there were no keys left in the vehicle; is that
19 right?
20 A No.
21 Q Okay. Who besides yourself has permission to drive your car?
22 A Just myself, my mom and maybe like my sister or maybe like a friend.
23 People that I know.
24 Q People you know. Okay. Do you know an individual by the name of
25 Frankie Watters?

1 A No.

2 Q Okay. Do you recognize sitting in the blue shirt at the table over here
3 on the end?

4 A No.

5 Q Do you know him?

6 A No.

7 Q Does he have permission to drive your vehicle?

8 A No.

9 Q When you -- so you drove to the Cannery in your Honda, parked it,
10 locked it and went inside and ate; is that right?

11 A Yeah.

12 Q And then at some point when you were in the Cannery, did you learn
13 something unusual happening to your car?

14 A Well I didn't know until two officers they told me that -- what happened
15 to my car.

16 Q Okay. Well when did that happen?

17 A After I got done eating and then they -- my mom went to the bathroom
18 and I was waiting for her and that's when two officers came up to me. They told me
19 they were trying to find me.

20 MR. O'BRIEN: Objection; hearsay.

21 THE COURT: Sustained.

22 BY MS. HERBERT:

23 Q Don't tell me what they told you. But the two officers came up to you; is
24 that right?

25 A Yeah.

1 Q Okay. And based upon their conversation with them, what did you
2 learn?

3 A What happened to my car.

4 Q And what did happen to your car?

5 A It got stolen from the parking lot, it got wrecked, and it's location, like
6 right behind the Wal-Mart on -- well it's like right behind the Walmart, it's like Nellis.

7 Q Okay. Close to the area of the Cannery?

8 A Yeah.

9 Q Okay. So, is it fair to say that when the officers approached you you
10 had no idea your car was missing?

11 A No.

12 Q Okay.

13 A I still didn't.

14 Q Did you ever go to the parking garage or the parking lot to see if your
15 car was there or what did you do after the officers came to talk to you?

16 A They -- I followed them out to the parking lot and then they asked me if
17 my car was parked here, like in his area, and I said yeah.

18 Q Okay. And then after you showing the officers where you had parked
19 your car and fair to say your car wasn't there; is that right? Your car wasn't parked
20 where you left it?

21 A Yeah.

22 Q Okay. What did you do after that?

23 A Just found a way home, I guess.

24 Q Well at some point did -- because you mentioned that they told you the
25 location of your vehicle; is that right?

1 A Yeah.

2 Q Okay. Let me ask you this. When the officers first approached you, did
3 you know -- did they also know where the location of your vehicle was or were you
4 just informed it was missing?

5 A They knew where it was 'cause like they said, it's right behind the
6 Walmart.

7 Q Okay. Did you ever go to the Walmart to look at your car?

8 A Yeah, after maybe a few hours later.

9 Q Okay. So --

10 A I took my own pictures also.

11 Q Okay. So, the officers came and spoke to you. And then did you go
12 home in the meantime?

13 A Yeah.

14 Q And then you went to the Walmart? Okay. And you looked at the
15 condition of our car when it was behind the Walmart; is that right?

16 A Yeah.

17 Q Okay. When you had parked your car and [indiscernible] at the
18 Cannery, what kind of condition was it in?

19 A It was good condition, not the best, but it was still drivable.

20 Q Was there any visible scrapes or damage?

21 A No.

22 Q What about the ignition? Was there anything -- damage to the ignition?

23 A No it was a normal ignition.

24 Q When did you purchase this car?

25 A December of 2009.

1 Q Okay. And your car was reported was reported March 18th, 2011; is
2 that right?

3 A Yeah.

4 Q So, that's about 16 months; is that fair?

5 A Yeah.

6 Q Okay. And how many miles did you -- did you know how many miles on
7 the car when you purchased it?

8 A I don't remember. Probably 15,000 miles.

9 Q Okay. So, you think in the 16 months you put approximately 15,000
10 miles on your car?

11 A Yeah.

12 Q Okay. Did you ever get into accidents with this car in those 16 months?

13 A I had a light front damage that I fixed, probably about \$650 in damage.
14 But I fixed it with all original parts and stuff. It was just like bumper and hood
15 damage.

16 Q Okay. So, there was some damage but you paid yourself to get that
17 fixed?

18 A Yeah, nothing major.

19 Q No any kind of interior or structural damage that would devalue the car?

20 A No, just like bumper and radiator damage and stuff like that.

21 Q Okay. And how much did you purchase the vehicle for in December of
22 2009?

23 A For 4599 -- yeah, \$4,600.

24 Q Okay. And where did you purchase it from?

25 A I forgot the dealership name. It used to be on Boulder Highway but

1 they moved to another location.

2 Q Okay. So, it was a dealership?

3 A Yeah, like a small dealership.

4 Q Okay. Are you -- did you have an opportunity to look at the Kelley Blue
5 Book value of your vehicle, for what it be worth, on March, 2011?

6 A Yeah.

7 Q And when did you that, did you put in how many miles you had on your
8 car on March 18th, 2011?

9 A Yeah.

10 Q Okay. And then you put in what type of vehicle you have; is that
11 correct?

12 A Yeah, the type.

13 Q Okay. And then they also asked you questions regarding what model;
14 is that right?

15 A Yeah.

16 A Okay.

17 A So, you put all that information accurately to reflect your vehicle; is that
18 fair?

19 A Yeah.

20 Q Okay. Do you remember what the Kelley Blue Book value of your
21 vehicle was when you put all that information in?

22 A About -- in good condition about 4,100 to about 4,200.

23 Q Okay. So, about 4,000 to 4,2000?

24 A Yeah.

25 Q For a car in good condition?

1 A Yeah.

2 Q Okay. And based upon what you testified, would you say your car fit
3 into the good condition category?

4 A Yeah.

5 MS. HERBERT: Court's indulgence. Permission to approach the witness?

6 THE COURT: Yes.

7 BY MS. HERBERT:

8 Q I'm going to show you what's been marked as State's proposed Exhibit
9 27. Do you recognize this?

10 A Yeah.

11 Q And how do you recognize that?

12 A The Blue Book value or the Kelley Blue Book from their web page.

13 Q Okay. And then what kind of car is listed as shown as the Blue Book
14 value?

15 A 2000 Honda Civic SP value package, sedan four door.

16 Q Is that the car you had on March 18th of 2011?

17 A Yeah.

18 Q And how miles does the Kelley Blue Book indicate for the value?

19 A A hundred and sixty thousand.

20 Q And you had about 150,000, 155. Is that a fair and accurate --

21 A Yeah.

22 Q And is that a fair and accurate depiction of the Kelley Blue Book
23 print-out for your vehicle with what information your vehicle had from our speaking?

24 A Yeah.

25 MS. HERBERT: Judge, I'm going to admit State's proposed Exhibit 27.

1 THE COURT: Twenty-seven is offered. Any objection?

2 MR. GARDNER: I'd like to inquire about the condition of the car a little bit.

3 THE COURT: Do you want traverse on this point?

4 MR. GARDNER: Please.

5 THE COURT: All right. I'll give you limited --

6 MS. HERBERT: Okay.

7 THE COURT: Mr. Garner, you have the witness on cross-examination.

8 VOIR DIRE TESTIMONY

9 BY MR. GARDNER:

10 Q Sir, when you -- you said there was -- after you bought the car it was in
11 a wreck?

12 A Yeah.

13 Q And -- but you still considered the car in good condition?

14 A I had all the parts replaced with original Honda parts 'cause they
15 changed the bumper, the radiator, the water pump. And all those parts were original
16 Honda parts, not from the Honda dealership just Honda parts.

17 Q Don't you think it would be fair to say an 11 year old car that had been
18 in an accident even if it had been repaired probably really you could get about
19 \$2,000 out of it if you sold it?

20 A Not with a Honda Civic.

21 MR. GARDNER: I don't have any other questions then, Your Honor.

22 THE COURT: Okay. State.

23 MS. HERBERT: So, we move to admit State's proposed 27.

24 THE COURT: Any motion as to 27? Any objection?

25 MR. GARDNER: We don't have any further objections, Your Honor.

1 THE COURT: Twenty-seven is received.

2 [STATE'S EXHIBIT #27 ADMITTED]

3 MS. HERBERT: Thank you, Judge. Permission to publish?

4 THE COURT: Yes.

5 BY MS. HERBERT:

6 Q So, Yosvany, you said that you believed your car was in good condition,
7 however, Kelley Blue Book also gives you the estimated value for excellent and fair
8 condition as well; is that right?

9 A Yeah.

10 Q And that's reflected on this print-out?

11 A Yeah.

12 Q What is the fair condition for your vehicle according to Kelley Blue
13 Book?

14 A Three thousand four hundred and fifty-five.

15 Q And then what's the excellent condition for your vehicle?

16 A Four thousand five hundred eighty.

17 Q So, is it fair to say your car may have been in between fair and good?

18 A I still classify it as good.

19 Q Okay.

20 A I mean, it didn't have -- when it was repaired it didn't have -- I mean, it
21 didn't look like it was damaged or anything.

22 Q Okay. So, you had everything fixed that was damaged in the earlier
23 accident?

24 A Yeah, with original Honda parts and everything.

25 Q Okay. And you also had mentioned that you went to the scene where

1 your vehicle was recovered near the Walmart?

2 A Yeah.

3 Q Okay. And you mentioned that you had taken pictures of the vehicle
4 yourself; is that right?

5 A Yeah.

6 Q Did you look inside of the vehicle as well as the outside?

7 A Yeah. I took pictures of the inside and outside.

8 Q Okay. And when you got there, what did you notice the condition of
9 your vehicle to be like?

10 A It was a total wreck from both sides, the front, minus the trunk.

11 Q Can you be a little more specific what you remember seeing? Was
12 there anything about the wheels that you remember?

13 A All wheels were pretty much -- flat. The front wheels were -- one wheel
14 was gone. It was just on rims. The back were still there but they were all popped.

15 Q Okay. What about the doors of your vehicle. Do you remember what
16 they looked like?

17 A One door was missing like the outer panel and probably about 20 feet
18 away from the car and they were crashed in.

19 Q Did you -- you said you looked inside the vehicle; is that right?

20 A Yes.

21 Q What was unusual or different from when you last saw your car on the
22 inside of your vehicle?

23 A The ignition was tampered with. Well it has over the steering column
24 like a plastic and that plastic was gone.

25 MR. HERBERT: Okay. I'm going to show you what's been marked as State's

1 proposed Exhibit 13, 14, 15, 16, 17, 19 and 21. Permission to approach?

2 THE COURT: Yes.

3 BY MS. HERBERT:

4 Q Take a look at these collectively and tell me if you recognize these
5 photographs?

6 A Yeah.

7 Q Okay. All of the photographs except for 19, 13, 14, 15, 16, 17 and 21 --
8 well how do you recognize those?

9 A Well, I mean, that's my car.

10 Q And is that how your car appeared on March 18th when you went to go
11 recover it?

12 A Yeah.

13 Q Okay. Is that a fair and accurate depiction of how your car appeared?

14 A Yeah.

15 MS. HERBERT: Judge, State's going to move to admit 13 through 17 and
16 21.

17 THE COURT: Any objection?

18 MR. GARDNER: No objections, Your Honor.

19 THE COURT: Thirteen through 17 and 21 will be received.

20 **[STATE'S EXHIBIT #'s 13 THROUGH 17 AND 21 ADMITTED]**

21 BY MS. HERBERT:

22 Q And State's proposed Exhibit 19, do you recognize what that's a picture
23 of?

24 A Yeah, it looks like the outer panel of the door.

25 Q Okay. And is that a fair and accurate depiction of the outer panel of

1 your door of your vehicle as it appeared on March 18th, 2011?

2 A Yeah.

3 MS. HERBERT: State moves to admit State's 19.

4 THE COURT: Nineteen is offered now. Any objection?

5 MR. GARDNER: No, Your Honor.

6 THE COURT: Nineteen will be received.

7 [STATE'S EXHIBIT #19 ADMITTED]

8 MS. HERBERT: Thank you. Permission to publish?

9 THE COURT: Yes.

10 BY MS. HERBERT:

11 Q Showing you State's 21. Okay. What is this a picture of?

12 A Oh, 2000 Honda Civic or my car.

13 Q Okay. And the front of the car there's some damage to it, yes?

14 A Yeah.

15 Q Okay. Can you describe just for the record what that damage is?

16 A The bumper loose; the front rim -- well the tire pretty much gone and
17 the engine pushed in is pretty much all the damage.

18 Q Okay. Is it fair to say that when last your vehicle when you parked at
19 the Cannery it did not appear like this?

20 A No.

21 Q Okay. Showing you State's 14. Is that a picture of the side of your
22 vehicle?

23 A Yeah.

24 Q Okay. And there's obviously damage to the two doors, they're pushed
25 in, and then the side of the hood; is that right?

1 A Yeah.

2 Q And it's also fair to say that your vehicle did not look like that when you
3 parked it at the Cannery?

4 A No.

5 Q Showing you State's 13. Is that also a picture of your vehicle?

6 A Yeah.

7 Q Okay. And the license plate 8-7-1 W-K-Y, is that your license plate?

8 A Yeah.

9 Q There's some belongings coming out of the trunk. Are those yours?

10 A Yeah.

11 Q When you showed up at the scene where your Honda was, did you
12 collect your valuables out of the vehicle?

13 A Yeah.

14 Q Showing you State's 19. And for the record, this is a picture of the door
15 panel that you were describing?

16 A Yeah.

17 Q Okay. There's some items in the street, this back pack and foot locker;
18 were those yours as well?

19 A Yeah.

20 Q Okay. So, you collected those at the scene?

21 A I collected the back pack and I don't remember like what was the other
22 one. I -- mostly like CDs and I left those there. They were all scratched up.

23 Q Oh, okay. Showing you State's 15. Is this a picture of the inside of
24 your vehicle?

25 A Yeah.

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1 Q It appears in the picture there's the air bag from the -- the driver's side
2 air bag and then it looks like the passenger side air bag is also deployed; is that
3 right?

4 A Yeah.

5 Q When you last saw your car, were either of those two air bags deployed
6 when you parked it at the Cannery?

7 A No they weren't.

8 Q And then there's also -- can you describe what if anything regarding the
9 ignition area is different from when you left -- saw your car?

10 A There's no black plastic covering around the front steering column.

11 Q If you touch the screen it'll make a mark. Can you just circle the area
12 you're talking about?

13 A There.

14 Q Okay. Showing you State's admitted 16. Is that just a closer up picture
15 of the part you just circled, the ignition?

16 A Yeah, the ignition is there and it usually has like a plastic cover, like a
17 round ball there and underneath there.

18 Q Because the last time you saw your vehicle that plastic cover was on
19 that steering column?

20 A Yeah, it was perfectly intact and everything. No damage or anything.

21 Q Okay. And then lastly State's 17. Is that just an even closer up picture
22 of the ignition?

23 A Yes.

24 Q And there's a bunch of wires that are sticking out. Were those like that
25 the last time you saw your car?

1 A No.

2 Q So, did you -- after you went to the scene and you picked up your
3 personal belongings and you took some pictures yourself, what did you do next?

4 A Just went home.

5 Q What did you end up doing with the car?

6 A Tow truck company just drove it away and they send me a couple of
7 papers a couple weeks later.

8 Q Did you end up recovering the vehicle or did you just cut it as a total
9 loss?

10 A I just cut it as a total loss.

11 MS. HERBERT: I'll pass the witness.

12 THE COURT: Cross-examination.

13 **CROSS-EXAMINATION**

14 BY MR. GARDNER:

15 Q Sir, how much did the insurance company pay you for the loss?

16 A I was -- since I was in New York and I didn't have insurance, I just let it
17 lapse. I was spending more time in New York than here so I just let the insurance
18 expire.

19 MR. GARNER: I don't have any other questions. Thank you.

20 THE COURT: Any redirect?

21 MS. HERBERT: Nothing further.

22 THE COURT: Anything else for this witness? You can step down. Call your
23 next witness.

24 MS. WONG: The State calls Officer Rolando Pro.

25 THE MARSHAL: Remain standing, raise your right hand and face the clerk.

1 **ROLANDO PRO**

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

3 THE COURT CLERK: Thank you, sir. Please be seated. Please spell your
4 name for the record.

5 THE WITNESS: First name is Rolando, R-O-L-A-N-D-O and the last name is
6 PRO, P-R-O.

7 THE COURT: Counsel, your witness.

8 MS. WONG: Thank you, Judge.

9 **DIRECT EXAMINATION**

10 BY MS. WONG:

11 Q Officer, how are you employed?

12 A With the Las Vegas Metropolitan Police Department.

13 Q How long have you been employed with Metro?

14 A For 13 years.

15 Q What position do you hold within Metro?

16 A I'm a police officer, a Category 2.

17 Q Now directing your attention to March 18th, 2011, were you on duty on
18 that day?

19 A Yes, I was.

20 Q And what hours were you scheduled to work that day?

21 A From 6:45 in the morning to 4:45 p.m.

22 Q So, now what were you doing at approximately 3:20 p.m. that day?

23 A I was heading in to secure my shift and I was getting gas at the gas
24 station on Flamingo and Pecos.

25 Q What does it mean to secure your shift?

1 A It basically means where you start to head in and wind down, you know,
2 towards the end of your day.

3 Q Now did you receive a call from dispatch at that time?

4 A Yes.

5 Q What was the nature of the call?

6 A A vehicle pursuit and there were already units that were assigned to the
7 pursuit and the pursuit was coming up in the area that I was getting gas at.

8 Q Okay. So, what happened as a result?

9 A Being as the pursuit was headed towards my way, I headed down there
10 to assist.

11 Q Were you actually officially assigned the call?

12 A I don't believe right off the bat, no.

13 Q So, now were you given a description of this subject vehicle?

14 A I believe the description had already been out because there was
15 already units that were chasing the vehicle.

16 Q Okay. So, what vehicle were you chasing?

17 A I believe it was a four door Honda.

18 Q Okay. Do you recall what color?

19 A No.

20 Q Okay. Do you recall a license plate?

21 A No.

22 Q Okay. So, you were just looking for a four door Honda that's speeding
23 down the street?

24 A Correct, that two units were already chasing.

25 Q Okay. So, ultimately did you come upon this vehicle?

1 A I did.

2 Q Okay. And explain that.

3 A I drove down there to the location of where the units were coming up.

4 Q Where would that be?

5 A Flamingo and U.S. 95.

6 Q Okay.

7 A The vehicle got to U.S. 95 and traveled southbound. When I got to the

8 area, I entered the freeway and continued southbound and initially go the visual site

9 of the suspect vehicle at U.S. 95 and Tropicana.

10 Q So, that's the first that you actually observed this vehicle?

11 A Correct.

12 Q All right. Were there other patrol units following this subject vehicle?

13 A There were several.

14 Q And do you recall who were the officers in pursuit?

15 A I believe Officer Tabitha Baker and I'm certain on Jeff Harper. He was

16 in the K-9 Expedition.

17 Q Officer Harper was in an SUV?

18 A Correct.

19 Q All right. So, what happened as you observed the Defendant on the 95

20 and Tropicana -- I'm sorry -- as you observed the subject vehicle on the 95 and

21 Tropicana?

22 A The off ramp was pretty backed up and I observed the suspect vehicle

23 veer to the left and go over the actually landscape following by two marked units.

24 Q And then what happened?

25 A I believe there was a spin out from the suspect vehicle on Tropicana

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1 and then that vehicle continued eastbound on Tropicana with the patrol units still
2 following.

3 Q All right. And which direction he was driving on Tropicana?

4 A Tropicana, he ended up going eastbound from U.S. 95.

5 Q All right. And where did that vehicle proceed from there?

6 A It continued eastbound down Tropicana towards Nellis.

7 Q All right. And did anything happen at Nellis?

8 A Towards Nellis and Tropicana, the suspect vehicle went into oncoming
9 traffic head on and there was a collision involving another vehicle.

10 Q And what type of vehicle was involved in that collision?

11 A I believe it was a truck.

12 Q Do you recall what kind of truck?

13 A No.

14 Q Okay. Was it a civilian truck or --

15 A It was a civilian's vehicle.

16 Q All right. Do you recall what color the vehicle was?

17 A No.

18 Q So, what happened after the Honda struck the truck?

19 A The units that were pursuing tried to enclose on the suspect vehicle and
20 the suspect fled from that scene as well, continuing driving northbound on Nellis
21 from the accident.

22 Q And where did the suspect vehicle go from there?

23 A The suspect vehicle continued northbound on Nellis towards Harmon.

24 Q Did that vehicle ultimately turn onto Harmon?

25 A Correct.

1 Q And what happened from there?

2 A The vehicle turned eastbound on Harmon from Nellis. It immediately
3 went into oncoming traffic again and drove in direction of a light pole and a curb.

4 Q And you say it drove into the direction of, did it actually hit the curb and
5 the light pole?

6 A Correct. The vehicle did hit the curb on the other side of the road.

7 Q And what happened after the vehicle struck the light pole?

8 A After it hit that area, it actually spun out and was actually facing our
9 direction. It was facing our direction which is the opposite direction of the direction it
10 was traveling.

11 Q So, you mean initially he was traveling the wrong way and after it struck
12 the light pole it's now facing the correct direction?

13 A He was driving east and when he spun out he was facing west.

14 Q Okay. And was he in the westbound lanes now?

15 A Yes, he was.

16 Q And you said he's facing now your patrol car?

17 A No; he was facing my partner, Officer Harper and the K-9 unit.

18 Q All right. And where were you positioned at this time?

19 A I was off to the side about a 45 degree angle in my patrol vehicle.

20 Q So, after the accident, did you and Officer Harper attempt to place the
21 subject in custody?

22 A Yes.

23 Q Okay. What did you?

24 A Officer Harper stayed in front of the vehicle and then I immediately went
25 to a tactic to go the rear to attempt to box him in to prevent him from pursuing that

1 area.

2 Q So, both your and Officer Harper are still in your patrol vehicles at this
3 time?

4 A Correct.

5 Q All right. So, what happened after you guys maneuvered your vehicles
6 to box the subject in?

7 A He first drove towards Officer Harper and the K-9 vehicle.

8 Q What do you mean he drove towards Officer Harper?

9 A His vehicle was facing the direction of Officer Harper and he put it in
10 drive -- was driving in the direction that Officer Harper was at.

11 Q Okay.

12 A From there, he put it in reverse and he struck my vehicle.

13 Q Which part of his vehicle struck your vehicle?

14 A I believe it was the rear driver's side quarter panel of his vehicle struck
15 somewhere on the front driver's side of my bumper to my patrol vehicle.

16 Q And what happened after the subject hit your vehicle?

17 A After he hit my vehicle, I made the determination to pin him into the
18 curb with my patrol vehicle.

19 Q And were you able to successfully do so?

20 A Yes, I was.

21 Q And why you did pin the subject vehicle to the curb?

22 A To prevent him from actively fleeing again.

23 Q Now prior to the subject striking your vehicle, how far apart was your
24 vehicle from his?

25 A I would say approximately ten feet.

1 Q Okay. And prior to the subject driving towards Officer Harper, how far
2 apart was their vehicles?

3 A It was about the same.

4 Q Was there any damage caused to your vehicle as a result of the subject
5 backing up into it?

6 A Yes, there was.

7 Q What kind of damage?

8 A Damage to what I just mentioned: The front bumper driver's side of my
9 patrol vehicle.

10 Q Other than to your car, was there any damage to the light pole that the
11 subject struck?

12 A I believe there was but I'm not a hundred percent sure on that. I never
13 went back to the light pole.

14 Q Okay. So, you did observe the -- you actually saw the light pole?

15 A Yeah; correct.

16 MS. WONG: Permission to approach, Your Honor?

17 THE COURT: Yes.

18 BY MS. WONG:

19 Q Officer Pro, showing you what's been marked as State's proposed
20 Exhibits 18 and 20. Please review these items and let me know if you recognize
21 them.

22 A I recognize one as -- one being the light pole.

23 Q So, that's State's proposed Exhibit 20? Do you recognize what's
24 depicted in State's proposed Exhibit 18?

25 A No.

1 Q No? Okay. So, now with regard to State's proposed Exhibit 20, is that
2 a fair and accurate depiction of the light pole that the Defendant struck -- that the
3 subject struck on March 18th, 2011?

4 A Yes.

5 MR. WONG: State moves for the admission of State's proposed 20 in to
6 evidence.

7 THE COURT: Twenty is offered. Any objection?

8 MR. O'BRIEN: No objection, Your Honor.

9 THE COURT: Twenty is received.

10 **[STATE'S EXHIBIT #20 ADMITTED]**

11 BY MS. WONG:

12 Q All right. Officer Pro, showing you State's Exhibit 20. What are we
13 looking at here?

14 A The light pole that was struck.

15 Q And showing you what's already been marked as State's Exhibit 21.
16 Do you recognize what's depicted here?

17 A It's going to be my patrol vehicle that I was driving on that day and the
18 suspect vehicle which I ended up pinning into that curb.

19 Q So, your patrol vehicle is the vehicle depicted on the right here?

20 A Correct.

21 Q And this is the subject vehicle on the left?

22 A Correct.

23 Q Okay. And this is where you had pinned the subject to the curb?

24 A Correct.

25 Q So, what happened after you had successfully pinned the subject

1 vehicle to the curb?

2 A I tried to get out my driver's side but because of the impact the door
3 wouldn't open. So, I had to exit out through my passenger side of my patrol vehicle.

4 Q Did you see anybody get out of the subject vehicle?

5 A Yes, I did.

6 Q And who did you see?

7 A The Defendant.

8 Q Will you please point to that individual and describe an article of
9 clothing that he's wearing?

10 A You mean right now?

11 Q Right now.

12 A The blue shirt.

13 Q Is he sitting --

14 A To the far right in the blue collared shirt.

15 MS. WONG: May the record reflect the witness has identified the Defendant.

16 THE COURT: Yes.

17 BY MS. WONG:

18 Q So, where do you see the Defendant going?

19 A After he exited the --

20 Q After he exited the vehicle.

21 A He immediately hopped over a block wall into an adjoining Walmart, I
22 believe.

23 Q And what did you do at this point?

24 A I was looking at Officer Harper to see if he was going to release his K-9
25 dog.

1 Q And did you go over the wall along with the Defendant?

2 A No, I did not.

3 Q Did you stay on scene where the accident occurred?

4 A I did.

5 Q Now at any point during the pursuit did you have your lights and sirens
6 on?

7 A Yes, I did.

8 Q At which point did you have your lights and sirens on?

9 A At Nellis and Tropicana.

10 Q And did you turn them off at some point?

11 A I believe probably after he was taken into custody?

12 Q So, once you turned on your lights and sirens you never turned them off
13 again?

14 A No.

15 Q Did your entire pursuit of the Defendant occur within Clark County?

16 A It did.

17 MS. WONG: Pass the witness.

18 THE COURT: Cross-examination.

19 **CROSS-EXAMINATION**

20 BY MR. O'BRIEN:

21 Q Officer Pro, you first learned about the pursuit via radio call; is that
22 correct?

23 A That's correct.

24 Q Okay. And did the radio call provide a description of the suspect?

25 A Not that I remember.

1 Q Okay. It didn't state that the driver was wearing a blue sweatshirt.

2 A I don't recall if it did.

3 Q Okay. So, once you -- after you joined the chase and you attempted to
4 box him in, you said that you jammed the Honda into the curb in order to prevent
5 any further flight; is that correct?

6 A Correct.

7 Q Okay. And prior to that point when you had been following him, the
8 suspect was driving fast in the Honda?

9 A I would say so.

10 Q Would you say it was doing everything to get away from the officers?

11 A Correct.

12 Q Okay. And so you blocked the Honda into the curb and your passenger
13 door was jammed?

14 A Uh-huh.

15 Q Due to the impact?

16 A No, no, my passenger door was not jammed. It was the driver's side
17 door.

18 Q Oh, sorry. The driver's side door was jammed during the impact. Okay.
19 And you said the driver got out of the car, out of the Honda?

20 A Correct. I believe out of the passenger side of his.

21 Q Okay. So, the Honda is between is your car and the curb?

22 A It's curb, Honda then me.

23 Q Okay. So, he gets out of the passenger side of the Honda, you get out
24 of the passenger side of your car?

25 A Correct.

1 Q And you said he immediately jumped over the wall?

2 A Yeah, a wall that was to the right of him, correct.

3 MR. O'BRIEN: And, Your Honor, we have no further questions.

4 THE COURT: Redirect.

5 MS. WONG: No further questions, Your Honor.

6 THE COURT: Anything else for this witness?

7 MS. WONG: No, Your Honor.

8 THE COURT: Please step down. Call your next witness.

9 MS. WONG: The State calls Officer Jeff Harper.

10 MR. O'BRIEN: Your Honor, I'm sorry. Can we recall the officer for a

11 question. I forgot to check with co-counsel.

12 THE COURT: You want to re-open cross-examination?

13 MR. O'BRIEN: If we may.

14 THE COURT: Officer, you're still under oath. Please be seated. Counsel,
15 you have the witness on cross-examination.

16 MR. O'BRIEN: Thank for your patience, Officer.

17 THE WITNESS: No problem.

18 **CROSS-EXAMINATION -- continued**

19 BY MR. O'BRIEN:

20 Q Just wanted to check. When the suspect got out of the Honda, he was
21 wearing a blue hoodie, is that right, a blue sweatshirt?

22 A I don't recall.

23 Q Okay. So, you don't recall whether he was wearing a hood up
24 sweatshirt?

25 A I don't recall his clothing, no.

1 Q All right. Thank you.

2 THE COURT: Redirect examination.

3 MS. WONG: No further questions, Your Honor.

4 THE COURT: Anything else for this witness? Seeing no hands, please step
5 down and call your next witness.

6 MS. WONG: The State calls Officer Jeff Harper.

7 THE MARSHAL: Remain standing and raise your right hand facing the clerk.

8 **JEFF HARPER**

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

10 THE COURT CLERK: Thank you, sir. Please be seated. State and spell
11 your name for the record.

12 THE WITNESS: It's Jeff Harper, J-E-F-F H-A-R-P-E-R.

13 THE COURT: Counsel, your witness.

14 MS. WONG: Thank you, Judge.

15 **DIRECT EXAMINATION**

16 BY MS. WONG:

17 Q Officer, how are you employed?

18 A I'm a police officer with the Las Vegas Metropolitan Police Department.

19 Q How long have you been with Metro?

20 A I've been with them for almost 12 years.

21 Q Currently do you work within a specialized unit within Metro?

22 A I do. I work with the canine section.

23 Q And how long have you worked with the canine unit?

24 A Three years.

25 Q How is working in a canine unit different than say working on patrol?

1 A Our primary function as it works is we have two dogs. We have a patrol
2 dog in either narcotics or explosives. Our job is strictly to deal with vehicle pursuits,
3 foot pursuits, large buildings that need to be cleared, stuff like that; large open
4 areas, stuff that a dog would be able to do safer.

5 Q All right. And do you have to have specialized training in order to
6 become a part of Metro's canine unit?

7 A Yes, we do.

8 Q Do you have to be certified?

9 A Yes, we do.

10 Q Does the dog also have to be certified?

11 A They do.

12 Q Okay. And you indicated that there are special -- different kinds of
13 canine dogs?

14 A Correct.

15 Q Patrol being one of them and drugs being another?

16 A Correct.

17 Q And what field do you specialize in?

18 A I have both. I have narcotics dog and a patrol dog.

19 Q And what kind of training do you have to do in order to become a
20 certified -- patrol canine unit patrol unit?

21 A We take a written test that have to do with case laws, stuff like that. We
22 also have to go through at least 12 week training with our patrol dogs. That goes
23 anywhere from obedience to release work to building searches to different
24 environmental things; stuff that they may see when they're out on the street. We
25 learn to clear buildings with them effectively. We have to do what's called

1 [indiscernible]. There's several steps we have to take within that 12 weeks, anything
2 that they would encounter on the streets, we have to be tested and certified on.

3 Q Okay. Now back on March 18th of 2011 did you have canine partner
4 with you?

5 A I did.

6 Q Okay. And who was that canine partner?

7 A I have two. I have a patrol dog named Rocco [phonic] and I have a
8 narcotics dog named Rebel.

9 Q And what kind of dog is Rocco?

10 A Rocco is a Belgian Malinois, a four year old.

11 MS. WONG: Can I have permission to approach, Your Honor?

12 THE COURT: Yes.

13 BY MS. WONG:

14 Q Detective Harper, I'm showing you what's been marked as State's
15 proposed Exhibit 22. Do you recognize what's depicted in the photograph?

16 A Yes, that's my canine partner, Rocco.

17 Q And this is a fair and accurate depiction of Rocco?

18 A Yes, it is.

19 MS. WONG: State moves for the admission of State's proposed Exhibit 22
20 into evidence.

21 THE COURT: Any objection?

22 MR. O'BRIEN: No objection.

23 THE COURT: Twenty-two is received.

24 **[STATE'S EXHIBIT #22 ADMITTED]**

25 MS. WONG: Thank you, Judge. Permission to publish?

1 THE COURT: Yes.

2 BY MS. WONG:

3 Q And Officer Harper, I'm showing you State's Exhibit 22. Is this your
4 dog, Rocco?

5 A Yes, it is.

6 Q Okay. Now were you and Rocco certified at that time?

7 A Yes, we were.

8 Q Okay. How long have you been certified with Rocco?

9 A Since of November of 2010.

10 Q Okay. So, how did you and Rocco specialize specifically in the patrol
11 area?

12 A Yes; that is my patrol dog.

13 Q And Rocco is able to do all those things that we just discussed that he
14 had to learn in order to become certified as a patrol dog?

15 A Correct; he certified November of 2010.

16 Q And is Rocco still your canine partner today?

17 A Yes, he is.

18 Q Okay. Now directing your attention to March 18th, 2011 at
19 approximately 3:15, were you on patrol with Rocco at that time?

20 A Yes, I was.

21 Q Okay. And were you in a standard Metro issued black and white patrol
22 car?

23 A I actually have a marked black and white Expedition.

24 Q Okay. And were you dispatched to the area of Tropicana and U.S. 95
25 at that time?

1 A Yes, I was.

2 Q Why?

3 A NHP received a phone call from a concerned citizen that they had a
4 reckless driver. And when they ran the license plate, they advised us that it had
5 exited the freeway and it was returning as a stolen vehicle.

6 Q Okay. And do you recall when you actually received this call?

7 A I believe it was right around that time of 3:15-ish.

8 Q Okay. And were you provided a description of that vehicle?

9 A Correct, I was.

10 Q Okay. And what was that description?

11 A It was a Chrysler Sebring convertible.

12 Q Do you recall what the license plate was?

13 A I don't recall it.

14 Q Okay. Did you at one point?

15 A I did know it. It came up on our computer screen. If I looked at my
16 report I'm sure it would be in there.

17 MS. WONG: Judge, may I approach the witness?

18 THE COURT: Yes. Could you show counsel what you're referring to?

19 BY MS. WONG:

20 Q Has your memory been refreshed?

21 A I actually did not write it in my report. It was in the details of the call that
22 we were dispatched on.

23 Q Okay.

24 MS. WONG: Judge, May I approach the witness?

25 BY MS. WONG:

1 Q Officer, I'm showing you a copy of the arrest report in this case.

2 A Okay.

3 Q Now having looked at the report has your memory been refreshed?

4 A Yes, it was.

5 Q What was the license plate on the subject vehicle?

6 A It was 3-2-6 Tom, George, Paul.

7 Q Okay. Now what happened after you received this call?

8 A I was on the other side of town. So, I then began to patrol over -- head
9 over to the area of that call while units and myself were attempting to locate that
10 vehicle.

11 Q Okay. And what was the area that you're referring to?

12 A U.S. 95 and Tropicana eastbound.

13 Q And ultimately did you see the subject vehicle?

14 A I did not.

15 Q Okay. And then where did you proceed from there?

16 A We then continued -- while I was heading down to that area another
17 unit spotted the vehicle in a certain area. I then continued to head down to Boulder
18 and Tropicana where that unit saw it. [Indiscernible] and we checked a couple
19 casino areas and areas surrounding it.

20 Q Did you eventually spot the subject vehicle?

21 A I did not actually spot that vehicle. I was in a parking lot where another
22 unit saw driving and I attempted, because it was a large parking lot, to go over and
23 help him search for the vehicle.

24 Q And what parking lot are you talking about.

25 A The Eastside Cannery there at Harmon and Boulder Highway.

1 Q Okay. So, explain to me what happened inside the Eastside Cannery
2 parking lot.

3 A When the unit said -- he advised us on the radio that he spotted the
4 vehicle at a high rate of speed inside of there, I then went to the entrance off of
5 Harmon and I then went to the right -- west end of the parking lot to attempt to locate
6 it inside there. While I was driving around in there, the unit advises over the radio
7 that they located the vehicle farther west -- I'm sorry --- east of where I was.

8 Q Okay.

9 A So, I began to drive over to that area.

10 Q And at that time, did you spot the subject vehicle?

11 A I did not spot that vehicle at that time because the patrol unit that
12 observed that -- observed the person in another vehicle fleeing the area at a high
13 rate of speed.

14 Q Okay. And what happened after that?

15 A As I was continuing to drive across that entrance from the eastside --
16 I'm sorry -- the west side to the east side, I observed a vehicle that they called out
17 as a green vehicle coming at me at a high rate of speed. I was in a marked vehicle.
18 I attempted to turn my lights and sirens on to get it to stop. It ran over several curbs
19 and went northbound off of the exit from that parking lot out onto Harmon.

20 Q Okay. So, let's just back up for one second here. Initially you were
21 looking for a Chrysler --

22 A Correct.

23 Q -- Sebring? And eventually you're now looking for a -- what type of
24 vehicle?

25 A It was a Honda.

1 Q Okay. Do you recall the color?

2 A I believe it was green.

3 Q Okay. So, you're now -- do you know what type of a Honda it was?

4 A It was a four door, I believe, Civic.

5 Q All right. So, now you're looking for a four door Honda Civic and you
6 eventually see this Honda?

7 A Correct.

8 Q Okay. Now it was your understanding that it's the same person that
9 you're looking for even though there's two different vehicles involved?

10 A Correct.

11 Q All right. So, when you first see the Honda, where was it?

12 A It was traveling eastbound towards the entrance of Harmon, off of the
13 Harmon. Where the entrance comes in off of Harmon into the parking lot, you can
14 go two ways. It's like a plus intersection, if you want to call it that. I was coming
15 from this side, which was the west side going east and the vehicle, was traveling
16 towards me this way.

17 Q But were you both still inside the Eastside Cannery parking lot.

18 A We were both inside the Eastside Cannery, yes.

19 Q All right. Now you indicated that you attempted at that point to turn on
20 your lights and sirens. Did you attempt to or did you actually turn on your lights?

21 A I actually turned them on.

22 Q Okay. Now the lights, what color are they?

23 A They're red and blue.

24 Q Okay. Do they flash?

25 A Yes, they do.

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1 Q Okay. And are those sirens loud?

2 A Correct; there's two of them on the front of my vehicle.

3 Q All right. Now did you get an opportunity to observe the driver of the
4 Honda?

5 A Yes, I did.

6 Q Okay. How did you observe that person?

7 A He was the driver of the vehicle. He was slouched down in the vehicle
8 a little bit.

9 Q Where was he slouched down in the vehicle?

10 A In the driver's seat.

11 Q And when you say slouched down, what do you mean?

12 A His seat appeared to be reclined back a little bit. He wasn't sitting up
13 right like I am sitting right now.

14 Q Okay. And that person that you saw in that green Honda, do you see
15 that person in the courtroom today?

16 A Yes, I do.

17 Q Will you please point to that individual and describe an article of
18 clothing that he's wearing?

19 A The gentleman right there in the blue shirt.

20 Q Where's he sitting?

21 A Next to the other two subjects in the shirt right there.

22 Q So, the gentleman on the far right?

23 A Yes.

24 MS. WONG: Okay. May the record reflect that the witness has identified the
25 Defendant?

1 THE COURT: Yes.

2 MS. WONG: Thank you, Judge.

3 BY MS. WONG:

4 Q Now take us to where he -- where the Defendant is exiting the Eastside
5 Cannery parking lot. What do you estimate his speed to be at this time?

6 A Roughly about 25, 30 miles an hour inside of that parking lot.

7 Q And you indicate that he had ran over some curbs?

8 A Correct; they were landscaping curbs that divide the road between the
9 landscaping and the road.

10 MS. WONG all right. May I approach?

11 THE COURT: Yes.

12 BY MS. WONG:

13 Q Officer Harper, I'm showing you what's been marked as State's
14 proposed Exhibit 26. Do you recognize the area depicted here?

15 A Yes, I do.

16 Q And is this a fair and accurate depiction of the area surrounding the
17 Eastside Cannery parking lot?

18 A Yes, it is.

19 Q Okay. What I want you to do here is mark with this black marker where
20 the Defendant exited. And what's the Defendant do after exiting the Eastside
21 Cannery parking lot.

22 A After he exited the parking lot, he then turned westbound. It's kind of
23 southwest bound on Harmon towards Boulder Highway.

24 Q Okay. Can you mark on the map as well?

25 A [Illustrates].

1 Q And where did he go from there?

2 A At that time, he turned to go northbound against a red traffic signal onto
3 Boulder Highway.

4 Q When you say he went against a traffic signal, do you mean he ran a
5 light?

6 A Correct.

7 Q Okay. Can you please with the red marker that's in front of you, if you
8 can mark with a big X where the Defendant ran the light.

9 A [Illustrates].

10 Q Now are you lights and sirens still on at this time?

11 A At that time I -- when he ran the red there, I then shut them down --

12 Q Okay.

13 A --- to try to curb his behavior.

14 Q Okay. But prior to that, you had your lights and sirens on?

15 A Correct.

16 Q And the Defendant did not stop?

17 A Correct.

18 Q Okay. All right. So, what happens after the Defendant runs that light?

19 A He then continues northbound on Boulder Highway for approximately
20 one hundred to two hundred yards.

21 Q All right. And then what happens there?

22 A At that time, he then goes across the median which is -- Boulder
23 Highway's probably 45 feet wide. There's a bunch of large rocks in there. He went
24 from the northbound side of Boulder Highway through the median and went over to
25 the southbound side at a high rate of speed.

1 Q How fast do you estimate the Defendant was going at that time?

2 A About 60 miles an hour.

3 Q Okay. So, what happens after the Defendant goes into incoming
4 traffic?

5 A He almost causes several accidents as he's going the wrong way up
6 Boulder Highway from the vehicles that were continuing on the correct side. He
7 then attempted to turn into the Walmart parking center and caused an accident with
8 another subject there.

9 Q Okay. Now with that black -- the black marker -- one second -- with that
10 black marker, please trace the steps the Defendant took prior to getting to that
11 accident and where he causes that accident in front of the Walmart, please mark
12 with the red pen.

13 A Okay. [Illustrates].

14 Q Okay. Now can you describe this accident that you recall occurred
15 outside Walmart?

16 A I just remember seeing the two cars collide. It was at the entranceway
17 right there. He causes the accident. It was kind of hard to see because I was on
18 the opposite side of the street trying to keep up next to him. So, when he causes
19 the accident, I just see the two cars spinning.

20 Q So, even though the Defendant was driving on the wrong side of the
21 road, were you driving on the correct side of the road?

22 A Yes, I was.

23 Q All right. And you did observe the two vehicles collide?

24 A I did.

25 Q Do you recall what vehicle was involved in the accident aside from the

1 Defendant?

2 A I'm having a hard time remembering right now.

3 Q Would it refresh your recollection if you looked at your report?

4 A I would.

5 MS. WONG: May I approach the witness, Your Honor?

6 THE COURT: Yes.

7 BY MS. WONG:

8 Q And I'm showing you your officer's report and direct your attention to
9 the third full paragraph.

10 A Okay.

11 Q Please let me know when you are finished.

12 A Okay.

13 Q Has your memory been refreshed

14 A I would. I'd have to see that other event number that I referred to
15 because I will have all the other vehicle information on which vehicles were involved
16 in the accident.

17 MS. WONG: May I approach, Your Honor?

18 THE COURT: Yes.

19 BY MS. WONG:

20 Q Now I'm showing you a copy of the arrest report in this case and
21 directing your attention to the fourth full paragraph.

22 A Okay.

23 Q Has your memory been refreshed?

24 A It has.

25 Q And do you recall what type of vehicle was involved in the accident

1 outside Walmart?

2 A Yes, it was a gray Ford Taurus with a handicap, physically handicapped
3 plates.

4 Q Okay. Did you at some point drive past that accident scene?

5 A I did.

6 Q Okay. Were you able to observe the driver of that Ford Taurus?

7 A I was.

8 Q Okay. How old was that person -- was the driver?

9 A He was probably about 60 go 70 years old.

10 Q So, an elderly gentleman?

11 A Yes.

12 Q Okay.

13 MR. GARDNER: I'd object to 60 being elderly.

14 THE COURT: The objection's noted.

15 BY MS. WONG:

16 Q Okay. Now hard was the impact of the collision?

17 A It was pretty significant.

18 Q Could you estimate how the fast the Defendant was going at this time?

19 A I estimate right around 60 to 65 miles an hour.

20 Q And how fast were you going?

21 A I was doing 60 to 65 miles an hour also. I was pacing him at the same
22 time.

23 Q And for those of us who don't know, what does pacing mean?

24 A It means you're going equal speeds with them. You can either do it
25 next to 'em, behind 'em, in front of 'em. You're going the exact same speed as

1 them. So, if you're looking over at him and he's going parallel with you, not gaining
2 not falling back at all and you look at your speed, that's how fast he would be going.

3 Q Now did you see whether there was any damage caused to either
4 vehicle?

5 A I believe there was damage caused to the front of the suspect vehicle,
6 the Honda Civic, and also rear damage to the victim vehicle.

7 Q Now after causing the accident, did the Defendant stop to render aid?

8 A He did not.

9 Q What did he do?

10 A He then continued to go northbound in the southbound lanes of Boulder
11 Highway.

12 Q Okay. If you could please mark that with the black pen on the map.

13 A [Illustrates].

14 Q And you indicated that he was driving northbound in the southbound
15 lanes?

16 A Correct.

17 Q All right. Now heavy was traffic at this time?

18 A Traffic was light to moderate.

19 Q So, there were other cars on the road?

20 A Correct.

21 Q All right. Now as the Defendant is now driving on the wrong side of the
22 street on Boulder, how fast you estimate he was going at this time?

23 A About 65 to 70 miles an hour.

24 Q And, again, you were pacing him?

25 A Correct.

1 Q And did you continue to follow the Defendant?

2 A Correct; I was on the correct side of the road though.

3 Q Now what happened as the Defendant continued to drive on the wrong
4 side of the road on Boulder?

5 A As we were approaching Nellis right there on Boulder Highway, he then
6 made which would be a northbound turn against the flow the traffic. Our light, if he
7 would have been going on the correct side of the street, our light was red so the
8 north -- it's kind of a north and southbound Nellis -- had the green light. So, he went
9 through that light and then continued northbound on Nellis.

10 Q Okay. So, on where Boulder and Nellis where he runs that light, can
11 you please make that with a red pen, and of course mark his course with the black
12 pen.

13 A [Illustrates]. Okay.

14 Q As a result of him running that red light at Boulder and Nellis, were
15 there -- was there an accident that almost resulted?

16 A No, there was no accident; he almost caused one. As he was swerving
17 and missed several vehicles, he actually ran over the median on Nellis just north of
18 Boulder Highway causing him to spin out.

19 Q And what happened after he spun out?

20 A At that time, myself and several other patrol units, we tried to pinch him
21 in there where we take our patrol vehicles and try to put one in front and one behind
22 to stop his movement so he can't go any further. But he was able to weasel his way
23 out of there.

24 Q And what do you mean by that?

25 A He maneuvered around all of our patrol vehicles.

1 Q And he kept going?

2 A Correct.

3 Q All right. And so where did the Defendant go after regaining control of
4 his vehicle?

5 A He then went southbound on Nellis to where he got to Boulder Highway
6 and then he continued on Boulder Highway again.

7 Q Okay. Now you can please mark on the map the Defendant's path and
8 also up until the point where he goes northbound on Boulder?

9 A Okay. [Illustrates].

10 Q Now what happens after he goes northbound on Boulder?

11 A Once he goes northbound on Boulder Highway, he fails to stop at the
12 red light again at Flamingo and Boulder Highway and at that time he makes a
13 westbound turn up Flamingo almost causing again several accidents with the people
14 that already had a green light.

15 Q So, he actually runs the light there at Boulder and Flamingo?

16 A Yes, ma'am.

17 Q And to go westbound?

18 A Westbound. Correct.

19 Q Okay. If you can put a big X there where he did that.

20 A [Illustrates].

21 Q So, where was it exactly that the Defendant spun out? Was that at
22 Nellis and Boulder or Boulder and Nellis?

23 A He actually spun out -- yes, at Boulder and Nellis where he spun out
24 there.

25 Q Okay. The same place where he ran the light?

1 A Correct.

2 Q Okay. All right. Now what did you do as a result of seeing the
3 Defendant now running the red light at Boulder and Flamingo?

4 A Due to his driving behaviors with none of us with our lights and sirens
5 on behind him, he was driving on his own this way. So, I felt it was my duty as a
6 police officer to warn the public that he is driving erratically and then I reinitiated my
7 pursuit again with him to advise people of his driving behaviors and attempt to get
8 him to pull over again.

9 Q Okay. Were you lights and sirens on at this time?

10 A Yes, they were.

11 Q Okay. Did you turn them off previously?

12 A I did turn them off when he entered Boulder Highway at Harmon earlier.

13 Q And did a supervisor have to authorize a pursuit of the Defendant's
14 vehicle?

15 A Yes, they did.

16 Q And so what did you do?

17 A At that time, I continued -- I initiated all of my lights and my sirens and
18 then I followed him, you know, while he was driving.

19 Q All right. And how fast do you estimate the Defendant was going at this
20 time?

21 A Again, he was probably doing about 65 miles an hour up Flamingo.

22 Q And what's the speed limit there?

23 A Forty-five miles an hour.

24 Q Now were there also other patrol units also pursuing the Defendant's
25 vehicle?

1 A They were a ways back from when I initiated the pursuit. They were a
2 couple hundred yards back on the vehicle pursuit.

3 Q Now what happens after Defendant runs the light at Flamingo?

4 A We then continue westbound up Flamingo. As we slowly started
5 approaching traffic that's stopped at Flamingo and Mountain Vista, he then goes
6 over into the bike lane or auxiliary lane on Flamingo, which is to the far right, and
7 continues to go through that light.

8 Q Okay. Now as he's going through that light on Mountain Vista and
9 Flamingo, were there any pedestrians around?

10 A There were. There was -- I believe there was four pedestrians, there
11 was one crossing guard and one female adult and two small children that were in
12 there that actually had to jump out of the way. The sirens pretty much warned them
13 that we were coming and they saw us coming and they had to jump out of the way.

14 Q Why did they have to jump out of the way?

15 A Because when we were going through the intersection he veered to the
16 right to miss a vehicle that was going through the light at Flamingo and Mountain
17 Vista, and when he veered to miss that he went into the crosswalk.

18 Q And that's when he almost hit the children?

19 A Correct.

20 Q Okay.

21 A They had to jump out of the way.

22 Q All four people had to jump out of the way?

23 A Yes, they did.

24 Q All right. So, what happened after Defendant almost hit the children
25 and the crossing guard?

1 A We then continued westbound up Flamingo towards 95.

2 Q And how fast do you estimate the Defendant was going at that time?

3 A About 65, 70 miles an hour.

4 Q All right. I'm sorry. If you can mark the path up until this point with the
5 black marker except for the parts where the Defendant almost hit the young
6 children, if you could put an X there.

7 A [Illustrates]. Okay.

8 Q So, what happens as Defendant continues westbound on Flamingo?

9 A As he continues again westbound on Flamingo, we get to U.S. 95, the
10 light right there, and he goes through the light. And he crosses the median to go
11 into oncoming traffic once we go underneath U.S. 95. Flamingo goes underneath
12 the 95.

13 Q Okay. And what happens there?

14 A He goes across there. He gets the oncoming traffic and spins out of
15 control again almost causing an accident.

16 Q When you're saying he's going to into incoming traffic, what do you
17 mean?

18 A He's going westbound in the eastbound lanes. So, the people who are
19 going eastbound on Flamingo on the correct side he's heading on with them.

20 Q And so where does Defendant go from there?

21 A At that time, he then goes down eastbound Flamingo to the on-ramp
22 which you have to go back underneath U.S. 95 to get to the onramp which is a
23 sweeping turn that comes underneath the freeway again and then comes up on it.
24 It's kind of confusing.

25 Q So, is the Defendant basically driving in a circle?

1 A He then drove -- once he spun out, it spun him out and put him back on
2 eastbound Flamingo. He went eastbound Flamingo to the onramp of U.S. 95 to go
3 southbound.

4 Q Okay. And while he's on Flamingo, is he driving on the correct side of
5 the road or the wrong side of the road?

6 A Well at first before he did the spin out, he was on the wrong side of the
7 road. And then once he spun out, then it put him on the correct side of the road and
8 then he continued eastbound on the correct side of the road.

9 Q And did the Defendant ultimately get onto the onramp?

10 A He did.

11 Q Okay. And what happened there?

12 A At that time, he got onto the onramp to go southbound on 95. Our air
13 unit arrived. So, at that time patrol units turned off their lights and their sirens and
14 we spaced ourself [sic] from them to see if that would again calm behavior and the
15 air unit would call out everything that went on.

16 Q Okay. Now prior to getting onto to the freeway, did the Defendant
17 basically have a clear path onto the freeway entrance?

18 A Yes, he did.

19 Q Okay. And did anything occur there?

20 A No; as he went on 95 that's when he continued to go southbound on
21 U.S. 95 and then exited Trop.

22 Q Did the Defendant hit any structures while trying to get onto the onramp
23 of the 95?

24 A I don't remember.

25 Q Will it refresh your recollection if I showed you a copy of your officer's

1 report?

2 A Yes, it would.

3 MS. WONG: May I approach, Your Honor?

4 THE COURT: Yes.

5 BY MS. WONG:

6 Q I'm showing you a copy of your officer's report and I'm going to refer
7 you to the second to the last paragraph here.

8 A Okay.

9 Q Has your memory been refreshed?

10 A It has.

11 Q Okay. And what did the Defendant do as he got onto the 95 onramp?

12 A As he did go onto the onramp, he did hit the cement barrier.

13 Q Okay. How many times?

14 A I believe several times. I don't recall exactly how many.

15 Q Okay. So, how you were saying that air unit now took over the pursuit;
16 correct?

17 A Correct.

18 Q Did you drop back from the pursuit?

19 A I did drop back from the pursuit. We no longer had our lights and sirens
20 on. I did because I'm in a specialized unit with the dog. I will stay within eye shot of
21 the suspect vehicle so in case he does get out and bail from the vehicle, I have a
22 tool that's different than other patrol vehicle. So, I will stay close enough so that if
23 he does run I do have a dog that can help assist.

24 Q All right. And what happened after air unit took over. What did you
25 observe?

1 A Once the air unit took over, he then continued southbound on 95.
2 When the got to the Tropicana exit, he then took took the Tropicana exit to go down
3 the off ramp.

4 Q All right. And what happened at the Tropicana exit?

5 A At the Tropicana exit there is several vehicles that were stopped at the
6 red traffic signal right there at the light at Trop and U.S 95. So, at that time, the
7 Defendant actually went to the left into where they were doing construction in a dirt
8 lot area, like a waste area, and drove through that.

9 Q Okay. And did that almost cause an accident?

10 A That did almost cause an accident.

11 Q All right. And after driving through the landscaping and on the east side
12 of the ramp, what happened after that?

13 A He then continued through the waste area and actually came out onto
14 eastbound Tropicana where he caused an accident with a landscaping truck and
15 trailer.

16 Q Okay. Now you can draw on the map, retrace the Defendant's steps
17 with the black marker and then mark the accident with a red A.

18 A Okay.

19 Q Now how fast do you estimate the Defendant was going when he hit the
20 landscaping truck?

21 A Probably only about 20 miles an hour.

22 Q Now did the Defendant stop his vehicle after causing that accident?

23 A He did not.

24 Q All right. And what did he do instead.

25 A At that time he then jumped the median and started to go, again,

1 against oncoming traffic. He went eastbound up Tropicana in the -- I'm sorry --
2 westbound Tropicana in the eastbound lanes.

3 Q And so what happens from there?

4 A As the vehicles were approaching that intersection, they saw him and
5 everybody started to come to a stop. He flipped the car around and he spun it out
6 and he came back down the off ramp -- I'm sorry -- Tropicana and got onto the 95
7 onramp to go southbound again on 95.

8 Q Okay. And then what happens from there?

9 A At that time he then for some reason decides to turn left and go into the
10 waste site again on the opposite now of Tropicana.

11 Q Okay. And where does he go from there?

12 A At that time then he gets back out onto the roadway on Tropicana and
13 then starts to head eastbound.

14 Q Okay. And what happens next?

15 A He then fails to stop at the red traffic light. Again, we're a couple
16 hundred yards back following him at a distance while our air unit is also calling us
17 out. He doesn't stop at the red traffic signal at Mountain Vista and Tropicana
18 heading eastbound.

19 Q If you could mark that on the map with the red pen.

20 A [Illustrating]. Okay.

21 Q All right. And what happens after he runs that light at Tropicana and
22 Mountain Vista?

23 A He then continues eastbound Tropicana -- I'm not even sure how fast
24 he was going. We weren't close enough to him -- he then continues to keep going
25 eastbound towards Nellis.

1 Q All right. And what happens when he approaches Nellis?

2 A When he approaches Nellis, I can see that there's several vehicles
3 stopped again at the red traffic light right there at Nellis. They are west of the
4 intersection but in the eastbound lanes. So, at that time he goes across the median
5 and goes into oncoming traffic and causes another accident with a truck.

6 Q Okay. And did you see what kind of truck that was?

7 A I do.

8 Q And what kind of a truck was it?

9 A That one was a purple Napa truck with the little hat on top of it.

10 Q Showing you what's already been marked as State's Exhibit 9. Is this
11 the truck that the Defendant struck?

12 A Yes, it is.

13 Q And did his accident occur right outside the Walmart?

14 A No, this one actually occurred at Nellis and Tropicana.

15 Q That's right. Thank you. Okay. Now at the time of the accident were
16 there any other patrol vehicles pursuing this Defendant?

17 A No, nobody was around him. I was closest patrol unit and I was
18 approximately 200 yards behind him.

19 Q So, what happened after the Defendant struck this truck?

20 A The vehicle that he was in was pretty damaged. So, at that time I felt it
21 was going to stop sometime soon. And from all of our studies, it shows that the
22 majority of the vehicle pursuits turn into foot pursuits. So, that's why I then got up
23 closer to him and activated my lights and sirens again to try to get him to stop and to
24 warn people that he is coming.

25 Q All right. And did he stop?

1 A He did not stop.

2 Q Okay. What did he do?

3 A He then turned northbound on Nellis from Tropicana after causing that
4 accident.

5 Q Okay. If you could just depict that on the map there and also mark
6 where the accident occurred.

7 A Okay.

8 Q With the Napa truck. Okay. And so what happened when you turned
9 northbound onto Nellis?

10 A We continued probably 35 miles an hour, very light traffic. He blew the
11 stop sign at Sun Valley and Nellis.

12 Q Thank you. If you can mark that on the map.

13 A Then he continued northbound towards Harmon.

14 Q Okay. And what did he do when he got to Harmon?

15 A When he got to Harmon there was no traffic at Harmon. We had a
16 green light. He then turned eastbound on Harmon from Nellis.

17 Q And what happened after he drove eastbound in the westbound lanes
18 on Harmon?

19 A Once we drove eastbound it was like he took like a wide turn and came
20 into oncoming traffic, but luckily there was no vehicles coming westbound on
21 Harmon and he just started driving straight at a light pole.

22 Q Did he actually hit that light pole?

23 A He did hit the light pole. At the last second it looked like he swerved to
24 the side and just sideswiped it and it caused a very big accident.

25 Q And what was your response after seeing the Defendant crash into a

1 light pole?

2 A After seeing that, I couldn't let this pursuit go any further than it already
3 had. So, at that time, I felt that we needed to pinch him in again and this time if we
4 needed to, we needed to make contact to stop him so he couldn't hurt anybody.

5 Q Okay. When you say we, was there another patrol officer involved?

6 A There was a patrol officer that was behind me.

7 Q And who was that?

8 A It was Rolando Pro.

9 Q Okay. So, what do you and Officer Pro do at this time?

10 A After he hits the light pole, I then go head on with him. He does look
11 like he's starting to move a little bit but I'm on top of him before he could go
12 anywhere. We don't make contact. He stops and then puts it in reverse and as he's
13 starting to back up, I see him turn a little bit and run into Rolando Pro's front end of
14 his vehicle.

15 Q All right. And what happens after you see the Defendant strike Rolando
16 Pro -- Officer Pro's vehicle?

17 A Officer Pro then pushes him. I could see the vehicle get pushed into a
18 sidewalk to where it's no longer mobile and at that time I could see the Defendant
19 climbing over the driver's seat onto the passenger seat.

20 MS. WONG: Okay. May I approach the witness, Your Honor?

21 THE COURT: Yes.

22 BY MS. WONG:

23 Q Can I just have you mark the remaining path the Defendant took?

24 A Okay. On foot?

25 Q No.

1 A Oh, on the vehicle? Okay.

2 Q Where the vehicle stopped. And is this a fair and accurate depiction of
3 your -- of the pursuit of the Defendant's vehicle?

4 A Yes, it is.

5 MS. WONG: The State moves for the admission of -- if you can please initial
6 the map. The State moves for the admission of State's proposed Exhibit 26 into
7 evidence.

8 THE COURT: Twenty-six is offered. Any objection?

9 MR. GARDNER: We just like to look at it, please. No objection, Your Honor.

10 THE COURT: Twenty-six is received.

11 **[STATE'S EXHIBIT #26 ADMITTED]**

12 MS. WONG: Thank you, Judge. Permission to publish?

13 THE COURT: Yes.

14 BY MS. WONG:

15 Q Okay. Officer Harper, if you can very briefly explain the markings that
16 you made on this map?

17 A Okay. This touches the screen; correct? [Illustrates]. So, right here is
18 the Eastside Cannery. When he comes out this way, this is the entrance I was
19 talking about that he was coming from somewhere over this way and I was coming
20 from this side of the parking lot that way. When he went over the landscaping, he
21 came out onto here, drove westbound, then he went northbound. This is where he
22 crossed the median and went up there. That's where he caused the first accident,
23 right here. He continued to go into oncoming traffic. He hit a -- blew the stop light
24 right here and spun out right here, which is on Nellis, came back out and went out
25 onto Harmon -- or I'm sorry -- onto Boulder Highway up towards Flamingo, ran the

1 red light and went westbound. When he came up here to Mountain Vista, that's
2 where the kids were in the crosswalk right up there. We then continued up this way
3 where he spun out, came back onto the freeway right here. That's when he hit
4 guard railing somewhere right in here. He then continued to go this way on 95.
5 That's where he went into the embank -- you know, the waste area; came across
6 right in here is where he caused the accident with the landscaping truck. He then
7 went up this way, spun out, came back down. Now he went eastbound on
8 Tropicana. He ran the red light there at Mountain Vista. With nobody behind him,
9 he then continued this way. That's where he hit the Napa truck. Then he went
10 northbound on Nellis, ran the stop sign at Sun Valley, went up to Harmon, turn east
11 and that's where he cause the accident, the final accident, where he pinched him in.

12 Q All right. Great. Thank you. Now what happened after Officer Pro
13 pinches the Defendant's vehicle into the curb?

14 A He then exits the passenger side window. At that time, I'm also getting
15 out of my vehicle with my patrol dog making several announcements for him to stop
16 or I'm going to send my dog. He fails to comply with those. As we go -- as he goes
17 to go northbound, there's a wall right there that's the border of Walmart. Right as
18 my dog and I are both getting up to him, the dog jumps up, misses him. I grab onto
19 this shirt. I just barely get his shirt and he falls over to the other side of the wall.

20 Q Now you indicate he -- how did he exit his vehicle?

21 A He actually crawled out the passenger side window.

22 Q So, what happened after you guys just missed the Defendant going
23 over the wall?

24 A The air unit is calling it out that he's now running along the back side of
25 the Walmart. I then get my dog back into my truck and I drove around the block